

LINCOLN MEMORIAL UNIVERSITY LAW REVIEW

VOLUME 8

SUMMER 2021

ISSUE 3

JUVENILE JUSTICE:

HOW THE THEORY OF REHABILITATION INFLUENCES PROCEDURAL PROTECTIONS AND PUNISHMENT IN JUVENILE AND CRIMINAL COURTS

*Cydney Carter*¹

I. INTRODUCTION

There is a general consensus that when children are accused of committing criminal offenses, the main goal is rehabilitation. To achieve this goal, separate juvenile courts have been created with different punishments and procedures. However, children can still be tried in criminal court. This paper compares the procedural protections and

¹ Juris Doctor Candidate, May 2022, Lincoln Memorial University Duncan School of Law

punishments used in juvenile and criminal courts and analyzes how both court systems have failed to adequately rehabilitate juvenile offenders. It also looks abroad at international standards and other countries' juvenile reform efforts for inspiration on how to reform juvenile justice in the United States to better achieve its goal of rehabilitating juvenile offenders.

Imagine you are the parent of a fifteen-year-old child, who is out of school for the summer. Typically, you would arrive home from work to find your child playing video games, watching TV, or scrolling through social media on their cell phone. Today, you walk inside but cannot find your child in the house. In fact, your house is suspiciously clean; it looks almost exactly how you left it when you left at seven o'clock this morning. You would probably try to locate your child by calling or texting them or by looking up their cell phone location on your phone. However, today they do not answer. Maybe you see that your child's phone is at the local police station, or maybe you resort to asking your neighbors if they have seen your child only to find out that they were arrested. You would probably be scared, panicked even, worried about your child. What happened? Why were you not

notified? Is your child okay? Are they safe? What does this mean? What should you do next?

In June of 1964, Mrs. Gault found herself in a similar situation. When she came home from work around six o'clock in the evening, her fifteen-year-old son, Gerald Francis Gault, was nowhere to be found because he had been taken into police custody at ten o'clock that morning for making a lewd phone call to a neighbor.² No steps were taken to notify her or her husband, and she was forced to hear from her neighbor that her son had been arrested.³ Once she arrived at the detention home, she was informed that a hearing would be held the next day, but Gerald was not released into her care; instead, he was kept at the detention home for days with no explanation.⁴

Despite an intent to rehabilitate juvenile offenders, the United States continues to have high rates of juvenile incarceration. Though juvenile incarceration has decreased in recent years, new measures need to be implemented into an outdated system to better fulfill this goal. This paper will discuss the differences in how juveniles are punished for

² *In re Gault*, 387 U.S. 1, 4 (1967).

³ *Id.* at 5.

⁴ *Id.* at 5-6.

criminal violations across the world. First, it will look at the juvenile court system in the United States and how it differs from prosecuting juveniles in the criminal court system. Then, it will look abroad at European standards of juvenile justice. Specifically, it will look at the codes in Bosnia and Herzegovina and in Germany that focus on alternative sentencing methods for juvenile offenders. Lastly, it will discuss the flaws in American juvenile court systems and suggest programs that could further juvenile justice reform in the United States.

II. THE UNITED STATES CREATED THE JUVENILE COURT SYSTEM WITH THE GOAL OF REHABILITATING JUVENILES INTO PRODUCTIVE MEMBERS OF SOCIETY.

For many years, the United States has recognized the importance of treating children differently than adults when they are alleged to have violated the law.⁵ This led to the creation of a separate court system with a goal of rehabilitating children so that they could become productive members of society.⁶ These courts developed around the

⁵ *Gault*, 387 U.S. at 14.

⁶ Major Richard L. Palmatier, Jr., *Criminal Offenses by Juveniles on the Federal Installation: A Primer on 18 U.S.C. § 5032*, 1994 ARMY LAW 3, 3 (1994).

doctrine of *parens patriae*, which is a phrase taken from chancery practice and used to describe the power of the state to act *in loco parentis* to protect the property interests and the person of the child.⁷ *In loco parentis* is a Latin phrase that translates to “in the place of a parent.”⁸ Our current juvenile court system began over one hundred twenty years ago with the first juvenile court statute in Illinois in 1899 and led to the creation of juvenile courts in all fifty states and eventually federal statutes as well.⁹

The United States Code defines “juvenile” as “a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday.”¹⁰ “Juvenile delinquency” is defined as “the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.”¹¹ For a federal court to exercise jurisdiction over a

⁷ *Gault*, 387 U.S. at 17.

⁸ *In Loco Parentis*, BLACK’S LAW DICTIONARY, <https://thelawdictionary.org/in-loco-parentis/> (last visited Mar. 3, 2021).

⁹ *Gault*, 387 U.S. at 14.

¹⁰ 18 U.S.C. § 5031 (2020).

¹¹ *Id.*

delinquency proceeding, the Attorney General must certify that either a state court does not have jurisdiction over the juvenile and alleged offense or that it refuses to assume such jurisdiction, the state does not have adequate programs and services available for the juvenile's needs, or the offense is a violent felony or drug offense where there is a substantial federal interest.¹² If the Attorney General is unable to certify one of the criteria above, the child shall be surrendered to the appropriate state authorities.¹³ If the Attorney General is able to certify one of the criteria for establishing federal jurisdiction, the juvenile's alleged delinquency may be adjudicated in an appropriate federal district court.¹⁴ Generally, criminal prosecutions for the alleged act of juvenile delinquency are prohibited, except under certain circumstances that will be discussed in detail in the next section.¹⁵

¹² *See id.* § 5032.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

A. THE THEORY OF REHABILITATION PLAYS AN
IMPORTANT ROLE IN THE DECISION TO EITHER
TRANSFER JUVENILES TO CRIMINAL COURT OR KEEP
THEM IN JUVENILE COURT.

A juvenile may be transferred from juvenile court to criminal court under three circumstances.¹⁶ First, the juvenile may, with advice of counsel, request in writing to be proceeded against as an adult.¹⁷ Second, the Attorney General may file a motion to transfer in cases of violent offenses or enumerated drug offenses that were allegedly committed by the juvenile after his or her fifteenth birthday.¹⁸ Third, transfer to criminal court is mandatory when the alleged offense would have been a felony if committed as an adult and has an element of use, attempted use, threatened use, or substantial risk of physical force against another or is one of the enumerated drug offenses and the juvenile allegedly committed the offense after his or her sixteenth birthday and has previously been found guilty

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

of committing one of these offenses or a state felony that would have been such an offense under federal jurisdiction.¹⁹

Furthermore, Section 5032 provides certain procedural protections for juveniles by requiring that the juvenile be represented by counsel during transfer hearings and that reasonable notice of these hearings be given to juveniles, their parents, and their counsel.²⁰ Juveniles are also granted protection from double jeopardy because Section 5032 prohibits further proceedings, criminal or juvenile, regarding the alleged act once the current proceeding has begun, which means if the Attorney General plans to move the proceedings to criminal court, he or she must do so before any evidence is presented.²¹ The statute also states that any statements the juvenile makes before or during a transfer hearing cannot be admitted at any subsequent criminal proceedings.²² However, the court, in *United States v. Spruille*, held that a juvenile's confession was an exception to this rule because it was unrelated to the decision of whether to transfer the juvenile to criminal court.²³ Lastly,

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *United States v. Spruille*, 544 F.2d 303, 307 (1976).

it is also prohibited for a criminal prosecution or disposition hearing to take place until the court has received the juvenile's record or the clerk has certified that the juvenile does not have one, and it is required that any adjudications of delinquency be added to the juvenile's official record with a specific description of the acts committed.²⁴

When deciding whether or not to transfer the proceedings to criminal court, the court should determine whether such a transfer is in the best interest of justice.²⁵ To make this determination the court should consider the age and social background of the juvenile, the nature of the alleged offense, the extent and nature of the juvenile's prior delinquency record, the juvenile's present intellectual development and psychological maturity, the nature of past treatment efforts and the juvenile's response to such efforts, and the availability of programs designed to treat the juvenile's behavioral problems.²⁶

In *United States v. E.K.*, the court discussed how these factors should be weighted and what it meant for it to be in the best interest of justice that the juvenile be

²⁴ 18 U.S.C. § 5032 (2021).

²⁵ *Id.*

²⁶ *Id.*

transferred to criminal court. E.K. was a Native American from the Warm Springs Reservation in Oregon, who was before the court on allegations of burglary, theft, and assault with a deadly weapon.²⁷ He was seventeen and had a long list of prior offenses, and he also had a rough upbringing.²⁸ His parents suffered from chronic alcohol abuse and eventually got divorced, and his father later died.²⁹ He had not lived with either parent since he was six, rather he had moved around staying with friends and family or in institutional settings.³⁰ The court also found that though he was of average intelligence, he was rather immature.³¹ Though E.K. had been institutionalized before, the judge discussed how the previous institutions in Oregon were likely inappropriate for his particular needs and that there was a proper facility available in Denver, Colorado.³² The court focused on the importance of rehabilitation as the main purpose of the juvenile court system and stated that there is a presumption that offenders under eighteen are juveniles

²⁷ United States v. E.K., 471 F. Supp. 924, 926 (D. Or. 1979).

²⁸ *Id.* at 934-35.

²⁹ *Id.* at 934.

³⁰ *Id.*

³¹ *Id.* at 935-36.

³² *Id.* at 936-37.

and should be treated as such, absent facts to convince the court otherwise.³³ The judge wrote, “It is incumbent upon the court to deny a motion to transfer where, all things considered, the juvenile has a realistic chance of rehabilitative potential in available treatment facilities during the period of his minority.”³⁴ Finding that E.K. had potential for rehabilitation in the Denver facility, the court denied the motion to transfer.³⁵

B. THE THEORY OF REHABILITATION IN THE JUVENILE COURT SYSTEM IN THE UNITED STATES HAS BEEN USED TO JUSTIFY PROCEDURAL DIFFERENCES IN DELINQUENCY PROCEEDINGS.

Juvenile court proceedings differ from criminal court proceedings in many ways. One of these differences is the terminology used for each.³⁶ In juvenile court proceedings, the juveniles are found delinquent instead of guilty of criminal offenses.³⁷ The act of trying a juvenile in criminal court is also referred to as “being tried as an adult” or

³³ *Id.* at 931-32.

³⁴ *Id.* at 932.

³⁵ *Id.* at 937.

³⁶ Palmatier, *supra* note 6.

³⁷ Palmatier, *supra* note 6.

“proceeded against as an adult.”³⁸ Furthermore, “disposition hearings” take place in juvenile court and can result in orders for “detention,” whereas in criminal court, the defendant could be sentenced to a prison term.³⁹

The largest difference between juvenile court proceedings and criminal court proceedings is the different objectives of each because this difference is used to justify further differences in procedure. In *Kent v. United States*, the Court explained this difference by stating that the objectives of juvenile court proceedings are “to provide measures of guidance and rehabilitation for the child and protection for the society, not to fix criminal responsibility, guilt and punishment.”⁴⁰ Courts have used these objectives and the idea that the court is to act as *parens patriae* instead of as the child’s adversary to classify juvenile court proceedings as civil rather than criminal and to justify denying children procedural rights that are available to adults.⁴¹ In *Kent*, the Court held that juvenile court hearings only needed to “measure up to the essentials of due process and fair

³⁸ 18 U.S.C. § 5032 (2021).

³⁹ Palmatier, *supra* note 6.

⁴⁰ *Kent v. United States*, 383 U.S. 541, 554 (1966).

⁴¹ *Id.* at 555. *See also Gault*, 387 U.S. at 17.

treatment” and need not conform to all the requirements of a criminal trial or administrative hearing.⁴²

The limited procedural protections afforded to juveniles have proven to be a substantial flaw in the juvenile court system. One case that clearly shows how denying juveniles their constitutional due process rights can lead to detrimental and unfair outcomes is *In re Gault*. In *Gault*, a fifteen-year-old boy named Gerald Francis Gault was taken into police custody for making a lewd phone call to a neighbor.⁴³ No steps were taken to notify his parents, and his family was forced to hear from a neighbor that he had been arrested.⁴⁴ Once his mother arrived at the detention home, she was informed that there would be a hearing the next day, but Gerald was not released into his mother’s care; instead, he was kept at the detention home for days with no explanation.⁴⁵ Though a petition was filed with the court, it was not served on the Gaults and did not state any factual basis for the judicial action it initiated.⁴⁶ At this initial hearing, no record was made, which led to conflicting

⁴² *Kent*, 383 U.S. at 562.

⁴³ *Gault*, 387 U.S. at 4.

⁴⁴ *Id.* at 5.

⁴⁵ *Id.* at 5-6.

⁴⁶ *Id.* at 5.

testimony about what was said during this hearing at later proceedings.⁴⁷ Mrs. Cook, the woman who allegedly received the lewd phone call, never attended a hearing.⁴⁸

At the second hearing, a “referral report” was filed with the court listing the charge as “Lewd Phone Calls,” but again this document was not disclosed to the Gaults.⁴⁹ At the conclusion of this hearing, the judge ruled that Gerald was a juvenile delinquent and committed him to the State Industrial School until he reached the age of twenty-one, which meant five years for the fifteen-year-old.⁵⁰ If the same offense had been committed by an adult, the criminal code limited the penalty to a fine of \$5 to \$50 or up to two months imprisonment.⁵¹ Arizona law also did not allow appeals in juvenile cases, so a petition for a writ of habeas corpus was filed with the Supreme Court of Arizona and referred to the Superior Court.⁵²

The Gaults argued that Arizona’s Juvenile Code was unconstitutional because it did not require that parents or

⁴⁷ *Id.* at 5-6.

⁴⁸ *Id.* at 7.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 8.

⁵² *Id.*

children be informed of the specific charges, require proper notice of a hearing, or provide for an appeal.⁵³ They also asserted that Gerald was denied due process of law because of the lack of adequate notice of the charge and hearing, failure to notify him of his constitutional rights, use of unsworn hearsay testimony, and failure to make a record.⁵⁴ They further argued that Gerald was improperly removed from his parents' custody without a finding of their unsuitability.⁵⁵ At this habeas corpus hearing, the initial judge testified that he had determined that Gerald was delinquent because he was "habitually involved in immoral matters" based on prior allegations that never made it to a hearing because of a lack of foundation.⁵⁶ The Superior Court denied the writ of habeas corpus, and the Arizona Supreme Court later affirmed.⁵⁷

Despite the exhaustive list of due process rights that Gerald was denied that were brought up at the Arizona Superior Court level, the only ones appealed the Supreme Court of the United States were the right to notice of charges,

⁵³ *Id.* at 9.

⁵⁴ *Id.* at 9-10.

⁵⁵ *Id.* at 10.

⁵⁶ *Id.* at 9.

⁵⁷ *Id.* at 9-10.

right to counsel, right to confrontation, and cross-examination, privilege against self-incrimination, right to a transcript of the proceedings, and right to appellate review.⁵⁸ The Supreme Court held that the due process rights applicable to juvenile court proceedings were adequate written notice, advice as to the right to counsel, the rights of confrontation and cross-examination, and the privilege against self-incrimination.⁵⁹ The Court decided not to make a determination as to whether juveniles had a right to appellate review or a record of the hearings.⁶⁰

Another case that shows how limited procedural protections could lead to unfair outcomes for juveniles is *In re Winship*. In *Winship*, a twelve-year-old boy was adjudicated delinquent for opening a locker and stealing \$112 from a woman's purse based on statutory language that only required a preponderance of the evidence for a conclusion of delinquency.⁶¹ The judge ordered that he be sent to a "training school" for eighteen months and that the commitment could be extended annually until the boy turned

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* at 33, 42, 57.

⁶⁰ *Id.* at 58.

⁶¹ *In re Winship*, 397 U.S. 358, 360 (1970).

eighteen, which was six years away.⁶² The Supreme Court of the United States reversed and held that proof beyond a reasonable doubt was required for an adjudication of delinquency in juvenile court proceedings.⁶³

Despite what appeared to be a trend toward granting due process protections to juveniles, the Court in *McKeiver v. Pennsylvania* held that the right to a jury trial does not apply to juvenile courts.⁶⁴ The Court stated the Sixth Amendment guarantees a right to trial by jury in all criminal proceedings, and since juvenile court proceedings are not considered criminal, the right to trial by jury does not apply.⁶⁵ It also expressed concern with extending the right to a jury to juvenile court proceedings for fear that it might undermine the rehabilitative purpose of the juvenile court system by making the proceedings adversarial in nature.⁶⁶

⁶² *Id.*

⁶³ *Id.* at 368.

⁶⁴ *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (2019).

⁶⁵ *Id.* at 540-41.

⁶⁶ *Id.* at 545.

C. THE UNITED STATES SUPREME COURT HAS TAKEN
SURPRISINGLY RECENT STEPS TOWARDS ENSURING
THAT THE PUNISHMENTS IMPOSED ON JUVENILES
PROVIDE A REAL CHANCE AT REHABILITATION.

If the juvenile court system was created with the purpose of rehabilitating juveniles and giving them a chance at becoming productive members of society, then it would not make sense to impose punishments that prohibit juveniles from getting the opportunity to learn from their mistakes and to get a second chance at being productive members of society. In many states, children adjudicated delinquent in juvenile court must be released from custody when they turn twenty-one.⁶⁷ However, in adult court, juvenile offenders may receive the same sentences as adult offenders.⁶⁸ This standard, without further protections, allowed juvenile offenders to be subject to punishment that is clearly incompatible with a rehabilitation theory, especially after the Supreme Court ruled, in 1989, that the Constitution did

⁶⁷ Miller v. Alabama, 567 U.S. 460, 489 (2012) (citing ALA. CODE §12-15-117(a) (Cum. Supp. 2011); *see generally* 2006 National Report 103 (noting limitations on the length of juvenile court sanctions)).

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

not prohibit capital punishment for juvenile offenders between fifteen and eighteen years old.⁶⁹

Thankfully, the question of whether or not juvenile offenders should be sentenced to death came before the Supreme Court once again, but not until 2005.⁷⁰ Christopher Simmons was only a seventeen-year-old, high school junior when he proposed his plan to commit a burglary and murder to his friends.⁷¹ Simmons even convinced his friends to join him, though one of them backed out.⁷² Simmons and his friend, Charles Benjamin, broke into the home of Shirley Cook by reaching in an open window to unlock the door.⁷³ Once inside, Simmons and Benjamin used duct tape to bind Cook's hands and cover her eyes and mouth.⁷⁴ Then, they drove her to a state park, reinforced the bindings, covered her head with a towel, tied her hands and feet with electric wire, wrapped her entire face in duct tape, and threw her off a bridge to drown.⁷⁵ Despite this heinous crime, the Court in *Roper v. Simmons* held that the Eighth and Fourteenth

⁶⁹ *Roper v. Simmons*, 543 U.S. 551, 556 (2005) (citing *Stanford v. Kentucky*, 492 U.S. 361, 106 (1989)).

⁷⁰ *Roper v. Simmons*, 543 U.S. 551, 560 (2005).

⁷¹ *Id.* at 556.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

Amendments prohibited imposing the death penalty for crimes that were committed before the defendant turned eighteen.⁷⁶ In the eyes of the Court, the relative immaturity of juvenile offenders diminished their culpability and rendered the imposition of the death penalty a cruel and unusual punishment for juvenile offenders.⁷⁷

Five years later, the Supreme Court was once again faced with whether a criminal punishment imposed on a juvenile offender rose to the level of cruel and unusual punishment.⁷⁸ Terrance Jamar Graham was a troubled youth.⁷⁹ His parents were addicts, and he began using mind-altering substances at the age of nine.⁸⁰ When he was sixteen, he and three other juveniles attempted to rob a restaurant.⁸¹ One of his accomplices hit the manager over the head with a metal bar, but no money was stolen.⁸² The three other juveniles ran, and Graham was arrested and charged as an adult for armed burglary with assault or battery and attempted armed robbery.⁸³ After pleading guilty to both

⁷⁶ *Id.* at 578.

⁷⁷ *Id.* at 572-73.

⁷⁸ *Graham*, 560 U.S. at 52.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

charges and writing a letter to the court explaining how he would not get into trouble a second time, the court withheld adjudication of guilt and sentenced Graham to three years of probation, the first twelve of which were to be served in the county jail.⁸⁴

However, not even six months later, he was involved in a home invasion robbery with two men, where the three held the occupant of the home and his friend at gunpoint for thirty minutes while they ransacked the house.⁸⁵ The three guys attempted a second robbery that same night, but one of the guys was shot.⁸⁶ Graham drove the other two men to the hospital in his father's car and left them there.⁸⁷ As he left the hospital, Graham was spotted by police and refused to stop; the high-speed chase ended when Graham crashed into a telephone pole and was apprehended while trying to flee on foot.⁸⁸ The court found that Graham had violated the conditions of his parole by attempting to avoid arrest, committing a home invasion robbery, possessing a firearm, and associating with people engaged in criminal activity; he

⁸⁴ *Id.* at 54.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 55.

was also found guilty on the charges of armed burglary and attempted armed robbery.⁸⁹ Graham was sentenced to life without the possibility of parole.⁹⁰ The Supreme Court held that it constituted cruel and unusual punishment to sentence a juvenile offender to life without the possibility of parole for a nonhomicide crime and that when sentencing a juvenile to a life for a nonhomicide offense, the state must provide some meaningful opportunity to obtain release.⁹¹ The Court reasoned that life without parole could not be justified under a rehabilitation theory because it “improperly denies the juvenile offender a chance to demonstrate growth and maturity.”⁹²

While *Graham* was being adjudicated, two more important cases were making their way through the court systems, to eventually make it before the Supreme Court.⁹³ Both cases involved fourteen-year-old offenders that were convicted of murder and sentenced to life imprisonment without the possibility of parole.⁹⁴ The events giving rise to

⁸⁹ *Id.*

⁹⁰ *Id.* at 57.

⁹¹ *Id.* at 82.

⁹² *Id.* at 73-74.

⁹³ *Miller*, 567 U.S. at 466.

⁹⁴ *Id.* at 465.

the first case took place in November of 1999.⁹⁵ Kuntrell Jackson was on his way to the video store with two of his friends when he learned that one of the boys had a sawed-off shotgun in his sleeve.⁹⁶ Though Jackson initially decided to wait outside the video store for his friends, he eventually decided to go inside only to discover that his friends had the store clerk at gunpoint and were demanding money.⁹⁷ It was disputed at trial as to whether Jackson threatened the clerk by saying, “we ain’t playin’,” or whether he said to his friends, “I thought you all was playin’.”⁹⁸ The store clerk threatened to call the police, and one of Jackson’s friends shot and killed her before leaving emptyhanded.⁹⁹ As allowed by Arkansas law, the prosecutor of Jackson’s case chose to charge Jackson as an adult with capital felony murder and aggravated robbery.¹⁰⁰ Jackson’s motion to transfer to juvenile court was denied based on the facts of the case, a psychiatrist’s examination, and Jackson’s prior record of juvenile arrests.¹⁰¹

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 466.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

The defendant in the second case, Evan Miller, was living a troubled childhood.¹⁰² He had been in and out of foster care, his mother was an alcoholic and a drug addict, and his stepfather abused him.¹⁰³ Miller also used drugs and alcohol regularly and had attempted suicide four times, beginning at age six.¹⁰⁴ In 2003, Miller's friend, Cole Cannon, came over to make a drug deal with Miller's mother.¹⁰⁵ Afterward, Miller and his friend, Colby Smith, followed Cannon back to his trailer.¹⁰⁶ The three boys smoked marijuana and drank alcohol until Cannon passed out.¹⁰⁷ Then, Miller stole his wallet and split the cash with Smith, but when he tried to put the wallet back, Cannon woke up and grabbed Miller's throat. Smith hit Cannon with a baseball bat to get him to let go of Miller.¹⁰⁸ Once free, Miller grabbed the bat and hit Cannon with it repeatedly before putting a sheet over Cannon's head, saying, "I am God, I've come to take your life," and hitting him once more.¹⁰⁹ Miller and Smith returned to Miller's trailer but later went back to

¹⁰² *Id.* at 468.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

Cannon's to set it on fire; Cannon died from his injuries and smoke inhalation.¹¹⁰ Though Miller was initially charged as a juvenile, as required by Alabama law, the district attorney prosecuting the case sought removal, and the juvenile court allowed the case to be transferred to adult court.¹¹¹ The Alabama Court of Criminal Appeals affirmed, referencing the nature of the crime, Miller's "mental maturity," and his prior juvenile offenses.¹¹² Miller was therefore charged as an adult with murder in the course of arson.¹¹³

Since capital felony murder in Arkansas and murder in the course of arson in Alabama both carried a mandatory minimum punishment of life without the possibility of parole pursuant to the relevant statutes in the respective states, both Jackson and Miller were sentenced to life without parole for the crimes they committed at fourteen.¹¹⁴ The Supreme Court ruled that these mandatory sentencing schemes constituted cruel and unusual punishment in

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 469.

¹¹⁴ *Id.*

violation of the Eighth Amendment because they prohibited judges from considering mitigating circumstances.¹¹⁵

III. THE THEORY OF REHABILITATION HAS INFLUENCED HOW JUVENILE OFFENDERS ARE TREATED IN JUVENILE AND CRIMINAL COURTS ALL OVER THE WORLD.

After learning about how the United States has treated juvenile offenders over the years and how they are treated now, it is important to think about how they should be treated. Is the current standard appropriate? Are children being treated adequately by the states and afforded all their rights? Historically, the United States has routinely denied juvenile offenders certain rights in juvenile court that they would otherwise have been afforded in criminal court.¹¹⁶ However, in criminal court, they faced the same standards for punishment as adults, which resulted in sentences that constituted cruel and unusual punishment when imposed on juveniles.¹¹⁷ What protections should juveniles be afforded in juvenile and criminal court proceedings?

¹¹⁵ *Id.* at 489.

¹¹⁶ *Kent*, 383 U.S. at 562; *Gault*, 387 U.S. at 17.

¹¹⁷ *Roper*, 543 U.S. at 572; *Graham*, 560 U.S. at 82; *Miller*, 567 U.S. at 498.

One method that the American courts have used to help answer this question, at least in terms of punishment, is to look to the international community.¹¹⁸ Though international opinion and even most international human rights treaties are not binding law in the United States, they are persuasive as to what is considered acceptable.¹¹⁹ There appears to be an international consensus that rehabilitation is the appropriate goal when it comes to dealing with juvenile offenders.¹²⁰ In fact, the International Covenant on Civil and Political Rights, which has been signed by seventy-four countries and ratified by 173—including the United States—reads, “In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.”¹²¹ The only question that remains is how to execute this goal to best help juvenile offenders learn from their mistakes so that they do not continue to violate the law.

A. JUVENILE JUSTICE IN BOSNIA AND HERZEGOVINA

SHOWS A CLEAR DEDICATION TO REHABILITATION.

¹¹⁸ *Roper*, 543 U.S. at 575; *Graham*, 560 U.S. at 80-82.

¹¹⁹ *Graham*, 560 U.S. at 80.

¹²⁰ International Covenant on Civil and Political Rights art. 14(4), *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171.

¹²¹ *Id.*

The Criminal Procedure Code of Bosnia and Herzegovina provides procedural protections for juvenile offenders that show a dedication to rehabilitation. Article 342 provides that everyone in the proceeding must consider “the mental development, sensitivity and personal characteristics of the minor, so that the conduct of the criminal proceedings will not have an adverse effect on the minor’s development.”¹²² The prosecution is required to consider whether imposing correctional recommendations are possible and justified before filing.¹²³ The judge for juveniles must consider this same question before admitting the request for criminal proceedings.¹²⁴ In the preparatory proceedings, a study must be conducted on the environment and conditions in which the juvenile lived, as well as other circumstances that might have influenced the juvenile’s personality.¹²⁵ Other determinations that must be made at the preparatory proceedings include the facts of the case, the

¹²² Criminal Procedure Code of Bosnia & Herzegovina [BiH Crim. Pro Code] art. 342 (Bosn. & Herz.).

¹²³ *Id.* at art. 353.

¹²⁴ *Id.* at art. 354(1).

¹²⁵ *Id.* at art. 355(1).

minor's age, and the circumstances necessary to evaluate his mental development.¹²⁶

Juveniles must have an attorney once the preparatory proceedings begin, and if their family cannot provide one, the court must appoint one.¹²⁷ The juvenile must also be summoned and served process.¹²⁸ The juvenile welfare attorney also has a right to be notified of the proceedings, to be present at them, to be informed, to make recommendations, and to point out important facts and evidence.¹²⁹ The judge has the power to order that the child be placed in a juvenile home, in an educational or similar institution, under the supervision of the juvenile welfare authority, in the care of another family, or in exceptional cases, custody during the preparatory proceedings, but the minors must be separated from adults in custody.¹³⁰ There is a presumption that charges are to be dismissed if the prosecutor fails to supplement the preparatory proceeding or file a reasoned proposal containing the minor's full name, his age, an assessment of his mental development, a description

¹²⁶ *Id.*

¹²⁷ *Id.* at art. 343.

¹²⁸ *Id.* at art. 347.

¹²⁹ *Id.* at art. 347.

¹³⁰ *Id.* at art. 357-58.

of the offense, and evidence of the juvenile's guilt, and a recommended punishment or correctional measure in a timely manner then the charges shall be dismissed.¹³¹ Furthermore, the minor and his defense attorney must be present at the trial.¹³² When the judge imposes correctional measures, the minor is not declared guilty of a criminal offense; the opinion only states a description of the offense and the circumstances that justify the correctional measure.¹³³ The administration of the institution that carries out these correctional measures must deliver a report to the court every two months regarding the minor's behavior.¹³⁴ The juvenile, his family, his attorney, and the prosecutor have the right to appeal a verdict that imposes a correctional measure, sentences the juvenile to imprisonment, or dismisses the proceedings.¹³⁵

Bosnia and Herzegovina also have an entire chapter in its criminal code dedicated to punishing juveniles.¹³⁶ It is clear from this part of the Code that rehabilitation is the

¹³¹ *Id.* at art. 360.

¹³² *Id.* at art. 364(3).

¹³³ *Id.* at art. 368(3).

¹³⁴ *Id.* at art. 373.

¹³⁵ *Id.* at art. 370(1).

¹³⁶ Criminal Code of Bosnia and Herzegovina [BiH Crim. Code] art. 75-105 (Bosn. & Herz.).

main goal when punishing a juvenile in Bosnia and Herzegovina.¹³⁷ The Code provides for two main types of punishment: correctional recommendations and criminal sanctions, which encompasses two subcategories.¹³⁸ Correctional recommendations are intended to avoid initiating criminal proceedings against the juvenile and to influence the juvenile not to commit criminal offenses.¹³⁹ The two subcategories included in the category of criminal sanctions are correctional measures and juvenile imprisonment.¹⁴⁰ Correctional measures are intended to ensure the education, rehabilitation, and proper development of juvenile criminal offenders.¹⁴¹ Moreover, juvenile imprisonment is meant to exercise special influence on juvenile offenders to prevent recidivism and to deter other juveniles from committing criminal offenses.¹⁴²

If the juvenile admits to committing a criminal offense that has a prescribed punishment of either a fine or imprisonment up to three years and expresses his

¹³⁷ *Id.*

¹³⁸ *Id.* at art. 77-80.

¹³⁹ *Id.* at art. 77.

¹⁴⁰ *Id.* at art 80.

¹⁴¹ *Id.* at art. 81.

¹⁴² *Id.*

willingness to make amends, the court may apply correctional recommendations to the juvenile that may last up to a year.¹⁴³ The correctional recommendations that can be applied by the prosecutor are a personal apology, compensation, regular school attendance, and counseling.¹⁴⁴ The correctional recommendations that the juvenile judge can apply to the juvenile are community service; accepting a job; placement in another family, home, or institution; and treatment in a health institution.¹⁴⁵ When deciding on which correctional recommendation to apply, the court should consider “the overall interests of the juvenile and the injured party,” paying “special attention not to jeopardiz[e] the juvenile’s regular schooling or work.”¹⁴⁶

The correctional measures available for the court are committal to a disciplinary center for juveniles; intensified supervision by parents or guardians, in foster homes, or by a competent social care body; and committal to an educational institution, educational-reformatory home, or other training establishment.¹⁴⁷ When choosing a correctional measure, the

¹⁴³ *Id.* at art. 76.

¹⁴⁴ *Id.* at art. 78.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at art. 79.

¹⁴⁷ *Id.* at art. 82.

court must consider the child's age, mental development, psychological traits, propensities, motives for committing the crime and gravity of the crime, education and upbringing, environment and living conditions, previous record of punishment and correctional measures imposed, and any other relevant circumstances.¹⁴⁸

When the court determines that the juvenile offender needs appropriate short-term measures to influence the juvenile's personality and conduct but not extended educational or reformatory measures, the court should commit the juvenile to a disciplinary center for juveniles; this may be ideal when the offense was committed thoughtlessly or frivolously.¹⁴⁹ The court is also responsible for making sure that the juvenile does not fall behind in his regular studies or work because of such commitment.¹⁵⁰ When the child needs extended measures of education, rehabilitation, or treatment under adequate supervision but not complete isolation from the old environment, the court shall impose intensified supervision measures.¹⁵¹ The appropriate

¹⁴⁸ *Id.* at art. 84.

¹⁴⁹ *Id.* at art. 82-85.

¹⁵⁰ *Id.* at art. 85(3).

¹⁵¹ *Id.* at art. 82(3).

supervisor is based on the ability of the parents or guardians to supervise the child.¹⁵² If a parent or guardian is capable of supervising the child, the court may provide instructions or give orders to them to facilitate the juvenile's rehabilitation.¹⁵³ When the juvenile needs complete isolation from his old environment and extended measures of education, rehabilitation, or treatment under adequate supervision; the court shall impose institutional measures based on the child's need for education, reform, or special needs caused by impeded mental or physical development.¹⁵⁴ Committal to an educational institution may last from six months to three years; committal to an educational-reformatory home may last from one to five years; and committal to another training institution may last as long as necessary for the juvenile's medical treatment or rehabilitation but must be reassessed when the juvenile comes of age.¹⁵⁵

Juvenile imprisonment is only an option for the court in extreme cases, where a senior juvenile—one that is either

¹⁵² *Id.* at art. 86-88.

¹⁵³ *Id.* at art. 86.

¹⁵⁴ *Id.* at art. 82(4).

¹⁵⁵ *Id.* at art. 85-92.

sixteen or seventeen years old—has committed a criminal offense.¹⁵⁶ Junior juveniles—those older than fourteen but younger than sixteen—may only be subjected to criminal sanctions that are classified as correctional measures, not imprisonment.¹⁵⁷ When sentencing these juveniles to terms of imprisonment, the court may not choose a sentence that is less than one year or longer than ten years; furthermore, while the court may sentence these juveniles to sentences below the statutory minimum for the offense, the court may not sentence juveniles to terms that exceed the statutory maximum for the offense.¹⁵⁸ In making this determination, the court must consider all circumstances that may influence the duration of the sentence and pay special attention to the juvenile's mental development and the time needed for the juvenile's correction and occupational training.¹⁵⁹ Moreover, security measures of mandatory psychiatric treatment, mandatory medical treatment of addiction, and forfeiture may be imposed in combination with correctional measures and juvenile imprisonment sentences.¹⁶⁰

¹⁵⁶ *Id.* at art. 95.

¹⁵⁷ *Id.* at art. 80.

¹⁵⁸ *Id.* at art. 96(1).

¹⁵⁹ *Id.* at art. 97.

¹⁶⁰ *Id.* at art. 102.

B. GERMANY HAS AN ENTIRE LAW THAT
DEMONSTRATES ITS GOAL OF REHABILITATING ITS
YOUTH BY MODIFYING THE PROCEDURES AND
PUNISHMENTS THAT ARE APPLIED TO JUVENILE
OFFENDERS.

Germany's Youth Courts Law has many similar provisions to those of The Criminal Code of Bosnia and Herzegovina. The Youth Courts Law defines "youth" as someone fourteen to seventeen years old and prohibits anyone under fourteen from being held criminally liable.¹⁶¹ It also provides that there are three main categories of consequences that the juvenile could possibly face: supervisory measures, disciplinary measures, and youth penalty.¹⁶² Additionally, the Law provides for measures of reform and prevention, which include commitment to a psychiatric hospital or institution for withdrawal treatment, supervision of conduct, or withdrawal of permission to drive.¹⁶³ If a juvenile is committed to a psychiatric hospital

¹⁶¹ Jugendgerichtsgesetz, JGG [Youth Courts Law] § 1(2) (Ger.).

¹⁶² *Id.* at § 5.

¹⁶³ *Id.* at § 7.

or institution for withdrawal treatment, disciplinary measures or youth penalties cannot be imposed as well.¹⁶⁴

There are two types of supervisory measures: instructions and supervisory assistance.¹⁶⁵ The purpose of instructions is to promote and guarantee the juvenile's education.¹⁶⁶ The judge may instruct the juvenile to follow instructions regarding his place of residence, stay with a family or in a residential accommodation, accept employment or training, perform certain work tasks, submit to the care and supervision of a designated person, attend social skills training, attempt to settle with the victim, avoid certain people or places, go to road-traffic training, or undergo treatment for addiction withdrawal or specialist rehabilitative treatment.¹⁶⁷ These forms of treatment require parental or guardian consent and—for those over sixteen—the consent of the juvenile.¹⁶⁸ Initial instructions cannot be for longer than two years but can be amended to extend up to three years.¹⁶⁹

¹⁶⁴ *Id.* at § 5(3).

¹⁶⁵ *Id.* at § 9.

¹⁶⁶ *Id.* at § 10(1).

¹⁶⁷ *Id.* at § 10.

¹⁶⁸ *Id.* at § 10(2).

¹⁶⁹ *Id.* at § 11.

The next type of consequence that a juvenile could face is disciplinary measures. Disciplinary measures are intended to inform the juvenile that he must take responsibility for his wrongful actions, but they do not carry the same legal consequences as a criminal sentence.¹⁷⁰ Disciplinary measures include reprimands, conditions, and youth detention.¹⁷¹ Reprimands are intended to make it “absolutely clear to the youth the wrongfulness of his actions.”¹⁷² Conditions must be reasonable and could include reparations, apologies, tasks, or payments to charitable organizations.¹⁷³ Youth detention can be imposed during the juvenile’s weekly leisure time, in two-day periods of short-term detention—if it does not interfere with the juvenile’s education, training, or employment, or in long-term detention periods that last from one to four weeks.¹⁷⁴

In cases of serious guilt, where the juvenile demonstrated harmful inclinations during the offense, or when other measures are insufficient; a youth penalty may be imposed for a period of six months to five years, or ten

¹⁷⁰ *Id.* at § 13.

¹⁷¹ *Id.* at § 13(2).

¹⁷² *Id.* at § 14.

¹⁷³ *Id.* at § 15.

¹⁷⁴ *Id.* at § 16.

years in the case of a serious offense punishable by more than ten years under the general criminal law.¹⁷⁵ The Law defines a youth penalty as “deprivation of liberty in a facility provided for its execution.”¹⁷⁶ For sentences under one year, the judge may suspend a youth penalty in exchange for a two-to-three-year probationary period.¹⁷⁷ If accused of multiple offenses, a juvenile can only be subject to a single set of supervisory or disciplinary measures or one youth penalty.¹⁷⁸

Youth courts in Germany are composed of one criminal judge presiding as a youth court judge, the lay youth assessors’ court, and the youth panel.¹⁷⁹ The lay youth assessors’ court includes the presiding judges and two lay youth assessors, one man, and one woman.¹⁸⁰ The youth panel includes two lay youth assessors and three judges, one of whom is the presiding judge.¹⁸¹ Judges and public prosecutors involved in youth court matters should have appropriate education, training, and experience in the

¹⁷⁵ *Id.* at § 17-18.

¹⁷⁶ *Id.* at § 17(1).

¹⁷⁷ *Id.* at § 21.

¹⁷⁸ *Id.* at § 31(1).

¹⁷⁹ *Id.* at § 33(2).

¹⁸⁰ *Id.* at § 33(a)(1).

¹⁸¹ *Id.* at § 33(b)(1).

education and upbringing of juveniles.¹⁸² Furthermore, the court has the assistance of the Youth Court Assistance Service, which helps the court to understand the child's personality, suggest appropriate measures, and enforce juvenile compliance.¹⁸³

If youth criminal proceedings are initiated, investigations should be conducted into the juvenile's life and family background, development, previous conduct, and all other circumstances that could assist in assessing the psychological, emotional, and character make-up of the juvenile.¹⁸⁴ The juvenile has a right to compulsory defense counsel if one would have been appointed for an adult; the parent or guardian and legal representative have had their rights withdrawn or have been excluded from the hearing resulting in an impairment of their rights; the juvenile is facing potential institutionalization; or remand detention or provisional committal are to be enforced against him.¹⁸⁵ If the juvenile is not entitled to defense counsel, the presiding judge can appoint him an advisor, who will have the same

¹⁸² *Id.* at § 37.

¹⁸³ *Id.* at § 38(2).

¹⁸⁴ *Id.* at § 43(1).

¹⁸⁵ *Id.* at § 68.

rights as a defense counsel at the main hearing.¹⁸⁶ The juvenile, as well as his parent or guardian and legal representative, has the right to be heard, to ask questions and make applications, to be present during investigations, and to receive notice.¹⁸⁷ Appealable decisions include those regarding the suspension of a youth penalty, the duration of the probationary period or probationary assistance, a fresh order to undergo probationary assistance during the probationary period, and instructions and conditions.¹⁸⁸

IV. IMPLEMENTING SIMILAR PROGRAMS TO THOSE SEEN
IN EUROPEAN NATIONS COULD REDUCE JUVENILE
INCARCERATION AND BETTER SERVE THE GOAL OF
JUVENILE REHABILITATION.

1,995 children are arrested on any given day in the United States.¹⁸⁹ From 2009 to 2018, a child was arrested every 43 seconds.¹⁹⁰ Every day, there are over 48,000 children confined in juvenile facilities; one in five have yet to

¹⁸⁶ *Id.* at § 69.

¹⁸⁷ *Id.* at § 67.

¹⁸⁸ *Id.* at § 59.

¹⁸⁹ *Despite Improvements, an Ineffective and Biased System Remains*, CHILDREN'S DEFENSE FUND, <https://www.childrensdefense.org/policy/resources/soac-2020-youth-justice/> (last visited Apr. 20, 2021).

¹⁹⁰ *Id.*

be tried for the offenses they are accused of.¹⁹¹ The risk of juvenile confinement is higher for children of color, who are also disproportionately arrested, placed in juvenile facilities, and transferred to adult court.¹⁹² In 2017, fifty-four percent of juveniles transferred to adult court were black. Children in detention and corrections programs report sexual victimization, fear of attack, solitary confinement, strip searches, use of restraints, unnecessary use of force, poor relations with staff, limited access to educational services, and difficulty sleeping.¹⁹³ The detrimental effects of juvenile incarceration do not stop there because many of these juveniles have unmet health needs.¹⁹⁴ Seven out of ten incarcerated juveniles have at least one psychiatric disorder.¹⁹⁵ Juvenile incarceration is also associated with worse adult health, including severe functional limitations,

¹⁹¹ Wendy Sawyer, *Youth Confinement: The Whole Pie 2019*, PRISON POLICY INITIATIVE (Dec. 19, 2019), <https://www.prisonpolicy.org/reports/youth2019.html>.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Elizabeth S. Barnert, MD, MPH, MS, Rebecca Dudovitz, MD, MSHS, Bergen B. Nelson, MD, MS, Tumaini R. Coker, MD, MBA, Christopher Biely, MS, Ning Li, PhD, and Paul J. Chung, MD, MS, *How Does Incarcerating Young People Affect Their Adult Health Outcomes?*, OFFICIAL J. AM. ACAD. PEDIATRICS (Feb. 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5260153/#:~:text=The%20small%20existing%20literature%20on,rates%20of%20overweight%20and%20obesity>.

stress-related illnesses, and higher rates of being overweight or obese.¹⁹⁶ Moreover, despite the goal of rehabilitation, roughly eighty percent of incarcerated juveniles will be reincarcerated as adults.¹⁹⁷

The good news is juvenile confinement has decreased sixty percent since 2000.¹⁹⁸ It appears the United States has taken a trial-and-error approach to juvenile justice, but thanks to further research and reform advocates, juvenile justice in the United States might finally be headed in the right direction.¹⁹⁹ Missouri closed its correctional-style “training schools” and replaced them with smaller treatment centers that are more like dormitories.²⁰⁰ New programs have been developed that reduce violent, delinquent, criminal, and aggressive behavior in youths with “elevated risk levels” without confinement.²⁰¹ Some states have ended juvenile confinement for low-level, nonviolent, or status offenses.²⁰² Delaware and Florida have started issuing civil citations as an alternative to arresting juveniles for

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Sawyer, *supra* note 191.

¹⁹⁹ Sawyer, *supra* note 191.

²⁰⁰ Sawyer, *supra* note 191.

²⁰¹ Sawyer, *supra* note 191.

²⁰² Sawyer, *supra* note 191.

misdemeanors.²⁰³ These juveniles instead face community-based sanctions like family counseling, treatment for substance abuse or mental health, community service, apology letters, community impact statements, and restitution.²⁰⁴ Georgia, Kentucky, Tennessee, and Utah have placed caps on sentences to reduce the amount of time juveniles can be on probation, under court supervision, and placed outside the home—even lowering maximum sentences for certain felony offenses.²⁰⁵ Tennessee and Georgia have increased funding for community-based alternatives that focus on “front end” reforms.²⁰⁶ Research has helped policymakers and practitioners understand the impact that trauma has on cognitive development and behavior and led them to push for more supportive measures as an alternative to punishment.²⁰⁷ Which leads to the question: why are these measures not the norm? Why are juvenile incarceration rates in the United States still so high?

²⁰³ Sawyer, *supra* note 191.

²⁰⁴ Sawyer, *supra* note 191.

²⁰⁵ Sawyer, *supra* note 191.

²⁰⁶ Sawyer, *supra* note 191.

²⁰⁷ Sawyer, *supra* note 191.

One explanation could be that the United States is just stuck in its old ways. Our current juvenile justice system was created to prevent juvenile incarceration and promote juvenile rehabilitation. One of the reasons behind the creation of the first juvenile court system was the increasing number of children in adult jails,²⁰⁸ so it seems contradictory to now allow juveniles to be treated as adults and committed to detention centers that reflect similar conditions to what they would be exposed to in adult prisons. However, America is once again facing the same problem it had back in 1882: high numbers of juvenile incarceration. One possible explanation has been dubbed the “school-to-prison pipeline.”²⁰⁹ An increased reliance on police to patrol school hallways and zero-tolerance policies has turned minor school infractions into criminal offenses.²¹⁰ Some jurisdictions do not provide disciplinary alternative schools for students who are suspended or expelled, and those who do often provide inadequate learning environments.²¹¹ This leaves those

²⁰⁸ Quinn Myers, *How Chicago Women Created the World's First Juvenile Justice System*, NPR (May 13, 2019), <https://www.npr.org/local/309/2019/05/13/722351881/how-chicago-women-created-the-world-s-first-juvenile-justice-system>.

²⁰⁹ *School-to-Prison Pipeline*, ACLU, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline> (Apr. 20, 2021).

²¹⁰ *Id.*

²¹¹ *Id.*

students unsupervised and without constructive activities and, at the very least, behind when they return to their regular school.²¹²

If recent measures have been shown to effectively contribute to the declining incarceration rate, they should be the norm, not the alternative. As we have seen, European juvenile justice systems already expressly provide for these measures in their statutes. The Criminal Code of Bosnia and Herzegovina provides multiple alternatives to incarceration that facilitate rehabilitation and limits the amount of time juveniles can be committed.²¹³ Germany's Youth Courts Law provides for the Youth Court Assistance Service to facilitate the court in implementing and enforcing measures that adequately rehabilitate juveniles before the court.²¹⁴ Bosnia and Herzegovina also have a similar system that allows the judge the option to submit the child to pretrial detention for psychological evaluation by professionals to better understand the background, character, and mental development of the child.²¹⁵ These professionals then advise

²¹² *Id.*

²¹³ BiH Crim. Code art. 75-105.

²¹⁴ Youth Courts Law § 38.

²¹⁵ Interview with Vildena Pleh, University of Sarajevo Faculty of Law, ABA ROLI online lecture series (Apr. 20, 2021).

the court on the appropriate measures to best help rehabilitate the child.²¹⁶ Further efforts to reform Bosnia and Herzegovina's juvenile justice system have seen continued success. Banja Luka has a community-based day center that prevents juvenile offending by offering a range of activities, including parent counseling. Banja Luka also has an educational-correctional unit that offers activities aimed at preventing recidivism.²¹⁷ Though physically separate and built to look like a house, it is actually part of a prison.²¹⁸ Sarajevo has a disciplinary center for community-based rehabilitation of juvenile offenders that offers an intensive and comprehensive program to prevent recidivism.²¹⁹ Residential placement in this program is limited to twenty days, but most participants attend on a non-residential basis.²²⁰ These programs in Banja Luka and Sarajevo have reported low recidivism rates among attendees.²²¹

The solution to high rates of juvenile incarceration is simple: stop incarcerating juveniles. While incarceration

²¹⁶ *Id.*

²¹⁷ UNICEF, ASSESSMENT OF JUVENILE JUST. REFORM ACHIEVEMENTS IN BOSN. & HERZ. 7 (2011), https://childhub.org/sites/default/files/library/attachments/_bosniah_unicef_jj_2011_web.pdf.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

may be necessary for a few bad apples, it creates more of a problem than a solution to juvenile offending in the United States, so there must be an alternative for the majority of juveniles who have fallen victim to a failed system. There are a few common themes in these new programs that are showing success at reducing recidivism and incarceration rates: education, treatment, support, and engagement. Children need to be educated to be productive members of society. They need treatment for addiction and trauma. They need to be supported in low-income communities and underfunded public-school systems. They need safe and productive activities to occupy their free time. It sounds simple, and yet implementation is so severely lacking, likely from lack of funding. The United States must implement systems that fulfill these needs in order to further reduce juvenile incarceration. Though a few states have already implemented programs that fill these needs and achieved successful outcomes, the rest must follow suit. It has been demonstrated that there are many different program options, so states can choose those that work best for them, and looking abroad to European models of juvenile justice could further reform juvenile justice in the United States.

The United States courts should increase the use of child psychologists and experts to inform decisions in juvenile cases. The current system fails to adequately consider the background and developmental needs of the juvenile offenders. The best way to prevent recidivism is to address these underlying problems that contribute to juvenile offending. With juveniles already in pretrial detention, it would not be a drastic change to submit these juveniles to psychological assessments, which could inform the court as to whether further detention is necessary and what other measures could best serve the child. Current detention centers should be replaced with smaller facilities that have comprehensive programs directed at preventing reoffending. Longer detention sentences should be reserved for the most serious offenses, and jurisdictions should implement short-term and leisure time detention programs that are better suited to correct juvenile behavior without interfering with the juvenile's schooling.

V. CONCLUSION

In conclusion, the juvenile justice system in the United States has historically failed to achieve its goal of rehabilitating juveniles who commit criminal offenses.

Current efforts at reform have shown success, but the majority of the country is still stuck in the past, relying on detention and incarceration programs that only cause further problems for juvenile offenders and higher recidivism rates in the country. European countries have successfully implemented new programs that are helping children and reducing recidivism rates, and these programs have the potential to further reduce incarceration and recidivism rates in the United States.