

Diversion: Reducing Collateral Consequences and Recidivism with Alternative Resolutions

21st Annual State Criminal Justice Network Conference

August 11th, 2022

Melissa Labriola, Senior Social Behavioral Scientist, RAND Corporation

Raul Ayala, Collaborative Courts Supervising Attorney, Deputy Federal Public Defender, Office of the Federal Public Defender, Central District of California, Los Angeles

Tiffany Williams Roberts, Public Policy Director Southern Center for Human Rights

J.Z. Bennett, Assistant Professor, University of Cincinnati, School of Criminal Justice

Does Policy Effect Practice?

Raul Ayala

Collaborative Courts Supervising
Attorney, Deputy Federal Public
Defender

Office of the Federal Public Defender,
Central District of California, Los
Angeles

Federal Government: a few notable examples

- Biden-Harris Administration's Statement of Drug Policy Priorities for Year One (2021)
- 7 Priorities, including:
 - Supporting evidence-based prevention efforts to reduce youth substance use (Priority #4)
 - Advancing recovery-ready workplaces and expanding the addiction workforce (Priority #6)
- Office of National Drug Control Policy (and other agencies)
- Funding & Research Priorities: Office of Justice Programs (OJP), SAMHSA, NAMI, etc.
- DOJ: U.S. Attorney's Manual §9-22.00 (Pre-trial Diversion Program)

State Governments:

- Statutes, Rules of Court, administrative priorities, etc.
- Example: California Penal Code §1000 et seq., and more recently §100.95, et seq.

Non-Governmental Agencies: some examples

- National Association of Pretrial Services Organizations (NAPSA)
- National Association of Drug Court Professionals (NADCP)
- Council of State Governments Justice Center (i.e., Mental Health Court curriculum)
- American Bar Association, Criminal Justice Section (new Diversion Standards)

ABA Criminal Justice Section Diversion Standards

- ▶ First Edition (8/2022) – Black Letter (with Commentary on the way)
- ▶ Priority is a **public health approach, avoiding the criminal legal system**
 - ▶ Reduce collateral consequences
 - ▶ Address over-criminalization
 - ▶ Reduce incarceration
 - ▶ Curtail the burden on, and investment in, the criminal legal system
 - ▶ Eradicate racial disparities in arrests, charging, sentencing and incarceration
 - ▶ Encourage jurisdictions, ***in the absence of the threat of criminal sanctions***, to refer individuals to alternative care provide by the community or the diversion program itself
- ▶ Organization of the Standards:
 - ▶ Introduction and General Attributes of Diversion
 - ▶ Early Diversion: Community-First Programs
 - ▶ Early Diversion: Law Enforcement Programs
 - ▶ Early Diversion: Pre-Filing Programs
 - ▶ Pre-Plea Programs
 - ▶ Post-Plea Programs

Practical Realities

- ▶ **Public (Federal) Funding: majority is provided to state/local programs**
 - ▶ OJP: BJA, BJS, NIJ, OJJDP, OVC, SMART...others
- ▶ **Application of treatment and/or legal standards: accountability**
 - ▶ Organization/purpose of program
 - ▶ Composition of program team members
 - ▶ Definition of target population(s) and selection criteria
 - ▶ Screening and assessment procedures (therapeutic and/or criminogenic?)
 - ▶ Incentives, sanctions and therapeutic adjustments
 - ▶ Collection of data and process/impact evaluation(s)
 - ▶ Development, dissemination and improvement of evidence-based practices* and standards within and between jurisdictions
 - ▶ 50 states and 1 federal district; 94 federal judicial districts ("front end"; post-release)
- ▶ **Lack of strong/consistent policy directives, funding incentives, legal authority, program support (i.e., training) and resources re: diversion**



Tiffany Williams Roberts

Public Policy Director

Southern Center for Human Rights



Policing Alternatives & Diversion Initiative

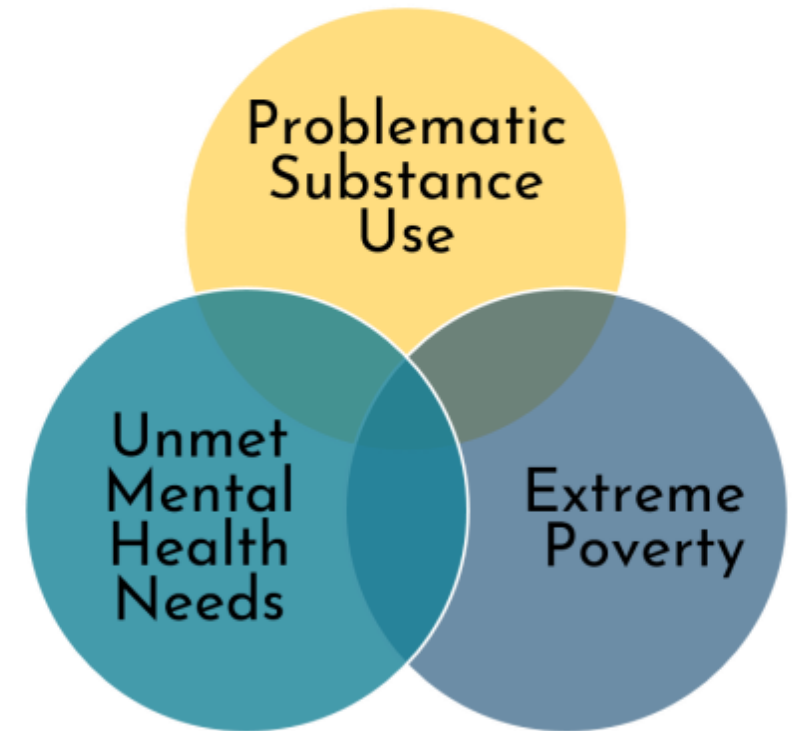
A New Approach to Community Safety & Wellness

Our current system has failed to provide care and support to those who need it most. Instead, local governments have criminalized survival activities.

PAD works to:

- 1. Reduce arrest and incarceration** of people struggling with unmet mental health needs, substance use, and extreme poverty.
- 2. Address community concerns** related to these issues.
- 3. Increase the accessibility of supportive services** in Atlanta and Fulton County.

Changing the response to:



A New Approach to Community Safety & Wellness

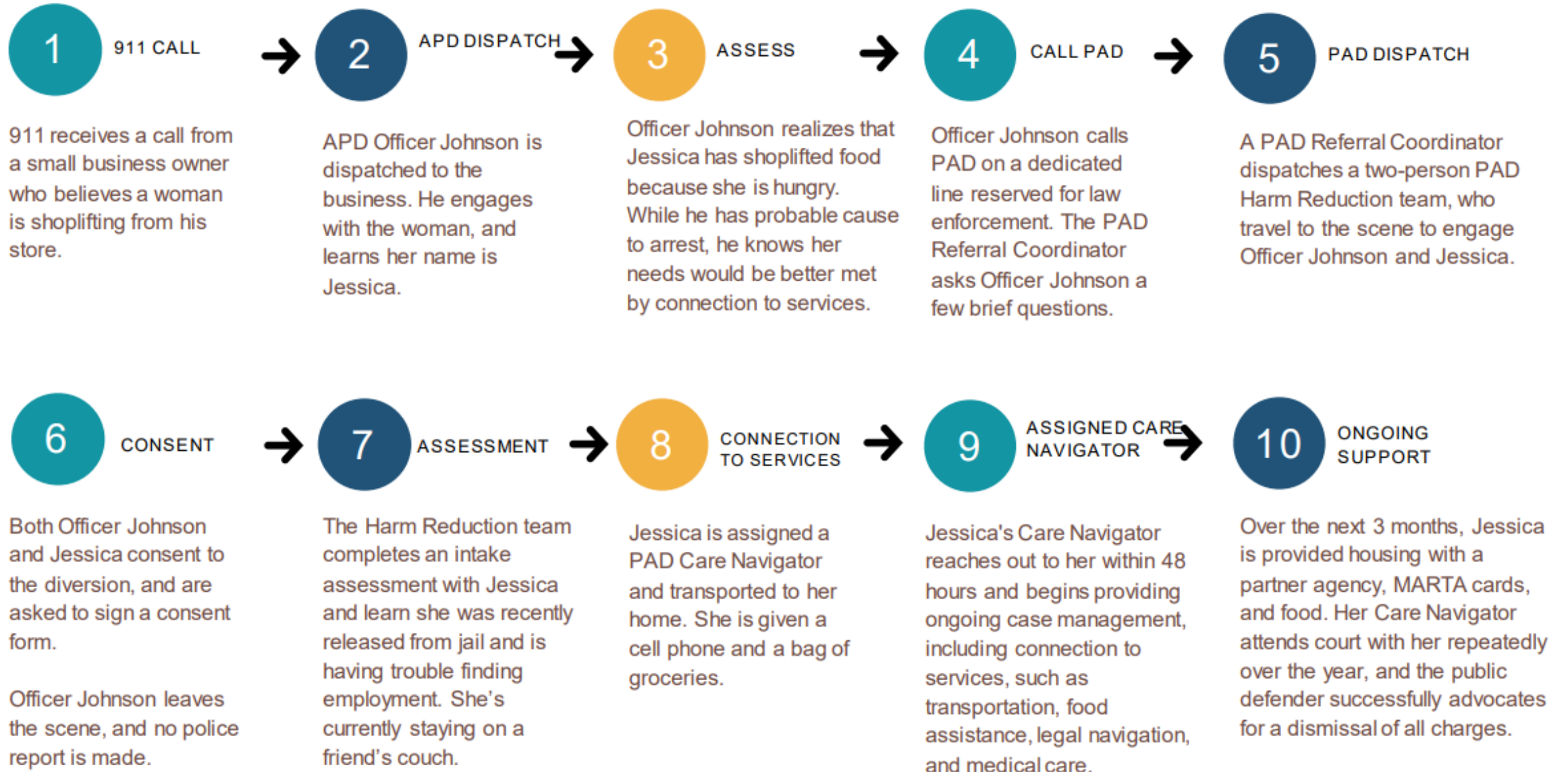
Provide pre-arrest diversion

Provide alternative response to people referred through City of Atlanta 311

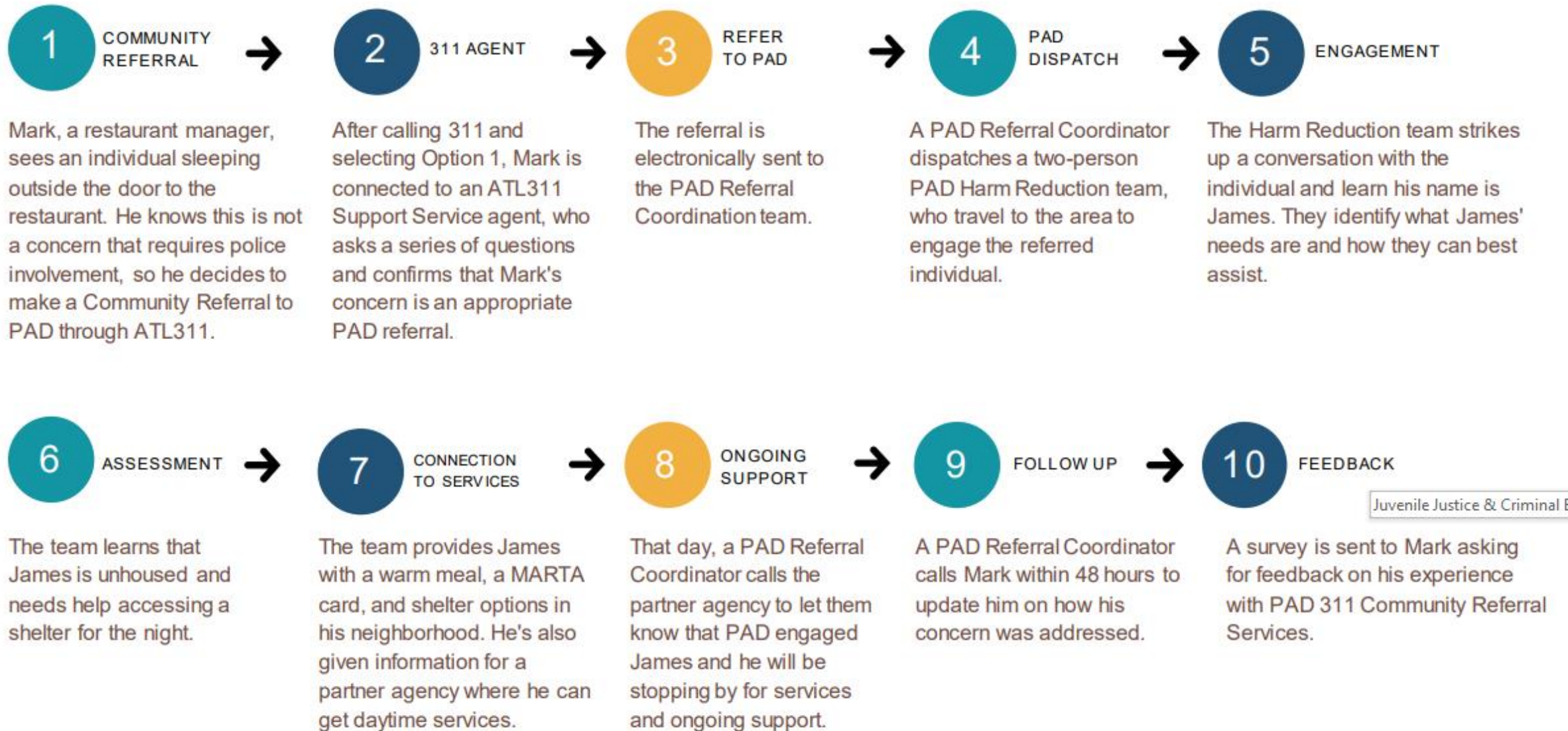
Reduce barriers to stability and increase community connections through care navigation, emergency housing, and direct supports



Pre-Arrest Diversion Flow Chart



Community Response Services through ATL311 Flow Chart



Makes Recovery Possible



- **Consent based**
- **No leveraging of services**
- **No treatment requirements**
- **Safe & non-judgmental environment**
- **Honoring people's self-determination**
- **Creative collaboration**

Our 2021 Impact

In 2021, PAD launched community referrals through 311 and expanded alternate response and diversion services citywide 7am-7pm , Monday-Friday.



281
Pre-arrest
diversions



875
Community
referrals via
ATL311



520
People
provided with
emergency
shelter



466
Officers trained



345
People served through
case management

Key 2022 Goals

- Implement a joint public awareness campaign to **recruit quality-of-life calls from 911 to 311**, and protocol to divert select call types from 911
- Launch a new Fulton County behavioral health coalition in partnership with the Georgia Mental Health Consumer Network, to **advocate for alternate mental health crisis responses** and services
- In partnership with City of Atlanta, Fulton County, Grady Hospital and others, establish the **Center for Diversion and Services** to provide 24/7 diversion and sobering services

APPROACH TO
COMMUNITY SAFETY &
WELLNESS



Portland Daily Ex

PORTLAND, MAINE WEDNESDAY, APRIL 24, 1996

THE AGE OF THE SUPER PREDATOR

Mainers say soaring juvenile crime portends need for system overhaul

By Sharon Mack
Of the NEWS Staff

When Michael Mason of Embden shot and killed his mother and brother in 1993, Maine courts and the juvenile system had little experience dealing with a violent



'The only victim in this case is dead': Mourning for 5-year-old Eric.

CRIME

'Superpredators' Arrive

Should we cage the new breed of vicious kids?

BY PETER ANNEN

ON OCT. 13, 1994, 5-YEAR-OLD ERIC Morse and his 8-year-old brother, Derrick, ran into two of the toughest bullies their South Side Chicago neighborhood had to offer. The intimidating boys lured the brothers to a vacant

where is the state supposed to put these two killers? A judge is scheduled to rule in the case next week. Around the country, other states are watching. They have their own predators to worry about.

It wouldn't be a problem if Illinois's special 30-bed "kiddie prison" weren't still un

Juvenile Justice & Criminal Behavior

THE COMING OF THE SUPER PREDATOR

Dr. J.Z. Bennett

Assistant Professor

University of Cincinnati, School of Criminal Justice

John Dilulio

- ▶ “A super-predator is a young juvenile criminal who is so impulsive, so remorseless, that he can kill, rape, maim, without giving it a second thought,” Dilulio said in 1996.







Remembering the 90's

s Ex-Theorist on Young 'Superpredators,' Bush Aide Has Regret

ELIZABETH BECKER FEB. 9, 2001

From his perch as the director of the new White House Office of Faith-Based and Community Initiatives, which he believes will help uplift many needy people but particularly the most troubled teenagers, John J. DiIulio Jr. conceded today that he wished he had never become the 1990's intellectual pillar for putting violent juveniles in prison and condemning them as "superpredators."

<https://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html>

Central Park 5

- Five teens were wrongfully convicted of beating and raping a woman jogger in Central Park in 1989
- Even though they did not commit the crimes they confessed to it anyway (deprived teens of food, drink, and sleep for over 24 hours)
- Despite inconsistencies within the confessions, which were presented during trial, and no physical evidence tying them to the crime scene, the teens were still convicted



TITLE: STRANDED ON DEATH ROW PART 1
BY: SAM CARSON AKA MUSCLE

A HOT SUMMER MORNING IN JULY 1995,
THE COUNTY JAIL BUS IS MAKING THAT TRIP
FROM HOLMESBURG COUNTY PRISON TO A
NOTORIOUS PENITENTIARY UPSTATE CALLED S.C.
I. (STATE CORRECTIONAL INSTITUTION)
GRATERFORD, WELCOME TO THE PENNSYLVANIA
PENAL SYSTEM FOR THE BIG BOYS, AS
THEY SAY, APPROXIMATELY FIFTY PEOPLE
CONVICTED OF CRIMES RANGING FROM RAPE,
MURDER, ROBBERY, BURGLARY, DRUG DEALING,
ETC., ENTER THE FRONT ENTRANCE A.K.A.
THE BELLY OF THE BEAST, THE CORRECTIONAL C.O.

The Crime Bill of 1994

The Violent Crime Control and Law Enforcement Act was a lengthy crime control bill that was put together over the course of six years.

- ▶ "Three strikes" mandatory life sentence for repeat offenders,
- ▶ Money to hire 100,000 new police officers,
- ▶ \$9.7 billion in funding for prisons, and an expansion of death penalty-eligible offences.
- ▶ It also dedicated \$6.1bn to prevention programs "designed with significant input from experienced police officers", however, the bulk of the funds were dedicated to measures that are seen as punitive rather than rehabilitative or preventative.





School To Prison Pipeline

- ▶ Succeeding the 1999 tragedy that occurred at Columbine High School in Jefferson County, Colorado, which left 12 students and one teacher dead by two armed students (Dylan Klebold and Eric Harris), zero tolerance policies began to infiltrate into many school districts across the nation.
- ▶ Under the Clinton Administration it applied the rhetoric and intention of tough-on-crime laws to the school environment and passed the Gun-Free Schools Act in 1994 (Kang Brown et. al. 2013). The Gun-Free Schools Act mandates expulsion for possession of a firearm, referral of law-violating students to the criminal or juvenile justice system.

Zero Tolerance

- ▶ There is a common misconception that severe disciplinary consequences like out-of-school suspensions are used primarily for very serious behaviors like bringing guns to school and selling drugs.
- ▶ Contrary to popular belief serious incidents that zero-tolerance policies can be applied to are extremely rare instances.

Zero Tolerance

- ▶ According to Youth for Change and the Advancement Project (2014) students have reported be suspended for
 1. laughing in class,
 2. getting out of a chair to sharpen her pencil,
 3. or for “popping” gum in class.

- ▶ Out-of-school suspension particularly problematic as it is highly associated with later involvement in the juvenile justice system.

How a Philly cop broke the school-to-prison pipeline

Updated: SEPTEMBER 26, 2016 — 5:13 AM EDT



Evaluation of the Philadelphia Police School Diversion Program

