



THE DISTRICT'S YOUTH REHABILITATION ACT: An Analysis
Briefing Document

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INTRODUCTION

On December 22, 2016, Mayor Muriel Bowser requested that the Criminal Justice Coordinating Council (CJCC) conduct analysis of the Youth Rehabilitation Amendment Act (YRA) with respect to how the YRA is applied; recidivism of those to whom it is applied; and whether or not the rehabilitative programming offered to YRA recipients is successful.

Also on December 22, 2016, Councilmember Charles Allen requested that the CJCC address similar questions related to the YRA. The CJCC submitted responses to Councilmember Allen's questions on February 1, 2017. However, responses to both the Mayor and the Councilmember's requests are included in the final report. Specifically, the report addresses the following questions:

1. How was the YRA applied with respect to sentencing and the setting aside of convictions?
2. How did recidivism rates compare for persons who were and were not sentenced under YRA? For persons who did and did not have their convictions set aside?
3. Did the rehabilitative programming offered to persons sentenced under the YRA improve offender outcomes?

The analysis was focused on individuals who were eligible for a YRA sentence and whose cases were disposed during calendar years 2010, 2011, and 2012. This timeframe was selected in order to determine recidivism rates for YRA eligible persons within two (2) years after they completed their sentences.

Overview of the District of Columbia Youth Rehabilitation Amendment Act

The District enacted the Youth Rehabilitation Amendment Act (YRA) in 1985, which provides for sentencing alternatives for youth under 22 years of age who are sentenced as adults for any crime other than murder, including murder associated with acts of terrorism.¹ The YRA also provides an opportunity for youth to have the conviction "set aside" in the future if the youth satisfies the conditions of the sentence. Having a conviction set aside means that information about the conviction (including the fact that the offender had been convicted of a crime) would not be publicly available; also, the offender does not have to disclose the conviction to potential employers. However, a set aside is distinct from "expungement" in that a set aside conviction can still be used in various instances, including in determining whether a person has committed a second or subsequent offense for the purposes of imposing enhanced sentencing; for impeachment if a YRA-convicted offender testifies as a witness; for sex offender registration and notification; and for gun offender registration.

¹ DC Code § 24-901(6); Legislation allows for juveniles sentenced as adults to be eligible for YRA sentencing when sentenced for eligible offenses.

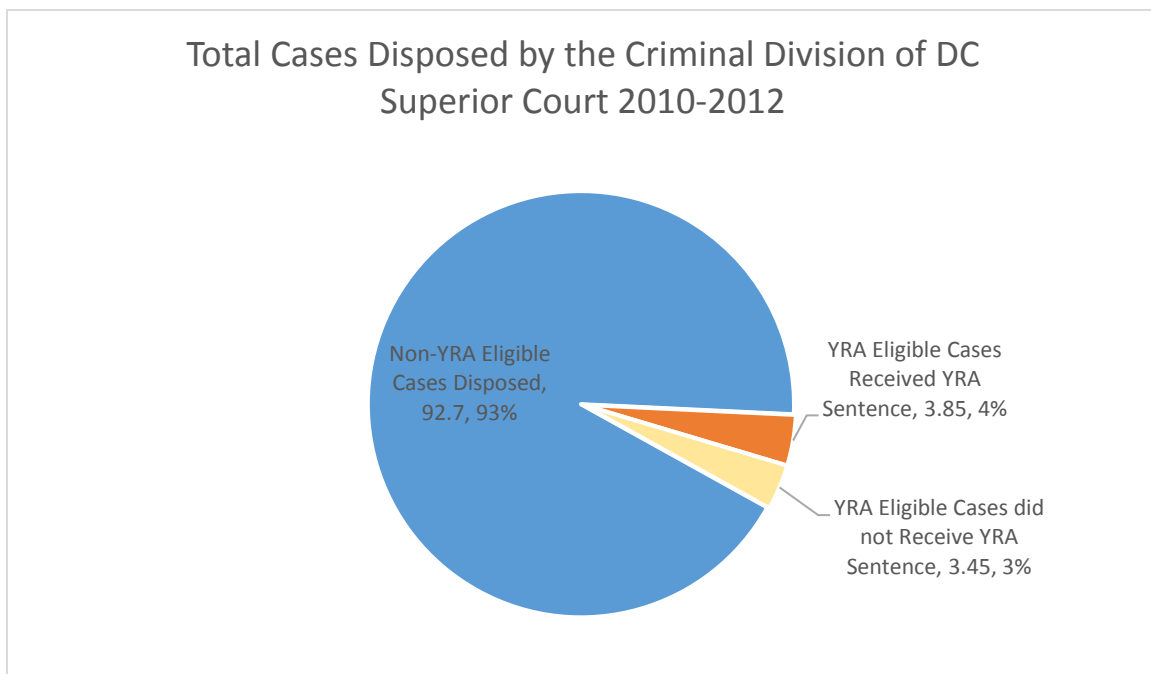
How was the YRA applied with respect to sentencing and the setting aside of convictions?

Sentencing under the YRA

There were 70,454 cases disposed by the Criminal Division of the District of Columbia Superior Court (DCSC) from 2010 - 2012. Of those, 5,166 cases (7.3%) were eligible for a YRA sentence, meaning the defendant in the case was under the age of 22, prosecuted as an adult, and convicted of a crime other than murder. A total of 2,726 cases received a YRA sentence during this time period, which accounts for less than 4% of all disposed cases and about 53% of all eligible cases. Further, there were 3,960 unique persons associated with the 5,166 YRA-eligible cases, and of those, 2,384 persons (60%) received a YRA sentence.

Of the 3,960 persons eligible for a sentence under YRA, 53% of the individuals had a felony, 32% had a crime of violence, and 14% had a weapon offense. There was a similar pattern among YRA-sentenced persons—62% had a felony offense, 37% had a crime of violence offense, and 17% had a weapon offense.

Figure 1: Total Cases Disposed by the Criminal Division of DCSC 2010 - 2012



Opportunity for multiple YRA sentences

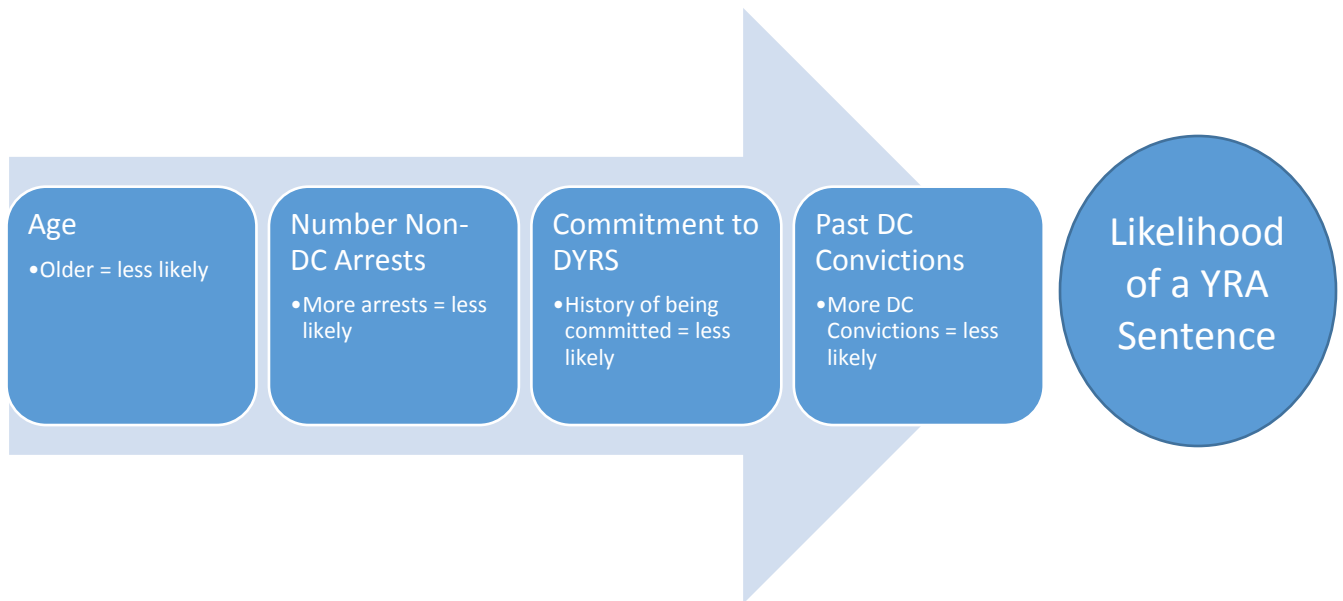
Most of the offenders who were sentenced under the YRA from 2010 – 2012 received one YRA sentence during that time period. It is important to note that one offender may have been a defendant in multiple cases, and it is common practice for judges to sentence multiple cases on the same date. With respect to the 2,384 persons sentenced under YRA from 2010 - 2012, 95.7% had one YRA sentencing date, 4.2% had two YRA sentencing dates, and .1% had three YRA sentencing dates. Those who received a second

opportunity to be sentenced under YRA were less likely to commit a crime of violence. The four people that each had three unique sentencing dates were convicted for offenses such as simple assaults, unarmed attempted robberies, property destruction, misdemeanor drug offenses, theft, and bail violations.

Factors that affected the likelihood of receiving a YRA sentence

A regression analysis was conducted to identify factors that affected the likelihood of receiving a YRA sentence. As shown in Figure 1, age, number of non-DC arrests, number of times committed to DYRS, and number of past DC convictions were the most influential factors. Therefore, while a surface examination would make it seem that more crimes of violence, weapon, and felony offenses are getting YRA sentences, when controlling for other factors, that finding dissipates.²

Figure 2: Factors that Affected the Likelihood of Receiving a YRA Sentence from 2010 - 2012



Note: A total of 14 variables were included in the regression analysis as potential factors that may have affected the likelihood of receiving a YRA sentence: age, gender, race, DC residence, number of DC arrests, number of DC convictions, number of non-DC arrests, number of non-DC convictions, number of commitments to the Department of Youth Rehabilitative Services (DYRS), juvenile case counts, juvenile adjudication counts, and whether the offenses for which they received the YRA sentence included crimes of violence, weapon, and/or felony offenses.

² Crimes of violence include armed and unarmed robbery, assault with a deadly weapon, aggravated assault, carjacking, and kidnapping. Weapon offenses captured here do not include *using* the weapon to commit a crime of violence. The category 'weapon offense' includes carrying a pistol without a license, unlawful possession of a firearm, and possession of a firearm during a crime of violence. SCDC identifies the categorization of offenses on pages 25 and 26 of their 2016 annual report found here: <https://scdc.dc.gov/sites/default/files/dc/sites/scdc/publication/attachments/Final%202016%20Annual%20Report%20%204-24-17.pdf>

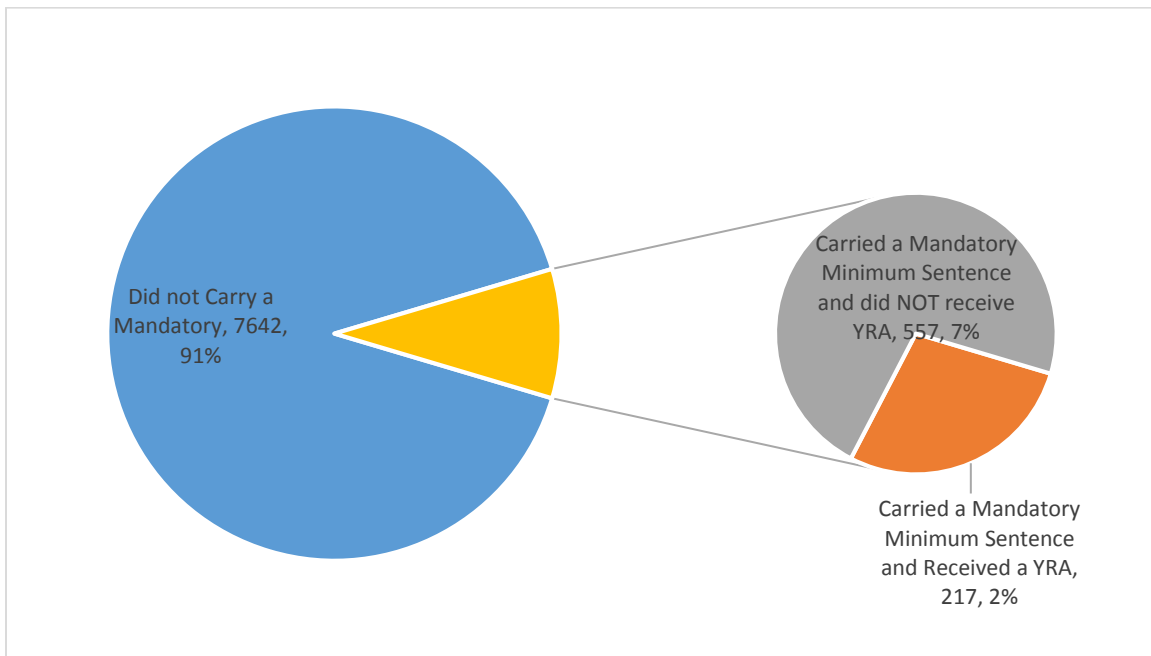
The Youth Study

Judges may request that a youth study be conducted to provide them with additional information to assist in their decision as to whether or not a YRA sentence should be imposed. The Correctional Treatment Facility (CTF) staff at the Department of Corrections conducts youth studies for individuals who are detained while awaiting their sentencing, and the Public Defender Service (PDS) conducts youth studies for individuals who are not detained prior to sentencing. Data were not available on the number of youth studies conducted by CTF or PDS or how the studies influenced the likelihood of receiving a YRA sentence.

Application of mandatory minimums for offenses in YRA-eligible cases

The 3,960 individuals who were eligible for a YRA sentence from 2010 – 2012 were convicted of a total of 8,416 offenses, and 774 (9.2%) of those offenses were subject to a mandatory minimum sentence.³ Offenses that carried a mandatory minimum were less likely to be sentenced under the YRA. In addition, YRA-sentenced cases were less likely to have *multiple* offenses that were subject to a mandatory minimum sentence compared to non-YRA sentenced cases.

Figure 3: Number of Offenses in YRA-Eligible Cases that Were Subject to Mandatory Minimum Sentences



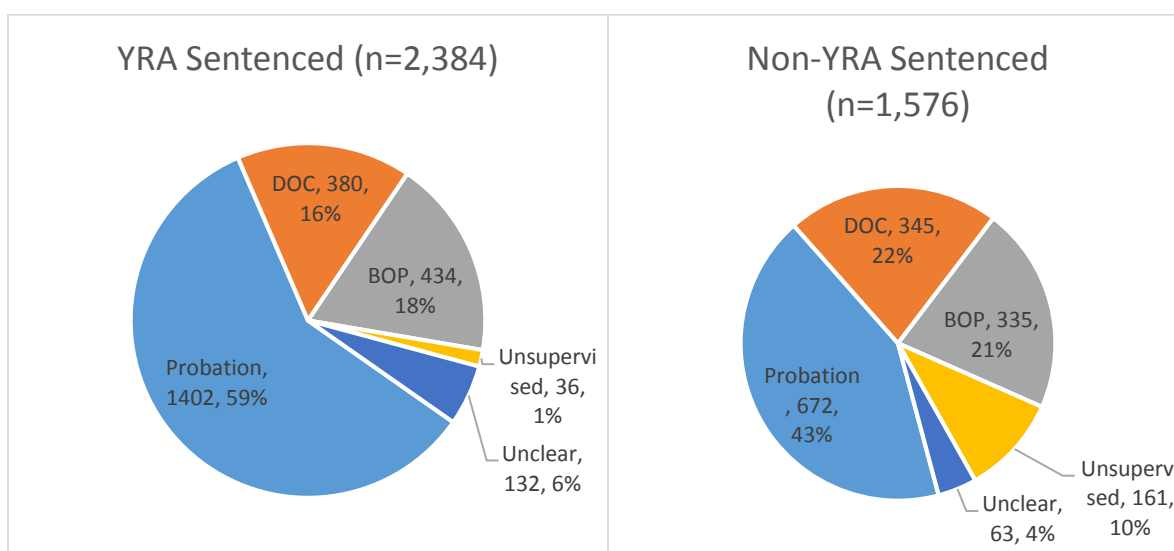
³ The data required some conservative assumptions around mandatory minimum sentences for the offenses in this analysis. Where a charge had a mandatory sentence whose length was determined by past offending and convictions, the analysis assumed the lowest mandatory requirement. For example, if an offense had 5 year mandatory minimum for a first offense and 7 year mandatory minimum for a second offense, the assumption was of a 5 year mandatory. This was unavoidable due to data limitations.

Where YRA and Non-YRA offenders served their initial sentence

Data were only available on offenders' initial sentences; the data did not reflect changes in sentencing that may have resulted from violations, revocations, or other reasons.⁴ However, information on the initial sentence provides insight on where the first opportunity lies for programming for YRA offenders, as well as for young adult offenders, in general.

According to the initial sentencing data, both YRA and non-YRA offenders were most commonly sentenced to supervised probation.⁵ For the offenders sentenced under YRA specifically, 59% were initially sentenced to supervised probation with CSOSA and 34% of them began their terms with DOC, with about half of those at DOC eventually bound for FBOP.

Figure 4: Where YRA and Non-YRA Offenders Convicted from 2010 – 2012 Served Their Initial Sentence



Convictions Set Aside Per the YRA

Proportion of persons sentenced under the YRA who had their convictions set aside

Of the 2,384 persons who received a YRA sentence from 2010 – 2012, at the time of our data collection (April 2017), 2,135 had completed their sentence and, therefore, were eligible to have their conviction set aside. Of those eligible persons, 976 (45.7%) had their convictions set aside and 1,159 (54.3%) did not.

⁴ This is not to infer that they served their entire sentences with this first supervising agency, or that they successfully completed a probation term if they were first placed there, only that it was their first supervising agency. 26.6% of all 3,960 persons and 29.5% of all 2,074 persons placed on probation as their first supervising agency were revoked during their probation sentence.

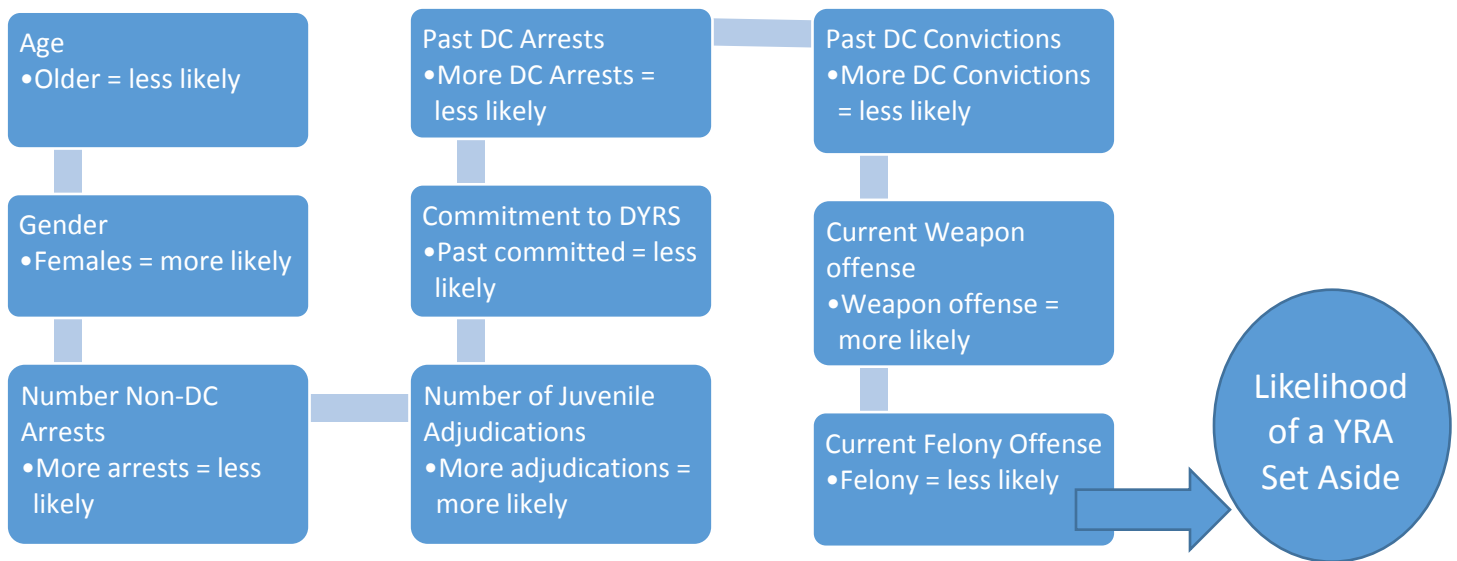
⁵ The first agency to whom a person is sent includes those sent to Probation and verified as such by CSOSA, those sent to DOC, those sent to DOC and were eventually destined for FBOP, and those unsupervised with a specific designation in the DCSC data of having either unsupervised probation or no supervision at all. The category labeled "unclear" are those that were incongruent across partner data sets and verifications.

Factors that affected the likelihood of having a sentence set aside

The decision to set aside the conviction of a person sentenced under YRA is determined by the court if the person is incarcerated or on probation at the end of their term. The U.S. Parole Commission makes the set aside decision for persons on parole or under supervised release at the end of their term.

As shown in Figure 3, 9 of the 14 factors, including age, gender, and prior arrests, among others, affected the likelihood that a YRA-sentenced person would have his or her conviction set aside. It is important to note, however, that there may be other influential factors, such as the behavior of the YRA-sentenced person while serving his or her term and whether the person participated in and successfully completed any rehabilitative programs. Such data were not available for analysis at the time of this review.

Figure 5: Factors that Affected the Likelihood that a YRA-sentenced Person Would Have His or Her Conviction Set Aside (2010 – 2012)



How did recidivism rates compare for persons who were and were not sentenced under YRA? For persons who did and did not have their convictions set aside?

The YRA statute allows for both sentencing alternatives as well as the opportunity to have the conviction set aside for YRA-sentenced offenders. In practice, receiving a YRA sentence is a gateway to the opportunity of having one’s sentence set aside at the successful completion of one’s term. The set aside offers tangible benefits to offenders with respect to employment and housing, which may create incentives for individuals to desist from future offending.

Recidivism Rates for YRA-Sentenced Persons Who Did and Did Not Have Their Convictions Set Aside

As shown in Table 3, persons who had their convictions set aside were significantly less likely to be rearrested or reconvicted within two (2) years of completing their sentence than persons who did not

have their convictions set aside. This finding also held true for specific types of offenses. Persons who had their convictions set aside were significantly ($p=.000$) less likely than their counterparts to be reconvicted of weapon offenses (5.9% to 13.3%) or crimes of violence (13.1% to 28.2%).

Table 1: Recidivism Rates Two Years After Completion of Sentence for YRA-Sentenced Persons Who Did and Did Not Have Their Convictions Set Aside

	Conviction Set aside (n=931)	Conviction Not Set aside (n=971)
Non-DC Arrests	6.2%	8.5%
DC Arrests	34.4%	58.1%
All Arrests	37.3%	60.9%
Non-DC Convictions	5.3%	7.7%
DC Convictions	12.3%	33.4%
All Convictions	16.8%	38.3%

Note: At the time data were collected (April 2017), there were 971 YRA-sentenced persons whose convictions were set aside and 931 YRA-sentenced persons whose convictions were not set aside, and for whom 2 years had passed since the completion of their sentence.

Even when controlling for differences in criminal history, demographics, and the offense that led to the YRA sentence, persons whose convictions were set aside were still likely to have lower recidivism rates than persons whose convictions were not set aside.⁶ It is important to note, however, that data were not available to control for other related factors, such as whether the individual participated in or successfully completed a rehabilitative program.

Recidivism Rates for Persons Who Were and Were Not Sentenced Under YRA

In order to provide a meaningful comparison of recidivism between YRA and non-YRA sentenced persons based upon available data, the analysis controlled for the factors that may have influenced whether or not an individual received a YRA sentence. To do so, “similarly situated” persons were identified among those who did and did not receive a YRA sentence; specifically, these individuals had similar current offenses, similar adult and juvenile criminal histories, and similar demographic profiles. Of the 3,960 persons who were eligible for a YRA sentence from 2010 – 2012, a group of 1,812 similarly situated persons was created—906 who received a YRA sentence and 906 who did not.

As shown in Table 2, the recidivism rates are comparable for similarly situated YRA and non-YRA sentenced persons. YRA sentenced persons were, however, slightly less likely to be rearrested ($p=.048$) within two (2) years of release. There was no statistically significant difference with respect to reconviction rates across the two groups.

⁶ The model predicted rearrest with 73% accuracy and reconviction with 76% accuracy.

Table 2: Recidivism Rates for Similarly Situated YRA and Non-YRA Sentenced Persons within Two Years of Release to the Community

	YRA Sentenced (n=906)	Non-YRA Sentenced (n=906)
Non-DC Arrests	10.3%	8.5%
DC Arrests	49.3%	55.6%
All Arrests	53.4%	58.7%
Non-DC Convictions	9.7%	8.1%
DC Convictions	26.3%	26.0%
All Convictions	33.0%	31.1%

Did the rehabilitative programming offered to persons sentenced under the YRA improve offender outcomes?

The YRA identifies two sources of programming for YRA-sentenced persons:

- For misdemeanants, the Mayor shall provide facilities and personnel for the treatment and rehabilitation of youth offenders.
- For felons, the Federal Bureau of Prisons (FBOP) is authorized to provide for the custody, care, subsistence, education, treatment and training for youth offenders.

There are no programs that are specifically designed to supervise or treat persons sentenced under the YRA. Therefore, data are not available at this time to assess the impact of programming offered to YRA-sentenced persons on recidivism or other offender outcomes.

However, the agencies responsible for incarceration and supervision of YRA-sentenced persons do offer some programs that may be beneficial for youthful offenders. For example, CSOSA developed and launched a Young Adult pilot program in two locations in the District, Northwest and Southeast. The Young Adult Program consists of an integrated supervision strategy that focuses on risk containment, treatment and employment.

FBOP offers programs in which young adults are able to participate; however, none of these programs are specific for YRA-sentenced persons and any programs for young adults are location-specific.

A person who is committed to the Department of Corrections (DOC) is met by a case manager who assesses his or her needs and determines appropriate programming based on sentence length as well as risk and needs.

Opportunities & Further Considerations

Eligibility Criteria for YRA Sentencing

1. Continue to afford the current structure of offenses and offenders for whom the YRA sentence is available. Based upon the analysis, the type of offense did not affect the likelihood that someone would receive a YRA sentence.
2. Conduct a “youth study” on all persons with a felony conviction who are eligible for YRA sentencing. This would make additional information available to help inform judicial decision-making and to potentially improve offender outcomes at the same time. Whether DOC and PDS

have existing resources that could handle the increase in the number of youth studies conducted, as well as opportunities for standardizing the content of the youth studies, will also need to be considered.

3. The Comprehensive Youth Justice Amendment Act of 2016 recognizes the developmental differences between juveniles and adults and allows for sentences below the mandatory minimums for juveniles sentenced as adults. According to research, similar to juveniles, young adults who commit offenses often desist from criminal activity once they reach the age of intellectual maturity, which varies between 23 and 25 depending upon individual development.⁷ Given the developmental similarities between juveniles and young adults, further consideration and clarification with respect to mandatory minimums for YRA-sentenced persons would be beneficial.

Programming for YRA-Sentenced and Youthful Offenders

If the YRA provides a chance at reducing barriers to employment, then appropriate and effective opportunities to rehabilitate and to desist from crime must be made available. There are opportunities to impact service delivery by formalizing programming and oversight. This can be achieved by making programming available where the offenders are and offering specialized caseloads specific to those who are sentenced under the YRA.

1. 59% of YRA-sentenced offenders were initially supervised in the community, which suggests community-based programming could be effective since there are evidence-based practices that may support this population.
2. 34% of YRA-sentenced offenders were initially sentenced to a term of incarceration. To this end, the DOC and BOP should be leveraged to support targeted programming for those who may be under their jurisdiction.

The opportunity here is to provide programs for those sentenced under the YRA. This can include cognitive-based therapies, public health models, and other approaches that have been shown effective in younger populations. Process evaluations and impact assessments can be conducted from the outset to insure that the District determines and follows best practice for this unique population, while at the same time sets a national model for approaches to this age group.

⁷ According to subject experts, “unlike logical-reasoning abilities, which appear to be more or less fully developed by age 15, psychosocial capacities that improve decision making and regulate risk taking – such as impulse control, emotion regulation, delay of gratification, and resistance to peer influence – continue to mature well in to young adulthood” (p.56) [Steinberg, L. (2007). Risk taking in adolescence. *Current Directions in Psychological Science: 16:* 55-59.] Basically, a person can distinguish right from wrong by their mid-teens; however, one cannot gauge risk, understand consequences, or delay gratification – especially under peer pressure – until well into the 20s. This is referred to frequently as the ‘maturity gap’ in the literature. [Steinberg, L., & Scott, E. (2003). Less guilty by reason of adolescence: Developmental immaturity, diminished responsibility, and the juvenile death penalty. *American Psychologist, 58,* 1009–1018.]