

Improving Justice for 16- and 17-year-olds in New York: Policy Recommendations

New York is one of only two states that define 16- and 17-year-old defendants as criminally responsible adults. New York's policy exposes these young people to lasting consequences, including the possibility of a criminal conviction, incarceration, and reduced employment prospects and earnings.

In 2012, New York State Chief Judge Jonathan Lippman and the state judiciary created the Adolescent Diversion Program in nine of New York's 62 counties. The goal of this pilot initiative is to improve the response to 16- and 17-year-old defendants in criminal court. With funding from the New York Community Trust, the Center for Court Innovation sought to study the judiciary's Adolescent Diversion Program initiative. The research team also looked at how 16- and 17-year-old defendants were treated across New York State before the Adolescent Diversion Program initiative was instituted. Specifically, research was conducted on the more than 42,000 criminal defendants ages 16 and 17 who were arrested statewide in 2011, with a separate analysis conducted for Adolescent Diversion Program participants in 2012 and 2013. The goal of the research is to help inform deliberations as the judicial, legislative, and executive branches search for the most effective response to 16- and 17-year-old defendants.

Key Statewide Findings

These findings document standard practice in all 62 counties of the state prior to implementation of the Adolescent Diversion Program.

- **Differences in Local Practice:** There was significant variation from county to county in the use of criminal penalties. Statewide, eight percent of 16- and 17-year-olds' cases ended in a criminal conviction and permanent criminal record; and an overlapping nine percent were sentenced to jail or prison. However, the numbers varied widely among counties and regions. For instance, five percent of cases in New York City, nine percent in suburban counties, and 14 percent in upstate counties ended in a criminal conviction.
- **Relationship between Charge Severity and Criminal Penalties:** The severity of the charge substantially increased the likelihood of conviction. Four percent of misdemeanor cases, 16 percent of nonviolent felonies, and 19

percent of violent felonies ended in a criminal conviction.

- **Predictors of Re-Arrest:** The defendant characteristics that were most predictive of re-arrest over a two-year tracking period were: (1) the number of prior arrests; (2) male sex; and (3) having a warrant issued for failing to appear at a scheduled court date.
- **Impact of Incarceration:** Convicting 16- and 17-year-olds of a crime or sentencing them to jail or prison did not deter future re-arrest; to the contrary, sentencing them to jail or prison modestly increased the likelihood of subsequent re-arrest for a violent felony.

The Adolescent Diversion Program

These findings are based on a specific comparison between Adolescent Diversion Program participants in six sites and a matched comparison sample.

- **Impact on Conviction Rates and Use of Jail:** Primarily because most counties limit Adolescent Diversion Program participation to misdemeanants, only three percent of both Adolescent Diversion Program and matched comparison defendants received a criminal conviction. Rates of jail were also low for both samples. Adolescent Diversion Program participants were jailed more often than comparison defendants (five percent v. three percent), but this was due entirely to the use of jail in Erie County. When Erie County was removed from the analysis, Adolescent Diversion Program participation reduced the use of jail, from three percent to one percent.
- **Impact on Re-Arrests:** The Adolescent Diversion Program initiative did not jeopardize public safety. There was no statistical difference between Adolescent Diversion Program participants and the comparison group in re-arrest rates for any crime. In fact, Adolescent Diversion Program participation tended to reduce the likelihood of a felony or violent felony re-arrest.
- **Effect of Defendant’s Risk Level:** Among the highest-risk defendants, Adolescent Diversion Program participants were re-arrested less frequently than comparison defendants (52 percent v. 61 percent). Conversely, among the lowest-risk defendants, Adolescent Diversion Program participants were re-arrested more than comparison defendants (14 percent v. eight percent). Those sites that tended to divert higher-risk defendants to the Adolescent Diversion Program saw more positive results than sites that limited the program to a lower-risk population. This finding confirms other research that suggests that intensive interventions should be reserved for high-risk individuals and that those same interventions can have a negative effect with low-risk individuals.

Policy Implications

Policymakers might consider the following:

- **Extend Future Reforms to Felony Defendants:** Limiting reforms to misdemeanor defendants will have a minimal effect on reducing criminal conviction and incarceration rates. If the goal is to reduce the long-term harms to employment prospects and other life outcomes that result from a criminal record, reform efforts should include felony defendants.
- **Assess Defendant Risk:** Brief, statistically valid assessments are widely available and easy to administer. They are, for example, currently integrated into the Nassau Adolescent Diversion Program site. Use of such assessments can indicate who is at high- and low-risk for re-offense as well as their service needs.
- **Focus on High-Risk Defendants:** Diversion to services is particularly effective for high-risk youth, whereas diversion may be counter-productive for low-risk youth. The case for linking high-risk youth to services is strengthened by the statewide analysis, which indicates that convicting 16- and 17-year-old defendants, or sentencing them to jail or prison, does *not* deter future criminality.
- **Avoid Over-Programming Youth:** It is particularly important to minimize the use of intensive interventions with low-risk youth. One Adolescent Diversion Program site that used lengthy service mandates for this population elicited negative findings (e.g., increased use of jail).

Sources

Reich, W. A., Farley, E. J., Rempel, M., and Lambson, S. H. 2014. *Prosecuting 16- and 17-Year-Old Defendants in New York: Outcomes under Conventional Prosecution and the Experimental Adolescent Diversion Program*. New York, NY: Center for Court Innovation.

Rempel, M., Lambson, S. H., Cadoret, C. R., and Franklin, A. W. 2013. *The Adolescent Diversion Program: A First Year Evaluation of Alternatives to Conventional Case Processing for Defendants Ages 16 and 17 in New York*. New York, NY: Center for Court Innovation.

Both are available for download at www.courtinnovation.org.