EXPLORING THE SPECTRUM: How the Law May Advance a Social Movement

Tiffani Darden*

INTRODUCTION

The school-to-prison pipeline too often places young people into a hamster's spinning wheel. According to the Department of Justice, suspension from school diminishes a student's chance to graduate from high school and increases a student's chance at entering the juvenile justice system.[1] The rollercoaster halts only when interrupted by a young person's confrontation with adult criminal courts.[2] In my opinion, a balanced approach, reconfigured to critique public education alongside youth correctional facilities, will more fully develop our understanding of the problem and assist in crafting holistic solutions. Children should not suffer undue trauma associated with adjudication, the "delinquent" label, and separation from supportive family and community networks.

The school-to-prison pipeline literature places a heavy onus upon public schools to reform internal policies—scholars focus heavily on prevention at the schoolhouse level. Important questions reside within this realm. School policies, implicit bias, and operational protocols need to change in order to avoid irrational disciplinary action. On the other hand, as to children formally detained and removed from their families and community, there needs to be a clear path to reentry into society.[3] Now, a juvenile offender detained in a government facility may be, upon release, unable to return to school with no one dedicated to supporting their attempt to graduate from a public education.

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1. U.S. DEP'T OF JUSTICE & U.S. DEP'T OF EDUC., SUPPORTIVE SCHOOL DISCIPLINE INITIATIVE (2011), https://www2.ed.gov/policy/gen/guid/school-discipline/appendix-3-overview.pdf.

2. *See* EMILY MORGAN ET AL., COUNCIL OF STATE GOV'TS JUSTICE CTR., THE SCHOOL DISCIPLINE CONSENSUS REPORT: STRATEGIES FROM THE FIELD TO KEEP STUDENTS ENGAGED IN SCHOOL AND OUT OF THE JUVENILE JUSTICE SYSTEM 8–12 (2014).

3. Jessica Feierman et al., *The School-to-Prison Pipeline . . . and Back: Obstacles and Remedies for the Re-enrollment of Adjudicated Youth*, 54 N.Y.L. SCH. L. REV. 1115, 1116 (2009-2010).

Social justice principles grounded in the law suggest that advocates may simultaneously pursue a more panoramic reform agenda.

Systemic interventions in public schools constitute one element to resolving this problem—a route thoroughly fleshed out in academic commentary. But juveniles detained in correctional facilities also need counseling and intense educational training to support their reentry into public schools as successful students. Morality and constitutional punishment under the Eighth Amendment may draw controversy, but the social science supporting the Court's juvenile sentencing trilogy pulls into question where we stand as a society with rehabilitating and supporting youth.[4]

Based on doctrine, the Eighth Amendment typically applies to sentencing—length of term of proportionality. But for previously detained juveniles, the state actor extends their sentence by an unwillingness to secure enrollment in a public school. The argument rings most clear for the compliant juvenile willing to sit home or wait around the schoolroom halls until someone finds them a seat. This indeterminate timeframe creates an empty space imposed upon these compliant citizens by a state actor. Public education officials do not fulfill their duty to educate the child, and the juvenile justice system does not hold the educational system accountable for their failure. In my opinion, while the children waste away under bureaucratic contempt and confusion, they are experiencing a violation of their individual right prohibiting cruel and unusual punishment.

Juveniles cited for a truancy violation, while on probation and stuck in this quagmire, also suffer from cruel and unusual punishment.[5] In essence, the state juvenile justice system, in conjunction with the state educational system, failed to secure their placement in a hospitable public school. For this reason, these juveniles find themselves back before a judge on truancy charges—a probation violation. From here, it is back to juvenile detention. How does this not equate to cruel and unusual punishment at the hands of a supposedly rehabilitative justice system?

Finally, on the broadest spectrum, denying public school reentry perpetuates the cycle to a lifetime of incarceration. This statistical reality may be labeled society's cruel and unusual punishment towards disadvantaged

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4. *See* Miller v. Alabama, 132 S. Ct. 2455, 2460 (2012) (the court held that mandatory sentencing schemes that impose a term of life imprisonment without parole on juvenile homicide offenders, thus precluding consideration of the offender's youth as mitigating against such a severe punishment, violate the principle of proportionate punishment under the eighth amendment); Graham v. Florida, 560 U.S. 48, 79–80 (2010) (barring life imprisonment without the possibility of parole for juvenile nonhomicide offenders); Roper v. Simmons, 534 U.S. 551, 575 (2005) (banning capital punishment for juveniles).

5. *See e.g.*, *Truancy*, CAL. DEP'T OF EDUC., http://www.cde.ca.gov/ls/ai/tr/ (last visited May 8, 2016).

youth at the state's hand.[6] My argument, admittedly, lacks a close link to the doctrinal underpinnings of Eighth Amendment jurisprudence, but the reality unearths its core.

This essay begins with a review of the hurdles facing juveniles that seek reentry into public schools after detention. Juveniles commit unthinkable acts against one's person and property, but if we commit to the constitutional differences between a juvenile and adult, regardless of the acts' severity, morality may dictate extension of Eighth Amendment principles to detention and government sponsored aftercare, which includes reentry into public schools. Part II addresses the necessary distinction between juvenile and adult offenders when crafting sentences and post detention requirements. The Eighth Amendment warrants a critique in light of the Court's recent opinions on age-related cases. First, the test inaptly suits the reasoning relied upon to support recent Supreme Court decisions involving juveniles and the criminal law context. With adults, the Court conducts a painstaking survey of legislation to discover society's attitude towards certain punishments. This seems wholly insufficient for juvenile offenders. Instead, we should rely on the same neuroscience relied upon in the juvenile sentencing trilogy. And we could also throw in some "common sense" as adopted when incorporating age as a relevant factor for the *Miranda* analysis in custodial interrogations. This revision to the test would prevent repeating a historical wrong and address current challenges faced in the school-to-prison pipeline challenge.

Part III examines solutions enacted in jurisdictions intent on successfully transitionally juveniles from detention back to their homes, public schools, and communities. On the spectrum from school-to-prison, when accounting for legal rights owed students and parents, the system's capacity expands and contracts in ways not always benefitting at-risk students. A restricted focus on school policy and administrators too narrowly confines the problem. The school-to-prison pipeline quandary requires a cross section of experts, including education, juvenile, community, and family law scholars and advocates. In reality, some children need to spend time away from their home environment based on the severity of committed offenses and other factors. Once removed from the home, advocates need to ensure these youths receive the rehabilitative services necessary to break the cycle and prevent a lifetime spent revolving through criminal courts. And most importantly, they are able to reintegrate after spending time in detention.

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6. *See generally What Is the School-to-Prison Pipeline*, ACLU, https://www.aclu.org/fact-sheet/what-school-prison-pipeline (last visited May 8, 2016).

I. UNDERSTANDING THE CHALLENGES OF REENTRY FOR JUVENILE OFFENDERS

A broader Eighth Amendment application arises in the juvenile law context. Once released from a detention facility, the state's refusal to reenroll students should constitute a fundamental rights violation. First, during school hours, society presents minors with two options: either attend school or remain at home. When schools deny reenrollment to children on probation, they either stay at home or sit in an administrator's office.[7] This equates to house arrest, a continuation of their incarceration. For those choosing to remain home or wander throughout the day, this may lead to a truancy charge, meaning a probation violation, and they are back in a juvenile detention facility. Finally, worst case scenario, the cycle perpetuates itself because a truant youth starts running in the same social circles that initially influenced his or her delinquent behavior. Now whom should we blame, the child or the system?

In its inception, the juvenile justice system sought to rehabilitate children. Although separated from their families, children brought into this system gained an education or trade suitable for future life sustainment.[8] More recently, during the eighties and nineties, the attitude towards juvenile delinquents shifted from charity to punishment.[9] Legislatures labeled a minor's wrongdoing the same as adult offenders.[10] This change affected the treatment of children in schools and before a court. Today, zero tolerance policies unfairly invoke harsh punishments against trivial offenses.[11] Moreover, these policies disproportionately affect children of color.[12] Some students receive in-school detention, other students receive suspension, others get transferred to an alternative school, and still others find themselves

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7. *See, e.g.*, DAVID R. GILES, N.J. INST. FOR SOC. JUSTICE, SCHOOL RELATED PROBLEMS CONFRONTING NEW JERSEY YOUTH RETURNING TO LOCAL COMMUNITIES AND SCHOOLS FROM JUVENILE DETENTION FACILITIES AND JUVENILE JUSTICE COMMISSION PROGRAMS 4–5 (2003); *Re-entry: Key Issues*, JUVENILE JUSTICE INFO. EXCH., http://jjie.org/hub/reentry/key-issues (last visited May 30, 2016).

8. *See, e.g.*, David M. Altschuler & Rachel Brash, *Adolescent and Teenage Offenders Confronting the Challenges and Opportunities of Reentry*, 2 YOUTH VIOLENCE & JUV. JUST. 72, 74 (2004); Janet Gilbert et al., *Applying Therapeutic Principles to a Family-Focused Juvenile Justice Model (Delinquency)*, 52 ALA. L. REV. 1153, 1158 (2001).

9. *See* Altschuler & Brach, *supra* note 8.

10. *Id.* at 75.

11. *Id.* at 74–75, 84.

12. GEORGETOWN LAW HUMAN RIGHTS INST., KEPT OUT: BARRIERS TO MEANINGFUL EDUCATION IN THE SCHOOL-TO-PRISON PIPELINE 10–11 (2012) [hereinafter KEPT OUT] (citing ADVANCEMENT PROJECT, OPPORTUNITY SUSPENDED 6 (2002), http://www.advance-mentproject.org/sites/default/ les/publications/opsusp.pdf).

in a detention center.[13] Those in detention centers suffer the greatest consequence. The system not only separates these youths from their families, but in many instances, these institutions fail to properly educate and provide necessary rehabilitative programs for reintegration.

Juveniles returning from state detention centers require a cadre of supportive professionals, family members, and community partners to successfully overcome their experience with the justice system and reintegrate into society.[14] Experts propose several guiding principles to ensure seamless reentry into one's community: students need an individualized plan tailored around the characteristics of their community; youth may need a mediator to facilitate "interaction and positive involvement with the community"; the juvenile's support system, such as family, schools, and employers, should be contacted before the release date; social services should identify deficiencies in the plan and create contingency plans; and finally, stakeholders should assess the juvenile and the community's progress.[15] Even though this essay focuses on public school reentry, each component plays a pivotal part in making the transition to public school.

In *Morrissey v. Brewer*, the Court reminded us that the purpose of the parole system "is to help individuals reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed. It also serves to alleviate the costs to society of keeping an individual in prison."[16] Most prisoners either automatically receive probation after serving a number of years on their sentence, or a probation board holds the discretion on whether to grant probation.[17] According to the *Morrissey* Court, parole conditions accomplish two purposes:

> [1] they prohibit, either absolutely or conditionally, behavior that is deemed dangerous to the restoration of the individual into normal society[; a]nd, [2] through the requirement of reporting to the parole officer and seeking guidance and permission before doing many

13. *See, e.g.*, TONY PHABELO ET AL., COUNCIL OF STATE GOV'TS JUSTICE CTR., BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT 20–21 (2011).

14. *Youth Reentry*, THE SENTENCING PROJECT (June 2012), http://www.sentencingproject.org/wp-content/uploads/2016/01/Youth-Reentry.pdf.

15. Feierman et al., *supra* note 3, at 1126; THE SENTENCING PROJECT, *supra* note 14 (citing DAVID M. ALTSCHULER & TROY L. ARMSTRONG, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, INTENSIVE AFTERCARE FOR HIGH-RISK JUVENILES: A COMMUNITY CARE MODEL (1994)); Altschuler & Brash, *supra* note 8.

16. Morrissey v. Brewer, 408 U.S. 471, 477 (1972).

17. *Id.* at 477–78.

> things, the officer is provided with information about the parolee and an opportunity to advise him.[18]

Parole boards grant this privilege to those demonstrating the potential to "return to society and function as a responsible, self-reliant person."[19] Moreover, society may benefit from the offender's release. According to the Court, "[s]ociety has a stake in whatever may be the chance of restoring him to normal and useful life within the law."[20] We owe no less an obligation to juvenile offenders.

After leaving a detention center, juvenile delinquents still remain under probation requirements. The obligation to immediately attend school applies across the board.[21] That every state oversees a public education system, students possess a property right to an education.[22] When public schools deny a student's attendance, this triggers due process issues. Unfortunately, public schools refuse to admit these students due to their criminal history and administrative requirements.[23] The *Kept Out* study conducted by Georgetown Law's Human Rights Institute Fact-Finding Mission sheds light on the challenges faced by these students in the Los Angeles Unified School District.[24] I'll briefly review their major findings, which provides a framework for understanding the problem, and gives necessary background for the legal analysis below.

First, district and school administrators block students on probation from reentering school without providing a reason.[25] Second, the age-based and credit-based policies used for enrollment in "comprehensive" public schools, as opposed to other alternative programs, erect a hurdle for overage and underage students.[26] Moreover, students with no other option than an alternative school facility regularly do not receive the educational foundation to compete for higher education opportunities.[27] Third, community schools inappropriately use transfer policies to avoid admitting students reentering

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18. *Id.* at 478.
19. *Id.* at 482.
20. *Id.* at 484.
21. *See* Feierman et al., *supra* note 3, at 1119 n.25.
22. Goss v. Lopez, 419 U.S. 565, 574 (1975) ("[T]he State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause . . . .").
23. Feierman et al., *supra* note 3, at 1116–17.
24. *See* KEPT OUT, *supra* note 12, at 14.
25. *Id.* at 20.
26. *Id.* at 25–26. Overage students may pose a safety risk and may not qualify for traditional public high schools based on the lack of credit hours in comparison to their grade level. Underage students may be suitable candidates for a vocational program or continuation school or alternative high school, but are not yet old enough for these options. *Id.*
27. *Id.* at 57.

from a state detention center.[28] These transfers pose insurmountable obstacles for some students due to lack of transportation outside their neighborhood, safety issues, and the stigma associated with not being accepted at their community institution.[29]

The *Kept Out* report also explores the problem surrounding lack of coordination between public schools and the juvenile justice facilities, and how this bureaucratic breakdown in communication ultimately adversely affects the reentering youth.[30] The inability to access transcripts and records hinders students from "reenrolling in traditional schools, being put in proper classes, graduating on time, and getting the special education services to which they are entitled."[31] These dismal setbacks occur because credits earned in detention centers do not neatly transfer to the public school system.[32]

To be fair, schools experience certain incentives to turn away students expected to perform below grade level, such as No Child Left Behind and local accountability standards.[33] The NCLB issues fall beyond this paper's scope, but its detrimental influence cannot be ignored in a full breakdown of the problem. Someone cannot survive without an education. Of all males incarcerated in federal and state prisons, sixty-eight percent did not earn a high school diploma.[34] For children leaving detention centers, and unsuccessfully trying to enroll in public schools, we risk a whole demographic not earning a high school diploma because they got caught in what should be a *rehabilitative* system.

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28. *See id.* at 29.
29. *Id.* at 30.
30. *Id.* at 34.
31. *Id.* at 35.
32. *See id.* at 35–36.
33. *See id.* at 21–22; Feierman et al., *supra* note 20, at 1221–26. In December, 2015, the NCLB Act was amended by the Every Student Succeeds Act ("ESSA"). *See generally* Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1802 (2015). ESSA changed the accountability standards established by NCLB, leaving "accountability goals almost entirely up to the states." *See* Greogry Korte, *The Every Student Succeeds Act vs. No Child Left Behind: What's Changed?*, USA TODAY (Dec. 11, 2015, 6:29 AM), http://www.usatoday.com/story/news/politics/2015/12/10/every-student-succeeds-act-vs-no-child-left-behind-whats-changed/77088780.
34. CAROLINE WOLF HARLOW, BUREAU OF JUSTICE STATISTICS, EDUCATION AND CORRECTIONAL POPULATIONS 1 (2003), http://www.bjs.gov/content/pub/pdf/ecp.pdf.

II. REDEFINING THE EVOLVING STANDARDS APPLIED TO EIGHTH AMENDMENT CLAIMS TO ADDRESS POST-DETENTION TREATMENT OF JUVENILES

To date, public education is not a fundamental right. However, state governments may not deprive a child of an education, and most state constitutions require that children receive a quality education. In *San Antonio Independent School District v. Rodriguez*, the Supreme Court intimated that complete deprivation from public school offerings may constitute a due process violation.[35] In *Plyler v. Doe*, the Court cast the exclusion of immigrant children as an equal protection violation under the Fourteenth Amendment; and, once again, the Court stressed the importance of not excluding entire demographic populations from the public school systems.[36] How unfortunate, then, that children caught in a system meant to rehabilitate often receive a sub-par education while detained in state facilities, and public schools refuse to admit them upon release from these detention centers.[37] This exposes a due process violation.

The due process clause, as interpreted in *Goss v. Lopez*, requires school districts to provide students with notice and an opportunity to be heard prior to exclusion from public schools.[38] *Goss* stops short of requiring officials to enroll students in public schools. Relevant to re-entry after detention, the Court suspected that more formal procedure should be enacted for long-term and permanent exclusion from public schools.[39] Under the informal "pass the ball" methods currently imposed by schools, students never enjoy these protections envisioned by the law. Moreover, many courts consider the transfer of students to alternative education facilities as requiring no process.[40]

I would argue, at this juncture, the States not only violate students' procedural and substantive due process rights, but this also constitutes cruel and unusual punishment. In the cases of juvenile defendants, many technical barriers and obfuscation from public schools prevents reentry.[41] The research

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35. *See* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 23–25 (1973).

36. Plyler v. Doe, 457 U.S. 202, 230 (1982).

37. *See* KEPT OUT, *supra* note 12, at 57.

38. 419 U.S. 565, 579 (1975) ("[S]tudents facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing.").

39. *Id.* at 584 ("Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations . . . something more than the rudimentary procedures will be required.").

40. Julie Underwood, Commentary, *The 30th Anniversary of* Goss v. Lopez, 198 EDUC. L. REP. 795, 801 (2005).

41. Feierman et al., *supra* note 3, at 1116–17.

shows, also, that alternative placements away from the child's community may cause serious disruptions to a student's progress; especially, students already fighting an uphill battle to reenter the public education system.[42] As with imposing discipline in schools, these students do not receive individualized attention through an impartial education-centered structure. Due process arguments alone seem inadequate to quell the problems experienced by these students when attempting reentry.[43]

Based on the trending recognition of juveniles as "constitutionally different" from adult criminal defendants, the Supreme Court should redefine "cruel and unusual punishment" standards for juvenile offenders to encompass the original rehabilitation goals of juvenile justice courts. Once an under-aged citizen serves time in a juvenile detention center, they should no longer suffer stigma and reintegration challenges based on their indiscretion. Moreover, these questions should not be left to society, as allowed under the Eighth Amendment's current test. Neuroscience and morality support a unique application of Eighth Amendment doctrine to juvenile offenders. The original construct of juvenile justice envisioned a rehabilitative space for children failed by family and community.[44] With continued progress in soft and hard science, we now know that juveniles deserve special consideration when exhibiting criminal behavior. Juveniles should not be immune to consequences, but neither should they carry the full brunt of consequences levied upon an adult offender.

The juvenile sentencing trilogy, read in light of other opinions explaining juvenile rights, implies broader strides are necessary to realize the rehabilitation goals linked to juvenile justice. *Roper*,[45] *Graham*,[46] and *Miller*,[47] set forth grounding principles for understanding the Court's shift in how we should punish juvenile offenders. The following sections describe how the Court applied the Eighth Amendment to the statutory punishment schemes and consider the common principles in judging the constitutionality of juvenile punishment. This exercise builds the argument for viewing juveniles as constitutionally different from adults. The following background also supports how the Court's arguments justify formulating a specialized "cruel and unusual punishment" test for juveniles in future disputes involving juvenile sentencing and their reintegration into society.

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42. *Id.* at 1117.

43. *Id.* at 1120–21.

44. NAT'L RESEARCH COUNCIL & INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE 154 (Joan McCord et al. eds., 2001), http://www.nap.edu/read/9747/chapter/7 [hereinafter JUVENILE CRIME, JUVENILE JUSTICE].

45. Roper v. Simmons, 543 U.S. 551 (2005).

46. Graham v. Florida, 560 U.S. 48 (2010).

47. Miller v. Alabama, 132 S. Ct. 2455 (2012).

The juvenile sentencing trilogy of *Roper*, *Graham*, and *Miller* applied the Eighth Amendment to find unconstitutional three statutes. The Eighth Amendment reads as follows: "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[48] States must comply with this constitutional mandate pursuant to the Fourteenth Amendment's due process clause.[49] The Court conducts a two-step test which includes: "a review of objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question"; and exercising its "own independent judgment" regarding proportionality between the punishment and criminal act for a particular category of defendants.[50] The first prong to this test, the objective indicia of consensus, rings self-explanatory when reading the relevant cases. Although the justices interpret the data to reach varying consensuses, the state legislative analysis necessary to begin the inquiry remains consistent across majority, concurring, and dissenting opinions.[51]

In exercising its own judgment, the Court considers "history, tradition, and precedent" with due regard for the Amendment's "purpose and function in the constitutional design."[52] This analysis includes an examination of the "'evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual."[53] The proportionality principle contemplates that convicted persons should be punished in proportion to the offense committed and others convicted of similar offenses in the sentencing jurisdiction and other jurisdictions.[54] That one's punishment should be in proportion to the severity of their crime invokes few qualms among judges and commentators.[55] These essential proportionality determinations, however, present quite the

48. U.S. CONST. amend. VIII.

49. Furman v. Georgia, 408 U.S. 238, 239–40 (1972); Robinson v. California, 370 U.S. 660, 667 (1962); Louisiana *ex rel.* Francis v. Resweber, 329 U.S. 459, 462 (1947).

50. *Roper*, 543 U.S. at 564. Whether the Court's independent judgment should be considered seemed to fall by the wayside in the *Stanford v. Kentucky* opinion, but the Court explicitly cited this as a consideration in *Roper*. *Id.* (citing Atkins v. Virginia, 536 U.S. 304, 312 (2002)).

51. *See Miller*, 132 S. Ct. at 2470–72.

52. *Roper*, 543 U.S. at 560.

53. *Id.* at 561 (citing Trop v. Dulles, 356 U.S. 86, 100–01 (1958)). According to the Court, the Eighth Amendment "embodies a moral judgment" and applying the standard ebbs in congruence with "the basic mores of society change." Graham v. Florida, 560 U.S. 48, 58 (2010) (quoting Kennedy v. Louisiana, 554 U.S. 407, 419 (2008)).

54. *See, e.g.*, Tison v. Arizona, 481 U.S. 137, 155–56 (1987); Solem v. Helm, 463 U.S. 277, 286–89 (1983); Enmund v. Florida, 458 U.S. 782, 813–15 (1982).

55. *See* Weems v. United States, 217 U.S. 349, 367–74 (1910).

subjective puzzle, which wanes erratically when drawing norms specific to juvenile sentencing practices.

The juvenile justice system began with an emphasis on rehabilitation. Dedicated courts sought to mold productive citizens from children who took a wayward path.[56] More often than not, these children suffered from neglect or came from poor socio-economic backgrounds.[57] They were often the children of poor immigrants who worked long hours during the Industrial Revolution era.[58] Parallels exist between the initial population of children drawing the attention of Progressives, and the children targeted by our current system.[59]

What's changed?—our thoughts on how to restore these children.

The 1900s involved an air of altruism to the juvenile justice system's rehabilitation focus.[60] But now, the Supreme Court readily accepts science to justify a rehabilitation focus.[61] Therefore, why consider the movement of state legislatures and their constituencies in determining what constitutes cruel and unusual punishment against a juvenile offender? Juveniles deserve better protection from state actors. The programs enacted to successfully reenter juveniles from detention centers to their neighborhood schools and communities prove that we possess the capacity to offer them a different outcome.[62] In the eighties, black children from impoverished neighborhoods flooded the juvenile justice system.[63] A focus on gang violence and drug control underscored the criminal laws enacted to handle these "problem" youth.[64] Today, black and Latino children from impoverished neighborhoods

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56. *See* JUVENILE CRIME, JUVENILE JUSTICE, *supra* note 44, at 154.

57. *See, e.g.*, BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 55 (Michael Tonry & Norval Morris eds., 1999) ("For American society, acutely apprehensive about the disruptive influences of 'different' people, incarceration provided an attractive strategy to control the poor and immigrants.").

58. *Id.*

59. *See* Deborah L. Mills, United States v. Johnson: *Acknowledging the Shift in the Juvenile Court System from Rehabilitation to Punishment*, 45 DEPAUL L. REV. 903, 907–10 (1996).

60. *See id.* at 903–11; *see, e.g.*, MARVIN VENTRELL, NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, EVOLUTION OF THE DEPENDENCY COMPONENT OF THE JUVENILE COURT 19–27 (1998), http://www.juvenilelawsociety.org/upload/evolutionofthedependencycour.pdf.

61. *See, e.g.*, Miller v. Alabama, 132 S. Ct. 2455, 2464 (2012).

62. *See generally* OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, INTENSIVE AFTERCARE FOR HIGH-RISK JUVENILES: A COMMUNITY CARE MODEL (1994), https://www.ncjrs.gov/pdffiles/juvpp.pdf.

63. *See, e.g.*, Cynthia Conward, *There is No Justice, There is "Just Us": A Look at Overrepresentation of Minority Youth in the Juvenile and Criminal Justice System*, 4 WHITTIER J. CHILD & FAM. ADVOC. 35, 49 (2004).

64. *See* KEPT OUT, *supra* note 12, at 19–21; *see also* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 FUTURE OF CHILDREN, no. 2, Fall 2008, at 17–18, https://www.princeton.edu/futureofchildren/publications/docs/18_02_02.pdf.

flood the system, and they confront a system focused on punishment.[65] But, the tide seems to be turning within the highest court.

If juveniles are truly "constitutionally different" from adults, then they deserve a different test under the Eighth Amendment cruel and unusual punishment clause. When considering cruel and unusual punishment for adults, the Court focuses on objective indicia based on evolving standards, focused primarily on legislative cues.[66] When considering the "objective indicia of consensus," the Court looks to sentencing statutes and the frequency of their application.[67] For this prong of the analysis, a strong interplay exists between policymakers and the law. The Court literally tallies movement at the legislative level and enforcement of pre-existing laws to determine the constitutionality of a particular punishment.[68] "[L]egislative measures adopted by the people's chosen representatives weigh heavily in ascertaining contemporary standards of decency."[69] For a juvenile, however, we should still consider the best interest of the child. This interest pervades our child welfare jurisprudence and should carry no lesser weight in the delinquency context. The best interest of children must not waver based on public opinion as expressed through a legislator's "tough on crime" agenda. Instead, just as we measure the diminished capacity of juveniles by using social science evidence, so must we depend on such studies when determining whether a juvenile's experience with the justice system constitutes cruel and unusual punishment. This approach connects a core goal of the juvenile system—rehabilitation—with studied methods, which do not rely solely on mimicking the "justice" and "punishment" meted out for adults convicted of similar crimes. Moreover, the constitutional right should extend beyond conditions in juvenile facilities.

For *Roper*, *Graham*, and *Miller*, the Court emphasized its authority to interpret the Eighth Amendment, which requires consideration of the following: "culpability of the offenders at issue in light of their crimes and characteristics"; "the severity of the punishment in question"; and "whether

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65. *See* TEX. JUVENILE JUSTICE DEP'T, COMPREHENSIVE REPORT: YOUTH REENTRY AND REINTEGRATION, at app. C–D (2012); David M. Altschuler & Rachel Brash, *Adolescent and Teenage Offenders Confronting the Challenges and Opportunities of Reentry*, 2 YOUTH VIOLENCE & JUV. JUST., no. 1, Jan. 2004, at 74.

66. Roper v. Simmons, 543 U.S. 551, 563–64 (2005).

67. *See id.* at 564–65.

68. In *Roper v. Simmons*, the Court compares the number of states prohibiting the sentencing of death for mentally disabled and juvenile defendants. The Court also observes the number of states with these statutes still in effect that actually sentenced someone pursuant to the provisions. *Id.* at 564–67.

69. Woodson v. North Carolina, 428 U.S. 280, 294–95 (1976).

the challenged sentencing practice serves legitimate penological goals."[70] The Court concluded, in divided opinions, that the sentencing schemes in *Roper*, *Graham*, and *Miller* failed to pass their Eighth Amendment test.[71] *Roper v. Simmons* represents a gradual progression by the Court in defining when the Eighth Amendment will apply to sentences imposed upon offenses committed by juvenile defendants. Leading to *Roper*, distinct categories of offenders could not receive the death penalty, including "juveniles under 16, the insane, and the mentally retarded, no matter how heinous the crime."[72] *Roper* expanded these categories to include juveniles under the age of eighteen based on three distinctions between a minor and adult offender.[73] *Graham v. Florida*[74] and *Miller v. Alabama*[75] continued this trend toward making clear distinctions between juvenile and adult offenders. The States' arguments to overcome this movement encapsulated many overlapping and redundant statements, which the Court confronted with consistent, streamlined rebuttals.[76] The majority opinions provide reasons for reevaluating the community's role in sentencing and defining cruel and unusual punishment for juveniles.[77]

Let's begin with an overview of the Court's opinions on the culpability of juvenile offenders in light of their crimes and characteristics. First, according to the Court, juveniles lack maturity and a fully developed sense of responsibility, which may result in "impetuous and ill-considered actions and decisions."[78] Second, "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure."[79] Third, "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed."[80] The majority in *Graham v. Florida* and *Miller v. Alabama*, fully endorsed these reasons for holding that juveniles carry less culpability; therefore, they deserve lesser punishment and more rehabilitation based on their potential for reformation.[81]

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70. Graham v. Florida, 560 U.S. 48, 67–68 (2010).

71. Miller v. Alabama, 132 S. Ct. 2455, 2475 (2012); *Graham*, 560 U.S. at 79; *Roper*, 543 U.S. at 578.

72. *Roper*, 543 U.S. at 568 (citations omitted).

73. *Id.* at 569–71.

74. *Graham*, 560 U.S. at 68–69.

75. *Miller*, 132 S. Ct. at 2464–67.

76. *Id.* at 2470–74; *Graham*, 560 U.S. at 68–75.

77. *Miller*, 132 S. Ct. at 2463; *Graham*, 560 U.S. at 67–71.

78. *Roper*, 543 U.S. at 569 (citing Johnson v. Texas, 509 U.S. 350, 367 (1993)).

79. *Id.* at 569 (citing Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)).

80. *Id.* at 570 (citing ERIK H. ERIKSON, IDENTITY, YOUTH, AND CRISIS (1st ed. 1968)).

81. *Graham*, 560 U.S. at 74–75 (citing Roper v. Simmons, 543 U.S. 551, 569 (2005)). Citing to amicus briefs, the Court found further support for the conclusions elucidated in the *Roper* opinion for distinguishing the culpability level of juvenile and adult offenders. *See also* Miller v.

Roper, *Graham*, and *Miller* also share commonalities with the Court's rationale for rejecting the penological reasons offered for imposing harsh, permanent sentences on juvenile offenders.[82] The Court addresses the most common four theories of punishment: retribution; deterrence; incapacitation; and rehabilitation.[83] According to the Court, retribution loses significance when applied to a juvenile, and even more so when applied to a juvenile committing a non-homicide crime.[84] Due to a juvenile's diminished capacity to appreciate the gravity and consequences of their actions, the deterrence rationale loses significance in this context.[85]

Incapacitation and rehabilitation share a relationship not thoroughly explored by the opinions. To incapacitate a juvenile for life concedes their inability to ever change. Thus, "a life without parole sentence improperly denies the juvenile offender of a chance to demonstrate growth and maturity."[86] In the same vein, rehabilitation and parole should sync with one another; however, "denying the defendant the right to reenter the community, the State makes an irrevocable judgment about that person's value and place in society," which "is not appropriate in light of a juvenile nonhomicide offender's capacity for change and limited moral culpability."[87] The same rationale applies with greater heft to those temporarily detained and attempting reentry into public schools.

In *Roper v. Simmons*, the Supreme Court begins to lay the groundwork for distinguishing juvenile and adult offenders.[88] Justice Kennedy wrote the majority opinion addressing the issue of "whether it is permissible under the Eighth and Fourteenth Amendments to the Constitution of the United States to execute a juvenile offender who was older than [fifteen] but younger than [eighteen] when he committed a capital crime."[89] In *Roper*, the State presented three aggravating factors, which persuaded the jury to impose the

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Alabama, 132 S. Ct. 2455, 2464–65 (2012) (quoting *Roper*, 543 U.S. at 570) ("We reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'").

82. *Miller*, 132 S. Ct. at 2465–66; *Graham*, 560 U.S. at 70–71.

83. *Graham*, 560 U.S. at 71–74.

84. *Id.* at 71–72.

85. *See id.* at 72.

86. *Id.* at 73.

87. *Id.* at 74 (the Court also stresses a concern for the inability for some life without parole prisoners to receive rehabilitative services while incarcerated).

88. Roper v. Simmons, 543 U.S. 551, 555–56 (2005).

89. *Id.* This case required the Court to review their decision in *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989), wherein the Court prohibited the execution of a defendant sentenced to the death penalty for an act committed at the age of fifteen. In this case, the Court held that executing a minor under the age of sixteen violated the Eighth Amendment. *Id.* at 556.

death penalty.[90] Despite the judge's instruction permitting age as a mitigating factor to offset the prosecution's request for the death penalty, the jury recommended this sentence.[91]

During Simmons' post-conviction appeals, the Supreme Court decided *Atkins v. Virginia*, which deemed unconstitutional the execution of mentally disabled defendants.[92] The Court consistently drew analogies between mentally challenged defendants and juveniles in shifting its opinion from *Stanford*, which permitted imposing the death penalty on fifteen to eighteen years old juveniles, to the prohibition enunciated in the *Roper* opinion.[93] Justice Kennedy wrote that:

> As in *Atkins*, the objective indicia of consensus in this case—the rejection of the juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice—provide sufficient evidence that today our society views juveniles, in the words *Atkins* used respecting the mentally retarded, as "categorically less culpable than the average criminal."[94]

Interestingly, morality played a role in this opinion. According to the Court, "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."[95] Moreover, "[t]he susceptibility of juveniles to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult.'"[96]

In *Graham v. Florida*, the Supreme Court moved a little farther along the path to defining the concrete distinctions needing to be recognized between juveniles and adults, especially when imposing sentences.[97] Here, the Court determined whether juvenile offenders convicted of a non-homicide offense

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90. *Id.* at 557 ("As aggravating factors, the State submitted that the murder was committed for the purpose of receiving money; was committed for the purpose of avoiding, interfering with, or preventing lawful arrest of the defendant; and involved depravity of mind and was outrageously and wantonly vile, horrible, and inhuman.").

91. *Id.* at 558.

92. Atkins v. Virginia, 536 U.S. 304, 321 (2002).

93. *Roper*, 543 U.S. at 561–79. Interestingly, the Court upheld the death penalty for juveniles over fifteen but younger than eighteen, in *Stanford v. Kentucky*, 492 U.S. 361 (1989), on the same day in which it upheld the execution of mentally disabled defendants in *Penry v. Lynaugh*, 492 U.S. 302 (1989). *Id.* at 562. The Court would switch paths for both categories of defendants based on a diminished capacity rationale and evolved standards. *Id.* at 575–78.

94. *Id.* at 567 (quoting *Atkins*, 536 U.S. at 316).

95. *Id.* at 570.

96. *Id.* (quoting Thompson v. Oklahoma, 487 U.S. 815, 835 (1988)).

97. Graham v. Florida, 560 U.S. 48, 52–67 (2010).

may constitutionally receive a life without parole sentence.[98] The challenge constituted an issue of first impression, because it required the Court to delve into a "categorical challenge to a term-of-years sentence."[99] Once again, as seen in *Roper*, the majority opinion haled legislative reform as the "clearest and most reliable objective evidence of contemporary values."[100] The Court delves one step deeper to not only assess legislative provisions on the issue, but to determine the number of states that apply their existing laws that may have still permitted life without parole for non-homicide offenses committed by juveniles; according to the Court, rarely.[101]

In these juvenile sentencing cases, the Court toes a careful line between deference to governing state legislative bodies and the judicial role to dictate constitutional boundaries. This balancing act rears its head most in *Graham v. Florida*; throughout the opinion, Justice Kennedy respectfully reveals a clear skepticism for the state legislative role in reigning over these juvenile sentencing issues, their intricate nuances and related concerns. The conclusion to his analysis of "objective evidence of contemporary values," sets forth the State's argument and then hypothesizes public opinion in the following passage:

> [U]nder Florida law a child of any age can be prosecuted as an adult for certain crimes and can be sentenced to life without parole. The State acknowledged at oral argument that even a 5-year-old, theoretically, could receive such a sentence under the letter of the law. All would concede this to be unrealistic, but the example underscores that the statutory eligibility of a juvenile offender for life without parole does not indicate that the penalty has been endorsed through deliberate, express, and full legislative consideration. Similarly, the many States that allow life without parole for juvenile nonhomicide offenders but do not impose the

98. *Id.* at 52–53. At the time, Florida no longer implemented the parole option for defendants sentenced to life imprisonment. *Id.* at 57. The intermediate state appellate court upheld the sentence, Graham v. Florida, 982 So. 2d 43, 54 (Fla. Dist. Ct. App. 2008) (appellate court upholding the sentence), and the Florida Supreme Court denied review. Graham v. Florida, No. SC08-1169, 2008 WL 3896182, at *1 (Fla. Aug. 22, 2008) (unpublished table decision).

99. *Graham*, 560 U.S. at 61. Whereas *Harmelin v. Michigan*, 501 U.S. 957 (1991), provided an approach to determining the constitutionality of a "term-of-years" challenge, and *Roper v. Simmons* presented a categorical attack on imposing the death penalty upon juvenile offenders, *Graham* uniquely combined these two classifications of "cruel and unusual" punishment challenges. *See id.* at 61–62.

100. *Id.* at 62 (quoting Atkins v. Virginia, 536 U.S. 304, 312 (2002)).

101. *Graham*, 560 U.S. at 62 (stating that "[a]ctual sentencing practices are an important part of the Court's inquiry into consensus"). The Court even went as far as conducting independent research on the issue to supplement findings provided by the parties. *Id.* at 63–64.

> punishment should not be treated as if they have expressed the view that the sentence is appropriate.[102]

Miller v. Alabama completes the Supreme Court's most recent endeavors into juvenile sentencing and the constitutional mandates applicable to this practice.[103] And although the legislative statutes factored into the equation, Justice Kagan delivered an opinion that thematically reiterated the thought that juvenile sentencing should consider the offender's "'lessened culpability' and greater 'capacity for change.'"[104] *Miller v. Alabama* convincingly expounds the reasons for segregating juveniles and adults when considering sentences for even awful criminal behavior. The Court expresses a universal norm, in that:

> [N]one of what [may be] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific. . . . So *Graham*'s reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses. Most fundamentally, *Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole.[105]

The Court's sensitivity to age also arises when analyzing other criminal law issues. In *J.D.B. v. North Carolina*, the Court held that a suspect's age should be considered in the *Miranda v. Arizona* analysis.[106] In its reasoning, the Court stressed a juvenile's inability to fully internalize criminal justice procedures to the same extent as adults. How do we know? Social science provided scant support to the opinion.[107] Instead, the Court opined that "[i]t is a fact that 'generates commonsense conclusions about behavior and perception.'"[108] "Such conclusions apply broadly to children as a class. And,

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102. *Id.* at 67 (internal citations omitted).

103. Miller v. Alabama, 132 S. Ct. 2455, 2460 (2012).

104. *Id.* (quoting *Graham*, 560 U.S. at 50, 68, 74).

105. *Id.* at 2465. The Court makes clear that you must consider an offender's age, and juvenile status must be incorporated into the proportionality determination. *Id.* at 2466 (referencing *Graham* and *Roper*'s "foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children").

106. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2398–99, 2406 (2011); Miranda v. Arizona, 384 U.S. 436 (1966).

107. *J.D.B*, 131 S. Ct. at 2398–99. "That risk is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile." *Id.* at 2401 (citing Brief for Center on Wrongful Convictions of Youth et al. as Amici Curiae in Support of Petitioner at 21–22, J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011) (No. 09-11121), 2010 WL 5385329 (collecting empirical studies that "illustrate the heightened risk of false confessions from youth")).

108. *Id.* at 2403 (quoting Yarborough v. Alvarado, 541 U.S. 652, 674 (2004)).

they are self-evident to anyone who was a child once himself, including any police officer or judge."[109] From here, the Court turned to previous cases, legal philosophical history, and other contexts beyond criminal law.[110]

All focus must surround the notion that juveniles are constitutionally different from adults. Other areas of law, international norms, and social science justifies the court excising the objective indicia requirement.[111] In harkening back to a classic debate for juvenile justice advocates, too many re-entry policies struggle to balance the competing goals of holding offenders accountable for the severity of their offense and public safety against weighing the offender's unique status as a juvenile. The well-established family law tradition to act in the best interest of the child inspired the original juvenile justice courts' emphasis on rehabilitation, which in turn commands that contemporary courts not ignore the fundamental differences between adult and juvenile offenders. The Supreme Court chose to recognize these distinctions in the sentencing context when reasoning its holdings in *Roper*, *Graham*, *Miller*, and *J.D.B.*

III. POSITIVE RESULTS FOR JUVENILE OFFENDERS

Parents play a central part to adequately supporting students caught in the school-to-prison pipeline. In generations past, the school and parents shared an obligation to ensure a child's best interest. Parents inherited this status as a natural right and schools exercised these obligations through the *in loco parentis* doctrine.[112] In modern times, parents hold a first line advocacy duty to their child against unfair treatment from school officials. And while parents rely more frequently on *Goss* to dispute their child's exclusion from public schools, federal and state courts give school authorities great deference when reviewing school decisions.[113]

As discussed in my previous article, we also need to empower parents.[114] Specific to the school-to-prison pipeline trend, anecdotes related to this issue

109. *Id.*

110. *Id.* at 2403–04.

111. Kimberly Thomas, *Juvenile Life Without Parole: Unconstitutional in Michigan?*, 90 MICH. B.J., no. 2, Feb. 2011, at 34, 34.

112. Underwood, *supra* note 40, at 796.

113. Youssef Chouhoud & Perry A. Zirkel, *The* Goss *Progeny: An Empirical Analysis*, 45 SAN DIEGO L. REV. 353, 380–82 (2008). "More specifically, the applicable societal trend is the general shift from individual rights to collective welfare in the school context, whereas the concurrent and seemingly consequent judicial trend is increasing deference to public school authorities." *Id.* at 379.

114. Tiffani N. Darden, *Parental Exclusion from the Education Governance Kaleidoscope: Providing a Political Voice for Marginalized Students in Our Time of Disruption*, 22 WM. & MARY BILL RTS. J. 1093, 1095–96 (2014).

are riddled with parents denied the ability to discharge their children's due process rights during the disciplinary process.[115] Via Supreme Court precedent, constitutional due process protections apply to hearings regarding suspension, expulsion, and denial of reentry from public schools. Parents need to understand legal boundaries and be given an opportunity to express their concerns before a body of individuals willing to lend an unbiased ear and deliberate their arguments against suspension, expulsion, and denial of reentry. Based on the data, parents don't receive this opportunity, and the schools benefit from deference in disciplinary decisions that should not trump a parent's voice. As citizenship brokers for their children, parents share responsibility for supervising and shaping the student's character, knowledge base, and civic participation.

To cure the pipeline problem will require a holistic cure. Although we may anchor our attention around children's behavior, we know that most criminal violations signify the manifestation of underdeveloped youthful brains and unhealthy surroundings.[116] Therefore, the juvenile justice system must focus on the family when defining structural reform. In the Supreme Court's juvenile sentencing cases, the named defendants more often than not come from toxic family backgrounds.[117] Their criminal acts may not be excused based on this reality, but lessons learned arise to assist juveniles committing minor offenses. We should take this recognition of differentiating the youthful mind from an adult very seriously and apply the knowledge throughout the system.

As opposed to mass litigation, a legislative agenda may provide greater utility to local advocates. California recently passed a bill dedicated to the reentry problem.[118] One central statistic evidences the State's reentry issue: in 2011, only twenty-one percent of the 60,000 students released from state detention facilities enrolled in a community public school within thirty days.[119] These delays caused placement problems with special education students, prolonged graduation plans, and elevated dropout rates.[120] The California juvenile court schools have a dropout rate of approximately fifty

115. *Id.*

116. Roper v. Simmons, 543 U.S. 551, 569–70 (2005).

117. *See, e.g.*, Miller v. Alabama, 132 S. Ct. 2455, 2462 (2012) (stating that the defendant was abused and was in foster care as a child).

118. Assemb. B. 2276, Cal. Leg. 2013–2014, Reg. Sess. (Cal. 2015) (codified at CAL. EDUC. CODE § 48647 (West 2015)).

119. CAL. COMM. ON EDUC., BILL ANALYSIS, Assemb. B. 2276, Reg. Sess., at 6 (2014) [hereinafter BILL ANALYSIS].

120. *Id.*

percent, one of the highest rates in the California public state system.[121] Bill 2276 enacted three major reforms: (1) schools must immediately enroll students upon their release from detention, regardless of access to transcripts, records, and fees; (2) student records must be delivered to the student's chosen public school within two days; and (3) the institution must align student credits for core graduation courses instead of assigning credits as electives.[122]

To streamline agency functions, public education and probation officials must develop a joint transition and planning policy for district students reentering public schools. This agreement ideally covers data sharing, course credit transfer, and refinement of the immediate enrollment requirement. Although not a requirement, the bill encourages districts to enter a memorandum of understanding with juvenile court schools and probation officers to solidify the transition policies.[123] Finally, in the near future, with sufficient funding, the state will form a statewide taskforce, composed of stakeholders, to create a best practices model through studying existing programs.[124]

Within the criminal justice system, we assign blame to a particular party for their actions. Fair enough. But holding to the thought that children may be rehabilitated and placed on a positive path requires many people to take stock of shortcomings. At the same time, many people must come together to right track these youths. The offender's parents or guardians must play a pivotal role in the process. Moreover, these folks need guidance on how to work through the system's snares and traps. Reentry into public education and effective probation programs present a significant step. First and foremost, a streamlined connection must exist between the detention center, social services, and public schools. With respect to juveniles, the government holds responsibility to the child, the parent, and society.

In 2011, the Texas legislature created the Texas Juvenile Justice Department to implement the "Cultivating Success: The Reentry & Reintegration of TYC [Texas Youth Commission] Youth," which sets forth a community-based reentry process for children detained in state facilities.[125] The plan sets in motion several steps and support circles—a comprehensive process involving health professionals, social services, juvenile officers,

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121. *Governor Signs AB 2276 Ensuring Reenrollment Rights*, YOUTH LAW CTR. (Oct. 21, 2014), http://www.ylc.org/2014/10/governor-signs-ab-2276-ensuring-reenrollment-rights/ ("California's juvenile court schools have one of the highest dropout rates in the state at 52.2%.").

122. *See* BILL ANALYSIS, *supra* note 119.

123. *Id.*

124. *Id.*

125. TEX. JUVENILE JUSTICE DEP'T, *supra* note 65, at 1.

family, and community networks. Without too much detail, the Cultivating Success plan begins with assessing the child and developing an individualized treatment protocol for their stay in either a secure facility or halfway home.[126] I would like to pay special attention to the state's process for transitioning juveniles from detention centers back into the community.

Prior to release, the Texas Juvenile Justice Department ("TJJD") sends each child's file to other state agencies, including the Texas Workforce Commission and the Texas Health and Human Service Commission.[127] The TJJD and Department of Family and Protective Services have a memorandum of understanding to share information necessary to facilitate a smooth transition plan for each child.[128] This information sharing helps build a portfolio for the students, which includes a birth certificate and/or social security card, standardized testing scores, transcripts, and vocational certifications.[129] The advantages to shared information include increasing availability to services and keeping parents more informed about involvement opportunities specific to their child.

The community reentry plan begins three months prior to a juvenile's expected release date.[130] The TJJD employs specialist to assist with access to local jobs, training programs, public schools, and higher education institutions.[131] For students with more severe behavioral issues, such as alcoholism and mental health challenges, the TJJD contracts with nearly sixty "aftercare" providers across the state.[132] The TJJD also partners with approximately 2,000 volunteers across the state to serve as personal, academic, and professional volunteers. The state uses a multi-disciplinary team approach. This team coordinates with the youth, parent, reentry educational liaison, parole officer and/or case manager, and any necessary community partners.[133]

The most important aspect of Texas's consolidation into one central agency to handle reentry, in conjunction with supporting stakeholders, is the ability to collect data regarding the effectiveness of policies. According to TJJD, "the impact of reentry planning and the services provided to youth after release is measured by tracking the re-arrest and incarceration rates of juveniles receiving these services."[134] The 2012 report concludes that

126. *Id.* at 1–5.
127. *Id.* at 5.
128. *Id.*
129. *Id.* at 6.
130. *Id.* at 2.
131. *Id.* at 6.
132. *Id.* at 7, 9.
133. *Id.* at 6.
134. *Id.* at 9.

"[j]uveniles leaving state residential services since the implementation of reentry and reintegration planning have lower rearrest and reincarceration rates than juveniles released prior to implementation. Youth participating in select parole services also have lower rearrest and reincarceration rates than expected."[135]

As we move forward, the research needs to take a more nuanced approach on how to systematically streamline reentry services across bureaucratic agencies. Although skeptical, I hope that students receive at least a minimally adequate education while serving time in state detention facilities. From there, they are released to the social services to complete their probation period. Under all expectations, these juveniles need to attend school. In any given jurisdiction, what stops these children from enrolling in school?

According to the research, public schools discard these students from the rolodex.[136] Procedural hurdles arise to block their access to an education. In sum, detention centers and public schools fail to communicate the transfer of course hours; and, public school enrollment requirements prove impossible for students attempting to interface with the juvenile justice system.[137] Under the worst case scenario, the public school system purposely frustrates reentry after detention. From here, students feel stuck. Their families may not possess the wherewithal to traverse the procedures. And without the proper support, we now find ourselves analyzing a new issue—recidivism.

CONCLUSION

In concrete terms, how do we provide this second chance for juvenile offenders? I would like to claim innovating a new agenda, but this would be undertaking an unnecessary task, because the school-to-prison pipeline research specific to reentry presents clear resolutions for those once detained in state facilities. Surveying progressive states provides a path forward. We, as in social services, schools, community, and advocates, need to literally coddle coddle the children and their family. Beyond implementation, we should continue studying the success rates of best practices reform to encourage information sharing across jurisdictions. Moreover, from a doctrinal viewpoint, we should reconsider the application of Fourth and Eighth Amendment principles to this merry-go-round. Our collective social conscious, integrated government and community networks, and relevant

135. The Cultivating Success program seemed most successful for students completing their workforce development and gang intervention programs. *Id.* at 13.

136. *See* KEPT OUT, *supra* note 12, at 19 ("[S]ome schools deny students access to education by explicitly preventing them from reentering school.").

137. KEPT OUT, *supra* note 12, at 35.

interdisciplinary research, provides the capital necessary to resolve the challenges of juveniles released from state detention facilities.