FAMILY-DRIVEN JUSTICE

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This Article reports the results of a qualitative research study identifying best practices for family engagement in the juvenile justice system. The typical system operates from the faulty premise that families cause their children's problems. As a result, decisions about treatments or sanctions for youth routinely fail to incorporate family members' views about how best to address a youth's needs. Instead, system professionals make decisions that expose youth to treatments and environments that increase recidivism and place youth at a high risk of being abused. Victims, youth, families, and system professionals all lose under the current model. The goal of this study was to develop a shared understanding of how to reform justice systems to meet the needs of youth and families without sacrificing the public safety concerns of justice system professionals and victims.

Synthesizing efforts from jurisdictions across the country, this Article proposes a radical transformation of the justice system and introduces a concept called Family-Driven Justice. The foundational values of this transformation are: all families care about their children and can be trusted to make good decisions on their behalf; all families have strengths to build upon; all families want their children to grow up safe and free from justice-system involvement; and all families have dreams for their children and want them to succeed in adult life.

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To put these values into practice, this Article describes the five features of what a transformed justice system will look like when it uses these positive presumptions to guide changes. First, families will be supported before and after challenges arise with their youth. Second, families will have access to peer support from the moment a youth is arrested through exit from the justice system. Third, families will be involved in decision-making processes at the individual, program, and policy levels to hold youth accountable and keep the public safe. Fourth, families will be strengthened through culturally competent treatment options and approaches. Fifth, families will know their children are being prepared for a successful future.

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INTRODUCTION

Legal scholars are at the beginning of a research agenda that examines the relationship between families and the criminal justice system. In *Privilege or Punish: Criminal Justice and the Challenge of Family Ties*, the authors Dan Markel, Jennifer Collins, and Ethan Leib examine state policies that treat criminal defendants better or worse than other defendants on the basis of familial status.[1] In their view, family status should rarely be considered in the criminal justice system.[2] This Article contributes to this nascent discussion by reporting the results of an empirical study examining the role of families[3] in the juvenile justice system.[4] In contrast to Markel, et al., I come to the opposite conclusion—the justice system should be restructured to provide a significantly greater role for families than is present in the system today, a concept I term "Family-Driven Justice."[5]

While there are sharp differences between juvenile and adult criminal justice systems, both systems have competing objectives which include retribution and rehabilitation. Family concerns have not been adequately integrated into evaluating either of these competing philosophies. The distinctions between these two systems also artificially mask the fact that the majority of crimes are committed by young people.[6] Known as the "age-crime curve," involvement in criminal activity increases from late childhood, peaks in late adolescence, and then declines dramat-

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1. DAN MARKEL, JENNIFER M. COLLINS & ETHAN J. LEIB, PRIVILEGE OR PUNISH: CRIMINAL JUSTICE AND THE CHALLENGE OF FAMILY TIES (2009).

2. *Id.* at 154. One of their primary concerns is how "accommodations to families might impede the realization of criminal justice, understood as the effective and accurate prosecution of the guilty and exoneration of the innocent." *Id.* at xvi.

3. From the very beginning of my research, I approached the topic using a broad definition of family and did not limit the analysis to a child's parents or guardians. The family members I consulted with during the study settled on the following definition: "Family is broadly defined to include biological, foster, and adoptive parents, including persons in same-sex couples who may be acting as a parent but are not legally related to the child; siblings; grandparents; aunts and uncles; legal guardians and kinship caregivers; and all other persons in the child's support network who are viewed as part of the family system, such as clergy, neighbors, or close family friends." This definition is largely consistent with the test defining family used by the Supreme Court. *See* Smith v. Org. of Foster Families for Equal. & Reform, 431 U.S. 816, 843–45 (1977) (defining the concept of family on the basis of: 1) biological relationships; 2) emotional attachments; and 3) whether the relationship exists apart from the power of the state). This definition is also consistent with at least one juvenile justice agency's definition. *See infra* note 461.

4. The terms "juvenile justice system," "criminal justice system," and "justice system" are used throughout this article. When justice system is used, it denotes both juvenile and adult criminal justice systems. If I intend to refer to either the juvenile or adult criminal justice system exclusively, I use those terms.

5. In fairness, the authors did not attempt to address the separate rehabilitative aims of the juvenile justice system and might have come to different conclusions about accommodations had they evaluated family status in that context.

6. The terms "children" and "youth" are used interchangeably throughout this article to refer to persons under the age of 18, but also include persons who may be older who remain under the jurisdiction of the juvenile court. "Young adults" is used to describe persons over the age of 18. "Young people" refers to persons under the age of 25.

ically by the age of 25.[7] Many of the youth and young adults in both systems are being parented or supported by family members, yet we know little of the impact of justice system processing on these families.

The number of youth who are likely to interact with the justice system is alarming, even if not precise. According to the U.S. Bureau of Justice Statistics, about 1 in 35 adults, nearly 7 million individuals, were under the supervision of adult correctional systems on a single day at the end of 2012.[8] There are no comparable national daily estimates of the proportion of the youth population under supervision by the juvenile justice system. Annually an estimated 1.37 million youth are processed by juvenile courts,[9] and an additional 250,000 children are referred to adult courts.[10] The population of youth and young adults impacted by the justice system is marked by racial and ethnic disparities. By the age of 18, Black males have the highest rate of arrest (30%), followed by Latino males (26%), and white males (22%).[11] By the age of 23, these disparities continue to widen with Black males having a cumulative arrest rate of 49%, Latino males, 44%, and white males, 38%.[12] Arrest, even without a conviction, will lower the life chances for these young people.[13]

Once in the justice system, Black youth overwhelmingly receive more punitive treatment than their white peers.[14] Black youth only represent 17% of the overall youth population, but are 62% of the youth prosecuted in the adult criminal system, and are 9 times more likely than white youth to receive an adult prison sentence.[15] Black young adults ages 18–19 are 9.3 times more likely than white

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7. FROM JUVENILE DELINQUENCY TO ADULT CRIME: CRIMINAL CAREERS, JUSTICE POLICY, AND PREVENTION 5 (Rolf Loeber & David Farrington eds., 2012).

8. LAUREN E. GLAZE & ERINN J. HERBERMAN, BUREAU OF JUSTICE STATISTICS, CORRECTIONAL POPULATIONS IN THE U.S., 2012 1 (2013), *available at* http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4843.

9. OJJDP Statistical Briefing Book (Apr. 17, 2013), *available at* http://www.ojjdp.gov/ojstatbb/court/JCSCF_Display.asp?ID=qa06601&year=2010&group=1&estimate=2.

10. NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, STATE TRENDS: LEGISLATIVE VICTORIES FROM 2005 TO 2010 REMOVING YOUTH FROM THE ADULT CRIMINAL JUSTICE SYSTEM 3 (2011).

11. Robert Brame et al., *Demographic Patterns of Cumulative Arrest Prevalence by Ages 18 and 23*, 60 CRIME & DELINQ. 471, 476 (2014). Note these figures assume that missing cases from the National Longitudinal Survey of Youth, the dataset used in the study, are missing at random.

12. *Id.*

13. *See, e.g.*, Deyah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 937, 942–43 & n.7 (2003); Richard D. Schwartz & Jerome H. Skolnick, *Two Studies of Legal Stigma*, 10 SOC. PROBS. 133, 136 (1962).

14. Neelum Arya & Ian Augarten, *Critical Condition: African-American Youth in the Justice System*, 2 CAMPAIGN YOUTH JUST. 1, 23–26 (2005).

15. *Id.* at 1. States vary in whether and how youth are prosecuted as adults. While the perception is that youth who are prosecuted as adults are the "worst of the worst" and therefore deserving of adult court punishment, studies reviewing state-specific data from across the country have found that many youth entering the adult system are first-time offenders who have not had the benefit of the juvenile justice system, many are not charged with serious offenses, and the majority of youth receive a sentence of adult probation in-

young adults of the same age to be imprisoned.[16] Latino youth are also treated harshly.[17] Compared to white youth, Latino youth are 28% more likely to be detained, 41% more likely to be incarcerated or receive an out-of-home placement such as a boot camp or group home, and 40% more likely to be admitted to adult prison.[18] Latino young adults ages 18–19 are 3.5 times more likely than white young adults of the same age to be imprisoned.[19]

Juvenile and adult criminal justice systems involve a population of young people still closely connected to and assisted by their families. It is therefore somewhat surprising that scholars have not paid more attention to the families of youth who are arrested and imprisoned. Practitioners and scholars have tended to focus their research on how justice system involvement impedes marriage, and relationships between incarcerated parents and their children.[20] There are 2.7 million children of incarcerated parents[21] and scholarship in this area has been "driven by

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stead of adult prison. *See, e.g.*, CAMPAIGN FOR YOUTH JUSTICE & P'SHIP FOR SAFETY AND JUSTICE, MISGUIDED MEASURES: THE OUTCOMES AND IMPACTS OF MEASURE 11 ON OREGON'S YOUTH (2011); CHILDREN'S ACTION ALLIANCE, IMPROVING PUBLIC SAFETY BY KEEPING YOUTH OUT OF THE ADULT CRIMINAL JUSTICE SYSTEM (2010); CHILDREN'S LAW CENTER, INC., FALLING THROUGH THE CRACKS: A NEW LOOK AT OHIO YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM (2012); CITIZENS FOR JUVENILE JUSTICE, MINOR TRANSGRESSIONS, MAJOR CONSEQUENCES: A PICTURE OF 17-YEAR-OLDS IN THE MASSACHUSETTS CRIMINAL JUSTICE SYSTEM (2011); COLO. JUVENILE DEFENDER COAL., RE-DIRECTING JUSTICE: THE CONSEQUENCES OF PROSECUTING YOUTH AS ADULTS AND THE NEED TO RESTORE JUDICIAL OVERSIGHT (2012); MICHELLE DEITCH, JUVENILES IN THE ADULT CRIMINAL JUSTICE SYSTEM (2011); JUST CHILDREN, DON'T THROW AWAY THE KEY: REEVALUATING ADULT TIME FOR YOUTH CRIME IN VIRGINIA (2009); JUST KIDS P'SHIP, JUST KIDS: BALTIMORE'S YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM (2010); WASH. COAL. FOR THE JUST TREATMENT OF YOUTH, A REEXAMINATION OF YOUTH INVOLVEMENT IN THE ADULT CRIMINAL JUSTICE SYSTEM IN WASHINGTON: IMPLICATIONS OF NEW FINDINGS ABOUT JUVENILE RECIDIVISM AND ADOLESCENT BRAIN DEVELOPMENT (2009).

16. E. ANN CARSON & WILLIAM J. SABOL, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2011 8 (2012).

17. Neelum Arya et al., *America's Invisible Children: Latino Youth and the Failure of Justice*, 3 CAMPAIGN YOUTH JUST. 1, 6 (2009).

18. *Id.*

19. CARSON & SABOL, *supra* note 16.

20. *See generally* DONALD BRAMAN, DOING TIME ON THE OUTSIDE: INCARCERATION AND FAMILY LIFE IN URBAN AMERICA (2004); MEGAN COMFORT, DOING TIME TOGETHER: LOVE AND FAMILY IN THE SHADOW OF PRISON (2008); John Hagan & Ronit Dinovitzer, *Collateral Consequences of Imprisonment for Children, Communities, and Prisoners*, 26 CRIME & JUST. 121 (1999); Joseph Murray & David Farrington, *The Effects of Parental Imprisonment on Children*, 37 CRIME & JUST. 133 (2008); Ofira Schwartz-Soicher, *The Effects of Parental Incarceration on Material Hardship*, 85 SOC. SERVICE REV. 447 (2011); Naomi F. Sugie, *Punishment and Welfare: Paternal Incarceration and Families' Receipt of Public Assistance*, 90 SOC. FORCES 1403 (2012); Christopher Wildeman, Jason Schnittker & Kristin Turney, *Despair by Association? The Mental Health of Mothers with Children by Recently Incarcerated Fathers*, 77 AM. SOC. REV. 216 (2012); Christopher Wildeman & Bruce Western, *Incarceration in Fragile Families*, 20 FUTURE CHILD. & YOUTH SERVS. REV. 181 (2010).

21. BRUCE WESTERN & BECKY PETTIT, PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION'S EFFECT ON ECONOMIC MOBILITY 4 (2010), *available at*

numbers that portend an uncertain future for too many children to be ignored."[22] Yet an analogous focus on family members of incarcerated young people has not sparked a sustained scholarly inquiry even though "a legal paradigm which delegates the responsibility to assist the juvenile in not reoffending directly to the family should ensure that its rules and procedures do not undermine the parent–child relationship."[23] In addition to weakening family–youth bonds, the justice system exacerbates the economic vulnerability of families through the use of a variety of court- and incarceration-related fees and costs.[24] A recent survey of more than 1,000 parents and family members of youth involved in the justice system found that more than half of these families survive on less than $25,000 per year, with just 6% reporting incomes over the median household income in America of $50,000 per year.[25] Despite these limited financial resources, nearly two-thirds reported spending more than $125 per month on system costs, one-third spent more than $500 per month, and nearly one-fifth had costs over $1,000 per month.[26] Approximately one-third of families reported having to make difficult choices between paying for basic necessities or making court-related payments.[27]

Many scholars have worked to expose the racial inequities built into the criminal justice system,[28] and have proposed a variety of solutions to ending mass incarceration including legalizing drugs, refusing plea bargains, and jury nullification. Paul Butler succinctly states the problems of our current justice system: "What poor people, and black people, need from criminal justice is to be stopped less, arrested less, prosecuted less, incarcerated less."[29] Advocates have worked on

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http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Collateral%20Costs%20FINAL.pdf.

22. Myrna S. Raeder, *Making a Better World for Children of Incarcerated Parents*, 50 FAM. CT. REV. (special issue) 23, 28 (2012).

23. Hillary Farber, *To Testify or Not to Testify: A Comparative Analysis of Australian and American Approaches to a Parent-Child Testimonial Exemption*, 46 TEX. INT'L L.J. 109, 141 (2010).

24. JUSTICE FOR FAMILIES, FAMILIES UNLOCKING FUTURES: SOLUTIONS TO THE CRISIS IN JUVENILE JUSTICE (2012). *See also* DREW KUKOROWSKI, PETER WAGNER & LEAH SAKALA, PRISON POLICY INITIATIVE, PLEASE DEPOSIT ALL OF YOUR MONEY: KICKBACKS, RATES, AND HIDDEN FEES IN THE JAIL PHONE INDUSTRY (May 8, 2013), *available at* http://www.prisonpolicy.org/phones/please_deposit.pdf; DREW KUKOROWSKI, THE PRICE TO CALL HOME: STATE-SANCTIONED MONOPOLIZATION IN THE PRISON PHONE INDUSTRY (Sept. 11, 2012), *available at* http://www.prisonpolicy.org/phones/price_to_call_home.pdf; ACLU, IN FOR A PENNY: THE RISE OF AMERICA'S NEW DEBTORS' PRISONS (2010), *available at* https://www.aclu.org/files/assets/InForAPenny_web.pdf.

25. JUSTICE FOR FAMILIES, *supra* note 24, at 13.

26. *Id.* at 28.

27. *Id.*

28. *See, e.g.*, MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 271 n.7 (2010); James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. REV. 21 (2012); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271 (2004); Ian F. Haney Lopez, *Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama*, 98 CAL. L. REV. 1023 (2010).

29. Paul D. Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L.J. 2176, 2191 (2013).

a variety of strategies from prison abolition[30] to interventions designed to stop discrimination and other collateral consequences that come from criminal convictions.[31] Further, there are groups working together on insider- or correctional-led strategies known as Justice Reinvestment Initiatives (which have largely failed at reallocating resources from corrections to communities).[32] Against the backdrop of these primarily adult-centered criminal justice system reform efforts and recent juvenile-centered Supreme Court decisions declaring that justice policies must be tailored toward children,[33] it is now more important than ever to consider the family perspective in guiding future reform efforts. This Article is one step forward in that direction.

This Article reports the results of a qualitative research study identifying best practices for family engagement in the juvenile justice system and examines how the contemporary justice system undermines families. In 2008, the Center for Juvenile Justice Reform at Georgetown University conducted a survey of juvenile probation and correctional leaders and found not only that family engagement was ranked as one of the three most important operational issues facing their respective departments or agencies, but also that it was the most difficult to address.[34] Since that time, numerous organizations and initiatives have developed tools and resources to help agencies reach out to parents and other family members.[35] However, there are three critical pieces that have been missing from the efforts to date: 1)

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30. *See, e.g.*, CRITICAL RESISTANCE, http://criticalresistance.org/ (aimed at prison abolition).

31. *See, e.g.*, BAN THE BOX CAMPAIGN, http://bantheboxcampaign.org/ (aimed at ending discrimination against persons with criminal convictions).

32. *See, e.g.*, JAMES AUSTIN ET AL., ENDING MASS INCARCERATION: CHARTING A NEW JUSTICE REINVESTMENT 1–2, *available at* https://www.aclu.org/files/assets/charting_a_new_justice_reinvestment_final_0.pdf ("Possible savings in the form of 'averted costs' for JRI work have been either returned to the general coffers or used to augment community corrections and law-enforcement government budgets."). *See also* URBAN INST., JUSTICE REINVESTMENT INITIATIVE STATE ASSESSMENT REPORT 46 tbl.10 (2014), *available at* http://www.urban.org/UploadedPDF/412994-Justice-Reinvestment-Initiative-State-Assessment-Report.pdf (confirming the characterization that investments have not been returned to community services but have been primarily directed into justice-system programs).

33. *See* Elizabeth S. Scott, *"Children Are Different": Constitutional Values and Justice Policy*, 11 OHIO ST. J. CRIM. L. 71 (2013).

34. SHAY BILCHIK ET AL., NATIONAL REENTRY RESOURCE CENTER WEBINAR: FAMILY ENGAGEMENT IN REENTRY FOR JUSTICE-INVOLVED YOUTH (2010), *available at* http://www.csgjustice-center.org/documents/0000/0775/Oct_4_Webinar_Slides_FINAL.pdf.

35. Family involvement has been a priority for several juvenile justice-related organizations including the Center for Juvenile Justice Reform at Georgetown University; Council of Juvenile Correctional Administrators; Performance-based Standards for Youth Correction and Detention Facilities; MacArthur Foundation's Models for Change Initiative; National Evaluation and Technical Assistance Center for the Education of Children and Youth Who Are Neglected, Delinquent, or At Risk; Office of Juvenile Justice and Delinquency Prevention's National Center for Youth in Custody; Vera Institute of Justice's Family Justice Program; and Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative.

The justice field is not operating from a shared understanding of the goal or purpose of family engagement; 2) Some practices aimed at involving families are based upon a faulty ideology and stereotypes; and, 3) Family engagement initiatives have largely failed to acknowledge abuses perpetrated by justice agencies.[36]

First, family engagement or involvement is a nebulous term that is used inconsistently by family members, practitioners, and scholars alike. Juvenile justice professionals[37] use the term "family engagement" to refer to practices that are supportive and encouraging as well as strategies that are punitive or coercive. For example, an American Bar Association ("ABA" study on parental participation included ordering parents to appear in court and subjecting parents to sanctions as components of parental involvement.[38] Not surprisingly, families do not use the term family engagement this way. Wendy Luckenbill, a nationally recognized expert on family advocacy, explains,

> [E]verybody says they want tools to get families more engaged and involved with their children, and when we start presenting our curriculum and start talking about [how] the probation officer is supposed to be listening more to the family and understanding the family perspective more, we usually get somebody that says, "I thought you were going to give me tools to make families do what I think they should do."[39]

Families use the term family engagement to refer to how professionals and government services will respond to their concerns and help them meet the needs of their children. As demonstrated in this Article, often what families want or need is outside what justice agencies are able to provide themselves.[40]

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36. These are assertions that I have made based upon my practice experience in the field. It was beyond the scope of my study to examine these assumptions empirically, although future researchers are encouraged to do so.

37. The justice system is made up of numerous agencies usually involving law enforcement, corrections and probation departments, and juvenile and adult courts. Other agencies such as the child welfare, mental health, education, and human services agencies also play a role in the functioning of the justice system. In addition, many nonprofit organizations provide direct services to court-involved youth or provide legal or other advocacy services to youth and their families. I use the terms system reformers, stakeholders, practitioners, and professionals interchangeably to refer to people working for government agencies, quasi-government organizations, e.g., nonprofits that provide services to others under government contracts, as well as traditional child and juvenile advocacy organizations.

38. HEATHER J. DAVIES & HOWARD A. DAVIDSON, AMERICAN BAR ASS'N, PARENTAL INVOLVEMENT PRACTICES OF JUVENILE COURT (2001).

39. Wendy Luckenbill, Address to NTTAC 22, *available at* https://www.nttac.org/media/trainingCenter/85/Transcript%20Famiy%20Comes%20First%20Transforming%20Justice%20System%20by%20Partnering%20with%20Families%2005%2008%2013%20508c%20for%20TC.pdf.

40. This tension has been recognized by several scholars. Kay Levine has commented that "[b]y placing social problems inside the criminal justice framework without changing the fundamental orientation of the officials charged with addressing these problems, we ensure that the traditional apparatus of the criminal justice system—conviction, punishment, and surveillance—will be the only strategies considered by the problem-solvers." Kay L. Levine, *The New Prosecution*, 40 WAKE FOREST L. REV. 1125, 1131

The goal of my study was to develop a shared understanding of how to address the needs of youth and families by identifying areas of common ground between family members and juvenile justice system professionals. For example, Los Angeles County has recently made changes to the way child-serving and justice agencies respond to youth in the foster care and delinquency systems, known as dual-jurisdiction or crossover youth.[41] Los Angeles asserts that they have begun to value "families by radically altering the premise on which social services are based, moving from 'replacing families' to supporting and strengthening them."[42] My study sought to identify similar practices, currently in use in jurisdictions across the country, which are consistent with the family vision to help reconceptualize the relationship between families and government services.

Second, many of the existing family engagement practices are built upon a faulty ideology.[43] The stereotype of the bad, thoughtless, uncaring parent is ubiq-

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(2005). *See also* Allegra M. McLeod, *Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law*, 100 GEO. L.J. 1587, 1673 (2012).

41. L.A. CNTY. DEP'T OF PROBATION, PRACTICE PRINCIPLES, PRACTICE MODEL GUIDE AND IMPLEMENTATION THROUGH THE BREAKTHROUGH SERIES COLLABORATIVE MODEL FOR SYSTEM IMPROVEMENT 17 (2009), *available at* http://lacdcfs.org/TitleIVE/documents/Attachment%20I%20-probation.pdf.

42. *Id.*

43. The ideology of the juvenile court is represented in this quote from Judge Edwards: an important purpose of the court is "to preserve and strengthen families, so that they can raise their children without state interference." Leonard P. Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 JUV. & FAM. CT. J. 1, 39 (No. 2 1992). Legal scholars have noted how the ideology of familial independence from the state is a myth. *See, e.g.*, CLAIRE HUNTINGTON, FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS 68–69 (2014) ("One of the most fascinating paradoxes of family law is that despite the breadth and depth of state regulation, a bedrock principle of family law is that families are autonomous, operating apart from the law. Family autonomy is the belief that a clear line divides the family from the state and that legal rights form a protective barrier against state intervention. This could not be farther from the truth, but is a persistent belief nonetheless."); Barbara Bennett Woodhouse, *Ecogenerism: An Environmentalist Approach to Protecting Endangered Children*, 12 VA. J. SOC. POL'Y & L. 409, 430 (2005) ("The dominant macrosystem in the United States is characterized by a number of mutually reinforcing values and ideologies, including 1) a belief in individual responsibility; 2) the myth of individual autonomy; 3) a belief in free market efficiency as the measure of good and in consumption as the engine of the free market; 4) deep-seated prejudices dividing people along lines of race, class, gender, and, increasingly, religion; and 5) a success ethic, whether you call it survival of the fittest or 'meritocracy,' that rejects as unworthy those who falter in climbing the ladder of success."); Lois A. Weithorn, *Developmental Neuroscience, Children's Relationships with Primary Caregivers, and Child Protection Policy Reform*, 63 HASTINGS L.J. 1487, 1504–05 (2012) ("We vacillate between solutions that are polar opposites: Families are either exclusively left to their own devices—to struggle to provide adequate and safe homes and environments against sometimes overwhelming odds—or the state coercively intervenes, often removing children from the family home."); Maxine Eichner, *Dependency and the Liberal Polity: On Martha Fineman's* The Autonomy Myth, 93 CAL. L. REV. 1285, 1316 (2005) ("The division of responsibility that I propose posits what might be called both 'strong families' and a 'strong state.' This division expects that people should seek to meet the dependency needs of their family members, and therefore requires families to take on the difficult task of caring for dependents. Yet it also maintains

uitous. As Sylvia Ann Hewlett and Cornel West note in their book, *The War Against Parents*, "Hollywood's emphasis on incompetent or abusive parents has become so pervasive that we have been lulled into taking this kind of parent-bashing for granted as a harmless quirk of mass entertainment."[44] According to Barbara Bennett Woodhouse, "The culture of rugged individualism has made it difficult for Americans to accept that parents do not have to be bad parents to have children in trouble."[45] There is a widespread belief, reflected both in the studies of family engagement and operation of the justice system overall, that families are the cause of their children's problems[46] and a corresponding belief that system professionals know better.

These attitudes may have been inadvertently fostered by the 1967 landmark decision establishing the right to counsel for youth, *In re Gault*.[47] *Gault* sparked the modern children's rights movement, which "influenced children's lawyers to regard the law as something oppressing children and unfairly denying them adult-like rights."[48] Viewing children as separate rights-holders apart from their parents has meant that legal scholars and advocates have often focused on the concerns of youth apart from their families in ways that have been detrimental to both.[49] Because many practitioners believe families are the source of their children's problems, few studies of family engagement have directly asked families what they want from government services, or why they find it difficult to participate in the activities of the current justice system. When the ABA conducted its review of best practices on parental involvement in juvenile court, no parents were consulted.[50]

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that such caretaking requires supportive institutional structures, and that it is the state's responsibility to secure such structures.").

44. SYLVIA ANN HEWLETT & CORNELL WEST, THE WAR AGAINST PARENTS: WHAT WE CAN DO FOR AMERICA'S BELEAGUERED MOMS AND DADS 132 (1998). *See also* KAARYN S. GUSTAFSON, CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY 187 (2011) ("The American public has invested heavily in the creation of a new welfare system, as well as in the perpetuation of the symbol of the welfare queen. We have developed a culture that stigmatizes, even criminalizes, the poor. We have instituted public benefits programs that do not lift people out of poverty or even ease the experience of poverty.").

45. Barbara Bennett Woodhouse, *Keynote*, 81 ST. JOHN'S L. REV. 519, 528 (2007).

46. *See, e.g.*, Eve M. Brank & Victoria Weisz, *Paying for the Crimes of Their Children: Public Support of Parental Responsibility*, 32 J. CRIM. JUST. 465, 469 (2004) (68.7% of respondents answered "parents" when asked "when a teenager commits a crime, which of the following is most responsible, in addition to the teenager?"); Lynn D. Wardle, *The Fall of Marital Family Stability and the Rise of Juvenile Delinquency*, 10 J. L. & FAM. STUD. 83, 88 (2007) ("I wonder whether we are not making children pay for the faults of their parents.").

47. *In re* Gault, 387 U.S. 1 (1967).

48. Martin Guggenheim, Graham v. Florida *and a Juvenile's Right to Age-Appropriate Sentencing*, 47 HARV. C.R.–C.L. L. REV. 457, 474 (2012).

49. *See generally* MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS (2005); Annette Ruth Appell, *Representing Children Representing What?: Critical Reflections on Lawyering for Children*, 39 COLUM. HUM. RTS. L. REV. 573, 578 (2008).

50. *See* DAVIES & DAVIDSON, *supra* note 38.

Family members who do not participate in justice system activities are sometimes viewed as lacking respect for the law. A recent empirical study by Liana Pennington examining parental attitudes toward the juvenile court process exemplifies this approach. Pennington suggests that family members and the community may be "hostile to the legal process."[51] Pennington claims that the lack of a defined role in the juvenile court process creates or reinforces "parents' negative perceptions of the legal process"[52] which they impart to their youth, "creating or reinforcing juveniles' negative perceptions of the legal process."[53] Further, parents discuss their experiences with family members, neighbors, and others in the community, leading to decreasing "levels of community trust in the court process and legal authorities."[54] Pennington's proposed intervention to address the attributes she ascribes to parents would take the form of a parental narrative: "a time when parents can speak to the court about their child's home life and their opinion concerning the child's needs" which the judge will then take into consideration.[55] Pennington's parental narrative makes sense. A recent study confirms that more than 80% of family members are never asked by a judge what should happen to their child.[56] Yet one wonders how the juvenile justice system could operate without even considering the family perspective. Judge Todd A. Hoover has acknowledged:

> Our systems play out the belief that total strangers—caseworkers, juvenile probation officers, counselors, or judges—who make decisions for these families will produce the best outcomes. I do not know how that kind of thinking was constructed, but I have seen it in my courtroom numerous times.[57]

I am not opposed to Pennington's proposal, or the bulk of strategies put forward by others,[58] but I approached my research with the understanding that the

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51. Liana J. Pennington, *Engaging Parents as a Legitimacy-Building Approach in Juvenile Delinquency Court*, 16 U.C. DAVIS J. JUV. L. & POL'Y 481, 523 (2012). *See also id.* at 514 (The juvenile justice system of today "aims to change youth behavior and to better socialize children to *accept dominant norms.* The meaningful involvement of parents can help the justice system to realize these goals and lead to overall better outcomes for children." (emphasis added)). But note that Pennington's own research shows that even parents who distrusted the legal system or viewed the system as racist wanted to see changes in their child's behavior. *Id.* at 528.

52. *Id.* at 488.

53. *Id*.

54. *Id*.

55. *Id*. at 487. Although not explicitly stated, Pennington seems to fall short of arguing for a greater parental role out of concern that doing so would dilute the due process rights of youth.

56. *See* JUSTICE FOR FAMILIES, *supra* note 24, at 21.

57. PA. FAMILY GRP. DECISION MAKING LEADERSHIP TEAM, PENNSYLVANIA FAMILY GROUP DECISION MAKING TOOLKIT: A RESOURCE TO GUIDE AND SUPPORT BEST PRACTICE IMPLEMENTATION 195 (2008), *available at* http://www.pacwcbt.pitt.edu/Organizational%20Effectiveness/FGDM%20Evaluation%20PDFs/FGDM%20Toolkit.pdf.

58. *See, e.g.*, MARGARET DIZEREGA & SANDRA VILLALOBOS AGUDELO, VERA INST. JUSTICE, PILOTING A TOOL FOR REENTRY: A PROMISING APPROACH TO ENGAGING FAMILY MEMBERS (2011), *available at* http://www.vera.org/sites/default/files/

scope of existing family engagement efforts are too narrow and limited to have any substantial impact on youth outcomes—or parent, youth, or community perceptions of justice.

In my view, interventions with families in juvenile justice appear to have the same limitations as similar efforts in the child welfare system. Scholars of the child welfare system have been critical of the mismatch between social service interventions and the problems that need to be resolved. Dorothy Roberts has wondered, "How can agencies expect to solve problems arising from any combination of deplorable conditions—chronic poverty, dangerous neighborhoods, shoddy housing, poor health, drug addiction, profound depression, lack of childcare—with a three month parenting course or ephemeral crisis intervention?"[59] Although Pennington says the parental narrative "would be relatively easy and cost very little,"[60] it is nonetheless supposed to "create more inclusive courtroom environments for parents, engage parents as coproducers of justice in the case involving their child, and build parental support as a community resource."[61] Pennington asks too much of the intervention.

Solutions to family engagement in the juvenile justice system are often marketed as minor changes to the system, which nonetheless are meant to have a substantial impact. The Vera Institute of Justice, one of the preeminent consulting organizations to state and local justice organizations, created the Relational Inquiry Tool, a series of eight questions to help correctional staff inquire about family support. The tool is sold as a "simple idea [that] could lead to considerable change."[62] If these eight questions are as transformative as Vera claims, one wonders why Vera does not make the questions available for free.

My study started by honoring the perspectives of family members and is rooted in the belief that families and communities impacted by the justice system are not opposed to legal processes or holding their children accountable for crimes they have committed. One only has to look at the public outcry after the acquittal of George Zimmerman in the killing of Trayvon Martin,[63] the mistrial of Michael Dunn in the killing of Jordan Davis,[64] and the protests after the police shooting of

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resources/downloads/Piloting-a-Tool-for-Reentry-Updated.pdf; JOAN PENNELL, CAROL SHAPIRO & CAROL SPIGNER, CTR. JUVENILE JUSTICE REFORM, SAFETY, FAIRNESS, AND STABILITY: REPOSITIONING JUVENILE JUSTICE AND CHILD WELFARE TO ENGAGE FAMILIES AND COMMUNITIES (2011), *available at* http://cjjr.georgetown.edu/pdfs/famengagement/FamilyEngagementPaper.pdf.

59. Dorothy E. Roberts, *Is There Justice in Children's Rights?: The Critique of Federal Family Preservation Policy*, 2 U. PA. J. CONST. L. 112, 124 (1999).

60. Pennington, *supra* note 51, at 487.

61. *Id.*

62. Margaret diZerega & Carol Shapiro, *Asking About Family Can Enhance Reentry*, 69 CORRECTIONS TODAY 58 (2007), *available at* http://www.vera.org/files/corrections-today-asking-about-family-dizerega.pdf.

63. *See, e.g.*, http://www.pbs.org/newshour/bb/nation-july-dec13-zimmerman2_07-15/.

64. *See, e.g.*, http://miamiherald.typepad.com/nakedpolitics/2014/03/mothers-of-trayvon-martin-and-jordan-davis-join-sharpton-in-fight-against-syg.html.

Michael Brown,[65] as evidence that communities desire an effective and fair justice system. Rather than viewing family members as hostile to legal processes, system professionals should recognize that conflict and hostility are foreseeable results of a system that considers families the primary cause of their children's criminal behavior. A parent in the focus groups conducted as part of this study noted: "When our child entered the system it was clear to my family that we had already been stigmatized as 'bad parents.' That somehow we were responsible for our child getting involved in the system. This label stayed with us through every step of the process."[66] Another parent noted,

> People would say you're not a good parent or you're not doing what you need to be doing. Heck I was a single parent; I worked every day 8 to 5 like most people do. I got off work and took my kid to tutoring, little league, whatever it is that needed to be done after that. I went home prepared a meal. I got him prepared, I did homework. I got him prepared for the next day for school. I did the same routine that every other parent did you know that had two parents in the house. I felt like I was being a good mother.[67]

Families may be uncooperative because justice-related and child-serving agencies are viewed as broken and ineffective. Another family member from the focus groups commented: "I am a foster parent and I was also a child who experienced many systems, including the justice system. I see the issues of poverty, race, lack of income, lack of knowledge as adding to the problem of why our kids are ending up in systems that don't work."[68]

A system professional responding to the survey conducted as part of this study recognized how the system frustrates families: "The court hearing schedule is not friendly to the parents, meaning a parent may sit all day waiting for the hearing to be held costing them a day's pay and therefore it is likely that they are less willing to be cooperative."[69]

Third, existing family engagement initiatives have largely failed to acknowledge that justice system agencies are illegitimate, or perceived to be illegitimate, in many communities.[70] According to an August 2013 poll by the Pew Research Center, 68% of Blacks believe they are treated less fairly than whites in

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65. *See, e.g.*, Kurtis Lee & Tina Susman, *Ferguson Protests Lure Many from Across the U.S.*, L.A. TIMES, Aug. 20, 2014, *available at*, http://www.latimes.com/nation/la-na-ferguson-outsiders-20140820-story.html#page=1.

66. Quote from Parent, Focus Group Transcript, Wash. D.C. (Apr. 27, 2011) (on file with author).

67. *Id.*

68. *Id.*

69. Quote from Juvenile Justice Professional, Survey (Respondent 3-8) (on file with author).

70. Gary Blasi and John Jost have provided evidence that the desire to believe that systems are fair and legitimate leads people to disregard contrary evidence. Gary Blasi & John T. Jost, *System Justification Theory and Research: Implications for Law, Legal Advocacy, and Social Justice*, 94 CAL. L. REV. 1119 (2006).

the courts, and 70% of Blacks believe they are treated less fairly by the police.[71] Yet historic[72] and recent events call into question whether the juvenile justice system operates as a legitimate and effective institution. Scandals such as the mass grave at the Florida Dozier School for Boys,[73] excessive use of solitary confinement on New York City's Rikers Island,[74] Luzerne County "kids for cash" scandal,[75] Shelby County's racially discriminatory practices,[76] or Texas'[77] and Indi-

71. Karlyn Bowman & Jennifer Marsico, *Black and White Opinions About the Justice System In America*, FORBES (Aug. 22, 2014 11:14AM), http://www.forbes.com/sites/bowmanmarsico/2014/08/22/black-and-white-opinions-about-the-justice-system-in-america/. *See also* DAVID B. ROTTMAN & RANDALL M. HANSEN, NAT'L CTR. STATE COURTS, HOW RECENT COURT USERS VIEW THE STATE COURTS: PERCEPTIONS OF WHITES, AFRICAN-AMERICANS, AND LATINOS 1–5 (2001), *available at* http://contentdm.ncsconline.org/cgi-in/showfile.exe?CISOROOT=/ctcomm&CISOPTR=18/ (finding that more than one-half of Latinos and two-thirds of Blacks view local courts as out of touch with the community).

72. It is beyond the scope of this Article to explain the development of the juvenile court. *See generally* ROBERT M. MENNEL, THORNS AND THISTLES: JUVENILE DELINQUENTS IN THE UNITED STATES 1825–1940 (1973); JOHN R. SUTTON, STUBBORN CHILDREN: CONTROLLING DELINQUENCY IN THE UNITED STATES, 1640–1981 (1993); MIROSLAVA CHÁVEZ-GARCIA, STATES OF DELINQUENCY: RACE AND SCIENCE IN THE MAKING OF CALIFORNIA'S JUVENILE JUSTICE SYSTEM (2012); BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT (1999); ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY (1977); DAVID ROTHMAN, DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC (2002); STEVEN L. SCHLOSSMAN, LOVE AND THE AMERICAN DELINQUENT: THE THEORY AND PRACTICE OF "PROGRESSIVE" JUVENILE JUSTICE, 1825–1920 (2d ed. 1977); DAVID. S. TANENHAUS, JUVENILE JUSTICE IN THE MAKING (2004); Cheryl Nelson Butler, *Blackness as Delinquency*, 90 WASH. U. L. REV. 1335, 1336 (2013).

73. Ben Montgomery & Waveney Ann Moore, *For Their Own Good: A St. Petersberg Times Special Report on Child Abuse at the Florida School for Boys*, TAMPA BAY TIMES, Apr. 17, 2009, http://www.tampabay.com/specials/2009/reports/marianna/; Ben Montgomery & Waveney Ann Moore, *Florida Juvenile Justice: 100 Years of Hell at the Dozier School for Boys*, TAMPA BAY TIMES, Oct. 9, 2009, http://www.tampabay.com/specials/2009/reports/dozier/; U.S. DEP'T OF JUSTICE, *Investigation of the Arthur G. Dozier School for Boys and the Jackson Juvenile Offender Center Marianna, Florida* (2011), *available at* http://www.justice.gov/crt/about/spl/documents/dozier_findltr_12-1-11.pdf.

74. Trey Bundy, *For Teens at Rikers Island, Solitary Confinement Pushes Mental Limits*, CENTER FOR INVESTIGATIVE REPORTING (Mar. 4, 2014), http://cironline.org/reports/teens-rikers-island-solitary-confinement-pushes-mental-limits-6130.

75. The Luzerne County judicial corruption scandal involved judges receiving kickbacks for sending youth to for-profit juvenile facilities. *See* JUVENILE LAW CTR., Luzerne "KIDS FOR CASH" Scandal, *available at* http://www.jlc.org/current-initiatives/promoting-fairness-courts/luzerne-kids-cash-scandal (last visited Feb. 11, 2014).

76. The U.S. Department of Justice Civil Rights Division investigated the Juvenile Court of Memphis and Shelby County, Tennessee, and found systemic violations of children's due process and equal protection rights. U.S. DEP'T OF JUSTICE, MEMORANDUM OF AGREEMENT REGARDING THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY (Dec. 17, 2012), *available at* http://www.justice.gov/iso/opa/resources/877201212181059489251 57.pdf.

77. MICHELE DEITCH, UNDERSTANDING AND ADDRESSING YOUTH VIOLENCE IN THE TEXAS JUVENILE JUSTICE DEPARTMENT: REPORT TO THE OFFICE OF THE INDEPENDENT

ana's[78] statewide scandals of rampant sexual and physical abuse in juvenile facilities, are viewed by some practitioners as isolated examples and by others as the status quo in juvenile justice. While individual and isolated instances of abuse are perhaps inevitable in any system, the available evidence suggests that numerous juvenile justice agencies experience system-wide failures, which routinely fall below constitutional minimum standards.[79] A recent report by the Annie E. Casey Foundation found widespread maltreatment of youth in facilities in nearly half of the states across America.[80] However, the majority of approaches to family engagement presume that justice system agencies exercise power fairly and effectively.

Regardless of whether one views the juvenile justice system as largely broken or in need of moderate adjustments, there has been a longstanding consensus by justice system professionals over how to address deficiencies in how the existing justice system operates.[81] Yet family engagement efforts have largely been

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OMBUDSMAN (2013), *available at* https://www.utexas.edu/lbj/sites/default/files/file/faculty/DeitchUnderstandingandAddressingYouthViolenceinTJJDMay%202013FINAL.pdf.

78. U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE PENDLETON JUVENILE CORRECTIONAL FACILITY (2012), *available at* http://www.justice.gov/crt/about/spl/documents/pendleton_findings_8-22-12.pdf.

79. *See* RICHARD A. MENDEL, ANNIE E. CASEY FOUND., NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION (2011), *available at* http://www.aecf.org/~/media/Pubs/Topics/Juvenile%20Justice/Detention% 20Reform/NoPlaceForKids/JJ_NoPlaceForKids_Full.pdf ("Since 1970, systemic violence, abuse, and/or excessive use of isolation or restraints have been documented in the juvenile corrections facilities of 39 states (plus the District of Columbia and Puerto Rico). In 32 of those states (plus the District of Columbia and Puerto Rico), the abusive conditions have been documented since 1990, and in 22 states (plus the District of Columbia), the maltreatment has been documented since 2000."). *See also* ANNIE E. CASEY FOUND., SYSTEMIC OR RECURRING MALTREATMENT IN JUVENILE CORRECTIONS FACILITIES: STATE-BY-STATE SUMMARY (2011), *available at* http://www.aecf.org/m/resourcedoc/aecf-noplaceforkids-Maltreatment-2011.pdf; *See also*, U.S. DEP'T OF JUSTICE, SPECIAL LITIGATION SECTION CASES AND MATTERS, *available at* http://www.justice.gov/crt/about/spl/findsettle.php#juv (last visited Sept. 10, 2014).

80. *See* MENDEL, *supra* note 79.

81. *Compare* NAT'L ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS AND GOALS, NAT'L ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS AND GOALS (1973) (recommending: 1) increase family stability; 2) develop programs for families needing services, including families with children who are truant or who run away, families with children who disregard parental authority, and families with children who use intoxicating beverages or who are under 20 years old and commit delinquent acts; 3) develop programs for children who are neglected or physically abused; 4) develop programs for young people to prevent delinquent behavior before it occurs; 5) develop diversion activities whereby youths are processed out of the juvenile justice system; 6) develop dispositional alternatives so that institutionalization can be used only as a last resort; 7) extend due process to all juveniles; 8) control the violent and chronic delinquent; 9) reduce the proportion of minorities who are victims of delinquent acts and who are clients in the juvenile justice system and increase the proportion of minority policymakers and operators in the juvenile system; 10) increase the coordination among agencies to improve the operation of the juvenile justice system and to increase resources and knowledge about how to deal with juvenile offenders; 11) improve research; and 12) allocate resources, especially to the many states that do not have their own

aimed at getting families to participate in the current system as is,[82] while neglecting how families participate in and lead larger justice system reform efforts such as combatting the school-to-prison pipeline or mass incarceration generally.

My study fills these three gaps by explaining the key characteristics of what a transformed justice system could look like if it honored youth and families while simultaneously addressing key concerns of juvenile justice professionals, a concept I name "Family-Driven Justice."[83] My findings suggest that system stakeholders have already begun to recognize the need to reexamine juvenile and criminal justice policies and practices across the board, and not to limit family engagement to piecemeal programs tacked onto the existing system. However, prior to this study, the field had no clear directions linking family engagement with these other reform efforts.

This Article proceeds in three parts. Part I explains the methodology of my research study to identify best practices in family engagement in juvenile justice. Part II contrasts the research on how families are thought to contribute to delinquency with characteristics of adolescent offending. I then review the research on evidence-based programs used in juvenile justice. Summarizing these findings, I claim that a family-driven approach not only respects family autonomy, but it is also the approach that most closely reflects the best available evidence in how to reduce adolescent offending.

Part III reports the findings from my original research. I begin by describing one jurisdiction's experience in changing the default assumptions about families that pervade the juvenile justice system. I then synthesize similar efforts from other jurisdictions, and with family member input, distill the results into key propositions that form the foundational values of Family-Driven Justice: all families care about their children and can be trusted to make good decisions on their behalf,

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resources to deal with juvenile programs), *with* YOUTH TRANSITION FUNDERS GRP., JUVENILE JUSTICE REFORM: A BLUEPRINT (2012), *available at* http://www.ytfg.org/documents/Blueprint_JJReform.pdf (proposing that justice systems need to: 1) divert youth from the justice system; 2) reduce institutionalization; 3) eliminate racial and ethnic disparity; 4) ensure access to quality counsel; 5) create a range of effective community-based programs; 6) recognize and serve youth with specialized needs; 7) build small rehabilitative facilities; 8) improve aftercare and reentry; 9) engage youth, family, and community; and 10) keep youth out of adult courts, jails, and prisons). *See also* Mark Soler et al., *Juvenile Justice: Lessons for a New Era*, 16 GEO. J. ON POVERTY L. & POL'Y 483 (2009) (describing challenges and opportunities for juvenile justice reform).

82. *See, e.g.*, VERA INST. OF JUSTICE, SETTING AN AGENDA FOR FAMILY-FOCUSED JUSTICE REFORM (2011), *available at* http://www.vera.org/files/FJP-advisory-board-report-v6.pdf ("Since its work began nearly a decade ago, the Family Justice Program at the Vera Institute of Justice has provided training and consultation to help people in the juvenile and criminal justice fields adopt a family-focused approach. In practice, this has meant developing simple tools and techniques that help front-line staff talk with incarcerated people (or those on probation or under parole supervision) about family members who can make a positive difference in their lives. It also means guiding management to create policies and environments that encourage such interactions.") *Id.* at 4.

83. Gary Blasi has noted that policymakers must be offered "alternative visions" to be able to approach problems in new ways. Gary Blasi, *Framing Access to Justice: Beyond Perceived Justice for Individuals*, 42 LOY. L.A. L. REV. 913, 920 (2009).

all families have strengths to build upon, all families want their children to grow up safe and free from justice-system involvement, and all families have dreams for their children and want them to succeed in adult life. To put these values into practice, I then describe in greater detail the five features of a transformed justice system that would give families what they want without sacrificing public safety. Privileging and reorienting our justice system to respect family autonomy, or using a family-driven approach, is both desirable and within reach.

Part IV concludes by suggesting that while my research findings did not identify a single jurisdiction with all five features of a transformed justice system, this vision is possible to achieve even within the context of the American system of limited government. In other words, the justice system can become radically more kind, fair, and effective without waiting to resolve the endemic problems of racism and poverty that plague our nation. I further suggest that adopting Family-Driven Justice would help reduce mass incarceration in America, and also dramatically reduce the racial and ethnic disparities present throughout the justice system.

I. METHODOLOGY

My research study was designed to identify the reasons families are dissatisfied with the operation of the current justice system, uncover what families want instead, and identify existing practices offered by government and nonprofit agencies that conform to the family vision.[84] I conducted the field research for this study while I was the Research and Policy Director at the Campaign for Youth Justice ("CFYJ"), a national nonprofit organization aimed at reducing the number of youth prosecuted as adults and improving the juvenile justice system.[85] In total, the research project employed literature reviews, site visits, focus groups, surveys of

84. This study was limited to addressing the juvenile justice system (and the widespread family desire to remove youth from the adult justice system), but otherwise did not address the full range of adult criminal justice issues. Nonetheless many of the features of Family-Driven Justice are applicable to the adult justice system as well, specifically as they relate to young adults under the age of 25. While this study did not specifically examine the perspectives of family members of young adults, I have reason to believe family members of young adults would support many of the ideas presented here. First, many of the family members who participated in this study have children who have entered the criminal justice system either because their children were prosecuted as adults or have committed subsequent crimes after the age of 18. Second, it is logical that there are overlapping concerns, specifically for the under age 21 population because we know that "[t]he period of early adulthood has been traditionally neglected when it comes to educational, vocational, mental health, and social services. Within most systems, individuals aged 17–21 are shifted out of the adolescent services systems, and there is often little to replace those services." FROM JUVENILE DELINQUENCY TO ADULT CRIME, *supra* note 7, at 176. Third, my review of the literature and existing programmatic approaches on family engagement turned up many of the same practices used in both juvenile and adult systems. For example, both the Relational Inquiry Tool and Family Group Decision Making are used with youth and adult populations.

85. *See* CAMPAIGN FOR YOUTH JUSTICE, http://www.campaignforyouthjustice.org/ (last visited Sept. 10, 2014).

juvenile justice officials, and consultations with system and family experts between 2010 and 2013.[86]

I started by conducting an extensive literature review on the relationship between families and crime,[87] and effective family engagement practices inside[88] and outside[89] the field of juvenile justice. Other child-serving systems, specifically the mental health and education fields, have had a longer history of working in partnership with families, and I wanted to draw upon their knowledge of best practices.[90] In addition, I reviewed compilations of evidence-based juvenile justice programs.[91]

I conducted site visits to three jurisdictions in the West, Southwest, and Midwest, perceived by family and system experts as being responsive to the needs of youth and families. I was accompanied on most of these site visits by colleagues from CFYJ, other juvenile justice experts, system professionals, and family members. I observed a day-treatment program, an intensive probation supervision program, two secure residential care facilities, an alternative education program, a GED program, a charter school, and a probation-staffed recreation and community outreach program. I also observed parent support, community, and economic de-

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86. I was heavily influenced by the work of Chip and Dan Heath. CHIP HEATH & DAN HEATH, SWITCH: HOW TO CHANGE THINGS WHEN CHANGE IS HARD (2010) (describing how to make changes at the individual, organizational, and societal levels). The overarching interdisciplinary methodological approach I used for my study is described in KRISTEN LUKER, SALSA DANCING INTO THE SOCIAL SCIENCES: RESEARCH IN AN AGE OF INFO-GLUT (2008). Traditional, canonical, social science often approach research projects looking for "the distribution of individuals (or groups or institutions) across a known number of categories whose boundaries are clear." *Id.* at 38. Unlike canonical social scientists, my research project was "to discover the relevant categories at work" in the concept of family engagement. *Id.* at 102 (emphasis omitted).

87. *See infra* Part II.

88. Using the Google search engine I used the search terms "juvenile justice family" and "juvenile justice family filetype:pdf."

89. Using the Google search engine I used the search terms "family engagement filetype:pdf" and "family involvement filetype:pdf."

90. The works I used to form my primary working hypotheses of the purpose and multiple components involved with family engagement were ANNE T. HENDERSON ET AL., BEYOND THE BAKE SALE: THE ESSENTIAL GUIDE TO FAMILY-SCHOOL PARTNERSHIPS (2007), and TRINA OSHER & PAT HUNT, NAT'L CTR. MENTAL HEALTH JUVENILE JUSTICE, INVOLVING FAMILIES OF YOUTH WHO ARE IN CONTACT WITH THE JUVENILE JUSTICE SYSTEM, RESEARCH AND PROGRAM BRIEFS (2002), *available at* www.jjcmn.com/public/2010/04/Involving-Families-of-Youth-with-the-juvenile-justice-system.pdf. My observations of site visits were heavily influenced by these two texts.

91. I reviewed programs listed in the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Model Programs Guide. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, MODEL PROGRAMS GUIDE, *available at* http://www.ojjdp.gov/mpg/ (last visited Sept. 10, 2014). I also reviewed the inventory of evidence-based programs reviewed by the Washington Institute of Public Policy. Steve Aos et al., Return on Investment: Evidence-Based Options to Improve Statewide Outcomes, *available at* http://www.wsipp.wa.gov/ReportFile/1090/Wsipp_Return-on-Investment-Evidence-Based-Options-to-Improve-Statewide-Outcomes-July-2011-Update_Technical-Appendix-I.pdf (last visited Sept. 10, 2014).

velopment activities for youth not involved in the justice system. These site visits gave me an opportunity to observe how direct service providers talk about the issues facing families. Consistent with the literature about family engagement from the mental health and education fields, many of the professionals in juvenile justice also used the word "partnership" to describe how they approached family work and decisions of how to intervene with families, reinforcing the applicability of this related literature to the juvenile justice system.

The aforementioned site visits also gave me an opportunity to experience what good programs look, feel, sound, and smell like. My work experiences in investigating, litigating, and improving conditions of confinement for incarcerated youth might otherwise have artificially set the bar too low. I was able to see firsthand the differences between environments operating below or at the constitutional minimum, and environments conducive to growth and stimulation.[92] By visiting the physical offices or program locations, I could also observe or take note of evidence to corroborate providers' comments about how they treat youth and families. For example, I observed physical settings that were decorated for the appropriate holiday season, which reinforced staff anecdotes about how families were specially accommodated during the holidays. Where my observations failed to match, I could ask follow-up questions. While in one residential setting, I observed decorations that appeared too young to be appropriate for the age of youth housed in the facility. I was able to ask an accompanying family member, who also was a high school teacher, for her perceptions. She was able to confirm that the decorations were similar to those found in nonresidential school settings.

Between March and July of 2011, CFYJ convened a series of focus groups in conjunction with the federal Office of Juvenile Justice and Delinquency Prevention ("OJJDP") and the Education Development Center to identify the challenges families experience within the justice system.[93] Families and youth from sixteen states and tribes with direct experience with the justice system participated in these focus groups. The main guiding questions and topic areas for discussion were as follows: (1) What was your first involvement with the system? (2) What was your child's experience with the system? Were all your needs met? (3) What was your family's experience with the system? Were your needs met and your rights respected? (4) Was there aftercare, i.e., what happened when your child was no longer in the system? Did he or she receive support?[94] I also reviewed unpublished focus group transcripts with parents conducted by CFYJ from prior years. I never directly asked families about their preferences for a transformed jus-

92. *Compare* Richard Ross, Juvenile in Justice, *available at* http://richardross.net/juvenile-in-justice (last visited Sept. 10, 2014) (depicting photographs of a typical facility in the juvenile justice system), *with* RICHARD MENDEL, THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS (2010) (depicting photographs of facilities run by the Missouri Division of Youth Services).

93. *See* OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, FAMILY LISTENING SESSIONS (2013), *available at* http://www.ojjdp.gov/pubs/241379.pdf [hereinafter OJJDP Focus Groups].

94. *Id.*, at i–ii.

tice system because of the difficulty of knowing about alternative options.[95] Instead, I convened an informal advisory board of family experts and juvenile justice professionals to identify promising programs to research and who were willing to review my findings throughout the study.

Between April and May of 2012, I conducted surveys of juvenile justice professionals who are part of two networks. The Annie E. Casey Foundation's Juvenile Detention Alternative Initiatives network is made up primarily of juvenile justice professionals working at a variety of county-level agencies.[96] In contrast, the Council of Juvenile Correctional Administrators network is made up of state-level juvenile justice agency officials.[97] The survey was administered online and started with a series of closed-ended prompt questions related to the five broad categories of topics I had identified from the literature about family engagement (see the Appendix for a copy of the survey instrument). From the site visits, I knew that the quantitative data gathered directly from the survey would yield unreliable results because I had observed staff describing features of their policies and practices expansively to imply that they were available to all families when in fact they were available to only a small subset of families. This was additionally confirmed by a survey respondent and family member reviewer who contacted me to explain that I should interpret the quantitative results with caution. Nevertheless, the purpose of the prompt questions was to provide survey respondents with the kinds of concepts I was associating with the amorphous family engagement concept. Respondents were then asked to provide the top five benefits, challenges, and barriers to implementing the programs or practices in their jurisdiction. I coded and categorized their original responses in light of my prior research. I then circulated copies of all actual survey responses with redacted identifying information, and a draft of my interpretations of the open-ended questions, to all respondents so that they could provide feedback and correct any mischaracterizations of their responses. I received feedback that my interpretations were correct.

After identifying the major themes of common ground between family members and system stakeholders, I identified specific examples demonstrating the new vision in consultation with system and family experts. For many examples, I provide both a description of the programs and a specific story of how the intervention works with youth and families. The purpose of the stories is to illuminate with clarity the humanity and dignity family members expect from interac-

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95. Law and Society scholars have noted that the process of identifying and translating grievances is fraught with challenges. *See, e.g.*, William L.F. Felstiner, Richard L. Abel & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1980–81).

96. *See* ANNIE E. CASEY FOUND., JUVENILE DETENTION ALTERNATIVES INITIATIVES, http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/SitesAndContacts.aspx (last visited July 17, 2014). *See also* RICHARD A. MENDEL, ANNIE E. CASEY FOUND., TWO DECADES OF JDAI: FROM DEMONSTRATION PROJECT TO NATIONAL STANDARD (2009), *available at* http://www.aecf.org/~/media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiaive/TwoDecadesofJDAIFromDemonstrationProjecttoNat/JDAI_National_final_10_07_09.pdf.

97. *See* CJCA Membership Criteria, COUNSEL FOR JUVENILE CORRECTIONAL ADMINS., http://cjca.net/index.php/aboutus/membership (last visited Sept. 10, 2014).

tions with system professionals. On a positive note, there were too many examples from jurisdictions to incorporate all of the good work occurring across the country. The specific examples used to demonstrate Family-Driven Justice were selected using the following criteria: the number of children and families affected by the practice, diversity in the racial and ethnic population served, geographic location and size of jurisdiction, written documentation or online access to information about the effort to enable professionals to refer to additional materials if interested in more information, and the ability to obtain confirmation of the description's accuracy by someone in the local jurisdiction. I also made a conscious choice to include practices from agencies that have experienced recent scandals but have made special efforts to address family engagement as part of their reform strategy to demonstrate that agencies at all levels of functioning can commit the necessary resources to family engagement.

A practitioner-oriented version of the study findings was circulated to all experts who had participated in the project for additional feedback.[98] Family members and system experts were then able to confirm or dispute my characterizations of the evidence. Neither family nor system experts had any major critiques of the findings presented in the draft report.[99] Some system professionals felt the tone was too laudatory of existing efforts and not critical enough of the system, whereas others expressed the opposite concern. Multiple staff from one state agency provided an extensive critique of the tone or word choice used in the draft, which they viewed as too negative of agency officials. I asked for clarification to ensure that the disagreement was over word choice and not specific policy recommendations, which they subsequently confirmed. In response, the report received a tone overhaul to downplay negative characterizations of the current system players in the hope that justice professionals would be more receptive to the policy changes recommended.

This Article departs from the practitioner-oriented report in both form and substance. This Article makes the argument that respecting family autonomy in the justice system, or Family-Driven Justice, is warranted by the literature. Where possible, this Article also connects the key features of a transformed justice system to interdisciplinary academic literatures in the hope that future scholars will research, evaluate, and further refine the model. However, the biggest difference is that this Article takes an overtly critical view of the current justice system.

Although I attempted to limit the biases in both the data collection and interpretation, there are several limitations to my study. The first limitation is the bias resulting from relying primarily on family and system experts who believe change is needed in the justice system. Almost all of the persons consulted in this

98. The practitioner-oriented report was published by the Campaign for Youth Justice in the Spring of 2013. A complete list of persons consulted in the project can be found in that report. *See* NEELUM ARYA, FAMILY COMES FIRST: TRANSFORMING THE JUSTICE SYSTEM BY PARTNERING WITH FAMILIES (2013).

99. Representative comments were: "The report is very comprehensive and covers all the bases" and "You make great use of examples and stories as well as research." Minor word change or grammatical suggestions were almost uniformly accepted unless disputed by other evidence gathered during the study.

study are part of various reform movements in juvenile justice. I did not perform outreach directly to persons who view the juvenile justice system as largely effectual. Further, my study is biased in favor of consensus-based status quo reform approaches to juvenile justice reform. The family and system experts I relied upon are all invested in their particular view of problems and potential solutions, and readers will see that many of the hardest issues, e.g., changes to stop and frisk policies or juvenile transfer laws, do not have consensus aside from allowing family members to participate in discussions about changes to these laws and policies.[100]

The second limitation is that I did not specifically reach out to family members of status offenders involved in Persons in Need of Supervision or Children in Need of Supervision programs. According to the National Center for Juvenile Justice, less than 2% of the referrals to juvenile court for delinquency offenses were from relatives,[101] whereas 40% of referrals for ungovernability were from relatives.[102] There are likely to be significant differences between family members who voluntarily seek the assistance of justice agencies when children are committing crimes against others and those families whose children are not obeying parental orders.[103] There were family members in the focus groups who were part of the former but not the latter group of parents. Future research should explore these differences.

A third limitation is that there is a dearth of literature available on effective programs to meet the specific needs of girls, specifically girls of color, in the justice system.[104] The dominant conversations about juvenile justice reform and research on delinquency presume a male population. While an effort was made to address the needs of girls, it is possible that their specific needs and family concerns are not fully accounted for in this study. It is also possible (and likely) that the literatures I have used to provide the basis for taking a family-driven approach are similarly biased.[105]

II. FAMILIES AND CRIME

In this Part, I explore the contradictions between three distinct literatures related to families and the causes of crime. As mentioned briefly in the introduction, juvenile justice professionals often operate from the faulty ideology that chil-

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100. *See infra* notes 364–366 and accompanying text.

101. CHARLES PUZZANCHERA & SARAH HOCKENBERRY, NAT'L CTR. FOR JUVENILE JUSTICE, JUVENILE COURT STATISTICS 2010, at 31 (2013), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/grants/244080.pdf.

102. *Id.* at 76.

103. *But see infra* text accompanying notes 253–256 (suggesting that it is possible that families with access to community services would not seek court intervention).

104. *See, e.g.*, Jyoti Nanda, *Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System*, 59 UCLA L. REV. 1502, 1522 (2012); Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 59 UCLA L. REV. 1584, 1624 (2012); MONIQUE W. MORRIS, AFRICAN AM. POLICY FORUM, RACE, GENDER, AND THE SCHOOL-TO-PRISON PIPELINE: EXPANDING OUR DISCUSSION TO INCLUDE BLACK GIRLS 3 (2012), *available at* http://aapf.org/wp-content/uploads/2012/08/Morris-Race-Gender-and-the-School-to-Prison-Pipeline.pdf.

105. *See infra* text accompanying note 166.

dren's delinquent behaviors are caused by their parents. For example, in a conversation with a high-ranking federal agency official about the desirability of keeping youth in residential facilities in close proximity to their home communities, he asked, "Do we really need to keep kids close to home? I mean, do we really want them having contact with their families anyway?"[106] While I approached my study from the stance that the views of family members should be considered and prioritized in future reform efforts, I was nonetheless open to the possibility that the literature would find the opposite.

In this Part, I reconcile several views found in the literature about the causes of crime.[107] First, I review the literature describing why and how families are thought to cause delinquent behavior in their children. Second, I review the literature that explores adolescent offending characteristics, which suggest that delinquent behavior is part of the normal process of growing up. Third, I review the evidence of "what works" in juvenile justice programs. I end this Part with a summary of the key conclusions I use as the basis for taking a family-driven approach in juvenile justice.

A. The Family–Crime Connection

Undeniably, the academic literature suggests a link between parenting behaviors and criminal justice involvement.[108] However, none of the extant literature on the connection between families and delinquency "completely explain[s] the relationship between parental behavior and delinquency."[109] The causal mechanisms linking family factors to delinquency "tend to be related not only to each other but also [to] other risk factors for delinquency."[110]

There are at least three ways scholars believe families are expected to have an impact on delinquency. First, familial characteristics, such as family structure and size, may be linked to criminal behavior.[111] Studies show that children of

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106. Personal conversation between study author and official.

107. There are at least ten broad causes or explanations for the persistence and desistence of offending between adolescence and adulthood including: 1) early individual differences in self-control; 2) brain maturation; 3) cognitive changes; 4) behavioral risk and protective factors; 5) exposure to social risk and protective factors; 6) mental illnesses and substance use/abuse; 7) changing life circumstances (e.g., employment and marriage); 8) situational context of crime places and activities; 9) neighborhood; and 10) justice system response. FROM JUVENILE DELINQUENCY TO ADULT CRIME: CRIMINAL CAREERS, JUSTICE POLICY, AND PREVENTION 323–24 (Rolf Loeber & David Farrington eds., 2012).

108. *See, e.g.*, David P. Farrington, *Families and Crime*, *in* CRIME AND PUBLIC POLICY (James Q. Wilson & Joan Petersilia eds., 2011).

109. Ronald L. Simons, Leslie G. Simons & Donna Hancock, *Linking Family Processes and Adolescent Delinquency: Issues, Theories, and Research Findings*, *in* THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE 186 (Barry C. Feld & Donna M. Bishop eds., 2012) ("One might speculate that each of the theories possesses an element of truth and that it is the combination of these psychological factors that explains the effect of parenting on delinquency.").

110. Farrington, *supra* note 108, at 143.

111. *See also* Wardle, *supra* note 46, at 93 (reviewing the literature connecting marital and family structure and juvenile delinquency and acknowledging that "family structure may be a shorthand way of referring to family interaction factors and dynamics

single parents are at a higher risk for delinquency; however, part of this difference can be explained by covariates with single parenthood such as poverty, living in disadvantaged areas, and higher exposure to stressful life events.[112] Single-parenthood itself does not appear to cause delinquency, as there is evidence that additional support from other caregivers, such as the nonresidential parent or grandparent, can decrease the risk for delinquency.[113] Other features of families correlating with delinquency include large family size, early childbearing, and teenage pregnancy.[114] Overall, family structure appears to have a modest impact on delinquency: there is a 15% difference in delinquency between children living with married, biological parents versus those living in other family structures such as single parent, stepfamily, or cohabitating parents.[115]

Second, some scholars believe criminal behavior is genetically transmitted.[116] The family as a source of "delinquent-DNA" has a long and ugly history in America. In a famous case authored by Justice Oliver Wendell Holmes, the Su-

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such as conflict, control, communication, caring and trust, identity support, etc., which other research has shown to correlate with delinquency").

112. *See* SARA MCLANAHAN & GARY SANDEFUR, GROWING UP WITH A SINGLE PARENT (1994).

113. *See* Paul Amato & J.G. Gilbreth, *Nonresident Fathers and Children's Well-Being: A Meta-Analysis*, 61 J. MARRIAGE & FAM. 557 (1999); Stephen Demuth & Susan Brown, *Family Structure, Family Processes, and Adolescent Delinquency: The Significance of Parental Absence Versus Parental Gender*, 41 J. RES. CRIME & DELINQ. 58 (2004); Leslie Simons et al., *Parenting Practices and Child Adjustment in Different Types of Households: A Study of African-American Families*, 28 J. Family Issues 212 (1996); Simons et al., *supra* note 109.

114. *See* Farrington, *supra* note 108.

115. *See* Robert Apel & Catherine Kaukinen, *On the Relationship Between Family Structure and Antisocial Behavior: Parental Cohabitation and Blended Households*, 46 CRIMINOLOGY 35 (2008).

116. Genetic influence on delinquency is reported to vary from 7% to 85%. *See, e.g.*, Louise Arsenault et al., *Strong Genetic Effects on Cross-Situational Antisocial Behavior Among 5-Year-Old Children According to Mothers, Teachers, Examiner-Observers, and Twins' Self-Reports*, 44 J. CHILD PSYCHOL. & PSYCHIATRY 832 (2003); Kevin Beaver et al., *Gene Environment Interplay and Delinquent Involvement: Evidence of Direct and Indirect, and Interactive Effects*, 24 J. ADOLESCENT RES. 147 (2009); Sara R. Jaffee et al., *Nature × Nurture: Genetic Vulnerabilities Interact with Physical Maltreatment to Promote Conduct Problems*, 17 DEV. AND PSYCHOPATHOLOGY 67 (2005); Michael J. Lyons et al., *Differential Heritability of Adult and Juvenile Traits*, 52 ARCHIVES GEN. PSYCHIATRY 906 (1995); Terrie E. Moffitt, *The New Look of Behavioral Genetics in Developmental Psychopathology: Gene-Environment Interplay in Antisocial Behavior*, 131 PSYCHOL. BULL. 533 (2005); Soo Hyun Rhee & Irving D. Waldman, *Genetic and Environmental Influences on Antisocial Behavior: A Meta-Analysis of Twin and Adoption Studies*, 128 PSYCHOLOGICAL BULLETIN 490 (2002); David C. Rowe, *Genetic and Environmental Components of Antisocial Behavior: A Study of 265 Twin Pairs*, 24 CRIMINOLOGY 513 (1996); Wendy S. Slutske et al., *Modeling Genetic and Environmental Influences in the Etiology of Conduct Disorder: A Study of 2,682 Adult Twin Pairs*, 106 J. ABNORMAL PSYCHOL. 266 (1997). Specific genes appear to have an effect on the development of delinquency and antisocial behavior, but the genes do not account for the variation in offending. David Goldman & Francesca Ducci, *The Genetics of Psychopathic Disorders*, *in* 1 INTERNATIONAL HANDBOOK ON PSYCHOPATHIC DISORDERS AND THE LAW (Alan R. Felthous & Henning Sass eds., 2007).

preme Court upheld a forced sterilization law because of the perceived intergenerational transmission of crime.[117] A recent book by historian Miroslava Chávez-Garcia has explicitly identified the influence of eugenics in the juvenile justice system in California,[118] and it is likely that this connection is present in other states as well.[119]

Contemporary research on the genetic component of crime is more limited. Today, "few trained criminologists undertake biological research" because of "an understandable ideological backlash against the grim history of biological ideas about crime propounded by phrenologists, eugenicists, and other 'criminal anthropologists.'"[120] The limited research into the genetic component of crime suggests that even where "[t]here is a heritable component to antisocial behavior, . . . parental behavior exerts an influence beyond any genetic risk transmitted to the child."[121]

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117. Buck v. Bell, 274 U.S. 200, 207 (1927) ("It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of Imbeciles are enough." (internal citation omitted)). This case was later overturned by *Skinner v. Oklahoma* as the Court observed that "[s]terilization of those who have thrice committed grand larceny, with immunity for those who are embezzlers, is a clear, pointed, unmistakable discrimination." 316 U.S. 535, 541 (1942).

118. CHÁVEZ-GARCIA, *supra* note 72.

119. *See, e.g.*, Michael Willrich, *The Two Percent Solution: Eugenic Jurisprudence and the Socialization of American Law, 1900–1930*, 16 L. & HIST. REV. 63 (1998).

120. Terrie E. Moffit et al., *Crime and Biology*, *in* CRIME AND PUBLIC POLICY 75 (James Q. Wilson & Joan Petersilia eds., 2011). In my view the biology-crime connection remains a largely silent but present undercurrent to thinking about crime. For example, economists have argued that the U.S. crime decline in the 1990s can be attributed to the increased availability of abortions after the Court's ruling in *Roe v. Wade*. *See* John J. Donohue III & Steven D. Levitt, *The Impact of Legalized Abortion on Crime*, 116 Q. J. ECON. 379 (2001). Some criminal justice agencies are also using DNA samples to look for suspects in the family tree. DAVID LAZER, TAUBMAN CTR. POL'Y BRIEFS, SEARCHING THE FAMILY TREE FOR SUSPECTS: ETHICAL AND IMPLEMENTATION ISSUES IN THE FAMILIAL SEARCHING OF DNA DATABASES 1 (2008), *available at* http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/centers/taubman/policybriefs/lazer_final.pdf. Given the recent Supreme Court rulings limiting the death penalty and life-without-parole sentences for certain categories of offenders, it is common to hear about the biological bases of crime through the lenses of mental health and other cognitive impairments.

121. Simons et al., *supra* note 109, at 192; *see also* Terrie E. Moffit, Avsalom Caspi & Michael Rutter, *Measured Gene-Environment Interactions in Psychopathology: Concepts, Research Strategies, and Implications for Research, Intervention, and Public Understanding of Genetics*, 1 PERSP. PSYCHOL. SCI. 5 (2006). In theories of child development generally, the role of biology is having an increased importance as well. The child development theories of psychologists Urie Bronfenbrenner and James Gabarino have been expanded as a "biodevelopmental" framework that recognizes that "[h]uman development is shaped by a dynamic and continuous interaction between biology and experience." NAT'L RES. COUNCIL & INST. OF MED., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 23 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000).

Thus, we reach the third and predominant way that families are believed to be linked to crime. There is a significant body of scholarship studying the links between parenting practices and antisocial or delinquent behavior. The theories can roughly be divided into two main mechanisms by which parenting behaviors contribute to delinquency: the absence of parent control and the lack of parental support and nurturance. Two theories, social learning theory[122] and general theory of crime,[123] suggest that "it is the absence of parental control (i.e., lax monitoring and consistent discipline) that fosters child antisocial behavior."[124] Alternatively, attachment theory,[125] hostile attribution bias,[126] and general strain theory[127] suggest

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122. Social learning theory emphasizes that children learn to be deviant during the process of interacting with family members and peers. *See* ALBERT BANDURA & RICHARD H. WALTERS, SOCIAL LEARNING AND PERSONALITY DEVELOPMENT (1963); ALBERT BANDURA, PRINCIPLES OF BEHAVIOR MODIFICATION (1969). There are various stems to this theory, one of which–the coercion model–emphasizes the relationship between parents and children. Developed by Gerald Patterson and colleagues John Reid, Thomas Dishion, Debra Capaldi, and James Snyder, the coercion model postulates that parents often use intimidation and threats to coerce their children into better behavior. This in turn provokes an angry and defiant response from the child. Parents often then give into the child, reinforcing the child's poor behavior. GERALD PATTERSON, COERCIVE FAMILY PROCESS (1982). Over time this results in premature autonomy. Thomas J. Dishion, et al.,Francois Poulin & Nani Medici Skaggs, *The Ecology of Premature Adolescent Autonomy: Biological and Social Influences*, *in* EXPLAINING ASSOCIATIONS BETWEEN FAMILY AND PEER RELATIONSHIPS (Kathryn A. Kerns, Josefina M. Contreras & Angelina M. Neal-Barrett eds., 2000); Thomas Dishion, Sarah Nelson & B. Bullock, *Premature Adolescent Autonomy: Parent Disengagement and Deviant Peer Process in the Amplification of Problem Behavior*, 27 J. ADOLESCENCE 515 (2004). According to a review of the literature, "both basic and intervention research provide strong support for the coercion model." Simons et al., *supra* note 109, at 179.

123. The General Theory of Crime developed by Michael Gottfredson and Travis Hirschi views parental control as the primary cause of delinquent behavior because parents fail to teach their children self-control during the critical developmental window (i.e., before the age of 10). *See* MICHAEL R. GOTTFREDSON & TRAVIS HIRSCHI, A GENERAL THEORY OF CRIME (1990). The research support for this theory is mixed. Simons et al., *supra* note 109, at 181.

124. Simons et al., *supra* note 109, at 186.

125. Attachment theory, first developed by the developmental psychologist John Bowlby, identified three styles of attachment of youth, which develop through interactions with caregivers. Bowlby argued that youth with an avoidant attachment style (i.e., cynical, distrusting view of relationships) are likely to engage in delinquent behaviors. *See* JOHN BOWLBY, 1 ATTACHMENT AND LOSS: ATTACHMENT (1969); JOHN BOWLBY 3 ATTACHMENT AND LOSS: LOSS: SADNESS AND DEPRESSION (1980). Later, other researchers identified a fourth type of attachment, labeled disorganized attachment. *See* Mary Main & Judith Solomon, *Procedures for Identifying Infants as Disorganized/Disoriented During the Ainsworth Strange Situation*, *in* ATTACHMENT IN THE PRESCHOOL YEARS: THEORY, RESEARCH, AND INTERVENTION (Mark Greenberg, Dante Cicchetti & Mark Cummings eds., 1990).

126. Hostile attribution bias, a theory most associated with Kenneth Dodge, suggests that children and adolescents develop a cognitive bias that makes them believe that they must be on guard. *See, e.g.*, Kenneth Dodge, *The Structure and Function of Reactive and Proactive Aggression*, *in* THE DEVELOPMENT AND TREATMENT OF CHILDHOOD AGGRESSION (Debra Pepler & Kenneth Rubin eds., 1991); Kenneth Dodge et al., *Social Information-Processing Patterns Partially Mediate the Effect of Early Physical Abuse on Later Conduct Problems*, 51 J. ABNORMAL PSYCHOL. 632 (1995). While studies show that only

that "lack of parental support and nurturance (i.e., hostility, neglect)" cause delinquent behavior.[128] The problem with evaluating these theories is that antisocial or delinquent behaviors "are difficult to measure, and there is some evidence that results differ according to methods of measurement."[129] Overall, a recent meta-analysis by James Derzon of family factors as predictors of criminal and violent behavior found that the strongest predictors were parental education, parental supervision, child-rearing skills, parental discord, and family size.[130] Weak predictors were young parents, broken homes, and socioeconomic status.[131]

With respect to children who have been abused or neglected, there is conflicting support for the proposition that abuse and neglect cause later offending behavior.[132] According to the national Survey of Youth in Residential Placement, most children in the juvenile justice system residing in out-of-home placements such as detention centers, correctional training schools, and group homes have not been abused (70%), although a significant proportion of youth (30%) have been.[133] If one takes into account that children in out-of-home placement are the children most likely to be from homes with histories of abuse and neglect, these findings

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a portion of delinquent behavior can be attributed to hostile attribution bias, the good news is that interventions are possible to eliminate this behavior. *See* Kenneth Dodge, *Translational Science in Action: Hostile Attribution Style and the Development of Aggressive Behavior Problems*, 18 DEV. PSYCHOPATHOLOGY 791 (2006).

127. General strain theory posits that exposure to strain, in this case the strain of poor parenting, increases the risk for delinquency. The idea is that harsh or erratic parenting causes a child to feel angry and frustrated, leading to delinquency. *See* ROBERT AGNEW, WHY DO CRIMINALS OFFEND? (2005); ROBERT AGNEW, PRESSURED INTO CRIME: AN OVERVIEW OF GENERAL STRAIN THEORY (2006).

128. Simons et al., *supra* note 109, at 186.

129. Farrington, *supra* note 108, at 135.

130. James Derzon, *The Correspondence of Family Features with Problem, Aggressive, Criminal and Violent Behavior: A Meta-Analysis*, 6 J. EXPERIMENTAL CRIMINOLOGY 263, 288 (2010).

131. *Id.* at 286.

132. *See, e.g.*, Cathy Widom, *Childhood Victimization and Adolescent Problem Behaviors*, *in* ADOLESCENT PROBLEM BEHAVIORS (Robert Ketterlinus & Michael Lamb eds., 1994) (explaining possible causal mechanisms linking childhood victimization and later violence); Timothy Brezina, *Adolescent Maltreatment and Delinquency: The Question of Intervening Processes*, 35 J. RES. CRIM. & DELINQ. 71 (1998) (finding limited support for social learning theory, attachment theory, and strain theory with respect to abusive parents); Alan Leschied et al., *Childhood Predictors of Adult Criminality: A Meta-Analysis Drawn from Prospective Longitudinal Literature*, 50 CAN. J. CRIMINOLOGY & CRIM. JUST. 435 (2008) (finding that child maltreatment and witnessing family violence were only modest predictors of adult crime); Terence Thornberry, Timothy Ireland & Carolyn Smith, *The Importance of Timing: The Varying Impact of Childhood and Adolescent Maltreatment on Multiple Problem Outcomes*, 13 DEV. & PSYCHOPATHOLOGY 957 (2001) (finding that maltreatment persisting into adolescence predicts delinquency).

133. ANDREA J. SEDLAK & KARLA S. MCPHERSON, YOUTH'S NEEDS AND SERVICES, JUVENILE JUSTICE BULLETIN 2 (APR. 2010).

could be seen as the upper limit of an estimate of the numbers of youth with prior abuse histories.[134]

Gang-involved youth are a particular group of youth who are perceived to come from troubled families. One complication in this characterization is evidence that gang affiliation is a transitory experience with "some studies showing that more than half of gang members remain in the gang for a year or less."[135] Reviewing over 20 studies examining risk factors associated with joining a gang, Malcolm Klein and Cheryl Maxson found that a risk factor of low parental supervision in the family domain was mostly supported with gang-joining.[136] However, family poverty and disadvantage, family structure, and family attachment were not supported by the research.[137]

Finally, pertaining to the concentration of offenders in certain families, a small proportion of families have extensive criminal backgrounds, while the overwhelming majority of families do not. The studies examining this issue suggest that less than 8% of families have extensive intergenerational contact with the justice system.[138] Further, while co-offending by siblings was common, "[t]here was no evidence that parents directly encouraged their children to commit crimes or taught them criminal techniques; on the contrary, a criminal father usually disapproved of his son's offending."[139] To the extent that offending is concentrated in families, "there may be intergenerational continuities in exposure to multiple risk factors" also correlated with offending.[140]

B. Characteristics of Adolescent Offending

The literature examining characteristics of adolescent offending similarly confirms that youth are heavily influenced by the characteristics of their family

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134. As discussed in the next Subpart, all youth can be expected to participate in some aspects of delinquency so methodologically it is difficult to determine how much of the criminal behaviors can be attributed to abuse. Further, there are reporting biases in that family violence is more likely than violence perpetrated by non-family members to be reported to police. Matthew Durose, et al., *Family Violence Statistics: Including Statistics on Strangers and Aquaintances*, U.S. BUREAU OF JUSTICE STATISTICS 22 (June 2005).

135. Richard Rosenfeld, Helene White & Finn-Aage Esbensen, *Special Categories of Serious and Violent Offenders*, *in* FROM JUVENILE DELINQUENCY TO ADULT CRIME: CRIMINAL CAREERS, JUSTICE POLICY, AND PREVENTION 141 (Rolf Loeber & David Farrington eds., 2012).

136. MALCOLM KLEIN & CHERYL MAXSON, STREET GANG PATTERNS AND POLICIES 144–46 (2006).

137. *Id.*

138. Studies conducted as part of the Pittsburgh Youth Study and Cambridge Study in Delinquent Development document that only 6–8% of families have extensive intergenerational contact with the justice system, but these families accounted for up to half of all convictions of family members. Farrington, *supra* note 108, at 132; *see also* David Farrington, Jeremy Coid & Joseph Murray, *Family Factors in the Intergenerational Transmission of Offending*, 19 CRIM. BEHAV. & MENTAL HEALTH 109 (2009); David Farrington et al., *The Concentration of Offenders in Families, and Family Criminality in the Prediction of Boys' Delinquency*, 24 J. ADOLESCENCE 579 (2001).

139. Farrington, *supra* note 108, at 133.

140. *Id.* at 132.

and neighborhood,[141] and that youth are less capable of escaping or avoiding these environmental influences.[142] However, this research also adds the notion that all youth engage in delinquent behaviors.

In sharp contrast to the idea that youth who commit crimes must come from troubled families, research shows that nearly all individuals engage in delinquent activities at some point during their development, with scholars acknowledging that "[s]ome form of delinquency is a normative part of adolescence."[143] Official records of arrests and convictions fail to show the true distribution of criminal offending behavior "because most offenders are not caught."[144] For example, even though white youth are more likely to report using drugs and 30% more likely to report selling drugs, Black youth are twice as likely to be arrested, twice as likely to be detained, and significantly more likely to be prosecuted in the adult court for drug offenses.[145] Several of our national leaders admit to participating in criminal activity as young people, with former Senator Alan Simpson perhaps being one of the most outspoken about his youth. He admits that he "rode aimlessly around town, shot things up, started fires and generally raised hell."[146]

There are several explanations for why adolescence is a time of greater involvement in criminal behavior. Children are more likely to ignore or downplay risks when making decisions,[147] less likely to be affected by deterrence

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141. *See, e.g.*, Jeffrey Fagan, *Contexts of Choice by Adolescents in Criminal Events*, *in* YOUTH ON TRIAL 371–94 (Thomas Grisso & Robert G. Schwartz eds., 2000).

142. *See, e.g.*, Alan E. Kazdin, *Adolescent Development, Mental Disorders, and Decision Making of Delinquent Youths*, *in* YOUTH ON TRIAL (Thomas Grisso & Robert G. Schwartz eds., 2000).

143. Jennifer L. Woolard, *Adolescent Development, Delinquency, and Juvenile Justice*, *in* THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE 107 (Barry C. Feld & Donna M. Bishop eds., 2012). *See also* DELBERT S. ELLIOT, DAVID HUIZINGA & SCOTT MENARD, MULTIPLE PROBLEM YOUTH: DELINQUENCY, SUBSTANCE USE, AND MENTAL HEALTH PROBLEMS (1989); John H. Laub and Sarah L. Boonstoppel, *Understanding Desistance from Juvenile Offending: Challenges and Opportunities*, *in* THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE 373 (Barry C. Feld & Donna M. Bishop eds., 2012) ("Adolescent involvement in crime is nearly ubiquitous, and it is seen by some as a normative aspect of growing up."); John H. Laub, Elaine Eggleston Doherty & Robert J. Sampson, *Social Control and Adolescent Development: A View from Life-Course Criminology*, *in* APPROACHES TO POSITIVE YOUTH DEVELOPMENT (Rainer K. Silberseisen & Richard M. Lerner eds., 2007); ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE (2008); David P. Farrington et al., *The Concentration of Offenders in Families, and Family Criminality in the Prediction of Boys' Delinquency*, 24 J. ADOLESCENCE 579 (2001); Terrie E. Moffitt, *Adolescence-Limited and Life-Course Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 PSYCHOL. REV. 674 (1993).

144. Alex Piquero, J. David Hawkins & Lila Kazemian, *Criminal Career Patterns*, *in* FROM JUVENILE DELINQUENCY TO ADULT CRIME: CRIMINAL CAREERS, JUSTICE POLICY, AND PREVENTION 17 (Rolf Loeber & David Farrington eds., 2012).

145. Arya & Augarten, *supra* note 14.

146. Alan Simpson, *A Sentence Too Cruel for Children*, WASH. POST (Oct. 23, 2009), *available at* http://www.washingtonpost.com/wp-dyn/content/article/2009/10/22/AR2009102203803.html.

147. *See* Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death*

measures,[148] less likely to consider long-term consequences when making decisions,[149] and more susceptible to peer pressure with regard to risky behavior.[150] These four explanations may be rooted in changes occurring in the brain during adolescence. The part of the brain essential for evaluating risk, long-term planning, impulse control, and rationality,[151] the prefrontal cortex, is not fully developed by late adolescence and is one of the last parts of the brain to mature.[152] These re-

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Penalty, 58 AM. PSYCHOL. 1009, 1012 (2003); Bonnie L. Halpern-Felsher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 J. APPLIED DEV. PSYCHOL. 257, 261, 264–70 (2001); Susan G. Millstein & Bonnie L. Halpern-Felsher, *Perceptions of Risk and Vulnerability*, *in* ADOLESCENT RISK AND VULNERABILITY 15, 34–35 (Baruch Fischoff et al. eds., 2001).

148. *See, e.g.*, Jeffrey Fagan, *Juvenile Crime and Criminal Justice: Resolving Border Disputes*, 18 FUTURE CHILD. 81, 102–03 (2008); Eric L. Jensen & Linda K. Metsger, *A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime*, 40 CRIME & DELINQ. 96, 96–104 (1994); Richard Redding & Elizabeth Fuller, *What Do Juveniles Know About Being Tried as Adults? Implications for Deterrence*, 55 JUV. & FAM. CT. J. 35 (2004); David Lee & Justin McCrary, *Crime, Punishment, and Myopia* (Nat'l Bureau of Econ. Research, Working Paper, No. W11491, 2005).

149. *See, e.g.*, Steven A. Drizin & Allison McGowan Keegan, *Abolishing the Use of the Felony-Murder Rule when the Defendant is a Teenager*, 28 NOVA L. REV. 507, 527–28 (2004); Jari-Erik Nurmi, *How Do Adolescents See Their Future? A Review of the Development of Future Orientation and Planning*, 11 DEV. REV. 1, 28–29 (1991); Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, 30, 35–36 (2009).

150. *See, e.g.*, Thomas J. Berndt, *Developmental Changes in Conformity to Peers and Parents*, 15 DEV. PSYCHOL. 608, 612, 615–16 (1979); Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEV. PSYCHOL. 625, 626–34 (2005); Scott & Steinberg, *supra* note 147; Laurence Steinberg & Susan B. Silverberg, *The Vicissitudes of Autonomy in Early Adolescence*, 57 CHILD DEV. 841, 848 (1986).

151. *See, e.g.*, Antonio R. Damasio & Steven W. Anderson, *The Frontal Lobes*, *in* CLINICAL NEUROPSYCHOLOGY 404, 434 (Kenneth M. Heilman & Edward Valenstein eds., 4th ed. 2003) (one "hallmark of frontal lobe dysfunction is difficulty making decisions that are in the long-term best interests" of the individual); Antoine Bechara et al., *Characterization of the Decision-Making Deficit of Patients with Ventromedial Prefrontal Cortex Lesions*, 123 BRAIN 2189, 2198–2200 (2000) (patients with lesions in the prefrontal cortex suffered from impairments in the ability to make real-life decisions because of an insensitivity to future consequences, whether reward or punishment); Antoine Bechara et al., *Dissociation of Working Memory from Decision Making Within the Human Prefrontal Cortex*, 18 J. NEUROSCIENCE 428, 428, 434 (1998) (prefrontal cortex is necessary for decision-making in tasks involving evaluation of risk and reward); Elizabeth R. Sowell et al., *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 NATURE NEUROSCIENCE 859, 860 (1999) (frontal lobes are essential for planning and organization).

152. *See, e.g.*, LINDA SPEAR, THE BEHAVIORAL NEUROSCIENCE OF ADOLESCENCE 108–11 (2010); B. J. Casey et al., *Structural and Functional Brain Development and its Relation to Cognitive Development*, 54 BIOLOGICAL PSYCHOL. 241, 243 (2000); Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROC. NAT'L ACAD. SCI. 8174, 8177 (2004).

search findings have been highly influential in the recent Supreme Court jurisprudence finding special protections for juveniles.[153]

In light of this brain research, it is not clear whether parents can control their children's behavior at all.[154] As Kristin Henning has noted, "it is plausible that a fifteen-year-old boy would have the cognitive ability to understand—in a conversation with his father—that robbery is wrong, yet impulsively participate in such conduct with a group of friends who snatch a stranger's hat and run away."[155] Developmental research shows that youth are particularly susceptible to the influence of peers[156] and that peer presence makes youth much more likely to engage in risk taking.[157] Scholars have also noted that adolescents often conceal their delinquent peers from their parents, prompting criminologist Mark Warr to call these peers "secret friends."[158]

Research also shows that crime rates peak around late adolescence and then steeply decline into adulthood.[159] Most youth will be "adolescent-limited" offenders, in recognition that most will age out of their offending behaviors by their early-20s.[160] In contrast, persons who continue engaging in criminal activity as

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153. *See* Roper v. Simmons, 543 U.S. 551 (2005); Graham v. Florida, 130 S. Ct. 2011 (2010); J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011); Miller v. Alabama, 132 S. Ct. 2455 (2012).

154. *See, e.g.*, Judith G. McMullen, *"You Can't Make Me!": How Expectations of Parental Control over Adolescents Influence the Law*, 35 LOY. U. CHI. L.J. 603 (2004).

155. Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 399 (2013).

156. *See* Steinberg & Scott, *supra* note 147.

157. *See id. See also* Margo Gardener & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEVELOPMENTAL PSYCHOL. 625, 626–34 (2005); Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Influence*, 43 DEVELOPMENTAL PSYCHOL. 1531, 1538–39 (2007).

158. Mark Warr, *The Tangled Web: Delinquency, Deception, and Parental Attachment*, 36 J. YOUTH AND ADOLESCENCE 607 (2007).

159. Rolf Loeber et al., *Overview, Conclusions, and Key Recommendations*, *in* FROM JUVENILE DELINQUENCY TO ADULT CRIME: CRIMINAL CAREERS, JUSTICE POLICY, AND PREVENTION 320–23 (Rolf Loeber & David Farrington eds., 2012) ("[S]tudies show that about 40–60% of juvenile offenders persist into early adulthood, but the percentage of persisters substantially decreases afterwards. . . . Juveniles whose self-reported offending started at ages 7 or 8 tended to be active offenders for a median of 12 years (thus, continued to offend up to ages 19–20), whereas those who began offending between ages 9 and 10 had a delinquency career of a median of 9 years (thus ending around the same age), while those who started offending between ages 11 and 16 had an active delinquency career with a median of 5 to 8 years, thus also ending at ages 16–23. When official records of offending were the criterion, the results were basically replicated but with slightly shorter offending durations than for self-reported delinquency."); *see also* Moffitt, *supra* note 143; Terrie E. Moffitt, *Natural Histories of Delinquency*, *in* CROSS-NATIONAL LONGITUDINAL RESEARCH ON HUMAN DEVELOPMENT AND CRIMINAL BEHAVIOR 3–4, 7, 29 (Elmar G.M. Weitekamp & Hans-Jürgen Kerner eds., 1994).

160. *See* Moffitt, *supra* note 143, at 686; *see also* JOHN H. LAUB & ROBERT J. SAMPSON, SHARED BEGINNINGS, DIVERGENT LIVES: DELINQUENT BOYS TO AGE 70 (2003);

adults are referred to as "life-course persistent" offenders.[161] However, at present there is no reliable method for determining which juvenile offenders will become adult offenders.[162] Many systems rely on unstructured assessments or locally developed and nonvalidated instruments to predict offending behaviors.[163] Judges often rely on these informal procedures[164] even though other research has shown that unstructured assessments by mental health professionals to predict violence by an individual will not be accurate in two-thirds of cases.[165] Better-validated assessments are not necessarily on the horizon. According to a review of youth and adult assessment tools, the bulk of "research is based on samples of American, Canadian, and British males from the majority culture. Our knowledge of the dynamics of early adult crime among females and those from minority ethnic and cultural groups is limited."[166] Furthermore, some of the risk assessments used may be useful to predict offending or violence, but are not useful in intervention, planning, or monitoring progress.[167]

Finally, because delinquency is nearly ubiquitous during adolescence, the reason some children are involved in the justice system, while others are not, has more to do with policing, diversion, and court processing practices rather than the actual troublesome behaviors that youth display or their family situations.[168] Since 1988 there has been formal congressional recognition that racial and ethnic bias

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RICHARD A. MENDEL, LESS HYPE, MORE HELP: REDUCING JUVENILE CRIME, WHAT WORKS–AND WHAT DOESN'T 15 (2000) ("the criminal careers of most violent juvenile offenders span only a single year").

161. *Id.*

162. *See, e.g.*, THOMAS GRISSO, DOUBLE JEOPARDY: ADOLESCENT OFFENDERS WITH MENTAL DISORDERS 64–65 (2005) (discontinuity of disorders in adolescence creates "moving targets" for identification of mental disorders); Edward P. Mulvey & Elizabeth Cauffman, *The Inherent Limits of Predicting School Violence*, 56 AM. PSYCHOLOGIST 797, 799 (2001) ("Assessing adolescents . . . presents the formidable challenge of trying to capture a rapidly changing process with few trustworthy markers.").

163. Robert D. Hoge, Gina M. Vincent & Laura S. Guy, *Prediction and Risk/Needs Assessments*, *in* FROM JUVENILE DELINQUENCY TO ADULT CRIME: CRIMINAL CAREERS, JUSTICE POLICY, AND PREVENTION 152 (Rolf Loeber & David Farrington eds., 2012).

164. Edward P. Mulvey & Anne-Marie R. Iselin, *Improving Professional Judgments of Risk and Amenability in Juvenile Justice*, 18 FUTURE CHILD. 35, 35–37 (2008).

165. *See* Thomas Grisso & Alan J. Tomkins, *Communicating Violence Risk Assessments*, 51 AM. PSYCHOLOGIST 928 (1996); John Monahan, *Violence Prediction: The Last 20 Years and the Next 20 Years*, 23 CRIM. JUST. & BEHAV. 107 (1996); Bernard Rubin, *Prediction of Dangerousness in Mentally Ill Criminals*, 27 ARCHIVES OF GEN. PSYCHIATRY 397 (1972).

166. Hoge, Vincent & Guy, *supra* note 163, at 175.

167. Robert D. Hoge & D.A. Andrews, EVALUATION FOR RISK OF VIOLENCE IN JUVENILES (2010).

168. *See, e.g.*, Howard Snyder, *Juvenile Delinquents and Juvenile Justice Clientele: Trends and Patterns in Crime and Justice System Response*, *in* THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE 12 (Barry C. Feld & Donna M. Bishop eds., 2012) ("[A]rrest rates and arrest rate trends are not always good indicators of either the relative involvement of juveniles in crime or changes in prevalence/incidence of criminal behavior.").

are pervasive in the juvenile justice system.[169] Biases based on class, gender, and sexual orientation have also been identified.[170]

C. Evidence-Based Practices in Juvenile Justice

Regardless of whether families are perceived as the cause of a child's delinquency, or whether adolescent offending is viewed as part of the normal development process, there is yet a third set of literature involving interventions to address delinquent behavior.

The majority of long-standing evidence-based practices designed to help youth charged with the most serious offenses and youth who have the highest risks of offending are family-based programs.[171] The evidence-based programs with rigorous evaluations include Wraparound Services,[172] Multi-systemic Therapy,[173] Family Integrated Transition,[174] Family Preservation Services,[175] Functional Fami-

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169. NATIONAL RESEARCH COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 211 (2013), *available at* http://www.nap.edu/openbook.php?record_id=14685&page=211; *see also* Arya & Augarten, *supra* note 14; Neelum Arya & Addie C. Rolnick, *A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems*, 1 CAMPAIGN YOUTH JUST. (2008); Arya et al., *supra* note 17.

170. *See, e.g.*, Angela Irvine, *"We've Had Three of Them": Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System*, 19 COLUM. J. GENDER & L. 675 (2010).

171. Email correspondence between author and Jason Medina (on file with author).

172. Wraparound Services provide individualized, comprehensive, community-based services and supports to youth with serious emotional or behavioral problems so that they may remain in the community. Resources are created and organized to meet the needs of the youth after identifying the strengths of the youth and family. The goal is to turn what community resources are available into what the youth and family needs.

173. Multi-systemic Therapy (MST) was developed in the late 1970s to meet two goals: provide the youth's caregivers with skills and resources to cope with the difficulties of raising teenagers with behavioral problems; and give youth skills to cope with family, peer, school, and neighborhood problems. MST treatment plans are designed jointly with family members and are family-driven rather than therapist-driven. The typical duration of home-based MST services is approximately four months, with multiple therapist-family contacts occurring each week. *See* SCOTT W. HENGGELER ET AL., MULTISYSTEMIC TREATMENT OF ANTISOCIAL BEHAVIOR IN CHILDREN AND ADOLESCENTS (1998); Scott W. Henggeler et al., *Four-Year Follow-up of Multisystemic Therapy with Substance Abusing and Substance-Dependent Juvenile Offenders*, 41 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 868 (2002); Cindy M. Schaeffer & Charles M. Bourduin, *Long-Term Follow-up to a Randomized Clinical Trial of Multisystemic Therapy with Serious and Violent Juvenile Offenders*, 73 J. CONSULTING & CLINICAL PSYCHOL. 445 (2005).

174. Family Integrated Transition (FIT) provides services to youth who have mental health and chemical dependency disorders and are returning to the community. The overarching framework of FIT is derived from MST, with additions from Dialectical Behavior Therapy and Motivational Enhancement Therapy. FIT begins two months prior to release from a residential setting and continues for four to six months. FIT uses therapists to coach caregivers in establishing productive partnerships with schools, community supports, parole, and other systems and help caregivers develop skills to be effective advocates for those in their care.

ly Therapy ("FFT"), and Functional Family Probation/Parole Services.[176] In a review of these programs, Peter Greenwood and Susan Turner explain their success: "[P]rograms that emphasize family interactions are the most successful, probably because they focus on providing skills to the adults who are in the best position to supervise and train the child. More traditional interventions that punish or attempt to frighten the individual youth are the least effective."[177]

Although most practitioners have long touted these programs, they have generally not been considered examples of family engagement even though families are an integral component of these programs. Some family members are offended by the trade names of these programs.[178] For example, FFT connotes the idea that the families are dysfunctional. However, FFT practitioners clarified that the term "functional" refers to all behavior having a functional purpose in how the family operates.[179]

Although these programs have a strong track record in helping youth, only about 5% of youth in the juvenile justice system have the opportunity to benefit from these programs with proven effectiveness.[180] What do youth get if they do not get one of these programs? The vast majority of programs currently operating in

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175. Family Preservation Services are short-term (four to six weeks), family-based services designed to assist families in crisis by improving parenting and family functioning while keeping children and communities safe. Family preservation programs are designed to help families cope with stress, maintain needed services, and obtain other needed services.

176. Functional Family Therapy (FFT) is a home-based prevention and intervention program by clinically-trained therapists. Functional Family Probation or Parole (FFP) is the latest adaptation of FFT for use by trained probation and parole officers. Both FFT and FFP target risk and protective factors for youth and families, and provide concrete techniques for clinical staff and probation and parole staff to use when working with youth and families. The three-phase approach of FFT and FFP work to: 1) increase the entire family's motivation to participate in services and engage every family member in the process; 2) provide support and encouragement to the family and youth such as referring youth to services or teaching new skills; and 3) link youth and families with relevant providers of services and coach the family and youth to implement what has been learned and maintain the change.

177. Peter W. Greenwood & Susan Turner, *Probation and Other Noninstitutional Treatment: The Evidence is In*, *in* THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE 121 (Barry C. Feld & Donna M. Bishop, eds., 2012). *But see* Dick Mendel, *Analysis: Holes in the Evidence for Evidence-Based*, JUVENILE JUSTICE INFORMATION EXCHANGE (Aug. 18, 2014), http://jjie.org/analysis-holes-in-the-evidence-for-evidence-based/107453/; Gary Gately, Evidence-Based 'Gold Standard' Coveted, Yet Controversial, JUVENILE JUSTICE INFORMATION EXCHANGE (Aug. 13, 2014), http://jjie.org/evidence-based-gold-standard-coveted-yet-controversial/107409/.

178. *Family-Focused Practice: A Critical Examination of Functional Family Probation*, JDAI INTER-SITE CONFERENCE (Apr. 25, 2012) (Comment made by family member at a conference workshop).

179. *Id.*

180. Peter Greenwood, *Prevention and Intervention Programs for Juvenile Offenders: The Benefits of Evidence-Based Practice*, FUTURE CHILD. 11 (2008).

the justice system today have either little empirical support to demonstrate efficacy, or are known to exacerbate delinquent behavior. [181]

Research from a variety of disciplines, including early childhood development, education, mental health, physical health, and child welfare, all point to family-driven care as a key solution to addressing the needs of children.[182] Similar to Greenwood and Turner, leading experts in the family engagement movement offer three primary reasons that involving families makes a difference in addressing the treatment needs of children.

First, "parents have special knowledge that can enhance the design of interventions and treatments."[183] Parents typically have more contact with their children than any system professional, and can share cultural knowledge, which is critical to contextualizing interventions to make them effective.[184] In other words, families know what is likely to work best with their children and which approaches probably will not.

Second, "parents can promote healthy development, can prevent problems from developing or exacerbating, and can implement effective treatment protocols and educational interventions."[185] When families are involved, they can monitor what is happening with their children, keep youth on track, and inform system professionals when things are not working out as expected.

Third, research demonstrates that outcomes improve when family members and youth are active participants in their own treatment,[186] particularly when

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181. Scott W. Henggeler & Sonja K. Schoenwald, *Evidence-Based Interventions for Juvenile Offenders and Juvenile Justice Policies that Support Them*, 25 SOC. POL'Y REP. 1, 1, *available at* http://www.srcd.org/sites/default/files/documents/spr_25_no_1.pdf ("In general, the vast majority of current juvenile justice services has little empirical support or exacerbates antisocial behavior. These include processing by the juvenile justice system (e.g., probation), juvenile transfer laws, surveillance, shock incarceration, and residential placements (e.g., boot camps, group homes, incarceration). On the other hand, several effective treatment programs have been validated in rigorous research. Effective programs address key risk factors (e.g., improving family functioning, decreasing association with deviant peers), are rehabilitative in nature, use behavioral interventions within the youth's natural environment, are well specified, and include intensive support for intervention fidelity."); *see also* David Huizinga & Kimberly Henry, *The Effect of Arrest and Justice System Sanctions on Subsequent Behavior: Findings from Longitudinal and Other Studies*, *in* THE LONG VIEW OF CRIME: A SYNTHESIS OF LONGITUDINAL RESEARCH 220–54 (Akiva M. Liberman ed., 2008).

182. *See* Sandra A. Spencer, Gary M. Blau, & Coretta J. Mallery, *Family-Driven Care in America: More Than a Good Idea*, 19 J. CAN. ACAD. CHILD & ADOLESCENT PSYCHIATRY 176 (2010).

183. Trina W. Osher, David Osher & Gary M. Blau, *Families Matter*, *in* FAMILY INFLUENCES ON CHILDHOOD BEHAVIOR AND DEVELOPMENT EVIDENCE-BASED PREVENTION AND TREATMENT APPROACHES, 47 (Thomas P. Gullotta & Gary M. Blau eds., 2008).

184. American Academy of Pediatrics Committee on Hospital Care, *Family-Centered Care and the Pediatrician's Role*, 112 PEDIATRICS 691, 691–96 (2003).

185. Osher, et al., *supra* note 183.

186. *See, e.g.*, Erin Morrissey-Kane & Ronald Pinz, *Engagement in Child and Adolescent Treatment: The Role of Parental Cognitions*, 2 CLINICAL CHILD & FAM. REV. 183 (1999); Michael Wehmeyer & Susan Palmer, *Adult Outcomes for Students with Cogni-*

youth and families are given leadership roles in making treatment decisions.[187] The American Academy of Child and Adolescent Psychiatry approved a policy statement in October 2009 explicitly endorsing family and youth participation in clinical decision-making.[188]

D. Research Supports Family-Driven Justice

There are several key insights from these three literatures that justify taking a family-driven approach to transform the justice system.

First, the overwhelming majority of families (greater than 90%) who have contact with the justice system do not have extensive histories of criminal justice system involvement.[189] This makes sense given the research that most youth are adolescent-limited offenders and do not become adult offenders.[190] However, families with extensive contacts with the system (under 10%) account for up to half of all cases within the system overall.[191] The fact that some families have continuous and repeated exposure to the justice system further confirms that the current justice system approach is not working, and the system needs a new approach to meet these families' needs effectively. I suspect that system stakeholders are regularly exposed to families with chronic issues, which reinforce preexisting stereotypes even though the majority of families who have contact with the system do not conform to those stereotypes. This may account for why jurisdictions that have made the most headway on family engagement also have explicit value statements countering these negative stereotypes.[192]

Second, aside from the few evidence-based programs for serious offenders, there is minimal evidence that juvenile justice agencies reduce offending behaviors beyond what would naturally occur through the normal maturation pro-

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tive Disabilities Three Years After High School: The Impact of Self-Determination, 38 EDUC. AND TRAINING IN DEVELOPMENTAL DISABILITIES 131 (2003).

187. Spencer et al., *supra* note 182.

188. AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENT (Oct. 2009) ("Family and youth involvement is essential at each phase of the treatment process, including assessment, treatment planning, implementation, monitoring, and outcome evaluation. Family and youth partnership also needs to inform decision making at the policy and systems level. Family priorities and resources must be identified and should drive care. Throughout the treatment process families and youth must: have the right to be involved in making decisions regarding providers and others involved in the treatment team; be encouraged to express preferences, needs, priorities, and disagreements; collaborate actively in treatment plan development and in identifying desired goals and outcomes; be given the best knowledge and information to make decisions; make joint decisions with their treatment team; and participate actively in monitoring treatment outcomes and modifying treatment.")

189. *See supra* note 138.

190. A question for future research is to determine whether the group of life-course-persistent offenders comes from families with intergenerational exposure to the justice system. To my knowledge, there is no criminological research that has explored this question.

191. *See supra* note 138.

192. *See infra* notes 200–214 and accompanying text.

cess.[193] In fact, the evidence points to the opposite conclusion—contact and further penetration into the justice system increases the risk to public safety.[194] Studies of youth released from residential corrections programs find that 70% to 80% of youth are rearrested within two or three years.[195] Youth with the lowest offending levels prior to incarceration end up committing more crimes after being incarcerated.[196] Considering that most youth receive assessments or treatments without proven effectiveness,[197] this means that current justice system professionals have no real informational advantage that should privilege their decisions over families' decisions. By this statement I do not mean to suggest that system stakeholders have no useful information or perspectives to offer, but rather that their level of knowledge of what will work for an individual child does not warrant granting decision-making authority to system professionals. Scholars have noted that the failure to emphasize rehabilitation or the use of evidence-based practices "would be grounds for malpractice in medicine,"[198] but is not in law.

It is likely to be the case that if families had more control over the treatment plans for children, justice agencies would see an increase in efficacy of the existing programs offered by the system because family members could assist with targeting the right services to their children.[199]

Third, while some system professionals would probably like more research on the specific links between families and crime before changing the default assumptions of how the justice system operates, in my view waiting for more sophisticated research studies is not warranted. The purpose of having more research is to help identify effective interventions. However, the bulk of evidence-based approaches in juvenile justice known to be successful with the most serious offenders already takes a strengths-based approach to families. The family-driven

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193. *See supra* note 143 and accompanying text.

194. *See, e.g.*, ANTHONY PETROSINO, CAROLYN TURPIN-PETROSINO & SARAH GUCKENBURG, CAMPBELL SYSTEMATIC REVS., FORMAL SYSTEM PROCESSING OF JUVENILES: EFFECTS ON DELINQUENCY (2010) (referencing a meta-analysis of 29 controlled studies that found that juvenile court processing tended to increase criminal behavior as compared to diversion to community services); RICHARD E. REDDING, JUVENILE JUSTICE BULLETIN, JUV. TRANSFER LAWS: AN EFFECTIVE DETERRENT TO DELINQUENCY? (referencing a meta-analysis of the effect of transfer policies to adult court that found that transfer increased recidivism). Confinement in facilities also is iatrogenic. BARRY HOLMAN & JASON ZIEDENBERG, WASH., D.C.: JUSTICE POL'Y INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES (2006); Uberto Gatti, Richard Tremblay & Frank Vitaro, *Iatrogenic Effect of Juvenile Justice*, 50 J. CHILD PSYCHOL. & PSYCHIATRY 991 (2009); Huizinga & Henry, *supra* note 181, at 220–54.

195. MENDEL, *supra* note 79.

196. EDWARD MULVEY, OJJDP JUV. JUSTICE FACT SHEET, HIGHLIGHTS FROM PATHWAYS TO DESISTANCE: A LONGITUDINAL STUDY OF SERIOUS ADOLESCENT OFFENDERS (2011).

197. *See supra* notes 162–167 and accompanying text.

198. Edward J. Latessa, Francis T. Cullen & Paul Gendreau, *Beyond Correctional Quackery: Professionalism and the Possibility of Effective Treatment*, 66 FED. PROBATION 43 (2002).

199. *See supra* notes 182–188; *infra* notes 382–408 and accompanying text.

approach can really be viewed as implementing the best practices from existing research.

III. KEY FEATURES OF FAMILY-DRIVEN JUSTICE

As mentioned at the outset of this Article, family engagement is a nebulous concept. This study was aimed at identifying philosophies and practices currently in use that are mutually agreeable to both system professionals and family members. Bart Lubow, former director of the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, highlighted for an audience of juvenile justice professionals his version of what an ideal justice system looks like, which succinctly summarizes my key findings and the family-driven approach:

> I want a system that acts upon the belief that youth need families, not facilities, a system that understands that whenever we disrupt a family, we lessen the odds that a youth will succeed as an adult. On the practice level, this means a system that recognizes family strengths and devotes its resources to strengthening families; a system that learns from families, involves them in day-to-day operational decisions regarding their children, and includes them in policy and resource discussions. I want a family-focused system . . . .[200]

From my research, I identified only a handful of jurisdictions across the country that have been intentional about creating comprehensive strategies to address the needs of families, and even fewer that have attempted to implement Lubow's vision. From the examples that do exist, it is useful to see how the jurisdictions evolved over time, and how they have incorporated value statements into their work to help stakeholders counter the system professionals' negative stereotypes of families.[201]

Starting in 1999, DuPage County, Illinois, wanted to address the rising costs of court-ordered residential care.[202] They realized that providing services to youth, without addressing family or environmental factors, was ineffective in resolving the youth's delinquent behaviors long-term.[203] They made a series of incremental changes to their justice system, and, in 2006, as part of the Catherine D. and John T. MacArthur Foundation Models for Change Initiative, DuPage County formed a Parent Involvement Workgroup to engage families in the juvenile justice system.[204] Even though the DuPage County had been active in system reform efforts for over a decade, those efforts were not accompanied by a fundamental shift in the ideology of the justice system or perceptions about families in particular.

Similar to the dominant view that parents cause their children's behavior discussed in Part II, the Workgroup initially began with the attitude of holding par-

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200. Bart Lubow, Director, Juvenile Detention Alternatives Initiative (JDAI), Annie E. Casey Foundation, Remarks at the JDAI National Inter-site Conference (Apr. 25, 2012).

201. *See also* text accompanying *infra* note 440.

202. SHANNON HARTNETT & STUART BERRY, DUPAGE CNTY. DEP'T OF PROBATION AND COURT SERVICES PARENTAL INV. WORK AREA, A TRANSITION UPDATE.

203. *Id.*

204. *Id.*

ents more accountable for their child's behavior.[205] However, the group quickly realized that such an approach would be ineffective.[206] Instead they moved to what they described as a "parent involvement philosophy" because they found that "approaches which are strengths-based, culturally competent, and based on the individualized needs of the family are most effective in helping families initiate and maintain positive youth and family outcomes."[207]

From my research, I found that many efforts that have met the family vision for how parents who want government services to help their children have intentionally started with clear value statements to guide and clarify the purpose of the effort. One of the key elements of the DuPage parental involvement effort states:

> It is our belief that the vast majority of parents care about their children, and parent them to the best of their ability. It is also our belief that some parents, due to their life experiences, current circumstances, skill level, socioeconomic status, degree of social support, special needs of their children, and other factors, could benefit from receiving additional information about effective parenting (e.g., child development and the changing role of parents), skill building, resources, and social support from both professionals and other parents . . . .[208]

Changing the ideology of the juvenile justice system overall to respect family autonomy—what some families refer to as "voice and choice"[209]—also begins by modifying the default rules of the system and approaching families with the following four positive presumptions of Family-Driven Justice:[210]

(1), All families care about their children and can be trusted to make good decisions on their children's behalf.[211]

(2), All families have strengths to build upon, including families with mental health or substance abuse issues or prior involvement with the criminal justice and child welfare systems.[212]

(3), All families want their children to grow up safe and free from entering the justice system: for those children who are already part of the system, families wish for their children to be free from continued justice system involvement.[213]

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205. *Id.*
206. *Id.*
207. *Id.*
208. *Id.*
209. Comment from a family member at the New Jersey JDAI conference (Oct. 8, 2013).
210. I drafted these presumptions in Spring 2012 after my preliminary literature review and site visit to the Midwest. A draft of these propositions was circulated to family members who participated in monthly organizing calls orchestrated by the Campaign for Youth Justice. The specific language for these four presumptions was determined through email exchanges and phone consultations with family member experts. (On file with author).
211. *Id.*
212. *Id.*

(4), All families have dreams for their children and want them to succeed in all aspects of adult life. Families hold onto these dreams even for children who are part of the justice system and want the justice system to help their children fulfill these dreams.[214]

The first proposition includes a presumption that caregivers "have the capacity and motivation to act in their children's best interests, with strong bonds of affection and adequate measures of wisdom and good judgment guiding their decisions and actions."[215] While "[b]earing or rearing a child is not a guarantee that parents will love their children and look out after their interests; in most instances, it works out that way."[216] In *Privilege or Punish*, Markel, et al. found the opposite default presumptions at play in parental responsibility laws in that "they frequently create liability for parents based on their status as a parent and the misconduct of their child alone, leaving the intentionally responsible parent to plead their good parenting skills as an affirmative defense instead of making the prosecution show the absence of good parenting as part of its case-in-chief against the parent."[217] This first presumption also incorporates the current constitutional protections for the parent–child relationship, which are similarly premised on assumptions that parents "act in the best interests of their children." [218]

Although this research project began with the belief that family members act in their child's best interest, there are special populations of youth and families who will require special outreach and accommodations. Some youth come to the attention of justice agencies without active custodial parents, i.e., having neither a biological or foster parent, nor other relative caregiver, or without a caregiver who is capable of meeting the needs of the child at that particular moment. I interviewed a system expert who raised the specific problem of how to handle a youth adjudicated delinquent for drug use but cared for by parents who are themselves drug users.[219] He explained that jurisdictions will differ in whether these caregivers are considered appropriate.[220] In some jurisdictions, these parents would be automatically disqualified and the child would be removed from the home. Other states, particularly those states that have decriminalized marijuana use, may ap-

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213. *Id.*

214. *Id.*

215. Weithorn, *supra* note 43.

216. Maxine Eichner, *The Family and the Market-Redux*, 13 THEORETICAL INQUIRIES L. 97, 123 (2012) (citing John Eekelaar, *Self-Restraint: Social Norms, Individualism and the Family*, 13 THEORETICAL INQUIRIES L. 75 (2011)).

217. MARKEL ET AL., *supra* note 1, at 69.

218. *See, e.g.*, Parham v. J.R., 442 U.S. 584, 602 (1979) (recognizing a parent's right to raise children as "perhaps the oldest of the fundamental liberty interests"); *see also* Troxel v. Granville, 530 U.S. 57, 65–67 (2000); Santosky v. Kramer, 455 U.S. 745, 753 (1982); Wisconsin v. Yoder, 406 U.S. 205, 232 (1972) ("[The] primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."); Stanley v. Illinois, 405 U.S. 645, 651 (1972); Prince v. Massachusetts, 321 U.S. 158, 166 (1944); Pierce v. Soc'y of Sisters, 268 U.S. 510, 514–16 (1925); Meyer v. Nebraska, 262 U.S. 390, 400 (1923).

219. Telephone Interview with Jason Medina, FFT-FFP National Trainer and Consultant (Sept. 21, 2011).

220. *Id.*

proach the issue differently. For youth in these situations, rather than remove youth to a group home or institutional environment, system experts and family members agree that justice agencies should use Family Finding and other permanency-oriented techniques developed for youth in foster care to identify and recruit family members who will be able to be part of the unconditional, permanent support system for these youth.[221]

Youth who enter the justice system on domestic violence charges will also require specific and special outreach because of the extremely high levels of family conflict. For example, Francine Sherman has explained that 60% of girls charged with domestic assault offenses committed their violence against a parent which may be attributed to "family chaos or physical and sexual abuse."[222] Another population of youth requiring special attention is LGBT youth. National data show that 15% of youth in the juvenile justice system are LGBT, questioning, or express their gender in nonconforming ways.[223] Compared to their heterosexual and gender-conforming peers, family rejection is a common reason for the delinquency, and counseling and support for families is often necessary.[224]

The general sentiment among the family members I consulted with during this research project was that, while some parents or guardians of children may be viewed as inappropriate caregivers for the youth in a particular situation, the family members wanted to ensure that their views were still heard and incorporated in decision-making and that children who needed to be removed from the home would go to other relative caregivers.

In this Part, I explain the five features of what a transformed justice system will look like when it uses these positive presumptions to guide changes. First, families will be supported before and after challenges arise with their youth. Second, families will have access to peer support from the moment a youth is arrested through exit from the justice system. Third, families will be involved in decision-making processes at the individual, program, and policy levels to hold youth accountable and keep the public safe. Fourth, families will be strengthened through culturally competent treatment options and approaches. Fifth, families will know their children are being prepared for a successful future.

A. Services Without Justice-System Involvement

The focus groups with families elicited two seemingly contradictory findings. Some families were adamantly opposed to justice system processing, viewing the system primarily through the lenses of race/ethnicity and class bias. One parent noted:

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221. Jesse's story as an example of Family Finding in practice. *See infra* note 308 and accompanying text.

222. Sherman, *supra* note 104, at 1603–04.

223. *See* Irvine, *supra* note 170.

224. *Id.* In my research, I identified two resources to support LGBT youth in the justice system. The Family Acceptance Project at San Francisco State University is developing model services for ethnically diverse families to help increase family support for LGBT children. The Equity Project is an initiative to ensure that LGBT youth in juvenile delinquency courts are treated with dignity, respect, and fairness.

> I grew up in Philadelphia and I used to get locked up for the smallest things. As an adult, I moved to what I thought was a "better" community but I quickly learned that it had nothing to do with where I lived. Instead, it had to do with race. In my view, kids of color get arrested more than other kids.[225]

Another parent noted:

> My son was walking home from school and he was curious about a fight that was going on. He went to where the fight was occurring and when the police arrived my son was arrested and accused of being part of gang activity. It was three hours before we as the parents were notified. Racial disparity in [the County] is unbelievable.[226]

For these families, their children's behavior was typical "kid stuff," and they were concerned by the way their children were being labeled mad, sad, and bad.[227] As Nancy Dowd has noted, "State intrusion into families is a significant divider of families by race and class: the model of privacy and family protection is more typical for white middle and upper class families, versus intrusion, supervision, and the presence of the state in the lives of the families of people of color and low income families."[228] Families holding this view were essentially advocating against government intervention in favor of family privacy.

In contrast, other families had experienced significant challenges raising their children or were experiencing new conflicts they were trying to resolve.[229] Rather than wanting to be left alone, they wanted help. One of the most common complaints of families involved in the justice system is that many had attempted to get help for their children but none was forthcoming.[230] "I went [to the justice system] 'cause I felt like I had no other choice. I thought I had exhausted all my choices, all of my options. I felt like I had nowhere else to go."[231]

Many families were turned away by other child-serving systems because they were ineligible for services.[232] They made too much to qualify for services, but not enough to purchase private services for their child, assuming those services even existed in the community.[233] Families in these situations had taken a proactive approach to find help, but little was available.[234] One parent noted: "We were told that since we lived in a rural area and mental health services were scarce that

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225. Focus Group Transcript, Wash. D.C. (Apr. 27, 2011) (quote from a parent).
226. *Id.*
227. OJJDP Focus Groups, *supra* note 93, at 11–12.
228. Nancy E. Dowd, *Essay: (Re)constructing the Framework of Work/family*, 16 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 331, 338 (2010).
229. OJJDP Focus Groups, *supra* note 93, at 2.
230. *Id.*
231. Focus Group Transcript, Wash. D.C. (Apr. 27, 2011) (quote from a parent).
232. OJJDP Focus Groups, *supra* note 93, at 11.
233. *Id.*
234. *Id.* at 2.

it probably would be best for our child to be locked up because she'll get services faster."[235]

These families were particularly resentful of being blamed for their child's behavior.[236] Families were also angry that the government would be willing to spend hundreds of thousands of dollars to incarcerate a youth, but not spend much smaller sums to keep the child out of a facility.[237]

The survey responses by system stakeholders did not address the issue of race and ethnic bias directly because this was outside the scope of the survey, but respondents generally agreed that families often need a comprehensive array of resources and services, which are lacking in most communities.[238] Others noted that resources may be available but offered by a different agency.[239] In these situations, justice system professionals expressed their own frustrations that their hands were often tied as they had no authority to compel services provided by a different agency.[240]

The results from the focus groups and surveys suggest that justice system agencies need to reduce the flow of "kid stuff" into the justice system, while simultaneously expanding access to services for youth with more significant needs. One way for local juvenile justice agencies to do this is by conducting supply-chain-like analyses to understand the major feeder systems into the justice system and to close those points of entry indicating racial/ethnic and class biases. Law enforcement and justice agencies should also expand the diversionary pathways to direct youth away from the justice system if there is contact. For example, Native youth living on reservations face extreme challenges, including poverty, and alcohol and substance abuse. Native youth also are disproportionately affected by substance abuse disorders as compared to their peers from other racial groups in the United States.[241] In collaboration with the Robert Wood Johnson Foundation's Reclaiming Futures Initiative, the Sovereign Tribal Nation of Sicangu Lakota has worked to create a culturally appropriate and family-based response to youth with substance abuse issues.[242] In 2003, more than 75% of Rosebud juvenile justice

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235. *Id. See also* COMM. ON GOV'T REFORM—MINORITY STAFF SPECIAL INVESTIGATIONS DIV., U.S. HOUSE OF REPRESENTATIVES, INCARCERATION OF YOUTH WHO ARE WAITING FOR COMMUNITY MENTAL HEALTH SERVICES IN THE UNITED STATES ii (2004) (finding that approximately 2,000 youth are incarcerated due to a lack of mental health services).

236. OJJDP Focus Groups, *supra* note 93, at iv.

237. *Id.*

238. Survey results with juvenile justice professionals.

239. *Id.*

240. *Id.*

241. *See* SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., CTR. FOR BEHAV. HEALTH STAT. AND QUALITY, THE NATIONAL SURVEY ON DRUG USE & HEALTH REPORT: SUBSTANCE USE AMONG AMERICAN INDIAN OR ALASKA NATIVE ADOLESCENTS 4 (Oct. 2011).

242. The Reclaiming Futures Oyate Teca Owicakiya created comprehensive solutions to their specific juvenile crime problem. The solutions they implemented included: screening first-time offenders to assess and refer teens for treatment; using care teams for youth within its Wellness Court; having residential treatment for youth on the reservation;

court cases were related to underage drinking, and youth inpatient treatment services used to be located off the reservation.[243] The Reclaiming Futures Oyate Teca Owicakiya (which means "Helping Young People" in the Lakota language) partnered with the community and more than 15 agencies and programs to increase alcohol and drug treatment and prevention services to young people and their families.[244]

1. Interventions Before Arrest

The literature suggests three main drivers of conflict leading a substantial proportion of youth to enter the juvenile justice system: family-based concerns, school-based conflicts, and neighborhood conflicts. Each of these drivers requires its own type of interventions.

a. Family-Based Strategies

The findings from the focus groups with families suggest that jurisdictions need to develop new ways to support families parenting adolescents. One parent noted, "Our son got into a situation and was incarcerated. As parents, we had no idea what to do. We needed information. We needed to share information. Parents need guidance."[245]

Unlike the plethora of early childhood parenting magazines and other resources to help parents access parenting knowledge about young children, parenting information is largely hidden from view for parents who are struggling with raising older children. Communities can bridge this gap by making available and promoting general parenting resources and support. The Urban Leadership Institute's Raising Him Alone Campaign ("RHA") engages and supports single mothers raising boys.[246] Initially a two-city initiative, RHA has now expanded to additional cities and created a national online presence.[247] RHA now serves as a national clearinghouse for parenting information used by thousands of single mothers across the country.[248]

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using innovative treatment approaches include equine therapy, archery, and a range of Lakota cultural practices; involving members of the Sicangu Lakota Nation to share cultural traditions, spiritual knowledge, and life experiences; promoting indigenous practices such as peacemaking and family group decision-making to repair harm and keep cases out of the court system; sponsoring a youth-run business at the juvenile detention center to teach teens traditional values, work ethics, and home-based business skills; and including families in assessment, treatment, and family recovery programs. *Reclaiming Futures Oyate Teca Owicakiya*, RECLAIMINGFUTURES.ORG, http://www.reclaimingfutures.org/our-sites/site-directory/sites-southdakota/sites-southdakota-rosebud (last visited June 19, 2014).

243. *Id.*

244. *Id.*

245. OJJDP Focus Groups, *supra* note 93, at 10.

246. *Raising Him Alone: Providing Resources and Support for Single Mothers Raising Boys*, RAISING HIM ALONE, http://www.raisinghimalone.com (last visited Feb. 16, 2013).

247. *Id.*

248. *Id.*

Another necessary step is for communities to find a way to provide direct support to families at high risk for entering the justice system.[249] For example, the Grandparents Raising Grandchildren program in St. Joseph, Michigan, assists grandparents and other caregivers who are raising teenagers and children of incarcerated parents.[250] Families living in the rural tri-county area are able to build meaningful relationships that allow families to share challenges and solutions to their unique family situation, such as through the "Party Line," which are conference calls that allow families to share challenges and solutions; the "Breakfast Bunch," regular get-togethers at a local restaurant; and other family events with good food and special activities for the children.[251] The program also offers family members respite services, mileage reimbursement for travel to and from events, and informational and referral services through a newsletter.[252]

Families also want to be able to access services for their children without getting their children tangled up in court. As one parent noted, "I went [to the justice system] 'cause I felt like I had no other choice. I thought I had exhausted all my choices, all of my options. I felt like I had nowhere else to go."[253] One example indicative of this alternative approach is the Florida Network of Youth and Family Services, a consortium of 32 community-based agencies serving youth and families who are not involved in either the child welfare or juvenile justice systems.[254] The Network offers a variety of services to youth and families: outreach and public education services for youth, families, and the community; centralized intake available twenty-four hours a day, seven days a week; shelter services that can be used to provide respite during strained family situations; nonresidential services such as crisis intervention and individual, group and/or family counseling; and case management services.[255] Florida has seen great success through operating the Network: 90% of the youth never enter the juvenile justice system, and only 6% of families receiving services were petitioned to court as Children In Need of Services cases.[256]

b. School-Based Strategies

Schools are the major social institution used to socialize children, participation is mandatory, and the majority of public money for youth is spent on education.[257] According to one state study, more than one in seven students can be ex-

249. *Id.*

250. NANCY ALDRICH, BROOKDALE FOUNDATION RELATIVES AS PARENTS PROGRAM GUIDEBOOK: PROMISING PRACTICES IN ENCOURAGING & SUPPORTING GRANDPARENTS AND RELATIVES RAISING CHILDREN 12 (2007), *available at* http://www.brookdalefoundation.org/rapp/07-080_n4a_Brookdale_final.pdf.

251. *Id.*

252. *Id.*

253. Focus Group Transcript, Wash. D.C. (Apr. 27, 2011) (quote from a parent).

254. FLORIDA NETWORK OF FAMILY AND YOUTH SERVS., ANNUAL REPORT 3 (2010), *available at* http://www.floridanetwork.org/PDFs/FN_AR_2010_F_Web.pdf.

255. *Id.* at 5–6.

256. *Id.* at 16.

257. A. Baron Holmes IV, Gary D. Gottfredson & Janet Y. Miller, *Resources and Strategies for Funding*, *in* COMMUNITIES THAT CARE: ACTION FOR DRUG ABUSE PREVENTION (J. David Hawkins & Richard F. Catalano eds., 1992).

pected to have contact with the juvenile justice system between the seventh and twelfth grade.[258] For many families, schools are a big part of the problem as well as part of the solution.[259] Families note how minor problems in schools escalate into major issues: "It all started with school suspensions, when he had nothing to do."[260] Another parent noted, "[t]he revolving door of punishment—suspensions, expulsions, arrests—puts our children on the streets, and on the road to gangs and prison."[261] According to a Justice for Families study of over 1,000 families in the justice system, nearly one in three families reported that their child's first arrest took place at school.[262] The increase in school-based arrests has many causes, including zero tolerance laws,[263] truancy laws, and the growth of school-based policing.[264] In a site visit to an alternative school for probation-involved youth, one of the teachers explained that, when children return to their home school, the school is often hostile to the family. Teachers from the alternative school occasionally reach out to assist in helping reintegrate the youth to the appropriate school placement.[265]

From my research and consultation with system experts, I identified three main strategies to address school-based conflicts to prevent youth from ending up in or returning to the justice system that work with middle- and high-school-age youth populations.[266] First, juvenile courts have begun to develop ways to close the

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258. TONY FABELO ET AL., COUNCIL OF STATE GOV'TS JUSTICE CTR., BREAKING SCHOOL RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE INVOLVEMENT xii (2011), *available at* http://csgjusticecenter.org/wpcontent/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf.

259. *See generally* ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 7 (2005), *available at* http://www.advancementproject.org/sites/default/files/publications/finaleolrep.pdf.

260. JANE A. WALKER & KAREN FRIEDMAN, LISTENING AND LEARNING FROM FAMILIES IN JUVENILE JUSTICE 18 (2001) (quote from a family member).

261. POIR-PAC ELEMENTARY JUSTICE COMM., PARENT-TO-PARENT GUIDE, RESTORATIVE JUSTICE IN CHICAGO PUBLIC SCHOOLS STOPPING THE SCHOOL-TO-PRISON PIPELINE (2010) (quote from a parent).

262. JUSTICE FOR FAMILIES, *supra* note 24.

263. The Gun Free Schools Act of 1994, 20 U.S.C. § 7151 (2003), required schools receiving federal funding to expel any student possessing a firearm on school premises. When schools implemented the law, they often expanded the scope of the law to a wide variety of mandatory policies. *See* Eric Blumenson & Eva S. Nilsen, *One Strike and You're Out? Constitutional Constraints on Zero Tolerance in Public Education*, 81 WASH. U. L. Q. 65 (2003); Michael Pinard, *From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities*, 45 ARIZ. L. REV. 1067 (2003).

264. Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUST. 280, 281 (2009) (finding that schools with school resource officers (SROs) did have increased arrests compared to schools without SROs, but differences disappeared when economic disadvantage was controlled.) *See also* Paul Hirschfield, *Preparing for Prison? The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 83 (2008) (claiming the presence of police in schools will criminalize behavior previously handled informally by school officials).

265. Site visit to Southwest jurisdiction, Oct. 2011.

266. I focused on the population most likely to enter the justice system, but additional early school-based prevention programs have also been shown to be effective at re-

door to school-based offenses. For example, Judge Teske in Clayton County, Georgia, helped develop the School Offense Protocol Agreement to prevent minor offenses in schools, like disorderly conduct and fighting, from ending up in juvenile court.[267] However, because the door to juvenile court is closed, schools have to find alternative strategies to cope with problem behaviors.[268]

Second, schools need positive school environments and cultures to improve the behavior of students. Schools can decrease disruptions using a program available nationwide, known as Positive Behavioral Intervention and Supports ("PBIS").[269] PBIS is a school-wide approach to establishing the social culture and behavioral supports to help all children achieve both social and academic success.[270] This program has also been used successfully in juvenile justice institutions.[271] What does PBIS look like in a real school? Jonesboro Middle School, also located in Clayton County, Georgia, has implemented PBIS. The school's behavioral expectations for youth are: (1) be respectful of self, others, and property; (2) be responsible and prepared at all times; and, (3) be ready to follow directions and procedures. The school then prepared materials to show students and parents how to meet these expectations. For example, the school posted displays of what it looks like to show respect for learning. They showed pictures of students in appropriate versus inappropriate dress and organized versus unorganized backpacks and notebooks. The school also uses a "gotcha" system to provide positive reinforcement for good behavior. Students are rewarded when teachers catch them in the act of doing something positive, such as picking up trash on school property or helping another student. These youth are then entered into a monthly raffle to participate in a pizza party luncheon. By being consistently rewarded for good behavior, disruptive behaviors within the school have been dramatically reduced.[272]

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ducing delinquency. *See, e.g.*, David B. Wilson, Denise Gottfredson & Stacy Najaka, *School-Based Prevention of Problem Behaviors: A Meta-Analysis*, 17 J. QUANTITATIVE CRIMINOLOGY 247 (2001).

267. STEVE TESKE, USING COLLABORATIVE STRATEGIES TO REDUCE DISPROPORTIONATE MINORITY CONTACT: A CASE STUDY IN SCHOOL REFERRALS & REDUCING THE SCHOOLHOUSE TO JAILHOUSE PIPELINE EFFECT, *available at* http://www.jdaihelpdesk.org/casemodadmis/Keeping%20Low-Level%20Offenders%20Out%20of%20the%20System.pdf.

268. As Gary Gottfredson has noted, "[T]he most important reason to prevent delinquency and improve schools is that schools themselves are weakened by problem behavior." Gary Gottfredson, *Schools and Delinquency*, *in* THE OXFORD HANDBOOK ON JUVENILE CRIME AND JUVENILE JUSTICE 203, 218 (Barry C. Feld & Donna M. Bishop eds., 2012).

269. OFFICE OF SPECIAL EDUCATION PROGRAMS (OSEP) TECHNICAL ASSISTANCE CENTER ON POSITIVE BEHAVIORAL INTERVENTIONS & SUPPORTS, *PBIS Frequently Asked Questions*, http://www.pbis.org/pbis_faqs (last visited Feb. 16, 2013).

270. *Id.*

271. *See, e.g.*, Patrick S. Metze, *Plugging the School-to-Prison Pipeline by Improving Behavior and Protecting Core Judicial Functions: A Constitutional Crisis Looms*, 45 ST. MARY'S L.J. 37, 42 (2013) (reporting on the effectiveness of the implementation of PBIS within the schools of the Texas juvenile correctional system).

272. This case example was adapted from the Office of Special Education Programs (OSEP) Technical Assistance Center on Positive Behavioral Interventions & Sup-

Third, schools can develop targeted strategies to work directly with youth and families at risk of justice-system involvement. In a site visit to a jurisdiction in the Southwest, I spoke with a parent of a non-court-involved middle school student and a parent educator. The parent described the benefits she received from attending the parent education classes offered by her child's school. When asked about what was helpful about the classes she described how they clarified the differences between being a friend to a child versus an authority figure, and how she learned appropriate ways to check in on a child compared to ways that inappropriately violate a child's privacy, as well as ways to support homework. The parent educator also described how many families in the area lacked specific knowledge of certain concepts taught in the school, which generated tensions for parents interested in ensuring that their children completed their homework. The curriculum for parents helped translate the concepts their children were learning in school to knowledge the parents possessed so that parents could support their children's learning and maintain parental authority.[273]

From my literature review, I identified parent support strategies specific to working with families of youth who were truant, had been suspended, or were at risk of not graduating. As part of the Family Engagement for High School Success Initiative, Lake County, Illinois held focus groups with the families of these students that revealed that many families were unaware of school requirements, were confused about their role, felt intimidated by school personnel, and were unable to assist with homework because their children's academic skills exceeded their own.[274] The concerns of parents of truants paralleled the concerns of non-court-involved parents with whom I had met. The comprehensive strategy Lake County developed to address these challenges included: (1) a fall orientation to provide parents with necessary information; (2) a "Soccer on Sundays" program for truant students and their fathers, which incorporated both social events and information; (3) an incentive program whereby parents who learn how to use the online student tracking system receive a refurbished computer to monitor their child's progress; (4) family resource coordinators to help families; (5) parent–teacher conferences and at-home visits; and, (6) an internet-based homework and mentoring support program for youth.[275]

Fourth, schools can employ restorative justice practices to respond to conflicts in lieu of other disciplinary policies.[276] According to the parents who advocated for changes to Chicago Public Schools' disciplinary policies, "The big idea of restorative justice is that students can and should learn to understand why their

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ports website, *Case examples*, http://www.pbis.org/school/primary_level/case_examples.aspx (last visited July 21, 2014).

273. Site visit to Southwest jurisdiction, Oct. 2011.

274. HARVARD FAMILY RESEARCH PROJECT & UNITED WAY, THE FAMILY ENGAGEMENT FOR HIGH SCHOOL SUCCESS TOOLKIT: PLANNING AND IMPLEMENTING AN INITIATIVE TO SUPPORT THE PATHWAY TO GRADUATION FOR AT-RISK STUDENTS 74 (2011), *available at* http://www.jsri.msu.edu/upload/resources/FEHS.pdf.

275. *Id.* at 74.

276. *See generally* Thalia González, *Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline*, 41 J.L. & EDUC. 281, 286 (2012).

misbehavior is wrong and be allowed the opportunity to 'make it right.'"[277] As a result of family advocacy, Chicago Public Schools revised their student discipline policies in 2007.[278] The revised Student Code of Conduct allows schools, parents, and communities to use restorative justice programs such as Peace Circles, Peer Juries, and community service as alternatives to suspension, expulsion, or arrest for many offenses.[279] Here is an example of a Peace Circle in action:

> [A] young man came in late to school one day and exchanged words with the security guard. He yelled and she hollered back, and it escalated from there. Soon, the principal heard the yelling, and asked them to sit in a Peace Circle. At first, the security guard refused, saying the student had threatened her. She thought he should be suspended or arrested for talking that way to her. But, after some convincing, both agreed to participate.
>
> In the Peace Circle, it came out that this young man was having problems at home—his mother had been arrested, and he was caring for his younger siblings. He was late to school because of all that he was dealing with at home, and he was mad and frustrated with himself for letting it all overwhelm him. The security guard was angry too. She felt disrespected. But as she listened, she came to empathize with his situation. She even offered to spend time with the boy to help support him.
>
> By the end of the Peace Circle, the two agreed to speak more respectfully to one another, and to spend time together. The student was not suspended or arrested. Instead, he had found someone to listen to him and to be there for him, and both parties involved had learned a lesson about themselves and about each other.[280]

c. Neighborhood-Based Strategies

In addition to schools, many youth come to the attention of justice agencies because of youth-adult conflicts within neighborhoods. There is extensive literature documenting the effect of neighborhoods on crime,[281] and in particular how crime is clustered in certain physical spaces or "hot spots."[282] Adults call the police to deal with youth behaviors that the adults find annoying, disrespectful, or threat-

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277. POIR-PAC ELEMENTARY JUSTICE COMMITTEE, *supra* note 261 (quote from a parent member of POIR-PAC).

278. *Id.* at 1.

279. *Id.* at 4-5.

280. *Id.* at 7.

281. *See, e.g.*, Robert Bursik & Harold G. Gramsick, NEIGHBORHOODS AND CRIME: THE DIMENSIONS OF EFFECTIVE COMMUNITY CONTROL (1993); Clifford R. Shaw & Henry D. McKay, JUVENILE DELINQUENCY AND URBAN AREAS (1942); Robert J. Sampson, Steven Raudenbush & Felton Earls, *Neighborhoods and Violent Crime: A Multi-Level Study of Collective Efficacy*, 77 SCI. MAG. 918 (1997).

282. *See, e.g.*, David Weisburd, Nancy A. Morris & Elizabeth R. Groff *Hot Spots of Juvenile Crime: A Longitudinal Study of Arrest Incidents at Street Segments in Seattle, Washington*, 25 J. QUANTITATIVE CRIMINOLOGY 443 (2009).

ening.[283] For example, storeowners may call the police to enforce anti-loitering laws to prevent youth from congregating outside their stores. Neighbors may call the police if youth play their music too loud late at night. Rather than resolve the underlying conflict, police are often called to disperse the youth. The short-term fix of involving the police to resolve these disputes often has long-term negative consequences for the youth and stability of the community overall.[284]

During a site visit to a jurisdiction in the Southwest, I spoke with the executive director of a nonprofit community agency. I inquired whether they had ever had a problem with a youth that resulted in them calling law enforcement or referring the child to a local justice agency. The director explained that the organization had not needed to involve law enforcement in any dispute. He then proceeded to recount a story of how they had resolved a situation involving a youth who had committed vandalism on a wall of a new building. Instead of calling the police, the director contacted the child's father and they met to work out an appropriate way for the child to repair the damage and do community service.[285]

This type of informal and pragmatic solution presumably takes place everyday across America. However, I wondered if there was a systematic way or model to address these types of conflicts. Among system experts, there was broad consensus that one of the leading conflict resolution programs in the country is the Community Conferencing Center in Baltimore, Maryland. The Center is a conflict transformation and community justice organization that provides ways for people to resolve conflicts and crime.[286] Their work has been recognized nationally and

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283. See MICHAEL S. SCOTT, U.S. DEPARTMENT OF JUSTICE OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, DISORDERLY YOUTH IN PUBLIC PLACES, 6 PROBLEM-ORIENTED GUIDES FOR POLICE SERIES 3-4, *available at* http://www.cops.usdoj.gov/html/cd_rom/inaction1/pubs/DisorderlyYouthinPublicPlaces.pdf ("Communities are often divided over what constitutes acceptable youth conduct. This is especially true in areas undergoing substantial demographic change–for example, an influx of youth where older residents predominated, or an influx of a new ethnic or racial group. Some misconduct, even if accepted by the community, might not be tolerable from a legal standpoint. Conversely, some youth conduct may bother some community members, but may be perfectly legal, perhaps even constitutionally protected. You must balance youths' right to congregate in public against others' right to be free from annoyance, harassment and intimidation. Furthermore, the legal grounds for disrupting youth gatherings in public are typically vague. It is easy to get frustrated by demands to control disorderly youth where no clear legal authority to do so exists. Young people often do not fully appreciate their conduct's effect on others. What they believe to be normal and legitimate behavior can sometimes make others apprehensive or afraid. Sometimes the mere presence of large youth groups, or their physical appearance (dress, hairstyles, body piercings, and tattoos), is intimidating regardless of their conduct. People often perceive youth groups congregating in public to be gangs and, therefore, dangerous. The elderly are particularly intimidated by large youth groups. In addition, group size may influence individual behavior–teenagers often behave in front of a group of peers in ways they would not if they were alone or in pairs.").

284. Arrests, even without convictions, have detrimental impact on youth. Pager, *supra* note 13.

285. Site visit to Southwest jurisdiction, October 2011.

286. CMTY. CONFERENCING CTR., http://www.communityconferencing.org/ (last visited Feb. 16, 2013).

internationally for its use of restorative justice practices.[287] The resolution of conflicts will vary based on local conditions, but here is one example of how the Center helped one neighborhood avoid residents calling the police to complain about noise and trash issues attributed to youth.

One neighborhood had a dispute over youth playing basketball in a local alley and the Center was asked to provide a facilitator to convene a meeting between neighborhood residents.[288] With support from the facilitator, the residents developed a community contract that established clear guidelines of behavior. Youth were provided clear hours that were appropriate for playing basketball, were prohibited from using profanity, and were required to clean up their trash. [289] Adults were required to speak directly with the youth or their parents about any problems before calling the police.[290] With a contract in place, the local residents were able to obtain a real long-term resolution to the conflicts that did not involve police unnecessarily.

2. Services and Diversion at Arrest

As explained in Part II.B, the literature suggests that communities should decrease the time that youth are exposed to dangerous detention conditions and rethink how to get youth services they may need without justice-system involvement because children who spend any time in facilities are at extremely high risk of physical, sexual, and emotional abuse.[291] A parent in the focus groups conducted in this study commented: "I thought that when our son was sent to detention that this might scare him from continuing down the path he was going. Nothing is further from the truth. I saw firsthand the damage that detention did to our son."[292]

The indicator most likely to predict future imprisonment is the amount of time a young person spends in a facility and having contact with the justice system.[293] According to system experts, the two most promising strategies currently in use to prevent unnecessary contact with justice system processing and facility stays are civil citation programs and juvenile assessment or reception centers.

Since 2007, the Civil Citation program in Miami-Dade County, Florida, has lowered the numbers of referrals to the juvenile justice system for minor offenses and addressed youth and family needs without imposing an arrest record on

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287. *Id.*

288. *Greenspring Neighborhood Conflict*, CMTY. CONFERENCING CTR., GREENSPRING NEIGHBORHOOD CONFLICT, http://www.communityconferencing.org/index.php/impact/resolving/greenspring_neighborhood_conflict/ (last visited Feb. 16, 2013).

289. *Id.*

290. *Id.*

291. *See supra* note 79 and accompanying text; *see also* BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 2-3 (Nov. 28, 2006), *available at* http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf.

292. Focus Group Transcript, Wash. D.C. (Apr. 27, 2011) (quote from a parent).

293. *See supra* note 194.

youth.[294] Rather than arresting a youth for a low-level offense, law enforcement officers give youth civil citations.[295] Youth who are formally arrested can also be referred to the program during the regular juvenile intake process as well.[296] Youth receive a comprehensive screening and assessment and are then referred to services to meet their needs.[297] For example, if a substance abuse problem is identified during the assessment, a youth will be referred to the appropriate service even if the offense was not drug-related. The program also has an accountability component. Youth receive a variety of sanctions, which can include community service, writing essays or letters of apology, or providing restitution to victims.[298] Youth who successfully complete both their assigned services and sanctions will leave the program without an arrest record.[299]

In addition to helping youth and families, the program has helped the system become more effective overall. Police are able to spend more time on the street and less time transporting youth to booking or attending court hearings for low-level offenses.[300] Further, with the removal of the low-level youth from the system, prosecutors, public defenders, juvenile probation officers, and judges all have more time to spend on the more serious cases, which require greater attention.[301] The program has been successful at improving public safety, reducing disproportionate minority contact, and has also produced cost savings for the county.[302] In its initial year, the program had a 3% recidivism rate, and reduced juvenile arrests by 30%. Officials have also calculated an immediate $5,000 cost savings per child by avoiding arrests.[303]

In contrast to the Civil Citation program where, generally, the youth have not been taken into custody, other jurisdictions are developing juvenile reception or assessment centers to avoid the negative consequences of juvenile detention when youth are taken into custody.

The New Avenues for Youth Reception Center in Multnomah County, Portland, Oregon, is one example of a police-centered detention alternative.[304] Prior to the development of the Center, all youth taken into police custody were

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294. Telephone interview with Karen Diazgranados, Civil Citation Referral Reduction Coordinator (Apr. 2012).

295. *Id.*

296. *Id.*

297. *Id.*

298. *Id.*

299. *Id.*

300. MIAMI-DADE CNTY. JUVENILE SERVICES DEP'T, CIVIL CITATION INITIATIVE BROCHURE (on file with author).

301. *Id.*

302. *Id.*

303. *Id.*

304. MULTNOMAH CNTY. DEP'T OF COMM. JUS., *Engaging the Police and the Development of an Alternative Reception Center for Non-detainable Youth*, *in* DETENTION REFORM PROCESS (2006), *available at* http://web.multco.us/sites/default/files/dcj-juvenile/documents/engaging_the_police.pdf; Juvenile Detention Alternatives Initiative, *JDAI Model Site: Multnomah County, OR*, JDAI HELP DESK, http://www.jdaihelpdesk.org/SitePages/multnomah.aspx (last visited July 21, 2014).

brought to the juvenile detention facility. The Center was developed to divert youth who pose no threat to public safety away from the juvenile justice system and toward community resources.[305] The Center operates twenty-four hours a day, seven days a week, and primarily serves status offenders and homeless and runaway youth.[306] The Center has been very successful at reducing the number of non-detainable incarcerated youth, reducing the time police spend on juvenile intake processes, preventing youth homelessness, and preventing youth from requiring greater services by providing services for high-risk youth and families.[307] Here is one story of how young people who are arrested can be accommodated using these principles:

> Jesse, a 15-year-old boy, was arrested with some friends after they failed to pay the bill at a local Denny's restaurant. The manager caught them and called the police. While the other kids were picked up by their parents from juvenile hall, Jesse's mom did not want him back. The local runaway and homeless youth shelter was called and took him in. After calling his mom, staff at the shelter learned she had a life-long drug and alcohol problem, and she was now homeless and living with friends. She did not have the ability to care for her son.
>
> With the shelter advocating on Jesse's behalf, the court dropped the charges on Jesse, and the county social services agency agreed to place him with the shelter as an emergency foster care placement. While working with Jesse, staff at the shelter convinced his mom to sign herself into residential treatment and encouraged him to maintain contact with her by visiting with her twice a week.
>
> To come up with a permanent plan for Jesse, the county social service agency convened a team decision-making meeting to bring all Jesse's family and adult friends together to brainstorm where he could live. The Family Finding model was used, and Jesse's "cousin" volunteered to have Jesse live with her. Although not biologically related, the cousin had known Jesse his entire life and he had relationships with her other children. The cousin listed her rules that Jesse had to abide by and he agreed.[308]

B. Peer Support for System-Involved Families

Once a child does have contact with the justice system, both the focus groups and surveys indicate that families lack basic information about the process of the court system, their legal rights, and the role of the various players in the system. For example, one parent said:

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305. MULTNOMAH CNTY. DEP'T OF CMTY. JUST., *supra* note 304.

306. *Id.*

307. *Id.*

308. This anecdote is adapted from Sparky Harlan's blog. Sparky Harlan, *Denny's Grand Slam and N.E.R.F.S – Jesse Goes Home*, WORDPRESS (Jun. 30, 2009), http://sparkyharlan.wordpress.com/2009/06/30/dennys-grand-slam-and-n-e-r-f-s-jesse-goes-home/.

> When we first got involved in the system, the thing that baffled us was the lack of communication. At no point did anyone in authority tell us what was happening with our child. We were uninformed and didn't know the questions to ask and we didn't know our rights; worse we were meant to feel like we didn't have any. Our child was transferred from one facility to another and no one ever told us where they were taking him.[309]

Parents are often asked to consent to the questioning of their child without access to an attorney to guide them,[310] although many times children are questioned without the knowledge of their parents at all. Parents are unprepared for this responsibility: "The officers could not or would not explain anything. My lack of experience and knowledge led me to make mistakes that negatively impacted my child's outcome in the system."[311]

Families sometimes receive guidance from police, intake workers, the child's attorney, or others, only to learn later that they were misinformed: "They will manipulate youth. I didn't know the system. A social worker came at me, she asked what kind of help we can get your son. I gave answers and found out she was with the [Districy Attorney] and using the information against me—against us."[312]

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309. Focus Group Transcript, Wash. D.C. (Apr. 27, 2011) (quote from a parent).

310. *See e.g.*, Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 226–27 (2006) ("About a dozen states require the presence of a parent or other 'interested adult' when police interrogate juveniles as a prerequisite to a valid Miranda waiver. Those states assume that most juveniles require an adult's assistance to effectively exercise Miranda rights. They presume that a parent will enhance a juvenile's understanding of and ability to exercise rights and reduce coercive pressures. Courts recognize that juvenile justice policies have become more punitive and that youths require additional safeguards to achieve functional procedural parity with adults. Commentators generally support parental presence safeguards, even though they recognize the limited utility of such safeguards.") *See also*, Hillary B. Farber, *The Role of the Parent/guardian in Juvenile Custodial Interrogations: Friend or Foe?*, 41 AM. CRIM. L. REV. 1277, 1280 (2004) (explaining three inadequacies with the parent/guardian advisor: the standardless approach with which courts assess their appropriateness; the inadequacy with which adults understand Miranda; and conflicts of interest between youth and parents.); Note, *Juvenile Miranda Waiver and Parental Rights*, 126 Harv. L. Rev. 2359, 2359 (2013) (explaining "that juvenile interrogations violate hybrid parental-Miranda rights by threatening to elicit false confessions that remove innocent children from their parents' care. Per se rules offer solutions: either parents should be empowered to guard their interests through truly informed consent, or child suspects should be provided with other risk-reducing protections.").

311. Focus Group Transcript, Wash. D.C. (Apr. 27, 2011) (quote from a parent); *see also* Ellen Marrus, *Gault, 40 Years Later: Are We There Yet?* 44 CRIM. L. BULL. 413, 428 (2008) ("Parents may encourage their son or daughter to waive counsel because they do not understand the consequences the child may be facing. Parents want their child to tell the truth and take responsibility for his or her actions. Or they may simply be frustrated or embarrassed and not know how to handle the situation, wanting it to end as quickly as possible. Parents may also not want the involvement of a lawyer because of the costs involved in hiring an attorney and may encourage the child to waive counsel for that reason.").

312. Focus Group Transcript, Wash. D.C. (2005) (quote from a parent).

In the surveys, system stakeholders acknowledged how families were impacted by the lack of knowledge and how difficult it is to explain the system to families. System professionals tend to use a lot of jargon in their jobs with which families are unfamiliar.[313] A detention specialist noted, "[p]arents often don't understand how serious the process is."[314] One detention alternatives coordinator commented that it is "difficult to convey complex court policy and budget issues that affect services."[315]

However, system professionals who have already implemented programs to educate family members about the justice system report that these changes have eased family anxiety and improved family engagement. One county probation director noted that "[f]amilies seem relieved to find information about the court and how things are handled."[316] Another noted, "[f]amilies are more engaged because they understand the system better."[317]

While some family member experts were interested in advocating for individual legal representation to represent their interests in juvenile court, from my research, individual legal representation for family members is not a viable policy solution. Parents of children in the justice system often lack the financial resources to pay for attorneys themselves and are unlikely to obtain a constitutional entitlement to legal advice.[318] A more promising approach to ensuring that families have access to legal knowledge is through providing generalized access to legal information through community-based organizations and existing legal organizations. Two community groups in California, the Asian Law Caucus in San Francisco,[319] and the Albert Cobarrubias Justice Project in Silicon Valley, are providing innovative ways to support families without the individual representation model.[320]

Peer support is not, nor should be, considered a substitute for legal services.[321] In addition to legal advice, families clearly want the assistance of a peer—a family member who has gone through the system before and survived the experi-

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313. Quote from justice system professionals, survey (Respondent 2-42).

314. Quote from justice system professionals, survey (Respondent 3-1).

315. Quote from justice system professionals, survey (Respondent 2-12).

316. Quote from justice system professionals, survey (Respondent 2-16).

317. Quote from justice system professionals, survey (Respondent 3-11).

318. *See* Lassiter v. Dep't of Social Servs. of Durham Cnty., N.C., 452 U.S. 18 (1981) (finding parents in the child welfare system do not have a general right to counsel).

319. *Criminal Justice Reform*, ASIAN AMERICANS ADVANCING JUSTICE: ASIAN LAW CAUCUS, http://www.advancingjustice-alc.org/what-we-do/criminal-justice-reform (last visited Aug. 6, 2014).

320. ALBERT COBARRUBIAS JUSTICE PROJECT, http://acjusticeproject.org/ (last visited Aug. 5, 2014).

321. Whether and how families should be involved in the legal representation of the child is the subject of much debate outside of the scope of this article. *See, e.g.*, Kristin Henning, *It Takes A Lawyer to Raise A Child?: Allocating Responsibilities Among Parents, Children, and Lawyers in Delinquency Cases*, 6 NEV. L.J. 836, 837 (2006); David R. Katner, *Revising Legal Ethics in Delinquency Cases by Consulting with Juveniles' Parents*, 79 UMKC L. REV. 595, 632 (2011) (arguing the American Bar Association's Model Rules of Professional Conduct Rule 1.14 should be modified to include a duty to consult with parents or caregivers of youth in the delinquency system); Marrus, *infra* note 311.

ence—to help them navigate the justice system.[322] One parent expressed the following sentiment: "Have a system where somebody actually talks to the parents . . . so they'll know exactly what to expect, what not to expect, what their rights are . . . . I think that would make a big difference."[323] Another parent stated:

> You really don't have any guidance from anyone on what the next steps are. So, for us it was a whole lot of unknowns, frustrations, and time delays we didn't know how to handle. Now we hear things we should have asked, but at the time I didn't know I could ask.[324]

Peer support has demonstrated effectiveness in other child-serving systems and we are beginning to see the benefits in juvenile justice as well. Although the lack of consistency across programs and approaches has made evaluating the impact of peer support programs difficult across all child-serving systems, a recent review of the existing studies found that, "while the empirical base for parent-to-parent support is limited, the results from the studies reviewed are encouraging."[325] The availability of peer support in juvenile justice is limited at present, but survey responses from system stakeholders suggest that they would support expanding these types of services to help explain the system to families.[326]

Although I could not identify a jurisdiction that offers peer support from the moment of arrest or first contact with the system, based on the research from Colorado discussed below, families would likely benefit from continuous access to peer support. Through my research I identified three different types of peer support currently available in the juvenile justice system: peer support services available at the juvenile court, peer support offered to families of youth with mental health needs, and an organizing and advocacy model of peer support.

1. Educating Families at Arrest

Families need access to information and support at the first contact with the justice system when they have the most questions and the anxiety is highest. During one of the site visits, I noticed that the main receptionist of one program had a nameplate on her counter, "Director of First Impressions."[327] In the justice system, police officers hold this title, and frequently the first impressions they leave with families are negative. In a focus group conducted by the Maryland Coalition of Families for Children's Mental Health, a family member described how she met the police: "When I came in, he was on the floor and a police officer had his foot on my grandson's back."[328] I have observed many families talk about the

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322. OJJDP Focus Groups, *supra* note 93, at 10.

323. MARYLAND JUVENILE JUSTICE COAL., PARENTS' VOICES: DON'T TREAT US LIKE I DID THE CRIME 5 (on file with author).

324. OJJDP Focus Groups, *supra* note 93, at 21.

325. VESTINA ROBBINS, JANICE JOHNSTON, HOLLY BARNETT, WILLIAM HOBSTETTER, KRISTA KUTASH, AL DUCHNOWSKI & SASHA ANNIS, THE LOUIS DE LA PARTE FLA. MENTAL HEALTH INST., DEP'T OF CHILD & FAMILY STUDIES, PARENT TO PARENT: A SYNTHESIS OF THE EMERGING LITERATURE 6 (July 2008), *available at* http://cfs.cbcs.usf.edu/_docs/publications/parent_to_parent.pdf.

326. *See supra* text accompanying notes 313–317.

327. Site visit to Southwest jurisdiction, October 2011.

328. WALKER & FRIEDMAN, *supra* note 260 (quote from a family member).

harm they experience witnessing their children in handcuffs and shackles. Law enforcement need to recognize the role they play in establishing the tone of the families' experience throughout the justice system.[329]

While I was unable to identify a jurisdiction that provides peer support from the time of arrest, family experts expressed a clear desire for law enforcement to establish protocols for working with families. The protocols would require law enforcement to notify parents immediately, or at regular intervals thereafter if they were not reached, whenever a child is brought into custody. Parents or other family members who come to retrieve the child should then receive an information and resource packet explaining the child's and parents' rights; contact information for legal assistance and peer support organizations; the locations of the courthouses and facilities in the jurisdiction with directions and public transportation information; and basic information about the juvenile justice system and process.[330]

The earliest example of peer support I could identify from my research currently in place starts at the courthouse. In King County, Washington, a program known as Juvenile Justice 101 helps families understand the juvenile justice system.[331] The central feature of the program is an orientation provided to family members at the courthouse.[332] Family members who have already been through the juvenile system with their own youth, known as "Family Partners," run 30-minute orientation sessions in the courtroom lobby.[333] Families also receive a resource booklet including information about court programs and community services, and guidance about how to track youth behaviors and other information useful for court staff.[334] Following the court orientation, the Family Partners speak individually with families to offer emotional support, information about court and/or community resources, and provide mentoring and coaching about how to work effectively with court staff.[335] Family Partners also develop and participate in workshops in the community to present information about the juvenile court process.[336]

2. Family Advocate Model Throughout Court Involvement

Since the concept of peer support originated out of the mental health field in the 1980s, many jurisdictions across the country have established peer support programs for the subset of the juvenile population that has mental health needs.

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329. As this article was going to print, protests over the shooting of unarmed youth, Michael Brown, had erupted in Ferguson, Missouri. The media coverage confirms the pivotal role that policing plays in popular perceptions of justice. Further, perceptions of justice vary widely by race. *See, e.g.*, Noah Gordon, *Americans' Deep Racial Divide on Trusting the Police*, ATLANTIC, Aug. 20, 2014, http://www.theatlantic.com/politics/archive/2014/08/americans-deep-racial-divide-on-trusting-the-police/378848/.

330. Consultations with family system experts.

331. SARAH CUSWORTH WALKER, MICHAEL PULLMANN, ERIC TRUPIN, JACQUELYN HANSEN, & STARCIA AGUE, DIV. OF PUB. BEHAVIORAL HEALTH & JUSTICE POLICY, A GUIDEBOOK FOR IMPLEMENTING JUVENILE JUSTICE 101 (2011).

332. *Id.* at 6.

333. *Id.*

334. *Id.*

335. *Id.*

336. *Id.* at 7.

In 2007, Colorado established the Family Advocacy Demonstration Program to provide peer support for families in three locations.[337] The goal of the program was to ensure that youth and families get access to necessary services to keep youth from reoffending.[338] Pilot sites used funds from the demonstration program to pay for a family advocate—a parent or primary guardian who has raised or cared for a child with a mental health or co-occurring disorder, and a family system navigator—an individual who has the skills, experience, and knowledge to work with these youth.[339] While there were subtle differences between the three jurisdictions, they generally used a wraparound approach to work with the families. In each of the three sites, the family advocate, often with the support of a service coordinator or family systems navigator, developed and implemented an individualized plan for the youth and family. The program was subsequently evaluated with promising findings. During the study period, only 9 of the 90 participating youth (10%) were convicted of additional crimes after enrolling in the family advocacy program.[340] Given the high-risk nature of the youth involved, the Colorado Department of Public Safety found the program to be cost-effective, explaining that, if sites were able to avert a *single* conviction for one youth in the program, estimated at a cost of $57,276, sites could offset nearly 99.7% of the average cost to run the *entire* program in the site.[341] In other words, the program pays for itself. While currently restricted to youth with mental health needs, the evidence suggests that these programs could be modified and expanded to meet the needs of all families. In fact, this was one of the recommendations from Colorado's pilot study because family members sometimes find the behavioral health label a turn-off. Here is how one youth described his experience with the program:

> Family Agency Collaboration and the Family Advocate helped my family by going to court with me and my family. By working with people in the juvenile justice system get me on track with court and legal difficulties. They also helped with finding me a job to keep me out of trouble on the streets. I fell behind in school and I needed to get my credits up so they also help me find summer school options. Once I found a school to go to they help make sure I was doing good in school and checked to see if my grades was on track. I also learned the rights that I have as a citizen which help me because I now know what I can and can't do and know if I will get in trouble for the certain things I do. I am also interested in black history and I received help and assistance with books and information that was very useful to know my history and culture. This program has helped me become a better and more mature person and I will always use the skills I learned in life so that I can be successful.[342]

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337. *Id.*
338. *Id.*
339. *Id.*
340. *Id.*
341. *Id.*
342. KERRY CATALDO & KEVIN FORD, COLO. DIV. OF PUB. SAFETY, OFFICE OF RESEARCH & STATISTICS, EVALUATION OF THE COLORADO INTEGRATED SYSTEM OF CARE FAMILY ADVOCACY DEMONSTRATION PROGRAMS FOR MENTAL HEALTH JUVENILE JUSTICE

Rhode Island has developed a similar peer support program, Project Hope, for youth returning to their homes and communities from the Rhode Island Training School ("RITS").[343] Youth transitioning out of the RITS are referred to the program 90–120 days prior to the youth's discharge, allowing Project Hope staff time to get to know the youth and family prior to developing a service plan with them.[344] Family Service Coordinators, each of whom is an individual who was or is the principle caregiver of a youth who has had contact with the juvenile justice system, work closely with the Clinical Social Worker at the RITS while the youth is incarcerated, and with the Probation Officer when the youth returns to the community.[345]

Youth and their families meet with the Family Service Coordinator to participate in a strengths-based assessment and discuss what services they need to keep the youth in the community and avoid reincarceration.[346] A plan is then developed as a team with the youth, family, clinical social worker, probation officer, and community officers before the youth is released.[347] A case manager is also assigned to ensure implementation of the plan for a period of 9–12 months following discharge.[348] Throughout this time, the planning team is brought together to change or modify the youth's plan when needed.[349]

3. Peer Support, Organizing, and Advocacy for System Reform

In contrast to peer support mechanisms, which are aimed at helping families understand or access services within the system, a growing number of family advocacy organizations have been forming to provide support to families wanting to reform the justice system overall. Justice for Families[350] is one national effort supporting families in the justice system comprising several state and local family advocacy organizations across the country. One of the first of these organizations to develop, Families and Friends of Louisiana's Incarcerated Children ("FFLIC"),[351] is a statewide advocacy organization working on behalf of Louisiana youth. FFLIC's work includes representing youth at disciplinary hearings, developing parent-advocates through training, advocating for policy change, and repre-

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POPULATIONS: FINAL REPORT (2010), *available at* http://cospl.coalliance.org/fedora/repository/co:7890 (quote from a youth).

343. KATHLEEN R. SKOWRA & JOSEPH J. COCOZZA, NAT'L CTR. FOR MENTAL HEALTH AND JUVENILE JUSTICE (NCMHJJ), BLUEPRINT FOR CHANGE: A COMPREHENSIVE MODEL FOR THE IDENTIFICATION AND TREATMENT OF YOUTH WITH MENTAL HEALTH NEEDS IN CONTACT WITH THE JUVENILE JUSTICE SYSTEM 62 (2007), *available at* http://www.ncmhjj.com/Blueprint/programs/ProjectHope.shtml.

344. *Id.*

345. *Id.* at 92.

346. *Id.*

347. *Id.*

348. *Id.*

349. *Id.*

350. JUSTICE FOR FAMILIES, http://www.justice4families.org/file/Home.html (last visited Feb. 16, 2013).

351. FAMILIES AND FRIENDS OF LOUISIANA'S INCARCERATED CHILDREN, http://www.fflic.org/home (last visited Feb. 16, 2013).

senting the voices of community and family members in a variety of policy-making arenas.[352]

FFLIC started in 2000 when a few parents came together to advocate for reforms to Louisiana's juvenile justice system:

> We were tired of the phone calls about broken jaws and trips to the hospital; we were furious at how far we had to travel to see our own children; we were frustrated at the defense attorneys who were too busy to meet with our children before trial; we were sick of being told that we are bad parents and that our children were beyond help![353]

Working in coalition with other advocacy organizations, including the Juvenile Justice Project of Louisiana, among others, FFLIC secured passage of the Juvenile Justice Reform Act of 2003, which closed Tallulah, the state's most notorious juvenile facility.[354] FFLIC continues to be a voice in juvenile justice reform efforts in Louisiana.[355]

C. Family-Driven Cases, Programs, and Policies

Procedural justice scholars have found that people's perceptions about the legitimacy of public institutions shape law-related behavior.[356] One of the main reasons the system has failed to work effectively with families is the lack of trust that exists between families and system stakeholders. As mentioned earlier, both Pennington and Justice for Families found the juvenile justice system seriously deficient in integrating the family perspective in the courtroom.[357] In addition to modifying courtroom procedures, the survey results explicitly acknowledge that the underlying philosophy and culture of the justice system needs to change to begin viewing families as partners. Stakeholders noted how the roles of professionals will need to change to valuing families. In particular, juvenile judges will have to be "[open] to the notion that families have strengths and sometimes know best what will work to turn their children's lives around."[358] Probation staff will also need to change focus from being "enforcers of court orders and brokers of services rather than providers of services."[359] System stakeholders explicitly noted the need for change but that many system professionals do not want to "to give up any control or share power."[360] For example, one director of a state juvenile corrections agency said we "need to break down thoughts such as 'the family caused the problem so why should they have a say?'"[361] Even when agencies do make space for

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352. *Id.*
353. *Id.* (quote from a family member).
354. *Id.*
355. *Id.*
356. *See, e.g.*, TOM TYLER, WHY PEOPLE OBEY THE LAW (2006); Tom Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 ANN. REV. PSYCHOL. 375 (2006).
357. *See* Pennington *supra* note 51; JUSTICE FOR FAMILIES *supra* note 24.
358. Quote from juvenile justice professional, Survey (Respondent 2-40).
359. Quote from juvenile justice professional, Survey (Respondent 1-3).
360. Quote from juvenile justice professional, Survey (Respondent 2-13).
361. Quote from juvenile justice professional, Survey (Respondent 1-7).

family members in system decision-making and meetings, one program coordinator noted that "[f]amily members are still the minority. They feel like there is a space to be heard but they are not being listened to as equals."[362]

DuPage County, Illinois, one of the jurisdictions that has made the most progress on family engagement, included these ideas in its "Core Concepts of Family Centered Justice" document:

> - Dignity and Respect: Juvenile justice system staff listens to and honors family perspectives and choices. Family knowledge, values, beliefs and cultural backgrounds are incorporated into the planning and delivery of services.
> - Information Sharing: Juvenile justice system staff communicates and shares information with families in ways that are affirming and useful. Families receive timely, complete and accurate information in order to effectively participate in decision-making.
> - Participation: Families are supported in participating in services and decision-making and are empowered to increase their level of participation.
> - Collaboration: Families, juvenile justice system staff, and justice system leaders collaborate in program and policy development, implementation and evaluation, and in professional education, as well as in delivery of services.[363]

In this Subpart, I describe ways the justice system can involve families in decision-making processes at three levels: in individual cases; in assisting in program development and training opportunities; and at the broader level of law and policy reform.

1. Families Instigate Program, Training, and Law & Policy Changes

In most jurisdictions, deciding how to hold youth accountable and deciding how to address youths' needs—the very structure and process of the justice system itself—has been devoid of family input. The offenses youth are charged with often become the primary driver of what happens in cases—choices typically made by an individual police officer, probation officer, or prosecutor.[364] When matters are handled formally in court, prosecutors in many states become the ultimate deciders of the offenses youth are charged with, which typically triggers additional laws related to sanctions and sentencing.

Making the justice system more responsive to families means revisiting laws and policies across the board. However, changing these laws does not mean

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362. Quote from juvenile justice professional, Survey (Respondent 2-14).

363. *See* HARTNETT & BERRY, *supra* note 202.

364. *Juvenile Justice System Structure & Process*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, http://www.ojjdp.gov/ojstatbb/structure_process/case.html (last visited Feb. 16, 2013).

that families do not want consequences for their children who have engaged in delinquent or criminal activities. Families recognize that youth need to be held accountable for their actions and want to keep their communities safe. In Pennington's study she found that:

> [E]ven parents who distrusted the legal system wanted their child to learn a positive lesson from the court experience. For example, an African American mother who viewed the legal system as racist described her role in the court process as "helping my son understand what his responsibilities are and to help him see how serious the charge is." One Latina mother with very negative views of the police and the courts told me "if he did what they say he did, he should be punished so he can learn."[365]

The laws and policies that generate the most concern for families involve the availability, quality, and equitable distribution of community-based services and resources; discriminatory policing practices, e.g., stop and frisk; definitions, scope, and application of criminal laws (particularly school-based offenses); court-related policies (including availability and quality of appointed counsel, charging practices and protocols of prosecutors, and court-related fees and fines); the use of incarceration for youth and conditions of confinement; and laws allowing youth to be prosecuted in the adult criminal justice system and held in adult jails and prisons.[366]

In addition to involving families in decisions about law and policy changes, many agencies are starting to involve family members in designing programs, training staff, and serving on policy-making bodies. [367] For example, in response to parents asking for support, Santa Cruz, California has implemented a family strengthening program, Cora y Corazón, that honors cultural and family traditions.[368] In Pennsylvania, the Family Involvement in Juvenile Justice Curriculum was piloted in 2011, and provides an opportunity to explore the assets and biases that practitioners bring to their relationships with family.[369] The results demonstrate a statistically significant shift in participants' attitudes toward family, with nearly 80% of participants agreeing that "the benefits of family involvement in the court process outweigh the drawbacks" after the training, as compared to approximately 50% of participants before the training.[370]

While involving parents in program development and training seems to be a relatively new innovation occurring infrequently, government agencies at all levels have made more headway in involving family and youth representatives on their oversight or advisory bodies. At the federal level, family and youth represent-

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365. Pennington, *supra* note 51, at 528.

366. This list of policies was created in conjunction with family experts.

367. *See, e.g.*, WENDY LUCKENBILL, MODELS FOR CHANGE: STRENGTHENING THE ROLE OF FAMILIES IN JUVENILE JUSTICE (Guidi Weiss ed., 2012), *available at* www.modelsforchange.net/publications/352/Innovation_Brief_Strengthening_the_Role_of_Families_in_Juvenile_Justice.pdf.

368. Personal communications with Santa Cruz juvenile justice professionals.

369. LUCKENBILL, *supra* note 367.

370. *Id.*

atives have been added to serve on advisory bodies such as the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention[371] and the Working Group for OJJDP's National Center for Youth in Custody.[372] States such as New Jersey, New Mexico, Pennsylvania, Virginia, and Washington have also included family members on the State Advisory Groups that administer the Juvenile Justice and Delinquency Prevention Act.[373] Even local governments have appointed family members to serve on policy-making bodies. One example is the Calcasieu Parish's Children and Youth Services Planning Board in Louisiana.[374] The Board consists of diverse members of the community, including parent organizations and youth.[375] The members serve two-year terms and help to develop and implement a comprehensive plan for youth in the community, which encourages positive youth development, diverts children away from the criminal justice and child welfare systems, reduces the incarceration of youth, and responds to delinquency in the community.[376]

Incorporating the views of family members into efforts at these three levels can be expected to show promising results. Some system professionals attribute family engagement efforts with having a positive impact on the development of system-wide policies overall.[377] System stakeholders believe that a better understanding of the needs of families has led to a higher quality of policy development and changes in protocol.[378] One probation director noted that "[f]amily members offer a fresh or unique perspective on issues involving their kids."[379] Another case manager noted that "[i]nput by parents and their experience in the Juvenile Justice system enables us to formulate new policies and procedures to make our system more effective."[380] Family feedback has also been a useful source of information for quality assurance activities. For example, some agencies conduct quality assurance calls with family members to learn about how probation officers are interacting with clients and about the treatment they are receiving from various service providers.[381]

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371. *Member Information*, COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY, http://www.juvenilecouncil.gov/members.html (last visited July 20, 2014).

372. THE NATIONAL CENTER FOR YOUTH IN CUSTODY, http://nc4yc.org/about-us/working-group.html (last visited July 20, 2014).

373. Author personal communication with Nancy Gannon Hornberger, former Executive Director of the Coalition for Juvenile Justice.

374. CALCASIEU PARISH CHILDREN & YOUTH PLANNING BOARD, BY-LAWS, http://www.calcypb.org/home (last visited Feb. 16, 2013).

375. *Id.*

376. *Id.*

377. *See e.g.*, Quote from juvenile justice professional, Survey (Respondent 2-42) ("input by parents in their experience in Juvenile Justice system, enables us to formulate new policies and procedure to make our system more effective.")

378. *Id.*

379. Quote from juvenile justice professional, Survey (Respondent 2-28).

380. Quote from juvenile justice professional, Survey (Respondent 2-42).

381. Conversation with Kim Godfrey, Executive Director, PBS Learning Institute.

2. Families Resolve Individual Cases Themselves

Since early juvenile courts viewed parents as responsible for their child's misconduct, early court reformers paid little attention to parents within the court process. Families often have no formal role in the court process.[382] Families are often unaware of their options, are confused about the process, lack access to legal advice, and feel pressure to encourage their children to plead guilty.[383] Assuming a child is guilty of a delinquent or criminal act and families and system professionals agree that justice system involvement is warranted,[384] what combination of sanctions, supervision, and services is appropriate to impose on a youth? How should these decisions involve the input of families?

In most jurisdictions, juvenile court judges make these decisions after receiving recommendations from prosecutors, probation officers, and the youth.[385] Typically the court relies on a combination of diagnostic evaluations and reports to make the final decision.[386] Shockingly, judges rarely consult with parents. According to the Justice for Families survey of more than one thousand family members, more than 80% of family members reported that they were never asked by a judge what should happen to their child.[387] As experienced by the family, even the "best" decisions and disposition plans can be alienating. Families report not having a chance to express their views about what they believe will help their child, or an opportunity to explain how they may have difficulty fulfilling certain plan requirements.[388] A parent in Pennington's study said, "I'm responsible to shelter her, feed her, clothe her, raise her, water her and watch her grow. Why don't I have a say when I'm in a courtroom? Why am I sitting in the back?"[389]

Pennington further observed parents who wanted to speak but were silenced: "During one hearing the juvenile's attorney told the judge that family therapy would benefit the client and his mother. The mother tried to interject two times, saying, 'Can I say something?' After the second time, the judge said to the mother, 'Ma'am, please be quiet.'"[390]

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382. Pennington, *supra* note 51, at 483.

383. *See supra* notes 309–23 and accompanying text.

384. Most children in the justice system confess to crimes and plead guilty. *See* BARRY C. FELD, KIDS, COPS, AND CONFESSIONS 170 (2013) (reporting study of interrogated sixteen- and seventeen-year-olds charged with felonies in which 92.8% waived their Miranda rights and 88.4% confessed or made incriminating statements). My research project did not attempt to address modifications to the criminal justice system to protect wrongful convictions of youth from false confessions. *See generally* Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 LAW & PSYCHOL. REV. 53, 61 (2007); Joshua A. Tepfer, Laura H. Nirider & Lynda M. Tricarico, *Arresting Development: Convictions of Innocent Youth*, 62 RUTGERS L. REV. 887, 891 (2010).

385. OJJDP Statistical Briefing Book Juvenile Justice System Structure & Process, *supra* note 363.

386. *Id.*

387. JUSTICE FOR FAMILIES, *supra* note 24.

388. *See* WALKER & FRIEDMAN, *supra* note 260.

389. Pennington *supra* note 51, at 491.

390. *Id.* at 492.

In the worst instances, families have been publicly scolded and humiliated in front of their children, making it even more difficult to exercise any parental authority over the child when they return home.[391]

System stakeholders had minimal comments on decision-making within the court process, but did speak frequently of the barriers that families face in participating in court processes or other treatment meetings or programs.[392] Many family members work multiple jobs, have shift work with odd hours, or have unreliable work schedules. As one detention specialist noted, "[t]he court hearing schedule is not friendly to the parents, meaning a parent may sit all day waiting for the hearing to be held costing them a day's pay and therefore it is likely that they are less willing to be cooperative."[393]

Jurisdictions are now experimenting with a variety of team decision-making approaches, which include families as valued members and voices in creating disposition plans.[394] Team-based approaches may be particularly helpful when families seek out the justice system for assistance. After consulting with system and family experts, the approach families most want when they have not sought out the justice system is one approach known as Family Group Decision Making (FGDM).[395]

FGDM has been adopted in several jurisdictions across the country, but overall its use is rather limited relative to traditional court practices.[396] FGDM is based on the values and beliefs that families have strengths and can change, families are the experts on themselves, options are preferable to advice, empowering

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391. *See, e.g.*, WALKER & FRIEDMAN, *supra* note 260.

392. This reflects, in part, how the survey was structured. My prompt questions were not specifically directed at court processes. *See* infra Appendix.

393. Quote from juvenile justice professional, Survey (Respondent 3-8).

394. ANNIE E. CASEY FOUND./CASEY FAMILY SERVS., FAMILY TEAMING: COMPARING APPROACHES (May 31, 2012), *available at* http://ncjfcj.org/sites/default/files/teaming-comparing-approaches-2009.pdf. Juvenile Court Judge Steven Teske created the Finding Alternatives for Safety and Treatment (FAST) panel, in Clayton County, Georgia. Every Monday, Wednesday and Friday mornings the FAST panel, a group of experts from child welfare authorities, school psychologists, mental health counselors, and community volunteers, interviews the child's parent or guardian to make recommendations to the judge. Teske says that as a result of the FAST panel the court is more efficient about processing cases, and judges make more informed decisions since he follows the panel's suggestions 95 percent of the time. Chandra Thomas-Whitfield, *'FAST' Track to Juvenile Justice*, JUV. JUST. INFO EXCHANGE (Jan. 1 1970), *available at* http://jjie.org/'fast'-track-to-juvenile-justice/2483/.

395. The practice originates from New Zealand where FGDM is required by law to be used at multiple points in their youth court system. *See* Farber *supra* note 23, at 137 n. 217.

396. *See, e.g.*, Mary Ellen Reimund, *The Law and Restorative Justice: Friend or Foe? A Systemic Look at the Legal Issues in Restorative Justice*, 53 DRAKE L. REV. 667, 677 (2005) ("Estimates in 2001 showed ninety-four active FGC programs in the United States."). *See also* Mark Umbreit & Howard Zehr, *Restorative Family Group Conferences: Differing Models and Guidelines for Practice*, 60 FED. PROBATION 24, 27 (1996).

people is preferable to controlling them, and empowering families will lead to families controlling their own lives.[397]

Pennsylvania has been using the practice since 1999.[398] FGDM has been so successful that it has turned into a cross-system practice.[399] It has expanded to almost all 67 counties in Pennsylvania and is used in multiple government agencies including child welfare and adoption, mental health and education, and juvenile probation and adult corrections.[400] Although county implementation of FGDM differs across Pennsylvania, the basic process involves a Family Group Conference, which is a meeting with family members, victims, service providers, the referring worker, and the youth.[401]

Dauphin County, Pennsylvania uses FGDM in cases ranging from simple assault and theft to offenses involving guns and drugs.[402] The juvenile probation office screens the case for eligibility to participate in FGDM and gets victim agreement before seeking agreement from the District Attorney.[403] Overall, FGDM appears to engender several positive outcomes. According to Judge Richard Lewis:

> [T]hrough [Family Group Conferences] I have seen more parents become involved with their children, more creative plans, stronger ownership of those plans, a significant reduction in recidivism, and a positive shift in the relationship between juvenile probation officers and our community.[404]

The conferences save significant court time and resources. There also appears to be a correlation between the conferences and job satisfaction for staff. The normal staff turnover in the child welfare and juvenile probation department is approximately 15%, but for staff involved with FGDM it is about .05%.[405] Implementing FGDM also contributes to overall cultural changes because, as staff focus on what families can do, they "critically analyze their agency documents and recognize that, without having intended to do so, they have adopted a condescending attitude rampant with systemic language and acronyms."[406]

Family members also report satisfaction with FGDM: 97% of family participants indicate that they would recommend the practice to others, 92% agree

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397. PENNSYLVANIA FAMILY GROUP DECISION MAKING LEADERSHIP TEAM, PENNSYLVANIA FAMILY GROUP DECISION MAKING TOOLKIT: A RESOURCE TO GUIDE AND SUPPORT BEST PRACTICE IMPLEMENTATION 2 (2009), *available at* http://www.pacwcbt.pitt.edu/Organizational%20Effectiveness/FGDM%20Evaluation%20PDFs/FGDM%20Toolkit.pdf.

398. *Id.* at 12.

399. *Id.*

400. *Id.*

401. *See* ALLAN MACRAE & HOWARD ZEHR, THE LITTLE BOOK OF FAMILY GROUP CONFERENCES: NEW ZEALAND STYLE (2004).

402. *See* PENNSYLVANIA FAMILY GROUP DECISION MAKING LEADERSHIP TEAM, *supra* note 396, at 188.

403. *Id.*

404. *Id.*

405. *Id.* at 197.

406. *Id.* at 19-20.

that the process addressed their concerns, and 99.5% say that it provided adequate protection for the child.[407]

Justice system stakeholders and families will have mixed opinions about the best way to prevent offending. Some will believe that punishing or imposing sanctions on a child will "teach him a lesson" to make it less likely a youth will commit a crime again in the future. Others will be more concerned about addressing the "root causes" of a child's behavior to prevent reoffending. The needs and wishes of victims must also be considered. However, assuming that the plans family members create can meet the public safety goals of the system, the family views of how to respond to their children should be paramount. While allowing families flexibility in determining appropriate sanctions for their child might violate notions of fairness across children, in other contexts, these differences are embraced. As Lois Weithorn has noted, "variation among family approaches to childrearing is, in theory, to be protected—indeed, promoted—in the absence of indications that particular approaches are harmful to children, not only because we believe that parental autonomy is an inviolable component of liberty, but also because its protection benefits us all in producing a more robust citizenry and a stronger society." [408]

D. Justice-System Services Which Strengthen Families

While juvenile justice systems are different across the country, former Chief Probation Officer for Santa Cruz County, Judith Cox, noted before an audience of juvenile probation officials that:

> [D]espite vast geographic distances, varying fiscal climates and significant demographic and political differences, the juvenile justice systems in the United States are strikingly similar. They are built upon vast expenditures on secure detention and commitment facilities—*not* on communities, kids and families. We are a "one size fits all" service delivery system which still relies on suppression and incapacitation as the predominant operating principles.[409]

Converting to Family-Driven Justice necessarily entails making a dramatic shift in the operating principles of the current system. In the focus groups, the majority of family members were disappointed with the way the justice system handled their youth, but a few had positive experiences. As one parent in the focus groups said: "The staff was very supportive. They took into consideration the burdens that we faced and they gave us an opportunity to determine ways to overcome those burdens. They did include the family in my son's treatment plan and they followed through with services that helped our son."[410]

If low-level youth are successfully diverted away from the justice system as advocated earlier, this will necessarily mean that youth with more serious crim-

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407. *Id.* at 197.

408. *See* Weithorn, *supra* note 43, at 1497.

409. Judith Cox, former Chief Probation Office for Santa Cruz County, Remarks at the JDAI National Inter-site Conference (Sept. 2007) *available at* http://www.jdaihelpdesk.org/santacruz/Santa%20Cruz%20County%20CA%20Beyond%20Detention%202007.pdf.

410. OJJDP Focus Groups, *supra* note 93, at 13.

inal histories or offenses will remain in the system. For these medium- to high-risk youth, justice system interventions will typically have three distinct and overlapping purposes—sanctions to hold youth accountable or impose retributive punishment, supervision to keep youth from offending while under the court jurisdiction, and services to prevent offending in the future.

Families should be involved in helping to determine how to hold the youth accountable, keep the public safe, and ensure that youth get the services they need. Families are likely to generate hundreds of creative solutions to accomplish these goals and many of the plans will contain interventions tailored to the specific interests and needs of the youth, e.g., establishing mentors for the child, connecting youth to structured after-school activities or employment, which will require minimal monitoring or oversight by justice agencies. However, medium- to high-risk youth are also likely to require more justice agency supervision. This Subpart profiles what family-friendly interventions look like for these medium- to high-risk youth by profiling intensive, yet community-based approaches, and residential programs known to take a strengths-based approach to families.[411]

1. Comprehensive Community-Based Services

The most commonly used alternative to incarceration, standard probation, has not been very effective for youth and families, and communities are beginning to rethink their practices. As Dave Mitchell, Chief of the Placement Services Bureau for the Los Angeles County Department of Probation, has said, "Traditionally Probation has been aligned with law enforcement and our 'treatment' approach was that if you break your conditions of probation, I will lock you up. As a treatment approach, this was not successful."[412]

Many jurisdictions have modified the way probation officers work with youth and families. Sacramento, Yolo, and Los Angeles Counties in California; Multnomah County in Oregon; and the states of Utah and Washington are training probation and parole officers to work in a strengths-based manner with youth and families through a program known as FFP, which stands for "Functional Family Probation or Parole."[413] Other jurisdictions contract with providers to allow youth to participate in the standardized evidence-based programs.[414]

Finally, jurisdictions across the country are also contracting with providers for a range of programs to meet specific community needs. In this Subpart, I profile two large-scale community-based providers, Southwest Key and Youth

411. A recent report by Shaena Fazal, not available during the research period, provides more detail on the characteristics of effective community-based programs. SHAENA FAZAL, SAFELY HOME, *available at* http://www.safelyhomecampaign.org/Portals/0/Documents/Safely%20Home%20Preview/safelyhome.pdf?ver=2.0.

412. CASEY FAMILY PROGRAMS, STORIES OF PRACTICE CHANGE IN JUVENILE PROBATION: USING FLEXIBLE FUNDS IN LOS ANGELES COUNTY TO SUPPORT YOUTH AND THEIR FAMILIES 6 (July 2010), *available at* http://lachildrenscommission.org/cmsl_152704.pdf.

413. Telephone Interview with Jason Medina, FFT-FFP National Trainer and Consultant (Sept. 21, 2011).

414. *See supra* notes 171–176 and accompanying text.

Advocate Programs, Inc., which system experts agree provide some of the very best care to youth in the country through contracting with traditional justice agencies. Both providers approach the work from the perspective of community engagement and cultural competence, and work with families, youth, and system stakeholders to craft individual plans to meet the specific needs of youth and public safety.

Southwest Key is a national nonprofit organization founded in 1987 to improve the lives of children and their families.[415] Founded by Dr. Juan Sanchez, Southwest Key provides quality education, safe shelter, and alternatives to incarceration for thousands of youth each day, while helping families become economically self-sufficient.[416] Southwest Key operates more than 50 programs throughout the United States and works with youth and families in Arizona, California, Georgia, New York, Texas, and Wisconsin.[417] The average costs of their programs vary depending upon the number of youth and length within the program, but typically are a fraction of the costs of detention or incarceration.[418] Southwest Key offers programs ranging the entire continuum of care for youth in the juvenile justice system, including empowerment and prevention, diversion, alternative education, alternatives to detention and out-of-home care, specialized treatment, and transitional living and reentry.[419] Staff are on-call twenty-four hours a day, seven days a week to meet the unique needs of youth and families, and individualize their approach to each family by developing flexible service plans in partnership with them.[420]

Youth Advocate Programs, Inc. ("YAP") works with child welfare, juvenile justice, behavioral health, and disability and education systems to develop and offer community-based alternatives for the highest-risk children and families.[421] YAP traces its roots to a 1975 ruling that prohibited young people from being incarcerated with adult inmates at a facility in Pennsylvania.[422] Since that time, YAP has grown and operates programs in 25 major U.S. cities as well as dozens of other urban, suburban, and rural communities in 16 states and the District of Columbia.[423] A large percentage of youth served by YAP are at the "deep end" of the juvenile justice system.[424] YAP has developed some unique service delivery principles that are the hallmark of their programs. For example, they recruit staff from the neighborhoods where the young people and families live, providing an eco-

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415. *About Us*, SOUTHWEST KEY PROGRAMS, PHILOSOPHY & BACKGROUND http://www.swkey.org/about/philosophy/ (last visited July 21, 2014).

416. *Id.*

417. *Id.*

418. *Id.*

419. *Id.*

420. *Id.*

421. *Who We Are*, YOUTH ADVOCATE PROGRAMS, INC., http://www.yapinc.org/WhoWeAre/tabid/479/Default.aspx (last visited July 21, 2014).

422. *Who We Are > Our History*, YOUTH ADVOCATE PROGRAMS, INC., http://www.yapinc.org/WhoWeAre/tabid/488/Default.aspx (last visited July 21, 2014).

423. *Id.*

424. *See id.*

nomic stimulus to the neighborhood.[425] They also provide opportunities for young people and their families to give back to others so that youth are not viewed as "needy" clients but are considered resources and contributors to their community overall.[426] As a result, YAP strengthens both the family and community in ways that will last beyond the length of time the youth is in contact with the justice system.[427] Here is an example of how YAP works with youth:

> A juvenile court judge referred Jose, a young arsonist to YAP to see if the program could keep the child out of a residential placement. Jose's mother was perceived to be non-compliant, resistant, and angry, and social workers felt they had no choice but to remove Jose from her home. YAP quickly identified the problem—Jose's mother did not speak English. Once she was given an interpreter, she was able to fully participate in discussions about what was happening with her child and her behavior changed.
>
> Jose was assigned an Advocate recruited from the neighborhood where he lives. The Advocate spent 15 hours each week working with Jose and his mother to develop and implement a plan that would get Jose the help he needed. Together they came up with a three-point plan. First, YAP used a wraparound flexible fund to hire an experienced therapist to complete an assessment of Jose and provide a series of treatment sessions to address his firestarting behavior. YAP also arranged for Jose to receive a volunteer mentor from the local firehouse who lived in the neighborhood. YAP both recruited the fireman and trained him to be a big brother to Jose. Second, YAP addressed the need to get more male role models for Jose to address his problem with adult authority figures. Jose identified an uncle as someone he would like to spend more time with. Unfortunately Jose's uncle had no time for him as he worked several part-time jobs to provide for his family. YAP approached the uncle to see if he would be willing to give up one of his jobs and be hired by YAP instead. Through YAP, the uncle was able to spend 10 hours per week with Jose and they were able to develop a significant relationship. Finally, Jose was encouraged to find activities that he enjoyed participating in. Jose expressed an interest in soccer, and his advocate introduced him to the high school soccer coach who encouraged Jose to join the team.
>
> Through this comprehensive and tailored approach, Jose has been able to stay at home with the loving support of his mother and uncle. He is thriving in the community, has not started any more fires, and has developed several meaningful and positive relationships with adults and other youth who will help him stay on track in the future.[428]

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425. *See id.*
426. *See id.*
427. *See id.*
428. Anecdote provided by Shaena Fazal, National Policy Director, Youth Advocacy Programs, Inc.

2. Safe, Rehabilitative, Residential Options

No experience is more predictive of future adult difficulty than confinement in a secure juvenile facility.[429]

Families differ in their experiences and opinions about out-of-home care since the quality and safety of facilities varies drastically across the nation. Some families feel that residential placements are a necessary option, particularly as a way to remove the child from a negative environment or peers.[430] Families also recognize that some youth may be a risk to themselves or others and need an out-of-home placement for a short period of time.[431] However, there is widespread agreement among families that the majority of juvenile detention and corrections facilities are geared towards punishment, not treatment, and are inappropriate for their children.[432] Families also uniformly oppose housing youth in adult facilities for any length of time.[433] Here is one parent who spoke about the lack of appropriate services for youth in detention:

> In eighth grade my son received counseling that worked really well for him. Years later, while locked in a detention facility, my son recognized he needed therapy and requested it. He was told that they could provide him with counseling once a month. We all understand that for therapy to be effective, it needs to occur more than once a month. I believe if my son were given the proper counseling when he asked for it, he would not be struggling with some of the issues he has today.[434]

Youth feel similarly. Instead of helping them, youth say many facilities only make them worse: "You get better at what you came in for,"[435] and "Jail makes you better at the opposite of good."[436]

If children must be held in a residential facility, families want them to be housed in facilities that look and feel like facilities operated by the Missouri Division of Youth Services ("DYS").[437] Missouri uses a continuum of programs ranging from day treatment programs to secure care in small, community-based facilities located throughout the state.[438] The Missouri facilities are some of the safest

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429. Michael Wald & Tia Martinez, *Connected by 25: Improving the Life Chances of the Country's Most Vulnerable 14–24 Year Olds* (working paper) (2003), *available at* http://betterfutures.fcny.org/betterfutures/connected_by_25.pdf.

430. Information gathered during interviews with professionals during site visits.

431. *Id.*

432. OJJDP Focus Groups, *supra* note 93, at 25.

433. *Id.* at iv–v.

434. *Id.* at 11.

435. JUVENILE JUSTICE PROJECT OF LOUISIANA, NO BETTER OFF: AN UPDATE ON SWANSON CENTER FOR YOUTH 4 (Nov. 2010), *available at* http://media.nola.com/politics/other/No-Better-Off-Final-Report-2.pdf.

436. *Id.*

437. *See* OJJDP Focus Groups, *supra* note 93, at 3–4.

438. RICHARD MENDEL, THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS 16 (2010), *available at* http://missouriapproach.org/storage/documents/aecf_mo_fullreport_webfinal.pdf.

and most effective in the nation.[439] They create a positive peer culture among youth by using a group treatment model facilitated by youth development specialists instead of a traditional correctional approach that keeps youth in cages.[440] Not only do youth released from the Missouri system have lower rates of recidivism, but youth and families appear to do better in terms of educational, health, and other indicators of child well-being.[441]

There are several key elements of the Missouri approach to families which includes operating on a core philosophy anchored in beliefs and concepts such as "the family is vital to the treatment process" and "families as experts."[442] First, all agency leaders and direct-service providers participate in family systems training and are taught to respect the family hierarchy, communicate with families in a supportive and respectful manner, and value family expertise.[443] The DYS State Advisory Board also includes two former DYS parents and a former DYS youth.[444] Second, DYS assigns a single service coordinator to work with each youth and family throughout their time with DYS, and families are engaged in the planning process within the first several days after the court commits a youth.[445] Service coordinators make home visits to meet families in familiar and comfortable settings, and to minimize the impact of the power imbalance that may intimidate or inhibit family participation.[446] There are also Regional Family Specialist positions to provide family counseling and support on a voluntary basis to interested families.[447] Third, most youth are placed in small facilities within a 50-mile radius of their homes and facility visitation policies are flexible to respond to family interests, customs, and convenience.[448] Transportation is also provided to ensure families have access to regular visits.[449] Families may also tour any of the DYS facilities to review conditions.[450]

Regardless of the type of out-of-home setting a youth is placed in, families want their children to be safe, receive appropriate rehabilitation services, and have access to strong academic and/or vocational programs to prepare them for careers.[451] And despite their children being in an out-of-home placement, families want to be full participants in the everyday lives of their children, which means having regular opportunities to call and visit with a child, and regular communication with staff. Youth also want contact with family members. According to the

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439. *Id.* at 9.
440. *Id.* at 2.
441. *Id.* at 6–7).
442. Email from Tim Decker, former Director of the Missouri Division of Youth Services, to Neelum Arya (June 6, 2012) (on file with author).
443. *Id.*
444. *Id.*
445. *Id.*
446. *Id.*
447. *Id.*
448. *Id.*
449. *Id.*
450. *Id.*
451. *See supra* notes 428–29 and accompanying text.

national Survey of Youth in Residential Placement, the overwhelming majority (94%) of youth want to maintain contact with their families.[452]

The survey results demonstrate that detention and correctional officials agree that justice systems achieve better outcomes for the youth in their care when they involve families. Two quotes from directors of state corrections agencies demonstrate why—"Overall the kids are happier whenever we involve their parents"[453] and "Students are more likely to engage in treatment when families are involved."[454] System stakeholders also note that maintaining family contact is essential to ensure a smooth transition back into the community.[455] Engaging families in the change process means that "[f]amily support [is available] to help provide corrective action to youth when needed."[456]

Involving families when the child is residing in an out-of-home placement is challenging but it can be done. The Texas Juvenile Justice Department has made family engagement a top priority as part of efforts to overhaul the entire system after scandals of rampant sexual abuse.[457] Texas began implementing a series of reforms including developing the Parents' Bill of Rights[458] and a family handbook

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452. Andrea J. Sedlack & Karla S. McPherson, *Conditions of Confinement: Findings from the Survey of Youth in Residential Placement*, JUV. & JUST. BULL. 1 (May 2010), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf.

453. Quote from juvenile justice professional, Survey (Respondent 1–5).

454. Quote from juvenile justice professional, Survey (Respondent 1–13).

455. Survey results with juvenile justice professionals.

456. Quote from juvenile justice professional, Survey (Respondent 1–6).

457. Texas Presentation PowerPoint (on file with author).

458. The Texas Department of Juvenile Justice Parents of Incarcerated Children - Bill of Rights, states that:

> Parents of children who have been committed to the care, custody, or control of the Texas Juvenile Justice Department have the following rights:
>
> 1) As a parent, you have the right to know that you and your child will be treated fairly regardless of race, religion, national origin, language, economic status, disability, gender, sexual orientation, or age and that each child will be treated as an individual.
>
> 2) As a parent, you have the right to expect the agency to provide a safe, secure, and sanitary environment for your child.
>
> 3) As a parent, you have the right not to be judged, blamed or labeled because of your child's incarceration.
>
> 4) As a parent, you have the right to be a vocal and active advocate on behalf of your child.
>
> 5) As a parent, you have the right to be an active participant when decisions are made about your child.
>
> 6) As a parent, you have the right to be informed about matters related to your child's welfare.
>
> 7) As a parent, you have the right to access your child's records.
>
> 8) As a parent, you have the right to meaningful participation in your child's treatment, including medical treatment, behavioral health treatment, and education.
>
> 9) As a parent, you have the right to communicate with your child, including visitation, telephone, and mail.

explaining key features and policies within the facilities.[459] Here is one example of how Texas facilities attempt to make families feel welcome in their facilities:

> Our youth escort their family members to the school where they are free to wander the halls, introducing their families to their teachers and showing off their classrooms. Staff members hang back and supervise the youth and families from a distance, giving the participants a greater sense of attending the type of open house one might expect at a regular public school.[460]

My research identified several ways to maximize youth—family contact and facilitate family—staff communication, including the following practices: using an expanded definition of family for visitation and mail correspondence;[461] creating a welcoming environment for families through developing special materials to explain their rights and the policies of the facility, hosting special events, soliciting regular feedback from families, and making the physical environment more inviting and comfortable for families; ensuring that visitation hours are convenient for family members, providing low- or no-cost phone services, and assisting with transportation to aid regular communication between youth and families; and providing training and support to staff to facilitate effective staff–family interactions and promote regular communication.[462]

E. Youth Fully Prepared for Successful Futures

In creating a juvenile justice system that reflects what families want for their children, justice agencies would not only respond to youths' behavior problems, but will make sure that youth are fully prepared for life as adults. James Forman, former public defender and developer of a school for children involved in the justice system in Washington, DC, has noted that:

> 10) As a parent, you have the right to be assured that all TYC staff are professional, courteous, and respectful.
> 11) As a parent, you have the right to know that TYC will take immediate corrective action to protect the rights of parents and youth.
> 12) As a parent, you have the right to meaningful participation in your child's transition-planning — from intake through release, parole, and eventual discharge.

TEXAS DEPARTMENT OF JUVENILE JUSTICE, PARENTS OF INCARCERATED CHILDREN - BILL OF RIGHTS, *available at* http://www.tjjd.texas.gov/programs/parents_billof_rights.aspx.

459. Texas Presentation PowerPoint (on file with author).

460. Staff quote, PowerPoint presentation provided by the Texas Youth Commission to the Models for Change network (on file with author).

461. Immediate family members are parents, legal guardians, foster parents, legal wife, children, siblings, and grandparents. Extended family members are any adult related to the youth by blood, adoption, or marriage, and any adult who has an established household or mentoring relationship with the youth. This would include godparents, clergy, teachers, neighbors, and family friends.

O.H. CLOSE YOUTH CORR. FACILITY, VISITOR INFORMATION AND RULES 1 (2008) (on file with author) (detailing how the facility, located in Stockton, California, defines family for visitation purposes).

462. Henderson et al., *supra* note 90; Osher & Hunt *supra* note 90; Texas Presentation PowerPoint (on file with author); Consultation with family experts.

> Everything about the juvenile justice system tells young people who have been arrested how little hope we have for them. Consider what happens at a youth's first court hearing after an arrest. As a public defender, I stood next to clients every day and listened to judges tell them the same thing: "I'm going to release you on the condition that you: 1) do not get arrested again, 2) pass your weekly drug tests, and 3) carry an attendance card to school for your teachers to sign." As a public defender, it was my job to get my client the fewest conditions of release possible, so I certainly would never ask for more than that. But I was always amazed by the expectations conveyed in those judicial orders. What parent defines success as going to school, not using drugs, and avoiding arrest? Parents dream of college, of getting good grades, of children making a contribution to their families and communities. But such talk is absent from the juvenile court system, because the system does not think that children who have been arrested have that potential.[463]

Contrast Foreman's assessment of how the justice system treats youth with the family expectations for Hasan Davis, former Commissioner of the Kentucky Department of Juvenile Justice:

> When I was 11, I got arrested, and I remember waiting at the police station for my mom. As I saw the other mothers arrive, I could see the fear, frustration, and embarrassment that comes with having a child get caught up in this system, which came out as anger and threats . . . [W]hen she showed up, she was really calm. I figured she didn't want to show herself in front of the police, and I thought she's going to lose it when we get in the car, but instead there was deafening silence. Halfway home I finally found the courage to look up at her, and she was crying these huge tears. She looked down at me and said, "Baby, if you could see what I see every time I look at you, you would know how great you are." Having family connections has been integral to my success. In the middle of my internal and external chaotic world, my mother and stepfather gave me the support and courage to find a path beyond my worst choices. And no matter what I did my mother refused to let me forget the powerful image she held up as the man I could one day be—it was something to aspire to.[464]

Under Family-Driven Justice, justice systems would move beyond the paradigm of reducing and managing risk, to unleashing the untapped potential within the children they are supervising. In a transformed justice system, agencies would foster the youth's innate potential, take concerted efforts to help remove the stigma and collateral consequences attached to justice system involvement, and also prepare youth to become positive leaders in their community. Many youth who

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463. James Forman, Jr., *Education for Liberation*, 2 HARV. L. & POL'Y REV. 75, 79–80 (2008).

464. Interview with Hasan Davis, Acting Commissioner, Kentucky Department of Juvenile Justice, *New Leadership in Kentucky's Department of Juvenile Justice*, VERA INSTITUTE OF JUSTICE, (May 31, 2012), *available at* http://www.vera.org/blog/new-leadership-kentucky%E2%80%99s-department-juvenile-justice.

commit serious offenses are youth with creative and entrepreneurial spirits—talents that, in affluent communities, are recognized, nurtured, and developed, since they know these youth will become the future leaders of their community.[465] In fact, many youth in the justice system are already natural leaders; their leadership qualities enabled them to lead their peers to participate in destructive activities. As a youth participant from YouthBuild, a program profiled below noted, "I considered myself to have leadership potential, but no outlet to express that potential."[466]

Families want justice agencies to tap into these strengths and help youth see beyond their current circumstances to help them envision and develop the skills necessary to realize a brighter future for themselves. In this Subpart, I profile a variety of ways to ensure youth are fully prepared for their future.

1. Youth Obtain Skills Needed to Thrive

All youth, whether they have been involved in the justice system, need support from caring adults to make a successful transition to adulthood. Research shows that social and environmental factors such as having a safe place to live, employment, and a social network are more influential in desistance from crime than any psychopathology.[467] Agencies need to take proactive steps to help youth develop the skills they need to navigate graduation from high school, postsecondary education, employment, and other life milestones. From my research, I identified one tool widely available to help justice agencies prepare youth for adulthood, the Casey Life Skills Assessment ("CLSA").[468]

The CLSA is a free, online, youth-centered tool that comprehensively assesses the life skills that youth will need in adulthood.[469] The tool was originally designed for youth ages 14–21, regardless of their living situation, and is as free as possible from gender, ethnic, and cultural biases.[470] The CLSA is best used as part of collaborative conversations between the youth, family, and other service pro-

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465. For example, in my previous interactions with incarcerated youth, several of the youth who were caught selling drugs were youth who could probably be characterized as entrepreneurial. If provided other legitimate avenues of earning money, I suspect many of the young people would have chosen other alternatives. Research also suggests this may be true as "a sizeable fraction of drug dealers report little to no drug use." Rosenfeld et al., *supra* note 135, at 140.

466. THE CENTER FOR INFORMATION RESEARCH ON CIVIC LEARNING AND ENGAGEMENT, PATHWAYS INTO LEADERSHIP: A STUDY OF YOUTHBUILD GRADUATES (2012) *available at* http://www.civicyouth.org/wp-content/uploads/2012/05/YouthBuild.pdf (quoting former youth member of YouthBuild).

467. *Preventing Crime: What Works, What Doesn't, What's Promising*, RES. IN BRIEF (U.S. Dep't Just./Nat'l Inst. Just.), July 1998, *available at* https://www.ncjrs.gov/pdffiles/171676.PDF.

468. CASEY LIFE SKILLS PRACTICE GUIDE, http://casey.org-casey-life-skills-resources/ (last visited Feb. 16, 2013).

469. *See id.*

470. Casey Life Skills Privacy Policy 1–7, *available at* http://www.casey.org/media/CLS_assessments_LifeSkills.pdf.

viders. After conducting the assessment, with support from other adults, youth develop individual learning plans to learn the skills they will need to be successful.[471]

In addition to youth-directed individual learning plans, justice agencies should also be reevaluating the educational and programmatic offerings available to youth in residential settings to ensure they are adequately prepared for college or careers. The Pennsylvania Council of Chief Juvenile Probation Officers, in partnership with residential and day-treatment facilities across the state, have formed the Pennsylvania Academic Career/Technical Training Alliance (PACTT).[472] Participating facilities agree to align their education curricula with state standards issued by the Pennsylvania Department of Education, as well as offering career and technical education programs in high-demand areas, e.g., culinary arts, auto body.[473] PACTT also works to ensure that schools in the community cooperate by providing education records in a timely manner and ensuring that credits transfer properly.[474] Finally, PACTT helps facilities teach youth the "soft skills" they need to succeed in the market through a uniform manual and the development of a "student employability portfolio."[475]

2. Strengthening Youth Capacities as Parents

As noted in the Introduction, the literature on the needs of children of incarcerated parents has focused predominately on parents in the adult criminal justice system, however, many youth (approximately 30% of teen males) involved in the justice system are parents themselves.[476] Helping these youth develop and maintain bonds with their children is an emerging concern for juvenile justice agencies. While on one of the site visits to a residential facility I heard a baby cry. The realistic sound was coming from a group of young people learning about parenting behaviors using life-like dolls that mimicked infant behaviors requiring the young parent to change, feed, or soothe the pretend baby.[477] These young people were learning skills for future parenting. My research also identified promising examples of programs working with young mothers and fathers.[478]

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471. *See supra* note 467.

472. *See* About Us, PACTT ALLIANCE, http://www.pacttalliance.us/about-us/what-do-we-do/ (last visited Sept. 11, 2013).

473. *Id.*

474. *Id.*

475. Employability/Soft Skills, PACTT ALLIANCE, http://www.pacttalliance.us/resources/employability.

476. ANNE M. NURSE, FATHERHOOD ARRESTED: PARENTING FROM WITHIN THE JUVENILE JUSTICE SYSTEM (2002).

477. Site visit to Midwest jurisdiction, October 2010.

478. One of the promising examples my research identified was the Center for Young Women's Development in San Francisco, a provider of services for young mothers. The organization is currently in transition and is changing the programs and services they offer.

The Baby Elmo Program is a program currently being piloted in a number of jurisdictions across the country.[479] A project of the Georgetown Early Learning Project and the Youth Law Center, the ten-session program focuses on strengthening family ties between incarcerated teen fathers and their infants using a standardized curriculum presented by facility personnel.[480] The teen parents are taught how to praise, play, and interact with their children through the use of videos—Sesame Street Beginnings—provided by the Children's Television Workshop.[481] After viewing a parenting lesson, the fathers play with their own children for an hour practicing what they have learned.[482] Early results of the program are promising. The teen parents develop an awareness of the role they can play in their child's development.[483] In addition, even in a relatively short time period, the babies appear to develop bonds with their fathers.[484]

3. Leadership Development

Finally, families want to ensure their children are proactively being developed as leaders. Adolescence is a time of identity development[485] and, rather than developing a positive self-identity, justice-system involvement can instill or reinforce negative identities for youth such as "criminal," "offender," or "gang-banger."

Justice agencies can help to counteract this labeling effect by developing special programs to foster the development of positive identities for youth. For example, the Azteca Soccer Program was formed by an entrepreneurial probation officer in Santa Cruz County, California.[486] She wanted to help the local youth in her Watsonville community develop identities as soccer players.[487] Latino youth from rival gangs come together as teammates and play soccer together in an adult recreational league.[488] Due to high demand, a second team was also formed.[489]

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479. Rachel Barr et al., *The Baby Elmo Program: Improving Teen Father–Child Interactions within Juvenile Justice Facilities*, 33 CHILD. & YOUTH SERVICES REV. 1555 (2011).

480. *Id.*

481. *Id.*

482. *Id.*

483. *Id.*

484. *Id.*

485. *See, e.g.*, Alan S. Waterman, *Identity Development from Adolescence to Adulthood*, 18 DEVELOPMENTAL PSYCHOL. 341, 355 (1982) ("The most extensive advances in Identity formation occur during the time spent in college.").

486. Calvin Men, *Watsonville soccer game benefit Azteca Soccer Academy*, SANTA CRUZ SENTINEL, July 26, 2014, 05:59:05 PM PDT), http://www.santacruzsentinel.com/copsandcourts/ci_26223467/watsonville-soccer-games-benefit-azteca-soccer-academy.

487. *See id.*

488. *Id.*

489. *ESPN Film Chronicles Work of Santa Cruz Probation Officer*, ANNIE E. CASEY FOUND. (Dec. 3, 2012), http://www.aecf.org/blog/espn-film-chronicles-work-of-santa-cruz-probation-officer/.

Through practices and games, adult players and coaches mentor youth.[490] The youth learn sportsmanship, leadership skills, conflict resolution, and anger management, all while learning self-discipline and responsibility.[491] The games also provide an opportunity for families to get together and support their children.[492] The family members help with fundraising projects to support the team, attend games, and encourage their children to do their best on and off the field.[493] This program is just one example of how justice agencies can use creativity to identify opportunities to help their youth develop an identity beyond their criminal activities.[494]

In contrast to this locally-grown program, a nationwide program that has had a substantial impact on developing youth leaders is YouthBuild. YouthBuild began in 1978 as a local, community-based organization in East Harlem.[495] The program has developed into a nationwide network of 270 organizations with a variety of funders, including the U.S. Department of Labor.[496] These YouthBuild organizations annually enroll approximately 10,000 highly disadvantaged young people in programs that combine education, job training, service, and leadership development.[497] YouthBuild provides trade and job skills to youth by giving them opportunities to build or rehabilitate houses while also earning a GED or high school diploma.[498]

A substantial proportion of youth participating in YouthBuild programs have had justice-system involvement.[499] According to the 2010 survey of entering students to the program, 32% have been adjudicated, and 11% have felony convictions.[500] The program has documented success with these young people.[501] Every dollar spent on a YouthBuild student with a criminal record will result in a return on investment ranging from a minimum of $10.30 up to $43.80.[502] YouthBuild is proving that youth in the justice system can be developed into successful leaders:

> [YouthBuild] is a very rare example of a large-scale leadership program primarily for young people who have dropped out of high school, [and] its philosophy challenges the dominant approach to that group. In general, major institutions, from schools to law enforcement agencies, treat them as threats to themselves and their

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490. *See supra* note 489.

491. *Santa Cruz Probation Grants and Initiatives*, SANTA CRUZ CTY. PROBATION, http://sccounty01.co.santa-cruz.ca.us/prb/grants.asp (last visited Sept. 11, 2014).

492. TEDX TALKS, *TedxSantaCruz: Gina Castaneda – United Rival Teen Gang Members Through Soccer*, YOUTUBE (June 11, 2011), http://www.youtube.com/watch?v=WfuA8tyCbaM#t=682.

493. *Id.*

494. *Id.*

495. CENTER FOR INFORMATION RESEARCH ON CIVIC LEARNING AND ENGAGEMENT, *supra* note 464.

496. *Id.*

497. *Id.*

498. *Id.*

499. *Id.*

500. *Id.*

501. *Id.*

502. *Id.*

> communities, and offer—if they offer anything at all—a combination of surveillance, remediation, discipline, and punishment to try to alter their destructive trajectories. In contrast, YouthBuild treats them as potential civic leaders and invests in their leadership skills.[503]

YouthBuild is intentional about leadership development for the youth involved in their programs, as well as for alumni.[504] "I'm not the one that's fighting—I'm the one that's helping now."[505] In addition to supporting the expansion of YouthBuild programs, child-serving and justice agencies should revisit their current programs to ensure that youth are being cultivated as leaders.

CONCLUSION

The goal of my study was to shift the way the juvenile justice field addresses the needs of families by moving away from the current narrow and limited conceptions of family engagement to develop a broader vision of Family-Driven Justice. My findings suggest that system stakeholders that have done the most work responding to the needs of families have already begun to recognize the need to reexamine all juvenile and criminal justice policies and practices and have started to make this shift. However, overall the juvenile justice field has not developed a systematic way of integrating family engagement efforts into their broader system reform efforts. This Article has started to fill that gap by identifying the key features of what families want in a transformed justice system. Instead of an overarching ideology that sees families as the cause of their children's problems, the new transformed justice system would appreciate families as key partners in addressing their children's needs.

As described in this Article, the current justice system routinely intervenes in the lives of young people and their families. The decisions about treatments or sanctions for youth not only fail to incorporate family members' views about how best to address youth's needs, but they are replaced by views of system professionals with little proven knowledge on how to improve the youth's behavior. Worse, these system professionals routinely make decisions that expose youth to treatments and environments that increase offending and their risk of being abused. Scholars have suggested the treatments provided by the current justice system constitute "medical malpractice"[506] and families refer to these practices as government-sanctioned or taxpayer-supported child abuse. To address these issues, I have proposed a radical transformation of the justice system using the principles of Family-Driven Justice.

While my research findings suggest that no jurisdiction currently meets these five features of a transformed justice system, there appears to be a consensus emerging within the field about what that approach would look like—beginning with challenging the default assumptions about how the justice system views families. Further, through providing specific examples currently in place in jurisdic-

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503. *Id.*
504. *Id.*
505. *Id.*
506. Latessa et al., *supra* note 198, at 43–49.

tions across the country exemplifying this approach, I have also demonstrated that transformation is possible to achieve within the context of our current government structure.

While my study was not designed to identify ways to address mass incarceration, I believe that Family-Driven Justice would also make a significant impact in that endeavor. Paul Butler has explained how mass incarceration can be broken down into a five-step process.[507] First, poor people, particularly people of color, receive more surveillance including police stops and arrests.[508] Second, the "criminal law deliberately ignores the social conditions that breed some forms of law breaking."[509] The strategies identified in Part III.A, such as providing families with access to services without justice-system involvement, using conflict resolution strategies to address disputes in schools and neighborhoods, and using diversion programs in lieu of arrest, would help to address these two steps. Third, law enforcement, prosecutors, and judges, have both explicit and implicit biases against criminal defendants.[510] Fourth, guilt is assured by a criminal justice system which relies on expansive criminal liability, guilty pleas, and mandatory minimums.[511] Family-Driven Justice would address these third and fourth steps by returning decision making back to the communities where crimes occur through the use of Family Group Decision-Making, and involving family members on oversight and policy reform initiatives. While not ridding the system completely of the explicit and implicit biases, FGDM and the inclusion of family members as part of policy reform efforts would likely reduce the level of bias and improve the overall efficacy of the justice system. The fifth and final step in Butler's articulation of mass incarceration is "Repeat the cycle."[512] It is here where Family-Driven Justice makes the most significant impact. A family-driven approach recognizes that young people are within a unique stage of development and treating young people in the context of their families will achieve the lowest recidivism rates and therefore stop the flow into and out of jail or prison.

APPENDIX: SURVEY INSTRUMENT

Family Engagement in the Juvenile Justice System

At the request of the Annie E. Casey Foundation, the Campaign for Youth Justice is undertaking a study of how juvenile justice agencies are working to involve and engage with family members. This survey is expected to take approximately 10–20 minutes to complete. Your responses will not be critiqued, but will be aggregated to get a sense of how sites are engaging families. If you don't feel like you can answer a question definitively, don't sweat it; it's acceptable to answer questions to the best of your knowledge. Please also forward this survey to additional persons in the site that might be best positioned to answer these questions.

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507. Butler, *supra* note 29 at 2186.
508. *Id.* at 2183.
509. *Id.*
510. *Id.*
511. *Id.* at 2183–84.
512. *Id.* at 2184.

. . .

	Yes	No	In Progress
I. What tools and resources are available to help families navigate the juvenile justice system?			
Does your jurisdiction have a guide to the juvenile justice system that is available to parents and explains the court process?			
Does your jurisdiction provide a guide/inventory of resources available in the community to families?			
Does your jurisdiction offer a training orientation (e.g., video) that explains the juvenile justice system to families?			
Do family members have opportunities to ask other family members about the process? For example, are there parent liaisons or other family leaders designated to respond to parent questions?			
Is there a dedicated person whose job it is to help staff engage families?			
II. What services are provided to families by your agency, and how are families involved in determining which services they need?			
At the point of diversion, are families a part of a formal process deciding what resources would be helpful to them and their child?			
Are families involved in helping to develop case plans before or after disposition?			
Do families have access to parenting education or skills courses?			
If families are not satisfied with the services they are receiving, is there a way for families to request a different provider or service?			
III. How do the juvenile facilities or residential placements accommodate families?			
Do families have an option to visit their children at hours outside of normal business hours (e.g., evenings and weekends)?			
Do families have an option to visit their children at hours outside of normal visiting hours? In other words, if the family has a conflict with traditional vis-			

	Yes	No	In Progress
iting hours are there opportunities to make special arrangements for an alternate visiting time?			
Is transportation to the facility available for families who would otherwise by unable to access the facility?			
Do families have free or low-cost options to speak with their child over the telephone?			
Are families allowed to tour the juvenile facility?			
IV. How does your agency solicit input from families to inform policy decisions?			
Is there a formal body of family representatives to consult within your jurisdiction? For example, does your jurisdiction have a Family Council?			
Are there family representatives that participate on working groups or policy committees?			
Have you conducted focus groups within the last year to gather input from families?			
Has the jurisdiction solicited feedback from family members through periodic surveys?			
V. Does your agency train staff on how to work with families?			
Does the site provide training to staff on effective strategies to working with and engaging families?			
Do family members play a role in the training of staff?			
VI. Does your agency participate in a "system of care" or "wraparound" initiative with other agencies (e.g., mental health, child welfare, education)?			

In this survey we have asked you to identify some basic ways your agency is working with families. If you answered "Yes" to any question above, please describe in greater detail what your site has been doing. Please also describe any innovative ways your agency has been involving or engaging with families that may not have been asked here.

What are the top five benefits your agency has experienced by being more family-friendly or more intentional about involving families?

. . .

What have been the most challenging or frustrating aspects of working to engage families?

. . .

If your agency wanted to become more intentional around family involvement and engagement, what do you see as potential barriers to implementing practices and policies that recognize families as partners within your juvenile justice system?

. . .

Thank you for completing this survey. . . .