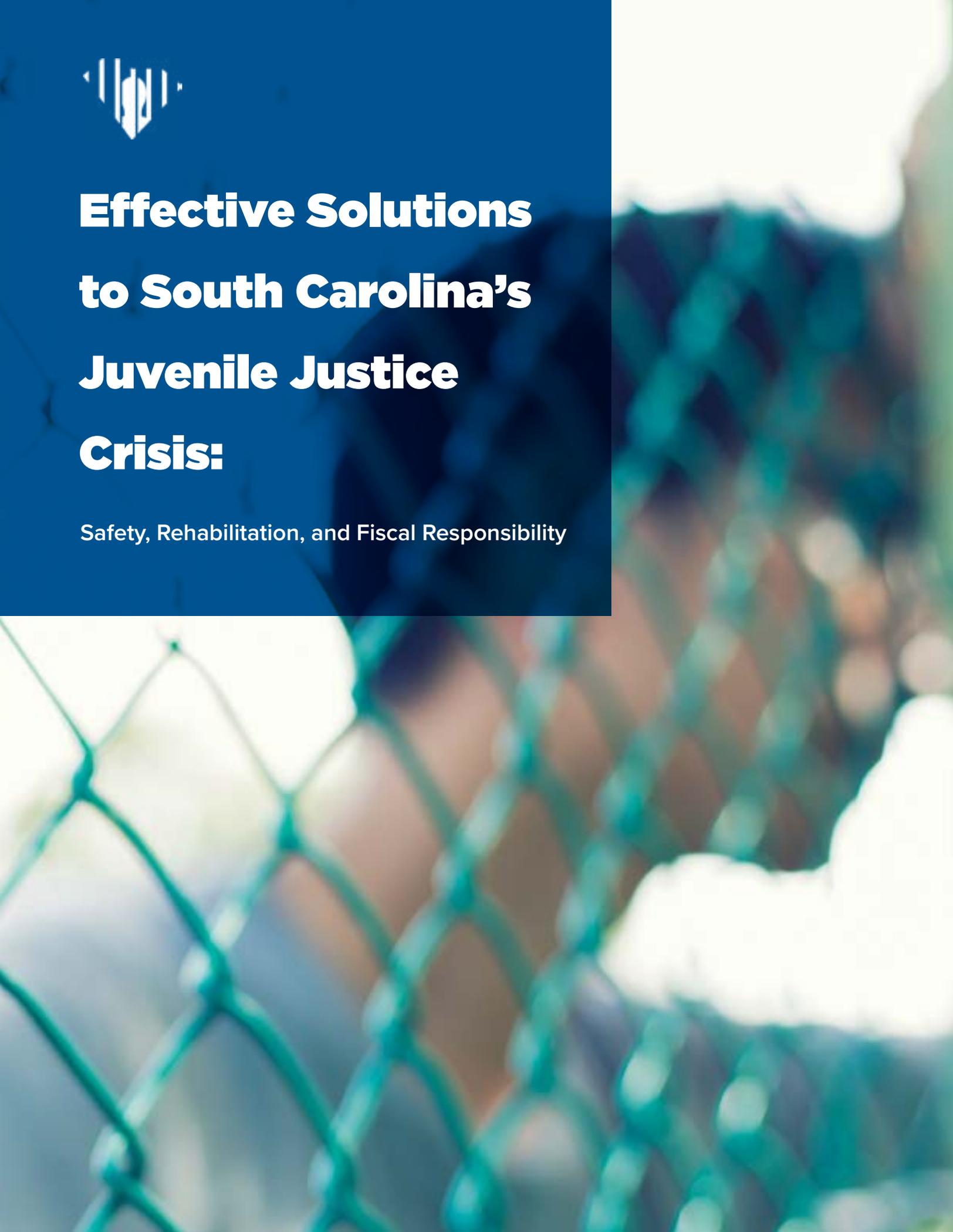




# **Effective Solutions to South Carolina's Juvenile Justice**

## **Crisis:**

Safety, Rehabilitation, and Fiscal Responsibility



# Effective Solutions to South Carolina's Juvenile Justice Crisis: Safety, Rehabilitation, and Fiscal Responsibility

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# Executive Summary



## Now Is the Time to Build a Model Juvenile Justice System in South Carolina

A common approach to poor outcomes and inadequate or harmful practices in traditional juvenile corrections is to implement program improvement processes grounded in adult correctional theory, as well as to adopt new program models or practices that may address some symptoms while ignoring other factors leading to healthy adolescent development. *The limitation of this approach is that it often amounts to a simple ‘rebooting’ of the existing system. As with a home computer or laptop, when you reboot the system, you end up back in the same place. The system may simply become better at implementing an outdated program. The youth-in-custody system needs more than a simple rebooting. It needs culture change and an operating platform that is trauma informed, developmental, and therapeutic.*<sup>1</sup>

– Tim Decker, former director of the Missouri Division of Youth Services.

More than a decade after emerging from federal court oversight, the South Carolina Department of Juvenile Justice (“DJJ”) once again faces significant difficulties. Recent legislative and media reports have shined a light on some of DJJ’s current problems. Some members of the South Carolina General Assembly now consider DJJ to be in the midst of a crisis marked by violence at DJJ facilities, poor staffing models, and inadequate treatment for children in custody. A critical Legislative Audit Council report describes an agency facing serious challenges, and led to the resignation of the DJJ director.<sup>2</sup>

This crisis creates an opportunity to address long-standing challenges and set South Carolina on a course to build a model juvenile justice system. This white paper will not rehash the incidents that triggered the General Assembly’s attention. Instead, this analysis is a call to action to address the long-standing problems in how we treat juvenile offenders and to set South Carolina on a path towards building a model juvenile justice system—a system that reduces crime by rehabilitating child offenders, keeps children and juvenile justice staff safe, and more efficiently spends taxpayer money.

Opportunity for reform comes from another source: the “raise the age” law<sup>3</sup> will require significant (and positive) changes for South Carolina; now is the time to plan to make those changes as effective as possible. Act 268 raises the age of family court jurisdiction, so seventeen-year-old children will generally be tried and punished as children.<sup>4</sup> Family Courts will have jurisdiction over children accused of committing crimes while seventeen years old, excepting more severe offenses which may be waived to general sessions court. This change will treat seventeen-year-old children accused of many crimes *as* children—an important and positive result.

But this change requires planning, which is why Act 268 does not take effect until 2019. Part of the planning should involve a hard look at what types of juvenile facilities will be most effective, both for the existing DJJ population and the DJJ population of 2019 and beyond. Obviously, cost is a key feature: if our juvenile justice system currently engages in expensive and ineffective activities, then now is the time

to shift resources away from ineffective and harmful juvenile justice interventions, so DJJ will have the ability to handle effectively both the seventeen-year-olds who will soon be added to the juvenile justice system and the existing juvenile population.

Unfortunately, South Carolina is at risk of simply “rebooting” problems at DJJ. As Tim Decker, the former director of the Missouri Division of Youth Services (and administrator of the Missouri Model discussed below), predicted, we have “implement[ed] program improvement processes grounded in adult correctional theory”—we have added barbed wire, bolted down furniture, and given DJJ staff pepper spray. But we have not yet addressed more fundamental structures that preclude South Carolina from being a national leader like Missouri—in particular, our over-reliance on large facilities, which research and experience show are inherently unsafe and fail to prevent (and perhaps, in some instances, even cause) future crime.

At this juncture, South Carolina is at risk of expanding a fundamentally flawed system. To accommodate increased numbers of youth in the juvenile justice system when Act 268 takes effect, DJJ has proposed spending millions of dollars to build more large jail facilities—a new unit at the state’s already large, centralized juvenile jail, and a fourth regional evaluation center, where DJJ temporarily incarcerates children for a range of offenses.<sup>5</sup> DJJ’s large centralized jail and its evaluation centers have a troubled record of safety risks to children and staff, and poor recidivism data.

Rather than spend millions of dollars to expand large jail facilities—and the problems within them—we should reduce our reliance on those facilities, and use taxpayer dollars on more evidence-based interventions.

In addition to spending taxpayer dollars efficiently, there is also some general consensus about the goals of our juvenile justice system, including: (1) keeping children safe when in state custody, (2) keeping DJJ staff safe, (3) keeping the community safe when adolescents are released from DJJ, and (4) balancing accountability with rehabilitation for youthful offenders. Rehabilitating children not only treats children as children, but, if done effectively, it also prevents recidivism and reduces crime. It is at the heart of the General Assembly’s purpose when it created DJJ and required it to “provid[e] or arrang[e] for necessary services leading to the rehabilitation of delinquents”<sup>6</sup>—a purpose our Supreme Court has recognized as “distinctly different” from the adult criminal justice system.<sup>7</sup>

This paper sets forth suggestions for how to reach these goals.

## Principles of Model Juvenile Justice Systems

Part I details the key research-based principles of model juvenile justice systems. First, when children are committed to state custody, they should be housed in small facilities. Large, hardware-secure facilities—such as DJJ’s Broad River Road Complex and evaluation centers—are inherently dangerous for children and staff alike, incredibly expensive, and do not effectively rehabilitate children in a way that reduces the likelihood of recidivism upon their release. These facilities are associated with high degrees of sexual abuse of children, and over-reliance on isolation of children with challenging behaviors. Sadly, evidence suggests both problems exist here in South Carolina. Juvenile facilities should be smaller and spread out across the state rather than centralized.

Second, it is imperative that we provide intensive services to children in custody and in the community, because these children often suffer from mental health challenges and other special needs. Failure to address these underlying issues will result in perpetually high recidivism rates. There are services with strong evidence supporting a positive effect on rehabilitation and recidivism, and the state should invest in them.

Third, children should be prepared to successfully integrate back into their communities while separated from their families. Children should be placed within a reasonable proximity to their homes, with frequent visitation and with evidence-based follow-up services set up to begin upon their release.

## Model State Reforms

Part II sets forth how other states have put the foregoing principles into practice, including the Missouri Model, which many consider the gold standard in rehabilitating youth offenders. Other states—including Georgia, Texas, Connecticut, Kentucky, and West Virginia—have also enacted far-reaching and bipartisan juvenile justice reforms in recent years. These reforms have successfully:

- Decentralized juvenile facilities so children are placed in smaller facilities closer to their homes;
- Invested in proven mental health and other interventions; and
- Prohibited children from being incarcerated for mere misdemeanor offenses.

## History of South Carolina Reform and Our Present Problems

Part III recounts the history of DJJ reforms that have taken place in South Carolina over the past 20 years. While well-intentioned, these reforms have failed to create a model system. South Carolina’s juvenile justice system was in a bad place in the 1980s and early 1990s, leading to a class action lawsuit and a consent decree in 1995. Many positive changes followed, including improved sanitary conditions, expanded rehabilitation programs, and upgraded facilities.

But these reforms only went so far, because litigation can only achieve so much. As United States District Court Judge Joseph Anderson explained:

The court's role as to the constitutional claims is limited to establishing minimally acceptable constitutional standards. Although the court announced its views in this regard at the outset of the trial, most of the seventeen expert witnesses who testified at trial nevertheless urged upon the court a version of a remedial plan far beyond what the court has determined to be constitutionally required. *The court is constrained to conclude that many of these proposals are model programs which the state of South Carolina, through its duly elected representatives, might voluntarily choose to establish, but not programs that are required as a matter of constitutional law.* Thus, the court will grant to the Plaintiffs some, but not nearly all, of the relief they seek in this case.<sup>8</sup>

Thus, the lawsuit led to only minimum constitutional standards on our juvenile justice system. This outcome certainly marked an important first step, but the task of building a model juvenile justice system was left to “the state of South Carolina, through its duly elected representatives.”

The present state of our juvenile justice system shows that it is time for the state of South Carolina to pursue more ambitious and effective reforms. The current system has serious problems—but they are not merely problems of management or lack of security at particular facilities. The problems are more fundamental.

First, South Carolina continues to rely on large, centralized juvenile prisons and “evaluation centers” (which are effectively jails by another name). DJJ's substandard record over the last several years is predictable based on what research tells us about the problems associated with large juvenile facilities, including lack of security (which was evident in past years' riots), the disturbing overuse of solitary confinement, and high recidivism rates. Indeed, recidivism rates are significantly higher for incarcerated youth than for similarly situated children who were not incarcerated. And, to top it off, taxpayers pay extremely high costs for these facilities, draining resources from more effective programs.

Second, South Carolina permits too many children who have committed relatively minor offenses to be incarcerated. While the data is murky—another problem in South Carolina's system—it is clear that many children are committed to DJJ custody for status offenses, probation violations, and misdemeanors. These children are better served in the community, and the resources spent incarcerating them would be better directed to community-based interventions.

Third, South Carolina does not provide enough mental health services to children. This problem plays out in one particularly concerning way—namely, children who have a serious mental illness and, by law, may not be placed in DJJ custody, nonetheless are forced to wait in juvenile jails until beds at mental health facilities become available. The problem appears to be, at least in part, that South Carolina pays lower Medicaid rates to psychiatric residential treatment facilities in this state than do other states, so our in-state treatment facilities prefer to admit and treat the higher-paying patients from other states, leaving South Carolina children waiting in prison.

## **One Child's Tour Through DJJ**

Part IV provides a heart-rending, first-person account written by a child after being released from DJJ custody. The child committed a misdemeanor—petty larceny—but ended up jailed at a large “evaluation center,” which research shows increases the risk of recidivism by one-third. The child was sexually as-

saulted there, which is an all-too-common occurrence around the country, especially in large prison facilities. The child's abuse led to a tailspin of drug abuse and future crime, which brought the child through various DJJ placements, only to be abused further. This child is now on the road to recovery, but only in spite of—not because of the child's experience in the juvenile justice system.

## Suggested Reforms

South Carolina can enact reforms that address the problems which harmed the child referenced in Part IV. Part V lays out some suggested proposals for how South Carolina can now move forward toward a model juvenile justice system that prevents crime, serves children safely and effectively, and uses taxpayer dollars efficiently. Those proposals are ambitious but achievable. Committing to them now will serve our children and our communities better, spend taxpayer dollars more effectively, and start turning South Carolina's juvenile justice system into a national model:

- Limit the size of DJJ's massive (by today's standards) Broad River Road Complex.
- Limit the total number of children who are actually committed to DJJ, by placing limits on DJJ commitments for lower level offenders.
  - Prohibit the incarceration of status offenders.
  - Follow states like Georgia in reserving commitment for children who have committed felonies.
- Eliminate or sharply reduce the use of secure evaluation centers for DJJ.
- Promptly place children with serious mental illnesses and intellectual disabilities at appropriate locations, outside of the confines of DJJ facilities.
- Enhance mental health treatment for those children who do remain in DJJ custody.
- Improve the data available for DJJ to help its leaders and state policy makers be better equipped to make informed choices about the direction of DJJ.

The status quo is not working. This report includes a first person account from a child who was incarcerated in DJJ facilities and which—despite making for difficult reading—illustrates many of the core problems that need to be addressed. That child is now on the road to recovery. But for the sake of the children who are and will become part of our juvenile justice system, we should heed this child's closing words: "Something needs to be done now."



# **I. Principles of Model Systems**



Other states' experience and much academic research identify the key principles behind model juvenile justice systems. First, we should house children in small facilities. Large facilities are inherently unsafe for children and staff alike and are incredibly expensive; they do not foster the rehabilitation that children need and that will keep our communities safe from crime upon their release. Second, we should provide intensive services to children in custody and in the community—because these children have a wide range of mental health and other needs, and a failure to address them will cause a failure to prevent them from offending again. Third, children's time separated from communities should be spent setting them up for success upon their return to their communities.

### A. House Children in Small Facilities

Large juvenile detention facilities are inherently dangerous for children and staff. In 2011, the Annie E. Casey Foundation found widespread physical abuse and excessive use of force by facility staff among juvenile correctional facilities, as well as an epidemic of sexual abuse, rampant over-reliance on isolation and restraint, unchecked youth-on-youth violence, and frequent violence against staff.<sup>9</sup> In a 2010 national survey of youth in correctional care, forty-five percent of youth respondents reported that correctional staff “use force when they don't really need to.”<sup>10</sup> Unsurprisingly, children in detention facilities live in constant fear of physical attacks from both staff members and other youths.<sup>11</sup> Safety fears lead some children to affiliate with gangs—which frequently are very active, especially in larger facilities that bring together children from different neighborhoods or regions.<sup>12</sup>

Large facilities tend to be particularly dangerous and particularly ineffective at rehabilitating incarcerated youth.<sup>13</sup> Approximately half of all juvenile offenders are incarcerated in facilities that hold more than 100 youth, and these types of facilities have the most over-crowding and the worst overall results.<sup>14</sup> The dangerous and stressful conditions that accompany large facilities lead to increased suicidal behavior, stress-related illness, psychiatric problems, and, ultimately, high recidivism rates.<sup>15</sup>

**Notably, South Carolina relies on a large, centralized juvenile prison, which houses more than 100 children. One December 2016 census of children housed “behind the fence”—at DJJ's Broad River Road Complex—counted 124 children.<sup>16</sup> That figure is consistently over 100,<sup>17</sup> and that figure could increase if, as proposed by DJJ, a new unit is built behind the fence.<sup>18</sup>**

Sexual abuse of children is a particularly significant problem at large institutions. The Department of Justice has found that “[a]n estimated 9.5% of adjudicated youth in state juvenile facilities and state contract facilities . . . reported experiencing one or more incidents of sexual victimization by another youth or staff in the past 12 months[.]”<sup>19</sup> **The survey results were particularly sobering in South Carolina: DOJ found a dramatic increase (29.2%) in youth who reported victimization at the DJJ Birchwood facility in South Carolina, while the John G. Richards facility had twenty percent of youth report sexual victimization.** Those facilities ranked third and twelfth, respectively, for the highest rates of sexual victimization *nationally* in this DOJ survey.<sup>20</sup> (Both facilities are part of DJJ's Broad River Road Complex, commonly known as “behind the fence.”) Notably, the Legislative Audit Council criticized DJJ for its lack of compliance with the federal Prison Rape Elimination Act.<sup>21</sup>

Beyond the harm suffered by children while incarcerated, incarceration itself has harmful long-term impacts on children after they are released. For example, children who grow up in confinement removed

from their communities are denied opportunities to develop social skills, self-control, and conflict resolution.<sup>22</sup> Entering incarceration and the conditions of incarceration have been found to both exacerbate and cause mental illness.<sup>23</sup> One study found that, among incarcerated youth diagnosed with depression, one-third developed depression *after* they entered incarceration.<sup>24</sup> Other research indicates that youth in confinement experience double to four times the rate of suicide compared to children living in the community.<sup>25</sup>

Indeed, a recent study found that confinement as a youth for as little as one month caused negative health effects in adulthood. The longitudinal study measured time spent incarcerated before age twenty-five and responses to questions about adult physical and mental health.<sup>26</sup> Controlling for baseline health and other determinants of health, the study found that adults who had been incarcerated as youths for as little as one month were more than forty percent more likely to experience increased symptoms of depression as an adult.<sup>27</sup> One to twelve months of incarceration as a youth was associated with worse general health as an adult, and incarceration for more than a year predicted increased suicidal thoughts and functional limitations as an adult.<sup>28</sup> While the study did not identify the causal mechanisms between youth incarceration and worse adult health, it is clear that any amount of time a youth spends incarcerated has long-term health effects, and more time in confinement is worse for long-term health.<sup>29</sup>

Youth who are incarcerated are also less likely to succeed academically and professionally.<sup>30</sup> Incarceration disrupts a youth's educational track, making it less likely that incarcerated youth will graduate from high school.<sup>31</sup> A study of over 35,000 juvenile offenders "suggest[s] that juvenile incarceration results in large decreases in the likelihood of high school completion and large increases in the likelihood of adult incarceration."<sup>32</sup> Moreover, for years after their release, youth who have been incarcerated work fewer hours<sup>33</sup> and are paid lower wages compared to people who were never incarcerated.<sup>34</sup>

Solitary confinement is a widely used practice among large institutional facilities with even more harmful effects on youth than traditional congregate incarceration. In a nationally representative survey of incarcerated youth, thirty percent reported that staff used solitary confinement as a disciplinary tool.<sup>35</sup> Solitary confinement is highly traumatic for youth, especially for youth who have already experienced trauma in their lives.<sup>36</sup> Studies show that solitary confinement is even more traumatic for youth than adults because adolescent brains have not yet developed the same psychological resources to manage the trauma of isolation.<sup>37</sup> It follows that solitary confinement further contributes to the onset or exacerbation of mental illness among confined youth, including significantly higher rates of suicide.<sup>38</sup> A 1999 study by the federal Office of Juvenile Justice and Delinquency Prevention found that fifty percent of suicides by incarcerated youth occurred while in solitary confinement.<sup>39</sup> Solitary confinement is also detrimental to physical health because it denies adolescents sufficient nutrition and exercise at a particularly important time in their physical development.<sup>40</sup> These harms have led the American Academy of Child and Adolescent Psychiatry,<sup>41</sup> numerous states,<sup>42</sup> the U.S. Department of Justice,<sup>43</sup> and the United Nations<sup>44</sup> to prohibit or strongly discourage the use of solitary confinement for incarcerated youth.

Solitary confinement should not be used for children. If it is used at all, it should be sparing, and brief. Unfortunately, DJJ’s data reveals that it is used far more frequently, and for days or weeks. On any given day in 2016, an average of 16.8 percent of all children housed at DJJ’s Broad River Road Complex were in “segregation.”<sup>45</sup> On many days, that figure spikes well over twenty percent.<sup>46</sup> At DJJ, children in “segregation” are kept in the “crisis management unit,” where children are typically kept in individual cells for up to twenty-three hours each day, or in the “intensive treatment unit.” DJJ’s “Segregation Track Sheet Summary” for November and December 2016 lists *ninety-one* separate children placed in at least one form of segregation—a facility whose population has ranged from the low 100s to the 130s.<sup>47</sup> All but six of those stays involved the “crisis management unit,” the most severe form of segregation. Stays in the “crisis management unit” ranged as high as thirty-six days, with a median stay of ten days. Stays at the ITU accounted for a smaller number of children, but ranged higher—up to forty-seven days, with a median of eighteen days. The total number of days in “segregation” of any kind ranged as high as seventy-four, with a median of ten days. That is half of those ninety-one children were kept in segregation for ten days or more – far too long.<sup>48</sup>

*In their own words: Solitary confinement at DJJ.* The following are excerpts from a statement written by a child detained at the “crisis management unit” at DJJ, dated April 1, 2016. The child gave the statement to the child’s attorney, who, with the client’s permission, shared it with the authors of this report with the child’s name redacted. The excerpts are presented verbatim in the child’s voice; only the spacing and emphasis have been added.

As of today, I’ve been in lock-up for 23 days and still doesn’t know how much longer I’ll remain in there.

While in lock-up we receive barely an hour of less for recreation. So most of the time in my cell with myself with a window that’s painted that preventing us from seeing outside.

During the 23 days here I’ve only been outside once, we don’t go to school, never been to the cafeteria, and not allowed to socialize with each other.

**Being in lock-up makes me feel suicidal** because I’m claustrophobic. And most of the time were always in a cell. It makes me feel like going through the wall it causes me to be angry, frustrated, and confused.

In addition to failing the children incarcerated in these facilities, large institutions fail the communities they are intended to serve because they do not achieve their goal of reducing recidivism. Studies of recidivism rates among youth who were incarcerated in large residential facilities have found that fifty to seventy percent<sup>49</sup> or seventy to eighty percent<sup>50</sup> of youth were rearrested within two or three years of release. Other studies have shown that, at large and often over-crowded facilities, custodial concerns take precedent over the delivery of treatment and services, resulting in less effective programs.<sup>51</sup> The high re-arrest rate may be due, in part, to the fact that confining large numbers of delinquent youth together creates an opportunity to learn new delinquent behaviors and skills, while further disenfran-

chising youth from mainstream society and encouraging association with delinquent groups.<sup>52</sup> Solitary confinement, as discussed immediately above, is particularly counter-productive to rehabilitative goals because it further denies incarcerated youth access to rehabilitative programs, education, some health care, and contact with family—all of which are essential for adolescent development and reintegration.<sup>53</sup>

Of particular concern to the state officials who oversee juvenile justice programs, large institutions pose a high risk of costly litigation.<sup>54</sup> A 2011 survey by the Annie E. Casey Foundation found that in the previous forty years there had been fifty-seven lawsuits in thirty-three states, the District of Columbia, and Puerto Rico that resulted in court-sanctioned remedies.<sup>55</sup> The survey further found that, “[o]f these lawsuits, 52 have included allegations of systemic problems with violence, physical or sexual abuse by facility staff, and/or excessive use of isolation or restraint.”<sup>56</sup> Solitary confinement, in particular, has been repeatedly challenged in the courts.<sup>57</sup>

There is a better way. As discussed in Part II, states which have shifted away from large facilities like DJJ’s Broad River Road Complex and evaluation centers have made children and juvenile justice agency staff safer while incarcerated, and reduced recidivism rates for children when they are released.

Smaller facilities provide other benefits. They can be spread across the state, making it easier for families to visit children at juvenile justice facilities—a particularly important step, as discussed in Part I.c. And with family members closer, mental health interventions that involve families—as many of the evidence-based interventions discussed in Part I.b do—become easier to provide.

## B. Provide Intensive Services to Children

In order to be successful, juvenile justice agencies must address the mental health needs of child offenders. Evidence-based mental health treatment provided in the community can prevent both crime and the need to incarcerate youth. Youth in juvenile detention facilities have much higher rates of mental illness than the general population and thus particularly need high-quality mental health interventions. While an estimated twenty percent of children and adolescents in the general population experience some type of mental illness during their childhood, fifty to seventy-five percent of incarcerated youth experience mental illness.<sup>58</sup> Consequently, juvenile justice programs that provide mental health treatment tend to be more successful at reducing recidivism, compared to programs that focus on coercion and control, which have no effect or even increase recidivism.<sup>59</sup> One 2009 analysis found that programs focusing on therapeutic counseling, skill building, and case management improved recidivism outcomes by a statistically significant amount,<sup>60</sup> whereas another study found that the best mental health-oriented programs could improve recidivism outcomes by twenty-five to eighty percent.<sup>61</sup>

Effective mental health and other treatment starts with screening all youth when they enter juvenile facilities so they can receive consistent and personalized treatment from trained mental health professionals.<sup>62</sup> Prompt screening is essential to identify children who have a serious mental illness or intellectual disability—and thus, by law, should be committed to the Department of Mental Health or Department of

Disabilities and Special Needs and not the Department of Juvenile Justice.<sup>63</sup>

To treat incarcerated youth, experts recommend evidence-based treatment models that have been shown to reduce recidivism, such as multisystemic therapy, functional family therapy, and cognitive behavioral health therapy.<sup>64</sup> According to the National Mental Health Association (now Mental Health America), these types of programs “are highly structured, intensive, emphasize social skill development and focus on behavior change, attitude adjustment and rethinking perceptions in order to reduce risk factors for juvenile justice involvement.”<sup>65</sup>

- Multisystemic therapy focuses on the social and environmental factors contributing to a youth’s problems and strategies to address those factors.<sup>66</sup> This model emphasizes empowering families to play an active role in a youth’s recovery and rehabilitation.<sup>67</sup> Studies of this method have shown up to a seventy percent reduction in long-term re-arrest rates.<sup>68</sup> Multisystemic therapy was originated at the Medical University of South Carolina,<sup>69</sup> but, despite its local origins, it is offered to few South Carolina children.
- Functional family therapy involves the whole family in ongoing therapy to reduce delinquent behavior and teaches the family to be self-sufficient through a customized plan.<sup>70</sup> One study found that fewer than ten percent of the youths who participated in this type of therapy were re-arrested, whereas almost sixty percent of youth who appeared in the juvenile court re-offended.<sup>71</sup>
- Cognitive behavioral health therapy is effective in a short time period, focuses on immediate reduction in symptoms, emphasizes interpersonal and behavioral skills, and is collaborative—all of which makes it well-suited to adolescents who will only be detained for a matter of months. This type of treatment has proven especially effective at reducing recidivism.<sup>72</sup>

These mental health interventions are particularly effective when used with children in the community—as an alternative to incarceration. Research and experience has shown that multisystemic therapy and functional family therapy, in particular, are effective when provided as an alternative to a residential placement for less serious offenders. One Florida study found that youth provided these treatments in the community were fourteen percent less likely to be convicted of a subsequent felony and thirty-five percent less likely to be sentenced to an adult prison than comparable youth who were incarcerated.<sup>73</sup>

It is especially important that juvenile correctional facilities are sensitive to the trauma that incarcerated youth have already experienced in their lives and the risk of further trauma during incarceration (especially the traumas that disproportionately occur within larger facilities, as discussed above). Between seventy-five and ninety-three percent of youth who become involved with the juvenile justice system have experienced one or more traumatic events.<sup>74</sup> In fact, the rate of post-traumatic stress disorder (“PTSD”) among youth in the juvenile justice systems is similar to the rate for soldiers who had been deployed in Iraq.<sup>75</sup> Similar to the recommended approach to mental health challenges, a trauma-informed system requires proper trauma screenings and needs assessments, as failure to diagnose co-existing trauma or PTSD will adversely affect treatment and recovery.<sup>76</sup>

### C. Set Children Up for Success Upon Return to Their Communities

Children in the juvenile justice system will return to their communities,<sup>77</sup> so DJJ must prepare children and their families for success upon the child's return. Therefore, families must be involved with treatment and maintain frequent contact with incarcerated children. According to the National Mental Health Association (now Mental Health America), "a lack of family connectedness is associated with juvenile criminal activity. Maintaining family ties while incarcerated, and preparing for and establishing positive family situations upon release, correlate with juveniles' successful reunification and reduced recidivism."<sup>78</sup>

Frequent visits between families and children in juvenile justice facilities are essential. While most research in this area has focused on adult inmates, two studies have examined the effects of visitation on incarcerated youth. One study found that visitation was associated with better mental health and lower incidence of depression.<sup>79</sup> The author of the study recommended "early and continued" family visits to help youth succeed while incarcerated.<sup>80</sup> A second study found a correlation between increased visitation and improved behavior and academic performance.<sup>81</sup> The study found that children with more frequent visitation had fewer behavioral incidents, whereas children with no visitation had the highest rates of behavioral incidents.<sup>82</sup> Similarly, more frequent visitation was associated with higher grade point averages ("GPAs"), whereas no visitation was associated with lower GPAs.<sup>83</sup> California recognized and endorsed the positive effects of family visitation when it passed the Connection and Young Offender Rehabilitation Act ("Chapter 458"), which facilitated greater communication and visitation between families and their detained children.<sup>84</sup>

One additional benefit of small facilities spread out across the state is that children can then be housed in facilities that are located closer to their homes, thus facilitating more family visitation. A placement's physical proximity is particularly important given the absence of reliable transportation that many families face.

**Smaller and more local facilities also make it easier for facility staff to work with families to prepare for children to return home.** That work includes planning to provide mental health and other services to children, and engaging them in school or vocational programs upon their return.

Upon return home, effective supervision necessitates continuing work to involve families. The mental health interventions with the strongest research base—multisystemic therapy and functional family therapy, discussed above—both require the close involvement of families.





## **II. Model State Reforms**



In response to the growing realization that the old way of incarcerating youth in large institutions is simply not working, several states have reformed their systems of juvenile justice and incarceration in significant ways. Following the highly-regarded Missouri Model, many states—including states with many similarities to South Carolina—have sought to improve rehabilitation efforts while simultaneously reducing costs, using the techniques and principles articulated above. While some of these reforms are still relatively new, promising early signs suggest these reforms are on the right track and can serve as models for South Carolina.

## A. The Missouri Model: The Leader in Juvenile Justice Reform

A discussion of successful juvenile justice reform begins with Missouri’s innovative system of juvenile justice, which is commonly referred to as the “Missouri Model.” Many regard the Missouri Model as the gold standard in juvenile justice reform.<sup>85</sup> In the early 1980s, Missouri closed its sprawling “training schools”—prison-style facilities with up to 650 beds, notorious for abusive conditions—to pursue a localized juvenile justice program centered around therapeutic rehabilitation.

The Missouri Model’s results speak for themselves, as facilities are safe and recidivism rates are relatively low.<sup>86</sup> These results are so convincing that many states have patterned their own reforms on the Missouri Model.<sup>87</sup> Even critics of other aspects of Missouri’s juvenile justice system acknowledge, or at least reserve judgment, on the effectiveness of the Missouri Model for incarcerating youth.<sup>88</sup>

The Missouri Division of Youth Services (“MO DYS”) describes the Missouri Model as “small programs close to home, family-like groups, and least restrictive environments.”<sup>89</sup>

### 1. Focus on Small, Local Facilities

Until the early 1980s, Missouri followed the traditional model of incarcerating youth in large, centralized facilities. The Boonville Training School, for example, had capacity for up to 650 youth. Perhaps as a result of its large size, Boonville was beset by violence and largely failed in its mission to rehabilitate youth.<sup>90</sup> Seeking to improve on these results, Missouri began experimenting with smaller facilities in the 1970s and, in 1983, closed Boonville and donated it to the Missouri Department of Corrections for use as an adult prison. Two years earlier, in 1981, Missouri had closed the Chillicothe Training School for girls.<sup>91</sup>

Missouri replaced these sprawling facilities with smaller detention facilities located in communities throughout the state.<sup>92</sup> As of 2010, Missouri had thirty-two programs located on twenty-six campuses, the largest of which contained only fifty beds.<sup>93</sup> By contrast, most state juvenile correctional facilities have around 150 beds.<sup>94</sup>

**Smaller facilities are integral to the Missouri Model’s success.** First, close-quarters and a high staff-to-child ratio make it possible for youth and staff to develop the one-on-one relationships that are critical to a child’s rehabilitation.<sup>95</sup> In addition, smaller facilities provide the state with more flexibility to maintain programs in more communities, because existing infrastructure (such as abandoned school buildings or

large residential homes) can be repurposed for youth detention. Keeping youth close to home increases their likelihood of successful rehabilitation. For that reason, MO DYS facilities are located in residential neighborhoods, state parks, and even college campuses.<sup>96</sup>

Finally, small, regionalized facilities have allowed Missouri to place youth in a least-restrictive environment and tailor specific placements to individual needs. Missouri has divided the state into five regions with four levels of programs in each.<sup>97</sup> The four levels are tailored to the severity of a juvenile's offense. The first level is essentially "day treatment," where the least serious offenders can receive education and therapy during the day, and return home at night.<sup>98</sup> The second level consists of group homes, where ten to twelve youth who committed low-level offenses live, attend school, and participate in extensive therapy.<sup>99</sup> The third level is a moderately secure facility mostly for youth who have committed felony offenses.<sup>100</sup> Despite being felony offenders in state custody, the youth in this third level spend a significant amount of time in the community on field trips and participating in service projects.<sup>101</sup> Finally, the most serious juvenile offenders are placed in secure facilities with a maximum population of only thirty-six youth.<sup>102</sup> Although these youth have fewer opportunities to leave the facility, the community is invited to the facility to interact and participate in activities with the youth.<sup>103</sup>

Thus, for every level of offender, Missouri's small and local facilities make it possible for youth to forge strong bonds with staff, participate in and receive support from their own communities, and receive the least restrictive detention experience possible without sacrificing public safety. This type of environment diminishes the likelihood of violence and the need for coercive actions by MO DYS staff. Instead, staff create a culture of safety through constant supervision, staff leadership, and cultivating healthy relationships.<sup>104</sup>

Staff can provide more customized treatment and individual attention to seriously troubled youth housed in small, local, and secure facilities.<sup>105</sup> The effectiveness of this approach—even in the toughest cases—is demonstrated by the fact that Missouri's most secure facilities lack the security hardware typical of most correctional facilities.<sup>106</sup> In 2010, Richard A. Mendel reported that at the Riverbend Treatment Center, for example, the only signs of the facility's correctional purpose are the outer fence and metal detector at the front door.<sup>107</sup> The facility contains only one prison-style cell, which is used to confine a juvenile for a few hours on the rare occasion a youth cannot be restrained through other means.<sup>108</sup> According to Mendel, the cell was not used a single time from May 2007 until the end of 2008.<sup>109</sup> **As of 2010, just six of MO DYS's thirty-two facilities had such a cell, and they were used no more than twenty-five times per year statewide.**<sup>110</sup> **This speaks to the effectiveness of the Missouri Model's use of smaller facilities to curb youth-on-youth violence, and stands in stark contrast to South Carolina, where as much as twenty percent of the more than 100 juveniles detained at the Broad River Road Complex are held in solitary confinement for twenty-three hours per day.**<sup>111</sup> Such measures are not only prohibited by MO DYS, they are rendered unnecessary by the effectiveness of treatment received within facilities.

MO DYS also prohibits the use of pepper spray, hog-ties, face-down restraints, and electrical shocks to retain order.<sup>112</sup> (A federal court barred DJJ from using tear gas in *Alexander S.*,<sup>113</sup> and, until recently, DJJ had also prohibited staff from using pepper spray.) Despite eschewing these commonplace correctional tactics, MO DYS has established an exemplary safety record, including **zero** youth suicides as of 2010.<sup>114</sup>

To be sure, smaller facilities did not reform Missouri's juvenile justice system overnight. MO DYS officials

readily acknowledge that it took a few years of experimentation for the program to find its footing.<sup>115</sup> MO DYS officials also contend that, ultimately, “the organizational culture has clearly fueled the change,” rather than the specific reforms implemented.<sup>116</sup> Now that it has worked out the kinks, however, Missouri has consistently posted some of the best safety and recidivism rates in the nation, in no small part due to its effective use of small and localized facilities.

## 2. Intensive Services to Incarcerated Children

Just as important as the size and location of the facilities is the individual care provided there. A recent study showed—not surprisingly—that individuals who were incarcerated as juveniles are less likely to complete high school and more likely to be incarcerated as an adult.<sup>117</sup> MO DYS seeks to ameliorate those trends by providing critical services to confined youth.

As an initial matter, MO DYS assigns each youth at every level facility to a group of ten to twelve juveniles, with whom they spend nearly every hour of the day.<sup>118</sup> As part of a close-knit group, youth experience positive pressure to pull their weight in performing chores, studying, and following rules.<sup>119</sup> In fact, youth are required to “check in” with their team at least five times per day to express how they feel physically and emotionally.<sup>120</sup> Youth can also call a “circle” with their team to raise concerns and complaints.<sup>121</sup> According to former MO DYS Director Tim Decker, “[t]he group is the primary treatment modality in our system, and nothing is allowed to supplant the group process.”<sup>122</sup> All members of the group attend school together as well. Even though the youth are on different levels with different intellectual capacities, MO DYS has been very successful in providing quality educational outcomes as measured by the number of youth obtaining high school diplomas and GED certificates.<sup>123</sup> The youth also have daily group treatment sessions.

In addition, youth receive individualized case management from an adult “service coordinator” assigned specifically to them.<sup>124</sup> The service coordinator oversees the youth’s progress throughout detention and even after discharge.<sup>125</sup> The service coordinator also helps to determine the youth’s treatment while in custody by performing a risk- and needs-assessment based on factors such as the juvenile’s offense history.<sup>126</sup> The service coordinator also decides when the youth can be sent home. In Missouri, when judges give juveniles indeterminate sentences, MO DYS can adjust the length of detention based on the needs of the juvenile.<sup>127</sup> This allows MO DYS to tailor a juvenile’s treatment and make him accountable, on some level, for his period of confinement.<sup>128</sup>

Finally, juveniles are encouraged to participate in therapy with their families. Research shows that “parents and families remain crucial and that effectively engaging and supporting parents is pivotal to successful youth development.”<sup>129</sup> The need for family participation is one additional reason why it is important to detain juveniles near their home, because proximity enables families to get involved.

These extensive services—assignment of juveniles to small groups, assignment of a personal service coordinator, emphasis on education, and opportunities for group and family therapy—are critical components of the continued success of the Missouri Model.

### 3. Creating Conditions for Success After Release from Custody

No matter the quality of their rehabilitative experience while incarcerated, juveniles face significant hurdles upon release, when they are often returned to the same environment that facilitated their delinquency. Missouri therefore attempts to provide juveniles with the skills they need to succeed after discharge.

First, Missouri attempts to increase what has been referred to as “self-awareness and communications skills.”<sup>130</sup> These skills are developed by giving youth opportunities to associate with members of the community and communicate within their small groups.<sup>131</sup> These opportunities help youth understand themselves better, and learn to work out problems through communication. Second, academic progress is crucial, for the obvious reason that a high school diploma or GED certificate is critical to a juvenile’s post-incarceration success. As discussed above, youth in the MO DYS are given ample opportunity to progress academically, and many do.<sup>132</sup> Some youth housed at MO DYS progress more in an academic school year than a typical youth in public school.<sup>133</sup> Youth also have the opportunity to gain work experience, or participate in community service,<sup>134</sup> all of which helps them build skills to become self-sufficient adults and will hopefully decrease the likelihood of further interactions with the law.

Importantly, MO DYS’s role does not end once the juvenile is released. Service coordinators monitor the youth following release and provide support where necessary.<sup>135</sup> This is facilitated by pre-release planning, where the service coordinator meets with the youth and his family to develop a plan for future success.<sup>136</sup>

**The success of the Missouri Model is manifest in its ability to decrease the number of juveniles who return to the system. According to former MO DYS Director Tim Decker in 2015, approximately “[t]wo-thirds of the young people discharged from Missouri DYS remained ‘law-abiding’ after three years.”<sup>137</sup> In addition, less than ten percent “are reincarcerated within three years.”<sup>138</sup> South Carolina data is difficult to find,<sup>139</sup> but what data has been reported suggests a higher rate.** A 2011 study commissioned by DJJ found an 80.2 percent thirty-six-month recidivism rate for children who were prosecuted and found guilty.<sup>140</sup> More recent figures also suggest a high recidivism rate. In 2014, DJJ reported that fifteen percent of children on probation or parole or in arbitration programs re-offended while under supervision.<sup>141</sup> That figure includes children who have committed less serious offenses (and thus were diverted to arbitration programs or placed on probation) and does not extend beyond DJJ supervision—so the three-year recidivism rate of children incarcerated by DJJ is likely substantially higher. DJJ has reported that, of children committed to DJJ custody in 2010, twenty-seven percent were “re-adjudicated to DJJ within twelve months of their release and thirty-one percent were re-adjudicated within thirty-six months of their release.”<sup>142</sup> Although DJJ plans to develop recidivism statistics to account for children who turn seventeen and are tried as adults for any future charges,<sup>143</sup> these current recidivism statistics do not appear to include such numbers, so the true recidivism rate is likely substantially higher.

#### B. Other Reform States

As noted previously, several states have sought to replicate Missouri’s success by reforming the way they incarcerate youth. Reforms have occurred around the country, in states large and small, and of different political leanings. Below are examples of states that appear to be achieving positive results, both

in terms of improving the lives and prospects of youth offenders, and bolstering the state's bottom line.

## Texas

Since 2007, Texas has significantly reformed its approach to incarcerating youth. Similar to Missouri, the Texas reforms arose in response to rampant abuse of juveniles in state custody.<sup>144</sup> Texas had another goal as well: saving money. Former Governor Rick Perry set the tone for these reforms, stating:

**I believe we can take an approach to crime that is both tough and smart. . . . [T]here are thousands of non-violent offenders in the system whose future we cannot ignore. Let's focus more resources on rehabilitating those offenders so we can ultimately spend less money locking them up again.<sup>145</sup>**

– Former Governor Rick Perry

Similar to Missouri, the Texas reforms have regionalized juvenile justice to keep youth offenders in their home communities, and focused on treatment and rehabilitation rather than coercive correctional tactics. Texas has also placed great emphasis on reducing the juvenile inmate population overall.

Senate Bill 103, which the Texas Legislature passed in 2007, sought to curb abuse in state-run institutions, lower the juvenile inmate population, and lay the groundwork for moving toward a regionalized treatment model akin to that found in Missouri.<sup>146</sup> To diminish abuse of juveniles within the system, SB 103 required the Texas Youth Commission (“TYC”) to provide 300 training hours before they commence guard duties at a correctional facility, maintain a ratio of at least one correctional officer for every twelve juveniles in facilities with a dormitory, establish an independent department to investigate allegations of abuse, and enhance punishment for sexual offenses against TYC inmates.<sup>147</sup> SB 103 also created the Office of Inspector General and the Office of Independent Ombudsman to oversee and hold accountable state institutions.<sup>148</sup> In addition, a new advisory board was created to facilitate communication between the various stakeholders in Texas state government.<sup>149</sup> While these reforms have had the effect of drastically reducing violence and sexual assaults perpetrated by staff, by 2012, youth-on-youth assaults had increased.<sup>150</sup>

As a sign that things are improving, however, the Center for Juvenile Justice Reform at Georgetown University recently selected Texas for its Youth in Custody Practice Model,<sup>151</sup> for which applicants are selected based on “a history of juvenile justice reforms and a high-level commitment to quality system and practice improvements at the agency and facility levels[.]”<sup>152</sup>

SB 103 also sought to lower the juvenile inmate population by diverting misdemeanants to county-based programs,<sup>153</sup> and reducing the age of youth over which the former Texas Youth Commission (“TYC”) had jurisdiction from 21 to 19.<sup>154</sup> To accommodate this diversion of youth from state to county facilities, the legislature increased the former Texas Juvenile Probation Commission’s (“TJPC”) budget by \$57 million.<sup>155</sup> Not surprisingly, commitments to state facilities declined rapidly following passage of SB 103.<sup>156</sup>

Because SB 103’s county-based initiatives were largely successful, in 2009, the legislature funded a grant for county probation departments titled the “Community Corrections Diversion Program,” also known as “Grant C.”<sup>157</sup> The purpose of Grant C was to divert even more youth from state to local facilities.<sup>158</sup> By 2011, SB 103 and Grant C had contributed to a sixty percent decline in youth committed to state facilities.<sup>159</sup> Senate Bill 653, passed in 2011, pushed this concept even further by creating the Texas Juvenile Justice Department (“TJJD”), which was intended to create a “partnership with communities” to “deliver[] . . . a continuum of services and programs to help youth enrich and value their lives and the community[.]”<sup>160</sup> Following this reform, state funding for local probation departments almost matched funding for state-run facilities.<sup>161</sup> **The average daily population in state facilities dropped more than seventy percent—from 4,800 to 1,399**, allowing Texas to shutter nine large facilities with between 112 and 436 beds.<sup>162</sup> Commitments to county facilities also declined during this time, suggesting youth were not simply being shuttled from the state to county detention.<sup>163</sup> In 2013, the Pew Charitable Trusts estimated that since 2008, the decrease in the youth population in secure facilities had **saved Texas more than \$50 million annually**.<sup>164</sup>

The Justice Center for the Council of State Governors found that Texas’s legislative efforts contributed to the decrease in the juvenile inmate population.<sup>165</sup> To be sure, juvenile inmate populations were declining throughout the country around the time of Texas’s first reforms in 2007, but Texas’s reforms accelerated that decrease significantly. In 2007, the legislature projected seven percent growth in the average daily population, when, in reality, between 2007 and 2012, commitments to state facilities declined sixty-six percent.<sup>166</sup> The study also revealed that county probation departments are supervising thirty percent fewer youth as a result of fewer arrests and fewer referrals to the juvenile justice system.<sup>167</sup> This came in conjunction with a decrease in state commitments, suggesting an across-the-board decrease.<sup>168</sup> Importantly, the study also showed that diversion from state facilities did not increase the crime rate as some feared.<sup>169</sup> A multivariate analysis revealed that legislative reforms contributed to this decline in commitments to state-run facilities.<sup>170</sup> These findings mirrored a study conducted by the Pew Charitable Trusts in 2013.<sup>171</sup>

The Justice Center study served as a catalyst for SB 1630, passed in 2015, which codifies Texas’s commitment to a regionalized plan that would keep youth closer to home in more rehabilitative settings.<sup>172</sup> Specifically, SB 1630 requires the newly formed TJJD to “develop . . . a regionalization plan for keeping children closer to home in lieu of commitment to the secure facilities operated by the department[.]”<sup>173</sup>

In August 2016, the TJJD issued its Regionalization Plan, which divided Texas into seven regions and listed the following long-term goals:

- (1) selecting and implementing a single validated risk and needs assessment across the state to improve treatment plans and interventions;
- (2) modernizing the program registry;
- (3) developing and expanding opportunities to advance and support the integration of research into practice;
- (4) improving and expanding collaborations with other youth-serving agencies to promote positive youth outcomes and continuity of care; and

(5) developing and sustaining a highly skilled and qualified juvenile justice workforce.<sup>174</sup>

The Regionalization Plan also assesses the availability of psychiatry, psychology, therapists, treatment curriculum, and other specialized treatment services and programs.<sup>175</sup>

Thus, the Texas reforms mirror the Missouri Model in some key respects, including regionalized treatment, integration of evidence-based practices into its treatment of offending youth, and least-restrictive detention policies. Texas has saved money in the process as it diverts youth who do not pose a risk to the community from out-of-home facilities. So far, this strategy has not led to an uptick in crime in the state.

## Georgia

In the wake of scandal surrounding alleged abuses of juveniles at its facilities,<sup>176</sup> Georgia enacted sweeping juvenile justice reform in 2013. Georgia's reforms mirror many of the principles found in the Missouri Model and the recent Texas reforms, including the desire to save money by being smarter on crime.

Through House Bill 242, the Georgia General Assembly sought to diminish the number of low-level offenders in out-of-home facilities and reduce recidivism.<sup>177</sup> First, and similar to Missouri, HB 242 eliminated mandatory minimum confinement to allow for judicial discretion in sentencing.<sup>178</sup>

Perhaps most importantly, Georgia followed Texas's lead in prohibiting misdemeanants being placed in state custody unless their offense history includes four prior adjudications, at least one of which must be felony,<sup>179</sup> a reform cited positively by the Legislative Audit Council.<sup>180</sup> HB 242 also prohibited all status offenders from being committed to state custody.<sup>181</sup> Moreover, Georgia required all children's dispositions to reflect the "least restrictive disposition appropriate" for each child.<sup>182</sup> Also similar to Texas, HB 242 created a financial incentive program for counties to develop their own programs to serve juvenile offenders.<sup>183</sup>

HB 242 seeks to reduce recidivism through similar methods to Missouri and Texas, including focusing resources on evidence-based programs, using detention-assessment instruments before detaining a juvenile, and focusing resources on higher-risk offenders by allowing lower-risk offenders to be placed on administrative caseloads, which is an alternate type of supervision that requires less oversight.<sup>184</sup>

Because the Georgia reforms are only a few years old, there is little research yet on their long-term effects. **Governor Nathan Deal** recently boasted, however, that felony commitments and placements in short-term programs dropped sixty-two percent in nine months, allowing the state to close two juvenile detention centers and avoid building two more.<sup>185</sup> In addition, local governments now have access to grants to develop improved programs for juveniles.<sup>186</sup> These are promising signs that HB 242 is having its desired effect, thereby making it a solid example for South Carolina to follow.

## Kentucky

Kentucky is another state seeking to lower costs and improve outcomes by reserving out-of-home facilities for only the most serious offenders. By 2012, low-level offenders made up fifty-five percent of commitments to secure facilities.<sup>187</sup> To curb this trend, the Kentucky legislature passed SB 200 in 2014, which sought to reserve incarceration in secure facilities for the most-serious offenders, strengthen evidence-based practices in local communities, and improve government performance.<sup>188</sup> SB 200 sought to achieve this result by enhancing its pre-court diversion program and restricting commitment of lower-level offenders.<sup>189</sup> The reforms are similar to those adopted in Missouri, Texas, and Georgia, as SB 200 encourages less reliance on large secure facilities, provides communities with resources and incentives to create effective programs, and mandates increased training and education of Department of Juvenile Justice employees.<sup>190</sup>

## West Virginia

In 2015, the West Virginia legislature unanimously passed SB 393, which diverted juvenile offenders with low-risk profiles away from expensive out-of-home facilities and invested some of the savings into evidence-based community programs.<sup>191</sup> Combined with new adult criminal justice legislation, the reforms are slated to save West Virginia up to \$200 million in prison construction and \$87 million in operating costs through 2018.<sup>192</sup>

## Connecticut

Between 2002 and 2012, Connecticut adopted several reforms that made substantial progress towards the goals of minimizing reliance on confinement, offering better treatment for confined youth, and creating a continuous network of proven community-based services.<sup>193</sup> Similar to Missouri, Connecticut has embraced multisystemic therapy, including group programs teaching anger management, moral reasoning, drug refusal, controlling one's emotions, and self-awareness.<sup>194</sup> Probation staff are trained to meet with youth and their families to identify and support goals and strengths.<sup>195</sup>

Connecticut has also addressed rampant abuse in one of its facilities by sending approximately half the population, who had less serious offense, to community-based programs, closing the high-security restraint unit, providing better training to staff, improving counseling and education services, and inviting families to participate in family counseling and other activities at the facility.<sup>196</sup> The facility in question has been scandal-free since the reforms were enacted, even earning accreditation from the American Correctional Association.<sup>197</sup>

As a result of these reforms, Connecticut can boast that it has controlled spending on juvenile justice while the state's juvenile crime rate and confinement rates have dropped.<sup>198</sup>

Importantly, Connecticut pursued these reforms at the same time as it implemented its own “raise the age” legislation, raising the maximum age for juvenile court jurisdiction from sixteen to eighteen (a more dramatic change than South Carolina’s pending shift from seventeen to eighteen). But its overall spending on juvenile justice actually *decreased*—because it shifted lower-level offenders from more expensive and less effective secure placements to more community and evidence-based interventions.<sup>199</sup> By making that shift, Connecticut served children in its juvenile justice system better *and* avoided spending large sums of money to implement its “raise the age” bill.

In summary, states are obtaining better results—and saving money in the process—by shifting to smaller, regional placements for children and away from more central prisons, focusing on rehabilitation, and reserving commitments for children who pose the greatest risk to public safety. Some of these measures could very likely assist South Carolina as it seeks to achieve these same goals.



# **III. History of Reform in South Carolina:**

**Progress, With Backsliding and Without  
Pushing Toward a Model System**



## A. *Alexander S.* and some progress to meet minimum constitutional standards

In 1990, South Carolina’s juvenile justice system was in a poor state.<sup>200</sup> Juvenile jails were overcrowded, understaffed, and in generally poor condition. Food served to children “frequently” contained “cockroaches and other foreign matter.”<sup>201</sup> DJJ guards used tear gas regularly to discipline children. The state failed to provide a “minimally adequate level of programming” to help children rehabilitate—a low standard.<sup>202</sup> This state of affairs led to a class action litigation challenging these conditions.

The *Alexander S.* opinion,<sup>203</sup> written by United States District Court Judge Joseph Anderson in 1995 following five years of litigation,<sup>204</sup> was a landmark decision nationwide in this arena.<sup>205</sup> But despite Judge Anderson’s commendable effort to try to address many of the issues at DJJ, the impact of *Alexander S.* was limited to the realities of litigation. Indeed, Judge Anderson remarked several times in his opinion that while *both sides* encouraged the court to adopt certain standards from the American Correctional Association (“ACA”), those standards, which “might represent desirable goals, . . . do not represent the standards minimally acceptable under the Constitution,”<sup>206</sup> which the court repeatedly stated was the standard it was required to use in evaluating DJJ.

Nevertheless, *Alexander S.* emphasized many of the core principles discussed above. For example, the court noted that utilizing “decentralized, community-based” juvenile correctional facilities and programs was an approach endorsed by (1) “[m]ost of the witnesses who testified at trial,” (2) “most experts in the field,” and (3) the South Carolina Juvenile Justice Task Force (a “blue-ribbon commission composed primarily of prosecutors, police officers, and family court judges, and headed by [then] South Carolina Associate Supreme Court Justice Jean Toal”).<sup>207</sup> The court also noted the ultimate, statutorily-mandated goal of DJJ: to rehabilitate its children.<sup>208</sup> Moreover, the court noted that it was incumbent on DJJ, under the Constitution, to provide “a minimally adequate level of programming . . . in order to provide juveniles with a reasonable opportunity to accomplish the purpose of their confinement, to protect the safety of the juveniles and the staff, and to ensure the safety of the community once the juveniles are ultimately released.”<sup>209</sup>

Ultimately, then, it is true that *Alexander S.* gave way to some important, positive results at DJJ beginning in 1995. It dramatically reduced the population behind the fence at the Broad River Road Complex (BRRC) as DJJ shifted children to wilderness camps and similar, smaller facilities located across the state. It resulted in some improved services and programs at DJJ. It also prohibited the use of tear gas at DJJ as an unconstitutional practice with juveniles (except in extraordinary circumstances).<sup>210</sup> But the court continued to emphasize that it was limited to requiring DJJ to adhere to services and treatment that meet constitutional minima, rather than creating a model juvenile justice system that was in the state’s best interests:

The court’s role as to the constitutional claims is limited to establishing minimally acceptable constitutional standards. Although the court announced its views in this regard at the outset of the trial, most of the seventeen expert witnesses who testified at trial nevertheless urged upon the court a version of a remedial plan far beyond what the court has determined to be constitutionally required. *The court is constrained to conclude that many of these proposals are model programs which the state of South Carolina, through its duly elected representatives, might voluntarily choose to establish, but not programs that are*

required as a matter of constitutional law. Thus, the court will grant to the Plaintiffs some, but not nearly all, of the relief they seek in this case.<sup>211</sup>

Thus, *Alexander S.* simply imposed minimum constitutional standards on our juvenile justice system. This was a critical first step to improving conditions for children, but as Judge Anderson noted, the task of building a model juvenile justice system was left to “the state of South Carolina, through its duly elected representatives.”

*Alexander S.* was also limited insofar as it only addressed DJJ, which was the only agency made a party to the lawsuit. Other state agencies that have an undeniable impact on juvenile justice in this state (e.g., the Department of Mental Health) were not subject to the court’s order. While those agencies were addressed somewhat through the subclass of children in *Alexander S.* who could not be cared for by DJJ (children with serious mental illness),<sup>212</sup> the court was constrained to the parties before it and could not address topics like the development and use of mental health services as they might relate to other state agencies.

## B. Much work remains to create a model system

That brings us to where we are now. Despite Judge Anderson’s word of caution that there was virtually uniform praise for small, decentralized, community-based facilities by nearly all of the experts who had opined on the subject as of 1995, DJJ today continues to rely on large juvenile jails that run counter to research and national models. BRRRC is simply too big—it is larger than any in the Missouri Model—and it has extensive hardware (which was recently upgraded), security staff (which was recently armed with pepper spray), and disturbingly frequent use of long-term isolation for juveniles.

**While DJJ deserves credit for offering rehabilitative services and shifting many children to smaller facilities, its continued use of large institutions (especially BRRRC, but also including its secure evaluation settings) creates unsafe conditions, fails to rehabilitate youth, and it is questionable whether it even saves resources in the short term.** During the fiscal year 2016, BRRRC alone spent at least \$23,700,850.<sup>213</sup> The average daily population at BRRRC for FY 2014-2015 was 117.<sup>214</sup> That figure declined some in early 2016<sup>215</sup> but rebounded to as high as 124 by December 2016.<sup>216</sup> That amounts to more than \$197,000 per year for every child incarcerated behind the fence, or more than \$540 per day.<sup>217</sup>

Furthermore, security problems will continue so long as the state houses 100-plus children in one location. As Tim Decker of Missouri has written, “[l]arge institutions utilizing traditional adult correctional approaches with young people is a recipe for further harm, failure, and increased risks to the general public. . . . While it may seem counterintuitive, small programs with a more natural, home-like environment and a therapeutic focus are far safer than are those that operate on a more traditional correctional platform with extensive hardware, security staff, and practices such as mechanical restraints and isolation.”<sup>218</sup> The Legislative Audit Council reached similar conclusions: “Most of the facilities at DJJ’s Broad

River Road Complex (BRRC) are outdated, poorly designed, may compromise security, and no longer meet the needs of DJJ.”<sup>219</sup>

South Carolina’s secure evaluation centers are similarly too big—they handle more than 1,000 children who cycle through every year.<sup>220</sup> They are arguably more problematic than BRRC because they are built even more like jails. These types of facilities have also been shown to increase recidivism as compared to smaller, community-based facilities tasked with the same evaluative purpose. “Youth evaluated in the community were 33% less likely to recidivate than those evaluated in a residential setting [at one secure evaluation center].”<sup>221</sup> In addition, research has found that short-term incarceration—defined as less than one month (compared to up to forty-five days at the evaluation centers—correlates with significantly worse mental health outcomes as an adult, even after controlling for baseline health and other variables.<sup>221</sup> Taxpayers spend millions of dollars for these poor results—at least \$10,591,165 for DJJ’s three evaluation centers, to be precise, or more than \$200 per day per child.<sup>222</sup>

There is also evidence that—like Georgia and other states before reform legislation—far too many youths are being incarcerated for misdemeanors and for status offenses. For example, DJJ reports that of the top ten most frequent “offenses associated with suspended and final commitments,” six are misdemeanors.<sup>223</sup> DJJ itself notes that “[t]echnical violations of probation and contempt of court cases collectively accounted for a significant proportion of suspended and final commitments to DJJ in fiscal year 2015-2016, with seven categories of probation violations dominating the ‘top ten’ list.”<sup>224</sup> And according to the Children’s Law Center, hundreds of children are jailed each year for status offenses—conduct that is not even criminal, such as truancy or incorrigibility.<sup>225</sup> Hundreds more are committed to DJJ custody based on technical violations of court orders in status offense cases.<sup>226</sup>

As a result, children are harmed by being unnecessarily incarcerated, and DJJ is harmed by being unnecessarily drained of resources that would be better spent elsewhere. Such unnecessary commitments are not DJJ’s fault—as Judge Anderson noted, commitments follow a family court process governed by statute, and DJJ does not have complete control over its “front door.”<sup>227</sup>

As one might expect, it is expensive to lock up so many kids. **According to one DJJ official, as of September 2014, “costs per youth per day for a long-term residential facility were \$426, evaluation center is \$154, detention is \$242, the wilderness program is \$111, foster care is up to \$142, group homes are \$83.23, intensive placements are an average of \$180.46, and shelter homes are \$50.”**<sup>228</sup>

During fiscal year 2015-2016, the average daily suspended and final commitment population was 414.<sup>229</sup> Moreover, twenty-five percent of the suspended and final commitment population was held in a secure facility, while forty-three percent were committed in community residential programs.<sup>230</sup> Nineteen percent of the committed population were housed at admissions processing centers<sup>232</sup> and the remaining

population was transferred to the Department of Mental Health or the Department of Disabilities and Special Needs.<sup>232</sup>

During 2015-2016, there were 791 individuals in residential beds on a given day.<sup>233</sup> This number includes individuals who were committed to DJJ custody and also those receiving supervision that needed temporary out-of-home placement.<sup>234</sup> Even though the individuals were housed in DJJ facilities for a variety of reasons, forty-seven percent were in hardware secure beds (DJJ's Detention Center, Evaluation Centers, and long-term facilities at BRRRC), and the remaining fifty-six percent were in foster care or community-based, staff-secure facilities.<sup>235</sup> These figures may suggest that children are being housed in hardware secure facilities when it is not necessary to do so.

During fiscal year 2014-2015, an average daily population of 401 juveniles was held in hardware secure facilities.<sup>236</sup> Those included (with their populations) Staff Secure Wilderness Camps (196), Multi-Agency Therapeutic Placements (220), Marine Programs (85), and Mental Health Placements (38).<sup>237</sup> Based on these numbers, hardware secure facilities appear to remain DJJ's default, even though they are proven to be less effective and more expensive. On the other hand, evidence-based care programs such as mental health placements are only accessible to a small number of children in the juvenile justice system, with an average daily population of 38 individuals.

More recent data shows one piece of good news—but continuing disturbing trends. In December 2016, the average daily population of children in DJJ custody was 776—a welcome decline from past years. But South Carolina continued to rely on the most expensive and least effective facilities to house these children. A majority of them—401—were housed in DJJ's secure facilities, with the remainder in community placements, foster homes, or facilities for children with serious mental illnesses or developmental disabilities.<sup>238</sup>

Through all of this, DJJ and other agencies remain ill-equipped to provide adequate mental health services. Multisystemic therapy and functional family therapy are generally unavailable—especially to children leaving DJJ custody or at risk of entering it.

A final problem is particularly noteworthy—an increasing number of children are housed in DJJ jails while they wait for appropriate placements from other agencies—most frequently mental health placements. DJJ is not equipped to serve children with serious mental illness or intellectual disabilities, and, by law, such children may not be committed to DJJ custody.<sup>239</sup> Psychiatric Residential Treatment Facility Services, while available in some smaller locations, are generally hard to find for new juveniles being brought into the system, in part because of simple incentives: Medicaid rates paid for South Carolina children are lower than Medicaid rates paid for by other states.

**According to the Children's Law Center, the number of children in DJJ custody who have a serious mental illness—and thus, by law, should not be in DJJ custody—spiked to 118 in 2015.** That figure was as high as the four previous years *combined*.<sup>240</sup> **Nearly ten percent of all kids committed to DJJ now qualify as having a serious mental illness. Unfortunately, appropriate placements for these children have not kept pace—only thirty-five percent of children with serious mental illness were placed in mental health facilities in 2015.** And those who were placed had to wait in jail longer for appropriate placements—with many waiting beyond the ninety-day limit required for this subclass of *Alexander S.*

plaintiffs.<sup>241</sup> When no appropriate placement exists, these children remain locked up in DJJ facilities—harming those children, making those facilities even less effective, and imposing a significant financial cost on DJJ. The root cause of the shortage of appropriate mental health placements needs to be addressed.



## **IV. In Their Own**

**Words: One Child's**

**Tour Through DJJ**



It is one thing to study how the juvenile justice system incarcerates children for minor, non-violent offenses, how incarceration in jail-like facilities puts children in danger of physical and sexual assault, and how that kind of incarceration can deepen children's problems and increase recidivism. It is another thing to experience it directly.

Here is one child's story of a tour through various DJJ facilities. The following are excerpts from a statement written by a child in 2016. The child gave the statement to the child's attorney, who, with the client's permission, shared it with the authors of this report with the child's name redacted. The excerpts, with potentially identifying information redacted, are presented verbatim in the child's voice; only the spacing has been changed.

I first got arrested...for petty larceny. When I was released from the Detention Center I was placed on parental house arrest. Afraid of going back I took my grandmother's car and ran ...When I was caught I went back to jail and was sentence a evaluation at [an] Evaluation Center.

While I was at [the evaluation center] I was raped by my roommate. When that happened my whole life changed. . . . When I went to court for the end of my evaluation I was placed on probation. When I went back home I wasn't the same. I didn't eat, sleep, or talk. I felt like I couldn't trust anyone. I stayed isolated in my room and locked myself in the bathroom because what has happened to me and I was for a long time until I start smoking weed.

My Mom tried to find some help but I wouldn't talk. I was diagnosed with PTSD. When I was diagnosed I began hanging out with bad people and getting high and drunk. I started stealing from my Mom and Grandma and, selling my body for money . . . . Then I finally violated my probation and was sent to [the evaluation center].

While I was at [the evaluation center] it was horrible. I was sexually assaulted by another juvenile. I had to do 90 days and probation for a year. . . . When I got discharged I went back home to my Mom . . . .

I still found a way to get drugs and started going to school high. One day I was caught under the influence of weed at school. I was sent home and suspended from school. Which caused me to violate probation. I got sent . . . back to [the evaluation center]. While I was at [the evaluation center] I was getting bullied . . . and staff didn't do anything to stop it. I was then sent to [a DJJ-contracted group home] where I was bullied also and I became suicidal and tried to kill myself by drinking bleach and Pine Sol. [They] sent me to the hospital . . . [I] was sent to [a different group home]. When I got there I had to sleep in an isolation cell [to protect the child from bullying] and other kids slept in rooms together. I was also getting bullied . . . . Then I told myself that I couldn't take any more of it. So to get myself kicked out I had oral sex with another client. . . . [Eventually] I had to go back to [the evaluation center] for an evaluation in 2015. When I completed my evaluation in 2016 I was sentenced to 5 to 10 months. I stayed at [the evaluation center] for 3 and a half months. I got in trouble for having a shank because 8 other juveniles had threatened to jump me. I told staff and gave them the shank and did what staff asked me to do. 3 days later I was put back in the same unit with the same kids who wanted to jump me but they never threatened to put their hands on me anymore.

A month later I was sent to an ITU Program at BRRC (Broad River Road Campus). I have been in the ITU Program for a week. Since I have been in DJJ it feels like I am being treated like an animal and a slave. I have multiple old cuts on my [wr]ist and discoloration on my ankles from shackles. My ankle swelled up because of the shackles and had to have a medical profile done for me not to be in shackles. When I came to ITU I was placed in there. It's very hard to do class work and enjoy your recreation in handcuffs and shackles. At times I often get cramps from the handcuffs and shackles. Being in handcuffs and shackles is very tra[u]matizing. You get use to your hand always being with the other. Sometimes I forget that I don't have them on.

DJJ says that change is possible. How do they expect us to change in handcuffs and shackles? Handcuffs are very painful and cuts off juveniles circulation. Just imagine rubbing up and down on your Achilles tendon every time you move or walk. . . .

I feel like all of my freedom confidence and dignity has been taken away from me and DJJ the one who took it . . . DJJ makes you think to yourself "Am I ever going to leave this place." . . . Ever since I came to DJJ I see a lot of stuff that I have never seen before like staff cursing juveniles out and threatening them, calling them names and treating them like animals, and if we say something they'll threaten to put you in isolation. . . .

Something needs to be done now.

This single story illustrates many of the essential problems in South Carolina's juvenile justice system. This child's story begins with a simple offense. Petit larceny is a misdemeanor, and adults charged with that crime would be tried in a magistrate's or municipal court and subject to a fine of up to \$1,000 and 30 days in jail.<sup>242</sup> This child's fate was far worse.

Authorities jailed this child in one of three large "evaluation centers," which are among the most jail-like facilities in our juvenile system. The results are predictable. Years of experience and research shows that large, jail-like institutions are not safe for children or staff. Children are particularly vulnerable to sexual assault at such institutions—as South Carolina children reported to the Department of Justice about other in-state facilities. The state could not keep this child from enduring not one but two sexual assaults while at different evaluation centers.

Scholars have studied South Carolina's residential evaluation centers and found that rather than promote public safety or rehabilitation of juveniles, they increased recidivism by as much as one-third.<sup>243</sup> This child's story makes it easy to see why.

It is hard to escape this child's conclusion: "Something needs to be done now."





# **V. Moving Forward:**

**An Agenda for South Carolina to  
Develop a Model Juvenile Justice  
System**



As Tim Decker has said, rebooting our current system will not work. Adding more security features to large juvenile prisons will not serve children or the state in the long run. More fundamental reform is necessary. We need to re-evaluate our reliance on large, jail-like facilities and laws and practices that incarcerate children in such facilities for minor crimes.

Consistent with the principles set forth in Sections I and II, and the experiences of other states set forth in Section III, there are several steps South Carolina can take to move toward a model juvenile justice system:

- Limit the size of DJJ’s massive (by today’s standards) Broad River Road Complex.
- Limit the total number of children who are actually committed to DJJ by placing limits on DJJ commitments for lower level offenders.
- Eliminate or sharply reduce the use of secure evaluation centers for DJJ.
- Promptly place children with serious mental illnesses and intellectual disabilities at appropriate locations, outside of the confines of DJJ facilities.
- Enhance mental health treatment for those children who do remain in DJJ custody.
- Improve the data available for DJJ to help its leaders and state policy makers be better equipped to make informed choices about the direction of DJJ.

#### **A. Limit the size of BRRC.**

To expand the large, centralized jail at BRRC—as DJJ has proposed to do in 2019<sup>244</sup>—would be a significant mistake. It would expand an expensive and ineffective placement option. Years of research and effective policy reforms in other states suggest we should go in precisely the opposite direction. We should shrink BRRC and shift our reliance to smaller, more geographically spread out facilities.

DJJ should work to develop three or four secure facilities that can hold no more than thirty to fifty children at a time, without increasing overall capacity.<sup>245</sup> By contrast, as noted above, BRRC has recently had a population of 124,<sup>246</sup> which would increase starting in 2019, especially if DJJ builds its planned expansion of BRRC.<sup>247</sup> Missouri’s facilities house no more than fifty children.

#### **B. Reduce the total number of children committed to DJJ custody.**

To limit the number of children who walk through DJJ’s front door, the General Assembly should consider statutory limits on who may be committed in the first place. No status offenders should be committed,

period.<sup>249</sup> There should be no loopholes to this rule: indirect commitments of status offenders based on probation violations or contempt of court for violations of an order imposed through a status case, without a delinquency charge, should be statutorily barred as well.

Additionally, there should be limits to commitments for youths who commit non-violent misdemeanors. We encourage the General Assembly to follow Georgia's reform model which, as the Legislative Audit Council concluded, helped Georgia close several juvenile facilities:<sup>249</sup> no child should be committed to DJJ custody based on a misdemeanor unless the child has previously committed a felony and at least three other crimes.<sup>250</sup>

Despite a lack of clear data,<sup>251</sup> what data does exist strongly suggests that hundreds of children are committed to DJJ's custody every year for misdemeanor and status offenses. Nationally, only one quarter of children are committed to juvenile facilities based on violent offenses, with large numbers of children committed for property crimes (19%), technical violations (such as probation violations, 17%), public order offenses (11%), simple assault (8.4%), and drug offenses other than trafficking (6%).<sup>252</sup>

South Carolina statistics suggest a similar phenomenon. Although DJJ does not track the number of children committed to its custody and placed in different settings based on their offense, the agency does report the "ten most frequent offenses associated with suspended and final commitments." Only one of those ten offenses is violent, and that accounts for only twenty-six children. Two of those ten are for probation violations with an underlying felony conviction. The remaining seven are for non-violent offenses. And the largest portion—by far—are not for new crimes but for technical violations following relatively minor offenses. There were 241 children committed to DJJ custody for probation violations following misdemeanor convictions.<sup>253</sup>

Even more disturbing, South Carolina continues to incarcerate a large number of children for non-violent status offenses such as truancy or incorrigibility, in which the underlying behavior is not even criminal. DJJ data shows that 151 children were given a final or suspended commitment following a probation violation or contempt of court adjudication in which the underlying conduct—that is, the behavior which led to the probation order which was then violated—was a status offense.<sup>254</sup> Other data suggest the number may be even higher—234 in fiscal year 2013.<sup>255</sup> Many of those violations are continued status offenses—such as continued truancy following an order to have perfect attendance. That figure does not even count children committed to DJJ for the status offense itself—rather than a probation violation or contempt of court finding. A Children's Law Center study of status offenders found eighty-four pre-trial detentions and 123 post-adjudication commitments of status offenders from April 1, 2013 to March 31, 2014.<sup>256</sup>

As the Children's Law Center has pointed out, investing in MST is far more affordable than incarcerating children. The former costs about \$63.48 per day and is limited to six months of service. By contrast, as noted above, incarcerating children at BRRC costs at least \$426 per day.<sup>257</sup>

### C. Eliminate or sharply limit the use of secure evaluation centers.

The vast majority of DJJ evaluations should be made in the community, and secure evaluations should be barred for status offenses and misdemeanors (with some possible exceptions for violent misdemeanors), in accordance with the policies detailed above. When a child is not an immediate flight or safety risk, non-jail facilities would be more effective (and likely induce less recidivism) than the secure evaluation centers. DJJ could shift towards using such facilities without incurring extra costs—indeed, such facilities are less expensive than the evaluation centers.

### D. Place children with serious mental illness and intellectual disabilities at appropriate locations.

Children with serious mental illness and intellectual disabilities do not belong in DJJ custody. That is South Carolina law,<sup>258</sup> and for good reason—juvenile justice facilities are not designed to serve such children effectively. Placing such children with DJJ, especially at BRRC or secure evaluation centers, drains DJJ resources and staff time that should be directed to other children.

The statute is clear —“No juvenile may be committed to an institution under the control of the Department of Juvenile Justice who is seriously handicapped by mental illness or [an intellectual disability].”<sup>259</sup> Children with serious mental illness or intellectual disabilities should either be released to their families with intensive mental health or other services, or, if necessary, placed in an appropriate treatment facility, as the Children’s Code explicitly envisions.<sup>260</sup>

Unfortunately, far too many children with serious mental illness or intellectual disabilities are housed in prison-like DJJ facilities, often because of a problem with state Medicaid policies. These children often sit at the DJJ admissions center—a portion of the Midlands Evaluation Center, one of the most prison-like facilities within DJJ—which is one of the same types of facilities found to increase the likelihood of recidivism by as much as one-third.<sup>261</sup> Such a facility is inappropriate to the point of dangerous for children with serious mental illness and especially for children with intellectual disabilities who are often victims of other children.

A central cause relates to Medicaid rates (and cannot be blamed on DJJ). South Carolina Medicaid reimbursement rates are much lower than those paid by nearby states. Even though the children committed to DJJ often have serious behavioral issues arising from their mental illness, many beds at South Carolina providers are filled by children from other states.<sup>262</sup>

The General Assembly and the executive branch should address the Medicaid rates that leave South Carolina children with severe mental illness languishing in jail-like DJJ placements while they wait for mental health placements, often with their mental health further deteriorating. This phenomenon hurts children and imposes on South Carolina taxpayers the cost of maintaining those children in jails; legislative action could and should remedy this problem.

While focusing on this issue, the General Assembly could also fix obsolete language regarding “mental retardation” and “seriously handicapped” children in the existing statute.<sup>263</sup>

## E. Enhance mental health and other services.

The General Assembly should also fund Medicaid initiatives to provide more community-based services to enable children to return to their families. Evidence-based mental health interventions—especially multisystemic therapy and functional family therapy—can keep children home with their families *and* prevent future crime. For less severe offenses, provision of these mental health interventions should be a frequent alternative to incarceration. Unfortunately, it appears that many less severe offenders continue to be incarcerated in South Carolina. Moreover, South Carolina suffers from a shortage of these proven, but specialized, mental health services.

To DJJ's credit, it is working to train clinicians to provide trauma-focused cognitive behavioral therapy, with a goal of increasing the provision of this important evidence-based service to children in its custody by the end of fiscal year 2017-18.<sup>264</sup> And, also to DJJ's credit, it has expanded its budget for treatment and intervention services for children incarcerated at BRRRC.<sup>265</sup> But children should not have to be incarcerated at BRRRC to benefit from expanded services—we should expand the provision of high-quality services in the community so children do not get sent to BRRRC in the first place.

In short, South Carolina spends money incarcerating children instead of providing effective mental health treatments: we are spending more money for worse results. It should instead provide more evidence-based mental health treatments and incarcerate fewer children.

## F. Improve the data available to make informed policy choices.

Whenever possible, policy makers should use accurate and detailed data to inform their decisions. The field of juvenile justice is no exception to that rule. Unfortunately, as the authors of this paper have now learned, and as the Legislative Audit Council separately found,<sup>266</sup> the availability of essential data regarding the juvenile justice system is difficult to come by. Here are two examples regarding particularly important data.

### Recidivism

Recidivism is an essential measure for any juvenile justice system. Low recidivism rates reflect successful efforts to rehabilitate young offenders and prevent future crime. High recidivism rates reflect the opposite. The Missouri Model is popular in large part because it has demonstrated low recidivism rates.

How does South Carolina stack up? As discussed in Part III.a.3, South Carolina's recidivism rate is very likely significantly higher than Missouri's. But coming to a definitive answer is difficult because South Carolina's data tracking is poor. Consider:

- DJJ's annual reports do not include recidivism data.<sup>267</sup>
- Prior data conflates recidivism data for very different populations—children on probation (who, by

definition, were not committed to DJJ) and children on parole (children who were committed to DJJ and then released on parole).<sup>268</sup>

- Existing data does not capture children once they become adults for purposes of the criminal justice system. Existing statements from DJJ report the number of children “re-adjudicated to DJJ”<sup>269</sup> within certain time periods. But a child released from DJJ at age seventeen who then commits a crime will likely be charged in the adult system, and thus will not be “re-adjudicated to DJJ” and not captured in DJJ’s data.

DJJ promises to develop recidivism statistics to account for children who turn seventeen and are tried as adults for any future charges.<sup>270</sup> But DJJ does not have the capacity to track this data regularly.<sup>271</sup> As a result, the state will lack an essential data point for measuring the juvenile justice system’s effectiveness.

### **Incarcerated children and their offenses**

“What are you in for?” The vast majority of children committed to various DJJ placements can answer this question. But DJJ does not track information to answer this question in the aggregate. We know because, while researching this white paper, we submitted a Freedom of Information Act request to DJJ asking the number of children committed to DJJ and placed at different facilities following various categories of offenses. DJJ responded that “the Department does not maintain records responsive to your requests.” Instead, as one DJJ official explained, answering the requests “would require the Department to create information that is not currently maintained by the Department.”

The data the Department does have does not answer the question. DJJ reports the “ten most frequent offenses associated with suspended and final commitments.”<sup>272</sup> But that data (a) conflates suspended and final commitments, (b) reports only ten offenses, leaving thirty-seven percent of all commitments unaccounted for, and (c) does not report where children with particular offenses are actually placed. How many children committed for probation violations, simple assault, or other misdemeanors are placed at BRRC, in an alternative placement, or sit at the admissions center? DJJ data does not answer the question.

This data is crucial. As explained in Part III, limiting the ability to incarcerate children for relatively minor offenses has been a hallmark of juvenile justice reform efforts in Georgia, Texas, and elsewhere. What limited South Carolina data exists suggests that we, too, incarcerate children for relatively minor offenses. And there is a strong case to limit such incarcerations as a pillar of juvenile justice reform. We should have clear baseline data about which children are placed in which facility for which crimes, and track that data as reform progresses.

### **G. Introduce legislative reforms to keep track of the data**

The General Assembly and the public should have more data on these two issues and more. The General Assembly could address this by adding specificity to its existing requirement that DJJ complete an

annual report. South Carolina Code section 63-19-340 requires DJJ to complete an annual report that “shall include an account of” DJJ funds, “persons served,” and DJJ facilities and programs. The statute does not require the specific data points discussed here—the General Assembly could require the DJJ to do so.

The General Assembly should also analyze the cost of providing this data and ensure it provides adequate funding to the Department so it can gather, analyze, and report this data accurately.

## CONCLUSION

The recent crises at DJJ should not simply be a cause for alarm—they are an opportunity to pursue long-needed reforms. South Carolina can have a model juvenile justice system—a system that actually rehabilitates children who commit crimes and thus keeps the public safe from future crime, and helps those children grow to become responsible adults; that keeps children, staff, and the public safer; and that spends taxpayer dollars more effectively.

South Carolina's leaders now have a unique opportunity to build a model juvenile justice system. We have the knowledge, we have the resources, and the only question is whether our state has the will to make the reforms that are necessary.

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## Notes

- 1 Tim Decker, *Starting from a Different Place: The Missouri Model, in A NEW JUVENILE JUSTICE SYSTEM: TOTAL REFORM FOR A BROKEN SYSTEM* 63, 68 (Nancy Dowd ed., 2015) (emphasis added).
- 2 SOUTH CAROLINA GENERAL ASSEMBLY LEGISLATIVE AUDIT COUNCIL: A LIMITED REVIEW OF THE S.C. DEPARTMENT OF JUVENILE JUSTICE (Jan. 2017), [http://lac.sc.gov/LAC\\_Reports/2017/Documents/DJJ.pdf](http://lac.sc.gov/LAC_Reports/2017/Documents/DJJ.pdf) [hereinafter, “LEGISLATIVE AUDIT COUNCIL REPORT”].
- 3 See Act of June 17, 2016, No. 268, 2016 S.C. Acts, 1751, 1751 (to be codified at S.C. Code Ann. § 63-3-510).
- 4 See *id.* at § 2, 2016 S.C. Acts, 1751, 1753.
- 5 S.C. REVENUE AND FISCAL AFFAIRS OFFICE, STATEMENT OF ESTIMATED FISCAL IMPACT, S. 121-916, at 2 (2016), <http://rfa.sc.gov/files/impact/S0916%20signed%206-16.pdf>.
- 6 S.C. CODE § 63-19-350(7) (2008). United States District Court Judge Joseph Anderson also recognized this rehabilitative purpose in his opinion in *Alexander S.*, writing that, “[a]s articulated in the South Carolina Children’s Code, the policy of the state with respect to juvenile delinquents is to attempt to rehabilitate juveniles who have been deprived of their liberty.” *Alexander S. v. Boyd*, 876 F. Supp. 773, 780 (D.S.C. 1995).
- 7 *In re Kevin R.*, 409 S.C. 297, 304, 762 S.E.2d 387, 390-91 (2014).
- 8 See *id.* at 779 (emphasis added) (footnotes and citations omitted).
- 9 Richard A. Mendel, The Annie E. Casey Foundation, No Place for Kids: The Case for Reducing Juvenile Incarceration 5-8 (2011).
- 10 *Id.* at 9.
- 11 *Id.*
- 12 *Id.* at 25.
- 13 Mark W. Lipsey et al., Center for Juvenile Justice Reform, Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice 14 (2010).
- 14 JUSTICE POLICY INSTIT., THE COSTS OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES MAKE GOOD FISCAL SENSE 9 (2009).
- 15 *Id.*
- 16 The highest daily population at BRRC in December 2016 was 124. The average daily population that month was 108. S.C. DEP’T OF JUVENILE JUSTICE, JUVENILE POPULATION SUMMARY FY 2015-2016: MONTHLY REPORT DECEMBER 2016 [hereinafter JUVENILE POPULATION SUMMARY FY 2015-2016].
- 17 DJJ’s monthly population summaries show that BRRC’s average daily population fell under 100 from March through August 2016. But it was higher than 100 in every month before and after that range. And, except for those months, DJJ data reflects consistent numbers in the low 100s from FY 2011 through the present. S.C. DEPT. OF JUVENILE JUSTICE, 2015 REPORT CARD 15 (2015), <http://www.state.sc.us/djj/pdfs/2015-report-card.pdf>. [hereinafter 2015 REPORT CARD].
- 18 S.C. REVENUE AND FISCAL AFFAIRS OFFICE, *supra* note 5, at 2.
- 19 BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2012, at 4 (2013), <https://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.
- 20 See *id.* at 12. An earlier DOJ survey had also revealed high rates here in South Carolina 17.6% at Birchwood and 20.9% at John G. Richards – compared to a national average of 12.1%. Those figures included reported youth-on-youth victimization (2.0% of youth at Birchwood and 4.3% at John G. Richards compared to a national average of 2.6%), sexual misconduct involving staff using force (7.8% and 6.0%, compared to a national average of 3.9%), and sexual misconduct involving staff without a report of force (8.0% and 14.9% compared to a national average of 5.9%). ALAN J. BECK ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, SPECIAL REPORT: SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2008-09, at 29, 32, 34, 37, 44, 47 (2010). The point is *not* to criticize DJJ for these alleged incidents; how to prevent and respond to such incidents *within large secure facilities* is beyond the scope of this white paper. Rather, the present point is simply that severe harms like those reported in the DOJ surveys are inherent risks in large juvenile institutions.
- 21 LEGISLATIVE AUDIT COUNCIL REPORT, *supra* note 2, at 17-20.
- 22 JUSTICE POLICY INSTIT., *supra* note 14, at 9; Jeffrey Fagan & Aaron Kupchik, *Juvenile Incarceration and the Pains of Imprisonment*, 3 DUKE F.L. & SOC. CHANGE 29, 58 (2011).
- 23 JUSTICE POLICY INSTIT., *supra* note 14, at 9; Christopher B. Forrest, Ellen Tambor, Anne W. Riley, Margaret E. Ensminger, & Barbara Starfield, *The Health Profile of Incarcerated Male Youths*, 105 PEDIATRICS no. 1 286, 286-91 (2000); J.H. Kashani, G.W. Manning, D.H. McKnew, L. Cytryn, J.F. Simonds, & P.C. Wooderson, *Depression Among Incarcerated Delinquents*, 3 PSYCHIATRY RESOURCES, Issue 2, Oct. 1980, at 185, 185-191.

- 24 JUSTICE POLICY INSTIT., *supra* note 14, at 18 (*citing* COAL. FOR JUVENILE JUSTICE, HANDLE WITH CARE: MEETING THE MENTAL HEALTH NEEDS OF YOUNG OFFENDERS, 2000 ANNUAL REPORT TO THE PRESIDENT, THE CONGRESS, AND THE ADMINISTRATOR OF THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (2001)).
- 25 JUSTICE POLICY INSTIT., *supra* note 14, at 18 (*citing* DALE G. PARENT, VALERIE LIETER, STEPHEN KENNEDY, LISA LIVENS, DANIEL WENTWORTH, & SARAH WILCOX, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, CONDITIONS OF CONFINEMENT: JUVENILE DETENTION AND CORRECTIONS FACILITIES (1994)); see also COAL. FOR JUVENILE JUSTICE, *supra* note 24, at 18.
- 26 Elizabeth S. Barnert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?*, 139 PEDIATRICS No. 2, 2-3 (2016).
- 27 *Id.* at 5-6.
- 28 *Id.* at 4-6.
- 29 See *id.* at 2,6.
- 30 JUSTICE POLICY INSTIT., *supra* note 14, at 9.
- 31 See *id.* at 18; MENDEL, *supra* note 9, at 12.
- 32 ANNA AIZER & JOSEPH J. DOYLE, JR., JUVENILE INCARCERATION, HUMAN CAPITAL AND FUTURE CRIME: EVIDENCE FROM RANDOMLY-ASSIGNED JUDGES 2 (2013). This study used randomly-assigned judges—who incarcerated similarly-situated children at different rates—as the instrumental variable to estimate the effects of incarceration on similarly-situated children.
- 33 MENDEL, *supra* note 9, at 12.
- 34 Jeffrey Fagan & Richard B. Freeman, *Crime and Work*, 25 CRIME & JUST. 225, 243 (1999).
- 35 MENDEL, *supra* note 9, at 9.
- 36 Laura Anne Gallagher, *More Than a Time Out: Juvenile Solitary Confinement*, 18 U.C. DAVIS J. JUV. L. & POL'Y 244, 253 (2014); see also AMERICAN CIVIL LIBERTIES UNION, ALONE & AFRAID: CHILDREN HELD IN SOLITARY CONFINEMENT AND ISOLATION IN JUVENILE DETENTION AND CORRECTIONAL FACILITIES 5 (2014).
- 37 Gallagher, *supra* note 36, at 250 (*citing* Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 WASH. U. J. L. & POL'Y 241, 257 (2012)); see also JUVENILE JUSTICE REFORM COMM., AMERICAN ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (2012).
- 38 See JUVENILE JUSTICE REFORM COMM., *supra* note 37; Gallagher, *supra* note 36, at 250 (*citing* Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 WASH. U. J. L. & POL'Y 241, 257 (2012)).
- 39 Gallagher, *supra* note 36, at 251-52; see also JUVENILE JUSTICE REFORM COMM., *supra* note 37.
- 40 Gallagher, *supra* note 36, at 254; see also AMERICAN CIVIL LIBERTIES UNION, *supra* note 36, at 4-5.
- 41 JUVENILE JUSTICE REFORM COMM., *supra* note 37.
- 42 Gallagher, *supra* note 36, at 262 (Connecticut, Maine, Massachusetts, Missouri, New York, Oregon, Pennsylvania, Oklahoma, West Virginia, Alaska, and Washington, D.C.).
- 43 U.S. DEP'T OF JUSTICE, REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 101 (2016).
- 44 Gallagher, *supra* note 36, at 265.
- 45 DJJ provided monthly “Juvenile Population Summar[ies]” in response to a Freedom of Information Act Request by the authors. Those documents list the “ADP”—average daily population—for DJJ’s solitary confinement unit and the Broad River Road Complex as a whole. We calculated the percentage of children housed at BRRC who are placed in solitary by dividing the average daily population in solitary by the average daily population at BRRC for each month, and then averaged the resulting figure over 2016. The percentages fluctuated from a low of 5.3% in March 2016 to a high of 22.7% in July 2016. For January through September 2016, DJJ’s population summaries track children placed in the “maximum security unit (CMU).” For October through December 2016, DJJ’s population summaries do not refer to the “maximum security unit” and instead refer to “Laurel (ITU/HOLD).” This appears to refer to the same population of children; Laurel is the name of DJJ building which holds its solitary unit, and both names are listed as having an identical capacity—twenty-four—which coincides with the number of cells in DJJ’s solitary unit.
- 46 See *id.*; see Eli Hager, *In Some States, Raising the Age for Adult Court Is the Easy Part*, THE MARSHALL PROJECT (Sept. 27, 2016, 10:00 PM), <https://www.themarshallproject.org/2016/09/27/in-some-states-raising-the-age-for-adult-court-is-the-easy-part#.ZeKGm4uDk>.
- 47 S.C. DEP'T OF JUVENILE JUSTICE, SEGREGATION TRACK SHEET SUMMARY: NOVEMBER 1 THRU DECEMBER 31, 2016, 1-3 (2016).
- 48 *Id.*
- 49 JUSTICE POLICY INSTIT., *supra* note 14, at 16 (*citing* JAMES AUSTIN, KELLY DEDEL JOHNSON, & RONALD WEITZER, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, ALTERNATIVES TO THE SECURE DETENTION AND CONFINEMENT OF JUVENILE OFFENDERS (2005), & VA. DEP'T OF JUVENILE JUSTICE JUVENILE RECIDIVISM IN VIRGINIA, DJJ RESEARCH QUARTERLY (2005)).

- 50 MENDEL, *supra* note 9, at 10 (“Of the six states reporting juvenile or adult arrests within two years of release, none showed less than a 68 percent rearrest rate, and virtually all states reporting three-year rearrest rates converge at about 75 percent.”).
- 51 LIPSEY, *supra* note 13, at 14.
- 52 BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INSTIT., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 4-5 (2006); JUSTICE POLICY INSTIT., *supra* note 14, at 17 (citing Andrew Golub, *The Termination Rate of Adult Criminal Careers* (April 13, 1990) (unpublished Ph.D. dissertation, Carnegie Mellon University) (on file with Carnegie Mellon University); Thomas J. Dishion, Joan McCord, & François Poulin, *When Interventions Harm: Peer Groups and Problem Behavior*, 54 AMERICAN PSYCHOLOGIST no. 9, 755, 755-762 (1999).
- 53 Gallagher, *supra* note 36, at 254; see also AMERICAN CIVIL LIBERTIES UNION, *supra* note 36, at 4-5.
- 54 AUSTIN, *supra* note 49, at 2 (“In the worst case scenario, crowded facilities can lead to increased institutional violence, higher operational costs, and significant vulnerabilities to litigation to improve the conditions of confinement.”).
- 55 MENDEL, *supra* note 9, at 5.
- 56 *Id.*
- 57 See, e.g., *S.H. v. Reed*, No. 2:04-CV-1206, 2015 WL 8281637, at \*1 (S.D. Ohio Dec. 9, 2015); *R.J., et al. v. Jones*, No. 1:12-CV-07289 (N.D. Ill. Dec 6, 2012); *Troy D., et al. v. Mickens*, 1:10-cv-02902-JEI-AMD (D. N.J., June 7, 2010); *Morales v. Turman*, 569 F. Supp. 332, 333 (E.D. Tex. 1983); *Inmates of Boys’ Training Sch. v. Affleck*, 346 F. Supp. 1354, 1357-58 (D.R.I. 1972); *Lollis v. N.Y. State Dep’t of Soc. Servs.*, 322 F. Supp. 473, 475-77 (S.D.N.Y. 1970); *Katka v. Montana*, No. BDV-2009-1163 (Mont. 1st Jud. Dist. Ct, Lewis and Clark Cty. Dec. 16, 2009).
- 58 COAL. FOR JUVENILE JUSTICE, *supra* note 24, at 8.
- 59 MENDEL, *supra* note 9, at 16.
- 60 Lipsey, Mark W., *The Primary Factors that Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview*, 4 VICTIMS & OFFENDERS 124, 139 (2009).
- 61 JUSTICE POLICY INSTIT., *supra* note 14, at 18 (citing Paul Gendreau and Claire Goggin, *The Principles of Effective Intervention with Offenders in CHOOSING CORRECTIONAL OPTIONS THAT WORK* (Alan T. Harland ed., 1996)).
- 62 Rani A. Desai et al., *Mental Health Care in Juvenile Detention Facilities: A Review*, 34 J. AM. ACAD. PSYCHIATRY LAW 204, 208-10 (2006); American Acad. of Pediatrics, *Health Care for Youth in the Juvenile Justice System*, 128 PEDIATRICS no. 6, 1219, 1226-27 (2011).
- 63 See S.C. CODE § 63-19-1450(A) (2008) (“No juvenile may be committed to an institution under the control of the Department of Juvenile Justice who is seriously handicapped by mental illness or retardation.”).
- 64 NAT’L MENTAL HEALTH ASS’N, *MENTAL HEALTH TREATMENT FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM: A COMPENDIUM OF PROMISING PRACTICES* 5, 8-9 (2004); American Acad. of Pediatrics, *supra* note 62, at 1232; MENDEL, *supra* note 9, at 30.
- 65 NAT’L MENTAL HEALTH ASS’N, *supra* note 64, at 4.
- 66 *Id.* at 5.
- 67 *Id.*
- 68 MENDEL, *supra* note 9, at 17; NAT’L MENTAL HEALTH ASS’N, *supra* note 62, at 5.
- 69 MEDICAL UNIV. OF S.C., <http://academicdepartments.musc.edu/psychiatry/research/dgch/subsites/mst.htm> (last visited January 26, 2017).
- 70 NAT’L MENTAL HEALTH ASS’N, *supra* note 64, at 5.
- 71 *Id.*
- 72 MENDEL, *supra* note 9, at 16 (“[A] recent review found that cognitive behavioral training programs are associated with a 26 percent reduction in recidivism—the most of any treatment modality.”); NAT’L MENTAL HEALTH ASS’N, *supra* note 64, at 6; Desai et al., *supra* note 60, at 211.
- 73 MENDEL, *supra* note 9, at 17.
- 74 Samantha Buckingham, *Trauma Informed Juvenile Justice*, 53 AM. CRIM. L. REV. 641, 654 (2016).
- 75 *Id.* at 654.
- 76 *Id.* at 653.
- 77 A small number of children in DJJ will be transferred to the South Carolina Department of Corrections. S.C. CODE § 63-19-1440(D). But that is the exception that proves the rule.
- 78 NAT’L MENTAL HEALTH ASS’N, *supra* note 64, at 2.
- 79 Kathryn C. Monahan et al., *The Effects of Visitation on Incarcerated Juvenile Offenders: How Contact with the Outside Impacts Adjustments on the Inside*, 35 LAW & HUM. BEHAV. 143, 144, 149-50 (2011).
- 80 *Id.* at 150.
- 81 SANDRA VILLALOBOS AGUDELO, VERA INSTITUTE OF JUSTICE, *THE IMPACT OF FAMILY VISITATION ON INCARCERATED YOUTH’S BEHAVIOR AND SCHOOL PERFORMANCE: FINDINGS FROM THE FAMILIES AS PARTNERS PROJECT 1-2* (April 2013).
- 82 *Id.* at 3.

- 83 *Id.* at 4.
- 84 Stephanie Watson, *The Family Connection and Young Offender Rehabilitation Act of 2007: No Room for Retribution*, 39 MCGEORGE L. REV. 677, 685-86 (2008) (“The bill was a direct response to specific complaints of families frustrated by the barriers preventing them from visiting and communicating with their children. Chapter 458 capitalizes on the widely accepted idea that family connections reduce recidivism and play an important role in the rehabilitation process.”)
- 85 See, e.g., MICHELLE NEWELL AND JORJA LEAP, CHILDREN’S DEFENSE FUND CALIFORNIA, REFORMING THE NATION’S LARGEST JUVENILE JUSTICE SYSTEM 9 (2013), <http://www.cdfca.org/library/publications/2013/reforming-the-nations.pdf> (recommending Missouri as a model for California); Solomon Moore, *Missouri System Treats Juvenile Offenders With Lighter Hand*, N.Y. TIMES, March 26, 2009, [http://www.nytimes.com/2009/03/27/us/27juvenile.html?\\_r=0](http://www.nytimes.com/2009/03/27/us/27juvenile.html?_r=0); Marian Wright Edelman, *Juvenile Justice Reform: Making the “Missouri Model” an American Model*, THE HUFFINGTON POST (May 15, 2010, 5:12 AM), [http://www.huffingtonpost.com/arian-wright-edelman/juvenile-justice-reform-m\\_b\\_498976.html](http://www.huffingtonpost.com/arian-wright-edelman/juvenile-justice-reform-m_b_498976.html)
- 86 RICHARD A. MENDEL, THE ANNIE E. CASEY FOUNDATION, THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS 6–7 (2010), <http://www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf> [hereinafter THE MISSOURI MODEL]; see also NEWELL AND LEAP, *supra* note 85, at 9.
- 87 See, e.g., NEWELL AND LEAP, *supra* note 79, at 9 (“The success of the Missouri Model led states and counties across the country to implement a similar justice model.”).
- 88 Mae C. Quinn, *The Other “Missouri Model”: Systemic Juvenile Injustice in the Show-Me State*, 78 Mo. L. Rev. 1193, 1194-1202 (2013) (arguing that with the exception of the juvenile corrections system, Missouri is failing youth in education and access to courts); Rachel Lippmann, *Despite Positive Reputation, Missouri’s Juvenile Justice System Has Serious Systemic Problems*, St. Louis Public Radio (Oct. 5, 2015), <http://news.stlpublicradio.org/post/despite-positive-reputation-missouri-juvenile-justice-system-has-serious-systemic-problems#stream/0> (criticizing alleged due process violations in juvenile courts system).
- 89 *Inside the Approach*, MO. DIV. OF YOUTH SERVS., MO. DEP’T OF SOC. SERVS., <http://missouriapproach.org/>.
- 90 See THE MISSOURI MODEL, *supra* note 86, at 15.
- 91 *Id.*
- 92 MO. DIV. OF YOUTH SERVS., MO. DEP’T OF SOC. SERVS., MISSOURI’S DIVISION OF YOUTH SERVICES: PROGRAMS AND SERVICES 1 (2003), <http://dss.mo.gov/dys/articles/progservice.pdf> [hereinafter PROGRAMS AND SERVICES].
- 93 THE MISSOURI MODEL, *supra* note 86, at 15.
- 94 *Id.*
- 95 *Id.* (“The most important thing in dealing with youthful offenders is the relationships, the one-on-one relationships formed between young people and staff. And not just the line staff. It’s critical that the director of the facility know every kid by name.”).
- 96 *Id.* at 16.
- 97 *Id.* See PROGRAMS AND SERVICES, *supra* note 92, at 2, for a map of the five regions.
- 98 THE MISSOURI MODEL, *supra* note 86, at 16.
- 99 *Id.*
- 100 *Id.*
- 101 *Id.*
- 102 *Id.* at 16–18.
- 103 THE MISSOURI MODEL, *supra* note 86, at 16–18.
- 104 *Id.* at 25–27.
- 105 Shelley Zavlek, *Planning Community-Based Facilities for Violent Juvenile Offenders as Part of a System of Graduated Sanctions*, Juvenile Justice Bulletin 5 (Aug. 2005), <http://www.ncjrs.gov/pdffiles1/ojdp/209326.pdf>.
- 106 THE MISSOURI MODEL, *supra* note 86, at 27.
- 107 *d.*
- 108 *Id.*
- 109 *Id.*
- 110 *Id.*
- 111 DJJ provided monthly “Juvenile Population Summar[ies]” in response to a Freedom of Information Act Request by the authors. Those documents list the “ADP”—average daily population—for DJJ’s solitary confinement unit and the Broad River Road Complex as a whole. We calculated the percentage of children housed at BRRC who are placed in solitary by dividing the average daily population in solitary by the average daily population at BRRC for each month, and then averaged the resulting figure over 2016. Children held in solitary accounted for 22.5% of all children at BRRC in May 2016, 20.5% in June 2016, 22.7% in July 2016, and 22.1% in August 2016.
- 112 THE MISSOURI MODEL, *supra* note 86, at 27.
- 113 *Alexander S. v. Boyd*, 876 F.Supp. 773, 786 (D.S.C. 1995).

- 114 THE MISSOURI MODEL, *supra* note 86, at 10.
- 115 *E.g.*, DICK MENDEL, SMALL IS BEAUTIFUL: THE MISSOURI DIVISION OF YOUTH SERVICES 29-30, <http://www.ctja.org/resources/pdf/reform-smallisbeautiful.pdf> [hereinafter SMALL IS BEAUTIFUL].
- 116 *Inside the Approach*, MO. DIV. OF YOUTH SERVS., MO. DEP'T OF SOC. SERVS., <http://missouriapproach.org/>.
- 117 Anna Aizer and Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges* 3 (Nat'l Bureau of Econ. Research, Working Paper No. 19102, 2013), <http://www.nber.org/papers/w19102.pdf>.
- 118 PROGRAMS AND SERVICES, *supra* note 92, at 5; THE MISSOURI MODEL, *supra* note 86, at 20.
- 119 THE MISSOURI MODEL, *supra* note 86, at 20.
- 120 SMALL IS BEAUTIFUL, *supra* note 115, at 32.
- 121 *Id.*
- 122 THE MISSOURI MODEL, *supra* note 86, at 20.
- 123 *Id.* at 21 (noting that more than 300 DYS youth earned a GED certificate or high school diploma in 2008).
- 124 *Id.*
- 125 *Id.* at 21–22.
- 126 *Id.* at 21.
- 127 THE MISSOURI MODEL, *supra* note 86, at 22.
- 128 *Id.*
- 129 DOUGLAS, W. NELSON, THE ANNIE E. CASEY FOUNDATION, A ROAD MAP FOR JUVENILE JUSTICE REFORM 10 (2008), [http://www.campaignforyouthjustice.org/documents/AECNR\\_RoadMap.pdf](http://www.campaignforyouthjustice.org/documents/AECNR_RoadMap.pdf).
- 130 THE MISSOURI MODEL, *supra* note 86, at 31.
- 131 *See id.* at 31-32.
- 132 *See id.* at 32.
- 133 *Id.*
- 134 *Id.* at 33.
- 135 PROGRAMS AND SERVICES, *supra* 92, at 6.
- 136 THE MISSOURI MODEL, *supra* note 86, at 34-35.
- 137 Decker, *supra* note 1, at 81.
- 138 *Id.*, *citing* MISSOURI DEPARTMENT OF SOCIAL SERVICES, DIVISION OF YOUTH SERVICES, ANNUAL REPORT, FISCAL YEAR 2013, 19 (reporting “FY2010 Discharges Three Years Later” as 5.2% committed to prison and 2.1% committed to other facilities).
- 139 DJJ’s Annual Statistical Report does not include recidivism data. *See, e.g.*, S.C. DEP’T OF JUVENILE JUSTICE, 2015-2016 ANNUAL STATISTICAL REPORT (DEC. 2016), <http://www.state.sc.us/djj/pdfs/2015-16%20Annual%20Statistical%20Report%20Final.pdf> [hereinafter 2015-2016 ANNUAL STATISTICAL REPORT]. DJJ publishes annual “report cards.” While earlier report cards included limited recidivism data, the most recent report card does not. *See* 2015 REPORT CARD, *supra* note 17. The limited data reported in the past is difficult to parse because it conflates children on probation (many of whom were never incarcerated) with those on parole (all of whom were incarcerated), and fails to define what offenses were counted as recidivism (for instance, whether contempt of court charges or probation violations were categorized as “re-offend[ing]”).
- 140 GEORGE W. APPENZELLER ET AL., AN EVALUATION OF THE SOUTH CAROLINA JUVENILE ARBITRATION PROGRAM 38 (2011), [http://www.swsolutionsinc.com/Library/Reports/2011\\_SCDJJ\\_ArbitrationProgram.pdf](http://www.swsolutionsinc.com/Library/Reports/2011_SCDJJ_ArbitrationProgram.pdf).
- 141 SOUTH CAROLINA DEP’T OF JUVENILE JUSTICE, 2014 REPORT CARD 12, <http://www.state.sc.us/djj/pdfs/2014-report-card.pdf> [hereinafter 2014 REPORT CARD].
- 142 Letter from Sylvia Murray to Honorable Kirkman Finlay, III (Sept. 21, 2016) 2, *available at* <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/DJJ.php> (follow “Letter from DJJ to Oversight Subcommittee (September 23, 2016) hyperlink” [hereinafter Sept. 21, 2016 Letter]).
- 143 *Id.* at 2-3.
- 144 CHILDREN AT RISK, THE STATE OF JUVENILE JUSTICE IN TEXAS: A ROADMAP TO IMPROVED OUTCOMES IN THE TEXAS JUVENILE JUSTICE DEPARTMENT, ADULT CERTIFICATION, AND MENTAL HEALTH 22-23 (Robert Sanborn et al. eds., 2012), [http://childrenatrisk.org/wp-content/uploads/2013/05/01\\_The-State-of-Juvenile-Justice.pdf](http://childrenatrisk.org/wp-content/uploads/2013/05/01_The-State-of-Juvenile-Justice.pdf); Elizabeth Upchurch, Notes and Comment, *Putting the Focus Back on the Family: Using Multisystemic Therapy and Regionalized Incarceration as Alternatives to the Texas Youth Commission*, 15 Tex. WESLEYAN L. REV. 161, 166-68 (2008).
- 145 Address by Governor Rick Perry (Feb. 6, 2007), *appearing in* HOUSE JOURNAL OF THE REGULAR SESSION OF THE EIGHTIETH LEGISLATURE 315, 324 (*emphasis added*).
- 146 Sara A. Gordon, Note, *Juvenile Justice Reform in Texas: The Context, Content & Consequences of Senate Bill 1630*, 42 J. LEGIS. 232, 245 (2016).

- 147 S.B. 103, secs. 14, 40, 45, 80th Leg., Reg. Sess. (Tex. 2007).
- 148 *Id.* at secs 17, 57.
- 149 *Id.* at sec. 30.
- 150 Brandi Grissom, *More Young Inmates Attack One Another*, N.Y. TIMES, Feb. 11, 2012, at A31A.
- 151 Press Release, Tex. Juvenile Justice Dep't, TJJJ Selected to Participate in National Practice Model (Apr. 25, 2016), [http://www.tjjd.texas.gov/Docs/PressRelease/160420\\_YICPM.pdf](http://www.tjjd.texas.gov/Docs/PressRelease/160420_YICPM.pdf).
- 152 Center for Juvenile Justice Reform, Youth in Custody Practice Model, <http://cjjr.georgetown.edu/our-work/yicpm/#guidelines> (last visited Jan. 29, 2017).
- 153 S.B. 103, sec. 8.
- 154 S.B. 103, sec. 50; DEBORAH FOWLER, FIRST FOCUS, A TRUE TEXAS MIRACLE: ACHIEVING JUVENILE JUSTICE REFORM IN A TOUGH ECONOMIC CLIMATE 3 (2012), <https://firstfocus.org/resources/report/a-true-texas-miracle/>.
- 155 FOWLER, *supra* note 154, at 3.
- 156 *Id.* at 4.
- 157 *Id.*
- 158 *Id.*
- 159 *Id.* at 5.
- 160 TEX. JUVENILE JUSTICE DEP'T, VOLUNTEER TRAINING MANUAL, 3 (2015), <https://www.tjjd.texas.gov/docs/VolunteerTraining-Manual.pdf>; FOWLER, *supra* note 154, at 5.
- 161 FOWLER, *supra* note 154, at 6.
- 162 See *id.* at 6-7.
- 163 See *id.* at 7.
- 164 THE PEW CHARITABLE TRUSTS, BENDING THE CURVE: JUVENILE CORRECTIONS REFORM IN TEXAS 3 (2013), [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2013/psppbendingthecurvejuvenilecorrectionsreformintexas.pdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2013/psppbendingthecurvejuvenilecorrectionsreformintexas.pdf.pdf) [hereinafter BENDING THE CURVE].
- 165 TONY FABELO ET AL., COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER, CLOSER TO HOME: AN ANALYSIS OF THE STATE AND LOCAL IMPACT OF THE TEXAS JUVENILE JUSTICE REFORMS 30-35 (2015), <https://csgjusticecenter.org/wp-content/uploads/2015/01/texas-JJ-reform-closer-to-home.pdf>; Patrick Michels, *Texas Juvenile Justice Reformers Take a Victory Lap*, TEXAS OBSERVER, Jan. 29, 2015, <https://www.texasobserver.org/texas-juvenile-justice-reformers-take-victory-lap/>.
- 166 FABELO, *supra* note 165, at 26-27, 30.
- 167 *Id.* at 39.
- 168 See *id.*
- 169 See *id.* at 28-29.
- 170 *Id.* at 30-35.
- 171 See BENDING THE CURVE, *supra* note 164.
- 172 Gordon, *supra* note 146, at 250; *Critical Senate Juvenile Justice Reform Bill Passes Texas House*, HOUSTON CHRONICLE, May 27, 2015, [http://www.yourhoustonnews.com/kingwood/opinion/critical-senate-juvenile-justice-reform-bill-passes-texas-house/article\\_2734480d-89be-5e3a-b2e8-0dd3d082e4c4.html](http://www.yourhoustonnews.com/kingwood/opinion/critical-senate-juvenile-justice-reform-bill-passes-texas-house/article_2734480d-89be-5e3a-b2e8-0dd3d082e4c4.html); Mike Ward, *Texas Continues to Move Youths to Community Programs*, HOUSTON CHRONICLE, Dec. 6, 2015, <http://www.chron.com/news/politics/texas/article/Texas-continues-to-move-youths-to-community-6680332.php>.
- 173 SB 1630, sec. 4, 84th Leg., Reg. Sess. (Tex. 2015) (adding sec. 203.017 to ch. 203).
- 174 TEX. JUVENILE JUSTICE DEP'T, REGIONALIZATION PLAN 2-3 (Aug. 2016), [https://www.tjjd.texas.gov/Docs/Regionalization/16\\_Regionalization\\_Plan.pdf](https://www.tjjd.texas.gov/Docs/Regionalization/16_Regionalization_Plan.pdf).
- 175 *Id.* at 20-22.
- 176 Maggie Lee, *In Georgia, Sex Abuse Allegations Cloud Progress of Juvenile Justice Reform*, JUVENILE JUSTICE INFORMATION EXCHANGE, July 17, 2013, <http://jjie.org/in-georgia-sex-abuse-allegations-cloud-progress-of-juvenile-justice-reform/104903/> (noting that, according to a 2013, Georgia held two of the four juvenile facilities with the highest incidence of youth reports of sexual victimization while incarcerated).
- 177 Jason Carruthers and Jessica Sully, *Juvenile Justice Reform HB 242*, 30 GA. ST. U. L. REV. 63, 66 (2013).
- 178 THE PEW CHARITABLE TRUSTS, GEORGIA'S 2013 JUVENILE JUSTICE REFORM: NEW POLICIES TO REDUCE SECURE CONFINEMENT, COSTS, AND RECIDIVISM 6 (July 2013), [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs/content-level\\_pages/reports/georgia20201320juvenile20justice20reform20summary20briefjuly2013pdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs/content-level_pages/reports/georgia20201320juvenile20justice20reform20summary20briefjuly2013pdf.pdf) [hereinafter GEORGIA'S 2013 JUVENILE JUSTICE REFORM].
- 179 GA. CODE ANN. § 15-11-601(a)(10)-(11) (2015); GEORGIA'S 2013 JUVENILE JUSTICE REFORM, *supra* note 178, at 6.
- 180 Legislative Audit Council Report, *supra* note 2, at 81.
- 181 GEORGIA'S 2013 JUVENILE JUSTICE REFORM, *supra* note 178, at 6.
- 182 GA. CODE ANN. § 15-11-601(a).

- 183 GEORGIA'S 2013 JUVENILE JUSTICE REFORM, *supra* note 178, at 6.
- 184 GEORGIA'S 2013 JUVENILE JUSTICE REFORM, *supra* note 178, at 6-8.
- 185 Matt Smith, *Georgia's Gov. Nathan Deal: 'The Ultimate Criminal Justice Reform'*, JUVENILE JUSTICE INFORMATION EXCHANGE (Nov. 24, 2015), <http://jjie.org/georgias-gov-nathan-deal-the-ultimate-criminal-justice-reform/157241/>.
- 186 *Id.*
- 187 THE PEW CHARITABLE TRUSTS, KENTUCKY'S 2014 JUVENILE JUSTICE REFORM: NEW LAW WILL STRENGTHEN COMMUNITY SUPERVISION AND REDUCE SECURE CONFINEMENT 5 (2014), [https://comm.ncsl.org/productfiles/83101979/Pew\\_Kentucky\\_juvenile\\_justice.pdf](https://comm.ncsl.org/productfiles/83101979/Pew_Kentucky_juvenile_justice.pdf).
- 188 *Id.* at 7-9.
- 189 *Id.* at 7.
- 190 *See id.* at 7-9.
- 191 *Public Safety in West Virginia*, THE PEW CHARITABLE TRUSTS, Apr. 3, 2015, <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2012/09/28/public-safety-in-west-virginia>.
- 192 *Id.*
- 193 RICHARD MENDEL, JUSTICE POLICY INSTITUTE, JUVENILE JUSTICE REFORM IN CONNECTICUT: HOW COLLABORATION AND COMMITMENT HAVE IMPROVED PUBLIC SAFETY AND OUTCOMES FOR YOUTH 15 (2013), [http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi\\_juvenile\\_justice\\_reform\\_in\\_ct.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_juvenile_justice_reform_in_ct.pdf).
- 194 *Id.* at 20.
- 195 *Id.*
- 196 *Id.* at 24.
- 197 *Id.*
- 198 *Id.* at 3, 27-28.
- 199 What Did It Cost?, Raise the Age CT, <http://www.raisetheagect.org/results-cost.html> (last visited 1/29/2017).
- 200 *See Alexander S. v. Boyd*, 876 F. Supp. 773, 783-95 (D.S.C. 1995) (findings of fact).
- 201 *Id.* at 787.
- 202 *Id.* at 790.
- 203 *See id.* at 773.
- 204 Notably, the *Alexander S.* litigation involved 22 pretrial hearings, 54 pretrial orders, three separate visits to DJJ facilities by Judge Anderson totaling over 20 hours, a visit to a comparable facility in Georgia, and a non-jury trial that lasted approximately three months, where “the court heard from sixty-six witnesses (including seventeen expert witnesses) and reviewed one hundred and twenty-six exhibits consisting of several thousand pages.” *Id.* at 778.
- 205 *See Alexander S.*, 876 F. Supp. at 778 n.5 (noting that, to that point, “[f]ew cases involving challenges to the conditions of juvenile correctional facilities ha[d] been litigated and, of those that ha[d], most ha[d] been settled short of trial”); *see also* Douglas E. Abrams, *Reforming Juvenile Delinquency Treatment to Enhance Rehabilitation, Personal Accountability, and Public Safety*, 84 OR. L. REV. 1001, 1009 (2005) (citing the *Alexander S.* opinion as the prime example of one of the “[i]awsuits successfully challenging the abusive conditions of juvenile confinement” in the United States during the 1990s); Brent Pattison, Note, *Minority Youth in Juvenile Correctional Facilities: Cultural Differences and the Right to Treatment*, 16 LAW & INEQ. 573, 594 (Summer, 1998) (noting that the *Alexander S.* opinion “has important implications for asserting” juvenile rights to services and programs in juvenile justice facilities nationwide, including culturally appropriate services).
- 206 *Alexander S.*, 876 F. Supp. at 779.
- 207 *Id.* at 778, 794. The court noted that smaller facilities were “more effective at reducing recidivism,” and, while perhaps more expensive in the short term, would have the opportunity for Medicaid funding and could serve as “stepdown programs or halfway houses for juveniles turning to their communities.” *Id.* at 794. The court even noted that, in a 1995 bill, “the South Carolina General Assembly apparently expressed its preference for decentralized juvenile correctional facilities.” *Id.* at 795 n.41.
- 208 *See, e.g., Alexander S.*, 876 F. Supp. at 780 (“As articulated in the South Carolina Children’s Code, the policy of the state with respect to juvenile delinquents is to attempt to rehabilitate juveniles who have been deprived of their liberty through the commitment process of the family courts of South Carolina.”).
- 209 *Id.* at 790.
- 210 *Id.* at 785-86. Notably, the court’s rationale for prohibiting tear gas also disfavors the use of pepper spray at DJJ today. As Judge Anderson stated:  
 The court finds that the use of CS gas upon juveniles is counterproductive. *It causes more anger in the juveniles toward the adults who are supposed to be caring for them. The use of gas as a form of punishment teaches the victims to inflict pain as a method of controlling others and makes the juveniles more volatile, more aggressive, and less likely to respond properly to authority figures. Moreover, the inappropriate use of CS gas*

may cause long-term medical complications for the juveniles. For these reasons, the court concludes that the indiscriminate use of CS gas violates the juveniles' constitutional rights under the Due Process Clause. *Id.* at 786 (emphasis added).

211 See *id.* at 779 (emphasis added) (footnotes and citations omitted).

212 See *id.* at 777 n. 3.

213 LEGISLATIVE AUDIT COUNCIL REPORT, *supra* note 2, at 40. That number may be higher; a Department of Juvenile Justice report provided in response to a Freedom of Information Act request by the authors lists \$33,995,098.56 in expenditures associated with the BRRC. The requested information sought the "Budget for BRRC" including all costs for security, programming, treatment, education, and health, services. Under the heading of the "Broad River Road Complex," DJJ reported \$13.6 million for the "Broad River Road Complex," \$3.5 million for the Office of the Inspector General (which investigates security incidents and complaints against staff), \$1.3 million for "treatment and intervention," \$25 thousand for "social work," \$2.9 million for "consultation & evaluation," \$3.2 million for "education management," \$2.8 million for "education Birchwood school," \$11 thousand for "education Willow Lane school," \$4.6 million for "health services," and \$1.9 million for "dietary." The "Total Broad River Road Complex" cost for FY 2016 was \$33,995,098.56. To ensure a conservative cost estimate, we use the total figure adopted by the Legislative Audit Council.

214 S.C. DEP'T OF JUVENILE JUSTICE, 2014-2015 ANNUAL STATISTICAL REPORT 2 (Nov. 2015), <http://www.state.sc.us/djj/pdfs/2015-Annual-Statistical-Report.pdf>. DJJ's 2015-2016 annual report does not include the BRRC's average daily population.

215 On May 24, 2016 there were 95 juveniles housed at BRRC. Correctional Consulting Services, LLC, *Security Audit Report: South Carolina Department of Juvenile Justice 7* (May 26, 2016) [http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DJJ/Security%20Audit%20by%20Correctional%20Consulting%20Services,%20LLC%20\(May%2024-27,%20%202016\).pdf](http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DJJ/Security%20Audit%20by%20Correctional%20Consulting%20Services,%20LLC%20(May%2024-27,%20%202016).pdf).

216 JUVENILE POPULATION SUMMARY FY 2015-2016, *supra* note 16.

217 \$23,700,850 (see *supra* note 2133) divided by 120 children is \$197,507.08. That annual cost divided by \$365 is \$541.12 per child per day.

218 DECKER, *supra* note 1, at 72-73 (2015) (emphasis added).

219 LEGISLATIVE AUDIT COUNCIL REPORT, *supra* note 2, at 22.

220 There were 1,051 residential evaluations in the 2015-16 fiscal year. 2015-2016 ANNUAL STATISTICAL REPORT, *supra* note 139, at 19. Cheri J. Shapiro et al., *Natural Experiment in Deviant Peer Exposure and Youth Recidivism*, 39 J. OF CLINICAL CHILD & ADOLESCENT PSYCHOLOGY 242, 250 (2010).

221 Barnert, *supra* note 26, at 5-6.

222 LEGISLATIVE AUDIT COUNCIL REPORT, *supra* note 2, at 40. The total cost divided by about 1050 children committed for evaluations is \$10,086.82 per child. Evaluations are limited by statute to 45 days. S.C. CODE § 63-19-1440(C). Dividing the per child cost by the 45 day limit equals \$224.14. The authors recognize that many children do not stay the full 45 days. We divided by 45 days to provide a conservative cost estimate; dividing by a smaller number of days would increase the daily estimated cost per child. The figure may be even higher; one DJJ document lists total costs of \$15,401,508.49 for the evaluation center in response to a Freedom of Information Act request by the authors. Using that figure as a starting point leads to a daily cost of \$325. The evaluation centers also house a smaller number of children awaiting placement elsewhere and it is not clear if the costs of incarcerating these children are included in the budget figures. If they are, the daily cost of the evaluation centers would decline somewhat, but we cannot quantify that amount.

223 See 2015-2016 ANNUAL STATISTICAL REPORT, *supra* note 139, at 20 (listing probation violation for category V misdemeanors, contempt of court following a criminal offense, simple assault, probation violation for status offenses, contempt of court for status offenses, and probation violation for category IV misdemeanors among the top ten). While the authors of this paper requested information from DJJ on this point through the Freedom of Information Act (FOIA), DJJ officials responded that the Department does not keep track of information related to the status offenses of its youth, a separate issue that also obviously needs addressing. See *infra* Part VI.f.

224 2015-16 ANNUAL STATISTICAL REPORT, *supra* note 139, at 20.

225 The Children's Law Center's study of status offenders found 84 pre-trial detentions and 123 post-adjudication commitments of status offenders from April 1, 2013 to March 31, 2014 – 207 in a one-year period. CHILDREN'S LAW CENTER AT THE UNIV. OF S. CAROLINA, STATUS OFFENSE CASES IN SOUTH CAROLINA: A REVIEW AND RECOMMENDATIONS 3 (2015), <http://childlaw.sc.edu/frmPublications/SOTFReport2015.pdf> [hereinafter STATUS OFFENSE CASES IN SOUTH CAROLINA].

226 See 2015-2016 ANNUAL STATISTICAL REPORT, *supra* note 139, at 20 (reporting 122 children given final or suspended commitments following technical violations of status offense court orders); COAL. FOR JUVENILE JUSTICE: SOS PROJECT, USE OF THE VALID COURT ORDER: FACT SHEET 1, <http://www.juvjustice.org/sites/default/files/resource-files/State%20VCO%20usage%202.18.15.pdf> [hereinafter *Use of the Valid Court Order*] (reporting 234 commitments based on status offense cases in FY 2013).

- 227 *Alexander S. v. Boyd*, 876 F. Supp. 773, 781-82 (D.S.C. 1995).
- 228 JUSTICE POLICY INST., STICKER SHOCK: CALCULATING THE FULL PRICE TAG FOR YOUTH INCARCERATION 11 n.46 (Dec. 2014), [http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker\\_shock\\_final\\_v2.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf). (quoting Brett M. Macgargle, Assoc. Deputy for Planning and Programs at DJJ).
- 229 2015-2016 ANNUAL STATISTICAL REPORT, *supra* note 139, at 21.
- 230 *Id.* at 22.
- 231 These centers are typically the secure evaluation centers described above—the same jail-like facilities that Cheri Shapiro found increased recidivism by 33%. See Shapiro, *supra* note 221, at 250. As detailed above, the large number of youths housed in these settings suggests that there are a number of kids being housed in hardware secure facilities who do not need to be.
- 232 2015-2016 ANNUAL STATISTICAL REPORT, *supra* note 139, at 22.
- 233 *Id.* at 24.
- 234 *Id.*
- 235 *Id.*
- 236 See 2015 REPORT CARD, *supra* note 17, at 6.
- 237 See *id.*
- 238 JUVENILE POPULATION SUMMARY FY 2015-2016, *supra* note 16.
- 239 S.C. CODE § 63-19-2050.
- 240 Children’s Law Center, South Carolina Departments of Juvenile Justice and Mental Health Seriously Mentally Ill (SMI) Juveniles.
- 241 *Id.*
- 242 S.C. CODE § 16-13-30(A).
- 243 Shapiro, *supra* note 221, at 250.
- 244 S.C. REVENUE AND FISCAL AFFAIRS OFFICE, STATEMENT OF ESTIMATED FISCAL IMPACT, S. 916, at 2 (Dec. 6, 2016), <http://rfa.sc.gov/files/impact/S0916%20signed%206-6-16.pdf> [hereinafter STATEMENT OF ESTIMATED FISCAL IMPACT, S. 916].
- 245 We do not advocate increasing the system’s overall capacity, even with the pending implementation of the raise the age law. Experiences in other states show that raise the age laws do not require expansion of juvenile facilities. See Campaign for Youth Justice, *The Impact of “Raise the Age” Laws* (updated June 7, 2016), <https://www.campaignforyouthjustice.org/images/factsheets/RTAImpactTwoPagerJune72016final.pdf>. If more beds prove necessary, they should be developed through more wilderness camps and other less expensive and more effective facilities.
- 246 The highest daily population at BRRC in December 2016 was 124. The average daily population that month was 108. JUVENILE POPULATION SUMMARY FY 2015-2016, *supra* note 16.
- 247 STATEMENT OF ESTIMATED FISCAL IMPACT, S. 916, *supra* note 246, at 2.
- 248 Federal law prohibits the incarceration of children who commit status offenses. 42 U.S.C. §5633(a)(11)(A). This law contains a much-criticized loophole for children who commit technical violations of court orders imposed as a result of status offenses, *id.* at § 5633(a)(11)(A)(ii), but 28 states and territories report zero uses of that exception. See USE OF THE VALID COURT ORDER, *supra* note 227, at 2.
- 249 LEGISLATIVE AUDIT COUNCIL REPORT, *supra* note 2, at 81.
- 250 This is, perhaps, an admittedly arbitrary line, drawn under the notion that we must draw a line somewhere. The specific proposal is modeled after Georgia’s 2013 reform law. GA. CODE ANN. § 15-11-601(a) (10)-(11). Generally, children placed on probation whose probation is subsequently revoked can be subjected to extended or more intensive probation, but they cannot be incarcerated unless incarceration for their underlying offense was permissible. See GA. CODE ANN. § 15-11-608(f). Children can be ordered into a higher level of probation which includes a “secure probation sanctions program.” This program involves *short-term* detention; the Georgia statute refers to a “seven, 14, and 30 day program.” GA. CODE ANN. § 15-11-605(f)(4).
- 251 See Part VI.f, *infra*.
- 252 CHILD TRENDS DATA BANK, JUVENILE DETENTION: INDICATORS ON CHILDREN AND YOUTH 14-15 (Dec. 2015), [http://www.childtrends.org/wp-content/uploads/2012/05/88\\_Juvenile\\_Detention.pdf](http://www.childtrends.org/wp-content/uploads/2012/05/88_Juvenile_Detention.pdf).
- 253 2015-2016 ANNUAL STATISTICAL REPORT, *supra* note 139, at 20. These are troubled children, not hardened criminals.
- 254 See *id.*
- 255 USE OF THE VALID COURT ORDER, *supra* note 227, at 1.
- 256 STATUS OFFENSE CASES IN SOUTH CAROLINA, *supra* note 226, at 3.
- 257 *Id.* at 2.
- 258 S.C. CODE § 63-19-1450(A).
- 259 *Id.*

- 260 See S.C. CODE § 63-19-1410(A)(1)-(2) (empowering family court judges to place delinquent children in a “hospital or other suitable facility” to be “examined or treated,” or designate an appropriate “lead agency” to perform a family assessment and develop a plan to meet the child’s needs).
- 261 See *Shapiro et al.*, *supra* note 221, at 250.
- 262 While the Department of Health and Human Services, as part of the Palmetto Coordinated System of Care initiative, is developing a Medicaid waiver to address the mental health needs of several hundred children with severe mental illness, the waiver will not go into effect until at least August 2017. It is not clear how this waiver will interact with the needs of children involved with DJJ. Other recent changes may affect the delays in finding mental health placements for children in DJJ custody. In late 2014, the Department of Mental Health closed the adolescent forensic unit at the Hall Institute but did not develop another facility to serve the children who had been sent there. In addition, in July 2014, DHHS changed its authorization process for admission to psychiatric residential treatment facilities, enabling parents of children eligible for Medicaid to seek admission without authorization by a state agency.
- 263 See S.C. CODE § 63-19-1450(A). Accepted terminology includes “intellectual disability” and “disabled.”
- 264 Letter from Sylvia Murray to Honorable Kirkman Finlay, III (Feb. 19, 2016) 10, *available at* <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/DJJ.php> (follow “Letter from DJJ to Oversight Subcommittee (February 19, 2016) hyperlink).
- 265 That figure has increased from \$824,580.24 in FY 2015 to \$1,316,751.27 in FY 2016, according to a document provided to the authors in response to a Freedom of Information Act request. S.C. Department of Juvenile Justice, Broad River Road Complex (reporting FY 2015 and FY 2016 expenditures).
- 266 LEGISLATIVE AUDIT COUNCIL REPORT, *supra* note 2, at 2.
- 267 The term “recidivism” does not appear in the annual reports, nor does any data about recidivism. See *generally* 2015-2016 ANNUAL STATISTICAL REPORT, *supra* note 139. DJJ publishes annual “report cards.” While earlier report cards include limited recidivism data, the most recent report card does not. See *generally* REPORT CARD 2015, *supra* note 15. The limited data reported in the past is difficult to parse because it conflates children on probation (many of whom were never incarcerated) with those on parole (all of whom were incarcerated), and fails to define what offenses were counted as recidivism (for instance, whether contempt of court charges or probation violations were categorized as “re-offend[ing]”).
- 268 See 2014 REPORT CARD, *supra* note 141.
- 269 Sept. 21, 2016 Letter, *supra* note 142, at 2.
- 270 *Id.* at 2-3.
- 271 *Id.* at 3 (“Due to the scope of this project, and the necessity to track juveniles into their adult years, this project is not tenable as an ongoing, annual project.”)
- 272 2015-2016 ANNUAL STATISTICAL REPORT, *supra* note 139, at 20.



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