

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT  
JUVENILE COURT DEPARTMENT**

**DISPOSITIONAL AND SENTENCING BEST PRACTICES FOR  
DELINQUENT AND YOUTHFUL OFFENDER MATTERS**



Prepared by the Juvenile Court Working Group on  
Sentencing Best Practices  
April 2016

## FOREWORD

*It is with my utmost appreciation to the multidisciplinary members of this committee, herein named, for their devotion to the attainment of positive outcomes for our youth, that the Juvenile Court Department now presents its dispositional and sentencing best practices guidelines.*

*Chief Justice Amy L. Nechtem*

*April 1, 2016*

## WORKING GROUP ON SENTENCING BEST PRACTICES

The working group was chaired by Jay D. Blitzman, First Justice of the Middlesex County Juvenile Court. Members of the committee are: Joan McMenemy, First Justice of Berkshire County Juvenile Court; Mary Beth Keating, Associate Justice of Worcester County Juvenile Court; Helen Brown Bryant, Associate Justice of Suffolk County Juvenile Court; Marian Ryan, Middlesex District Attorney; Joshua Dohan, Director of CPCS Youth Advocacy Department; Kevin Kennedy, Chief of Lincoln Police Department; Ruth Rovezzi, Deputy Commissioner of the Department of Youth Services; John Millett, State Supervisor, Juvenile Court Department, Office of the Commissioner of Probation; and Rachel Wallack, Administrative Office of the Juvenile Court. Thank you to research assistants Dixie Tauber and Sarah Tyssen of Harvard Law School.

## INTRODUCTION

The trial courts of Massachusetts have undertaken to examine sentencing practices under the direction of Chief Justice Ralph Gants of the Supreme Judicial Court and Chief Justice Paula Carey of the Trial Court and in recognition that sentences should be proportionate, no greater than necessary (the principle of frugality), and designed to help the offender “get past the past.”<sup>1</sup> In his annual State of the Judiciary address in October 2015, Chief Justice Gants amplified his previous observations by noting that, “in a criminal case, problem-solving means not only adjudicating the question of guilt or innocence regarding crimes already committed; it also

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<sup>1</sup> Chief Justice Ralph D. Gants, Mass. Inc. Keynote Address at the Second Annual Massachusetts Criminal Justice Reform Coalition Summit (Mar. 16, 2015), *available at* <http://www.mass.gov/courts/docs/sjc/docs/speeches/sjc-chief-justice-gants-remarks-umass-boston-031615.pdf>.

means crafting a fair and proportionate sentence that is designed to reduce the likelihood of recidivism and, as a result, to prevent future crimes.”

The goal of the best practices sentencing committees that have been created in the sentencing trial courts is to ensure that each judge who imposes a sentence has the information needed about the defendant and the crime to determine an appropriate sentence and, where probation is imposed, to determine which conditions will best address the particular needs of the defendant. The sentencing committees have been charged with the consideration of best practices to be used in formulating dispositions, which include diversion and cases that are resolved by pre-trial probation pursuant to G.L. c. 287, § 87. Each committee has been asked to create a bench book that is composed of a legal section that addresses issues specific to their court, a resource section identifying programs, and a research section. The Juvenile Court already publishes a bench book in conjunction with MCLE. The most recent iteration, published in 2014, features two volumes that address juvenile justice and child welfare. This framework reflects the need to consider the issues that affect children, families and public safety in a larger context. Chapter 9, Dispositions and Admissions, of the Massachusetts Juvenile Bench Book (MCLE 2014) addresses sentencing in greater detail than this memorandum.

It is important to note that the Committee has endeavored to provide information and research that judges may consider in sentencing, without impinging upon their discretion. As part of our process, each of our county Chief Probation Officers has prepared listings of programs and initiatives that can be accessed electronically. The Committee is also preparing a compilation of research material that will be available in a similar manner.

The mission of the Juvenile Court involves promoting the healthy development of children and adolescents while protecting and enhancing public safety. G.L. c. 119, §53, provides that the juvenile code “shall be liberally construed so that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance.” The Massachusetts Supreme Judicial Court has noted recently that

“[f]rom these pronouncements, the principal aim and underlying philosophy of our juvenile justice system become clear... This is not a punitive scheme strictly akin to the adult criminal justice system. Rather, it is *primarily rehabilitative*, cognizant of the

inherent differences between juvenile and adult offenders, and geared toward ‘the correction and redemption to society of delinquent children.’”<sup>2</sup>

While rehabilitating children is an important priority, it is axiomatic that society has a reasonable expectation that juvenile offenders will be held accountable.<sup>3</sup> The research suggests that in many instances these goals are not incompatible. In addressing or balancing these concerns, it is appropriate that sentencing judges have access to screening tools, data, and reliable research regarding evidence-based practices that may assist in designing fair and developmentally appropriate sentences for each child. This approach will assist in determining which youth should be supervised in the community and which youth must be securely detained to protect the public. While there are obviously instances in which secure confinement is necessary to address the inherent goal of protecting public safety, research has demonstrated there are also many instances in which there are affordable and appropriate alternatives to commitment that protect the public while reducing recidivism.<sup>4</sup>

In assessing which juveniles should be on probation, the Committee has reviewed the literature concerning crafting conditions that are individually tailored as well as issues related to the length of supervision. The Committee has examined the use of the Ohio Youth Assessment System (OYAS), a risk assessment tool currently used to determine the degree of supervision, for purposes of sentencing as well. The Committee’s discussions have also included consideration of strength based methodologies such as Positive Youth Development and restorative justice as pro-social models that promote greater engagement. The Committee has reviewed the research on adolescent brain development and theories of natural desistance. The Committee also notes the traditional sentencing factors embodied in G.L. c. 119, § 53, and our juvenile sentencing statute, G.L. c. 119, § 58. These factors, as noted in judicial input to the Committee include information that encompass the nature of an offense and victim impact, the nature of the offender, prior experience with the juvenile justice system, the perspective of probation, substance abuse and mental health histories and the scope of family engagement. In reviewing

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<sup>2</sup> Commonwealth v. Magnan M., 461 Mass. 459, 461 (2012) (*emphasis added*).

<sup>3</sup> Reforming Juvenile Justice: A Developmental Approach (Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, eds., 2013), at 5, 322.

<sup>4</sup> *Re-Examining Juvenile Incarceration* (April 20, 2015), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>.

this landscape the Committee also focused on data regarding racial and ethnic disparities and the high percentage of children dually involved in juvenile justice and child welfare.

General precepts that inform sentencing include the mission statement of our juvenile code, G.L. c. 119, § 53, as previously noted. We have broad sentencing authority. Pursuant to G. L. c. 119, § 52, the Massachusetts Juvenile Court has jurisdiction over any child between the age of seven and eighteen who is accused as being a child “who violates any city ordinance or town-by-law or who commits any offense against a law of the commonwealth.” Adjudicated delinquents who are committed to the Department of Youth Services are committed until age eighteen. Youthful offender allegations pursuant to the sentencing provisions of G.L. c. 119, § 58(a) can result in the imposition of the terms an adult would receive for comparable conduct. Youth adjudicated as youthful offenders face commitment until age twenty-one per G.L. c. 119, § 58(c). Juvenile commitments are indeterminate and operate as the functional equivalents of mandatory sentences. The Committee has attempted to provide information that may be of assistance in developing sentences that address the nature of an offense as well as the nature of the offender.

## **GUIDING PRINCIPLES**

1. At sentencing and case disposition, a judge should keep the mandates of G.L. c. 119, §53 in mind, ensuring that the juvenile code “...shall be liberally construed so that the care, custody, and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance.” G.L. c.119 s53. (Introduction, *supra*)

2. A judge should consider that the “...principal aim and underlying philosophy of our juvenile justice system [has] become clear...This is not a punitive scheme strictly akin to the adult criminal justice system. Rather, it is primarily rehabilitative, cognizant of the inherent differences between juvenile and adult offenders, and geared toward the correction and redemption to society of delinquent children.” *Commonwealth v. Magnus M.*, 461 Mass. 459, 461 (2012). (Introduction, *supra*)

3. A judge should consider that society has a reasonable expectation that juvenile offenders will be held accountable, mindful to balance this expectation with the rehabilitative nature of juvenile court. (Introduction, *supra*)

4. In formulating a disposition or sentence for a juvenile or youthful offender, a judge may wish to consider traditional factors and sources of information: the nature and circumstances of the offense, the victim impact statement, a pre-sentence report of probation, the court and prior delinquency record, the success or lack of success of any past treatment or delinquency

dispositions, the nature of services available through the juvenile justice system, the youth's age and maturity, and the likelihood of avoiding future criminal conduct. (Sections II (C)(1, 2) *infra*).

5. A judge may wish to consider that, as a general proposition, research on adolescent brain development indicates that adolescents are (a) less able than adults to control impulses through reason, (b) disposed to over-value short term benefits as compared to long term consequences, and (c) are immensely susceptible to negative peer influences. (Section III (A)(1) *infra*)

6. A judge may wish to consider the research which shows adolescents develop over time and pose less of a public safety risk as they become less impulsive and more capable of making considered decisions. Pursuant to the maturational arc of adolescence, under a theory experts call "natural desistance," research suggests that more than half of the juveniles who are arraigned would not return to juvenile court. (Section III (B) *infra*)

7. A judge may wish to consider that in some cases, confinement of the youth is necessary to achieve the goals of rehabilitation and public safety. A judge should also be mindful that, in the vast majority of cases, the goals of juvenile court can be met through community-based rehabilitation. (Section IV (D) *infra*). Unnecessary institutional confinement, even for one night, may lead to harmful exposure to negative peer influences, and may have the unintended consequence of an adolescent self-identifying as an offender, and may actually increase recidivism rates among juvenile offenders. (Section III (B) *infra*)

8. A judge should tailor a probation sentence and conditions to carefully meet the goals of probation. This is dependent upon both the circumstances and characteristics of the particular juvenile as well as the nature and circumstances of the offense. Careful consideration should be given to not only the length of supervision, but also the specific conditions. Research suggests that extended program involvement beyond the *average* length of program involvement does not increase effectiveness. Research also supports the notion that "less may be best" for some juveniles. It is worth considering whether the issue facing the juvenile is best addressed in the juvenile court system, or whether the issue is best addressed through some other service delivery system. (Section IV (D) *infra*)

9. When available, risk/need assessments may be used to help a dispositional/sentencing judge determine who may best be served by probation, and with what conditions. Research suggest that youth with a low risk to reoffend should be involved with the court minimally (if not diverted). Youth with a moderate to high risk of reoffending should be subject to the minimum level of supervision and control necessary to promote public safety. (Section III (B) *infra*)

10. At sentencing, a judge may wish to consider whether certain probation conditions will have unintended consequences (a supervision fee that creates an impossible financial hardship for example, (Sections IV (D) (N) *infra*), or whether the youth may face other serious collateral consequences for an adjudication or conviction. (Section IV (E) *infra*)

11. To promote confidence in the fairness of the proceedings, where appropriate, a judge may wish to articulate the reasons for why they are imposing a certain sentence or certain probationary conditions. (Section IV (F) *infra*)

12. At case disposition or sentencing, a judge may wish to give careful consideration as to whether the youth before the court has suffered trauma (whether sufficient evaluation has occurred to determine the youth's needs), the effect trauma has had on the youth and their behavior, and whether there are steps that can be taken to help address the trauma and resulting behavioral issues. (Section IV (G) *infra*)
13. At sentencing/disposition, a judge may wish to consider the principles of Positive Youth Development (PYD), to ensure the youth has their formative needs met to make a successful transition into adulthood. Principles of PYD include ensuring the youth has access to nurturing relationships with caring adults, positive peer relationships, good physical and mental health, effective education and job skills, and leadership and autonomous decision making opportunities. (Section IV (A) *infra*)
14. A sentencing/dispositional judge should strive to be ever-mindful of the effects of implicit bias on decision making. Disparate treatment of minority individuals has long-reaching impact. Youth of color are vastly over-represented in the justice system. (Section IV (B) *infra*)
15. The potential benefits of diversion and pre-trial probation as a dispositional tool should be considered whenever possible. Research suggests that youth given the opportunity for diversion have lower rates of recidivism. (Section IV (C) *infra*)
16. At sentencing or case disposition, a judge should consider whether the youth before the court has substance abuse issues (whether further evaluation is warranted) and if so, whether the most effective means to address the issue been identified for this particular youth. (Section IV (H) *infra*)
17. At sentencing or disposition, each youth before the court deserves an individualized assessment. A judge may wish to consider the use of reliable risk/needs assessment tools to connect appropriate services to the needs/risk level of each youth. In appropriate cases, a judge may also wish to consider ordering an evaluation of the youth pursuant to G.L. c.119 s68A. (Section IV (I) *infra*)
18. In the complex system of juvenile justice, careful consideration should be given to whether the youth before the court is “dually-involved” (i.e. a youth with both DCF and delinquency involvement) or whether the youth has mental health issues. Many of these youth have significant trauma histories, and have often suffered significant disruption/losses in their normal functioning and development. A sentencing/dispositional judge may wish to consider an integrated “team approach,” where diversion and/or other appropriate case services can be explored. (Section IV (J) *infra*)
19. Pursuant to the Victim's Bill of Rights, a judge should ensure that the victim of a crime has the right to confer with probation prior to the filing of a pre-sentence report, request restitution, and be heard through an oral or written impact statement, or at any other time as deemed appropriate by the court. (Section IV (K) *infra*)

20. A judge should consider participating in coordinated “sentencing and case disposition” panel discussions with peers, and take the opportunity to view first-hand DYS facilities. (Section IV (L) *infra*)

21. A judge should periodically review relevant and material data and statistics relative to juvenile sentencing, and should keep informed of the current state of the science and research as it relates to adolescent development and evidence-based best sentencing practices. (Section IV (M) *infra*)

## **I. PURPOSE AND GOALS**

The committee and this memorandum were created with numerous goals in mind. The primary objective is to discuss sentencing practices that will best protect the public safety while simultaneously promoting positive youth development. Nothing contained herein however is intended to impinge upon judicial independence and discretion.<sup>5</sup> To achieve these goals, the committee has reviewed existing practices, resources, and available data, and now attempts to provide access to such resources in order to enhance judicial decision-making and promote optimal outcomes for the youth and communities we serve. The disposition of juvenile cases is complicated, and the science continues to evolve. To fulfill the objectives and goals of this committee, the Juvenile Court will continue to review the current state of research and best practices on sentencing.

## **II. STATUTORY AND CASE LAW AUTHORITY RELATED TO SENTENCING AND DISPOSITION**

### **A. Statutes**

1. G.L. c. 119, § 52 (definitions); § 53 (mandate that juveniles “as far as practicable be treated, not as criminals, but as children...”); and § 54 (juvenile and youthful offender jurisdiction)
2. G.L. c. 119, §§ 58, 58B (delinquency and youthful offender dispositions); G.L. c. 279, § b2 (DYS commitments may be suspended)
3. G.L. c. 276, § 7 (pre-trial probation as a dispositional tool)
4. G.L. c. 119, § 1 (confidentiality of juvenile court; exceptions)
5. G.L. c. 119, § 62 (restitution)

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<sup>5</sup> See *Commonwealth v. Goodwin*, 414 Mass. 88 (1993) (judges are permitted great latitude in sentencing).

6. G.L. c. 71, § 37 (suspensions, expulsion and re-entry of students; pertinent collateral consequences)
7. G.L. c. 90, § 27 (clerk's office to notify RMV of case dispositions; pertinent to collateral consequences)
8. G.L. c. 6 § 178E (d)(e)(f) (SORB registration/relief from registration)
9. G.L. c. 258B (Victim's Bill of Rights)
10. Mass.R.Crim.P 1(b) applies rules of criminal procedure to delinquency and youthful offender cases)

## B. Cases

### 1. US Supreme Court

- a. *In re Gault*, 387 U.S. 1. (1967)(juveniles entitled to same due process rights as adults)
- b. *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011)(age matters in determining whether a juvenile is in custody for Miranda purposes)
- c. *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (abolition of mandatory juvenile life without parole in murder cases)
- d. *Roper v. Simmons*, 543 U.S. 551 (2005) (abolition of juvenile death penalty)
- e. *Graham v. Florida*, 560 U.S. 48 (2010) (abolition of juvenile life without parole in non-capital cases)

### 2. Massachusetts cases

- a. *Diatchenko v. District Attorney for Suffolk Dist.*, 466 Mass. 655 (2013) (retroactive application of *Miller v. Alabama*)
- b. *Commonwealth v. Brown*, 466 Mass. 676 (2013) (will juvenile court consider proportional accountability in context other than murder cases)
- c. *Commonwealth v. Magnus M.*, 461 Mass. 459 (2012) (authority to sentence juveniles to continuances without findings after jury verdict) (note: certain types of sexual assaults may not receive a continuation without a finding, *see* G.L. c.119, §58)
- d. *Commonwealth v. Hanson H.*, 464 Mass. 807 (2013) (mandatory imposition of GPS under chapter 265, § 47 does not apply to juveniles)
- e. *Commonwealth v. Gavin G.*, 437 Mass. 470, 471 (2002) ("Juvenile Court judges lack the authority to order the expungement of probation records")
- f. *Commonwealth v. Humberto H.*, 466 Mass. 562 (2013) (authority of Juvenile Court judges to dismiss cases for want of probable cause prior to arraignment)

- g. *Commonwealth v. Walczak*, 463 Mass. 808 (2012) (Lenk, J., concurring) (opining that the animating purpose of the Supreme Court cases that focus on the difference between juveniles and adults appears to be an effort to foreclose "criminal procedure laws that fail to take defendants' youthfulness into account at all and recognizes that the differences between being tried in the Superior Court and in the Juvenile Court are considerable)"
- h. *L.L.v. Commonwealth*, 470 Mass. 169 (2014)(SJC "seeks to provide additional guidance" concerning the standard by which a Juvenile Court judge determines the risk of re-offense under c. 6, § 178E (f) when considering a juvenile's motion for relief from registration and acknowledges that there is no such thing as "no risk" of re-offense)
- i. *Com. v. Ilya I.*, 470 Mass. 625 (2015)(dismissal of possession of marijuana with intent to sell upheld, holding that "the juvenile's age detracts from the probative value that otherwise might be accorded to his nervous demeanor and his association with other young black males on a street corner.")
- j. *Doe, SORB No. 68549 v. Sex Offender Registry Board*, 470 Mass. 102 (2014)(question remains whether the manner in which the SORB guidelines differentiate between adults and juveniles is sound in view of current scientific research)

### **C. Specific sentencing structures in Juvenile Court**

#### **1. Delinquency dispositions and sentences**

*See* Chapter 9, Dispositions and Admissions of the Massachusetts Juvenile Court Bench Bar Book which addresses sentencing issues in greater detail (MCLE 2014)

#### **2. Youthful Offender sentencing**

G.L. c. 119, § 58 outlines youthful offender sentencing and requires that written findings are made at sentencing, detailing how the sentence best protects the present and long term public safety. In general, the law provides for three sentencing options. A judge may sentence a youthful offender to commitment to Department of Youth Services until the age of twenty-one (G.L. c. 119, § 58(c)). This sentence may be suspended (G.L. c. 279, § 2). A judge may choose to sentence a youthful offender to a sentence "as provided by law," which means that the disposition is the same as an adult would face for a conviction, including imposition of state prison sentences that cannot be suspended or reduced (G.L. c. 119, § 58 (a)). The third option is a "combination sentence," whereby a judge may impose a sentence that entails a commitment to the Department of Youth Services until age twenty-one, AND a suspended house of correction or state prison sentence. G.L. c. 119, § 58(b). Each youthful offender indictment may be considered individually for the purposes of imposing a sentence (for example, in a case with multiple indictments, a judge may sentence a youthful offender to a DYS commitment on one indictment, and a "combination sentence" on another indictment).

Prior to sentencing youthful offender, the judge “shall conduct a sentence recommendation hearing.” A probation pre-sentencing investigative report is to be provided to the parties at least seven days prior to the hearing. The sentencing judge must consider, but is not limited to consideration of, the following eight factors:

1. The nature and circumstances of the offense;
2. Victim impact statement;
3. A report by a probation officer concerning the history of the youthful offender
4. The youthful offender’s court and delinquency record;
5. The success or lack of success of any past treatment or delinquency dispositions regarding the youthful offender;
6. The nature of services available through the juvenile justice system;
7. The youthful offender’s age and maturity; and
8. The likelihood of avoiding criminal conduct.

### **III. SUMMARY OF DATA AND EVIDENCE-BASED RESEARCH THAT MAY INFORM DEVELOPMENTALLY APPROPRIATE DISPOSITIONS FOR CONSIDERATION**

#### **A. Summary and resources related to adolescent brain development**

##### **1. Cognitive and behavioral adolescent development**

In considering this body of research it is appropriate to note that science is probabilistic. Individualized sentencing entails consideration of research and whatever information that is available regarding the specific adolescent. As a general proposition, the research conducted on adolescent brain development and how it relates to delinquent behavior and diminished culpability indicates that adolescents are (a) less able than adults to control impulses through reason, (b) disposed to overvalue short-term benefits as compared to long-term consequences, and (c) immensely susceptible to negative peer influences.<sup>6</sup> The Supreme Court of the United States has increasingly stressed these insights, and held that they must be considered in a series of cases that have ended mandatory juvenile life without parole.<sup>7</sup> The Massachusetts Supreme

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<sup>6</sup> See Laurence Steinberg, Should the Science of Adolescent Brain Development Affect Juvenile Justice Policy and Practice? (May 20, 2014) *available at* <http://cfc.ncmhjj.com/wp-content/uploads/2014/05/Dr.-Laurence-Steinberg-Keynote-May-20-2014.pdf>.

<sup>7</sup> As the Supreme Court of the United States said in a recent seminal decision abolishing the death penalty for those who were under 18 at the time of their crime, “First, as any parent knows and as the scientific and sociological studies...tend to confirm, ‘[a] lack of maturity and an underdeveloped senses of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.’...The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressure, including peer pressure...The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.” *Roper v. Simmons*, 543 U.S. 551, 569-570 (2005) (*emphasis added*). These insights were expanded in *Graham v. Florida*, 560 U.S. 48, 48, 130 S. Ct. 2011, 2014, 176 L. Ed. 2d 825 (2010) (holding LWOP

Judicial Court has applied these holdings retroactively. Application of the principles of proportional accountability in other circumstances may be addressed in future cases.<sup>8</sup>

## 2. The potential effect of peer and parental influence on behavior

Studies repeatedly indicate that adolescents are more subject to peer influence than adults.<sup>9</sup> Youth measure their behavior by comparing themselves to others, and also may try to alter their behavior such that it matches that of their peers. Peers thus not only provide models for behavior, but may also directly pressure peers to make certain choices and behave in certain ways.

## 3. The potential effect of maltreatment and trauma on adolescent behavior

A growing body of research indicates that trauma may affect behavior, relationships, and perceptions of safety.<sup>10</sup> Youth who experience traumatic events may have mental and physical health challenges, problems developing and maintaining healthy relationships, difficulties learning, behavioral problems, and substance abuse issues.<sup>11</sup> Children who have experienced trauma or prolonged maltreatment suffer from “decreased integration of the left and right sides of the brain,” which can negatively affect their ability to use logic and reason.<sup>12</sup> Exposure to traumatic events may impair brain development especially in the areas of learning and self-regulation.<sup>13</sup> These manifestations of exposure to trauma are often misdiagnosed and may appear as willful/delinquent behavior and, for this reason, many youth exposed to trauma end up in the juvenile justice system.<sup>14</sup> Effective dispositions for traumatized youth will seek to avoid re-traumatization, usually by focusing on therapeutic approaches well designed to promote healthy development in a trauma responsive manner.

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unconstitutional for those under 18 who did not commit homicide) and *Miller v. Alabama*, 132 S. Ct. 2455, 2460, (2012) (holding mandatory LWOP unconstitutional for those under 18 who did commit homicide).

<sup>8</sup> See *Diatchenko v. District Attorney for Suffolk Dist.*, 466 Mass. 655 (2013) (expanding the U.S. Supreme Court’s holdings in *Roper*, *Graham*, and *Miller* by outlawing all JLWOP both prospectively and retroactively). The opinion notes that application of proportional sentencing in other contexts is an issue for further consideration.

<sup>9</sup> Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137 (1997).

<sup>10</sup> NATIONAL JUVENILE DEFENDER CENTER, NATIONAL JUVENILE DEFENSE STANDARDS (2012), at 22.

<sup>11</sup> Ford, J.D., Chapman, J.F., Hawke, J. & Albert, D., *Trauma among Youth in the Juvenile Justice Systems: Critical Issues and New Directions* (2007).

<sup>12</sup> NATIONAL JUVENILE DEFENDER CENTER, NATIONAL JUVENILE DEFENSE STANDARDS (2012), at 22.

<sup>13</sup> De Bellis, M.D. *Outcomes of Child Abuse Part II: Brain Development*. *Biological Psychiatry* 45(10), 1271-84. (1999)

<sup>14</sup> ELIZABETH SEIGLE, NASTASSIA WALSH, & JOSH WEBER, CORE PRINCIPLES FOR REDUCING RECIDIVISM AND IMPROVING OTHER OUTCOMES FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM (New York: Council of State Governments Justice Center, 2014); Focal Point Vol. 21, *Complex Trauma in Children and Adolescents*, (Winter 2007).

#### 4. The optimal pathways to develop pro-social attitudes and skills

Youth who are able to develop pro-social skills and relationships are at less risk of becoming involved with the juvenile justice system.<sup>15</sup> A recent study tracking serious adolescent offenders as they transitioned from youth to early adulthood has concluded that programs that “promote an examination of one’s thoughts and actions...combined with opportunities to practice and internalize that thinking” can significantly help youth develop and reduce their offending.<sup>16</sup> Allowing youth to discover and practice constructive reactions to social situations is a key method for promoting pro-social attitudes.<sup>17</sup>

#### **B. Summary and resources related to the potential effects on juvenile court involvement**

##### Natural Desistance

The research demonstrates the maturational arc of adolescence. Research has shown that adolescents develop and over time and pose less of a public safety threat as they become less impulsive and more capable of making considered decision.<sup>18</sup> This pattern includes adolescents accused of serious offenses given what the experts describe as natural desistance.<sup>19</sup> In fact, research suggests that more than half of juveniles who are arraigned would not return to court on new charges.<sup>20</sup>

As Chief Justice Gants noted in his recent address, “In medicine, there is a principle that a doctor should inflict no more pain and furnish no more medication than is necessary to treat the

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<sup>15</sup> CENTRAL AND EASTERN OREGON JUVENILE JUSTICE CONSORTIUM, A GRADUATED SYSTEM OF INCENTIVES, INTERVENTIONS AND SANCTIONS FOR YOUTH OFFENDERS ON PROBATION—A CASE MANAGEMENT APPROACH (2006).

<sup>16</sup> C.A. SCHUBERT & E.P. MULVEY, PROGRAMS THAT PROMOTE POSITIVE DEVELOPMENT CAN HELP YOUNG OFFENDERS GROW UP AND OUT OF CRIME (2014).

<sup>17</sup> *Id.*

<sup>18</sup> *See generally* AMERICAN PSYCHOLOGICAL ASSOCIATION, DEVELOPING ADOLESCENTS: A GUIDE FOR PROFESSIONALS (2002).

<sup>19</sup> *See* C.A. SCHUBERT & E.P. MULVEY, PROGRAMS THAT PROMOTE POSITIVE DEVELOPMENT CAN HELP YOUNG OFFENDERS GROW UP AND OUT OF CRIME (2014). The strong pattern of natural desistance “is true...even for most youth who have been chronically and even violently delinquent in earlier adolescence.” Draft for Comment and Discussion from Robert Kinscherff to Sentencing Best Practices Working Group (Feb. 2, 2015) (on file with the author), at 2.

<sup>20</sup> OJJDP, Statistical Briefing Book—Juveniles in Corrections (2011) *available at* <http://www/ojjdp.gov/ojstatbb/corrections/qa08305.asp?qaDate=2011>

patient, and we need to act on a comparable principle in sentencing.”<sup>21</sup> Though research in this particular area is limited, studies suggest that there is “a small and somewhat inconsistent negative effect from juvenile court processing compared with diversion at the point of initial referral.”<sup>22</sup> Further, unnecessary institutional confinement, even for one night,<sup>23</sup> may lead to harmful exposure to negative peer influences, may have the unintended consequences of an adolescent self-identifying as an offender,<sup>24</sup> and may increase recidivism rates among juvenile offenders.<sup>25</sup>

Unnecessary conditions of probation can also have unintended consequences.<sup>26</sup> Conditions that focus on a therapeutic approach to controlling behavior by focusing on constructive personal development reduce recidivism more than programs designed upon a control or deterrence philosophy.<sup>27</sup> Implementing a system of incentives and graduated responses to probation violations may enable probation to more accurately account for some adolescents’ ability to conform their behavior to long-term rules and expectations.<sup>28</sup> This system

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<sup>21</sup> See Chief Justice Ralph D. Gants, Mass. Inc. Keynote Address at the University of Massachusetts, Boston (Mar. 16, 2015) available at <http://www.mass.gov/courts/docs/sjc/docs/speeches/sjc-chief-justice-gants-remarks-umass-boston-031615.pdf>, at 4.

<sup>22</sup> National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press, at 150.

<sup>23</sup> Juvenile Detention Alternatives Initiative (2015). *Trauma and Delinquency*.

<sup>24</sup> “We have known since the 1940’s that simply officially designating a youth as delinquent raises recidivism risk.” Draft for Comment and Discussion from Robert Kinscherff to Sentencing Best Practices Working Group (Feb. 2, 2015) (on file with the author), at 2. Studies have shown that “if designed and implemented in a developmentally informed way, procedures for holding adolescents accountable for their offending can promote positive legal socialization, reinforce a pro-social identity and facilitate compliance with the law.” See National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press, at 185. On the other hand, “unduly harsh interactions between youth and justice system official can undermine respect for the law and legal authority and reinforce a deviant identity and social disaffection.” Id. at 5.

<sup>25</sup> National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press, at 123.

<sup>26</sup> Draft for Comment and Discussion from Robert Kinscherff to Sentencing Best Practices Working Group (Feb. 2, 2015) (on file with the author), at 3.

<sup>27</sup> Lipsey, H.W. Howell, J.C., *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence Based Practices*, Georgetown University Center for Justice Reform (2010)

<sup>28</sup> Such a response grid has already been implemented in several communities, including parts of Oregon. See CENTRAL AND EASTERN OREGON JUVENILE JUSTICE CONSORTIUM, A GRADUATED SYSTEM OF INCENTIVES, INTERVENTIONS AND SANCTIONS FOR YOUTH OFFENDERS ON PROBATION—A CASE MANAGEMENT APPROACH

will best help juveniles if it takes account of (a) the severity of and the reason for the violation and (b) the adolescent's risk of reoffending.<sup>29</sup> Crafting conditions that are specifically designed to redress behavior in an individual circumstance would enable the judge and juvenile to work together to set conditions that are appropriate and serve compelling correctional and rehabilitative goals. A judge may wish to be mindful that there is a risk that a disposition that removes a youth from his community may interfere with his healthy development and may serve to increase recidivism. Studies have shown that an optimal level of control for the purpose of serving public safety would be to divert juveniles with a low risk of reoffending. Juveniles with a moderate to high risk of reoffending should be subject to the minimum level of supervision and control necessary to promote public safety, rehabilitation, and healthy development, and should be provided with appropriate, effective therapeutic services.<sup>30</sup> Finally, judges will likely wish to consider that any disposition that takes a youth out of his community, interferes with his schooling or his ability to get a job, or interferes with his development of positive peer and adult/family relationships will have a negative effect on his healthy development and, in turn, the desistance process, and will not enhance the goal of public safety.<sup>31</sup>

#### **IV. SENTENCING AND DISPOSITIONAL CONSIDERATIONS**

##### **A. The principles of positive youth development**

All adolescents need similar resources, opportunities and services to develop and mature healthily.<sup>32</sup> It is important to note that, given the adolescent tendency to overvalue immediate rewards and underappreciate risks, all adolescents engage in risky behavior and it is an important part of their development.<sup>33</sup> Studies indicate that maturity is closely linked with reduced offending rates.<sup>34</sup> Thus, if an adolescent repeatedly violates the law (all adolescents engage in some delinquent behavior), likely he or she is not sufficiently connected to these resources and

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(2006). This system incorporates "special privileges suggested by the youth and/or parents," thereby encouraging the youth to take an active role in his disposition and promoting the involvement of supportive adults (PYD). *Id.* at 5.

<sup>29</sup> *See id.* at 6.

<sup>30</sup> Lipsey, H.W. Howell, J.C., *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence Based Practices*, Georgetown University Center for Justice Reform, 12 (2010).

<sup>31</sup> *See*, Justice Policy Institute, *The Dangers of Detention: The impact of Incarcerating youth in Detention and Other Secure Facilities*, 2006.

<sup>32</sup> *See* Jeffrey A. Butts, Gordon Bazemore, & Aundra Saa Meroe. *Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development*. Washington, DC: Coalition for Juvenile Justice (2010), at 9.

<sup>33</sup> Laurence Steinberg, Ph.D, *Age of Opportunity: Lessons from the New Science of Adolescence*, chapter 5.

<sup>34</sup> *See* C.A. SCHUBERT & E.P. MULVEY, PROGRAMS THAT PROMOTE POSITIVE DEVELOPMENT CAN HELP YOUNG OFFENDERS GROW UP AND OUT OF CRIME (2014).

thus his or her development is stalled.<sup>35</sup> Positive youth development (PYD), which emerged after several decades of research on adolescent development,<sup>36</sup> is a comprehensive way of understanding how adults and systems can help adolescents access these resources and thus develop appropriately.<sup>37</sup> PYD is a strength-based resilience-oriented approach to adolescence and a comprehensive way of thinking about the resources, opportunities and services that are needed to facilitate a youth's successful transition from adolescence into adulthood.<sup>38</sup> Using a PYD approach, youth are seen as resources to be developed and not problems to be managed.<sup>39</sup> The PYD approach recognizes that all children are able to grow into self-sufficient law-abiding adults and all children need adult assistance to do this. Young people enmeshed in the juvenile justice system often face more elevated challenges than other children with a less well-functioning support system. A PYD approach recognizes that for youth with challenging behavior stemming from life circumstances, there is no such thing as a quick fix and the path to maturity involves a lot of trial and error. Accordingly, the focus is on understanding a young person's life circumstances and collaborative problem solving versus blaming and consequences or punishment. The ultimate goal of the PYD approach is long-term healthy development and not simply short-term compliance.<sup>40</sup>

The PYD approach recognizes that youth must have their formative needs met in specific domains in order to have a successful transition into adulthood.<sup>41</sup> The most important PYD assets are access to nurturing relationships with caring adults, positive peer relationships, physical and mental health, effective education and job skills, and leadership and autonomous decision-making opportunities. Nurturing adult relationships and positive peer relationships help adolescents access all other resources necessary for PYD. Further, positive relationships between adolescents and responsible adults are one of the key mechanisms available to promote healthy

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<sup>35</sup> *Id.*

<sup>36</sup> Jeffrey A. Butts, Susan Mayer, & Gretchen Ruth. *Focusing Juvenile Justice on Positive Youth Development*. Chicago, IL (2005), at 4.

<sup>37</sup> See Jeffrey A. Butts, Gordon Bazemore, & Aundra Saa Meroe. *Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development*. Washington, DC: Coalition for Juvenile Justice (2010), at 9.

<sup>38</sup> See Jeffrey A. Butts, Gordon Bazemore, & Aundra Saa Meroe. *Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development*. Washington, DC: Coalition for Juvenile Justice (2010).

<sup>39</sup> Roth & Brooks-Gunn (2003).

<sup>40</sup> Jeffrey A. Butts, Susan Mayer, & Gretchen Ruth, *Focusing Juvenile Justice on Positive Youth Development*. Chicago, IL (2005), at 5.

<sup>41</sup> *Id.*

development.<sup>42</sup> Allowing adolescents to practice leadership and autonomous decision-making (e.g. by valuing their abilities and input) contributes to their growing sense of responsibility. Research suggests that adolescents are more likely to modify their behavior when they feel like they are fully engaged in the process.<sup>43</sup> Meaningful access to education and job opportunities gives adolescents the motivation and ability to engage productively with society. Finally, access to physical and mental health resources allows adolescents to focus on their abilities rather than their impediments.

Using a PYD approach in dispositional planning encourages resilience which may help a youth be better able to cope with exposure to traumatic events, both past and future, as well as helping the youth along her natural path to desistance.

### **B. The effects of implicit bias on decision-making**

Consideration of implicit bias and differential treatment versus differential offending should inform the exercise of discretion in Juvenile Court dispositions.<sup>44</sup> National data shows that disparate treatment of similarly situated offenders has racial and ethnic impacts, especially at the arrest and detention stages.<sup>45</sup> While recent events have highlighted the effects of implicit biases in offender-police interactions, law enforcement officers are not the only ones affected by implicit bias. Judges, prosecutors, defense attorneys, and all other actors in the criminal justice system need to constantly counteract the risk that we all have implicit biases.<sup>46</sup>

As data from the Massachusetts Juvenile Detention Alternatives Initiative Dashboard shows, black adolescents in Massachusetts are 3 times more likely to be arrested, and of those arrested 1.3 times more likely to be arraigned, and of those arraigned 1.5 times more likely to be detained, and of those detained 1.7 times more likely to be committed than their white counterparts.<sup>47</sup> In other words, African American youth are almost nine times more likely than their white peers to end up committed to DYS. Regardless of the causes of these disparities, they

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<sup>42</sup> Jeffrey A. Butts, Susan Mayer, & Gretchen Ruth, *Focusing Juvenile Justice on Positive Youth Development*. Chicago, IL (2005), at 5.

<sup>43</sup> William H. Barton & Jeffery A. Butts, *Building on Strength: Positive Youth Development in Juvenile Justice Programs*, Chicago, IL (2008), at 9.

<sup>44</sup> National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press, at 7.

<sup>45</sup> *Id.*

<sup>46</sup> See Theodore Eisenberg & Sheri Lynn Johnson, *Implicit Racial Attitudes of Death Penalty Lawyers*, Cornell Law Faculty Publications, Paper 353 (2004) (showing that even defense attorneys in capital cases are highly affected by implicit bias).

<sup>47</sup> Juvenile Detention Alternatives Initiative, *Massachusetts Juvenile Detention Alternatives Initiative Dashboard—Statewide Overview: October–December 2014 Update* (2014), at 3.

have led to an increased perception among African American youth, and their families and communities, that they cannot expect a fair outcome from courts.<sup>48</sup>

This disparate treatment has a long reaching affect. Recent research has determined that an individual's perception of fairness is important to legal socialization. The research suggests that adolescents are more likely to accept responsibility early in the process if they see they see the proceedings as fair and transparent and the punishment proportionate to their offense. The converse is also true. For example, if an adolescent views the system as unfair and receives disproportionate punishment than he is less likely to take responsibility and less likely to internalize pro-social values.<sup>49</sup>

### **C. The potential benefits of diversion and pre-trial probation as a dispositional tool**

Diversion and other alternatives to the traditional disposition model, such as restorative justice programming, provide for balanced accountability without generating stigmatizing court records that cannot be expunged.<sup>50</sup> Additionally, multiple experiments have shown that diversion can more effectively prevent future crime than can formal processing.<sup>51</sup> Unfortunately, not all youth in Massachusetts are currently afforded the opportunity of diversion or provided with restorative justice programming, which is an inequity in our current system that results in differential treatment.

A recent study was conducted to compare the effects of formally moving adolescents through the juvenile justice system to diverting them, and it found that there was a 6% decrease in delinquency rates among the youth in the diversion group.<sup>52</sup> Diverted adolescents in this study had lower rates of recidivism regardless of whether they were provided with services or not, although those given services (e.g. counseling, education programs) had even lower rates of delinquency.<sup>53</sup> As a further benefit, diversion is a very cost-effective method, and it is far less

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<sup>48</sup> See National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press, at 130.

<sup>49</sup> National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach, Committee on Addressing Juvenile Justice Reform*. Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie Schuck, EDs. Committee on Law and Justice Division of Behavioral and Social Sciences and Education. Washington, D.C.: National Academies Press.

<sup>50</sup> *Commonwealth v. Humberto H.*, 466 Mass 562 (2013).

<sup>51</sup> See Petrosino, Anthony, Carolyn Turpin-Petrosino, and Sarah Guckenburg. 2013. *Formal System Processing of Juveniles: Effects on Delinquency*. No. 9 of Crime Prevention Research Review. Washington, D.C.: U.S. Department of Justice, Office of Community Oriented Policing Services.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

expensive than formal adjudication. The benefit to every diverted adolescent is approximately \$51,000 greater than the costs.<sup>54</sup>

Given the collateral consequence that can result from the maintenance of court records, pre-arraignment diversion is particularly important. Massachusetts does not permit juvenile or adult records to be expunged. There are models across the state that feature out of court programming developed by collaborative dialogue in an attempt to reduce unnecessary state intervention. Examples of such efforts include the National Council of Juvenile and Family Court Juvenile Pathways to Juvenile Justice project (Middlesex County), the MacArthur Foundation Models for Change initiative designed to address youth involved in juvenile justice and child welfare (Hampden, Essex, Suffolk counties), and a wide array of partnerships under aegis of the JDAI process and county probation departments.

#### **D. Probation vs. DYS commitment**

Each of the sentencing committees has discussed the issue of when to impose a committed sentence as opposed to community based supervision. As every judge knows, there are cases where DYS commitment is necessary (and often the last resort) to achieve the goals of rehabilitation and public safety. Research supports the proposition, however, that in the vast majority of cases, the goals of juvenile court can be met through community-based rehabilitation efforts.<sup>55</sup> Useful research tools regarding this issue include *Reforming Juvenile Justice: A Developmental Approach* (National Academies Press 2013) and *The Burdens of Leniency* by Ronald Corbett, Ed.D, 99 Minn. L. Rev. 1697 (2015).

At sentencing, judges should give careful consideration to tailoring conditions that are reasonably related to the goals of probation. This is dependent upon both the circumstances and characteristics of the particular juvenile as well as the nature and circumstances of the offense committed. *Commonwealth v. Scott Gomes*, 73 Mass. App. Ct.857 (2009). When determining an appropriate disposition, consideration should also be given to the appropriate length of supervision. In some instances less may be best. “On the one hand, there is no credible evidence that very brief, shock programs, either institutional or community-based, produce reductions in reoffending. On the other hand, there is evidence that extended program involvement beyond the average program length does not increase effectiveness.”<sup>56</sup> It is also worth considering whether the issue facing the juvenile is best addressed in the juvenile court system, or whether the issue is best addressed through some other service delivery system.

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<sup>54</sup> See National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press, at 169.

<sup>55</sup> *Id.*, at 155.

<sup>56</sup> *Id.*, at 158.

A sentencing judge may also wish to consider whether imposing a probation supervision fee has the unintended consequence of becoming a counterproductive financial burden for indigent juveniles and their families. In cases of indigent juveniles, judges may waive fees or impose community service in lieu of statutory fees. The ability to pay, an issue in restitution as well, is of particular import in juvenile practice.

### **E. Collateral consequences**

The consequences of an adjudication may be more profound and long-lasting than the reality of the actual finding. A felony accusation can result in school suspension and in circumstances of adjudication, expulsion.<sup>57</sup> Adjudications can also cause loss of benefits including public housing, immigration consequences, and adversely affect the youth's ability to attend college or obtain college loans, and may deprive a youth of an array of employment opportunities including entrance into the military. Additionally, in certain circumstances, adjudications may serve as a predicate for enhanced penalties if the youth later picks up an adult charge. All of these consequences may impair the healthy development of youth and in turn thwart natural desistance. Accordingly, a judge may wish to use care when crafting dispositions so as to avoid these types of collateral consequences yet still hold the youth accountable.

Certain crimes, including OUIs and sex offenses, carry with them particularly profound collateral consequences. For example, pursuant to G.L. c. 90, § 24, a juvenile charged with an OUI can lose his license for years if s/he does not complete the court ordered alcohol education program. Sentencing Judges should be aware that most first offenders are eligible for the 24D program, which includes an alcohol education program that can serve as an alternative to more significant fines, license loss, and possible incarceration. Additionally, according to G.L. c. 6, § 178E (f), a juvenile adjudicated of a sexual offense must register with the sex offender registry board (SORB). If a juvenile adjudicated for sexually assaultive behavior does not receive a sentence of immediate confinement, however, (or upon motion of the Commonwealth) that juvenile may be relieved from the requirement to register as a sex offender following a hearing. Within fourteen days of sentencing, the court must “determine whether the circumstances of the offense in conjunction with the offender's criminal history indicate that the sex offender does not pose a risk of re-offense or a danger to the public. If the court so determines, the court shall relieve such sex offender of the obligation to register.”<sup>58</sup> The juvenile bears the burden of proving that he does not pose a risk of re-offense or danger to the public. In interpreting the process, the SJC has held there is no requirement that a judge must find there *no risk* to reoffend (which would be nearly impossible), but that there is a *low* risk given the level classifications of the SORB.<sup>59</sup> In thinking about the issue of registration, a judge may wish to consider studies

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<sup>57</sup> If the student is not charged with a felony, then he or she cannot be suspended or expelled for more than 90 days. G.L. c. 71, §37(h).

<sup>58</sup> G.L. c. 6, § 178E(f).

<sup>59</sup> See *Commonwealth v. Ronald R.*, 450 Mass. 262 (2007), *Commonwealth v.L.L.*, 470 Mass. 169 (2014). For a review of data analyzing adolescent sex offending see *The Perversion of Youth* by Frank Dicaldo (New York University Press 2009). In comments to the Committee, some judges indicated that they refer cases to the court clinic to evaluate the risk of sexual re-offending.

that show that the registration of juvenile sex offenders does not lower recidivism rates and may in fact lead to increased recidivism due to the fact that registration leads to many barriers to successful re-integration into the community.<sup>60</sup>

#### **F. The importance that the juvenile perceive the process as fair**

Beyond being a basic matter of justice, fairness, and the perception of fairness, strengthens the legitimacy of the court.<sup>61</sup> If youth feel that they have been treated fairly by the court, they respond better to intervention and recidivism is reduced.<sup>62</sup> Conversely, perceptions of unfairness “impede efforts to encourage minority youth to accept responsibility for their criminal acts and to internalize pro-social values.”<sup>63</sup> Adolescents “react favorably to being treated with dignity and respect and having their voices heard.”<sup>64</sup> The simple act of valuing the youth’s input (whether or not it is ultimately possible to incorporate it) can increase perceptions of fairness. This perception of fairness can also be strengthened if juveniles have some understanding of why they are receiving a particular disposition. Therefore, judges should consider stating the reasons for their dispositions on the record. If Juvenile Court judges value and attempt to incorporate adolescents’ input in the process of choosing an adequate disposition,<sup>65</sup> and provide adolescents with an explanation for the disposition ultimately chosen,<sup>66</sup> adolescents will be more receptive and likely to take accountability.

#### **G. Trauma-informed decision making**

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<sup>60</sup> Michael F. Caldwell, Sex Offender Registration and Recidivism Risk in Juvenile Sexual Offenders, 27 Behavioral Sciences and the Law 941, (2009).

<sup>61</sup> “Treating youth fairly and ensuring that they perceive that they have treated fairly and with dignity contribute to positive outcomes in the normal process of social learning, moral development, and legal socialization during adolescence.” National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press, at 6.

<sup>62</sup> *See id.* “Importantly, identity formation also involves a pursuit of autonomy, which leaves adolescents sensitive to, and at times resistant to, social control efforts of authority figures that they regard as illegitimate (Fagan and Tyler, 2005).” *Id.* at 187.

<sup>63</sup> National Research Council (2013), *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press, at 130.

<sup>64</sup> *Id.* at 190.

<sup>65</sup> *Id.* at 210.

<sup>66</sup> *Id.*

Research suggests that more than 80% of juvenile justice-involved youth report a history of exposure to at least one traumatic event at some point in their lives, and the majority of youth report multiple forms of victimization.<sup>67</sup> These traumatic events include actual or threatened exposure to violence (both at home and in the community), death, sexual abuse and exploitation, emotional abuse, bullying, natural and man-made disasters, life-threatening accidents, chronic homelessness, and having (or living with someone who has) serious mental or terminal illness.<sup>68</sup> Research suggests that females in particular are more likely to suffer “multiple” traumas, or “poly-victimization,” and are more likely to develop PTSD as a result.<sup>69</sup>

One of the most replicated findings in research on adolescent development shows that early physical maltreatment predicts a range of problems for teens, including increased risk for delinquent behavior.<sup>70</sup> Trauma can interrupt cognitive development, and increase psychological impairment, thus making a youth less responsive to services. Exposure to trauma puts a child at risk for developing depression and PTSD, and exhibiting a host of negative behaviors (physical aggression, defiance, emotional dysregulation, drug and alcohol use, running away, self-harm, involvement with abusive romantic partners, sexual acting-out and exploitation).<sup>71</sup>

In developing a disposition or sentence, a judge may wish to consider whether the youth has a trauma history and whether that history is being adequately evaluated and addressed through services and interventions. A judge may wish to further consider whether the trauma history mitigates in any way the nature of the offense and/or the level of culpability. Consideration may be given as to whether the child is safe in their current environment, and also as to whether detainment (and the accompanying issues of hand-cuffing/searching) may serve as a further trigger for a youth who has suffered trauma. A judge may wish to consider that out-of-home placements, multiple placements, school disruption, strip searches, shackling, and the use of physical restraints are some practices that can cause trauma or re-traumatize youth.<sup>72</sup>

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<sup>67</sup> See e.g., Abram et al., 2004; Dierkhising et al., 2013; Ford, Hartmann, Hawke, & Chapman, 2008; Ford, Grasso, Hawke, & Chapman, 2013; Kerig et al., 2011, 2012.

<sup>68</sup> National Child Traumatic Stress Network Bench Card, *available at* [http://www.nctsn.org/sites/default/files/assets/pdfs/judge\\_bench\\_cards\\_final.pdf](http://www.nctsn.org/sites/default/files/assets/pdfs/judge_bench_cards_final.pdf)

<sup>69</sup> Trauma Among Girls in the Juvenile Justice System, National Child Traumatic Stress Network Juvenile Justice Consortium, Patricia K. Kerig, Ph.D., and Julian D. Ford, Ph.D., 2014, pp. 5-6).

<sup>70</sup> National Resource Council (2013), *Reforming Juvenile Justice: a Developmental Approach*, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds., Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, Washington, D.C., The National Academies Press, at page 103.

<sup>71</sup> National Child Traumatic Stress Network Bench Card, *available at* [http://www.nctsn.org/sites/default/files/assets/pdfs/judge\\_bench\\_cards\\_final.pdf](http://www.nctsn.org/sites/default/files/assets/pdfs/judge_bench_cards_final.pdf)

<sup>72</sup> Vandervort, F., *The Impact of Traumatic Stress and Alcohol Exposure on Youth: Implications for Lawyers, Judges and Courts*, Michigan Child Welfare Law Journal (Winter 2007-2008)

One of the most important things that a judge may wish to consider when crafting a disposition is that youth have some natural resilience which can be greatly enhanced with support from one or more caring adults, access to community resources, opportunities, and services, and with appropriate intervention.<sup>73</sup>

The National Child Traumatic Stress Network and the National Council of Juvenile and Family Court Judges have created a bench card to assist judges in responding to the behaviors and issues faced by trauma-exposed youth. The Court, probation and practitioners may access the bench card and other helpful resources, including information on culturally competent responses, at the National Child Traumatic Stress Network home site.

## H. Substance abuse issues

Per the National Survey on Drug Use and Health (NSDUH, 2014), an estimated 8.8 percent of youth aged 12-17 used illicit drugs regularly, and 11.6 percent of youth drank alcohol regularly.<sup>74</sup> Research suggests that approximately 10% of substance-using adolescents will eventually develop a clinical substance abuse disorder.<sup>75</sup> In a 2010 study of youth in residential treatment, more than two-thirds reported serious substance abuse problems.<sup>76</sup> Not surprisingly, the majority of adolescents with substance abuse disorders (90%) do not perceive themselves as in need of services.<sup>77</sup> According to the NSDUH (2014), only 9.1% of youths in need of treatment actually received treatment.<sup>78</sup>

Research commonly shows a link between substance abuse problems and *serious* delinquency.<sup>79</sup> It is important to note that serious/chronic offenders are “much more likely than other juvenile offenders to be substance users and to qualify as having substance abuse

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<sup>73</sup> Danya Glaser, *Child Abuse and Neglect and the Brain—A Review*, 41 J Child Psychol. & Psychiatry 97, 111 (2000).

<sup>74</sup> Alcohol and Drug Prevention and Treatment Therapy, OJJDP (2015) located at [http://www.ojjdp.gov/mpg/litreviews/Alcohol\\_and\\_Drug\\_Therapy\\_Education.pdf](http://www.ojjdp.gov/mpg/litreviews/Alcohol_and_Drug_Therapy_Education.pdf)

<sup>75</sup> *Id.*, citing SAMHSA, 2008.

<sup>76</sup> National Resource Council (2013), *Reforming Juvenile Justice: a Developmental Approach*, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds., Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, Washington, D.C., The National Academies Press, at page 85.

<sup>77</sup> *Id.*, citing SAMHSA, 2006.

<sup>78</sup> *Id.*

<sup>79</sup> Substance Use and Delinquent Behavior Among Serious Adolescent Offenders, Edward P. Mulvey, Carol A. Schubert, and Laurie Chassin, *Juvenile Justice Bulletin*, OJJDP, December 2010, at page 3.

disorders.”<sup>80</sup> As with the frequency of committing delinquent/criminal acts, there is research which supports the idea that there is a natural desistance to using substances in late adolescence.<sup>81</sup> The key is to find the right intervention, at the right time, for the right youth to help reduce the chance of reoffending, and to minimize the risk for a lifetime of substance abuse struggles.<sup>82</sup>

At the dispositional or sentencing phase of the case, a judge may wish to consider whether a substance abuse problem has been identified. Proper screening and evaluation is key. Just as it is important to get help for the youth who need it, youth who do not require therapy or a full-blown treatment program should not take up that resource. A judge may wish to consider whether all community-based resources for treatment have been identified. Although the resource may be scarce, if substance abuse within the family is affecting the youth’s chance for success, referral for a family-based treatment, if available, may be worthy of consideration. Certain types of treatment have developed standards for the amount of time needed to provide effective intervention. For substance abuse, the recommended period of treatment is a minimum of 90 days to produce stable change.<sup>83</sup>

### **I. Assessment tools and Court Clinic evaluations**

Every child who comes before the court for disposition or sentencing deserves an individualized assessment, formal or informal, by the court. The development of tools and procedures for the effective assessment of the risk of reoffending and the developmental/intervention needs of the youth is a desirable “...first step in achieving the overall goal of a more rational and developmentally appropriate array of preventative interventions in the juvenile system.”<sup>84</sup> Use of reliable risk/needs assessment can “reduce the occurrence of idiosyncratic decision making and maximize the impact of resources” by connecting them to the risk level of each youth.<sup>85</sup> In the Juvenile Court system, our Probation Department has begun the training and roll-out of two assessment tools: MAYSI II and OYAS. At sentencing, a judge may consider information available in these assessment tools. Care must be taken that appropriate

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<sup>80</sup> Id. at page one.

<sup>81</sup> Id. at pages 4-5 (the reasons for the desistance remain unclear; little is known about how the processes of desistance work or what factors influence them).

<sup>82</sup> Id. at page one

<sup>83</sup> National Resource Council (2013), *Reforming Juvenile Justice: a Developmental Approach*, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds., Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, Washington, D.C., The National Academies Press, at page 157.

<sup>84</sup> National Resource Council (2013), *Reforming Juvenile Justice: a Developmental Approach*, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds., Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, Washington, D.C., The National Academies Press, at page 5.

<sup>85</sup> Id.

steps are taken to avoid prejudicing a young person’s rights in regard to the Fifth and Sixth Amendments in this process.

A judge may order an aid in sentencing evaluation through the Court clinic. In practicality, an evaluation often takes several weeks to complete, and this should be taken into account and ordered as soon as possible in cases where such a report is appropriate. In some instances, a sentencing judge is provided with a court clinic evaluation moments before or even *during* a sentencing hearing. Efforts should be made to ensure the sentencing judge is aware of, and has access to the court clinic evaluation *in advance of* the sentencing hearing with adequate time for full review. Given the potential harm a youth may suffer if information in any court clinic report is released to persons other than those before the court, a judge may wish to order that all reports should be held under a protective order limiting access of the report to the parties before the court and requiring notice to the juvenile and appointment of counsel should a third-party seek access to the information at the time of sentencing or at a future date.

#### **J. Dual-status youth and youth with mental health issues**

In the complex system of juvenile justice, many of the youth before the court have histories of past or current involvement with child protections services (DCF). Sometimes referred to as “dually-involved youth,” many of the youth have a trauma histories related to serious abuse and/or neglect, and have often suffered significant disruptions/losses in their normal functioning and development. Family dysfunction, frequent moves, unmet basic needs, foster care and/or changes in school, etc. are all issues which may play a role in why the youth is before the court. Other youth have mental health issues which may very well be affecting their behavior, competency, criminal responsibility, and ability to abide by conditions of probation. Some youth before the delinquency court may have both prior DCF history and mental health issues.<sup>86</sup> A sentencing judge may wish to consider an integrated “team approach” with cases of youth involved with (or who should be involved with) DCF, DMH, DDS, and ensure that all parties with important information and an ability to provide services are a part of the dispositional process in court.<sup>87</sup> A sentencing/dispositional judge may consider whether and how these circumstances (many outside the control of the youth) should factor into disposition. The use of effective screening tools and evaluations may help a judge identify treatment needs and resources for these youth.

A judge may also wish to consider whether the setting where an incident took place, coupled with the status of the complaint, mitigates the effect of a juvenile’s conduct. For example, where the setting is a residential placement or a school for developmentally disabled or emotionally disturbed youth and the conduct that serves as the basis of the charge is consistent

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<sup>86</sup> See generally, *Guidebook for Juvenile Justice and Child Welfare System Coordination and Integration, a Framework for Improved Outcomes*, Child Welfare League Press, Janet K. Wigg and John A. Tuell, at pages xiii-xix.

<sup>87</sup> National Resource Council (2013), *Reforming Juvenile Justice: a Developmental Approach*, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds., Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, Washington, D.C., The National Academies Press, at page 323.

with the reason he is in the placement/school and where the status of the complainant is an employee/counselor who was hired to work at the school to deal with the students/residents. *See e.g. Commonwealth v. Orville O.*, 2014 Mass. App 757 (unpublished 2014).

### **K. The Victim's Bill of Rights**

Pursuant to the Victim's Bill of Rights, the victim of a crime has the right to confer with the probation officer prior to the filing of a presentence report, to request that restitution be an element of the final disposition of a case, and to be heard through an oral or written victim impact statement at sentencing/case disposition about the effects of the crime on the victim and as to the recommended sentence, and to be heard at any other time as deemed appropriate by the court. G.L. c. 258B, § 3(n)(o)(p).

### **L. Sentencing panel discussions and on-site visits to DYS facilities**

Judges should have an opportunity to participate in discussions with their peers on best sentencing practices. Through the administrative office, sentencing panels could be coordinated to occur either at court conference and trainings or other intervals based on need and geography. Judges may also wish to learn more about the services available at DYS by engaging in on-site visits to DYS programs and facilities (including secure detention). All Juvenile Court judges appointed after the spring of 2016 will be required, as part of their orientation prescribed by Chief Justice Nechtem, to visit a DYS program.

### **M. Accessing up-to-date statistics, data and research related to juvenile dispositions**

As discussed herein, it is necessary to be aware of research and analysis of evidenced based best practices and to consider data from sources such as JDAI and the data dashboards regularly published by DYS and the Office of the Commissioner of Probation.

### **N. Imposition of fees**

A sentencing judge may wish to consider whether imposing fees at disposition or sentencing will have the unintended (and counterproductive) consequence of becoming a financial burden for the family of the youth, and/or lead to possible sanctions for violating probation. The vast majority of youth before the court (95%) are determined to be eligible for court appointed counsel due to indigency.<sup>88</sup> Careful consideration should be made when assessing ability to pay.<sup>89</sup>

In cases of indigent youth, a judge may consider waiving the fees, or imposing a condition of community services, when it is determined the fees would create an undue financial

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<sup>88</sup> Juvenile Probation data.

<sup>89</sup> See generally, Ronald P. Corbett, Jr. *The Burdens of Leniency: The Changing Face of Probation*, MINN. L. REV. 1697 (2015).

hardship for the family.<sup>90</sup> Community service work may be imposed in lieu of fees. If a judge makes a determination that payment of a supervision fee would constitute a financial hardship and orders community service, that finding should be entered on the record. Important work that connects the youth to the community has numerous potential benefits. The many outstanding agencies in our communities which offer youth the opportunity to perform community services should be commended and supported.

In cases where restitution is ordered, a judge may waive monthly supervision fees for each month the youth is in compliance with paying their restitution order.

## V. LIST OF RESOURCES

### A. Research and Articles

#### 1. Adolescent Brain Development

- a. AMERICAN PSYCHOLOGICAL ASSOCIATION, DEVELOPING ADOLESCENTS: A GUIDE FOR PROFESSIONALS (2002).
- b. Laurence Steinberg, Should the Science of Adolescent Brain Development Affect Juvenile Justice Policy and Practice? (May 20, 2014) *available at* <http://cfc.ncmhjj.com/wp-content/uploads/2014/05/Dr.-Laurence-Steinberg-Keynote-May-20-2014.pdf>.

#### 2. Collateral Consequences

- a. Dylan Walsh, *The Crimes of Children*, THE ATLANTIC, Aug. 10, 2015.

#### 3. Comprehensive

- a. Chief Justice Ralph D. Gants, Mass. Inc. Keynote Address at the University of Massachusetts, Boston (Mar. 16, 2015) *available at* <http://www.mass.gov/courts/docs/sjc/docs/speeches/sjc-chief-justice-gants-remarks-umass-boston-031615.pdf>.
- b. National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.
- c. *Glossary of Massachusetts Sentencing Terms*, version 4.15(1) (2016), Lee J. Garteberg.
- d. FRANCINE T. SHERMAN & FRANCINE H. JACOBS, *Juvenile Justice: Advancing Research, Policy, and Practice* (Wiley & Sons, Inc., 2011).

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<sup>90</sup> See generally, Letter from the U.S. Department of Justice (March 14, 2016), *available at* <https://www.justice.gov/crt/file/832461/download>.

- e. Massachusetts Juvenile Bench Book; Editors Blitzman, Schelfaudt (MCLE 2014)- published periodically.
- f. Juvenile Delinquency and Child Welfare Source Book (MCLE 2015); Eds. Karp, Limon, Wolf.; published annually.
- g. CENTRE FOR CRIME AND JUSTICE STUDIES, *DEBATING YOUTH JUSTICE: FROM PUNISHMENT TO PROBLEM SOLVING?* (Zoe Davies and Will McMahon eds., 2007).
- h. ELIZABETH SEIGLE, NASTASSIA WALSH, & JOSH WEBER, *CORE PRINCIPLES FOR REDUCING RECIDIVISM AND IMPROVING OTHER OUTCOMES FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM* (New York: Council of State Governments Justice Center, 2014).
- i. SOUTH DAKOTA JUVENILE JUSTICE REINVESTMENT WORK GROUP, *FINAL REPORT* (2014).
- j. *The Supreme Court and the Transformation of Juvenile Sentencing* (Sep. 30, 2015), Elizabeth Scott, Thomas Grisso, Marsha, Levick and Laurence Steinberg: MacArthur Foundation.

#### 4. Cradle to Prison Pipeline

- a. Marian Wright Edelman, Justice For America's Children, *Juvenile Justice: Advancing Research, Policy, and Practice*, Editors Francine Sherman, Francine Jacobs (Wiley & Sons, Inc., 2011). (deconstructing the cradle to prison pipeline)
- b. Daniel Losen, Johanna Wald, *De-Constructing the School-to-Prison Pipeline* ([www.josseybass.com](http://www.josseybass.com) 2003).

#### 5. Detention and Commitment

- a. Glaze, Lauren E. & Danielle Kaebler, *Correctional Populations in the United States, 2013*; U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS (Dec. 2014).
- b. BARRY HOLMAN & JASON ZIEDENBERG, JUST. POL. INST., *THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES* (2006).
- c. Williams, Marian, *The Effect of Pretrial Detention on Imprisonment Decisions*, 28(2) CRIM. JUST. REV. 299 (2003).

#### 6. Diversion

- a. Petrosino, Anthony, Carolyn Turpin-Petrosino, and Sarah Guckenburger. 2013. *Formal System Processing of Juveniles: Effects on Delinquency*. No. 9 of Crime Prevention Research Review. Washington, D.C.: U.S. Department of Justice, Office of Community Oriented Policing Services.
- b. National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schnuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press

- c. Re-Examining Juvenile Incarceration, Id. (Data Section).
  - 7. Evidence-based research
    - a. Jeffrey Butts & John Roman, *Better Research for Better Policies, in Juvenile Justice: Advancing Research, Policy, and Practice* 505-26 (Francine T. Sherman & Francine H. Jacobs, 2011).
  - 8. National and International comparisons
    - a. Lode Walgrave, *Restoration in Youth Justice*, 31 CRIME & JUST. 543 (2004).
    - b. Neal Hazel, Cross-National Comparison of Youth Justice, Youth Justice Board, [www.yjb.gov.uk](http://www.yjb.gov.uk). (2008).
  - 9. Natural desistance
    - a. Petrosino, Anthony, Carolyn Turpin-Petrosino & Sarah Guckenburg. 2013. *Formal System Processing of Juveniles: Effects on Delinquency*. No. 9 of Crime Prevention Research Review. Washington, D.C.: U.S. Department of Justice, Office of Community Oriented Policing Services.
    - b. LAURENCE STEINBERG, GIVE ADOLESCENTS THE TIME AND SKILLS TO MATURE, AND MOST OFFENDERS WILL STOP (2014).
  - 10. Positive Youth development
    - a. William H. Barton & Jeffery A. Butts. Building on Strength: Positive Youth Development in Juvenile Justice Programs. Chicago, IL (2008).
    - b. AMERICA’S PROMISE ALLIANCE, The 5 Promises, <http://www.americaspromise.org/promises> (last visited Apr. 23, 2015).
    - c. JEFFREY BUTTS ET. AL., FOCUSING JUVENILE JUSTICE ON POSITIVE YOUTH DEVELOPMENT (2005).
    - d. JEFFREY A. BUTTS, GORDON BAZEMORE, & AUNDRA SAA MEROE. POSITIVE YOUTH JUSTICE--FRAMING JUSTICE INTERVENTIONS USING THE CONCEPTS OF POSITIVE YOUTH DEVELOPMENT. Washington, DC: Coalition for Juvenile Justice (2010).
    - e. Richard F. Catalano, *Positive Youth Development in the United States: Research Findings on Evaluations of Positive Youth Development Programs*, 591 ANNALS AM. ACAD. POL. & SOC. SCI. 98 (2004).
    - f. William Damon, What Is Positive Youth Development?, 591 ANNALS AM. ACAD. POL. & SOC. SCI. 13 (2004).
    - g. KAREN DUKAKIS ET. AL., POSITIVE YOUTH DEVELOPMENT: INDIVIDUAL, SETTING AND SYSTEM LEVEL INDICATORS (2009).
    - h. IOM (INSTITUTE OF MEDICINE) & NRC (NATIONAL RESEARCH COUNCIL), INVESTING IN THE HEALTH AND WELL-BEING OF YOUNG ADULTS, Washington, DC: The National Academies Press (2014).

- i. COLETTE S. PETERS & SHANNON MYRICK, JUVENILE RECIDIVISM—MEASURING SUCCESS OF FAILURE: IS THERE A DIFFERENCE? (2011).
- j. C.A. SCHUBERT & E.P. MULVEY, PROGRAMS THAT PROMOTE POSITIVE DEVELOPMENT CAN HELP YOUNG OFFENDERS GROW UP AND OUT OF CRIME (2014).
- k. Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137 (1997).
- l. Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18(2) FUTURE OF CHILD. 15 (2008).
- m. LAURENCE STEINBERG, GIVE ADOLESCENTS THE TIME AND SKILLS TO MATURE, AND MOST OFFENDERS WILL STOP (2014).

11. Probation

- a. Ronald P. Corbett, Jr. *The Burdens of Leniency: The Changing Face of Probation*, MINN. L. REV. 1697 (2015).
- b. Draft for Comment and Discussion from Robert Kinscherff to Sentencing Best Practices Working Group (Feb. 2, 2015) (on file with the author).
- c. CENTRAL AND EASTERN OREGON JUVENILE JUSTICE CONSORTIUM, A GRADUATED SYSTEM OF INCENTIVES, INTERVENTIONS AND SANCTIONS FOR YOUTH OFFENDERS ON PROBATION—A CASE MANAGEMENT APPROACH (2006).
- d. FERNANDO GIRALDO, SANTA CRUZ COUNTY, CA: A STORY OF SUSTAINABILITY IN EQUITY AND DETENTION REFORM (Apr. 2012) *available at* <http://www.jdaihelpdesk.org/intersiteconf2012/Shifting%20Probation%20Culture%20Innovations%20that%20Last%20Outcomes%20that%20Count%20-%20Santa%20Cruz%20%282012%20Conference%29.pdf>.
- e. Draft for Comment and Discussion from Robert Kinscherff to Sentencing Best Practices Working Group (Feb. 2, 2015) (on file with the author).
- f. Michael J. Leiber & Jennifer H. Peck, *Probation Violations and Juvenile Justice Decision Making: Implications for Blacks and Hispanics*, YOUTH VIOLENCE AND JUVENILE JUSTICE (2012).
- g. Jeffrey Lin, Ryken Grattet & Joan Petersilia, “Back-End Sentencing” and Reimprisonment: Individual, Organizational, and Community Predictors of Parole Sanctioning Decisions, 48 CRIMINOLOGY 759 (2010).
- h. Amanda NeMoyer ET. AL., *Predictors of Juveniles’ Noncompliance with Probation Requirements*, 38 LAW & HUM. BEHAV. 580 (2014).
- i. Craig S. Schwalbe & Tina Maschi, *Investigating Probation Strategies with Juvenile Offenders: The Influence of Officers’ Attitudes and Youth Characteristics*, 33 LAW & HUM. BEHAV. 357 (2009).

- j. Hillary Smith ET. AL., *Race, Ethnicity, Class, and Noncompliance with Juvenile Court Supervision*, 623 ANNALS AM. ACAD. POL. & SOC. SCI. 108 (2009).
- k. Megan M. Sulok, *Extended Jurisdiction Juvenile Prosecutions: to Revoke or Not To Revoke*, 39 LOY. U. CHI. L.J. 215 (2007).

12. Race and ethnicity

- a. James Bell & Raquel Mariscal, *Race, Ethnicity, and Ancestry in Juvenile Justice*, in *Juvenile Justice: Advancing Research, Policy, and Practice* 111-30 (Francine T. Sherman & Francine H. Jacobs, 2011).
- b. Theodore Eisenberg & Sheri Lynn Johnson, *Implicit Racial Attitudes of Death Penalty Lawyers*, Cornell Law Faculty Publications, Paper 353 (2004).
- c. Michael J. Leiber & Jennifer H. Peck, *Probation Violations and Juvenile Justice Decision Making: Implications for Blacks and Hispanics*, YOUTH VIOLENCE AND JUVENILE JUSTICE (2012).
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- e. Theodore Eisenberg & Sheri Lynn Johnson, *Implicit Racial Attitudes of Death Penalty Lawyers*, Cornell Law Faculty Publications, Paper 353 (2004).

13. Restorative Justice

- a. Lode Walgrave, *Restoration in Youth Justice*, 31 CRIME & JUST. 543 (2004).

14. Risk Assessment

- a. Mulvey, E.P. and Schubert, C.A. (2014). *To Monitor Changing Risks and Needs, Repeat Assessments of Young Offenders over Time*. Chicago, IL: MacArthur Foundation.

15. Trauma Informed Decision Making

- a. Buffington, K., Dierkhising, C.B., & Marsh, S.C. (2010) *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency*, Reno, Nevada, National Council of Juvenile and Family Court Judges.
- b. National Child Traumatic Stress Network. <http://www.nctsn.org/resources/topics/juvenile-justice-system>

**B. Statistics and data**

- 1. Juvenile Court Probation Dashboard—Compiled Periodically (currently disseminated to judges).
- 2. Department of Youth Services statistics (available upon request)
- 3. JDAI dashboard – Compiled quarterly, *available at* <http://www.mass.gov/eohhs/gov/commissions-and-initiatives/jdai/jdai-data-dashboards-.html>

4. OJJDP, Statistical Briefing Book—Juveniles in Corrections (2011)  
*available at*  
<http://www.ojjdp.gov/ojstatbb/corrections/qa08305.asp?qaDate=2011>.
5. Justice Policy Institute, Factsheet – The Tip of the Iceberg: What Taxpayers Pay to Incarcerate Youth (March 2015).
6. Juvenile Offenders and Victims: 2014 National Report; Editors Sickmund and Puzzanchera (National Center for Juvenile Justice 2014 for OJJDP).
7. Re-Examining Juvenile Incarceration (April 20, 2015),  
<http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>.
8. Juvenile Court monthly filings by county – Compiled Monthly.

### **C. Practice Manuals**

1. Juvenile Court Bench Book, Vol I and II.
2. Massachusetts Prosecutors Guide
3. National Juvenile Defender Center, National Juvenile Defense Standards (2012).

**Note: For lists of programming for youth available in the Commonwealth for each county, please consult electronic list prepared by probation.**