



Time for Change:

A National Scan and Analysis of Hybrid Justice Systems for Emerging Adults

By Selen Siringil Perker and Lael E. H. Chester

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Foreword

by Bruce Western

The passage from adolescence to adulthood can be the most challenging stage of life. This time of transition often brings an independence and new social roles that are somehow more mature than childhood, but less responsible than full-fledged adulthood. Research shows that the path from adolescence to adulthood involves moving away from the company of family to the company of peers, from the school to wider social world, and all this happens when a young person's capacity for decision-making is still maturing. The tumult of emerging adulthood is vividly reflected in crime statistics that show risky and harmful behaviors peak in the middle and late teenage years.

Our courts, prisons, and social policy agencies are deeply familiar with the rocky path to adulthood. Throw in conditions of poverty, neighborhood segregation, underfunded schools, and overworked families, and the period of emerging adulthood can be even more perilous. Yet the design of our criminal justice institutions takes little account of how deeply unsettled life can be for young people, particularly in very poor communities. Institutional design often ignores the reality that young people are on a developmental pathway, in which their social supports will become more stable, their decision-making will improve, and successfully navigating this pivotal time of life will have long-lasting positive effects. At the same time, ignoring the developmental path and resorting to harsh punishment can be ruinous.

Over the last decade, a criminal justice policy movement has grown that begins to recognize the challenges of emerging adulthood. The

hallmarks of this movement are greater leniency shown in prosecution and sentencing for young people, a greater reliance on rehabilitative programming, and an extension of the tools of family court to people under adult criminal jurisdiction. These are the first steps towards a different kind of policy philosophy in which the main goal is helping young people move along the developmental pathway of the life course even when they make mistakes. After all, this is how we respond in affluent communities, when young people can make even serious mistakes but nevertheless have tremendous potential for great success.

This report from the Columbia Justice Lab's Emerging Adult Justice Project is the first to systematically document the existence of an emerging adult jurisdiction—hybrid systems that combine elements of the juvenile and adult criminal legal systems for youth navigating the transition to adulthood. The report highlights the key innovations in sentencing, court processing, and record protection, among others. These changes in policy are also relatively new and, as the report shows, there is still a long way to go. For advocates, policymakers and practitioners who want to support the success of young people contending with poverty, racism, and mass incarceration, this report is a critical resource. Through a careful review of statutory and institutional conditions, we can begin to define a different kind of policy paradigm that is geared towards human development and community investment rather than punishment.

Bruce Western is the Bryce Professor of Sociology and Social Justice and Director of the Justice Lab at Columbia University

Executive Summary

Emerging adults, defined as youth between the ages of 18 through 25 in this report, are in an important developmental stage of life, sometimes referred to as an “age of opportunity.” Yet emerging adults bear the brunt of mass incarceration in the United States. Spending these critical years in a system that causes trauma, harms their development, and imposes a lifelong criminal record severely damages their prospects. Recidivism is high for emerging adults, suggesting that the current system is ineffective for their personal growth and for public safety. Further, racial disparities among emerging adults are higher than for any other age group in the criminal legal system, which research shows cannot be explained by differences in behavior among peers of different race. Though this age group is overrepresented in the criminal legal system, emerging adults are remarkably malleable and most system-involved emerging adults will age out of crime shortly if given the opportunity to do so.

For all these reasons, the past decade has seen reform efforts to more effectively and fairly deal with emerging adults accused of breaking the law. This report reviews a unique systemic reform initiative in emerging adult justice: hybrid systems that create a

distinct path for emerging adults by lessening

some of the harm imposed by the adult system and extending some of the rehabilitative opportunities of the juvenile system to support the healthy transition to adulthood. In some jurisdictions, these hybrid systems are called “youthful offender” statutes. We reject that designation because of the obvious stigmatizing nature of the phrase; throughout the report we instead use the term “hybrid” to refer to these statutes, laws, or systems unless the report is referring to a specific jurisdiction’s law (e.g., New York’s Youthful Offender Law).

Hybrid systems create a distinct path for emerging adults by lessening some of the harm imposed by the adult system and extending some of the rehabilitative opportunities of the juvenile system to support the healthy transition to adulthood.

The detailed, comparative analysis in this report *excludes* two categories of policy initiatives often confused with hybrid systems for emerging adults. First, we excluded legal provisions that allow the application of some of the protections of the juvenile system to adolescents who were below the upper age limit of juvenile court at the time of allegedly committing an offense but who were made subject to the harsher treatment of the adult system often due to the “seriousness” of the alleged offense (these are often called “serious youthful offender,” “extended jurisdiction juvenile,” or “blended sentencing” laws). These “reverse hybrid systems,” as we prefer to call them, can only partially mitigate the harmful effects of subjecting youth to the harsh, punitive adult criminal legal system. As it is the international standard, we believe that all youth under at least age 18 should be treated in the juvenile justice system. Second, we excluded from our detailed analysis the isolated, specialized practices or provisions for emerging adults, such as specialized sentencing, corrections, or parole, that apply within only a segment of the adult legal system and fall short of creating a true hybrid “system.”

Our national scan revealed seven jurisdictions that have hybrid systems for emerging adults: Alabama, District of Columbia, Florida, Michigan, New York, South Carolina, and Vermont. After conducting the scan, we analyzed the key provisions of each of these hybrid statutes, reviewed the existing, publicly available (but scarce) data on system-involved emerging adults, and conducted virtual and in-person interviews with key stakeholders to better understand the practical application of the law and the experience of emerging adults in these jurisdictions. Combining the information gleaned from our research with the existing body of research on emerging adults’ developmental needs and the adult criminal legal system’s effect on young people, we offer key elements of a model hybrid statute to serve as a resource for states that wish to adopt or expand hybrid systems.

KEY PROVISIONS OF HYBRID STATUTES

MODEL AL DC FL MI NY SC VT

ELIGIBILITY - AGE

Lower Age Limit	Birthdate at which a youth becomes eligible for the hybrid statute	At least 18	14	15	14	18	13	14	12
Upper Age Limit	Birthdate up to which a youth remains eligible for the hybrid statute	26	21	25	21	26	19	25	22
No Age Tiers for Emerging Adults	Are different age groups within the emerging adult range treated the same under the hybrid statute?	✓	✓	✓	✓	✗	✓	✗	✓

ELIGIBILITY - OFFENSE

All Offenses Included	Are all offenses eligible under the hybrid statute for emerging adults?	✓	✓	✗	✗	✗	✗	✗	✓
No Exclusion for Prior Case under Hybrid Statute	Can youth with a prior case under the hybrid statute be eligible again for a subsequent offense?	✓	✓	✓	✗	✓	✗	✗	✓
No Exclusion for Other Criminal History	Are youth with any other criminal history eligible for the hybrid statute?	✓	✓	✓	✓	✗	✗	✓	✓

APPLICATION

Juvenile Court	Does the juvenile court decide whether to apply the hybrid statute?	✓	✗	✗	✗	✗	✗	✗	✓
Presumptive Application	Is the hybrid statute presumed to apply to youth who meet the eligibility requirements?	✓	✗	✗	✗	✗	✗	✗	✗
Judge Initiates	Can the judge prompt application of the hybrid statute at own initiative?	✓	✓	✓	✓	✓	✓	✓	✓
Prosecutor Initiates	Can the prosecutor initiate application of the hybrid statute?	✓	✓	✓	✓	✓	✓	✓	✓
Youth Initiates	Can the youth (defense) request application of the hybrid statute?	✓	✓	✓	✓	✓	✓	✓	✓
No Prosecutorial Consent Requirement	Can the determination of whether to apply the hybrid statute be made without the prosecutor's consent?	✓	✓	✓	✓	✗	✓	✓	✓
Final Decision: Court	Does the court have the final decision on granting the application of the hybrid statute?	✓	✓	✓	✓	✓	✓	✓	✓
Criteria in Statute	Does the hybrid statute explicitly set the criteria for granting its application?	✓	✗	✓	✗	✗	✓	✗	✓

PROCEDURAL PROVISIONS

No Plea Requirement	Can youth be eligible for the hybrid statute without having to enter a plea of guilty?	✓	✓	✓	✓	✗	✓	✓	✓
Closed Session	Are at least some proceedings for emerging adults under the hybrid statute closed to the public?	✓	✓	✗	✗	✓	✓	✗	✓
Jury Trial	Is a jury trial allowed under the hybrid statute?	✓	✗	✓	✓	✗	✓	✓	✗

SENTENCING PROVISIONS

Limits on Fines & Fees	Are fines and fees prohibited or limited for youth under the hybrid statute?	✓	✗	✗	✗	✗	✗	✗	✓
Limits on Incarceration	Does the hybrid statute preclude or limit the length of a term of incarceration?	✓	✓	✗	✓	✓	✓	✓	✓
Limits on Probation	Does the hybrid statute limit the length of a term of probation?	✓	✓	✗	✓	✓	✗	✓	✓
Mandatory Minimums Obviated	Does the hybrid statute obviate mandatory minimum sentences for eligible youth?	✓	✓	✓	✓	✓	✓	✓	✓

POST-SENTENCING PROVISIONS

Special Custody	Is there a specialized correctional unit for emerging adults incarcerated under the hybrid statute?	✓	✗	✗	✓	✓	✗	✓	N/A
Juvenile Custody	Can emerging adults incarcerated under the hybrid statute be committed to juvenile corrections and avoid adult corrections?	✓	✗	✗	✗	✗	✗	✗	N/A
Juvenile Probation	Can emerging adults placed on community supervision under the hybrid statute remain under the supervision of juvenile probation agency?	✓	✗	✗	✗	✗	✗	✗	✓
Court Involvement	Does the court maintain jurisdiction and hear any alleged post-sentencing violations?	✓	✓	✓	✓	✓	✓	✗	✓
Early Termination	Is there an opportunity to shorten the period of probation or confinement if the young person is doing well?	✓	✓	✓	✓	✓	✗	✓	✓
Support Services	Does the hybrid statute require mandatory provision of support services to eligible youth?	✓	✗	✓	✓	✗	✗	✓	✓

RECORD PROTECTION PROVISIONS

Automatic Record Protection	Can a youth automatically avoid a formal record of conviction if the term under the hybrid statute ends successfully?	✓	✓	✗	✗	✓	✓	✗	✓
Other Record Protection	If it is not automatic, does the hybrid statute offer other means of record protection, such as a petition to expunge or seal records of a conviction?	✓	N/A	✓	✓	N/A	N/A	✓	N/A

Hybrid statutes vary greatly by the degree of protections they offer and present themselves on a wide spectrum between the adult criminal legal systems and juvenile justice systems. This versatile nature of hybrid systems makes them an important tool in the toolbox of policymakers that seek to transform justice responses to emerging adults. Hybrid systems are associated with enhanced public safety as indicated in some studies by lower recidivism rates of impacted youth for weapon and violent offenses. Through record protection measures, hybrid systems reduce collateral effects of a criminal record, increase employment and community engagement opportunities for youth, and can meaningfully curb incarceration. A study of gun violence in Chicago, for example, showed that employment is the most important preventative factor to keep emerging adults from carrying guns.

Though hybrid statutes present many improvements, they do have drawbacks as we found during our in-depth study of seven hybrid systems. While we define emerging adulthood as ages 18 to 25, states vary in what ages their hybrid laws address and the reach of many hybrid systems are limited. Further, the application of these statutes relies heavily on judicial and/or prosecutorial discretion and leaves many emerging adults without the benefits of the hybrid system. It is imperative that hybrid systems be used and assessed in the larger context of developmentally appropriate justice mechanisms for emerging adults and not be relied on as a single silver bullet.

As states across the country consider passing or expanding hybrid statutes, it is important to evaluate change in the context of our growing knowledge of this developmental stage.

Our overarching recommendation for these jurisdictions is to fully embrace both goals of a hybrid system for emerging adults: (1) to reduce the harm of the adult criminal legal system, especially elements that drive mass incarceration and the pervasive racial, ethnic, economic, and other inequities

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that harm individuals, families, communities, and society as a whole, and (2) to support the successful transition to healthy adulthood.

Hybrid statutes should explicitly state these goals and should avoid approaches that have been proven ineffective and harmful, such as boot camps and shock incarceration. A hybrid statute should require collection, assessment, and reporting of data so that both the system actors and the public can evaluate how the hybrid systems are being implemented and whether the systems' goals are being achieved.

Successfully applying a hybrid statute requires that all key stakeholders be well-educated in youth development. This includes defense attorneys, prosecutors, judges, probation officers, and correctional staff. In some jurisdictions, there are community service providers who have a wealth of experience and expertise working with this distinct developmental age group. The system should seek their assistance in designing trainings for the various stakeholders, as well as working as partners in delivering developmentally appropriate and effective supports, services, and opportunities.

Our recommendations for key provisions of hybrid statutes can be summarized as follows:

1. AGE

We recommend that hybrid systems serve people between their 18th and 26th birthday, a range that scientific research shows is a key stage of ongoing development. And since this is a critical and prolonged developmental stage, imposing age-based tiers within this cohort for disparate treatment are not advised. In some states children under 18 are included in these laws as a strategy to ameliorate the harm they would suffer in the adult system. We recommend that instead anyone alleged to have broken the law at least before their 18th birthday remain under juvenile court jurisdiction without exceptions and benefit from the full protections offered in the juvenile delinquency system. We also recommend that eligibility for a hybrid statute go by age at the time of alleged offense, not age at the time of conviction.

2. OFFENSE

All offenses should be eligible for disposition through the hybrid system. The type of offense does not alter a young person's developmental stage and cannot predict future behavior.

3. APPLICATION

The decision to apply a hybrid law should be made in juvenile court, and judges should have clear criteria for applying the statute. Originating the case in juvenile court places the case with professionals better trained in youth development. Multiple parties (judge, prosecution, defense, and youth) should have the right to ask for the application of the hybrid statute. Victims should have the opportunity to be heard throughout the process.

4. PROCEDURAL PROVISIONS

Youth and emerging adults are particularly susceptible to the pressures of entering a guilty plea without adequately weighing the consequences or pursuing their due process rights. Under a model hybrid statute, eligibility is not contingent upon entering a plea, nor are young people obligated to waive their right to a jury trial. Because of the lifelong collateral consequences of system involvement, our model statute includes provisions to protect a youth's privacy, especially at the early stages of the legal proceedings when the application of the hybrid system is being considered.

5. SENTENCING PROVISIONS

Incarceration harms youth. More developmentally appropriate responses focus on effective supports, services, and opportunities available in the community. Therefore, in our model hybrid statute, mandatory minimums cannot be applied, and incarceration is limited (both the use of incarceration and the length of incarceration). Even probation can create barriers to experiences that support desistance, growth, and maturity. The use of probation, including the terms and length of time, should be appropriate for the developmental stage. Imposing fines and fees on emerging adults is counterproductive, as most are financially dependent on their families.

6. POST-SENTENCING PROVISIONS

Emerging adults should receive developmentally appropriate supports and, whenever possible, in the community. If incarcerated, they should have access to special education, vocational training, and the opportunity to stay connected to family and other loved ones. Such access is much more likely to happen in a well-run juvenile facility or a specialized unit. Likewise, juvenile probation officers will be better prepared to meet the needs of young people than officers trained in the supervision of adults. Continued judicial oversight is essential to ensure that emerging adults are receiving age-appropriate treatment. Positive incentives, rather than technical violations or the threat of revocation of hybrid status, should be used to promote compliance and support maturity.

7. RECORD PROTECTION

One of the main objectives of hybrid systems is to spare emerging adults the lifelong consequences of a criminal record. Record protection should be automatic. This will free emerging adults from barriers to housing, employment, education and more and thereby contribute to their healthy growth and desistance from crime.

Part I of this report provides an introduction to emerging adult justice and hybrid systems for emerging adults, summarizes our general findings, and identifies the key provisions of the seven hybrid systems. In addition, this section includes concrete recommendations for a model hybrid statute for emerging adults. *Part II* consists of reports for each of the seven hybrid systems with a detailed analysis of the key provisions of their hybrid statutes. Preceding *Part I* and each report in *Part II* is a poem by a currently or formerly incarcerated emerging adult.

A Youth's Outlook

By Robert aka Rah-Rah



I broke the law and accept what I've done
In return I get 9 years for a lighter that looked like a gun
Listen to the outlook from one of the blessed youth
I said the blessed youth
From the blessed youth that's been fed nothing but lies
Nowhere close to the truth
The things we took up are guns, knives and bats
Yeah, we be armed and strong
But how do you know it's not right if you're being taught wrong
Who cares enough to listen and slow down?
To understand the youth's struggle?
Who really, honestly wants to help?
Is it you?
I asked, is it you?
A youth's outlook is what I'm trying to share
A youth's outlook is priceless and rare
A youth's outlook should be carefully examined
A youth's outlook is like fire from a cannon
A youth's outlook from a young inquiring mind
A youth's outlook while locked up and doing time
One thing I ask of you before I end this
Listen
I just ask that you hear me out
Try to understand

Poetry courtesy of Free Minds Book Club & Writing Workshop (<https://freemindsbookclub.org>).
Illustration courtesy of Echoes of Incarceration (<https://www.echoesofincarceration.org>).

PART I

I. INTRODUCTION TO EMERGING ADULT JUSTICE AND HYBRID SYSTEMS

Although age 18 was once understood to signify developmental maturity, recent research suggests that brain development continues into the mid-20s,¹ and that developmental milestones associated with independent, mature adulthood occur well past the 18th birthday for the current generation.²

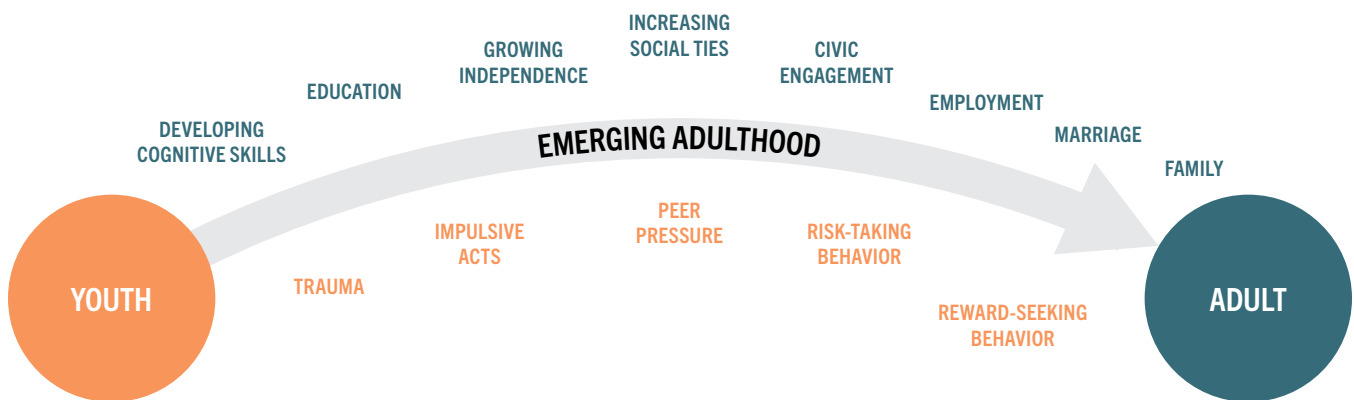
Neuroscience also tells us that the cognitive abilities of youth develop more quickly than their executive functioning and psychosocial skills, resulting in a “maturity gap.”³ This maturity gap means that “young adults are more likely to engage in risk-seeking behaviors, have difficulty moderating their responses in emotionally charged situations, or have not fully developed a future-oriented method of decision-making.”⁴ Moreover, cultural expectations around adolescence and adulthood have shifted in the last century.⁵ Whereas age 18 once corresponded to an assumption of adult roles, sociological research indicates that contemporary emerging adults experience a more extended transition to adulthood.⁶ Due in large part to economic changes, traditional markers of adulthood such

as leaving the family home, getting married, and entering into the work force now rarely occur at age 18 in the United States.⁷ Accordingly, the 18- to 25-year-old age group have been recognized as a distinct developmental category—one during which adolescents “emerge” into adulthood.⁸

The 18- to 25-year-old age group have been recognized as a distinct developmental category—one during which adolescents “emerge” into adulthood.

The term “emerging adults,” first coined in 2000 by psychologist Jeffrey Jensen Arnett, aptly defines this critical developmental period: the transition from an adolescent who is dependent

Figure 1. Developmental factors and milestones in transition to adulthood



on parents or guardians for supervision and guidance (as well as emotional and financial support) into a fully mature, independent adult who engages as a productive and healthy member of society.⁹ While there is no universal definition of “emerging adults” in the context of the criminal legal system, it is defined in this report as individuals transitioning from adolescence to adulthood, from age 18 to 25.¹⁰

In the past decade, many professional fields have increasingly recognized the distinct developmental needs of emerging adults and crafted specific laws and policies to better address these needs.¹¹ Policy discussions around the country are now focusing on transforming the justice system’s responses to emerging adults so that it similarly recognizes the distinct developmental needs of emerging adults and ends the cycle of incarceration for this critical age group.

The current age delineations of the American criminal legal system are inherited from the 19th century.¹² Hoping to produce a model in which children could be rehabilitated and not merely punished, reformers urged the creation of a separate juvenile justice system for children. The age of demarcation between the juvenile and adult systems has differed among states over the years, but the vast majority now set it at age 18. However, many different types of statutory exceptions allow (or require) youth younger than age 18 to be prosecuted and/or sentenced as adults, regardless of the upper age of juvenile court jurisdiction.¹³

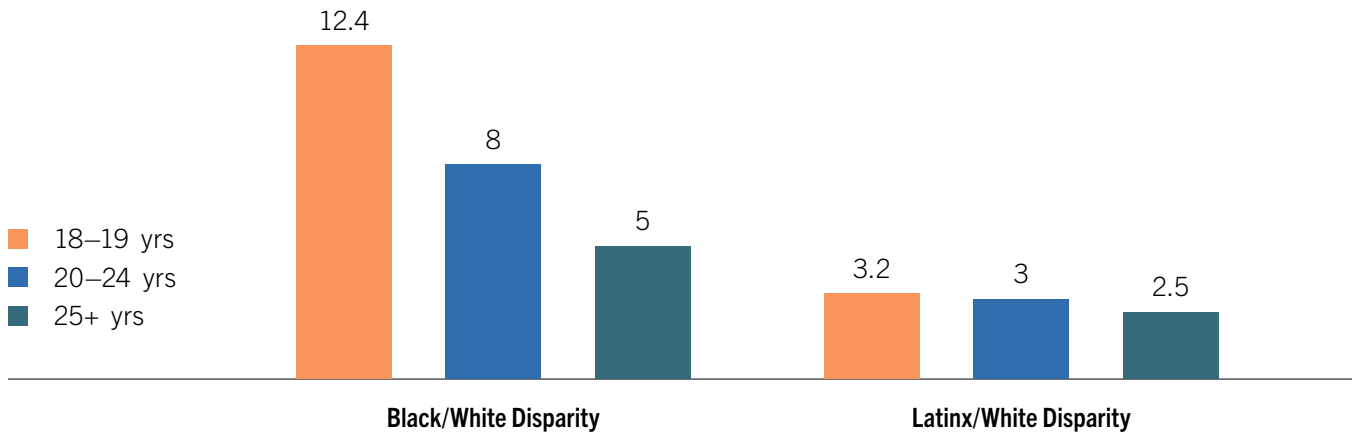
Like younger adolescents, emerging adults are malleable and undergo significant cognitive and social changes during this critical stage of life, which is sometimes referred to as an “age of opportunity.”¹⁴ The vast majority of youth will mature and desist or “age out” of crime by the mid-20’s.¹⁵ Involvement in the adult criminal legal system can interfere with and harm this maturation process. Interactions with the system

are “stickier” today than in prior times, as transgressions are more public, digital fingerprints are difficult to erase and can be fraught with error, and adult criminal records create a host of collateral consequences that further interfere with the healthy transition to adulthood.¹⁶

Racial and ethnic disparities, present throughout the criminal legal system for all ages, are amplified for system-involved emerging adults. For example, in 2019, **Black and Latinx 18- and 19-year-old males were 12.4 times and 3.2 times more likely to be imprisoned than their white peers, respectively.**¹⁷ (See Figure 2) For Black males ages 20 to 24, the incarceration rate was 8 times greater than for white males of the same age, while Latinx males were 3 times more likely to be incarcerated than their white peers.¹⁸ When looking at older adults, Black and Latinx men over age 25 are incarcerated at approximately 5 times and 2.5 times the rate of white men, respectively.¹⁹ As such, Black and Latinx emerging adults, especially younger cohorts, face the highest racial disparities of any age group in the adult criminal legal system. These disparities perpetuate other societal inequalities among vulnerable and minority communities, curtailing the ability to join the workforce, pursue higher education, participate in civic activities like voting, and secure housing.²⁰ Racial and ethnic disparities magnify the collateral consequences of an adult criminal record for emerging adults of color, who are already experiencing challenges inherent in this period of transition to independent adulthood.

Most emerging adults in the criminal system have been victims of violence,²¹ and suffer from underlying mental, behavioral, and substance use disorders.²² Toxic environments, such as adult jails and prisons, further traumatize young people and cut off the opportunities and supports that are crucial to their ability to grow into healthy and productive adults.

Figure 2. Disparities in Prison Commitments by Age (Males), 2019



The detrimental effects of the criminal legal system’s traditionally harmful environment affect emerging adults more than fully grown adults because they are more vulnerable to negative influence.²³ This is evidenced, in part, by national rates of recidivism—emerging adults have the highest recidivism rates of any age group, cycling back into prisons the soonest and most frequently.²⁴

Against this backdrop, a remarkable number of reform efforts focused on emerging adults have been pursued throughout the nation in the last decade. These reform initiatives can be grouped in three main categories: (1) localized/programmatic reforms; (2) isolated legislative reforms within the adult criminal legal system; and (3) systemic reforms.

Localized/programmatic reform initiatives include, for example, a specialized diversion program implemented by an elected prosecutor for a specific county, a specialized court, specialized probation caseloads, and a specialized correctional unit.²⁵ These initiatives are often localized and may not benefit all emerging adults, even within the same local area. Since they are not statutory, they impact youth in different jurisdictions differently based on access (“justice by geography”)²⁶ and are harder to sustain in the

face of political changes of power and leadership. As such, localized, programmatic efforts can be even more vulnerable to perpetuation of racial and class inequalities.²⁷

The second category of reforms – isolated legislative reforms within the adult criminal legal system – include initiatives such as adopting specialized parole or resentencing provisions²⁸ and creating the opportunity for record expungement.²⁹ These aim to ameliorate adult criminal legal system responses to all eligible emerging adults, but similar to localized programmatic reforms, they apply only to a segment of the criminal legal system.

By contrast, the third category – systemic reform efforts – have the potential to apply to all emerging adults and implicate all key system actors at once (police, prosecution, courts, corrections, etc.). These systemic emerging adult justice reform initiatives primarily consist of (1) raising the upper age of juvenile court jurisdiction,³⁰ and (2) developing or expanding a third, hybrid system (also known as “youthful offender” statutes) for emerging adults. This report focuses on the latter, major emerging adult justice reform initiative. We use the term “hybrid” laws or systems for this group of reform initiatives throughout this report in lieu of the “youthful offender” statutes term to

avoid perpetuating the stigma associated with the term “offender.” Also, the term “hybrid” is fitting to denote this third system of justice as it applies to emerging adults who are transitioning from adolescence to adulthood and combine elements of both the juvenile and adult criminal legal systems.

Hybrid systems enable emerging adults to be treated in a partially mitigated fashion befitting their distinct developmental attributes by applying some of the protective elements of the juvenile delinquency system, such as confidentiality and record protection provisions (e.g., court proceedings closed to the public, avoiding an adult “conviction” and substituting “adjudication” instead, and avoiding a criminal record via automatic expungement when a sentence is complete) and/or limiting confinement (with capped sentences or exceptions to “adult” mandatory sentences). These systems have the potential to play a critical role in reducing harmful impacts and racial and ethnic inequities that are caused or worsened by involvement in the adult criminal legal system. Hybrid laws are also associated with enhanced public safety, as evidenced by lower recidivism rates of impacted youth for weapon and violent offenses in some studies. Through record protection measures, hybrid laws reduce collateral effects of a criminal record, increase employment and community engagement opportunities for impacted youth, and can meaningfully curb incarceration. A study of gun violence in Chicago, for example, showed that employment is the most important preventative factor to keep emerging adults from carrying guns.³¹ The COVID-19 pandemic posed unique challenges in this context. Detachment from mainstream institutions is expected to be the highest for justice-involved youth and youth of color in the immediate future because of the pandemic.³² Hybrid laws are one way to help reverse the tide.

In comparison to more localized, programmatic reform efforts, hybrid laws address the needs

of emerging adults in a systemic way while maintaining individualized rehabilitative goals. But hybrid systems are not without pitfalls. For instance, due to their discretionary nature, hybrid statutes may not apply evenly to all eligible emerging adults in the same jurisdiction, in contrast with across-the-board reform initiatives like raising the age of juvenile court jurisdiction. We acknowledge such inherent shortcomings and believe hybrid systems are just another tool in the toolbox of justice stakeholders to better address the developmental needs of system-involved emerging adults. **Hybrid systems should be used and assessed in the larger context of developmentally appropriate justice mechanisms for emerging adults and should not be relied on as a single silver bullet.**

Recently, jurisdictions throughout the nation have sought to enact or enhance hybrid laws: Michigan, the District of Columbia, and Vermont significantly expanded the scope of their hybrid systems by raising their upper age of eligibility to an individual’s 26th, 25th, and 22nd birthdays respectively. Similarly, as of the date of this report, New York had an active bill seeking to raise the age of its hybrid system to include emerging adults up to their 25th birthday.³³

While hybrid laws affect a significant number of young people and involve the use of substantial justice system resources, basic information about the location, scope, practice, and impact of hybrid laws have been unknown to the field. To fill this knowledge gap and with the support of the Joyce Foundation, we embarked on a national scan of hybrid statutes in January 2021. In Part I of this report, we summarize our findings of the national scan and present a comparative analysis of key provisions of seven hybrid systems for emerging adults in the nation along with our recommendations for a model hybrid statute. In Part II of this report, separate and detailed reports on each jurisdiction with a hybrid statute are included.

II. RESEARCH SCOPE AND METHODOLOGY

In the first phase of this project, we conducted a national scan of laws in all fifty states and the District of Columbia to identify jurisdictions with hybrid systems that combine elements of the juvenile and adult criminal legal systems and systemically extend some of the protections of the juvenile justice systems to emerging adults who exceed the upper-age threshold of juvenile court jurisdiction. This national scan was conducted as a desk review, using online legal research tools like Westlaw and LexisNexis, library collections, and other online information published by national youth justice organizations, such as the National Juvenile Defender Center. We also conducted a literature review and contacted public defender offices and/or prosecutor offices in major counties in all fifty states and the District of Columbia to confirm whether there is a hybrid statute or specialized statutory provision which applies to emerging adults in that jurisdiction.

Our national scan revealed at least twenty-four jurisdictions with a “youthful offender” statute or some sort of specialized statutory provision that apply to adolescents and/or emerging adults. Out of these twenty-four jurisdictions that offer age-specific provisions, we identified seven that meet our criteria for a “hybrid system for emerging adults”: Systemic, statutory response extending some key, rehabilitation-focused juvenile justice provisions to youth above the upper age limit of juvenile court jurisdiction, in line with their distinct developmental stage. These jurisdictions are Alabama, District of Columbia, Florida, Michigan, New York, South Carolina, and Vermont. This report and our detailed analysis focus on these seven jurisdictions.

To enable an accurate and comparative legal analysis of the key provisions offered in these seven hybrid systems, we developed a data-collection instrument and coded key information in each statute in a systematic way. We expanded

our research to understand the broader juvenile and criminal legal framework in each jurisdiction, noting such provisions as the upper age of juvenile court jurisdiction, sentencing guidelines, and mandatory minimums. This expansive research enabled us to accurately assess what legal difference hybrid system provisions make in the treatment of emerging adults. Additionally, we collected historic information on hybrid statutes, including the year of enactment of the original hybrid statute for each state that has one, any subsequent amendments, and substantive analysis of major changes.

In the second phase of our research, we synthesized this larger data set of key provisions in the hybrid systems in seven major categories presented as tables in this report. These categories are: 1) Eligibility – Age; (2) Eligibility – Offense; (3) Application; (4) Procedural Provisions; (5) Sentencing Provisions; (6) Post-Sentencing Provisions; and (7) Record Protection Provisions. Each category of analysis consists of a set of questions, presented in separate tables resembling a scorecard. A checkmark (✔) is a positive result and a cross (✘) indicates an area at which the hybrid system of a jurisdiction can be improved. Since there are often subtle nuances in statutory wording between jurisdictions and between the statute and its implementation in practice, we indicated major particularities of a jurisdiction by footnotes in each table in the state reports. We contacted key justice stakeholders, public defenders, prosecutors, and advocates in these seven jurisdictions to confirm our understanding of the key provisions and earlier drafts of these state reports drawing from this analysis. Based on their legislative history and robust provisions and case law, we selected three jurisdictions – Michigan, Alabama, and District of Columbia – for more in-depth research with the aim of finding existing data on the implementation of their hybrid systems. Since the pandemic

limited our ability to travel, we conducted virtual interviews with key stakeholders in these three jurisdictions to enhance our understanding of their hybrid systems in practice. We also organized an in-person field trip to Detroit and Lansing, Michigan, and held meetings with circuit and district court judges, officials at the Michigan Supreme Court Administrative Office (SCAO), a prosecutor's office, and probation

officers. Wayne County Circuit Court (which covers Michigan's most populous county) and SCAO shared with us some data on Michigan's Holmes Youthful Trainee Act, which we analyzed and incorporated in our state report for Michigan. We also analyzed and incorporated in our state reports for Michigan, Alabama, and District of Columbia other public data we were able to retrieve from published reports.

III. KEY FINDINGS

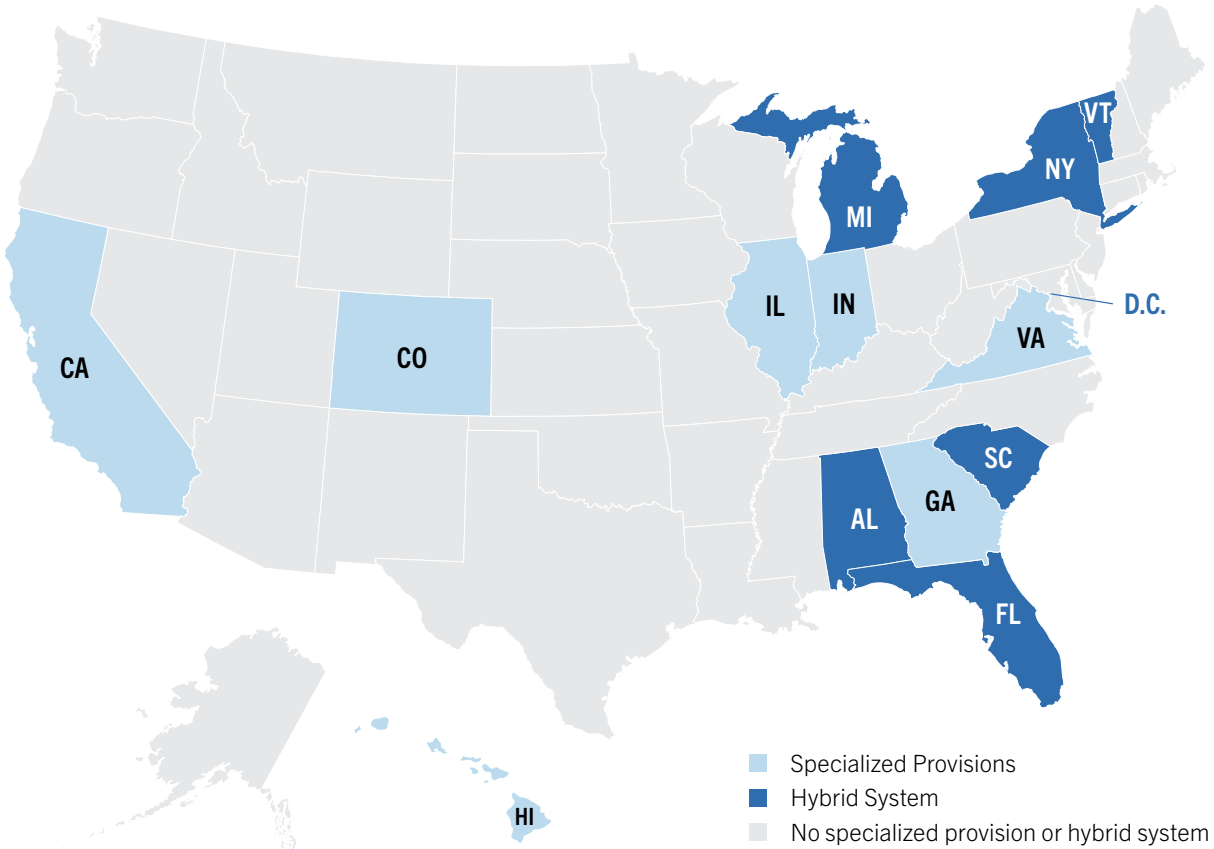
Our national scan in the first phase of our research revealed at least twenty-four jurisdictions with a hybrid statute or some sort of specialized statutory provision applying to adolescents and/or emerging adults. While some among these twenty-four jurisdictions have a specific "youthful offender" statute, several others have isolated statutory provisions for adolescents or emerging adults embedded in their juvenile or adult criminal codes. Further, there is no common definition of "youth" or "youthful offender" across jurisdictions. These provisions and statutes vary greatly in scope and whom they apply to. Finally, most of these jurisdictions fall short of offering a full hybrid system for emerging adults, which is the focus of this research, for one or more of the following reasons:

First, several states (at least ten according to our national scan) have legal provisions that allow application of some of the protections of the juvenile system only to adolescents who were below the upper age limit of juvenile court at the time of committing an offense, while simultaneously subjecting them to the harsher treatment of the adult criminal legal system (with or without transfer to adult court) because of the "seriousness" of offense. We refer to these systems as "reverse hybrid systems" to distinguish them from hybrid systems that apply to emerging adults. Ohio's "Serious Youthful Offender"³⁴ law and Minnesota's "Extended

Jurisdiction Juvenile"³⁵ provisions are examples of such "reverse hybrid systems" in the Great Lakes region. Other jurisdictions our national scan identified as having similar provisions are Massachusetts,³⁶ Arkansas,³⁷ Connecticut,³⁸ Idaho,³⁹ Iowa,⁴⁰ Montana,⁴¹ New Mexico,⁴² and Oklahoma.⁴³ Often described as "blended sentencing" or "extended jurisdiction juvenile" laws, these provisions differ from the hybrid systems that are the focus of our study. These provisions were created to mitigate harmful effects of the national "tough on crime" movement in the 1990s, which sought to prosecute and sentence more children as adults rather than to expand the rehabilitative model in the juvenile system to include emerging adults. Our detailed, comparative analysis *excludes* these jurisdictions.⁴⁴

Second, seven additional states offer only isolated statutory provisions targeting emerging adults – such as providing for specialized corrections, specialized sentencing, or specialized parole – but fall short of creating a true hybrid system for emerging adults that provide protections at the early stages of criminal prosecution through trial, sentencing, and post-release. For example, the "youthful offender" provisions in Colorado's Criminal Code create a specialized (alternative) sentencing option for eligible youth under the custody of the Department of Corrections, but separate from the adult prison system.⁴⁵ Other

Figure 3. Jurisdictions with a hybrid system or specialized legislative provisions for emerging adults



states that offer specialized statutory provisions falling short of hybrid systems for emerging adults are California (specialized parole),⁴⁶ Georgia (specialized corrections),⁴⁷ Hawaii (specialized sentencing and corrections),⁴⁸ Illinois (specialized parole),⁴⁹ Indiana (specialized corrections),⁵⁰ and Virginia (specialized sentencing and corrections).⁵¹ (See Figure 3). Most of these isolated statutory provisions for emerging adults focus on specialized sentencing and/or corrections for emerging adults and appear to draw structurally and substantively from the Federal Youth Corrections Act, which was passed in 1950 and later repealed in 1984.⁵²

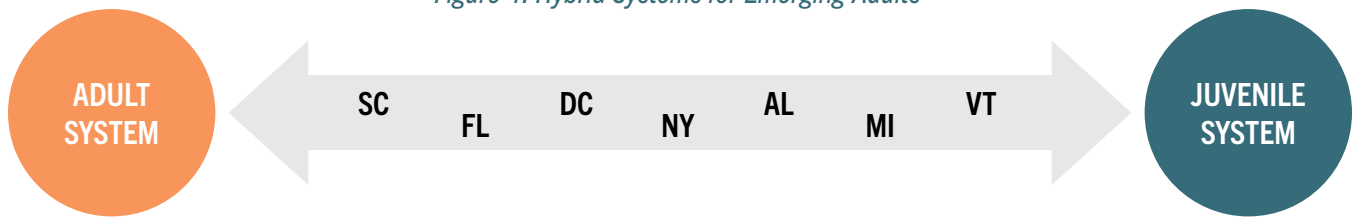
As discussed above, our national scan revealed seven jurisdictions that have hybrid systems expanding some protections of the juvenile justice system to emerging adults: Alabama, District of Columbia, Florida, Michigan, New York, South Carolina, and Vermont. These hybrid systems

Our national scan revealed seven jurisdictions that have hybrid systems for emerging adults: Alabama, District of Columbia, Florida, Michigan, New York, South Carolina, and Vermont.

for emerging adults often have been overlooked because they are mixed with jurisdictions that apply “youthful offender” statutes/provisions only to youth under the upper age limit of juvenile court jurisdiction but are treated more harshly than juveniles, usually as a result of direct filing, waiver provisions, or transfer laws.

Hybrid systems are also confused with, but different from, jurisdictions that offer some isolated statutory provision, such as specialized

Figure 4. Hybrid Systems for Emerging Adults



sentencing or corrections, for emerging adults.⁵³ In contrast with these isolated, specialized legislative provisions, the seven jurisdictions included in our study offer comprehensive responses and create, in essence, a third justice system, in which emerging adults are spared some of the harms inherent in the adult criminal legal system and are afforded some of the protections and rehabilitative services provided in the juvenile justice system, extending from the early stages of a case to beyond sentencing.

Our in-depth legal analysis of these seven hybrid systems for emerging adults revealed that even these systems differ greatly by the degree of protections they offer, covering a wide spectrum between the adult criminal legal systems and juvenile justice systems. Some hybrid systems, like South Carolina and Florida, offer fewer systemic protections for emerging adults and focus instead on specialized sentencing or corrections; others, like Vermont and Michigan, offer more robust systemic responses, including

strong confidentiality and record protection provisions, bringing them closer to juvenile justice systems. (See Figure 4). The versatile nature of hybrid systems makes them an important tool for policymakers who seek to transform justice responses to emerging adults.

It is not our intent to rank these seven hybrid systems against each other. Such ranking would not only be counterproductive to further meaningful emerging-adult justice reform, but also would be highly flawed, since the statutory provisions of these seven systems vary greatly in substance, scope, wording, practice, and impact. But our thorough analysis of these various statutes allowed us to identify key provisions and assess the hybrid systems' strengths and weaknesses based on both the robust body of research on this distinct developmental group and the promising practices being developed in this burgeoning field. We summarize below our (A) general findings; and (B) findings on Key Provisions of these hybrid statutes.

A. General Findings on Hybrid Statutes for Emerging Adults

Our search for, and subsequent analysis of, hybrid statutes that apply elements of the juvenile and adult criminal legal systems to emerging adults revealed general findings in three areas: (1) Goals; (2) Legislative Drafting; (3) Data.

1. Goals

We observed two distinct but complementary goals of hybrid systems for emerging adults:

First, to reduce the harm caused by the adult system. The means to achieve this differ in each jurisdiction but can include adding elements of confidentiality in the proceedings with a closed session or sealing records; eliminating mandatory sentencing; and providing an opportunity for youth to avoid the lifelong consequences of an adult criminal record. Our comparative study suggests that current hybrid systems put more emphasis in this goal.

Second, to support the transition to healthy adulthood and focus on rehabilitation rather than punishment. This involves providing positive support with more developmentally appropriate services and opportunities. A good example of this is the hybrid provision in Washington, D.C., which explicitly states that “the Mayor shall provide facilities, treatment, and services for the developmentally appropriate care, custody, subsistence, education, workforce training, and protection” of youth eligible under the statute.⁵⁴

Though both are important goals, we found no jurisdiction that embraced both goals holistically. Instead, we discovered a complicated patchwork of varying procedures and approaches that tended to emphasize the first goal – reducing harm caused by the adult system.

2. Legislative Drafting

We observed that some hybrid systems (e.g., Alabama) have very brief hybrid statutes that do not incorporate a comprehensive framework reflecting the distinct developmental stage of emerging adulthood and guiding decision-making by justice agents. Others (e.g., Florida and South Carolina) put excessive emphasis on regimented, military-style confinement in their YO statutes

B. Findings on Key Provisions

The key provisions of each hybrid system are complex and best understood in the larger context of their jurisdiction’s legal framework. To enable a meaningful comparison of these key provisions and inform policymakers and justice officials who want to improve their existing legal framework for emerging adults, we created tables for each category of key provisions and share below some of the highlights of our findings. These categories are: 1) Eligibility – Age; (2) Eligibility – Offense; (3) Application; (4) Procedural Provisions; (5) Sentencing Provisions; (6) Post-Sentencing Provisions; and (7) Record Protection Provisions.

We discovered a complicated patchwork of varying procedures and approaches that tended to emphasize the first goal – reducing harm caused by the adult system.

and frequently use terms like “boot camp” or “shock incarceration.” All hybrid systems except for Michigan still use the “youthful (or youth) offender” label to denote eligible youth, which comes with the stigma that follows a young person for a lifetime and contradicts the rehabilitative premise of these hybrid systems.

3. Data

Except for the District of Columbia’s Youth Rehabilitation Act, none of the hybrid systems expressly incorporates a mandate for data collection, contributing to the dearth of knowledge about how these systems work in practice, whether they alleviate or enhance racial and other disparities, and how they affect outcomes for participants as well as public safety.

A more detailed analysis of these provisions and questions raised regarding each jurisdiction can be found in Part II – State Reports.

1. Eligibility – Age

Among the seven jurisdictions in this study, the ranges of eligibility based on age vary between 12 to 18 at the lower age threshold and 19 to 26 at the upper age limit.

Michigan has the highest upper age limit for a hybrid system for emerging adults (Holmes Youthful Trainee Act – HYTA). A youth can be

Table 1. Eligibility - Age

		AL	DC	FL	MI	NY	SC	VT
Lower Age Limit	Birthday at which a youth becomes eligible for the hybrid statute	14	15	14	18	13	14	12
Upper Age Limit	Birthday up to which a youth remains eligible for the hybrid statute	21	25	21	26	19	25	22
No Age Tiers for Emerging Adults	Are different age groups within the emerging adult range treated the same under the hybrid statute?	✓	✓	✓	✗	✓	✗	✓

eligible for Michigan’s HYTA if they had not reached their 26th birthday at the time of the alleged offense. Michigan is closely followed by the District of Columbia, which sets the upper age limit of its hybrid system at the 25th birthday at the time of offense. Both the District of Columbia and Michigan passed major reform bills raising the eligibility age of their hybrid systems to highest in the nation in 2018 and 2020, respectively.

All jurisdictions except for South Carolina mark the age of eligibility by the time of the alleged offense (not by date of filing or conviction).

All jurisdictions except for Michigan apply their hybrid systems not only to emerging adults (youth above the upper age threshold of the juvenile court jurisdiction), but also to younger youth (children) who were transferred, direct-filed, or waived to adult court for prosecution. We use the term “split hybrid system” for such jurisdictions in our report. Although our analysis focuses on emerging adults, we use the term “youth” to denote both eligible groups in this report. As stated above, our study excludes “reverse hybrid systems” – jurisdictions that apply their “youthful offender” statutes only to children below the upper age limit of juvenile court jurisdiction and that do not extend these statutory provisions to emerging adults. It is worth noting that some jurisdictions included in our study started as reverse hybrid systems but later developed a hybrid system for emerging adults within their legal framework, as a result of legislative reforms changing age

of majority or juvenile/family court. Alabama’s hybrid system is an interesting example of the dynamic nature of the line between a hybrid and reverse hybrid system, along with Vermont, which raised the upper age limit of its “youthful offender law” from age 18 to the 22nd birthday in 2018 at the same time it raised the upper age of its juvenile (family) court jurisdiction from 18th to the 20th birthday.⁵⁵

While most hybrid systems treat all emerging adults of eligible age the same, two jurisdictions (Michigan and South Carolina) differ in this respect. Most notably, Michigan requires the consent of the prosecutor to assign a youth HYTA status if the alleged offense was committed after an individual’s 21st birthday.

2. Eligibility – Offense

Alabama and Vermont have the widest offense eligibility range, excluding no emerging adults statutorily solely based on the nature of the charged offense. Except for Florida, which applies only to felonies, all hybrid systems apply to both misdemeanors and felonies. However, most hybrid systems provide some statutory exclusions for certain offenses. For instance, the hybrid systems of Michigan and the District of Columbia statutorily exclude murder and sexual offenses. New York, in addition to certain serious felonies and sexual offenses, also excludes “armed felony”; however, the Court does have the discretion, after weighing mitigating circumstances, to extend eligibility to a youth

Gun Offenses and Hybrid Systems for Emerging Adults

Except for special treatment of armed felonies in New York, no hybrid system categorically excludes firearms offenses. However, the reality is far more complex. Application of hybrid systems relies heavily on other sentencing laws, as well as judicial and prosecutorial discretion. For example, the maximum possible penalty for the charged offense can make a youth ineligible for “youthful offender” status in South Carolina. In Michigan, revocation of HYTA status is mandatory if the youth is convicted of a firearms offense while serving a HYTA term. Additionally, our interviews with key stakeholders in several jurisdictions indicate that court and prosecutorial practices vary greatly in cases involving gun possession and other offenses committed with guns. Since data is lacking on implementation of hybrid systems in the various jurisdictions, these anecdotal observations about the relationship between gun offenses and hybrid systems of treatment for emerging adults cannot currently be complemented by empirical analysis.

charged with some of the excluded offenses. South Carolina’s hybrid system has the narrowest eligibility range in terms of charged offense, applying only to nonviolent misdemeanors and less serious felonies. Although statutory exclusions are often limited to only a few of the more serious offenses in most hybrid systems, our interviews with key stakeholders in several jurisdictions suggest that wide prosecutorial and judicial discretion provided in these hybrid statutes may de facto restrict their application for some offenses in practice.

Of the seven hybrid systems we examined, four can apply to eligible youth more than once. Only Florida, South Carolina, and New York limit application of “youthful offender” status to

those who were not previously treated under the same statute. However, even when a prior case under the hybrid statute does not automatically disqualify a youth for a subsequent offense, we observed that in practice the courts may consider such history negatively while using judicial discretion.

In five of the seven hybrid systems, youth that have any criminal history other than prior case under the hybrid statute are still eligible to be treated under the hybrid statute for a subsequent offense. Youth in Michigan with a history of certain sexual offenses and youth in New York with a prior felony conviction cannot be treated in their state’s hybrid system.

Table 2. Eligibility - Offense

		AL	DC	FL	MI	NY	SC	VT
All Offenses Included	Are all offenses eligible under the hybrid statute for emerging adults?	✓	✗	✗	✗	✗	✗	✓
No Exclusion for Prior Case under Hybrid Statute	Can youth with a prior case under the hybrid statute be eligible again for a subsequent offense?	✓	✓	✗	✓	✗	✗	✓
No Exclusion for Other Criminal History	Are youth with <i>any other</i> criminal history eligible for the hybrid statute?	✓	✓	✓	✗	✗	✓	✓

3. Application

The application of the hybrid statute is determined by the adult criminal court in all hybrid systems except for Vermont, where the determination is made in the Family (Juvenile) Court. A common feature of all hybrid systems in the U.S. is that application of the hybrid statute to an eligible youth is discretionary, and the final decision on granting application of the statute is made by the court. In Florida, the Department of Corrections is also given statutory power to designate an individual already sentenced as an adult as a “youthful offender.”

Alabama, Florida, and South Carolina, provide little to no criteria for their discretionary application, whereas those in the District of Columbia, New York and Vermont include extensive criteria. In the absence of statutory criteria, appellate courts in Michigan and Alabama have proactively developed guidelines for judicial discretion in eligible cases. The criteria we most frequently observed in case law and relevant statutes are age at the time of offense (youth or immaturity), past contact with the justice system, nature of offense, and potential for rehabilitation.

Although judicial discretion is a common feature of all hybrid systems, the statutes differ greatly in terms of guidance provided to judges and other stakeholders in the use of their discretionary powers. Some hybrid statutes, such as those in Michigan,

Although the court has the final decision on the application of the hybrid statute, the parties can initiate or argue for or against it. In some jurisdictions (e.g., Michigan and Alabama), consent of the youth is required for application

Table 3. Application

		AL	DC	FL	MI	NY	SC	VT
Juvenile Court	Does the juvenile court decide whether to apply the hybrid statute?	✗	✗	✗	✗	✗	✗	✓
Presumptive Application	Is the hybrid statute presumed to apply to youth who meet the eligibility requirements?	✗	✗	✗	✗	✗	✗	✗
Judge Initiates	Can the judge prompt application of the hybrid statute at own initiative?	✓	✓	✓	✓	✓	✓	✓
Prosecutor Initiates	Can the prosecutor initiate application of the hybrid statute?	✓	✓	✓	✓	✓	✓	✓
Youth Initiates	Can the youth (defense) request application of the hybrid statute?	✓	✓	✓	✓	✓	✓	✓
No Prosecutorial Consent Requirement	Can the determination of whether to apply the hybrid statute be made without the prosecutor’s consent?	✓	✓	✓	✗	✓	✓	✓
Final Decision: Court	Does the court have the final decision on granting the application of the hybrid statute?	✓	✓	✓	✓	✓	✓	✓
Criteria in Statute	Does the hybrid statute explicitly set the criteria for granting its application?	✗	✓	✗	✗	✓	✗	✓

of the YO statute. Unique to Michigan, consent of the prosecutor is required for application of HYTA to youth ages 21 and over at the time of offense.

With minor exceptions in New York (first misdemeanor conviction) and Vermont (presumption for diversion in certain cases), in no cases are the hybrid statutes presumed to apply to eligible youth. This combination of wide judicial discretion and little to no guiding criteria elevates the risk of bias and “justice by geography,” where similar cases receive different treatment from courtroom to courtroom.

4. Procedural Provisions

An important feature of hybrid systems for emerging adults is the procedural protections they offer to eligible youth. Most notably, Michigan, Alabama, Vermont, and New York require hybrid system proceedings to be confidential and/or closed to the public. But the degree of confidentiality protection differs among these four hybrid systems. In Michigan, for example, confidentiality kicks in only after HYTA determination is made. In New York, when a misdemeanor case appears to be eligible for treatment under the hybrid statute, proceedings (even at arraignment) start sealed with the consent of the youth. In Vermont, the hearing to determine whether the hybrid status should be granted is open to the public for youth ages 18 or over at the time of offense whereas the entire hearing is closed to the public for those younger.

Hybrid systems that closely track the adult criminal system and function more like specialized sentencing and/or corrections provisions (South Carolina, Florida and District of Columbia) offer less or no confidentiality protections of the court proceedings.

Except for Michigan, a guilty plea is not required for application of the statute in the other hybrid systems. In the District of Columbia, Florida, New York, and South Carolina, the hybrid statute can apply to a youth who was found guilty after a jury trial, whereas in Alabama and Vermont, a jury trial is not allowed under the hybrid statute.

5. Sentencing⁵⁶ Provisions

One of the major benefits of hybrid statutes is the limits they impose on possible sentences. All seven hybrid systems technically obviate mandatory minimum sentences that normally apply to individuals in the adult criminal legal system per the jurisdiction’s sentencing laws. Except for the District of Columbia, all hybrid systems either preclude or limit the length of possible terms of incarceration for eligible youth. Under Vermont’s hybrid statute, for example, the only dispositional option for youth over age 18 is probation. Similarly, in Michigan, a youth assigned “youthful trainee” status under HYTA for a misdemeanor cannot be placed in state prison, but can be placed in county jail for no longer than one year. Further, the duration of an incarceration term cannot exceed two years in a HYTA felony case in Michigan.

Table 4. Procedural Provisions

		AL	DC	FL	MI	NY	SC	VT
No Plea Requirement	Can youth be eligible for the hybrid statute without having to enter a plea of guilty?	✓	✓	✓	✗	✓	✓	✓
Closed Session	Are at least some proceedings for emerging adults under the hybrid statute closed to the public?	✓	✗	✗	✓	✓	✗	✓
Jury Trial	Is a jury trial allowed under the hybrid statute?	✗	✓	✓	✗	✓	✓	✗

Table 5. Sentencing Provisions

		AL	DC	FL	MI	NY	SC	VT
Limits on Fines & Fees	Are fines and fees prohibited or limited for youth under the hybrid statute?	✗	✗	✗	✗	✗	✗	✓
Limits on Incarceration	Does the hybrid statute preclude or limit the length of a term of incarceration?	✓	✗	✓	✓	✓	✓	✓
Limits on Probation	Does the hybrid statute limit the length of a term of probation?	✓	✗	✓	✓	✗	✓	✓
Mandatory Minimums Obviated	Does the hybrid statute obviate mandatory minimum sentences for eligible youth?	✓	✓	✓	✓	✓	✓	✓

In addition to limits on possible incarceration, all hybrid systems, except for the District of Columbia and New York, impose limits on the length of a term of probation. Our interviews with key stakeholders revealed that probation is the typical disposition in most hybrid systems. The sentencing limits provided in hybrid statutes have the potential to reduce incarceration and harmful effects of long-term exposure of emerging adults to corrections.

Surprisingly, we found that only one hybrid system – Vermont – prohibits or limits imposition of fines and fees for eligible youth.

6. Post-Sentencing Provisions

Currently in all hybrid systems, emerging adults sentenced to incarceration and/or probation are placed in adult corrections and probation. Michigan, South Carolina, and Florida have specialized correctional units within the adult

Table 6. Post-Sentencing Provisions

		AL	DC	FL	MI	NY	SC	VT
Special Custody	Is there a specialized correctional unit for emerging adults incarcerated under the hybrid statute?	✗	✗	✓	✓	✗	✓	N/A
Juvenile Custody	Can emerging adults incarcerated under the hybrid statute be committed to juvenile corrections and avoid adult corrections?	✗	✗	✗	✗	✗	✗	N/A
Juvenile Probation	Can emerging adults placed on community supervision under the hybrid statute remain under the supervision of juvenile probation agency?	✗	✗	✗	✗	✗	✗	✓
Court Involvement	Does the court maintain jurisdiction and hear any alleged post-sentencing violations?	✓	✓	✓	✓	✓	✗	✓
Early Termination	Is there an opportunity to shorten the period of probation or confinement if the young person is doing well?	✓	✓	✓	✓	✗	✓	✓
Support Services	Does the hybrid statute require mandatory provision of support services to eligible youth?	✗	✓	✓	✗	✗	✓	✓

correctional system for emerging adults incarcerated under their YO statutes. In addition, the District of Columbia, although not mandated by its hybrid statute (Youth Rehabilitation Act – YRA), launched in 2018 the Young Men Emerging Unit, a specialized corrections program in the D.C. jail that houses a limited number of emerging adults, some of whom are sentenced under the YRA.⁵⁷

In all hybrid systems except South Carolina, the Court maintains oversight of the hybrid case post-disposition to hear any alleged violation of a disposition under the hybrid statute. In Michigan, for example, the court can hear an alleged violation of the HYTA term and may revoke HYTA status, as opposed to handing over discretion to corrections or probation post-disposition. Further, all hybrid systems except New York⁵⁸ offer an opportunity to shorten the period of probation or confinement if the young person is doing well. Research suggests that such early terminations and other positive incentives can be especially effective in promoting a young person’s compliance with the law.

Supportive services are critical for an emerging adult to successfully complete the terms of a hybrid case and avoid reoffending. Four of the seven hybrid systems mandate the provision of such services in the statute. The District of Columbia’s

YRA, as amended in 2018, comes to the forefront in this regard. Despite not being mandated by the hybrid statute in other jurisdictions (e.g., Michigan), some developmentally appropriate services are provided in practice in collaboration with community organizations.

7. Record Protection Provisions

Arguably the greatest benefit of hybrid statutes is the record protection provisions they offer. The effects of a criminal record on the life of an emerging adult are pervasive: An adult criminal record diminishes an individual’s prospects of steady employment and higher education, restricts civic engagement, and limits access to adequate housing and public assistance, all of which are critical to an emerging adult’s healthy transition to adulthood.⁵⁹ These collateral effects also disproportionately affect youth of color, deepening intergenerational poverty and racial inequities.⁶⁰ Further, onerous procedural requirements for expunging criminal records can marginalize emerging adults, who often lack the resources and knowledge to navigate the legal system.

It is therefore promising that in four of the seven hybrid systems in our study (Alabama, Michigan, New York, and Vermont), youth can automatically avoid a formal record of conviction if the term of the hybrid case ends successfully. The remaining

Table 7. Record Protection Provisions

		AL	DC	FL	MI	NY	SC	VT
Automatic Record Protection	Can a youth automatically avoid a formal record of conviction if the term under the hybrid statute ends successfully?	✓	✗	✗	✓	✓	✗	✓
Other Record Protection	If it is not automatic, does the hybrid statute offer other means of record protection, such as a petition to expunge or seal records of a conviction?	N/A	✓	✓	N/A	N/A	✓	N/A

three hybrid systems (D.C., Florida, and South Carolina) offer other means of record protection by petition, such as “conviction set aside,” “withholding adjudication of guilt,” and “expungement” provisions, respectively. However, the legal impact of this latter group of record protection provisions is more limited than protections offered in other hybrid systems that do not consider a guilty finding under their hybrid statute as a conviction. The scope, procedures, and effects of all these record protection provisions vary between jurisdictions, as discussed in more detail in the state reports.

“Having my record set aside helped me feel like I belonged in college. The Youth Rehabilitation Act [YRA—D.C.’s hybrid statute] extends beyond employment as it plays a critical role in a young person developing into an adult altogether. YRA gave me a different identity in a way that would allow me to pursue my dreams instead of watching them run away from me. Once I fully understood the YRA, I started to realize how critical its role was and still is in the success I have today.”

Jordan, Free Minds Book Club

IV. RECOMMENDATIONS AND MODEL HYBRID STATUTE

A. General Recommendations

1. Goals

First, our overarching recommendation for jurisdictions is to fully embrace both goals of a hybrid system: (1) to reduce the harm of the adult criminal legal system, especially elements that drive mass incarceration and the pervasive racial, ethnic, economic, and other inequities that harm individuals, families, communities, and society as a whole; and (2) to support the successful transition to healthy adulthood. This means that jurisdictions should be constantly asking: Are we (intentionally or unintentionally) making things worse? And are we actively and systemically providing developmentally appropriate services, programs, and opportunities that youth need to thrive?

Successfully applying a hybrid statute requires that all key stakeholders be well-educated in youth development. This includes defense attorneys, prosecutors, judges, probation officers and correctional staff. Some jurisdictions have community service providers with a wealth of experience and expertise working with this distinct developmental age group, and the system should seek their assistance in designing training curricula for the various stakeholders.

Additionally, creating specialized practices and departments may be a way to ensure that the system is employing a developmentally appropriate approach to the emerging adults. As noted earlier, our research showed that most

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Emerging Adult Justice Developmental Framework

The Emerging Adult Justice Project, with the assistance of a diverse group of experts, recently created a new developmental framework specifically for emerging adults involved in the justice system.⁶¹ The model is now being test-driven in Massachusetts, Nebraska, and the District of Columbia, with the support of the Annie E. Casey Foundation.⁶² It is our hope that this framework, which will be further revised over the next several years according to the lessons learned from these jurisdictions, will be an important guide for jurisdictions adopting emerging adult justice reforms, including the design and implementation of hybrid systems.

of the hybrid systems (except Vermont) were operating within the regular adult criminal legal system, and specifically designated staff or facilities were rarely being used in these cases. This contrasts starkly with the juvenile justice systems, where it is common to see cases being handled by professionals (judges, prosecutors, defense attorneys, mental health clinicians, etc.) who have received training and are specifically assigned to work with youth.

Finally, as discussed in the Introduction section above, hybrid statutes are just another tool in the toolbox of justice stakeholders to better address the developmental needs of system-involved emerging adults. Hybrid systems should not be relied on as a cure-all, and should be used and assessed in the larger context of developmentally appropriate justice mechanisms for emerging adults.

2. Legislative Drafting

Embracing the two essential goals of hybrid system wholeheartedly also means that the statutes should include language that explicitly states the underlying goals. Hybrid statutes should also avoid using stigmatizing terms, such as “youth(ful) offenders.” Finally, the legislation should exclude all outdated, ineffective and harmful punishments, such as “boot camps” and “shock incarceration.” Research has found such programming to be ineffective in reducing

recidivism and fostering positive life outcomes for young people.⁶³

3. Data

As a third general recommendation, a hybrid statute should require collection, assessment, and reporting of data so that both the system actors and the public can evaluate how the hybrid systems are being implemented in practice and whether the goals of the hybrid systems are being achieved. As discussed in the

Systems should always be seeking input and direction from the most knowledgeable – those who are system-involved and their family members and loved ones.

Key Findings section above, basic data on hybrid systems were extremely difficult to obtain for this report. At a minimum, jurisdictions should be tracking caseloads: How many youths are eligible for the hybrid system? How many actually enter the hybrid system? Who are these youth (age, gender, race and ethnicity)? What are the charges (misdemeanor, felony, etc.)? How many

emerging adults complete the hybrid system successfully and what was involved (length of probationary period, incarceration, etc.)? How many did not complete successfully and why (technical violation or new offense)? And what developmental services, programs, and opportunities did emerging adults use and benefit

from in the process? Of course, the answer to this last question can best be provided by the young people themselves, which serves as a reminder that systems should always be seeking input and direction from the most knowledgeable – those who are system-involved and their family members and loved ones.

B. Recommendations on Key Provisions and Model Hybrid Statute


As discussed above under the Key Findings section, our thorough analysis of hybrid statutes allowed us to identify key provisions and assess these various systems’ strengths and weaknesses based on both the robust body of research on this distinct developmental group and the promising practices being developed in this burgeoning field. In this section, using the same tables we created to assist with our analysis of the key provisions of each hybrid statute, **we propose a model hybrid statute with the following provisions to guide jurisdictions in improving their existing hybrid system or creating a new one.**

1. Eligibility – Age

Many hybrid statutes set the lower age limit well below the start of emerging adulthood (e.g., New York at age 13), and these laws could even

include youth who have not yet reached puberty. Our research showed that the jurisdictions with low age limits tend to be jurisdictions that also allow younger children to be prosecuted and sentenced as adults, either through a direct file or transfer provisions. The hybrid system in these jurisdictions is being used as a mechanism to partially ameliorate the harm caused by such transfer provisions. Of course, the better solution would be for jurisdictions to **ensure all those within the age limit of juvenile court benefit fully from the protections of the juvenile system.** A robust body of research points to the negative consequences of prosecuting and sentencing youth as adults, including consequences to their own safety and that of the public.⁶⁴ If such transfer provisions are eliminated, it then makes sense for the lower age limit of the hybrid system

Table 8. Model Hybrid Statute: Eligibility - Age

Lower Age Limit	Birthday at which a youth becomes eligible for the hybrid statute	At least 18*
Upper Age Limit	Birthday up to which a youth remains eligible for the hybrid statute	26
No Age Tiers for Emerging Adults	Are different age groups within the emerging adult range treated the same under the hybrid statute?	

⁶⁴As noted in the text above, we recommend that the lower age limit of a hybrid statute be set, at a minimum, on the birthday in which all alleged offenses are automatically prosecuted in adult criminal court. For Georgia, Texas and Wisconsin, this would be age 17. **This recommendation is built on the ideal that no children (those under the upper age limit of juvenile court) be denied full protection of the provisions offered in a rehabilitative juvenile justice system and subjected to the punitive adult system.**

to be set at the birthday at which juvenile court jurisdiction ends. For most states, that would be 18, but as of the writing of this report, it would be 17 in Georgia, Texas, and Wisconsin, as this is the upper age limit of their juvenile justice systems. But until jurisdictions stop allowing younger youth to be prosecuted and sentenced as adults, jurisdictions can and should consider a lower age limit for their hybrid systems.

The current hybrid statutes offer a range of upper age limits, from 19 in New York to 26 in Michigan. Since research shows that the transition to adulthood extends into the mid-20s, and that youth who have experienced trauma and/or suffered from brain injuries tend to reach developmental milestones associated with adulthood at even later ages, we recommend 26 as an appropriate upper age limit for a model statute.

For a model statute, we further recommend using the age at the time of the alleged offense as the marker for eligibility rather than the age at the time of conviction. The latter can cause unfair outcomes since youth have little control over the progression of their court case.

Some jurisdictions provide age tiers for emerging adults within the hybrid statute. Generally, this has resulted from political compromise – factors that could be negotiated during the passage

of the bill. For a model statute, we recommend that eligibility based on age be the same for all emerging adults.

2. Eligibility – Offense

As discussed in the Introduction of this report, most emerging adults will mature and age out of criminal behavior by their mid-20s. The types of offenses they may be charged with have no bearing on their developmental stage and cannot be used to accurately predict future behavior, criminal or otherwise. Our model statute therefore allows all offenses to be included in a hybrid system.

In particular, there is no evidence-based reason for excluding gun charges from hybrid statutes. Several recent studies in different jurisdictions showed that arrests for illegal gun possession were heavily skewed toward Black males and that enforcement focused on Black communities.⁶⁵ Hybrid systems should not exclude or create punitive exceptions for gun offenses since this practice deepens the racial disparities that are already pervasive in the criminal legal systems’ treatment of emerging adults.

As emerging adults are maturing, they are remarkably malleable, and can change rapidly. The fact that a young person has been involved in the criminal legal system (or even a hybrid system) before, should not exclude them from being served

Table 9. Model Hybrid Statute: Eligibility - Offense

All Offenses Included	Are all offenses eligible under the hybrid statute for emerging adults?	✓
No Exclusion for Prior Case under Hybrid Statute	Can youth with a prior case under the hybrid statute be eligible again for a subsequent offense?	✓
No Exclusion for Other Criminal History	Are youth with <i>any other</i> criminal history eligible for the hybrid statute?	✓

in a more developmentally appropriate system. Furthermore, the exclusion of youth with a prior criminal history will unfairly impact youth of color, who are disproportionately caught up in both the juvenile and adult justice systems at levels that cannot be explained by differences in their behavior, further amplifying societal inequities.

3. Application

In order to pursue the two overarching goals of a model hybrid system – ameliorating the harm caused by the adult criminal legal system and supporting transition to healthy adulthood by applying a more developmentally appropriate response and focusing on rehabilitation rather than punishment for system-involved emerging adults – it makes the most sense to rely on the juvenile court to determine whether a hybrid system should apply to youth. Juvenile judges and other juvenile system actors (such as juvenile

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probation officers) should have more expertise, as their caseload is focused on youth and often can include delinquency and child welfare cases, and youth may not age out of this system until 21. Ideally, professionals working in the juvenile court have also received training in adolescent development and healthy youth development, resulting in more informed decision-making.

Table 10. Model Hybrid Statute: Application

Juvenile Court	Does the juvenile court decide whether to apply the hybrid statute?	✓
Presumptive Application	Is the hybrid statute presumed to apply to youth who meet the eligibility requirements?	✓
Judge Initiates	Can the judge prompt application of the hybrid statute at own initiative?	✓
Prosecutor Initiates	Can the prosecutor initiate application of the hybrid statute?	✓
Youth Initiates	Can the youth (defense) request application of the hybrid statute?	✓
No Prosecutorial Consent Requirement	Can the determination of whether to apply the hybrid statute be made without the prosecutor's consent?	✓
Final Decision: Court	Does the court have the final decision on granting the application of the hybrid statute?	✓
Criteria in Statute	Does the hybrid statute explicitly set the criteria for granting its application?	✓

Our proposed statutory model includes a strong presumption to applying the hybrid statute. This does not prevent a later decision to be made to prosecute an emerging adult in the traditional adult criminal legal system, but while the decision is being made, the presumption protects the young person from the harms of the adult system. Otherwise, a young person can spend days, weeks, months or even a year in some circumstances, exposed to the adult system and subject to its potential trauma and other negative impacts, before being moved to a hybrid system.

Once a jurisdiction creates a hybrid system, we recommend that all parties – judges, prosecutors, and youth/defense attorneys – have an opportunity to initiate the application to a hybrid system. Providing prosecutors with the option of blocking the application, by requiring prosecutorial consent in the statute, is problematic. Often prosecutors make their decision to give or deny consent early on in a case, when significant pieces of the evidence or circumstances of the young person’s life, maturity, and alleged actions are unknown. If the default (presumed) application of the hybrid statute as we recommend for the statutory model is overridden, then having a hearing in front of a judge, a neutral party, and allowing all the parties to present relevant evidence and make arguments for or against the application of the hybrid statute is both fair and appropriate. Further, it is important that victims be included in

the process. This means that victims should be able to attend the hearing (even if it is otherwise closed to the public) and to submit a statement regarding the application of the hybrid statute in this case, if appropriate.

And finally, a model statute clearly and explicitly sets forth the criteria for a judge to apply in making such a decision. Of course, the criteria should consider the two important overarching goals of the hybrid statute as discussed above, the developmental stage of emerging adulthood, and the relevant research showing their ongoing potential for growth and maturity with appropriate supports and opportunities.

4. Procedural Provisions

Youth and emerging adults are particularly susceptible to the pressures of entering a guilty plea without thinking through all the consequences (especially future repercussions) or taking the time to adequately pursue their rights of due process.⁶⁶ Under a model hybrid statute, eligibility is not contingent upon entering a plea, nor are young people required to waive their right to a jury trial.

Because of the severe lifelong consequences that accompany a criminal record, a model statute includes provisions to protect a youth’s privacy while proceedings are conducted. This can be achieved by holding them in a closed court session, especially in jurisdictions that

Table 11. Model Hybrid Statute: Procedural Provisions

No Plea Requirement	Can youth be eligible for the hybrid statute without having to enter a plea of guilty?	✓
Closed Session	Are at least some proceedings for emerging adults under the hybrid statute closed to the public?	✓
Jury Trial	Is a jury trial allowed under the hybrid statute?	✓

traditionally hold closed hearings in juvenile delinquency cases, or by using initials or some other nonidentifying information in the public records and proceedings. If the case is ultimately dismissed or otherwise disposed of without any finding of guilt (or a term with the equivalent meaning), the young person can be spared unnecessary harm at a particularly critical stage of their lives when they are transitioning into adulthood. And as one interviewee explained, it’s hard to “put the cat back in the bag” and add record protection once a case has been made public.

5. Sentencing Provisions

A plethora of reports address the harms caused by the incarceration of youth and adults, and the more general phenomenon of mass incarceration.⁶⁷ Jurisdictions interested in creating or expanding a hybrid statute have an opportunity to adopt more developmentally appropriate responses that focus on effective supports, services, and opportunities available outside the prison walls and in the community. In our model hybrid statute, therefore, mandatory minimums cannot be applied, and the use and length of incarceration is limited. Even probation, which allows youth to remain in the community, can be onerous and create barriers to experiences

that support desistance, growth, and maturity. Both the use and length of probation should be well reasoned and carefully tailored to the developmental stage.⁶⁸

Finally, imposing fines and fees on emerging adults who are system-involved is, in most circumstances, counterproductive. Most emerging adults, even those that are not system-involved, are financially dependent on their families for food, housing and/or transportation.⁶⁹ Gone are the days of good-paying jobs for 19-year-olds that allow full independence. When the fines and fees are paid, some interviewees told us they believe the payments are coming from family or close friends, who have their own financial burdens that can include supporting younger children in the household. And if unpaid or paid late, fines and fees can further entangle emerging adults in a system that will continue to make their healthy transition to adulthood more difficult.

6. Post-Sentencing Provisions

We propose a model hybrid statute that extends the principles and practices outlined above to the post-sentencing (post-dispositional) process. If an emerging adult receives a “youthful offender” disposition under the hybrid system, it only makes sense that they receive developmentally

Table 12. Model Hybrid Statute: Sentencing (Disposition) Provisions





Limits on Fines & Fees	Are fines and fees prohibited or limited for youth under the hybrid statute?	
Limits on Incarceration	Does the hybrid statute preclude or limit the length of a term of incarceration?	
Limits on Probation	Does the hybrid statute limit the length of a term of probation?	
Mandatory Minimums Obviated	Does the hybrid statute obviate mandatory minimum sentences for eligible youth?	

Table 13. Model Hybrid Statute: Post-Sentencing (Post-Disposition) Provisions

Special Custody	Is there a specialized correctional unit for emerging adults incarcerated under the hybrid statute?	✓
Juvenile Custody	Can emerging adults incarcerated under the hybrid statute be committed to juvenile corrections and avoid adult corrections?	✓
Juvenile Probation	Can emerging adults placed on community supervision under the hybrid statute remain under the supervision of juvenile probation agency?	✓
Court Involvement	Does the court maintain jurisdiction and hear any alleged post-sentencing violations?	✓
Early Termination	Is there an opportunity to shorten the period of probation or confinement if the young person is doing well?	✓
Support Services	Does the hybrid statute require mandatory provision of support services to eligible youth?	✓

appropriate supports when the court case is complete. This means that if an emerging adult loses their liberty, they should not be housed in a regular adult correctional unit, but rather a specialized unit that provides such developmentally appropriate services as education (including special education) and vocational training and actively supports communications and connections with family and loved ones, etc.⁷⁰ In many jurisdictions, the best option will be to keep the emerging adult in the custody of the juvenile system rather than try to create a whole new correctional system. There are important federal laws that seek to separate youth from adults by sight and sound (the Juvenile Justice Delinquency and Prevention Act) and protect them from sexual abuse while held or incarcerated (Prison Rape Elimination Act). Housing youth incarcerated under a hybrid statute in the custody of the juvenile system would not violate such laws so long as youth under the hybrid statute are processed in the juvenile system and not defined and convicted as “adults.”⁷¹

Similarly, when it comes to community supervision, it may be most beneficial to use juvenile probation departments and tap into the staff expertise on youth development, in-depth experiences working

with this age group, and knowledge of appropriate resources in the community, rather than create new specialized probational services.

Research shows that positive incentives can be particularly motivating for this age group, so providing clear provisions that allow the probation period to be shortened and conditions reduced are key components for a model statute. Hybrid statutes should eliminate the ability to revoke hybrid status for technical violations during probation or parole and instead rely on positive incentives to promote compliance. Hybrid statutes should also offer an opportunity for early consideration for judicial review or parole release of emerging adults.

Continuing judicial oversight of the case is another important component of a model statute. We learned during some of our interviews more informal methods used in a hybrid system to resolve alleged violations of conditions are subject to arbitrary application.

And as noted in the “Key Findings” section above, it is counterproductive to create a hybrid statute and not provide developmentally appropriate supports. We recommend that a hybrid statute

provide a mandate for the development and support of these services. But it is important to note that it is inappropriate and unfair to have judges or others consider whether these support systems currently exist or not when determining whether to apply the hybrid statute to a particular case. Young people should never be penalized for the absence or limitations of support services; rather, the system should be held accountable for ensuring these services are available.

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7. Record Protection Provisions

One of the most beneficial aspects of a hybrid system is record protection. By removing the lifelong collateral consequences of a criminal record, young people are given the opportunity to achieve the developmental milestones known to support desistance and promote healthy adulthood, such as safe and stable housing and meaningful employment. A model statute provides automatic record protection upon completion of the case. Providing other means of record protection through a court petition is a less beneficial alternative. Young people who have just experienced the criminal legal system will, understandably, have practical and emotional

reasons not to want to return to court for this last step in the process. Adding such a bureaucratic process may be surmountable, but it will result in many more emerging adults stuck with a record against their own interests, as well as the interests of their families. And has been shown by the Criminal Justice Coordination Council’s analysis of the District of Columbia’s hybrid system, setting aside criminal records reduces recidivism, benefitting society as a whole.

Table 14. Model Hybrid Statute: Record Protection Provisions

Automatic Record Protection	Can a youth automatically avoid a formal record of conviction if the term under the hybrid statute ends successfully?	✓
Other Record Protection	If it is not automatic, does the hybrid statute offer other means of record protection, such as a petition to expunge or seal records of a conviction?	✓

ENDNOTES - PART I (NATIONAL)

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- 6 Elizabeth S. Scott, Richard J. Bonnie, and Laurence Steinberg, “Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy,” *Fordham Law Review* 85, no. 2 (2016): 641, 643, <https://ir.lawnet.fordham.edu/flr/vol85/iss2/12> (citing Richard J. Bonnie, Clare Stroud, and Heather Breiner, eds., *Investing in the Health and Well-Being of Young Adults* [Washington, DC: National Academies Press, 2015], <http://www.ncbi.nlm.nih.gov/books/NBK284787/>).
- 7 Scott, Bonnie, and Steinberg, “Young Adulthood”; John H. Laub and Robert J. Sampson, “Life-Course and Developmental Criminology: Looking Back, Moving Forward—ASC Division of Developmental and Life-Course Criminology Inaugural David P. Farrington Lecture, 2017,” *Journal of Developmental and Life-Course Criminology* 6, no. 2 (2020): 158–71, <https://doi.org/10.1007/s40865-019-00110-x>.
- 8 Scott, Bonnie, and Steinberg, “Young Adulthood.”
- 9 This population is also described as “late adolescents,” “young adults,” or “transition-age youth.”
- 10 The authors acknowledge that each emerging adult matures at a different rate, and many variables affect the developmental process. Thus, we consider the 18-to-25-year age range for emerging adults to be flexible, and we encourage enabling the application of dedicated policy and programming to youths one to two years outside of this age range.
- 11 For example, the American Academy of Pediatrics recommended increasing the upper age limit of pediatrics care over the current limit of age 21. Every state set the drinking age, which is more closely related to social and emotional decision making, at 21 years. By the same token, all states that have legalized marijuana have set the legal age of its use at 21 years or older. See, e.g., Amy Peykoff Hardin, Jesse M. Hackell, and Committee on Practice and Ambulatory Medicine, “Age Limit of Pediatrics,” *Pediatrics* 140, no. 3 (2017), <https://doi.org/10.1542/peds.2017-2151>.
- 12 Schiraldi, Western, and Bradner, *Community-Based Responses*.
- 13 The national advocacy group Campaign for Youth Justice (CFYJ) kept up-to-date information about these laws on its website: <http://www.campaignforyouthjustice.org>, although CFYJ closed its campaign in December 2020. As of this writing, the site is still maintained as a resource.
- 14 See Laurence D. Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence* (Boston: Houghton Mifflin Harcourt, 2014).
- 15 Robert J. Sampson and John H. Laub, *Crime in the Making: Pathways and Turning Points Through Life* (Cambridge, MA: Harvard University Press, 1993).
- 16 Christopher Uggen and Lindsay Blahnik, “The Increasing Stickiness of Public Labels,” in *Global Perspectives on Desistance: Reviewing What We Know and Looking to the Future*, ed. Joanna Shapland, Stephen Farrall, and Anthony Bottoms (London: Routledge, 2016), 222–43; Christopher Uggen and Robert Stewart, “Piling On: Collateral Consequences and Community Supervision,” *Minnesota Law Review* 99 (2015): 1871–1910, https://www.minnesotalawreview.org/wp-content/uploads/2015/09/Uggen_4fmt_PDF.pdf.
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- 22 Selen Siringil Perker and Lael E. H. Chester, “The Justice System and Young Adults With Substance Use Disorders,” *Pediatrics* 147, no. Supplement 2 (2021): S249–58, <https://doi.org/10.1542/peds.2020-023523H>; Doris J. James and Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates* (Bureau of Justice Statistics, 2006), <https://bjs.ojp.gov/content/pub/pdf/mhppji.pdf>.
- 23 James C. Howell et al., *Bulletin 5: Young Offenders and an Effective Response in the Juvenile and Adult Justice Systems: What Happens, What Should Happen, and What We Need to Know*, Study Group on the Transitions between Juvenile Delinquency and Adult Crime, 2013, <https://www.ojp.gov/pdffiles1/nij/grants/242935.pdf>.
- 24 For example, a study of 30 states found that 3 out of 4 emerging adults released from a correctional facility in 2005 were rearrested within three years. Matthew R. Durose, Alexia D. Cooper, and Howard N. Snyder, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* (Bureau of Justice Statistics, 2014), 12, <https://bjs.ojp.gov/content/pub/pdf/rprts05p0510.pdf>.
- 25 See, e.g., Emerging Adult Justice Learning Community, *A Roadmap to Reform: Key Elements of Specialized Courts for Emerging Adults* (New York: Justice Lab at Columbia University, 2021), <https://justicelab.columbia.edu/sites/default/files/content/Key%20Elements%20of%20Specialized%20Courts%20for%20Emerging%20Adults.pdf>; Emerging Adult Justice Learning Community, *A Roadmap to Reform: Key Elements of Specialized Correctional Units for Emerging Adults* (New York: Justice Lab at Columbia University, 2021), <https://justicelab.columbia.edu/sites/default/files/content/Key%20Elements%20of%20Specialized%20Correctional%20Units%20for%20Emerging%20Adults.pdf>.

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28 Natalie Behr, *Specialized Parole and Resentencing Laws Focused on Emerging Adults: New and Proposed Reforms in CA, IL, CO, D.C., and FL* (New York: Justice Lab at Columbia University, 2020), https://static1.squarespace.com/static/5c6458c07788975dfd586d90/t/5f7498fbed48091d1d13a65c/1601476860538/20200930+EAJP_Specialized+Parole+and+Resentencing+Laws+Focused+on+EAs.pdf.

29 Massachusetts passed legislation in 2018 that allows young people adjudicated (juvenile court) or convicted (adult criminal court) of an offense committed under age 21 to request expungement. Committee for Public Counsel Services Youth Advocacy Division, *Expungement Guide* (Boston: Committee for Public Counsel Services, 2019), <https://www.publiccounsel.net/wp-content/uploads/2020/09/YAD-Expungement-Guide-January-2019.pdf>.

30 In the last seven years, many jurisdictions, including California, Connecticut, Illinois, Massachusetts, Nebraska, Vermont, Virginia, and Washington, have considered legislation to include emerging adults in the juvenile justice system by raising the age of juvenile court jurisdiction beyond the 18th birthday. On May 30, 2018, Vermont enacted a new law that gradually raises the upper age of juvenile jurisdiction to a young person’s 20th birthday by 2022, but delayed the full implementation to include 19-year-olds in the juvenile jurisdiction to July 1, 2023, largely because of the pandemic. For a discussion of such raising the age efforts: in **Vermont**, see, Karen Vastine et al., *Report on Act 201 Implementation Plan Report & Recommendations* (Vermont Agency of Human Services, Department for Children and Families, 2019), https://static1.squarespace.com/static/5c6458c07788975dfd586d90/t/5dd2ebf2b1425d33ae1ef1/1574104062934/Vermont-RTA-DCF-Report-Final_EAJP.pdf; in **Connecticut**, see, Lael Chester and Vincent Schiraldi, *Public Safety and Emerging Adults in Connecticut: Providing Effective and Developmentally Appropriate Responses for Youth Under Age 21* (Cambridge, MA: Harvard Kennedy School Malcolm Wiener Center for Social Policy, 2016), https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/public_safety_and_emerging_adults_in_connecticut.pdf; in **Massachusetts**, see, Selen Siringil Perker and Lael Chester, *Emerging Adults: A Distinct Population That Calls for an Age-Appropriate Approach by the Justice System* (Cambridge, MA: Harvard Kennedy School Malcolm Wiener Center for Social Policy, 2017), https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/MA_Emerging_Adult_Justice_Issue_Brief_0.pdf; in **Illinois**, see, Selen Siringil Perker, Lael E. H. Chester, and Vincent N. Schiraldi, *Emerging Adult Justice in Illinois: Towards an Age-Appropriate Approach* (New York: Justice Lab at Columbia University, 2019), <https://doi.org/10.7916/d8-fpvw-1t32>.

31 See Jocelyn Fontaine et al., “We Carry Guns to Stay Safe”: *Perspectives on Guns and Gun Violence from Young Adults Living in Chicago’s West and South Sides* (Washington, DC: Urban Institute, 2018), <https://www.urban.org/research/publication/we-carry-guns-stay-safe>.

32 Kristen Lewis, *A Decade Undone: Youth Disconnection in the Age of Coronavirus* (New York: Measure of America, Social Science Research Council, 2020), <https://ssrc-static.s3.amazonaws.com/moa/ADecadeUndone.pdf>.

33 More information about these legislative reform initiatives can be found in detailed state reports under Part II.

34 Ohio Rev. Code Ann. § 2152.11 (West 2023).

35 Minn. Stat. Ann. § 260B.130 (West 2023).

36 Mass. Gen. Laws Ann. ch. 119, § 58 (West 2023).

37 Arkansas Code 9-27-507 (West 2023).

38 Conn. Gen. Stat. Ann. § 54-76b (West 2023).

39 Idaho Code Ann. § 20-509 (West 2023).

40 Iowa Code § 907.3(a) (West 2023).

41 Mont. Code Ann. § 41-5-1602 (West 2023).

42 N.M. Stat. Ann. § 31-18-15.3 (West 2023).

43 Okl. St. Ann. tit. 10A, §§ 2-5-201-213 (West 2023).

44 These “reverse hybrid” systems – blended sentencing provisions created to mitigate the harms of treating children more harshly than juveniles in the juvenile system – have been studied extensively by others. See, e.g., Patricia Torbet et al., *State Responses to Serious and Violent Juvenile Crime* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1996), <https://www.ojp.gov/pdffiles/statresp.pdf>.

45 Colo. Rev. Stat. Ann. § 18-1.3-407; The Emerging Adult Justice Project, *Study of the Effectiveness of the Current Youthful Offender System, As Designed by the Enabling Statute and as Implemented by the Department of Corrections* (Justice Lab at Columbia University, 2022), <https://static1.squarespace.com/static/5c6458c07788975dfd586d90/t/61f94e42046bd20d7cc275c4/1643728450509/20220201+EAJP+Columbia+Justice+Lab+YOS+CO+Leg+Report+FINAL.pdf>.

46 Cal. Penal Code § 3051 (West 2023).

47 Ga. Code Ann. §§ 42-7-1-9 (West 2023).

48 Haw. Rev. Stat. Ann. § 706-667 (West 2023).

49 730 Ill. Comp. Stat. Ann. 5/5-4.5-115 (West 2023).

50 Ind. Code Ann. § 11-14-1-5 (West 2023).

51 Va. Code Ann. § 19.2-311 (West 2023).

52 18 U.S.C. §§ 5005, 5006. (repealed by Pub. L. 98–473, 98 Stat. 2027, Title II, § 218(a)(8) (1984)).

53 These isolated, specialized legislative provisions can generally be also developed in practice without legislative action. See, e.g., Emerging Adult Justice Learning Community, *A Roadmap to Reform: Key Elements of Specialized Courts for Emerging Adults* (New York: Justice Lab at Columbia University, 2021), <https://justicelab.columbia.edu/sites/default/files/content/Key%20Elements%20of%20Specialized%20Courts%20for%20Emerging%20Adults.pdf>; Emerging Adult Justice Learning Community, *A Roadmap to Reform: Key Elements of Specialized Correctional Units for Emerging Adults* (New York: Justice Lab at Columbia University, 2021), <https://justicelab.columbia.edu/sites/default/files/content/Key%20Elements%20of%20Specialized%20Correctional%20Units%20for%20Emerging%20Adults.%20April%202021..pdf>; Emerging Adult Justice Learning Community, *A Roadmap to Reform: Key Elements of Specialized Probation for Emerging Adults* (New York: Justice Lab at Columbia University, 2021), <https://justice-lab.columbia.edu/sites/default/files/content/Key%20Elements%20of%20Specialized%20Probation%20for%20Emerging%20Adults.pdf>.

54 D.C. Code § 24-902 (a).

55 See Alabama and Vermont state reports in Part II of this report for a detailed discussion of these reforms.

56 In Michigan’s and Vermont’s hybrid systems, the guilty finding or

plea is not considered a conviction, and therefore the youth assigned YO status is technically not “sentenced.” We use the term “sentence” and “sentencing” where necessary in this report to allow for comparison between all hybrid systems.

57 Joel Castón and Tyrone Walker, “D.C.’s Promising Initiative for Young Incarcerated People,” *The Washington Post*, November 13, 2020, https://www.washingtonpost.com/opinions/local-opinions/dcs-promising-initiative-for-young-incarcerated-people/2020/11/12/aa06caaa-22a7-11eb-8672-c281c7a2c96e_story.html; Michael Woody, Tyrone Walker, and Joel Castón, *DC’s Young Men Emerging Unit: A Story of Reform and Lessons Learned from the Front Lines* (Washington, DC: Justice Policy Institute, 2020), https://justicepolicy.org/wp-content/uploads/2021/06/Young_Men_Emerging_Unit_2020.pdf.

58 While there is no special provision in New York’s “Youthful Offender” statute to shorten the period of probation or confinement if the young person is doing well, all individuals placed on probation in New York can be discharged early by a decision of the court. N.Y. CPL § 410.90.

59 See, e.g., Margaret Love and David Schlüssel, *The Many Roads to Reintegration* (Collateral Consequences Resource Center, 2020), <https://ccresourcescenter.org/wp-content/uploads/2020/09/The-Many-Roads-to-Reintegration.pdf>.

60 Darren Wheelock and Christopher Uggen, *Race, Poverty and Punishment: The Impact of Criminal Sanctions on Racial, Ethnic, and Socioeconomic Inequality* (Ann Arbor: National Poverty Center at the University of Michigan, 2006), https://npc.umich.edu/publications/workingpaper06/paper15/working_paper06-15.pdf.

61 A description of EAJP’s #DevelopingJustice Project and the new Developmental Framework can be found on our website at <https://www.eajustice.org/ea-developmental-framework>.

62 Lael E.H. Chester and Naoka Carey, “To End the Age of Incarceration, Three Communities Pioneer a Developmental Approach,” *Youth Today*, May 11, 2023, <https://youthtoday.org/2023/05/to-end-the-age-of-incarceration-three-communities-pioneer-a-developmental-approach/>.

63 U.S. Department of Justice, “Practice Profile: Juvenile Boot Camps,” National Institute of Justice Crime Solutions, September 10, 2013, <https://crimesolutions.ojp.gov/ratedpractices/6#summary>.

64 See, e.g., Robert Hahn et al., “Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services,” *Morbidity and Mortality Weekly Report* 56, no. RR-9 (November 30, 2007): 1–16, <https://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.

65 See, e.g., Geoff Hing and Lakeidra Chavis, “The War on Gun Violence Has Failed. And Black Men Are Paying the Price.,” *The Marshall Project*, March 23, 2023, <https://www.themarshallproject.org/2023/03/23/gun-violence-possession-police-chicago>.

66 See, e.g. *Young Minds, Big Decisions: An Insight into the Experiences of Young Adults Pleading Guilty to Crimes in England & Wales* (London: Fair Trials, 2022), <https://www.fairtrials.org/app/uploads/2022/10/Young-minds-big-decisions.pdf> (a recent report from England and Wales which includes testimonies from emerging adults about their decision to enter a guilty plea, including their lack of understanding of the long-term impact and the pressures they felt, even when innocent).

67 For recent examples, see Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence* (Washington, DC: The Sentencing Project, 2022), <https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf>; National Research Council et al., *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, ed. Jeremy Travis, Bruce Western, and Steve Redburn (Washington, DC: The National Academies Press, 2014), <https://static1.squarespace.com/static/5c8e74cd94d71a16f94b536/t/5d25669d43a2cd00019e9f24/1562732198223/The+Growth+of+INCARCERATION+in+the+United+States+Exploring+Causes+and+Consequences.pdf>.

68 For more information about specialized probation for emerging adults, see Emerging Adult Justice Learning Community, *Key Elements of Specialized Probation*.

69 The Pew Research Center found that in February 2020, 47% of 18- to 19-year-olds resided with a parent. In July 2020, after the onset of the pandemic, this rose to 52%. Richard Fry, Jeffrey S. Passell, and D’Vera Cohn, “A Majority of Young Adults in the U.S. Live with Their Parents for the First Time Since the Great Depression,” *Pew Research Center*, September 4, 2020, <https://www.pewresearch.org/short-reads/2020/09/04/a-majority-of-young-adults-in-the-u-s-live-with-their-parents-for-the-first-time-since-the-great-depression/>.

70 For information and guidance on creating a specialized correctional system for emerging adults, see Emerging Adult Justice Learning Community, *Key Elements of Specialized Correctional Units*.

71 There are important federal laws that seek to separate (sight and sounds) youth from adults (the Juvenile Justice Delinquency and Prevention Act) and protect them from sexual abuse while held or incarcerated (Prison Rape Elimination Act). For a discussion of these laws, and how states can define who is a “youth” and serve emerging adults in their juvenile justice systems, see Selen Siringil Perker and Lael Chester, “Raising the Upper Age of Juvenile Jurisdiction: Implications of Federal JJDP and PREA Requirements” (Justice Lab at Columbia University, December 2019), <https://static1.squarespace.com/static/5c6458c07788975df586d90/t/5e18a80aa109244b94238e39/1578674187293/Raising+the+Upper+Age+of+Juvenile+Jurisdiction+Implications+of+Federal+JJDP+and+PREA+Requirements.pdf>.

Changes

By CW

There comes a time in our lives
When we reach the point of adulthood
Where we get rid of our childish mentality
And grow up

And we're put into rough situations
That we're mature enough to think our way out of
Where we learn how to conquer those situations
And not depend on someone else to always be there
To pick us up when we fall

There are a lot of obstacles we face
That determine our maturity
And when we overcome them
We know that we've changed



PART II



Michigan's Holmes Youthful Trainee Act: A Tiered Hybrid System with the Most Expansive Age Range

I. LEGAL LANDSCAPE

In the last decade, Michigan has implemented and initiated many reforms to make its youth justice system more developmentally appropriate. Effective on October 1, 2021, Michigan increased the upper age limit of its juvenile court jurisdiction from an individual's 17th birthday to their 18th birthday at the time of an alleged offense.¹ Further, Michigan has a progressive hybrid system for emerging adults, which now allows individuals up to their 26th birthday at the time of offense to benefit from protections afforded in the Holmes Youthful Trainee Act. In July 2022, Michigan Supreme Court handed down a landmark decision finding automatic-life-without-parole sentences unconstitutional under the state constitution for youth who were 18 years old at the time of an offense, as they violate the principle of proportionality and constitute cruel punishment.²

Finally, the Michigan Juvenile Justice Task Force recently recommended establishing a minimum age for juvenile court jurisdiction and setting it at age 13,³ which, if enacted, would bring Michigan in conformity with international standards.⁴

The juvenile court has jurisdiction over juveniles under 18 years of age,⁵ but retains jurisdiction for a period of two years beyond the maximum age of jurisdiction, or for certain offenses until age 21, if the alleged offense was committed before 18.⁶ Michigan does not have statutory provisions for mandatory transfer of juveniles to the adult system, but has a juvenile court discretionary waiver statute and prosecutorial discretion provisions permitting a child age 14 and over to be tried in adult criminal court.⁷

While Michigan has no mandatory minimum sentences for many offenses including illegal gun possession or manslaughter, it still mandates minimum sentences for several offenses including first-degree murder (imprisonment for life without eligibility for parole) and possession of a firearm while committing a felony.⁸ Michigan also has a four-strike statute.⁹

Michigan has several statutory provisions that allow for deferred judgment of guilt, which are often referred to as “first-time offender statutes” and can apply to defendants who have not previously been convicted of the same or related offense.¹⁰

II. AN OVERVIEW OF THE HOLMES YOUTHFUL TRAINEE ACT

Michigan’s **Holmes Youthful Trainee Act (HYTA)**, named after its sponsoring legislator David Holmes, was first enacted in 1967 but major amendments have been made over the years. The most recent significant amendment came into force in October 2021, raising the upper age limit of HYTA to the 26th birthday, the highest age for existing hybrid systems for emerging adults in the United States.

HYTA essentially creates a hybrid system for eligible emerging adults that combines substantive and procedural provisions of the state’s juvenile justice system and adult criminal legal system. With a wide age range of eligibility, strong confidentiality and record protection

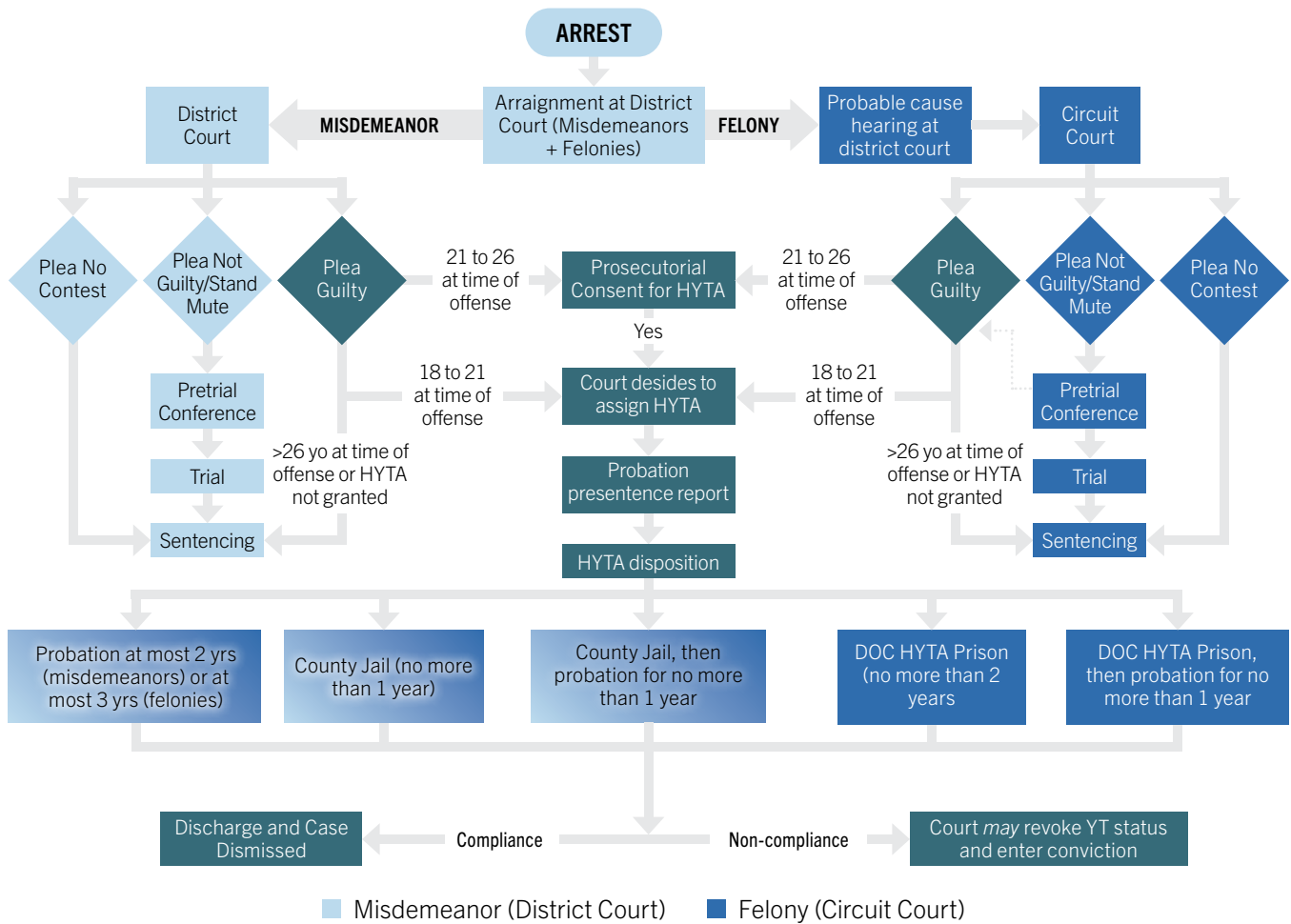
provisions, and limits on available dispositions (incarceration and probation), HYTA is one of the most robust hybrid systems in the country. Figure 1 provides a flow chart of the HYTA system and highlights some of its key junctures.

Youth may be eligible for HYTA when they are alleged to have committed a criminal offense on or after their 18th birthday but before their 26th birthday and subsequently plead guilty. Some offenses are statutorily excluded from HYTA, and there is an additional prosecutorial consent requirement if the offense was committed on or after the individual’s 21st birthday.

Assignment of youthful trainee status under HYTA has important consequences. For example, a YT assignment is not considered a conviction. HYTA prescribes limits on terms of incarceration and probation separate from traditional sentencing guidelines, essentially obviating mandatory sentencing minimums. Further, as soon as youthful trainee status is granted, the proceedings are closed to the public, and records become nonpublic and remain that way unless HYTA status is revoked due to a new conviction for a listed offense or failure to comply with the conditions of the HYTA term.

With a wide age range of eligibility, strong confidentiality and record protection provisions, and limits on available dispositions (incarceration and probation), HYTA is one of the most robust hybrid systems in the country.

Figure 1. Trajectory of a criminal case under Holmes Youthful Trainee Act



III. KEY PROVISIONS OF THE HOLMES YOUTHFUL TRAINEE ACT

1. Eligibility – Age


Under Michigan’s HYTA, a person who pleads guilty to a crime allegedly committed after their 18th birthday but before their 26th birthday is eligible for youthful trainee (YT) status.¹¹ If the youth was older than 21 at the time of the alleged offense, the assignment of YT status requires consent of the prosecuting attorney.¹²

Both the lower and upper age limits for determining HYTA eligibility have changed in the last decade. Michigan passed 2019 Public Act 113 increasing the upper age limit of its juvenile court from a youth’s 17th to 18th birthday, effective on October 1, 2021. Correspondingly,

2020 Public Act 396 raised the lower age limit of HYTA from 17th birthday to 18th birthday, also effective on October 1, 2021.

The original HYTA set the upper age limit to the 20th birthday at the time of committing an alleged crime.¹³ In 1993, the upper age limit was raised to the 21st birthday.¹⁴ In 2015, the upper age of HYTA eligibility was raised again to the 24th birthday of a young person at the time of alleged offense.¹⁵ This remarkable reform came with a compromise: introducing a prosecutorial consent requirement for granting YT status to 21- to 23-year-old defendants at the time of offense, essentially creating a tiered hybrid system.¹⁶

Table 1. Michigan HYTA: Eligibility – Age (Current)

Lower Age Limit	Birthday at which a youth becomes eligible for the hybrid statute	18
Upper Age Limit	Birthday up to which a youth remains eligible for the hybrid statute	26
No Age Tiers for Emerging Adults	Are different age groups within the emerging adult range treated the same under the hybrid statute?	 ^a

^a Assignment of “youthful trainee” status requires the consent of the prosecutor if the alleged offense was committed after an individual’s 21st birthday.

Table 2. HYTA Age Range Changes (1967–2021)

	1967	1993	2015	October 2021
Lower Age Limit	17	17	17	18
Upper Age Limit (Up to birthday)	20	21	24	26

In December 2020, based on the recommendations of the Task Force on Jail and Pretrial Incarceration,¹⁷ Michigan Legislature passed a comprehensive jail reform package, which included the expansion of the age range for HYTA eligibility. Effective on October 1, 2021, the upper age limit of HYTA was raised from the 24th birthday to the 26th birthday, while the tiered approach, requiring prosecutorial consent to apply HYTA to youth 21 and over, was maintained.¹⁸ The Senate Fiscal Impact Analysis report anticipated that expanding the age range for HYTA “could result in a decrease in the number of individuals sentenced to an MDOC facility. As a result, the Department [of Corrections] could see lower costs, but it is as yet unknown how many people will be affected under the bill’s provisions.”¹⁹

2. Eligibility – Offense

Statutorily, Michigan’s YT status can be granted for a wide variety of offenses, but the following crimes are excluded under MCL 762.11(3):

- (a) A felony for which the maximum penalty is imprisonment for life;
- (b) A major controlled substance offense;
- (c) A traffic offense;
- (d) A violation, attempted violation, or conspiracy to violate criminal sexual conduct statutes (except when found because of the victim’s age);
- (e) A violation, attempted violation, or conspiracy to commit assault with intent to commit criminal sexual conduct.

Additionally, the defendant cannot have previously been convicted or adjudicated for a listed offense for which registration is required under the Sex Offenders Registration Act. If the individual is charged for such a crime, the individual must prove by clear and convincing evidence that he or she is not likely to engage in further listed offenses.²⁰

If a defendant is charged with an excluded offense and pleads guilty to any other offense, the prosecutor shall consult with the victim regarding

the applicability of HYTA.²¹ However, the victim’s consent is not legally required to determine eligibility.

Although traffic offenses are generally considered less serious, the Court of Appeals of Michigan has found that the exclusion from YT status of traffic offenses is constitutional because it is rationally related to the legitimate purpose of holding all drivers to an adult standard of care.²²

Finally, prior assignment of YT status for another offense does not make the youth categorically ineligible for YT status for a subsequent offense under HYTA. This differentiates HYTA in an important way from Michigan statutory provisions that offer the possibility of deferred judgment of guilt for first-time offenses. While some stakeholders we interviewed seemed to treat HYTA as another deferred sentencing option along with “first time offense” statutes,²³ HYTA and first-time offense statutes have important differences, as reflected in the table below.

As one judge we spoke with put it, “HYTA was not intended to be a ‘one and done’ provision.” While

some judges we interviewed shared that they weigh a prior HYTA assignment heavily against granting HYTA status for a subsequent offense when using their discretion, other judges do not preclude youth from being granted YT status for subsequent offenses just because of their HYTA history. In fact, throughout our interviews, we heard several times that since HYTA can be applied multiple times, some prosecutors and defense counsels petition for application of HYTA if both HYTA and “first-time offense” deferred sentencing provisions are applicable, in order to reserve the latter in case the person later ages out of HYTA and commits another offense.

The judicial practice of assigning YT status to a youth more than once is in line with the underlying premise of HYTA: the distinct developmental stage and rehabilitation potential of emerging adults. A judge who used to limit YT status to only one case per young person explained to us her evolving understanding of HYTA: “A turning point was when I realized the underlying justification for HYTA is the young brain, poor decision-making. I understand that the justification is still valid when

Table 3. HYTA vs. First-Time Offense Statutes

	HYTA	FIRST-TIME OFFENSE STATUTES (DEFERRED SENTENCES)
Focus	Youth (age requirement) and rehabilitation.	First offense (no age consideration)
Prosecutorial Consent	Required for all 21-to 26-year-olds.	Generally, not required ²⁴
Court Proceedings	Closed to the public immediately after assignment of YT status.	All court proceedings are open to the public.
Record	Conviction is not entered; case remains in abeyance and is dismissed upon successful completion of a HYTA term.	Conviction is reported as a deferred judgment of guilt. Record of court proceedings are closed to public during deferral period. Upon successful completion, dismissal is reported.
Eligibility	Can be granted multiple times.	Can be granted only once.

they are at this age even if they were granted HYTA before. HYTA is giving these youth a grace period to grow up.”




“A turning point was when I realized the underlying justification for HYTA is the young brain, poor decision-making. I understand that the justification is still valid when they are at this age even if they were granted HYTA before. HYTA is giving these youth a grace period to grow up.”

While the statute excludes few offenses from YT status, the law’s wide prosecutorial and judicial discretion restricts the application of HYTA for some included offenses in practice. Differences in the use of HYTA appears to vary greatly from county to county and even from courtroom to courtroom in the same county. For example, a social worker in the Ottawa County Public Defender’s Office said prosecutorial discretion makes HYTA unreachable for kids charged with serious offenses, even though it is critically important for these youth to get HYTA status

because a felony record is likely to obstruct opportunities they need in order to reach healthy adulthood. Some court officials and judges we interviewed stated that while many youths are granted YT status for concealed gun charges, youth are often denied YT status if the alleged offense is committed using a weapon or firearm, even though they are still eligible under the statute. In one county, it was expressed that courts have a general consensus that HYTA should be avoided in any gun charges, “excluding a whole community.” In another county, a judge we interviewed stated that she often grants YT status to youth charged with a gun offense but usually requires attending a gun-safety course as a condition of doing so.

Some officials we interviewed said the highest number of HYTA cases at Ingham County district courts are for retail fraud and accompany underlying addiction problems, possession of controlled substances, and intimate partner domestic violence. In Wayne County, a circuit court judge said most HYTA cases on his docket are for a concealed weapon. A Macomb County public defender, on the other hand, said that in her experience, most HYTA cases involve robberies or carjackings. Unfortunately, limited data prevent us from supporting these observations with an empirical analysis.

Table 4. Michigan HYTA: Eligibility – Offense

All Offenses Included	Are all offenses eligible under the hybrid statute for emerging adults?	
No Exclusion for Prior Case under Hybrid Statute	Can youth with a prior case under the hybrid statute be eligible again for a subsequent offense?	
No Exclusion for Other Criminal History	Are youth with <i>any other</i> criminal history eligible for the hybrid statute?	 ^a

^a A defendant cannot be assigned YT status if previously convicted or adjudicated for a listed offense for which registration is required under the Sex Offenders Registration Act. MCL 762.11(4)(a).

Differences in the use of HYTA appear to vary greatly from county to county and even from courtroom to courtroom in the same county.

3. Application of HYTA

HYTA consideration and assignment are performed by the adult criminal court having jurisdiction of the criminal offense.²⁵ In Michigan, district courts have jurisdiction when the underlying charge is a misdemeanor; circuit courts have jurisdiction in felony cases.

HYTA does not automatically apply to youth who meet the eligibility requirement, as discussed above. The judge, the prosecutor, or the defendant must initiate HYTA consideration.

The judge can prompt application of HYTA at their own initiative and can override a prosecutor's objection if the defendant was younger than the 21st birthday at the time of committing the alleged offense. Michigan's Court of Appeals has found that, because of its narrow application, HYTA does not violate the separation of powers clause (an objection based on the theory that it permits the judicial branch to exercise prosecutorial functions by allowing courts to dismiss a case without prosecutorial consent). The assignment of YT status "merely acts to suspend the criminal proceedings," which resume if the YT violates the terms of the status and are dismissed if the YT fulfills the terms.²⁶

However, judicial practice varies greatly among counties and courtrooms. Although some judges we interviewed said they often ask the prosecution and the defense whether HYTA has been considered if it is an eligible case but not requested by the parties, other judges said they would not consider HYTA unless it is first initiated by the prosecution or defense. According to

some public defenders we interviewed, defense counsel is almost always the one who asks for YT status in Michigan. On the other hand, one judge we interviewed said that in her courtroom, defense attorneys do not pursue HYTA as much as they should, adding that HYTA should be part of the plea deal early on, even if HYTA was not granted a previous time. She added, "90% of the time I ask if HYTA was considered because the defendant is under age 21," noting that court-appointed attorneys are generally more attuned to the judge's practices and may be using HYTA more effectively than privately retained counsels, who may be less familiar with how the HYTA system works.

An additional requirement in the application of HYTA is prosecutorial consent if the alleged offense was committed after an individual's 21st birthday but before their 26th birthday. As explained above under the eligibility section, the prosecutorial consent requirement was enacted as a compromise to raise the upper age of HYTA above the 21st birthday in 2015. In its 2020 report, the Joint Task Force on Jail and Pretrial Incarceration had recommended that the age at which prosecutors must approve the use of HYTA should be raised to 24, along with an expansion of the age of HYTA eligibility to include young people aged 24 and 25.²⁷ While raising the upper age of HYTA eligibility to 26th birthday based on the Task Force's recommendation, Public Act 396 of 2020 kept the age after which prosecutorial consent is required for assigning youthful trainee status at a young person's 21st birthday at the time of offense. Critics of this tiered approach raise concerns that the prosecutorial consent requirement may be used to induce youth to waive their rights as early as at arraignment. Again, no data is available to track the number of cases in which prosecutors give or withhold consent for granting YT status to 21- to 26-year-olds. But anecdotally, a circuit court judge in one county observed that in their experience, "on average, prosecutors give consent to HYTA status in 50% of the cases for youth ages 21 to 26."

While the judge has the final decision on whether to grant HYTA, granting of YT status always requires consent of the youth.²⁸

The statute does not stipulate specific criteria to guide court decisions on whether to grant or deny YT status. Rather, extensive case law sets the criteria. While determining HYTA status, courts consider age, seriousness of the offense, and timing of the offense.²⁹ According to our interviews, in practice, aggravating factors can include victim statements or traumatic effects on the victim. Although prior criminal history does not categorically make a youth ineligible for HYTA except as discussed previously, in practice, judges often review prior criminal history when using their discretion to grant or deny YT status. One public defender we interviewed said that YT status is generally granted unless the youth has an extensive criminal history. As discussed under the eligibility (offense) section, although firearm offenses are not categorically excluded from HYTA, practitioners we interviewed said that courts give particularly heavy weight to offenses committed using a firearm, and prosecutors often actively object to granting HYTA status in such cases.









According to our interviews with key stakeholders, a thorough understanding of the young person's background, past trauma, current circumstances, and underlying causes that contribute to the lawbreaking behavior is a key element that could aid the court in its HYTA decision. Probation departments are only involved after a plea and the granting of youthful trainee status through a pre-sentence investigation, and hence courts do not readily have this information at hand to help guide their decision on whether to grant or deny HYTA until later stages of the procedure. Without effective defense counsel, young people may not be able to articulate to the judge their particular and relevant circumstances or to show remorse. As one of the social workers we interviewed stated, "many of these young people have a lot

of anxiety, but they are not able to express it and must 'put on a brave face' and may not get HYTA for that reason." Some public defender offices effectively use social workers to assess their clients' needs and circumstances to enhance the judge's understanding of these factors and assist in their HYTA decision. Interviewees noted that social workers' reports are generally well received by the courts.

As one of the social workers we interviewed stated, "many of these young people have a lot of anxiety, but they are not able to express it and must 'put on a brave face' and may not get HYTA for that reason."

Since judicial and prosecutorial discretion plays a critical role in the application of HYTA, a public defender we spoke with said that obtaining HYTA status often remains an uphill battle, with some prosecutors unreceptive to even considering HYTA. This also raises concerns about the risk of bias and "justice by geography," where similar cases receive different treatment across the courthouse and county boundaries. Our interviews with key stakeholders suggest that HYTA is used more widely in urban counties than rural ones. Even within the same county, HYTA practices can vary greatly. Some stakeholders suggested making application of HYTA presumptive in all eligible cases to address these shortcomings.

Table 5. Michigan HYTA: Application

Juvenile Court	Does the juvenile court decide whether to apply the hybrid statute?	
Presumptive Application	Is the hybrid statute presumed to apply to youth who meet the eligibility requirements?	
Judge Initiates	Can the judge prompt application of the hybrid statute at own initiative?	
Prosecutor Initiates	Can the prosecutor initiate application of the hybrid statute?	
Youth Initiates	Can the youth (defense) request application of the hybrid statute?	 ^a
No Prosecutorial Consent Requirement	Can the determination of whether to apply the hybrid statute be made without the prosecutor's consent?	 ^b
Final Decision: Court	Does the court have the final decision on granting the application of the hybrid statute?	
Criteria in Statute	Does the hybrid statute explicitly set the criteria for granting its application?	

^a Consent of youth (defense) is required for assignment of YT status. MCL 762.11(1).

^b Assignment of YT status requires the consent of the prosecutor if the alleged offense was committed after an individual's 21st birthday but before their 26th birthday.

4. Procedural Provisions

HYTA status can be granted only after the defendant enters a plea of guilty and waives the right to a jury trial. A defendant who pleads nolo contendere (accepting conviction without admitting guilt) cannot be granted HYTA.³⁰

Critics of this plea requirement raise concerns about the due process rights of the emerging adult. To address this shortcoming, different solutions have emerged in practice and formalized in common law. For example, defense counsel sometimes get a Killibrew agreement with the prosecution to commit to HYTA status, a particular sentence, term of probation, or reduced charges.³¹ Defense counsel can also seek a Cobbs evaluation, which asks the judge for a preliminary evaluation of a sentence.³² Then, if the judge does not follow the sentencing

agreement or preliminary evaluation and imposes a harsher sentence, the youth can withdraw the plea and proceed to trial.

After a plea is entered and HYTA is granted, court proceedings are closed to the public and the records become nonpublic.³³ The confidentiality of proceedings is one of the highlights of Michigan's hybrid system. Although it is an important benefit of HYTA compared to the traditional adult criminal procedure, emerging adults can be better protected from the harmful effects of court involvement if all proceedings pertaining to a HYTA-eligible case, including the hearing at which a HYTA determination is made, are closed to the public at the start of proceedings, similar to confidentiality protections offered in the juvenile system.³⁴

The confidentiality of proceedings is one of the highlights of Michigan’s hybrid system.

This procedure could also avoid challenges in courtroom management and communication between justice agencies in regard to HYTA cases’ changing classification from public to nonpublic – challenges that were shared by key stakeholders we interviewed. Arraignment starts in a public hearing. As a matter of practice, guilty plea and assignment of YT status can happen in the same hearing, or, as often the case, later in the proceedings during pretrial conference or even up-to the day of trial. As soon as YT status is granted, proceedings must switch over to a closed session. The practical transition from public to nonpublic can be difficult, especially in virtual hearings, which have become common courtroom practice since the Covid-19 pandemic.

Further, although the judge orders the case file and records of court proceedings to be marked nonpublic after assigning YT status, Michigan law does not automatically seal the arrest record upon assignment of YT status. Several stakeholders suggested that one solution to this is making HYTA application presumptive, which would make




HYTA-eligible cases nonpublic as a default at the onset of the criminal procedure. They pointed out that it is much easier to go from a confidential proceeding to a public one than the other way around, after which keeping records confidential is like trying to “put the cat back in the bag,” with the footprint of the temporary public record never completely erased. A few stakeholders, on the other hand, opposed the idea of starting a HYTA-eligible case in a confidential hearing, on the constitutional grounds of right to due process.

A guilty finding is not considered a conviction under HYTA.³⁵ The case remains in abeyance and is then dismissed upon completion of a HYTA term. A conviction is entered only if the YT status is revoked due to failure to comply with the terms imposed for the assignment of YT status, for reasons such as a new arrest or conviction for another offense. As discussed in more detail under the “Post-sentencing” subsection, revocation of HYTA status is mainly discretionary (although mandatory in certain cases) and appears to happen rarely in practice, according to those we interviewed.

5. Sentencing³⁶ Provisions

Michigan’s HYTA limits the terms of incarceration and probation separately from traditional sentencing guidelines, essentially eliminating mandatory minimums.³⁷

Table 6. Michigan HYTA: Procedural Provisions

No Plea Requirement	Can youth be eligible for the hybrid statute without having to enter a plea of guilty?	
Closed Session	Are at least some proceedings for emerging adults under the hybrid statute closed to the public?	 ^a
Jury Trial	Is a jury trial allowed under the hybrid statute?	

^a Proceedings start public and are closed to public only after a guilty plea is entered and the HYTA status is granted.

Once YT status is assigned and the underlying charge is an offense punishable by imprisonment for a term of more than one year, the court has the following options:³⁸

- (a) Commit the individual to the Department of Corrections for custodial supervision and training for not more than two years. If the individual is younger than 21, commit to an institutional facility designated by the Department for that purpose;
- (b) Place the individual on probation for not more than three years; may require participation in a drug treatment court;
- (c) Commit the individual to the county jail for not more than one year; or
- (d) Commit the individual to the Department of Corrections or to the county jail and then place the individual on probation for not more than one year.

HYTA provides further limits to possible incarceration and probation for a list of select felonies and misdemeanors. An individual assigned YT status cannot be incarcerated in state prison if the underlying charge is for a listed offense.³⁹ These include, for example,

charges for manufacturing and use of controlled substances⁴⁰ or carrying concealed weapons.⁴¹

Further, if an individual is assigned YT status and the underlying charge is for an offense punishable by imprisonment for no more than one year, the court shall place the individual on probation for no more than two years.⁴²

As a practical matter, after a plea is entered and HYTA status is granted in a felony case, the Circuit Court judge refers the case to the Department of Corrections for the probation office to conduct a pre-sentence investigation and recommend an appropriate disposition. To guide the pre-sentence evaluation, the Department uses the COMPAS needs assessment tool,⁴³ which is also used for all adult defendants and is not specifically tailored to HYTA or emerging adults. The Department prepares a pre-sentence report and makes a recommendation to the court based on the COMPAS score of the individual. In a misdemeanor case, the district court may request a pre-sentence report from that court’s probation department, although this is not mandatory. Some judges we interviewed expressed the need to improve the quality of pre-sentence reports to better inform HYTA dispositions.

Table 7. HYTA Dispositions

	MISDEMEANOR	FELONY
Probation	≤ 2 years	≤ 3 years
Jail	≤ 1 year	≤ 1 year
Jail + Probation	≤ 1 yr jail + ≤ 1 yr probation	≤ 1 yr jail + ≤ 1 yr probation
DOC Prison	N/A	≤ 2 years ^a
DOC Prison + Probation	N/A	≤ 2 yrs prison + ≤ 1yr probation

^a Except felonies listed in MCL 762.13(2).

In practice, up-front jail or prison time under HYTA is relatively rare, according to key stakeholders we interviewed. A typical disposition is probation for twelve to eighteen months, while youth charged with serious offenses or with a long prior criminal history are more likely to be incarcerated in county jail or state prison. One district court official suggested that, in line with the 2020 amendments of the sentencing provisions of Michigan’s Criminal Procedure Code,⁴⁴ the presumption in a misdemeanor HYTA case should be a non-jail, non-probation disposition to avoid net-widening. If the disposition is probation, the court should justify it and explain in clear terms what is expected for rehabilitation.





The court may order electronic monitoring during probation for an individual that was 21 or older at the time of the alleged offense and assigned youthful trainee status under HYTA.⁴⁵

Each order of probation in a felony case includes a supervision fee of \$30 per month to be paid to the Department of Corrections, for up to thirty-six

months. If the individual is placed on probation supervision with an electronic monitoring device, the fee is \$60 per month. A person must not be subject to more than one supervision fee at the same time, and the fee having the shorter remaining duration is waived.⁴⁶ The fees can be waived for an indigent young person.⁴⁷ HYTA does not prohibit or limit fines and fees for youth assigned YT status, other than those that Michigan law provide for court-involved individuals of all ages based on indigency. According to practicing attorneys we interviewed, most young people are required to pay fees in practice.

The limits the statute sets for possible HYTA dispositions (both on type and duration) provide the potential to reduce youth incarceration in Michigan.⁴⁸ On the other hand, advocates have stated that the fact that a youth can even be incarcerated under HYTA is problematic, since “incarcerating them and then sending them back out into the world” is counterproductive for their transition into healthy adulthood.

Table 8. Michigan HYTA: Sentencing Provisions

Limits on Fines & Fees	Are fines and fees prohibited or limited for youth under the hybrid statute?	
Limits on Incarceration	Does the hybrid statute preclude or limit the length of a term of incarceration?	
Limits on Probation	Does the hybrid statute limit the length of a term of probation?	
Mandatory Minimums Obviated	Does the hybrid statute obviate mandatory minimum sentences for eligible youth?	

6. Post-Sentencing⁴⁹ Provisions

A youth incarcerated under Michigan’s HYTA is committed to the adult correctional system, either in state prison under the custody of Department of Corrections⁵⁰ or to the county jail.⁵¹ As discussed above, if the underlying charge is a misdemeanor or a felony listed in MCL 762.13(2), the youth cannot be committed to the state prison for custodial supervision.

The Department of Corrections has a specialized correctional unit for male individuals incarcerated under HYTA within the Thumb Correctional Facility (TCF), in Lapeer County.⁵² Female individuals committed to the custody of the Department of Corrections are incarcerated at the Women’s Huron Valley Correctional Facility (WHV), which does not have a specialized unit for HYTA youth.⁵³ Upon commitment to the custody of the Department of Corrections, the YT is subject to the direction of the Department of Corrections.⁵⁴ According to the MDOC’s policy directive, the TCF and WHV Wardens each designate a HYTA Coordinator at their respective institutions.⁵⁵ The HYTA Coordinator establishes written program objectives for each HYTA youth received at the institution, and programming provided to the individual shall be consistent with these objectives. MDOC officials declined to comment on specific programming offered to HYTA youth under the custody of the department; however, the policy directive stipulates that youth imprisoned under HYTA are offered the same programming as other incarcerated adults, which include academic, vocational, therapeutic, and recreational programming, with the exception that youthful trainees are ineligible to participate in community-based programs. Further, HYTA youth are permitted to commingle with other incarcerated individuals for purposes of program participation and custodial management. Youthful trainees are subject to the same disciplinary policies and rules that pertain to misconduct as older adults.⁵⁶

If an individual is committed to the county jail, the court may authorize work release or release for educational purposes per HYTA, but this provision is limited by whether such programs exist in that particular jail.⁵⁷

*According to a prosecutor,
“HYTA remains to be limited to
a ‘protect the record’ approach and
not yet in the next step to increase
and coordinate community
resources youth need to succeed.”*

Under HYTA, a youth placed on probation must be under the supervision of a probation officer.⁵⁸ In Michigan, individuals sentenced by a circuit court are supervised by a state probation officer from the DOC, whereas those sentenced for misdemeanors are supervised by a district court’s probation officer. Youth placed on probation under HYTA are served within the adult system with no specialized caseloads.

The statute does not require mandatory provision of community-based support services to HYTA youth. However, stakeholders we interviewed said that often youth under HYTA are referred to existing community-based programs, such as trade/vocational school, substance abuse, life skills, and financial literacy programs. According to our interviews, housing and a safe and secure home are the most urgent needs for HYTA youth. Further, the existing resources and referral practices vary greatly by county, and young people may lack knowledge and access to them without coordinated efforts among justice agencies and providers. According to a prosecutor, “HYTA remains to be limited to a ‘protect the record’ approach and not yet in the next step to increase

and coordinate community resources youth need to succeed.” Other stakeholders suggested establishing a well-planned infrastructure and safety nets in the community to better address developmental needs of young people under HYTA.

After a HYTA disposition, the case remains in abeyance until the HYTA term ends. During this period, the court maintains jurisdiction and can hear any alleged violations of the HYTA term. If the youthful trainee status is not revoked, the court discharges the individual and dismisses the proceedings.⁵⁹ However, if the HYTA status is revoked, a conviction is entered, and a sentence is imposed with credit for time served as a youthful trainee. The statute provides for both discretionary and mandatory revocation of HYTA status after sentencing.

Discretionary revocation: The court may terminate consideration for YT status at any time or revoke assigned HYTA status any time before final release at its discretion.⁶⁰ The statute does not set the criteria for discretionary revocation of HYTA status. In practice, revocation may be triggered by new arrest records or a poor disciplinary record during the HYTA term. According to our interviews with key stakeholders, revocation of HYTA status is not the norm, and courts revoke HYTA less frequently now compared to the past. One judge we interviewed said that in their experience, “out of 10 HYTA cases, 8 complete their probation terms with HYTA intact.” In practice, instead of outright revocation of HYTA status, many judges set graduated sanctions – for example, jail time in addition to the original probation disposition – when a youth violates conditions of the YT status.

Mandatory revocation: Revocation of YT status is mandatory if the youth pleads guilty to or is convicted of certain crimes while serving a HYTA term.⁶¹ Examples include murder, felony assault, major controlled-substance offense, and firearms-related offenses (whether or not

the possession of a firearm is an element of the crime).⁶² In addition, if a YT who is required to be registered under the Sex Offenders Registration Act willfully violates that act, YT status is required to be revoked.⁶³

In practice, the court has additional discretion to decide on the early discharge of a young person who is doing well while serving a HYTA term. The 2020 amendments to Michigan’s Criminal Procedure Code established a general process for early discharge from probation for individuals of all ages.⁶⁴ As suggested by emerging research and key stakeholders’ accounts, early discharge and other positive incentives, instead of the threat of revocation, can be instrumental in promoting a young person’s compliance with the HYTA term. Some stakeholders recommended specific inclusion of such positive incentives and early discharge grounds in HYTA.

HYTA does not stipulate the procedure and standards for review of a youth’s compliance after disposition to guide the judge’s early discharge or revocation decisions. In practice, compliance review varies by geography and is based on judicial philosophy, type of disposition, and underlying offense.

For each youthful trainee incarcerated in state prison, the HYTA coordinator conducts at least an annual review of each HYTA youth in custody to assess compliance and progress towards program objectives.⁶⁵ If the HYTA coordinator believes that an early release from incarceration is warranted due to exceptional progress, or revocation of HYTA status is warranted due to misconduct or failure to participate in recommended programming, they can complete a formal evaluation and recommend early release or revocation of HYTA status. This recommendation is then reviewed by the Warden, Correctional Facilities Administration Assistant Deputy Director (ADD), and the ADD of the Office of Parole and Probation Services. If all deem it warranted, a recommendation to the

court is made to amend its original assessment and allow for the early release or revocation of HYTA status as applicable. The sentencing judge may, as a result, revoke HYTA status, discharge the individual, or set a probation term.

HYTA youth on probation are also evaluated at the midpoint of their probation term for early discharge or revocation of HYTA status, following which a recommendation is made to the court to decide if the youth can be discharged early or if HYTA status should be revoked.

According to our interviews with key stakeholders, in practice, the frequency of HYTA reviews by the court varies greatly by geography. Some judges review HYTA cases every three or six months, while others reopen the file only at the end of the HYTA term for discharge and dismissal. While most public defender’s offices do not actively follow up on youth serving a HYTA term, some public defender’s offices use a more holistic approach that includes continued engagement with their clients and communications with social workers to ensure they receive needed support for compliance with HYTA.







7. Record Protection Provisions

Arguably some of the most important aspects of Michigan’s HYTA are provisions pertaining to confidentiality of proceedings and record protection.

As discussed above, all records of proceedings and charges of a HYTA case are sealed and kept out of public record immediately after the plea. If the HYTA term ends successfully, the court dismisses the charges and all records regarding the disposition of the criminal charge and the individual’s assignment as a youthful trainee will remain out of the public record automatically without further action.⁶⁶ A nonpublic record of the proceedings will be accessible to law enforcement, prosecutors, and the courts for use in the performance of their duties.⁶⁷ If the youth does not comply with the requirements of the HYTA disposition and YT status is revoked, the record of conviction is entered into the individual’s public criminal record.

An assignment of youthful trainee status is not a conviction for a crime unless the court revokes the YT status.⁶⁸ Therefore, the individual assigned

Table 9. Michigan HYTA: Post-Sentencing Provisions

Special Custody	Is there a specialized correctional unit for emerging adults incarcerated under the hybrid statute?	
Juvenile Custody	Can emerging adults incarcerated under the hybrid statute be committed to juvenile corrections and avoid adult corrections?	
Juvenile Probation	Can emerging adults placed on community supervision under the hybrid statute remain under the supervision of juvenile probation agency?	
Court Involvement	Does the court maintain jurisdiction and hear any alleged post-sentencing violations?	 ^a
Early Termination	Is there an opportunity to shorten the period of probation or confinement if the young person is doing well?	
Support Services	Does the hybrid statute require mandatory provision of support services to eligible youth?	 ^b

^a The statute does not require court involvement for continuation of YT status, but the Court can hear any alleged violation and revoke YT status at its discretion any time before final release.

^b Some support services/programs are offered in practice despite not being mandated by the statute.

Table 10: Michigan HYTA: Record Protection Provisions

Automatic Record Protection	Can a youth automatically avoid a formal record of conviction if the term under the hybrid statute ends successfully?	✓
Other Record Protection	If it is not automatic, does the hybrid statute offer other means of record protection, such as a petition to expunge or seal records of a conviction?	N/A

YT status does not suffer a civil disability or loss of legal rights and privileges. Further, assignment to YT status cannot be admissible as a conviction for impeachment purposes in a court of law.⁶⁹ However, under MCL 777.50 and U.S.S.G. 4A1.1, a prior YT assignment is considered a conviction for the purpose of scoring prior record variables and criminal history in sentencing guidelines.⁷⁰

The robust confidentiality and record-protection provisions of HYTA protect system-involved emerging adults from the lifelong harmful effects of an adult criminal record and promote their healthy transition to adulthood and desistance from crime.

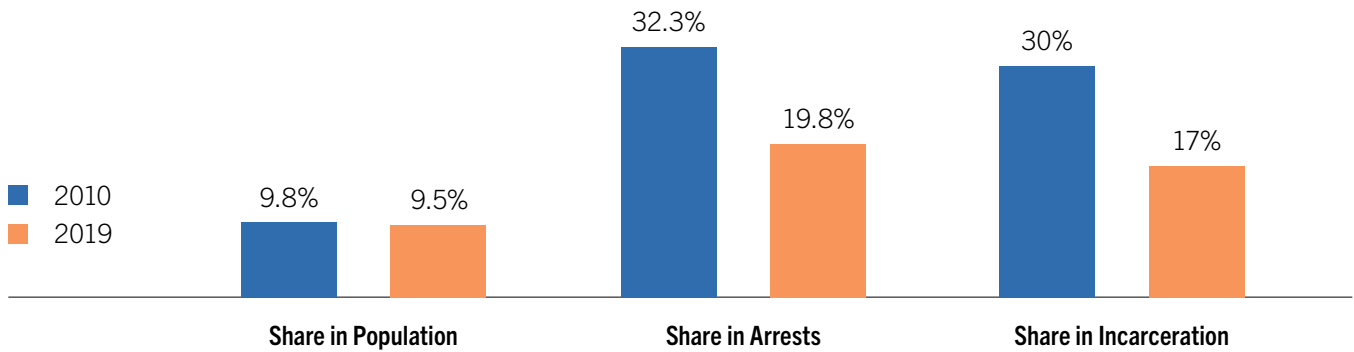
IV. DATA ON EMERGING ADULTS IN MICHIGAN'S CRIMINAL LEGAL SYSTEM AND IMPLEMENTATION OF HYTA

Limited data is publicly available on emerging adults involved in Michigan's criminal legal system. In recent years, Michigan accelerated its efforts toward a statewide unified case-management system. The Supreme Court Administrative Office (SCAO) maintains a statewide judicial data warehouse (JDW) and collects raw data on caseloads but does not routinely track and analyze HYTA-specific data. The cost of creating a comprehensive HYTA dataset and time limitations limit the scope of data SCAO can retrieve from the JDW. Officials expect data accessibility and quality will improve in the future. In the absence of comprehensive statewide data, we analyzed the limited data SCAO and Wayne County Circuit Court were able to share with us to enhance our understanding of HYTA's implementation in practice. We also reviewed aggregate juvenile and adult criminal legal system data published by various state departments and agencies for individuals under age 25.

From 2009 to 2019, the number of juveniles in Michigan's justice system decreased by 38%, with a 48% decrease in pending adjudications, 35% decrease in supervised youths by court, and 19% decrease in supervised youths by DCI.⁷¹

Similarly, in the last decade, there has been an overall decrease in the number of system-involved emerging adults. For instance, arrest events for those 25 or younger in Michigan dramatically decreased from over 140,000 in 2008 to fewer than 80,000 in 2018, a reduction of approximately 43%.⁷² Despite this decline, emerging adults continue to be overrepresented in Michigan's criminal legal system. In 2010, emerging adults constituted 9.8% of the state population⁷³ and 32.3% of all arrests⁷⁴ and 30% of commitments to Michigan's state prisons.⁷⁵ In comparison, by 2019,⁷⁶ the share of emerging adults declined to 19.8% of all arrests⁷⁷ and 17% of all commitments to state prisons in Michigan.⁷⁸ (Figure 2)

Figure 2. Share (%) of Emerging Adults in Criminal Legal System in Michigan, 2010 and 2019



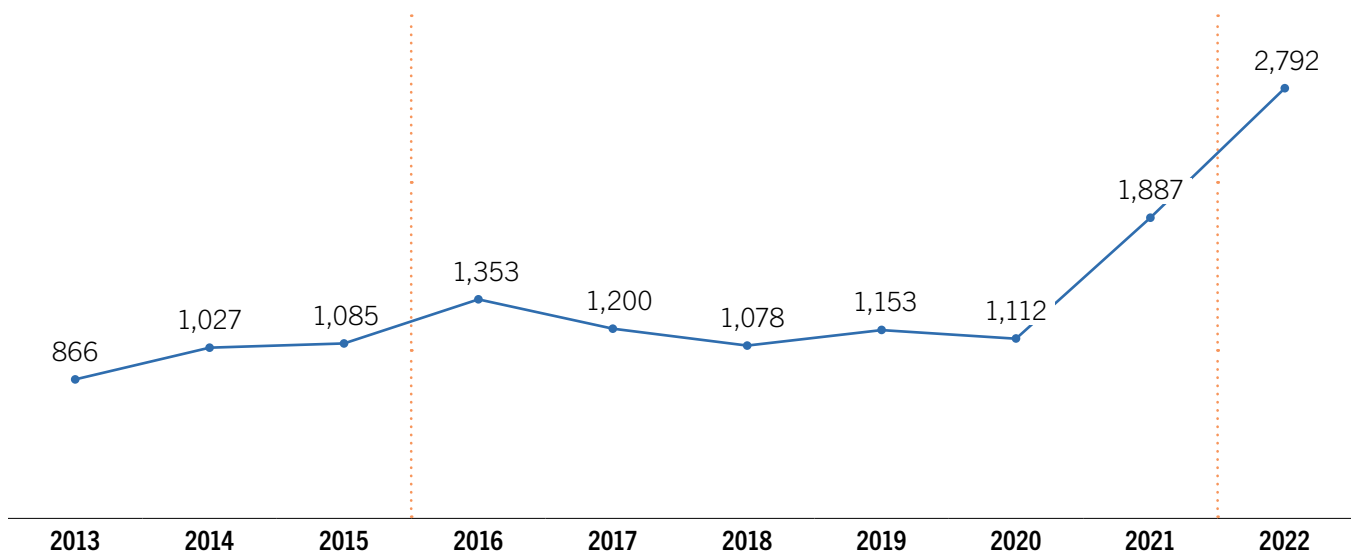
Source: U.S. Census Bureau; Michigan State Police; House Fiscal Agency.

According to the SCAO data shared with us, the number of individuals granted a temporary HYTA disposition (“deferred HYTA”) more than tripled statewide in the last decade, from 866 in filing year 2013 to 2,792 in filing year 2022.⁷⁹ The number of individuals granted HYTA increased 32% between 2014 and 2016 after Michigan raised the upper age limit for HYTA from a youth’s 21st birthday to their 24th birthday in 2015. The number of individuals granted HYTA more than doubled between 2019 and 2022, after Michigan raised HYTA’s upper age limit to the 26th birthday (Figure 3).

In Wayne County Circuit Court, the number of total HYTA dispositions increased 64%, from 718 in 2019 to 1177 in 2022, after a gradual decrease from 2010 to 2020.⁸⁰ (Figure 4).

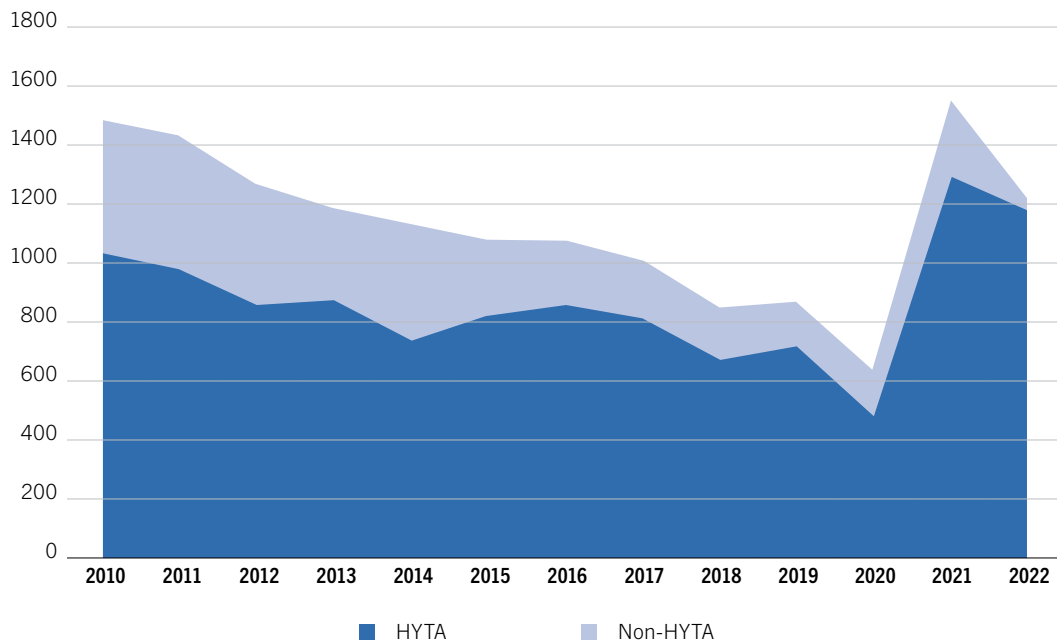
According to the data shared with us, a very high (perhaps unexpected) ratio of cases involving 18- to 25-year-olds receive a HYTA disposition in Wayne County Circuit Court. For instance, out of all cases filed in 2022, 97% of youth who met age eligibility criteria – 18 to 25 years of age at the time of offense – were granted a HYTA disposition. (Figure 4 and 5). Although HYTA is discretionary, it appears that almost all eligible youth receive

Figure 3. HYTA Dispositions by Filing Year (“Deferred HYTA”), 2013–2022



Source: Michigan Supreme Court Administrative Office

Figure 4. HYTA and Non-HYTA Dispositions by Filing Year, 18-to 25-year-olds, Wayne County Circuit Court, 2010– 2022



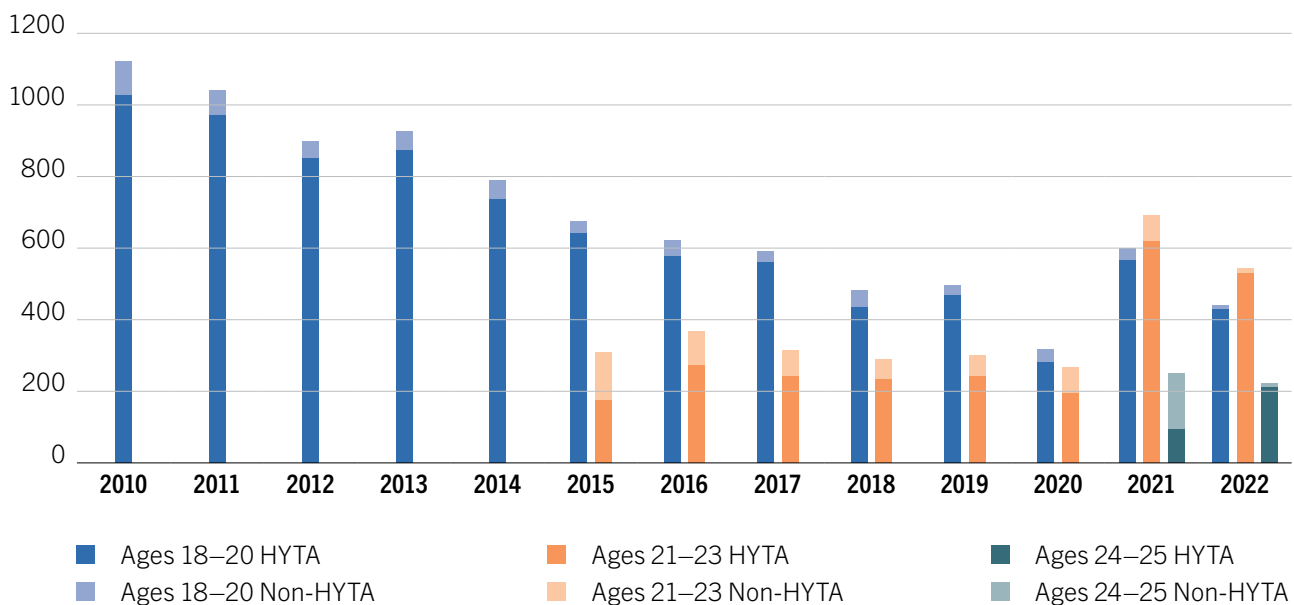
Source: Wayne County Circuit Court

HYTA at Wayne County Circuit Court. But it could also mean that very few cases involving 18- to 25-year-olds are dismissed without a guilty plea.

The last decade appears to be a shift in the age makeup of HYTA cases, consistent with the two legislative reforms expanding the age range

for HYTA eligible cases. Although 1,030 HYTA dispositions were granted for 18- to 20-year-olds in filing year 2010 (constituting 91% of all cases filed for this age group the same year), in filing year 2022 only 433 HYTA dispositions were granted for the same age group (although the proportion rose to 98% of all cases filed for this

Figure 5. HYTA v. Non-HYTA Dispositions by Age and Filing Year, 2010-2022



Source: Wayne County Circuit Court

age group the same year). HYTA dispositions for 21- to 23-year-olds have been steadily increasing since becoming eligible in 2015, and this age group surpassed the number of 18- to 20-year-olds granted a HYTA disposition in cases filed in 2021 and 2022. (Figures 5 and 6).

Further, the prosecutorial-consent requirement for assignment of HYTA to youth ages 21 to 25 at the time of offense does not appear to significantly affect the HYTA outcome for this age group in Wayne County. The data suggests that the Wayne County Circuit Court quickly responded to legislative changes raising the upper age limit of HYTA in the last decade.

Females made up 12% (139) of HYTA dispositions granted for cases filed in 2022 at Wayne County Circuit Court (Figure 7). As such, gender distribution of HYTA dispositions is reflective of the gender distribution in all Circuit Court cases filed for 18- to 25-year-olds in the County.

Black emerging adults (all genders) constituted 87% (1,020) of all HYTA dispositions granted for cases filed in 2022 at Wayne County Circuit Court – a rate similar to the share of Black emerging

adults in non-HYTA cases filed the same year. In comparison, Black emerging adults make up only 15% of all Michigan residents between ages 18 and 24.⁸¹ The share of Black emerging adults in HYTA dispositions seems to have increased slightly in the last decade, from 77% in 2012 to 87% in 2022.

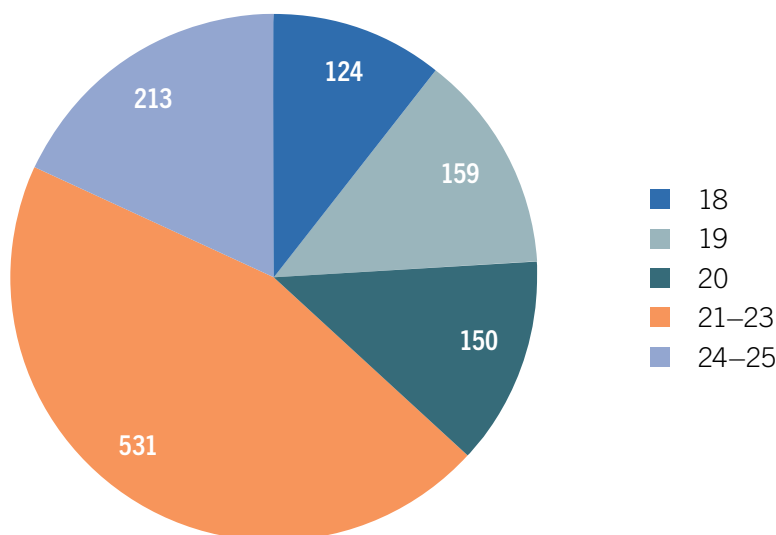
The gender and racial distribution of HYTA dispositions does not notably vary by age of eligible youth.

For HYTA cases filed in Wayne County Circuit Court between 2010 and 2015, the median duration of a HYTA term was 676 days. Median length of a HYTA term dropped slightly to 651 days for cases filed between 2016 and 2022. A total of 85% of all HYTA dispositions for cases filed between 2010 and 2022 were completed within three years. (Figure 8).⁸² Wayne County Circuit Court’s data set did not include the type of HYTA disposition (probation versus incarceration).

It is important to note that Wayne County Circuit Court data may not be representative of the whole of Michigan. Wayne County is the most populated county of Michigan and includes Detroit as an urban jurisdiction. Further, the circuit court has jurisdiction on felony cases and therefore the data is not representative of HYTA practices in misdemeanor cases. A better and more informative data analysis can be made when SCAO fully implements a statewide unified case management system.

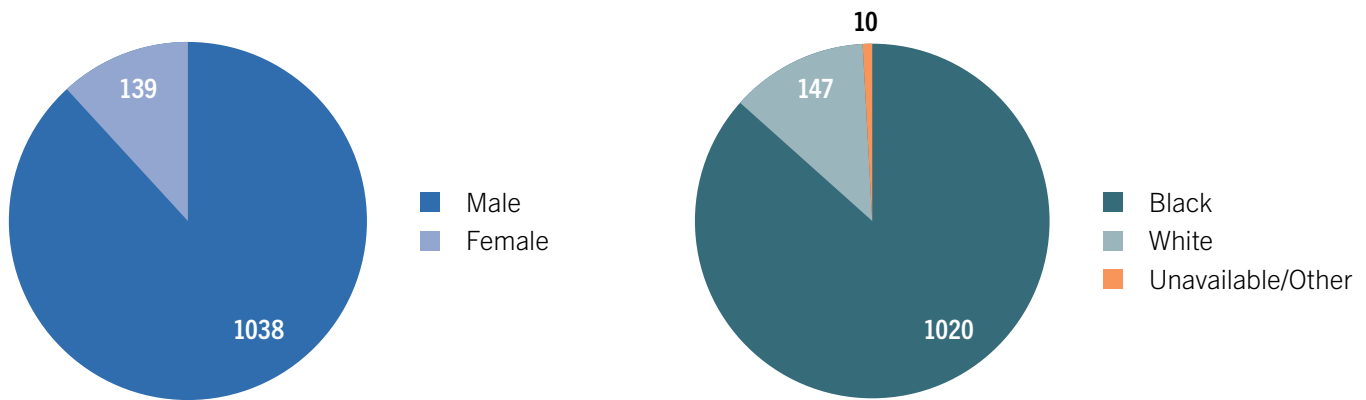
In the absence of official publication of data, the Lansing State Journal conducted its own investigation in 2019 and reported some data from three Ingham County district courts with jurisdiction over misdemeanor cases that received a HYTA disposition.⁸³ According to this report,

Figure 6. HYTA Dispositions by Age, Wayne County Circuit Court, 2022



Source: Wayne County Circuit Court

Figure 7. HYTA Dispositions by Gender and Race, Wayne County Circuit Court, 2022



Source: Wayne County Circuit Court

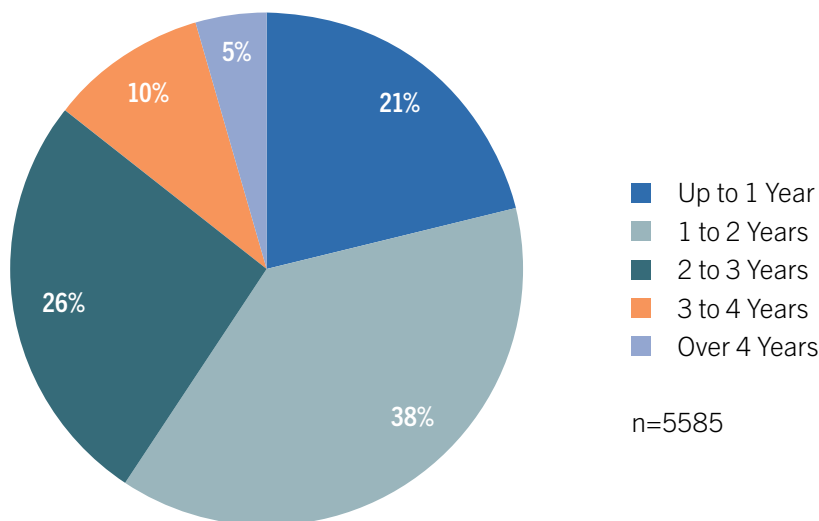
in 2018, district courts assigned HYTA status in 227 misdemeanor cases in Ingham County, and the number of total HYTA dispositions remained somewhat steady between 2014 and 2018.⁸⁴ This corroborates with observations of court officials we interviewed, who felt raising HYTA's eligibility upper age limit did not appreciably change the overall caseloads.

From the beginning of 2018 to the beginning of 2021, the number of youths under 18 who are not youthful trainees committed to Michigan

Department of Corrections (MDOC) facilities decreased from 35 to 16, and the number of youths under 18 who were committed to MDOC as a youthful trainee decreased from 9 to virtually none.⁸⁵ In 2019, 341 individuals ages 19 and under and 1,107 individuals ages 20 to 24 were committed to the Michigan Department of Corrections (MDOC).⁸⁶

MDOC does not release HYTA-specific data. However, MDOC's general incarceration data suggest that HYTA reforms might have played a

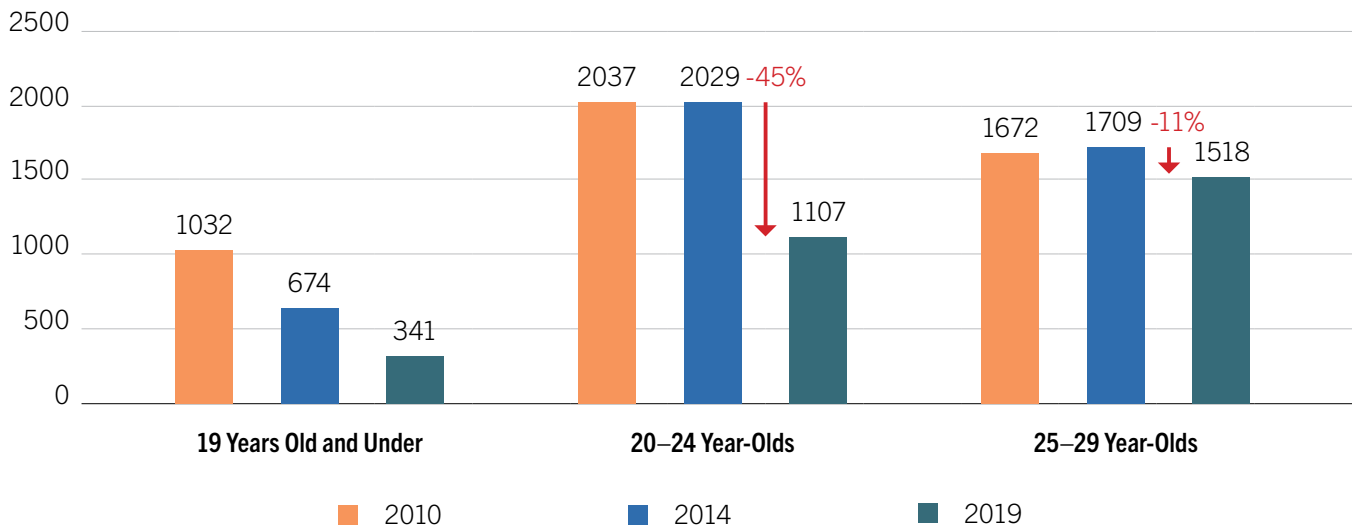
Figure 8. Length of HYTA Term, 2010-2022



Source: Wayne County Circuit Court

role in reducing incarceration in Michigan. In 2014, the last full year before HYTA's upper age limit was raised from the 21st birthday to 24th birthday, 2,029 individuals ages 20 to 24 were committed to Michigan's state prisons.⁸⁷ By 2019, the number of individuals ages 20 to 24 committed to state prisons declined to 1,107 – an overall decline of 45%.⁸⁸ In contrast, the number of 25- to 29-year-olds committed to state prisons declined by only 11% in the same time frame, from 1,709 to 1,518.⁸⁹ (See Figure 9).

Figure 9. Number of Individuals Committed to Michigan State Prisons by Age Group (2010-19)

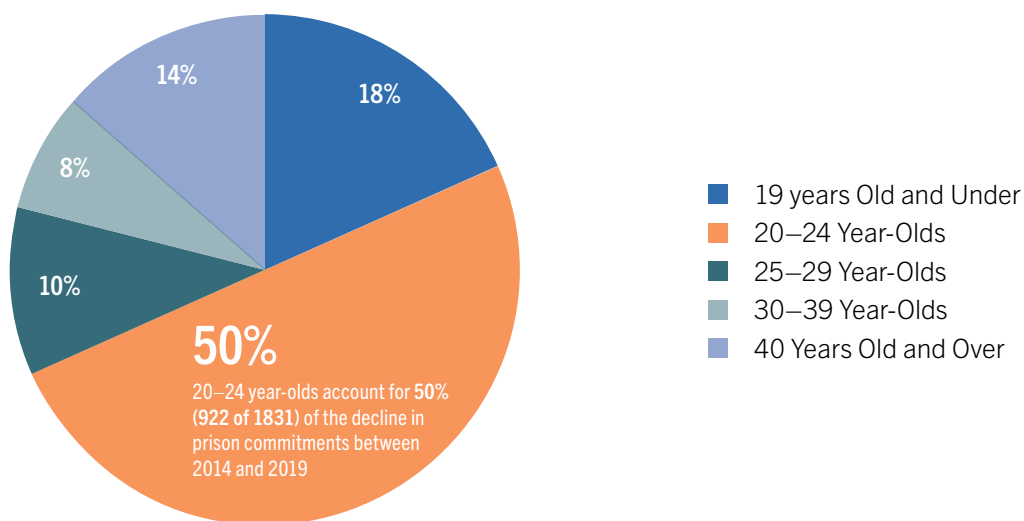


Source: House Fiscal Agency

By another measure, the decline in prison commitments of 20- to 24-year-olds made up more than half of the overall decline in total prison commitments in Michigan for all age groups between 2014 and 2019.⁹⁰ (See Figure 10). Although data limitations prevent us from establishing a causal link, it seems likely that this

significant decline in incarceration of emerging adults between 2014 and 2019 was impacted by the expansion of the state’s hybrid system in 2015, which increased the age range of those eligible for HYTA status (and its sentencing restrictions) from a youth’s 21st birthday to 24th birthday.

Figure 10. Share (%) in Decline in Annual State Prison Commitments by Age Group (2014-2019)



Source: House Fiscal Agency

MAJOR LEGISLATIVE HISTORY
MICHIGAN HOLMES YOUTHFUL TRAINEE ACT

1967	<ul style="list-style-type: none"> Passed “Holmes Youthful Trainee Act” (“HYTA”). MCL §§ 762.11-16 	<i>Act 301 of 1966</i>
1988	<ul style="list-style-type: none"> Amended §762.11 to expand the categories of offenses that would be ineligible for youthful trainee (YT) status 	<i>Act 4 of 1988</i>
1993	<ul style="list-style-type: none"> Amended §762.11 to include the requirement of guilty plea to be assigned YT status Raised the upper age limit of HYTA from 20th birthday to 21st birthday at the time of offense. 	<i>Public Act 293 of 1993</i>
1994	<ul style="list-style-type: none"> Amended §762.12 to include mandatory revocation of YT status if “an individual who is required to be registered pursuant to the Sex Offenders Registration Act willfully violates that act.” 	<i>Public Act 286 of 1994</i>
2004	<ul style="list-style-type: none"> Amended §762.11 to expand the categories of excluded offenses, including violations of criminal sexual conduct statutes. Precluded assignment of YT status to youth with a prior record of conviction for a listed offense for which registration is required under the Sex Offenders Registration Act. 	<i>Public Act 239 of 2004</i>
2015	<ul style="list-style-type: none"> Raised the upper age of YT eligibility from 21st birthday to the 24th birthday at the time of the offense. Introduced a prosecutorial consent requirement for assignment of YT status to youth who had passed their 21st birthday at the time of offense. Expanded the grounds for mandatory revocation of YT status to include being found guilty of any of the excluded offenses (for determining YT status) while serving a HYTA term, except for traffic violations, and with the addition of a firearm offense. 	<i>Public Act 31 of 2015</i>
2019	<ul style="list-style-type: none"> Raised the lower age of YT eligibility from 17th birthday to the 18th birthday at the time of offense. Reduced the probation supervision fee from a maximum of \$135 to a fixed fee of \$30 per month eliminating the determination of fees based on income and financial resources. Added the possibility of placing the youth under probation supervision with an electronic monitoring device with a total probation supervision fee of \$60/month. Added the possibility of waiving the supervision fees for indigent youth. 	<i>Public Act 165 of 2019</i>
2020	<ul style="list-style-type: none"> Effective on October 1, 2021, raised the upper age of YT eligibility from the 24th birthday to the 26th birthday at the time of the offense. Added the requirement for the prosecutor to consult with the victim regarding the applicability of HYTA if a youth is originally charged with an excluded offense and pleads guilty to any other offense. 	<i>Public Act 396 of 2020</i>

ENDNOTES - MICHIGAN

1 2019 PA 113; MCL 712A.2(a).

2 See *People v. Parks*, 510 Mich. 225 (2022).

3 As of the date of writing this report, Michigan did not have legislation setting a minimum age for juvenile court jurisdiction. However, the state's competency statute provides a presumption for incompetence of juveniles less than 10 years of age to stand proceedings in a juvenile court. MCL 330.2062(1).

4 Michigan Task Force on Juvenile Justice Reform, *Report and Recommendations*, 2022, 14, <https://michigancommitteeonjuvenilejustice.com/wp-content/uploads/Michigan-Taskforce-on-Juvenile-Justice-Reform-Final-Report.pdf>.

5 MCL 712A.2.

6 MCL 712A.2a(1), 712A.2a(5).

7 MCL 712A.4, 764.1f, 712A.2(a)(1); for an overview of Michigan's adult criminal legal system and youth justice system, see Sheryl Kubiak et al., *Overview of the Criminal Legal System in Michigan: Adults and Youth*, ed. Jessica L. Best (Center for Behavioral Health and Justice at Wayne State University, 2021), <https://behaviorhealthjustice.wayne.edu/michigan-data-landscape>; see also Karen U. Lindell and Katrina L. Goodjoint, *Rethinking Justice for Emerging Adults: Spotlight on the Great Lakes Region* (Juvenile Law Center, 2020), <https://jlc.org/sites/default/files/attachments/2020-09/JLC-Emerging-Adults-9-2.pdf>.

8 MCL 750.316(1), 750.227b(1).

9 MCL 769.12.

10 See, e.g., MCL 333.7411 (Controlled Substance); MCL 769.4a (Domestic Violence); MCL 600.1076(6) (Drug Treatment Court); MCL 600.1090-600.1099a (Mental Health Court).

11 MCL 762.11(2).

12 MCL 762.11(1).

13 1966 PA 301.

14 1993 PA 293, amending MCL 762.11.

15 2015 PA 31, amending MCL 762.11 effective August 18, 2015.

16 We discuss in more detail the implications of this tiered approach under the Application subsection below.

17 Michigan Joint Task Force on Jail and Pretrial Incarceration, *Report and Recommendations*, 2020, 29, <https://www.courts.michigan.gov/48e562/siteassets/committees,-boards-special-initiatives/jails/jails-task-force-final-report-and-recommendations.pdf>.

18 2020 PA 396, amending MCL 762.11 effective October 1, 2021.

19 Michigan Senate Fiscal Agency, "Bill Analysis: Senate Bills 1046 through 1051 (as Introduced 7-23-20)," September 23, 2020, 3–14, <https://www.legislature.mi.gov/documents/2019-2020/billanalysis/senate/archive/2019-SFA-1046-G.pdf>.

20 MCL 762.11(4).

21 MCL 762.11(2).

22 See *People v. Martinez*, 211 Mich. App. 147, 535 N.W.2d 236 (1995).

23 E.g., MCL 333.7411 (Controlled Substance); MCL 769.4a (Domestic Violence); MCL 600.1076(6) (Drug Treatment Court); MCL 600.1090-600.1099a (Mental Health Court).

24 Consent of the prosecutor in consultation with the victim is required for domestic violence cases. MCL 769.4a(1).

25 MCL 762.11(1).

26 *People v. Trinity*, 189 Mich. App. 19, 22, 471 N.W.2d 626 (1991).

27 Michigan Joint Task Force on Jail and Pretrial Incarceration, *Report and Recommendations*, 29.

28 MCL 762.11(1).

29 See *People v. Fitchett*, 96 Mich. App. 251, 292 N.W.2d 191 (1980); *People v. Khanani*, 296 Mich. App. 175, 817 N.W.2d 655 (2012).

30 See *People v. Harns*, 227 Mich. App. 573, 576 N.W.2d 700 (1998), *vacated in part*, 459 Mich. 895, 587 N.W.2d 504 (1998).

31 See *People v. Killebrew*, 416 Mich. 189, 330 N.W.2d 834 (1982) (creating the right to withdraw an otherwise valid plea if court violates sentencing agreement between the parties).

32 See *People v. Cobbs*, 443 Mich. 276, 505 N.W.2d 208 (1993).

33 MCL 762.14(4); see *People v. Bobek*, 217 Mich. App. 524, 553 N.W.2d 18 (1996); *People v. GR*, 331 Mich. App. 58, 951 N.W.2d 76 (2020).

34 Michigan Court of Appeals had, in fact, compared similarities of HYTA with the juvenile justice system, stating that "HYTA is essentially a juvenile diversion program." *People v. Dipiazza*, 286 Mich App 137, 141, 778 N.W.2d 264 (2009).

35 MCL 762.11(1).

36 Since assignment of YT status under HYTA is not considered a conviction, some stakeholders said that YT status is treated similar to a "pre-sentencing status" and another stakeholder stated that assignment of YT status is an "intermediate treatment one receives vis-a-vis a juvenile disposition and an adult sentence." Therefore, we generally use the terms "HYTA disposition" or "HYTA term" instead of "sentence" in this report for Michigan. When necessary, the term "sentencing" or "post-sentencing" is included to allow for comparisons with other jurisdictions in this study.

37 2 Michigan Judicial Institute, *Criminal Proceedings Benchbook* §9.10, A.3, at 9-57 (2023) ("A trial court's decision to grant sentencing under HYTA should not be reviewed as a decision to depart from the [sentencing] guidelines." *People v. Khanani*, 296 Mich App 175, 183 (2012). "[T]he sentencing guidelines have not been held to apply to the decision whether to grant youthful-trainee status.").

38 MCL 762.13(1).

39 MCL 762.13(2).

40 MCL 333.7404.

41 MCL 750.227. Other offenses for which a HYTA youth cannot be incarcerated in state prison are: breaking and entering (MCL 750.110), credit card fraud (MCL 750.157n to 157v), larceny (MCL 750.356), taking possession of motor vehicles and driving away (MCL 750.413), robbery (MCL 750.530), and receiving or concealing stolen property (MCL 750.535).

42 MCL 762.13(3).

43 See, "Our Products: Northpointe Suite Risk Needs Assessments," Equivant, 2022, <https://www.equivant.com/northpointe-risk-need-assessments/>.

44 MCL 769.5.

45 MCL 762.11(6). However, Michigan's general probation statute allows electronic monitoring for 18- to 21-year-olds.

46 MCL 762.13(6).

47 MCL 762.13(7).

48 See section IV below for data on incarceration of emerging adults in Michigan.

49 The term "post-sentencing" is used to allow for comparisons with other jurisdictions in this study. See note 36 above.

- 50 MCL 762.13(1)(a).
- 51 MCL 762.13(1)(c).
- 52 “Thumb Correctional Facility (TCF),” Michigan Department of Corrections, 2023, <https://www.michigan.gov/corrections/prisons/thumb-correctional-facility>.
- 53 Michigan Department of Corrections, “Michigan Department of Corrections Policy Directive: Youthful Trainees,” May 30, 2017, https://www.michigan.gov/-/media/Project/Websites/corrections/publications/Folder4/03_02_120_v572200.pdf?rev=1b5157c408f743c-caa745ed8bbe4e233.
- 54 MCL 762.13(4).
- 55 MCL 762.13(4).
- 56 MCL 762.13(4).
- 57 MCL 762.13(5).
- 58 MCL 762.13(4).
- 59 MCL 762.14(1).
- 60 MCL 762.12(1).
- 61 MCL 762.12(2).
- 62 HYTA shall be revoked if the individual pleads guilty to or convicted of the following offenses according to MCL 762.12 (2): (a) A felony for which the maximum penalty is imprisonment for life; (b) A major controlled substance offense; (c) A violation, attempted violation, or conspiracy to violate felonious assault, assault with intent to do great bodily harm less than murder, assault by strangulation or suffocation, Assault with intent to rob and steal (unarmed), breaking and entering a dwelling, Possession of firearm or ammunition by person convicted of felony, Armed with intent to use dangerous or deadly weapon or instrument, carrying concealed weapons, unlawful possession of pistols, Possession of firearm when committing or attempting to commit felony, criminal sexual conduct, carjacking, and robbery; (d) A violation, attempted violation, or conspiracy to violate criminal sexual conduct statutes; (e) A firearm offense.
- 63 MCL 762.12(3).
- 64 MCL 771.2.
- 65 Michigan Department of Corrections, “Michigan Department of Corrections Policy Directive: Youthful Trainees.”
- 66 MCL 762.14 (4).
- 67 MCL 762.14 (4).
- 68 MCL 762.14(2); see *People v. Dipiazza*, 286 Mich App 137, 141, 778 N.W.2d 264 (2009).
- 69 See *United States v. LeBlanc*, 612 F.2d 1012 (6th Cir. 1980).
- 70 See *People v. Williams*, 298 Mich. App. 121, 825 N.W.2d 671 (2012); *United States v. Shor*, 549 F.3d 1075 (6th Cir. 2008).
- 71 Kubiak et al., *Overview of the Criminal Legal System*, 38.
- 72 Kubiak et al., 6.
- 73 Census data for 2010 show Michigan residents between ages 18 and 24 made up 9.8 percent of the state population. See U.S. Census Bureau, *S0101: Age and Sex*, 2010, <https://data.census.gov/table?q=s0101&g=040XX00US26&tid=ACSST1Y2010.S0101>.
- 74 In 2010, 91,189 out of 282,037 total arrests were emerging adults between ages 18 and 24. See Michigan State Police, “2010 Statewide Arrest Totals,” 2010, https://www.michigan.gov/msp/-/media/Project/Websites/msp/micr-assets/2010/2010_annual_statewidearrests.pdf?rev=405048729a4245549df82ecfdc5d6866&hash=73A6D0F-6B5E793AD227CB0B9A21B6752.
- 75 House Fiscal Agency, “Prison Commitments by Age,” December 27, 2022, https://www.house.mi.gov/hfa/PDF/Corrections/Corrections_Data_Prison_Commitments_by_Age.pdf.
- 76 We use 2019 arrest and prison commitment data since this was the most recent, publicly available MDOC data at the time of writing this report. Due to Covid-19 restrictions and lockdowns in place, 2020 data does not allow a reliable comparison with previous years.
- 77 In 2019, 41,819 out of 211,196 total arrests were emerging adults between ages 18 and 24. See Michigan State Police, “2019 Statewide Arrest Totals,” 2019, https://www.michigan.gov/msp/-/media/Project/Websites/msp/micr-assets/2019/statewide_arrests.pdf?rev=a6e-8f38e272948bdb27dc75f7bf54fd3&hash=716DFEFB4E11F3F19E-510633207AFF09.
- 78 House Fiscal Agency, “Prison Commitments by Age.”
- 79 Data shared by SCAO via email dated March 29, 2023. Excludes 2nd Circuit Court (Berrien County), 5th District Court (Berrien County), and 61st District Court (Grand Rapids).
- 80 Data shared by Wayne County Circuit Court via email dated February 22, 2023.
- 81 U.S. Census Bureau, *S0101: Age and Sex*, 2021, <https://data.census.gov/table?q=s0101&g=040XX00US26&tid=ACSST1Y2021.S0101>; U.S. Census Bureau, *B01001B: Sex by Age (Black or African American Alone)*, 2021, <https://data.census.gov/table?q=Race+and+Ethnicity&g=040XX00US26&tid=ACSST1Y2021.B01001B>.
- 82 Excludes cases that do not have a “completion date” and cases that have a “revoked date” in the Wayne County Circuit Court dataset.
- 83 Kara Berg, “How Youthful Offenders Are Avoiding Sexual Assault Convictions, State Registry,” *Lansing State Journal*, February 24, 2019, <https://www.lansingstatejournal.com/story/news/2019/02/24/sex-assault-nonpublic-conviction-hyta-msu-rape-youth-prosecutor/2909390002/>.
- 84 *Wayne County Circuit Court via email*.
- 85 Kubiak et al., *Overview of the Criminal Legal System*, 29.
- 86 Michigan Department of Corrections, *2019 Statistical Report*, 2021, B-49, https://www.michigan.gov/-/media/Project/Websites/corrections/assets/Folder24/MDOC_2019_Statistical_Report.pdf?rev=80a09f2ffb8a4e5981934e163fde65c7 This data is not HYTA specific and also include non-HYTA youth, i.e., youth who are sentenced as adults either because they were over the juvenile court jurisdiction age threshold at the time of offense or prosecuted as adults pursuant to juvenile court jurisdiction waivers.
- 87 House Fiscal Agency, “Prison Commitments by Age.”
- 88 House Fiscal Agency. The data is non-HYTA specific and includes both 20-to 24-year-olds incarcerated without HYTA status and those incarcerated under HYTA.
- 89 House Fiscal Agency.
- 90 House Fiscal Agency.

Run Away Clock

By AG



Just yesterday it seems I was a child experiencing fun
Rude awakening to the responsibilities of an adult that's twenty-one
Being a kid is wonderful, yet I didn't believe the hype
Now that I'm grown I dread reality, classified the immature type
Every second counts when indulged in a race
Time is of the essence, which prefers the faster pace
The day welcomes the moon, as the sun retires the night
Twenty-four hours quickly vanishes right before your sight
I need a stopwatch to put life on hold
From losing teeth to going gray the swift approach to getting old.
Cherish good moments, be sure to make them last
Months transform to years as memories come to past
Thoughts clouded by anger as I plot revenge with a rock
The task at hand is to destroy the life of the Run Away Clock

Poetry courtesy of Free Minds Book Club & Writing Workshop (<https://freemindsbookclub.org>).

Illustration by Jameel Charles, courtesy of Echoes of Incarceration (<https://www.echoesofincarceration.org>).

Alabama’s “Youthful Offender” Statute: From a Reverse to a Split Hybrid System

I. LEGAL LANDSCAPE

In Alabama, juvenile court has jurisdiction for youth 17 years of age and under (up to the 18th birthday).¹ Once a child has been adjudicated dependent, delinquent, or in need of supervision, jurisdiction of the juvenile court may extend through age 20 (up to the 21st birthday) unless the judge terminates it by an order.² The jurisdiction of the juvenile court ends when the child is convicted or adjudicated a “youthful offender.”³

Alabama requires mandatory transfer to adult court (statutory exclusion) of juveniles who are at least 16 years old or older and charged with certain serious felonies, capital offenses, or drug trafficking.⁴ Alabama also has discretionary

waiver provisions that permit a juvenile at least 14 years old to be tried in adult criminal court for any alleged offense on the motion of the prosecutor.⁵ When a transfer to adult court is followed by a criminal conviction or adjudication as a “youthful offender” under the state’s Youthful Offender Act (hereinafter “YOS”), the jurisdiction of the juvenile court over any future alleged lawbreaking by that child is permanently terminated (the “once an adult, always an adult” approach).⁶

Alabama is a mandatory minimum state⁷ and has a multiple strike statute.⁸

II. AN OVERVIEW OF ALABAMA’S HYBRID SYSTEM FOR EMERGING ADULTS

Alabama’s **Youth Offender Act (YOS)** is coded in Ala. Code 1975 § 15-19-1 through § 15-19-7. In contrast with the dynamic legislative history of some other “youthful offender” statutes, such as Michigan’s Holmes Youthful Trainee Act (HYTA) and D.C.’s Youth Rehabilitation Act (YRA), Alabama’s YOS has not been subject to major amendments since its original enactment in 1972. The statute is brief and does not include detailed provisions or guidance. Additionally, Alabama’s

YOS offers a “split hybrid system” in that it applies to both children (youth below the upper age threshold of the juvenile court jurisdiction) who are transferred to the adult system per waiver provisions and emerging adults - youth over the upper age limit of the juvenile court jurisdiction at the time of offense up to 21st birthday. Our analysis below focuses on the latter group, but uses the term “youth” to denote both eligible groups.

III. KEY PROVISIONS OF ALABAMA’S “YOUTHFUL OFFENDER” STATUTE

1. Eligibility – Age

Under Alabama’s YOS, the individual’s age at the time of the alleged offense determines eligibility for the YO status.

Ala. Code 1975 § 15-19-1 reads that “A person charged with a crime which was committed in his or her minority but was not disposed of in juvenile

court and which involves moral turpitude or is subject to a sentence of commitment for one year or more shall, and, if charged with a lesser crime may be investigated and examined by the court to determine whether he or she should be tried as a youthful offender, provided he or she consents to such examination and to trial without a jury where trial by jury would otherwise be available to the defendant” [emphasis added].


The lower age limit of the YOS in Alabama is, thus, defined in terms of the jurisdiction of the juvenile court meaning if the juvenile court retains original jurisdiction, the YO act would not apply. In Alabama, the juvenile court, upon a motion of the prosecutor, can waive its jurisdiction and transfer a juvenile who was 14 or older at the time of offense to adult court for criminal prosecution (discretionary waiver).⁹ The adult criminal court judge may thus elect to apply the YOS to a transferred child who committed an alleged offense after their 14th birthday.

Use of the phrase “in his or her minority” to delineate the upper age limit of the YOS had caused confusion especially after the subsequent passage of the Alabama Majority Age Act in 1975. The upper age limit for Alabama’s YOS was drawn at the age of majority, which was 21 in 1972 when YOS was enacted. Thus, Alabama’s YOS started as a “reverse” hybrid system and arguably was initially intended to provide rehabilitative treatment to children that were transferred to the adult criminal system and to protect them,

“The Youthful Offender Act is intended to extricate persons below twenty-one of age from the harshness of criminal prosecution and conviction. It is designed to provide them with the benefits of an informal, confidential, rehabilitative system.”

to some extent, from the harsh treatment of the adult criminal legal system and extend some developmentally appropriate responses of the juvenile system to such youth. However, Majority Age Act of 1975 reduced the age of majority to age 19 and provided that “nothing in this Act shall be deemed to repeal any provisions of the [Alabama Youthful Offender Act].”¹⁰ Thus the legislature, by passing the Majority Age Act and providing that the upper age limit of the YOS shall not be equated with the new age of majority, essentially carved out a hybrid system for 18- to 21-year-olds. Although the Code of Alabama currently defines an adult as an individual “19 years of age or older,”¹¹ it is acknowledged that the legislature intended to retain the 21st birthday as the upper jurisdictional limit of the Alabama Youthful Offender Act: “The Youthful Offender Act is intended to extricate persons below twenty-one of age from the harshness of criminal

Table 1. Alabama YOS: Eligibility – Age

Lower Age Limit	Birthday at which a youth becomes eligible for the hybrid statute	14
Upper Age Limit	Birthday up to which a youth remains eligible for the hybrid statute	21
No Age Tiers for Emerging Adults	Are different age groups within the emerging adult range treated the same under the hybrid statute?	

prosecution and conviction. It is designed to provide them with the benefits of an informal, confidential, rehabilitative system.”¹²

Due to the ambiguity of the wording used in the statute, some stakeholders have suggested that the Legislature clarify and/or reconsider the age limits of Alabama’s YOS.¹³ For example, age limits of the YOS could be numerically specified, as done in Michigan and District of Columbia. Further, since the Alabama Legislature separated the upper age limit of the YOS from the age of full adult responsibility with the passage of the Majority Age Act of 1975, there appears to be an opportunity for the Legislature to raise the upper age limit of the YOS higher, to the 25th or 26th birthday, in line with the recent reform initiatives undertaken in other jurisdictions with a hybrid system.¹⁴




2. Eligibility - Offense

Alabama’s YOS does not limit a person’s eligibility to be granted YO status by the type of underlying offense. However, the underlying offense is taken into consideration when determining whether the court has a statutory obligation to initiate a YO examination as discussed below. YOS also allows the YO status to be applied to young people with a prior YO sentence and other history of law infringement.

The judge cannot deny YO status solely on the grounds of the severity of the underlying offense. In practice, however, it seems that the more serious the underlying criminal charge, the less inclined a trial judge will be to grant YO status. One leading practitioner we interviewed observed that about 75% to 80% of youth charged with a first-time property offense are granted YO status, whereas cases involving allegations of serious injury against persons or that include the use of a firearm are unlikely to be granted YO status.

The courts have interpreted the statute to mean that if the underlying charge was an offense that does not involve moral turpitude or that involves a maximum sentence of incarceration for less than one year, the court may, but does not have to, investigate and examine the case to determine whether the youth should be afforded YO treatment. In these cases, the option of initiating YO examination is held in the discretion of the trial court, and does not constitute a statutory right. Therefore, the court has no obligation to advise the youth (defense) with regard to the YOS if the youth is charged with an offense that does not involve moral turpitude or that involves a maximum sentence of less than one year.¹⁵ In all other offenses, the court has an affirmative duty to apprise the youth of the benefits of the YOS and to initiate examination for determination of YO status with the consent of the youth.¹⁶

Table 2. Alabama YOS: Eligibility – Offense

All Offenses Included	Are all offenses eligible under the hybrid statute for emerging adults?	
No Exclusion for Prior Case under Hybrid Statute	Can youth with a prior case under the hybrid statute be eligible again for a subsequent offense?	
No Exclusion for Other Criminal History	Are youth with <i>any other</i> criminal history eligible for the hybrid statute?	

3. Application

Granting of the YO status is discretionary by the court and requires an application and consent of the youth/defense attorney. Therefore, assignment of YO status is not automatic when the youth meets the age eligibility requirement. Because the statute itself does not provide the criteria or other details a judge must consider when using discretion as to whether to grant YO status or how to apply YOS in general, the appellate court has had to address the issue repeatedly over the years and has created rules and guidance on an as-needed basis.

In a vast majority of cases, including felonies, serious misdemeanors, or other offenses that involve moral turpitude, the trial court must advise the youth that they might be eligible for YO status.¹⁷ The Alabama Supreme Court observed that “§ 15–19–1 has been interpreted to impose an affirmative duty on the court to apprise an accused youthful offender of the benefits of the Act.”¹⁸ However, as discussed above, if the youth is charged with an offense that does not involve moral turpitude or that involves a maximum sentence of less than one year, the court does not have an obligation to advise the youth of the benefits of the YOS and does not have to investigate and examine the youth for determination of YO status.¹⁹

The Supreme Court in *Petty* held that “while a trial court should inform a youthful defendant of the provisions of the Youthful Offender Act prior to the plea stage, its failure to do so will not constitute reversible error if the court gives adequate notice prior to conviction, unless, of course, the defendant entered a plea of ‘guilty’ to the charges against him, without notice of the Act, or he can otherwise show that he has been prejudiced by the court’s delay.”²⁰ While the court may, and in most cases, must, initiate examination for determination of whether to grant

YO status at its own initiative, the youth must still consent to such examination and to trial without a jury.²¹

There is no caselaw addressing the question of whether defense counsel’s failure to timely advise his/her client on the possibility of YO status constitutes malpractice. In general, to the extent the court is unwilling or unable to reverse the error, this could constitute a conventional instance of malpractice. To prevail on a legal malpractice claim in Alabama, “plaintiff must prove (1) that, in the absence of the alleged malpractice, the plaintiff would have been entitled to a more favorable result in the legal matter concerning which the attorney is alleged to have been negligent, and (2) that the attorney’s negligence in fact caused the outcome of the legal matter to be less favorable to the plaintiff than the outcome would have been in the absence of the alleged malpractice.”²² In many cases, a malpractice plaintiff (former defendant in the criminal case) could likely meet this burden.

If the youth consents to examination and trial without a jury, the YOS “requires that the court conduct a factual investigation into the defendant’s background.”²³ In determining YO status, the judge can consider criminal record, age, seriousness of prior convictions, success of prior attempts to reform conduct, nature of current crime charged.²⁴ However, there is no set method for how the judge must consider a defendant’s application.²⁵ Denial of YO status does not require trial court to follow prescribed format or to articulate on record reasons for denial and is within virtually absolute discretion of trial court.²⁶ The only limitations on discretion are that the judge’s decision cannot appear to be arbitrary or made without any examination or investigation.²⁷ Furthermore, the judge cannot deny it “based solely on the charge in and of itself.”²⁸

Failure to object to the denial of YO status waives the issue on appeal.²⁹

Some practitioners have critiqued the brevity of the YOS and the lack of guidance provided by the statute to inform the wide discretion given to courts in granting or denying the youthful offender. Highlighting the disparate practices in application of the YOS, one attorney stated that “the same behavior by someone with a similar background gets very different treatment depending on luck of the draw.” Some called for automatic application of the statute to youth who meet the eligibility requirements in order to address the variance of court practices by county, the issue of “justice by geography,” and racial and ethnic disparities in application of the YOS.

To be assigned YO status, the youth must submit an “application for youthful offender status” form,³⁰ upon which the judge orders

Highlighting the disparate practices in application of the YOS, one attorney stated that “the same behavior by someone with a similar background gets very different treatment depending on luck of the draw.”

an investigation to be conducted by the local probation office under the state Bureau of Pardons and Paroles. According to a defense attorney we interviewed, the “youthful offender” investigation is similar to a “presentence” investigation and the quality of investigation varies greatly across the state. Depending on the probation officer, the investigation may include an interview with the youth, their family, or others in youth’s network, such as an employer. The investigation report

Table 3. Alabama YOS: Application

Juvenile Court	Does the juvenile court decide whether to apply the hybrid statute?	✘
Presumptive Application	Is the hybrid statute presumed to apply to youth who meet the eligibility requirements?	✘
Judge Initiates	Can the judge prompt application of the hybrid statute at own initiative?	✔ ^a
Prosecutor Initiates	Can the prosecutor initiate application of the hybrid statute?	✔
Youth Initiates	Can the youth (defense) request application of the hybrid statute?	✔ ^b
No Prosecutorial Consent Requirement	Can the determination of whether to apply the hybrid statute be made without the prosecutor’s consent?	✔
Final Decision: Court	Does the court have the final decision on granting the application of the hybrid statute?	✔
Criteria in Statute	Does the hybrid statute explicitly set the criteria for granting its application?	✘

^a Except when the youth is charged with an offense that does not involve moral turpitude or that involves a maximum sentence of less than one year, the court *must* advise youth regarding YOS and initiate examination for determination of whether to grant YO status provided that the youth consents.

^b Consent of youth (defense) is *required* for examination to determine whether the youth should be tried as YO and assignment of YO status. Ala. Code 1975 § 15-19-1.

is then filed with the court, which has the final decision on whether to grant or deny YO status.

4. Procedural Provisions

Youth assigned YO status are tried at “court sessions separate from those for adults charged with crime.”³¹ If the youth assigned YO status does not plead guilty, the trial is held before the judge without a jury.³²

A youth (defendant) cannot request “youthful offender” treatment without waiving the right to a jury trial. Appellate courts ruled that the introduction of a jury into such proceedings would destroy any confidentiality with which the act attempts to clothe the proceedings and the youth’s record. As a practical matter, the provision that youth assigned YO status be tried “at court sessions separate from those for adults charged with crime” would become virtually impossible to carry out.³³

Further, the appellate courts ruled that the jury-waiver provision of the YOS does not render the statute unconstitutional; the adjudicatory procedures defined by the YOS do not violate due process of law; and any benefits which might result from the infusion of a jury trial into YO proceedings are greatly outweighed by the detrimental effects it would have to the orderly functioning of the YO system and to the interests of those persons the YOS was designed to protect.³⁴

5. Sentencing Provisions

If someone is adjudged a “youthful offender” and the underlying charge is a felony, the court shall:

- (1) Suspend the imposition or execution of sentence with or without probation;
- (2) Place the defendant on probation for a period not to exceed three years;
- (3) Impose a fine as provided by law for the offense with or without probation or commitment; or
- (4) Commit the defendant to the custody of the Board of Corrections for a term of three years or less.³⁵

If a sentence or fine is not otherwise authorized by law, then a disposition under this statute can be replaced or supplemented with a fine of not more than \$1,000, which can be authorized in installments.³⁶

If the underlying charge is a misdemeanor, the court may assign “correctional treatment as provided by law for such misdemeanor.”³⁷

A judge cannot give pretrial diversion on a YO guilty plea without the consent of the prosecutor. A judge cannot impose consecutive probation periods or consecutive sentences if the total of either exceeds three years.

6. Post-Sentencing Provisions

A youth sentenced to incarceration under Alabama’s YOS serves time in an adult correctional facility. The statute does not provide

Table 4. Alabama YOS: Procedural Provisions








No Plea Requirement	Can youth be eligible for the hybrid statute without having to enter a plea of guilty?	
Closed Session	Are at least some proceedings for emerging adults under the hybrid statute closed to the public?	
Jury Trial	Is a jury trial allowed under the hybrid statute?	

Table 5. Alabama YOS: Sentencing Provisions

Limits on Fines & Fees	Are fines and fees prohibited or limited for youth under the hybrid statute?	
Limits on Incarceration	Does the hybrid statute preclude or limit the length of a term of incarceration?	
Limits on Probation	Does the hybrid statute limit the length of a term of probation?	
Mandatory Minimums Obviated	Does the hybrid statute obviate mandatory minimum sentences for eligible youth?	

for a separate, specialized correctional unit or facility exclusively for those sentenced under the YOS. There is no specialized probation for youth sentenced under the YOS and such youth serve their probation sentence under the supervision of adult probation agency. The sentencing court maintains jurisdiction to hear any alleged post-sentencing violations. The court may also shorten the duration of probation sentence if the young person is doing well.







The Alabama YOS does not require mandatory provisions of support services to youth sentenced as youthful offenders. According to our interviews,

Alabama’s YO sentencing and post-sentencing mechanisms are not by default particularly rehabilitative. If the defense counsel is creative and proactive, courts will sometimes provide more developmentally targeted approaches, seeking to connect youth to GED or trade skills programs or other age-appropriate services.

7. Record Protection Provisions

A guilty decision under the YOS is not considered a conviction, and thus does not disqualify the youth from rights or privileges as would an adult conviction.³⁸ For example, the youth is not disqualified from public office or public

Table 6. Alabama YOS: Post-Sentencing Provisions

Special Custody	Is there a specialized correctional unit for emerging adults incarcerated under the hybrid statute?	
Juvenile Custody	Can emerging adults incarcerated under the hybrid statute be committed to juvenile corrections and avoid adult corrections?	
Juvenile Probation	Can emerging adults placed on community supervision under the hybrid statute remain under the supervision of juvenile probation agency?	
Court Involvement	Does the court maintain jurisdiction and hear any alleged post-sentencing violations?	
Early Termination	Is there an opportunity to shorten the period of probation or confinement if the young person is doing well?	
Support Services	Does the hybrid statute require mandatory provision of support services to eligible youth?	

employment as a result of being adjudicated as a “youthful offender.”³⁹ Courts have noted that the YOS “is intended to extricate persons below 21 from the harshness of prosecution and conviction. It is designed to provide them the benefits of an informal, confidential rehabilitative system.”⁴⁰

A YO adjudication (guilty decision) is not considered a strike under the state’s “Habitual Felony Offender Act” since it is not a conviction as far as future justice-involvement is concerned.⁴¹ But the statute provides that if the youth is “subsequently convicted of crime, the prior adjudication as youthful offender shall be considered” by the court.⁴² Further, in *United States v. Elliot*, the Eleventh Circuit held that state adjudications of youthful offenders qualify as convictions for the purposes of the career offender sentence enhancement under the federal sentencing guidelines.⁴³ The court held that the decision did not affect Alabama’s interpretation of the YOS, only the statute’s application to federal sentencing.⁴⁴

YO proceedings, including investigation, are confidential. Statements made by a defendant during a YO examination and investigation

cannot be used as evidence against him but can be considered at the time of sentencing after the defendant has been found guilty of a crime or adjudged a youthful offender.⁴⁵ Youth (defendants) can be cross-examined about statements made during the investigation if it is a “harmless error.”⁴⁶

YO status affords confidentiality of records except for sex offense cases: “The fingerprints and photographs and other records ... shall not be open to public inspection unless the person adjudged a youthful offender is treated as an adult sex offender according to Section 15-20A-35; provided, however, that the court may, in its discretion, permit the inspection of papers or records.”⁴⁷ However, such records of a person adjudged a youthful offender can be later reviewed by prosecutors.⁴⁸

Some practitioners shared concerns about the ability to maintain confidentiality from both the investigations and adjudications of YO status in actual practice.⁴⁹

Table 7. Alabama YOS: Record Protection Provisions

Automatic Record Protection	Can a youth automatically avoid a formal record of conviction if the term under the hybrid statute ends successfully?	✔
Other Record Protection	If it is not automatic, does the hybrid statute offer other means of record protection, such as a petition to expunge or seal records of a conviction?	N/A

IV. DATA AND KEY FINDINGS ON EMERGING ADULTS IN ALABAMA'S CRIMINAL LEGAL SYSTEM AND IMPLEMENTATION OF THE YOS

Our desk review and interviews with practitioners revealed a number of key findings on implementation of the hybrid statute in Alabama.

First, it appears that some defense attorneys fail to inform or advise their client that they may be eligible for YO status. In one case where counsel failed to timely file for YO status, the court retroactively considered defendant's application, and the lawyer was not sanctioned.⁵⁰ The ability to apply the application retroactively can be complicated by the Alabama Rules of Criminal Procedure, which currently provides a one-year statute of limitations on applying for YO status.⁵¹ Further, the courts do not consider YO status a matter of subject matter jurisdiction and therefore do not accept it as constituting a reason for extending the statute of limitations.⁵² However, federal habeas corpus petitions are still potentially available: The 11th Circuit Court of Appeals held that trial court's failure to "perform its mandatory duty" to inform youth of his eligibility to request consideration for YO treatment violates youth's "federal due process rights," warranting habeas corpus relief.⁵³

Second, there is no clear or mandatory format for the proceedings to grant or deny YO status.⁵⁴ The YOS does not require a complete or "formal" hearing in every case.⁵⁵ Further, a judge is not statutorily required to order an investigation report by a probation officer in every case.⁵⁶ The judge's discretion is almost absolute.⁵⁷ While the decision to enter into the YO process is elective and requires the consent of the youth, such a decision may remain a strategic gamble, as one does not know how thorough or fair the process will be.

Finally, when a probation report is ordered, it often carries significant weight relative to any proceedings in front of a judge. In one case,

a judge adjudicated YO status without a full hearing, solely relying on the investigation report of the probation officer.⁵⁸ According to a key stakeholder, currently most probation officers have a law enforcement background as opposed to social work background and are not specifically trained on the developmental needs of emerging adults.

According to our desk review and interviews, there is no publicly available data that specifically identifies youth sentenced under Alabama's YOS. In the absence of YO-specific public data, we reviewed aggregate data as general background on youth in Alabama's juvenile and adult criminal legal system.

Drug abuse violations are the single most common underlying offense category in arrests of 18- to 20-year-olds in Alabama, constituting 21% of all arrests of this age group, followed by property crimes (12%).

In 2019, an estimated 464,460 15- to-17-year-olds and 804,720 18- to 20-year-olds were arrested in Alabama, making 5% and 8% of arrests of all ages respectively.⁵⁹ Drug abuse violations are the single most common underlying offense category in arrests of 18- to 20-year-olds in Alabama, constituting 21% of all arrests of this age group, followed by property crimes (12%).⁶⁰ Only 5% of arrests of 18- to 20-year-olds were for "violent offenses," including murder, robbery, and aggravated assault, according to the federal Office of Juvenile Justice and Delinquency Prevention.⁶¹

As of 2019, Alabama has a commitment rate of 90 per 100,000 juveniles in the state, as compared to the general U.S. commitment rate of 66.⁶² There were 2.3 times more Black and Latinx juveniles in detention than white juveniles, a figure mirroring the national average.⁶³

The incarceration rate disparity between Black and white youth decreased by 19% between 2015 and 2019.⁶⁴ Admissions to Alabama’s Department of Youth Services (DYS) overall have been steadily declining since 2008.⁶⁵ Female admissions to DYS had a particularly dramatic decrease, from 450 in 2008 to 167 in 2019.⁶⁶

On the adult criminal side, the total population sentenced to incarceration under the custody of the Alabama Department of Corrections (ADOC) was 25,186 in 2021.⁶⁷ Alabama’s incarceration rate in 2019 was 17th in the nation at 419 incarcerated individuals per 100,000 population.⁶⁸ This population reached a ten-year peak in 2013, at 32,523 under ADOC supervision. From 2011 to 2021, the population of incarcerated individuals in state prisons decreased by over 22%.⁶⁹

As of 2021, the majority of individuals incarcerated in Alabama state prisons were Black (54.6%).⁷⁰ The imprisonment rate of Black Alabamans was 1132

per 100,000, versus 421 for white Alabamans.⁷¹ Between 1978 and 2017, the population of Black people in prison increased by 193%.⁷²

For the vast majority of those sentenced to incarceration in ADOC, underlying charges are drug offenses.⁷³ In fact, about 3,500 Alabamans were sentenced in 2021 for drug-related offenses, while the second-most-common offense type was theft, at only 950.⁷⁴

Annual jurisdictional releases—including split sentence, end of sentence, and probation—from the custody of ADOC have been declining on average since 2011.⁷⁵ Alabama imposes an outsized number of life sentences compared to other states: 24% of all sentences as of 2020 were life sentences in Alabama, compared with 3.3 % in Maine.⁷⁶

According to ADOC annual report, the average age of incarcerated individuals in state prisons as of 2021 was 42.⁷⁷ The majority (over 6,700) of those individuals were between 31 and 40 years of age, while about 4,250 were between 21 and 30.⁷⁸ As of 2021, 1331 individuals in DOC custody were between ages 21 and 25, and 122 were between ages 15 and 20.⁷⁹

MAJOR LEGISLATIVE HISTORY ALABAMA’S YOUTHFUL OFFENDER STATUTE

1971	<ul style="list-style-type: none"> Passed Youthful Offender Act. Ala. Code 1975 § 15-19-1 through § 15-19-7 	<i>Acts 1971, 3rd Ex. Sess., No. 335, p. 4622</i>
2012	<ul style="list-style-type: none"> Amended § 15-19-1 by adding a requirement of notice to family and an evidentiary hearing before determining eligibility of YO status when an element of the crime is intentional infliction of serious physical injury or intentional killing. 	<i>Act 2012-465, p. 1286, § 1</i>
2014	<ul style="list-style-type: none"> Amended § 15-19-7 by giving prosecutors access to records of youth sentenced as “youthful offenders.” 	<i>Act 2014-432, p. 1593, § 1</i>
2015	<ul style="list-style-type: none"> Amended § 15-19-7 by opening records to public if the youth sentenced under the YOS is treated as an adult sex offender. 	<i>Act 2015-463, p. 1506, § 1</i>

ENDNOTES - ALABAMA

- 1 Ala. Code 1975 § 12-15-114; see also definition of a “child” in Ala. Code 1975 § 12-15-102.
- 2 Ala. Code 1975 § 12-15-117 (a).
- 3 Ala. Code 1975 § 12-15-117 (b).
- 4 Ala. Code 1975 § 12-15-102 (6).
- 5 Ala. Code 1975 § 12-15-203 (a).
- 6 Ala. Code 1975 § 12-15-203 (i).
- 7 Ala. Code 1975 § 13A-5-6 (sentences of imprisonment for felonies).
- 8 Ala. Code 1975 § 13A-5-9 (Habitual felony offenders -- Additional penalties).
- 9 Ala. Code 1975 § 12-15-203 (a).
- 10 Ala. Acts 1975 No. 77, §4.
- 11 Ala. Code 1975 § 12-15-102.
- 12 *Raines v State*, 294 Ala 360, 363, 317 So 2d 559, 561 (1975); see also, *Jackson v. State*, 133 So.3d 420 (Ala.Crim.App.2009), opinion after remand, rehearing denied, certiorari denied.
- 13 See, e.g., *The Alabama Youthful Offender Act*, 28 Ala. L. Rev. 481 (1977).
- 14 For example, the District of Columbia raised the upper age of their hybrid system (Youth Rehabilitation Act) to 25th birthday of a youth in 2018, and Michigan (Holmes Youthful Trainee Act) raised it to 26th birthday effective in October 2021.
- 15 *Pressey v. State*, 597 So. 2d 1385 (1992).
- 16 *Clemmons v. State*, 294 Ala. 746, 321 So.2d 238 (Ala.1975).
- 17 *Clemmons v. State*, 294 Ala. 746, 321 So.2d 238 (Ala.1975).
- 18 *Ex parte Petty*, 548 So. 2d 636, 637 (Ala. 1989) (citing *Clemmons v. State*, 294 Ala. 746, 750, 321 So.2d 238, 243 (1975)); see also *Robinson v. State*, 429 So.2d 682, 683 (Ala.Crim.App.1983); *Bledsoe v. State*, 409 So.2d 924, 926 (Ala.Crim.App.1981); *Johnson v. State*, 55 Ala. App. 579, 580, 317 So.2d 546, 547 (Ala.Crim.App.1975).
- 19 See *Pressey v. State*, 597 So. 2d 1385 (Ala. Crim. App. 1992).
- 20 *Ex parte Petty*, 548 So. 2d at 638.
- 21 Ala. Code 1975 § 15-19-1(a).
- 22 *Bonner v. Lyons, Pipes & Cook, P.C.*, 26 So. 3d 1115, 1120 (Ala. 2009).
- 23 *Reese v. State*, 677 So. 2d 1239, 1240 (Ala. Crim. App. 1995) (citing *Ware v. State*, 432 So.2d 555 (Ala.Crim.App.1983)).
- 24 Ala. Code 1975 § 15-19-1(c). See *Jackson v. State*, 133 So. 3d 420, 461-462 (Ala. Crim. App. 2009).
- 25 See *Edwards v. State*, 317 So. 2d 512 (Ala. 1975).
- 26 See *Reese*, 677 So. 2d 1239 (citing *Garrett v. State*, 440 So.2d 1151, 1152–53 (Ala.Crim.App.1983), cert. denied (Ala.1983)); accord, *Goolsby v. State*, 492 So.2d 635 (Ala.Crim.App.1986). The judge need not grant a formal hearing. See *Morgan v. State*, 363 So. 2d 1013 (Ala. Crim. App. 1978).
- 27 See *Wilson v. State*, 563 So. 2d 11,12 (Ala. Crim. App. 1989).
- 28 *Ex parte Ferrell*, 591 So. 2d 444, 449 (Ala. 1991); see also *Watkins v. State*, 357 So.2d 156 (Ala. Crim. App. 1977).
- 29 See *Ford v. State*, 645 So. 2d 317 (Ala. Crim. App. 1994).
- 30 See State of Alabama Unified Judicial System, “Application for Youthful Offender Status and Order of Investigation (Form C-54),” n.d., <https://eforms.alacourt.gov/media/btbh45db/application-for-youthful-offender-status-and-order-of-investigation.pdf>.
- 31 Ala. Code 1975 § 15-19-3.
- 32 Ala. Code 1975 § 15-19-4.
- 33 *Raines v. State*, 294 Ala. 360, 317 So.2d 559 (Ala.1975).
- 34 See *id.*
- 35 Ala. Code 1975 § 15-19-6(a).
- 36 Ala. Code 1975 § 15-19-6(b).
- 37 Ala. Code 1975 § 15-19-6(d).
- 38 Ala. Code 1975 § 15-19-7(a); see *Gordon v. Nagle*, 2 F.3d 385 (11th Cir. 1993).
- 39 Ala. Code 1975 § 15-19-7(a).
- 40 *Raines v. State*, 294 Ala. 360, 317 So.2d 559 (Ala.1975).
- 41 Ala. Code 1975 § 13A-5-9.
- 42 Ala. Code 1975 § 15-19-7(a).
- 43 U.S. Sentencing Guidelines Manual § 4B1.1.
- 44 *Eleventh Circuit: Survey of Recent Decisions*, 44 Cumb. L. Rev. 559 (2014).
- 45 Ala. Code 1975 § 15-19-5.
- 46 *Coleman v. State*, 452 So. 2d 1355 (Ala. Crim. App. 1984).
- 47 Ala. Code 1975 § 15-19-7(b).
- 48 Ala. Code 1975 § 15-19-7(c).
- 49 William Lee Pfeifer Jr., “Youthful Offender Applications - What You Don’t Know Might Hurt You,” *Avvo* (blog), February 17, 2011, <https://www.avvo.com/legal-guides/ugc/youthful-offender-applications---what-you-dont-know-might-hurt-you>.
- 50 *Jackson v. State*, 133 So.3d 420 (Ala.Crim.App.2009).
- 51 Ala. R. Civ. P. 32.2 (c); see also *Hobbie v. State*, 564 So.2d 97 (Ala. Crim.App.1990).
- 52 See *Hobbie*, 564 So.2d 97.
- 53 *Coleman v. State of Alabama*, 827 F.2d 1469, 1475 (1987).
- 54 See *Goolsby v. State*, 492 So.2d 635 (Ala.Crim.App.1986).
- 55 See *Morgan v. State*, 363 So.2d 1013 (Ala.Crim.App.1978); *Wynn v. State*, 480 So.2d 1 (Ala.Crim.App.1983).
- 56 See *Clemmons v. State*, 294 Ala. 746, 321 So.2d 238 (Ala.1975).
- 57 See *Ware v. State*, 432 So.2d 555 (Ala.Crim.App.1983).
- 58 *Adams v. State*, 955 So.2d 1037 (Ala.Crim.App.2003).
- 59 Office of Juvenile Justice and Delinquency Prevention, “Estimated Number of Arrests by Offense and Age Group, 2020,” OJJDP Statistical Briefing Book, July 8, 2022, https://www.ojjdp.gov/ojstatbb/crime/ucr.asp?table_in=1.
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- 63 Office of Juvenile Justice and Delinquency Prevention.
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- 65 Alabama Department of Youth Services, *2019 Annual Report*, 2019, <https://dys.alabama.gov/wp-content/uploads/2020/07/DYS-ANNUAL-REPORT-FY2019.pdf>.

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- 73 Alabama Department of Corrections, *ADOC Annual Report*.
- 74 Alabama Department of Corrections, 29.
- 75 Alabama Department of Corrections, *ADOC Annual Report*.
- 76 “U.S. Criminal Justice Data.”
- 77 Alabama Department of Corrections, *ADOC Annual Report*.
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- 79 Alabama Department of Corrections, 34.

Trapped

By KB

My vision obstructed by the bars on my window
as I watch the sun's incline

Regrets escape for only a moment, moving along
hastily as time.

Trying to drift away from this place of hate with
gates laced with knives,

but I'm trapped within a cage that holds me close
while manipulating my mind.

The stone walls whispers attempting to soothe
my hunger while caressing my pain.

Freedom, I strive for though some days I feel as if
my struggle is in vain.

My cries for help are smothered by screams of
frustration, day to day stress I live through

Yesterday was like today and tomorrow is the
same I'm trapped in a realm of déjà vu

Why's are no longer summoned while my pillow
fondles my neck and head

Nights no longer filled with sweet dreams only
nightmares pictures of the dead.

Tucked neatly in my coffin longing for slumber,
just wanting to rest in peace

Instead I'm trapped in prison from being caged in
by the streets.



District of Columbia's Youth Rehabilitation Act:

A Dynamic Hybrid System That Continues to Evolve

The District of Columbia's hybrid system, named the **Youth Rehabilitation Act (YRA)**, was enacted in 1985 and was modeled after the Federal Youth Corrections Act, which existed from 1950 to 1984. Though originally passed at the height of tough-on-crime federal politics, the current YRA is one of the most progressive hybrid systems in the country: It affords youth below 25 years

of age such developmentally appropriate measures as exceptions to mandatory minimums, rehabilitative programming, and set-asides of convictions. The YRA has undergone significant amendments over the last two decades, transforming it from more of a specialized sentencing provision to a hybrid system.

I. LEGAL LANDSCAPE

A unique feature of the District's criminal legal system is the jurisdictional interplay between the District's local justice agencies and the federal system. The National Capital Revitalization and Self-Government Improvement Act of 1997 (Revitalization Act) transferred a number of adult criminal legal system functions, such as corrections, parole, and community supervision, to the control of the federal government. Since emerging adults – 18-to 25-year-olds – are subject to the adult criminal court jurisdiction in D.C. and are subject to the requirements under the Revitalization Act, most emerging adults under the YRA serve their prison sentence, parole, and community supervision under federal jurisdiction. This means that emerging adults sentenced to prison for a felony under the D.C. law, except those with only short periods of time remaining on their sentences, are in the custody of a federal prison, not in the District's Department of Corrections.¹ These prisons are nearly always far away from D.C. and the youths' families and support networks. Further, not having authority to direct programming and services within the Federal Bureau of Prisons or the federal probation agency (Court Services and Offender Supervision Agency (CSOSA)) limits the District's ability to implement reform

initiatives addressing the unique needs of emerging adults, such as the District's hybrid system, the Youth Rehabilitation Act.

Regarding the jurisdiction of the juvenile court in D.C., the court has jurisdiction for youth 17 years of age and under (up to 18th birthday).² However, the juvenile court can retain jurisdiction over youth aged 18, 19, and 20 (until the 21st birthday) who allegedly committed their crime *before* age 18.³ Further, D.C. has discretionary transfer and direct file provisions that allow some youth under the age 18 to be prosecuted and treated in the adult criminal system.⁴ The District's Department of Youth Rehabilitation Services (DYRS) has sole jurisdiction of youth under the age of 18 at the time of offense and, thus, individuals treated in the juvenile system are not subject to the jurisdictional issues between the local and federal agencies in D.C.'s adult criminal legal system.

With regard to sentencing laws, D.C. has mandatory minimum sentences for certain offenses including weapon offenses, such as gun possession.⁵ Further, D.C. has a multiple strike statute imposing a seven-year minimum sentence for repeat violent offenses.⁶

II. AN OVERVIEW OF D.C.'S YOUTH REHABILITATION ACT

D.C.'s YRA⁷ was first enacted in 1985 and was modeled after the Federal Youth Corrections Act (YCA), which had just been repealed in 1984. The original YRA was nearly identical to the repealed YCA, and essentially provided sentencing alternatives and specialized corrections for eligible youth. The Sentencing

Reform Amendment Act of 2000 and the Youth Rehabilitation Amendment Act of 2018⁸ substantively changed the YRA, turning it into a hybrid system that extends more rehabilitative aspects and protections found in juvenile justice systems to 18-to 24-year-olds.

Turning Controversy into Reform: 2018 Amendment of D.C.'s Youth Rehabilitation Act

An unusual turn of events preceded the passage of DC Law 22-97, which amended and improved the District's Youth Rehabilitation Act (YRA). In 2016, *The Washington Post* published a series of hard-hitting articles on the YRA, which they claimed to be an "obscure local law" enacted in 1985.⁹ The reporters misattributed what they believed to be an uptick in crime committed by young people to YRA. In the process, they tried to conduct a survey across the country to determine how the YRA compared to other YO laws in other jurisdictions. In the end, The Post "was unable to find any law with provisions equivalent to those in the District's Youth Act."¹⁰

The reaction to the *Post* series was unusual. Instead of a get-tough policy response that often follows high-profile news coverage of violent crime, District leaders engaged in a thoughtful process and called for a careful examination of the issues to inform the best course of action. Policy makers' efforts were supported by District's advocacy groups' initiatives, led by the Justice Policy Institute, providing useful and relevant information to the stakeholders, media, and the public in general.¹¹ The District's Criminal Justice Coordinating Council (CJCC) conducted a detailed empirical analysis of YRA to inform policy discussions.¹² The Chair of the Judiciary Committee of the DC Council, Charles Allen, convened stakeholder meetings to consider these findings. Highlighting the lack of services and developmentally appropriate programming provided under the Youth Rehabilitation Act, he aptly observed that "for years, we've called it the Youth Act and left out the R. It's like the rehabilitation part was just forgotten."¹³ Instead of abolishing YRA as a result of the *Post* series, legislation was drafted to build on the strengths of the existing YRA while also addressing its deficiencies.¹⁴

In a remarkable turn of events, the YRA was not only kept, but a more robust and expanded version of the statute passed in 2018.¹⁵ The District's experience serves as a striking lesson for policy makers, practitioners, and advocates that seek to enhance the existing legislative framework of hybrid systems for emerging adults in other jurisdictions across the United States.

The YRA provides a *split* hybrid system as it applies both to children (youth below the upper age limit of the juvenile court jurisdiction) treated in the adult system as a result of either “direct file” or discretionary transfer and to emerging adults (youth above the upper age limit of the juvenile court jurisdiction). Despite its recent amendments, the key provisions of the YRA remain mainly focused on postconviction and post-sentencing phases of the criminal procedure, and the protections YRA offers for the

trial stage are much more limited than the hybrid systems of other jurisdictions, such as Michigan’s HYTA that provides extensive confidentiality protections. On the other hand, D.C.’s YRA stands out from among other hybrid systems with its robust conviction set-aside provisions and post-sentencing provisions, specifically those that permit early termination of a YRA sentence and require mandatory provision of developmentally appropriate programming and support services.

III. KEY PROVISIONS OF THE DISTRICT’S YOUTH REHABILITATION ACT

1. Eligibility – Age

The YRA applies to youth who allegedly committed a crime before their 25th birthday and are charged as adults.¹⁶ YRA-eligible youth include both emerging adults – youth over the upper age limit of the juvenile court jurisdiction at the time of alleged offense (18- to 24-year-olds) – as well as children who were under the upper age threshold of juvenile court jurisdiction at the time of alleged offense but were prosecuted in the adult criminal court as a result of either direct file or discretionary transfer provisions. Under D.C. law, 16- to 17-year-olds charged with certain felonies or traffic offenses are directly prosecuted in the adult court.¹⁷ Further D.C. permits juveniles, who are 15 years old or older at the time of offense and who meet certain criteria

based on underlying offense and criminal history, to be transferred to adult court.¹⁸

In 2018, two important changes to age consideration for determining YRA eligibility took place: First, the upper age was raised from the 22nd to the 25th birthday.¹⁹ Second, instead of using the date of the conviction or guilty plea as the marker for eligibility, the amended YRA uses the age at the time of the alleged offense.²⁰

2. Eligibility – Offense

While YRA can apply to a wide array of offenses, including both misdemeanors and felonies, some offenses are statutorily excluded. Individuals charged with “murder, first degree murder that constitutes an act of terrorism, second degree

Table 1. D.C.’s YRA: Eligibility – Age





Lower Age Limit	Birthday at which a youth becomes eligible for the hybrid statute	15
Upper Age Limit	Birthday up to which a youth remains eligible for the hybrid statute	25
No Age Tiers for Emerging Adults	Are different age groups within the emerging adult range treated the same under the hybrid statute?	

Table 2. D.C.'s YRA: Eligibility – Offense

All Offenses Included	Are all offenses eligible under the hybrid statute for emerging adults?	
No Exclusion for Prior Case under Hybrid Statute	Can youth with a prior case under the hybrid statute be eligible again for a subsequent offense?	
No Exclusion for Other Criminal History	Are youth with <i>any other</i> criminal history eligible for the hybrid statute?	

murder that constitutes an act of terrorism, first degree sexual abuse, second degree sexual abuse, and first-degree child sexual abuse” are ineligible for YRA.²¹ These are statutorily mandatory exclusions, which the judge cannot override.

A prior YRA sentence or other previous contact with the juvenile and criminal legal system do not automatically render an individual ineligible under YRA for a subsequent offense. However, YRA includes prior YRA sentences and other previous contacts with juvenile and criminal legal system in the list of criteria that the court shall consider while using its discretion in sentencing a youth under the Act.²²

The list of excluded offenses in the YRA has been expanded over the years. When originally enacted, the YRA applied to all offenses other than murder. In 2002²³ and 2018²⁴, the YRA was amended to exclude youth charged of terrorism offenses and certain sexual offenses respectively.

3. Application of YRA

Differing from other hybrid systems analyzed in this study, a youth who meets YRA’s threshold eligibility criteria (age and offense) discussed above is automatically considered a “youth offender”²⁵ and, thus, can benefit from *some* of the YRA provisions without a discretionary decision. The YRA provisions that are the

most impactful in practice, however, require a discretionary decision by the court.

Non-discretionary application of some YRA provisions: The statutory wording of the YRA technically allows a youth that meets the basic age and offense eligibility requirements listed in § 24-901(6) to benefit from some of the YRA provisions automatically, without a discretionary decision by the court. These include, for example, support services/developmentally appropriate programming afforded under YRA.²⁶ As discussed in more detail under subsection 6 on post-sentencing provisions below, the application of these provisions is currently restrained in practice due to jurisdictional issues and limited programming available for emerging adults.

Discretionary Application of YRA Provisions: Application of the most impactful provisions of the YRA, including the special sentencing and discretionary set-aside provisions requires a discretionary decision by the court. While using its discretion to determine whether to apply these provisions of the YRA, the court must consider the following, non-exhaustive criteria listed in the statute:²⁷ (1) individual’s age at the time of the alleged offense; (2) nature of the offense including whether the youth was acting along with an adult in committing the offense; (3) prior YRA sentence, if applicable, (4) compliance with supervision and pretrial release, and the rules of the facility

to which the young person has been committed; (5) youth's current participation in rehabilitative programming, if any; (6) youth's previous contact with the juvenile and criminal justice systems; (7) youth's family and community circumstances at the time of the offense, including history of abuse, trauma, or involvement in the child welfare system; (8) youth's ability to "appreciate the risks and consequences" of the conduct; (9) medical reports of physical, mental, or psychiatric examinations of the individual; (10) unlawful use of controlled substances; (11) youth's capacity for rehabilitation; and (12) statements by victims or families of victims.²⁸ Finally, the court can consider any other information that it deems relevant to its decision.²⁹

The court is required to make a written statement on the record summarizing the reasons why it sentenced, or denied to sentence, a youth under the YRA³⁰ (or set aside, or denied to set aside the conviction of a youth regardless of being sentenced under the YRA³¹). The youth is also entitled to present to the court facts that would affect the court's decision on the discretionary application of the YRA.³²

So long as the court considers and weighs the option of sentencing under the YRA, the court has met its requirements.³³ The rigor with which the trial court applies the criteria listed in YRA in deciding whether to apply the special sentencing provisions of the YRA is reviewable on appeal. Appellate courts were satisfied when "the court's sentencing decision reflect[ed] a thoughtful and conscientious discharge of his sentencing responsibilities."³⁴









The detailed criteria that guide the court's use of discretion was incorporated in the YRA during its major amendment in 2018. Together with the statutory mandate imposed on the court to explain the reasons for applying, or denying to apply the discretionary sentencing and set-aside provisions of YRA, these statutory provisions

set a good model for other jurisdictions that provide little to no guidance for use of judicial discretion in granting "youthful offender" status and applying protections offered in their YO laws to eligible youth. Stakeholders we interviewed in D.C. highlighted, however, the wide variance in YRA practices across the District. Since there is no special caseload for YRA cases, they observed that some judges and defense attorneys may encounter a YRA case for the first time and be unfamiliar with the YRA's nuances. For more equitable outcomes, some stakeholders recommended more training to legal system actors, including defense attorneys, prosecutors, and judges, on adolescent development, how to work with an emerging adult, how to deal with young persons with trauma, and how to apply the eligibility and mitigating factors in the YRA statute (such as past behavior, demonstration of rehabilitation potential, etc.).

A 2017 analysis conducted by the Criminal Justice Coordinating Council (CJCC) prior to the 2018 amendments reviewed the implementation status of the YRA between 2010 and 2012.³⁵ After collecting data on the fourteen different factors courts considered in practice to determine sentencing under the YRA – including, age, prior offense, and offense currently in question – the CJCC report found that four of the fourteen factors tested were particularly important: "age, number of non-DC arrests, number of times committed to the Department of Youth Rehabilitation Services (DYRS), and number of past DC convictions."³⁶ Older individuals within the eligible age range were less likely to receive YRA sentences, notwithstanding set-asides.³⁷ The CJCC did not find that the type of offense charged played such a significant role in the court's determination: "[C]rimes of violence, felony, and weapon offenses [were] no more or less likely to receive a YRA sentence."³⁸

While the prosecutor can ask the judge to apply discretionary provisions of the YRA, prosecutors

Table 3. D.C.'s YRA: Application

Juvenile Court	Does the juvenile court decide whether to apply the hybrid statute?	
Presumptive Application	Is the hybrid statute presumed to apply to youth who meet the eligibility requirements?	 ^a
Judge Initiates	Can the judge prompt application of the hybrid statute at own initiative?	
Prosecutor Initiates	Can the prosecutor initiate application of the hybrid statute?	
Youth Initiates	Can the youth (defense) request application of the hybrid statute?	
No Prosecutorial Consent Requirement	Can the determination of whether to apply the hybrid statute be made without the prosecutor's consent?	
Final Decision: Court	Does the court have the final decision on granting the application of the hybrid statute?	
Criteria in Statute	Does the hybrid statute explicitly set the criteria for granting its application?	

^a Youth who meet the threshold eligibility requirements (age and offense) are automatically considered a “youth offender” and can benefit from *some* provisions of the YRA without a discretionary decision (e.g., support services/developmentally appropriate programming). However, the most impactful YRA provisions in practice, such as special sentencing and discretionary set-aside provisions, require a discretionary decision of the court.

have been historically opposed to the YRA. One stakeholder we interviewed stated that while there were occasions where the prosecutor did not adamantly oppose the YRA for a defendant, she cannot “think of one time when the government recommended YRA.”

4. Procedural Provisions

In contrast with other hybrid systems, such as Michigan’s Holmes Youthful Trainee Act (HYTA) and Alabama’s Youthful Offender Act (YOA), D.C.’s YRA mainly focuses on postconviction provisions (sentencing and post-sentencing treatment/programming) for eligible youth. Therefore, procedural protections and provisions offered to youth under the YRA are limited.

A youth can be sentenced as a “youth offender” under the YRA after a guilty verdict, a guilty plea, or a plea of no contest.³⁹ The youth is not required to enter a guilty plea or waive their right to a jury




trial in order to benefit from the YRA provisions.

A youth who was found guilty and sentenced under the YRA receives a conviction, but this can be “set aside,” as explained under the record protection provisions subsection below. The YRA does not offer confidentiality provisions for the court proceedings prior to sentencing, such as those offered in Michigan’s HYTA and Alabama’s YOA, with one exception: a court’s consideration of any records related to the individual’s contacts with the juvenile justice and child welfare systems and/or medical and mental health records are conducted at the bench and placed under seal.⁴⁰

5. Sentencing Provisions

A key sentencing provision of the YRA statute in D.C. is that it allows the court to issue, at its discretion, an imprisonment sentence less than any mandatory-minimum term otherwise provided by law.⁴¹ However, YRA does not

Table 4. D.C.'s YRA : Procedural Provisions

No Plea Requirement	Can youth be eligible for the hybrid statute without having to enter a plea of guilty?	
Closed Session	Are at least some proceedings for emerging adults under the hybrid statute closed to the public?	
Jury Trial	Is a jury trial allowed under the hybrid statute?	

automatically obviate mandatory minimums in that the court *may*, but does not have to, set a sentence less than the mandatory minimum.⁴²





The statute also provides sentencing alternatives. The court has the discretion to suspend the imposition or execution of an incarceration sentence and place the youth under probation on the grounds that the youth would be better served by community supervision instead of confinement.⁴³ Further, if the offense for which the youth is convicted is punishable by imprisonment, the court may use its discretion to sentence the youth pursuant to §24-903 (i.e., probation and community service, or imprisonment less than mandatory minimums) up to the maximum penalty of imprisonment otherwise provided

by law.⁴⁴ In contrast with other hybrid systems, D.C.'s YRA does not provide statutory limits on the duration of probation or imprisonment sentences for youth sentenced under the statute.

A youth placed on probation under YRA is statutorily required to perform at least 90 hours of community service.⁴⁵ The mayor is mandated to develop a community service plan with a list of agencies where an eligible youth may be assigned for community work, a description of such service, and related procedures.⁴⁶

In using its discretion for sentencing a youth under the YRA, the statute requires that a court consider the criteria listed in §24-903(c)(2) as discussed in the Application subsection above.

Table 5. D.C.'s YRA: Sentencing Provisions

Limits on Fines & Fees	Are fines and fees prohibited or limited for youth under the hybrid statute?	
Limits on Incarceration	Does the hybrid statute preclude or limit the length of a term of incarceration?	
Limits on Probation	Does the hybrid statute limit the length of a term of probation?	
Mandatory Minimums Obviated	Does the hybrid statute obviate mandatory minimum sentences for eligible youth?	 ^a

^a Under the YRA, the Court, at its discretion, may, but does not have to, set a sentence less than the mandatory minimum. D.C. Code § 24-903(b)(2).

6. Post-Sentencing Provisions

D.C.'s YRA stands out from other hybrid systems with its robust post-sentencing provisions, specifically those that permit early termination of a YRA sentence and require mandatory provision of developmentally appropriate programming and support services .

Under YRA, youth sentenced to imprisonment or probation serve their sentence in adult corrections or under the supervision of the adult probation agency. This limits the ability of the District to implement YRA's robust post-sentencing provisions fully, since the Revitalization Act transferred a number of adult criminal legal system functions from the District's local agencies to the control of the federal government. In fact, currently, most emerging adults under the YRA serve their prison sentence, parole, and community supervision under federal jurisdiction and not under the jurisdiction of District's local agencies.

For example, the Revitalization Act requires any individual sentenced to incarceration for a felony (longer than one year imprisonment) in the District to serve their sentence within the legal custody of Federal Bureau of Prisons (FBOP).⁴⁷ Thus, emerging adults sentenced to incarceration for more than one year under the YRA are not housed in the D.C. Department of Corrections (DCDOC) facilities, but in FBOP facilities, which are often far away from their homes, families and support network.

This creates a gaping legal loophole: Due to jurisdictional limitations, the District of Columbia does not have direct enforcement power over the federal Bureau of Prisons or Court Services and Offender Supervision Agency (CSOSA, the federal probation and parole agency).⁴⁸ Although the YRA authorizes the FBOP to provide such developmentally appropriate programming and care as required of D.C. agencies for eligible emerging adults under the YRA,⁴⁹ provision of

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such programming and resources cannot be enforced in practice. As a result, an emerging adult under the YRA who was placed in a non-DC facility, as is often the case cannot, in practice, benefit fully from the YRA provisions and receive the support services and developmentally appropriate programming that would otherwise apply to them under the statute. Furthermore, the youth held in non-District facilities is unable to file a habeas petition in the D.C. courts.⁵⁰

While emerging adults sentenced to less than one year of incarceration under YRA can remain in local jail under the custody of DCDOC, those who are committed to the custody of FBOP are mainly housed in other states. Even youth who are awaiting trial in jail are often housed outside the District, which can impact their ability to get a speedy trial for YRA-eligible youth.⁵¹ On any given day, there are approximately 2,000 people (including those detained pending trial and those who are sentenced) in D.C. jail, approximately one in four of whom are emerging adults.⁵²

For this small subset of emerging adults under YRA that are incarcerated in the D.C. jail, a new, promising initiative was launched in February 2018 before the revised YRA took effect: The D.C. Department of Corrections created a new specialized corrections program, the Young Men Emerging (YME) unit, for youth ages 18 to

25 including some who are sentenced under the YRA.⁵³ A second YME unit was opened the following year. The YME program is built on a rehabilitative, rather than punitive, model and held in a separate housing unit that provides education, counseling, mentoring, and a measure of self-governance. Restorative justice principles and a “credible messenger” model are at the core of this promising initiative.⁵⁴ Due to limited space and jurisdictional limitations of DCDOC imposed by the Revitalization Act, currently only a small subset of emerging adults under YRA can participate in this promising initiative. As of April 2021, the capacity of the YME unit was twenty-five male emerging adults (mentees) in addition to five mentors, chosen from among the older incarcerated individuals serving life sentences and living on the unit.⁵⁵ From April 2019 to May 2020, a total of seventy-eight emerging adults have been on the YME unit.⁵⁶ Since the YME program is placed within a jail setting (instead of prison settings designed for longer term incarceration), it serves a more transient population, as the emerging adults can either be transferred to the federal prison or released back to the community.⁵⁷ Between April 2019 and May 2020, the participants in the YME spent an average of 84 days, with a maximum length of stay of 387 days.⁵⁸ In the same period, nineteen emerging adults were transferred to a federal facility, two were released to the custody of Maryland and Virginia state facilities, and sixteen were released back into the community.⁵⁹

One of the interesting provisions of the YRA is the opportunity to shorten the period of probation and/or confinement when a youth fully complies with all the requirements of the sentence. The question of who has the authority to decide on such early termination depends on the commitment (incarceration) / probation distinction of the original sentence and the time of offense:

- (a) Youth sentenced to *incarceration* and committed to custody under YRA for an offense committed before August 2000⁶⁰ may be released and placed in supervision (probation) conditionally “whenever appropriate” by a decision of the (federal) United States Parole Commission (USPC).⁶¹ At the end of one year from the date of such conditional release, youth may be unconditionally discharged before the expiration of the original sentence.⁶² Youth sentenced to incarceration under the YRA for an offense committed after August 2000 are not eligible for release on “parole” by a decision of the USPC, but may be terminated from a term of supervised release by a decision of the USPC.⁶³
- (b) For youth sentenced to probation under YRA, the court may, in its discretion, unconditionally discharge the youth from probation before the end of the maximum period of probation previously fixed by the court.⁶⁴

As discussed in detail under the record protection provisions subsection below, whether the unconditional discharge happens *before or after* the expiration of the original sentence has important consequences on the procedure for setting aside the conviction.

The sentencing court maintains jurisdiction for hearing any alleged violation of the conditions of the YRA sentence and can decide to revoke it for a technical or substantive violation. However, the statute excludes a positive test for use of marijuana from consideration as a violation of probation unless the use of marijuana (as opposed to controlled substances generally) was included as an express condition of probation.⁶⁵ A significant change in YRA’s post-sentencing provisions came in 2018 when §24-905 was repealed by the Youth Rehabilitation Amendment

Act.⁶⁶ The repealed section provided that youth who were sentenced to incarceration under the YRA could be removed from the “youthful offender treatment program” by a decision of the director of the Department of Corrections if the department determined that the youth would “derive no further benefit.”⁶⁷ Before this provision was repealed in 2018, the D.C. Court of Appeals had extended the “no further benefit” criterion to the revocation of a YRA probation sentence by the sentencing court by requiring the court to first make a determination that the youth would derive “no further benefit” from the YRA sentence before revoking a probation sentence.⁶⁸ Since §24-905 is now repealed, it is unclear from case law whether the court must make a similar determination to revoke a YRA sentence.

Programming

A hallmark of D.C.’s YRA is its detailed provisions on developmentally appropriate support services.

The YRA provides that “the Mayor shall provide facilities, treatment, and services for the developmentally appropriate care, custody, subsistence, education, workforce training, and protection” of youth eligible under the statute.⁶⁹ The statute defines “treatment” as “guidance for youth offenders designed to improve public safety by facilitating rehabilitation and preventing recidivism.”⁷⁰ It is noteworthy that the statute requires that these provisions be made available to youth both while pending trial and after conviction.⁷¹ Further, this mandate for the provision of specialized, developmentally appropriate services applies *automatically* to youth who meet the threshold age and offense eligibility requirements of the statute, regardless of whether the youth is ultimately sentenced under the YRA.

These requirements for extensive and developmentally appropriate support services

were included in the YRA during its most recent amendment in 2018, after a thoughtful legislative process that was informed by a detailed analysis of the implementation of the statute by the District’s Criminal Justice Coordinating Council. As aptly noted by Councilmember Charles Allen regarding YRA before the amendments, “there was no ‘R’ in the YRA.”⁷²

The 2018 amendments to the YRA have provided D.C. with an important opportunity to invest in a wide range of effective, developmentally appropriate treatment programs and services geared specifically for this age group. However, one of the biggest challenges to successful implementation is the District’s lack of jurisdiction of the federal Bureau of Prisons, as discussed above. “Young adults who are sentenced under the Youth Act often serve their sentences in prisons far away from the District where they receive little to no services. Thus, despite the intent of the Youth Act, there is currently little if any meaningful rehabilitation being provided,” according to a Justice Policy Institute report published before the revised YRA took effect.⁷³

The 2018 amendments to the YRA have provided D.C. with an important opportunity to invest in a wide range of effective, developmentally appropriate treatment programs and services geared specifically for emerging adults.

The revised YRA mandated the mayor to develop and submit to the council a strategic plan for providing these rehabilitative facilities, treatment, and services for youth under the YRA, including “recommendations for







adopting and implementing inter-agency programming” by District agencies to address:

- “(A) The educational, workforce development, behavioral and physical health care, housing, family, and reentry needs of youth offenders before commitment, while in District or federal care or custody, and upon reentry;
- (B) The availability of a continuum of developmentally appropriate, community-based services for youth offenders before commitment, while in District care or custody, and upon reentry;
- (C) Best practices in restorative justice for victims, youth offenders, including for youth offenders convicted of violent offenses, and persons at risk of becoming youth offenders;
- (D) The expansion of diversion programs for persons at risk of becoming youth offenders; and
- (E) Outreach by the District to committed

youth offenders in District or federal care or custody to identify needs for services and plan for reentry.”⁷⁴

In November 2021, a team from the Justice Policy Institute and the D.C. Emerging Adult Justice Action Collaborative comprised of local policymakers, justice system stakeholders, community service providers, researchers, and people with lived justice system experience, delivered to D.C. Mayor Muriel Bowser a final Strategic Plan in accordance with the statute.⁷⁵ This Strategic Plan identified diversion, housing/education, education/workforce development, and family as key priority areas for implementation. Notably, to address D.C.’s unique jurisdictional challenge to successful implementation of support services mandated by the YRA, the Strategic Plan recommended reestablishing local control of adult criminal legal system functions and raising the age of juvenile justice jurisdiction to age 25 to move the authority for prosecution, detention, and supervision of all emerging adults to District agencies.⁷⁶ Short of both options, the Strategic Plan recommended

Table 6: D.C.’s YRA: Post-Sentencing Provisions

Special Custody	Is there a specialized correctional unit for emerging adults incarcerated under the hybrid statute?	 ^a
Juvenile Custody	Can emerging adults incarcerated under the hybrid statute be committed to juvenile corrections and avoid adult corrections?	
Juvenile Probation	Can emerging adults placed on community supervision under the hybrid statute remain under the supervision of juvenile probation agency?	
Court Involvement	Does the court maintain jurisdiction and hear any alleged post-sentencing violations?	
Early Termination	Is there an opportunity to shorten the period of probation or confinement if the young person is doing well?	
Support Services	Does the hybrid statute require mandatory provision of support services to eligible youth?	

^a A limited number of YRA youth are held in the Young Men Emerging (YME) unit, a specialized corrections program for youth ages 18 to 25, launched by the D.C. Department of Corrections in 2018.

that all other legal and regulatory framework should be explored to bring all emerging adults serving their sentence in a FBOP facility to D.C. to serve out their sentence at the D.C. jail and expanding the YME units' offerings to all eligible emerging adults held within DCDOC custody.⁷⁷ One of the stakeholders we spoke with, and who was closely involved in the preparation of the Strategic Plan, referred to the plan as an effective "blueprint," explaining that the next step is to aggregate the ongoing and planned efforts in the community into a more specific plan for implementation.

As of the date of writing of this report, the YRA Strategic Plan has not been implemented.⁷⁸

7. Record Protection Provisions

Under the YRA, a guilty finding enters as a conviction in a youth's criminal record, but the conviction *may* be, or in case of early termination shall be automatically (without a discretionary decision), "set aside" after the youth successfully completes at least a part of the sentence.

While YRA's robust "set-aside" provisions provide stronger record protection than some other hybrid systems included in this study (e.g., Florida), they remain weaker than some others in large part due to the complex procedures required by the statute for setting aside a conviction and the relatively limited legal effect. Set-asides can play a significant role in alleviating collateral consequences of a public criminal record, including stigma and discrimination in social and economic contexts. However, the legal impact is more limited than record protection provisions offered in other hybrid systems that do not consider a guilty finding under their YO statute a conviction (e.g., Michigan and Alabama).

When a conviction is set aside under YRA, all *public* records of the *conviction* are removed and the youth does not have to disclose that conviction to a potential employer or in housing applications and the like, but that conviction can still be

A "set-aside" gives a youth a clean slate in employment and all other areas of life.

viewed and used by courts when considering future sentencing if the individual reoffends.⁷⁹ For instance, the YRA statute allows a conviction set aside to be used for imposing an enhanced sentence if the person commits a second or subsequent offense; in determining whether an offense is a second or subsequent violation under sentencing provisions for individuals who recidivate drug offenses; or for impeachment if the person testifies in his or her own defense at trial.⁸⁰ Further, a conviction set aside may be used for "gun offender registration,"⁸¹ or in determining whether a person's possession of a firearm is unlawful because of a previous conviction.⁸² YRA's set-aside provision covers only the conviction. Individuals still need to file a motion to have arrest records sealed.

As in record protection and confidentiality provisions offered in other hybrid systems, the public policy rationale behind set-asides provided in the YRA is rehabilitation: A set-aside gives a youth a clean slate in employment and all other areas of life while retaining some leverage for courts to respond differently to an alleged future offense.⁸³

YRA's set-aside provisions can be applied in two distinct ways:

Automatic (non-discretionary) set-aside: A conviction of a youth is set aside *automatically* (without a discretionary decision) upon unconditional discharge *before the expiration of the sentence* imposed (early termination).⁸⁴

Discretionary set-aside: A conviction of a youth *may* be set aside by a *discretionary decision* after

the expiration of the originally imposed sentence. The decision to set aside the conviction is determined by the court if the person is incarcerated or on probation at the end of their term.⁸⁵ The YRA provides that the federal U.S. Parole Commission (USPC) can make the set aside decision for youth on parole or supervised release at the end of their term.⁸⁶ Even though YRA gives USPC discretion to set aside a conviction during parole or supervised release (and after a period of incarceration), the D.C. Appeals Court has found that the USPC does not have sole and exclusive authority to do so—DC courts may do so as well – if the youth was originally sentenced to probation for a misdemeanor.⁸⁷ A public defender explained that in the current practice a motion is always filed with the court for a set-aside decision. With regard to factors that are considered in discretionary set-aside decisions, the 2017 CJCC report found that younger youth with less of a criminal history, females, as well as those convicted of illegal gun possession were more likely to have their conviction set aside while felony convictions were less likely to be set aside.⁸⁸



An additional important and unique feature of D.C.’S YRA is the provision that allows an eligible youth, regardless of whether being sentenced under the YRA or not, to file a motion to the court to have their conviction set aside upon completion of their sentence.⁸⁹ Upon a

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youth’s motion, the court may, in its discretion, set aside the conviction. In evaluation of such a motion, the statute requires that the court consider the same criteria listed in §24-903(c) (2) for determining the application of the YRA’s alternative sentencing options (see subsection 3: “Application of YRA” above). This extension of discretionary set-asides to youth who were not originally sentenced under the YRA took effect at the most recent major revision of the statute in 2018.⁹⁰

Perhaps as a testament to the intrinsic complexity of the YRA, and its set-aside provisions in particular, the statute also mandates the Office of Victim Services and Justice Grants to provide grants annually to organizations to assist victims of crime and eligible young people in understanding and navigating its sentencing and set-aside provisions.⁹¹

Table 7. D.C.’s YRA: Record Protection Provisions

Automatic Record Protection	Can a youth automatically avoid a formal record of conviction if the term under the hybrid statute ends successfully?	 ^a
Other Record Protection	If it is not automatic, does the hybrid statute offer other means of record protection, such as a petition to expunge or seal records of a conviction?	 ^a

^a A conviction is entered in the criminal record of youth but is “set aside” *automatically* (non-discretionary) when the sentence is terminated early (“upon unconditional discharge [...] before the expiration of the sentence imposed”). After expiration of the sentence imposed, a conviction may be set aside by a *discretionary decision* of the court (or of the U.S. Parole Commission if the youth was on parole or supervised release at the end of their term). D.C. Code § 24-906. A “set aside” means that information about the conviction is not publicly available, but it can be used by the court when considering future sentencing if the individual reoffends, or for firearms and sex offense registration.

IV. DATA ON EMERGING ADULTS IN D.C.'S CRIMINAL LEGAL SYSTEM AND IMPLEMENTATION OF YRA

A unique feature of D.C.'s YRA as compared to hybrid systems of other jurisdictions is the mandatory and detailed monitoring and evaluation requirement built into the statute. This provision was included in the statute during its most recent major amendment in 2018.⁹² Under the current YRA, the CJCC is mandated to analyze and submit to the mayor and the legislature a detailed report biannually, starting on October 1, 2022. The report shall include:

- “(1)The number of cases and persons eligible for sentencing and to have their convictions set aside under [the YRA], and how many persons were sentenced or had their convictions set aside under [the YRA];
- (2) The factors that affected the likelihood of receiving a sentence under [the YRA], such as assessed offense type, prior arrests, prior juvenile commitment, or age;
- (3) The extent to which cases eligible to be sentenced under [the YRA] were subject to mandatory-minimum terms, and if so, the extent to which mandatory-minimum terms were imposed;
- (4) The type and length of sentences for those sentenced under [the YRA], compared to those not sentenced under [the YRA];
- (5) The factors that affected the likelihood that those sentenced under [the YRA] would have their convictions set aside;
- (6) A comparison of recidivism of those sentenced under [the YRA] who had their convictions set aside, compared to those sentenced under [the YRA] who did not have their convictions set aside;

A unique feature of D.C.'s YRA as compared to hybrid systems of other jurisdictions is the mandatory and detailed monitoring and evaluation requirement built into the statute.

- (7) A comparison of the recidivism of those sentenced under [the YRA] to similarly situated persons not sentenced under [the YRA]; and
- (8) The impact of programming provided to youth offenders under [the YRA].⁹³

The YRA also mandates sharing of information by the Department of Corrections, the Metropolitan Police Department, the Department of Youth Rehabilitation Services, and the D.C. Sentencing Commission, upon request of the CJCC to enable the above detailed biannual report.⁹⁴

The Corrections Information Council (CIC) is also statutorily required to report on the conditions of confinement and programming provided to youth committed to the custody of the Bureau of Prisons under YRA.⁹⁵

In fiscal year 2020, the CIC published a brief annual report concerning the facilities, treatment, and services for YRA youth in the care of the Department of Corrections (DOC) and Bureau of Prisons (BOP).⁹⁶ They highlighted a number of concerns regarding the implementation of the amended YRA: (1) There are currently no programs provided by the DOC specifically designed for youth committed under YRA; (2) While the mayor is statutorily responsible for providing specialized facilities, treatment, and

services, most of the youth sentenced under YRA are outside the mayor’s jurisdiction; (3) The amended YRA authorizes BOP to provide services for eligible youth, but it does not mandate the BOP to provide these services; and (4) There is no record of current programs specifically designed by the BOP for youth sentenced under YRA, and no specific requirements for such future treatment or programs.⁹⁷ To overcome these jurisdictional issues and extend developmentally appropriate programming to *all* eligible youth under the YRA, the Strategic Plan submitted by D.C. Emerging Adult Justice Action Collaborative recommended, among other measures we discussed under the post-sentencing provisions section above, transferring jurisdiction of system-involved 18-to 24-year-olds to the Department of Youth Rehabilitation Services (DYRS).⁹⁸

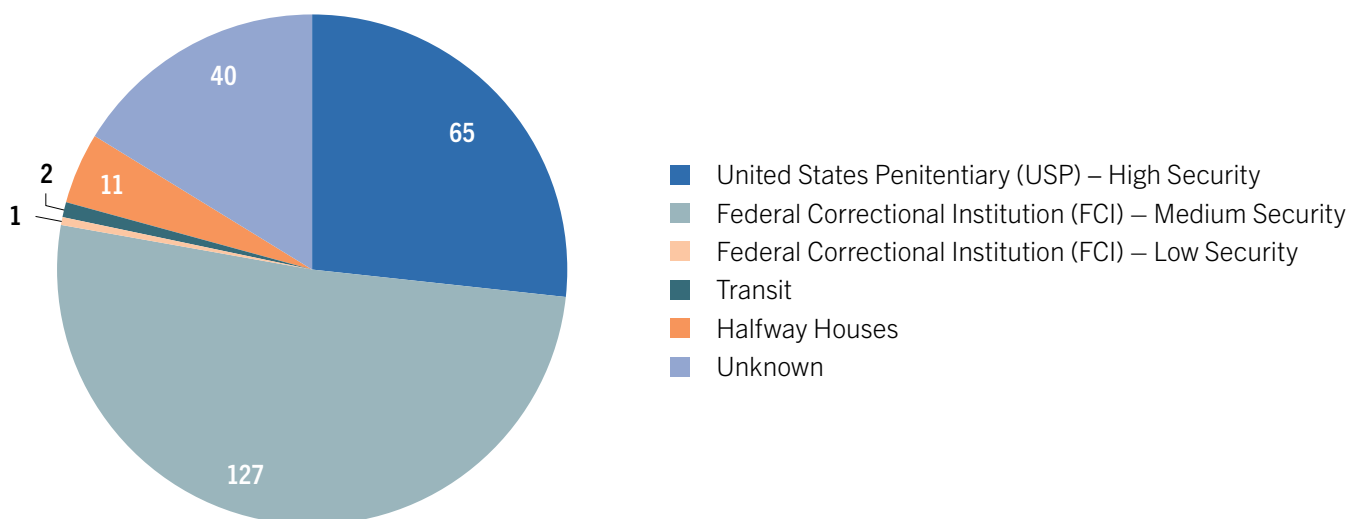
The data provided at CIC’s report on youth incarcerated under YRA is prohibitively limiting to make any meaningful analysis. It reports only the total population of YRA youth in BOP custody according to their placement. Accordingly, as of March 2019, 246 young people were in the custody of BOP serving a YRA sentence, and the majority of them were housed in medium

security federal correctional institutions (127). No other demographic data (race, age, etc.) or other information (e.g., offense, duration of custody etc.) was provided.

Of course, even if more detailed data on youth in the custody of BOP and/or DOC were published, this would have helped only with a partial understanding of the implementation of the YRA in practice. A meaningful analysis of YRA’s implementation requires comprehensive and cross-agency reporting, including information from courts, probation, and community-based programs, in addition to corrections. In the absence of specific data on emerging adults from all these key justice actors, stakeholders have to extrapolate numbers from different data sets.

To date, the most comprehensive empirical analysis of the implementation and outcomes of YRA is CJCC’s 2017 report, commissioned by the Council of the District of Columbia to inform legislative discussions that culminated in the enactment of the Youth Rehabilitation Amendment Act of 2018.⁹⁹ CJCC’s 2017 report uses data for the years 2010 to 2012.

Figure 1. Population of YRA Youth in Federal Bureau of Prisons Custody, March 2019



Source: CIC, “Youth Rehabilitation Act Report”, September 26, 2019, p. 8.

According to this report, cases eligible for YRA sentencing represented 7% (5,166) of the total number of disposed cases, and 53% (2,726) of the eligible cases were sentenced under YRA. Another study by the Justice Policy Institute found that fewer than half (45%) of those receiving felony sentences issued between 2010 and 2015 and eligible for the YRA were sentenced under the Youth Act.¹⁰⁰ Only about 4% of the eligible youth had both a conviction for a crime of violence and a weapon offense.¹⁰¹ Most youth sentenced under YRA were Black (71%) and male (86%).¹⁰² CJCC report found that the youth are most commonly sentenced to probation under the YRA. From among the youth sentenced under YRA, 59% were initially sentenced to supervised probation and 34% initially received an imprisonment sentence (and 18% of those were eventually held by BOP).¹⁰³

CJCC also reported that nearly half of the eligible persons who had completed their sentence successfully had their conviction set aside.¹⁰⁴ There was no measurable difference between YRA and non-YRA recidivism rates (for similarly-situated defendants).¹⁰⁵ However, among those sentenced under the YRA, set-asides had a meaningful effect on recidivism: **“persons whose convictions were set aside were less likely to be re-arrested and/or reconvicted than persons who were sentenced under the YRA but whose convictions were not successfully set aside”**.¹⁰⁶ The report concluded that the set-aside is the key benefit that was shown to reduce recidivism. Echoing the CJCC report’s findings, DC Councilmember Charles Allen stated that when evaluating the older version of YRA, “the evidence shows recidivism doesn’t improve whether or not the young adult was sentenced under the YRA – it’s the potential of having their conviction set aside later that makes the real difference in public safety outcomes.”¹⁰⁷ Implementation of the strategic plan and increased resources in community programming as required by the amended YRA are expected to improve overall recidivism outcomes for YRA youth.

“The evidence shows recidivism doesn’t improve whether or not the young adult was sentenced under the YRA – it’s the potential of having their conviction set aside later that makes the real difference in public safety outcomes.”

Other, non-YRA specific criminal legal system data illustrate the disproportionate number of emerging adults represented in D.C.’s legal system and the stark racial disparities.

For instance, according to the D.C. Sentencing Commission (SCDC) data, 22- to 30-year-olds accounted for the largest share (37.4%) of the felony sentences handed down in the District in 2020.¹⁰⁸ In the same year, 18- to 21-year-olds accounted for 22% of all felony sentences.¹⁰⁹ Further, one in three (32%) individuals between 18 and 21 years old at the time of offense were sentenced to prison.¹¹⁰

SCDC also reported that in 2020, Black males ages 18 to 30 constituted more than half of the individuals sentenced at the case level, with 46% of this group receiving a prison sentence.¹¹¹ Thus, if successfully implemented, the revised YRA has the potential to not only improve life outcomes for eligible youth, but also to increase public safety and advance racial equity and justice.

**MAJOR LEGISLATIVE HISTORY
D.C.'S YOUTH REHABILITATION ACT**

1985	<ul style="list-style-type: none"> Enacted “Youth Rehabilitation Act of 1985” (“YRA”) 	<i>DC CODE § 24-901 through 24-907</i>
2000	<ul style="list-style-type: none"> Repealed § 24-905, which had previously allowed the Department of Corrections to remove a youth from the treatment program by a determination that youth will derive “no further benefit.” Amended § 24-906(c) clarifying circumstances under which a set-aside can be used by the Courts and by the US Parole Commission. Removed the requirement that youthful offenders must serve their sentences within DC. 	<i>D.C. Law 13-302</i>
2002	<ul style="list-style-type: none"> Changed the definition of a “youth offender” to specifically exclude youth charged of “terrorism” offenses, where previously the only offense excluded was murder 	<i>D.C. Law 14-194, part of the Omnibus Anti-Terrorism Act of 2002</i>
2018	<ul style="list-style-type: none"> Amended § 24-901 raising the maximum age until which youth can be eligible for YRA from 22 to 24 (up to 25th birthday) and providing that age at time of commission of an alleged crime, rather than age at time of conviction shall be used to determine eligibility under YRA. Excluded more offenses from YRA, including first-degree sexual abuse, second-degree sexual abuse, and first-degree child sexual abuse. Amended § 24-902 Subsection (a-1)(1) to require that the mayor shall develop a Strategic Plan for providing facilities, treatment, and services for the developmentally appropriate care, custody, education, workforce training and protection of youth under YRA. Amended § 24-903 making it possible for the court to sentence any eligible youth (ages 15 to 24)—at its discretion—to probation and community service rather than incarceration. Previously only those under 18 were eligible for non-incarceration sentences under the YRA. Amended subsection § 24-903(b)(2) to allow the court to issue a sentence lower than the mandatory minimum, at the court’s discretion. Amended subsection § 24-903(c), requiring the court to consider several factors (e.g., age, previous criminal history, physical, mental, or psychiatric examinations etc.) when deciding whether to sentence a youth under the YRA. Amended § 24-906, to allow the court (at their discretion) set aside the conviction of any eligible youth (meeting age and offense requirements), regardless of whether the youth was originally sentenced under the YRA, upon successful completion of their sentence. Added section § 24-906.01 providing grants to organizations to assist victims of crime and eligible youth in understanding and navigating the sentencing and set-aside provisions of YRA. Added a new section §24-906.02 requiring mandatory data collection and biannual analysis and review of the YRA. 	<i>Youth Rehabilitation Amendment Act of 2018, D.C. Law 14-197</i>

ENDNOTES - DISTRICT OF COLUMBIA

- 1 “Department of Corrections Closes Final Prison and Accomplishes Major Milestone,” *District of Columbia Department of Corrections* (blog), November 19, 2001, <https://doc.dc.gov/release/department-corrections-closes-final-prison-and-accomplishes-major-milestone>.
- 2 D.C. Code § 16-2301(3).
- 3 D.C. Code §§ 16-2301(3), 16-2303.
- 4 D.C. Code §§ 16-2301(3), 16-2307.
- 5 D.C. Code § 24-403(a)-(b).
- 6 D.C. Code § 24-403(a)-(b).
- 7 D.C. Code §§ 24-901 to -906.
- 8 See Major Legislative History of D.C.’s Youth Rehabilitation Act table below.
- 9 Amy Brittain, “How an Accused Rapist Kept Getting Second Chances from the D.C. Justice System,” *The Washington Post*, May 14, 2016, https://www.washingtonpost.com/investigations/off-the-grid-how-a-violent-offender-slipped-through-the-dc-justice-system/2016/05/13/ba4ca96c-ebba-11e5-bc08-3e03a5b41910_story.html.
- 10 Amy Brittain, Aaron C. Davis, and Steven Rich, “Second-Chance Law for Young Criminals Puts Violent Offenders Back on D.C. Streets,” *The Washington Post*, December 3, 2016, https://www.washingtonpost.com/investigations/second-chance-law-for-young-criminals-puts-violent-offenders-back-on-dc-streets/2016/12/02/fcb56c74-8bc1-11e6-875e-2c1bfe943b66_story.html. It is the hope of authors of this national report to better inform future reporting on “youthful offender” laws that offer a hybrid system for emerging adults by a systematic comparison of their key provisions. As our national study found, D.C. is only one of several jurisdictions that offer similar hybrid systems for emerging adults.
- 11 See Marc Schindler, “Youth Rehabilitation in D.C.: From Controversy to Progress,” *The Washington Post*, January 11, 2019, https://www.washingtonpost.com/opinions/youth-rehabilitation-in-dc-from-controversy-to-progress/2019/01/11/d2ea0be6-056a-11e9-b5df-5d3874f1ac36_story.html.
- 12 Ellen P. McCann, *The District’s Youth Rehabilitation Act: An Analysis* (Washington, DC: Criminal Justice Coordination Council, 2017), <https://cjcc.dc.gov/sites/default/files/u65602/YRA%20Briefing%20Document.pdf>.
- 13 Crime and Justice News, “Critics Vow to Overhaul D.C. Youth Rehabilitation Law,” *The Crime Report*, October 31, 2017, <https://thecrimereport.org/2017/10/31/critics-vow-to-overhaul-d-c-youth-rehabilitation-law/>; see also The Washington Post Editorial Board, “D.C. Moves Toward a Safer Strategy for Youth Rehabilitation,” *The Washington Post*, September 20, 2017, https://www.washingtonpost.com/opinions/dc-moves-toward-a-safer-strategy-for-youth-rehabilitation/2017/09/20/85798b88-9d70-11e7-9083-fbdfd6804c2_story.html.
- 14 For a summary of the bill, see Erik Salmi, “The Latest on the Youth Rehabilitation Amendment Act,” *Office of DC Councilmember Charles Allen* (blog), May 4, 2018, https://www.charlesallenward6.com/the_latest_on_the_youth_rehabilitation_amendment_act.
- 15 Youth Rehabilitation Amendment Act of 2018, D.C. Law 22-197.
- 16 D.C. Code § 24-901(6).
- 17 D.C. Code § 16.2301(3). Felonies subject to such direct file at the adult court are: murder, first degree sexual abuse, first degree burglary, armed robbery, assault with intent to commit any such offense, and any other offense properly joinable with such an offense.
- 18 D.C. Code § 16-2307.
- 19 Youth Rehabilitation Amendment Act of 2018, D.C. Law 22-197, §102(a); 65 DCR 9554.
- 20 Prior to this amendment, age at the time of conviction or guilty plea was taken as basis for determination of YRA eligibility. See *Holloway v. United States*, 951 A.2d 59 (D.C. 2008).
- 21 D.C. Code § 24-901(6).
- 22 D.C. Code § 24-903(c)(2).
- 23 Omnibus Anti-Terrorism Act of 2002, D.C. Law 14-194, §157.
- 24 Youth Rehabilitation Amendment Act of 2018, D.C. Law 22-197, §102(a).
- 25 D.C. Code § 24-901(6).
- 26 D.C. Code § 24-902.
- 27 D.C. Code § 24-903(c)(2); see also D.C. Code § 24-906(e-1) for discretionary set-aside.
- 28 D.C. Code § 24-903(c)(2)(A)-(L)
- 29 D.C. Code § 24-903(c)(2)(M).
- 30 D.C. Code §§ 24-903(c)(1), 24-903(d).
- 31 D.C. Code § 24-906(e-1)(1)-(2); see subsection 7 below on record protection provisions.
- 32 D.C. Code § 24-903(c)(1).
- 33 See *Edwards v. United States*, 721 A.2d 938, 945 (D.C. 1998) (holding that “the trial court weighed and rejected the option of sentencing [...] under the Youth Rehabilitation Act, thus meeting the requirements of that Act.”).
- 34 *Copeland v. United States*, 271 A.3d 213, 226 (D.C. 2022) (citing *Veney v. United States*, 681 A.2d 428, 435 (D.C. 1996) (en banc)); see also *Veney*, 681 A.2d at 434 (explaining that even if a defendant is eligible for a YRA sentence, “an adult sentence may [nevertheless] be imposed if the record reflects that the [sentencing] judge was aware of the availability under the Act of youth offender treatment, that he considered that rehabilitative option, and that he rejected it”).
- 35 McCann, *District’s Youth Rehabilitation Act*.
- 36 McCann.
- 37 McCann.
- 38 McCann, 21.
- 39 D.C. Code § 24-901(2).
- 40 D.C. Code § 24-903(c)(1).
- 41 D.C. Code § 24-903(b)(2).

- 42 See, e.g., *Briscoe v. United States*, 181 A.3d 651 (2018) (upholding the trial court’s sentencing a 22-year-old defendant convicted of possession of a firearm during a robbery to five years of imprisonment based on the statutory mandatory minimum although the YRA *permitted* the court to sentence the defendant to probation) (emphasis added).
- 43 D.C. Code § 24-903(a)(1).
- 44 D.C. Code § 24-903(b).
- 45 D.C. Code § 24-903(a)(2).
- 46 D.C. Code § 24-903(a)(3).
- 47 See “Department of Corrections Closes Final Prison and Accomplishes Major Milestone.”
- 48 Justice Policy Institute, *Emerging Adult Strategic Plan 2020-2025* (Washington, DC: Justice Policy Institute, 2021), https://justicepolicy.org/wp-content/uploads/2022/06/DC_YRA_Strategic-Plan_2020-2025.pdf.
- 49 D.C. Code § 24-902(c) (“The federal Bureau of Prisons is authorized to provide facilities, treatment, and services for the developmentally appropriate care, custody subsistence, education, workforce training, segregation, and protection of youth offenders convicted of felony offenses under District law and in federal care or custody.”).
- 50 See *United States v. Crockett*, 861 A.2d 604, 606-07 (D.C. 2004) (finding that DC courts did not have jurisdiction over individuals held in non-District facilities).
- 51 See *United States v. Stephenson*, 891 A.2d 1076, 1082 (D.C. 2006) (finding that delay of four months, which was caused by a lack of efficiency in trying to bring the youth, who would have been eligible for YRA sentencing if there had not been a delay, into the District for trial, was not too long to violate the defendant’s right to a speedy trial so long as the delays were not orchestrated “to secure some type of tactical advantage.”).
- 52 “Young Adult Prison Reform Initiative Expands to Three New States,” *Vera Institute of Justice* (blog), May 15, 2019, <https://www.vera.org/newsroom/young-adult-prison-reform-initiative-expands-to-three-new-states>.
- 53 Woody, Walker, and Castón, *DC’s Young Men Emerging Unit*.
- 54 “A Transforming Approach to Justice,” Credible Messenger Justice Center, n.d., <https://cmjcenter.org/approach/#:~:text=The%20Role%20of%20Credible%20Messengers,give%20back%20to%20help%20others>.
- 55 Emerging Adult Justice Learning Community, *Key Elements of Specialized Correctional Units*, 6.
- 56 Woody, Walker, and Castón, *DC’s Young Men Emerging Unit*, 17.
- 57 For more information on other innovative models of specialized correctional units for emerging adults, see Emerging Adult Justice Learning Community, *Key Elements of Specialized Correctional Units*, 6.
- 58 Woody, Walker, and Castón, *DC’s Young Men Emerging Unit*, 17.
- 59 Woody, Walker, and Castón, 17.
- 60 D.C. Code § 24-904(c).
- 61 D.C. Code § 24-904(a). Before DC’s Sentencing Reform Emergency Amendment Act of 2000 came into force, courts have affirmed that parole dates and actual duration of confinement under YRA are decided by the correction authorities, not the court. See *Palacio-Escoto v. United States*, 764 A.2d 795, 796 (D.C. 2001) (citing *Clark v. United States*, 416 A.2d 717, 719 (D.C.1980) that “release is to be determined, not by the court, but rather by the Youth Act authorities,” and *Dorszynski v. United States*, 418 U.S. 424, 445 n. 1 (1974) that “the actual duration of the treatment period is determined by the Youth Correction authorities”).
- 62 D.C. Code § 24-904(b).
- 63 D.C. Code § 24-906(c); see also *Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes*, 68 FR 41527-01.
- 64 D.C. Code § 24-906(e).
- 65 D.C. Code § 24-903(a)(2A).
- 66 Youth Rehabilitation Amendment Act of 2018, D.C. Law 22-197, §101(d), 65 DCR 9554.
- 67 D.C. Code §24-905 (Repealed); *Vaughn v. United States*, 598 A.2d 425 (D.C. 1991).
- 68 See *Smith v. United States*, 597 A.2d 377 (D.C. 1991).
- 69 D.C. Code § 24-902(a).
- 70 D.C. Code § 24-901(5).
- 71 D.C. Code § 24-902(a)(1)-(2).
- 72 Crime and Justice News, “Critics Vow to Overhaul D.C. Youth Rehabilitation Law.”
- 73 Justice Policy Institute, “Fact Sheet: The Youth Rehabilitation Act and Depictions of Its Use in D.C.’s Justice System,” n.d., https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/dc_youth_act_fact_sheet.docx.
- 74 D.C. Code § 24-902(a-1)(2).
- 75 Justice Policy Institute, *Strategic Plan*; See also DC Corrections Information Council, *District of Columbia Youth Rehabilitation Act Update* (Washington, DC, 2022), https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/YRA%20Report_2.16.22.pdf.
- 76 Justice Policy Institute, *Strategic Plan*, 18–19.
- 77 Justice Policy Institute, 57.
- 78 District of Columbia Corrections Information Council, *Update on the District of Columbia Youth Rehabilitation Act* (Washington, DC, 2020), https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/Final%20YRA%20Update%20%283%29.pdf. The District of Columbia has been chosen as an “Innovation Site” to pilot a new developmental framework created specifically for system-involved emerging adults, who, for the most part, will be served under the YRA. The Emerging Adult Justice Project of the Columbia Justice Lab will be supporting this work; see “Developmental Framework Project,” Emerging Adult Justice Project, 2023, <https://www.eajjustice.org/ea-developmental-framework>.
- 79 See *United States v. McDonald*, 991 F.2d 866 (D.C. Cir. 1993); see also *Wade v. United States*, 173 A.3d 87 (D.C. 2017).
- 80 D.C. Code § 24-906(f).
- 81 D.C. Code § 24-906(f)(7).

- 82 D.C. Code § 24-906(f)(8).
- 83 See *McDonald*, 991 F.2d at 871.
- 84 D.C. Code §§ 24-906(a), 24-906(c), 24-906(e).
- 85 D.C. Code § 24-906(e).
- 86 D.C. Code § 24-906(b).
- 87 See *Ferguson v. United States*, 157 A.3d 1282 (D.C. 2017).
- 88 McCann, *District's Youth Rehabilitation Act*, 5.
- 89 D.C. Code § 24-906(e-1)(1).
- 90 Youth Rehabilitation Amendment Act of 2018, D.C. Law 22-197.
- 91 D.C. Code § 24-906.01.
- 92 Youth Rehabilitation Amendment Act of 2018, D.C. Law 22-197.
- 93 D.C. Code § 24-906.02(a).
- 94 D.C. Code § 24-906.02(b).
- 95 D.C. Code § 24–101.01(f)(1)(C).
- 96 District of Columbia Corrections Information Council, *Youth Rehabilitation Act Report* (Washington, DC, 2019), https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/YRA%20report_PUBLISHED.pdf.
- 97 But the standard programming opportunities that are available to anyone who is confined within the BOP or DOC is also available to this particular population. For a list of such programs, see DC Department of Corrections, “Services Offered to Persons Housed in DC DOC Facilities,” DC Department of Corrections, n.d., <https://doc.dc.gov/page/services-offered-persons-housed-dc-doc-facilities>; District of Columbia Corrections Information Council, *Youth Rehabilitation Act Report*.
- 98 Justice Policy Institute, *Strategic Plan*.
- 99 McCann, *District's Youth Rehabilitation Act*.
- 100 Justice Policy Institute, “Youth Rehabilitation Act.”
- 101 McCann, *District's Youth Rehabilitation Act*.
- 102 McCann.
- 103 McCann, 19.
- 104 McCann, 21.
- 105 McCann, 30.
- 106 McCann, 30.
- 107 Erik Salmi, “Reforming the ‘YRA’: The ‘Youth Rehabilitation Amendment Act of 2017’” (Office of DC Councilmember Charles Allen, September 18, 2017), https://d3n8a8pro7vhm.cloudfront.net/charlesallencdc/pages/1919/attachments/original/1505767521/YRA_Reform_One-Pager.pdf?1505767521.
- 108 District of Columbia Sentencing Commission, *2020 Annual Report* (Washington, DC, 2021), 38, https://scdc.dc.gov/sites/default/files/dc/sites/scdc/service_content/attachments/Annual_Report_2020.pdf.
- 109 District of Columbia Sentencing Commission, 38.
- 110 District of Columbia Sentencing Commission, 39.
- 111 District of Columbia Sentencing Commission, 40.

Confined as a Youth

By Antwon

When you think about childhood
You 'posed to be able to smile
But never in my life was I taught how
I was always around anger that led to pain
I was always confined
At least that's how it felt to my brain
The streets not only took me, but they took my mother too
Confined as a youth, so tell me what I 'posed to do?
Some people say they love the streets because the game is all they know
I will never label myself until I give myself time to grow
And sometimes I wonder why do it always have to be me?
Then I hear my great grandma's voice saying
"You wasn't the only one that wasn't free"
It's crazy how people put lies in our heads
Trying to get us to believe this is who we are
When, for real, every living thing was made to be a star
I hope one day we will see there's no limit to what we can do
But until that day comes, I'm here on earth, "confined as youth"



Florida’s “Youthful Offender” Act:

A Split Hybrid System with a Focus on Specialized Corrections

I. LEGAL LANDSCAPE

In Florida, the juvenile court has jurisdiction for any person under the age of 18 at the time of an alleged offense.¹ The minimum age of transfer to the adult criminal court for a felony offense is in most cases 14; however, there is no minimum age for the indictment of a juvenile as an adult for a “capital” offense carrying a life sentence or the death penalty.²

Florida has a range of mandatory minimum sentence provisions, including for drug offenses, sexual battery, and firearm offenses, among others.³ Florida also has a three-strikes law known as the “10–20–Life” law.⁴ Offenses falling under the three-strikes statute are largely violent offenses and serious property crimes.

II. AN OVERVIEW OF FLORIDA’S YOUTHFUL OFFENDER ACT

Florida enacted a hybrid statute known as the **Florida Youthful Offender Act (YOA)** in 1978.⁵ The adult criminal court may, at its discretion, apply the YOA to young people who committed a crime prior to 21 years of age at the time of the offense.⁶ The YOA affords specialized sentencing and corrections and limited record protection provisions.

Florida’s YOA differs from other youthful offender statutes that provide a hybrid system for emerging adults – youth ages 18 to 25 – in two important ways: First, Florida’s YOA emphasizes specialized corrections/sentencing component over the holistic approach provided by other hybrid systems for emerging adults that start with procedural protections offered at the early stages of criminal proceedings and extend beyond sentencing via more robust record protection provisions. Second, the YOA

contains a provision for the adult sentencing of children transferred to the adult system.⁷ The latter provision makes Florida’s YOA a *split* hybrid system: extending some protective measures to emerging adults (youth *above* the upper age threshold of the juvenile court jurisdiction) as a hybrid system and extending some protective measures to children (youth *below* the upper age threshold of the juvenile court jurisdiction, yet) who are transferred to the adult system per waiver provisions. This study focuses on the first group, but uses the term “youth” to denote both eligible groups.

Since its enactment, the YOA has undergone several major amendments, including most notably, the age for eligibility and the enumerated criteria for judges to consider when determining whether to classify an individual a “youthful offender.”

III. KEY PROVISIONS OF FLORIDA'S YOA

1. Eligibility – Age

An emerging adult must be at least 18 years old to be eligible for judicial assignment of youthful offender status under Florida's YOA.⁸ Alternatively, a child as young as 14 years old can be transferred to the adult system per Florida's waiver provision⁹ and, then, sentenced under the YOA.¹⁰

The statute sets the upper age limit for YOA eligibility to an individual's 21st birthday at the time of the alleged crime.¹¹

In addition to YOA sentencing in court, the Department of Corrections may request "youthful offender" classification of individuals in its custody who are under age 24 and meet the eligibility criteria in § 958.04 to participate in a "youthful offender basic training program."¹²

The original YOA had the same age range as the present YOA. In 2008, the Florida legislature essentially restricted eligibility of young people by changing the upper age limit from the 21st birthday at the time of offense to the 21st birthday at the time of sentencing.¹³ However, in 2019, the legislature reinstated the original language, qualifying young people by their age (21st birthday) at the time of offense, not when the sentence was imposed.¹⁴ The age paradigm in the Florida YOA between 2008 and 2019 withstood 14th Amendment Equal Protection Clause challenges under a rational basis scrutiny,¹⁵ because, the appellate courts

reasoned, the statute was tailored to ensure that the program remained "truly youthful," and YOA sentencing was not guaranteed even if defendant meets the eligibility criteria (i.e. YOA sentencing is discretionary).¹⁶ The 2019 amendment resolving this age paradigm in favor of the use of the individual's age at the time of the crime as an eligibility requirement brought Florida's YOA more in line with the vast majority of hybrid statutes in other jurisdictions and deters the potential abuse of prosecutorial discretion by postponing proceedings in YOA-eligible cases.

2. Eligibility – Offense

YOA sentencing applies to all *felonies* except when a person has been found guilty of a "capital or life felony."¹⁷

Armed robbery is considered a first-degree felony (not a life felony) for the purposes of the YOA, meaning that youth sentenced for this crime are eligible for YOA.¹⁸ Youth sentenced for sexual battery are eligible for the YOA, but are ineligible for release from custody under § 958.09 ("extension of the limits of the place of confinement") discussed in the post-sentencing provisions subsection below).

Further, youth are ineligible if they have been previously sentenced as a "youthful offender" under the YOA.¹⁹ However, YOA does not preclude youth with other prior criminal/delinquency

Table 1. Florida YOA: Eligibility – Age





Lower Age Limit	Birthday at which a youth becomes eligible for the hybrid statute	14
Upper Age Limit	Birthday up to which a youth remains eligible for the hybrid statute	21
No Age Tiers for Emerging Adults	Are different age groups within the emerging adult range treated the same under the hybrid statute?	

Table 2. Florida YOA: Eligibility – Offense

All Offenses Included	Are all offenses eligible under the hybrid statute for emerging adults?	
No Exclusion for Prior Case under Hybrid Statute	Can youth with a prior case under the hybrid statute be eligible again for a subsequent offense?	
No Exclusion for Other Criminal History	Are youth with <i>any other</i> criminal history eligible for the hybrid statute?	

history. For instance, a child charged as an adult per waiver provisions but sentenced as a juvenile by the court is still eligible to be sentenced under the YOA for a new offense.²⁰ Additionally, young people who simply served some part of a previous sentence in a “Youthful Offender” facility, but were not adjudicated or sentenced previously under the YOA, can still be sentenced under the YOA for a subsequent offense.²¹

3. Application

There are two ways that an individual can be granted youthful offender status under the YOA in Florida. First, the trial court may sentence a youth who meets the eligibility requirements discussed above as a youthful offender under the YOA (“judicial disposition”).²² Second, the Department of Corrections may designate an individual already sentenced as an adult as a youthful offender.²³ Both the judicial and DOC dispositions of youthful offender status are discretionary and not automatic or presumed.

As to the judicial disposition, lower courts are not required to sentence a person as a youthful offender (under the YOA) unless they deem such a designation appropriate.²⁴

In 1980, the Florida legislature made a significant amendment²⁵ to YOA pertaining to judicial disposition: It changed the text from a *mandatory requirement* that some defendants be classified

as youthful offenders in the original enacted text of YOA to a *discretionary classification with listed considerations*.²⁶ While this 1980 amendment made assignment of YO status discretionary, the Legislature added an extensive list of criteria for a judge to consider when designating a person as a youthful offender in order to guide this decision-making process. These criteria included seriousness of crime, violent nature of crime, prior violations, sophistication and maturity of the youth, and whether the classification would enable meeting the youth’s educational needs. A further amendment to the statute in 1985 eliminated these enumerated criteria for judges regarding whether a defendant should be classified a “youthful offender.”²⁷ Currently as it stands, the YOA provides little-to-no structure or statutory mandate for judges to designate a defendant a youthful offender.

There appears to be no additional or comprehensive criteria expounded in caselaw beyond what the statute provides for basic eligibility as threshold requirements (age and offense).²⁸

Appellate courts have held that the trial court judge is in the best position to determine whether the YOA is the most appropriate/beneficial sentence to hand down, but “[t]he trial court’s sentencing discretion under the Youthful Offender Act is not unbridled.”²⁹ The court in Pressley noted that “the trial court may, after reviewing the criteria

[basic threshold eligibility requirements for age and offense], decline to sentence a statutorily qualified person as a youthful offender” but that “[l]ike any other exercise of judicial discretion, the trial court’s sentencing decision must be supported by logic and reason and must not be based upon the whim or caprice of the judge.”³⁰

In addition to the court initiating YO consideration at its own discretion, both the youth (defendant) and the prosecutor can request application of the YOA. The youth is entitled to an opportunity to present to the court facts which would materially affect the decision of the court to adjudicate the person as a youthful offender.³¹

According to information provided by public defenders familiar with the statute, judges do not reference any mandatory considerations when designating a person as a youthful offender. Common arguments made by defense attorneys focus on the immaturity of their client and/or the

domination of another older person or influence of a peer (often a co-defendant) that diminished the youth’s ability to appreciate the severity of their actions.³²




As to youthful offender disposition by the Department of Corrections, the statute stipulates that “[t]he Assistant Secretary for Youthful Offenders shall continuously screen all institutions, facilities, and programs for any inmate who meets the eligibility requirements for youthful offender designation specified in s. 958.04, whose age does not exceed 24 years. The department may classify and assign as a youthful offender any inmate who meets the criteria [referring to threshold eligibility requirements for age and offense] of s. 958.04.”³³ According to the data released by the Department of Corrections, the majority of those who are incarcerated as youthful offenders are designated as such not judicially, but by the Department.³⁴

Table 3. Florida YOA: Application

Juvenile Court	Does the juvenile court decide whether to apply the hybrid statute?	✘
Presumptive Application	Is the hybrid statute presumed to apply to youth who meet the eligibility requirements?	✘
Judge Initiates	Can the judge prompt application of the hybrid statute at own initiative?	✔
Prosecutor Initiates	Can the prosecutor initiate application of the hybrid statute?	✔
Youth Initiates	Can the youth (defense) request application of the hybrid statute?	✔
No Prosecutorial Consent Requirement	Can the determination of whether to apply the hybrid statute be made without the prosecutor’s consent?	✔
Final Decision: Court	Does the court have the final decision on granting the application of the hybrid statute?	✔ ^a
Criteria in Statute	Does the hybrid statute explicitly set the criteria for granting its application?	✘

^a The Department of Corrections may also designate an individual already sentenced as an adult as a youthful offender; but participation in the basic training program requires the court’s approval. Fla. Stat. § 958.045 (2) & (8).

Table 4. Florida YOA: Procedural Provisions

No Plea Requirement	Can youth be eligible for the hybrid statute without having to enter a plea of guilty?	
Closed Session	Are at least some proceedings for emerging adults under the hybrid statute closed to the public?	
Jury Trial	Is a jury trial allowed under the hybrid statute?	

4. Procedural Provisions

As stated above, there are two major ways that a youth can be sentenced or classified as a youthful offender: judicial designation per § 958.04, and designation by the Department of Corrections. Only the YOA’s procedural provisions for the judicial designation will be explained here; however, a discussion of some procedural aspects of the designation by the Department of Corrections will be included in the post-sentencing provisions subsection below.

For judicial designation of “youthful offender” status in Florida, a guilty verdict, a guilty plea, or a plea of *nolo contendere* is required.³⁵ Therefore, the individual does not need to waive their right to a jury trial in order to benefit from the provisions offered under the YOA. A public defender informed us that in most cases, judges will informally require a guilty plea or verdict as a means of showing remorse and a commitment to reform, but a plea of *nolo contendere* (accepting conviction without admitting guilt) is statutorily sufficient.³⁶ The statute does *not* provide for other procedural protections such as confidentiality of proceedings at any stage, including after designation of youthful offender status.

5. Sentencing Provisions





If the court elects to impose a YOA sentence, then the (reduced) sentence applies in lieu of the statutory mandatory minimum provided for the underlying offense in Florida’s Criminal Punishment Code or the “10-20-Life” statute.³⁷ The court has four sentencing options under YOA

§ 958.04(2): (1) Probation or supervision in a “community control program” for a period of not more than six years; (2) Probation and a period of incarceration in county jail not exceeding 364 days as a condition of probation; (3) incarceration in state prison in the custody of Department of Corrections for a period not more than six years; or (4) a “split” sentence of incarceration and probation/community supervision.

For split sentences, the term of incarceration in any facility other than probation or community correction must be between one and four years. The combined maximum sentence of incarceration, probation, and community restitution is six years.³⁸ In all cases, the length of probation and incarceration sentences granted under YOA cannot exceed the maximum statutory sentence for the underlying offense.³⁹

While permitting the state to reimpose incarceration if the individual violates their probation, Florida’s YOA, as a hybrid system, still appears to reduce incarceration by the limits it imposes on the duration of both probation and incarceration sentences. For example, per § 958.14, if the individual completes the sentenced year(s) of incarceration under YOA and then commits a low-level technical violation while on probation and is reincarcerated as a result, the total duration of incarceration (original incarceration sentence + reincarceration for technical violation of probation sentence for the original offense) cannot exceed six years.⁴⁰

Table 5. Florida YOA: Sentencing Provisions

Limits on Fines & Fees	Are fines and fees prohibited or limited for youth under the hybrid statute?	
Limits on Incarceration	Does the hybrid statute preclude or limit the length of a term of incarceration?	
Limits on Probation	Does the hybrid statute limit the length of a term of probation?	
Mandatory Minimums Obviated	Does the hybrid statute obviate mandatory minimum sentences for eligible youth?	

6. Post-Sentencing Provisions

Under Florida’s YOA, the Department of Corrections must designate separate institutions and programs for youth sentenced as youthful offenders and provide a special training program for staff to operate these institutions and programs.⁴¹ Currently, Florida has separate institutions for both juveniles sentenced as youthful offenders under YOA per waiver provisions (ages 14 to 17) and emerging adults sentenced under YOA or designated by the Department as youthful offenders (ages 18 to 24). The emerging adults sentenced under YOA (or designated by the Department as “youthful offenders”) are housed in special facilities within the adult correctional system with the exception of special circumstances.⁴²

Florida law also requires the Department of Corrections to develop and implement a “basic training program” (BTP) for youth designated by the court or the Department as youthful offenders under the YOA.⁴³ The stated purpose of BTP is “diversion from lengthy incarceration when a short ‘shock’ incarceration could produce the same deterrent effect.”⁴⁴ The BTP is a structured disciplinary program that lasts a minimum of 120 days and is based upon a military basic training model with marching drills, a strict dress code, manual labor, and physical training with obstacle courses. Florida’s YOA, thus, models its specialized corrections for emerging adults

mainly after the juvenile “boot camp” model that research has found to be ineffective in reducing recidivism and fostering positive life outcomes for young people.⁴⁵

In addition to the military basic training program, the statute requires provision of training in decision making and personal development, high school equivalency diploma and adult basic education courses, drug counseling, and other rehabilitation programs.⁴⁶

When youth start their YOA incarceration sentences, the Department of Corrections screens them for the basic training program, using the following criteria: having no physical limitations that preclude participation in strenuous activity, not being impaired; not having been previously incarcerated in a state or federal correctional facility; and potential to benefit from the rehabilitative aspects of “shock” incarceration. If the department selects the youth for the basic training program, it must request formal approval from the sentencing court for placement in the program. This formal approval is required even if the person is designated a youthful offender judicially at the sentencing. We were told anecdotally that in practice many judges indicate that they will not allow for BTP participation in their initial YOA disposition and sentencing decision. If the youth is classified as a youthful offender by the department (as opposed to by the sentencing

court) and selected to participate in BTP, the department must also notify the state attorney.⁴⁷

The statute also allows the court to sentence an emerging adult under the YOA to a county-operated “youthful offender boot camp” separate from juveniles.⁴⁸

Under the YOA, a youth in the custody of the Department of Corrections “shall be required to participate in work assignments, and in career, academic, counseling, and other rehabilitative programs,” including educational programs, career and job training, life and socialization skills training, and prerelease orientation and planning.⁴⁹ Despite these statutory provisions, a public defender we interviewed noted that these youthful offender facilities are not altogether different from adult facilities. Colloquially called “Gladiator Camps,” these facilities are often viewed as dangerous and violent places, where “tough-guy mentality” dominates.

A positive feature of Florida’s YOA is the possibility of “extension of limits of confinement,” which allows the Department to authorize youth assigned youthful offender status to leave the place of confinement for a prescribed period of time to arrange for employment or for suitable residence for use upon release, to work at paid employment, participate in an educational or training program, or to serve in a public service program.⁵⁰ If effectively implemented, this provision can be instrumental in preparing youth for reentry and transition to adulthood in their communities. The statute excludes youth convicted of sexual battery from this discretionary “extension of limits of confinement.”⁵¹

According to the 2021-2022 annual report of the Department of Corrections, out of several youthful offender facilities, Lake City Correctional Facility has the highest number of youths in custody who are designated as youthful offenders. In fiscal year 2021-2022, out of the total of 1,104 youth

who were assigned as youthful offenders in these facilities, 402 (36%) were designated as youthful offenders by the court, while the remaining were assigned by the Department of Corrections.⁵² In comparison, in 2009, out of the 2,697 young people who were admitted to the custody of Department of Corrections, 696 (26%) were sentenced as a youthful offender by a trial court and 2,001 (74%) were designated as a youthful offender by the Department of Corrections after admission.⁵³ According to the same report, there were a total of 4,225 individuals serving sentences as youthful offenders in the custody of Department of Corrections as of June 30, 2009.⁵⁴ The significant decrease (59%) in the total number of individuals incarcerated as youthful offenders in Florida between 2009 – 2022 is promising.⁵⁵

The significant decrease (59%) in the total number of individuals incarcerated as youthful offenders in Florida between 2009 – 2022 is promising.

YOA requires the Department of Corrections to develop a system for tracking recidivism, including, rearrests and recommitment of individuals designated youthful offenders and report it annually. According to its most recent annual report (2021–22), of 622 individuals who were less than 21 years of age at admission and were less than 24 years of age at their release in 2018 with a youthful offender provision, 74.4% were rearrested and 30.1 % were returned to prison within three years of release.⁵⁶ In comparison, on average 21.2% of adults of all ages who were released in 2018 returned to prison within three years of release. The inefficacy of the boot camp model YOA adopts and the lack of meaningful record protection provisions in the YOA to enable







impacted youth to achieve key milestones of adulthood (e.g., employment, safe housing, civic engagement) without the burden of criminal records upon release appear to be important factors contributing to the higher recidivism rate for youth incarcerated as youthful offenders.

If a youth allegedly violates the terms of their YO sentence, they can be prosecuted for such violation, or alternatively (if the violation was also a stand-alone crime), be brought up on new charges applying to that crime.⁵⁷ If an individual allegedly commits a low-level technical violation of the terms of their probation under YOA, then the sentencing court can decide to commit the youth to the custody of the Department of Corrections for additional incarceration, for a period no longer than six years (or up to the statutory maximum sentence for the original offense if it is less than six years).⁵⁸ However, any substantive legal violation – including any new criminal charge of any level – could result in being sentenced up to the statutory maximum for the original offense (exceeding six years).

On the other hand, successful participation of the individual in the youthful offender program

may result in a recommendation to the court for modification or early termination of probation, community control, or the imprisonment sentence at the discretion of the court.⁵⁹ Further, under § 958.06, “the court, upon motion of the defendant, or upon its own motion, may within 60 days after imposition of sentence suspend the further execution of the sentence and place the defendant on probation in a community control program upon such terms as the court may require.” Appellate courts found that the court has “no authority to deny release on probation” to an individual who has successfully completed the youthful offender program.⁶⁰ The Department of Corrections adopts rules defining criteria for successful participation including academic and vocational training and “satisfactory adjustment.” Based on the recommendation of the Department of Corrections, the modification of the sentence may include termination of incarceration and imposition of a term of probation, which, including the term of incarceration served, may not exceed the original sentence imposed.⁶¹ These post-sentencing provisions allow a Florida youthful offender sentence to be determinate in its overall length, but indeterminate in exactly how much incarceration time it involves.

Table 6: Florida YOA: Post-Sentencing Provisions

Special Custody	Is there a specialized correctional unit for emerging adults incarcerated under the hybrid statute?	
Juvenile Custody	Can emerging adults incarcerated under the hybrid statute be committed to juvenile corrections and avoid adult corrections?	
Juvenile Probation	Can emerging adults placed on community supervision under the hybrid statute remain under the supervision of juvenile probation agency?	
Court Involvement	Does the court maintain jurisdiction and hear any alleged post-sentencing violations?	
Early Termination	Is there an opportunity to shorten the period of probation or confinement if the young person is doing well?	
Support Services	Does the hybrid statute require mandatory provision of support services to eligible youth?	

Once the sentence is completed, the statute requires development of a comprehensive transition and post-release plan by a team consisting of a transition assistance officer, a classification officer, an educational representative, a health services administrator, a probation and parole officer, and the young person.⁶²

7. Record Protection Provisions

The adjudication of guilt is entered as a conviction by default in a YOA case in Florida. However, the statute gives the court discretion to withhold adjudication of guilt if the youth is sentenced to probation or “community control” program, and not to incarceration.⁶³

When the Court withholds an adjudication of guilt, the youth avoids a conviction and the negative consequences that flow from a criminal conviction. However, a withhold of adjudication still appears on a criminal record unless the youth gets the record sealed after the conclusion of the sentence. In this way, a withhold of adjudication is similar to the “set-aside” provision in District of Columbia’s Youth Rehabilitation Act, but more limited in its scope.



It is worth noting that rules of criminal procedure in Florida *generally* allow the sentencing judge to withhold an adjudication of guilt, whether or not YOA applies, if the judge sentences the defendant to probation.⁶⁴ However, the Florida law imposes additional limitations on this general judicial

sentencing discretion for certain offenses.⁶⁵ The benefit of YOA is that it expands the courts’ sentencing discretion to withhold an adjudication of guilt by circumventing these additional limitations. For instance, while driving under the influence and vehicular manslaughter offenses are ineligible for withholding adjudication under the Florida law, appellate courts affirmed that the trial court can withhold adjudication when sentencing a youth under the YOA for such offenses.⁶⁶

As a general rule, adjudication cannot be withheld if the court imposed a sentence of incarceration. However, adjudication can be withheld if incarceration is imposed under YOA as a *condition* of probation sentence in cases when probation is revoked and the term of possible incarceration does not exceed 364 days.⁶⁷

Other than the enhanced discretionary withholding of adjudication provision for young people designated youthful offenders and sentenced to probation, the YOA does not provide any specific record protection provision for youth sentenced under the statute. Therefore, for the most part, records of youth under YOA receive the same treatment of records in a non-YOA case: “[t]he records relating to the arrest, indictment, information, trial, or disposition of alleged offenses of a person adjudicated a youthful offender under this act shall be subject to such sealing, expunction, and control of dissemination as are the criminal justice records of other adult offenders under applicable provisions of law.”⁶⁸

Table 7. Florida YOA: Record Protection Provisions

Automatic Record Protection	Can a youth automatically avoid a formal record of conviction if the term under the hybrid statute ends successfully?	
Other Record Protection	If it is not automatic, does the hybrid statute offer other means of record protection, such as a petition to expunge or seal records of a conviction?	 ^a

^a YOA provides for the same treatment of records as would otherwise apply in a non-YOA case except for an enhanced discretionary withholding of adjudication provision when the young person is sentenced to probation. Fla. Stat. § 958.04(2)(a); §958.13.

ENDNOTES - FLORIDA

- 1 Fla. Stat. § 785.03(7).
- 2 Fla. Stat. § 985.227. But see, *Roper v. Simmons*, 543 U.S. 551 (2005) (ruling the death penalty to be unconstitutional for youth under the age 18).
- 3 Fla. Stat. § 775.
- 4 Fla. Stat. § 775.087.
- 5 Florida's Youthful Offender Act is codified at Fla. Stat. § 958.04 through § 958.15.
- 6 Fla. Stat. § 958.04(1)(a-c),
- 7 Fla. Stat. § 985.
- 8 Fla. Stat. § 958.04(1)(a).
- 9 Fla. Stat. § 985.556.
- 10 Fla. Stat. § 958.04(1)(a).
- 11 Fla. Stat. § 958.04(1)(b).
- 12 Fla. Stat. § 958.045 (8)(a).
- 13 Fla. Stat. § 958.04; H.R.J. Res. 7137, Reg. Sess., 2008 Fla. Laws 2008-250 § 7.
- 14 Fla. Stat. § 958.04; H.R.J. Res. 7137, Reg. Sess., 2008 Fla. Laws 2008-250 § 7.
- 15 Under the substantive due process (14th Amendment Equal Protection Clause), the rational basis test is whether the challenged statute bears a rational relation to a permissible legislative objective.
- 16 *Jackson v. State*, 137 So. 3d 470 (Fla. Dist. Ct. App. 2014)
- 17 Fla. Stat. § 958.04(1)(c).
- 18 *Simpkins v. State*, 784 So. 2d 1203 (Fla. Dist. Ct. App. 2001).
- 19 Fla. Stat. § 958.04(1)(c).
- 20 Fla. Stat. § 985.565(4)(a)(2) provides 3 sentencing options at the discretion of the court for most children charged as an adult per waiver provisions, by order of harshness: (1) sentence as an adult; (2) sentence as a "youthful offender" under YOA; or (3) sentence as a juvenile.
- 21 See *State v. Lezcano*, 586 So. 2d 1287, 1991 Fla. App. LEXIS 9740 (Fla. 3rd DCA 1991).
- 22 Fla. Stat. § 958.04.
- 23 Fla. Stat. § 958.045; *Thomas v. State*, 825 So.2d 1032 (Fla. Dist. Ct. App. 2002).
- 24 *Jackson v. State*, 191 So.3d 423 (Fla. 2016).
- 25 1980 Fla. Laws 80-321 § 1.
- 26 Fla. Stat. § 958.04. In the original version of YOA enacted in 1978, through 1980 amendments of the Act, subsection (2) of the statute had read, "(2) A person shall be classified a youthful offender if such person meets the criteria of subsection (1) and such person (a) Has not previously been found guilty of a felony, whether or not the adjudication of guilt has been withheld; or (b) Has not been adjudicated delinquent for an act which would be a capital, life, or first degree felony if committed by an adult." [Emphasis added]. The use of "shall" in § 958.04(2) made application of the YOA mandatory before subsequent amendments made it discretionary. *Newberry v. State*, 421 So. 2d 546 (Fla. Dist. Ct. App. 1982).
- 27 Comm. Subst. to S. 55, Reg. Sess., 2008 Fla. Laws 85-228 § 20.
- 28 See *Goodson v. State*, 392 So. 2d 1335 (Fla. Dist. Ct. App. 1980).
- 29 *McKinney v. State*, 27 So.3d 160, 161 (Fla. Dist. Ct. App. 2010) cited by *Pressley v. State*, 73 So. 3d 834, 837 (Fla. Dist. Ct. App. 2011).
- 30 *Pressley v. State*, 73 So. 3d at 837 (Fla. Dist. Ct. App. 2011), citing *McKinney v. State*, 27 So.3d (Fla. Dist. Ct. App. 2010) at 161; *Nolte v. State*, 726 So.2d 307, 309 (Fla. Dist. Ct. App. 1998).
- 31 Fla. Stat. § 958.07.
- 32 *Roper v. Simmons*, 543 U.S. 551 (2005) (referencing the malleability of the defendant's young brain and fact that character is not beyond redemption).
- 33 Fla. Stat. § 958.045 (8)(a).
- 34 Florida Department of Corrections, *Annual Report 2021-22, 2023*, 28, <http://www.dc.state.fl.us/pub/annual/2021/Annual%20Report%2021-22.pdf>. The data shared by the Department of Corrections exclude those who are designated youthful offenders judicially and not sentenced to incarceration.
- 35 *Peterson v. State*, 453 So. 2d 512 (Fla. Dist. Ct. App. 1984).
- 36 Fla. Stat. § 958.04(1)(b).
- 37 Fla. Stat. § 958.04. See also *Gallimore v. State*, 100 So.3d 1264 (Fla. Dist. Ct. App. 2012); *State v. Drury*, 829 So. 2d 287 (Fla. Dist. Ct. App. 2002).
- 38 *Lampkins v. State*, 798 So.2d 883 (Fla. Dist. Ct. App. 2001).
- 39 Fla. Stat. § 958.04(2)(a)-958.04(3).
- 40 6-year incarceration limit does not apply if reincarcerated for a "substantive" violation of probation requirements. *Christian v. State*, 84 So. 3d 437, 444 (Fla. Dist. Ct. App. 2012).
- 41 Fla. Stat. § 958.11.
- 42 Fla. Stat. § 958.11 (3).
- 43 Fla. Stat. § 958.045(1).
- 44 Fla. Stat. § 958.045(2).
- 45 U.S. Department of Justice, "Practice Profile: Juvenile Boot Camps."
- 46 Fla. Stat. § 958.045(1)(a).
- 47 Fla. Stat. 958.045(2).
- 48 Fla. Stat. § 958.046.
- 49 Fla. Stat. § 958.12(1).
- 50 Fla. Stat. § 958.09 (1).
- 51 Fla. Stat. § 958.09 (2).
- 52 Florida Department of Corrections, *Annual Report 2021-22*, 28.

53 Florida Senate Committee on Criminal Justice, *Youthful Offender Designation in the Department of Corrections*, 2010, 6, <https://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-114cj.pdf>.

54 Florida Senate Committee on Criminal Justice, 4.

55 Florida Senate Committee on Criminal Justice, *Youthful Offender Designation in the Department of Corrections* (comparing data on total number of youthful offender admissions to/assignments in DOC during the fiscal years 2009 and 2022).

56 Florida Department of Corrections, *Annual Report 2021-22*, 28.

57 In *Boynton v. State*, 896 So. 2d 898 (Fla. Dist. Ct. App. 2005), an individual who escaped from the Youthful Offender facility was charged with new crimes related to the escape (or charged with the crime of escape), rather than being charged for violating his YOA sentence.

58 Fla. Stat. § 958.14.

59 Fla. Stat. §958.04 (2)(d).

60 *Baker v. State*, 705 So. 2d 76, 78 (Fla. Dist. Ct. App. 1997).

61 Fla. Stat. §958.04 (2)(d).

62 Fla. Stat. § 958.12.

63 Fla. Stat. § 958.04(2)(a).

64 See, Fla. R. Crim. P. § 3.670 providing, for all criminal cases, that “where allowed by law, the judge may withhold an adjudication of guilt if the judge places the defendant on probation.” In practice, a withhold is typically made available to individuals charged with an offense for the first time.

65 See Fla. Stat. § 316.656; § 849.25(2) & (3); § 893.135(3).

66 *State v. Gibron*, 478 So.2d 475 (Fla. 2d DCA 1985); *Sloan v. State*, 884 So. 2d 378 (Fla. Dist. Ct. App 2004).

67 Fla. Stat. § 958.04(2)(b). See, *State v. Oates*, 610 So. 2d 522 (Fla. Dist. Ct. App. 1992).

68 Fla. Stat. § 958.13(1).

Painter

By Yester

Painter, change the color of my painting
Give it a little bit of color 'cause it's dark
Put some sky blue so I can have a taste of liberty
Erase these walls that hold me down
And add some wings to me
To fly far away from my captivity
'Cause my daily living is sad and full of darkness
And many rain clouds gather around me
Leaving me wet with pain and cold in my soul
Paint a brilliant sun in my life so I can get dry
Because I've been trying to get dry with this cold breeze
But instead of getting dry, I get more cold
Add the word home in my road
And the word family in my future
And I'll be grateful the rest of my entire life



New York’s “Youthful Offender” Law: A Potential for Expansion of the Hybrid System for Emerging Adults

I. LEGAL LANDSCAPE

New York’s criminal legal system is infamous for the “Rockefeller Drug Laws,” enacted in 1973 under then-Governor Nelson Rockefeller, that mandated harsh prison terms for possession and sale of even relatively small amounts of drugs. These laws became a national model that shifted the response to drug use disorders from the medical and public health systems to the criminal legal systems. It also set the stage for the expansion of mandatory minimum sentences to a broad range of criminal offenses that exists today.¹

In recent years, New York has accomplished some significant criminal legal system reforms. Although the Rockefeller Drug Laws technically remain on the books, significant changes have been made over the years, most notably in 2009 with statutory revisions that allow for judicial discretion.² Other justice reforms include changes in policies and practices regarding cash bail³ as well as technical parole violations (known as the “Less Is More Act”).⁴

New York has also achieved significant reforms specifically to the youth justice system: First, New York implemented the “Close to Home” initiative

in New York City, removing youth from adult-type prisons far from where they lived, and creating more developmentally appropriate residential placements in the city so that youth can be near their families and communities.⁵ Second, the State raised the upper age of juvenile jurisdiction for most cases (but not all) from the 16th to the 18th birthday and the lower age from 7 up to 12 (for almost all offenses).⁶

There is now a push to expand and improve New York’s Youthful Offender (YO) Law, with pending legislation entitled *The Youth Justice and Opportunity Act* (YJ&O).⁷ This proposal seeks to: (a) create a new “young adult status” with benefits similar to the YO law that expands eligibility from the 19th to the 26th birthday; (b) expand the types of cases where YO law would be automatically applied; (c) expand the mitigating factors that judges can consider when deciding whether to grant YO and Young Adult Status in serious cases; (d) allow young people to receive YO and Young Adult Status (YAS) more than once in felony cases and (e) provide judges the discretion to waive fees and surcharges.⁸ YJ&O also includes a provision that would permit retroactive re-sentencing to YO and YAS.

II. AN OVERVIEW OF NEW YORK’S YOUTHFUL OFFENDER LAW

New York’s Youthful Offender Law (YO) impacts only the youngest emerging adults, by providing an opportunity to be sentenced under this special provision if the youth is accused of committing a crime before their 19th birthday. In addition to age, eligibility is limited by both certain types of

offenses and criminal history. The YO status is granted by the judge at the time of sentencing and there are both automatic and discretionary provisions. When judges are authorized to use their discretion (in cases that do not involve first-time, misdemeanor offenses), the statute explicitly

lists criteria to guide a judge’s determination. There are no YO incarceration sentences that can exceed 4 years.

A few of the distinguishing elements of the New York YO Law are that a youth sentenced as a YO is not convicted, but rather adjudicated with the conviction “set aside,” and further, court proceedings can be closed to the public. The official records are sealed for civil circumstances, including housing and employment background checks, though they are visible to some educational institutions. These provisions help alleviate the lifelong collateral consequences

that flow from an adult criminal prosecution and conviction.

The New York YO Law has one new feature: As amended in 2021,⁹ people who were eligible but previously denied YO status and who have not been convicted of another crime in at least five years since their original sentence or incarceration, may reapply *retroactively* for YO status. This enables them to have a conviction vacated and replaced with a youthful offender finding (an adjudication) and avoids disqualifications that flow from a criminal conviction for certain jobs, appointments, and licenses.

III. KEY PROVISIONS

1. Eligibility – Age

The New York Youthful Offender Law can apply to youth who allegedly committed a criminal offense from their 13th to the 19th birthdays and is applied to youth being prosecuted as an adult in adult court.¹⁰ For the younger youth (under age 17), who are typically prosecuted and sentenced as a juvenile for less serious offenses, the YO statute provides some relief from the harsh sentencing that can be imposed by the adult court for the most serious offenses. So, for example, the YO Law can apply to a 13-year-old designated a “Juvenile Offender” who has been convicted of murder in the 2nd degree or for sexually motivated felonies. For 14- and 15-year-olds, YO can also apply in Murder in the 2nd degree cases as well a list of other serious offenses. The subsection below will

provide details on the types of cases which apply to youth who commit an offense between the 16th and 19th birthdays.

2. Eligibility – Offense

For youth who are convicted of a criminal offense that occurred when they were at least 16 years old but under age 19, there are two categories of circumstances in which they are *ineligible* for YO:

- (1) *Type of alleged offense*: The statute lists certain offenses as exceptions to eligibility, namely, class A-I or A-II felony, armed felony, rape in the 1st degree, criminal sexual act in the 1st degree, and aggravated sexual abuse.¹¹ But the statute provides the court some discretion to still

Table 1. New York YO Law: Eligibility – Age


Lower Age Limit	Birthday at which a youth becomes eligible for the hybrid statute	13
Upper Age Limit	Birthday up to which a youth remains eligible for the hybrid statute	19
No Age Tiers for Emerging Adults	Are different age groups within the emerging adult range treated the same under the hybrid statute?	

Table 2. New York YO Law: Eligibility – Offense

All Offenses Included	Are all offenses eligible under the hybrid statute for emerging adults?	✘
No Exclusion for Prior Case under Hybrid Statute	Can youth with a prior case under the hybrid statute be eligible again for a subsequent offense?	✘ ^a
No Exclusion for Other Criminal History	Are youth with <i>any other</i> criminal history eligible for the hybrid statute?	✘

^a A prior misdemeanor does not have an impact on eligibility, but a prior felony makes a youth ineligible for YO status.

find a youth eligible even when charged with some of these offenses (all but A-I and A-II felonies), when determining that either there are mitigating circumstances that bear directly on the manner in which the crime was committed or that the youth was not the sole participant, and their participation was “relatively minor.”¹² If the court decides a youth is eligible after this determination, the court must make a statement on the record for the reasons and a transcript must be forwarded to the state division of criminal justice services.¹³

(2) *Prior criminal history*: The YO statute cannot be applied in cases where a youth has a prior conviction and sentence for a felony or a prior adjudication as a youthful offender following a conviction of a felony.¹⁴ There is no discretion provided to the court under these circumstances involving prior felony convictions.

3. Application

The determination of whether an eligible youth will be sentenced as a youthful offender in New York occurs upon conviction. First, the court must order a “pre-sentence investigation” to be received before pronouncing a sentence. Then, if the conviction is for a first misdemeanor, the court must impose a YO sentence.¹⁵ For other types of cases (felonies), the court must consider

whether “the interest of justice” would be served “by relieving the eligible youth from the onus of a criminal record and by not imposing an indeterminate term of imprisonment of more than four years.”¹⁶









If the youth is convicted of more than one crime at once and the court determines to grant YO for any of the convictions, the court must determine that it is in the interest of justice to apply the YO law for *all* the convictions.¹⁷

The YO law does not mention the role of the prosecutor or youth/defense attorney in the description of how the YO determination is made but, since it occurs at the time of sentencing, the parties have an opportunity to argue for or against the YO sentencing when there is judicial discretion.

In the case *People v. Rudolph*,¹⁸ the NY Court of Appeals held that judges *must* make a YO determination in *every* case in which the youth is eligible, even if a youth/defense attorney failed to request it or forgoes it as part of a plea bargain.

In 2021, the YO law was amended¹⁹ and now provides an opportunity to apply for YO status *retroactively*, for anyone otherwise eligible who had previously been denied YO status and has not been convicted of any other crimes in at least five years since either the imposition of the sentence

Table 3. New York YO Law: Application

Juvenile Court	Does the juvenile court decide whether to apply the hybrid statute?	
Presumptive Application	Is the hybrid statute presumed to apply to youth who meet the eligibility requirements?	 ^a
Judge Initiates	Can the judge prompt application of the hybrid statute at own initiative?	 ^b
Prosecutor Initiates	Can the prosecutor initiate application of the hybrid statute?	 ^c
Youth Initiates	Can the youth (defense) request application of the hybrid statute?	 ^c
No Prosecutorial Consent Requirement	Can the determination of whether to apply the hybrid statute be made without the prosecutor's consent?	
Final Decision: Court	Does the court have the final decision on granting the application of the hybrid statute?	
Criteria in Statute	Does the hybrid statute explicitly set the criteria for granting its application?	

^a YO status is required if a youth is eligible under the statute and is charged with a misdemeanor offense; there is no such presumption in felony cases.

^b Not only can a judge initiate, the NY Court of Appeals has ruled that judges *must* make a YO determination in *every* case in which the youth is eligible, even if a youth/defense attorney failed to request it or forgoes it as part of a plea bargain. *People v. Rudolph*, 21 N.Y. 2d 497 (2013).

^c Prosecutors and youth/defense attorneys can argue for or against a YO sentence but the court makes the determination at sentencing.

or release from incarceration. Under these circumstances, the statute provides a robust list of factors that a judge must consider, including:

- a) Whether relieving the individual from the onus of a criminal record would facilitate rehabilitation and successful reentry and reintegration in society;
- b) The manner in which the crime was committed;
- c) The role of the individual in the crime;
- d) The individual's age at the time of the crime;
- e) The length of time since the crime was committed;
- f) Any mitigating circumstances at the time of the crime;
- g) The individual's criminal record;
- h) The individual's attitude toward society and respect for the law; and

- i) Evidence of rehabilitation of living a productive life including, but not limited to, participation in educational and vocational programs, employment history, alcohol and substance use treatment, and family and community involvement.²⁰




4. Procedural Provisions

The New York YO Law does not require youth to plead guilty, and it also does not prohibit youth from requesting a jury trial. As noted above, the judge makes the determination of YO status after a conviction.

There are some confidentiality provisions that apply in YO cases but only if those cases do *not* involve an alleged felony:

- a) In cases where a youth *appears* to be eligible for YO status and who has not previously been adjudicated a YO or

Table 4. New York YO Law: Procedural Provisions

No Plea Requirement	Can youth be eligible for the hybrid statute without having to enter a plea of guilty?	
Closed Session	Are at least some proceedings for emerging adults under the hybrid statute closed to the public?	 ^a
Jury Trial	Is a jury trial allowed under the hybrid statute?	

^a Only misdemeanor cases are closed to the public.

convicted of a crime, any accusatory instrument filed with the court is sealed.

- b) Court hearings involving youth who *appear* to be eligible for YO status (e.g., at arraignment) may be conducted in private at the discretion of the court and with the youth’s consent.

5. Sentencing Provisions

The YO law authorizes different dispositions in YO cases depending on the type of case: In misdemeanor cases, the court must impose a sentence authorized for the offense in non-YO cases but, when this is the youth’s first offense, the court must not impose a definite or intermittent sentence of imprisonment with a term for more than six months.²¹

In YO felony cases, the court must impose a sentence available in class E felony cases, capping the period of incarceration to the maximum of four years.²²

The YO statute does not limit or eliminate the imposition of fines or fees but a separate sentencing reform legislation passed in 2020 applies to YO cases. This new provision authorizes a judge to waive fees for youth who committed an offense under age 21 if the court finds that the fine “would work an unreasonable hardship on the defendant, his or her immediate family, or any other person who is dependent on such defendant for financial support or, . . . the imposition of such surcharge or fee would adversely impact the defendant’s reintegration into society, or [the waiver is in] the interests of justice.”²³

Table 5. New York YO Law: Sentencing Provisions





Limits on Fines & Fees	Are fines and fees prohibited or limited for youth under the hybrid statute?	
Limits on Incarceration	Does the hybrid statute preclude or limit the length of a term of incarceration?	
Limits on Probation	Does the hybrid statute limit the length of a term of probation?	
Mandatory Minimums Obviated	Does the hybrid statute obviate mandatory minimum sentences for eligible youth?	

Table 6: New York YO Law: Post-Sentencing Provisions

Special Custody	Is there a specialized correctional unit for emerging adults incarcerated under the hybrid statute?	✘
Juvenile Custody	Can emerging adults incarcerated under the hybrid statute be committed to juvenile corrections and avoid adult corrections?	✘
Juvenile Probation	Can emerging adults placed on community supervision under the hybrid statute remain under the supervision of juvenile probation agency?	✘
Court Involvement	Does the court maintain jurisdiction and hear any alleged post-sentencing violations?	✔
Early Termination	Is there an opportunity to shorten the period of probation or confinement if the young person is doing well?	✘
Support Services	Does the hybrid statute require mandatory provision of support services to eligible youth?	✘

6. Post-Sentencing Provisions

Younger youth sentenced as a YO, such as what is defined as a “Juvenile Offender” and “Adolescent Offender” under New York law, are supervised and/or housed in juvenile facilities. But older youth (emerging adults) sentenced as a youthful offender in New York are served by the adult criminal legal system departments in terms of community supervision and incarceration, without any special provisions regarding early termination²⁴ or mandated support services, and there is no designated correctional facility for youth adjudicated as YOs in the State. The courts remain as involved post-conviction as in any other adult case (e.g., conducting hearings if there are alleged violations of community supervision).

7. Record Protection Provisions

When a youth is adjudicated as a YO, the conviction is automatically substituted by a “youthful offender adjudication.”²⁵ A youthful offender adjudication is *not* deemed a conviction and therefore does not adversely affect a youth’s access to public employment, professional licensure, housing, and public services.²⁶

*A youthful offender adjudication is not deemed a conviction and therefore does not adversely affect a youth’s access to public employment, professional licensure, housing, and public services.*²⁶

As discussed above, all official records, including those filed with the court and the police, relating to a case in which the youth has been adjudicated a YO are confidential (sealed) and may not be made available to the public (outside of law enforcement and the criminal legal system). There are provisions that allow some records to be visible to certain educational institutions but for limited purposes, such as to further the student’s educational plan, successful school adjustment and reentry into the community.²⁷

These provisions help alleviate the lifelong collateral consequences that flow from an adult criminal prosecution and conviction.

Table 7. New York YO Law: Record Protection Provisions

Automatic Record Protection	Can a youth automatically avoid a formal record of conviction if the term under the hybrid statute ends successfully?	✔
Other Record Protection	If it is not automatic, does the hybrid statute offer other means of record protection, such as a petition to expunge or seal records of a conviction?	N/A

ENDNOTES - NEW YORK

1 S. 7872, 2021-2022 Leg. Sess. (N.Y. 2022). (bill pending that would eliminate mandatory sentences in New York) (last visited February 3, 2023). For information about the coalition working on the advocacy efforts to pass this Bill, see “Our Demands,” Communities Not Cages, n.d., <https://www.communitiesnotcagesny.org/our-demands>.

2 Jeremy W. Peters, “Albany Reaches Deal to Repeal ’70s Drug Laws,” *The New York Times*, March 25, 2009, <https://www.nytimes.com/2009/03/26/nyregion/26rockefeller.html>.

3 For a description of the bail reforms, see Taryn A. Merkl, “New York’s Latest Bail Law Changes Explained,” *Brennan Center for Justice* (blog), April 16, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/new-yorks-latest-bail-law-changes-explained>; for a report on the implementation of the bail reform, see Olive Lu and Michael Rempel, *Two Years In: 2020 Bail Reforms in Action in New York State* (New York: Data Collaborative for Justice at John Jay College of Criminal Justice, 2022), https://datacollaborativeforjustice.org/wp-content/uploads/2022/12/Two_Years_In_Bail_Reforms_New_York.pdf.

4 For more information, see “What You Need to Know About the Less Is More Act,” *The Legal Aid Society* (blog), 2022, <https://legalaidsoc.org/get-help/parole/what-you-need-to-know-about-the-less-is-more-act/>; see also Corrections & Community Reentry Committee et al., *Report on Legislation by the Corrections and Community Reentry Committee, Criminal Courts Committee, Criminal Justice Operations Committee, and Mass Incarceration Task Force*, A. 5493 / S. 1343 (New York: New York City Bar Association, 2021), https://s3.amazonaws.com/documents.nycbar.org/files/2020648-LessIsMoreReport_FINAL_2.21.20.pdf; see also Columbia University Justice Lab and Independent Commission on New York City Criminal Justice and Incarceration Reform, *The Enormous Cost of Parole Violations in New York* (New York, 2021), https://justicelab.columbia.edu/sites/default/files/content/Cost_Parole_Violations_in_New_York.pdf?nocache=1.

5 For more information about the Close to Home Initiative, see Jason Szanyi and Mark Soler, *Implementation of New York’s Close to Home Initiative: A New Model for Youth Justice* (Washington, DC: The Center for Children’s Law and Policy, 2018), <https://cclp.org/wp-content/uploads/2018/02/Close-to-Home-Implementation-Report-Final.pdf>; see also Division of Youth Development and Partnerships for Success, “Close to

Home,” *New York State Office of Children and Family Services* (blog), n.d., <https://ocfs.ny.gov/programs/rehab/close-to-home/>.

6 Children between the ages of 7 and 11 charged with any homicide offense remain subject to family court prosecution.

7 S. 3426, 2023-2024 Leg. Sess. (N.Y. 2023).

8 Youth Justice NY, the coalition of organizations supporting *The Youth Justice and Opportunity Act*, has a website which provides a description of each of the proposed changes to the current YO Law: See <https://actforyouthjusticenyc.org>.

9 S. 282 / A. 6769.

10 N.Y. CPL § 720.10.

11 N.Y. CPL § 720.10(2)(a).

12 N.Y. CPL § 720.10(3).

13 N.Y. CPL § 720.10(3).

14 N.Y. CPL § 720.10(2)(b) and (c).

15 N.Y. CPL § 720.20(1)(b).

16 N.Y. CPL § 720.20(1)(a).

17 N.Y. CPL § 720.20(2).

18 21 N.Y.S.3d 497 (2013).

19 S. 282 / A. 6769.

20 N.Y. CPL § 720.20(5).

21 N.Y. YPL § 60.02(1).

22 N.Y. YPL § 70.

23 N.Y. CPL § 420.35(2-a).

24 While there is no special provision in New York’s “Youthful Offender” statute to shorten the period of probation or confinement if the young person is doing well, *all* individuals placed on probation in New York can be discharged early by a petition to court. N.Y. CPL § 410.90.

25 N.Y. CPL § 720.10 (4).

26 N.Y. CPL § 720.35 (1).

27 N.Y. CPL § 720.35 (2) & (3).

Resilient

By Antoine

Resilient is a strong word like education
A young man from Southeast
That's resilient in the making
Don't judge me on my past or my future situation
Judge me on my character
And not the hard times that I'm facing
I'm strong
I'm wise
I'm independent
I'm smart
My future is bright
My past looks dark
I read
I write
Go to class and succeed
My body is incarcerated
But my mind is totally freed!



South Carolina's Hybrid System for Emerging Adults:

An Emphasis on Specialized Corrections

I. LEGAL LANDSCAPE

South Carolina was, until recently, one of only a small number of states in the country that capped the juvenile justice system at the 17th birthday, automatically prosecuting and sentencing all 17-year-olds in the adult criminal legal system. This changed when Governor Nikki Haley signed a “Raise the Age” bill into law on June 6, 2016, expanding the juvenile court jurisdiction to many of the cases involving offenses that allegedly occurred before a youth’s 18th birthday. South Carolina’s Raise the Age Law includes some exceptions: Class A, B, C or D felony cases and any felony case that provides for 15 years or more of incarceration. When enacted, the Raise the Age law was applied prospectively to youth whose date of offense was on or after July 1, 2019.

South Carolina law provides no minimum age of juvenile jurisdiction.

South Carolina first enacted a Youthful Offender (YO) Law in 1968, making it one of the oldest hybrid systems in the country, and the current law can be applied to youth ages 17 to 24 (up to the 25th birthday) at the time of a conviction. In 2018, South Carolina was chosen as one of the “Restoring Promise” sites, an initiative of the Vera Institute of Justice and MILPA that seeks to improve conditions of confinement for emerging adults by “creating [correctional] housing units grounded in dignity.”¹ Vera and MILPA work in the South Carolina prisons where youth serve their YO sentences.

South Carolina has mandatory minimum sentences for adults, and the State also imposes a “three strikes” regime: For example, anyone convicted of a *third* “serious” offense or a *second* “most serious” offense (as those terms are defined in the statute) can receive life in prison without parole.²

II. AN OVERVIEW OF SOUTH CAROLINA'S YOUTHFUL OFFENDER LAW

South Carolina created a **Youthful Offender Law (YO)** in 1968 and there have been significant revisions made over the years, including a change in the official name to the “**Judge William R. Byars Youthful Offender Act**” in 2016, in honor of a former Family Court judge who also served as the director of both the South Carolina Department of Juvenile Justice and Department of Corrections.³ The Act can apply to youth convicted of crimes up to their 25th birthday for almost exclusively non-violent crimes (with two exceptions that are described below).

YO sentences are indeterminate in all cases except for burglary in the 2nd degree. The YO law provides significant discretion to the Department of Corrections to determine the length of the sentence served, if youth violated any terms of a conditional release and, if so, the punishment to be imposed.

Youth serve YO incarceration sentences at “minimum security institutions,”⁴ and are generally separated from others serving non-YO sentences. The Department of Corrections lists

four different institutions that currently house or serve youth sentenced as YOs: Turbeville, Trenton and Allendale for males, and Camille Graham for females.⁵

Youth are sentenced as a YO in adult criminal court without any confidentiality protections, but there

are provisions in the law that allow some records to be expunged five years after the sentence is completed.

Youth can only be sentenced as a YO once in their lifetime.

III. KEY PROVISIONS

1. Eligibility – Age

Unlike most hybrid systems, South Carolina marks the age of eligibility by *the time of the conviction*, not when a criminal offense occurred. So, if a youth is sentenced for committing a crime at age 21 but is not convicted until age 25 (for reasons that may or may not be in the youth’s control), then the youth is ineligible for YO status.


The YO statute can be applied to youth as young as 14, when youth are “bound over” or transferred from the juvenile system to adult court and are otherwise eligible under the YO statute.⁶ In this regard, South Carolina is following in the footsteps of other states, such as New York, by providing some relief from the harsh sentencing that would be imposed by the adult court on such young children. But our analysis of South Carolina’s YO statute will focus on the older youth, and, except for cases involving Burglary in the 2nd degree (as described below), the age eligibility requirements remain the same for all emerging adults.

2. Eligibility – Offense

Youth can be sentenced as a YO in South Carolina for only non-violent misdemeanor and felony offenses with a maximum potential sentence that does not exceed 15 years in prison. There are two exceptions, with the following felony offenses still eligible for a YO sentence: (1) Criminal Sexual Conduct with a minor with the 3rd degree⁷ (which can describe a consensual sexual act between a person 18 and over with a victim over age 14 and under age 16); and (2) Burglary in the 2nd degree,⁸ although the youth must be under age 21 at the time of the conviction (instead of under 25, as applied for all other offenses) and must serve a minimum sentence of incarceration of three years.

Having prior justice-system involvement does not bar a youth from being sentenced as a YO but a youth may only be sentenced as a YO *once*.




Table 1. South Carolina YO Law: Eligibility – Age

Lower Age Limit	Birthday at which a youth becomes eligible for the hybrid statute	14
Upper Age Limit	Birthday up to which a youth remains eligible for the hybrid statute	25 ^a
No Age Tiers for Emerging Adults	Are different age groups within the emerging adult range treated the same under the hybrid statute?	 b

^a A youth is eligible to be sentenced as a YO if *convicted* before the 25th birthday.

^b Cases involving Burglary in the 2nd Degree are only eligible for YO when youth are convicted before age 21 (rather than 25th birthday).

Table 2. South Carolina YO Law: Eligibility – Offense

All Offenses Included	Are all offenses eligible under the hybrid statute for emerging adults?	
No Exclusion for Prior Case under Hybrid Statute	Can youth with a prior case under the hybrid statute be eligible again for a subsequent offense?	
No Exclusion for Other Criminal History	Are youth with <i>any other</i> criminal history eligible for the hybrid statute?	









3. Application

In South Carolina, a decision about YO occurs after a conviction has entered and at a sentencing hearing in the adult criminal court. A prosecutor and youth/defense attorney can argue for or against a YO sentence, and include it as part of a plea deal, but the judge ultimately decides whether to sentence a youth as a YO. For older youth, at least 21 years old but younger than 25, a judge cannot impose a YO sentence to the

custody of the Department of Correction for an indefinite period without their written consent.⁹ Otherwise, consent of the youth to a YO sentence is not required.

The YO statute does not provide specific criteria for sentencing a youth as a YO. But the statute is generally understood to focus on rehabilitation, and as one law firm explains to potential clients on the firm’s website, “[w]hen we are young we

Table 3. South Carolina YO Law: Application

Juvenile Court	Does the juvenile court decide whether to apply the hybrid statute?	
Presumptive Application	Is the hybrid statute presumed to apply to youth who meet the eligibility requirements?	
Judge Initiates	Can the judge prompt application of the hybrid statute at own initiative?	
Prosecutor Initiates	Can the prosecutor initiate application of the hybrid statute?	
Youth Initiates	Can the youth (defense) request application of the hybrid statute?	 ^a
No Prosecutorial Consent Requirement	Can the determination of whether to apply the hybrid statute be made without the prosecutor’s consent?	
Final Decision: Court	Does the court have the final decision on granting the application of the hybrid statute?	
Criteria in Statute	Does the hybrid statute explicitly set the criteria for granting its application?	

^a If a youth is at least 21 years of age but less than age 25, the judge can impose an indeterminate YO incarceration sentence (not to exceed 6 years) *only if* the youth provides written consent. S.C. Code Ann. § 24-19-50(3).

may make a poor judgement call and, thankfully, the South Carolina legislature recognized that those mistakes should not necessarily define the rest of our lives. Hence, the Youthful Offender Act, or ‘YOA’ in South Carolina.”¹⁰ The YO statute indicates that a goal of a YO sentence is to provide “treatment,” which is defined as “corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youthful offenders; this may also include vocational and other training considered appropriate and necessary by the division.”¹¹

4. Procedural Provisions

The YO law requires that the youth be convicted before being eligible to receive a YO sentence, but this conviction can occur through a plea of guilty or nolo contendere (choosing not to contest the conviction but without admitting guilt).¹² The proceedings are held in adult criminal court and are open to the public.

5. Sentencing Provisions

If sentenced as a YO, the court has the following options:

- 1) Suspend a prison sentence and place the youth on probation.¹³
- 2) Send the youth to the custody of the Department of Corrections for “an observation and evaluation period of not more than sixty days,” for “findings and recommendations for sentencing.”¹⁴
- 3) Sentence the youth indefinitely to the Department of Corrections for

“treatment and supervision” for a period not to exceed six years. But as explained above, youth must consent to this sentence in writing if ages 21 through 24 at the time of the conviction. Also, if the youth is convicted before their 21st birthday of Burglary in the 2nd Degree and sentenced as a YO, the youth must be incarcerated for at least 3 years.

Alternatively, the Court can decide that the youth “will not derive benefit from treatment” and may impose any other sentence allowed under South Carolina’s penalty provisions (outside of the YO provisions).¹⁵ The one alternative penalty provision that appears to be used most often and can apply to young people between the ages of 17 to 29, regardless of the YO statute, is a “SHOCK” incarceration sentence:¹⁶ This is a 90-day program designed as an “alternative to traditional incarceration” that appears to be heavily focused on intensive and regimented physical activities (which raises concerns noted elsewhere in this report about what may be boot-camp-type programming or similarly outdated, ineffective, and traumatic programming)¹⁷.

The South Carolina Department of Corrections is authorized under the YO Law to “regularly assess a reasonable fee to be paid by the youthful offender who is on conditional release to offset the cost of his supervision.”¹⁸

Table 4. South Carolina YO Law: Procedural Provisions








No Plea Requirement	Can youth be eligible for the hybrid statute without having to enter a plea of guilty?	
Closed Session	Are at least some proceedings for emerging adults under the hybrid statute closed to the public?	
Jury Trial	Is a jury trial allowed under the hybrid statute?	

Table 5. South Carolina YO Law: Sentencing Provisions

Limits on Fines & Fees	Are fines and fees prohibited or limited for youth under the hybrid statute?	
Limits on Incarceration	Does the hybrid statute preclude or limit the length of a term of incarceration?	
Limits on Probation	Does the hybrid statute limit the length of a term of probation?	
Mandatory Minimums Obviated	Does the hybrid statute obviate mandatory minimum sentences for eligible youth?	

6. Post-Sentencing Provisions

There is a special division within the South Carolina Department of Corrections that is responsible for both the institutional and community-based services of youth sentenced as YOs, called the Division of Youthful Offender Parole and Reentry Services (YOPRS).¹⁹ One of the hallmarks of the South Carolina YO statute is the imposition of an indeterminate term sentence. This conveys an unusual amount of discretion to YOPRS and leaves the Court with little oversight of the YO case post-disposition.

If sentenced to the custody of the Department of Corrections, the youth is sent to the Reception and Evaluation Center and a report is then provided to the Division’s director with recommendations. These recommendations can be that: (a) the youth be released conditionally under supervision; (b) the youth be transferred to an agency or institution for “treatment” or, more broadly, (c) the youth can be confined and afforded treatment under such conditions as he believes best designed for the protection of the public.”²⁰

If released to the community, youth are supervised by a “Intensive Supervision Officer” (ISO), who is to act “in a proactive manner in the life of each offender “and have a more limited caseload (20 to 25 young people) than the traditional parole officer.”²¹ In most cases, youth being supervised in the community are required to agree in writing to warrantless searches and seizures. Further,







any victims must be notified when a youth is conditionally released back into the community and recommendations from a victim are considered in community release decisions.²² The statute sets a cap of four years after the date of the conviction when the youth must be released conditionally.²³

The YOPRS also determines if a youth has violated any terms of their release and, if so, whether to revoke the conditional release and incarcerate them or impose additional terms to the conditional release. Defense attorneys in South Carolina have shared concerns about the high rates of violation decisions, especially for “technical violations.” According to information shared by the Department of Corrections at a Legislative Oversight Committee, a data outcome sample from November 1, 2018, showed that 10.8% of youth paroled in the YO system returned to DOC’s custody (over the life of the program) because of new convictions while slightly more, 13.7%, returned for a technical violation.²⁴

The Department of Corrections can order a youth be “unconditionally discharged” one year after being conditionally released. But in all cases, unconditional discharge must occur within six years of the start date of the Court’s sentence.²⁵

The YO statute specifies that sentences of incarceration be served in “minimum security institutions.”²⁶

Table 6: South Carolina YO Law: Post-Sentencing Provisions

Special Custody	Is there a specialized correctional unit for emerging adults incarcerated under the hybrid statute?	
Juvenile Custody	Can emerging adults incarcerated under the hybrid statute be committed to juvenile corrections and avoid adult corrections?	
Juvenile Probation	Can emerging adults placed on community supervision under the hybrid statute remain under the supervision of juvenile probation agency?	
Court Involvement	Does the court maintain jurisdiction and hear any alleged post-sentencing violations?	
Early Termination	Is there an opportunity to shorten the period of probation or confinement if the young person is doing well?	
Support Services	Does the hybrid statute require mandatory provision of support services to eligible youth?	

7. Record Protection Provisions



A youth sentenced under South Carolina’s YO statute is considered convicted and therefore cannot automatically avoid a formal record of conviction.

While the original YO statute did not include a specific record protection provision, subsequent amendments of the South Carolina statutes starting in 2003 created an opportunity for expungement. Under current law, a youth and/or representative may petition the circuit court to have the arrest and conviction records pertaining to many YO cases expunged if the individual has not been convicted of any other offense while serving the YO sentence and for a period of five years from the date of completion of the YO sentence.²⁷

The exceptions are: It must be a first offense conviction and cannot be a YO conviction for motor vehicle offenses, violent crimes (as defined under § 16-1-60), domestic violence offenses, or offenses required to register with the sex offender registry.²⁸ In the 2023 legislative session, a House bill was proposed to narrow the scope of excluded offenses eligible for expungement, in particular by allowing a YO conviction for driving under suspension offense to be expunged.²⁹

Despite these developments, South Carolina’s YO law remains limited in record protection provisions compared to other hybrid statutes that include more robust provisions to prevent the life-long collateral effects of an adult criminal record.

Table 7. South Carolina YO Law: Record Protection Provisions

Automatic Record Protection	Can a youth automatically avoid a formal record of conviction if the term under the hybrid statute ends successfully?	
Other Record Protection	If it is not automatic, does the hybrid statute offer other means of record protection, such as a petition to expunge or seal records of a conviction?	 ^a

^a South Carolina Code, in another chapter, allows the records of a first offense conviction as a YO (excluding certain offenses) to be expunged upon petition if the individual is not convicted for another offense while serving the YO sentence and for a period of five years from the date of completion of the YO sentence. S.C. Code Ann. § 22-5-920.

ENDNOTES - SOUTH CAROLINA

- 1 “Restoring Promise: An Initiative Creating Housing Units Grounded in Dignity for Young Adults in Prison,” Vera Institute of Justice, n.d., <https://www.vera.org/spotlights/restoring-promise>. South Carolina is the only one of the six Restoring Promise sites that has a hybrid system that extends to youth who are accused of committing an offense after their 18th birthday.
2 See S.C. Code Ann. §17-25-45.
- 3 “William Byars Obituary,” *The State*, November 12, 2019, <https://www.legacy.com/us/obituaries/thestate/name/william-byars-obituary?id=9287548>.
- 4 S.C. Code Ann. § 24-19-60.
- 5 South Carolina Department of Corrections, “SCDC Letter to Oversight Committee with Attachments,” May 24, 2019, [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/Corrections/SCDC%20letter%20to%20Oversight%20Committee%20with%20attachments%20\(May%2024,%202019\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/Corrections/SCDC%20letter%20to%20Oversight%20Committee%20with%20attachments%20(May%2024,%202019).pdf) (containing “Presentation – Youthful Offender Sentencing”).
- 6 S.C. Code Ann. § 24-19-10(d)(i) and § 63-19-1210.
- 7 S.C. Code Ann. § 16-3-655.
- 8 S.C. Code Ann. § 16-11-312.
- 9 S.C. Code Ann. § 24-19-50(3).
- 10 “South Carolina Youthful Offender Act,” *Young & Young, Attorneys at Law* (blog), August 24, 2018, <https://www.adamyoun-glawfirm.com/blog/2018/08/south-carolina-youthful-offender-act/>.
- 11 S.C. Code Ann. § 24-19-10(e).
- 12 S.C. Code Ann. § 24-19-10(f).
- 13 S.C. Code Ann. § 24-19-50(1).
- 14 S.C. Code Ann. § 24-19-50(2).
- 15 S.C. Code Ann. § 24-19-50(4).
- 16 S.C. Code Ann. § 24-13-1310 *et seq.*
- 17 Department of Justice, “Practice Profile: Juvenile Boot Camps,” National Institute of Justice Crime Solutions, September 10, 2013, <https://crimesolutions.ojp.gov/ratedpractices/6#-summary>.
- 18 S.C. Code Ann. § 24-19-110.
- 19 “Young Offender Parole and Reentry Services,” South Carolina Department of Corrections, 2023, <https://www.doc.sc.gov/programs/yoprs.html>.
- 20 S.C. Code Ann. §24-19-90.
- 21 “Young Offender Parole and Reentry Services.”
- 22 S.C. Code Ann. §24-19-110(D).
- 23 S.C. Code Ann. §24-19-120(A).
- 24 South Carolina Department of Corrections, “SCDC Letter,” May 24, 2019.
- 25 S.C. Code Ann. §24-19-120(A).
- 26 S.C. Code Ann. §24-19-60.
- 27 S.C. Code Ann. § 22-5-920 (B)(1).
- 28 S.C. Code Ann. § 22-5-920 (B)(2).
- 29 H. 3890, 125th Gen. Assemb., Reg. Sess. (S.C. 2023).

Turn on the Lights

By Thomas

Looking for that star in the sky
Reaching for my dreams
Wishing to be the best at what I do
Motivating me with a twinkle of light
In a world of haters
Turn on my light brighter
So my people, my family and friends
Can see me shine bright in a life of hell
Where I beat the devil
By accomplishing my dreams
Even though people told me
I wouldn't be anything
I proved them wrong
So turn up the lights so that we can all
Shine bright like diamonds in that sky
Freeing us to be all that we can be
Our kids, our future, our friends, our families
Turn them up so that we can all see them
Shining bright



Vermont's Hybrid System for Emerging Adults:

A Model That Taps into the Strength of the Juvenile System

I. LEGAL LANDSCAPE

In the last ten years, Vermont has adopted significant youth justice reforms, including the enactment of two statutes that place the State on the cutting-edge in the burgeoning field of emerging adult justice:

- (1) Vermont raised the upper age of juvenile jurisdiction from the 18th to the 20th birthday. The new law, known as “Act 201,” was enacted in 2018 and the implementation is gradual. Starting on July 1, 2020, 18-year-olds were included

in the juvenile system. Although the statute set the date for 19-year-olds to be included two years later, on July 1, 2022, Vermont delayed the implementation to July 1, 2023, largely because of the pandemic.¹

- (2) Vermont expanded their “Youthful Offender” statute (hybrid system) to include youth up to the 22nd birthday at the time of the offense.

II. AN OVERVIEW OF VERMONT'S YOUTHFUL OFFENDER LAW

Vermont's original **Youthful Offender Law (YO)** took effect on January 1, 2009, and only applied to youth under age 18. Then, in 2017, Vermont passed a law that expanded eligibility of YO to include youth from age 12 up to the 22nd birthday, and the implementation of this expanded version began on July 1, 2018.² The YO provides an opportunity for emerging adults to have their cases processed in the Family Court (juvenile division) and their treatment overseen by the Department for Children and Families and the Department

of Corrections (with one agency designated as the “lead”). While a YO case is pending, a criminal conviction is deferred and, if the case is completed successfully, no conviction is entered, and the records of the YO case are automatically expunged (for records from the adult system) and sealed (for records from the juvenile system). If the YO case is not completed successfully, the case is transferred to the adult Criminal Division, a conviction is entered, and the youth is sentenced as an adult.

III. KEY PROVISIONS

1. Eligibility – Age

The YO law can be applied in cases involving a youth as young as age 12 who allegedly committed an offense as well to an emerging adult who allegedly committed a crime before the 22nd birthday. However, the eligibility of the YO statute differs slightly for different age groups, with YO law only being applied to younger youth charged with the most serious crimes while it

can be applied to youths ages 19 to 21 charged with any offense (with more details below). It is worth noting that although Vermont raised the upper age of juvenile jurisdiction over the 18th birthday, the YO law retains the 18th birthday as a key distinction in a number of important aspects, such as the eligibility by offenses and whether a court proceeding is open or closed to the public (as described below).

Table 1. Vermont YO Law: Eligibility – Age

Lower Age Limit	Birthday at which a youth becomes eligible for the hybrid statute	12
Upper Age Limit	Birthday up to which a youth remains eligible for the hybrid statute	22
No Age Tiers for Emerging Adults	Are different age groups within the emerging adult range treated the same under the hybrid statute?	✓

As would be expected, the expansion of the hybrid system up to the 22nd birthday in 2018 caused a dramatic increase in YO court filings: In Fiscal Year (FY)18, before implementation, Vermont reported only 33 YO court filings while in FY19, the number of filings jumped to 324. But after initial concerns that the caseload might continue to increase over time, it appears to have stabilized and even decreased: In FY20, there were 295 YO case filings and then slightly less, 248, in FY21.³

2. Eligibility – Offense

For youth ages 12 to 15, YO law can be used only in what Vermont calls the “Big 12” cases, generally the most serious charges. These include: (1) arson causing death; (2) assault and robbery with a dangerous weapon; (3) assault and robbery causing bodily injury; (4) aggravated assault; (5) murder; (6) manslaughter; (7) kidnapping; (8) unlawful restraint; (9) maiming; (10) sexual assault; (11) aggravated sexual assault; (12) burglary into an occupied dwelling.⁴ For youth

ages 16 to 18, eligibility for YO law extends to both Big 12 and felony cases. For older youth, ages 19 to 21, eligibility for YO law extends to *any* offense.

Prior criminal history, including a prior YO sentence, does not preclude an emerging adult from being eligible for YO law.

3. Application

While the adult criminal court has original jurisdiction on youth ages 19 to 21, all cases that are being considered for YO status are decided by the Family Court (juvenile division).

A prosecutor, youth (and defense attorney), and judge can all request that an eligible case be designated as a YO case. The burden of proof is on the moving party to prove by a preponderance of the evidence that a youth should be granted YO status. If the court makes the motion, the burden shall be on the youth.⁵

Table 2. Vermont YO Law: Eligibility – Offense

All Offenses Included	Are all offenses eligible under the hybrid statute for emerging adults?	✓
No Exclusion for Prior Case under Hybrid Statute	Can youth with a prior case under the hybrid statute be eligible again for a subsequent offense?	✓
No Exclusion for Other Criminal History	Are youth with <i>any other</i> criminal history eligible for the hybrid statute?	✓

If the motion for YO status is contested, “[h]earsay may be admitted during the hearing and may be relied on to the extent of its probative value.”⁶ Otherwise, the Vermont Rules of Evidence apply.⁷









To determine whether YO status should be granted, “the court shall first consider whether public safety will be protected by treating the youth as a youthful offender.”⁸ The statute, as amended most recently in 2021 with an effective date of June 1, 2022, sets out a series of specific factors that must be completed and/or considered when considering eligibility for YO status for all ages:

- A. The youth must complete a risk and needs assessment (Vermont uses the Youth Assessment and Screening Instrument or “YASI”), completed by the Department for Children and Families (DCF).
- B. DCF must provide a report to the court that includes a recommendation as to (1) whether diversion is appropriate because the youth is a low to moderate risk to reoffend, (2) a recommendation as to whether YO status is appropriate and (3)

a description of the services that may be available for the youth.⁹

- C. Diversion is then presumed in all cases that do not involve a “Big 12” offense *and* in cases where the youth scores as a moderate to low risk on a risk and needs assessment conducted by DCF. To bypass the presumed diversion, a prosecutor must state on the record “why a referral would not serve the ends of justice.”¹⁰
- D. At the YO Consideration Hearing, the statute¹¹ requires the court to consider the following questions and factors:
 - a. *Will public safety be protected by treating the youth as a YO?* In the most recent changes made to the statute in 2021, a list of criteria that the court should consider was added and include:
 - i. nature and circumstances of the charge and whether violence was involved;
 - ii. youth’s mental health treatment

Table 3. Vermont YO Law: Application

Juvenile Court	Does the juvenile court decide whether to apply the hybrid statute?	
Presumptive Application	Is the hybrid statute presumed to apply to youth who meet the eligibility requirements?	 ^a
Judge Initiates	Can the judge prompt application of the hybrid statute at own initiative?	
Prosecutor Initiates	Can the prosecutor initiate application of the hybrid statute?	
Youth Initiates	Can the youth (defense) request application of the hybrid statute?	
No Prosecutorial Consent Requirement	Can the determination of whether to apply the hybrid statute be made without the prosecutor’s consent?	
Final Decision: Court	Does the court have the final decision on granting the application of the hybrid statute?	
Criteria in Statute	Does the hybrid statute explicitly set the criteria for granting its application?	

^a Although there is not a presumption of YO status, there is a presumption for diversion in certain cases. 33 V.S.A. § 5280(e).

- history and needs;
 - iii. youth’s substance abuse history and needs;
 - iv. youth’s residential housing status;
 - v. youth’s employment and educational situation;
 - vi. whether the youth has complied with conditions of release;
 - vii. youth’s criminal record and whether the youth has engaged in subsequent criminal or delinquent behavior since the original charge;
 - viii. whether supervising the youth on YO probation is appropriate considering the nature of the charged offense(s) and age and specialized needs of the youth;
 - ix. whether the youth has connections to the community; and
 - x. youth’s history of violence and illegal or violent conduct involving firearms or other deadly weapons.
- b. *Is the youth amenable to treatment or rehabilitation?*
- c. *Are there sufficient services in the juvenile system to meet the youth’s treatment or rehabilitation needs?*

4. Procedural Provisions

Court proceedings related to determining whether YO status should be granted are closed to the public for youth who committed an offense under age 18. For youth ages 18 and over, the public safety portion of the hearing is open to the public.¹² In all cases, there are provisions for victims to be notified of the proceedings, attend hearings, and provide a victim’s impact statement.¹³




In cases where the YO status is denied, the case can be prosecuted in the adult Criminal Division. Any information disclosed during the YO proceeding (such as information collected by the risk and needs assessment) is inadmissible in subsequent proceedings in the Criminal Division.¹⁴

If YO status is granted, the case proceeds in Family Court to determine the “merits,” the equivalent of a finding of guilty or not guilty beyond a reasonable doubt. There is no right to a jury. If merits are found, and the youth later successfully completes all requirements imposed by the court at disposition, then no conviction is entered into the record. Further, all records relating to the case in the adult criminal division are automatically expunged and all records in the family court are sealed.¹⁵

5. Sentencing (Disposition) Provisions

In Vermont, a youth is not “sentenced” in the Family Court for either delinquency or youthful

Table 4. Vermont YO Law: Procedural Provisions

No Plea Requirement	Can youth be eligible for the hybrid statute without having to enter a plea of guilty?	
Closed Session	Are at least some proceedings for emerging adults under the hybrid statute closed to the public?	 ^a
Jury Trial	Is a jury trial allowed under the hybrid statute?	

^a For youth ages 18 and above, the proceedings are closed to the public only after the determination of public safety has been made.

offender cases. Rather, if “merits” are found, the court determines a “disposition.”

In YO cases, the first step in this process is for DCF to submit a disposition case plan that contains proposed services and condition of probation, a description of the services that may be available, and a recommendation of the lead agency (either DCF and DOC, although *both* agencies will remain involved in the case). The lead agency has final decision-making authority of the case plan and the provision of services, and the lead agency can change, without court intervention, if the agencies believe it is in the best interest of the youth.¹⁶ In most cases involving a youth aged 18 and older, DOC is designated as the lead agency.

Vermont’s YO provides only one dispositional option for youth over age 18: probation.¹⁷ Both housing and residential placement are currently unavailable.¹⁸ Electronic monitoring is allowed, and probationary services are organized and supervised by either juvenile (DCF) or adult (DOC) agencies. But for youth under 18, the disposition can include a change in legal custody (to a parent, relative or DCF) and placement in a residential treatment or secure facility.¹⁹

6. Post-Sentencing (“Post-Merits”) Provisions

The Department for Children and Families and the

Department of Corrections have adopted principles of engagement with youth placed on probation as a YO as articulated in DCF’s Family Service Policy Manual 164. These principles include: partnering with youth in taking responsibility and developing competency using restorative justice practices; collaborating with the youth to identify services, provide supervision, and assist in successful completion of probation; promoting partnership with service providers, state agencies and community organizations; treating each youth as an individual; and protecting the community with risk and need-based interventions.

In cases where the youth has completed all terms of probation, the DCF Family Services Worker and the DOC Assigned Officer can recommend a discharge and the prosecutor and youth (and defense attorney) may file a motion or stipulation requesting that the court determine whether the youth should be successfully discharged, and the court may so move on its own motion as well.²⁰ The statute requires the court to consider four factors: the degree to which the youth fulfilled the terms of the case plan and probation order; the youth’s performance during treatment; reports from the treatment personnel; and “any other relevant facts associated with the youth’s behavior.”²¹

The DCF and DOC conduct a review of each

Table 5. Vermont YO Law: Sentencing (“Disposition”) Provisions^a

Limits on Fines & Fees	Are fines and fees prohibited or limited for youth under the hybrid statute?	✓ ^b
Limits on Incarceration	Does the hybrid statute preclude or limit the length of a term of incarceration?	✓
Limits on Probation	Does the hybrid statute limit the length of a term of probation?	✓
Mandatory Minimums Obviated	Does the hybrid statute obviate mandatory minimum sentences ^a for eligible youth?	✓

^a Vermont does not “sentence” a youth in Family Court. Rather, if “merits” are found, then a court orders a “disposition.” The term “sentencing” is included in this table and this report to allow for comparisons with other states.

^b There are no fines and fees imposed on youth in the Vermont Family Court, where YO cases are supervised.

YO case every six months.²² In cases where completion or compliance is an issue, DCF and DOC will employ “graduated sanctions” and the DCF Family Services Policy notes that “the DCF Family Service Worker/DOC Assigned Officer should encourage creativity in determining how youth can repair the harm.”²³ DCF and DOC can file a violation of probation with the court.

Youth who are over age 18 and are accused of violating a disposition plan can be detained in an adult correctional facility operated by DOC while awaiting a hearing.²⁴ If the court finds that a violation occurred, it can (i) maintain the YO status and modify (including extending) the conditions of probation; (ii) revoke the YO status and send the case to the Criminal Division for sentencing as an adult; or (iii) transfer supervision of the youth to the DOC “with all the powers and authority of the Department and the Commissioner. . . , including graduated sanctions and electronic monitoring.”²⁵ If the YO status is revoked, the case is transferred to the adult Criminal Division, a conviction of guilty

is entered, and an adult sentence is imposed.²⁶ The Criminal Division has access to all the Family Division records from the YO proceedings but, as noted elsewhere, the uses of these YO records are limited.

In all cases, YO status terminates when a youth reaches the 22nd birthday.

7. Record Protection Provisions

Vermont provides some important protections to youth who both pursue and/or are granted YO status. This includes the information gleaned “directly or indirectly” from the risk and needs assessment (a requirement for YO status) or “other conversations with the Department or community-based provider.” This information cannot be used against the youth in either a juvenile or criminal case “for any purpose, including impeachment or cross-examination.” Only “. . .the fact of the participation in the screening may be used in subsequent proceedings.”²⁷

Table 6. Vermont YO Law: Post-Sentencing (“Post-Merits”) Provisions

Special Custody	Is there a specialized correctional unit for emerging adults incarcerated under the hybrid statute?	N/A
Juvenile Custody	Can emerging adults incarcerated under the hybrid statute be committed to juvenile corrections and avoid adult corrections?	N/A
Juvenile Probation	Can emerging adults placed on community supervision under the hybrid statute remain under the supervision of juvenile probation agency?	✓ ^a
Court Involvement	Does the court maintain jurisdiction and hear any alleged post-sentencing violations?	✓
Early Termination	Is there an opportunity to shorten the period of probation or confinement if the young person is doing well?	✓
Support Services	Does the hybrid statute require mandatory provision of support services to eligible youth?	✓ ^b


^a Both the VT Department for Children and Families (juvenile agency) and the Department of Correction (adult agency) are involved in YO cases and can provide probationary supervision, with one agency designated as the lead.

^b Specific services are not listed in the statute but “youth shall be eligible for appropriate community-based programming and services.” 33 V.S.A. § 5284(d).

The actual hearing to determine whether YO status should be granted is open to the public for youth who allegedly committed a crime at age 18 or older when the court is determining whether public safety can be afforded if given YO status. The entire hearing is closed to the public for the younger youth.²⁸ But once YO status has been granted, the subsequent proceedings are confidential for *all* ages.²⁹

If the YO case ends successfully, then a conviction is not entered, and the case is dismissed. For the YO cases that were at some point heard in the adult Criminal Division, “all records relating to the case” in that Division are expunged. In all YO cases, the records from the Family Court are sealed pursuant to 33 V.S.A. § 5119.³⁰

Table 7: Vermont YO Law: Record Protection Provisions

Automatic Record Protection	Can a youth automatically avoid a formal record of conviction if the term under the hybrid statute ends successfully?	
Other Record Protection	If it is not automatic, does the hybrid statute offer other means of record protection, such as a petition to expunge or seal records of a conviction?	N/A

ENDNOTES - VERMONT

1 For more detailed information about the inclusion of emerging adults in Vermont’s juvenile justice system, see Karen Vastine et al., *Report on Act 201 Implementation Plan Report & Recommendations* (Vermont Agency of Human Services, Department for Children and Families, 2019), https://static1.squarespace.com/static/5c6458c07788975dfd586d90/t/5dd2ebfce2b1425d33ae1ef1/1574104062934/Vermont-RTA-DCF-Report-Final_EAJP.pdf. During the writing of this report, there were discussions at hearings in the Vermont’s Legislature regarding the possibility pushing back the implementation date of the second phase of the Raise the Age Law (including 19-year-olds into the juvenile justice system) to a later date.

2 33 V.S.A. § 5280.

3 Vermont Judiciary, *Annual Statistical Report FY21* (Montpelier: Vermont Judiciary, 2022), 11, <https://www.vermontjudiciary.org/sites/default/files/documents/FY2021%20Annual%20Statistical%20Report%20-%20FINAL.pdf>.

4 33 V.S.A. § 5204(a).

5 33 V.S.A. § 5283(d).

6 33 V.S.A. § 5283(c)(1).

7 Family Proceedings Rule 1.1(c)(1).

8 33 V.S.A. § 5284(a)(1).

9 33 V.S.A. § 5282(b)(1)-(3).

10 33 V.S.A. § 5282(e).

11 33 V.S.A. § 5284.

12 33 V.S.A. § 5283(c)(2).

13 33 V.S.A. § 5288.

14 33 V.S.A. § 5281(c)(2).

15 33 V.S.A. § 5287(d).

16 Vermont Department for Children and Families, “Policy 164: Youthful Offender Status,” in *Family Services Policy Manual*, 2022, 9, <https://outside.vermont.gov/dept/DCF/Shared%20Documents/FSD/Policies/Policy164.pdf>.

17 33 V.S.A. § 5284(c)(1).

18 Vermont Department for Children and Families, “Policy 164,” 9.

19 33 V.S.A. § 5284(c)(2).

20 33 V.S.A. § 5287(a).

21 33 V.S.A. § 5287(b)(1)-(4).

22 Vermont Department for Children and Families, “Policy 164,” 16.

23 Vermont Department for Children and Families, 17.

24 33 V.S.A. § 5285(a).

25 33 V.S.A. § 5285(c)(1)-(3).

26 33 V.S.A. § 5285(d).

27 33 V.S.A. § 5280(d)(4).

28 33 V.S.A. § 5283(c)(2).

29 33 V.S.A. § 5283(c)(2).

30 33 V.S.A. § 5287(d).

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