
CRUEL AND UNUSUAL PUNISHMENT: A LOOK AT THE JUVENILE CRIMINAL JUSTICE SYSTEM

ABSTRACT

The United States incarcerates more individuals than any other country in the world. Juveniles, and in particular juveniles of color, are caught up in this adult criminal justice system—losing their basic human rights and future opportunities—due to the ineffective tough-on-crime mentality of policing and sentencing in the United States. Juveniles are more impulsive due to their brains’ continued growth and development; therefore, the purpose of the juvenile justice system is rehabilitation. However, the current justice system does not consistently treat juveniles in a rehabilitative manner.

This Note proposes legislative changes in Iowa to end the sentencing of juveniles as adults in the criminal justice system. Charging and sentencing juveniles as adults jeopardizes success for them in the future and compromises the overall safety of the community due to the likely threat of recidivism. This becomes cruel and unusual punishment for both the communities and the juveniles.

Juveniles are not treated as adults by the government in any other aspect of life, and they do not receive adult treatment in any other context. However, when it comes to the criminal justice system, they are treated and held to the same standards as adults despite their brains not being fully developed. This Note seeks to clarify the distinction between the behavior of adults and juveniles when it comes to imposing criminal punishments and calls on the state of Iowa to repeal and amend the statutes providing for juveniles to be tried in adult court.

TABLE OF CONTENTS

I. Introduction	232
II. What Is the Purpose of the Criminal Justice System?	234
A. Fundamental Rights: Cruel and Unusual Punishment	234
B. What Is Punishment?	235
C. What Is Rehabilitation?	237
III. Juveniles in Adult Court	237
A. History of the Juvenile System	238
B. Safety for the Kids: Recidivism	240
1. Kids in Adult Prisons—Recidivism	241
2. Consequences of Incarcerating Juveniles with Adults	244
C. Safety for the Community: Cost on Society	245

IV. What Are Other States Doing?: National Comparison.....	246
A. California	247
B. Vermont	248
C. Indiana	249
D. Arizona.....	250
E. South Carolina	250
F. Louisiana.....	251
G. Washington, D.C.....	252
H. The Federal Government	252
I. Other Movements.....	253
V. What Should Iowa Do?: Implications in Iowa.....	254
A. What Is Iowa Currently Doing?.....	254
B. Why Should Iowa Stop Allowing Juveniles into Adult Court?.....	257
C. What Are Alternative Forms of Rehabilitation?.....	260
1. Community-Based Supervision	260
2. Community Service.....	261
3. Restorative Justice	263
4. Educational Programming	264
5. Creative Arts Rehabilitation Programming.....	265
D. Proposed Legislation for Iowa	267
E. Potential Arguments Against the Proposed Legislation.....	268
VI. Conclusion.....	270

I. INTRODUCTION

Punishment serves a contradictory purpose when the sanctions imposed ultimately cause more crime in communities through recidivism and increase economic strain on the public forced to fund overpopulated prisons and increased police presence in communities. The criminal justice system should be held accountable to not only help rehabilitate but also to help stop the marginalization of the incarcerated population, facilitate a smooth reentry into society, and discourage recidivism.

Julio Mendez¹ was a 14-year-old Latinx boy when he first encountered the criminal justice system.² He was a star soccer player, living a fun-loving life, with his dreams set on collegiate athletics. He could get there; he was already being scouted by universities. But one day, Julio came home to his little sister sobbing; she had been raped. After weeks of waiting for the police to act and arrest the rapist, Julio took matters into his own hands. He marched over to the rapist's house with a baseball bat and beat the rapist. Julio was immediately arrested, charged as an adult with aggravated assault, and sentenced to 10 years in adult prison despite being only 14 years old. Surrounded by recidivist adult role models, Julio began to learn "tricks of the trade" and began to feel "at home." Once his sentence was up, he was released—only to be arrested shortly after for marijuana possession. Since then, Julio has spent his life in and out of the correctional setting. Now, at age 37 and as a father of two, he is currently sitting in a jail cell facing 14 more years in prison, leaving his children without a father.

Countless stories like Julio's exist as a result of juveniles being tried and punished by the adult criminal justice system and having their lives and futures gravely impacted. Seeking to understand and address these negative effects, this Note will discuss the general theories of punishment in Part II; the history and repercussions of juveniles in adult court in Part III; a national comparison on what other states are doing in response to this issue in Part IV; and a call for the Iowa legislature to take action in reconsidering the filing of juveniles into adult court in Part V.

1. Trigger warning: assault/battery and rape.

2. While this story is fictional, it is based on true stories, and it resembles countless stories of juveniles caught in the pattern of reoffending due to unfair treatment at a young age in the adult criminal justice system. Julio's story is representative of personal stories I have heard throughout my life and, in particular, through my experiences teaching rehabilitative classes at the local jail. For additional similar stories, see Renata Sago, *Charging Youths as Adults Can Be a 'Cruel Wake-Up Call.' Is There Another Way?*, NPR (Aug. 15, 2017) <https://www.npr.org/2017/08/15/542609000/sentenced-to-adult-hood-direct-file-laws-bypass-juvenile-justice-system> [<https://perma.cc/W4YP-XSMK>].

II. WHAT IS THE PURPOSE OF THE CRIMINAL JUSTICE SYSTEM?

A. Fundamental Rights: Cruel and Unusual Punishment

There are a few fundamental rights guaranteed to every citizen of the United States, such as: the right to vote,³ the right to marry,⁴ the right to contraception and abortion,⁵ the right to free speech,⁶ and the right to bear arms.⁷ There are further rights that are guaranteed to anyone subject to criminal investigation or facing criminal charges: the right to confront witnesses,⁸ the right to remain silent,⁹ the right against unreasonable search and seizure,¹⁰ and the right to due process of law before deprivation of life, liberty, and property.¹¹

Another fundamental right is the right to not be subjected to cruel and unusual punishment.¹² The U.S. Supreme Court found, “To determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to ‘the evolving standards of decency that mark the progress of a maturing society.’”¹³ Similar to so many other historical injustices in this country that have been rejected under this standard, prosecuting juveniles in the adult system no longer meets the “evolving standards of decency” our society has adopted.¹⁴ Neither the juvenile nor the adult criminal justice systems permit cruel and unusual punishment, but ultimately, these systems have fundamentally different goals—the adult system focuses on punishment, while the juvenile system focuses on rehabilitation.¹⁵

3. U.S. CONST. amends. XV, XIX, XXVI.

4. *See generally* Obergefell v. Hodges, 576 U.S. 644 (2015); Loving v. Virginia, 388 U.S. 1 (1967).

5. *See generally* Whole Woman’s Health v. Hellerstedt, 136 S. Ct. 2292 (2016); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992); Roe v. Wade, 410 U.S. 113 (1973); Griswold v. Connecticut, 381 U.S. 479 (1965).

6. U.S. CONST. amend. I.

7. *Id.* amend. II.

8. *Id.* amend. VI.

9. *Id.* amend. V.

10. *Id.* amend. IV.

11. *Id.* amends. V, XIV.

12. *Id.* amend. VIII.

13. Trop v. Dulles, 356 U.S. 86, 101 (1958).

14. *Cf. id.*

15. *In re M.M.C.*, 564 N.W.2d 9, 11 (Iowa 1997) (“We recognize the primary goal of juvenile justice in Iowa is rehabilitation, not punishment.”); *see also* State v. Null, 836

B. What Is Punishment?

There are many different reasons or theories for punishment.¹⁶ “The United States Supreme Court has recognized four legitimate penological justifications: retribution, deterrence, incapacitation, and rehabilitation.”¹⁷ General deterrence’s purpose is “detering society in general” rather than “detering the individual.”¹⁸ Specific deterrence, on the other hand, has the goal of “detering a particular [individual] from repeating criminal conduct or from committing any further crimes.”¹⁹ Incapacitation or removal is focused on “protecting society from those ‘persons deemed dangerous because of their past criminal conduct.’”²⁰ Finally, retribution is the concept that “the primary justification of punishment is always to be found in the fact that an offense has been committed which deserves punishment, not in any future advantage to be gained by its infliction.”²¹ This is the primary purpose of the adult criminal justice system: punishment. All of these theories of punishment remain bound by the fundamental right maintained by the Eighth Amendment—that the means applied not be “cruel and unusual.”²²

In addition to incarceration or some type of community supervision, punishment can take the form of fines, fees, and other court costs and penalties.²³ Another form of punishment is the “waiver” of constitutional

N.W.2d 41, 60 (Iowa 2013) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 n.11 (1982)) (“[A]dolescents ‘deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults.’”); *infra* Part II.B, II.C.

16. *State v. Oliver*, 812 N.W.2d 636, 646 (Iowa 2012). A question to ponder is what is the goal of incarceration? Is it punishment, retribution, public safety, or for the overall betterment of society? See generally Lester Holt, *Lester Holt: What I Learned from Spending Two Nights in a Maximum-Security Prison*, NBC NEWS (Sept. 6, 2019), <https://www.nbcnews.com/news/amp/ncna1050286> [<https://perma.cc/8565-R78T>].

17. *Oliver*, 812 N.W.2d at 646.

18. Rosalind K. Kelley, *Sentenced to Wear the Scarlet Letter: Judicial Innovations in Sentencing—Are They Constitutional?*, 93 DICK. L. REV. 759, 780 (1989).

19. *Id.* at 779.

20. *Id.* at 782.

21. *Id.* at 783 (quoting WAYNE R. LAFAVE & AUSTIN W. SCOTT, SUBSTANTIVE CRIMINAL LAW § 1.5(a)(6) (1986)).

22. U.S. CONST. amend. VIII.

23. Matthew Menendez & Lauren-Brooke Eisen, *The Steep Costs of Criminal Justice Fees and Fines*, BRENNAN CTR. FOR JUST. (Nov. 21, 2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines> [<https://perma.cc/UN66-YW9S>]. This is arguably a detrimental and unjust burden, as many individuals trying to reenter society are overwhelmed with this debt, especially when

rights, such as the right to vote,²⁴ the right to bear arms,²⁵ the right to travel abroad,²⁶ the right to unlimited free speech,²⁷ and the right to privacy²⁸ when the individual becomes caught up in the carceral system. But “[c]riminal convictions should not lead to the denial of basic rights and human dignity,” and trying juveniles as adults leads to a denial of basic human rights and human dignity.²⁹

The juvenile justice system should work for “correction and redemption to society of delinquent children,” while the adult system is geared more toward public safety and punitive measures.³⁰ In other words, the primary purpose of the juvenile criminal justice system should be rehabilitation.³¹

they have not found employment and they are navigating other reentry complications. *Id.*; see, e.g., *Economics of Incarceration*, PRISON POL’Y INITIATIVE, https://www.prisonpolicy.org/research/economics_of_incarceration/ [<https://perma.cc/32BS-VLD7>].

24. Jean Chung, *Felony Disenfranchisement: A Primer*, SENT’G PROJECT (June 27, 2019), <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/> [<https://perma.cc/R9GS-UAPH>]. Not allowing individuals to vote causes disenfranchisement and sends a message that their voices do not matter. *Id.* Moreover, the right to vote does not correlate to most crimes. *Id.* In Iowa, even though Governor Kim Reynolds recently signed an Executive Order allowing persons convicted of felonies the right to vote upon completion of their sentence, there is still a significant incarcerated population who cannot vote. *Id.*; *Gov. Reynolds Signs Executive Order to Restore Voting Rights of Felons Who Have Completed Their Sentence*, OFF. GOVERNOR IOWA (Aug. 5, 2020), <https://governor.iowa.gov/press-release/gov-reynolds-signs-executive-order-to-restore-voting-rights-of-felons-who-have> [<https://perma.cc/TWD3-YVH3>].

25. *The Rights of Felons After Release*, COCHRAN FIRM (Oct. 2, 2018), <https://cochranfirm.com/rights-felons-release/> [<https://perma.cc/JNZ6-YDFZ>].

26. *Id.*

27. Eli Hager, *Does the First Amendment End at the Prison Gate?*, MARSHALL PROJECT (Oct. 25, 2016), <https://www.themarshallproject.org/2016/10/25/does-the-first-amendment-end-at-the-prison-gate> [<https://perma.cc/H5YY-GLXT>]. Censorship is a reality within the correctional setting. *Id.*

28. Darlene C. Goring, *Fourth Amendment—Prison Cells: Is There a Right to Privacy*, 75 J. CRIM. L. & CRIMINOLOGY 609, 609 (1984).

29. Jennifer Lackey, *The Measure of a Country Is How It Treats Its Prisoners. The U.S. Is Failing.*, WASH. POST (Feb. 6, 2019), https://www.washingtonpost.com/opinions/the-measure-of-a-country-is-how-it-treats-its-prisoners-the-us-is-failing/2019/02/06/8df29acc-2a1c-11e9-984d-9b8fba003e81_story.html?noredirect=on [<https://perma.cc/LH8Y-Z72H>].

30. *Metcalf v. Commonwealth*, 156 N.E.2d 649, 651 (Mass. 1959).

31. *See In re M.M.C.*, 564 N.W.2d 9, 11 (Iowa 1997).

C. What Is Rehabilitation?

Rehabilitation's goal is to "provid[e] the [individual] with appropriate treatment in order to modify anti-social behavior into acceptable conduct."³² Furthermore, "Successful rehabilitation of a defendant requires that sentences be tailored to fit the [individual] rather than the offense. Punishment, therefore, is justified under this theory only so far as the sentence will reform the individual into a productive member of society."³³

Ultimately, juveniles have less culpability.³⁴ Therefore, they do not deserve severe punishments because they have a "lack of maturity and an underdeveloped sense of responsibility";³⁵ they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and their characters are "not as well formed."³⁶ Furthermore, juveniles have the ability to change and adapt more than adults, and actions are less of "irretrievably depraved character" than adults.³⁷ All of these considerations point toward the need for more lenient punishments for juveniles and further emphasize the importance of rehabilitation programs and opportunities for these individuals.

III. JUVENILES IN ADULT COURT

The juvenile system was developed over the past century. Yet, juveniles are often still tried in adult court. Juveniles who have committed a crime are waived into adult court for the safety of the community, but when doing so, courts and legislatures must consider the full impact that trying juveniles in adult court has on the juveniles themselves, on their families, and on their communities. The greater well-being of the community may be better served with rehabilitation as the goal for all juveniles.

32. Kelley, *supra* note 18, at 780.

33. *Id.* at 781 (citation omitted).

34. Juvenile brains are not as developed as the adult counterparts due to their age. See Tim Requarth, *Neuroscience Is Changing the Debate over What Role Age Should Play in Courts*, NEWSWEEK (Apr. 18, 2016), <https://www.newsweek.com/2016/04/29/young-brains-neuroscience-juvenile-inmates-criminal-justice-449000.html> [https://perma.cc/RJK4-A2NW] (stating that even when people turn 18, they are not automatically fully mature).

35. *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

36. *Id.* at 569–70.

37. *Id.* at 570.

A. History of the Juvenile System

The juvenile system, perhaps surprisingly, has more than a century of history. The juvenile system first began in Illinois through the Illinois Juvenile Court Act of 1899.³⁸ The main focus of this juvenile system was on rehabilitation.³⁹ There was a bright line rule that youth under the age of 12 could not be placed in jail and serve time as adults who have convictions.⁴⁰ By 1925, all states followed suit—except Maine and Wyoming.⁴¹

In 1966, the Supreme Court began to hear key cases regarding the juvenile justice system.⁴² The Court held it is a violation of due process rights if juveniles do not have a hearing before being transferred into an adult criminal court from the juvenile system.⁴³ The Court also held that juveniles were guaranteed many of the rights associated with the adult criminal justice system.⁴⁴ In 1970, the standard of proof was raised in the juvenile justice system to beyond a reasonable doubt.⁴⁵ The previous standard, as shown in New York, was a preponderance of the evidence.⁴⁶

38. NAT'L RSCH. COUNCIL & INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE 157 (2001).

39. *Id.* ("The focus of the court was rehabilitation rather than punishment.").

40. *Id.*

41. *See id.* In 1904, Iowa followed suit, establishing a separate juvenile court system. Shannon O'Connor, *How Did Iowa Women Activists Lobby for the Passage of Juvenile Court Law in 1904?*, ALEXANDER STREET (2002), <https://documents.alexanderstreet.com/d/1000678923> [<https://perma.cc/KH3L-6G7M>]. It was a much more informal system than the adult criminal justice system. *Id.* Before this, juveniles were tried as adults in criminal court if they were over seven years old and capable of forming intent. *In re M.M.C.*, 564 N.W.2d 9, 10 (Iowa 1997). Maine and Wyoming now have juvenile justice systems. *Juvenile Cases*, STATE OF ME. JUD. BRANCH, https://www.courts.maine.gov/maine_courts/family/juvenile.html#:~:text=Maine%20Juvenile%20Court%20is%20the,under%2018%20years%20of%20age [<https://perma.cc/RB8B-F7E4>]; *Wyoming: Juvenile Justice Services*, JUV. JUST. GEOGRAPHY, POL'Y, PRAC. & STAT., <http://www.jjgps.org/juvenile-justice-services/wyoming#:~:text=Wyoming%20has%20a%20highly%20decentralized,detention%20is%20also%20locally%20administered> [<https://perma.cc/XUH7-6WBK>].

42. NAT'L RSCH. COUNCIL & INST. OF MED., *supra* note 38, at 158.

43. *Kent v. United States*, 383 U.S. 541, 561 (1966).

44. *See generally In re Gault*, 387 U.S. 1 (1967), *abrogated by* *Allen v. Illinois*, 478 U.S. 364 (1986).

45. *In re Winship*, 397 U.S. 358, 368 (1970).

46. *W. v. Fam. Ct.*, 247 N.E.2d 253, 257 (N.Y. 1969), *rev'd*, *In re Winship*, 397 U.S. 358 (1970).

In 1975, the Supreme Court decided juveniles could not be subjected to double jeopardy.⁴⁷ However, juveniles were still not entitled to a jury trial.⁴⁸ The Court listed 13 reasons why the jury trial is not required for juveniles.⁴⁹ Some of the reasons focused on concerns about jury trials: facilitating an adversarial process; being unnecessary for every trial; being unhelpful in fact-finding; creating more delay in the proceedings; and needlessly equating juvenile proceedings with criminal trials.⁵⁰

In 1974, Congress created the federal Office of Juvenile Justice and Delinquency Prevention within the Department of Justice (OJJDP).⁵¹ The goal of OJJDP today is to “support local and state efforts to prevent delinquency and improve the juvenile justice system.”⁵² The OJJDP works to achieve the goals of the Juvenile Justice and Delinquency Prevention Act,⁵³ particularly by creating accountability and providing the necessary services for the juvenile system.⁵⁴

In the last 15 years, the Supreme Court has determined juveniles deserve better treatment, meaning less punitive punishments.⁵⁵ In *Graham v. Florida*, the Court held the Eighth Amendment does not allow for courts to determine juveniles do not have the option for release—the option to

47. *Breed v. Jones*, 421 U.S. 519, 541 (1975).

48. *McKeiver v. Pennsylvania*, 403 U.S. 528, 545–50 (1971).

49. *Id.*

50. *Id.*

51. Juvenile Justice and Delinquency Prevention Act, 34 U.S.C. §§ 11101–11322 (2018).

52. *About OJJDP*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, <https://ojjdp.ojp.gov/about> [<https://perma.cc/H2AZ-3AZ8>].

53. Juvenile Justice and Delinquency Prevention Act, 34 U.S.C. §§ 11101–11322 (2018). This Act’s focus is on providing a planning and advisory system for juvenile justice, funding for delinquency prevention and intervention, and the operation of the OJJDP “which is dedicated to training, technical assistance, model programs, and research and evaluation, to support state and local efforts.” *Juvenile Justice and Delinquency Prevention Act, History of the JJDP Act*, COAL. FOR JUV. JUST., <http://www.juvjustice.org/federal-policy/juvenile-justice-and-delinquency-prevention-act> [<https://perma.cc/Q428-HGJS>].

54. *About OJJDP*, *supra* note 52. The office’s services, including various programming, aim to address the needs of juveniles and their families. *Id.*

55. *See generally* *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).

mend their ways and improve their lives.⁵⁶ The Court has further found, “The Eighth and Fourteenth Amendments forbid imposition of the death penalty on [individuals] who were under the age of 18 when their crimes were committed.”⁵⁷ A mandatory life-without-parole sentence of a juvenile for murder has also been considered cruel and unusual punishment.⁵⁸

B. *Safety for the Kids: Recidivism*

Why are juveniles considered “adult” enough to be punished as adults? Although they often receive lesser sentences, they are punished harshly with

56. *Graham*, 560 U.S. at 79. Graham was a juvenile who was facing a life sentence without the possibility of parole for a nonhomicidal crime. *Id.* at 52–53. At age 16, Graham and a couple friends attempted to commit a robbery. *Id.* at 53. Graham was charged as an adult under Florida law. *Id.* The court accepted his plea deal and sentenced him to three years of probation. *Id.* at 54. Six months later, Graham was arrested again for a home invasion robbery, therefore violating his probation. *Id.* At trial he was found guilty on all counts and sentenced to the maximum sentence for the offenses—life imprisonment. *Id.* at 57. The Court determined juveniles cannot be sentenced to life without parole for nonhomicidal offenses. *Id.* at 82.

57. *Roper*, 543 U.S. at 578. Simmons, at age 17, committed murder. *Id.* at 556. There is little dispute the murder was premeditated. *Id.* After the murder, Simmons bragged about the act, and he was even willing to reenact the crime scene as part of the interrogation. *Id.* at 557. The jury recommended the death penalty, and the judge followed suit. *Id.* at 558. He was then sentenced to death after his trial. *Id.* at 556. The Court held the death penalty is “disproportionate punishment for [individuals] under 18.” *Id.* at 575.

58. *Miller*, 567 U.S. at 489. Arkansas law allowed juveniles to be transferred to adult court when they were over the age of 14. *Id.* at 466. The petitioner, Jackson, at age 14, and two other boys, one of whom brought along a sawed-off shotgun, went to rob a video store, and one of the other boys shot the store clerk, killing her. *Id.* at 465–66. Jackson wanted to move the case back into juvenile court, but the court denied the request. *Id.* at 466. Jackson was sentenced to life without the possibility of parole. *Id.* The other petitioner in this case, Miller, was also 14 years old. *Id.* at 467. A drug deal went awry, and Miller and his friend beat the neighbor, and later came back and set fires to cover up the crime scene; the neighbor died from the injuries. *Id.* at 468. Miller was also charged as an adult, and sentenced to life without parole, the mandatory minimum. *Id.* at 469. The Court held that “requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory-sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment’s ban on cruel and unusual punishment.” *Id.* at 489. Similarly, the Court has found that individuals with intellectual disabilities have a lessened culpability, and thus are not fully responsible for their actions due to their reduced capacity to distinguish right from wrong. *Atkins v. Virginia*, 536 U.S. 304, 318 (2002). This case determined it was cruel and unusual punishment to subject these individuals to the death penalty. *Id.* at 319.

no real opportunity for rehabilitation.⁵⁹ Treating juveniles as adults in the criminal justice system with no opportunities for rehabilitation contributes to high rates of recidivism, which goes against the purpose of the juvenile justice system.⁶⁰

1. Kids in Adult Prisons—Recidivism

In 2000, “3,892 kids were confined in adult prisons” and “by 2016 this number had fallen to 956—still far too high.”⁶¹ This data may not capture the true numbers of juveniles in adult prisons, as “[s]ome of the decline in youth incarceration, however, is the result of youths aging out of the statistics but remaining behind bars for crimes committed before they were eighteen.”⁶²

Following a juvenile’s release, recidivism poses a critical problem in the juvenile justice system. Incarceration and detention create a higher likelihood juveniles will “continue to engage in delinquent behavior,”⁶³ largely due to “the experience of incarceration,”⁶⁴ which counterproductively continues to compromise public safety. Illustrating the impact of juveniles’ experience behind bars:

Incarceration has serious, harmful effects on a person’s mental and physical health, their economic and social prospects, their relationships, and on the people around them. This is true for adults, of course, but the experience of being removed from their homes and locked up is even more damaging for youth, who are in a critical stage of development and are more vulnerable to abuse.⁶⁵

59. See Maddy Troilo, *Locking up Youth with Adults: An Update*, PRISON POL’Y INITIATIVE (Feb. 27, 2018), <https://www.prisonpolicy.org/blog/2018/02/27/youth/> [<https://perma.cc/PH4Y-KT6V>].

60. See *id.*

61. *Id.*

62. *Id.*

63. Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, JUST. POL’Y INST., http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf [<https://perma.cc/Y3F4-9WPP>]; see also Edward P. Mulvey, *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, OFF. JUV. JUST. DELINQ. PREVENTION (Mar. 2011), <https://www.ojp.gov/library/publications/highlights-pathways-desistance-longitudinal-study-serious-adolescent-offenders> [<https://perma.cc/A5BF-P4VS>].

64. Holman & Ziedenberg, *supra* note 63, at 4.

65. Wendy Sawyer, *Youth Confinement: The Whole Pie*, PRISON POL’Y INITIATIVE

Furthermore, race plays a significant role in juvenile arrests and convictions.⁶⁶ According to a report conducted by The Sentencing Project in 2017, “Black youth were more than five times as likely to be detained or committed [to juvenile facilities] compared to white youth.”⁶⁷ The Equal Justice Initiative notes:

Black youth are burdened by a presumption of guilt and dangerousness—a legacy of our history of racial injustice that marks youth of color for disparately frequent stops, searches, and violence and leads to higher rates of childhood suspension, expulsion, and arrest at school; disproportionate contact with the juvenile justice system; harsher charging decisions and disadvantaged plea negotiations; a greater likelihood of being denied bail and diversion; an increased risk of wrongful convictions and unfair sentences; and higher rates of probation and parole revocation.⁶⁸

With Black youth having a higher likelihood of arrest and incarceration, the “link between detention and increased rates of recidivism” has a far greater impact on them than other races.⁶⁹

(Feb. 27, 2018), <https://www.prisonpolicy.org/reports/youth2018.html> [<https://perma.cc/N4NZ-58SU>] [hereinafter Sawyer, 2018]. Prison Policy Initiative has issued a more updated report using data from 2019. Wendy Sawyer, *Youth Confinement: The Whole Pie 2019*, PRISON POL’Y INITIATIVE (Dec. 19, 2019), <https://www.prisonpolicy.org/reports/youth2019.html> [<https://perma.cc/XUJ9-23QJ>] [hereinafter Sawyer, 2019].

66. See *Black Disparities in Youth Incarceration*, SENT’G PROJECT (Sept. 12, 2017), <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/> [<https://perma.cc/V8B5-P45H>].

67. *Id.*; see also Joshua Rovner, *Racial Disparities in Youth Commitments and Arrests*, SENT’G PROJECT (Apr. 1, 2016), <https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/> [<https://perma.cc/XSS3-8AGS>].

68. *Black Children Five Times More Likely than White Youth to Be Incarcerated*, EQUAL JUST. INITIATIVE (Sept. 14, 2017), <https://eji.org/news/black-children-five-times-more-likely-than-whites-to-be-incarcerated/> [<https://perma.cc/8VCJ-A3KN>].

69. Barbara Robles-Ramamurthy & Clarence Watson, *Examining Racial Disparities in Juvenile Justice*, 47 J. AM. ACAD. PSYCHIATRY & L. 1, 4 (2019), <http://jaapl.org/content/jaapl/early/2019/02/13/JAAPL.003828-19.full.pdf> [<https://perma.cc/9GET-YRDY>]. Iowa, in particular, has substantial racial disparities when it comes to arrests and convictions, being ranked by the ACLU as the fifth worst state for racial disparities in marijuana arrests. Andrea May Sahouri, *Iowa Ranks Fifth-Worst State in Racial Disparities for Marijuana Arrests*, ACLU Reports, DES MOINES REG. (Apr. 20, 2020), <https://www.desmoinesregister.com/story/news/crime-and-courts/2020/04/20/ac-lu-iowa-among-worst-nation-racial-disparities-marijuana-arrests/5155632002/> [<https://perma.cc/XZM3-MAJ6>]; *Iowa Profile*, PRISON POL’Y INITIATIVE, <https://www.prisonpolicy.org/profiles/IA.html> [<https://perma.cc/2WW8-JFGG>]. This is actually a slight

Not only are Black youth more prone to arrests and convictions, they are more likely to be tried in adult court.⁷⁰ In 2015, black youth made up 14 percent of the youth population in the United States, but they made up 47.3 percent of youth transferred by juvenile judges into adult court across the nation.⁷¹ The same year, there were at least 75,900 juveniles who were tried as adults.⁷² In 2017, in Iowa, there were 255 juveniles waived into adult court, 31.4 percent of them were black.⁷³ Meanwhile Iowa's black population is 4.1 percent.⁷⁴ Black youth are impacted the most by the direct file system, and therefore are disproportionately affected by the negative effects of the adult criminal justice and prison systems, including facing a higher likelihood of being housed in adult jails awaiting trial.⁷⁵

improvement from Iowa's previous claim to worst overall. *Iowa Ranks Worst in Nation in Racial Disparities of Marijuana Arrests*, ACLU (June 4, 2013), <https://www.aclu.org/press-releases/iowa-ranks-worst-nation-racial-disparities-marijuana-arrests> [<https://perma.cc/H8XH-Z9HU>].

70. Celeste Fremon, *Black Kids Far More Likely to Be Tried as Adults & Sentenced to Adult Prisons, According to New Report*, WITNESSLA (Sept. 25, 2018), <https://witnessla.com/as-youth-crime-continues-to-fall-black-kids-far-more-likely-to-be-tried-as-adult-s-according-to-new-report/> [<https://perma.cc/VVB2-KLPH>]; Christopher Huffaker, *In Many States, Black Juveniles End up in Adult Courts in High Numbers*, MIA. HERALD (June 22, 2017), <https://www.miamiherald.com/news/nation-world/national/article-157648774.html>.

71. Jeree Michele Thomas & Mel Wilson, *The Color of Juvenile Transfer: Policy & Practice Recommendations*, NAT'L ASS'N SOC. WORKERS 1 (2017), <https://www.socialworkers.org/LinkClick.aspx?fileticket=30n7g-nwam8%3d&portalid=0> [<https://perma.cc/VG8M-A9CC>]; see also Jeree Thomas, *The Prosecution of Black Youth as Adults*, CAMPAIGN FOR YOUTH JUST. (Feb. 1, 2018), <http://www.campaignforyouthjustice.org/voices/item/the-prosecution-of-black-youth-as-adults> [<https://perma.cc/4ZJ6-J26T>].

72. Michael Harriot, *Minor Damage: The Criminal Injustice of Black Youth Tried as Adults*, THE ROOT (Sept. 26, 2018), <https://www.theroot.com/minor-damage-the-criminal-injustice-of-black-youth-tri-1829311474> [<https://perma.cc/4RKN-ZZD4>] [hereinafter Harriot, *Minor Damage*]. Iowa does have legislation (H.F. 2393 from 2008) that addresses the inequalities and racial impact of sentencing for minority youth in its racial impact statement measure. IOWA CODE § 2.56 (2019). This allows for lawmakers to address the racial impact of sentencing and parole changes in proposed bills. *Id.*

73. Iowa Juv. Ct. Servs. Off., *Juvenile Delinquency: Annual Statistical Report 2017*, HUMANRIGHTS.IOWA.GOV 58 (Dec. 2018), <https://humanrights.iowa.gov/sites/default/files/media/2017%20State%20Annual%20Report%20for%20JCS.pdf> [<https://perma.cc/X233-5CNB>].

74. *Quick Facts: Iowa*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/IA> [<https://perma.cc/6LYG-DS9E>].

75. Harriot, *Minor Damage*, *supra* note 72; J. Thomas, A. Mallarino, I. Lyman & J.T. Minor, *Childhood Convicted: The Waiver of Iowa's Youth to the Adult Criminal Justice System*, CAMPAIGN FOR YOUTH JUST. 7 (2018), <http://cfyj.org/images/Childhood>

2. Consequences of Incarcerating Juveniles with Adults

When in an adult correctional facility, juveniles are more likely to commit suicide, more likely to be sexually assaulted, and more likely to have mental illnesses left untreated.⁷⁶

Compared to adults, [juveniles] are more likely to be harmed by exposure to stress and trauma, but they are also more likely to benefit from rehabilitation. In view of what we know about conditions of confinement in correctional facilities, it's no surprise that juveniles who are released from adult facilities are in worse shape, and are more likely to reoffend, than their counterparts with similar criminal histories who are released from facilities designed with adolescents in mind.⁷⁷

A significant reason for this is because adults in the criminal justice system become their teachers.⁷⁸

Additionally, juveniles do not have access to essential services to meet their developmental needs, such as psychiatric services, mental health treatment, and educational programming.⁷⁹ The juveniles are reduced in their ability to develop skills, experiences, and knowledge that is critical in becoming a functioning member of society.⁸⁰ Being locked up with adults in the criminal justice system robs the juveniles of educational opportunities

_Convicted_Report_-_FINAL.pdf [https://perma.cc/7G72-8P43] [hereinafter Campaign for Youth Justice, Iowa].

76. *Children in Adult Prisons*, EQUAL JUST. INITIATIVE, <https://eji.org/children-prison/children-adult-prisons> [https://perma.cc/X2MJ-U3KF] [hereinafter *Children in Adult Prisons*]; see also Vincent Schiraldi & Jason Zeidenberg, *The Risks Juveniles Face When They Are Incarcerated with Adults*, JUST. POL'Y INITIATIVE (1997) http://www.justicepolicy.org/images/upload/97-02_REP_RiskJuvenilesFace_JJ.pdf [https://perma.cc/6JLC-5FK9].

77. Jessica Lahey, *The Steep Costs of Keeping Juveniles in Adult Prisons*, ATLANTIC (Jan. 8, 2016), <https://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adult-prisons/423201/> [https://perma.cc/WY4K-FQC4] (quoting LAWRENCE STEINBERG, *AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE* 155 (2015)).

78. See Nicole Scialabba, *Should Juveniles Be Charged as Adults in the Criminal Justice System?*, A.B.A. (Oct. 3, 2016), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2016/should-juveniles-be-charged-as-adults/> [https://perma.cc/DE65-SHDG].

79. UCLA Juvenile Justice Project, *The Impact of Prosecuting Youth in the Adult Criminal Justice System: A Review of Literature*, UCLA SCH. L., 12, 32 (July 2010).

80. *Id.*

with their peers.⁸¹ Adult systems also do not typically provide basic “prison-survival skills or counseling” services for juveniles.⁸² It prevents them from developing critical life skills or dispute resolution abilities due to an absence of positive role models.⁸³ Attitudes and behaviors of juveniles are also impacted when transferred into the adult justice system, since the two systems have different purposes. These harsher circumstances “cost [the juveniles] something,” including a “loss of hope, safety, [and] respect.”⁸⁴ The juveniles in adult prison are prone to develop more violent behavior and engage in “criminal socialization.”⁸⁵ Once the juveniles are released from adult prison, they are not able to function as successfully in society, leading to an increased likelihood of recidivism.⁸⁶

C. Safety for the Community: Cost on Society

Sending juveniles into the adult criminal justice system creates a higher likelihood of recidivism and thus harms both juveniles and the public through longer and more expensive prison stays.⁸⁷ “While there may be an

81. See Mahari Simmonds, *Education Behind Bars: Can Young People Be Taught in Adult Justice System?*, JUV. JUST. INFO. EXCH. (Jan. 2, 2019), <https://jjie.org/2019/01/02/education-behind-bars-can-young-people-be-taught-in-adult-justice-system/> [<https://perma.cc/M7RW-RFK6>]. If any education is provided in the adult justice system, it is not regular and it “marginalize[s] students with disabilities.” *Id.* For example, in Florida, the education provided to juveniles in adult jails is “either virtually nonexistent or seriously deficient.” *Id.*

82. Andrea Wood, Comment, *Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller*, 61 EMORY L.J. 1445, 1455 (2012).

83. *Id.*

84. Jennifer L. Woolard, Candice Odgers, Lonn Lanza-Kaduce & Hayley Daglis, *Juveniles Within Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 INT’L J. OF FORENSIC MENTAL HEALTH, no. 1, 2005, at 1, 15 (2005).

85. Wood, *supra* note 82, at 1458. Criminal socialization occurs when the juveniles do not have access to rehabilitative programming, and they learn “new criminal techniques from more skilled and experienced [recidivists].” *Id.* at 1458 n.27 (citing DONNA BISHOP & CHARLES FRAZIER, *Consequences of Transfer*, in THE CHANGING BORDERS OF JUVENILE JUSTICE: TRANSFER OF ADOLESCENTS TO THE CRIMINAL COURT 227, 256–57 (Jeffrey Fagan & Franklin E. Zimring eds., 2000)).

86. Woolard, Odgers, Lanza-Kaduce & Daglis, *supra* note 84, at 16. See also Wood, *supra* note 82, at 1488. It is outside the scope of this Note to discuss abolishing juvenile detention as similar problems, such as recidivism, can result from any sort of incarceration or confinement. But, overall, adult correctional settings are not created for juveniles, and thus, juveniles are disproportionately impacted by these harsh sentences and repercussions. See *Children in Adult Prisons*, *supra* note 76.

87. Holman & Ziedenberg, *supra* note 63, at 10–11.

individual need to incarcerate some high-risk youth, the mass detention of a half-million youth each year is not necessarily reducing crime.”⁸⁸ Many juveniles charged with status and public order offenses, or even nonviolent drug offenses and technical violations, could be released without posing a threat to society.⁸⁹

While there certainly is an impact of juvenile crime on society, society contributes to juvenile crime when it does not provide the skills and tools juveniles need to be successful—and placing juveniles in adult court only exacerbates the problem.⁹⁰ The Centers for Disease Control and Prevention (CDC) notes the significant impact of youth violence on individuals and the community at large, often resulting from or leading to a youth’s encounter with the criminal justice system.⁹¹ The CDC indicates youth violence can be combatted through preventative and rehabilitative strategies, including: “[p]romot[ing] family environments that support healthy development,” “[p]rovid[ing] quality education early in life,” “[s]trengthen[ing] youth’s skills,” “[c]onnect[ing] youth to caring adults and activities,” “[c]reat[ing] protective community environments,” and “[i]nterven[ing] to lessen harms and prevent future risk.”⁹² These strategies “are intended to shape individual behaviors as well as the relationship, family, school, community, and societal factors that influence risk and protective factors for violence.”⁹³ These rehabilitative strategies, however, require keeping youth out of detention, especially with adults who have convictions, and helping them develop within society.

IV. WHAT ARE OTHER STATES DOING?: NATIONAL COMPARISON

Many states believe “sending kids directly to adult court undermine[s] the rehabilitative mission of the juvenile system.”⁹⁴ California, Vermont,

88. *Id.*

89. Sawyer, 2018, *supra* note 65.

90. Another aspect of the carceral system to consider is instead of overfunding prisons, jails, and police, and thus perpetrating mass incarceration, we should funnel money to the foster care system, reunifying families, and to schools and other learning and community support environments. This gives youth better opportunities and more positive influences, hopefully leading to better life choices and reduced recidivism.

91. *Preventing Youth Violence*, CTR. FOR DISEASE CONTROL & PREVENTION (2019), <https://www.cdc.gov/violenceprevention/pdf/yv-factsheet508.pdf> [<https://perma.cc/ELC3-JRK4>].

92. *Id.*

93. *Id.*

94. Sago, *supra* note 2.

Indiana, Arizona, South Carolina, Louisiana, and Washington, D.C., recently changed their laws regarding treating juveniles as adults in the criminal justice system, as did the federal government. There are other movements considering the sole use of rehabilitation programs—abolishing punishment of juveniles altogether.

Currently, there are four forms of laws that transfer juveniles into the adult criminal system.⁹⁵ First, statutory exclusion is where the adult criminal court has automatic jurisdiction based on the type of crime committed.⁹⁶ Second, judicially controlled transfers are cases that begin in the juvenile system but are transferred by the court.⁹⁷ Third, prosecutorial discretion transfer is when the prosecutor has the ability to decide where to file the case based on the type of crime.⁹⁸ Fourth, “[o]nce an[] adult, always an adult” transfer is when the juvenile has already been in the adult system, and must, in any subsequent case, also be tried as an adult.⁹⁹

Each of the following states have adapted its laws to provide less punitive ways to punish juveniles who have committed crimes.

A. California

California “abolished the power of prosecutors to ‘direct file’ youth into adult criminal court at district attorneys’ sole discretion.”¹⁰⁰ In November of 2017, Proposition 57 was passed, giving judges, not prosecutors, the discretion to decide if a juvenile will be tried in adult court.¹⁰¹ On February 1, 2018, the Supreme Court of California found the abolition of direct file to be retroactive on pending court cases.¹⁰²

95. See Anne Teigen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NAT’L CONF. STATE LEGISLATURES (July 1, 2020), <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx> [https://perma.cc/55CL-PTDE].

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. Mike Males, *Direct File of Youth to Adult Court: Gone and Unlamented as Youth Arrests Fall to All-Time Low in 2017*, CTR. ON JUV. & CRIM. JUST. (Aug. 8, 2018), <http://www.cjcj.org/news/12187> [https://perma.cc/W8F2-WT8V].

101. *Fact Sheet: Direct File*, CAMPAIGN FOR YOUTH JUST. (Feb. 12, 2018), http://www.campaignforyouthjustice.org/images/factsheets/Direct_file_fact_sheet_Final_1_2.pdf [https://perma.cc/NT8J-UYVQ].

102. *Id.*

The abolition of direct filing has had a significant impact on the juvenile system in California. In 2008, 1,201 juveniles were sent to adult court, mostly through direct filing by the prosecutors.¹⁰³ After its abolition, these numbers have plummeted, with just 77 juveniles sent to adult court in 2018.¹⁰⁴

B. Vermont

In 2016, Vermont paved the way by allowing individuals under the age of 21 to be considered juveniles for the purposes of criminal justice.¹⁰⁵ Beginning in 2022, the juvenile system will have jurisdiction over 18-, 19-, and 20-year-olds, instead of the adult criminal system.¹⁰⁶ There is a caveat for 12 serious crimes, which will be heard in adult court.¹⁰⁷ Vermont also began preventing prosecutors from moving a juvenile into adult court without judicial permission.¹⁰⁸ Under this new procedure, “youthful offenders” are to be heard in the Family Division for delinquency cases¹⁰⁹ and, for those whose crime dictates otherwise, a motion can be made to transfer the case from the Criminal Division to the Family Division to see if they accept the case for youthful offender treatment.¹¹⁰

103. Evan Sernoffsky & Joaquin Palomino, *Vanishing Violence: Locked up, Left Behind*, S.F. CHRON. (Oct. 3, 2019), <https://www.sfchronicle.com/bayarea/article/California-once-sent-thousands-of-juveniles-to-14480958.php> [https://perma.cc/F9U5-7TU3].

104. *Id.*

105. Aidan Ryan, *Crime Bill Would Redefine Juveniles as up to Age 21*, BOS. GLOBE (July 9, 2019), <https://www.bostonglobe.com/metro/2019/07/09/crime-bill-would-redefine-juveniles-age/maHshbBT6QaaX9ooVDVidN/story.html>.

106. *Id.*; VT. STAT. ANN. tit. 33, § 5203 (West 2020) (effective July 1, 2022).

107. The “Big 12” crimes are “arson causing death, assault and robbery with a dangerous weapon, assault and robbery causing bodily injury, aggravated assault, murder, manslaughter, kidnapping, unlawful restraint, maiming, sexual assault, aggravated sexual assault, and burglary into an occupied dwelling.” *Legislative Council CLE: Acts 153 and 162*, VT. GEN. ASSEMBLY (June 20, 2016), <https://legislature.vermont.gov/assets/Announcement-Uploads/2016-LC-CLE-Acts-153-and-162-Presentation.pdf> [https://perma.cc/TT84-QQQW] [hereinafter *Legislative Council CLE*]; see Deborah Becker, *Why Vermont Raised Its Juvenile Court Age Above 18—And Why Mass. Might, Too*, WBUR NEWS (Oct. 3, 2019), <https://www.wbur.org/news/2019/10/03/juvenile-court-age-vermont-massachusetts> [https://perma.cc/5LDA-L7GT].

108. VT. STAT. ANN. tit. 33, § 5203 (West 2020).

109. *Id.* § 5280.

110. *Id.* § 5281. Based on the juvenile’s age, the Family Division has jurisdiction over the case until the juvenile ages out of the system. *Legislative Council CLE*, *supra* note 107. However, depending on the crime, if it is considered a “Big 12” crime, and considering the age of the juvenile, the case may start in the Criminal Division. *Id.*

Vermont's Agency of Human Services, Department of Children and Families conducted a study and found that juveniles tried in the juvenile system are much less likely to reoffend than juveniles tried in adult court.¹¹¹ The new laws are geared toward maintaining the trend of keeping juveniles in the juvenile system to prevent future recidivism and help them become productive members of society.¹¹² Vermont also has procedures to ensure juveniles are not detained in a facility meant for adults unless certain criteria are met.¹¹³

C. Indiana

Effective July 1, 2016, Indiana began allowing some juveniles in adult court to transfer back to juvenile court.¹¹⁴ If the juvenile is at least the age of 16 and commits a certain felony, the juvenile court no longer has jurisdiction over the case.¹¹⁵ There are a couple factors the courts consider to determine if felonious cases can be heard in the juvenile court system, including: "if there are appropriate services available in the juvenile justice system," if the minor is "amenable to rehabilitation under the juvenile system," and if it is "in the best interests of the safety and welfare of the community."¹¹⁶ This helps "restore the possibility of exposing a kid to rehabilitative care within the juvenile justice system."¹¹⁷

Starting in 2018, Indiana also now requires an annual report on the juveniles in the adult criminal justice system.¹¹⁸ In 2018, there were 238 juveniles in the adult court system in Indiana.¹¹⁹ According to the 2018

111. C.R.G., *Juvenile Recidivism Study: 2008–2011*, VT. AGENCY OF HUM. SERVS. DEP'T CHILD. & FAM. (Mar. 30, 2015), http://www.crgvt.org/uploads/5/2/2/2/52222091/crg_report_2015_03_analysis_juvenile.pdf [https://perma.cc/45CC-W7VA].

112. *See id.*

113. VT. STAT. ANN. tit. 33, §§ 5292–93 (West 2020). The age of the juvenile defendant (i.e., 16 or 18 years old) and what type of crime they committed (i.e., felony or misdemeanor) will help determine whether the juvenile will be sentenced to an adult facility. *Id.*

114. IND. CODE ANN. § 31–30–1–4 (West 2020).

115. *Id.*

116. *Id.*

117. Sago, *supra* note 2.

118. IND. CODE ANN. § 5–2–6–24(e) (West 2020).

119. *Juveniles Under Adult Court Jurisdiction Annual Report*, IND. CRIM. JUST. INST., 4 (Oct. 30, 2018), https://www.in.gov/cji/grant-opportunities/files/Research_Juvenile_Waivers_2018.pdf [https://perma.cc/3N2N-P9TS]. As of February 27, 2018,

report, “The majority of juvenile cases in adult court are due to direct file or lack of jurisdiction of the juvenile courts.”¹²⁰ In 2018, the recidivism rate for juveniles was 33.3 percent¹²¹ and the adult recidivism report acknowledged it was more likely for younger individuals to reoffend.¹²²

D. Arizona

Arizona has both a mandatory direct file¹²³ and a discretionary direct file to adult court.¹²⁴ However, there can be a transfer back to the juvenile system if the original transfer was erroneous.¹²⁵ In other words, if the court determines the juvenile should not have been subjected to adult court jurisdiction, the court will transfer the juvenile back to juvenile court.¹²⁶ Effective August 3, 2018, Arizona no longer requires juveniles charged as adults to be placed in adult jails while waiting for trial.¹²⁷

E. South Carolina

On July 1, 2019, South Carolina raised the adult criminal court age from 17 years old to 18 years old.¹²⁸ The “overarching goal of Raise the Age is to keep teen[s] out of adult jails and afford them an additional year of eligibility when it comes to rehabilitative programs.”¹²⁹ This new law will also allow for more flexibility in the juvenile justice system and help provide

there were 4,656 juveniles in the adult system across the United States. Sawyer, 2018, *supra* note 65. This number dropped to 4,535 in December of 2019. Sawyer, 2019, *supra* note 65. But, overall, there are over 48,000 juveniles who are confined in various criminal justice facilities in the United States. *Id.*

120. *Id.*

121. *Juvenile Recidivism 2018*, IND. DEP’T CORR. (2018), <https://www.in.gov/idoc/files/2018JuvRecidivismRpt.pdf> [<https://perma.cc/F9EK-AWYT>].

122. *2018 Adult Recidivism Rates*, IND. DEP’T CORR. (2018), https://www.in.gov/idoc/files/2018_Adult_Recidivism_CountyofCommit.pdf [<https://perma.cc/Z8NJ-WDVT>].

123. ARIZ. REV. STAT. ANN. § 13–501(A) (2020). There is proposed legislation to raise the age of an adult from 18 to 22. S. Res. 1653, 54th Leg. 2d Reg. Sess. (Ariz. 2020).

124. ARIZ. REV. STAT. ANN. § 13–501(B) (2020).

125. *Id.* § 8–302.

126. *Id.*

127. *Id.* § 8–305.

128. S.C. CODE ANN. § 63–3–510 (2020).

129. Michael Majchrowicz, *SC’s Raise the Age Law Is About to Go into Effect. How It Will Be Implemented Remains Vague.*, POST & COURIER (June 25, 2019), https://www.postandcourier.com/news/sc-s-raise-the-age-law-is-about-to-go/article_69335050-8bb0-11e9-b95a-ffa4649741db.html [<https://perma.cc/23TE-B55B>].

alternative diversion programs, focused on rehabilitative measures.¹³⁰ The “[e]xceptions to the new law include teens younger than 18 accused of the most serious crimes including murder, rape and any felony for which someone could be sentenced [to] 15 years or more behind bars.”¹³¹

The South Carolina Department of Juvenile Justice, through federal data, noted that the state is ranked ninth in the nation for juvenile arrests.¹³² With the increase in the age of the juvenile system, this will only increase the amount of juvenile arrests; however, South Carolina remains hopeful this change is in the best interest of its youth population.¹³³

F. Louisiana

Louisiana also raised the adult criminal court age to 18, starting on June 1, 2019.¹³⁴ The belief is that “[t]rying 17-year-olds as juveniles keeps them safer while incarcerated, placing them within a population of peers rather than adults.”¹³⁵ In addition, “It also protects their futures, because they don’t leave the system with a permanent criminal record that impacts them when applying for jobs and higher education.”¹³⁶ The goal is to lower recidivism rates which will both lower crime rates and reduce the cost put toward incarceration.¹³⁷ Since 17-year-olds do not have fully developed impulse control or ability to regulate their emotions, this new law and the

130. *Id.*

131. *Id.*

132. *Juvenile Arrests in South Carolina Rank Ninth Nationally*, FITSNEWS (Aug. 26, 2019), <https://www.fitsnews.com/2019/08/26/juvenile-arrests-in-south-carolina-rank-ninth-nationally/> [<https://perma.cc/ZQZ8-B4XU>]. In this study, Iowa ranks 12th in juvenile arrests. *Juvenile Arrests*, OFF. JUV. JUST. & DELINQ. PREVENTION (2017), <https://www.ojjdp.gov/ojstatbb/crime/qa05103.asp?qaDate=2017&text=yes> [<https://perma.cc/PK87-882R>] (noting that the data depends on the state’s laws, police behavior, and community standards). Once a juvenile turns 18, they typically age out of the Iowa juvenile justice system. Iowa Juv. Just. Advisory Council, *Youth Rights and Responsibilities Handbook*, IOWA DEP’T HUM. RTS. 36 (2004), <https://humanrights.iowa.gov/sites/default/files/media/YRRHandbook%5B1%5D.pdf> [<https://perma.cc/HG3S-VWWH>].

133. *Juvenile Arrests in South Carolina Rank Ninth Nationally*, *supra* note 132.

134. LA. CHILD. CODE ANN. art. 804 (2020).

135. Leigh Guidry, *Louisiana’s ‘Raise the Age’ Law Takes Effect, 17-Year-Olds to Be Tried as Juveniles*, THE DAILY ADVERTISER (Mar. 6, 2019), <https://www.theadvertiser.com/story/news/2019/03/06/louisianas-raise-age-law-takes-effect-17-year-olds-tried-juveniles/3022544002/> [<https://perma.cc/M2FP-VLZS>].

136. *Id.*

137. *Id.*

corresponding programs will help to continue their development, avoid or heal from trauma, and return home.¹³⁸

G. Washington, D.C.

Effective April 4, 2017, Washington, D.C., began to transfer juveniles from adult correctional facilities to juvenile facilities.¹³⁹ With these age-appropriate housing opportunities, the juvenile confinement conditions will hopefully improve.¹⁴⁰ Washington, D.C., has made great strides in improving its juvenile justice system, focusing on community and rehabilitation.¹⁴¹ Its program is “one that focuses on keeping kids close to their communities and discards the punitive approach to punishment—it has been lauded as a model for reform.”¹⁴²

H. The Federal Government

The federal government recently passed a bill called the Juvenile Justice and Delinquency Prevention Act.¹⁴³ Now, even if juveniles are charged in adult court, states cannot incarcerate juveniles within adult jails.¹⁴⁴ The Act created an agency, the Justice Department’s OJJDP, which is tasked with tracking the racial disparities apparent in the juvenile justice system and to come up with solutions to combat these disparities.¹⁴⁵ The Act also “bans shackling of pregnant girls and provides funding for tutoring,

138. Grace Toohey, *How Will Louisiana’s Raise the Age Law Affect Juvenile System? Officials Brace for ‘Growing Pains’*, THE ADVOC. (Feb. 28, 2019), https://www.theadvocate.com/baton_rouge/news/courts/article_5a756c10-3b79-11e9-8b95-ff075cb95d3d.html. A report by the Campaign for Youth Justice showed that raising the age has not only helped the juveniles but also has created a safer system. Jeree Thomas, *Raising the Bar: State Trends*, CAMPAIGN FOR YOUTH JUST. (2015–17), http://cfyj.org/images/A-StateTrends_Report-Web.pdf [https://perma.cc/9QPP-A4FX].

139. D.C. CODE ANN. § 24-913 (West 2020).

140. *See id.*

141. *See DC’s Juvenile Justice System*, DEP’T YOUTH REHAB. SERVS., <https://dysr.dc.gov/page/dcs-juvenile-justice-system> [https://perma.cc/Z622-3VMT].

142. Eileen Rivers, *D.C. Youth Detention Emerges as Model of Improvement, but Struggles Persist*, USA TODAY (Dec. 30, 2017), <https://www.usatoday.com/story/opinion/policing/reentry/column/2017/12/30/d-c-youth-detention-emerges-model-improvement-but-struggles-persist/978857001/> [https://perma.cc/82P6-LRRC].

143. *See New Bill Bans States from Holding Children in Adult Jails*, EQUAL JUST. INITIATIVE (Jan. 3, 2019), <https://eji.org/news/new-bill-bars-holding-children-in-adult-jails/> [https://perma.cc/64DA-UKPT].

144. *Id.*

145. *Id.*

mental health, and drug and alcohol programs for juveniles.”¹⁴⁶ This creates more accountability and is a step in the right direction toward saving juveniles from recidivism and a life of crime.

I. Other Movements

Other movements advocate for complete eradication of sentencing juveniles in adult court.¹⁴⁷ It has been shown that “youth held in adult facilities are 36 times more likely to commit suicide and are at the greatest risk of sexual victimization” and “[y]outh of color are over-represented in the ranks of juveniles being referred to adult court.”¹⁴⁸ Furthermore, “the U.S. Department of Justice and the Centers for Disease Control and Prevention found that transferring youth to the adult criminal justice system does not protect the community and substantially increases the likelihood that youth will re-offend.”¹⁴⁹ Adult prisons are unfit to give juveniles the “age-appropriate support and services they need. . . . [A]dult facilities offer fewer counseling services, educational and job training opportunities, and treatment options than juvenile facilities.”¹⁵⁰ Convicting juveniles as adults creates a group of people who struggle to find employment and housing simply because they were punished for something they did when they were young and may not have known any better—not allowing them the ability and resources to fully learn and grow from their past mistakes.¹⁵¹ Evidence

146. *Id.* Incarcerated adult women can still be shackled when they are pregnant and giving birth, even with evidence that this practice is dangerous for both the mother and the child. *Shackling of Pregnant Women in Jails and Prisons Continues*, EQUAL JUST. INITIATIVE (Jan. 29, 2020), <https://eji.org/news/shackling-of-pregnant-women-in-jails-and-prisons-continues/> [<https://perma.cc/R2S3-YKFJ>].

147. See 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, 73–74 (Spring 2017).

148. *Keep Youth out of Adult Courts, Jails, and Prisons*, NAT’L JUV. JUST. NETWORK, <https://www.njjn.org/about-us/keep-youth-out-of-adult-prisons> [<https://perma.cc/GGL2-TM2G>] [hereinafter NJJN, *Keep Youth Out*].

149. *Id.*

150. Estivaliz Castro, David Muhammad & Pat Arthur, *Treat Kids as Kids: Why Youth Should Be Kept in the Juvenile System*, CAL. ALL. 1, 2 <http://www.caycj.org/documents/TreatKidsasKids.pdf> [<https://perma.cc/9B6J-LWPP>] (citing A. Peerman, C. Daugherty, A. Hoornstra & S. Beydler, *Capital City Correction: Reforming DC’s Use of Adult Incarceration Against Youth*, D.C. LAW. FOR YOUTH & CAMPAIGN FOR YOUTH JUST. (May 2014)).

151. See Teresa Wiltz, *Children Still Funneled Through Adult Prisons, but States Are Moving Against It*, USA TODAY (Jun. 17, 2017), <https://www.usatoday.com/story/news/>

has shown that “prosecuting more youthful [individuals] in juvenile justice courts will save taxpayers money as recidivism rates are reduced and more youth are able to lead successful lives, earn a living, and contribut[e] to the local economy.”¹⁵² Public safety is not advanced when juveniles are punished the same way adults are punished, and research has shown “that as youth mature, they are substantially less likely to re-offend.”¹⁵³

As a result, the National Juvenile Justice Network (NJJN) “recommends that all youth [under the age of 18] be processed through juvenile court.”¹⁵⁴ New York’s Raise the Age law has made some significant changes where all juvenile misdemeanors will be heard in juvenile court and any juvenile felonies will be heard in a special family court sector of the criminal system, resulting in “[n]o youth [being] housed in adult prison facilities or jails.”¹⁵⁵ For the betterment of society and the juveniles, “ending youth confinement should be a top priority,” since the purpose of the juvenile justice system is rehabilitation, not retributive punishment.¹⁵⁶ It is easier for young people to succeed when the juvenile justice system focuses on “individual rehabilitation,”¹⁵⁷ — the ultimate purpose of the system.

V. WHAT SHOULD IOWA DO?: IMPLICATIONS IN IOWA

A. What Is Iowa Currently Doing?

Currently, Iowa allows for juveniles to be tried in adult court.¹⁵⁸ One of these methods is a discretionary waiver system for setting aside the juvenile

2017/06/17/how-raise-age-laws-might-reduce-recidivism/400065001/ [https://perma.cc/R9W7-CPCQ].

152. *Id.*

153. *Youth Tried as Adults*, JUV. L. CTR., <https://jlc.org/issues/youth-tried-adults> [https://perma.cc/YV7X-4VNY].

154. NJJN, *Keep Youth Out*, *supra* note 148. The National Juvenile Justice Network’s focus is education, community building, and advocating for laws that best serve the juveniles and their families within the United States. *Our Work*, NAT’L JUV. JUST. NETWORK, <https://www.njjn.org/our-work> [https://perma.cc/C2AB-YSMN]. Its main focus areas are community, leadership, standards, information, tools, and inclusion.

Id.

155. Wiltz, *supra* note 151.

156. Sawyer, 2018, *supra* note 65.

157. Wiltz, *supra* note 151.

158. *See* IOWA CODE §§ 232.8, 232.45 (2019).

jurisdiction.¹⁵⁹ The other method is statutorily imposed, where the juvenile is automatically waived into adult court.¹⁶⁰

Iowa Code § 232.45 provides for the discretionary waiver, which requires judicial approval.¹⁶¹ In accordance with the Code, the prosecutor or the child may file a motion to request the court to waive its jurisdiction to adult court, and upon this motion, there will be a hearing for the judge to determine if the case should be moved to adult court.¹⁶² The judge will consider circumstances including: the age of the juvenile, the type of crime, whether there is probable cause a public offense was committed, whether the juvenile will not likely be rehabilitated in juvenile court, and whether the transfer is in the best interest of the community.¹⁶³

The judge may waive the juvenile court's jurisdiction if: (1) the juvenile is 14 years of age or older; (2) "there is probable cause to believe that the child committed a delinquent act which would constitute the public offense"; (3) "there are no reasonable prospects to rehabilitate the child in juvenile court"; (4) the waiver would be in the best interest of the child; and (5) the waiver would be in the best interest of the community.¹⁶⁴ In determining whether there are reasonable prospects for rehabilitation, the factors the court must consider "include but are not limited to": (a) the nature and circumstances of the "alleged delinquent act"; (b) "[t]he nature and extent of the child's prior contacts with juvenile authorities"; and (c) "[t]he programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult."¹⁶⁵

159. See *id.* § 232.45. Iowa does not consider waiving a juvenile into adult court as cruel and unusual punishment. *State v. Crooks*, 911 N.W.2d 153, 165 (Iowa 2018). Additionally, Iowa allows juveniles to be housed in adult jails. IOWA CODE § 232.22 (2019); Campaign for Youth Justice, *Iowa*, *supra* note 75, at 8.

160. IOWA CODE § 232.8 (2019).

161. *Id.* § 232.45.

162. *Id.* § 232.45(6)–(7); Campaign for Youth Justice, *Iowa*, *supra* note 75, at 3.

163. IOWA CODE § 232.45(6)–(7).

164. *Juvenile Court and Procedure, Waiver Hearing*, IOWA JUD. BRANCH, <https://www.iowacourts.gov/iowa-courts/juvenile-court> [https://perma.cc/NZX2-ND D5]; IOWA CODE § 232.45.

165. IOWA CODE § 232.45(8).

The judge can also waive the juvenile into adult court to be tried as a “youthful offender,” if: (1) the juvenile is 12 to 15 years old or is 10 or 11 and has been charged with a class “A” felony; (2) “there is probable cause to believe that the child has committed a delinquent act which would constitute a public offense”; and (3) there are not “reasonable prospects for rehabilitating the child, prior to the child’s eighteenth birthday.”¹⁶⁶ Being tried as a “youthful offender” means the juvenile will have the ability to access “juvenile services in a juvenile facility.”¹⁶⁷ If the juvenile is successful, the juvenile will not have a conviction on their record; however, if the juvenile is not successful, they are subject to adult sentences and convictions.¹⁶⁸ The court can: (1) “[d]efer judgment and place the youthful offender on probation, upon the consent of the youthful offender”; (2) “[d]efer the sentence and place the youthful offender on probation upon such terms and conditions as the court may require”; (3) “[s]uspend the sentence and place the youthful offender on probation upon such terms and conditions as the court may require”; (4) order “[a] term of confinement as prescribed by law for the offense”; or (5) “[d]ischarge the youthful offender from youthful offender status and terminate the sentence.”¹⁶⁹

Once jurisdiction of the juvenile system is waived, the juvenile is now “subject to the same criminal procedures and penalties as adults,” such as longer and harsher prison stays and less access to rehabilitation programming and services.¹⁷⁰ This gives “broad discretion upon the court to consider such [rehabilitative] factors as it deems relevant in determining whether it ought to waive jurisdiction in a particular case.”¹⁷¹ All “subsequent criminal proceedings” of the waived juvenile who is 16 years of age or older will also be held in adult court no matter how minor the offense.¹⁷²

166. *Id.* § 232.45(7).

167. Campaign for Youth Justice, *Iowa*, *supra* note 75, at 5.

168. *Id.*

169. IOWA CODE § 907.3A. This is not a common practice in Iowa. Campaign for Youth Justice, *Iowa*, *supra* note 75, at 5. Between 2013 and 2017, there were only 22 juveniles who participated in this program. *Id.*

170. IOWA CODE § 232.45(8); *Juvenile Court and Procedure, Waiver Hearing*, *supra* note 164.

171. *In re T.D.*, 335 N.W.2d 638, 639 (Iowa Ct. App. 1983).

172. IOWA CODE § 232.45A(2).

Iowa also has statutory requirements where the juvenile is automatically waived or placed under adult court jurisdiction.¹⁷³ If juveniles commit a simple misdemeanor under certain Iowa Code chapters, they are excluded from the jurisdiction of juvenile court.¹⁷⁴ If the juvenile is 16 years of age or older and if the juvenile committed certain crimes, they are automatically waived into adult court.¹⁷⁵ These crimes are “a forcible felony,” “manufacturing, delivering, or possessing controlled substances with intent to deliver, while in the immediate possession or control of a firearm or offensive weapon,” or “felony-grade weapons violations, or any weapons violation committed by a criminal street gang member for the benefit of, at the direction of, or in association with a criminal street gang.”¹⁷⁶ Juveniles can request to be transferred to juvenile court by filing a reverse waiver motion to the court “for good cause.”¹⁷⁷

B. Why Should Iowa Stop Allowing Juveniles into Adult Court?

The federal government determined that the right to vote begins at age 18.¹⁷⁸ The nationally recognized right to consume alcohol is age 21.¹⁷⁹ In

173. *Id.* § 232.8.

174. *Id.* § 232.8(1)(b). These Iowa Code chapters are 321, 321G, 321I, 453A, 461B, 462A, 481A, 481B, 483A, 484A, and 484B. *Id.* Also, violations of curfew or traffic ordinances are excluded from juvenile court. *Id.* There were 12,326 convictions involving juveniles between the ages of 15 and 17 in 2017. Campaign for Youth Justice, *Iowa*, *supra* note 75, at 4.

175. IOWA CODE § 232.8(a)(c); *Juvenile Court and Procedure, Waiver Hearing*, *supra* note 164. Under Iowa law, forcible felonies are considered to be “any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, human trafficking, arson in the first degree, or burglary in the first degree.” IOWA CODE § 702.11(1). Felonies that are not considered forcible are willful injury, spousal sexual abuse, “[s]exual exploitation by a counselor, therapist, or school employee,” “[c]hild endangerment subject to penalty,” domestic abuse, certain assaults, and “[r]emoval of an officer’s communication or control device.” *Id.* § 702.11(2).

176. Campaign for Youth Justice, *Iowa*, *supra* note 75, at 4; *see* IOWA CODE §§ 124.401, 232.8(1)(c), 723A.2.

177. IOWA CODE §§ 232.8(1)(c), 803.5; Campaign for Youth Justice, *Iowa*, *supra* note 75, at 4.

178. U.S. CONST. amend. XXVI.

179. 23 U.S.C. § 158 (2018). After Prohibition, the drinking age fluctuated from state to state, some states set the drinking age at 21, while others set it lower. Denali Tietjen, *Why 21? A Look at Our Nation’s Drinking Age*, BOS. GLOBE (July 17, 2014), <https://www.boston.com/culture/health/2014/07/17/why-21-a-look-at-our-nations-drinking-age> [<https://perma.cc/3LZV-GZSX>]. From the 60s and 70s, states began to drop the drinking age to 18—the age when someone was considered an adult. *Id.* However, in

Iowa, the right to have a full driver's license with no restrictions is age 18.¹⁸⁰ The age to rent a car is usually over 21, and even then, there are usually extra costs when under the age of 25.¹⁸¹ In Iowa, the age to gamble or place a bet is 21,¹⁸² the age to buy cigarettes or tobacco is now 21,¹⁸³ the age to get a tattoo is 18,¹⁸⁴ the age to acquire a nonprofessional weapon permit is 21, and the age to get a professional weapon permit is 18.¹⁸⁵ Why should Iowa treat juveniles as adult in the criminal justice system when juveniles are not legally considered adults in almost every other aspect of life?

As alluded to in *Roper v. Simmons* and *Miller v. Alabama*, and argued in *Graham*, juvenile brains are not fully developed, and therefore they cannot be held liable as adults with fully developed brains, since they lack the capacity needed to make decisions in the same way.¹⁸⁶ Scientific studies have emphasized this fact, showing juvenile brains are not as developed in the executive function; instead, their brains tend toward more impulsive decisionmaking, and juveniles are more prone to "seek sensations" over "contemplating risks and consequences."¹⁸⁷ They are simply not old enough

1985, President Ronald Reagan raised the national drinking age to 21 years old, due to a substantial increase in drunk driving accidents. *Id.* The drunk driving culprits were seen to be individuals between the ages of 16 and 21, and public health officials identified the effect that alcohol has on a brain that has not been fully developed. *Id.*

180. *License Descriptions*, IOWA DOT, <https://iowadot.gov/mvd/driverslicense/driverslicense/descriptions#MinorRestricted> [<https://perma.cc/6KYA-9KW7>]. Even car insurance for young drivers is much more expensive since they are considered to be more of a liability. *Auto Insurance for Teens*, ACCEPTANCE INS., <https://www.acceptanceinsurance.com/our-products/auto-insurance/teenager-auto-insurance/> [<https://perma.cc/6BXQ-Z9EM>]. Due to teenagers' inexperience and impulsive behavior, they are three times more likely to be involved in a car accident. *Id.*

181. Brittany Leigh Anas, *How to Rent a Car When You Are Under 25*, USA TODAY (Mar. 16, 2018), <https://traveltips.usatoday.com/rent-car-under-25-61224.html> [<https://perma.cc/G79G-WNUQ>].

182. IOWA CODE § 99F.9.

183. *Id.* § 453A.2. The federal government recently increased the age to buy tobacco to 21 years old. Jacqueline Howard, *The US Officially Raises the Tobacco Buying Age to 21*, CNN (Dec. 27, 2019), <https://www.cnn.com/2019/12/27/health/us-tobacco-age-21-trnd/index.html> [<https://perma.cc/ZS3C-N7GH>]. Iowa followed suit in raising the purchasing age to 21, enacted January 1, 2020. IOWA CODE § 453A.2 (2021).

184. IOWA CODE § 135.37 (2019).

185. *Id.* § 724.8.

186. See generally *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).

187. Morgan Tyler, *Understanding the Adolescent Brain and Legal Culpability*, A.B.A. (Aug. 1, 2015), https://www.americanbar.org/groups/public_interest/child_

to be fully cognizant of their actions, and they have a higher propensity to change their behavior.¹⁸⁸ Juvenile brains continue to develop well into their 20s, with the full maturation around age 25.¹⁸⁹ The parts of the brain involved in “reasoning, advanced thought and impulse control” are the last to mature.¹⁹⁰ Additionally, dopamine, which regulates executive functions such as “memory, concentration, problem-solving and other mental functions,” is found in lower levels during adolescence.¹⁹¹ This explains how “risk taking and risky decision making decline[s] between adolescence and

law/resources/child_law_practiceonline/child_law_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/ [https://perma.cc/N2JM-2EV8]. See generally Leah H. Somerville & BJ Casey, *Developmental Neurobiology of Cognitive Control and Motivational Systems*, 20 CURRENT OP. IN NEUROBIOLOGY 236 (2010); Coal. for Juv. Just. & Off. Juv. Just. Delinq. Prevention, *What Are the Implications of Adolescent Brain Development for Juvenile Justice?*, COAL. FOR JUV. JUST. (2006), https://www.juvjustice.org/sites/default/files/resource-files/resource_134.pdf [https://perma.cc/MB8X-WDTS] [hereinafter Coal. for Juv. Just., *Brain Development*]; *Juvenile Justice & the Adolescent Brain*, MASS. GEN. HOSP., <http://clbb.mgh.harvard.edu/juvenilejustice/> [https://perma.cc/94NK-ZCBP].

188. See, e.g., LaDoris Cordell, *The Reasons for Treating Juveniles Differently*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/juvenile/bench/different.html> [https://perma.cc/4LLZ-TJRD] (“[T]here are salvageable young people who have committed some very horrible kinds of crimes, who are able to get their lives together and be productive members of society. I think it is a mistake to just carte blanche give up on these young people just because of the nature of the conduct, when there is so much more that goes into why that person got there at that point in time so young in their lives.”).

189. Coalition for Juvenile Justice, *Brain Development*, *supra* note 187, at 3; Alison S. Burke, *Under Construction: Brain Formation, Culpability, and the Criminal Justice System*, 34 INT’L J. L. & PSYCHIATRY 381, 382 (2011) (citing J. Day, S. Chiu & R. Hendren, *Structure and Function of the Adolescent Brain: Findings from Neuroimaging Studies*, 29 ADOLESCENT PSYCHIATRY 175 (2006)).

190. Coalition for Juvenile Justice, *Brain Development*, *supra* note 187; Burke, *supra* note 189, at 383 (citing E. R. Sowell, P. M. Thompson, C. J. Holmes, T. L. Jernigan, & A. W. Toga, *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 NATURE NEUROSCIENCE 859 (1999)).

191. Coal. for Juv. Just., *Brain Development*, *supra* note 187; Burke, *supra* note 189, at 383 (citing Sowell et al., *supra* 190, at 859); see also Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 16 ANN. REV. CLINICAL PSYCH. 47, 54 (2009).

adulthood.”¹⁹² Learning by trial and error is crucial in juvenile brain development.¹⁹³

Furthermore, mental disorders are generally not diagnosed until an individual’s early 20s.¹⁹⁴ Lack of mental health care in prisons could be incredibly detrimental to juveniles, especially if they are beginning to show signs of mental disorders that are left untreated, mistreated, or undiagnosed.¹⁹⁵

Many other states are considering the implications of the adult criminal justice system on the more vulnerable juvenile population.¹⁹⁶ Iowa should repeal the state’s ability to waive jurisdiction and try juveniles in adult court.¹⁹⁷

C. What Are Alternative Forms of Rehabilitation?

It is crucial to find alternatives to detention and confinement for juveniles as neither of these methods help facilitate rehabilitation.¹⁹⁸ There are numerous forms of rehabilitation, including community-based supervision, community service, restorative justice, educational programming, and creative arts rehabilitation programming.

1. Community-Based Supervision

Basic forms of treatment and community-based supervision have been proven effective in discouraging recidivism for juveniles.¹⁹⁹ Proper treatment

192. Burke, *supra* note 189, at 383 (citing Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEVELOPMENTAL PSYCH. 625 (2005)).

193. *Juvenile Justice & the Adolescent Brain*, *supra* note 187.

194. See, e.g., *Intersection Between Mental Health and the Juvenile Justice System*, OFF. JUV. JUST. DELINQ. PREVENTION (July 2017), <https://www.ojjdp.gov/mpg/litreviews/Intersection-Mental-Health-Juvenile-Justice.pdf> [<https://perma.cc/Q4DZ-HLJQ>].

195. See *id.*

196. See Brian Evans, *Looking Back*, CAMPAIGN FOR YOUTH JUST. (Jan. 5, 2017), <http://www.campaignforyouthjustice.org/news/blog/tag/Direct%20File> [<https://perma.cc/XQ9F-7UU2>].

197. IOWA CODE § 232.45 (2019).

198. See *Alternatives to Detention and Confinement*, OFF. JUV. JUST. DELINQ. PREVENTION (Aug. 2014), <https://www.ojjdp.gov/mpg/litreviews/AlternativesToDetentionandConfinement.pdf> [<https://perma.cc/XML3-EJ4M>].

199. Mulvey, *supra* note 63.

can help reduce substance abuse, and it can also reduce the commission of crimes and offenses.²⁰⁰ These programs are more comprehensive in nature and can “include components related to prosocial development as a means to combat existing antisocial behaviors and negative peer relations.”²⁰¹ Motivational interviewing, drug court, and family-inclusive therapy are many of the ways substance and alcohol abuse treatment can provide beneficial rehabilitation for juveniles.²⁰²

Community-based supervision, such as after-school care or structured programming, can help hold juveniles accountable, as well as provide them other opportunities instead of resorting to crime.²⁰³ Effective after-school programming tends to have “[a]n emphasis on social skills or character development,” “[m]ore structure, with a predictable schedule,” “[s]maller size, with lower adult/youth ratios and with opportunities for one-on-one training/tutoring,” “[s]trong links to school-day curriculum,” “[q]ualified and well-trained staff (e.g., hiring staff that hold bachelor degrees),” “[h]igher percentage of male staff,” and “[l]ow attrition.”²⁰⁴ These programs are also significantly more cost effective than the alternative: confinement.²⁰⁵

2. Community Service

A typical form of rehabilitation for juveniles is community service. Community service “help[s] juveniles learn responsibility,” which not only helps with rehabilitation but with specific deterrence.²⁰⁶ The real focus of

200. *Id.*

201. *Alcohol and Drug Prevention and Treatment/Therapy*, OFF. JUV. JUST. DELINQ. PREVENTION (Mar. 2015), https://www.ojjdp.gov/mpg/litreviews/Alcohol_and_Drug_Therapy_Education.pdf [<https://perma.cc/8CH5-KZ3U>].

202. *Id.*

203. *See Recidivism Reduction: Community-Based Supervision Alternatives to Incarceration*, AM. LEGIS. EXCH. COUNCIL 2 (Apr. 2015), <https://www.alec.org/app/uploads/2015/04/Recidivism-Reduction.pdf> [<https://perma.cc/WCD2-BQMD>].

204. *After School Programs*, OFF. JUV. JUST. DELINQ. PREVENTION (Oct. 2010), https://www.ojjdp.gov/mpg/litreviews/Afterschool_Programs.pdf [<https://perma.cc/AW49-LK9L>].

205. *Community-Based Supervision: Increased Public Safety, Decreased Expenditures*, NAT'L JUV. JUST. NETWORK 7, http://www.njjn.org/uploads/digital-library/NJJN-YAP_CBA-costs_Nov2014_FINAL2.pdf?utm_source=FPC-community-based-supervision-tip-sheet-special&utm_campaign=CBA-tip-sheet_Oct2014&utm_medium=email [<https://perma.cc/7Y7L-XEZQ>].

206. Christina M. Dines, *Minors in the Major Leagues: Youth Courts Hit a Home Run for Juvenile Justice*, 31 NOTRE DAME J.L. ETHICS & PUB. POL'Y 175, 184 (2017).

community service is accountability.²⁰⁷ It emphasizes the strengths of the individuals and their ability to be responsible, and it teaches them about their “capacity to choose” and the value of social tolerance.²⁰⁸ It also gives back to the community—it restores, instead of punishes.²⁰⁹

Court-mandated community service for juveniles allows them to “[l]earn about legal and judicial systems,” “[u]nderstand the impact of their actions,” “[i]dentify the causes and effects of community problems,” “[f]orm meaningful working relationships with [others],” “[d]evelop critical-thinking, citizenship, and problem-solving skills,” “[a]ddress real community needs,” “[r]ecognize the need for involvement,” “[d]evelop a personal stake in the well-being of their communities,” “[g]ain a sense of their own effectiveness,” and “[g]ive back to victims and the community.”²¹⁰ The advantage of community service is that there is a variety of options for volunteer work through governmental agencies, local or national non-profits, or for social causes.²¹¹ The community service can help by “restoring the community, increasing connections between the individual and community, and providing opportunities for skill training.”²¹² In fact, “many youth justice and juvenile justice professionals . . . have seen a correlation between effective peer imposed community service, heightened civic awareness, and reduced recidivism rates.”²¹³

207. See, e.g., *Lesson 3: Programs-Community Services*, CTR. FOR JUST. & RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/community-service/#sthash.lMmaFHa8.dpbs> [<https://perma.cc/Q5GL-RZED>] [hereinafter Restorative Justice].

208. *Id.*

209. *Mandated Community Service*, GLOBAL YOUTH JUST., <https://www.globalyouthjustice.org/our-work/mandated-community-service/> [<https://perma.cc/DLY6-YDQY>] [hereinafter Global Youth Justice].

210. Charles Degelman, et al., *Giving Back: Introducing Community Service Learning*, NAT'L CTR. FOR JUV. JUST. 6 (2006), <https://www.ncjrs.gov/pdffiles1/ojdp/237389.pdf> [<https://perma.cc/93XR-T2VM>].

211. Restorative Justice, *supra* note 207.

212. Douglas Thomas & Mary Hunninen, *Making Things Right: Meaningful Community Service for Juvenile Offenders*, NAT'L CTR. FOR JUV. JUST. 4 (Mar. 2008), http://www.ncjj.org/pdf/taspecialbulletincommunityservice_doug_2008.pdf [<https://perma.cc/8UGK-XQZR>].

213. Global Youth Justice, *supra* note 209.

3. Restorative Justice

Restorative justice has recently become more accepted as a legitimate method for criminal deterrence.²¹⁴ It is a theory of justice with a goal to “repair the harm by involving the entire community in rehabilitating [individuals] and holding them accountable for their behavior.”²¹⁵ In particular, foreign countries, such as Germany and New Zealand, have explored the concept of restorative justice, with the United States slowly following suit.²¹⁶ Juveniles can benefit from “efforts of reparation to the victim” and “participation in victim-offender reconciliation (mediation).”²¹⁷

Typically, restorative justice programs respond to crime through: (1) “identifying and taking steps to repair harm”; (2) “involving all stakeholders,” such as the victims, individuals caught up in the system, families, and other key players; and (3) “transforming the traditional relationship between communities and government in responding to crime.”²¹⁸ Different types of restorative justice programming may involve family group conferences, victim-impact panels, mediation, circle sentencing (also known as peacemaking or talking circles), or community reparative boards.²¹⁹

One local example of restorative justice is in West Des Moines, Iowa where there is a program called Youth Justice Initiative (YJI)—“a community-based participatory restorative justice process.”²²⁰ The goal of

214. See generally Hadar Dancig-Rosenberg & Tali Gal, *Restorative Criminal Justice*, 34 CARDOZO L. REV. 2313 (2013).

215. *Restorative Justice*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, (Nov. 2010), https://www.ojjdp.gov/mpg/litreviews/Restorative_Justice.pdf [<https://perma.cc/52D9-T5ZK>] [hereinafter OJJDP, *Restorative Justice*].

216. See Connie de la Vega & Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 UNIV. S.F. L. REV. 983, 1019–23 (2008). For example, restorative justice is now law in Vermont. VT. STAT. ANN. tit. 28, § 2a (West 2020). Missouri juvenile courts are also using restorative justice methods known as Victim Offender Dialogue. Hon. T. Bennett Burkemper, Jr. et. al., *Restorative Justice in Missouri’s Juvenile System*, 63 J. MO. BAR 128, 131 (2007).

217. de la Vega & Leighton, *supra* note 216, at 1020.

218. OJJDP, *Restorative Justice*, *supra* note 215.

219. *Id.*

220. *Community Programs: Youth Justice Initiative*, CITY OF WEST DES MOINES, <http://www.wdm.iowa.gov/government/police/community-programs/youth-justice-initiative> [<https://perma.cc/C9PW-KC9E>].

the program is to combat juvenile recidivism through “promot[ing] healing, increas[ing] accountability and provid[ing] support.”²²¹ The process involves:

engag[ing] crime victims and community members in the justice process, holding young offenders directly accountable to the people and community they have harmed, restoring as far as possible the losses of victims and providing a range of opportunities for dialoging and problem solving whenever possible, which can lead to a greater sense of community safety, social harmony and peace for all.²²²

Programs like YJI allow for growth as a community and for the individuals trapped in the patterns of reoffending. Allowing juveniles alternatives and allowing them to see the consequences of their actions is an effective rehabilitative method to reduce crime and protect the community.²²³

4. Accessible Educational Programming

Another common alternative method to incarceration of juveniles is encouragement of educational programs through technical or vocational training, as well as obtaining a GED,²²⁴ because “participation in prison education . . . [is] associated with an over 40 percent reduction in recidivism.”²²⁵ Technical education, in particular, has been found to be very

221. *Id.*

222. *Id.*

223. *See id.*

224. Educational programs are critical for growth and development of juveniles. Accessibility for this type of programming is important whether the juvenile is in the community, a juvenile detention center, or an adult prison or jail.

225. Michelle Chen, *Prison Education Reduces Recidivism by over 40 Percent. Why Aren't We Funding More of It?*, NATION (Aug. 17, 2015), <https://www.thenation.com/article/prison-education-reduces-recidivism-by-over-40-percent-why-arent-we-funding-more-of-it/>. Programs and learning opportunities within the jail “improve[d] the conditions” for both the incarcerated people and the staff. Holt, *supra* note 16. Educational programs, such as Bard Prison Institute (BPI), have proven to be successful. BARD PRISON INST., <https://bpi.bard.edu/> [<https://perma.cc/3PRM-DFMY>]. The goal of this program is to “redefine the availability, affordability, and expectations typically associated with higher education in America,” by transforming the “negative impacts of criminal punishment and create radical inroads of access and opportunities to higher learning.” *Id.* The graduates leave the correctional setting to “contribute to their communities,” pursuing further education or finding stable careers; in fact, “[v]irtually none return to prison.” *Id.*

beneficial, especially for the youth.²²⁶ Vocational education needs to be proactive, especially for juveniles, since it benefits both the students' futures and their "communities to which they return."²²⁷

5. Creative Arts Rehabilitation Programming

Overall, reform of the rehabilitative programs available to both youth and adult populations would greatly decrease recidivism rates and cut down the incarcerated population in general.²²⁸ Music and art therapy have proven to be effective in the medical field and more recently have been adapted to the correctional setting.²²⁹ Studies have shown that "engaging in various arts activities (such as singing, dancing, play acting, and doing crafts) at a young age is associated with positive social and emotional behaviors, including empathy, sharing, and mood control."²³⁰ Further, "For at-risk and justice-involved youths, the arts can provide an outlet for addressing emotional and/or problem behaviors through opportunities to learn new skills, develop new talents, and express thoughts and ideas in creative and therapeutic ways."²³¹

One particular organization, Arts in Prison, is dedicated to providing arts within the correctional setting.²³² It is a simple way for incarcerated individuals to express themselves and find purpose.²³³ The arts can also be

226. See Margo DelliCarpini, *Building a Better Life: Implementing a Career and Technical Education Program for Incarcerated Youth*, 61 J. CORR. EDUC. 283, 285 (2010).

227. Duane A. Rominger, *A Study in Vocational Program Planning in a Correctional Setting*, 41 J. CORR. EDUC. 168, 172 (1990).

228. See LEE BERNSTEIN, *What Works? Reform and Repression in Prison Programs*, in AMERICA IS THE PRISON: ARTS AND POLITICS IN PRISON IN THE 1970s 98 (2010).

229. See generally Michael H. Thaut, *A New Challenge for Music Therapy: The Correctional Setting*, 4 MUSIC THERAPY CORR. PSYCHIATRY 44 (2005).

230. *Arts-Based Programs and Arts Therapies for At-Risk, Justice-Involved, and Traumatized Youths*, OFF. JUV. JUST. DELINQ. PREVENTION (May 2016), <https://www.ojjdp.gov/mpg/litreviews/Arts-Based-Programs-for-Youth.pdf> [<https://perma.cc/66NK-L5TZ>] [hereinafter *Art-Based Programs*].

231. *Id.*

232. *A Comprehensive Arts in Corrections Program*, ARTS IN PRISON, <http://www.artsinprison.org> [<https://perma.cc/3MHM-CSK8>] [hereinafter *Comprehensive Arts*]. Arts in Prison is based in Kansas, and its goal is to give incarcerated people the opportunity to express themselves through creative means (i.e., music, theater, photography, art) by inspiring and encouraging them. *Our Story*, ARTS IN PRISON, <https://www.artsinprison.org/aipstory/> [<https://perma.cc/3J97-RJK3>]. Their music program—East Hill Singers—has a recidivism rate of only 18 percent, while the rest of Kansas is 32 percent. *Id.*

233. See *Comprehensive Arts*, *supra* note 232.

therapeutic in nature and can help “improv[e] outcomes such as prosocial behaviors, resilience, problem-solving skills, self-regulation, academic achievement, and family functioning,” through “target[ing] problem behaviors and behavioral health issues, including delinquency, anger, depression, anxiety, ADHD, and suicidal thoughts or ideations.”²³⁴

Along the same vein, choirs facilitate: “(a) emotional health, (b) social interaction and reconnection through performance, (c) group process, and (d) mental stimulation.”²³⁵ Furthermore, it has been shown that “membership in an ‘extracurricular’ group in a prison setting offers an ‘alternative community,’ which gives incarcerated individuals a place to belong.”²³⁶

Iowa Medical and Classification Center, commonly known as Oakdale Prison just outside of Iowa City, Iowa, has a community choir that was created in 2009 by Mary Cohen.²³⁷ This choir is a way for the incarcerated individuals to connect with community volunteers and “[t]o give them that sense that they are human beings—with a voice—which is part of the approach of restorative justice.”²³⁸ It is more than just a place to make people feel good and supported; it also “creat[es] an environment where reflection can take place.”²³⁹

Similarly, theater is another creative outlet for people maybe not as inclined to choirs. It has a similar result in facilitating community and providing a sense of purpose and enjoyment.²⁴⁰ Journaling can also help teach individuals the skills and ability to process their emotions—a good

234. *Art-Based Programs*, *supra* note 230.

235. Mary L. Cohen, *Choral Singing and Prison Inmates: Influences of Performing in a Prison Choir*, 60 J. CORR. EDUC. 52, 53 (2009).

236. Laya Silber, *Bars Behind Bars: The Impact of a Women’s Prison Choir on Social Harmony*, 7 MUSIC EDUC. RES. 251, 253 (2005); *see also* Thaut, *supra* note 229, at 45.

237. Shelby Fleig, *How a Choir Transforms an Iowa Prison into an All-Accepting Refuge*, DES MOINES REG. (Apr. 18, 2019), <https://www.desmoinesregister.com/story/news/2019/04/18/iowa-prison-choir-inmates-volunteers-oakdale-coralville-andy-douglas-redemption-songs-mary-cohen/3471531002/> [<https://perma.cc/65MB-TAJP>].

238. *Id.*

239. *Id.*; *see also* Mary Cohen, *Communities of Caring Through Choral Singing: An Update from the Oakdale Prison Choir*, JUST. ARTS COAL. (Jan. 4, 2019), <https://thejusticeartscoalition.org/2019/01/04/communities-of-caring-through-choral-singing-an-update-from-the-oakdale-prison-choir/> [<https://perma.cc/UB8H-P8M7>].

240. *See* Jack Hitt, *Act V*, THIS AM. LIFE (Aug. 9, 2002), <https://www.thisamericanlife.org/218/act-v> [<https://perma.cc/ZEF3-QY8K>].

coping skill.²⁴¹ And poetry can be an outlet for individuals to creatively express their emotions and process traumas and challenges they face in their daily lives.²⁴²

D. Proposed Legislation for Iowa

The purpose of the juvenile justice system is rehabilitation,²⁴³ and direct filing juveniles to adult criminal court directly undermines the rehabilitative nature inherent in the juvenile system. Instead, it allows for a cruel and unusual punishment for juveniles who need, and would benefit from, a second chance.²⁴⁴

Iowa should repeal Iowa Code § 232.45 and amend Iowa Code § 232.8 to prohibit the ability for juveniles, children 18 years old and younger, to be prosecuted within the adult criminal justice system.²⁴⁵ In its place, Iowa should establish a community-based supervision program that incorporates community service, restorative justice, and any necessary treatment (substance abuse, mental health services, or arts/music therapy).²⁴⁶ This proposed legislation will provide juveniles with the resources and skills they

241. See Zandra H. Stino & Barbara C. Palmer, *Motivating Women Offenders Through Process-Based Writing in a Literacy Learning Circle*, 43 J. ADOLESCENT & ADULT LITERACY 282, 287 (1999).

242. See RUNDSM, <http://rundsm.org/movement-515/> [https://perma.cc/5JR4-QS VR]. RunDSM is a Des Moines-based program focused on providing a community and creative environment for youth. In particular, Movement 515 (a program provided by RunDSM) is an “urban arts community where, twice a week, students and mentors come together to create spoken word poetry and graffiti art. Attempting to slow down the world and investigate themselves, they work toward becoming change agents, shedding light on the impact human emotion and connection brings to the global community.” *Movement 515*, RUNDSM, <http://rundsm.org/movement-515/>. This program has not only been instrumental in the lives of the youth involved but it has contributed to the Des Moines community and even the current Black Lives Matter movement in Des Moines, now known as the Black Liberation Movement.

243. *State v. Lyle*, 854 N.W.2d 378, 394 (Iowa 2014) (holding that the cruel and unusual punishment clause in the Iowa constitution is violated by subjecting juveniles to mandatory minimum sentences).

244. U.S. CONST. amend. VIII.

245. Perhaps the age of adulthood could be increased to 19 years old, like in Vermont, or even to 23 or 25, to better mirror the age when the juvenile brain has become fully developed. See VT. STAT. ANN. tit. 33, § 5203 (West 2020); Coalition for Juvenile Justice, *Brain Development*, *supra* note 187, at 3.

246. *Supra* Part IV.C.

need to become successful members of society.²⁴⁷ Instead of punishing them for a prior act during their impulsive childhood, and stigmatizing them for a lifetime based on that one act, Iowa should allow for the growth of individuals within their communities or an appropriately designed rehabilitative justice system. People make mistakes; children make mistakes. Juveniles should be able to learn from their mistakes but punishing them and surrounding them with “hardened criminals” and labeling them as “criminals” and “deviants” does not motivate them to become better people. Reintegration is hard enough with most individuals having inadequate job skills along with little family support and mental health, social, or medical challenges.²⁴⁸ Instead, they should be inspired, encouraged, and given skills and resources needed to avoid reoffending in the future. Prosecuting juveniles as adults is both cruel and unusual punishment that does not contribute to the rehabilitative purpose of the juvenile justice system.²⁴⁹

E. Potential Arguments Against the Proposed Legislation

The main arguments against reforming the direct file and waiver system and placing juveniles in the adult criminal justice system stem from fears about community safety.²⁵⁰ The concern with “out-of-control juvenile crime” drove many states to create the ability for juveniles to be tried as adults.²⁵¹ Others argue that if juveniles commit a heinous crime, they should

247. *Id.*

248. Celeste Davis, Stephen J. Bahr & Carol Ward, *The Process of Offender Reintegration: Perceptions of What Helps Prisoners Reenter Society*, 13 CRIMINOLOGY & CRIM. JUST. 446, 447 (2012).

249. U.S. CONST. amend. VIII.

250. Another argument might be regarding victims’ rights. Certainly, victims have rights, and I am not diminishing their circumstances or what they are going through, but this begs the question: what is the purpose of the criminal justice system? Is it to punish the perpetrators? Or to vindicate the victim? And what happens when it is a victimless crime? I would argue the point of the criminal justice system is rehabilitation and correction of damaging behavior. The civil system exists for the victim to be repaid and restored, and often there is restitution to the victim as a condition of the criminal sentence. See *Victim Restitution and Other Financial Remedies*, IOWA ATT’Y GEN., https://www.iowaattorneygeneral.gov/media/documents/RESTITUTION_brochure_2008_F7F73523E_87AAC25E228E8.pdf [<https://perma.cc/S8QY-WDF2>]. This restitution is not waivable in Iowa courts. *Victim Restitution*, POLK CNTY. IOWA, <https://www.polkcountyiowa.gov/county-attorney/programs-and-resources/victim-restitution/> [<https://perma.cc/A7WN-CLKG>].

251. Malcolm C. Young & Jenni Gainsborough, *Prosecuting Juveniles in Adult Court: An Assessment of Trends and Consequences*, SENT’G PROJECT (Jan. 2000), <https://www.prisonpolicy.org/scans/sp/juvenile.pdf> [<https://perma.cc/4XZA-EH7K>].

be punished accordingly, and the adult criminal justice system provides both accountability and a suitable penalty for the crime committed.²⁵² Furthermore, when juveniles are almost adults, there is an argument that they should be treated as adults.²⁵³ Charging juveniles as adults also appears to create a sense of consistency and accountability in reparations and restitution for the crime committed against the victims and the community.²⁵⁴ It also produces more consistency across the board for the same types of crime committed by both adults and juveniles.²⁵⁵

While there may be some validity in these counterarguments, the government has a duty to protect its more vulnerable populations, such as juveniles, especially when sexual assault and other abuse toward juveniles is prevalent in the adult criminal justice system.²⁵⁶ The lack of accessibility to education and necessary rehabilitative and counseling services poses an insurmountable barrier for many juveniles upon release.²⁵⁷ Having an adult criminal record tarnishes the ability for juveniles to find jobs and prevents them from furthering education with the lack of access to financial aid and other resources.²⁵⁸ Since the recidivism rate increases when juveniles are treated like adults, the concerns for community safety are compromised, creating a less effective crime deterrent and producing a more dangerous society.²⁵⁹ It also becomes a significant concern when race becomes a substantial factor in waiving juveniles into adult court.²⁶⁰

252. Natalie Regoli, 22 *Should Juveniles Be Tried as Adults Pros and Cons*, CONNECTUS (Mar. 26, 2019), <https://connectusfund.org/22-should-juveniles-be-tried-as-adults-pros-and-cons> [<https://perma.cc/DM7C-YFXU>].

253. *Id.*

254. *Id.*

255. *Id.*

256. See Caitlin Curley, *Juveniles Tried as Adults: What Happens When Children Go to Prison*, GENBIZ (Nov. 11, 2016), <http://www.genfkid.org/juveniles-tried-adults-happens-children-go-prison> [<https://perma.cc/A6KN-83V6>].

257. *Id.*

258. *Id.*

259. Molly McDonough, *Report: Recidivism Higher for Youth Offenders Tried as Adults*, A.B.A. J. (Nov. 30, 2007), https://www.abajournal.com/news/article/report_recidivism_higher_for_youth_offenders_tried_as_adults [<https://perma.cc/F4UV-C5HR>].

260. Jennifer L. Eberhardt & Aneeta Rattan, *The Race Factor in Trying Juveniles as Adults*, N.Y. TIMES (June 5, 2012), <https://www.nytimes.com/roomfordebate/2012/06/05/when-to-punish-a-young-offender-and-when-to-rehabilitate/the-race-factor-in-trying-juveniles-as-adults> [<https://perma.cc/ZG92-93GM>]. See also *Juvenile InJustice: Charging Youth as Adults Is Ineffective, Biased, and Harmful*, HUM. IMPACT PARTNERS

VI. CONCLUSION

Over the past couple decades, the criminal justice system in the United States has shown its true colors of discrimination and prejudice through mass incarceration—the product of the War on Drugs, broken windows policing, mandatory minimums, three-strikes laws, and tough-on-crime policies. Mass incarceration does not only result in cruel and unusual punishment to those incarcerated but impacts the community at large. It exacerbates the negative impacts of disenfranchised voters, slave labor, police brutality, and systemic discrimination. With all the political plight that the criminal justice system is in, it is not fair to drive juveniles—a vulnerable population representing our country's future—into the broken system. Our goal should be to rehabilitate and mend society, instead of pointing fingers at the true victims of systemic discrimination and lack of governmental support.

Julio Mendez, now a 37-year-old Latinx man, is awaiting trial on another drug charge.²⁶¹ He feels more comfortable in jail, as he does not know how to live on the outside. He loves his children, but he does not know how to raise them. His numerous drug charges are a result of his self-medication to cope with the stress and anxiety he feels in the real world. He wants to stop offending and become a productive member of society, but he does not know how; the system did not give him the skills and tools he needed at a young age to succeed.²⁶²

Imagine if Julio had the opportunity, as a 14-year-old, to visit the man he beat up. Maybe he would have been able to learn about empathy and remorse, leading him toward more positive community interactions and connections. If Julio was able to make amends and observe the consequences of his actions, maybe he would have learned the implications of his behaviors on his community, leading him toward more active and positive engagement through volunteering and giving back to his community. If Julio had the opportunity to receive treatment or counseling for his anger and frustration, maybe he would be better able to learn how to cope with his surroundings and be home with his own children, teaching them these same skills. If the system had not failed him, where would he be now? Perhaps he would have been a successful college athlete or maybe he would be settled down with a job he loves and his own family, enjoying life on the outside.

(Feb. 2017), <https://humanimpact.org/hipprojects/juvenile-injustice-charging-youth-as-adults-is-ineffective-biased-and-harmful/> [<https://perma.cc/4NCU-WFC2>].

261. See *supra* Part I.

262. *Id.*

Juveniles are not treated as adults in any other sphere of life, so why should they be punished as adults? Our youth deserve better. We deserve better, because “each of us is more than the worst thing we’ve ever done.”²⁶³

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263. BRYAN STEVENSON, *JUST MERCY* 290 (2015).

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