

“It’s Not Designed for Children”

A Fuller Accounting of the Costs of West
Virginia’s Criminal System for Youth



WEST VIRGINIA CENTER ON
BUDGET & POLICY



MIDIAN LEADERSHIP PROJECT
INC. 501c3

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Introduction

In the spring of 2023, we at the Midian Leadership Project teamed up with the American Friends Service Committee to host listening sessions with young adults who had spent part of their childhood in the criminal legal system.

We wanted to understand how criminal system fines and fees affected them. We heard how legal debts strained family finances and led to suspended driver's licenses. But they also spoke of other impacts: stress, depression, unnecessary family separations, and a shrinking sense of possibility.

Then, within months of those listening sessions, we began to hear a familiar drumbeat. School administrators, politicians, and commentators called for action to address what they characterized as a "chronic problem" of children missing school and behaving poorly.¹

These state leaders wanted to expand a 2023 law that allowed teachers to remove middle and high school students deemed "disorderly."² That law, they argued, should be expanded to include elementary school children.³ Others called for more enforcement of truancy laws.

We wondered if these lawmakers would be so keen to increase punitive measures against children if they had heard what we had in those listening sessions. We partnered with the West Virginia Center on Budget and Policy (WVCBP) to ask: What does it cost a child to be exposed to this system?

Our research began with a look at the costs imposed by courts: fines, fees, and restitution. But as we reviewed the data and spoke with those personally impacted by the criminal legal system, we learned that the most serious costs are those that go uncounted.

This report is our attempt to combine the stories we heard at our listening sessions, research on fees and fines in the judicial system, and data about the criminal legal system in West Virginia to provide a fuller accounting of harms done by the criminal legal system and what it might require to truly interrupt these harms.

A note about language: Instead of the "juvenile justice system," this report will refer to the "criminal legal system for children." The latter provides clarity about who is brought into the system (people under the age of 18) and does not presume that justice is accomplished.

1. Hoppy Kercheval, "Student No-Shows are a Chronic Problem in our Schools," West Virginia MetroNews, September 19, 2023, <https://wvmetronews.com/2023/09/19/student-no-shows-are-a-chronic-problem-in-our-schools/>; "West Virginia Senator Calls for Action on Classroom Behavioral Issues: 'It's a Growing Problem'," WV News, https://www.wvnews.com/news/wvnews/west-virginia-senator-calls-for-action-on-classroom-behavioral-issues-its-a-growing-problem/article_86e6425e-8d51-11ee-a6d2-23408f2b2b6b.html; Amelia Ferrell Knisely, "Teachers Need Student Discipline Support. State Lawmakers Will Try to Address a Complicated Issue," West Virginia Watch, January 19, 2024, <https://westvirginiawatch.com/2024/01/19/teachers-need-student-discipline-support-state-lawmakers-will-try-to-address-a-complicated-issue/>.
2. House Bill 2890, 86th Leg., Reg. Sess. (W. Va. 2023), https://www.wvlegislature.gov/Bill_Text_HTML/2023_SESSIONS/RS/bills/hb2890%20sub%20enr.pdf.
3. Steven Allen Adams, "W.Va. Legislature to Take Another Crack at School Discipline," Parkersburg News and Sentinel, December 6, 2023, <https://www.newsandsentinel.com/news/local-news/2023/12/w-va-legislature-to-take-another-crack-at-school-discipline/>.

A Snapshot of West Virginia’s Criminal Legal System for Children

The criminal legal system for children was created to operate differently than the adult criminal legal system. The system for kids is premised on the belief that children can learn and change. The state requires the system to prioritize a child’s care, mental and physical well-being, and family connection.⁴ However, our research shows that the system does not adequately protect or prioritize children, their families, or their communities.

West Virginia can file two types of cases against children: delinquency and status.⁵ Delinquency offenses refer to acts considered a crime at any age, whereas status offenses are behaviors prohibited by law because of one’s status as a child.⁶

Status filings cover behaviors ranging from having a cigarette or possessing alcohol to running away from home or defying parental supervision. The most frequent status charges are truancy cases, filed against a child “who is habitually absent from school without good cause.”⁷

A third category of cases involving children are “abuse and neglect” cases. If the state believes a child has been abused and/or neglected, the state brings a petition against the parent or adult believed to be responsible.⁸ For the last decade, most circuit court filings involving children were abuse and neglect petitions (5,286 were filed in 2023 alone).⁹ In many cases, abused and neglected children are removed from their parents and families and placed in the foster care system.

Abuse and neglect cases are part of a family separation crisis in West Virginia. To learn more about the racial and economic biases, and other issues affecting the child welfare system, read the WVCBP’s 2023 report *Moving Upstream: Improving Child Welfare in West Virginia Requires Addressing Root Causes of Hardship*.

Over the last 15 years, West Virginia has seen circuit court filings against children rise, then fall, then rise again.¹⁰ Between 2009 and 2014, the state averaged 4,999 status and delinquency filings per year. At the start of that period, delinquency cases outnumbered status offenses two to one.¹¹

4. West Virginia Code § 49-1-105(b), <https://code.wvlegislature.gov/49-1-105/>.

5. West Virginia Code § 49-1-202, <https://code.wvlegislature.gov/49-1-202/>.

6. W.Va. Code § 49-1-202.

7. W.Va. Code § 49-1-202.

8. West Virginia Code § 49-1-201, <https://code.wvlegislature.gov/49-1-201/>.

9. “Annual Statistics Report on Circuit, Family, and Magistrate Courts: The West Virginia Court System – 2023” (Charleston, WV: Supreme Court of Appeals of West Virginia Administrative Office), 6, available here: <https://www.courtswv.gov/sites/default/pubfilesmnt/2024-04/2023annualStats.pdf>.”

10. WVCBP analysis of West Virginia Court System Annual Reports and Annual Statistical Reports for 2009-2023, published by the Administrative Office of the Supreme Court of Appeals of West Virginia.

11. “West Virginia Court System 2009 Annual Report” (Charleston, WV: Administrative Office of the Supreme Court of Appeals of West Virginia), 99, <https://www.courtswv.gov/sites/default/pubfilesmnt/2023-06/2009AnnualReport.pdf>. Note: Data for McDowell County Circuit Court is unavailable for 2009.

Then in 2010, the state passed a law that lowered the threshold for truancy petitions to five unexcused absences per school year.¹² Within a few years, nearly one in three public school students were deemed truant.¹³

Treating Symptoms Instead of the Cause

Lawmakers focus on truancy because of its relationship to children dropping out of high school. However, the people we interviewed emphasized that truancy is not the root problem, but instead a symptom of any number of challenges facing kids.

As one person explained, “Honestly, I think that is the biggest thing about truancy is you pressing this kid on not coming to school and trying to get him in deeper trouble. [They’re] not trying to see *why* he’s not coming to school.”¹⁴

Another youth shared, “My mom couldn’t pay the water bill and I was like, wanting to miss school because I had no clean clothes. Like that’s a real thing... they don’t know what you went through.”¹⁵

We heard from kids missing school because of unreliable transportation. Others didn’t have a stable home – couch surfing from one day to the next. An attorney who represents youth pointed out, “There are a lot of mental issues that make going to school undesirable. Anxiety, fear, being bullied. They’re basically miserable at school.”¹⁶

In 2013, delinquency and status filings reached 5,258, as West Virginia became one of only five states that increased its incarceration rate.¹⁷

Parents, educators, and advocacy organizations mobilized and called for change.¹⁸ By the end of 2014, an intergovernmental task force had released a report with recommendations to reform the criminal legal system for children.¹⁹ At the 2015 State of the State, Governor Earl Tomblin told lawmakers, “We must do more to keep our kids out of the courtroom and in the classroom.”²⁰

12. House Bill 4593, 79th Leg., Reg. Sess. (W. Va. 2010), https://www.wvlegislature.gov/Bill_Text_HTML/2010_SESSIONS/RS/signed_bills/house/HB4593%20ENR_signed.pdf.

13. Mackenzie Mays, “1 in 3 Students in W.Va. is Truant,” *Charleston Gazette-Mail*, September 20, 2014, https://www.wvgazettemail.com/news/1-in-3-students-in-w-va-is-truant/article_9340df27-c84d-558a-a8c0-4b01728f532f.html.

14. Listening Session, Midian Leadership Project, Charleston, WV, April 25, 2023.

15. Midian Listening Session, April 25, 2023.

16. J.E., interview with Sara Whitaker, May 21, 2024.

17. “West Virginia Court System 2013 Annual Report” (Charleston, WV: Administrative Office of the Supreme Court of Appeals of West Virginia), 76, <https://www.courtsww.gov/sites/default/pubfilesmnt/2023-06/2013AnnualReport.pdf>; Ted Boettner and Rick Wilson, “Improving Juvenile Justice in West Virginia” (Charleston, WV: West Virginia Center on Budget and Policy and American Friends and Service Committee, 2018), 4, <https://wvpolicy.org/wp-content/uploads/2018/5/JJ-Report-Release-FF-.pdf>.

18. “Let’s Keep Kids in School and Out of Court,” ACLU of West Virginia, December 14, 2014, <https://www.acluww.org/en/news/lets-keep-kids-school-and-out-court-0>.

19. Ashton Marra, “Reducing Truancy Top Concern of Juvenile Justice Study,” *West Virginia Public Broadcasting*, December 11, 2014, <https://wvpublic.org/reducing-truancy-top-concern-of-juvenile-justice-study/>.

20. “West Virginia State of the State Address,” January 14, 2015, C-SPAN, <https://www.c-span.org/video/?323784-1/west-virginia-state-state-address>.

The 2015 legislature responded with two new laws to reduce the number of children removed from their homes and to increase community-based services.

House Bill 2550 required schools to work with a child's caretakers to reduce unexcused absences.²¹ Most importantly, the law raised the number of allowable unexcused absences from five to 10 per year. For children who may be charged with a status offense (like truancy) or a misdemeanor, Senate Bill 343 created ways for kids to avoid a formal charge.²²

For first time truancy and status offenses, a prosecutor is required to refer a child to "pre-petition diversion" with a Department of Human Services case worker, a probation officer, or a truancy diversion specialist.²³ Similarly, a court may refer a child to community-based counselor or mental health services, or up to six months of "informal probation" for "counsel and advice" about how to avoid a formal petition.²⁴

The effect on status offenses was immediate: filings went down by nearly 300 in the year the law was passed.²⁵

It soon became clear how truancy policy drove criminal legal system involvement. In the four years following the restrictive 2010 truancy law, status filings averaged 2,318 per year.²⁶ In the four years following the easing, status filings averaged just 1,323 per year – a difference of a thousand cases per year.²⁷

Four Out-of-Home Placements in Four Years

Truancy is the reason that L.N. spent three years of his childhood separated from his family.²⁸

L.N. was only 12 years old when a circuit judge placed him under court supervision. It was not until L.N. was 14 or 15 years old that he realized that the court could keep him under court supervision until his 21st birthday – or until he graduated high school. By then, he had already been separated from his family and sent to live in children's homes in other cities.

A decade later, L.N. recalls the exact date he was sent away for the first time. He was in the seventh grade and at a status hearing when his judge decided to put him in the custody of the Department of Health and Human Resources (now the Department of Human Services). "I didn't understand what they were saying. I don't think my grandmother did either. She was crying."

21. House Bill 2550, 82nd Leg., Reg. Sess. (W. Va. 2015), https://www.wvlegislature.gov/Bill_Text_HTML/2015_SESSIONS/RS/signed_bills/house/HB2550%20SUB%20ENR_signed.pdf.

22. Senate Bill 393, 82nd Leg., Reg. Sess. (W. Va. 2015), https://www.wvlegislature.gov/Bill_Text_HTML/2015_SESSIONS/RS/signed_bills/senate/SB393%20SUB1%20ENR_signed.pdf.

23. West Virginia Code § 49-4-702, <https://code.wvlegislature.gov/49-4-702/>.

24. West Virginia Code § 49-4-702a, <https://code.wvlegislature.gov/49-4-702A/>.

25. "The Annual Statistical Report on Circuit, Family, and Magistrate Courts: 2015 Data" (Charleston, WV: Supreme Court of Appeals of West Virginia Administrative Office), 3, https://www.courtswv.gov/sites/default/pubfiles/mnt/2023-06/2015AnnualReport_Statistics.pdf.

26. WVCBP analysis of Annual Statistical Reports for 2016-2019, published by the Administrative Office of the Supreme Court of Appeals of West Virginia.

27. WVCBP analysis of West Virginia Court System Annual Reports and Annual Statistical Reports for 2011-2014, published by the Administrative Office of the Supreme Court of Appeals of West Virginia.

28. L.N., interview with Sara Whitaker, May 22, 2024.

There was no opportunity to say goodbye to family or school friends. No chance to collect personal items from home. Just shuffled into a car with a DHHR worker who drove him an hour away from his grandmother’s home.

It would be more than a year before L.N. came back home to live with her.

But a few months after returning, now enrolled in high school, L.N. continued to miss school. The trouble was getting up in time for the 6:45 a.m. school bus. When he missed it, the only option was taking two city buses that would take anywhere from 60 to 90 minutes. If his grandmother had a car, his trip would have been five minutes door to door. No one on L.N.’s court team asked about transportation barriers – let alone, tried to help him get a reliable back-up ride to school.

Instead, he was taken away from his home three more times between his freshman and junior years. Each stay lasted several months. Each facility was different. All were an hour or more away from home.

“There was a point in time that I was depressed. I’m a funny person, always try to joke around and play around. But there was a point that I was not trying to joke around.”

The places L.N. was sent were not youth jails, but instead designed to be therapeutic. This was not L.N.’s experience.

When asked to reflect on these placements, he says, “I had to understand early how to grow up.” L.N., who is Black, explains, “A lot of the staff was country – I can tell they hadn’t been around Black people. Staff would make little racist jokes.” When asked how he dealt with those moments, he said, “It was easy because I knew that I didn’t want to spend an extra minute in this place.”

These placements gave L.N. a chance to observe the differences in how children were treated. “I kept seeing that I was doing better than this kid, but he was being sent home and I wasn’t because we had different judges.”

L.N. got to spend his entire senior year in his home high school where he received his diploma. When asked what he believed the schools, courts, and case workers should do with cases like his, L.N. puts it simply: “Try to help the kid instead of sending them away.”

But since the COVID-19 pandemic, all filings against children have moved in the opposite direction. Status filings have grown slowly, while delinquency charges have increased by hundreds each of the last two years.²⁹ This re-expansion of the criminal legal system for children is a frightening development for the young people in our program.

Filings Against Children in Circuit Court	2021	2022	2023
Delinquency Filings	1,469	1,740	2,032
Status Filings	942	1,144	1,161
Total	2,411	2,884	3,193

29. WVCPB analysis of Annual Statistical Reports for 2021-2023, published by the Administrative Office of the Supreme Court of Appeals of West Virginia.

How long a young person spends in the system depends on whether they are charged with a status or delinquency offense. In most status offense cases, courts maintain authority over a child until they become an adult. However, in truancy cases, the court maintains control until age 21 or the child completes high school. When a child has been found delinquent, the court has authority until age 21.

Once adjudicated, a court has multiple options for disposition, ranging from dismissal to financial penalties to probation supervision to the most restrictive: incarceration.³⁰

Children Behind Bars

The Bureau of Juvenile Services (BJS) – a division of the West Virginia Division of Corrections and Rehabilitation (DCR) – operates 10 youth jails across the state.³¹ In the last decade, West Virginia was one of only four states that increased its rate of children sentenced to these facilities (152 per 100,000 youth in 2010 versus 170 per 100,000 in 2019).³²

In West Virginia's youth jails, boys outnumber girls three to one. At the end of the last fiscal year, 38.2 percent of youths behind bars were children under 16 (including one 11-year-old and five 12-year-olds).³³

As cases filed against children rose over the last three years, so have the number of kids behind bars. In Fiscal Year 2021, BJS facilities housed an average daily population of 186 youth.³⁴ Two years later, the average daily population had grown to 288 youth.³⁵

Further, correctional control of youth has spilled into the community. A 2015 law to reform the criminal legal system for children included the establishment of community-based youth reporting centers (YRCs).³⁶ The law mandated the Division of Juvenile Services (BJS's former name) to operate "at least nineteen" YRCs by July 2018.³⁷

Today the state's corrections agency oversees 20 staffed YRCs.³⁸ These centers offer counseling services, plus a variety of group classes on topics like "conflict management," "life skills," "bullying," and "job readiness." In June 2024, there were 440 youth enrolled, ranging from five to 47 youth per facility.³⁹

30. West Virginia Code §49-4-714, <https://code.wvlegislature.gov/49-4-714/>.

31. "WV Division of Corrections & Rehabilitation FY 2023 Annual Report" (Charleston, WV: DCR, December 2023), 22-24, <https://dcr.wv.gov/Documents/FY23%20ANNUAL%20REPORT%20WVDCR.pdf>.

32. Charles Puzzanhera, Sarah Hockenberry, and Melissa Sickmund, "Youth and the Juvenile Justice System: 2022 National Report" (Pittsburgh, PA: National Center for Juvenile Justice, December 2022), 187, <https://ojj-dp.ojp.gov/publications/2022-national-report.pdf>.

33. DCR, "2023 Annual Report," 41.

34. "FY 2021 Annual Report WV Division of Corrections and Rehabilitation" (Charleston, WV: WV DCR, January 2021), 28, https://dcr.wv.gov/resources/Documents/annual_reports/FY21ANNUAL%20REPORT%20WVDCR.pdf.

35. DCR, "2023 Annual Report," 26.

36. Senate Bill 393, 82nd Leg., Reg. Sess. (W. Va. 2015).

37. West Virginia Code § 49-2-912, <https://code.wvlegislature.gov/49-2-912/>.

38. "Juvenile Facilities and Reporting Centers," WV Division of Corrections & Rehabilitation, <https://dcr.wv.gov/facilities/Pages/Juvenile-Facilities-and-Reporting-Centers.aspx>.

39. "West Virginia Division of Juvenile Services Race & Gender Report as of 6/3/2024," provided by Sallie Daugherty, email to Sara Whitaker, June 18, 2024, available here: <https://wvpolicy.org/wp-content/uploads/2024/06/2024.06.03-BJS.pdf>.

Early on, BJS described YRCs as an investment “[t]o reduce our detention population and increase the amount of youth placed back within their home environment, while still receiving the necessary education and counseling essential for growth.”⁴⁰

But over the last eight years that the law has been in effect, the average daily population of youth behind bars increased by 44 children (18.0 percent).⁴¹ Community supervision appears to be one factor: one in four kids behind bars were incarcerated for violations of their court-ordered supervision.⁴²

The harms of youth incarceration are well-documented. Being locked up during childhood “worsens pre-existing physical and mental health problems,” “leads to poor health in adulthood,” and correlates with shorter life expectancy.⁴³

Incarceration exposes children to victimization. In the most recent year of data collected pursuant to the Prison Rape Elimination Act, “an estimated 7.1% of youth in juvenile facilities reported being sexually victimized during the prior 12 months.”⁴⁴

A 2015 report documented “systemic maltreatment” in the nation’s youth facilities, including physical abuse at the hands of staff.⁴⁵ One study of youth in correctional and residential facilities found that an overwhelming majority of children had witnessed violence by staff or other residents.⁴⁶ Widespread violence behind bars can lead to more violence. Research shows that children who witness violence or are victims of violence are more likely to be later charged with a violent crime.⁴⁷

West Virginia has chosen to conceal its policies about how and when corrections staff use force and restraints against youth in state facilities. In 2024, the DCR denied a public records request for the agency’s “Juvenile Use of Force & Restraints” policy, claiming the policy was “exempt from disclosure.”⁴⁸

40. “West Virginia Division of Juvenile Services Annual Report for Fiscal Year 2017” (Charleston, WV: WV DJS, January 2018), 4, https://dcr.wv.gov/resources/Documents/annual_reports/DJS-AnnualReport-2017.pdf. Note: prior to a 2018 consolidation of all correctional agencies, the Bureau of Juvenile Services was called the Division of Juvenile Services.

41. DCR, “2023 Annual Report,” 39.

42. DCR, “2023 Annual Report,” 41.

43. Richard Mendel, “Why Youth Incarceration Fails: An Updated Review of the Evidence” (Washington, DC: The Sentencing Project, December 2022), 12, <https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf>.

44. Erica Smith and Jessica Stroop, “Sexual Victimization Reported by Youth in Juvenile Facilities, 2018” (U.S. Department of Justice, Bureau of Justice Statistics, December 2019), 1, <https://bjs.ojp.gov/content/pub/pdf/svryjf18.pdf>.

45. Richard Mendel, “Maltreatment of Youth in U.S. Juvenile Detention Corrections Facilities” (Baltimore, MD: The Annie E. Casey Foundation, 2015), <https://assets.aecf.org/m/resourcedoc/aecf-maltreatmentyouthuscorrections-2015.pdf>.

46. Phelan Wyrick and Kadee Atkinson, “Examining the Relationship Between Childhood Trauma and Involvement in the Justice System,” *National Institute of Justice Journal*, no. 283 (2021): 31, <https://www.ojp.gov/pdffiles1/nij/255641.pdf>.

47. Wyrick and Atkinson, “Childhood Trauma and Involvement in the Justice System,” 34.

48. Office of the Commissioner, West Virginia Division of Corrections and Rehabilitation, letter to Rachel Rubin, February 5, 2024, <https://wvpolicy.org/wp-content/uploads/2024/06/2024.02.05-Letter-from-DCR.pdf>.

Still, other DCR administrative rules provide a glimpse of how incarcerated children can be punished in ways that isolate, dehumanize, and undermine rehabilitative goals. If a child is believed to have violated a facility rule, the correctional staff can take away “privileges” like library and reading access, visitation, and telephone calls.⁴⁹ If a child is placed in solitary confinement – either as a sanction or to await a disciplinary hearing – the staff will remove their bedding during non-sleeping hours, as well as all personal items “including, but not limited to hygiene items, pencils, papers, and photos.”⁵⁰ Research demonstrates that youth are especially harmed by solitary confinement, which has been shown to exacerbate mental health conditions, increase risk of suicidal ideation, and deepen a child’s social isolation.⁵¹

When an incarcerated child is taken to a court hearing or other appointment, they are shackled and placed in handcuffs. Shackling a child “unnecessarily humiliates, stigmatizes, and traumatizes.”⁵² Handcuffs restrict a child’s ability to read documents or take notes in court, which limits their ability to meaningfully participate in their defense.⁵³ One judge who stopped shackling children in their Texas courtroom reported: “More engaged kids and families, more meaningful conversations, more success.”⁵⁴ A decade ago, the American Bar Association passed a resolution against the indiscriminate shackling of children.⁵⁵ While most states have followed suit, West Virginia has not adopted a presumption against indiscriminate shackling.⁵⁶

These combined harms make it difficult to imagine how the system lives up to its stated mission of rehabilitation. Perhaps this is why youth incarceration does not prevent future contact with the criminal legal system. Kids who have been locked up “suffer high rates of rearrest, new adjudications/convictions, and reincarceration” in childhood and adulthood.⁵⁷

West Virginia’s investment in carceral facilities is rising. In Fiscal Year 2023, the state spent \$49.2 million on youth jails – an \$8.1 million spending increase over the previous year.⁵⁸

49. “Juvenile Resident Discipline,” Policy Directive 325.07, West Virginia Division of Corrections & Rehabilitation, effective November 15, 2019, <https://wvpolicy.org/wp-content/uploads/2024/01/325.07-Juvenile-Resident-Discipline-2019.11.15.pdf> (Note: Disciplined youth must be permitted to make one phone per week to family.).

50. “Juvenile Specialized Housing,” Policy Directive 326.04, West Virginia Division of Corrections & Rehabilitation, effective November 15, 2019, <https://wvpolicy.org/wp-content/uploads/2024/01/326.04-Juvenile-Specialized-Housing-2019.11.15.pdf>.

51. Jessica Feerman, Karen U. Lindell, and Natane Eaddy, “Unlocking Youth: Legal Strategies to End Solitary Confinement in Juvenile Facilities” (Philadelphia, PA: Juvenile Law Center, 2017), 10-12, https://jlc.org/sites/default/files/attachments/2018-03/JLC_Solitary_ReportFINAL.pdf.

52. “Unshackle the Children: A National Overview of State Implementation Experiences” (Washington, DC: The Gault Center, January 2024), 4, https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children_Final.pdf.

53. Gault Center, “Unshackle the Children,” 7-8.

54. Gault Center, “Unshackle the Children,” 8.

55. “Resolution 107A,” American Bar Association Criminal Justice Section Report to the House of Delegates, February 2015, <https://www.defendyouthrights.org/wp-content/uploads/ABA-Report-Resolution-2015-107A-Revised-Approved.pdf>.

56. “Anti-Shackling Proposal, ABA Resolution 107A,” American Bar Association, October 25, 2022, YouTube video, <https://www.youtube.com/watch?v=R9Wr-xaUvnE>.

57. Mendel, “Why Youth Incarceration Fails,” 12.

58. DCR, “2023 Annual Report,” 26; “FY 2022 Annual Report WV Division of Corrections and Rehabilitation” (Charleston, WV: WV DCR, December 2022), 28, https://dcr.wv.gov/resources/Documents/annual_reports/FY22%20ANNUAL%20REPORT%20WVDCCR.pdf.

Meanwhile, other investments in youth are declining.⁵⁹ Over the last three years alone, West Virginia invested \$134.3 million to cage children.⁶⁰

In all, between youth jails and YRCs, 740 children began the summer of 2024 under correctional control – a new and shameful high.⁶¹ The YRC “reform” of the criminal legal system for children proved instead to be an expansion of this harmful system.

Racism: A Feature, Not a Bug

While Black children make up four percent of West Virginia’s general population, Black youth constituted at least 11.6 percent of those incarcerated in Fiscal Year 2023.⁶²

West Virginia policymakers are aware of these discrepancies. A 2018 analysis by the Office of Research and Strategic Planning found that nonwhite youths were more likely than white youths to be arrested, detained, convicted, and incarcerated.⁶³ Black children were 5.3 times more likely than white children to be arrested and 2.4 times more likely to be incarcerated prior to sentencing.⁶⁴ At the same time, nonwhite youths were less likely to receive a diversion or to be placed on probation.⁶⁵

After the 2015 legislative reforms, state agencies set out to reduce racial and ethnic disparities in the criminal legal system. The most recent data lacks promise. Between 2021 and 2022, arrests of nonwhite youths increased by an alarming 23.7 percent.⁶⁶ Once inside of the court system, children of color saw a 39.8 percent decrease in diversions offered, no change in pretrial detention, and a 133.3 percent increase in the number of children transferred to adult court.⁶⁷

And make no mistake — this discrimination does not end with children. Black adults account for 13.0 percent of the state prison population, although they only make up 3.7 percent of

59. Sean O’Leary, Ted Boettner, and Rachel Rubin, “Strengthening West Virginia Families: Seven Policies to Build Shared Prosperity” (Charleston, WV: West Virginia Center on Budget and Policy, 2018), 4, https://wvpolicy.org/wp-content/uploads/2019/01/WVCBP_WVfamilies2018.pdf; Rhonda Rogombe, “Medicaid in the Mountain State: A Health and Economic Necessity” (Charleston, WV: West Virginia Center on Budget and Policy, 2021), 11, <https://wvpolicy.org/wp-content/uploads/2021/07/WVCBP-Medicaid-Budget-Report.pdf>; Kelly Allen and Sean O’Leary, “Hope Scholarship Reduces Resources for Public Schools, Lacks Necessary Oversight” (Charleston, WV: West Virginia Center on Budget and Policy, 2023), 1, <https://wvpolicy.org/wp-content/uploads/2023/12/hope-scholarship-brief.pdf>.

60. DCR, “2021 Annual Report,” 28; DCR, “2022 Annual Report,” 28; DCR, “2023 Annual Report,” 26.

61. DCR, “Race & Gender Report as of 6/3/2024.”

62. The Annie E. Casey Foundation, “Child Population by Race and Ethnicity in West Virginia,” KIDS COUNT Data Center, <https://datacenter.kidscount.org>; DCR, “2023 Annual Report,” 41. Note: Because of inconsistent measures across data sets, these population figures do not include Black people counted under multi-racial categories.

63. Douglas H. Spence, “Measuring Disproportionate Minority Contact in West Virginia’s Juvenile Justice System” (Charleston, WV: Division of Justice and Community Services, Office of Research and Strategic Planning, January 2018), 1, <https://das.wv.gov/JCS/ORSP/SAC/Publications/Documents/2018DMC%20in%20WV%20Research%20Brief.pdf>.

64. Spence, “Disproportionate Minority Contact,” 4.

65. Spence, “Disproportionate Minority Contact,” 1.

66. “Juvenile Justice Subcommittee July 1, 2022 – June 30, 2023 Annual Report” (Charleston, WV: Department of Homeland Security, Division of Administrative Services, Justice and Community Services Section), 22, https://www.wvlegislature.gov/legisdocs/reports/agency/J03_CY_2023_26060.pdf.

67. DHS, “Juvenile Justice Subcommittee Annual Report,” 17-18.

West Virginia residents.⁶⁸ The more punitive the sentence, the deeper the disparity. Black adults are four times as likely to be serving a life with parole sentence,⁶⁹ five times as likely to be serving a life without parole sentence,⁷⁰ and seven times as likely to have a prosecutor request a life sentence based on prior convictions.⁷¹

These disparities may reflect how children are referred to the criminal system and who presides over these cases.

A significant number of filings originate in schools, where Black children are disproportionately disciplined. Department of Education data showed that Black students were suspended at twice the rate of white students, losing nearly three more days of instruction than their white fellow students.⁷² Across the state, about one in five Black students were suspended during the 2021-2022 school year.⁷³

Magistrates preside over youth detention hearings and some misdemeanor offenses. Of West Virginia's 160 magistrates, only three are Black (1.9 percent of magistrates).⁷⁴ Every circuit court judge in the state is white (60 white men and 15 white women).⁷⁵ West Virginia is one of 18 states in which no member of the supreme court is a person of color.⁷⁶

Financial Penalties for Children

There is a growing national movement to eliminate fees imposed on children in the criminal legal system. One analysis of these financial penalties found that they “risk undermining the core goal of the juvenile court system by increasing wealth disparities in the system, pushing youth deeper into the system based on inability to pay, penalizing youth well into adulthood, and heightening family stress.”⁷⁷

68. U.S. Census Bureau, Population Estimates, July 1, 2023 (V2023) — West Virginia, Quick Facts, <https://www.census.gov/quickfacts/WV>; DCR, “2023 Annual Report,” 35.

69. “DCR stats life sentences (Life With Mercy).pdf” provided by Sallie Daugherty, email to author, June 26, 2023, available here: <https://wvpolicy.org/wp-content/uploads/2023/09/DCR-stats-life-sentences-Life-With-Mercy.pdf> (Black people are serving 15.4 percent of life with mercy sentences).

70. WVCBP analysis of “DCR stats life sentences (Life Without Mercy).pdf” provided by Sallie Daugherty, email to author, June 26, 2023, available here: <https://wvpolicy.org/wp-content/uploads/2023/09/DCR-stats-life-sentences-Life-Without-Mercy.pdf> (Black people are serving 18.9 percent of Life without Mercy sentences).

71. “DCR stats life sentences (Habitual).pdf” provided by Sallie Daugherty, email to author, June 26, 2023, available here: <https://wvpolicy.org/wp-content/uploads/2023/09/DCR-stats-life-sentences-Habitual-Life.pdf> (Black people are serving 25.5 percent of Habitual Life sentences).

72. “SY 22 Discipline Data in Review,” West Virginia Department of Education, May 10, 2023, slides 10 and 30, <https://wvpolicy.org/wp-content/uploads/2024/07/Discipline-Data-in-Review.pdf>.

73. Department of Education, “Discipline Data,” slide 29.

74. Jennifer Bundy, Public Information Officer at West Virginia Supreme Court of Appeals, email to Sara Whitaker, January 26, 2024.

75. Bundy, email to Sara Whitaker, January 26, 2024.

76. Zoe Merriman, Chihiro Isozaki, and Alicia Bannon, “State Supreme Court Diversity – May 2024 Update” (Brennan Center for Justice, May 2024), <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity-may-2024-update>.

77. Jessica Feerman, Naomi Goldstein, Emily Haney-Caron, Jaymes Fairfax Columbo, “Debtors’ Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System” (Philadelphia, PA: Juvenile Law Center, 2016), 4, <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>.

Young adults at the 2023 listening sessions emphasized how the state practice of suspending driver's licenses for unpaid fees reduced their employment options. One youth remarked, "A lot of good-paying jobs [are] driving jobs."⁷⁸ Another added, "That's how the system will screw you from the get-go."⁷⁹

A study of 1,167 youth cases found that children ordered to pay financial penalties were more likely to be convicted of new offenses than those who were not (even when controlling for the person's age, race, and offense category).⁸⁰ Further, the higher the amount imposed, the higher the likelihood of recidivism.⁸¹

These results have garnered allies in the movement to eliminate court-ordered financial penalties. In 2018, the National Council of Juvenile Family Court Judges passed a resolution calling for the reduction or elimination of fees imposed on youth.⁸² Three years later, Law Enforcement Leaders to Reduce Crime & Incarceration released its *Juvenile Justice Reform Principles*, which included a recommendation to "stop charging youth criminal justice fees and fines."⁸³

West Virginia's criminal legal system for children imposes three main types of financial penalties:

Fines: Additional penalties that can be ordered upon conviction. For delinquency offenses, the court may fine a child up to \$100.⁸⁴ West Virginia law also provides courts discretion to impose graduated fines for underage alcohol consumption.⁸⁵ There are no fines imposed for other status offenses.

Restitution: For actual damages or loss caused by a delinquency offense, the court may order a child – or their parents – to make reparation to the party who experienced the loss.⁸⁶

Court Costs: Fees used to fund the criminal legal system and other government functions. Unlike fines, court costs bear no relationship to the offense and are imposed as a matter of course when a person is convicted. Instead, this type of fee is a "regressive tax, used to raise revenue."⁸⁷

78. Midian Listening Session, April 25, 2023.

79. Midian Listening Session, April 25, 2023.

80. Alex R. Piquero, Michael T. Baglivio, and Kevin T. Wolff, "A Statewide Analysis of the Impact of Restitution and Fees on Juvenile Recidivism in Florida Across Race & Ethnicity," (2023), 2, https://jlc.org/sites/default/files/attachments/2023-02/Piquero_et_al_AV_Fees_%26_Restitution_Report_wTables_011723.pdf.

81. Piquero, Baglivio, and Wolff, "A Statewide Analysis of the Impact of Restitution and Fees on Juvenile Recidivism in Florida Across Race & Ethnicity," 2.

82. "Resolution Addressing Fines, Fees, and Costs in Juvenile Courts" (National Council of Juvenile and Family Court Judges, March 2018), 2, https://www.ncjfcj.org/wp-content/uploads/2019/10/ExXIII_FinesFeesCosts_Resolution.pdf.

83. "Juvenile Justice Reform Principles" (Law Enforcement Leaders to Reduce Crime & Incarceration, April 2021), 2, https://live-lawenforcementleaders.pantheonsite.io/wp-content/uploads/2021/04/2021.4.27_LEL-Juvenile-Justice-Reform-Brief.pdf.

84. West Virginia Code § 49-4-715(a)(1), <https://code.wvlegislature.gov/49-4-715/>.

85. West Virginia Code § 49-4-713(a), <https://code.wvlegislature.gov/49-4-713/>.

86. West Virginia Code § 49-4-715(a)(2), <https://code.wvlegislature.gov/49-4-715/>.

87. "Local Policy Guides: Fee Elimination and Debt Relief" (Fines and Fees Justice Center, February 2022), 1, <https://finesandfeesjusticecenter.org/content/uploads/2022/03/Local-Policy-Guides-Fee-Elimination-Final.pdf>.

When imposing fines and/or restitution, West Virginia law requires the court to consider “the seriousness of the offense, the child’s ability to pay and a program of rehabilitation consistent with the best interests of the child.”⁸⁸ Restitution must “aid in the rehabilitation of the child in a juvenile case” and “set in an amount that is within the realistic ability of the children to pay within a reasonable amount of time, so that they can complete a probationary period, put these events behind them and move forward.”⁸⁹ Furthermore, a court may not deny probation based on a youth’s inability to pay a fine or restitution.⁹⁰ While the law sets forth detailed guidance, the data shows that young people in West Virginia face different financial penalties based on where they live.

The data provided by the Supreme Court of Appeals of West Virginia reveal significant financial penalties in magistrate courts.⁹¹ Between 2021 and 2023, state magistrates ordered youth convicted of misdemeanors to pay a total of \$744,338.56 in court costs, fines, and restitution.⁹² Over the same three-year period, magistrate courts collected \$617,623.47 for “juvenile misdemeanor” cases.⁹³

Most of the financial penalties imposed by magistrate courts were court costs, which accounted for four out of every five dollars assessed (81.3 percent of all penalties).⁹⁴ Over the last three years, the amount of court costs ordered has increased by tens of thousands of dollars each year.

	2021	2022	2023
Court Costs Imposed by Magistrate Courts in Juvenile Cases	\$164,407.93	\$201,250.75	\$239,612.38

By contrast, data shows serious inconsistency in the collection of “court costs,” and, as further described below, does not analyze all the costs youth and families face.⁹⁵

Between 2021 and 2023, circuit court costs totaled \$64,161.73.⁹⁶ But a closer look reveals that judges in just eight counties ordered these court costs in status and delinquency cases, and none as much as Berkeley County. In Berkeley, circuit court judges ordered \$57,327.00 in court costs – or 89.3 percent of all court costs in the state. Some counties imposed almost no costs on children.⁹⁷

88. West Virginia Code § 49-4-715(b), <https://code.wvlegislature.gov/49-4-715/>.

89. *In re Michael S.*, 524 S.E.2d 443, 446 (1999); *State v. Kristopher G.*, 500 S.E.2d 519.

90. W.Va. Code § 49-4-715(b).

91. WVCBP analysis of “Juvenile Assessed 2021-2023.xlsx” and “Juvenile Collected 2021-2023.xlsx” provided by Suzanne Summers, email to Sara Whitaker, May 15, 2024.

92. WVCBP analysis of “Juvenile Assessed 2021-2023.xlsx.”

93. WVCBP analysis of “Juvenile Assessed 2021-2023.xlsx.”

94. WVCBP analysis of “Juvenile Assessed 2021-2023.xlsx.”

95. WVCBP analysis of “Juvenile Restitution 2021-2023.xls” provided by Suzanne Summers, email to Sara Whitaker, May 15, 2024. Note: There are two caveats to the circuit court data discussed. First, Monongalia County – the state’s third most populous county – is not included in the data. Second, the financial penalties imposed in a case are not required fields in the court’s case management system. Thus, there may be additional fines, court costs, and restitution in sentencing orders that were not captured in the data provided by the judiciary. Because youth cases are confidential, these documents are not available to the public.

96. WVCBP analysis of “Juvenile Restitution 2021-2023.xls.” The eight counties that imposed court costs between 2021 and 2023 were: Berkeley, Braxton, Hampshire, Jefferson, Mineral, Morgan, Summers, and Tucker.

97. WVCBP analysis of “Juvenile Restitution 2021-2023.xls.” Between 2021 and 2023, courts in only five

For restitution also, where a young person lives overwhelmingly influences how they will be treated. From 2021 through 2023, West Virginia courts imposed \$273,941.22 of restitution debt on youth. But these figures are distorted by Hampshire County, a jurisdiction with 23,649 residents and only two circuit court judges (H. Charles Carl, III and C. Carter Williams).⁹⁸

In 2021, Hampshire's judges imposed a restitution bill of \$53,897 on court-involved youth.⁹⁹ The county, which had less than one percent of all delinquency cases filed that year, was responsible for 72.8 percent of all restitution imposed across the state.¹⁰⁰

In 2022, Hampshire's judges imposed a staggering \$110,619.88 in restitution obligations on children in a year that the county had only 20 delinquency filings.¹⁰¹ It is hard to imagine how debts this size could "aid in the rehabilitation" of the youth involved. The futility of Hampshire County's approach to restitution is reflected in the total amount collected in 2021 and 2022: \$2,616.50 – just 1.6 percent of the restitution imposed in those two years.¹⁰²

When Hampshire is omitted from the data, the total restitution imposed over those three years is \$109,424.34 – or approximately \$688 per year for each of the state's remaining counties.¹⁰³

A child can also be held responsible for the cost of GPS monitoring equipment and supervision or for their court-ordered drug screens. (In one county, a positive drug screen costs four times that of a negative drug screen.) West Virginia law also permits the collection of reimbursement fees for the cost of court-appointed counsel, even though access to counsel is a right guaranteed by the Constitution.¹⁰⁴ Families may also be required to pay for the cost of diversion programs designed to help young people avoid the harsh consequences of juvenile court involvement.¹⁰⁵

If a kid is removed from their home and placed in a youth jail or other placement, the court may order a parent to pay child support.¹⁰⁶ Unpaid support can result in a lien or contempt

counties (Grant, Logan, Putnam, Harrison, and Mineral) imposed any fines on youth for a total assessed amount of \$460.

98. U.S. Census Bureau, Population Estimates, July 1, 2023 (V2023) — Hampshire County, West Virginia, Quick Facts, <https://www.census.gov/quickfacts/fact/table/hampshirecountywestvirginia/PST045223>; "Circuit Court: Hampshire," West Virginia Judiciary, <https://www.courtsww.gov/public-resources/court-information-county/hampshire>.

99. WVCBP analysis of "WithPivotCopy of Juvenile Restitution 2021-2023.xlsx" provided by Mallory Watkins, email to Sara Whitaker, May 23, 2024.

100. "The 2021 Annual Statistics Report on Circuit, Family, and Magistrate Courts" (Charleston, WV: Supreme Court of Appeals of West Virginia Administrative Office), 4, https://www.courtsww.gov/sites/default/pubfilesmnt/2023-06/2021AnnualReport_Statistics.pdf; WVCBP analysis of "WithPivotCopy of Juvenile Restitution 2021-2023.xlsx."

101. WVCBP analysis of "WithPivotCopy of Juvenile Restitution 2021-2023.xlsx"; "The 2022 Annual Statistics Report on Circuit, Family, and Magistrate Courts" (Charleston, WV: Supreme Court of Appeals of West Virginia Administrative Office), 6, <https://www.courtsww.gov/sites/default/pubfilesmnt/2024-04/2022annualStats.pdf>.

102. WVCBP analysis of "WithPivotCopy of Juvenile Restitution 2021-2023.xlsx."

103. WVCBP analysis of "WithPivotCopy of Juvenile Restitution 2021-2023.xlsx."

104. W. Va. Code § 29-21-16(g), <https://code.wvlegislature.gov/email/29-21-16/>.

105. W. Va. Code § 49-4-716(g), <https://code.wvlegislature.gov/email/49-4-716/>.

106. West Virginia Code § 49-4-801, <https://code.wvlegislature.gov/49-4-801/>. A judge has discretion to order no support if the judge finds that the parent has no income or that no support is in the best interests of the child.

hearing against the child’s caregiver.¹⁰⁷

Ultimately, whether a West Virginia court will order a financial penalty – and how much that penalty will be – comes down to a child’s zip code.

Other Ways the Criminal System Extracts Wealth

As burdensome as they are, court-ordered financial penalties are just the beginning. A criminal case extracts wealth from children and their families in several ways that go uncounted.

Youth in jails must pay for services that have been privatized by the correctional system. One example is commissary, which sells everything from reading glasses and underwear to candy bars and instant meals — often at above-market prices.¹⁰⁸ And as youth pay inflated prices for commissary items – many of which are everyday necessities – the state makes a profit. In 2022, West Virginia signed a five-year contract to have Union Supply Group (USG) provide commissary services in jails and prisons.¹⁰⁹ Under the contract, USG pays the DCR a 20 percent commission on sales made in youth jails, setting up a perverse incentive for the state to provide fewer and fewer goods for free. Additionally, if families are *already* paying “child support” and then also paying for commissary, they are, in essence, paying twice.

Then there are the costs that are not ordered by a court, but the result of court actions. Parents who called off work to be at a hearing. Paying for gas – or rides – to the courthouse or to visit a youth removed from home. One student-athlete recalled a sports tournament he had paid for in advance but ultimately did not attend because he could not secure the court’s permission.¹¹⁰

A child’s involvement in the criminal system could threaten their entire family’s housing. Housing authority policies state that “criminal activity” can be used to deny a housing application or to evict families from housing.¹¹¹ Such policies can lead children and their caretakers through a “revolving door of homelessness and punishment.”¹¹² Unsheltered people have 10 times as many contacts with police than people living in shelters.¹¹³ One in six adults behind bars had experienced homelessness in the year prior to their incarceration.¹¹⁴

107. West Virginia Code § 49-4-803, <https://code.wvlegislature.gov/49-4-803/>.

108. USG, West Virginia Division of Corrections and Rehabilitation: Cost Reply, available here: <https://wvpolicy.org/wp-content/uploads/2023/08/USG-Cost-Reply-Menu.pdf>.

109. State of West Virginia Agency Master Agreement, Union Supply Group: Commissary Services, Order Date January 27, 2022, available here: <https://wvpolicy.org/wp-content/uploads/2023/08/2022-United-Supply-Group-Master-Agreement.pdf>.

110. D.Y., interview with Sara Whitaker, May 1, 2024.

111. WVCBP review of *Admissions and Continued Occupancy Policy* manuals for West Virginia housing authorities.

112. Lucius Couloute, “Nowhere to Go: Homelessness Among Formerly Incarcerated People” (Northampton, MA: Prison Policy Initiative, August 2018), <https://www.prisonpolicy.org/reports/housing.html>.

113. Janey Rountree, Nathan Hess, and Austin Lyke, “Health Conditions Among Unsheltered Adults in the U.S.” (Los Angeles, CA: California Policy Lab, October 2019), 6.

114. Couloute, “Nowhere to Go.”

“You’ll Never Play Sports Here Again”

T.H. believes his high school experience was determined by his criminal system involvement.¹¹⁵ At the start of his freshman year, he was excited about high school. He had made the football team – a sport he had played since his father had coached him in pee-wee.

But a few weeks into his first semester, a teacher misinterpreted a joke T.H. made in class and sent him to the principal’s office. T.H. does not remember exactly when he found out that he was going to be charged with a felony offense or expelled from school. But he does remember his principal telling him, “You’ll never play sports here again.”

Years later what he remembers most about his court hearings was how big the courtroom seemed. “I had never been in trouble before in my life. I was terrified.”

While the case unfolded, T.H.’s education was put on hold. He could not attend an alternative school because of the nature of the charge. Over the next few months, he was required to attend court hearings, undergo a psychological evaluation, and see a therapist. T.H.’s lawyer tried to convince him to accept a plea deal. Years later, T.H. reflects, “I wonder what my future would have been if I had taken that deal. As I get older, it pisses me off that they’re doing this to kids.”

T.H. remembers being thankful for his judge, whom T.H. saw as “reasonable” and skeptical of the state’s case. After months away from school, the state dismissed the charge. But no one offered T.H. an apology for what he had lost in the meantime. What he had unfairly been robbed of.

“Those few months I got out of school messed me up. I fell behind. After that I was deemed a troublemaker. I can tell by the way people treated me.” He never made it back on the football team because of his grades and eventually left his high school for one in another city. He later left that school to study at a trade program, where he earned his high school diploma. “I’m glad I got tough skin. If I had a weak mind or weak will, I wouldn’t have even tried to graduate school.”

T.H. was more fortunate than others. He made it through the criminal legal system without incarceration or legal debt, without separation from his family, and without a conviction.

But the experience left T.H. in what he describes as “a depressive state.” He retreated into isolation. “I’m having all these bad thoughts and feelings because I’m sheltering myself. Why shelter yourself? Because I couldn’t trust anybody. The people I was supposed to trust the most, threw me to the wolves.” Now in his early 20s, T.H. says his trust issues persist.

Today he still wonders what would have happened if he were never charged, if he hadn’t been labeled and misjudged, if he had been allowed to continue football. “It’s a big ‘what if’ – the sports aspect. That ended my sports involvement. What if I went to college for sports?”

115. T.H., interview with Sara Whitaker, May 22, 2024.

A Record That Follows Kids into Adulthood

Nearly 60 years ago, the United States Supreme Court acknowledged a myth at the heart of the criminal legal system for children: “Juvenile Courts are sometimes defended by a statement that it is the law’s policy ‘to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.’ This claim of secrecy, however, is more rhetoric than reality.”¹¹⁶

The reality is that confidentiality does not always extend to higher education and future employment.

There is no correlation between criminal history screening and improved campus safety.¹¹⁷ Yet, many colleges and universities ask applicants to disclose past criminal charges, convictions, and/or school discipline. Just asking can have a chilling effect. One study of thirty campuses found that 62.5 percent of people who checked a box acknowledging a felony conviction never completed the application.¹¹⁸

In 2018, the Common Application, which allows students to apply to 1,000+ colleges and universities through a single application portal, eliminated the criminal history question.¹¹⁹ But the Common Application continues to allow schools to ask supplemental questions about criminal history and discipline.

Amongst West Virginia’s seven largest four-year universities, only West Virginia State University does not ask about an applicant’s disciplinary or criminal record.¹²⁰

The state’s three largest schools – West Virginia University, Marshall University, and Fairmont State University – refrain from asking all applicants to disclose criminal system involvement. But all three schools require students applying to specific fields of study to make certain disclosures. Applicants to WVU’s Health Sciences programs are asked about disciplinary actions at previous schools.¹²¹ Marshall conducts a background check on all prospective nursing students.¹²² FSU asks nursing and police academy applicants about criminal history and requires a background check.¹²³

116. *In re Gault*, 387 U.S. 1, 24 (1967).

117. “Reconsidered: The Use of Criminal History Records in College Admissions” (New York, NY: The Center for Community Alternatives, November 2010), 6, <https://communityalternatives.org/wp-content/uploads/2020/02/use-of-criminal-history-records-reconsidered.pdf>.

118. “Boxed Out: Criminal History Screenings and College Application Attrition” (New York, NY: Center for Community Alternatives, March 2015), 9, <https://communityalternatives.org/wp-content/uploads/2019/11/boxed-out.pdf>.

119. Scott Jaschik, “Common App Drops Criminal History Question,” *Inside Higher Ed*, August 12, 2018, <https://www.insidehighered.com/admissions/article/2018/08/13/common-application-drops-criminal-history-question-although-colleges>.

120. “West Virginia State University,” Common Application, accessed June 18, 2024, <https://www.commonapp.org/>.

121. Joseph Cook, Director of Admissions and Operations at West Virginia University, email to Rachel Rubin, June 18, 2024; “West Virginia University,” Common Application, accessed June 18, 2024, <https://www.commonapp.org/>.

122. “Marshall University,” Common Application, accessed June 18, 2024, <https://www.commonapp.org/>.

123. Kathy Potesto, Admissions Associate at Fairmont State University, phone conversation with Rachel Rubin, May 28, 2024; “College of Nursing - BSN Application,” Fairmont State University, accessed June 18, 2024, <https://apply.fairmontstate.edu/>.

Shepherd University, West Liberty University, and the University of Charleston all ask every applicant whether they have been convicted of a felony offense, regardless of which program they are applying to.¹²⁴

One scholar suggests that the most permanent consequence of a criminal record may be on future employment.¹²⁵ Despite a national movement toward “ban-the-box” policies, a study found that most employers continue to ask job applicants about their criminal history.¹²⁶ Employers are “more than 50% less likely to make a callback or job offer to applicants with a criminal record.”

Trauma That Lingers for Years

These collateral consequences should be enough to discourage West Virginia’s lawmakers from calling for expansions of the state’s already vast criminal legal system for children.

But even as severe as these consequences were, they were not the harms that stuck with the people who had gone through that system. Instead, they fixated on experiences and interactions that are not captured in any court data or spreadsheets.

They recalled threats of punishment from adults in education or other social service roles. The feeling that they were not in control of their body or personal space. Experiencing constant worry caused by wondering how a case would end. Missing out on their childhoods. Being pulled from class to take a drug test at school. Being ripped from home and loved ones. “Jokes” about Black people. Depression. Embarrassment. Shame.

A lot of this is made possible by the confidential nature of youth cases. Court watchers and investigative journalists cannot attend hearings. An adult who had a youth criminal record would need a judge’s permission to access their own court file.¹²⁷ If the state believes a person violated these confidentiality rules, it can charge that person with a misdemeanor, punishable by up to six months in jail.¹²⁸

Indeed, this report may not have happened if the founding director of the Midian Leadership Project was not a reverend. He explained, “The system is so secret that I wouldn’t have seen it if I didn’t have confessional privilege with a group of boys. No one is able to look at the pattern and fix the pattern. Everything we see is behind this veil that we are told is protecting

124. “Shepherd University,” Common Application, accessed June 18, 2024, <https://www.commonapp.org/> (“Have you been charged with a criminal offense other than a misdemeanor?” & “If yes, an explanation of this criminal offense is required to process your application.” (250 word max)); Michelle Panepucci, Director of Admissions Operations at West Liberty University, email to Rachel Rubin, May 28, 2024 (“Have you been convicted of a felony in the past 5 years? Please provide an explanation to your response of “Yes” to the question above.” & “Have you ever been suspended for academic or disciplinary reasons? If “yes,” please explain your academic or discipline suspension here.”); “University of Charleston,” Common Application, accessed June 18, 2024, <https://www.commonapp.org/> (“Have you ever been convicted of a felony?”).

125. Joy Radice, “The Juvenile Record Myth,” *The Georgetown Law Journal* 106 (2018): 387, <https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/02/zt100218000365.pdf>.

126. Riya Saha Shah and Jean Strout, “Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records” (Philadelphia, PA: Juvenile Law Center, February 2016), 11, https://jlc.org/sites/default/files/publication_pdfs/Future%20Interrupted%20-%20final%20for%20web_0.pdf.

127. West Virginia Code § 49-5-103, <https://code.wvlegislature.gov/49-5-103/>; Phone call with Kanawha County Circuit Clerk’s Office, May 6, 2024.

128. W.Va. Code § 49-5-103.

children but is actually protecting the system.”¹²⁹

Stress Stemming from Those Meant to Support

D.Y. still bristles at the ways his probation officer treated him when he was a teenager.¹³⁰ He remembers the officer threatening “to send me away for months.” At one appointment, his officer implied that he had been watching D.Y. around town. “My probation officer told me exactly what kind of bike I drove. And I was thinking, but you didn’t tell me you saw me.” To D.Y., the exchange felt like a threat. His probation officer could demand a drug test or change D.Y.’s schedule at the last minute, but was in return inconsistently available to D.Y. “On some days, they choose when – or not – to respond to you.” Probation supervision, often held up as a diversion from out-of-home placement and incarceration, felt more like a threat to D.Y. “If anything, it just added stress.”

Layers of Adversity

Our most significant finding was how the criminal legal system pours additional harm on top of pre-existing harm. For many children in the Mountain State, adversity begins long before they face the criminal legal system. According to the 2024 KIDS COUNT report, in West Virginia:

- A quarter of kids live in poverty.¹³¹
- One in three kids have parents who lack secure employment.¹³²
- 22 percent of kids live in households that spend more than 30 percent of income on housing costs.¹³³
- 36 percent of kids live in single-parent families.¹³⁴
- 132,000 kids live in families that received Supplemental Security Income (SSI), cash public assistance income, or Supplemental Nutrition Assistance Program (SNAP) benefits.¹³⁵
- 7,152 kids were in the foster care system.¹³⁶

Over the last three decades, we have learned how this type of childhood adversity can have profound and long-term impacts on people’s well-being.

In the mid-1990s, the Adverse Childhood Experiences (ACE) Study surveyed thousands of adults about whether they had experienced the following 10 categories of adversity during

129. J.B., interview with Sara Whitaker, July 2, 2024.

130. D.Y., interview with Sara Whitaker, May 1, 2024.

131. “2024 KIDS COUNT Data Profile: West Virginia,” The Annie E. Casey Foundation, 1, <https://assets.aecf.org/m/databook/2024-KCDB-profile-WV.pdf>.

132. AECF, “2024 KIDS COUNT: West Virginia,” 1.

133. AECF, “2024 KIDS COUNT: West Virginia,” 1.

134. AECF, “2024 KIDS COUNT: West Virginia,” 2.

135. “Children in Families That Receive Public Assistance in West Virginia,” The Annie E. Casey Foundation, KIDS COUNT Data Center, <https://datacenter.aecf.org/data/tables/8857-children-in-families-that-receive-public-assistance?loc=50&loct=2#detailed/2/50/false/1095/any/17739,17740>.

136. “Children in Foster Care in West Virginia,” The Annie E. Casey Foundation, KIDS COUNT Data Center, <https://datacenter.aecf.org/data/tables/6243-children-in-foster-care?loc=50&loct=2#detailed/2/50/false/2048/any/12987>.

their childhoods: emotional abuse, physical abuse, sexual abuse, emotional neglect, physical neglect, domestic violence, parental separation or divorce, the incarceration of a household member, household substance abuse, or household mental illness.¹³⁷

At the same time, the ACE researchers examined respondents' medical records for risk factors (e.g., substance use disorder, depression, obesity, etc.) and disease factors (e.g., cancer, stroke, diabetes, heart disease, etc.).

The study found that the more adverse experiences in childhood, the more risk factors and chronic disease later in life.¹³⁸ This close relationship between traumatic events and poor health has been examined through a growing body of research on traumatic stress.

From the beginning of one's life, any new experience activates the body's stress-response system. How the stress response is activated varies by person and experience. "Hyper-arousal prepares people for fight and/or flight, which requires an increased heart-rate; dissociation prepares them for inescapable stress, slowing their heart rate, breathing and other functions."¹³⁹

Not all stress is bad. In fact, stress is necessary to our survival, helping us avoid threats. When stress is predictable, moderate and controlled, children build tolerance and "comfortably 'metabolize' the ups and downs of daily life."¹⁴⁰

But when a child is subjected to multiple traumas – when adversity is chronic or unpredictable – the stress response stays on, pumping out a low dose of inflammatory chemicals.¹⁴¹ This "toxic stress" can have a wear-and-tear effect on the body – like revving a car engine for days or weeks at a time – which is why repeated activation of a child's stress response system can impact their developing brain, immune system, hormones, and cardiovascular system.¹⁴²

Traumatic responses in the body can have real-world effects. One report explains: "The aftermath of trauma is frequently accompanied by behavioral changes, such as an increase in externalizing behavior (acting out) such as aggression, defiance, and substance use. It is more likely that police will take notice of the individual exhibiting behaviors, especially in families that cannot afford psychotherapy and other expensive private

137. Felitti, et al., "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults," *American Journal of Preventive Medicine* 14, no. 4 (1998), <https://www.ajpmon-line.org/action/showPdf?pii=S0749-3797%2898%2900017-8>; "About the CDC-Kaiser ACE Study," Centers for Disease Control and Prevention, <https://www.cdc.gov/violenceprevention/aces/about.html>.

138. Michael T. Baglivio, et al., "The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders," *Journal of Juvenile Justice* 3, no. 2 (2014): 1, <https://www.ojp.gov/pdffiles/246951.pdf>.

139. Bruce Perry and Maia Szalavitz, *The Boy Who Was Raised as a Dog: And Other Stories from a Child Psychiatrist's Notebook* (New York, NY: Basic Books, 2007), 172.

140. Jane Mulcahy, "Understanding the Real Reasons Why Care-Experienced Children End up Being 'Cared for' in Prison" (2018), 3, <https://doi.org/10.13140/RG.2.2.24109.38883>; Bruce Perry and Oprah Winfrey, *What Happened to You? Conversations on Trauma, Resilience, and Healing* (New York, NY: Flatiron Books, 2021), 37.

141. "ACEs and Toxic Stress: Frequently Asked Questions," Harvard University Center on the Developing Child, <https://developingchild.harvard.edu/resources/aces-and-toxic-stress-frequently-asked-questions/>.

142. Nadine Burke Harris, *The Deepest Well: Healing the Long-Term Effects of Childhood Adversity* (New York, NY: Houghton Mifflin Harcourt, 2018), 65.

treatment options. All of this leads to an increased possib[ility] of arrest and subsequent incarceration, where instead there should be healing and growth.”¹⁴³

Multiple studies have demonstrated a strong association between ACE score and criminal system involvement in both childhood and adulthood.¹⁴⁴

According to the latest data, 21 percent of West Virginia kids have experienced two or more adverse experiences.¹⁴⁵

But one’s ACE score is not a sentence. People can avoid the long-term impacts of trauma, as well as the risk factors that lead to status/delinquency filings.

A study that followed respondents from childhood through early adulthood identified the “protective factors” that interrupted the link between childhood adversity and later offending.¹⁴⁶ A child was less likely to engage in harmful behaviors when they had a strong connection to school, quality relationships with parental figures, and a safe and cohesive neighborhood community.¹⁴⁷

This is compatible with criminology findings that most children grow out of “anti-social” behavior, including those convicted of serious offenses.¹⁴⁸ And yet, placing children in institutional settings – that is, removing them from their school, home, and community – can “derail this developmental process.”¹⁴⁹

The criminal system for children claims to exist for the purpose of rehabilitating kids; in reality, it does the opposite. The system compounds old traumas by separating the child from whatever protective factors they might have access to. Then the system adds new traumas caused by isolation, stress, exposure to abuse, and more.

143. Gabrielle French, Allie Goodman, and Chloe Carlson, “Trauma and the Carceral State” (Ann Arbor, MI: Carceral State Project, June 2020), <https://storymaps.arcgis.com/stories/59162cc67b8c4b0880849b75f-0649cfd>.

144. Baglivio, et al., “Prevalence of ACE in Juvenile Offenders,” 5-8. (A study of 64,329 youth referred to the criminal legal system in Florida found that the group was four times more likely than the original ACE study population to report four or more ACEs.); James A. Reavis, et al., “Adverse Childhood Experiences and Adult Criminality: How Long Must We Live before We Possess Our Own Lives?” *The Permanente Journal* 17, no. 2 (2013): 44, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3662280/pdf/permj17_2p0044.pdf (Men convicted of violent offenses were four times more likely than the average adult male to have had four or more adverse experiences in childhood.).

145. “Children Who Have Experienced Two or More Adverse Experiences in West Virginia,” The Annie E. Casey Foundation, KIDS COUNT Data Center, <https://datacenter.aecf.org/data/tables/9709-children-who-have-experienced-two-or-more-adverse-experiences?loc=50&loct=2#detailed/2/50/false/2043/any/18961,18962>.

146. Andra Wilkinson and Hannah Lantos, “How School, Family, and Community Protective Factors Can Help Youth Who Have Experienced Maltreatment” (Child Trends, July 2018), 2, https://cms.childtrends.org/wp-content/uploads/2018/06/SchoolFamilyCommunityYouthMaltreatment_ChildTrends_July2018.pdf.

147. Wilkinson and Lantos, “Protective Factors Can Help Youth,” 8-11.

148. Laurence Steinberg, Elizabeth Cauffman, and Kathryn C. Monahan, “Psychosocial Maturity and Desistance from Crime in a Sample of Serious Juvenile Offenders,” (Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, March 2015), 1, <https://ojjdp.ojp.gov/sites/g/files/xyck-uh176/files/pubs/248391.pdf>.

149. Steinberg, Cauffman, and Monahan, “Desistance from Crime in Serious Juvenile Offenders,” 9.

“It’s Not Designed for Children.”¹⁵⁰

A.B. was only 12 years old when she was charged with felonies. Her childhood had already been stressful.

Her parents divorced when she was young. Then her mother moved A.B. and her older brother from Oklahoma to West Virginia. A.B.’s mother became disabled. A person close to the family abused A.B. when she was in elementary school, and A.B. tried to overdose on muscle relaxers.

And yet, A.B. was a gifted student who wanted to become a doctor and play sports. Her dream was “to help people.”

Then a trip to Walmart changed the rest of her childhood. A.B. was with her adult brother when he tried to use stolen checks at the retailer. A.B.’s brother was arrested and taken to jail, and A.B. was charged in the youth system with the felonies of forgery and uttering.

A.B. remembers court being “very overwhelming, intimidating, scary.” But even then, A.B. saw, “My mom got the brunt of it because she was the caregiver. I remember not liking the way they talked to her.”

A.B. pled guilty and began a probation term that would last from age 13 through adulthood. Around the same time, A.B.’s mom was diagnosed with ovarian cancer. “I’m pretty sure the stress of [my case] didn’t help.”

A.B. began self-medicating with alcohol, then marijuana. “The only person that had ever cared for or loved me was dying. I hadn’t been using before I was involved in the system. But by the time I got through everything, I was using.” She “couldn’t pass a drug screen” but her probation officer never suggested a treatment program for substance use disorders. “I’m a bad kid – that’s how he looked at it.”

When her mother died, A.B. ran away with a boyfriend who was in his 20s. “He was horrible to me – physically abusive.” When A.B. was arrested for leaving her probation supervision, she was “black and blue” from her boyfriend’s abuse. When she was brought back to court, no one acknowledged her mother’s death or A.B.’s victimization. “Maybe that’s why I never addressed any of the trauma for years and years.”

A.B. is thriving today. She found treatment, developed her purpose, and started a family – all things she wanted as a teenage girl.

When asked if there were positive parts of her childhood experience with the criminal system, A.B. is quick to respond: “Absolutely not. There is nothing they provided. There was no love. There was never any kindness. And it really only led to more stress, more anxiety, more substance use. It’s not designed for children. You’re supposed to be loved.”

150. A.B., interview with Sara Whitaker, May 14, 2024.

How it All Adds Up

One attorney who represents youth explained, “The real problem is that kids are not the problem. So often we are trying to fix a kid from a broken system. Like trying to change your car tires when your engine doesn’t work.”¹⁵¹

As a result, the criminal system for children fails to improve the lives of those it supposedly serves. Frequently, it does the opposite. Even bold, expensive efforts to “reform” the system, like the creation of youth reporting centers (YRCs) covered above, functionally serve to expand the system and the harms it perpetrates.

So, what can be done?

Below are three basic strategies for how advocates might thread the needle of helping children, without growing the system that is harming them.

1. We can reduce the harm inside the system.
2. We can reduce the system itself.
3. We can build up different, child-affirming systems.

No. 1 We Reduce the Harm Inside the System

Not all reforms are created equal. There is a tendency to believe that any court program other than incarceration is inherently good for children. In West Virginia, this belief drove expansions of “diversions” like YRCs, teen drug courts, and probation supervision.

At the end of 2023, there were 2,578 children under probation supervision – more than 10 times the number of children behind bars.¹⁵² 400 children were ordered to attend YRCs.¹⁵³

In these programs, judges or supervising officers devise extra “conditions” for children, which if violated may result in sanctions or incarceration.

One may assume that more conditions and supervision will translate to less risky behavior. But research shows that too much of these interventions can increase recidivism by interfering with factors known to reduce risk: “school, work, familial obligations, and pro-social relationships.”¹⁵⁴

151. J.E., interview with Sara Whitaker, May 21, 2024.

152. “West Virginia Judiciary 2023 Annual Report” (Charleston, WV: Supreme Court of Appeals of West Virginia Public Information Office), 26, <https://www.courtsww.gov/sites/default/pubfiles/mnt/2024-05/2023CourtAnnualReport.pdf>; “West Virginia Division of Juvenile Services Race & Gender Report as of 1/3/2024,” provided by Sallie Daugherty, email to Sara Whitaker, May 22, 2024, available here: <https://wvpolicy.org/wp-content/uploads/2024/07/BJS-2023.01.03.pdf>.

153. DCR, “Race & Gender Report as of 1/3/2024.”

154. Julian Adler, Joseph Barrett, and Michael Rempel, “The Myth of Legal Leverage? Toward a Relational Framework for Court-Based Treatment” (New York, NY: Center for Court Innovation, April 2020) 1, https://www.courtinnovation.org/sites/default/files/media/documents/2020-04/report_the_myth_of_legal_lever-

Which is why experts have come to see these programs as a “trip wire for further criminal legal system contact.”¹⁵⁵ One legal scholar who examined youth probation in particular concluded: “Any effort to reform youth probation or shrink its footprint is likely to continue to serve as a net widener, sweeping youth deeper into our carceral state.”¹⁵⁶

The results speak for themselves: one in four West Virginians behind bars were incarcerated for court violations.¹⁵⁷ We should be skeptical of reforms that simply divert children to another part of the system, especially if the reform fundamentally increases the size of the system.

Instead, West Virginia can focus on reforms that reduce harm within the system, without expanding it.

We can start by joining the growing list of states that have eliminated fines and fees for youth.¹⁵⁸ We can stop making children and their families pay for drug tests and court supervision. We can end the wealth extraction in youth jails. We can ban indiscriminate shackling of children and the use of solitary confinement.

But each of these policies seeks to reduce harms experienced by children who are already in the system. Real harm reduction requires us to look further upstream.

No 2. We Reduce the System Itself

The premise undergirding the entire criminal legal system is that a child in trouble needs more government intervention by punishment bureaucrats. But if we learned anything from people who had been prosecuted as children, it was that exposure to the criminal legal system is the punishment.

The second strategy we can pursue is to reduce the size of the system itself.

To be clear, this is not a blanket condemnation of the people who work inside the criminal legal system for children. Yes, our research uncovered stories of system stakeholders acting in ways that proved harmful to the children involved. But we also heard about stakeholders in every corner of the system who acted with sincere care and concern for children.

Acknowledging the harms linked to the criminal system for children does not minimize the good intentions, hard work, and deep compassion of those good actors.

[age_04232020.pdf](#).

155. Evangeline Lopoo, Vincent Schiraldi, and Timothy Ittner, “How Little Supervision Can We Have?” *Annual Review of Criminology* 6 (2023): 1, <https://doi.org/10.1146/annurev-criminol-030521-102739>.

156. Jyoti Nanda, “Set up to Fail: Youth Probation Conditions as a Driver of Incarceration,” *Lewis & Clark Law Review* 26, no. 3 (2022): 747, <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1953&context=pubs>.

157. DCR, “2023 Annual Report,” 41.

158. “State Activity,” Debt Free Justice, <https://debtfreejustice.org/state-activity>.

Instead, it leads us to an important question: what if we did not invest in a system where their acts of care were diminished by the system's inextricable features: shame, control, separation? What would it look like if our state instead invested those people and their resources into an alternative system – or systems – of preventive, people-affirming care?

No. 3 We Build Child-Affirming Institutions

When we asked those who had been through the criminal legal system as children to imagine what this world would look like, they all had answers.

L.N., who had spent several years of his childhood under court supervision for truancy, pointed to Midian's headquarters. The large multi-purpose facility offers neighborhood kids space to do homework, lift weights, borrow a book, and play sports. "If this was here. The people and this place. I would have had a safe haven to go to, with people who had a relationship with me."¹⁵⁹

A.B., who spent her teenage years on probation, wished she had had "a community to say, 'This kid's not bad, they just need support.'"¹⁶⁰ A.B. reflected, "I really needed help with my substance use disorder. I needed to talk about being abused. I needed to talk about my mom dying."

One foster mother emphasized a child's need for attention. "Positive adult attention. If you can just stop and give attention, that can stop a whole lot."¹⁶¹

What these folks describe are the same protective factors that help children tolerate adversity: positive connection to one's school, quality relationships with parental figures, and a sense of belonging in one's neighborhood community.

The criminal legal system is not designed to give children these protective factors, but West Virginia can invest in adults that do.

"Abolition is about presence, not absence. It's about building life-affirming institutions." - Ruth Wilson Gilmore

It starts with public schools, which bear the responsibility of educating one-quarter of a million West Virginia kids.¹⁶²

159. L.N., interview with Sara Whitaker, May 22, 2024.

160. A.B., interview with Sara Whitaker, May 14, 2024.

161. J.N., interview with Sara Whitaker, May 16, 2024.

162. Samuel Workman, "West Virginia's IDEA Data: Developmental Disability in Time and Space" (Morgantown, WV: Institute for Policy Research and Public Affairs, West Virginia University, June 2024), <https://policyresearch.wvu.edu/reports/reports-and-research/2024/02/06/west-virginia-s-idea-data-developmental-disability-in-time-and-space>.

One high school teacher told us, “Kids want a teacher who cares. You can help a kid in need, but when 75 percent of them are in need, it’s overwhelming.”¹⁶³ There is no question that school professionals are being asked to cope with more and more challenges our state has failed to prevent: the foster care crisis, the lack of treatment for substance use disorders, housing insecurity, poverty, and more.

We need to pay educators what they are worth. A social worker told us that low pay increases stress amongst her colleagues, and then eventually, burnout. She explained, “You can’t pour from an empty cup.”¹⁶⁴

Compensation is one measure of what we value. In the last fiscal year, the state minimum salary for a new teacher with a master’s degree was \$44,167,¹⁶⁵ whereas an 18-year-old state police trooper who finished training is entitled to a base salary of \$58,084.¹⁶⁶

But higher compensation alone is not enough. An adult who works with children stated plainly, “You can’t effectively make a difference in the lives of kids without more people.”¹⁶⁷ In a state where 17 percent of all students have independent education plans (IEPs) for developmental disabilities, we need more adults to shoulder the challenges facing these kids and their schools.¹⁶⁸ The people we spoke with wanted more counselors, social workers, classroom aides, bus drivers, coaches, and volunteers. The only folks they wanted to see less? Police in schools.

West Virginia must build neighborhoods where kids feel a sense of belonging – especially during the afterschool hours.

One former recreation center director told us how her center provided refuge to kids who did not otherwise have consistent support: “I collected a bunch of kids. I was kind of like their adult. I’m listening to their girlfriend stories. I’m making sure they’re doing well in school.”¹⁶⁹ When her center closed its doors during the COVID-19 pandemic, kids still showed up and “would just sit outside.”

Cities and counties can fund parks and recreation departments like we fund police departments. West Virginia’s largest city, Charleston, budgeted \$24.5 million for police last year, but only \$3.1 million for parks and recreation.¹⁷⁰ This enormous investment in police overshadows other neighborhood projects, too. A 2023 report found that the city of Charleston allocated more general fund revenue to police overtime payments alone than the city allocated to the economic and community development office, the public library, the public art office and projects, and all city festivals combined.¹⁷¹

163. A.L., interview with Sara Whitaker, May 20, 2024.

164. K.W., interview with Sara Whitaker, May 15, 2024.

165. West Virginia Code § 18A-4-2, <https://code.wvlegislature.gov/18A-4-2/>.

166. West Virginia Code § 15-2-5, <https://code.wvlegislature.gov/15-2-5/>.

167. J.N., interview with Sara Whitaker, May 16, 2024.

168. Workman, “West Virginia’s IDEA Data.”

169. J.N., interview with Sara Whitaker, May 16, 2024.

170. “Municipal Budget July 1, 2023 – June 30, 2024,” City of Charleston, 119, 121, 143, available here: <https://wvpolicy.org/wp-content/uploads/2023/08/City-of-Charleston-Budget-FY-2024.pdf>.

171. Sara Whitaker, “The Costs Police Overtime in Charleston” (Charleston, WV: West Virginia Center on Budget and Policy, August 2023), 1, <https://wvpolicy.org/wp-content/uploads/2023/08/Cost-of-police-over-time.pdf>.

West Virginia must increase funding for extracurriculars like arts programs and sports. A high school football coach described what sports can do for a child: “It seems like a place where a lot of kids find value and family and belonging when they might not have found it anywhere else in their life yet. Whether they are a poor student and not feeling smart. It fills a basic need of feeling important and needed and loved. It’s something that draws them in. For me the value is that it’s about progress and continual growth. It’s about the physical and mental and the spiritual. A beautiful workshop for kids to get their needs met.”¹⁷²

One mentor warned against using extracurriculars as leverage, “Programs shouldn’t be seen as privileges – these are the support systems.”¹⁷³ Too many times, he had seen the loss of an activity or sport dangled as punishment in front a child. “When you take a child out of an activity or off a team, you are ripping them away from a set of friends and a place they belong.”

Finally, we must invest in parents and caregivers, so that they can invest in their children. A foster mother told us, “We’re creating cycles we cannot stop. And we’re creating them because we stop caring after they turn 18 years old.”¹⁷⁴

This requires a commitment to reduce the criminal legal system for all people – regardless of age. One in ten West Virginia kids have had an incarcerated parent or guardian.¹⁷⁵

The ACEs Study demonstrated that having a parent behind bars could lead to poor physical and mental health later in life. But studies also show that parental incarceration leads to behavioral challenges and criminal system involvement during childhood.¹⁷⁶ Plus, the harms we describe in this report are also inflicted on adults who face criminal charges. The solution is the same: use the system less.

We know what it takes to support parents and caregivers: Raising the minimum wage to a living wage and ensuring paid family and medical leave.¹⁷⁷ Widely available, affordable child care.¹⁷⁸ Housing support, debt relief, and other measures that increase the wealth of working-class families.¹⁷⁹ It is about meeting the economic needs of caregivers, so that they in turn can meet their children’s needs.

We support children by supporting those who love them.

172. A.L., interview with Sara Whitaker, May 20, 2024.

173. J.B., interview with Sara Whitaker, July 2, 2024.

174. J.N., interview with Sara Whitaker, May 16, 2024.

175. “Children Who Had a Parent Who Was Ever Incarcerated in West Virginia,” The Annie E. Casey Foundation, KIDS COUNT Data Center, <https://datacenter.aecf.org/data/tables/9688-children-who-had-a-parent-who-was-ever-incarcerated?loc=50&loct=2#detailed/2/50/false/2043/any/18927,18928>.

176. Baglivio, et al., “Prevalence of ACE in Juvenile Offenders,” 3.

177. Sean O’Leary, “State of Working West Virginia 2022: A Lost Decade and a Path Forward” (Charleston, WV: West Virginia Center on Budget and Policy, December 2022), 22-23, <https://wvpolicy.org/wp-content/uploads/2022/12/SWVW-2022-Final-Web.pdf>.

178. Kelly Allen, “Will Child Care Investments That Helped Families and Providers Through the Pandemic Disappear?” West Virginia Center on Budget and Policy, March 30, 2022, <https://wvpolicy.org/will-child-care-investments-that-helped-families-and-providers-through-the-pandemic-disappear/>.

179. Rhonda Rogombe, “Housing Insecurity in West Virginia Remains Elevated Despite Economic Recovery,” West Virginia Center on Budget and Policy, June 9, 2022, <https://wvpolicy.org/housing-insecurity-in-west-virginia-remains-elevated-despite-economic-recovery/>; Ryan Quinn, “Biden’s Student Loan Forgiveness Plan Could Benefit WV Big,” Charleston Gazette-Mail, August 25, 2022, https://www.wvgazette.com/news/education/bidens-student-loan-forgiveness-plan-could-benefit-wv-big/article_5b78e81b-d5e4-5791-a6cd-8dbdc52f7221.html.

Final Thoughts

West Virginia's criminal legal system for children is at a crossroads. Juvenile reforms implemented in the 2010s led to decreases in the number of criminal cases filed against youth. But as West Virginia emerged from the COVID-19 pandemic, the trend reversed, and criminal filings have increased each of the last three years.¹⁸⁰

Today's rhetoric is anti-child. But the 2024 election will usher in new leadership in each branch of government. We have a choice to make. Will we continue to rely on a system that makes life worse for children? Or will we invest in the people who can keep them out of that system?

About

The Midian Leadership Project is a sports-based community development nonprofit located in Charleston, West Virginia, founded by a group of student-athletes from Charleston's Capital High School. Midian owns and operates a community center in the heart of Charleston's West Side neighborhood, and focuses on holistic, longitudinal social leadership development across ages 10-25. Midian follows the community development philosophy of civil rights leader Rev. Dr. John Perkins and focuses on equipping young leaders to reinvest in the next generation by drawing on their own experiences and challenges to lead social change.

The West Virginia Center on Budget and Policy works to advance public policies that increase opportunity and eliminate inequities through credible and accessible research and community-rooted advocacy. The Center's criminal legal policy is guided by a simple belief: the most effective way to reduce the harms caused by the system is to reduce the system itself.

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180. Supreme Court of Appeals, "The West Virginia Court System – 2023," 6; Supreme Court of Appeals, "2022 Annual Statistics Report," 6; Supreme Court of Appeals, "2021 Annual Statistics Report," 4.