

Rethinking
Approaches to
Over Incarceration
of Black Young
Adults in Maryland

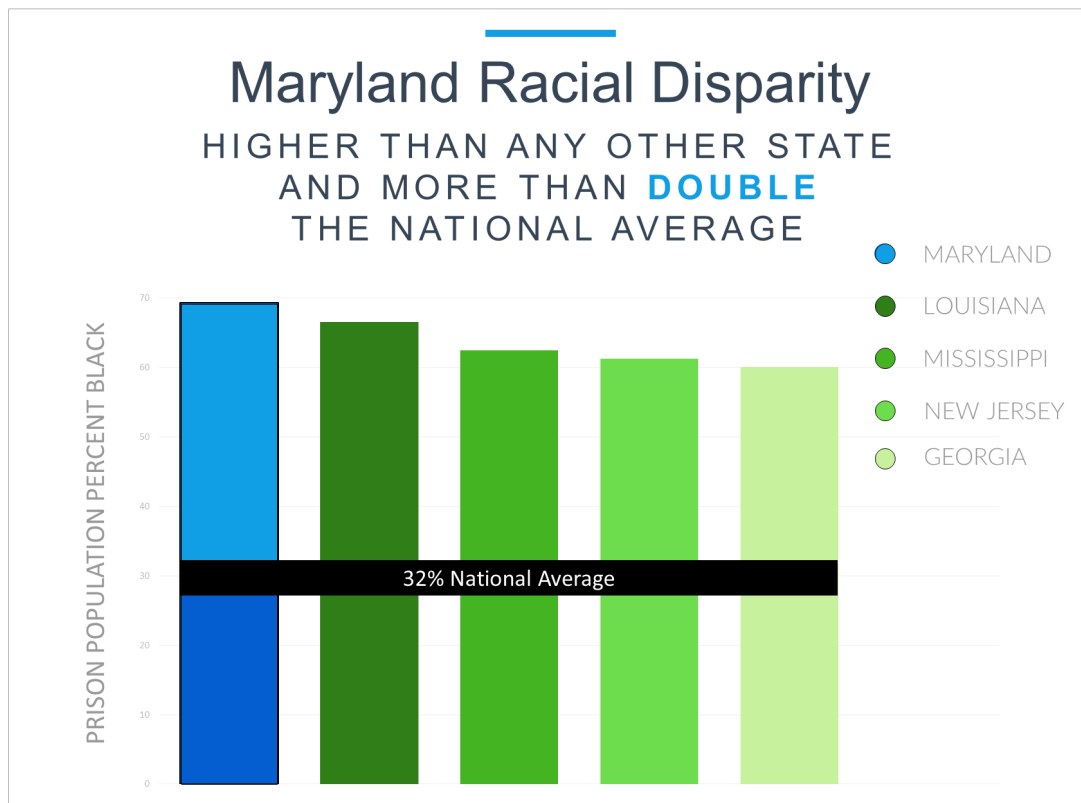
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INTRODUCTION

Punitive sentencing policies and restrictive parole release practices in Maryland have resulted in a deeply racially disproportionate criminal justice system that is acutely impacting those serving the longest prison terms. This is true despite a declining prison population and state leadership in Maryland having undertaken criminal justice reform in recent years. As recently as July 2018, more than 70 percent of Maryland's prison population was black, compared to 31 percent of the state population. The latest data from the Department of Justice show that the proportion of the Maryland prison population that is black is more than double the national average of 32 percent. These disparities are rooted in decades of unbalanced policies that disproportionately over-police under-resourced communities of color, and a criminal justice system focused on punitive sentencing and parole practices.



Disparity Most Pronounced Among Emerging Adults, Especially Those with Long Sentences

Racial disparities persist despite the fact that the Maryland prison population has declined by 13 percent since 2014, resulting in nearly 2,700 fewer people incarcerated. These inequalities affect the entire population, but are most pronounced among those individuals who were incarcerated as emerging adults (18 to 24 years old) and are serving long prison terms. Nearly eight in 10 people who were sentenced as emerging adults and have served 10 or more years in a Maryland prison are black. This is the highest rate of any state in the country.

To be Effective, Solutions Must Focus on the Emerging Adult Population

To reverse these racially disparate outcomes—the result of decades of failed policies—Maryland needs to rethink its approach to 18- to 24-year-olds and join a growing number of jurisdictions exploring reforms related to emerging adults. This policy brief will provide perspective on why this population is unique and reforms are critical to improving outcomes in the justice system. Going forward, Maryland's leadership can look toward examples of successful, evidence-based, and promising alternatives in other jurisdictions that can reduce the impact on emerging adults, racial disparities, and criminal justice involvement.

WHAT DO WE MEAN BY “EMERGING ADULTS”?

The United States justice system is divided into two separate entities: the adult criminal justice system and the juvenile justice system. With the creation of the juvenile court in 1899, the vast majority of youth under the age of 18 are served in the juvenile system. But the choice of 18 as the cutoff age is arbitrary and subject to specific state statutes. For example, in four states,¹ 17-year-olds are automatically prosecuted and sentenced as an adult. However, most states have chosen 18 as the age of adulthood. Some states, such as New York and North Carolina, have recently taken steps to raise the age of juvenile jurisdiction from 16 to 18 years old.¹

¹ Note that each state retains discretionary or mandatory mechanisms to transfer a youth into the adult court for specific crimes defined by the states' statutes.

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The reason this age threshold matters is because the juvenile justice system's underlying philosophy differs radically from that of the adult system. The juvenile justice system was explicitly developed as an alternative to the adult system, which is primarily focused on punishment. The juvenile system is based on an understanding that children have a less developed sense of right and wrong, reduced impulse control, and, as such, a different level of culpability for their actions. The juvenile system is not focused on absolving children of responsibility for their actions. However, it offers education, personal development, and rehabilitation rather than punishment.

Adolescent Brain Development

An evolving thread of research has drawn focus to similarities among youth who are under 18 and those between the ages of 18 and 24 years old, commonly referred to as emerging adults.

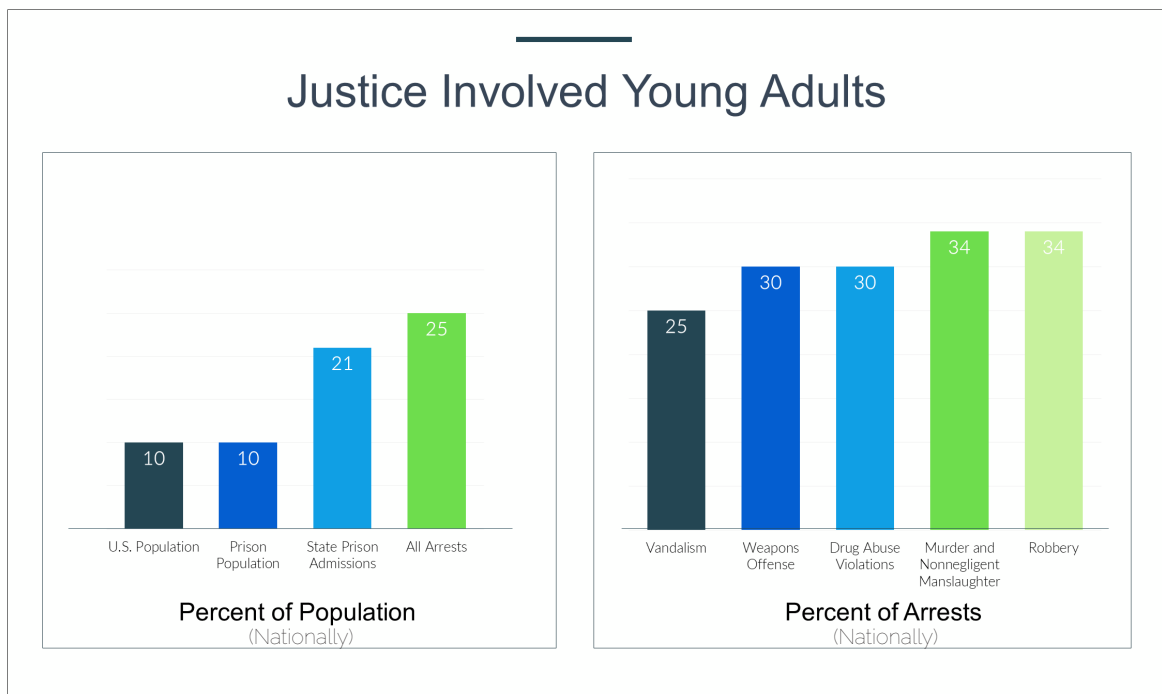
In recent years, adolescent brain development research has concluded that the brain continues to mature until at least the mid-20s. An average emerging adult possesses youth-like characteristics of heightened impulsivity, elevated sensitivity to peer and social influences, greater risk-taking, and immature decision making characterized by short-term thinking.² These characteristics can become risk factors to engaging in delinquency or criminal behavior and are exacerbated further among emerging adults with histories of trauma.

While relatively new to the field of criminal justice, these cognitive differences have been recognized for years in other sectors. For example, in many states you are either unable to rent a car before age 25 or are required to pay a young renter's fee.³ This is an acknowledgement of differences in decision making among younger people. In addition, according to researchers at Columbia University, "sociological research also reveals that key milestones bridging youth to adulthood, such as completing education, employment and marriage, come later in an individual's life course compared to previous generations."⁴ In terms of marriage, in 1960, 45 percent of those 18 to 24 years old were married, compared to only 9 percent in 2010.

Juvenile Justice—The “Magic” of 18

There is no science to selecting 18 years of age as the delineation between the juvenile and adult criminal justice system. It is an arbitrary cutoff that emerged from a political process informed by the science and cultural standards of the era. While emerging adults have more cognitive development than children, they still lack a fully developed socio-emotional system that can lead to poor impulse control and criminal behavior (Appendix I). Youth are more susceptible to peer influence and

risk-seeking behavior, but emerging adults are more susceptible than adults.⁵ This is an argument for policy makers to adapt to the new research that has emerged highlighting the similarities between youth and emerging adults by revisiting long-standing practices in sentencing and corrections.



EMERGING ADULTS IN THE CRIMINAL JUSTICE SYSTEM

Nationally, emerging adults comprise a disproportionate share of the prison population. While they only encompass 10 percent of the U.S. general population, they account for nearly 10 percent of the prison population,⁶ 21 percent of state prison admissions,⁷ and at least 25 percent of arrests.⁸

Emerging Adults, Race, and Long Prison Terms

These numbers are even more pronounced among people serving long prison terms. An analysis by the Urban Institute found that many individuals serving the longest prison terms were sentenced as emerging adults.⁹ Nationally, nearly four in

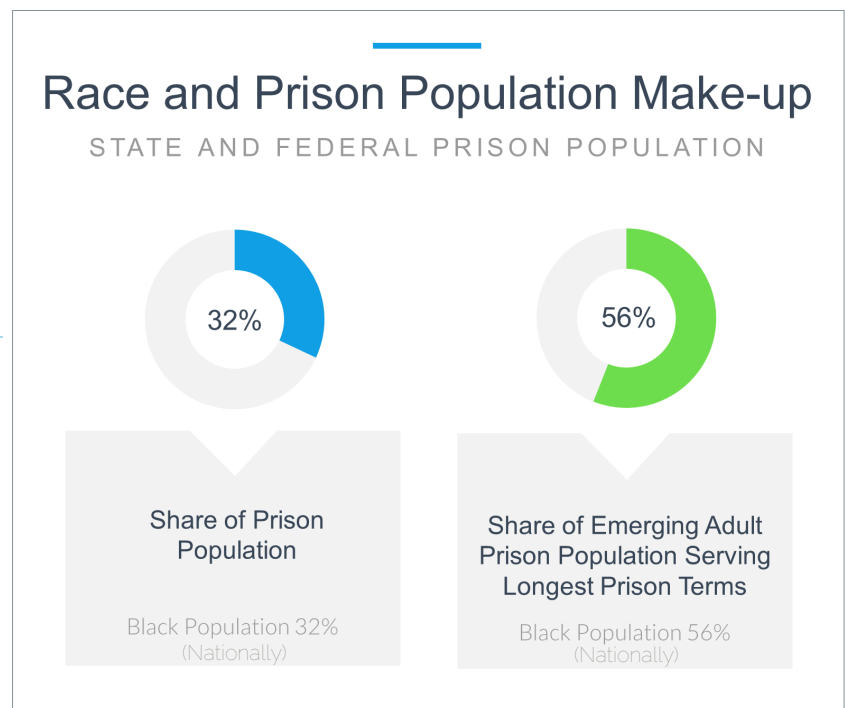
10 people serving the longest prison terms were incarcerated as an emerging adult. Moreover, many of them are black—while three in 10 people in state or federal prison are black, nearly six in 10 serving the longest prison terms and having entered as an emerging adult are black. This problem promises to get worse, as 13 percent of all black males in prison are emerging adults, many of whom will remain in prison serving extremely long sentences.

MARYLAND: EMERGING ADULTS, LONG SENTENCES, AND RACIAL DISPARITIES

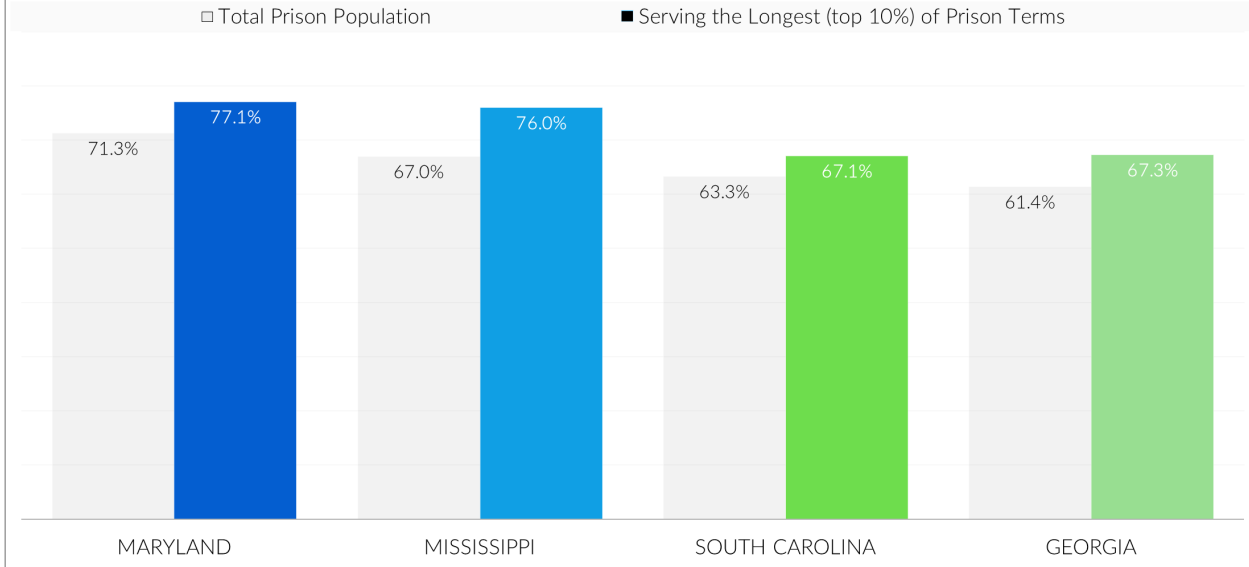
If the national story about emerging adults, race, and long prison terms is concerning, the situation in Maryland is alarming. In 2017, Maryland was at the forefront of the national criminal justice reform conversation when the state reported an unprecedented 10 percent decrease in its overall prison population. Policy makers declared victory. But despite that success, Maryland has been plagued with high rates of racial disparities among emerging adults serving long prison terms.

Maryland leads the country in racial disparity among those serving long prison terms. More than 70 percent of people in Maryland prisons and nearly eight in 10 people in prison who have served 10 years or more are black.

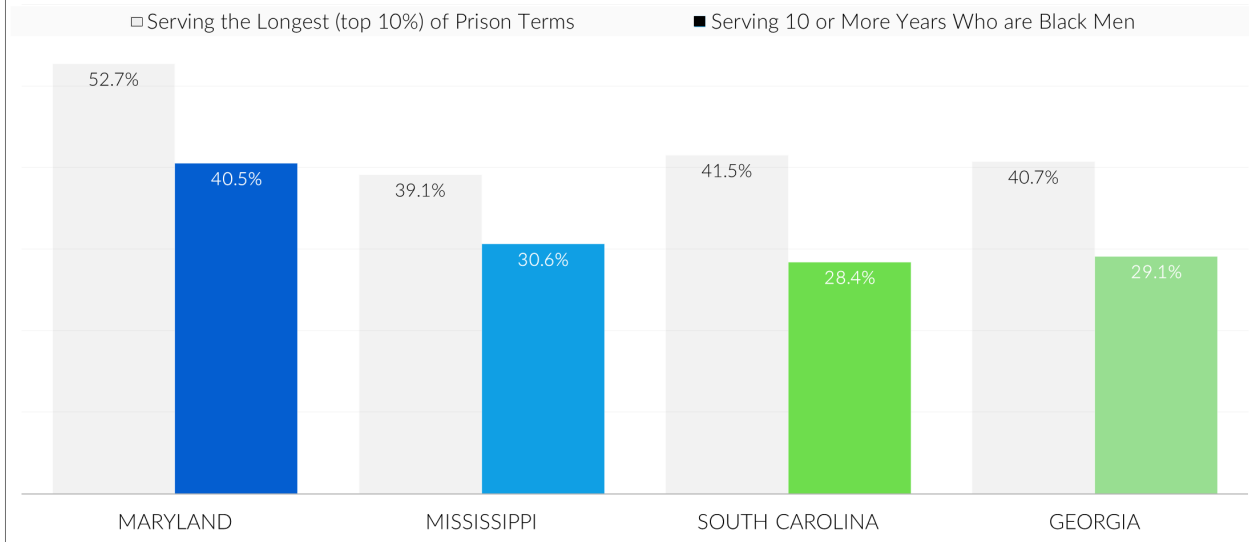
Among those people serving the longest prison terms (the longest 10 percent), half had been incarcerated as emerging adults and 82 percent are black. Of those serving 10 or more years, 41 percent are black men who were sentenced as emerging adults.



Prison Population that is Black



Share of Those Serving Long Prison Terms Who Were Sentenced Under the Age of 25



Costly Implications

Maryland's failure to appropriately respond to offenses committed by emerging adults has profound and costly implications for its rapidly growing elderly prison population. In many ways, these are the same populations at different points in time: elderly incarcerated individuals imprisoned decades earlier when they were emerging adults. Continuously neglecting the needs of emerging adults impacts the current and future prison population. In 2018, there were more than 900 people in Maryland prisons who were older than 60 and more than 3,300 people who are 50 or older. Maryland is spending more than \$50,000 a year on average to keep them incarcerated despite the lack of any public safety benefits.

The recent story of the Ungers in Maryland brings the issue into stark relief. In 2012, the Maryland Court of Appeals held that improper jury instructions invalidated the life with the possibility of parole sentences for 235 people. As of 2019, 192 of these individuals had been released from prison. Most of them were emerging adults when they were sentenced—with an average age of 24—and they spent an average of 40 years incarcerated. Almost 90 percent of the Unger Group are black, while only 18 percent of Maryland's population was black at the time of their sentencing.

Since their release, less than 4 percent have returned to prison—only one person was returned for a new offense—compared to a recidivism rate of 40 percent for the overall Maryland prison population. It is estimated that the Ungers' release has saved Maryland \$185 million, and there could be savings of more than \$1 billion over the next decade by releasing more of Maryland's low-risk elderly incarcerated people. Maryland could have saved even more had they chosen age-appropriate interventions when the Ungers—along with the tens of thousands who have committed offenses as emerging adults—were young, rather than incarcerating people for the majority of their life.¹⁰

These alarming cost figures can be traced back to the lack of appropriate responses to violent offenses committed by the emerging adult population. In 2018, the Maryland Department of Juvenile Services had more than 19,000 intakes with only 3 percent between 18 and 20 years old. Conversely, Maryland Department of Public Safety and Correctional Services served nearly 19,000 adults, with 11 percent of the population between 18 and 24 years old. The driver of these trends is a lack of viable alternatives, which results in emerging adults being processed through an adult criminal justice system that consistently delivers poor results and instead increases the likelihood of further criminal behavior.

In 2015, the Justice Policy Institute released *The Right Investment*, which found

that the neighborhoods with the highest incarcerated populations scored generally low on other socio-economic outcomes. In the two most impacted ZIP codes in Baltimore, 21213 and 21217, emerging adults constituted 32 percent of all of the arrests in the fourth quarter of 2018. These findings continue to tell the Maryland story of racial and neighborhood inequality.

According to the Baltimore Police Department, in the first eight months of 2019, there were 13,664 arrests. Of those, 23 percent were emerging adults, despite accounting for only 11 percent of the overall population; 91 percent of those young adults arrested were black. Young adults also disproportionately account for those arrested for violent offenses.¹¹

THESE ALARMING COST FIGURES CAN BE TRACED BACK TO THE LACK OF APPROPRIATE RESPONSES TO VIOLENT OFFENSES COMMITTED BY THE EMERGING ADULT POPULATION.

The story of disproportionate representation of emerging adults and inequality continues with crime victimization. According to a recent analysis by The Washington Post on homicide clearance rates, there were 2,827 homicides in Baltimore between 2007 and 2017. Nearly 30 percent of the victims were individuals between 18 and 24 years old.¹² Of that population, 95 percent were black.

Rather than being afforded developmentally appropriate opportunities in the youth system, they are served in a system that lacks age-appropriate rehabilitative programming. With emerging adults responsible for a disparate percentage of offenses, as well as being disproportionately represented as victims, progress with this population can have an outsized impact in reducing violent offenses and victimization. Put another way, investment in improving outcomes for emerging adults in the criminal justice system could achieve “a big bang for the bucks” return.

EMERGING ADULT POLICY RECOMMENDATIONS

In recent years, the Supreme Court has issued landmark rulings that have compelled states to reevaluate how they address serious, violent offenses by young people under the age of 18. By outlawing the death penalty and life without parole sentences for those under age 18, the Supreme Court has forced states to reckon with the impact of long prison terms for young people. Examples abound of people being successfully and safely released from prison after having served long prison terms. These success stories have galvanized a larger conversation about how those lessons also apply to emerging adults.

As with youth under 18, when emerging adults are incarcerated in the adult system, they miss education and socialization opportunities that are critical to their successful transition to adulthood and their ability to function as independent, productive adults when they are released. The combination of the lack of age-appropriate services before, during, and after justice involvement is impacting their success.¹³

The Maryland justice system is failing emerging adults, particularly those who are black. Rather than warehousing emerging adults, Maryland can learn lessons from other jurisdictions and develop age-appropriate programming to help emerging adults successfully transition into adulthood with a focus on education, vocational programming, and rehabilitative services. This would result in better public safety outcomes.

Jail and Prison-based Programs

In most cases, adult correctional facilities run on the principle of a one-size-fits-all approach. Despite research suggesting that emerging adults share a receptivity to treatment on par with youth in the juvenile justice system and would benefit from tailored programming, adult facilities rarely accommodate those unique needs. Practices in other countries that emphasize emerging adult programming, based on the foundations of the juvenile justice system—culturally responsive and tailored toward the unique challenges that emerging adults face—reveal the positive impact of in-facility treatment upon reentry.¹⁴

Correctional practices should be developed in parallel to the successes of programming in the youth system and the community. Emphasizing education, vocational training, and enhanced counseling are strategies that every emerging adult needs for a successful transition to adulthood. A number of jurisdictions are implementing promising innovations in this area, including Connecticut; Boston, Massachusetts; Middlesex County, Massachusetts; Washington, DC; and South Carolina.¹⁵

Sentencing Consideration

The Supreme Court, as well as some states, have determined that special consideration can be paid to age when considering criminal sentencing. In some cases, these considerations can contravene existing mandatory sentencing schemes as judges are afforded expanded discretion. While these sentencing provisions have

historically been applied to youth under 18, the evolving research in the field strongly supports a similar approach for the emerging adult population.

Allowing a judge to treat age as a mitigating factor for emerging adults can greatly decrease justice involvement by allowing for a shorter sentence, retaining juvenile jurisdiction, allowing for criminal records to be expunged or sealed, or permitting an individual to be treated in the community while under some form of supervision. Jurisdictions should then be incentivized to reinvest the savings from reduced incarceration into age-appropriate, evidence-based programming for emerging adults. This type of fiscal reinvestment was established in some states when they raised the age of juvenile jurisdiction, which resulted in more individuals being successfully supervised without confinement.

Probation Reform

Most probation models function under a one-size-fits-all strategy and do not take into account age-appropriate interventions. Consideration of an individual's specific circumstances will allow probation departments to develop age-appropriate interventions. The impact of an individual's age and environment needs to play a role in the probation supervision formula. In many cases, emerging adults are exposed to criminal behavior at a higher rate than other adults. Justice-involved emerging adults have higher rates of past trauma, parental incarceration, foster care placement, poverty, substance abuse, and mental health issues. These factors must be taken into account and addressed in order to plan for successful outcomes.

To ensure successful supervision, probation should operate in collaboration with community-based organizations that focus on treating individuals between 18 and 24 years old. Providing age-appropriate, individualized treatment and services, in turn, will shorten the length of supervision and increase the likelihood of successful reentry.

JUSTICE-INVOLVED EMERGING ADULTS HAVE HIGHER RATES OF PAST TRAUMA, PARENTAL INCARCERATION, FOSTER CARE PLACEMENT, POVERTY, SUBSTANCE ABUSE, AND MENTAL HEALTH ISSUES. THESE FACTORS MUST BE TAKEN INTO ACCOUNT AND ADDRESSED IN ORDER TO PLAN FOR SUCCESSFUL OUTCOMES.

In 2016, the U.S. Department of Justice conducted a 50-state analysis of responses to justice-involved emerging adults. As part of their findings, they identified various

jurisdictions that have altered their community supervision strategies to address the needs of this unique population. These jurisdictions included Boston, Massachusetts; Columbia, South Carolina; Des Moines, Iowa; New York City, New York; and San Francisco, California.¹⁶

Community-based Organizations

Understanding the growing need for a better approach for emerging adults, community-based organizations have advanced innovative and more effective responses. For example, Roca's evidence-based, data-driven intervention model, which recently began work in Baltimore, is designed to assist high-risk emerging adults with gaining meaningful employment to break the cycle of violence and incarceration. The intervention model is a four-year process with 88 percent of the participants avoiding any future criminal justice involvement.¹⁷

With a similar approach, the Safe and Successful Youth Initiative in Massachusetts operates at the intersection of public safety and public health. It provides opportunities for a coordinated intervention with partnerships in education, training, and transitional employment.¹⁸ A program evaluation showed that similar emerging adults not involved in the program were 42 percent more likely to be incarcerated. Boston generated \$7.35 in crime-related savings for every \$1 spent on the program.

Incarceration is not the solution to addressing crime, public safety, and community violence and should not be the presumptive response to addressing behavior of emerging adults in Maryland. Community interventions, programming, and treatment provides an opportunity to address issues of accountability and rehabilitation, and effect lasting positive change on future outcomes for all justice involved individuals, including emerging adults. Maryland must invest in a robust community-based continuum of care to provide for effective community based services, supports, and opportunities, including for housing, education, behavioral health, employment, substance abuse treatment, restorative justice options.

Policy Change

Since 2007, many states have raised the age of juvenile jurisdiction to ensure that the majority of youth are served by the juvenile system. Some states have begun to explore expanding this threshold to include emerging adults.

In 2018, three states proposed raising the age of juvenile jurisdiction beyond one's 18th birthday. In Connecticut, Governor Malloy championed a bill to gradually raise the age of juvenile jurisdiction to 21, allowing emerging adults to benefit from the protections and services of the state's juvenile system.¹⁹ In Massachusetts, the legislature debated bills to gradually raise the age to 21 and created a special task force to examine the issue in more depth. In Illinois, the legislature considered a bill to raise the age of juvenile jurisdiction to 21 in misdemeanor cases.

Vermont passed a law in 2018 which will increase the age of juvenile jurisdiction to 20 in 2022. The first part of the implementation of this law—incorporating 18-year-olds into the juvenile justice system—will begin in 2020.

In the meantime, despite not raising the age of juvenile jurisdiction, some states have made important changes in recognition of the specific circumstances faced by emerging adults.

Florida, Michigan, and New York

In certain circumstances, prosecutors in Florida, Michigan, and New York have the authority to expunge the records of emerging adults. This may be a small practice change, but it opens the door for community assimilation through meaningful employment without the barrier of a criminal record.

Washington, DC

In 2018, the DC Council passed a newly amended Youth Rehabilitation Act, a statute that applies to youth and emerging adults in its criminal justice system. The amended law raised the age from 22 to 25 for those convicted of eligible offenses to serve shorter sentences and re-enter the community without the burden of a criminal record if they successfully complete the terms of their sentence. Additionally, the amended law requires that the District revamp its age-appropriate rehabilitative programs for the emerging adult population, both while in the community and while incarcerated.²⁰

In 2016, the District passed the Incarceration Reduction Amendment Act (IRAA) in order to bring the city into compliance with the recent Supreme Court rulings outlawing juvenile life without parole sentences. The 2016 law allowed those convicted and serving extreme sentences for offenses committed before they were 18 years old to petition for re-sentencing after serving 20 years. In late 2018, an amendment was passed to the IRAA which reduced the amount of time someone needed to serve before being eligible for resentencing to 15 years. An additional amendment to the IRAA was introduced in March 2019 that would raise the age of eligibility to 25 years old.

Oregon

Oregon has maintained jurisdiction over many young adults who were sentenced by the adult court. In 1994, Oregon passed Ballot Measure 11, which requires a mandatory sentence for specific serious and violent offenses. While many of the sentences carry a term beyond the emerging adult years, Oregon Youth Authority maintains jurisdiction until age 25, allowing an individual to take advantage of the developmentally appropriate programming in the youth system during their formative years.²¹

CONCLUSION

Maryland has the most extreme racial disparities for those incarcerated for long terms in the United States. That should alarm Maryland leadership and its residents. These disparities are rooted in policing practices that target communities of color, a lack of investment and opportunity in historically disadvantaged neighborhoods, and an overly punitive sentencing, parole, and corrections system that focuses on punishment with insufficient attention given to programming and rehabilitative services that have been proven to improve public safety outcomes.

In particular, failure to address the needs of emerging adults in the criminal justice system has exacerbated racial inequities and driven a system that incarcerates people for decades beyond any public safety benefit. Maryland must not sit by as other states awaken to the need to think differently about emerging adults. Foundational reforms to how the juvenile and criminal justice systems treat 18- to 24-year-olds will help with rolling back mass incarceration, reducing racial disparities, empowering communities, saving taxpayer dollars, and delivering on the promise of safe and prosperous neighborhoods.

APPENDIX

	Adolescence (puberty through 18)	Young Adults (18-25)	Later Adulthood (25 +)
Cognitive Development	Abstract thinking. Mental visor can hold not only concrete objects and experiences, but concepts for organizing them into categories and patterns. (i.e. abstract concepts like friendship and fairness, addition and subtraction as “opposites” not just carrying out the functions.)	More complex thinking. Increased ability to hold on their mental visors not only single abstractions, but clusters of abstractions and systems for organizing abstract thought. This assists them in math and science, as well as thinking about ideas, values and perspectives.	New levels of abstract analysis. An increased ability to not only organize abstractions but to do so self-consciously, and to evaluate ways of doing so.
Moral Development and Problem Solving	Right/wrong framework. Tendency to hold on one’s mental screen only one concept of what is right at a time. Ideas are either right or wrong. You are either right or wrong. They are either right or wrong.	Appreciation for diverse views. Development of a more “multiplicitic” framework in which they can “see” multiple points of view, value diversity of people and perspectives and appreciate that there may be many right answers to a problem.	More complex problem solving. Greater sophistication in analyzing problems that have no right answers, such as moral dilemmas; and to articulate resolutions based on more complex types of thought
Interpersonal Development	Instrumental relationships. Relationships tend to be about alternating reciprocity (i.e. you scratch my back, I’ll scratch yours). Can put themselves in someone else’s shoes, but have difficulty holding another point of view and theirs at the same time. Under stress, the needs of others fall off the mental visor.	Mutuality in relationships. Can form relationships with peers based on observing that they care about the same things; and loyalties to institutions based on observing that they share the same values. Can understand constructive criticism, appreciating that the other person is intending to be helpful. More likely to switch from instrumental orientation to more “socializable” orientation (like the Golden Rule.)	Enhanced leadership capacity. Able to put themselves on their mental visor and observe the ways in which they play an active role in shaping their values and decisions. Thus, they can create as well as follow rules and engage in processes by which individuals do so.
Emotional Development	Intensity of emotions. Triggered by hormones at puberty, teens are more aroused and aroused more easily — whether by something that makes them happy, angry or excited.	Emotional regulation. Acquire significantly greater capacity for integration of thought and emotion. Ability to hold past, present and future on their mental visor, and weigh immediate rewards against future consequences. Able to put more brakes on emotional intensity and sensation seeking.	Greater capacity for self-evaluation. Ability to see themselves as actors on the stage of life, they can also evaluate how effectively they do so, and how satisfied they or their employers, partners and others are with their performance and the impact.

Source: <http://www.nyjusticecorps.org/wp-content/uploads/2014/09/Stages-of-Adol-YA-Development.pdf>

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