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Juvenile Sentencing in Georgia

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Second Panel – Juvenile Sentencing in Georgia

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Broadly speaking, this panel addressed the various theoretical approaches to, policies and procedures surrounding and methods of disciplining, punishing, sentencing and possibly rehabilitating youthful individuals. First, we’re going to proceed with each panelist having a few minutes to offer perspectives on juvenile sentencing in Georgia from their particular relationship with the system.

Aakeem Woodard - As you know, in the state of Georgia, when you turn seventeen, you automatically go to prison. It’s automatic. You can be sentenced at fifteen and tried, as an adult, but when you turn seventeen, you automatically go to prison.⁵ I used to work for the Department of Juvenile Justice, and I just thanked Judge Deal because it was his father who changed the law to hire me.⁶ I was the first person to be hired by the Department of Juvenile Justice with a felony because the department said “if he can do what he says he can do, then hire him. What did I say I can do? I said “If you give me an opportunity to affect those children that have been tried as adults in the state of Georgia, there’s two things I guarantee you I can do: I can help them change their direction so that by the time they turn seventeen, they will be changed, and if they do turn 17 and are sent to prison, they will be different. They will understand, their parents will understand, and they be on the road to success the moment they go into the Georgia prison system. So, I wrote a program called Step to Change.⁷ It was only programming in the United States of America for every child that was tried as an adult.

Through the program, we have changed their mind and helped them get their minds together. Just before I move on, I want to say what I would tell every child, “I’m sorry, but you have to do something that your whole body will scream that you can’t do. You’re fifteen, and I need you to become an adult. I need you right now to become an adult because the world is treating you that way, so playtime is over. It’s no time to play because what’s about to grip

¹ Randee Waldman, EMORY L., <https://law.emory.edu/faculty/faculty-profiles/waldman-profile.html> (last visited Dec. 28, 2022).

² *Administrative Team*, CLARKE CNTY. SCH. DIST., <https://www.clarke.k12.ga.us/Page/81> (last visited Dec. 28, 2022).

³ Southern Center for Human Rights, LEAD 411, <https://app.lead411.com/company/Southern-Center-for-Human-Rights-1441148.html> (last visited Dec. 28, 2022).

⁴ Aakeem Woodard, *Panelist*, FULTON CNTY., <https://www.fultoncountyga.gov/empowering-young-men-to-excel-conference/empowering-young-men-panelists-person-landing/aakeem-woodard> (last visited Dec. 28 2022).

⁵ See GA. CODE ANN. § 17-10-1 (2022) (“[I]n any case where a person under the age of 17 years is convicted of a felony and sentenced as an adult to life imprisonment or to a certain term of imprisonment, such person shall be committed to the Department of Juvenile Justice to serve such sentence in a detention center of such department until such person is 17 years of age at which time such person shall be transferred to the Department of Corrections to serve the remainder of the sentence.”).

⁶ See Michell Eloy, *Deal Signs Final Wave of Criminal Justice Reforms into Law*, WABE (Apr. 14, 2014), <https://www.wabe.org/deal-signs-final-wave-criminal-justice-reforms-law/> (“The newest reforms, now law, bar some state agencies from disqualifying job applicants because they have a criminal record.”).

⁷ See *Office of Chaplaincy Services Introduces “Step to Change” at Atlanta YDC*, DEPT OF JUV. JUST. BLOG (July 2, 2018), <https://djj.georgia.gov/blog-post/2018-07-02/office-chaplaincy-services-introduces-step-change-atlanta-ydc> (describing the pilot of the “Step to Change” program).

you before you turn seventeen is the fear that speaks to you, a fear that talks to you. A fear that will tell you ‘you can’t make it’ and will drown out everything you feel about rehabilitation. And it will tell you to harm yourself or harm others, ‘you have no chance to make it,’ but I need you to be prepared for that fear because it’s coming. And you’ll be prepared to fight.” We found kids from Fulton County, not Dekalb County, that were resentenced when they were seventeen and were sent home. And we have not had one kid come back, not one. As a matter of fact, the first one, who was a sex offender, graduated from Georgia Southern University. He works in accounting right now at one of the major firms here in Atlanta, Georgia.

Emily Boness - my name is Emily Boness, and I am happy to be here this morning with you to talk about peer courts. Peer Court is a diversion program in which young people serve as the advocates – as lawyers, judge, and jury in the disposition or sentencing hearings for first time misdemeanor offenders.⁸ I didn’t invent this program as they’re actually common around the country⁹ and, as a high school student in Anchorage, Alaska, I was a volunteer for the Program.¹⁰ So when I came to Athens and graduated from law school and was looking for a way to get involved in the Community, I worked with a now retired judge here to start Athens Peer Court.¹¹ When I started that program, it was important to me that we had the opportunity to train the young people who would serve as those advocates, and so I also developed the training program. It’s a twelve-hour leadership development and skill development course so that the students who serve in those hearings have the skills necessary to be good advocates.¹²

In the Athens Peer Court, once a young person comes to Athens Peer Court, they receive a sentence. Some examples are community service, an essay, but it is sometimes an apology to their parents and sometimes jury duty.¹³ The respondent then has sixty days to complete that sentence, and they are not on probation at that time.¹⁴ So the only contact that they have with Athens Peer Court is that one night during their hearing, as well as any jury duty after that.¹⁵ We collaborate with UGA Law students to help administer the program in terms of helping the youth volunteers to prepare those hearings.¹⁶ They go in with the volunteers during the interviews with the client and with the youth advocates. I get asked “Why might a community have a Peer Court?”

⁸ Caitlin Jett, *Athens Peer Court Offers Second Chance for First-Time Juvenile Offenders*, THE RED & BLACK (Apr. 16, 2019), https://www.redandblack.com/athensnews/athens-peer-court-offers-second-chance-for-first-time-juvenile-offenders/article_0214d9de-5ff5-11e9-b7be-7f5b202fc409.html.

⁹ See *About Us: The Significance of Youth Courts: The Mission of the National Association of Youth Courts*, NAT’L ASS’N OF YOUTH CTS., https://youthcourt.net/?page_id=121 (last visited Dec. 28, 2022) (detailing the conference’s involvement with 1,050 youth courts across the U.S.).

¹⁰ *About*, J.W. FANNING INST. FOR LEADERSHIP DEV., <https://www.fanning.uga.edu/athenspeercourt/about/> (last visited Dec. 28, 2022).

¹¹ *Id.*

¹² *APC News*, J.W. FANNING INST. FOR LEADERSHIP DEV., <https://www.fanning.uga.edu/apcnews/> (last visited Dec. 28, 2022).

¹³ *Respondents*, J.W. FANNING INST. FOR LEADERSHIP DEV., <https://www.fanning.uga.edu/athenspeercourt/respondents/> (last visited Dec. 28, 2022).

¹⁴ *Your Answers to Frequently Asked Questions*, J.W. FANNING INST. FOR LEADERSHIP DEV., <https://www.fanning.uga.edu/wp-content/uploads/2018/04/Respondent-FAQ.pdf> (last visited Dec. 28, 2022).

¹⁵ *Id.*

¹⁶ *About*, *supra* note 12.

Some of the benefits that I've seen over the years is that it is a leadership opportunity, of course, for the young people who serve as those volunteers. And every respondent is invited to come back and be a volunteer, as there are no requirements to serve as a volunteer. It is a diversion from something else, so if the alternative in Athens prior to having a Peer Court was to meet with a probation officer and have the probation officer decide the community service hours or the disposition, then this is an alternative that allows them to meet with their peers.¹⁷ They have a chance to share what happened in front of their peers and to meet with people who are their peers advocating for them. Their youth advocates are going to stand up and share what they learned during the interview.¹⁸ It happens quickly, ideally, in terms of the time between an offense and the time they have their hearing. Ideally, it is under thirty days, so that's a big benefit. If you're a young person, and you know that something is going to happen, and you will know quickly what's going to happen, then you are quickly able to move on. That is a huge benefit, so you don't have something hanging over your head or a case that is dragging on. A process to start one is that you have to have a supportive juvenile court judge, of course.¹⁹ You also have to have an organization or a person who's willing to own it.²⁰

There are other Peer Courts in Georgia, ones in Dekalb County, Columbia County, and Forsyth County.²¹ And, of course, each one of those is run a little bit differently. Some of them are run through the juvenile court, but the one in Athens is run through a partnership with the University of Georgia.²² A Peer Court does require somebody to commit to being willing to make sure that this happens. Then, you have to get your youth volunteers trained.²³ And after that, you can have respondents come, respondents being whoever is eligible for the program. In Athens, we had shoplifting cases and first-time possession of marijuana. Before those stopped coming through, we had curfew violations and some cases that were coming from the school. That is an overview of our Peer Court and why you might have one and what you might do to get it started.

Kaitlyn Barnes - As public policy counsel for the Southern Center for Human Rights, it's my job to advocate for statewide policy reforms to the criminal legal and juvenile justice systems here in Georgia and to ensure that they are respecting the dignity of every person directly impacted by those systems.²⁴ It is also my job to ensure that they are promoting fairness, equality and racial justice at every stage, regardless of a person's age. At the very least, I try to mitigate the harm that's experienced by people who are directly impacted by the criminal legal system when it comes to juvenile justice reform, working with lawmakers and stakeholders and other advocates. My first talking point in promoting juvenile justice

¹⁷ *Id.*

¹⁸ *Respondents, supra* note 15.

¹⁹ *About, supra* note 12.

²⁰ See *Start a Peer Court*, J.W. FANNING INST. FOR LEADERSHIP DEV., <https://www.fanning.uga.edu/wp-content/uploads/2018/04/About-Peer-Courts.pdf> (last visited Dec. 29, 2022) (listing the various stakeholders required to support a youth court).

²¹ See *Grants & Programs Unit*, DEKALB CNTY. JUV. CT., <http://dekalbjuvencourt.org/grants-programs-unit/> (last visited Dec. 29, 2022); *Teen Court*, COLUMBIA CNTY. CMTY. CONNECTIONS, <http://cccc4kids.org/teen-court> (last visited Dec. 29, 2022); FORSYTH CNTY. PEER CT., <http://www.forsythcountypeercourt.com/about.html> (last visited Dec. 29, 2022).

²² *About, supra* note 12.

²³ See *id.* ("Fanning trains and manages the participant volunteers, while the Juvenile Court refers appropriate cases to Athens Peer Court.")

²⁴ See *Who We Are*, S. CTR. FOR HUM. RTS., <https://www.schr.org/who-we-are/> (last visited Dec. 29, 2022) (outlining the SCHR's mission to "secure equality, dignity, and justice for people impacted by the criminal legal system in the Deep South").

reform is to emphasize that kids are different from adults. We sort of come back to this again and again, and courts, lawmakers, policymakers, and advocates come back to this again and again. Because of that period of adolescence in early to mid-teens to early to mid-20s is defined by change, it's a time when kids are going to be taking risks and pushing boundaries.²⁵ That's a natural and normal part of adolescent development as they reform their own identities that are distinct from their parents, their families and the structures that govern their lives.²⁶ Unfortunately, sometimes that risk-taking behavior can be dangerous for themselves and for the people around them.²⁷ And even more, unfortunately by nature of their youth, they may struggle to appreciate those long-term consequences of their actions.²⁸

This is a result of their brain development and that the parts of their brain responsible for regulation are underdeveloped at those early ages.²⁹ Limited life experiences also make it difficult for them to recognize long term consequences of their actions.³⁰ And, even when they can recognize those consequences, they may struggle to desist from misconduct.³¹ I think what's exciting about this age group, and what I always like to end on when I talk about how kids are different from adults is their incredible capacity for growth, change and their incredible responsiveness to rehabilitation.³² All of these facts about kids have driven really important reforms and the last ten to fifteen years, certainly in state houses across the country and in Georgia, as well. It has led to reforms in courts at every level and significantly at the highest level here in the United States.³³ That's because these facts about kids go to the heart of two really fundamental principles of the criminal and juvenile justice systems.

The first is that the criminal legal system and punishments in the criminal legal system have to be proportional and that proportionality is an essential feature to fairness in these systems.³⁴ And so, if punishments for kids are going to be proportional, they must take into consideration the ways in which all of those factors I just named that are inherent to youth, the ways that reduce a child's culpability. And we have to make sure that punishments don't just fit the crime, but that these responses fit the child. The second

²⁵ See generally Laurence Steinberg, *Risk Taking in Adolescence: What Changes, and Why?*, 1021 ADOLESCENT BRAIN DEV.: VULNERABILITIES AND OPPORTUNITIES 51 (2004) (analyzing why adolescents take more risks than adults).

²⁶ See generally JANE KROGER, *IDENTITY DEVELOPMENT: ADOLESCENCE THROUGH ADULTHOOD* (2d ed. 2007) (discussing the complex identity development process throughout adolescence).

²⁷ See generally David Le Breton, *The Anthropology of Adolescent Risk-Taking Behaviors*, 10 BODY & SOC'Y 1 (2004) (analyzing how adolescent risk-taking behaviors can cause social dangers including self-harm and isolation from society).

²⁸ See generally Mary R. Rolison and Avraham Scherman, *Factors Influencing Adolescents' Decisions to Engage in Risk-Taking Behavior*, 37 ADOLESCENCE 585 (2002) (acknowledging that adolescents do not appraise risks the same way that adults do).

²⁹ See generally Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REV. 78 (2008) (reviewing the impact of adolescent brain development on adolescent risk-taking behaviors).

³⁰ See Kristin Henning, *What's Wrong with Victims' Rights in Juvenile Court?: Retributive Versus Rehabilitative Systems of Justice*, 97 CA. L. REV. 1107, 1137 (2009) ("Adolescents also have limited life experience and less concern for the future, leading them to 'pay less attention to [the] long-term consequences' of their behavior . . .").

³¹ See *id.* (explaining neurological differences in the adolescent brain that prevent juveniles from engaging in the "rational identification and consideration of alternative courses of conduct.")

³² See *id.* at 1121 (discussing the differences between adults and adolescents and how those differences relate to the likelihood that the defendant will be rehabilitated).

³³ Elizabeth Cauffman et al., *How Developmental Science Influences Juvenile Justice Reform*, 8 U.C. IRVINE L. REV. 21, 29 (2018) (exploring the effects that developmental science has had upon juvenile justice reform).

³⁴ See generally Andrew von Hirsch, *Proportionality in the Philosophy of Punishment*, 16 CRIME AND JUST. 55, 55–56 (1992) (acknowledging the notion that proportionality is a fundamental principle of a just system and examining reasoning behind that principle).

fundamental principle that this is all relevant to is that one of the central justifications for our system of punishment in this country is that it's not just about punishment, but also about rehabilitation.³⁵ And again kids are especially responsive to rehabilitative efforts, and so we have to make sure that they get those opportunities. This has again driven in some really important reforms in the last fifteen years here in Georgia, but there is a lot of work yet to be done and we'll talk more about some of that.³⁶ But just to name a couple of things before we get into it is one: the way in which we treat way too many children as adults, and I really appreciate Aakeem [Woodard] sharing his personal stories here with us today about how harmful those policies can be for children. But it's really important to remember that they're harmful for communities as well. Study after study shows that kids who are adjudicated in the juvenile justice system are less likely to reoffend compared with those who are dealt with in the adult system.³⁷ So it's really looking at if we want to promote public safety, we've got to make sure that we're treating kids like the kids that they are. And then, finally, as long as we are continuing to subject kids to adult sentences and adult court, we've got to make sure that they are getting meaningful opportunities for parole. This means ending life without parole in Georgia for kids and ensuring that they get parole eligibility at an age when they can take full advantage of it.

Randee Waldman - The vast majority of us and what we know about childhood, what we know about adolescence, is that it is normative teenage adolescent behavior to do things that society is not a fan of.³⁸ A lot of us do that as teenagers because our brains aren't fully developed yet.³⁹ You get away with it. We have our little thrill, and then we move on with our lives, because nobody has decided that they needed to intervene in our lives.⁴⁰ Society has made a choice to decide which children's lives we should intervene with, and they all look more like Aakeem [Woodard] than they do the rest of us on this panel.⁴¹ We do so not based upon the action that the young people take, but by where they live, who they are, and who their family is much more often than by the act itself.⁴² Most of us grow up and desist – there's a theory of desistance where we stop committing crimes, and we move on to lawful productive lives without any help from court.⁴³ And so I say that to say there are two ends of the system that we struggle with as a society.

³⁵ See Chad Flanders, Article, *The Supreme Court and the Rehabilitative Ideal*, 49 GA. L. REV. 383 (2015).

³⁶ See *Comprehensive Juvenile Justice Policy Reform | Georgia*, NAT'L. CONF. OF STATE LEGISLATURES (Mar. 12, 2019), <https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-justice-reinvestment-georgia.aspx>.

³⁷ See David L. Myers, *Recidivism of Violent Youths in Juvenile and Adult Court: A Consideration of Selection Bias*, 1 YOUTH VIOLENCE AND JUV. JUST. (2003).

³⁸ See *Look before you leap: Teens still learning to plan ahead*, AM. ASS'N FOR THE ADVANCEMENT OF SCI. (Jun. 17, 2011), <https://www.eurekalert.org/news-releases/829559>.

³⁹ *Id.*; See also *Juvenile Arrest Rate Trends*, OFF. OF JUV. JUST. AND DELINQ. PREVENTION (Jul. 8, 2022), https://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05200&selOffenses=1.

⁴⁰ Was this footnote a mistake? The only thing I could think to cite to was data revealing how many children are believed to commit crimes each year, but who are not ultimately arrested. I couldn't find any data on this.

⁴¹ See M. Sickmund et al., *Easy Access to Juvenile Court Statistics: 1985-2019*, OFF. OF JUV. JUST. AND DELINQ. PREVENTION, <https://www.ojjdp.gov/ojstatbb/ezajcs/asp/demo.asp> (revealing that since 2010, approximately 34.5% of all “cases handled by juvenile courts” each year involved black children).

⁴² See Delbert S. Elliott, *Environmental Factors Contribute to Juvenile Crime and Violence*, in *JUVENILE CRIME: OPPOSING VIEWPOINTS* 83, 84-86 (A.E. Sadler ed. 1997) (identifying poverty, “early learning experiences in the family,” and “the social or cultural organization” of the neighborhood as among those factors most likely to impact a child's criminal tendencies).

⁴³ See Shawn D. Bushway & Christopher Uggen, *BROOKINGS-AEI WORKING GRP. ON CRIM. JUST. REFORM, Fostering Desistance*, in *A BETTER PATH FORWARD FOR CRIMINAL JUSTICE* 47-48 (Rashawn Ray & Brent Orrell eds. 2021) (identifying “a new way of thinking about desistance as a process associated with a decline in rates of offending as people age rather than a distinct phenomenon by which people exit a life of offending”).

The first one is where Kaitlyn [Barnes] left off with which is trying young people as adults, where Aakeem [Woodard] ended up in our system, he did not need years to grow up. He proved that each and every day that he was inside of our system by becoming a leader, by becoming a model, that there was no reason why Aakeem [Woodard] needed to spend twenty-five years, why he needed to get a life sentence. There is no reason why we could not have treated him like the child that he was, provided him with support and services within our justice system in our juvenile justice system and allowed him to lead the productive life that he needed to lead when he came out as still a young man, instead of a still youngish but kind of closer to middle aged man. The second and, though, is the one that gets less talked about. We talk about trials of young people as adults and long, lengthy sentences quite regularly, but we don't talk about the early end and the harm that's caused by bringing young people into the system for minor infractions. There's a saying that we talked about a lot in the youth Defense world, which is that "probation is not a win." We oftentimes think about probation as a win because they're not getting locked up, and they're not in detention, but it is a deepening and a sort of noose around a neck, as you bring a person into the system where it is hard to escape.⁴⁴

When I was a young person in school if somebody was watching me every day, they would have realized that I went to school rarely. That would have violated my probation, and that would have kept me coming back deeper and deeper.⁴⁵ They would have realized that I had an argument with my mom, and my mom would have reported that argument to probation, and that would have kept me deeper and deeper into a system for committing no new crimes. I have young people with extended probation violations back into our system over and over and over again for a minor misdemeanor offense that they committed at that point two and a half years ago and I can't get them free because they're doing small things that are all technical violations. Probation is not a win when you have young people who are not causing damage to society who are not harming society. Young people who are doing okay and would keep on doing okay when we're embroiling them in a system that is hard to escape from. So, Emily [Boness] and I had a conversation about do I think diversion is our middle ground and a win? Maybe if we're not net widening but we're net narrowing, and by that, I mean, I don't need diversion for a kid who brought alcohol to school once. You know who can handle that? School. We don't need to bring them into our court system. The research shows that every time we touch a child, we make it more likely they will be a recidivist.⁴⁶ We need to stop touching children and letting them grow up like all of us had the opportunity to do.

Could you give us a little bit more information about what are their struggles, as they recognize and understand and maybe begin to comprehend as much as they can that they are going to be treated as an adult?

⁴⁴ See Allison Frankel, *Revoked: How Probation and Parole Feed Mass Incarceration in the United States*, HUM. RTS. WATCH (July 31, 2020), <https://www.hrw.org/report/2020/07/31/revoked/how-probation-and-parole-feed-mass-incarceration-united-states> (reporting that in 2018, 28% "of U.S. state and federal prison admissions stemmed from violations of parole and some types of probation").

⁴⁵ See *Frequently Asked Questions About Juvenile Probation*, THE ANNIE CASEY FOUND. (Nov. 2, 2021) <https://www.aecf.org/blog/frequently-asked-questions-about-juvenile-probation> (considering how school attendance is a common probation condition for juvenile delinquents).

⁴⁶ See TYRONE OLIVER ET AL., 2020 RECIDIVISM REPORT, GA. DEPT OF JUV. JUST. <https://djj.georgia.gov/document/publication/2020-recidivism-report/download> (analyzing recidivism rates in Georgia since 2013).

Aakeem Woodard - One of the good things that I do now because I work at the Fulton County DA's Office – it was a big jump from DJJ to the DA's Office. But Fani Willis, the DA says “You have been staying so long at the end of a spicket, you only catch the kids that are running through the pipeline. I want you to get ahead of the pipeline. I want you to turn the knob, something that the DA's office has not done. I want you to get into the schools. I want you to get into the neighborhoods. I want you to take the DA's office and say, ‘We are trying to do more than just lock you up.’” Because once they become locked up, not only do I have to ask them to become an adult, I have to ask them to dehumanize themselves. In order to survive in that environment, you have to dehumanizing yourself, and the problem we see is people coming back to prison because they left their humanity inside the facility. We only have the power to parole these physical bodies, that's all we have. None of us have the power to parole our mind, other than the person itself. But to survive, what I mean by that is you have to tell the child to dehumanize themselves, so if they see somebody being hurt or stabbed, don't show no emotions behind it. It doesn't concern you. Keep moving. That's not how we grow up, that's not being a human being in society.

I remember when I first shed a tear after ten years, and it was foreign to me because I'm not supposed to cry. I'm not supposed to have a feeling. So, we have to tell the child that their not only becoming adult, but to become something abnormal. To dehumanize yourself and then pray to God that you can come home whole. So, I teach a lot of the youth how to make the greatest escape ever. How do you jump the fence before your body does? And I used to get asked how could I be so happy where I am at, and I said “I left prison years ago. I'm just waiting on my body to catch up with me.” I left years ago, and we can teach them a lot of things. We teach anger management, substance abuse, and we have all these programs. But we don't teach them how to gain their humanity back in that environment, so why even send them there? For example, a kid is fifteen years old and is tried for SB440 (armed robbery). The judge gives him ten, do five. Do the math. In five years, he'll be twenty years old. The juvenile court can hold you until you're twenty-one years old, so why sentence this kid as an adult so that he has to leave DJJ. You could have sentenced him as a juvenile and still gotten the same amount of time. Why sentence him as an adult because once he gets the adult time, when he does come home at twenty, he can do absolutely nothing.

I was working for the FBI in anti-terrorism during a time when Al Qaeda was at its height, and I couldn't even get an apartment. I couldn't even get a bank account. I was saving lives. We spoiled three terrorist attacks, but I couldn't even get an apartment. Why? Because I had a felony. And that's what they called me a unicorn. So if I'm a unicorn, then you're telling me that you know that the rest of the kids will not be successful coming through that environment. So there has to be a change in how we see this, how we sentence, how we sentence a child, how we wrap services around the child. And not only the child, but the family also. Right now, we have all the South Fulton County schools, and the DA's office is going to implement a mental health program in our schools. You'd be surprised when I pitched it to the kids how many of them said, “I need help” and how many of them were A student, but they still needed mental health help. We just can't keep doing this, and the cycle keep going over and over and over again until we say “Okay, if they are children, then we need to treat them as that, sentence them as that and wraparound services, so they can be successful.”

Youth have a very different perspective, so what do their youthful perspective offer for the dispositions or the sentencing? How do they reflect that might be different than adults? The kids in your in your court think very differently about punishment and sentencing and offending than adults do.

Emily Boness – I think about it from two perspectives, one from the volunteers who receive this training and then they serve during the hearings on Tuesday nights downtown. They're very insightful, very perceptive, and they read the police reports and say “This doesn't make sense. I can't follow along. Why didn't they write this information in so I can figure out who was involved?” So, they see gaps and things that don't make sense. We would debrief after all of our hearings, and I would hear, “It didn't make sense that we had this case.” “But where were the other people involved?” “Where did they go?” Or sometimes a case came from a school, and they would say “This happens all the time at my school, so why is this one here and all the other ones I saw at the school not here?” So those questions, to the extent that those young people are already asking them and already understanding the imperfect system, I hope they take that knowledge on with them. We certainly have had opportunities for those youth to engage with the juvenile court judge to talk about, write up, and put together things that we can present to the folks that are the adults. And, and then from the other side to the extent again that the young people are different, I hope that having young people work with young people makes it less adult like.

We are in juvenile court, we do have hearings in court, but no adults speak during the process. Young people interview and talk to their client. They kind of understand what happened, and they try to understand the client as a person. So, if it is a case about shoplifting, they don't just talk about the crime. They try to get to know the client, maybe talking about how they take care of their brother, play basketball or want to go to college. And that is what the advocate shares in open court so that the judge can learn more the person. It's fast, and the hearing is over quickly, but to the extent that its only young people involved, hopefully we are taking what is an adult process and putting it in the hands of all their peers.

We're thinking about this notion of children as miniature adults, which is just scientifically, psychologically not true, and maybe there's a little bit more reflection on that in the adultification of children.

Kaitlyn Barnes - I think I see this come up in my work in one particular area, and that's the rhetoric that I hear lawmakers using when we talk and when we have these conversations about treating more kids as kids or not treating kids as adults, depending on what the issue is. And that's this idea that I'm sure you've all heard the phrase that “if you do an adult crime, you're going to get the adult time” and so just this idea that, by virtue of having committed what might be a very serious, very serious offense that you are no longer a child. But that means that you're no longer a child and that you are an adult and so therefore it's appropriate that you'd be subject to some of these harsher sentences. And to go back to the science that we have, that assertion is simply not supported.⁴⁷ It's a talking point that is just not supported by evidence.⁴⁸ And so again, all the ways that we've talked about

⁴⁷ See Page Dukes, *Post-Crossover Update*, S. CTR. FOR HUM. RTS. (Mar. 10, 2021) <https://www.schr.org/post-crossover-update/> (supporting HB 272 which hopes to raise the age of juvenile court jurisdiction and to keep juveniles in juvenile court).

⁴⁸ See Caroline Ford, *'Children Are Different:' Sentencing Juveniles as Adults*, PULITZER CTR. (Aug. 20, 2019)

kids being different are true, even for those folks who've done things that might scare us. I also want to just reiterate that you can't ignore the role that race plays and these decisions and the ways that Black children and children of color are adultified at much higher rates than white kids, especially when you look at our juvenile justice system.⁴⁹ Studies of Georgia's system have shown racial disparities at every single decision point of the juvenile justice system, so we just we can't ignore that sort of piece of this.⁵⁰

Randee Waldman - My panelists said it all, but my quick note is that when we do this, it is important to remember that we then take a 15-year-old and ask them to make their adult decisions by themselves. When they're in juvenile court, their parents sit at a table with them, and when they're in adult court, they don't.⁵¹ There's decisions we're asking fifteen-year-olds to make decisions, life and death decisions, about whether they want to go to trial, and about whether they want to take plea bargaining. Life-long consequences based decisions that we are throwing on the shoulders of 15-year-olds.⁵² In Georgia, we put these decisions on thirteen-year-olds.⁵³ We try 13-year-olds as an adult here in this day, and we are asking them to be adults. We can't snap our fingers and make somebody an adult. Try being an adult when you were thirteen. I'm still struggling, and I turned 50 last week. I struggle to be an adult sometimes.

Aakeem Woodard - When I was young, I had David Wolff as my attorney at that time. He told me to write a letter to your mom while I sat in the courtroom, and my feet couldn't even touch the ground in the seat I was sitting in. And he was talking all this talk about this and that in lawyer terminology, and he told me to write the letter to make it look like I was helping him out. So to what Randee was saying, I didn't have any clue what was going on.

I think some of you have mentioned this a little bit, but I wanted to explore to what extent have the backgrounds of individual youth impacted your work or how you might approach a specific child's case? By background, I'm referring to race which we've touched on, but there are also other characteristics, including gender socioeconomic status, immigration status, sexual orientation, gender identity, education or geography, as we begin to think more about children who are growing up in rural communities versus suburban communities or urban communities. So, I'm curious to hear your thoughts on the role of a child's particular background and characteristics.

<https://pulitzercenter.org/blog/children-are-different-sentencing-juveniles-adults> (discussing the application of the JJRA and the tough on crime era).

⁴⁹ See Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. OF PERSONALITY AND SOC. PSYCH. 526 (2014), <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf> (finding that “Black children are afforded the privilege of innocence to a lesser extent than children of other races” as well as “seen as more culpable for their actions (i.e., less innocent) within a criminal justice context than are their peers” and “are actually misperceived as older relative to peers”).

⁵⁰ See generally SAMUEL GONZALES ET AL., DISPROPORTIONATE MINORITY CONTACT IN GEORGIA'S JUVENILE SYSTEM, GA. CRIM. JUST. COORDINATING COUNCIL (Mar. 18, 2018), <https://cjcc.georgia.gov/sites/cjcc.georgia.gov/files/GA%20DMC%20Assessment%20FINAL%20203.19.18.pdf>.

⁵¹ See *Norris v. State*, 651 S.E.2d 40, 42 (Ga. 2007) (finding that a parent's presence during juvenile proceedings is permitted but not required).

⁵² O.C.G.A. § 15-11-561 (West 2017) (stating that a petition to transfer a juvenile to superior court can be initiated if, among other things, the juvenile was “at least 15 years of age at the time of the commission of the offense . . .”).

⁵³ *Id.* (holding that a 13 or 14 year old can be transferred to superior court if they “either committed an act for which the punishment is loss of life or confinement for life in a penal institution or committed aggravated battery resulting in serious bodily injury to an alleged victim who is not a public safety officer . . .”).

Randee Waldman - I think each of those things plays a different role in perhaps each courtroom that we're in. The vast majority of people, I will walk into Dekalb County or Fulton County juvenile courts, which are the primary places that I practice, and I could go weeks, months without finding a white child inside that courtroom. When it is, it's because it's traffic court day and our courts in Georgia, if you get a speeding ticket when you're sixteen, you automatically have to go to juvenile court.⁵⁴ You can't just pay your fine, and I know when traffic court day is because it looks very different in our courthouse. Virtually all people of color every now and then every couple of months, you find a white child. Socioeconomic status goes somewhat hand in hand. Virtually every child in the Dekalb County or Fulton County courthouses are indigent. You'll find again a handful, 2, 3, 4, those are talked about a lot. I'll talk about a couple more that aren't.

You see very few girls because the girls are treated differently. There's a little bit more leniency on the front end and less leniency on the back end.⁵⁵ The first time a girl comes in, we actually think "oh it's a girl," and we sort of move them away.⁵⁶ And then they keep coming back, our paternalistic society responses take over, and we feel we need to support and protect and do more.⁵⁷ We think it's normal for the boys to be coming in with this many offenses, but it's not normal for the girls, and we treat them a little bit more harshly at the back end. I don't think there's much disparity on LGBTQ youth.⁵⁸ They do show up in our court system, but I don't see disparate treatment. And that just might be my courts in my system, but I have not seen that much. I will say, probably the one that gets least talked about in our system, but has the most impact, is education.⁵⁹ Education, education, education. In juvenile

⁵⁴ GA. CODE ANN. § 15-11-630(a)(d) (2014) ("The summons, notice to appear, or other designation of a citation accusing a child of committing a juvenile traffic offense constitutes the commencement of the proceedings in the court of the county in which the alleged violation occurred . . ."). See also *Juvenile Traffic Laws in Georgia*, LAWSON & BERRY (last visited Nov. 11, 2022), <https://www.georgiacriminallawyer.com/juvenile-traffic-laws-in-georgia> (Georgia Juvenile Courts have jurisdiction over all cases involving people under the age of 17. This includes traffic cases. . . . In larger jurisdictions, such as Fulton County, the juvenile court may hear only traffic cases for the entire day.').

⁵⁵ Spivak et al., *Gender and Status Offending: Judicial Paternalism in Juvenile Justice Processing*, 9(3) FEMINIST CRIMINOLOGY, 224, 225 (2015) ("Gender differences are especially salient in the case of juvenile status offenses."); see also Teresa Wiltz, *States Grapple with Girls in the Juvenile Justice System*, PEW (Nov. 25, 2015), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/11/25/states-grapple-with-girls-in-the-juvenile-justice-system> ("Federal law requires states to assess how their juvenile justice programs serve girls and come up with concrete plans to improve them. . . . [S]tates such as Georgia . . . have laws aimed at reducing race or gender disparities in their juvenile justice systems.').

⁵⁶ Samantha Ehrmann et al., *Girls in the Juvenile Justice System*, U.S. DEPART. OF JUST. (2019), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/251486.pdf> ("In 2015, law enforcement agencies in the United States made an estimated 921,600 arrests of persons younger than age 18. Girls accounted for 269,900 of those arrests, or less than one third . . .").

⁵⁷ Spivak et al., *supra* note 55 at 228 ("The main concept behind judicial paternalism is protection; specifically, protecting women from the criminal justice system, protecting women from themselves, and/or protecting women from losing their mother due to incarceration.") (citations omitted).

⁵⁸ *But see LGBTQ Youths in the Juvenile Justice System*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/lgbtq-youths-in-the-juvenile-justice-system.pdf> (last visited Dec. 29, 2022).

⁵⁹ See, e.g., *Youth Involved with the Justice System*, YOUTH.GOV, <https://youth.gov/youth-topics/juvenile-justice/youth-involved-juvenile-justice-system>; see generally Kathryn Hanson & Deborah Stipek, *Schools v. Prisons: Education's the Way to Cut Prison Population*, SAN JOSE MERCURY NEWS (May 16, 2014), <https://ed.stanford.edu/in-the-media/schools-v-prisons-educations-way-cut-prison-population-op-ed-deborah-stipek>.

court, the proxy for a good kid versus a bad kid is what happens inside the school system.⁶⁰ If you have a young person who has committed an offense, and they are straight A student, they are more likely to go home than if you have a young person who has committed the same or more severe offense and does not have an A average.⁶¹ This means that our students with disabilities are most impacted by our system.⁶² T

The data shows that up to 70% of our young people in our detention centers have a disability of some sort, either a special ED classification or a mental health disability.⁶³ They're not doing well in school in large part because they're not getting the support and services that they need help them be successful.⁶⁴ I'm not talking about students with severe behavior disabilities in school. Students with learning disabilities are almost three times more likely to be arrested or brought into our system, therefore students with learning disabilities right are likely to be brought deeper and deeper into our system.⁶⁵ They are more likely to be arrested because they're less likely able to explain themselves well. They are less likely to be able to talk themselves out of it the way you and I could write, they're more likely to confess because they're less likely to understand their rights.⁶⁶ But they're also less likely to be doing well in school because of their learning disability, not because of anything behaviorally which has brought them deeper into our system. And so our special education students, I think, are the most disparity treated within our system. Even if they have an IEP, they may not be getting everything they need. If you've ever worked in our education system, you'd know that. The bureaucracy around our education system is very much a different broken system that feeds into our broken justice system. When it comes to immigration, my court and my district attorneys have been very accommodating of trying to work things out so that there is not an immigration consequence. For most, but not all of my young people who have immigration consequences, if it's not a major offense, they will work in a way to keep it off a record so that the immigration consequences are lessened.

⁶⁰ See, e.g., J. Guillermo Villalobos & Theresa L. Bohannon, *The Intersection of Juvenile Courts and Exclusionary School Discipline*, NAT'L COUNCIL OF JUV. AND FAM. CT. JUDGES, https://www.ncjfcj.org/wp-content/uploads/2017/10/NCJFCJ_SJP_Courts_SchoolDiscipline_Final.pdf (last visited Dec 29, 2022).

⁶¹ See, e.g., *id.*; see generally supra note 59; see also Deborah Stipek & Kathryn Hanson, *Schools v. Prisons: Education's the Way to Cut Prison Population*, SAN HOSE MERCURY NEWS (May 16, 2014), <https://ed.stanford.edu/in-the-media/schools-v-prisons-educations-way-cut-prison-population-op-ed-deborah-stipek>.

⁶² Leigh Ann Davis, *People with Intellectual Disabilities in the Criminal Justice Systems: Victims & Suspects*, THE ARC, <https://thearc.org/wp-content/uploads/forchapters/Criminal%20Justice%20System.pdf> (last visited Dec. 29, 2022) (explaining the conditions that lead to the connection between those with learning disabilities and the criminal justice system).

⁶³ Some estimates can show to be even higher. See *Supporting Youth with Disabilities in Juvenile Corrections*, U.S. DEP'T OF EDUC., <https://sites.ed.gov/osers/2017/05/supporting-youth-with-disabilities-in-juvenile-corrections/#:~:text=In%20the%20United%20States%2C%20roughly,as%20high%20as%2085%20percent>.

⁶⁴ John McKenna, *Students with Disabilities Are Not Getting Help to Address Lost Opportunities*, THE CONVERSATION (Mar. 3 2022, 8:26 AM), <https://theconversation.com/students-with-disabilities-are-not-getting-help-to-address-lost-opportunities-177431> (explaining how students with disabilities are more severely disadvantaged by the pandemic but continuing to explain how even before the pandemic the same children's needs were not met).

⁶⁵ Davis, *supra* note 62.

⁶⁶ See Ronnie Cohen, *Young People with Disabilities More Likely to be Arrested*, REUTERS (Nov. 10, 2017), <https://www.reuters.com/article/us-health-disabilities-law-enforcement/young-people-with-disabilities-more-likely-to-be-arrested-idUSKBN1DA2SZ> (“[P]eople with mental or physical disabilities [are] 13 percent more likely to be arrested . . . than people free of disabilit[ies].); see also S.E. Smith, *Cops Are More Likely to Arrest Disabled Persons*, VICE (Dec. 5, 2017), <https://www.vice.com/en/article/d3xvkv/disabled-people-arrest-rates> (“Disabled people have a cumulative probability of arrest by age 28 of nearly 43 percent, versus 30 percent among nondisabled people.”).

Kaitlyn Barnes - I want to highlight one point that Randee [Waldman] mentioned a few times, and that is geography. This is one that is really important when you are taking this statewide approach, and I appreciate that Randee [Waldman] made a point to say that her experience is limited to her courts. Geography matters because it matters who's the judge in that courtroom, what are their priorities, what are their values, what are their biases, who's the prosecutor in that jurisdiction, what decisions are they making, what access to counsel is there, and what does that look like in any given jurisdiction. Then, finally, where it's appropriate to refer a child to services or support in the Community, does that Community have the services or support available that the child needs? That's going to look very different if you're looking at a rural county versus a metro county, and that's something that comes up in every conversation at the capital. This might be a program that would work in a metro area, but in your more rural counties, they're going to struggle to realize the goals of some really ambitious policy proposals.

Aakeem Woodard – I had the opportunity when I worked with DJJ to deal with all the youth who were tried as adults in the state of Georgia, so the demographic was different to me. I could see youth from the southern part of the state to Atlanta. And in the two years when I wrote their programming and served with DJJ, I have one person that was white that was sentenced for armed robbery. That doesn't mean they don't commit armed robberies; it just means the judges sent it down to juvenile court and didn't sentence them as an adult. And I know we speak about race around his issue but remember that Fulton County and Dekalb County have large black populations. So when we start talking about disproportion in time and sentences, we don't need to just look at if the white person is doing it or the black person is doing it. It is what the culture is doing because if we only focus on whites are over here and blacks are over here, we are going to miss the point again. In Dekalb County, most of the officials are black, but all their kids go straight to prison. The problem with the county is the culture, and if we don't change the culture, we will just replace one person with another person who thinks we are doing a good job. We're not doing a good job. I just want us to know when we speak about race and disparity in juvenile treatment, we have some rural counties that are all white, but even black kids don't get sentenced to prison in those counties because it's not the culture. It is not just white officials doing it to black kids, it is not just a color aspect, it is the culture. It goes all the way back to daycare, to be honest. My son goes to a daycare, but if it's an all black daycare, then the person might say "I have to be harsh on these kids, they are a little tougher." That's culture. And they are not tougher, they are still children.

Those are two very important points that we can think about. The various characteristics of the Youth who are involved and how that influences their experience in treatment right, but then also there's a question of decision makers and culture. And I think you're right, it is a cultural question about how we as a society and how our systems treat children and youth and that culture is one of the hardest things to change.

Thinking about reform, I think we've identified some problems in the system, some large problems in the system. You've identified some potential goals of reform, rehabilitation, or prevention. We need to prevent kids from being entered into these systems, we need to prevent adults from entering kids into any of these systems, and we need to rehabilitate and reform. In other words, in contrast to being harshly punitive reforms, what do we do to reform? What types of reform efforts have each of you all seen or worked with? Have they been effective and what might they promise for the future? Where should we go in the future?

Randee Waldman - There are a lot of solutions that have proven successful across the country, and here's the thing - kids are going to commit crimes, it's true. They've been committing crimes since the beginning of time, and they're going to continue to commit crimes. The vast majority of them don't need to be in our justice system, so easy reforms are stop arresting kids. That's an easy reform that we can do, and where are we doing it from? Let's start with our schools. Over fifty percent of cases vanished during the pandemic.⁶⁷ Our dockets were cut in half because we didn't have kids coming into our system from schools.⁶⁸ And I'm not talking about the kids who actually commit serious violent offenses in schools. I'm talking about the everyday fights, food fights, and when somebody got mad and cursed. I'm talking about the minor things that we bring kids in for - misdemeanors majority of them every single day.

Reforms that have worked in other jurisdictions are school justice partnerships between our school systems and our courts to keep those offenses in our school system with community based support and services around the young people.⁶⁹ Our dockets were cut in half, it was more than fifty percent of our case load that vanished when we stopped going to in person school. And then on the flip side of that, our communities did not get more unsafe. Those same kids who were put on probation for all those stupid school offenses did not go out into the community and commit crimes during the pandemic because they're not committing crimes in the community. So keep those as a school based issue as number one. On the back end of things, stop trying kids as adults. Raise the age. Eighteen is the age of jurisdiction everywhere, but three places: Georgia, Wisconsin and Texas. Everywhere else, it's eighteen, and we are seventeen. Let's get that done. It's been in the capital for a decade or so. As before, SB440⁷⁰, stop trying thirteen-year-olds as adult. Let's work with young people in our justice system, the one that's designed to provide rehabilitative services, support, and change lives. We don't rehabilitate in prison, it's just not what they do. There's not all of the supports that we wrap around children in our juvenile system – they just don't exist in our adult system.

Aakeem Woodard – The Juvenile system can hold a person until they are twenty-one years old. We have kids in DJJ right now that are in college. He can graduate from high school in DJJ. But the moment he turned seventeen and go to a prison, all of that is out the window. You can go to college in prison if your family can afford it, and I've only seen one guy whose family could afford to send him to college while he was in prison. Just one. So if he can't graduate high school, he has to fight to get a GED. Once they cross the bridge, it is so hard to bring them back in time. Time will never change anybody, and prison does not rehabilitate. The person may rehabilitate in prison, but the prison didn't rehabilitate him.

Kaitlyn Barnes – I'll add a couple points to the don't send kids to prison bit because, as much as I would like to spend my time talking about positive reforms that we want to support that would include these systems, I'm not able to do that in my advocacy at the

⁶⁷ Charles Puzzanchera, *Trends in Youth Arrests for Violent Crimes*, JUV. JUST. STATISTICS (Aug. 2022), <https://ojjdp.ojp.gov/publications/trends-in-youth-arrests.pdf> (noting in 2020 the number of violent crime arrests involving youth decreased approximately 50% from the 2010 value.).

⁶⁸ See e.g., Ben Chapman, *Schools Confront a Wave of Student Misbehavior, Driven by Months of Remote Learning*, WALL ST. J. (Dec. 9, 2021), <https://www.wsj.com/articles/schools-student-misbehavior-remote-learning-covid-11639061247>.

⁶⁹ See generally The Editorial Board, Opinion, *The School-to-Prison Pipeline*, N.Y. TIMES (May. 29, 2013), <https://www.nytimes.com/2013/05/30/opinion/new-york-citys-school-to-prison-pipeline.html> (noting these programs have been successful in jurisdictions across the country.).

⁷⁰ S.B. 440, 142nd Gen. Assemb., Reg. Sess. (Ga. 1994).

Capitol because we are too busy fighting really, really harmful regressive policy proposals. Georgia, as I'm sure many of you are aware, saw this laudable moment of reform over the course of the Deal administration and too often I hear lawmakers refer to that as this finite moment that happened and is over and we're done with reform, and now we are we're seeing all kinds of rollbacks to the things that we saw accomplished. We have started a return to tough on crime policies straight out of 1994. I think that where we're seeing it most is in the in the context of gangs. I've been hearing that upwards of 70% of crime in the state of Georgia is related to gang violence.⁷¹ And to sort of come back to the point that Aakeem [Woodard] made about drugs, sending a person into the prison system is not a way to get them out of a gang. That's a way to get the more entrenched in gangs, and until we take an approach to a public health approach to violence and gang activity in particular and really study how we can intervene and prevent, certainly, for young people before they end up in the system. Also, on the back end, we're going to keep spending millions and millions of dollars policing and prosecuting these folks without the results that we want to see so we will just have to be a lot more creative with our responses to these issues that are real in many communities.

⁷¹ Joe Henke, *Georgia Leaders Work to Address Violent Gang Activity After Atlanta Officer is Shot*, 11ALIVE (Feb. 9, 2022), <https://www.11alive.com/article/news/crime/georgia-leaders-discuss-gang-activity/85-b1ca0048-be2c-48bb-a880-2739648393c4>.