



FAIR AND JUST PROSECUTION

Promoting justice through leadership and innovation

ISSUES AT A GLANCE

Lessons Learned from Germany: Promoting Developmentally Appropriate and Rehabilitative Youth and Young Adult Justice

*Fair and Just Prosecution (FJP) brings together elected district attorneys¹ as part of a network of like-minded leaders committed to change and innovation. FJP hopes to enable a new generation of prosecutive leaders to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. In furtherance of those efforts, FJP's "Issues at a Glance" briefs provide district attorneys with information and insights about a variety of critical and timely topics. These papers give an overview of the issue, key background information, ideas on where and how this issue arises, and specific recommendations to consider. They are intended to be succinct and to provide district attorneys with enough information to evaluate whether they want to pursue further action within their office. For each topic, FJP has additional supporting materials, including model policies and guidelines, key academic papers, and other research. For further guidance on youth and young adult justice, please also consult FJP's [Juvenile Justice and Young Adult Issues: Promoting Trauma-Informed Practices](#) and [Young Adults in the Justice System](#) issue briefs, as well as other resources on the [Juvenile and Young Adult Issues](#) page of FJP's website. If your office wants to learn more about this topic, we encourage you to contact us.**

SUMMARY

This FJP "Issues at a Glance" brief is the second in a series² focused on lessons learned from Germany's criminal legal system that are particularly instructive for elected prosecutors in the United States. This brief explores how Germany responds to crimes committed by young people in ways that are developmentally appropriate, center on rehabilitation, and resort to

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¹ The terms "district attorney" or "DA" are used generally to refer to any chief local prosecutor, including State's Attorneys, Prosecuting Attorneys, and Attorneys General with local jurisdiction.

² The first brief in this series, [Lessons Learned from Germany: Avoiding Unnecessary Incarceration and Limiting Collateral Consequences](#), addressed how Germany promotes public safety and holds people accountable while keeping its incarceration rate low and limiting collateral consequences.

"[T]he brain is not fully developed at ages 16 and 17, and young people, even those who commit serious crimes, can learn and evolve into upstanding and valuable members of our community."

— DISTRICT OF COLUMBIA ATTORNEY GENERAL KARL RACINE

incarceration only in limited circumstances and when absolutely necessary. It provides examples of how some DAs in the U.S. are implementing youth justice reforms that are consistent with the principles underlying the German model. Finally, it offers specific recommendations for how elected prosecutors can apply these lessons learned within their jurisdictions.

BACKGROUND

In recent years, the American public has become increasingly aware of the damage wrought by “tough-on-crime” policies, and in some jurisdictions, communities have elected criminal justice leaders who are committed to undoing these harms and pursuing alternate data-informed approaches. To inform their efforts, many of these leaders are looking to models, strategies, and lessons that can be learned from abroad.

A key element of the tough-on-crime era in the U.S. was the dramatic escalation of punitive responses toward young people who were suspected of breaking the law. A generation of youth who came into contact with the criminal legal system, particularly Black boys, were falsely labeled as “superpredators” and characterized as lacking empathy and being incapable of rehabilitation.³ This drove the enactment of state and federal laws designed to make it easier to prosecute children as adults, incarcerate them, and subject them to extreme decades-long and even life sentences. Greater reliance on police officers in schools also contributed to the increased criminalization of normal adolescent misbehavior, particularly for youth of color.⁴

Separately, scientists in recent years have come to understand that adolescent brain development continues through a young person’s mid-twenties. This means that young adults⁵ are in many ways more similar to teenagers than to older adults. As such, they have a diminished capacity to control impulsive behavior and a heightened susceptibility to peer pressure.⁶ Moreover, like children, the vast majority of young adults who commit crimes, including very serious crimes, will age out of this behavior as they mature.⁷ Developmentally appropriate interventions can help facilitate this growth, whereas developmentally inappropriate responses can undermine it.⁸ However, with some notable exceptions, criminal legal systems in the U.S. generally fail to take into account the unique developmental needs and potential of young adults.

Today, the superpredator myth is widely acknowledged to have been a racist and destructive

³ Leah, R. (2018), *The “superpredator” myth was discredited, but it continues to ruin young black lives*, Salon, <https://www.salon.com/2018/04/21/the-superpredator-myth-was-discredited-but-it-continues-to-ruin-young-black-lives/>. See also Henning, K. (2021), *The Rage of Innocence: How America Criminalizes Black Youth*, Pantheon.

⁴ *Id.*

⁵ There is no one consistently used definition of “young adults,” also referred to as “emerging adults.” Germany applies its young adult approach to individuals aged 18 to 20, but experts often recognize young people up to age 25 as falling within this developmental stage. See, e.g., The Emerging Adult Justice Project, <https://www.eajustice.org/>. Therefore, while some of the policy and programmatic examples provided in this issue brief have only been implemented for a narrower age range, many would be equally appropriate for young people up to around age 25.

⁶ Fair and Just Prosecution (2019), *Young Adults in the Justice System*, 3-4, https://fairandjustprosecution.org/wp-content/uploads/2019/01/FJP_Brief_YoungAdults.pdf.

⁷ Loeber, R. and Farrington, D.P. (2014), *Age-Crime Curve*, in: Bruinsma, G. and Weisburd, D. (Eds.), *Encyclopedia of Criminology and Criminal Justice*, https://doi.org/10.1007/978-1-4614-5690-2_474.

⁸ See, e.g., Sakala, L., et al. (2020), *A Guide to Community Strategies for Improving Emerging Adults’ Safety and Well-Being*, Urban Institute, https://www.urban.org/sites/default/files/publication/101838/a20guide20to20community20strategies20for20improving20emerging20adults2720safety20an_0.pdf.

falsehood,⁹ disavowed even by the individual who coined the phrase.¹⁰ The science around adolescent brain development is increasingly influencing criminal legal policy, which has led to some progress in the U.S. in laws and policies related to youth. In a series of decisions, the Supreme Court recognized that children are different from adults and are particularly capable of growth and change,¹¹ and advocacy campaigns across the country have successfully rolled back many of the harsh laws that were enacted in the wake of the superpredator rhetoric.¹² In turn, both the number of children who are incarcerated and the number of children in adult correctional facilities have dropped precipitously.¹³ A handful of jurisdictions (as discussed below) have also adopted reforms to better serve young adults who come in contact with the criminal legal system.

Nevertheless, tough-on-crime ideology and remnants of the superpredator myth continue to pervade the way young people are treated across the U.S. in both the juvenile and adult criminal legal systems.¹⁴ This is evident not only in legislation enacted during that time that remains in place today, but also in still widely held perceptions about appropriate responses to crimes committed by young people. In particular, sentencing norms for youth in the U.S. remain far out of line with international practices.¹⁵ Furthermore, policies and programs tailored to young adults remain rare exceptions; the vast majority of young adults in the criminal legal system are subject to processes and institutions that neither differentiate them from older adults nor use approaches designed to support their growth and rehabilitation.

Policymakers and elected prosecutors who strive to address these challenges and achieve the best outcomes for young people can and should seek to learn from successful youth justice approaches abroad. Germany provides a particularly notable model, as its responses to youth who break the law are centered entirely on rehabilitation, and it has included young adults in its juvenile justice system – rather than in its adult justice system – for more than half a century.

This brief outlines notable aspects of the German approach to youth and young adults, sets forth examples in the U.S. of jurisdictions and leaders embracing policies that align with these approaches, and presents recommendations for future reform.

⁹ Leah, *supra* note 3.

¹⁰ Becker, E. (2001), *As Ex-Theorist on Young 'Superpredators,' Bush Aide Has Regrets*, The New York Times, <https://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html>.

¹¹ *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), *Miller v. Alabama*, 132 S.Ct. 2455 (2012), *Graham v. Florida*, 560 U.S. 48 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005).

¹² Evans, B. (2020), *Winning the Campaign: State Trends in Fighting the Treatment of Children As Adults in the Criminal Justice System (2005-2020)*, Campaign for Youth Justice, <http://www.campaignforyouthjustice.org/images/reportthumbnails/CFYJ%20Annual%20Report.pdf>.

¹³ Sawyer, W. (2019), *Youth Confinement: The Whole Pie 2019*, Prison Policy Initiative, <https://www.prisonpolicy.org/reports/youth2019.html>.

¹⁴ Leah, *supra* note 3.

¹⁵ For example, the United States is the only country to sentence people to life without parole for crimes they committed as children. Renwick, H. (2019), *Rejecting Harsh Sentences for Children: 20 Years of Sentencing Reform*, American Bar Association, <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2018/summer2018-rejecting-harsh-sentences-children-20-yrs-sentence-reform/>. Plus, in most European countries sentences rarely exceed 20 years even for adults. Mauer, M. (2018), *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, UMKC Law Review, 87(1), 127, <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment>.

KEY LESSONS FROM THE GERMAN YOUTH JUSTICE SYSTEM

Germany's approach to youth justice is grounded in two key principles: first, young people are still developing and must be treated in age-appropriate ways that recognize their unique needs and potential for growth; and second, interventions must be rooted in rehabilitation and should rely on the least restrictive avenue possible for achieving that aim. This section expands on these principles and looks at how they are applied in practice.

I. Principle One: Treat kids like kids – and young adults more like kids.

At the core of the German model is the principle that kids should *always* be treated like kids. Accordingly, **children can never be prosecuted for acts committed before age 14,¹⁶ nor tried as adults for acts committed before age 18.¹⁷** If intervention is necessary for children who are younger than 14, the case may be referred to the youth welfare system, which, like in the U.S., offers a spectrum of responses ranging from counseling for the child and/or family to placement in a foster home or residential care setting.¹⁸

Consistent with the recognition that young adults share many of the characteristics of those who are under 18,¹⁹ **German juvenile courts have had jurisdiction over 18-, 19-, and 20-year-olds since 1953.²⁰** The decision to bring young adults under the jurisdiction of juvenile courts was in part driven by compassion for a generation of young people whose fathers had been killed during World War II, and whose childhoods had been shaped by this absence.²¹ For young people in this age range (at the time of the offense), the court has discretion to apply either juvenile or adult sanctions.

Unlike the calculus underlying decisions in the U.S. regarding whether to try children as adults, **German courts do not make the decision about whether to treat a young adult as a juvenile or an adult based on the seriousness of the offense.** Instead, a German court applies juvenile law if either (a) "at the time of committing the crime the young adult in his moral and psychological development was like a juvenile" (for example, if the young person has not

¹⁶ Dünkel, F. (2016), *Youth Justice in Germany*, Oxford Handbook, 3, <https://rsf.uni-greifswald.de/storages/uni-greifswald/fakultaet/rsf/lehrstuehle/ls-duenkel/Veroeffentlichungen/Duenkel - Youth Justice in Germany - Oxford Handbooks Online.pdf>.

¹⁷ *Id.* at 27.

¹⁸ Witte, S., et al. (2016), *Briefing on the German Child Protection System*, Hestia, 2-3, <https://welfarestatefutures.files.wordpress.com/2016/11/hestia-whitepaper-german-child-protection-system-aug2016.pdf>.

¹⁹ Fair and Just Prosecution (2019), *Young Adults in the Justice System*, https://fairandjustprosecution.org/wp-content/uploads/2019/01/FJP_Brief_YoungAdults.pdf.

²⁰ Dünkel, *supra* note 16, at 2.

²¹ Matthews, S., Schiraldi, V., and Chester, L. (2018), *Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System*, Justice Evaluation Journal, 7, https://justicelab.columbia.edu/sites/default/files/content/Youth%20Justice%20in%20Europe%20Experience%20of%20Germany%20the%20Netherlands%20and%20Croatia%20in%20Providing%20Developmentally%20Appropriate%20Responses%20to%20Emerging%20Adults%20in_0.pdf.

"Sending a young person into adult prison is a very serious decision that can have lifelong implications. In 20 years, we've learned a lot about the science of cognitive development and now it's informing our case law and our practice."

completed schooling, does not support him or herself, or lives with parents), or (b) “the motives and the circumstances of the offence are those of a typically juvenile crime” (for example, if it was an impulsive offense committed with peers).²² If either of these factors apply, the court is *required* to handle the case under juvenile law, without regard to the seriousness of the offense.²³ Courts generally tend to interpret these factors very widely and apply juvenile law in any case in which there is doubt regarding a young person’s maturity.²⁴ In other words, the factors used to determine whether to treat a young person as a juvenile or an adult are directly tied to the *reasons* why a separate juvenile system exists.

In practice, German judges and prosecutors have gained increasing comfort with this approach over time, as illustrated by the fact that close to 60% of young adults were treated as juveniles in 2020, up from only 38% in 1964.²⁵ Moreover, while minor offenses that would simply result in a fine, such as traffic violations, are more likely to be handled under adult law, the vast majority (80-90% depending on the offense) of young adults who commit the most serious offenses, such as murder, rape, robbery, felony drug offenses, and crimes resulting in serious bodily injury, are sentenced under juvenile law.²⁶ German courts tend to view it as beneficial to society to keep these young people who have engaged in often unplanned and impetuous conduct in the juvenile system, which is particularly focused on rehabilitation.²⁷

II. Principle Two: The purpose of juvenile and young adult justice is rehabilitation, not punishment.

By law, the primary purpose of any youth justice response in Germany is to prevent the young person from committing additional offenses.²⁸ German youth justice is also grounded in a principle of “minimum intervention,” meaning that **sanctions should only be imposed if absolutely necessary**.²⁹ For petty offenses, this means that diversion without any sanction (“non-intervention”) is typical. More serious offenses, including some felonies, may be addressed through victim-offender reconciliation (mediation), educational measures provided by outside agencies, and/or minor sanctions by the court, such as a warning, community service (usually between 10 and 40 hours), reparation/restitution, an apology to the victim, or a fine.³⁰

²² *Id.* at 24.

²³ Matthews, Schiraldi, and Chester, *supra* note 21, at 8.

²⁴ Dünkel, *supra* note 16, at 24.

²⁵ *Id.*; Statistisches Bundesamt (2021), *Strafverfolgungstatistik 2020*, p. 20.

²⁶ *Id.* at 25.

²⁷ Both the adult and juvenile systems in Germany are more focused on rehabilitation than the U.S. system, though the juvenile system is particularly focused on rehabilitation. Matthews, Schiraldi, and Chester, *supra* note 21.

²⁸ Dünkel, *supra* note 16, at 5.

²⁹ *Id.* at 6.

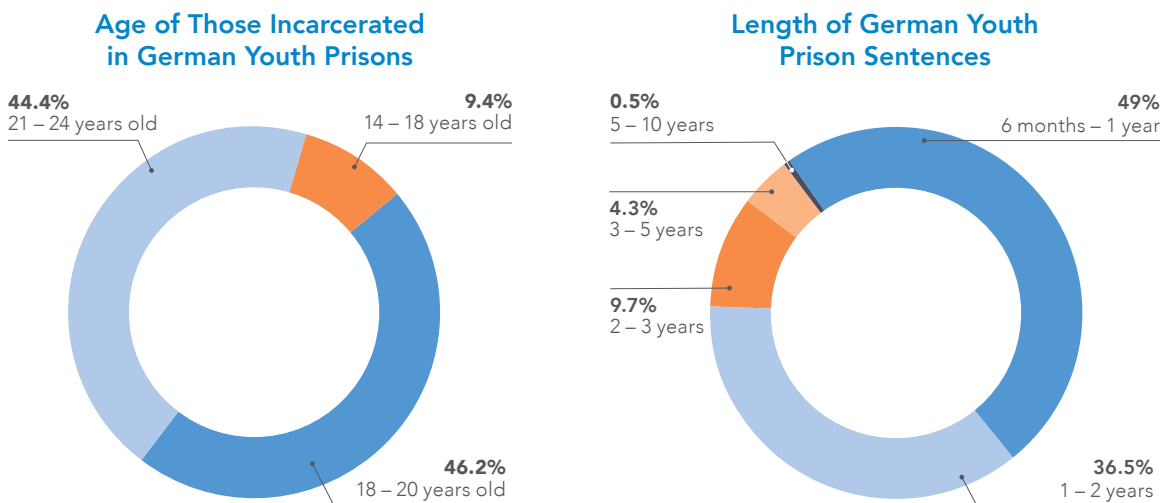
³⁰ *Id.* at 5-7.

“When you bring people into the juvenile justice system, the earlier [and] the deeper you bring them into the system, the more it actually leads to recidivism.... [T]he consequences of what we have done really has led to a system that, unfortunately, is in some ways on par with Somalia and North Korea.”

The requirement of minimum intervention also means that **incarceration is permitted only if there are no other appropriate measures to reach the rehabilitative goals of the youth justice system**. Only 1.5% of juvenile sanctions imposed against 14- to 21-year-olds (including both informally and formally) are for unconditional youth imprisonment, and 3.5% are for suspended youth imprisonment, which is similar to being placed on probation.³¹ Moreover, the incarceration of children is even less frequent than these already low numbers suggest, as only a small proportion of those incarcerated in youth prisons are under 18; more than 90% are young adults.³²

For the very small number of young people who are incarcerated, sentences tend to be substantially shorter than in the U.S. For those sentenced under juvenile law, five years is generally the maximum imprisonment, with a 10-year maximum for very serious offenses, and a 15-year maximum for 18- to 20-year-olds in particularly serious murder cases.³³ *Only 0.5% of youth prison sentences are for more than five years.*³⁴

In the rare situations in which children or young adults are incarcerated, youth correctional facilities are required to promote rehabilitation and self-respect, and are not permitted to be punitive environments. Regardless of an individual's age, under German law the only punishment permitted during incarceration is the deprivation of liberty itself. To help those who are imprisoned successfully reintegrate into society post-incarceration, Germany also mandates that life in correctional facilities must be as similar as possible to life outside, and any detrimental effects of imprisonment must be counteracted.³⁵ Underlying German incarceration practices is the view that "[o]nly a penal system that places human dignity at the centre of its endeavors can have a positive impact on the prisoners."³⁶ In addition, with regard to young people specifically, German



Source: Dünkel, F. (2016), *Youth Justice in Germany*, Oxford Handbook. Data from 2013.

³¹ *Id.* at 15.

³² *Id.* at 33.

³³ *Id.* at 7.

³⁴ *Id.* at 16.

³⁵ Bundesministeriums der Justiz und für Verbraucherschutz, *German Prison Act of 1976 (last amended 2013)*, Part 2, §3, http://www.gesetze-im-internet.de/englisch_stvollzg/englisch_stvollzg.html#p0020.

³⁶ The Berlin Senate Department for Justice and Consumer Protection (2015), *The Prison System in Berlin*, 7, https://www.berlin.de/justizvollzug/_assets/senjustv/sonstiges/broschuere-justizvollzug-englisch.pdf.

law further requires youth prisons to “arouse the youth’s sense of self respect,” “be structured in an educational manner,” and “help the youth to overcome those difficulties which contributed to his commission of the criminal offense.”³⁷

In practice, the conditions in youth prisons in Germany are on par with some of the better youth correctional facilities in the U.S.³⁸ (though as noted above, more than 90% of the young people in German youth prisons are actually 18 or over). Since youth incarceration is so rare in Germany, the population of youth in German youth prisons has on average committed more serious crimes than youth incarcerated in U.S. juvenile facilities.³⁹ Yet German youth behind bars have substantially more freedom than their counterparts in the U.S.⁴⁰ Prison guards typically do not carry weapons, relying instead on communication to defuse challenging situations.⁴¹ And, as described by a U.S. youth correctional expert who visited a youth prison in Germany, “nowhere was there the sense of fear and heavy correctional hardware, such as pepper spray, solitary confinement, and strip searching, that dominates the U.S. correctional landscape.”⁴² This is facilitated in part by the fact that German correctional officers receive two years of training in topics such as psychology and conflict management, with an emphasis on using positive reinforcement.⁴³ Visitors from the U.S. to German youth prisons have also expressed being particularly impressed by the vocational offerings in areas such as metal working and culinary skills.⁴⁴

PROMISING PRACTICES IN THE U.S. TO IMPROVE YOUTH AND YOUNG ADULT JUSTICE

In recent years, some U.S. policymakers, prosecutors, and other criminal legal system practitioners have responded to research on adolescent brain development, trauma, and other topics by reforming their approach to youth and young adult justice in ways that are more aligned with some of the best practices out of Germany.

I. Examples of Principle One: Treat kids like kids – and young adults more like kids.

Several states have enacted legislative changes in recent years to prevent the prosecution of young children and to ensure that the criminal legal system responds to young adults in ways that are developmentally appropriate. In 2018, for example, **Massachusetts** raised the lower age of juvenile jurisdiction from seven to 12, thereby preventing the arrest and prosecution of young children.⁴⁵ Meanwhile, **Vermont** raised the upper age of juvenile jurisdiction to include 18-year-olds

³⁷ Schiraldi, V. (2018), *In Germany, It’s Hard to Find a Young Adult in Prison*, The Crime Report, <https://thecrimereport.org/2018/04/10/in-germany-its-hard-to-find-a-young-adult-in-prison/>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See, e.g., The Berlin Senate Department for Justice and Consumer Protection, *supra* note 36, at 21.

⁴² Schiraldi, *supra* note 37.

⁴³ Subramanian, R. and Shames, A. (2013), *Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States*, Vera Institute of Justice, 12, <https://www.vera.org/publications/sentencing-and-prison-practices-in-germany-and-the-netherlands-implications-for-the-united-states>.

⁴⁴ Schiraldi, *supra* note 37.

⁴⁵ Commonwealth of Massachusetts (2018), Senate Bill S.2371, An Act relative to criminal justice reform, Section 72, <https://malegislature.gov/Bills/190/S2371>.

in July 2020, and to include 19-year-olds by July 2022.⁴⁶ Other jurisdictions – including **New York**,⁴⁷ **Washington, D.C.**,⁴⁸ **Michigan**,⁴⁹ and **Alabama**⁵⁰ – have enacted legislation providing protections for young adults, such as allowing courts to depart from mandatory sentences for young adults, “adjudicate” them rather than convict them, keep proceedings confidential, and/or expunge past convictions. **Virginia**,⁵¹ **California**,⁵² and **Washington, D.C.**⁵³ have also established processes to allow early parole for cases involving individuals who were young adults at the time of the offense.

Additionally, consistent with Germany’s prohibition on trying children as adults, **many elected prosecutors have also prioritized keeping children out of adult court.** On his first day in office, **Los Angeles (California) District Attorney George Gascón** announced a policy ending the practice of trying children as adults.⁵⁴ **Western Judicial Circuit (Georgia) District Attorney Deborah Gonzalez** has adopted a presumption against recommending that children be transferred to adult court unless required by law, and her policy further requires review of mandatory transfer cases to determine if her office should pursue a special filing to remand the case back to juvenile court.⁵⁵

In line with Germany’s recognition that young adults are in many ways more developmentally similar to younger teenagers than they are to older adults, district attorneys have also been

⁴⁶ Vermont General Assembly (2018), S.234 (Act 201), An act relating to adjudicating all teenagers in the Family Division, except those charged with a serious violent felony, <https://legislature.vermont.gov/bill/status/2018/S.234>.

⁴⁷ 2015 New York Laws, Article 720, Youthful Offender Procedure, <https://law.justia.com/codes/new-york/2015/cpl/part-3/title-u/article-720/> (allows “Youthful Offender” status to be applied to 18-year-olds).

⁴⁸ McCann, E.P. (2017), *The District’s Youth Rehabilitation Act: An Analysis*, The Criminal Justice Coordinating Council, https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/page_content/attachments/District%27s%20YRA-An%20Analysis.pdf.

⁴⁹ Michigan Code of Criminal Procedure, 762.11 Criminal offense by individual between ages 17 and 24; assignment to status of youthful trainee; consent of prosecuting attorney; exceptions; employment or school attendance; electronic monitoring; definitions, [http://www.legislature.mi.gov/\(S\(xeuswun43mubnmhe1tg1q3cs\)\)/mileg.aspx?page=GetObject&objectname=mcl-762-11](http://www.legislature.mi.gov/(S(xeuswun43mubnmhe1tg1q3cs))/mileg.aspx?page=GetObject&objectname=mcl-762-11).

⁵⁰ 2016 Code of Alabama, Section 15-19, Youthful Offenders, <https://law.justia.com/codes/alabama/2016/title-15/chapter-19/>.

⁵¹ Hayek, C. (2016), *Environmental Scan of Developmentally Appropriate Criminal Justice Responses to Justice-Involved Young Adults*, National Institute of Justice, U.S. Department of Justice, <https://www.ncjrs.gov/pdffiles1/nij/249902.pdf>.

⁵² California Legislature (2017-2018), AB-1308 Youth offender parole hearings, https://leginfo.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180AB1308.

⁵³ Choi, J. (2020), *DC passes bill allowing reduced sentences for young offenders*, The Hill, <https://thehill.com/homenews/state-watch/530433-dc-passes-bill-allowing-for-reduced-sentences-for-young-offenders>.

⁵⁴ Queally, J. (2020), *On first day as L.A. County D.A., George Gascón eliminates bail, remakes sentencing rules*, LA Times, <https://www.latimes.com/california/story/2020-12-07/in-first-day-on-job-gascon-remakes-bail-sentencing-rules>.

⁵⁵ Western Judicial Circuit (Georgia) District Attorney Deborah Gonzalez (2021), *Memorandum re: Fairness and Equity in the Western Judicial Circuit District Attorney Office*, 5, https://drive.google.com/file/d/1SHwcNeKMZmsCMJkddUvC7nu6ycS_GG9l/view.

“Today’s policy directive is about providing a young person an opportunity to learn and grow from their mistakes, without being tethered to the criminal legal system. That’s the fair and humane thing to do. And it will also keep us safer in the long term.”

striving to **improve policies and practices regarding young adults in the criminal legal system**. For example, **the San Francisco (California) District Attorney's Office** developed a Sentence Planning Program in which "sentencing planners," who have "expertise in evidence-based programs to address criminogenic needs, and detailed knowledge of programs and services available in San Francisco," conduct an in-depth review of a case and develop individualized recommendations, which may include education, vocational training, rehabilitation and behavior adjustment programs, and in some cases, supervision. An evaluation of the Sentence Planning Program found that it reduced recidivism by eight percentage points in cases relying on the sentencing planner's recommendations, in addition to reducing incarceration and saving money by resolving cases faster.⁵⁶ And in Massachusetts, **District Attorneys Andrea Harrington (Berkshire County)** and **David Sullivan (Franklin/Hampshire County)**, and **then-District Attorney Rachael Rollins (Suffolk County)**, jointly called on state policymakers to raise the age up to which youth can still be charged as juveniles from 18 to 21 years old.⁵⁷

II. Examples of Principle Two: The purpose of juvenile and young adult justice is rehabilitation, not punishment.

Elected prosecutors have also developed programs to respond to young people who come in contact with the legal system in ways that are more consistent with Germany's rehabilitative and non-carceral approach. For example, in 2019, **Prince George's County (Maryland) State's Attorney Aisha Braveboy** launched a comprehensive youth justice plan centered around diversion. Her office developed partnerships with public health and community organizations to assess young people's need for support and connect them with appropriate community-based services.⁵⁸ In the first six months after implementing this reform, her office saw a large drop in referrals to the Department of Juvenile Services.⁵⁹ And, in 2020, **King County (Seattle, Washington) Prosecuting Attorney Dan Satterberg** launched a juvenile restorative justice program in partnership with local community groups.⁶⁰ Within the initial months of the program's launch the office diverted over 150 cases, and thereafter expanded the program to include some offenses committed by people aged 18 to 20 years old.⁶¹

Similar to Germany's practice of diverting low-level youth cases, elected prosecutors in the U.S. have implemented reforms aimed at **keeping young people out of the system** when possible. For example, **DA Gascón in Los Angeles** adopted a policy against charging children for misdemeanors in most situations and allowing some youth felony cases to be resolved through restorative justice rather than prosecution,⁶² and a number of elected prosecutors,

⁵⁶ San Francisco District Attorney (2012), *Sentence Planning*, <https://www.sfdistrictattorney.org/victim-services/sentence-planning/>.

⁵⁷ Fair and Just Prosecution (2019), *Prosecutors Urge Policymakers to Raise the Age of the Juvenile Justice System to 21*, <https://fairandjustprosecution.org/wp-content/uploads/2019/06/MA-RTA-Release-FINAL.pdf>.

⁵⁸ Gray, M. F. (2019), *Braveboy Announces Youth Justice Reform Plans*, Post News Group, <https://www.postnewsgroup.com/braveboy-announces-youth-justice-reform-plans/>.

⁵⁹ The Daily Record (2020), *Aisha Braveboy*, <https://thedailyrecord.com/2020/06/26/aisha-braveboy/>.

⁶⁰ Gutman, D. (2022), *King County to Continue New Juvenile Restorative Justice Program, Despite Pushback*, Seattle Times, <https://www.seattletimes.com/seattle-news/politics/king-county-to-continue-new-juvenile-restorative-justice-program-despite-pushback/>.

⁶¹ *Id.*

⁶² Loudenback, J. (2021), *Los Angeles District Attorney Faces Resistance Over Justice Reforms*, The Imprint, <https://imprintnews.org/justice/juvenile-justice-2/pushback-praise-gascons-youth-justice-reforms-los-angeles/51208>.

including **Durham County (North Carolina) District Attorney Satana Deberry**,⁶³ **DA Deborah Gonzalez**,⁶⁴ and **Washtenaw County (Michigan) Prosecuting Attorney Eli Savit**,⁶⁵ have adopted presumptions against prosecuting most school-based conduct. **PA Savit** also established a presumption that his office will not prosecute comparable out-of-school incidents involving similarly aged peers.⁶⁶

DAs have also used their position as respected criminal justice leaders to advocate for more humane and rehabilitative settings, similar to those in Germany, for the small number of children who require placement in a confined setting. Most notably, more than 70 elected prosecutors and youth correctional administrators joined **a statement in 2020 calling for the closure of all youth prisons in the country**.⁶⁷

Finally, elected prosecutors including **DA Gascón, SA Braveboy, then-DA Rollins, PA Satterberg, Kings County (Brooklyn, New York) District Attorney Eric Gonzalez, Philadelphia (Pennsylvania) District Attorney Larry Krasner, and Baltimore City (Maryland) State's Attorney Marilyn Mosby** have established sentencing review units or processes, through which their offices can **revisit lengthy sentences imposed in the past**. These review processes encompass sentences imposed on both adults and youth, and are not directly tied to the same considerations underlying German youth sentencing practices. Nonetheless, the end result would be to correct excessive sentences imposed in the past in the U.S. and thus bring these sentences more in line with how Germany approaches sentencing.⁶⁸

RECOMMENDATIONS

The recommendations below delineate ways that elected prosecutors can lead in reshaping our youth justice system to build on what works in Germany and achieve better outcomes for young people in our country.⁶⁹

⁶³ Durham District Attorney's Office (2019), *Durham County District Attorney's Office Releases Six-Month Progress Report*, <https://medium.com/durham-district-attorneys-office/july2019progressreport-71adbe9d68a5>.

⁶⁴ Western Judicial Circuit (Georgia) District Attorney Deborah Gonzalez, *supra* note 55, at 5.

⁶⁵ Washtenaw County Office of the Prosecuting Attorney (2021), *Policy Directive 2021-11: Policy Regarding Juvenile Charging*, <https://www.washtenaw.org/DocumentCenter/View/19298/Juvenile-Charging-Policy?bidId=>.

⁶⁶ *Id.*

⁶⁷ Youth Correctional Leaders for Justice and Fair and Just Prosecution (2020), *Joint Statement by Fair and Just Prosecution and Youth Correctional Leaders for Justice on Closing Youth Prisons*, <https://fairandjustprosecution.org/wp-content/uploads/2020/07/Joint-Statement-on-Youth-Prisons-FINAL.pdf>.

⁶⁸ See FJP's *Revisiting Past Extreme Sentences: Sentencing Review and Second Chances* issue brief for more information about sentencing review.

⁶⁹ In addition to the recommendations herein, more information can be found in FJP's *Juvenile Justice and Young Adult Issues: Promoting Trauma-Informed Practices, Young Adults in the Justice System*, and *COVID-19 and the Criminal Justice System: Youth Justice Issues, Challenges, and Recommended Reforms* issue briefs, and Principle 6 "Treat Kids Like Kids," in *21 Principles for the 21st Century Prosecutor*.

"We must increase options to positively and successfully divert young people away from the juvenile justice system.... We can give our youth a second chance by providing them with a positive and strong support system within our overall criminal justice system."

1. **Don't prosecute young children under 14 years of age.**⁷⁰ Children this young should not be deemed to have culpability under the criminal legal system, and alternative responses should be used to address the situation. If a child or family needs support, connect them with community-based service providers. If more significant intervention is necessary, consider referring the case to the child welfare system, though unnecessary involvement with child protective services can also cause harm, so such decisions should be made with caution.⁷¹
2. **Request the incarceration of young people only in exceptional cases.** As discussed above, only 1.5% percent of youth sanctions in Germany are for unsuspended imprisonment – and even within that small number, the vast majority are actually young adults, rather than children. Children should almost always remain in the community, with any needed and appropriate supports. Whenever possible, divert kids and young adults pre-charge, as formal system processing increases the odds that they will reoffend.⁷² In some cases a diversion program may be appropriate, but many youthful infractions stem from typical adolescent behavior and do not require any intervention at all. For those who cannot be diverted pre-charge, focus on community-based educative responses, and only request incarceration if there are truly no appropriate community-based alternatives.
3. **Work with community groups and/or other agencies to develop community-based deflection, diversion, and alternative-to-incarceration programs.** Several strong models exist in the U.S., including some that serve young people who have committed serious crimes. Examples include credible messengers,⁷³ restorative justice,⁷⁴ Youth Advocate Programs,⁷⁵ Multisystemic Therapy,⁷⁶ Treatment Foster Care Oregon (formerly known as Multidimensional Treatment Foster Care),⁷⁷ Roca,⁷⁸ and READI Chicago.⁷⁹ In addition, the **San Francisco District Attorney's Sentence Planning** program for young adults, discussed above, is an innovative approach for identifying each young person's needs and connecting them with appropriate evidence-based services.⁸⁰ As new programs are developed, however, it is important to **avoid net widening** and ensure that young people are only sent to these programs if they have risk factors or needs that would be adequately addressed through participation (and cannot be addressed otherwise).

⁷⁰ As discussed above, children younger than 14 cannot be prosecuted in Germany.

⁷¹ Trivedi, S. (2019), *The Harm of Child Removal*, N.Y.U. Review of Law and Social Change, 43, 523-580, https://socialchangenyu.com/wp-content/uploads/2019/07/Shanta-Trivedi_RLSC_43.3.pdf; Sankaran, V., Church, C., and Mitchell, M. (2019), *A Cure Worse Than the Disease? The Impact of Removal on Children and Their Families*, Marquette Law Review, 102, 1161-1194, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3055&context=articles>.

⁷² Petrosino, A., Turpin-Petrosino, C., and Guckenburg, S. (2013), *Formal System Processing of Juveniles: Effects on Delinquency*, No. 9 of Crime Prevention Research Review, U.S. Department of Justice, Office of Community Oriented Policing Services, http://www.antonioacasella.eu/restorative/Petrosino_feb2013.pdf.

⁷³ Credible Messenger Justice Center, <https://cmjcenter.org/>.

⁷⁴ Fair and Just Prosecution (2017), *Building Community Trust: Restorative Justice Strategies, Principles and Promising Practices*, https://fairandjustprosecution.org/wp-content/uploads/2017/12/FJP.Brief_.RestorativeJustice.pdf.

⁷⁵ Youth Advocate Programs, Inc., <https://www.yapinc.org/>.

⁷⁶ MST Services, <https://www.mstservices.com/>.

⁷⁷ Treatment Foster Care Oregon, <https://www.tfcOregon.com/>.

⁷⁸ Roca, <https://rocainc.org/>.

⁷⁹ READI Chicago, <https://www.heartlandalliance.org/readi/>.

⁸⁰ San Francisco District Attorney, *supra* note 56.

4. **Do not send children to prison-like settings, and advocate for the closure of such institutions.** Youth prisons traumatize young people and make them more likely to reoffend.⁸¹ As seen in Germany, almost all children can safely remain in their communities.⁸² For the extremely small number of children who do require placement in a confined setting, ensure that they are placed in small, rehabilitative, home-like settings that are in or near their community.⁸³
5. **Don't transfer children under the age of 18 to adult court.** In addition to learning from the German model, data from the U.S. shows that our communities are safer when we treat kids like kids, as prosecuting children as adults increases recidivism.⁸⁴ When possible, avoid charges that would trigger mandatory adult court prosecution. And, if it is not possible to completely eliminate discretionary adult prosecution of children, then decisions to prosecute children as adults should be very rare, require high level approval within the prosecutor's office, and be based on an evaluation of factors more like those used in Germany for young adults, such as the child's background and maturity level and whether the offense was juvenile in nature (i.e., was it impulsive, done with peers, etc.).
6. **Advocate for raising the minimum age of juvenile court jurisdiction and for legislation that would prevent children from being prosecuted as adults.** This includes raising the upper age of juvenile court jurisdiction in Georgia, Texas, and Wisconsin, the three states in which 17-year-olds are still automatically sent to adult court, as well as advocating for laws to end the transfer of youth to adult court or to reduce the cases in which it may occur.⁸⁵
7. **Advocate for raising the age of criminal responsibility beyond 18.** Like in Germany, the rehabilitative focus – and more limited effect on a criminal record – often makes the youth justice system a more appropriate fit for young adults than the adult criminal legal system. Where discretion does exist to prosecute young adults in youth or adult systems, handle young adult cases in the youth system whenever possible.
8. **Be responsive to the unique needs of young adults at every stage of the criminal legal system.** For more detailed recommendations on how elected prosecutors can advance effective responses to young adults who come into contact with the criminal justice system, see FJP's *Young Adults in the Justice System* issue brief.
9. **Establish a Sentencing Review Unit or related process to revisit excessive sentences that have been imposed for crimes that were committed by children or young adults.** For more information, see FJP's *Revisiting Past Extreme Sentences: Sentencing Review and Second Chances* issue brief.

⁸¹ Youth Correctional Leaders for Justice and Fair and Just Prosecution, *supra* note 67.

⁸² *Id.* at 2.

⁸³ *Id.* at 4.

⁸⁴ Justice Policy Institute and The Campaign for Youth Justice (2020), *The Child Not the Charge: Transfer Laws Are Not Advancing Public Safety*, 13, http://www.campaignforyouthjustice.org/images/child_not_the_charge_report_1.pdf.

⁸⁵ For more information about legislative efforts to keep children out of adult court, see Evans, B. (2020), *Winning the Campaign: State Trends in Fighting the Treatment of Children As Adults in the Criminal Justice System (2005-2020)*, Campaign for Youth Justice, <http://www.campaignforyouthjustice.org/images/reportthumbnails/CFYJ%20Annual%20Report.pdf>.

CONCLUSION

For far too long in the U.S., our response to young people who commit crimes has been rooted in false assumptions, a lack of attention to what data and science tell us, and racial bias. For elected prosecutors who seek to shift this tide, Germany's approach to youth justice illuminates a path toward a system that is instead centered on rehabilitation and aligned with the research on adolescent brain development. Some DAs have already begun to heed these lessons and adopt policies that keep young people out of the system when possible and provide age-appropriate responses when necessary. Furthering this trend is a key step not only toward preventing many of the harms currently imposed on young people by the criminal legal system, but also for promoting public safety, while addressing young people's needs and helping them grow into successful adults.

RESOURCES

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- Frieder Dünkel and Wolfgang Heinz (2017), [Germany](#), International Handbook of Juvenile Justice (2nd ed.), p. 305-326.
- Sibella Matthews, Vincent Schiraldi, and Lael Chester (2018), [Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System](#), Justice Evaluation Journal.
- Ineke Pruin and Frieder Dünkel (2015), [Better in Europe? European responses to young adult offending](#), Transition to Adulthood.

FOR MORE INFORMATION: Contact FJP at info@fairandjustprosecution.org

