NATIONAL JUVENILE JUSTICE NETWORK

A House Divided No More
COMMON CAUSE FOR JUVENILE JUSTICE ADVOCATES, VICTIM ADVOCATES, AND COMMUNITIES

APRIL 2014

Introduction[*]

At the National Juvenile Justice Network (NJJN), we advocate for a fair and just juvenile justice system because we want youth held accountable in ways that help them get back on the right track and give them the tools to make better choices in the future.

At the same time, we know that we can't fix the juvenile justice system in isolation from youth's families, their communities, and the people who have been harmed by their actions. We acknowledge the very real and sometimes lasting harm caused when someone commits a crime. And we believe that the promise of a fair and just system cannot be realized without addressing the needs of all parties—including the needs of anyone harmed by crime. In order to proactively and effectively achieve broad system change, we believe that our advocacy must encompass consideration of the needs of everyone involved in the juvenile justice system—youth who commit crimes, youth at risk of committing crimes, the individuals and communities harmed when youth break the law, and the family members of all.

This paper is the beginning of an exploration that we hope will help bridge an unnecessary and sometimes harmful divide between juvenile justice advocates and victim advocates. We

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[*] Many organizations are exploring ways to rethink our typical approach to justice—both organizations who primarily work on victims' issues and those who primarily focus on justice reform. NJJN lends its voice to this dialogue and is grateful to the dedicated members of its victims working group for leading us forward in this area. Learn more about NJJN's work on victims' issues here: http://bit.ly/I3zQnX. NJJN also owes a great deal of credit and gratitude to the Partnership for Safety and Justice (PSJ), an NJJN member, for its work on victims' issues; PSJ is a leader in the field (www.safetyandjustice.org). NJJN is additionally indebted to the Justice Policy Institute (www.justicepolicy.org) for spearheading a discussion around these issues on a national level, and to Anne Seymour for her engagement with NJJN on our work on victims' issues.

recognize that these are not simple issues and acknowledge that we are far from having all the answers. And yet we hope that this paper can contribute to an open and honest dialogue that will lead to a more just and effective juvenile justice system.

The Need for Accountability and Restoration

A core tenet of the juvenile justice system is accountability: youth who commit offenses must take responsibility for any harm they cause. Holding youth accountable when they commit crimes helps them learn about the negative consequences of their actions, and is a crucial means of rehabilitation. At the same time, we must hold youth accountable in age-appropriate ways by using interventions that acknowledge the unique attributes of youth—their brains are still developing, they have an immense capacity for change, they make decisions differently than adults do[1]—and that give youth the tools to develop into responsible adults. These strengths-based responses to youth offending that are rooted in youth development are actually more effective at increasing public safety and decreasing crime than the more traditional method of locking youth up.[2] A significant body of research has shown that more punitive approaches, such as putting youth in prison, transferring them into the adult criminal justice system, and separating them from their families and other community supports, work contrary to our goals of increasing public safety and giving youth the tools to make better choices in their lives.[3]

While there are many positive, public safety-oriented ways to hold youth accountable, restorative justice practices take a holistic approach and have been proven to be effective with both people who have committed crimes and those who have been harmed by crime. Through restorative justice practices, people who have committed offenses take responsibility for their actions by addressing any harm they caused. When done well, restorative justice processes treat everyone with humanity and dignity. They give people who have been harmed the opportunity to be heard, ask questions and seek restoration; provide an opportunity for those who are responsible for crimes to apologize and assist in making amends for the harm they have done; and involve family members and members of the community in discussions around accountability, reparations, and rehabilitation.[4]

Exploring the Traditional Divide between People Who Commit Offenses and Victims

Conversations about the juvenile justice system often revolve around two groups of people: "offenders" and "victims."[5] These groups are treated as separate and mutually exclusive, and are very often positioned at odds with one another. However, the lines between the two groups can

often be blurred, and a sensible and responsible approach to reform recognizes that their experiences and needs overlap.

If we examine the traditionally separate groups of "victims" and "offenders" more closely, it becomes clear that, in fact, these groups are far from distinct; many youth who commit offenses have also been harmed by crime, often more than once.[6] A large number of youth who get into trouble with the law come from communities that are embroiled in violence and poverty, where many members of the community are involved in and affected by criminal activity, experience maltreatment, and lack support systems.

Youth Are Vulnerable to Committing Offenses and Being Victimized by Crime

Youth are unique. Their bodies are still growing and developing, their brains are continuing to change, and they make decisions differently than adults do.[7] Youth are also uniquely susceptible to peer pressure and often make riskier choices when surrounded by their friends.[8] This relative immaturity can lead to increased vulnerability—both in terms of risk of victimization and chance of involvement in delinquent activity.

Victimization by Age Group in 2011

(Rate of Incidents per 1,000 People)

Source: Jennifer L. Truman and Michael Planty, "Criminal Victimization, 2011," *Bureau of Justice Statistics* (October 2012): 5, accessed May 22, 2013 at http://1.usa.gov/15oX03S.
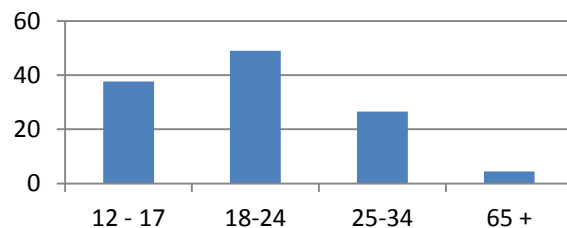
Homicide is the second leading cause of death for youth ages 15 to 24, and is the leading cause of death for African-American youth. Most (62 percent) victims of non-fatal youth violence are also youth.[10]

In fact, when youth are the victims of violent crime, it can make them more likely to commit violent crimes themselves: one study of over 5,000 youth found that youth who were the victims of a violent offense were three times more likely to commit a violent offense in the next twelve months than those who were not victims of violent crime (52 percent compared to 17 percent).[9]

Youth who are harmed by crime are at greater risk of drug or alcohol use and abuse, depression, mental health issues, doing poorly in school, unplanned pregnancy, and suicide.[11] Many of these risk factors are also shared by youth who commit crime.[12] And, prior history of being harmed by crime or committing a crime is a risk factor for future offending and/or victimization.[13]

The overlap between those harmed by crime and those who commit crime reinforces the need to approach solutions more holistically and preventatively, rather than dividing groups into "victims" and "offenders" and treating them as separate populations. With youth, this is especially true, considering their unique vulnerability and capacity for change.

The False Racial and Gender Divide

The common notion of an individual harmed by crime is often oversimplified and one-dimensional. Individuals harmed by violent crime are frequently portrayed in the media or policy debates as young, white women harmed by strangers. In fact, black men and boys experience higher rates of violent victimization than white women;[14] recent statistics show that women and girls of all races experience the majority of sexual and family violence,[15] and data covering the period 1993 to 2011 showed that men consistently experienced a higher rate of violent victimization than women.[16]

> *Between 1980 and 2003, boys were twice as likely as girls, on average, to be the victims of a serious violent crime. And black youth as a whole were 67 percent more likely to be victimized by serious violent crime than white youth were.[17]*

The demographics of youth in the juvenile justice system reflect a similar racial and gender skew. Black youth are overrepresented at all stages of the juvenile justice system,[18] are arrested at a higher rate than white youth,[19] are more likely to go deeper into the system (i.e., be incarcerated), and are more likely to be transferred to adult court.[20] When it comes to gender, boys and young men are more likely to be involved in the juvenile justice system than girls or young women.[21]

> *In 2002 (the last year for which data were analyzed), the murder rate for black youth was more than four times that for white youth.[22]*

These statistics challenge commonly held notions of who is harmed by crime. All people who are harmed by crime—regardless of race, gender or age—deserve opportunities for restoration and supportive services. A limited, one-dimensional, or distorted idea of those harmed by crime undermines attempts to find meaningful solutions that have the potential to help the greatest number of people and communities.

A Picture of "Dual Status or "Crossover" Youth

Another key area of overlap between youth who commit crime and individuals harmed by crime is that of so-called "dual status" or "crossover" youth—youth involved in both the child welfare system and the juvenile justice system. As with the false divides discussed above, there is no clear division between youth in the child welfare system and youth in the juvenile justice system. Many youth in the juvenile justice system are simultaneously in the custody of the state through

a child welfare case, or were once involved in the child welfare system.[23] Indeed, involvement in one system can lead directly to involvement in the other.[24] These youth quite often have special education needs, struggle with mental health and/or substance abuse issues, have witnessed domestic violence, and have a history of trauma.[25] Furthermore, child welfare systems can contribute to racial and ethnic disparities in the juvenile justice system.[26]

Services are often separated into those provided for youth in the child welfare system and those provided for youth in the juvenile justice system. Yet the very same youth frequently end up in both systems, and often need the same services. Hence, these services—such as counseling (with a special focus on a trauma), appropriate educational services, substance abuse treatment, and family involvement in treatment plans—should be accessible to youth involved in both systems.[27] Professionals working in both child welfare and juvenile justice recognize the need to break down divisions between the two systems, and are actively working on better systems integration and collaboration.[28] These efforts speak to a broader need to break down divisions between "victims" and "offenders"; improve and better integrate services to those harmed by and responsible for crime; and increase partnership among groups that have been traditionally focused on advocating solely for individuals harmed by crime or for youth involved in the justice system.

Youth in the Juvenile Justice System: Who Are They?

In 2011, 63 percent of youth in residential facilities were held for property offenses, drug offenses, technical violations, status offenses, or public order offenses.[29]

Breaking down some of the false divisions between stereotypical "victims" and "offenders" is one step toward viewing the justice system more holistically and ensuring justice, fairness and services for everyone involved. Another crucial step is to have a clear picture of the youth who populate the juvenile justice system.   Most youth are swept into the juvenile justice system for non-violent offenses, such as drug or alcohol use, vandalism, disorderly behavior, theft, or even non-criminal (status) offenses, such as skipping school and running away.[30] Youth who commit status offenses are often snared in a sticky trap of probation or supervision, sometimes without the services they need to actually change their behavior. Even youth who commit relatively minor crimes are quite often shackled, separated from their families, and locked up in secure youth prisons. A small number of youth in the justice system have committed serious crimes and may require intensive interventions;[31] but, as noted above, interventions such as imprisonment or transfer to the adult system are not the best way to address even the most serious youth offenses, both in terms of youth rehabilitation and public safety.

In 2009, 11,400 youth across the country were held in secure detention for skipping school, running away, violating curfew, and other offenses that would not be considered crimes if committed by adults.[34]

Unfortunately, punitive school disciplinary policies contribute to the funneling of youth into the juvenile justice system. While there are no national data on arrests in schools, it is widely acknowledged that the number of students arrested for conduct in school is on the rise.[32] Worse yet, children of color and students with disabilities are arrested in school settings at disproportionately high rates.[33]

As a society, we are spending valuable resources arresting and locking up youth who do not pose a threat to public safety. Involving them in the juvenile justice system usually does not effectively hold these youth accountable and help them correct their behavior, nor is the system generally oriented towards helping them repair or restore any damage they cause. Rather, it diverts resources away from restorative programming and can actually lead them to commit more offenses and to further involvement in the justice system.[35] A better model invests resources in prevention and diversion services for youth, while also investing in services for victims to help restore their loss to the extent possible.

A System that Too Often Fails Everyone

Given some of the misperceptions about who is harmed by crime and the offenses that most commonly drive youth into the juvenile justice system, it is no surprise that the current system rarely meets the needs of those involved in it. Anyone harmed by crime should receive meaningful services to help restore and repair their loss. And youth who commit offenses should be held accountable in ways that help them become responsible members of their families and communities. Yet the juvenile justice system too often fails to provide either group with the services or interventions they need. Instead, youth who commit offenses are locked up and punished at inordinate rates, while services provided to those harmed by crime are limited, and sometimes end once a prosecution is completed. This results in youth who are not rehabilitated, and people who can struggle to live healthy, productive lives after being harmed by crimes committed by youth. Then, too, the youth who have committed crimes and the people they have harmed quite often return to the same communities, living as neighbors, attending the same schools; many are even part of the same family.[36] Communities that are home to both high numbers of youth who commit offenses and people harmed by crime can be devastated by crime and the consequences of a justice system that is too quick to incarcerate and spends few resources on rehabilitation. Communities get stuck in a cycle in which youth become involved in criminal activity, are removed from their families and neighborhoods to be locked up, receive

inadequate rehabilitative services, and are then returned to their communities, often in worse condition than when they left. At the same time, community members live in fear of crime, experience high rates of victimization, do not receive support services that can help them heal or restore their losses, and do not have a chance to voice their own needs and concerns.

Policy debates tend to focus a lot of attention on individuals who have indeed suffered great loss and pain from crime, but who represent only a small fraction of the larger group of people harmed by crime. Media reports overwhelmingly feature white, middle-class people harmed by crime, and these "high-profile" crime victims often appeal to elected officials who embrace a "tough on crime" philosophy.[37] Unfortunately, the perspectives of people who live in communities most impacted by crime are not often heard in these debates, and the needs of individuals in these communities who have been harmed by crime—often repeatedly—are not addressed. Indeed, these individuals are sometimes even harmed by the policy agendas developed to address the needs of the more high-profile crime victims. People from these communities who have been harmed by crime certainly want to prevent future crime, but many also feel that the current justice system's overemphasis on incarceration actually causes greater harm by not focusing on prevention and reducing recidivism.[38] However, despite their passion, first-hand experience, and deeply vested interest in a system with better outcomes for all involved, the voices of these individuals remain, for the most part, unheard.[39]

A Path to Collaboration and Healing

It is clear that our current juvenile justice system does not consistently provide the services and interventions needed by youth who commit offenses and the people harmed by those crimes. There is also a growing acknowledgement among those who advocate on behalf of youth in the juvenile justice system of our responsibility to advocate for the restoration, healing and rehabilitation of anyone involved in and affected by youth crime. In some states, advocates for those harmed by crime and advocates for youth in the juvenile justice system have teamed up and are using their combined voices to leverage reform.[40] This collaborative approach can help ensure the delivery of appropriate and effective services to harmed and responsible individuals in order to stop the cycle of crime and help restore communities. Many organizations have been pushing the dialogue forward and working toward concrete policy change that reorients how our system holds youth accountable so that it effectively addresses the needs of youth in the juvenile justice system, people harmed by youth crime, and the families and communities who provide the support base for both groups.

NJJN embraces this continuing dialogue and hopes to help states share models for collaboration and a more holistic approach to juvenile justice system processes and service provision. Nevertheless, we approach this work with humility and honesty and are open to having a full conversation. We recognize that we will likely make mistakes in our journey to find solutions

that meet everyone's needs. We are learning as we go—both about how to nurture successful collaborations among these traditionally separate groups, and how to most appropriately respect their different perspectives. Changing the deeply-rooted-though-false dichotomy between those harmed by crime and those responsible for it will not come easily, but NJJN eagerly joins the dialogue, and shares the aspiration for a system that focuses on the humanity and healing of everyone involved.

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[1] See National Juvenile Justice Network, "Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice Advocates" (September 2012), accessed September 25, 2013 at http://bit.ly/T1Fp7w.

[2] National Juvenile Justice Network "Approaching Juvenile Justice with a Focus on Positive Youth Development: Policy Platform" (January 2010), accessed September 25, 2013 at http://bit.ly/1g3ZmMt.

[3] National Juvenile Justice Network, "The Truth About Consequences: Studies Point toward Sparing Use of Formal Juvenile Justice System Processing and Incarceration" (January 2012), accessed September 25, 2013 at http://bit.ly/1hGoy7e.

[4] Much has been written about the use of restorative justice practices in various contexts and their effectiveness with different populations, especially youth. To learn more about restorative justice generally, visit www.restorativejustice.org; to learn more about restorative justice practices with youth in the juvenile justice system, visit http://1.usa.gov/18kGro1.

[5] Danielle Sered of Common Justice (http://www.vera.org/project/common-justice) rejects the traditional terms of "victim" and "offender." She suggests reframing the language, referring instead to "harmed parties" and "responsible parties." We embrace a shift in terms, and use these terms as well as variations on "youth who commit offenses" and "people harmed by crime."

[6] Jennifer N. Shaffer and R. Barry Ruback, "Violent Victimization as a Risk Factor for Violent Offending among Juveniles," *Office of Juvenile Justice and Delinquency Prevention* (December 2002): 2, accessed April 10, 2013 at http://1.usa.gov/1arrFgJ. The youth "most likely to be victims of personal crime are those who report the greatest involvement in delinquent activities...In addition, the greater the variety of delinquent activities, the greater the risk of victimization."

[7] National Juvenile Justice Network, "Using Adolescent Brain Research to Inform Policy."

[8] Jeffrey Fagan, "Adolescents, Maturity, and the Law: Why Science and Development Matter in Juvenile Law," *American Prospect Online* (August 14, 2005), accessed April 10, 2013 at http://bit.ly/19n7X5m.

[9] Shaffer and Ruback, 6. For further discussion on the relationship between delinquency and victimization, see Carlos A. Cuevas, et al., "Children's Exposure to Violence and the Intersection between Delinquency and Victimization" (Office of Juvenile Justice and Delinquency Prevention, October 2013), accessed October 31, 2013 at http://1.usa.gov/1f6DkVp.

[10] For homicide as a cause of death, see Jeffrey E. Hall, et al., "Centers for Disease Control and Prevention's Expert Panel on Protective Factors for Youth Violence Perpetration," *American Journal of Preventative Medicine* 43: 2

Supp. 1 (August 2012): S1-S2, accessed May 22, 2013 at http://bit.ly/19n840Y. Re: victims of nonfatal violent youth crimes, see Carl McCurley and Howard N. Snyder, "Victims of Violent Juvenile Crime" (Office of Juvenile Justice and Delinquency Prevention, July 2004): 1 accessed May 22, 2013 at http://1.usa.gov/GSmvB4.

[11] Madeline Wordes and Michell Nunez, "Our Vulnerable Teenagers: Their Victimization, Its Consequences, and Directions for Prevention and Intervention" (National Council on Crime and Delinquency and National Center for Victims of Crime, May 2002): 13-15, accessed July 11, 2013 at http://bit.ly/17iHxjd.

[12] Shaffer and Ruback, 7.

[13] Shaffer and Ruback, 7.

[14] Erika Harrell, "Black Victims of Violent Crime" (Bureau of Justice Statistics, August 2007): 10, accessed July 22, 2013 at http://1.usa.gov/1g40dgd.

[15] "Survey of Recent Statistics: Domestic Violence Statistics," *American Bar Association Commission on Domestic and Sexual Violence*, accessed July 11, 2013 at http://bit.ly/1ec9O02.

[16] "Rates of Violent Victimizations, and Personal Thefts/Larcenies by Sex, 1993-2011" *National Crime Victimization Survey Victimization Analysis Tool*, accessed June 11, 2013 at http://1.usa.gov/1cBtwnM. The rates of personal thefts/larcenies for men and women were very similar—if not identical—over the same time period.

[17] Howard N. Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: 2006 National Report* (National Center for Juvenile Justice, March 2006): 27, accessed June 11, 2013 at http://1.usa.gov/15XZ05G. These statistics apply to youth ages 12 to 17. Serious violent crimes include aggravated assault, rape, robbery, and homicide.

[18] "And Justice for Some: Differential Treatment of Youth of Color in the Justice System" (National Council on Crime and Delinquency, January 2007): 1-2, accessed June 13, 2013 at http://bit.ly/IuEtLp.

[19] "Juvenile Arrest Rate Trends," *Statistical Briefing Book*, Office of Juvenile Justice and Delinquency Prevention, accessed June 6, 2013 at http://1.usa.gov/182xAdl.

[20] "And Justice for Some," 1-2.

[21] Boys were involved in 72 percent of delinquency cases in juvenile court in 2009. Charles Puzzanchera, Benjamin Adams, and Sarah Hockenberry, *Juvenile Court Statistics 2009* (National Center for Juvenile Justice, May 2012): 12, accessed April 18, 2013 at http://1.usa.gov/1c6mk0m.

[22] Snyder and Sickmund, 27.

[23] A 2006 study of youth involved in Seattle's juvenile justice system examined in detail the level and kinds of overlap with the child welfare system, including correlations with gender, race, recidivism, and other factors. Gregory Halemba and Gene Siegel, "Doorways to Delinquency: Multi-System Involvement of Delinquent Youth in King County (Seattle, WA)" (National Center for Juvenile Justice and Models for Change, September 2011), accessed June 13, 2013 at http://bit.ly/12LRdW0.

[24] Denise Herz, et al., "Addressing the Needs of Multi-System Youth: Strengthening the Connection between Child Welfare and Juvenile Justice" (Center for Juvenile Justice Reform and Robert F. Kennedy Children's Action Corps, March 2012), accessed May 22, 2013 at http://bit.ly/12eC1ue.

[25] Herz, iii; 2-3.

[26] "Is There a Link Between Child Welfare and Disproportionate Minority Contact in Juvenile Justice?" *Models for Change Knowledge Brief* (John D. and Catherine T. MacArthur Foundation, Models for Change Initiative, December 1, 2011): 4, accessed October 8, 2013 at http://bit.ly/Zydj7O.

[27] The National Child Traumatic Stress Network has a wealth of resources related to trauma-informed care for use by mental health professionals, juvenile justice professionals, judges, and attorneys at http://bit.ly/19PUDqW.

[28] Examples of this effort include the Systems Integration Initiative, launched at the Child Welfare League of America in 2000 with the support of the John D. and Catherine T. MacArthur Foundation, and the Crossover Youth Practice Model, developed by the Center for Juvenile Justice Reform in partnership with Casey Family Programs in 2009.

[29] Melissa Sickmund, et al., "Easy Access to the Census of Juveniles in Residential Placement, 1997-2011," Office of Juvenile Justice and Delinquency Prevention Statistical Briefing Book (2013), accessed September 18, 2013 at http://1.usa.gov/17iI3hl.

[30] "Easy Access to FBI Arrest Statistics: 1994-2010," Office of Juvenile Justice and Delinquency Prevention, accessed October 31, 2013 at http://1.usa.gov/17vdScB.

[31] In 2010, fewer than five percent of arrests of youth under age 18 were for serious violent offenses, such as murder, rape, robbery, and aggravated assault. See "Easy Access to FBI Arrest Statistics."

[32] See, e.g., Catherine Y. Kim and I. India Geronimo, "Policing in Schools: Developing a Governance Document for School Resource Officers in K-12 Schools" (American Civil Liberties Union, August 2009): 8, accessed September 18, 2013 at http://bit.ly/1bh1hHl; Johanna Wald and Lisa Thurau, "First, Do No Harm: How Educators and Police Can Work Together More Effectively to Preserve School Safety and Protect Vulnerable Students" (Charles Hamilton Houston Institute for Race and Justice, March 2010): 2-4, accessed September 18, 2013 at http://bit.ly/16AjqQG; and "Education on Lockdown: The Schoolhouse to Jailhouse Track" (Advancement Project, March 2005): 15, accessed September 18, 2013 at http://bit.ly/19DX3w1.

[33] See, e.g., "Hard Lessons: School Resource Office Programs and School-Based Arrests in Three Connecticut Towns" (American Civil Liberties Union and ACLU of Connecticut, November 2008): 35-44, accessed September 18, 2013 at http://bit.ly/1guLXe0, and Judith A. Browne, "Derailed! The Schoolhouse to Jailhouse Track" (Advancement Project, May 2003): 18-20, accessed September 18, 2013 at http://bit.ly/1fnvF7R.

[34] Charles Puzzanchera, Benjamin Adams and Sarah Hockenberry, "Juvenile Court Statistics 2009" (National Center for Juvenile Justice, May 2012): 83, accessed September 18, 2013 at http://1.usa.gov/1g40QpS. The federal Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. §5601 *et seq.*, prohibits secure confinement of youth for status offenses. However, the law makes an exception for youth who have violated a valid court order.

[35] See, e.g., National Juvenile Justice Network, "The Truth about Consequences."

[36] An Office of Juvenile Justice and Delinquency Prevention analysis shows that 65 percent of victims of violent crimes committed by youth were acquaintances and 23 percent were family members. Sixty-one percent of victims of violent crimes committed by youth were other youth. McCurley and Snyder, 4.

[37] David Rogers and Kerry Naughton, "Moving Beyond Sides: The Power and Potential of a New Public Safety Paradigm" (Partnership for Safety and Justice, December 2011): 3, accessed May 22, 2013 at http://bit.ly/16UjrBh.

[38] Rogers and Naughton, 3-4.

[39] Some victim advocate organizations—including Mothers in Charge, L.A.U.R.A. (Life After Uncivil Ruthless Acts), Healing 4 Our Families and Our Nation, and Urban Grief—are emerging with a voice on behalf of individuals harmed by crime, individuals responsible for crime, and their communities. Many of the people who make up these organizations have directly experienced the devastating effects of victimization as well as the harsh, dehumanizing effects of a bloated criminal justice system. These organizations focus on prevention, healing, and breaking the cycle of violence.

[40] The Partnership for Safety and Justice (PSJ), an NJJN member, is a leader in this realm. PSJ works with all those directly affected by crime—survivors of crime, people convicted of crime, and the families of both; for more information, visit www.safetyandjustice.org.