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A Professional Approach to Mental Health: Expanding the Professional Judgment Standard to
Constitutional Claims Brought by Justice-Involved Youth

Alexandra Marek*

I. INTRODUCTION

John is fourteen years old. In his short life so far, John witnessed a parent become a victim of drug addiction;¹ the family that is supposed to protect John, abused him;² and now a juvenile detention facility has taken John into its custody—cut off from the outside world. At the facility, John suffers from more physical and emotional abuse and struggles with depression, anxiety, and posttraumatic stress disorder with no real place to turn to.³ John’s story is typical of thousands of justice-involved youth who have endured similar abuse, trauma, and mental health struggles at such a young age. Over two million youth come into contact with the juvenile justice system every year,⁴ over half of whom are under the age of sixteen.⁵ The system confines around 36,000 youth in a juvenile facility on any given day.⁶ Prior to adulthood, children are still developing both physically and mentally, meaning any adverse experiences that occur to a child can have extremely debilitating and long-lasting impacts.⁷ Sadly, justice-involved youth are way too familiar with

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¹ See, e.g., *Miller v. Alabama*, 567 U.S. 460, 467–68 (2012).

² See, e.g., Liann Seiter, *Mental Health and Juvenile Justice: A Review of Prevalence, Promising Practices, and Areas for Improvement*, NAT’L TECH. ASSISTANCE CTR. FOR THE EDUC. OF NEGLECTED OR DELINQ. CHILD. AND YOUTH 4 (2017).

³ See discussion *infra* Part III.

⁴ *Youth Involved with the Juvenile Justice System*, YOUTH.GOV, <https://youth.gov/youth-topics/juvenile-justice/youth-involved-juvenile-justice-system> (footnote omitted) (last visited Jan. 7, 2022).

⁵ *Characteristics of Delinquency Cases Handled by Juvenile Courts*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK (June 22, 2021), <https://www.ojjdp.gov/ojstatbb/court/qa06206.asp?qaDate=2019>.

⁶ *One Day Count of Juveniles in Residential Placement Facilities, 1997–2019*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK (May 21, 2021), <https://www.ojjdp.gov/ojstatbb/corrections/qa08201.asp?qaDate=2019>.

⁷ Seiter, *supra* note 2, at 4.

trauma and adverse childhood experiences prior to becoming justice-involved.⁸ A majority of justice-involved youth struggle with at least one diagnosable mental health disorder/illness, and being detained in a juvenile facility often exacerbates these diagnoses.⁹

Justice-involved youth detained in juvenile facilities have a constitutional right to mental health treatment under the Fourteenth Amendment.¹⁰ Due to the prevalence of mental health disorders among youth and the severe trauma they experience at such a young age, it is critical that justice-involved youth detained in juvenile facilities obtain adequate mental health treatment that they have a right to receive.¹¹ Adequate mental health treatment, however, is limited within juvenile facilities due to the lack of training and preparation of staff in facilities, as well as lack of funding.¹²

This problem is only exacerbated by the lack of a consistent standard for the analysis of constitutional mental health claims brought by youth. Youth will bring these types of constitutional mental health claims when they have experienced severe harm as a result of a lack of mental health treatment while detained in juvenile facilities.¹³ Some courts, such as the Third Circuit, use the deliberate indifference standard when evaluating children's claims of unconstitutional medical care while detained.¹⁴ This standard is also applied to incarcerated adults, and generally, adults held pre-trial.¹⁵ The deliberate indifference standard requires courts to

⁸ *Id.*

⁹ OFF. OF JUV. JUST. & DELINQ. PREVENTION, INTERSECTION BETWEEN MENTAL HEALTH AND THE JUVENILE JUSTICE SYSTEM 1 (July 2017), <https://ojjdp.ojp.gov/mpg/literature-review/mental-health-juvenile-justice-system.pdf> [hereinafter INTERSECTION BETWEEN MENTAL HEALTH AND THE JUVENILE JUSTICE SYSTEM].

¹⁰ *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982).

¹¹ *Infra* Part III.

¹² Jacqueline M. Swank & Joseph C. Gagnon, *Mental Health Services in Juvenile Correctional Facilities: A National Survey of Clinical Staff*, 25 J. CHILD FAM. STUD. 2862, 2863 (2016).

¹³ *See, e.g., A.M. v. Luzerne County Juvenile Detention Center*, 372 F.3d 572, 579 (3d Cir. 2004); *J.H. v. Williamson County*, 951 F.3d 709, 722–23 (6th Cir. 2020);

¹⁴ *See, e.g., Luzerne County*, 372 F.3d at 577; *Williamson County*, 951 F.3d at 715 ; *Shenandoah Valley*, 985 F.3d at 334.

¹⁵ *See Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976); *Doe v. Shenandoah Valley Juvenile Center Commission*, 985 F.3d 327, 340 (4th Cir. 2021); *see also* discussion *infra* Part V.

determine if an individual accused of violating a person’s constitutional right to medical care while in the custody of the state or federal government, subjectively knew of a risk of serious harm to the health and safety of the person detained and chose to ignore it.¹⁶ For example, if a juvenile facility did not provide adequate mental health treatment to fourteen-year-old John for his anxiety, depression, and PTSD while detained and John subsequently filed suit for this mistreatment, under the deliberate indifference standard John would have to provide proof that the official knew of John’s mental health needs and chose to ignore it or intentionally denied treatment. Unless John could provide evidence of the official’s subjective knowledge and actions, John would have no way of succeeding on his claim.

In comparison, the professional judgment standard is generally utilized for individuals in the custody of state psychiatric hospitals and has been adopted by the Fourth Circuit regarding claims brought by undocumented immigrant youth detained in juvenile facilities.¹⁷ Instead of evaluating the subjective intent of the person accused, under this standard, courts evaluate whether the treatment provided was objectively a substantial departure from a professional standard of care—a lesser burden for the individual trying to show that their constitutional rights have been violated.¹⁸

The conflicting standards produce different analyses. Under the deliberate indifference standard, if there was even some treatment provided, then courts will be less likely to find that deliberate indifference existed, thereby providing very minimal protections.¹⁹ Comparatively, a court utilizing the professional judgment standard does not just consider whether treatment was

¹⁶ *Shenandoah Valley*, 985 F.3d at 340; *see also* discussion *infra* Part V.

¹⁷ *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982); *Shenandoah Valley*, 985 F.3d at 329.

¹⁸ *Shenandoah Valley*, 985 F.3d at 343–44.

¹⁹ Joel H. Thompson, *Today’s Deliberate Indifference: Providing Attention Without Providing Treatment to Prisoners with Serious Medical Needs*, 45 HARV. CIV. RTS.-CIV. LIBERTIES L. REV. 635, 650–51 (2010).

provided, but analyzes whether the treatment provided was a substantial departure from professional judgment.²⁰ This distinction in the professional judgment standard has the potential to elevate the treatment provided in juvenile detention settings since courts will be judging both whether treatment was provided, and whether it was constitutionally adequate. Therefore, not only would there be a lesser burden for a child who is bringing a constitutional medical claim to meet, but the standard may also encourage juvenile detention centers to enhance the mental health treatment they provide to children, especially if the standard is adopted nationally by courts.

The Supreme Court has not clearly articulated which standard applies to youth claiming unconstitutional mental health treatment when they are placed in juvenile facilities, allowing lower courts to decide which standard to employ, as described above.²¹ In fact, as of December of 2021, the Supreme Court rejected hearing a pivotal case, *Doe v. Shenandoah Valley*, in which the Fourth Circuit clearly established the use of the professional judgment standard for undocumented immigrant youth detained in juvenile detention facilities.²² The Supreme Court did not provide an explanation for their denial of the petition for certiorari, therefore the Fourth Circuit's use of the professional judgment standard may lead other circuit courts who have not considered this issue, to apply the professional judgment standard, rather than deliberate indifference.²³

Courts across the nation should utilize *Doe v. Shenandoah Valley* as a model for change and adopt the professional judgment standard when analyzing potential constitutional violations of the mental health treatment provided to youth while detained. The professional judgment standard focuses solely on the mental health treatment provided to youth and not the subjective

²⁰ *Shenandoah Valley*, 985 F.3d at 343–44.

²¹ See discussion *infra* Part V.

²² *Shenandoah Valley Juvenile Center Commission v. John Doe*, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/shenandoah-valley-juvenile-center-commission-v-john-doe/> (last visited Jan. 14, 2021)

²³ *Id.*; Grace Dixon, *Justices Won't Touch Migrant Kids' Revived Mental Health Suit*, LAW360 (Dec. 6, 2021), <https://plus.lexis.com/api/permalink/232aaca5-d745-4128-a9da-ca4bad95b332/?context=1530671>.

intent of the person or entity accused, thereby creating a lesser burden for youth to demonstrate that their constitutional rights have been violated and potentially serving as a catalyst for change among juvenile facilities and the mental health treatment they provide.²⁴

This Comment argues that the professional judgment standard should apply to claims brought by justice-involved youth who challenge the constitutionality of their mental health care they received while detained in juvenile facilities. The Comment focuses in particular on justice-involved youth detained in juvenile residential facilities. This standard will help ensure that mental health treatment provided to children is adequate and comparable to professional standards of care, and can potentially serve as impetus for structural reform of the juvenile justice system. Specifically, it can motivate juvenile facilities to provide professionally adequate mental health treatment, in order to avoid constitutional liability in court, which ultimately will benefit children detained in juvenile facilities since they will receive the mental health treatment that they need.

Part II of this Comment provides an overview of the juvenile justice system including a discussion of the evolution of the juvenile justice system's overall purpose, and exposes the overwhelming number of children impacted by the system every year. Part III addresses the extreme and severe mental health struggles that justice-involved youth typically experience prior to being detained and during detention. Part III also demonstrates the limited scope of mental health services provided to justice-involved youth, even though the need for such services is extremely high. Part IV discusses Supreme Court decisions that provided children with greater constitutional protections in the context of sentencing—reasoning that can be utilized to support the use of the professional judgment standard for children's constitutional mental health claims. Part V and VI argue for the need to apply the professional judgment standard, instead of the

²⁴ *Shenandoah Valley*, 985 F.3d at 343.

deliberate indifference standard to evaluate whether a child’s constitutional right to mental health treatment has been violated.

This Comment argues that justice-involved youth are a vulnerable population that often struggle with mental health disorders and illnesses, conditions that are only aggravated by confinement in a juvenile facility. Justice-involved youth have a constitutional right to mental health treatment, and to ensure that right is sufficiently protected, courts should apply the professional judgment standard towards claims brought by justice-involved youth.

II. THE EVOLUTION AND IMPACT OF THE JUVENILE JUSTICE SYSTEM

A. *The Juvenile Justice System’s Rehabilitative Roots*

The juvenile justice system today is often perceived as a parallel of the adult criminal justice system for youth. The juvenile justice system, however, was premised on the idea that children should be treated differently than adults and that the goal of rehabilitation should guide the juvenile justice system.²⁵ The first juvenile courts were created “based on the assumption that children were less culpable than adults and more responsive to rehabilitation.”²⁶ The individuals who created juvenile courts did so because they believed that children should be redirected from adult criminal courts to “rescue” them and to steer them away from “negative home environments.”²⁷

Discussing this history in *In Re Gault*, the Supreme Court stated that the juvenile system abandoned “the idea of crime and punishment.”²⁸ Instead a child was “to be treated and

²⁵ See Mark R. Fondacaro et al., *The Rebirth of Rehabilitation in Juvenile and Criminal Justice: New Wine in New Bottles*, 41 OHIO NW. UNIV. L. REV. 697, 700 (2015); Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 90 CORNELL L. REV. 383, 389 (2013); *Overview of Juvenile Justice System Structure & Process*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK, https://www.ojjdp.gov/ojstatbb/structure_process/overview.html (last visited Nov. 7, 2021).

²⁶ Henning, *supra* note 25, at 389.

²⁷ *Id.*

²⁸ *In re Gault*, 387 U.S. 1, 15–16 (1967).

rehabilitated and the procedures, from apprehension through institutionalization, were to be clinical rather than punitive.”²⁹ Indeed, the juvenile courts were never meant to be adversarial—minimal due process procedures were in place at the inception of the juvenile justice system.³⁰ Rather, the juvenile courts were set up to provide treatment and rehabilitation through a paternalistic approach.³¹ Overtime, however, these rehabilitative and protective principles were not effectively put into practice, leaving children completely unprotected; so changes were made to the system.³²

The Supreme Court addressed these changes in *In re Gault*. The Court established that children who interact with the juvenile justice system, including those potentially subjected to confinement, are protected by the Due Process Clause of the Fourteenth Amendment,³³ and are entitled to certain due process protections such as notice of charges³⁴ and the right to an attorney.³⁵ The Court emphasized, however, that the requirement of certain due process protections for children should not deter juvenile courts from continuing to take into account a child’s “emotional and psychological attitude.”³⁶ Instead, enforcing that requirement was meant to establish “a degree of order and regularity to Juvenile Court.”³⁷

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 15–16, 25–26.

³² *Id.* at 18, n.23 (“There is evidence . . . that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”) (citation omitted); see also Mark R. Fondacaro et al., *Reconceptualizing Due Process in Juvenile Justice: Contributions from Law and Social Science*, 57 HASTINGS L.J. 955, 956 (2006) (“It became apparent that the juvenile justice system was not living up either to its rehabilitative goal or to the expectation that relaxed procedures would facilitate that goal.”).

³³ *In Re Gault*, 387 U.S. at 30–31.

³⁴ *Id.* at 33–34.

³⁵ *Id.* at 41.

³⁶ *Id.* at 26–27.

³⁷ *Id.*

This decision can be understood as part of the Supreme Court decisions that made up the “due process revolution;”³⁸ a period when the Supreme Court made multiple decisions that ultimately led to the adoption of almost “all of the adult criminal procedure guarantees on the juvenile process.”³⁹ *In Re Gault* provided needed protections to youth who were not receiving any procedural protections but were subjected to confinement for long periods of time; but it also created a juvenile justice system that began substantially mirroring an adult criminal system.⁴⁰ Scholars, however, argued that the Supreme Court decisions during the “due process revolution” were not necessarily meant to propel the “adultification” of the juvenile courts, but instead the decisions were meant to ensure that the process in juvenile courts was fair.⁴¹

Unfortunately, the 1980s–1990s introduced the “tough-on-crime era,” in which punishment became the primary focus of the juvenile justice system.⁴² An increase in crime rates⁴³ in combination with extremely racist fears of the “super-predator,” a damaging term that tended to suggest young African-American males were programmed for crime,⁴⁴ led to changes throughout the country that made the juvenile justice system more punitive and similar to the adult criminal system rather than a source of rehabilitation.⁴⁵ This era, filled with extreme reluctance and distrust of a rehabilitative approach to the juvenile justice system and explicit racism towards African-

³⁸ See David S. Tanenhaus, *First Things First: Juvenile Justice Reform in Historical Context*, 46 TEX. TECH L. REV. 281, 285 (2013).

³⁹ Fondacaro, *supra* note 32, at 963.

⁴⁰ *Id.* at 956–57, 965. (“None of this should obscure the fact that these three decisions made the juvenile court look very similar to adult criminal court.”).

⁴¹ *Id.* at 963–64.

⁴² Josh Gupta-Kagan, *Beyond “Children are Different:” The Revolution in Juvenile Intake and Sentencing*, 96 WASH. L. REV. 425, 441 (2021); *Overview of Juvenile Justice System*, *supra* note 25.

⁴³ Gupta-Kagan, *supra* note 42, at 441.

⁴⁴ Samantha Buckingham, *Trauma Informed Juvenile Justice*, 53 AM. CRIM. L. REV. 641, 667 (2016).

⁴⁵ Gupta-Kagan, *supra* note 42, at 442 (“These reforms . . . led juvenile court prosecutors, probation officers, and judges to prosecute children more frequently and place children in state custody with greater frequency.”).

American children, led to more children detained at state juvenile facilities, even for minor offenses like vandalism.⁴⁶

Though in practice the juvenile justice system continues to engage in punitive practices and often lacks effective mental health treatment within facilities,⁴⁷ federal and local governments in recent years have made efforts to return to the rehabilitative ideals that the juvenile justice system was founded upon.⁴⁸ As a United States government website states, the main goals of the juvenile justice system include: “skill development, habilitation, rehabilitation, addressing treatment needs, and successful reintegration into the community.”⁴⁹ The drive to reinvigorate the rehabilitative approach is largely the result of scientific research, clearly demonstrating that children are psychologically and developmentally different from adults, and as a result, are more receptive to rehabilitation.⁵⁰ This evolving research has already been relied upon by the Supreme Court in the context of Eighth Amendment jurisprudence, as will be discussed later on.⁵¹

This Comment does not suggest, however, that adults are not receptive to rehabilitation and do not deserve a less punitive approach to justice in the adult criminal context; in fact research demonstrates that a majority of incarcerated adults are in dire need of more effective mental health treatment.⁵² This Comment, however, is solely focusing on the juvenile justice system and the implications of the evolving literature on children’s psychological development. The rejuvenation of a more rehabilitative and treatment-oriented approach to juvenile justice only supports the

⁴⁶ *Id.*; Fondacaro, *supra* note 25, at 704 (explaining how during the tough-on crime era there was a “72% increase in youth detention” over a ten-year span).

⁴⁷ See discussion *supra* Part III.

⁴⁸ Gupta-Kagan, *supra* note 42, at 444.

⁴⁹ *Juvenile Justice*, YOUTH.GOV, <https://youth.gov/youth-topics/juvenile-justice> (last visited Nov. 7, 2021).

⁵⁰ Gupta-Kagan, *supra* note 42, at 445.

⁵¹ See discussion *supra* Part II.B.

⁵² Fondacaro, *supra* note 25, at 708 (discussing the extremely negative impacts of the punitive adult criminal justice system, and how a majority of adults in contact with the criminal justice system are suffering from mental illness and are in need of mental health treatment and rehabilitation).

implementation of a constitutional standard that reflects this approach and evaluates the professional care and treatment provided to children detained in juvenile facilities.

B. *The Childhoods Taken by the Juvenile Justice System*

An estimated 2.1 million children under the age of eighteen are arrested in the United States every year.⁵³ In 2019, juvenile courts managed over 700,000 delinquency cases, involving cases with children who committed acts that would be considered crimes if they were committed as adults.⁵⁴ Of these cases, 54 percent were committed by children under the age of sixteen.⁵⁵ When a child initially makes contact with the juvenile justice system, the child is referred to the juvenile justice system by law enforcement, a parent, a victim, a school, or a probation officer.⁵⁶ Intake is then completed, where it is determined whether the case should be dismissed, handled informally, or handled formally.⁵⁷

If the case is handled formally, then an adjudicatory hearing takes place in order to determine if the child is responsible “for an alleged delinquent act.”⁵⁸ A child that is “judged delinquent,” will then have to attend a disposition hearing where the court decides what type of sanction will be enforced.⁵⁹ Negative implications are immediate when a child is referred formally to the juvenile justice system due to the stigma associated with appearing before a juvenile court.⁶⁰

⁵³ *Youth Involved with the Juvenile Justice System*, YOUTH.GOV, <https://youth.gov/youth-topics/juvenile-justice/youth-involved-juvenile-justice-system> (footnote omitted) (last visited Jan. 7, 2022).

⁵⁴ *Characteristics of Delinquency Cases Handled by Juvenile Courts*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK (June 22, 2021), <https://www.ojjdp.gov/ojstatbb/court/qa06206.asp?qaDate=2019>.

⁵⁵ *Id.*

⁵⁶ *Case Flow Diagram*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK, https://www.ojjdp.gov/ojstatbb/structure_process/case.html (last visited Nov. 7, 2021).

⁵⁷ Sarah Hockenberry, *Delinquency Cases in Juvenile Court, 2018*, U.S. DEP'T OF JUST. (Dec. 2020), <https://ojjdp.ojp.gov/publications/delinquency-cases-in-juvenile-court-2018.pdf>.

⁵⁸ Tamar R. Birckhead, *Closing the Widening Net: The Rights of Juveniles at Intake*, 46 TEX. TECH L. REV. 157, 162–64 (2013).

⁵⁹ *Id.*

⁶⁰ *Id.* at 163.

A child is often considered “deviant” or “dangerous” when they are involved with the juvenile justice system—labels children begin to believe themselves due to this stigma.⁶¹

Placing a child in a juvenile residential facility is considered the most extreme punishment available from a juvenile court, since it completely restricts the child’s freedom and connection to the outside world.⁶² In 2019, the median length of time placed in a juvenile facility for youth who have been court-ordered to a juvenile residential facility (“committed youth”) was 113 days⁶³ and for youth “awaiting adjudication, disposition, or placement elsewhere” (“detained youth”)⁶⁴ was sixty-four days.⁶⁵ In 2019, 12.4 percent of committed youth remained in facilities for at least a year, while 2.5 percent of detained youth remained in juvenile facilities for at least a year.⁶⁶ There are a number of different types of residential facilities that youth can be placed in including, detention facilities, long-term facilities, ranch/wilderness camps, residential treatment centers, and group homes.⁶⁷ This Comment will focus on youth placed in detention and long-term facilities since these facilities physically restrict the child’s freedom and connection to the community, thereby raising the concern of whether or not the facility is providing adequate mental health treatment since a child detained is unable to obtain treatment anywhere else.⁶⁸

⁶¹ *Id.*

⁶² *Juveniles in Corrections: Overview*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK, <https://www.ojjdp.gov/ojstatbb/corrections/overview.html> (last visited Nov. 7, 2021).

⁶³ *Median Days in Placement Since Admission, By Placement Status, 1997–2019*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK (May 21, 2021), <https://www.ojjdp.gov/ojstatbb/corrections/qa08405.asp?qaDate=2019>; *Percent of Residents Remaining in Placement by Placement Status, 2019*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK (May 21, 2021), <https://www.ojjdp.gov/ojstatbb/corrections/qa08401.asp?qaDate=2019>.

⁶⁴ *Remaining in Placement Status*, *supra* note 63.

⁶⁵ *Median Days in Placement*, *supra* note 63.

⁶⁶ *Percent of Residents Remaining by Placement Status, 2019*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK (May 21, 2021), <https://www.ojjdp.gov/ojstatbb/corrections/qa08401.asp?qaDate=2019>.

⁶⁷ *Easy Access to the Census of Juveniles in Residential Placement: 1997–2019: Glossary*, EZACJRP, <https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/glossary.asp#Facility> (last updated May 21, 2021).

⁶⁸ *Id.*

Thousands of young children are placed in restrictive residential facilities every year, a majority of whom are not considered to have committed very serious offenses, resulting in thousands of childhoods that are permanently impacted by the stigma associated with being involved with the juvenile justice system.⁶⁹ On any given day in 2019, there were more than 36,000 youth held in some type of juvenile residential facility.⁷⁰ Over 50 percent were children sixteen or younger.⁷¹ Juvenile facilities detain a disproportionate amount of African-American and Latino children as compared to white children.⁷² Additionally, children of minority communities are far more likely to be detained as compared to white children who have committed the same exact offense.⁷³ Around 40 percent of youth committed to a residential facility in 2017 were youth who committed some sort of person offense, including assault, robbery, or the most serious, homicide.⁷⁴ Over 1,000 youth in 2017 were committed to a residential facility for committing a status offense, like running away; an offense that is not a violation for adults.⁷⁵ In fact, only about 11 percent of youth who are incarcerated “are there for what on paper constitutes a very serious offense.”⁷⁶ The juvenile justice system impacts millions of children every year and juvenile facilities confine thousands of children, completely derailing their childhoods. Juvenile facilities and the court system take on the responsibility of caring and protecting justice-involved youth; unfortunately, this protection is not always provided.

⁶⁹ Birkhead, *supra* note 58, at 157.

⁷⁰ *One Day Count of Juveniles in Residential Placement Facilities, 1997–2019*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK (May 21, 2021), <https://www.ojjdp.gov/ojstatbb/corrections/qa08201.asp?qaDate=2019>.

⁷¹ *Age of Juvenile in Residential Placement, 2019*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK (May 21, 2021), <https://www.ojjdp.gov/ojstatbb/corrections/qa08204.asp?qaDate=2019>.

⁷² Buckingham, *supra* note 44, at 665.

⁷³ *Id.* (“Even as first time offenders, African American youth with no delinquency history whatsoever are more than four times as likely to be incarcerated than white youth who have similar backgrounds.”).

⁷⁴ Caren Harp & David B. Muhlhausen, *Juvenile Justice Statistics*, U.S. DEP’T OF JUST. 1 (June 2020), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/juveniles-in-residential-placement-2017.pdf>.

⁷⁵ *Id.* at 3.

⁷⁶ Buckingham, *supra* note 44, at 665.

III. JUSTICE-INVOLVED YOUTH AND MENTAL HEALTH

A. *The Prevalence of Mental Health Disorders and Illnesses*

Justice-involved youth suffer from mental health disorders and illnesses, as well as traumatic experiences, at a much greater rate than children in the general population, demonstrating the need for mental health treatment in juvenile facilities. Research has demonstrated that at least 70 percent of justice-involved youth have at least one diagnosed mental health disorder as compared to 9–22 percent of youth in the general population.⁷⁷ Justice-involved youth commonly suffer from a variety of mental health disorders including substance use disorders, anxiety, depression, and posttraumatic stress disorder.⁷⁸ In fact, research demonstrates that justice-involved youth “experience posttraumatic stress disorder (based on events prior to incarceration) at rates of four to eight times greater” than youth not involved with the juvenile justice system.⁷⁹ One study found that 20 percent of youth in residential facilities have a potential risk for suicide.⁸⁰

Research also suggests that justice-involved youth often suffer from adverse childhood experiences (ACEs).⁸¹ ACEs “are stressful or traumatic events that happen to or around a young person,” including emotional and physical abuse, and witnessing violence.⁸² One study reported that 97 percent of justice-involved youth participating in the study had one or more ACEs,⁸³ while other research also has shown that 95 percent of justice-involved youth have experienced some

⁷⁷ *Intersection between Mental Health and the Juvenile Justice System*, *supra* note 9, at 1–3.

⁷⁸ *Id.* at 3.

⁷⁹ Thalia Gonzalez, *Youth Incarceration, Health, and Length of Stay*, 45 FORDHAM URB. L.J. 45, 60 (2017); *see also* Buckingham, *supra* note 44, at 654 (“Rates of PTSD in juvenile justice-involved youth are comparable to the PTSD rates of soldiers returning from deployment in Iraq.”).

⁸⁰ Jacqueline M. Swank & Joseph C. Gagnon, *A National Survey of Mental Health Screening and Assessment Practices in Juvenile Correctional Facilities*, 46 CHILD YOUTH CARE F. 379, 380 (2017); *see also* Gonzalez, *supra* note 79, at 65–66.

⁸¹ Seiter, *supra* note 2, at 4

⁸² *Id.*

⁸³ *Id.*

sort of trauma, including 30 percent who have experienced physical abuse and 12 percent who have experienced sexual abuse.⁸⁴

ACEs can often lead to mental health illnesses and disorders.⁸⁵ Unsurprisingly, ACEs “negatively affect a young person’s trajectory for positive health, behavior, and/or psychological development.”⁸⁶ Studies have further shown that there is a correlation between children with ACEs and their involvement with the juvenile justice system.⁸⁷ In addition, often the responses children experience to trauma are manifested as “delinquent behaviors” or offenses that lead to the juvenile justice system.⁸⁸ For instance, due to trauma, children are often easily threatened and may overreact to certain situations, therefore children who have experienced trauma can be perceived as more aggressive or disruptive which may lead to contact with the juvenile justice system.⁸⁹ As a result, children entering the juvenile justice system are often in need of mental health treatment due to the traumatic experiences they have already experienced and the lack of access to mental health treatment in the community.⁹⁰

Research has also shown that the length of time youth spend with the juvenile justice system increases or exacerbates mental health issues among justice-involved youth.⁹¹ Residential facilities are often “overcrowded and understaffed,” leading to an extremely negative environment for children.⁹² Reports of violence and abuse in juvenile facilities are unfortunately common, with over 50 percent of youth reporting being victims of some sort of violence while placed in a

⁸⁴ Joseph Calvin Gagnon & Jackqueline M. Swank, *A National Survey on Mental Health Professional Development in Juvenile Justice Facilities: Implications for Youth Reentry*, 46(3) BEHAV. DISORDERS 149, 149 (2021).

⁸⁵ Seiter, *supra* note 2, at 4.

⁸⁶ Gonzalez, *supra* note 79, at 56.

⁸⁷ *Id.*

⁸⁸ Buckingham, *supra* note 44, at 656.

⁸⁹ *Id.*

⁹⁰ Gonzalez, *supra* note 79, at 59–60.

⁹¹ *Id.*; *see also* Buckingham, *supra* note 44, at 64–65; Fondacaro, *supra* note 25, at 705 (“Research consistently suggests that juvenile detention not only fails to correct delinquent behaviors, it often worsens them.”).

⁹² Fondacaro, *supra* note 25, at 705.

residential facility.⁹³ Almost all youth experience a form of abuse while detained including “sexual, physical, verbal, emotional, starvation, [and] unnecessary use of solitary confinement.”⁹⁴ The violence and abuse most children experience while detained in residential facilities only exacerbates both their mental and physical well-being.⁹⁵

The COVID-19 pandemic worsened juvenile facilities’ conditions and intensified the feelings of isolation and loneliness among youth while detained.⁹⁶ At the outset of the pandemic, many juvenile facilities completely stopped outside visitors from coming to the facilities, including family members.⁹⁷ To ensure social distancing, youth were placed in complete isolation, and though this may have protected their physical health from COVID-19, it sacrificed their mental health, “causing anxiety, depression, self-harm, and even suicide.”⁹⁸ On top of facilities excluding family members from visiting, and placing children in complete isolation, mental health programming was also reduced to mitigate the risk of spreading of COVID-19.⁹⁹

The pandemic is not over, and there is still a need to isolate children with COVID-19, children exhibiting symptoms, and children who have been in close contact with those infected with COVID-19, if they are not vaccinated.¹⁰⁰ Again, to protect the physical health of children and staff within a facility, social distancing and isolation are absolutely needed, but there must also

⁹³ Gonzalez, *supra* note 79, at 65.

⁹⁴ Fondacaro, *supra* note 25, at 705.

⁹⁵ *Id.*; Gonzalez, *supra* note 79, at 65.

⁹⁶ Marsha Levick, *No Exit: How Litigation Failed Incarcerated Youth During the COVID-19 Pandemic*, 93 TEMP. L. REV. 489, 498 (2021).

⁹⁷ *Id.* at 499.

⁹⁸ *Id.* at 498.

⁹⁹ *Id.* at 499.

¹⁰⁰ *Guidance for Correctional & Detention Facilities*, CTRS. FOR DISEASE CONTROL & PREVENTION (June 9, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Medicalisolation>.

be recognition of the mental health impacts this type of isolation can cause so that effective mental health treatment is implemented to address it.¹⁰¹

B. *The Absence of Mental Health Treatment in Juvenile Facilities*

A tremendous amount of justice-involved youth suffer from mental health disorders and have experienced trauma both outside and inside juvenile facilities. Despite the obvious need for services, justice-involved youth rarely obtain the treatment they need within juvenile facilities. Due to a lack of access to mental health treatment services in the community, research has demonstrated that the “juvenile justice system has become the de facto mental health system for American youth.”¹⁰² Justice-involved youth have often been turned away from mental health services in their community due to stigma surrounding their history of delinquency—these providers perceive justice-involved youth as dangerous or violent and therefore do not want to work with them.¹⁰³ Consequently, one study found that “more than a third of parents of youth in the juvenile justice system reported that their child was placed in a juvenile justice setting because mental health services were not available in their community.”¹⁰⁴

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) states that when the decision is made to place youth in juvenile residential facilities, the facilities take on the

¹⁰¹ *Medical Isolation of Individuals with Confirmed or Suspected COVID-19*, CTRS. FOR DISEASE CONTROL & PREVENTION (June 9, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Medicalisolation>. The CDC actually provides guidelines to correctional facilities concerning isolation, advising facilities to ensure that isolation for COVID-19 purposes is different from isolation due to solitary confinement by providing access to TV, books, a telephone to speak to family, and consistent access to mental health services. *Id.*

¹⁰² Jacqueline M. Swank & Joseph C. Gagnon, *A National Survey of Mental Health Screening and Assessment Practices in Juvenile Correctional Facilities*, 46 CHILD YOUTH CARE F. 379, 380 (2017); see also THE MENTAL HEALTH AND JUV. JUST. COLLABORATIVE FOR CHANGE: A TRAINING, TECHNICAL ASSISTANCE AND EDUCATION CTR, BETTER SOLUTIONS FOR YOUTH WITH MENTAL HEALTH NEEDS IN THE JUVENILE JUSTICE SYSTEM 2, https://ncyoj.policyresearchinc.org/img/resources/Better_Solutions_for_Youth_with_Mental_Health_Needs_in_the_Juvenile_Justice_System-501172.pdf.

¹⁰³ Seiter, *supra* note 2, at 4.

¹⁰⁴ *Id.*

“responsibility for mental health care, substance abuse treatment, and education.”¹⁰⁵ Despite this declaration, access to treatment in juvenile facilities is often very limited, with only a portion of juvenile facilities even evaluating whether youth in the facilities have mental health disorders upon entry.¹⁰⁶ Only 47 percent of detention facilities and 83 percent of long term committed juvenile facilities evaluated all youth for mental health treatment.¹⁰⁷ A majority of detention centers and long-term facilities, however, do provide some type of mental health services to youth in the facilities, even if it is for only a portion of youth who may need it.¹⁰⁸

Furthermore, research suggests that though justice-involved youth experience greater mental health disorders as compared to the general population, “service access is generally low” for justice-involved youth.¹⁰⁹ Though some services are being provided, research has demonstrated that many mental health professionals in juvenile facilities are not equipped to treat the mental health issues that justice-involved youth present.¹¹⁰ One study found that some of the main barriers to receiving adequate mental health treatment in juvenile facilities is lack of funding, and inadequate training and preparation of mental health staff in these facilities.¹¹¹

Additionally, research suggests that security, rather than mental health services, receives greater emphasis, and as a result more funding, leading to further lack of services for justice-involved youth.¹¹² Consequently, instead of providing needed treatment in the facilities, the staff

¹⁰⁵ *Juveniles in Corrections*, *supra* note 62.

¹⁰⁶ *Intersection between Mental Health and the Juvenile Justice System*, *supra* note 9.

¹⁰⁷ *Facilities Evaluating Youth for Mental Health Needs by Facility Operation and Facility Type*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK (May 15, 2020), <https://www.ojjdp.gov/ojstatbb/corrections/qa08540.asp?qaDate=2018>.

¹⁰⁸ *Percent of Facilities Providing Treatment Services, by Facility Type, 2018*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK (May 15, 2020), <https://www.ojjdp.gov/ojstatbb/corrections/qa08521.asp?qaDate=2018>.

¹⁰⁹ Katrina A. Hovey et al., *Mental Health and the Juvenile Justice System: Issues Related to Treatment and Rehabilitation*, 7 *WORLD J. OF EDUC.* 1, 7 (2017).

¹¹⁰ Gagnon, *supra* note 62, at 150.

¹¹¹ Jacqueline M. Swank & Joseph C. Gagnon, *Mental Health Services in Juvenile Correctional Facilities: A National Survey of Clinical Staff*, 25 *J. CHILD FAM. STUD.* 2862, 2863 (2016); *see also* Gonzalez, *supra* note 79, at 63.

¹¹² Hovey, *supra* note 109, at 8.

at the facility often resort to some sort of violence when a child is exhibiting behavioral issues as a result of their mental health, since they “are not trained to handle the needs of a mentally ill inmate.”¹¹³ Children clearly suffer from mental health disorders in juvenile facilities and struggle to cope with trauma experienced prior to and during their detention. Though there is an obvious need to provide treatment, services and adequate mental health treatment are rarely available to youth even though they have a constitutional right to care. The court system’s adoption of the professional judgment standard can potentially compel greater access to more effective treatment for justice-involved youth in juvenile facilities since the treatment provided in juvenile facilities would be compared to an adequate professional standard of care.

IV. THE CONSTITUTION AND ITS TREATMENT OF CHILDREN

“Children are different.”¹¹⁴ The Supreme Court has found that youth and adults should be treated differently under the Constitution in certain contexts, including the criminal context.¹¹⁵ Particularly, the Supreme Court has established that there is a constitutional distinction between youth and adults for the purpose of extreme sentences like the death penalty and life without parole.¹¹⁶ In *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama*, cases that will be discussed in full below, the Supreme Court acknowledged the particular vulnerabilities of children and their susceptibility to their environment, largely as a result of their continuing psychological development.¹¹⁷ The Court reiterated throughout these decisions that children are more responsive to rehabilitation and should be afforded greater protection from the harshest sentences, because of the developmental differences between children and adults—differences that the Court reasoned

¹¹³ Gonzalez, *supra* note 79, at 65.

¹¹⁴ *Miller v. Alabama*, 567 U.S. 460, 480 (2012).

¹¹⁵ Cynthia Soohoo, *You Have the Right to Remain a Child: The Right to Juvenile Treatment for Youth in Conflict with the Law*, 48 COLUM. HUM. RTS. L. REV. 1, 4 (2017).

¹¹⁶ *See, e.g., Miller*, 567 U.S. at 479–80.

¹¹⁷ *Id.* at 472; *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005).

support the idea that children do not have the required level of culpability to receive the harshest sentences.¹¹⁸ Though the focus of these decisions is on a child’s culpability, the discussions of the psychological development of children in these decisions establish the principle that children are different and may require greater protection under the Constitution in certain contexts as a result.

In *Roper v. Simmons*, the Supreme Court held that the Eighth Amendment’s ban on cruel and unusual punishment bars the government from imposing the death penalty on individuals under the age of eighteen.¹¹⁹ The defendant was a seventeen-year-old high school student who was convicted of murder and sentenced to the death penalty when he turned eighteen.¹²⁰ The Court held that due to a child’s continuing psychological development and greater possibility of rehabilitation, a child’s conduct cannot reach the “morally reprehensible” threshold needed to inflict the death penalty.¹²¹ It further concluded that morally, it would be “misguided” to compare a child’s decisions to that of an adult’s—asserting three reasons for this difference in treatment: (1) relying on scientific and sociological studies, the Court found that youth “lack[] maturity” and have “an underdeveloped sense of responsibility;”¹²² (2) youth “are more susceptible to negative influences and outside pressures;”¹²³ and lastly, (3) children’s personalities are still developing and are “more transitory.”¹²⁴ The Court emphasized children’s vulnerabilities and their stage of psychological development, recognizing their sensitivity to their own personal environments and

¹¹⁸ See, e.g., *Graham*, 560 U.S. at 74; *Roper*, 543 U.S. at 568–69.

¹¹⁹ *Roper*, 543 U.S. at 578–79.

¹²⁰ *Id.* at 556–58.

¹²¹ *Id.* at 570.

¹²² *Id.* at 569. The Court found that these characteristics have long been recognized by the government and is the reason why laws in regard to age have been established like voting, marriage, and jury service. *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 570.

trauma.¹²⁵ The Court concludes that a child’s decisions cannot be comparable to an adult’s because it is more likely that youth can be rehabilitated and reformed.¹²⁶

The Supreme Court continued to draw constitutional distinctions between youth and adults in *Graham v. Florida*, where the Court utilized the analysis in *Roper* and held that a juvenile cannot be sentenced to life without parole for a nonhomicide crime.¹²⁷ The Court recognized in this case that the defendant had a troubled childhood; both parents were addicted to cocaine, and the defendant himself began using drugs and alcohol between the ages of nine to thirteen.¹²⁸ After committing several robberies by the age of seventeen, the defendant was convicted for violation of probation and the trial court sentenced him to life imprisonment with no possibility of early release.¹²⁹

Utilizing the *Roper* analysis, the Supreme Court reaffirmed that there are clear, “fundamental” distinctions between the minds of adults and children that are supported by science, resulting in a child’s lesser culpability for a crime.¹³⁰ The Court also emphasized that youth “are most in need of and receptive to rehabilitation,” and found that sentencing a child to life without parole ignores a child’s “capacity for change.”¹³¹ Ultimately from this reasoning, the Court concluded that sentencing a child to life without parole for non-homicide crimes is disproportionate to the crime—violating the Eighth Amendment’s ban on cruel and unusual punishment.¹³² Importantly, the Court noted that lower courts need not “guarantee eventual freedom” to a child, but must provide a child with the opportunity to be released based on their

¹²⁵ See *Roper*, 543 U.S. at 569.

¹²⁶ *Id.* at 570.

¹²⁷ *Graham v. Florida*, 560 U.S. 48, 68 (2010).

¹²⁸ *Id.* at 53.

¹²⁹ *Id.* at 54–57.

¹³⁰ *Id.* at 68, 71–72.

¹³¹ *Id.* at 74.

¹³² *Id.* at 71.

growing maturity and rehabilitation, reinforcing the need for effective rehabilitation and treatment in juvenile facilities.¹³³

The Court further built upon its holdings in *Roper* and *Graham*, and in *Miller v. Alabama* held that the Eighth Amendment categorically bars mandatory life without parole sentences for youth, for homicidal crimes.¹³⁴ Two cases were consolidated for this opinion. In the first case, the defendant, Jackson, was fourteen years old when he and two other boys robbed a video store that ended with the murder of the store clerk.¹³⁵ Jackson remained outside for most of the robbery.¹³⁶ When Jackson went into the store he found one of the other boys pointing a gun at the store clerk, and then saw him murder her.¹³⁷ Jackson was convicted of felony murder and was sentenced to life without parole.¹³⁸ The second case involved the defendant, Miller, who was also fourteen years old and constantly had contact with the foster care system due to his mother's drug addiction and his step-father's abuse.¹³⁹ Miller was convicted of "murder in the course of arson" after he killed his mother's drug dealer.¹⁴⁰ Miller was sentenced to life imprisonment without parole.¹⁴¹

The Court found that the reasoning behind *Graham* could not be pigeonholed to only nonhomicide crimes because the "mental traits and environmental vulnerabilities" of youth are not "crime-specific."¹⁴² The Court found that the differences between youth and adults "diminish the penological justifications for imposing the harshest sentences on juvenile offenders."¹⁴³ The Court

¹³³ *Graham*, 560 U.S. at 74–75.

¹³⁴ *Miller v. Alabama*, 567 U.S. 460, 479 (2012).

¹³⁵ *Id.* at 465–66.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 466.

¹³⁹ *Id.* at 467–68.

¹⁴⁰ *Miller*, 567 U.S. at 468–69.

¹⁴¹ *Id.*

¹⁴² *Id.* at 473.

¹⁴³ *Id.* at 472.

also emphasized the two defendants’ troubled histories, reasoning that their extremely brutal childhood experiences likely lessened their level of culpability for the crimes they committed.¹⁴⁴ The Court noted that Jackson lived around violence for much of his life, circumstances that “go to Jackson’s culpability for the offense.”¹⁴⁵ In regard to Miller, the Court noted that he attempted suicide several times, including when he was in kindergarten, and further articulated that “if ever a pathological background might have contributed to a 14-year old’s commission of a crime, it is here.”¹⁴⁶

All of these decisions show that in the Eighth Amendment context addressing extreme sentences, the Supreme Court has recognized that children and adults are constitutionally different, due to the mental development of youth and their vulnerabilities to the environment around them. If children are constitutionally different for the purpose of extreme sentences under the Eighth Amendment, then the question that must be asked is whether the Constitution should also treat them differently with respect to rehabilitation and mental health treatment, especially since these decisions emphasize a child’s responsiveness to rehabilitation as a reason for prohibiting the enforcement of the harshest sentences.

V. CHOOSING THE PROFESSIONAL JUDGMENT STANDARD OVER DELIBERATE INDIFFERENCE

A. *The Competing Standards of Review*

A state has the constitutional responsibility to provide medical care and ensure the well-being of individuals involuntarily in the state’s custody either through “incarceration, institutionalization, or other similar restraint of personal liberty.”¹⁴⁷ The Supreme Court has found

¹⁴⁴ *Id.* at 478–79.

¹⁴⁵ *Id.* at 478.

¹⁴⁶ *Miller*, 567 U.S. at 478–79.

¹⁴⁷ *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 199–200 (1989).

that both the Eighth Amendment¹⁴⁸ and the Fourteenth Amendment¹⁴⁹ provide an individual in the state or federal government's custody a constitutional right to medical care. An incarcerated individual may bring this claim under the Eighth Amendment and a pre-trial detainee or an individual involuntarily in the state's custody may bring a claim under the Fourteenth Amendment.¹⁵⁰ A claim brought under either Amendment has largely been analyzed either through the deliberate indifference standard or professional judgment standard in order to determine whether or not a person's constitutional right was violated.

B. *Deliberate Indifference Standard*

The deliberate indifference standard was developed and further clarified by the Supreme Court in *Estelle v. Gamble* and *Farmer v. Brennan*.¹⁵¹ In *Estelle*, a person incarcerated at a Texas state prison asserted that the prison violated the Eighth Amendment by failing to adequately treat a back injury that occurred in the prison.¹⁵² The Supreme Court held that assessing whether the facility violated the Eighth Amendment required consideration of whether the correctional facility or its officials exhibited "deliberate indifference to a prisoner's serious illness or injury;" including the intentional denial or interference with medical treatment.¹⁵³ The Court chose this standard of analysis on the basis that the underlying purpose of the Eighth Amendment is to ensure punishments do not violate "evolving standards of decency" that mark the progress of civilized society and do not "involve the unnecessary and wanton infliction of pain."¹⁵⁴ *Estelle* found that actions that amount to deliberate indifference inflict "unnecessary and wanton infliction of

¹⁴⁸ *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

¹⁴⁹ *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982).

¹⁵⁰ 2 Police Liability Section § 8A.09.

¹⁵¹ See *Estelle*, 429 U.S. at 104–05; *Farmer v. Brennan*, 511 U.S. 825, 834–38 (1994).

¹⁵² *Estelle*, 429 U.S. at 98–99.

¹⁵³ *Id.* at 104–05; 2 Police Liability Section § 8A.09.

¹⁵⁴ *Estelle*, 429 U.S. at 102–03.

pain.”¹⁵⁵ Though *Estelle* only established that the deliberate indifference standard applied to Eighth Amendment claims, the standard has also generally been utilized for pre-trial detainees’ claims under the Fourteenth Amendment.¹⁵⁶ The Supreme Court, though, has yet to decide if this application is valid, admitting that the standard to be utilized for pre-trial detainees is “less clear under the Court’s precedents.”¹⁵⁷

In *Farmer v. Brennan*, the Supreme Court evaluated an Eighth Amendment challenge brought by a plaintiff incarcerated in federal prison.¹⁵⁸ The plaintiff, who identified as female, but biologically was born male, asserted that the prison violated the Eighth Amendment by failing to protect their health and safety, resulting in the plaintiff being beaten and raped while detained in the general population of the correctional facility.¹⁵⁹ The Court utilized the deliberate indifference standard to evaluate the plaintiff’s claim.¹⁶⁰

Both *Estelle* and *Farmer* go to great lengths in describing what deliberate indifference entails. In *Estelle*, the Court rejected the idea that “an inadvertent failure to provide adequate medical care” would meet the standard of deliberate indifference.¹⁶¹ The Court in *Farmer* expressly rejected “an objective test,” in favor of a more subjective approach to whether a prison or prison official demonstrated deliberate indifference to an incarcerated person’s health and safety needs.¹⁶² The *Farmer* Court clarified that for a person to be held liable under the deliberate indifference standard, an individual would need to demonstrate that the defendant had “knowledge of a substantial risk of serious harm” and chose to ignore it—reaffirming the subjective nature of

¹⁵⁵ *Id.* at 104.

¹⁵⁶ See *Doe v. Shenandoah Valley Juvenile Center Commission*, 985 F.3d 327, 340 (4th Cir. 2021).

¹⁵⁷ *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1865 (2017).

¹⁵⁸ 511 U.S. 825, 829 (1994).

¹⁵⁹ *Id.* at 829–31.

¹⁶⁰ *Id.* at 828–29.

¹⁶¹ *Estelle v. Gamble*, 429 U.S. 97, 105 (1976).

¹⁶² *Farmer*, 511 U.S. at 837.

the test.¹⁶³ The Court stated the deliberate indifference standard “describes a state of mind more blameworthy than negligence,” but also does not require a finding of purpose or intent.¹⁶⁴ In *Farmer*, despite the petitioner’s repeated attempts to convince the Court that the deliberate indifference standard would allow prison officials to ignore obvious dangers and harms to incarcerated individuals, the Court remained doubtful and described multiple cases where a prison official would be held liable.¹⁶⁵ Most recently, the Fourth Circuit stated that under the deliberate indifference standard, a plaintiff must prove that: (1) the plaintiff “had an objectively serious medical need;” and (2) the defendant “subjectively knew of the need and disregarded it.”¹⁶⁶

In the years since the Court decided these decisions, it has become clear that the deliberate indifference standard’s subjectiveness component creates a high burden for an individual asserting a claim of constitutionally inadequate medical care and offers them very limited constitutional protection.¹⁶⁷ Scholars have widely criticized the deliberate indifference standard, claiming that it is ineffective and has consistently failed to protect individuals, particularly individuals involved in the criminal justice system, due to its high burden.¹⁶⁸ One scholar notes, that even if individuals

¹⁶³ *Id.* at 842.

¹⁶⁴ *Id.* at 835.

¹⁶⁵ *Id.* at 842. The Court in *Farmer* provided examples of when a prison official likely would be held liable under the deliberate indifference standard. *Id.* The Court described that if a hypothetical plaintiff provides evidence that violence in a prison has clearly persisted and has been consistently documented, then a prison official in the prison would likely not avoid liability by arguing that they had no knowledge of the violence. *Id.* at 842–43. The Court also noted that a prison official would likely not be able to avoid liability in circumstances where they knew of a potential risk, but did not necessarily know who the victim would be. *Id.* at 843–44. The Court, however, did expressly note that these examples are not full-proof and there are circumstances even within these examples where a prison official may avoid liability, such as if they can show they truly did not know of a risk, or “if they responded reasonably to the risk,” even if the harm still occurred. *Id.* at 844.

¹⁶⁶ *Doe v. Shenandoah Valley Juvenile Center Commission*, 985 F.3d 327, 340 (4th Cir. 2021).

¹⁶⁷ Jason M. Groth & Sara Wolovick, *Overcoming Deliberate Indifference to the Covid-19 Pandemic*, 5 UTAH J. OF CRIM. L. 11, 14–15 (2021).

¹⁶⁸ Joel H. Thompson, *Today’s Deliberate Indifference: Providing Attention Without Providing Treatment to Prisoners with Serious Medical Needs*, 45 HARV. C. R.-C. L. L. REV. 635, 650–51; see also Groth, *supra* note 167, at 14–15 (discussing that despite a dangerous pandemic impacting the entire world, the deliberate indifference standard is still an extremely high burden for incarcerated individuals to meet. “Even the few cases in which trial courts have required officials to improve COVID-19 precautions in correctional facilities have been consistently overturned or stayed when the appeals courts reverse upon the application of [the deliberate indifference] standard.”).

have engaged in conduct “that most people would consider woefully inadequate to be reasonable,” in most cases those individuals will not be held liable under the deliberate indifference standard.¹⁶⁹

1. The Application of the Deliberate Indifference Standard to Youth

In the cases above, the deliberate indifference standard was utilized for adults currently incarcerated, but the Third Circuit Court of Appeals has applied the deliberate indifference standard to a child detained in a juvenile facility as well. In *A.M. v. Luzerne County Juvenile Detention Facility*, the Third Circuit held that the deliberate indifference standard applied to a thirteen-year old’s constitutional claims for lack of medical treatment, without any discussion of the potential use of the professional judgment standard.¹⁷⁰

In *A.M.*, prior to the plaintiff’s arrest, the child, A.M., had a significant mental health history including eleven hospitalizations at an inpatient psychiatric facility.¹⁷¹ A.M. suffered from ADHD, for which he took medication, and also suffered from anxiety, depression, and bipolar disorder.¹⁷² The juvenile center was informed of A.M.’s mental health history, however it did not initially provide him with his ADHD medication, and he received his psychiatric evaluation about ten days after being admitted into the facility.¹⁷³ Following this initial psychiatric evaluation, A.M. did not see any mental health professionals for the rest of his detention, despite experiencing extreme physical abuse while at the center.¹⁷⁴

Addressing these facts, the court reasoned that since the Supreme Court had yet to rule on what standard applies for pre-trial detainees, including juvenile detainees, and that “detainees are

¹⁶⁹ Groth, *supra* note 167, at 15.

¹⁷⁰ *A.M. v. Luzerne County Juvenile Detention Center*, 372 F.3d 572, 579 (3d Cir. 2004); *see also* *J.H. v. Williamson County*, 951 F.3d 709, 722–23 (6th Cir. 2020). The Sixth Circuit Court of Appeals also utilized the deliberate indifference standard, without any discussion of the professional judgment standard, to analyze a fourteen year old’s medical and mental health constitutional claim that he brought after being detained in a juvenile detention center. *Id.*

¹⁷¹ *Luzerne County*, 372 F.3d at 576.

¹⁷² *Id.*

¹⁷³ *Id.* at 576–77.

¹⁷⁴ *Id.*

entitled to no less protection than a convicted prisoner is entitled to under the Eighth Amendment,” the deliberate indifference standard applied.¹⁷⁵ The court did not discuss A.M.’s age or his status as a juvenile. A.M brought a number of claims against a nurse and doctor at the facility.¹⁷⁶ Applying the deliberate indifference standard, the court upheld summary judgment in favor of both the nurse and the doctor.¹⁷⁷ The favorable judgments to the nurse and doctor occurred despite the nurse allegedly failing to inform staff of A.M.’s mental health history and despite the doctor only conducting a physical evaluation, and no psychiatric evaluation, even though it was unclear whether the doctor was required to conduct the psychiatric evaluation or not.¹⁷⁸

Importantly, another claim brought against the juvenile facility challenging its “lack of policies or procedures to address the physical and mental health needs of residents,” fared slightly better.¹⁷⁹ The court again utilized the deliberate indifference standard but this time reversed summary judgment in favor of the juvenile facility and remanded to the district court.¹⁸⁰ A.M., a thirteen-year old boy at the time of his detention, struggled with his mental health prior to entering a juvenile facility, and was then subjected to horrible physical abuse, likely exacerbating his mental health disorders.¹⁸¹ Yet, the court did not engage in an analysis that recognized his age, youth, or particular vulnerabilities, and instead directly applied a standard that potentially limited the relief that A.M. was able to obtain.¹⁸²

C. Professional Judgment Standard

¹⁷⁵ *Id.* at 584.

¹⁷⁶ *Luzerne County*, 372 F.3d at 579.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 584.

¹⁸⁰ *Id.* at 584–85.

¹⁸¹ *Id.* at 575–76.

¹⁸² *Luzerne County*, 372 F.3d at 579.

The professional judgment standard, in comparison to the deliberate indifference standard, does not require a subjective component, therefore creating a less burdensome standard for plaintiffs to overcome.¹⁸³ The Supreme Court applied the professional judgment standard in *Youngberg v. Romeo*, in which the Court evaluated a constitutional claim brought by an individual who was involuntarily committed to a state psychiatric facility.¹⁸⁴ The Court applied this standard because it found that individuals who have been involuntarily committed to a psychiatric facility “are entitled to more considerate treatment and conditions of confinement” than incarcerated individuals, since the purpose of the criminal justice system, according to the Court, is punishment.¹⁸⁵ Under this standard, the Court established that “liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.”¹⁸⁶ There is a presumption that the professional judgment is valid.¹⁸⁷

Ultimately, a court is not supposed to determine the exact treatment that should be provided, but instead judge whether the treatment provided was substantially different from a professional standard of care.¹⁸⁸ Courts have noted that the professional judgment standard does not apply to cases where ordinary negligence is found, due to the fact that there needs to be a “substantial departure” from professional standards.¹⁸⁹ Several circuits, however, have not addressed the exact level of culpability between gross negligence, recklessness, and intentional

¹⁸³ *Doe v. Shenandoah Valley Juvenile Center Commission*, 985 F.3d 327, 343 (4th Cir. 2021).

¹⁸⁴ *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982).

¹⁸⁵ *Id.* at 321–22.

¹⁸⁶ *Id.* at 323.

¹⁸⁷ *Id.*

¹⁸⁸ *Shenandoah Valley*, 985 F.3d at 343.

¹⁸⁹ *Id.* at 342; *see also* *Patten v. Nichols*, 274 F.3d 829, 843 (4th Cir. 2001).

conduct that is required for there to be a violation of professional judgment.¹⁹⁰ But even so, the professional judgment standard is a lesser burden for individuals to overcome and provides greater protection against inadequate medical care, since the purpose of the standard is to ensure that practices within a particular facility are at least somewhat in line with professional norms, unlike the deliberate indifference standard. The Fourth Circuit has clearly articulated this distinction and has explained the reasoning behind using the professional judgment standard, as opposed to the deliberate indifference standard, for a number of contexts.

1. The Fourth Circuit Model of the Professional Judgment Standard

The Fourth Circuit has analyzed and adopted the use of the professional judgment standard in multiple cases, providing a model for other courts to follow and adopt. In fact, the Fourth Circuit potentially carved a path for change for youth detained in juvenile facilities by creating a circuit split when the court adopted the professional judgment standard over the deliberate indifference in a suit brought by undocumented immigrant children.¹⁹¹ Though the Fourth Circuit created this split, as mentioned previously, the Supreme Court rejected to hear the case on appeal, therefore the Fourth Circuit decision remains in effect for other circuit courts to potentially model their own decisions after.¹⁹²

The Fourth Circuit in *Patten v. Nichols* provided factors (the “*Patten* factors”) to consider when determining which standard to apply in a given case. In an upsetting set of facts, a representative of Maura Patten’s estate, a woman who died during her involuntary commitment to a state hospital, brought a constitutional action for the failure to provide adequate medical care to

¹⁹⁰ *Patten*, 274 F.3d at 842.

¹⁹¹ *Doe v. Shenandoah Valley Juvenile Center Commission*, 985 F.3d 327, 348 (4th Cir. 2021) (Wilkinson, J., dissenting).

¹⁹² Grace Dixon, *Justices Won’t Touch Migrant Kids’ Revived Mental Health Suit*, LAW360 (Dec. 6, 2021), <https://plus.lexis.com/api/permalink/232aaca5-d745-4128-a9da-ca4bad95b332/?context=1530671>.

Maura during her commitment.¹⁹³ Maura suffered from schizophrenia as well as a heart condition, and after multiple pleas to doctors to change her medication, which exacerbated her heart condition, Maura died.¹⁹⁴ Medical experts testified that the care the doctors at the facility provided was “a significant and gross deviation from the standard of care.”¹⁹⁵ The United States Department of Justice investigated the facility and found that the hospital “was not providing its patients with adequate mental health treatment or medical care.”¹⁹⁶

The Fourth Circuit provided three reasons for why the professional judgment standard should apply to claims brought by individuals involuntarily committed to state hospitals, despite earlier circuit precedent holding that the deliberate indifference standard applies to pre-trial detainees who also bring their claim under the Fourteenth Amendment.¹⁹⁷ First, the court found that involuntarily committed patients are taken into custody for treatment, and therefore should be afforded a standard that reflects this treatment purpose.¹⁹⁸ The court determined that pre-trial detainees, on the other hand, are only placed in custody to ensure that they do not flee.¹⁹⁹ Second, the court determined that the nature of the facility is dispositive.²⁰⁰ That is, the court emphasized that individuals involuntarily committed to hospitals are surrounded by appropriate treatment staff, while pre-trial detainees are placed in jails, which the court noted are not always adequately staffed with medical professionals.²⁰¹ Lastly, the court found relevant that patients that are placed in facilities usually stay for long periods of time, while pre-trial detainees are placed in facilities for

¹⁹³ *Patten*, 274 F.3d at 831.

¹⁹⁴ *Id.* at 831–33.

¹⁹⁵ *Id.* at 833.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 840–41.

¹⁹⁸ *Patten*, 274 F.3d at 840–41.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 841.

²⁰¹ *Id.*

only short periods of time.²⁰² The court concluded that these factors justified the use of the professional judgement standard over the deliberate indifference standard in the context of civil commitment.²⁰³ Unfortunately, despite the opinion of medical experts and the United States Department of Justice, the court still upheld a summary judgment in favor of the defendants, finding that the evidence provided “nothing more than ordinary medical negligence.”²⁰⁴

In 2021, the Fourth Circuit addressed *Doe v. Shenandoah Valley*, a case that may prove to be a catalyst for change for the assessment of constitutionally adequate mental health care for youth in juvenile facilities.²⁰⁵ In this case, the plaintiffs, unaccompanied immigrant children detained at Shenandoah Valley Juvenile Center (SVJC), challenged the mental health care they received while detained.²⁰⁶ SVJC is a juvenile detention facility that houses both unaccompanied immigrant children and children charged with crimes who are waiting for their cases to be heard.²⁰⁷

The children involved in this case experienced horrible trauma, abuse, and lack of medical care both outside and inside the juvenile center.²⁰⁸ Prior to entering the juvenile center, one child witnessed the gruesome murder of many of his friends, was horribly beaten and robbed, and his mother abandoned him.²⁰⁹ In addition, the children suffered physical abuse by detention officials, repeatedly self-harmed, attempted suicide, and deeply suffered from other serious mental health issues.²¹⁰ Multiple clinicians from SVJC testified before a Senate Subcommittee on Investigations that a majority of the unaccompanied immigrant children at the facility had high rates of trauma

²⁰² *Id.*

²⁰³ *Id.* at 842.

²⁰⁴ *Patten*, 274 F.3d at 845–46.

²⁰⁵ *Doe v. Shenandoah Valley Juvenile Center Commission*, 985 F.3d 327, 327 (4th Cir. 2021).

²⁰⁶ *Id.* at 329.

²⁰⁷ *Id.* at 329–30.

²⁰⁸ *Id.* at 329.

²⁰⁹ *Id.* at 331.

²¹⁰ *Id.* at 333–34.

and serious mental health needs.²¹¹ Though the facility provided some mental health services, SVJC staff admitted that it did not have the capacity to provide treatment to children with severe mental health issues.²¹²

The court held that the professional judgment standard applied to these claims because of the government’s clear duty to provide unaccompanied children in its custody care, and “given the unique psychological needs of children.”²¹³ Notably, the court treated the clear developmental differences between children and adults, identified in *Miller* and *Roper*, as relevant to the determination of which standard should apply—a constitutional discussion not readily seen outside the sentencing context.²¹⁴ Citing to Supreme Court decisions, the Fourth Circuit reasoned that the professional judgment standard is warranted because of the vulnerabilities of children and their psychological differences.²¹⁵

The court further noted that the professional judgment standard “presents a lower standard of culpability” as compared to the deliberate indifference standard.²¹⁶ Importantly, it reasoned that a court “must do more than determine that some treatment has been provided—it must determine whether the treatment provided is adequate to address a person’s needs under a relevant standard of professional judgment.”²¹⁷ The Fourth Circuit identified that children have been treated constitutionally different, as a result of their psychological and developmental differences, in the sentencing context. The court reasoned that these differences, in addition to the government’s duty to care for unaccompanied children, justified the use of the professional judgement standard—a

²¹¹ *Shenandoah Valley*, 985 F.3d at 330.

²¹² *Id.* at 331.

²¹³ *Id.* at 342.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.* at 343.

²¹⁷ *Shenandoah Valley*, 985 F.3d at 344.

standard that is not only easier for children to meet,²¹⁸ but would likely compel juvenile facilities to develop and implement constitutionally adequate mental health treatment services in facilities.

VI. THE PROMISE OF THE PROFESSIONAL JUDGMENT STANDARD

A. *The Necessity of the Professional Judgment Standard*

Following the heels of *Doe v. Shenandoah Valley*, the professional judgment standard should be expanded to all children constitutionally challenging the mental health treatment provided to them in juvenile facilities. The vulnerability of children, the underlying purpose of the juvenile justice system, and relevant brain science and rationales underlying Eighth Amendment jurisprudence, clearly demonstrate the appropriateness of utilizing this standard for youth, in order to ensure that youth are obtaining adequate mental health treatment while they are detained. Both statistics and case law have demonstrated society's particular need to better and adequately care for children's mental health while they are detained in juvenile facilities.²¹⁹

Justice-involved youth are clearly vulnerable to trauma, abuse and mental illness that are only intensified by the lack of treatment provided in juvenile facilities. The child in *Graham* began using drugs and alcohol at the age of nine and had two parents that both struggled with substance abuse.²²⁰ The child in *Miller* was in and out of the foster care system and suffered abuse from his step-father.²²¹ The children in *Shenandoah Valley* experienced horrible abuse both in and outside of the juvenile facility, and attempted suicide multiple times.²²² These personal accounts, along with statistics that show these stories are quite common, demonstrate that a majority of justice-

²¹⁸ *Id.* at 343.

²¹⁹ *Supra* Part III and IV.

²²⁰ *Graham v. Florida*, 560 U.S. 48, 53 (2010).

²²¹ *Miller v. Alabama*, 567 U.S. 460, 467–68 (2012).

²²² *Doe v. Shenandoah Valley Juvenile Center Commission*, 985 F.3d 327, 333–34 (4th Cir. 2021).

involved youth have a diagnosable mental health disorder, and are in desperate need of adequate mental health treatment.

The federal government admits and research demonstrates that juvenile facilities have “become the de facto mental health system for American youth.”²²³ Despite this, research has illustrated that staff in juvenile facilities are not equipped to treat the mental health conditions that many justice-involved youth exhibit.²²⁴ The professional judgment standard will hold juvenile facilities and professionals in the facilities more accountable than the deliberate indifference standard. Utilizing the professional judgment standard will allow courts to determine whether treatment provided to youth in facilities was adequate in accordance with the general professional standard of care; if the treatment provided was not appropriate and substantially diverged from accepted professional judgement, courts can hold the professionals and the juvenile facility accountable, while also promoting and compelling juvenile facilities to provide better treatment options for the children in the facilities.²²⁵

Importantly, the professional judgment standard does not require proof of subjective intent, unlike the deliberate indifference standard. Instead, a court objectively assesses whether treatment provided was a “substantial departure from acceptable professional judgment.”²²⁶ An objective analysis of the treatment provided offers greater protection to youth in facilities, because a court can examine the treatment provided, compare it to accepted professional standards of care, and then determine whether a constitutional violation exists.

By comparison, the deliberate indifference standard does not necessarily consider the treatment provided to youth or lack thereof, but rather focuses on the staff and the facility and

²²³ Swank, *supra* note 80, at 380.

²²⁴ *Supra* Part III.B

²²⁵ *Shenandoah Valley*, 985 F.3d at 343.

²²⁶ *Id.* at 342.

whether they chose to subjectively ignore a risk. This analysis pulls the focus away from whether adequate treatment was provided, and instead focuses on the mindset of the individual or facility accused, which is more difficult to ascertain. Courts' utilization of the professional judgment standard may help ensure facilities are equipped to provide a professionally adequate standard of care to justice-involved youth so that the facilities avoid liability from constitutional claims, resulting in children having greater access to adequate mental health treatment while confined to juvenile detention facilities.

B. Expanding the Constitutional Protections Provided to Children

The reasoning that the deliberate indifference standard should apply to justice-involved youth, simply because “detainees are entitled to no less protection than a convicted prisoner,” does not align with the principles underlying recent case law involving children and the constitutional protections to which they are entitled.²²⁷ In the sentencing context, the Supreme Court established that children should be treated differently under the Constitution with respect to inflicting the most extreme sentences.²²⁸ The reasoning of *Miller* and *Graham* that children should be given more protection in sentencing decisions under the Constitution due to their vulnerabilities and psychological differences between children and adults can be utilized to justify the use of the professional judgment standard, like in *Doe v. Shenandoah Valley*.

The Supreme Court consistently asserted in the sentencing cases that children are still psychologically developing and are more susceptible to rehabilitation, and as a result should not be subjected to the harshest sentences that may be imposed on adults. Because children are still psychologically developing, making them more vulnerable to negative environments, and potentially more responsive to rehabilitation, courts should also use the professional judgment

²²⁷ A.M. v. Luzerne County Juvenile Detention Center, 372 F.3d 584, 584 (3d Cir. 2004).

²²⁸ *Supra* Part II.

standard to adjudicate mental health claims. The professional judgment standard will help ensure that facilities are meeting children’s psychological needs and addressing their vulnerabilities, and providing the treatment and rehabilitation that they need. A child cannot be more responsive to treatment and rehabilitation, if they never adequately obtain it in the first place.

C. Using Fourth Circuit Decisions as a Model for Change

As demonstrated previously, the Fourth Circuit’s use and rationale for applying the professional judgment standard can serve as a catalyst for change across all courts. The decision in *Doe v. Shenandoah Valley* specifically should serve as a model for courts nationwide when analyzing youth’s constitutional mental health claims. Though the decision specifically involved unaccompanied immigrant youth, its reasoning and the Fourth Circuit’s use of the *Patten* factors can and should be expanded to claims brought by nonimmigrant justice-involved youth as well.

In regards to the first factor in the *Patten* reasoning²²⁹—reason for detention—many researchers have found that due to the lack of access to mental health care in many communities, juvenile justice facilities have become a place where parents and communities have turned to, to provide youth the mental health care they need.²³⁰ The Office of Juvenile Justice and Delinquency Prevention has also made clear that juvenile centers must take on the responsibility of providing mental health treatment for a child that is placed in a residential facility.²³¹ Therefore, juvenile facilities are not only supposed to take justice-involved youth into custody for punitive measures, but are supposed to provide treatment and rehabilitation—services often not available to youth in the community.

²²⁹ *Patten*, 274 F.3d at 840.

²³⁰ Swank, *supra* note 80, at 380; Seiter, *supra* note 2, at 4.

²³¹ *Juveniles in Corrections*, *supra* note 62.

As for the second factor in the *Patten* reasoning²³²—nature of the facility—most detention facilities provide some type of mental health services for youth in detention.²³³ The fact that juvenile facilities are not hospitals, does not mean that medical treatment is not provided to youth at all. Research has demonstrated, however, that often the medical care provided at juvenile facilities is inadequate. Utilizing the professional judgment standard would be a step forward in ensuring that adequate treatment is provided to vulnerable youth.²³⁴

The last factor in the *Patten* reasoning²³⁵—length of time at the facility— also provides support for applying the professional judgment standard. Justice-involved youth end up spending months at a juvenile facility, with some youth spending over a year in a facility.²³⁶ As research has demonstrated, youth often experience even more trauma while in the residential facilities, even if they are there for a shorter period of time, exacerbating mental health struggles they either previously had or resulting in new mental health disorders.²³⁷ Any length of time spent at a residential facility will be traumatic for youth if they are not provided the mental health treatment they need.

The Fourth Circuit in *Doe v. Shenandoah Valley* also asserts that the psychological and development vulnerabilities of children clearly support the use of the professional judgment standard when evaluating children’s constitutional mental health claims. As noted previously, a petition for certiorari has recently been denied by the United States Supreme Court as of December

²³² *Patten*, 274 F.3d. at 841.

²³³ *Percent of Facilities Providing Treatment Services, by Facility Type, 2018*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK (May 15, 2020), <https://www.ojjdp.gov/ojstatbb/corrections/qa08521.asp?qaDate=2018>.

²³⁴ *Intersection between Mental Health and the Juvenile Justice System*, *supra* note 9.

²³⁵ *Patten*, 274 F.3d. at 841.

²³⁶ *Median Days in Placement Since Admission, By Placement Status, 1997-2019*, OFF. OF JUV. JUST. & DELINQ. PREVENTION: STAT. BRIEFING BOOK (May 21, 2021), <https://www.ojjdp.gov/ojstatbb/corrections/qa08405.asp?qaDate=2019>.

²³⁷ See Gonzalez, *supra* note 79, at 59–60; Buckingham, *supra* note 44, at 64–65; Fondacaro, *supra* note 25, at 705.

6, 2021.²³⁸ If the Supreme Court chose to hear this case, it could have potentially provided guidance and support on expanding the professional judgment standard to all youth detained in juvenile facilities, since it is a circumstance that has yet to be discussed by the Court. The Supreme Court’s denial of the petition, however, certainly does not foreclose the use of the professional judgment standard in *Doe v. Shenandoah Valley* and more federal courts adopting it. The court in *Doe v. Shenandoah Valley* decided the case based on the care due to unaccompanied immigrant children, however as demonstrated above, the *Patten* factors and the discussion of children’s psychological differences also apply to all youth in juvenile facilities, thereby justifying the expansion of the professional judgment standard to all youth currently detained in juvenile facilities; an approach and rationale that should be adopted by all courts throughout the country.

D. Continuing Barriers

It is important to note that though the professional judgment standard would make it less difficult for youth to successfully demonstrate that their constitutional right to mental health treatment has been violated, this standard will not solve all the issues that plague juvenile justice facilities. A judicial consensus to apply the professional judgment standard will be the first step to applying a consistent standard. The next step would be to determine what a “substantial departure” from professional standards exactly means. The court in *Patten* grappled with this question and whether a departure from professional standards should be determined through a gross negligence standard, a recklessness standard, or something closer to intentional conduct.²³⁹ The professional judgment standard though is a clearly objective standard, unlike the deliberate indifference standard which has a subjective component. Therefore, courts should move away

²³⁸ *Shenandoah Valley Juvenile Center Commission v. John Doe*, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/shenandoah-valley-juvenile-center-commission-v-john-doe/> (last visited Jan. 14, 2021)

²³⁹ *Patten*, 274 F.3d. at 845–46.

from requiring the “substantial departure” from the professional standard to be somewhere closer to intentional conduct.

The court in *Shenandoah Valley* noted that “it must determine whether the treatment provided is adequate to address a person’s needs under a relevant standard of professional judgment.”²⁴⁰ This language indicates a standard that can be construed to be closer to negligence. Analyzing the professional judgment of staff in juvenile facilities in contrast to professional standards of care utilizing a framework more closely resembling negligence, would provide the greatest protection to justice-involved youth. Not only would children potentially have a greater chance of succeeding on their claims, but it would also compel juvenile facilities to implement more effective and adequate mental health treatment since courts will be holding facilities more accountable.

Moreover, the dissent in *Shenandoah Valley* highlights the potential barriers to broadening the application of the professional judgment standard to youth in detention facilities.²⁴¹ Judge Wilkinson argues that the purpose of detainment in this case was not rehabilitative and that the facility was not capable of providing the mental health services that are available in treatment facilities and hospitals, ultimately finding that “courts should not use vague constitutional ideals to force governmental facilities to fundamentally alter their mission.”²⁴² As mentioned previously, however, many children are in fact placed in juvenile facilities in order to obtain access to mental health treatment that they do not have in their community, and the fact that effective mental health treatment is not currently available in juvenile facilities is the exact reason for the need to apply the professional judgment standard.²⁴³ Children have a right to medical care when they are placed

²⁴⁰ Doe v. Shenandoah Valley Juvenile Center Commission, 985 F.3d 327, 344 (4th Cir. 2021).

²⁴¹ *Id.* 348–49 (Wilkinson, J., dissenting).

²⁴² *Id.* at 351.

²⁴³ Seiter, *supra* note 2, at 4.

in a juvenile facility; and often times they are placed in a facility to obtain that care, therefore courts should hold facilities accountable when the facilities do not provide a constitutionally adequate level of mental healthcare. The professional judgment standard is currently the better standard to employ over the deliberate indifference standard to not only ensure that facilities are held accountable for their actions, but also so that facilities are compelled to better equip their facilities with the mental health treatment that the children so desperately need.

VII. CONCLUSION

Research and case law support the use of the professional judgment standard for constitutional mental health claims brought by justice-involved youth currently detained at juvenile residential facilities. Though the professional judgment standard is in no way a perfect standard, broader adoption of it in cases involving children can provide potential change on the national level by ensuring that detained justice-involved youth obtain adequate mental health treatment that they so desperately need. Though this Comment does not address applying the professional judgment standard to adult claims, the lack of discussion is not meant to suggest that the professional judgment standard should not be utilized for adult claims as well. It is clear that adults involved with the criminal justice system also struggle substantially with mental health illnesses and disorders and deserve adequate mental health treatment too—but the standard to be utilized to ensure this treatment is not explored in this Comment. The Fourth Circuit's adoption of the professional judgment standard, a decision the Supreme Court chose not to hear or overturn, should be the approach utilized for justice-involved youth who challenge the constitutional adequacy of the mental health treatment, or lack thereof, they receive while detained. The use of the professional judgment standard is supported by research, and case law and can potentially serve as a catalyst for the reformation of the juvenile justice system.