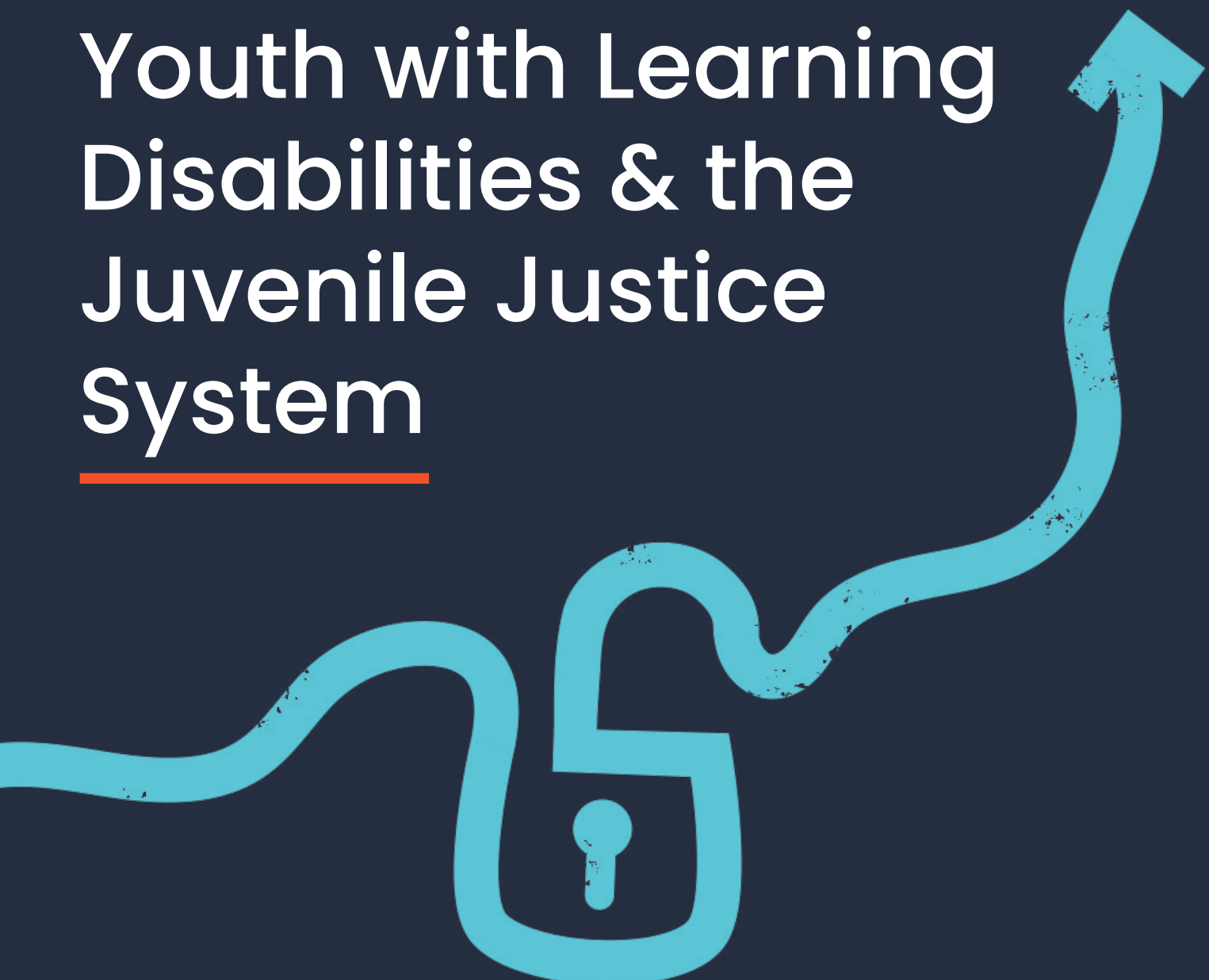


UNLOCKING FUTURES

Youth with Learning
Disabilities & the
Juvenile Justice
System





INTRODUCTION

Imagine you're a student with a disability that impacts how you interact with others and process situations. In an instant, that disability may be criminalized, and you could find yourself thrust into a juvenile justice system that offers little support and few education resources. This scenario is all too common. Thousands of young people are punished every day for what is often typical adolescent behavior, or behaviors related to their disability.

As the public continues to raise attention to issues of school climate and youth mental health, it's important to acknowledge another social system that runs parallel to education, with significant, widespread impacts on the outcomes of those young people involved: the juvenile justice system. Spending even a short time in the juvenile justice system as a young person can have effects that last into adulthood. Yet conversations about youth well-being rarely include this typically overlooked and underserved group. Students with disabilities in particular are more likely than their nondisabled peers to find themselves engaged in the juvenile justice system, with learning disabilities as one of the most common disability types.¹

About **65–70%** of youth involved with the juvenile justice System have a disability.²



Where is the “justice”?

For youth with and without disabilities, involvement in the juvenile justice system is incredibly punitive and traumatic, and rarely involves meaningful “rehabilitation” leading to more positive outcomes. Given the compounding lack of justice actually found in the system, the term “juvenile justice system” is often seen as a misnomer. It is sometimes replaced with “juvenile legal system” to more progressively reflect the experiences of those involved.

We use the term “juvenile justice” in this report to remain consistent with other publications and the federal government’s Office of Juvenile Justice and Delinquency Prevention. However, we believe that justice is not fully reflected within the juvenile legal system.

The phrase “school to prison pipeline” is commonly used to describe the process by which students are channeled from the education system to the criminal justice system, often as a result of punitive school policies.



This phenomenon has a disproportionate effect on students with disabilities, as well as other underserved groups, such as communities and students of color. The terms “school to prison pipeline” and “disability to prison pipeline,” however, imply a linear relationship that fails to take into account the complexities of the system and how this system treats certain groups of students differently. The experience of students is more often a cycle, and youth with disabilities are impacted more significantly at every level of the juvenile justice system compared to their nondisabled peers, becoming more prevalent at each stage of the system.³ A young person, once engaged with the juvenile justice system, is more likely to stay engaged.



1

Misunderstandings about identifying and supporting students with disabilities

Student's needs are not adequately met.

2

School hardening and punitive school culture creates a negative and unsafe learning environment

Student struggles in class and is disengaged with school.

3

Involvement with school based law enforcement increases likelihood for future harm

Nonviolent behaviors that may be related to underlying factors and unmet needs are often handled by officers without appropriate training in understanding youth with disabilities.

4

Students with disabilities are more likely to experience exclusionary discipline

Valuable time in class is missed and the student is further disengaged.

5

School based arrest

Student may have difficulty communicating their needs and / or processing.



Youth engaged with the juvenile justice system are much more likely to stay in the system.⁴

So rather than a straight line that starts and ends in one instance, justice-involved youth with disabilities are likely to rotate in and out from school to prison and back again.

Stakeholders from both the disability rights and juvenile justice sectors must elevate the needs of youth with disabilities at every level of the juvenile justice system to identify and implement solutions that are restorative, sustainable, and equitable.

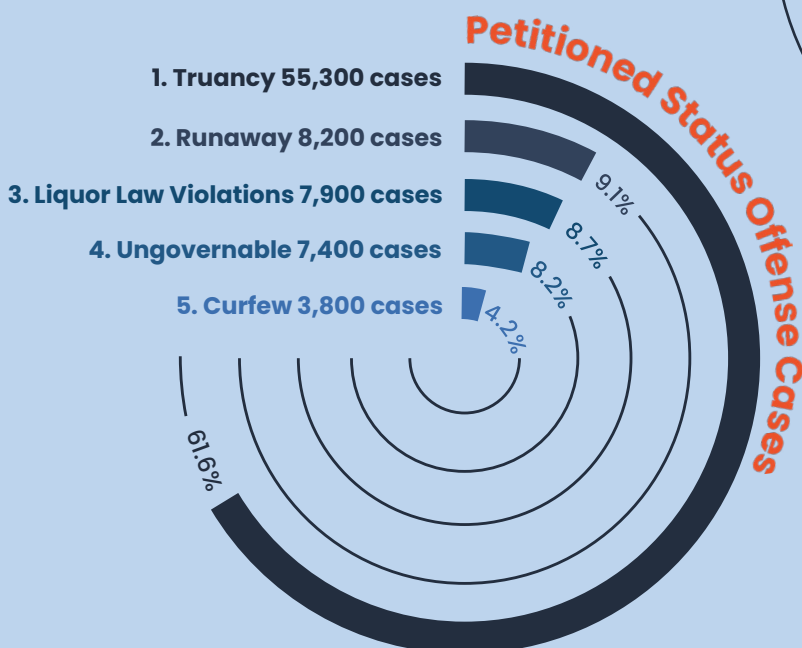
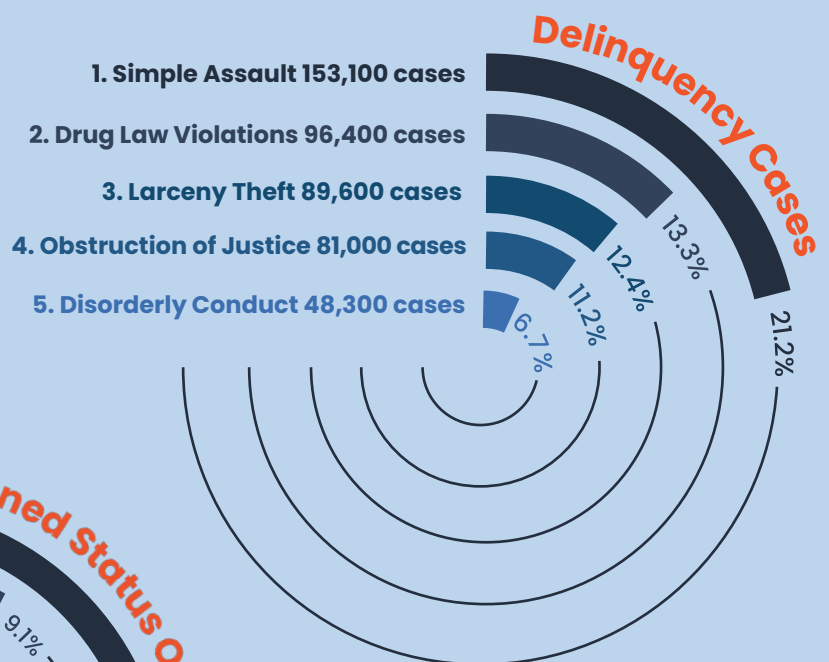
Background

The U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention (OJJDP) reports that 722,600 delinquency cases were handled by juvenile courts in 2019. The most common delinquency offense identified as the “most serious offense” in a case was simple assault, accounting for about 21% of cases.⁵ OJJDP also reported another 90,500 petitioned status offense cases handled by juvenile courts in the same year.⁶

Whereas delinquency offenses refer to “acts committed by juveniles that would be crimes if committed by adults,” status offenses “are acts that are illegal only because the persons committing them are of juvenile status.” These status offenses include runaway, truancy, and curfew violations, among other infractions. They are less likely to result in detention or incarceration, but they still represent very real encounters with the juvenile justice system that in many ways criminalize common adolescent behavior.^{7,8} Truancy offenses account for more than half (61%) of these types of cases.⁹

Over **722,000** juvenile delinquency cases were handled in 2019.¹⁰

These are the five most common infractions identified as “most serious offense” in **delinquency cases**.¹¹



These are the five most common infractions identified as “most serious offense” in **petitioned status offense cases**.¹²

It's estimated that there were over **240,000** instances of juvenile detention and/or commitment in 2019, by some counts.¹³

According to OJJDP, there are 36,479 juveniles in residential detention centers on a given day in the United States, based on a one-day count conducted October 23, 2019.¹⁴ While this figure reflects most recent data provided by the federal government, some suggest that estimates of juvenile cases are much higher in reality. This is due to flaws in data collection and other methodological reasons.¹⁵ Other reports using different methodology claim the number of young people placed in detention centers was 195,000 in 2018, and that there were over 240,000 instances of detention and/or commitment among youth in 2019.^{16, 17} The length of a young person's stay in a juvenile detention facility is 27 days on average.¹⁸ Staying in a juvenile correctional facility for any amount of time can be detrimental to a young person's overall development.

Unfortunately, it's difficult to pinpoint the exact number of young people with disabilities involved in the juvenile justice system, due to broad variability across jurisdictions and reporting. OJJDP also does not disaggregate based on disability in their online Statistical Briefing Book. However, existing calculations across available sources do indicate that the number of justice-involved youth with disabilities is significantly high, and disproportionate to the overall youth population. "Estimates of the percentages of incarcerated youth with disabilities typically range from 30–60%, with some estimates as high as 85%," according to the IRIS Center at Vanderbilt University.¹⁹

Despite there being no consistent, universal statistic, numerous studies and reports align with this finding, demonstrating a clear and significant relationship between disability status and juvenile justice involvement. Reports also indicate that learning disabilities are among the most prevalent disabilities and mental health issues impacting youth in the juvenile justice system, along with emotional disturbance.^{20, 21} The underlying lack of clarity in the data is reflective of the incoherence and fragmentation of the system itself, and perpetuates existing structures that fail young people with disabilities when they enter the justice system.

**STUDENTS WITH
DISABILITIES
ARE ALMOST 3X
MORE LIKELY TO
BE ARRESTED
THAN THEIR
NONDISABLED
PEERS²²**

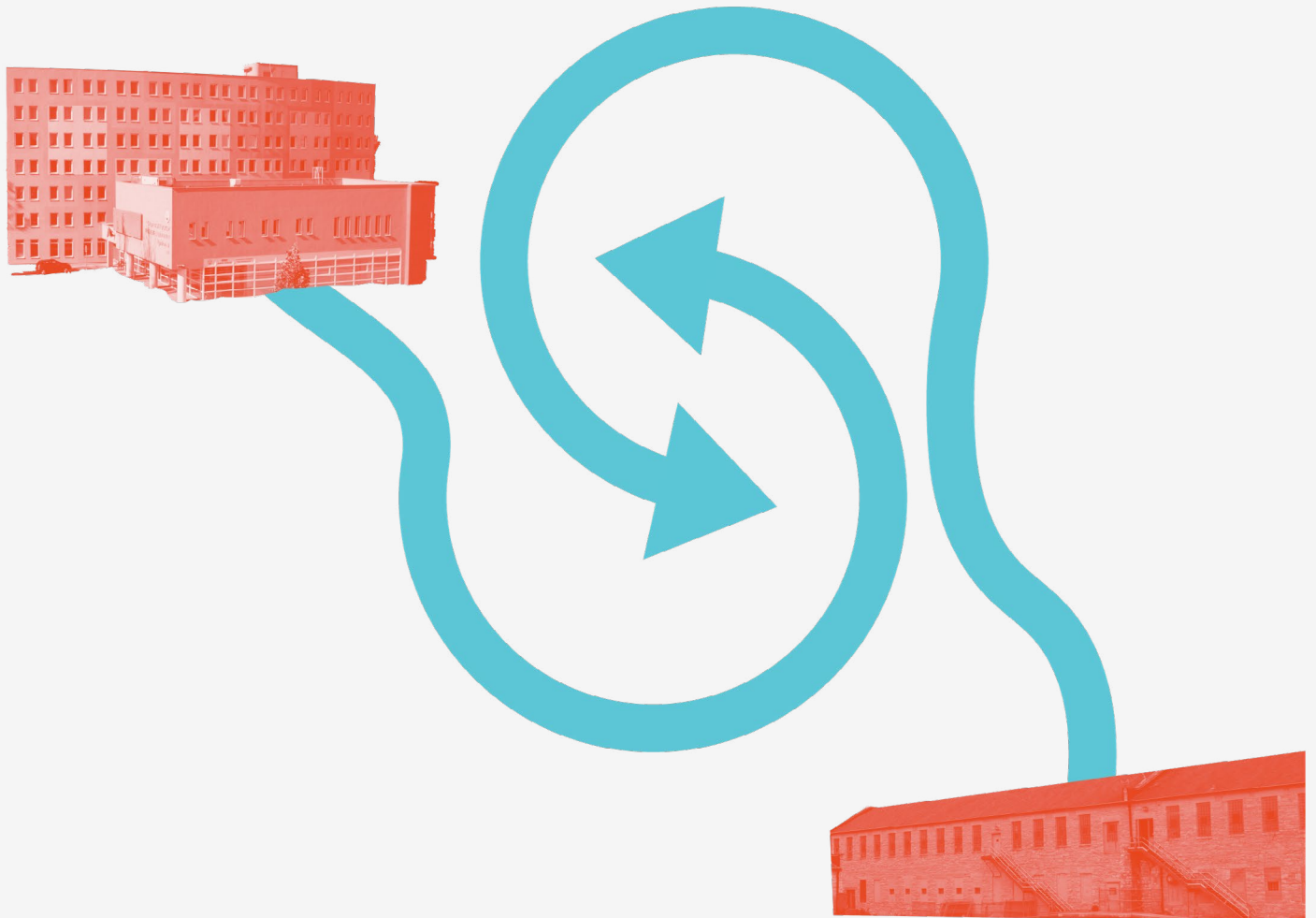
**AND ARE ESTIMATED TO
MAKE UP 30% – 60% OF
INCARCERATED YOUTH.²³**

HOW YOUTH WITH DISABILITIES BECOME INVOLVED WITH THE JUVENILE JUSTICE SYSTEM

The reasons and causes of justice involvement among youth with disabilities are as varied and unique as young people themselves. However, several patterns of engagement are pervasive throughout the population, and commonalities can be found both statistically and anecdotally. Many of these patterns are common in other sectors of the youth justice landscape. Juvenile involvement in the justice system and juvenile incarceration in the United States is also a profoundly intersectional issue. The disability community is just one of several marginalized communities disproportionately impacted. Looking at the system through a disability rights lens, we find that while many pathways of involvement are relevant for all students, disability exacerbates other risk factors and predictors of juvenile justice engagement.

Policies, Systems, and Predictors

There are many systemic and largely policy-driven forces that influence juvenile justice involvement for youth with disabilities and that perpetuate the “school to prison pipeline.” Many of these have co-occurring and compounding effects and reinforce a cyclical nature to the system. This means it’s especially hard for a child with a disability to break free once engaged in the system.



Key Federal Laws Impacting Youth With Disabilities in the Juvenile Justice System^{24, 25}

	Every Student Succeeds Act (ESSA)	Individuals with Disabilities in Education Act (IDEA)	Juvenile Justice and Delinquency Prevention Act (JJDP)
What is it?	The main education law of the United States. Originally passed in 1965 as the Elementary and Secondary Education Act, most recently reauthorized in 2015 as the Every Student Succeeds Act.	The primary federal law impacting the education of students with disabilities in the United States. Originally passed in 1975 and reauthorized most recently in 2004.	The key federal law that impacts students involved in the juvenile justice system. Originally passed in 1974 and reauthorized most recently in 2018.
What does it do?	<ul style="list-style-type: none"> • Aims to provide an equal opportunity for all students • Holds schools accountable for student learning • Ensures that states and districts make information publicly available (state report cards) • Provides funding for key programs (\$48 million for Title I, Part D in FY 2022) 	<ul style="list-style-type: none"> • Ensures that all children with disabilities receive a free appropriate public education • Provides funding to states to support services for students with disabilities (\$13.3 billion for IDEA Part B, state grants in FY 2022) 	<ul style="list-style-type: none"> • Supports state and local agencies addressing juvenile delinquency and delinquency prevention • Provides funding to state and local juvenile justice programs (\$70 million in FY 2022) and incentive grants for local delinquency prevention (\$50 million in FY 2022) • Establishes the Office of Juvenile Justice and Delinquency Prevention (OJJDP), within the Department of Justice (DOJ)
What is the impact on students involved in the juvenile justice system?	<p>State plans must describe how they will reenroll students and enable the accrual and transfer of credits and student records.</p> <p>ESSA Title I, Part D allocates funds to state education agencies for supplemental education services, including correctional facilities.</p>	IDEA legal protections apply to students in correctional facilities as they do in traditional schools. This is the responsibility of the local education agency.	Four core requirements: <ol style="list-style-type: none"> 1. Deinstitutionalization of status offenses 2. Separation of juveniles from adult inmates 3. Removal of juveniles from adult jails and lockups 4. Addressing of racial and ethnic disparities

School Exclusion Practices & School Hardening

Harsh school discipline and exclusion practices increase the likelihood for justice involvement and are continually strong predictors of juvenile justice encounters regardless of disability status.^{26, 27} Students with disabilities notably experience disciplinary school exclusion at higher rates than nondisabled students, therefore escalating risk.²⁸ Exclusionary practices include both in-and out-of-school suspensions, as well as expulsions and other punitive measures that remove students from the classroom. Removal from the classroom has detrimental social, emotional, and academic impacts, causing students to fall behind and disengage from the school community.

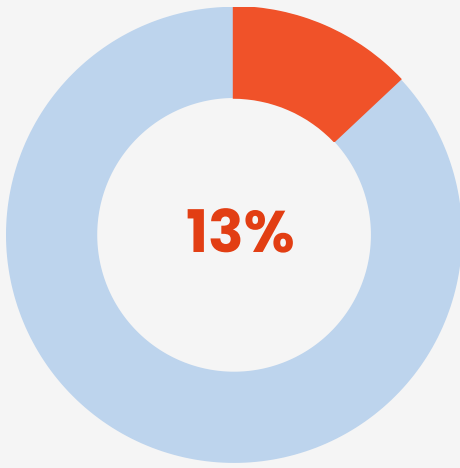
Students are more likely to engage in delinquent behavior when they feel disengaged with curriculum and left behind in school. School hardening and school policing practices can also foster negative and unsafe learning environments for all students, and especially for those from marginalized backgrounds, including students with disabilities.²⁹ There is little evidence that the presence of law enforcement in schools, including school resource officers (SROs), increases safety for students. Instead, school policing and school hardening can actually put students at greater risk for physical harm.³⁰



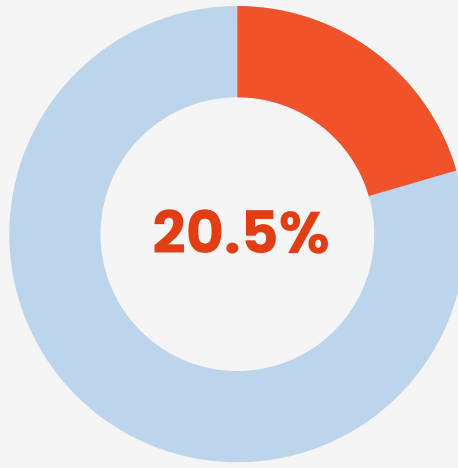
What is school hardening?



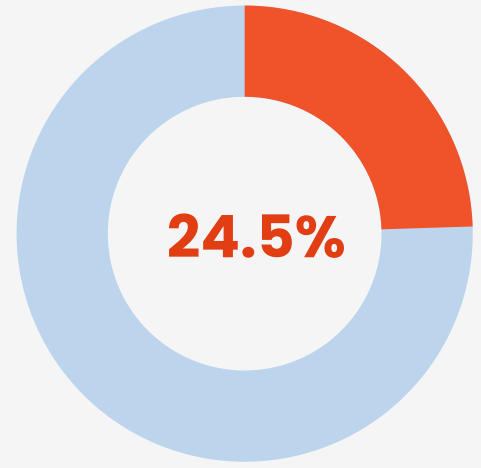
School hardening is a term used to describe practices and policies that increase tactical security measures in schools, such as the use of metal detectors, surveillance technology, limiting entrance points, arming teachers, and more. These tactics are often used in reaction to school violence, but there is little evidence that they are effective in preventing future harm.



Students with disabilities receiving services under IDEA make up about 13% of enrollment



but 20.5% of one or more in-school suspensions



and 24.5% of one or more out-of-school suspensions.³¹

Biases and Lack of Support

Anecdotally, experts describe a “labeling phenomenon” wherein the mere existence of being identified as having a disability (either through confirmed diagnosis or assumed disability) can cause a child to be more often associated with negative school or classroom behaviors. Teachers or other authority figures are more likely to assume students with these labels are predisposed to misbehavior, in many cases due to some level of implicit bias toward youth with disabilities.

This bias could also be the result of lack of awareness or understanding about disabilities. In a 2019 report by NCLD and Understood, for example, 1 in 3 teachers viewed students’ learning or attention issues as laziness, and only 17% felt very well prepared to teach students with mild to moderate learning disabilities.³² Without accurate and appropriate training and guidance, even the most well-meaning educators, administrators, and community members can mislabel and mishandle support for youth with disabilities. Behaviors seen by family, teachers, or others as “problematic” or “delinquent” may actually be symptoms or indicators of undiagnosed

and unaddressed mental and emotional health issues. This could include potential learning disabilities, underscoring the need for more consistent and effective mental health screening practices.³³

Students who go without appropriate identification and support and continue to “act out” or “misbehave” are frequently met with ineffective punitive responses to their behavior. When members of the community no longer know how to assist a young person they see as “a problem,” the response is often referral to law enforcement in some form. This can be closely related to referrals for status offenses, for example, which traditionally criminalize nonviolent behaviors that in many cases are reflective of typical adolescent development or other underlying issues.³⁴ Even if a referral doesn’t end in a young person being charged, such contact with law enforcement introduces or deepens their relationship with authorities and the justice system, putting them at greater risk for future involvement. Unfortunately, punitive discipline through law enforcement and justice involvement rarely mitigates a child’s behaviors, and can leave young people worse off than they were prior to that involvement.³⁵



MANIFESTATION DETERMINATIONS

Students with disabilities such as those with mental health disorders may behave in ways that are perceived to be outside of the acceptable norms in school. This could be because their disability impacts how they interact with others around them or to different stimuli. Sometimes when this occurs, school staff may discipline a child who has an Individualized Education Program (IEP) related to their mental health disorder, behavioral disorder or other disability and send a student home early from school, give them an in-school or out-of-school suspension, or administer other consequences. The IEP team must conduct what is called a manifestation determination if there's a change of placement for the student due to a disciplinary decision. During this process, the IEP team must answer the following questions:

1. Was the conduct in question caused by, or had a direct and substantial relationship to, the child's disability?
2. Was the conduct in question the direct result of the school district's failure to implement the IEP?

If the answer is 'yes' to either of these questions, the student must be placed back in the original setting from which they were removed. Only in special circumstances would this not occur if the IEP team determined that the behavior was a manifestation of the student's disability. A student would not return to the original placement if the family agrees to continue with the new placement, the student brings a weapon or illegal drugs to school, or has inflicted serious bodily harm to another person.

The goal of the manifestation determination process is to ensure schools are not punishing students and removing them from school due to behavior related to their disability. Instead, schools should provide additional behavioral supports to ensure students with disabilities can continue to be educated in the least restrictive environment. Unfortunately, states and school districts do not share publicly how often schools conduct these determinations or the outcomes of such meetings. Although one study concluded that "the combination of high and disparate rates [of suspensions] implicates a possible violation of the legal protections against punishing students for behaviors that are manifestations of their disability".³⁶

Escalations of Encounters and Interactions, Self-Advocacy Issues

Sometimes, interactions between youth with disabilities and law enforcement or authorities have outcomes that lead to further legal and potentially physical harm for young people.³⁷ Several advocates describe cases where an encounter between an authority figure and a young person with mental and/or behavioral issues escalates because the child reacts to a triggering action or stimulus, resulting in some sort

of harm. For example, one advocate described a scenario where a teenager with a disability caught conducting mildly delinquent behavior was engaging calmly with a police officer, until another officer walked over and placed a hand on their shoulder. The teenager subsequently "lost control" and began kicking and screaming, leading to a physical altercation and eventually to an alleged assault charge against the teenager.³⁸ Variations of this story, where a student's reaction has more serious consequences than their initial misbehavior may have warranted, are also common in school settings, sometimes

resulting in restraint and seclusion. These types of scenarios reflect the consequences of failing to understand the needs of youth with disabilities or establish a system of practice that prioritizes their safety. Interactions that escalate this way are more likely to occur when the needs of youth with disabilities are not considered or centered in practice.

Issues with self-advocating and relating their needs can also create uniquely increased challenges for youth with disabilities who find themselves engaged with the juvenile justice system. Young people with disabilities, for example, may have difficulties communicating or explaining information to law enforcement, or they may have trouble processing questions or instructions.³⁹ Youth with disabilities are also more likely than others to confess to crimes they did not commit and to be named or accused by peers seeking to avoid culpability for a crime.⁴⁰ As a result, these young people can easily find themselves progressing further into the juvenile justice system than youth without disabilities.

Parents, guardians, and family members may also have a hard time advocating for a young person in the juvenile justice system. In interviews, some professionals expressed that family members often know what is best for a child or what is needed for them to be successful, but they may have trouble effectively conveying those needs to authorities. Additionally, many families might not have access to resources that would help them be successful advocates.⁴¹ This not only applies to interactions at the time of a young person's arrest, but also to advocacy once a child is placed in a correctional facility.



Variation and Intersectionality Across Groups

While fragmentation of jurisdictional data and other methodological issues make it difficult to make specific comparisons regionally and nationwide, there is significant evidence that youth from other historically marginalized groups, such as youth from Black, Indigenous, and People of Color (BIPOC) communities and LGBTQ+ youth, also disproportionately experience involvement in the juvenile justice system.⁴²

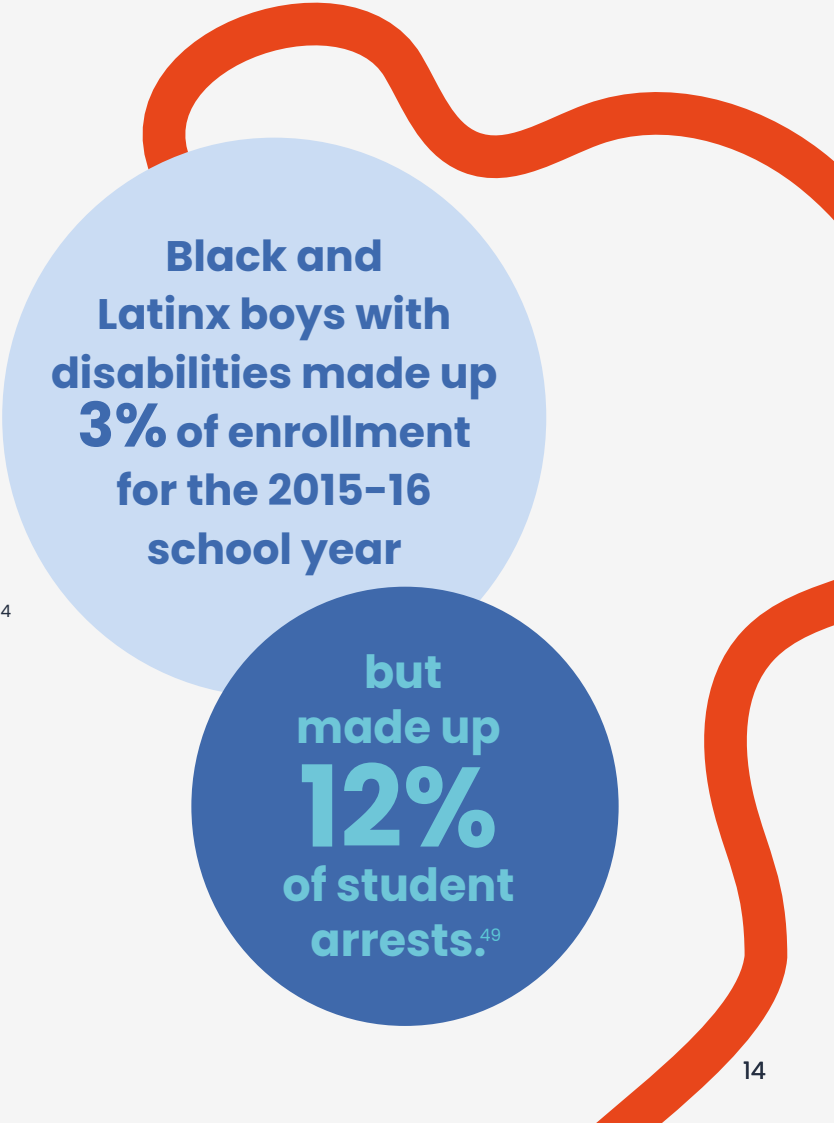
There are a number of other external and environmental factors potentially impacting children’s lives that correlate to and may increase the likelihood of juvenile justice involvement in addition to these identities. These factors can include comorbid or dual diagnoses with other mental health issues, or they may stem from traumatic or disruptive experiences and circumstances, such as placement in the child welfare system. It’s important to not only acknowledge the intersectionality of youth with disabilities in the juvenile justice system, but to also actively center it in study and discussion. Disability status is just one of many risk factors for justice involvement. When combined with other factors, disability compounds that risk and can exacerbate other issues, leading to justice involvement.

Race, Gender, and Sexual Orientation

The role of disability status is fundamentally paired with and exacerbated by racial bias in the justice system. Black children, and especially Black boys, with disabilities are consistently more likely to be engaged with the juvenile justice system than their White peers. This phenomenon is evidenced throughout the “school to prison pipeline” and juvenile justice system, with multiple studies verifying that race significantly impacts probability of justice involvement.^{43,44}

For example, Black youth and other youth of color experience school discipline at higher rates than White youth — an important consideration given the predictive relationship of school discipline and justice involvement, mentioned before.⁴⁵ One study also found that among youth with

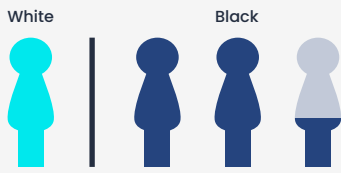
learning disabilities, “the odds of coming in contact with the juvenile justice system are slightly increased for Latino students.”⁴⁶ Black boys with disabilities specifically are the most frequently suspended group of students.⁴⁷ While likelihood of juvenile justice involvement increases at the intersection of race and disability status, that’s not where the relationship of these identities ends. Students of color are more likely than their White peers to be identified (and misidentified) as needing services or support related to a disability. Once given that label, they’re more likely to learn in more restrictive environments and experience higher rates of discipline.⁴⁸



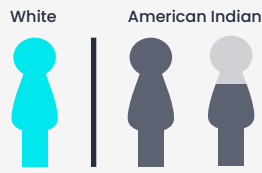
Black and Latinx boys with disabilities made up 3% of enrollment for the 2015-16 school year

but made up 12% of student arrests.⁴⁹

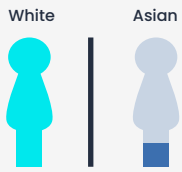
2020 Comparison of Juvenile Arrest Rates by Race⁵⁰



Black youths are **2.3X** more likely to be arrested than White youths.



Native American are **1.7X** more likely to be arrested than White youths.



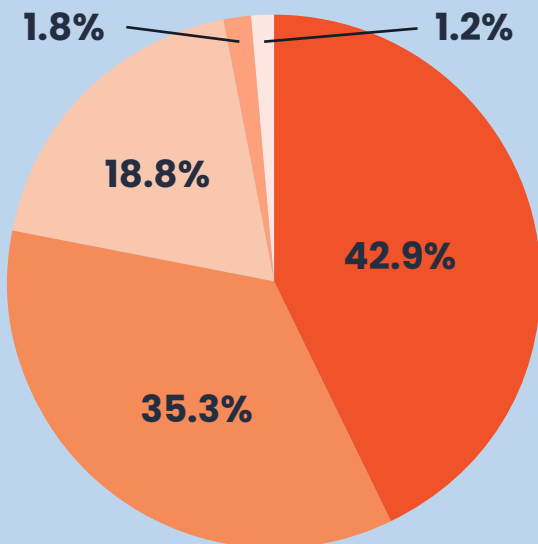
Asian youths are **0.8X** less likely to be arrested than White youths.



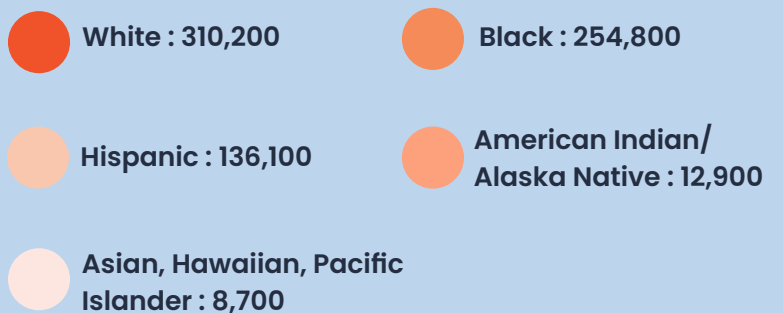
Non-White youths overall are **1.7X** more likely to be arrested than White youths.

*Data did not include demographics for Hispanic youths.

Black youths make up about 15% of children over 10 years old, but about 35% of cases handled by juvenile courts.

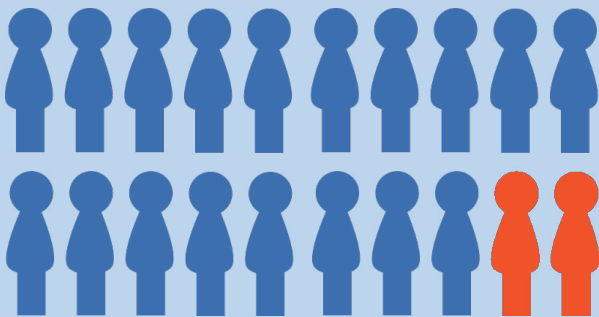


Demographic characteristics of cases handled by juvenile courts, 2019⁵¹

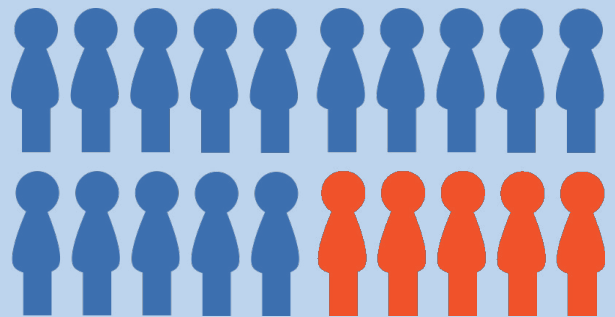


Students of color experience disproportionality in many areas of education. They're more often identified as having a disability, placed in more restrictive educational settings, and disciplined at higher rates than their peers.

Read more in NCLD's report on ***Significant Disproportionality***.⁵²



1 in 10 White boys with disabilities are suspended each year.



1 in 4 Black boys with disabilities are suspended each year.



Girls and young women of color are disproportionately more likely to be detained than their White counterparts.⁵³



Black girls specifically are 2.7x more likely to receive a juvenile justice referral compared to White girls.⁵⁴

Disability status additionally impacts young people at intersections of gender and sexual orientation. Although some studies indicate that girls are less likely to receive juvenile justice referrals than boys, others indicate that girls, and especially girls of color, are more likely to be criminalized for status offenses.^{53, 54} This particular phenomenon has historical roots, with “[e]arly legal thinking consider[ing] boys delinquent if they violated a civil ordinance or law, but girls [being] charged for general ‘immorality’... That is, girls were punished for behavior that was considered ‘unladylike’.”⁵⁵ That sentiment in many cases still prevails today despite updates to the law. LGBTQ+ students are also more likely to be involved with the juvenile justice system and be negatively impacted by school policing and school hardening measures.^{56, 57} This manifests in discrimination, bullying, and harassment, as well as status offenses for truancy and running away to avoid harmful environments.⁵⁸

LGBTQ youth make up **5–7%** of the youth population, but **13–15%** of the juvenile justice population.⁵⁹

Child Welfare System and Traumatic Childhood Experiences

Involvement in the child welfare system is also highly correlated with potential justice involvement.⁶⁰ Children in the child welfare system or foster system often have fewer resources and are more likely to encounter traumatic conditions.⁶¹ These conditions can be even more severe for those with learning disabilities and attention issues, or other mental health needs. They may have challenges adjusting to new environments and communities, or may not be able to communicate their needs.⁶² Youth with disabilities in the child welfare system are sometimes perceived to be “burdens” and therefore can experience more disruption and displacement than others. These circumstances lend themselves to adverse social-emotional development and susceptibility for more delinquency and potential justice involvement.

Similarly, trauma and other damaging and unresolved experiences can put young people at risk for justice involvement.⁶³ In some cases, delinquent behavior may be manifestations of trauma responses or even defense mechanisms in unsafe environments.



HOW THE CURRENT SYSTEM SERVES AND FAILS YOUTH WITH DISABILITIES

There is a general lack of commitment from state agencies and other actors to actually provide effective and lasting rehabilitation for young people in the juvenile justice system, especially when it comes to those with disabilities. Absence of reliable stakeholder training programs and systemic institutional failures often set young people with disabilities up for failure as they enter the system.

Countless jurisdictions also do not offer diversion programs or other services to mediate delinquency or prevent further harm. Once youth with disabilities enter the juvenile justice system, they are given very few, if any, resources to genuinely improve or support their future well-being. Having addressed pathways to justice involvement and how many influences along the “school to prison pipeline” impact students with disabilities, this section primarily focuses on issues during and after incarceration.

“Although data is difficult to obtain, estimates of incarcerated youth who have a learning disability range from as low as **30%** to as high as **85%**.”⁶⁴

Academic Deficiency in Correctional Facilities

Incarceration for any amount of time can have a negative impact on all youth, especially youth with disabilities, in both the short and long term.^{65, 66} Findings indicate that the juvenile justice and corrections system typically fails youth far more often than it serves them, with many young people finding themselves worse off when exiting than they were when they entered the system.⁶⁷ These impacts apply to many areas of a child’s life, including their social-emotional well-being and health – but most significantly it disrupts their education. Students with disabilities, who may already struggle in school, can easily find themselves with compounded academic challenges after their time in a correctional facility, and may quickly fall behind.

Educational Failures at Large

Quality educational opportunities for all students in correctional facilities, let alone those with disabilities, are few and far between. Unfortunately, though unsurprisingly, reporting and anecdotal accounts indicate teaching and learning in juvenile facilities are widely limited and notoriously subpar. It’s evident that correctional facilities are fundamentally not conducive environments for learning and

academic growth, based on conversations with experts and advocates. Learning simply does not happen there. Facilities and state agencies typically operate with a compliance mindset, doing the bare minimum rather than providing a high-quality education.

These institutions often have very little if any accountability measures in place as well.⁶⁸ In many cases, curriculum activities can consist merely of paper work packets and busy work, with little academic substance.⁶⁹ Correctional facilities struggle to recruit and retain experienced, high-quality educators. Those who do teach in these spaces are commonly overburdened by large classrooms and attempting to meet a broad range of academic levels and needs.

What are Child Find and an IEP?



Child Find is the term used to describe the State's requirement under IDEA to identify and evaluate all students with disabilities who may require special education services. An Individualized Education Program (IEP) is a personalized document that guides the services a student receives in school for their disability, and is a core part of IDEA.


IEPs are used to set goals, monitor and evaluate progress, determine placement, and record any other information needed for a student with a disability. They are established and reviewed by a team of experts that includes the students' parents/guardians.

IDEA Violations

The Individuals with Disabilities in Education Act (IDEA) applies to students being educated in public schools and correctional facilities. The primary purpose of IDEA is to ensure that students with disabilities are receiving a free appropriate public education (FAPE). However, numerous reports and interview anecdotes reveal that blatant and often egregious violations of IDEA occur regularly for students in the juvenile justice system.

This manifests in almost all IDEA's intended functions, from neglecting Child Find responsibilities to inappropriately changing Individualized Education Programs (IEPs). Common violations we discovered include:

- ▶ Failure to assess or evaluate students for disabilities and mental health needs⁷⁰
- ▶ Prolonged delays while transferring student records that prevent students from receiving their IEP supports in a timely manner⁷¹
- ▶ Unjust use of restraint and seclusion methods and failure to educate students in the least restrictive environment (LRE)⁷²
- ▶ Establishing or altering IEPs without considering individualized needs, "watering down" IEPs, or using "boilerplate" language⁷³
- ▶ Establishing or altering IEPs to fit the correctional facility's apparent capacity, including adding or removing items based on the facility's existing resources
- ▶ In adult correctional facilities, failure to provide IEP services for eligible 18- to 22-year-olds



The U.S. Department of Education (USED) released guidance on IDEA obligations for students in correctional facilities in 2014 in an effort to improve educational opportunities for incarcerated youth.⁷⁴ Although this guidance makes the obligations clear, it also appears largely underutilized, and it is evident that further action is needed to yield significant change. IDEA protections for students with disabilities are rarely enforced by USED, to the detriment of a child's education.

While some of these challenges may be avoided with the help of a disability rights lawyer, a protection and advocacy agency, or another expert resource, many families impacted by the juvenile justice system cannot afford or access this type of assistance. Still, several lawsuits have been filed against correctional facilities and state departments of justice for violating IDEA, including the recent class action case *Charles H. v. District of Columbia*, wherein a federal judge found "DC in contempt for failing to comply with [a] court order to provide special education to students at the DC jail."⁷⁵

Case Study: **CHARLES H. V DISTRICT OF COLUMBIA**^{76, 77, 78}

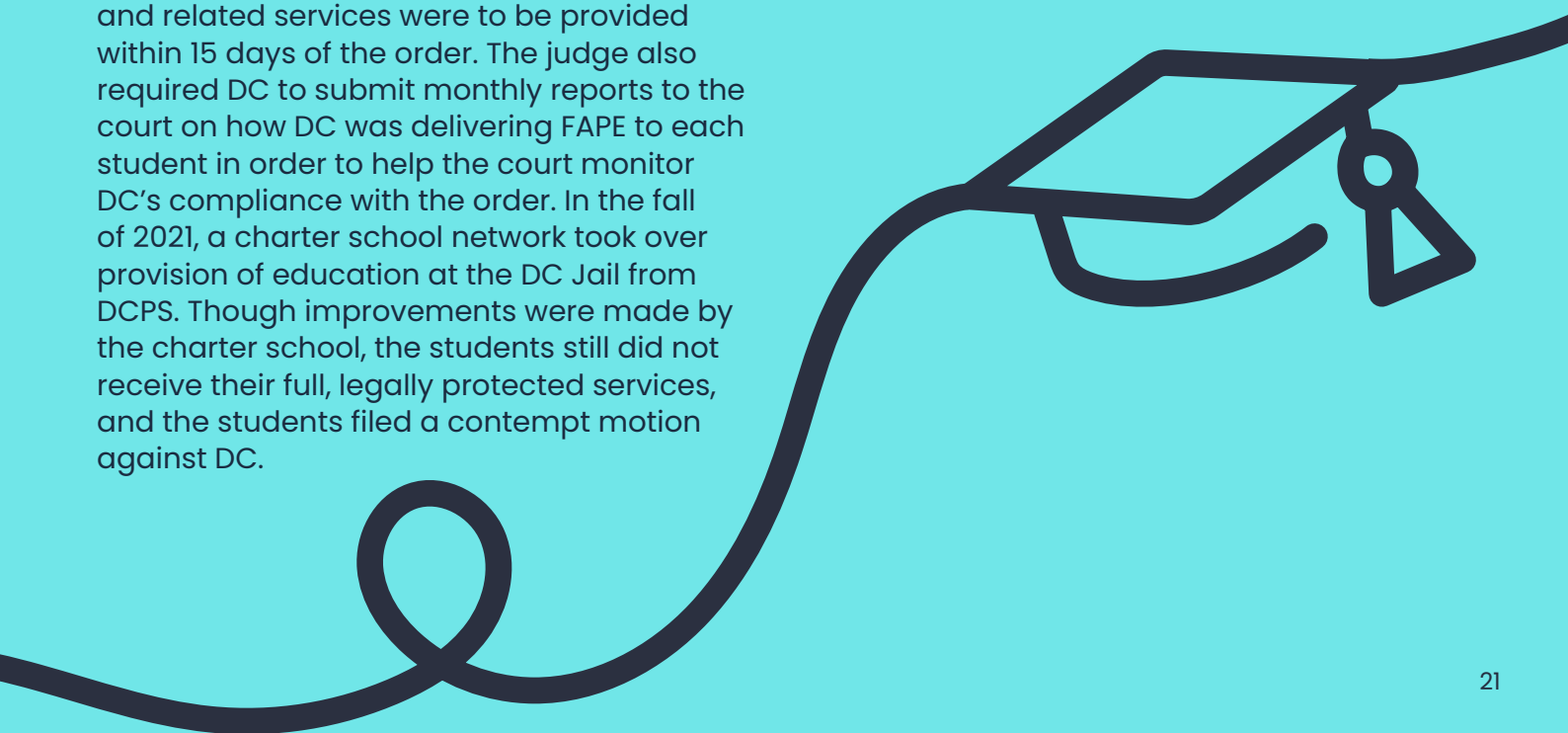
Starting in March 2020 at the beginning of the COVID-19 pandemic, incarcerated students with disabilities at the DC Jail were denied their IDEA rights when the students were not provided any instruction or related services per their IEPs. Critical services like counseling, speech language pathology, and other instructional supports were not provided to students at the DC Jail, while students in other DC public schools received distance learning through virtual instruction and services. Instead, students at the DC Jail were given paper work packets to complete, on their own, with no teacher support or feedback. By April 2021, instruction and services had not resumed.

As a result, three students at the DC Jail filed a class action lawsuit claiming that the District of Columbia Public Schools (DCPS) and Office of the State Superintendent of Education (OSSE), the local and state education agencies respectively, violated IDEA by failing to provide a free and appropriate public education and failed to monitor the public school at the DC Jail. The case is titled *Charles H. v District of Columbia*.

A federal district court judge issued a preliminary injunction in June 2021 requiring DC to provide services that complied with the students' IEPs. The full hours of instruction and related services were to be provided within 15 days of the order. The judge also required DC to submit monthly reports to the court on how DC was delivering FAPE to each student in order to help the court monitor DC's compliance with the order. In the fall of 2021, a charter school network took over provision of education at the DC Jail from DCPS. Though improvements were made by the charter school, the students still did not receive their full, legally protected services, and the students filed a contempt motion against DC.

In February 2022, the federal judge found DC in contempt of the preliminary injunction, stating in the contempt order "every student currently enrolled in the Program remains at an inexcusable educational deficit for this school year— a failure all the more baffling given that the Court entered its Preliminary Injunction months before the school year began." The court required DC to submit plans for how it planned to compensate for the special education hours each individual student lost during the time period in question (September 2021 through January 2022), required a fully operational remote learning system (by March 15, 2022), and extended IDEA eligibility for all students who should have received instruction and services after the injunction (even if the student had "aged out" of IDEA services since that time).

The students at the DC Jail continue to struggle with accessing instruction and services related to their disabilities as litigation continues. Through their continued advocacy, the students have made significant gains to ensure that all DC Jail students get the education that they are entitled to and can work towards obtaining their high school diplomas.



Re-Entry to School and Community

Adjusting back to life after any time in a correctional facility can be very difficult for young people. This is a critical time, when impacted youth are particularly vulnerable and in need of effective resources and support. Life after juvenile justice involvement, and especially juvenile confinement, can be difficult, and risk of reengagement and recidivism is high. For young people with disabilities, many of these risks and vulnerabilities are compounded by challenges related to their needs. In one study of probation youth, 47% of sampled students with disabilities receiving services reported that they had reoffended at least once.⁷⁹



The average length of a young person's stay in a juvenile detention facility is **27 days.**⁸⁰

Credit Transfers and Returning to School

In cases where young people are able to successfully learn and complete coursework while in a juvenile facility, getting academic credits to transfer when they return to school can be a challenge. Many students find that they're unable to apply the academic progress made while incarcerated toward their diploma. Some advocates claim that students can even find themselves grades behind where they expected to be. There are a number of reasons academic credits might not transfer appropriately, such as student relocation, curriculum differences, and even errors or problems with record transfers.⁸¹

While this can certainly be a problem for all students, those receiving services related to their disability can have an especially hard time catching up in these scenarios. Youth are more likely to repeat a grade, miss school days, or even drop out of school when they don't receive academic credit. Not receiving academic credit also increases the likelihood that students with disabilities will be placed on an alternative diploma track.⁸² Students can become easily disengaged in the curriculum and not pursue other educational opportunities if they feel their progress is "meaningless." This makes the transition out of juvenile justice facilities more difficult, and can increase the likelihood of recidivism.

Probation and Recidivism

Most of the factors that drive recidivism among youth with disabilities in the juvenile justice system are the same factors that cause initial engagement in the first place, as discussed above. School exclusion, difficulty self-regulating, and mental health issues continue to be strong risk factors for recidivism.⁸³ Unfortunately, national-level data on rates of juvenile justice recidivism does not exist.⁸⁴ However, it seems that the experience of juvenile justice involvement in and of itself may be an influential factor in predicting future justice involvement.

For students with disabilities in particular, some studies have found that compared to other young people in probation, those with an identified disability were “more likely to [reoffend or] recidivate.”⁸⁵ Beyond just having previous exposure to the juvenile justice system, young people returning to their communities after confinement may be on a probation sentence.

Probation policies and officers, therefore, represent a unique and compelling practical variable in shaping a young person’s future after their justice system experience, and could potentially be a disrupting force in the cyclical nature of the “school to prison pipeline.” Probation officers can be allies to the young people they serve or part of their support network, but they can also instigate or initiate a young person’s reentry to the juvenile justice system.

Terms of probation can vary, and without proper understanding or training on youth with disabilities, probation officers can misinterpret behaviors as problematic when they are actually reflective of other issues, including potentially disability. For example, a 15-year-old Black girl with ADHD in Michigan was sent to a detention center on a probation violation for not completing online schoolwork at the start of the COVID-19 pandemic.⁸⁶ There are numerous other examples of similar criminalizing behavior that don’t garner as much media attention but still have significant and life-altering impacts on students.

State-level data shows that rates of youth rearrest within one year are **55%, on average.**⁸⁷



What is Juvenile Probation?



Juvenile probation “is the supervision and monitoring of justice-involved youth in the community, rather than placement out of the home” or in a facility.⁸⁸ It is similar to probation for adults.



SYSTEMIC GAPS AND STRUCTURAL NEEDS

One of the most distinguishing characteristics of the juvenile justice system is its lack of productive cohesion, along with its notorious orientation toward compliance.⁸⁹ The juvenile justice system has significant room for improvement. Gaps are pervasive at all levels; there are issues with program implementation, quality, accountability, transparency, and overall safety. Ultimately, there are core structural and systemic issues that will require fundamental and widespread cultural change. While this paper only scratches the surface of this complex issue, our analysis here aims to focus on gaps that are particularly relevant to the needs of youth with disabilities, their education, and their general well-being.

Fragmentation of the Systems and Lack of Coherence

Responsibility for overall authority and implementation of the juvenile justice system is fragmented across the federal, state, and local levels. Although state and local jurisdictions have more direct influence on the experiences of youth in the system, federal legislation and regulations dictate many standards. At times, it can be difficult to identify who is “in charge” or which agency bears responsibility for students with disabilities in the juvenile justice system and for enforcing IDEA. This fragmentation often perpetuates the lack of quality and coherence in the field.

Siloed Systems

Even though there are many stakeholders at the intersection of juvenile justice, education, and disability, communication between these stakeholders can be rare. Typically, education and justice systems are extremely siloed at every level, with little communication as young people move from one to the other. This is demonstrated, for example, in issues with transferring student records, such as delivering IEP information from a school district to a correctional facility.

Sometimes, the agencies use different systems to track and manage student data and documentation. Advocates also find it difficult to regularly collaborate and build consensus in the field. In many cases, for example, nonprofits, funders, and other stakeholders tend to categorize projects as either a justice issue or an education issue, making it difficult to explore the intersections between the two. In reality, these issues are interconnected and overlapping. Siloing creates more confusion and greater challenges for youth involved.

Jurisdictional Variability

There is little consistency in the quality of the juvenile legal system nationwide, as much of the operation and implementation of the system is fragmented across state and local jurisdictions. Different places may have different data reporting systems, transparency standards, rehabilitation services, training measures, or even funding streams. Jurisdictional quality has a big impact on youth involved with the justice system for obvious reasons — where they are can impact their opportunities for success.

As with other issues in the system, this has a potentially exponential impact on youth with disabilities. For instance, detention centers in the same state may be operated independently and differently, and may offer varying educational services.

Different judges, district attorneys, and public defenders can have disparate levels of prior knowledge or experience with disabilities. A judge or lawyer who is knowledgeable and understanding of disabilities can make a huge difference in individual outcomes. Building positive relationships with these figures is a core part of making change.

Individual actors and advocates in a jurisdiction are often the main drivers of improvement. Diversion programs, support networks, and other successful interventions are typically the result of hard work from small, dedicated groups working locally. The diligence and commitment of people doing this work is incredibly important, but cannot ensure a lasting and sustainable structural change. Without these individual actors, programs can struggle to survive. Success stories tend to more often be singular instances rather than connected, state or federal programs.

Data Scarcity and Methodological Issues

One of the most obvious technical challenges to research and advocacy in the juvenile justice space is that there is very little reliable, publicly available data, especially when trying to make comparisons across jurisdictions. OJJDP's resources — arguably the most accessible and formal national database — are seen by many as being inaccurate or unreliable for showing the full scope of juvenile incarceration and justice involvement.⁹⁰ Data collection in individual jurisdictions may not be consistent, or may be hard to apply outside of the specific context. Reporting can also be skewed, incomplete, and outdated. Academic studies and other research have found ways to work around these challenges, but

usually this means results are limited to a specific region or population, or that sample sizes are possibly skewed as a result of methodology. In other words, many studies of juvenile justice can be well designed and executed technically, but they are still difficult to generalize and compare. This is part of the reason why estimates of youth with disabilities in the juvenile justice system are so broad, and why it is difficult to build consensus in the field. Improved widespread data collection and dissemination would provide a clearer picture of the juvenile justice environment.

Accountability Measures and Lack Thereof

Insufficient accountability measures and the absence of true quality standards are discussed throughout this report, but it's important to reiterate the systemic and structural roots of this phenomenon, demonstrated through research on state education plans. Title I, Part D of the Every Student Succeeds Act (ESSA) provides for federal funds to improve educational services for delinquent students, support transitions out of juvenile facilities back to school, and deliver services for at-risk youth (see table on page 9 for more information about ESSA).⁹¹ However, an analysis of 2018 state ESSA plans revealed that most states addressed Title I, Part D with “vague language” and did not establish even basic standards for education in juvenile facilities.⁹² Further, researchers found critical gaps between what was written in ESSA plans and what was actually being implemented in practice.⁹³ Likewise, there is a gap between USED's 2014 guidance on IDEA obligations for students with disabilities in justice facilities and the present reality, as previously discussed. These failures demonstrate a need to fully examine and reimagine enforcement of IDEA in justice facilities, and hold systems accountable.

Partner Spotlight:

THE ARC'S NATIONAL CENTER ON CRIMINAL JUSTICE AND DISABILITY

There are several organizations across the country already working to address the issues facing individuals with disabilities involved in the juvenile and adult justice systems. The Arc's National Center on Criminal Justice and Disability (NCCJD) is one of these organizations bridging the gap between the criminal justice and disability communities. NCCJD pursues and promotes safety, fairness, and justice for people with intellectual and developmental disabilities (IDD), and especially those with hidden disabilities and marginalized identities, as victims, witnesses, suspects, defendants, and incarcerated persons. They offer advocacy and resources for people with IDD facing criminal justice involvement, offer community-based peer learning programs, and promote best practices in the field.

NCCJD's Pathways to Justice program is a comprehensive, community-based program designed to improve access to justice for people with disabilities through a strategic process. First, NCCJD provides support in creating a local, multidisciplinary Disability Response Team (DRT). This DRT brings together stakeholders from the disability and criminal justice communities, and they work together to identify barriers to justice and serve as a go-to resource on criminal justice and disability in their community. NCCJD experts then work closely with the DRT to provide training for law enforcement, victim services providers, and legal professionals, covering key topics such as how to identify, interact with, and accommodate persons with IDD and other disabilities. NCCJD has reached over 2,000 stakeholders through their Pathways to Justice program, improving outcomes for individuals with disabilities in the criminal justice system.

For more information, visit <https://thearc.org/our-initiatives/criminal-justice>

POLICY RECOMMENDATIONS

Under the current statute, IDEA's requirements apply to state and local juvenile facilities. While USED has issued guidance on the requirements of states to meet their obligations under IDEA to children in juvenile facilities, this report has documented many shortcomings. We believe that both USED and Congress have a responsibility to ensure that IDEA's requirements are adhered to, so that children in juvenile facilities have the same opportunity at succeeding in their lives as other children.

Additionally, improvement can be made at all levels of government to create more safe and healthy school and community environments where young people with disabilities can thrive. Through evidence-based practices and holistic support, youth with disabilities can better avoid justice involvement.

For this reason, we propose the following policy recommendations:



1. USED should reissue and modernize the 2014 Education Guidance.

As documented earlier in this paper, USED issued guidance in 2014 on the requirements of states to serve children with disabilities in state and local juvenile facilities. This guidance is still in force today and should be recognized as an accurate listing of a state's responsibilities under IDEA. The current administration should reissue this guidance and take steps to modernize it to reflect current documentation of children with disabilities not receiving FAPE in such facilities. Once issued, USED should proactively and aggressively communicate with states about its existence and applicability. Lastly, the administration should release this guidance jointly from USED and the U.S. Department of Justice (DOJ) to ensure that states see that the administration is serious about enforcing IDEA's requirements, even through legal action by the DOJ.

2. Congress should hold oversight hearings and release a report on compliance with IDEA in juvenile facilities.

While we believe the law is clear that children with disabilities in juvenile facilities are entitled to FAPE, Congress can play an important oversight role in furthering the enforcement of IDEA's requirements with respect to these children. First, Congress should hold a series of oversight hearings, likely through the House Education and Labor Committee; the Senate Health, Education, Labor, and Pensions Committee; and the House and Senate Judiciary Committees (especially in concern with our third recommendation below) on state compliance with IDEA in state and local juvenile facilities. Congress has used a series of oversight hearings in the past to uncover a failure to follow federal law. These hearings should culminate with a bicameral report that reinforces that the existing law requires FAPE for such children and a directive to USED to ensure that the law's requirements are followed.

3. USED should actively enforce state responsibility for children with disabilities in state and local juvenile facilities, including through legal action where necessary.

USED stipulates that IDEA requires the provision of FAPE for children in state and local juvenile facilities. Yet as we have documented, there is a significant lack of compliance in this area. While reissued guidance and oversight hearings from Congress are essential, there is no substitute for enforcement from USED. While USED's typical enforcement mechanism with respect to IDEA has been to condition the receipt of funds by states, this method has been shown to cause only incremental change in how states administer IDEA's requirements generally. With the services to children with disabilities in juvenile facilities unlikely to be top priorities for many states, past steps taken by USED are unlikely to significantly improve compliance. For these reasons, we strongly recommend that USED begin to document noncompliance by states in this area through monitoring visits and other means. With this documentation in hand, we further strongly recommend that USED begin to take legal action with respect to a lack of state compliance. IDEA as well as other statutes provide USED with authority to seek court-based remedies when recipients of agency-provided grants do not follow through on the respective requirements. This step is clearly needed at this point to ensure meaningful change for children in these facilities.

4. USED should ensure that state and local jurisdictions are implementing evidence-based practices that promote safe and healthy school environments.

Creating safe and healthy school climates are key for fostering successful learning experiences and preventing delinquency or justice involvement. This is especially true for students with disabilities, students from BIPOC communities, and LGBTQ+ students who are disproportionately impacted by school hardening measures. The use of exclusionary discipline, zero tolerance policies, threat assessments, and school-based law enforcement all contribute to and perpetuate the "school to prison pipeline." Federal, state, and local agencies should work to eliminate these harmful practices and promote evidence-based solutions that foster a positive learning environment. These include positive behavioral interventions and supports (PBIS), universal design for learning (UDL), culturally based and trauma-informed restorative practices, and school-based mental health services and professionals, among others. Federal funds should not go to the use of school-based law enforcement, including school resource officers (SROs).

5. Federal, state, and local governments should bolster access to high-quality, well-rounded community services for youth.

Investment in community-based services and other programs can make a big difference at the federal, state, and local levels. Access to mental health screening and care, for example, enables individuals to get the assistance and services they need to be safe and healthy. Just like in schools, positive, safe, and healthy communities are beneficial to creating positive outcomes for everyone involved. The 988 Suicide and Crisis Lifeline offers an alternative to police contact, which is especially helpful for youth with disabilities who may be exhibiting stress caused by their disability, or who may be expressing other normal adolescent behaviors. Some districts have also seen success with diversion programs for juvenile offenders. Diversion programs are used to redirect youth away from the criminal justice system through initiatives that provide support. These programs are typically informed by restorative justice practices, and can create rehabilitative experiences that prevent young people from getting more deeply involved with the juvenile justice system.

6. Invest in crosswalks between disability, education, and justice, starting with USED and DOJ.

There is a significant need for improved data in the juvenile justice space, including disaggregation by disability status. One of the most glaring issues we found while compiling this report is the overall lack of quality data on youth with disabilities in the juvenile justice system. It's difficult to even find a reliable statistic on something as basic as the percentage of youth in the justice system who have a disability. While we have been able to draw conclusions based on various reports and studies, this information should be accessible and transparent so stakeholders can more easily address civil rights needs. OJJDP could spearhead this effort by adding disability status disaggregation in future iterations of its Statistical Briefing Book.

Further, there must be more meaningful and intersectional conversation across the education, justice, and disability fields. Funding and support should be put toward cross-sector collaboration in all areas of advocacy, policy, and practice. NCLD recognizes that many organizations and individuals are already doing this work, despite existing systemic barriers. We hope that this report helps to increase awareness in our community and facilitate inclusive conversation among partners and stakeholders already working toward these efforts, such that **we can all better serve young people with disabilities involved in the juvenile justice system.**



ACKNOWLEDGEMENTS

Thank you to the following experts and advocates for sharing their knowledge, experience, and time in developing and researching this project. Although this report represents substantial feedback from the expert panel, the views expressed in the report do not necessarily reflect the positions of the organizations listed:

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About the National Center for Learning Disabilities

NCLD works to improve the lives of the 1 in 5 children and adults nationwide with learning and attention issues — by empowering parents and young adults, transforming schools, and advocating for equal rights and opportunities. We're working to create a society in which every individual possesses the academic, social, and emotional skills needed to succeed in school, at work, and in life.

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The author dedicates this report in loving memory of her grandfathers, Merrill Skolnik and Matthew Snyderman.

Preferred Citation

Snyderman, J. (2022). *Unlocking futures: Youth with learning disabilities and the juvenile justice system*. Washington, DC: National Center for Learning Disabilities.

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