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## The Myth of Rehabilitation: How to Address Juvenile Justice System's Contributions to Recidivism

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## INTRODUCTION

“If you’re out there with the savages, then you’re gonna have to become a savage in order to survive.”<sup>1</sup> “Treated like an animal, I became an animal.”<sup>2</sup> “I became totally desensitized. Coldhearted. I really didn’t care what nobody was feeling... And I progressed in violence.”<sup>3</sup> As Nell Bernstein interviewed former incarcerated juvenile offenders for her award-winning book, *Burning Down the House*, the byproduct of locking away juvenile delinquents became clear; incarceration does not rehabilitate, but rather it transforms a traumatized child into a hardened, career criminal.

Federal guidelines, provided by the National Institute of Corrections state “the purpose of juvenile detention is to confine only those youth who are serious, violent, or chronic offenders... it is not considered appropriate for status offenders and youth that commit technical violations of probation.”<sup>4</sup> Despite the plain language of the guidelines, 75% of the over 48,000 American youth confined in facilities away from their home are incarcerated for non-violent offenses.<sup>5</sup> Currently, the United States incarcerates more youth than any other country, even ahead of China despite the United States having a population roughly one-third the size.<sup>6</sup>

America’s commitment to locking away youth offenders contradicts its simultaneous advocacy for juvenile rehabilitation, as studies show that exposing youth to confinement

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<sup>1</sup> Nell Bernstein, *Burning Down the House* 6 (2014).

<sup>2</sup> *Id.* at 34.

<sup>3</sup> *Id.* at 63.

<sup>4</sup> Wendy Sawyer, *Youth Confinement: The Whole Pie* 2019, Prison Policy (Dec. 19, 2019) <https://www.prisonpolicy.org/reports/youth2019.html>.

<sup>5</sup> *Id.*

<sup>6</sup> *Youth in the Adult System – Fact Sheet*, Act 4

<https://www.act4jj.org/sites/default/files/ckfinder/files/ACT4JJ%20Youth%20In%20Adult%20System%20Fact%20Sheet%20Aug%202014%20FINAL.pdf> (last visited March 19, 2021).

dramatically increase the likelihood that the same juvenile will be rearrested as an adult.<sup>7</sup> Some studies have found that recidivism rates, defined as the likelihood a criminal will reoffend, are as high as 89% for youth who were subject to incarceration.<sup>8</sup> Similarly, one study in Arkansas found that incarceration as a juvenile is the most significant factor in determining if someone will become a repeat offender.<sup>9</sup> The data is clear, locking away a juvenile offender does not rehabilitate. Depriving youth of meaningful relationships, education, and support, transforms a struggling child into a career criminal.

In response to the recent data, numerous measures have been taken in the United States to address the persisting problems of the juvenile criminal justice systems. Some of these actions, like Prevention Programs and the Juvenile Justice Reform Act of 2018, while necessary and effective in reducing the amount of confined youth within the United States, fail to address the root causes that lead confined youth to reoffend once actually incarcerated. In order to meet the rehabilitative goal of the juvenile criminal justice system, more action is needed to address the root causes of recidivism and the factors that lead youth offenders to future criminal behavior.

Part I of this paper will detail the history of the juvenile criminal justice system in the United States, describing its initial goal of rehabilitation, the surge of incarceration, and the recent shift returning to the goal of rehabilitation. Part II will discuss the harms of today's juvenile criminal system and how those harms lead to recidivism rather than rehabilitation. Part III will

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<sup>7</sup> Barry Holman & Jason Ziedenberg, *The Dangers of Detention*, Justice Policy Institute 4, [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf) (last visited March 23, 2020) (finding that evaluation of secure detention showed that 70% of youth held in secure detention were arrested or returned to secure detention within one year of release); *see also* Bernstein, *supra*, at 7 (One study “identified incarceration itself as the single most significant factor in predicting whether a youth will offend again—more so than family difficulties or gang membership.”).

<sup>8</sup> Bernstein, *supra*, at 7.

<sup>9</sup> *Id.*

explain efforts taken to reform the juvenile system, and, where applicable, how the efforts fall short of decreasing recidivism. Part IV will describe proposed changes to the juvenile criminal justice system, and how each of the proposed measures directly address the causes of recidivism and promote the goal of rehabilitation within the juvenile criminal justice system.

## **PART I – HISTORY OF JUVENILE JUSTICE IN THE UNITED STATES**

The juvenile criminal justice system has been a part of the United States since the early 19<sup>th</sup> century, but the roots of the system were largely influenced by England’s system.<sup>10</sup> In early England, the term *parens patriae* was the focal point of the juvenile system and translates to “the father of the country.”<sup>11</sup> In practice, *parens patriae* stood for the principle that the English king and the State were responsible for the upbringing of the child.<sup>12</sup> England’s influence still looms large on the American juvenile justice system today, as courts focus on “the best interest of the child.”<sup>13</sup> In essence, the notion of looking out for the best interest of the child is extremely similar to the concept of *parens patriae*, as in both cases the government seeks to take responsibility for reforming and developing a youthful offender.<sup>14</sup> Arguably, the government’s willingness to take affirmative actions to reform youth offenders serves as an example of courts trying to meet the rehabilitative goal of the juvenile justice system.

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<sup>10</sup> Alison S. Burke, *Introduction to the American Criminal Justice System* 1, <https://openoregon.pressbooks.pub/ccj230/chapter/13-3-history-of-the-juvenile-justice-system/> (last visited March 23, 2021) (“The juvenile court was created in Cook County Illinois in 1899, but the concept dates back to seventeenth century Europe”); see also *Youth in the Justice System*, Juvenile Law Center 1, <https://jlc.org/youth-justice-system-overview> (last visited March 23, 2021).

<sup>11</sup> Burke, *supra*.

<sup>12</sup> Burke, *supra*.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (“The persistent doctrine of *parens patriae* can be seen evolving from “king as a father” to a more general ideology, that of the state “acting in the best interest of the child”).

The premise of incarcerating youth in the United States originates from New York in 1825, when the state began operating its House of Refuge.<sup>15</sup> The House of Refuge was established to confine juveniles who were roaming the streets and those who had been referred by the court system.<sup>16</sup> Although not originally designed to punish juvenile criminal offenders, the House of Refuge serves as the earliest example of *parens patriae* within the United States, as its main purpose was to house at risk youth and prevent them from engaging in a life of crime.<sup>17</sup>

Over time, as the states began to acknowledge the differences between punishing children and punishing adults, a second type of institution, reform schools, were introduced throughout the nation. Reform schools were established in the United States in the 1850s, and served as housing facilities for delinquent and dependent kids.<sup>18</sup> While trying to serve dependent children, these reform schools even confined youth who had yet to commit a crime, very similar to the original House of Refuge in New York. These facilities would take in at-risk youth, as the State attempted to prevent youth from pursuing a life of crime. Youth within reform schools were broken up into families, with a staff member overseeing each family, and the facilities operated under a school focused structure.<sup>19</sup> However, the concept of operating a school and family-based structure appears to be more of a guise than a reality within these 19<sup>th</sup> and early 20<sup>th</sup> century reform schools. Youth held in these facilities were abused and subjected to forms of torture that today's society considers inhumane for even the most heinous criminals.<sup>20</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* (“These houses were not intended to house criminals, but rather at risk youth, or youth who were on the verge of falling into a life of crime because of their social circumstances. Because of the notion of *parens patriae*, many of the parents of these youth were not involved in the placement of their children in these houses”).

<sup>18</sup> Burke, *supra*.

<sup>19</sup> *Id.*

<sup>20</sup> Burke, *supra* (“...back in the nineteenth century, children were often exploited for labor and many of the school de-emphasized formal education”); *see also* Bernstein, *supra*, at 44 (“The culture was often a cruel one. ‘Children... were subjected to strict discipline and control... Corporal punishments (including hanging children from their

Despite the cruel nature and ineffectiveness of reform schools, they continued to grow in popularity into the 20<sup>th</sup> century.<sup>21</sup> The movement began to stall in Illinois in 1870 when, in an effort to preserve both the rights of the parent and liberties of the child, the Illinois Supreme Court held that children who had not been found guilty of committing a crime could not be forced to be imprisoned within reform schools unless the child's parents were completely unfit to raise a child.<sup>22</sup>

The Illinois Supreme Court's holding ultimately led the state to pass The Illinois Juvenile Court Act of 1899, establishing the first juvenile court in the United States and revolutionizing the juvenile criminal justice system throughout the country.<sup>23</sup> States throughout the nation began to establish their own juvenile court's system, and, as the Pennsylvania Supreme Court noted, the duty of these courts was to look out for the best interest of the child in order to prevent children from becoming life-long criminals.<sup>24</sup> The Pennsylvania Supreme Court's language depicts a sincere desire to save the lives of wayward youth that appears to have been felt throughout the nation. Early juvenile courts were reluctant to confine minors, particularly with adults, and instead implemented probation systems and treatment facilities with the goal of providing minors with supervision, guidance, and education.<sup>25</sup>

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thumbs, the use of the ducking stool for girls, and severe beatings), solitary confinement, hand-cuffs, the ball and chain, uniform dress, the silent system, and other practices were commonly used...”).

<sup>21</sup> Burke, *supra*.

<sup>22</sup> *People ex rel. O'Connell v. Turner*, 55 Ill. 280, 284-85 (Ill. 1870) (“Before any abridgement of [the natural right of the parent], gross misconduct or almost total unfitness on the part of the parent, should be clearly proven”).

<sup>23</sup> Burke, *supra*; see also *Youth in the Justice System*, *supra*; see also *Juvenile Justice History*, Center on Juvenile and Criminal Justice 1, <http://www.cjcj.org/education1/juvenile-justice-history.html> (last visited March 23, 2021).

<sup>24</sup> *Commonwealth v. Fisher*, 213 Pa. 48, 52 (Pa. 1905) (“To save a child from becoming a criminal, or from continuing in a career of crime, to end in mature years in public punishment and disgrace, the legislature surely may provide for the salvation of such a child, if its parents or guardian be unable or unwilling to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection”).

<sup>25</sup> *Youth in the Justice System*, *supra*.

Although these juvenile courts were becoming the norm and seemed to have genuine intentions, early juvenile courts deprived youth of fundamental due process rights.<sup>26</sup> To combat the due process deprivations plaguing children throughout the country, the Supreme Court mandated that youth receive the same due process rights as adult criminal defendants in 1967.<sup>27</sup> The protection of due process rights for delinquent youth, again while well intentioned, had detrimental impacts on America's youth when juvenile crime rates began to rise through the 1980s and 1990s and legislators responded by implementing "tough on crime" policies.<sup>28</sup>

These tough on crime protocols began the mass migration of juvenile delinquents to high security, prison-like facilities and even adult prisons.<sup>29</sup> To make matters worse, media propaganda in the late 1990s and early 2000s led America to view juveniles, particularly minority youth, as "super predators."<sup>30</sup> The notion of the super predator stood for the proposition that American youth, specifically minority youth, were on the brink of committing tens of thousands of murders, rapes, kidnappings, and other violent crimes by the year 2000.<sup>31</sup> Of course, the prediction was never supported by statistic or fact, but media and society attached themselves to the idea like it was

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<sup>26</sup> *Youth in the Justice System*, supra. ("Originally, the court process was informal – often nothing more than a conversation between the youth and the judge – and the defendant lacked legal representation. Proceedings were conducted behind closed doors with little public or community awareness of how the juvenile court operated or what happened to the children who appeared before it"); see also *In re Gault*, 387 U.S. 1, 10 (1967) ("... the juvenile is taken from the custody of his parents and committed to a state institution pursuant to proceedings in which the Juvenile Court has virtually unlimited discretion, and in which the following basic rights are denied: (1) notice of the charges; (2) right to counsel; (3) right to confrontation and cross-examination; (4) privilege against self-incrimination; (5) right to a transcript of the proceedings; and (6) right to appellate review).

<sup>27</sup> *In re Gault*, 387 U.S. 1, 30 (1967) (... a juvenile court adjudication of "delinquency" as a requirement which is part of the Due Process Clause of the 14<sup>th</sup> Amendment of our Constitution).

<sup>28</sup> *Youth in the Justice System*, supra.

<sup>29</sup> *Id.* ("Following the shift to ensure process in juvenile court proceedings, an increase in juvenile crime rates in the late 1980s and early 1990s prompted legislators to adopt 'tough on crime' policies, depriving certain youth of the juvenile justice system's protections. States enacted mechanisms to move youth from juvenile to adult criminal court for trial and punishment").

<sup>30</sup> Carroll Bogert & Lynell Hancock, *Superpredator: The Media Myth That Demonized a Generation of Black Youth*, The Marshall Project 1 (2020), <https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth>.

<sup>31</sup> *Id.*

gospel.<sup>32</sup> As a result, legislators were pressured into passing legislation that disregarded the rehabilitative goal of the juvenile justice and allowed for strict punishment of juveniles.<sup>33</sup>

By the early 2000s, the super predator media frenzy fizzled out and courts, legislators, and the public began to focus on the differences between adults and juveniles and the rehabilitative purpose of the juvenile criminal justice system. Since its peak at 8,476.2 in 1996, the juvenile arrest rate, measured by juvenile arrests per 100,000 persons aged 10-17, has steadily declined and today sits at 2,083.1.<sup>34</sup> Courts have even implemented limitations on sentences that can be imposed on juveniles, largely relying on adolescent brain studies and understanding that underdeveloped brains makes juveniles less culpable than adult offenders.<sup>35</sup> With the help of legislators and advocacy groups, states are beginning to implement real change in their juvenile criminal justice system and promote the principle of rehabilitation that the system was founded upon.<sup>36</sup>

Despite the waves of reformation being seen throughout the country there are still prevalent problems that persist from the “tough on crime” movement of the 1990s. For example, still today all fifty states have provisions for trying children in adult courts, some states provisions even allow the transfer of youth facing non-violent charges.<sup>37</sup> With the available science, evidence, and

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<sup>32</sup> *Id.*

<sup>33</sup> Bernstein, *supra*, at 75 (“The fundamental rehabilitative mission of the juvenile justice system, and, with it, our collective understanding that young people were different from adults – more vulnerable, more malleable, less able to make reasoned decisions and hence less responsible – buckled under the sustained attack that the super predator movement represented”).

<sup>34</sup> *Juvenile Arrest Trends*, U.S. Department of Justice 1, [https://www.ojjdp.gov/ojstatbb/crime/JAR\\_Display.asp?ID=qa05201](https://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201) (last visited March 23, 2021).

<sup>35</sup> See generally *Florida v. Graham*, 130 S.Ct. 2111 (2010) (abolishing life without parole sentence for nonhomicide juvenile defendants); see also *Miller v. Alabama*, 567 U.S. 460 (2012) (abolishing life without parole sentence for all juvenile defendants); see also *Roper v. Simmons*, 543 U.S. 551 (2005) (abolishing the death penalty for all juvenile offenders).

<sup>36</sup> See generally *Youth Justice New Jersey*, National Juvenile Justice Commission 1, <https://www.njjn.org/our-members/new-jersey> (last visited March 23, 2021) (“New Jersey Juvenile Justice Reform Coalition is a large and growing consortium of research, advocacy and direct service organizations committed to: (1) reducing the number of youth who come in contact with the system and diverting those who do; (2) reducing the incarceration of youth; and (3) improving conditions for youth in the system”).

<sup>37</sup> Bernstein, *supra*, at 80.

willingness to reform the juvenile criminal justice system, further changes to the system are needed to address the remaining problems within the system.

## **PART II – THE EXISTING SYSTEM’S REHABILITATION FAILURE AND ITS ROOT CAUSES**

The current juvenile justice system in the United States fails to fulfill its fundamental goal of rehabilitation because it forces America’s delinquent youth to endure traumas that derail a child’s healthy development. As a result, adolescents transform from an already troubled child to a career criminal. In some states, the recidivism rate for youth incarcerated through the juvenile system is as high as 89%.<sup>38</sup> In other words, today’s juvenile justice system essentially fails to achieve its rehabilitative goal nine out of ten times. Accordingly, in order to adequately reform the system, the conversion of troubled child to career criminal must be extinguished to the highest degree possible and rehabilitation cannot continue to be the rare exception to the rule. In order to address the transformation, it is necessary to understand what causes it.

The current facilities within the juvenile justice system fail America’s youth because they serve as a breeding ground of mental, physical, and sexual abuse, stunt healthy physical and mental development, and deprive children who need guidance the most of necessary educational and social support. As such, America’s juvenile incarceration facilities stimulate recidivism instead of curtailing it. Beyond the current status and byproduct of the system’s facilities, once a child successfully serves their sentence, the existing mechanisms of the juvenile justice system inadequately prepare or allow for youth offenders to successfully reenter society, all but assuring further delinquent behavior. Therefore, the failure to properly rehabilitate delinquent youth

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<sup>38</sup> *Id.*, at 7.

through the juvenile justice system is, in part, the consequence of the system's facility environments and the inability of children to effectively reenter society after serving their sentence.

### **a. Abuse in America's Juvenile Justice System**

Children held in the present juvenile justice system are exposed to mental, physical, and sexual abuse, putting an already troubled child through catastrophic trauma. On a broad scale, research has shown that people who are exposed to maltreatment in childhood are more likely to be arrested later in life.<sup>39</sup> Thus, when youth are exposed to abuse and maltreatment in juvenile detention facilities, the child is far more likely to repeat criminal behavior.<sup>40</sup> Therefore, it stands to logic that the various forms of abuse America's delinquent youth endure while confined significantly contribute to the high recidivism rates amongst juvenile delinquents.

The sad reality of the juvenile justice system is that child abuse inside juvenile facilities is by no means infrequent. A national survey conducted by the Federal Office of Juvenile Justice and Delinquency Prevention confirmed the dangers that youth face on a daily basis when held in juvenile detention facilities.<sup>41</sup> According to the survey, the majority (56%) of youth held in state juvenile confinement experienced abuse from both the facility's staff and other inmates.<sup>42</sup> Further

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<sup>39</sup> Janet Wiig & Cathy Spatz Widom, *et al.*, *Understanding Child Maltreatment and Juvenile Delinquency*, CWLA Press ix (2011),

[https://rfkncrcjj.org/images/PDFs/Understanding\\_Child\\_Maltreatment\\_and\\_Juvenile\\_Delinquency\\_From\\_Research\\_to\\_Effective\\_Program\\_Practice\\_and\\_Systemic\\_Solutions.pdf](https://rfkncrcjj.org/images/PDFs/Understanding_Child_Maltreatment_and_Juvenile_Delinquency_From_Research_to_Effective_Program_Practice_and_Systemic_Solutions.pdf).

<sup>40</sup> Janet Currie & Erdal Tekin, *Does Child Abuse Cause Crime*, NBER Working Paper Series 27-28 (2006), [https://www.nber.org/system/files/working\\_papers/w12171/w12171.pdf](https://www.nber.org/system/files/working_papers/w12171/w12171.pdf) (finding that child maltreatment doubles the probability that an individual engages in future criminal activity); *see also Long-Term Consequences of Child Abuse and Neglect*, Child Welfare Information Gateway 4 (April 2019), [https://www.childwelfare.gov/pubPDFs/long\\_term\\_consequences.pdf](https://www.childwelfare.gov/pubPDFs/long_term_consequences.pdf) (finding a correlation between child maltreatment and future juvenile delinquency and criminal activity).

<sup>41</sup> Bernstein, *supra*, at 30. (“[the survey] paints a picture of state juvenile prisons as an environment of nearly unremitting victimization, where young people ‘experience violence, theft and assault at an alarming rate.’”); *see also* Bernstein, *supra*, at 85 (“A review of all fifty states found only eight where there was *not* conclusive evidence of system-wide mistreatment”).

<sup>42</sup> *Id.*, at 30.

documenting the rampant abuse inside juvenile correction facilities, from 2004 to 2007, there were over 13,000 formal abuse claims filed against state run juvenile facilities.<sup>43</sup> In addition to formal reports of abuse, the use of physical force to “restrain” confined youth is fairly common inside juvenile detention facilities.<sup>44</sup>

Moreover, children held in juvenile detention facilities are nearly ten times more likely to be sexually abused by facility staff when compared to those who are not confined.<sup>45</sup> Specifically, a 2019 report by the United States Department of Justice found that nearly 1,000 confined youth reported being sexual assaulted in 2018 alone.<sup>46</sup>

Mental abuse of youth in confinement, at least partially, can be seen through the practice of holding kids in solitary confinement and the exposing them to traumas, such as the ones above. Roughly 33% of youth in custody confirm being held in solitary confinement, with half of those held being isolated for over 24-hours.<sup>47</sup> Since juveniles lack a fully developed brain and matured coping mechanisms, isolating children induces prolonged psychological stress which inhibits further brain development and increases the likelihood of future criminal behavior.<sup>48</sup> In addition,

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<sup>43</sup> *Id.*, at 84.

<sup>44</sup> See Bernstein, at 31 (“On top of the violence...more than [25%] of youth in custody reported that the staff used ‘some method of physical restraint on them—whether handcuffs, writstlets, a security belt, chains, or a restraint chair.’ Another 7[%] had been pepper sprayed, while 30[%] live on units where pepper spray is used.”).

<sup>45</sup> compare, *Child Sex Abuse Statistics*, National Center for Victims of Crime 1 (April 30, 2021), <https://victimsofcrime.org/child-sexual-abuse-statistics/> (finding that 1.6% of children were victims of rape/sexual abuse); with Bernstein, at 30 (finding that 10% of youth held in juvenile detention facilities were sexually abused by facility staff).

<sup>46</sup> Erica Smith, *et al*, *Sexual Victimization Reported by Youth in Juvenile Facilities*, Bureau of Justice Statistics Special Report 3 (2018), <https://www.bjs.gov/content/pub/pdf/svryjf18.pdf>.

<sup>47</sup> Bernstein, at 31; see also Molly McCluskey, ‘*What if this were Your Kid?*’, *The Atlantic* 1 (Dec. 24, 2017), <https://www.theatlantic.com/politics/archive/2017/12/juvenile-solitary-confinement/548933/> (finding that a juvenile detention center in New York regularly placed over 80 teenagers in solitary confinement for 23 hours a day, seven days per week).

<sup>48</sup> See, *Youth in Solitary Confinement*, MST Services 1 (September 26, 2019), <https://info.mstservices.com/blog/youth-solitary-confinement>; see also *The Mental Health Crisis in our Juvenile Detention Centers*, Shared Justice 1 (August 8, 2016) (“[isolation] wreaks profound neurological and psychological damage, causing depression, hallucinations, panic attacks, cognitive deficits, obsessive thinking, paranoia, anxiety, and anger”).

a study of incarcerated juvenile delinquents determined that over half of those incarcerated have “partial criteria” of Post-Traumatic Stress Disorder (“PTSD), while roughly one-third have “full criteria.”<sup>49</sup>

Another area of the juvenile justice system that is plagued with child abuse is adult prisons which house juvenile offenders. Critically, these adult facilities are not holding only the most serious juvenile offenders. In fact, a majority of youth in adult prisons are not violent offenders and are likely to be released from prison in early adulthood. Studies have shown that approximately 80% of youth held in adult prisons will be released before turning 21, and 95% will be released before their 25<sup>th</sup> birthday.<sup>50</sup>

For children held in adult jails and for those youth sentenced to adult penitentiaries, the abuses are even more dramatic.<sup>51</sup> Studies have shown that juveniles in adult prisons are five times more likely to be victims of sexual assault than those held in juvenile facilities.<sup>52</sup> In 2005, inmates under 18-years-old were victims of 21% of all inmate-on-inmate sexual assaults, despite the fact that minors account for only 1% of the adult prison population.<sup>53</sup> Accordingly, it is relatively unsurprising that youth confined in adult facilities are 34 times more likely to re-offend than youth held in juvenile facilities.<sup>54</sup>

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<sup>49</sup> See generally, Hans Steiner, M.D., Ivan G. Garcia, & Zakee Matthews, M.D., *Posttraumatic Stress Disorder in Incarcerated Juvenile Delinquents*, 36 J. Am. Child & Adolescent Psychol., 357 (1997) (Finding that 32% of incarcerated boys studied met full criteria of PTSD and an additional 20% met partial criteria).

<sup>50</sup> *Id.*

<sup>51</sup> Jessica Lahey, *The Steep Costs of Keeping Juveniles in Adult Prisons*, The Atlantic 1 (Jan. 8, 2016), <https://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adult-prisons/423201/> (finding that 75% of juveniles who were victims of abuse in adult prison were abused repeatedly).

<sup>52</sup> Shontae Saddlar, *Children in Adult Prisons*, Medium 1 (Nov. 26, 2019), <https://medium.com/@ssaddlar/children-in-adult-prisons-f06b7d00ff2>.

<sup>53</sup> *Youth in the Adult System Fact Sheet*, *supra*.

<sup>54</sup> Lahey, *supra*.

The statistics and findings above establish the predatory and torturous environment of many youth confinement facilities within the United States. The trauma and abuses are likely to produce higher recidivism rates, as they impede the healthy development of adolescents.

### **b. Stunted Development and Health Concerns when Youth are Confined**

When youth are incarcerated in any capacity their brain, emotional, mental, and social development are dramatically constrained.<sup>55</sup> As previously discussed kids that are confined, whether it be pre-trial or after conviction, are exposed to higher rates of physical and sexual abuse, as well as forms of mental abuse. Critically, subjecting children to this level of abuse stunts their development, increases the likelihood that the child will develop and/or exacerbate mental health conditions, and also diminishes physical health.<sup>56</sup>

A 2017 study found that youth who incarcerated between grades 7-12 had a significantly higher chance of developing significant health problems as an adult than those never incarcerated.<sup>57</sup> The results of the study showed that even a stay of less than one month led to increased depression as an adult, a stay of one month to a year resulted in worse mental and physical health as an adult, and confinement of one year or more led to functional limitations, depression, and suicidal thoughts throughout adulthood.<sup>58</sup> Of note, even in pre-trial detention,

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<sup>55</sup> Thalia González, *Youth Incarceration, Health, and Length of Stay*, 45 Fordham Urb. L.J. 45, 52 (2017), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2719&context=ulj>.

<sup>56</sup> Rebecca Rosefelt, *Children in Limbo: The Need for Maximum Limits for Juvenile Pretrial Detention*, 317 Minn. J. Int'l L. 239, 242 (2019), <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1316&context=mjil>; see also, International Human Rights Law Clinic, et al., *Children in Pretrial Detention: Promoting Stronger International Time Limits*, Juvenile Justice Advocates International 15-16 (2018), <https://www.wcl.american.edu/index.cfm?LinkServID=336BF47E-F500-5734-BF735718257FE45B> (“Detention impedes children’s regular adolescent development...due to the...environment of detention, as well as denial of educational community activities, children are unable to develop...traumatic experiences such as isolation, barriers to family contact, and time in adult prisons can skew behavioral and brain development in children, resulting in lifelong consequences for the individual and society”).

<sup>57</sup> Elizabeth S. Barnert, et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes*, 139 Pediatrics 2, 4 (February 2017), <https://pediatrics.aappublications.org/content/pediatrics/139/2/e20162624.full.pdf>.

<sup>58</sup> *Id.*

meaning that the juvenile offender has not even been found guilty of crime, over 40% of youth detained pre-trial are held for over one month, with 500 youths being held for over one year in 2017.<sup>59</sup>

Beyond health problems, juveniles detained awaiting trial or post-conviction have their social developments stunted as well.<sup>60</sup> Because of the juvenile's underdeveloped brain, youth become institutionalized at a much quicker rate than adults.<sup>61</sup> Institutionalization, at its core, is the term that means an acceptance that the prison lifestyle is a normal lifestyle. As a result of becoming institutionalized, youth become increasingly dependent on others to make decisions for them, lose the inability to practice self-restraint, and display emotional flatness resulting from a lack of meaningful social interactions during critical stages of development.<sup>62</sup> Accordingly, youth exposed to detention struggle to find any sense of an identity, and struggle to develop into functioning adults.<sup>63</sup>

Again, for juveniles that get placed in adult facilities, the impacts of incarceration are more profound. Exposing a child to the adult prison system is toxic to the youth's development and future. Youth held in adult prisons often only leave their cell for one hour per day, leading to anxiety, paranoia, and exacerbated underlying mental health disorders.<sup>64</sup> Further, youth serving time in adult prison systems are 36 times more likely to commit suicide than youth committed to the juvenile system.<sup>65</sup>

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<sup>59</sup> Sawyer, *supra*.

<sup>60</sup> *Id.*

<sup>61</sup> International Human Rights Law Clinic, *supra*, at 15.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

In addition to the foregoing, the trauma that adolescents encounter while incarcerated significantly hinder the actual development of the youth's brain going forward.<sup>66</sup> While trauma impacts multiple aspects of brain development, critical for the purpose of recidivism, trauma dramatically impacts the ability of an adolescent to control their own behavior and leads to the development of aggressive behavior and increased defiant behavior.<sup>67</sup>

Critically, adolescence is the point in one's life when "developmental trajectories become firmly established" and, as such, "it is much easier to alter an individual's life course in adolescence..."<sup>68</sup> The result of incarcerating an individual during such a critical point of development is increased delinquency, as those incarcerated as juveniles are 41% more likely to enter adult prisons by age 25 when compared to public school students from the same neighborhood.<sup>69</sup> Increased recidivism amongst those incarcerated should be expected, as those subjected to confinement during such critical developmental years are deprived of meaningful human connection which promote non-criminal behavior.<sup>70</sup>

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<sup>66</sup> Cook, A., *et al*, *Complex Trauma in Children and Adolescents*, *Psychiatric Annals* 35(5), 290, 290-91 (July 25, 2014), [https://www.researchgate.net/publication/264230700\\_Complex\\_Trauma\\_in\\_Children\\_and\\_Adolescents](https://www.researchgate.net/publication/264230700_Complex_Trauma_in_Children_and_Adolescents).

<sup>67</sup> *Id.*, at 292.

<sup>68</sup> David E. Arredondo, M.D., *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14.1 *Stanford L. & Pol'y Rev.* 13, at 14 (2003), <https://www.cbhc.org/uploads/File/Library/childmentalhealth.pdf>.

<sup>69</sup> Anna Aizer & Joseph Doyle, *What is the Long-Term Impact of Incarcerating Juveniles?*, *VoxEU* 1 (July 16, 2013), <https://voxeu.org/article/what-long-term-impact-incarcerating-juveniles>.

<sup>70</sup> Lilah Wolf, *Purgatorio: The Enduring Impact of Juvenile Incarceration and a Proposed Eight Amendment Solution to Hell on Earth*, 14 *Stan. J.C.R. & C.L.*, 89, at 98 (February 2018); *see also* Bernstein, *supra*, at 35 ("On top of the violence, chaos, fear, and degradation, the defining aspect of life behind bars is isolation. A young person who spends part or all of her adolescent years in a locked facility, away from friends and family, her every action subject to the dictates of strangers, misses many if not most of the central developmental tasks of adolescence: learning to navigate intimate relationships; forming the capacity to make independent decisions; taking on responsibility; discovering and expressing one's personal identity. None of these goals can be met in isolation. All require relationship, human connection. This is what prison, by definition, takes away").

### c. Depriving Youth of Necessary Resources

When youth offenders are incarcerated, they are often deprived of support and guidance that they desperately require, especially since most detained youth suffer from mental illness or require special education.<sup>71</sup> Education within juvenile correction facilities is particularly subpar and leads to kids often falling behind on their education.<sup>72</sup> Additionally, while kids are incarcerated, the opportunity to gain working experience to improve future employment opportunities is lost. Further, many juvenile detention facilities lack adequate mental health services. Just under 25% of young people in youth facilities lack access to even informal mental counseling, and less than 50% of incarcerated youth report having access to more structured services like family therapy or suicide reduction therapy.<sup>73</sup>

For children detained while they await trial, the facilities in which they are held typically lack resources to an even greater extent. Since youth held before trial are only supposed to be in these facilities for a short time, the facilities often lack resources that at-risk youth require.<sup>74</sup> For example, pre-trial detention centers rarely have any available educational resources.<sup>75</sup> As a result, juveniles who are already having their education interrupted are often forced to drop out of school

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<sup>71</sup> Patrick Gardner, *An Overview of Juvenile Mental Health Courts*, American Bar Association 1 (Sep. 1, 2011), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/](https://www.americanbar.org/groups/public_interest/child_law/resources/) (“Studies consistently show up to 65 or 70 percent of youth held in American juvenile detention centers have a diagnosable mental illness”); *see also* *Supporting Youth with Disabilities in Juvenile Corrections*, U.S. Department of Education 1 <https://sites.ed.gov/osers/2017/05/supporting-youth-with-disabilities-in-juvenile-corrections/> (last visited May 2, 2021) (“...it is estimated that the percentage of youth with disabilities typically range from 30 to 60 percent, with some estimates as high as 85%. This means that in a class of 15 students, anywhere from 5 to 13 of those students are likely to have a disability, most commonly specific learning disabilities, emotional or behavioral disorders, intellectual disability, or attention deficit hyperactivity disorders”).

<sup>72</sup> Paulette Parker, *Youth in the Justice System are Failed by an Education System Stacked Against Them*, State of Opportunity 1 (June 16, 2016), <https://stateofopportunity.michiganradio.org/post/youth-justice-system-are-failed-education-system-stacked-against-them> (“Many classes in facilities lack basic instruction...As a result, students in facilities are much more likely to fall behind, making their pre-existing educational gaps that much greater”).

<sup>73</sup> Kira Pyne, *Mental Health in Youth Facilities*, Coalition for Juvenile Justice 1 (May 13, 2020), <https://www.juvjustice.org/blog/1163>.

<sup>74</sup> Rosefelt, *supra*, at 244.

<sup>75</sup> *Id.*

and never earn a high school diploma.<sup>76</sup> Of note, limited education often limits potential future earnings and leads to increased likelihood of incarceration as an adult.<sup>77</sup>

As one might expect, adult facilities deprive youth of education, work training, and counseling services, all of which at-risk youth desperately need. Surveys of adult facilities found that 40% of adult facilities provide no education programs and only 11% offer special education programs.<sup>78</sup>

The deprivation of required services heavily influences recidivism amongst juvenile offenders, as inadequate education and mental health issues, including substance abuse, are amongst the most significant factors which lead to recidivism.<sup>79</sup> Thus, by depriving adolescents of effective educational resources and necessary counseling services, the system's current failure to provide youth with adequate resources enhance the chances of recidivism amongst youth offenders.

#### **d. Barriers to Successful Reentry**

Although most people believe that a juvenile record is unavailable to the public, this is far from true. 40 states and the District of Columbia either make all juvenile records public or provide circumstances in which juvenile records can be made public depending on the juvenile's age or offense history.<sup>80</sup>

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<sup>76</sup> International Human Rights Law Clinic, *supra*, at 22; *see also*, Bernstein, *supra*, at 183.

<sup>77</sup> Bernstein, *supra*, at 183.

<sup>78</sup> Neelum Arya, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, Washington, DC Campaign for Youth Justice 4 (November 1, 2007) <https://poseidon01.ssrn.com/delivery.php?ID>.

<sup>79</sup> Bruce Frederick, *Factors Contributing to Recidivism Among Youth Placed with the New York State Division for Youth*, Office of Justice Systems Analysis 4 (1999), [https://www.criminaljustice.ny.gov/crimnet/ojsa/dfy/dfy\\_research\\_report.pdf](https://www.criminaljustice.ny.gov/crimnet/ojsa/dfy/dfy_research_report.pdf) (finding that of all recidivists, 42% had a mental health condition, 61% suffered from substance abuse, and 92% had educational handicaps).

<sup>80</sup> Riya Saha Shah, et al., *Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement*, *Juvenile Law Center* 14 (2014), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/national-review.pdf>.

Juveniles attempting to reenter society face stigma from educational institutions as well as potential employers. Roughly 70% of juvenile offenders report difficulties in enrolling in school upon release.<sup>81</sup> Perhaps this is why only 12% of incarcerated juveniles are able to earn a high school diploma by young adulthood compared to a 74% national average.<sup>82</sup> The data reveals that job prospects are just as bleak. Spending time incarcerated as a juvenile leads to 25-30% less working time in the first ten years following release, and even fifteen years down the road employment numbers are significantly less for those who served time as an adolescent.<sup>83</sup> Having a criminal record as a juvenile also cuts the chances to receive a call back from a potential employer in half.<sup>84</sup> Considering that unemployment and a lack of education are two of the leading factors in predicting criminal activity, it should come as no surprise that a New York study found that 89% of those incarcerated as children were arrested as adults.<sup>85</sup>

The failure to be accepted in society upon release from juvenile detention personifies the overwhelming belief that incarceration does not lead to rehabilitation. If employers and educational institutions thought that incarceration led to rehabilitation, the stigma against those with juvenile criminal records would not be nearly as damning. Expunging these juvenile records, making it as if these records never existed, could be an effective way to try and alleviate some of the harms that come with being incarcerated as a juvenile.

Currently, all states have some type of provision for a juvenile to expunge their criminal records. However, states have varying limitations placed on expungement that often make the

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<sup>81</sup> Bernstein, *supra*, at 197.

<sup>82</sup> *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*, The Annie E. Casey Foundation 1, 10 (2010), <https://www.aecf.org/resources/the-missouri-model/>.

<sup>83</sup> Bernstein, *supra*, at 183.

<sup>84</sup> Bernstein, *supra*, at 184.

<sup>85</sup> *Id.*, at 182

expungement moot by the time it could occur. For example, almost all states have some sort of waiting period before a juvenile's record could be expunged, whether it be when until a juvenile reaches a certain age or after the duration of a specified amount of crime-free years. In either case, juveniles have already confronted the harms of having a criminal record. Studies have shown that roughly 70-80% of juvenile offenders are rearrested within two or three years of release.<sup>86</sup> Considering expungement is only available after a waiting period that exceeds two years in almost all states, youth are most likely already being victimized by a system that leads to criminal behavior by the time they are even eligible for expungement.

Another major issue with current expungement statutes is that nearly all states carve out exceptions to expungement based on the seriousness of the offense. At the surface this may seem rational, but, in reality, it is probably counterproductive. Youth who have committed the most serious offenses are likely the ones with the largest need for support, structure, and stability. Denying these juvenile offenders' employment and educational opportunities only increases the likelihood that they will re-offend. Thus, by restricting the availability of expungement to serious offenders, society becomes less safe because of the increased chance of re-offending.

Further, while most states do offer the sealing of most juvenile adjudications, many do not seal or expunge arrest records of juveniles. Thus, even if a juvenile's criminal record is generally unavailable to the public, employers and educators are still able to view arrest records that led to the adjudication. The ability to view arrest records could be just as detrimental to a youth's ability to effectively reenter society.

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<sup>86</sup> *Id.*

Overall, the present system and applicable state laws makes the successful reentry of a traumatized teen back to society almost impossible because of the difficulties in obtaining meaningful employment or educational opportunities.

### **PART III – CURRENT ATTEMPTS AT REFORM**

Although there are ongoing problems within the juvenile justice system and the facilities which confine juvenile delinquents, that is not to say that there has not been attempts to address the issues. For example, in 2018 Congress passed the Juvenile Justice Reform Act (“The Act”), which aims to provide youth incarcerated in adult facilities with more supervision to increase safety and further reduce the rate at which youth are incarcerated for status offenses.<sup>87</sup> Further, and perhaps most important for addressing recidivism, the Act seeks to “support a continuum of evidence-based or promising programs...that are trauma informed, reflect the science of adolescent and development, and are designed to meet the needs of at-risk youth.”<sup>88</sup> While the Act seems to be a significant step in the right direction, its ultimate impact on the system remains to be seen.

The “promising programs” the Act seeks to support include delinquency prevention, intervention, mental health treatment, family services and services for children exposed to violence, which each serve as other attempted juvenile justice reform.<sup>89</sup> Generally, these programs seek to provide at-risk youth with services and/or treatment before the child actually engages in criminal behavior or as an alternative to incarceration. Effective prevention programs include

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<sup>87</sup> See generally, 34 U.S.C. § 101, *et seq.*

<sup>88</sup> 34 U.S.C. § 102(4).

<sup>89</sup> *Id.*

Multisystemic Therapy (“MST”) and Functional Family Therapy (“FFT”).<sup>90</sup> MST, considered an intensive family and community-based treatment program, aims to reduce the rates of antisocial behavior by focusing on the child’s neighborhood, family, peers, and schools.<sup>91</sup> Research has shown that MST reduces the likelihood of re-arrest by 70% and reduces the chances a juvenile is confined outside the home by 64%.<sup>92</sup> FFT, an intervention which focuses on family treatment in a clinical environment, has also been effective in addressing recidivism, but to a lesser extent than MST.<sup>93</sup> Overall, programs like MST and FFT appear promising, and with the support of the Act, these programs offer substantial attempts to address the high rate of recidivism amongst juvenile offenders.

In regards to reform of actual confinement facilities within the juvenile justice system, perhaps the most substantial reform can be found in Missouri. The so called “Missouri Model” eliminated large scale, high security facilities in favor of smaller facilities that truly focus on rehabilitation.<sup>94</sup> The Missouri Model, run by the Division of Youth Services (“DYS”), practices indeterminate sentences in 82% of all juvenile cases.<sup>95</sup> Indeterminate sentencing allows DYS to decide on a particular program that is appropriate for the specific youth offender, rather than a predetermined length of stay.<sup>96</sup> As a result, youth who commit themselves to their program and show signs of rehabilitation quickly will have shorter stays, which in turn disincentivizes withdrawing and “waiting out the clock.”<sup>97</sup> The Missouri Model practices six principles

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<sup>90</sup> Lee Underwood, Kara Sandor von Dresner, & Annie L. Phillips, *Community Treatment Programs for Juveniles*, 2 Int’l J. of Behavioral Consultation and Therapy, 286, 292-93 (2006), <https://psycnet.apa.org/fulltext/2014-45650-011.pdf>.

<sup>91</sup> *Id.*, at 292.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*, at 293 (“With less serious juvenile offenders, there has been a 50-75% reduction in recidivism...There has also been a 35% reduction in recidivism rates for more severe juvenile offenders”).

<sup>94</sup> *Missouri Model*, *supra*, at 5.

<sup>95</sup> *Id.*, at 22

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

throughout its juvenile treatment, and as a result has seen unprecedented achievement in regards to rehabilitation and juvenile safety.<sup>98</sup>

The first principle places youth who do require confinement in small facilities located near their homes and families rather than incarcerating juveniles in large, prison-like institutions.<sup>99</sup> Nationwide, most youth confined in correctional facilities are housed in facilities with over 150 beds.<sup>100</sup> The largest facility in Missouri, however, has only 50 beds.<sup>101</sup> By keeping their facilities smaller, the Missouri Model allows for more individualized attention and treatment with youth offenders.

There are four different kinds of these smaller facilities found in Missouri. First, there are community care facilities. Community care facilities are for youth with the least serious offending history and the lowest likelihood to re-offend, and function as “day treatment” centers where juveniles go in from 8:00 am – 3:00 pm every day to receive academic work and counseling.<sup>102</sup> After 3:00 pm, kids are involved in tutoring, extracurricular activities, and family therapy.<sup>103</sup> There is also the option for juveniles to continue attending their regular schools under supervision, and only attend the facilities for counseling.<sup>104</sup>

The next type of facility is a group home for youth with limited offending history and a low risk of re-offending.<sup>105</sup> The group homes are not secured, and house only 10-12 youth at a time.<sup>106</sup> Kids in these group homes go to school onsite, but are able to leave the facility for jobs,

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<sup>98</sup> *Id* at 5

<sup>99</sup> *Id*, at 15

<sup>100</sup> *Id*

<sup>101</sup> *Id*.

<sup>102</sup> *Id*. at 16

<sup>103</sup> *Id*.

<sup>104</sup> *Id*.

<sup>105</sup> *Id*.

<sup>106</sup> *Id*.

group projects, and other community activities.<sup>107</sup> The typical stay is only four to six months, during which time youths receive extensive individual, group, and family counseling.<sup>108</sup>

Missouri also has moderately secure facilities for youth with somewhat more serious offending history or higher risk levels, like felony offenders.<sup>109</sup> The moderately secure facilities are in residential neighborhoods, state parks, and/or college campuses.<sup>110</sup> Even in these facilities, youth are regularly allowed to engage in field trips and community service projects.<sup>111</sup> Further, once a juvenile offender shows progress towards rehabilitation, the moderately secure facilities allow them to get jobs at local nonprofits and government agencies.<sup>112</sup> The typical stay at a moderately secure facility is 6-9 months.<sup>113</sup>

Finally, Missouri does have some secured facilities for the most serious offenders, however these facilities are still vastly different from the standard prison-like facilities commonly used throughout the country.<sup>114</sup> Missouri's secured facilities typically house only 30-36 offenders, and are not forced to stay behind bars.<sup>115</sup> Instead, youth stay in dorm rooms with common areas, wear their own clothes, and the group is even to have pets inside the facility.<sup>116</sup> These secure facilities have nightly team meetings in addition to individualized treatment, where kids are free to talk about their ideas, opinions, and future plans freely.<sup>117</sup>

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<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 18

<sup>117</sup> *Id.* at 19

The second principle places youth in closely supervised small groups and applies a group treatment process offering individual attention, rather than isolating confined youth in individual cells or leaving them to fend for themselves among a crowd of delinquent peers.<sup>118</sup> Youth typically spend their day in teams of 10-12 and they sleep in the same dorms, eat together, work together, and study together.<sup>119</sup> By keeping kids in this social circles, adolescents are less likely to withdraw and isolate the same way they would in a standard detention center.<sup>120</sup> Critically, if a juvenile acts out, they are forced to explain to their team why they acted the way they did and what their thought process was – teaching an important lesson of accountability.<sup>121</sup> Smaller groups also allow for one teacher and one student aid to teach the entire team more efficiently.<sup>122</sup> In fact, nearly 300 youth in the Missouri Model earned their GED or High School diploma by the time of release, despite the fact that virtually all youth are under 18 years old when discharged.<sup>123</sup>

Thirdly, DYS puts a greater emphasis on youth safety from physical aggression, ridicule, and emotional abuse.<sup>124</sup> Juveniles are closely supervised by staff, and the smaller team setting and team counseling promote positive peer relationships that prevent peer on peer abuse.<sup>125</sup> DYS has also taken the important measures of eliminating use of force by staff and stress treating adolescents humanely.<sup>126</sup> Perhaps the most telling statistic that shows DYS's commitment to the youth in their facilities is the fact that there has not been a single suicide in the Missouri Model's over 25 year existence.<sup>127</sup>

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<sup>118</sup> *Id.*, at 20.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*, at 25.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*, at 29.

<sup>127</sup> *Id.*, at 19.

The fourth pillar of DYS helps kids build skills for success by developing academic, pre-vocational, and communication skills, all of which improve the juvenile's ability to succeed following their release.<sup>128</sup> The DYS system, involving open communication amongst peers and staff alike, helps kids develop social skills that regular facilities simply deprive them of.<sup>129</sup> Adolescents who go through the DYS program are largely engaged, confident, and articulate when speaking with adults and strangers.<sup>130</sup>

Fifth, DYS engages the family throughout a juvenile's stay in the program, rather than completely isolating adolescents from their families.<sup>131</sup> The family is seen as a partner both throughout treatment and in post-relief life.<sup>132</sup> Throughout family counseling, DYS focuses on helping both parents and youth and change negative family dynamics and create a support system for the youth's continued success.<sup>133</sup>

The final principle places tremendous focus on aftercare.<sup>134</sup> DYS provides support and supervision for youth transitioning from a residential facility back into society.<sup>135</sup> Prior to release, DYS staff and the adolescent build an aftercare plan, which includes close monitoring and mentoring in the first few weeks following release.<sup>136</sup> Importantly, DYS makes every effort to ensure kids are enrolled in school, placed in jobs, and/or are signed up for extracurricular activities in their home communities prior to release.<sup>137</sup> As previously discussed, having

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<sup>128</sup> *Id.*, at 31.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*, at 34.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*, at 35.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

opportunities for education, employment, and/or extracurricular activities is extremely effective in reducing re-offending.

Altogether, there have been attempts to correct the persisting problems within the juvenile criminal justice system, however these attempts only address a piece of the puzzle and additional reform is necessary. Specifically, with the exception of the Missouri Model, the current reforms do very little to address the actual causes of recidivism found within juvenile confinement facilities while adolescents are serving their sentence.

## **PART IV – PROPOSED CHANGES TO THE JUVENILE JUSTICE SYSTEM**

The flaws of the juvenile criminal justice system in the United States are not simple, and, thus, there is no simple solution to fix the system in one fell swoop. The legislation passed by Congress, the limitations on juvenile sentencing maximums imposed by the courts, and the early/alternative intervention programs all help at risk youth and youth offenders; there is no denying it. While these actions may help youth in some aspects, they fall short of providing an ultimate solution to the problem, and, thus, more reform is necessary to make youth less likely to reoffend once exposed to the system.

In order to promote the rehabilitative goal of the juvenile justice system and prevent the cycle of criminal behavior many youth offenders fall into, measures need to be taken that address the root causes of future delinquent behavior. Studies and research show what helps rehabilitate youth, and yet very little is done to promote these solutions. The data is clear and indisputable, and as such, measures taken to amend the juvenile system must adhere to these studies and the data they provide.

The first step in rehabilitating youth offenders is mandating the age limit of family court jurisdiction at 21-years-old. Research shows, and courts have agreed, that the juvenile brain is biological different from an adult<sup>138</sup>. Therefore, youth are less likely to assess risk, think long term, and practice impulse control<sup>139</sup>. Raising the age of juvenile court jurisdiction grants juvenile offenders with underdeveloped brains access to rehabilitative services that the punishment focused adult prison system does not provide. These services, if executed properly, dramatically reduce the likelihood of re-offending.

Next, the juvenile justice system must do away with pre-trial detention for youth-defendants. Spending time incarcerated is crippling to a developing brain, and expose youth to emotional, physical, and mental trauma<sup>140</sup>. Most youth offenders come from impoverished backgrounds which leaves youth-defendants susceptible to spending extended time behind bars while they await trial. As current bail reform measures are at the forefront of the adult criminal justice system, the same reform is necessary in the juvenile system as well.

Third, juvenile criminal records should be expunged immediately upon completion of the sentence. One of the most significant factors in predicting criminal behavior is poverty<sup>141</sup>. When a child comes out of the juvenile system with a criminal record, they are discriminated against by employers and schools alike<sup>142</sup>. As a result, youth-offenders struggle to find steady jobs and further

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<sup>138</sup> Rhiana Kohl, et al, *The Influence of brain Development Research on the Response to Young Adult Males 18-24 Years of Age in the Criminal Justice System*, Massachusetts Department of Correction 1, 7 (November 2018) <https://www.mass.gov/doc/the-influence-of-brain-development-research-on-the-response-to-young-adult-males/download>; see generally *Florida v. Graham*, 130 S. Ct. 2011 (2010); see generally *In re Pers. Restraint of Monschke*, Nos. 96772-5, 96773-3, 2021 Wash. LEXIS 152 (March 11, 2021); see generally *Adolescent Development and Competency*, National Conference of State Legislature (March 23, 2021), <https://www.ncsl.org/documents/cj/jjguidebook-adolescent.pdf>.

<sup>139</sup> Kohl, *supra*, 7.

<sup>140</sup> González, *supra*, at 52; see also Barnert, *supra*.

<sup>141</sup> Bernstein, *supra*, at 184.

<sup>142</sup> *Id.*, at 183.

their education, delving these kids deeper into poverty and increasing the likelihood of re-offending. Expunging a juvenile criminal record removes a hurdle that is at times impossible for juvenile delinquents to clear as they attempt to move forward with their lives.

Finally, juvenile offenders must not be placed in highly secured, prison-like facilities. Instead, these offenders should be placed in systems that focus on the needs of the child, promote work and education, and teach kids about accountability and community. The mold for these non-secure facilities is seen in Missouri, where rehabilitation rates are at their highest and recidivist rates are at their lowest<sup>143</sup>. Implementing systems such as the Missouri Model not only give youth offenders a heightened chance of rehabilitation, but also make society safer as a whole as troubled youth are far less likely to become adult offenders.

#### **a. Raising the Family Court’s Jurisdiction to a Mandated 21 Years Old**

Youth offenders tried in the juvenile justice system have their trials heard in family court, rather than in the criminal courts. In 47 states, the maximum age of family court jurisdiction is 17-years-old<sup>144</sup>. All 50 states have statutes that allow teenagers to be tried as adults in certain situations<sup>145</sup>. 40 states allow a juvenile, in some circumstances, to be tried as an adult at 14 years old or younger<sup>146</sup>. These minimal age restrictions are implemented despite the acceptance of scientific research that establishes the brain is not fully developed until someone is in their mid-twenties.<sup>147</sup>

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<sup>143</sup> See Generally, *The Missouri Model*, *supra*.

<sup>144</sup> *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, National Conference of State Legislatures 1 (March 23, 2021), <https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx>.

<sup>145</sup> *Id.*

<sup>146</sup> *Interstate Commission for Juveniles*, Interstate Commission for Juveniles 1, <https://www.juvenilecompact.org/age-matrix> (last visited March 23, 2021).

<sup>147</sup> Kohl, *supra*, at 7; see also *Florida v. Graham*, *supra*; see also *In re Pers. Restraint of Monschke*, Nos. 96772-5, 96773-3, 2021 Wash. LEXIS 152 (Mar. 11, 2021).

Children are exposed to adult jails and prisons at an alarming rate in the United States. In 2014, roughly 6,200 American children are held in adult jails or prisons.<sup>148</sup> Thankfully, that number was nearly cut in half by 2018 when 3,400 juveniles were held in adult jails or prisons.<sup>149</sup> Alarming, however, the rate at which juveniles are held in adult facilities has not seen the same decrease. In 2014, between 88% of youth inmates under 18-years-old were held in adult prisons or were awaiting trial in adult jails.<sup>150</sup> In 2018, 79% of youth inmates under 18-years-old were held in adult facilities.<sup>151</sup> Further, these adult facilities are not housing only the most serious juvenile offenders. In fact, a majority of youth in adult prisons are not violent offenders and are likely to be released from prison in early adulthood. Studies have shown that approximately 80% of youth held in adult prisons will be released before turning 21, and 95% will be released before their 25<sup>th</sup> birthday.<sup>152</sup>

Youth are exposed to adult facilities despite the fact that research shows that the adolescent brain is not fully developed, especially in areas relevant to culpability.<sup>153</sup> Specifically, regions of the brain responsible for making good decisions and controlling impulses are amongst the last portions of the brain to develop and are not fully mature until an individual reaches 25 years old.<sup>154</sup> As such, it should come as no surprise that, at least according to one juvenile detention center employee, that 80% of juvenile offenders are incarcerated because of one bad, impulsive decision.<sup>155</sup> Further, adolescents are far more susceptible to peer pressure than adults. Studies have

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<sup>148</sup> *Youth in the Adult System, supra.*

<sup>149</sup> *Jail Inmates Younger than Age 18, 1993-2018*, U.S. Department of Justice 1, <https://www.ojjdp.gov/ojstatbb/corrections/qa08700.asp> (last visited March 23, 2021).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Youth in the Adult System, supra.*

<sup>153</sup> Kohl, *supra*, at 7.

<sup>154</sup> *Id.*; see also, *Adolescent Development and Competency, supra*, at 4.

<sup>155</sup> Rosie Cima, *Impulsive Rich Kid, Impulsive Poor Kid*, *Priceonomics* 1 (July 8, 2015), <https://priceonomics.com/impulsive-rich-kid-impulsive-poor-kid/>.

shown that hormonal changes from puberty affect the adolescent brain's ability to process emotional and social information.<sup>156</sup> Therefore, teenagers are at even greater risk of making impulsive decisions or falling prey to peer pressure. Finally, research has shown that adolescents lack the ability to think for the long term and are far more likely to engage in risky behavior.<sup>157</sup>

Altogether, modern science establishes and attributes the adolescents' "vulnerability to risky, often reckless behavior... to the divergent development courses of two brain systems: one that increases motivation to pursue rewards and one that restrains imprudent impulses."<sup>158</sup> Responding to the scientific evidence, the Supreme Court relied on multiple adolescent brain studies in coming to its decision in multiple landmark decisions eliminating certain punishments for juvenile offenders. For example, in abolishing the death penalty for all juvenile offenders, the Court reasoned that youth offenders: (1) lack maturity; (2) are more susceptible to negative influences; and (3) are not as well formed as an adult. *Roper v. Simmons*, 543 U.S. 551, 569 (2005). Of note, the Court found that a juvenile offender's irresponsible conduct "is not as morally reprehensible as that of an adult." *Id.*, (citing *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)).<sup>159</sup>

Given the Court's reliance and understanding of modern science in the *Roper*, *Graham*, and *Miller* decisions, it is difficult to understand the justification for placing teenagers and children in the adult criminal justice system and in adult facilities. To this point, essentially, the Court has understood the juvenile's lessened culpability to mean that a youth offender cannot be punished for *as long* as an adult offender, but may still be punished *in the same setting* as an adult offender.

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<sup>156</sup> *Adolescent Development and Competency*, *supra*, at 5.

<sup>157</sup> *Id.*, at 6; *see also*, Kohl, *supra*, at 8.

<sup>158</sup> Kohl, *supra*, at 8.

<sup>159</sup> *See also*, *Florida v. Graham*, 130 S.Ct. 2011 (2010) (abolishing life without parole sentence for nonhomicide juvenile defendants); *see also* *Miller v. Alabama*, 567 U.S. 460 (2012) (abolishing life without parole sentence for all juvenile defendants).

Setting boundaries on sentences for juvenile offenders at the back end such as eliminating the death penalty and life without parole sentences, while still allowing juveniles to be subject to the same style of punishment in the same location as adult offenders does not comport with the modern science the Court relies on in coming to its decisions in *Roper*, et al. The Court has stated and reiterated that a juvenile's underdeveloped brain deems them less morally culpable than an adult offender. *Id.* Therefore, the manner and setting in which an adolescent and an adult are punished should not be intertwined.

Further, much of the same rationale that warranted protections and lessened culpability for juvenile offenders in the eyes of the Court can also be attributed to offenders aged 18-20. Critically, modern research has found that offenders aged 18-24 are more similar to juveniles than adults when it comes to reoffending, maturity, and life circumstances.<sup>160</sup> The Court, acknowledged as much when it stated “the qualities that distinguish juveniles from adults do not disappear when an individual turns 18.” *Roper*, at 574. In a single statement, the Court concedes that the science and facts do not justify drawing the line of “adult” at 18 years old. A more scientific and facts-based approach would extend the age at which offenders can be tried as juveniles to 21 years old because the brain at that point is fully developed or is at least near full development.

The Washington Supreme Court recognized the inherent arbitrariness of drawing the line of adult at 18 years old when it held that offenders aged 18-20 must receive some of the constitutional protections of offenders under 18 because of underdeveloped brains. *In re Pers. Restraint of Monschke*, Nos. 96772-5, 96773-3, 2021 Wash. LEXIS 152 (Mar. 11, 2021). As the

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<sup>160</sup> *From Juvenile Delinquency to Young Adult Offending*, National Institute of Justice 1 (March 10, 2014), <https://nij.ojp.gov/topics/articles/juvenile-delinquency-young-adult-offending>, (“...Researchers conclude that young adult offenders ages 18-24 are more similar to juveniles than to adults with respect to their offending, maturation and life circumstances”).

Washington Supreme Court proclaimed, neuroscience does not account for any distinction between a 17-year-old and those aged 18-20. *Id.* The Court even stated that defendants aged 18-20 possess the same “developing brains and impulsive behavioral attributes as those under 18. *Id.*

Barring criminal defendants under 21 years old from being transferred to the adult system or facilities not only complies with the Supreme Court’s logic in numerous decisions and the Washington Supreme Court’s recent decision in *Monschke*, but also benefits the defendant and society as a whole. Regarding the defendant, as detailed above the harms of serving a sentence in adult facilities are far more pervasive than those related to being committed in a juvenile facility, particularly if the juvenile facility is not high-security. The research finding defendants aged 18-20 more closely resemble juveniles than adults, *supra*, is also significant for the purposes of this proposal, as it stands for the proposition that even offenders between 18-20 are likely to be rehabilitated. Thus, by being placed in juvenile facilities, defendants aged 18-20 are less likely to re-offend compared to being placed in the adult facility. In turn, society benefits in the long run because these defendants are less likely to commit crimes as an adult, leading to safer communities.

Overall, youth offenders under the age of 21 are at far greater risk of suffering mental, emotional, and sexual trauma from being placed in adult facilities than in juvenile facilities. Mandating that all defendants under 21 years old proceed through the juvenile system helps prevent these traumas from taking place and also decreases the likelihood of re-offense as an adult.

#### **b. Eliminating Detention for Juveniles Awaiting Sentencing**

Before a trial takes place, defendants are either released on their own recognizance, receive a bail amount that must be paid in order to be released, or are denied bail altogether. In 2020,

roughly 20% of all adults incarcerated were not yet convicted of a crime.<sup>161</sup> In the juvenile justice system, however, judges choose to detain youth prior to trial in 26% of cases.<sup>162</sup> Youth held prior to trial, before even being found guilty, are exposed to the same harms that come with incarcerating youth post-conviction. As such, juvenile defendants awaiting trial should be released from jail while they await their trials.

Since holding youthful-defendants in confinement while they await trial exposes them to various forms of abuse and deprives them of necessary resources, the appropriate measure is to eliminate pre-trial detention for juveniles altogether. Keeping kids away from these prison-like institutions as they await trial avoid all of the short-term and long-term risks detailed above, as children will still be able to be around their families, their community, and attend school. An overwhelming majority of juvenile defendants would not require any type of monitoring, as roughly 74% of youth are released while they await trial as it is.<sup>163</sup> For the remaining 26% that would have been placed in detention, there are other forms of intervention available that are both less harmful on the youth and have been shown to lower recidivism.

A possible alternative to pre-trial detention is to enroll youthful-defendants into family focused intervention systems while they await trial. The purpose of family focused intervention is to provide treatment for at-risk youth while avoiding incarceration.<sup>164</sup> Currently, this type of intervention has been studied as an alternative sentence for youth found guilty of crimes, but has not been used for youth who are awaiting trial.

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<sup>161</sup> Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, Prison Policy Initiative 1 (March 24, 2020), <https://www.prisonpolicy.org/reports/pie2020.html>.

<sup>162</sup> Sawyer, *supra*.

<sup>163</sup> Sawyer, *supra*.

<sup>164</sup> Dinessa Herrera, *Family-Focused Interventions for Juvenile Offenders: A Systemic Review*, Proquest 1, 6 (May 2020), <https://search.proquest.com/openview/d30268dd03fe3687390db5dcd17f4d23/1?pq-origsite=gscholar&cbl=51922&diss=y>.

One study that focused on three different styles of family focused intervention systems, Multisystemic Therapy (MST), Functional Family Therapy (FFT), and Parenting with Love and Limits (PLL), found that family focused intervention decreased the likelihood that a juvenile re-offends by nearly 20%.<sup>165</sup> Each of these three systems involve family therapy and focus on strengthening relationships between the juvenile offender and their family, peer group, and school system.<sup>166</sup>

Additionally, implementing family focused intervention systems are actually less expensive than incarcerating juveniles.<sup>167</sup> Cost-benefit analyses conducted in states throughout the country have shown that alternatives to juvenile incarceration save taxpayer dollars. For example, a study in Washington focusing on aggression replacement training (an intervention program that helps youth control their anger) saved \$11.66 for every \$1 spent.<sup>168</sup> More on point, a study from Milwaukee, Wisconsin found that offering treatment services to a juvenile offender and their family cost roughly \$3,300 per month, whereas traditional incarceration costs roughly \$5,000 per month.<sup>169</sup> Interestingly, the Wisconsin study determined that the biggest barriers to family focused intervention programs is a lack of information and expensive start-up costs.<sup>170</sup>

Even if family focused interventions require a high start-up cost, the studies illustrate that in the long run intervention programs are less expensive because of the lower costs of running intervention systems versus incarceration. Additionally, since these family focused intervention

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<sup>165</sup> *Id.*, at 13.

<sup>166</sup> *Id.*

<sup>167</sup> *Cost-Benefit Analysis of Juvenile Justice Programs*, National Conference of Legislatures 5 (Nov. 10, 2010), <https://www.ncsl.org/documents/cj/jjguidebook-complete.pdf>.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*, at 6.

<sup>170</sup> *Id.*

systems have been shown to reduce recidivism, less money would be spent incarcerating re-offending youth as adults and serve as another way to save money in the long run.

Altogether, the evidence and available data establish that exposing youth to pre-trial detention have both severe short-term and long-term impacts on the child and increase the likelihood that they will re-offend as an adult. Therefore, pre-trial detention should no longer be used while youths are awaiting their trial. Instead, the juvenile justice system should incorporate more family focused intervention systems to be used while juvenile offenders await trial. The use of family focused intervention systems avoid the harms of incarceration, improve the home life and support systems surrounding at-risk youth, and evidence establishes that these systems are cheaper and more effective in rehabilitating youth than detention.

### **c. Mandating the Expungement of all Juvenile Records Upon Completed Sentences**

One of the most glaring issues with the juvenile criminal justice system is the extreme difficulty that juveniles have reentering society. As a result of spending time incarcerated as an adolescent, individuals are far less likely to receive education or stable jobs upon release. A lack of education and work leads to further criminal activity, and the cycle repeats itself. The cycle could be broken, however, if juvenile records were required to be expunged at the completion of a sentence as juveniles would be subject to less stigma and have an easier time becoming a functioning member of society.

Critics of mandating expungement would likely argue that employers, schools, and the public have a right to know about the potential dangers of someone who may be joining their business, school, or neighborhood. This argument does hold some water, as it does make sense that people should be made aware of the fact that they may be exposing themselves to someone who has been convicted of a crime. One possible middle ground that could be reached is to

immediately seal all juvenile records upon the completion of a sentence, but allow the records to be made public if the juvenile re-offends within a specified time period. Under this proposal, the interests of the juvenile are still being served because immediately upon release they are given the opportunity to start fresh without the stigma that comes with having a criminal record. However, if a juvenile fails to steer clear of crime, their record would become more public and give those with a legitimate interest in the record an opportunity to view it. It should be emphasized, however, that once juveniles are given the opportunity to truly start fresh without being hindered by a criminal record, the likelihood of re-offense drops significantly. Studies have shown that attending school significantly lowers recidivism, while earning a high school diploma after release drops recidivism rates to 22%.<sup>171</sup> Similarly, youth offenders who are able to find stable employment also had dramatically lower recidivism rates than those who were not employed.<sup>172</sup>

An effective way to promote rehabilitation and decrease recidivism amongst juvenile offenders is to make reentry into society as easy as possible. Studies show that having a juvenile criminal record make it exceedingly difficult to obtain employment as well as employment. However, immediate expungement, at least in instances where the juvenile has not committed multiple offenses, makes integration with society much more attainable.

**d. Eliminate Confinement in High Security, Prison-Like Facilities and Implement Missouri's Model of Juvenile Confinement**

As previously discussed, the implications of incarcerating juveniles are grave and long lasting. Further demeaning to the process of incarceration is its inability to effectively rehabilitate youth offenders. The available evidence has established that rehabilitation is achieved when at-

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<sup>171</sup> 2006 Annual Report to the Florida Department of Education, Center for Criminology and Public Policy 1, 57 (2006), <http://criminology.fsu.edu/wp-content/uploads/FINAL-2006-2007-Annual-Report.pdf>.

<sup>172</sup> *Id.*, at 59.

risk youth receive treatment instead of confinement. Thus, the juvenile criminal justice system should stop imposing sentences that send juvenile offenders to high security, prison-like facilities. One possible solution that has shown sustainable and long-term success in keeping recidivism rates low is the Missouri Model discussed above. In order to better meet the goals of rehabilitation in the juvenile justice system, more systems should replicate the Missouri Model.

The Missouri Model has proven to be far more effective in rehabilitating at-risk youth than traditional facilities or other forms of alternative interventions. As of 2017, the one-year recidivism rate for those who completely a DYS program was a miniscule 10.9%<sup>173</sup> The three-year recidivism rate was only 27.2%.<sup>174</sup> The rehabilitative effects of the Missouri Model cannot be denied, as the state's recidivism rates are significantly lower than national averages and any other state.

Similarly, the Missouri Model's commitment to education is unrivaled by any other states. Again, in 2017, 89% of DYS advanced academically, and nearly 80% advanced at the same rate or at a greater rate than youth in traditional schools.<sup>175</sup> Additionally, 81% of DYS were able to achieve High School Equivalency or obtain a high school degree.<sup>176</sup> Once again, when comparing these statistics to the rest of the country, Missouri's juvenile system has far greater success than any other state.

The Missouri Model has been studied extensively, and has existed for over 25 years, but still very few states implement the policies of DYS. As early as 2001 the Missouri Model was seen

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<sup>173</sup>Annual Report Fiscal Year 2017, Division of Youth Services 19 (2017), [http://www.ngmfpn.com/uploads/1/1/9/4/119494103/2017\\_annual\\_report.pdf](http://www.ngmfpn.com/uploads/1/1/9/4/119494103/2017_annual_report.pdf).

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*, at 21.

<sup>176</sup> *Id.*

as a “guiding light” in juvenile justice reform, and yet states are still reluctant to follow its lead.<sup>177</sup> This is particularly shocking when one considers the cost benefits of implementing programs like the Missouri Model. Criminologists claim that by steering just one child away from a life of crime saves society \$3-6 million dollars in victim costs and criminal justice expenses, as well as increased wages and tax payments over the young person’s life.<sup>178</sup> Given the success of the DYS programs and the long-term cost savings, implementing these types of programs should be an easy decision for states to make.

Opponents of the Missouri Model may argue that repeat offenders and/or violent offenders need to be held in highly secured facilities. Even if one accepts that argument, Missouri has shown that it is possible to still rehabilitate youth offenders even in secured facilities. Missouri has shown that it is possible to hold children in a secured facility without modeling that facility after a prison. Regardless, the overwhelming majority of incarcerated youth have no business being in a highly secured prison since roughly 75% of incarcerated youth are detained for non-violent crimes.<sup>179</sup>

To put it bluntly, prison like facilities for juvenile offenders serve no purpose. They’re ineffective. They’re dangerous. They’re expensive. Given all the available data, eliminating prison like facilities is a necessary step to rehabilitate the at-risk youth in the United States. The Missouri Model and programs offered by DYS prove that juvenile delinquents are better served by establishing a sense of community and promoting positive relationships. At the same time, a system like the Missouri Model offers avenues to keep the most dangerous youth offenders away from society until they are rehabilitated and able to effectively rejoin society. If the United States

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<sup>177</sup> *The Missouri Model, supra*, at 5.

<sup>178</sup> *Id.*, at 12.

<sup>179</sup> Bernstein, *supra*, at 9.

is serious about the rehabilitative purpose of the juvenile criminal justice system, programs such as the Missouri Model must be implemented throughout the country.

## **CONCLUSION**

Overall, the current version of the juvenile justice system in the United States fails to meet its goal of rehabilitation, as recidivism rates are extremely high. It seems that recidivism amongst juvenile offenders is elevated due to exposure to trauma while confined, the impacts of such trauma on a juvenile's developing brain, and difficulties in reentry after completion of a sentence. Accordingly, reform measures which seek to reduce recidivism amongst juvenile offenders should be designed to address such trauma and aid juvenile reentry. If certain measures are taken to avoid traumatizing youth offenders, as Missouri has shown, the likely consequence is a reduction in recidivism. By addressing the root causes of future crime through new reform measures, it is possible to stop the transformation of troubled children into career criminals currently plaguing the juvenile justice system.