

# Legislative Policy Recommendations for Justice-Involved Emerging Adults in South Dakota

## INTRODUCTION

This report offers background information to support policy recommendations for the South Dakota Legislature, Governor and Chief Justice as required by House Bill 1063 (2023). These recommendations pertain to implementing effective processes and supports for emerging adults within the justice system. Recognizing that young adults have great potential for rehabilitation, our suggestions primarily revolve around two aspects: 1) enhancing supervision practices and 2) establishing policies for diversion programs tailored to individuals aged 18-25. This report offers actionable recommendations and examples of diversion programs and supervision practices that can be replicated.

## BASIS FOR TARGETED RESPONSES FOR EMERGING ADULTS

Emerging adults aged 18 to 25 are developmentally and socially different from both adolescents and fully developed adults. While their brain development is similar to that of an older adolescent, they often navigate life experiences and challenges intended for fully developed adults, including the criminal justice system. While individuals gain the ability to reason logically during late adolescence (16 to 17 years old), psychosocial maturity—or their ability to restrain themselves in the face of emotional, exciting, or risky stimuli—continues developing well into young adulthood.<sup>1</sup> Because of this, emerging adults do not exercise self-restraint as well as fully developed adults can when emotionally aroused.<sup>2</sup>

This brain and social development stage also helps explain the age-crime curve that shows offending rates increasing during adolescence, peaking around age 20, followed by declining criminal behavior during adulthood.<sup>3,4</sup> In fact, emerging adults are overrepresented at every stage of the

Best practices for supporting emerging adults include:

- offering supportive diversion opportunities;
- individualized and culturally-responsive case planning;
- building support networks;
- supporting stability through housing, education, and employment; and
- reducing negative impacts of justice involvement

criminal justice system, including prisons and jails.<sup>5</sup> Moreover, recidivism rates for this age group are the highest, with the greatest differences within the first year of release.<sup>6</sup> Additionally, during emerging adulthood, individuals explore their identity, figuring out what they want to do for work, what they want to study, and who they want for a partner. If incarcerated during this time, they cannot explore educational and employment opportunities, build social networks, and learn how to navigate skills required for successful independence.

As a result of developmental differences, the specific needs that emerging adults have, and the understanding that criminal behavior begins to decline at age 20, jurisdictions are modifying criminal justice policies and practices to support emerging adults in the criminal justice system better. This age group is also more amenable to intervention, and interventions targeted specifically at the needs of emerging adults have demonstrated effectiveness in positively changing behavior.<sup>7</sup>

Further, developing targeted policies and services that promote the healthy development of emerging adults and help them reach critical milestones can improve both individual outcomes and support public safety.<sup>8</sup> Generally, the best practices for supporting emerging adults include offering supportive diversion opportunities, individualized and culturally responsive case planning; building support networks; supporting stability through housing, education, and employment; and reducing negative impacts of justice involvement.

**Supportive diversion opportunities:** Opportunities for emerging adults to avoid formal court processing while receiving supportive services, like case management and cognitive behavioral interventions, to facilitate a successful transition to adulthood.

**Individualized and culturally responsive case planning:** Emerging adults are more amenable to positive interventions than older adults, especially when the services are targeted to their individualized needs.

**Building support networks:** Healthy relationships can facilitate the transition to adulthood, and support networks are essential for emerging adults, especially those reintegrating into their community.

**Supporting stability through housing, education, and employment:** Emerging adults benefit from programs that help them develop the skills necessary for long-term financial stability on various life paths.

**Reducing negative impacts of justice involvement:** Involvement in the justice system results in collateral consequences, including reduced access to education, employment, housing, and public benefits.<sup>9</sup> Enhancing policies and processes for expunging or sealing records can help to avoid these long-term consequences.

## RECOMMENDATIONS

1. Revise current statutes related to the use of evidence-based practices, to allow flexibility of funding a range of community-based and culturally responsive services.

Current South Dakota law only allows the South Dakota Unified Judicial System (UJS) and Department of Corrections (DOC) to provide and fund evidence-based programs for individuals under their supervision. SDCL 23A-48-1; 24-15A-43. Few programs have enough robust research to be considered evidence-based, and many evidence-based programs are not sustainable in rural communities due to staffing needs. This also creates a barrier for emerging adults if there is only one or limited evidence-based program accessible to them in their community. In some instances, the only option is to repeat the same program again if no other options are available. Further, many culturally responsive programming options

are not currently evidence-based and would require a prohibitive investment of time and money for rigorous evaluation.

Consider revising existing statutes to explicitly authorize UJS and DOC to fund a range of evidence-based and promising practices. This would allow UJS to support mentoring and culturally responsive programming for emerging adults. Ensure that the statutes provide flexibility to adapt and incorporate innovative approaches as research evolves. This change would also require the Department of Social Services to consider funding additional programs that are not considered evidence-based but may address the needs of this population.

2. Enact funding mechanism to support diversion processes and emerging adult diversion programs for non-violent and low-risk offenders to reduce collateral consequences associated with involvement in the justice system.

A criminal record can be a barrier to securing housing, employment, student loans, or other public benefits. For emerging adults whose needs in these areas are high, a criminal record can be a significant barrier to reintegrating and connecting with their community. South Dakota should consider requiring state attorneys to review each charge for eligibility and enact a mechanism to fund diversion processes and programs for young adults aged 18-25. This mechanism may include a financial incentive for counties to divert emerging adults, like the process in place for juvenile diversion, or a grant program to provide support for starting and piloting diversion programs to test the model before including funding in the budget.

Funding is necessary to support systems to oversee and administer the diversion processes and programs, including diversion coordinators in the state attorneys' offices and funding for community-based programming, including mentoring, culturally responsive programs, and cognitive behavioral health services. While administration of the diversion process and programming requires an investment, it is a significantly smaller investment than traditional

court processing and jail. Include provisions that allow for the seamless application for expungement following the successful completion of the diversion process.

Pennington County Diversion has experienced positive outcomes with its program over the last five years. The program is staffed with five FTEs and has served over 1000 emerging adults, and 51% have satisfied the current requirements for expungement (i.e., completion of their diversion agreement and no new charges for 18 months). Every case is reviewed and is eligible for diversion if the person pleads guilty to the charges, the victim consents, and the case occurs in Pennington County. Young adults charged with violent crimes, defined in SDCL 22-1-2(9), are excluded from the diversion program. Participants are not charged to participate in diversion.

While some lessons from Pennington County Diversion are applicable across the state, rural communities may need to adapt the process to accommodate a narrower range of accessible services and supports and fewer staff and resources. Rural regions of the state may consider having one diversion coordinator cover multiple counties.

In addition, DOC should consider creating an expedited pardon process for individuals that commit certain non-violent offenses during young adulthood. This would provide an opportunity for the consideration of removal of those offenses from the individual's criminal record.

### 3. Prioritize training for all court and community partners on developmental and social differences for emerging adults and best practices for supporting this age group.

Buy-in from all justice partners is necessary to improve how South Dakota responds to emerging adults who come to the attention of the justice system. Buy-in begins with education and understanding. Establish a mandatory training program for all justice professionals and community partners who interact with emerging adults, including law enforcement, judges, probation, prosecutors, public defenders, and program staff. Develop a comprehensive curriculum that covers the unique needs and challenges of young adults aged 18-25 in the justice system, focusing on trauma-informed approaches and de-escalation techniques to reduce recidivism. The justice partners must understand that diversion

and additional support contribute to public safety. Allocate funding for ongoing professional development and training updates to ensure stakeholders are current with the latest research and best practices.

### 4. Support cognitive behavior treatment and skill-building for emerging adults through dedicated funding streams.

Cognitive behavior treatment is an evidence-based practice for adolescents in the justice system and has also been effective with emerging adults. Some of the cognitive behavior-based interventions available to adolescents involved in the justice system in South Dakota may also be appropriate for emerging adults, however, many providers are not able to provide these services to individuals over the age of 18 due to funding and contract restraints. Allocate dedicated funding for cognitive behavioral skill-building in diversion programs for young adults. Partner with community-based providers that provide cognitive behavioral services to adolescents to expand their services to emerging adults with diversion agreements and those under supervision. There are research-based community supervision practices that can support emerging adults' needs, ensure community safety, hold young people more accountable, and reduce recidivism. Implementing effective supervision practices across probation can impact more young people who are not eligible for diversion programs. These practices can be enforced with policies and standards.

### 5. Consider practice changes across the justice system.

The UJS and DOC should develop and apply evidence about emerging adults to inform their supervision practices. For example, emerging adults are more amenable to positive interventions than older adults, especially when the services are targeted to their individualized needs. Consider requiring individualized case planning for emerging adults that incorporates needs assessment results, education and employment goals, building healthy support networks, and considering culturally responsive programming.

## CONCLUSION

South Dakota has spent the last decade implementing policies to improve their criminal and juvenile justice system. Emerging adults straddle these distinct systems; while developmentally, this age group could benefit from some of the rehabilitative and relationship-oriented practices in the juvenile system, their chronological age makes them ineligible. Several jurisdictions across the country have recognized the benefits of refining their approach to how emerging adults are handled in the criminal justice system through increased diversion opportunities, individualized case planning, and developing social supports. The recommendations outlined in this report are intended to be a foundation for considering opportunities for South Dakota stakeholders to work together to support emerging adults while protecting public safety and reducing recidivism. These recommendations should serve as a foundation for comprehensive legislation aimed at improving diversion programs and other promising practices for young adults involved in the justice system. It is essential to include experts, community stakeholders, and impacted individuals in the legislative process to ensure that the resulting laws are effective and responsive to the needs of the target population.

## ACKNOWLEDGEMENTS

This report was written by Teri Deal, Wendy Schiller, and Lindsey Wylie of the National Center for State Courts and developed with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails. For more information, see [www.safetyandjusticechallenge.org](http://www.safetyandjusticechallenge.org). For more information on the NCSC's Safety and Justice Challenge work, see <https://www.ncsc.org/Topics/Criminal/Courts-and-Jails/Safety-and-Justice-Challenge.aspx>.

We would also like to acknowledge the contributions of the Barriers for Emerging Adults Task Force. Please see [Appendix A](#) for a list of Task Force members.

## APPENDIX A: BARRIERS FOR EMERGING ADULTS TASK FORCE MEMBERS AND PROJECT STAFF

### Task Force Members

Erik Bringswhite - I.Am.Legacy

Ryan Brunner - Senior Policy Advisor, Governor's Office

Judge Natalie Damgaard - Judge, 2<sup>nd</sup> Judicial Circuit

Judge Mike Day - Presiding Judge, 4<sup>th</sup> Circuit

Terry Dosch - SD Council of Community Behavioral Health

Betsy Doyle - Chief Deputy Public Defender-Minnehaha County

David Flute - Secretary, Department of Tribal Relations

Daniel Hagggar - Minnehaha County State's Attorney

Marcia Hultman - Secretary of Labor and Regulation

Rep. Chris Karr - District 11

Jordan Majeske - Detective, Aberdeen

Belinda Nelson - CEO, Community Counseling Service

Molly Ramlo - Chief Court Services Officer-3rd Judicial Circuit

Lara Roetzel - Pennington County State's Attorney

Greg Sattizahn - State Court Administrator

Laura Scheibe - Department of Education

Sheriff Doug Solem - Beadle County Sheriff

Rep. Tamara St. John - District 1

Ernest Thompson - Attorney General Appointee

Kellie Wasko - Secretary of Corrections

Senator David Wheeler - District 12

Eric Whitcher – Director, Pennington County Public Defender's Office

Tiffany Wolfgang - Division of Behavioral Health, Department of Social Services

### Project Staff

Teri Deal - National Center for State Courts

Sadie Stevens - UJS Public Policy Analyst

## ENDNOTES

- 1 Deal, T., Cienfuegos-Silvera, A., & Wylie, L. (2022). Meeting the needs of emerging adults in the justice system. In C. Campbell & J. Holtzclaw, eds. *Trends in State Courts 2022*. Williamsburg, VA: National Center for State Courts.
- 2 Icenogle, G., et al. (2019). Adolescents' cognitive capacity reaches adult levels prior to their psychosocial maturity: evidence for a maturity gap in a multinational, cross-sectional sample. *Law and Human Behavior*, 43(69).
- 3 Farrington, D.P., Loeber, R., & Howell, J.C. (2012). Young adult offenders: the need for more effective legislative options and justice processing. *Criminology and Public Policy*, 11(729).
- 4 Loeber, R., et al. (2012). Findings from the Pittsburgh youth study: cognitive impulsivity and intelligence as predictors of the age-crime curve. *Journal of the American Academy of Child and Adolescent Psychiatry*, 51(1136).
- 5 Pirius, R. (2019). The Legislative Primer Series for Front-End Justice: Young Adults in the Justice System. Washington, DC: National Conference of State Legislatures. Retrieved from:  
[https://www.ncsl.org/Portals/1/Documents/cj/front\\_end\\_young-adults\\_v04\\_web.pdf](https://www.ncsl.org/Portals/1/Documents/cj/front_end_young-adults_v04_web.pdf)
- 6 FBI Criminal Justice Information Services Division, 2017 Crime in the United States, Table 38, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-38>
- 7 Perker, S.S., & Chester, L. (2017). Emerging adults: a distinct population that calls for an age-appropriate approach by the justice system. Malcom Wiener Center for Social Policy: Harvard Kennedy School. Available:  
[https://scholar.harvard.edu/files/selenperker/files/emerging\\_adult\\_justice\\_issue\\_brief\\_final.pdf](https://scholar.harvard.edu/files/selenperker/files/emerging_adult_justice_issue_brief_final.pdf)
- 8 Sakala, L., Courtney, L., Matei, A., & Harvell, S. (2020). A guide to community strategies for improvement emerging adults' safety and well-being. Urban Institute. Available:  
[https://www.urban.org/sites/default/files/publication/101838/a20guide20to20community20strategies20for20improving20emerging20adults2720safety20an\\_0.pdf](https://www.urban.org/sites/default/files/publication/101838/a20guide20to20community20strategies20for20improving20emerging20adults2720safety20an_0.pdf)
- 9 Prasad, S. (2021). Collateral consequences guide: a guide for prosecutors to support informed decision-making for emerging adults (ages 18-25). Stoneleigh Foundation. Available: [https://stoneleighfoundation.org/wp-content/uploads/2021/08/Emerging-Adult-Collateral-Consequences-Guide\\_2021\\_Final.pdf](https://stoneleighfoundation.org/wp-content/uploads/2021/08/Emerging-Adult-Collateral-Consequences-Guide_2021_Final.pdf)
- 10 Fixsen, D.L., Naoom, S.F., Blasé, K.A., Friedman, R.M. & Wallace, F. (2005). Implementation research: a synthesis of the literature. The National Implementation Research Network.
- 11 Deal, T., Cienfuegos-Silvera, A., & Wylie, L. (2022).
- 12 Similar to Alabama, Georgia, Pennsylvania, and Texas
- 13 Love (March, 2022). The many roads from reentry to reintegration. Collateral Consequences Resource Project,  
<https://ccresourcecenter.org/the-many-roads-to-reintegration/>
- 14 Nebraska and Wyoming (i.e., limited felonies and misdemeanors); Colorado, North Dakota, and Minnesota (i.e., broader felony & misdemeanor expungement). ([See Map here](#))
- 15 Livingstone, I., Amad, S., and Clark, L. (August 2015). Effective Approaches with Young Adults: A Guide for Probation Services. London: Transition to Adulthood and Clinks 11. Available at <https://www.issuelab.org/resources/26981/26981.pdf>
- 16 Ibid
- 17 Emerging Adult Justice Learning Community (2021). A Roadmap to Reform: Key Elements of Specialized Probation for Emerging Adults. New York: Justice Lab at Columbia University.
- 18 National Institute of Corrections. (2013). "Get Smart About . . . Rewards and Sanctions: The Facts about Contingency Management." Available at <https://nicic.gov/get-smart-about-rewards-and-sanctions-facts-aboutcontingency-management>.
- 19 Schwartz, S.J. & Petrova, M. (2019). Prevention science in emerging adulthood: a field coming of age. *Prevention Science*, 20, 305-309.
- 20 Sakala, Courtney, Maitei, & Harvell (2020).
- 21 Shiedow, A.J., McCart, M.R., and Davis M. (2016). Multisystemic therapy for emerging adults with serious mental illness and justice involvement. *Cognitive Behavioral Practice*, 23(3): 356-67.
- 22 Hughes, N., & Strong, G. (2016). Implementing the evidence on young adult neuromaturation: the development of a specialist approach in probation services. *Probation Journal*, 63(4): 452-459.



Supported by the John D. and Catherine T. MacArthur Foundation



[www.ncsc.org](http://www.ncsc.org)