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## Education Systems in Juvenile Detention Centers

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## EDUCATION SYSTEMS IN JUVENILE DETENTION CENTERS

### I. INTRODUCTION

Juvenile detention centers were first created to promote rehabilitation rather than to punish.<sup>1</sup> In fact, the goal of rehabilitation is the very reason juveniles who break the law are called “offenders” rather than “criminals.”<sup>2</sup> Rehabilitation is the reason a separate system of juvenile exists rather than only one system that processes both children and adults who break the law in the same courts.<sup>3</sup>

The importance of education in the prevention and rehabilitation of delinquent youth has been illustrated at great length in numerous studies.<sup>4</sup> Yet, implementation of education programs in juvenile detention centers varies widely from state to state and even within individual states.<sup>5</sup>

The U.S. Constitution does not mention education, and education is not a federal issue; therefore, education governance is reserved for the states.<sup>6</sup> Every state in the Union provides a constitutional foundation for “a free system of public schools” for every child within the state’s jurisdiction.<sup>7</sup> Although no state constitution explicitly articulates that education must be provided to juveniles in detention centers, the evolution of legislation and common law have extended the right to public education to juvenile offenders in state facilities.<sup>8</sup> Never-

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1. See JOAN MCCORD ET AL., *JUVENILE CRIME, JUVENILE JUSTICE* 154 (2001), <https://www.nap.edu/read/9747/chapter/7>.

2. *Id.*

3. *Id.*

4. See, e.g., *Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook*, RAND CORPORATION (Aug. 22, 2013), <http://www.rand.org/news/press/2013/08/22.html>; see also, OPEN SOCIETY INSTITUTE, RESEARCH BRIEF NO. 2, *EDUCATION AS CRIME PREVENTION: PROVIDING EDUCATION TO PRISONERS*, 2–3 (1997), [https://www.prisonpolicy.org/scans/research\\_brief\\_\\_2.pdf](https://www.prisonpolicy.org/scans/research_brief__2.pdf).

5. See MCCORD ET AL., *supra* note 1, at 156.

6. See Katherine Twomey, *The Right to Education in Juvenile Detention under State Constitutions*, 94 Va. L. Rev. 765, 784 (2008), <http://www.virginialawreview.org/sites/virginialawreview.org/files/765.pdf>.

7. *Id.* at 788.

8. E.g., Twomey, *supra* note 6, at 788-95.

theless, just what entails an adequate education in these circumstances is still debated.<sup>9</sup>

Constitutional and statutory language about the adequacy of education is vague. To make up for the discrepancy, the U.S. Congress has passed laws to outline educational mandates, and Presidents George W. Bush and Barack Obama even spearheaded presidential initiatives to address the problem.<sup>10</sup> Nevertheless, attempts to improve education programs within juvenile detention centers are fractured, leaving national recidivism rates unchanged.<sup>11</sup> Correcting this problem would directly and significantly impact recidivism among juveniles and dramatically affect the individual lives of juvenile offenders. Improvements could start with simply gathering data. Currently, there is no national data collected on sentence, time served in confinement, or time served on parole. Using national resources to gather this information would better allow the states to make informed decisions.

This Note presents an analysis of the present juvenile detention and education systems. I explore the overlap between state and federal laws that address how education should be conducted within juvenile detention centers. I argue that education is not a fundamental right according to the U.S. Constitution; however, it is a fundamental right according to each state constitution. Because the federal government has no express constitutional foundation for implementing policies that mandate state educational decisions within juvenile justice systems, only federal policies that are adopted by the states can be implemented.

I argue that the role of the federal government should be to incentivize and promote improvements in education within the juvenile justice system. The federal government can use its purse strings to encourage states to take action in areas of deep importance, such as testing every juvenile offender for learning

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9. See Josh Kagan, *A Civics Action: Interpreting "Adequacy" in State Constitutions' Education Clauses*, 78 N.Y.U. L. Rev. 2241, 2241 (2003), <http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-78-6-Kagan.pdf>.

10. See, e.g., 20 U.S.C.A. § 6301 et seq.; see also *About Us*, MY BROTHER'S KEEPER ALLIANCE, <https://www.mbkalliance.org/about-us/> (last visited Apr. 28, 2017).

11. Twomey, *supra* note 6, at 767.

disabilities upon entrance. The federal government should not use its pen to overreach state control of education issues by creating national mandates, but it can and should incentivize states to create solutions. The juvenile justice system needs to be reformed, and the federal government can provide useful contributions; however, the states have the ultimate purview over education within their boundaries.

To make these arguments, I explore the controversy around education within juvenile detention centers. Part I discusses why juvenile detention centers were created and how education facilitates lower recidivism rates. Part II provides a history of education rights. This section breaks down how the Supreme Court had addressed education as well as the areas of education the Supreme Court has refused to hear. It also discusses the foundation of state control over education. Part III highlights how education within juvenile detention centers currently falls short. Part IV illustrates some of the various ways federal and state laws have attempted to reform juvenile justice systems and education, and how federal and state laws have clashed. Part V provides arguments for states spearheading the solutions for education within juvenile detention systems and provides some possible remedies to consider.

## I. BACKGROUND OF JUVENILE DETENTION CENTERS

Policy discussions about public education systems' failures nationwide and within juvenile detention centers abound in the popular media.<sup>12</sup> Many critics advocate a national solution, but education even in juvenile detention centers is fundamentally a states' rights issue.

Before advocating a position, it is important to fully discuss the facts about juvenile justice and education. This section begins by illustrating how education is addressed in juvenile detention centers nationwide, followed by a discussion about the

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12. Liz Ryan, *Criminal Justice Reforms Must Include Youth Behind Bars*, Huffington Post, July 20, 2016, [http://www.huffingtonpost.com/liz\\_ryan/mr-president-and-congress\\_b\\_7828070.html](http://www.huffingtonpost.com/liz_ryan/mr-president-and-congress_b_7828070.html) ("Essentially, youth are much worse off after being incarcerated. Removing them from their homes and communities and placing them in correctional settings disrupts youths' education and their healthy psychological development . . ." *Id.*).

importance of education to reduce recidivism of juvenile delinquents. This section will finish by laying out the background and purpose of the juvenile detention centers and will provide a foundation for examining the efficacy of the education policies currently in place.

### *A. Statistical Measurements of Juvenile Delinquency and Education*

One a given day in 2015, more than 48,000 juveniles were held in detention centers across the nation.<sup>13</sup> That number is down 48% from 1997.<sup>14</sup> Today court systems more often use alternatives to incarceration, like probation, that enable juvenile offenders to stay out of residential placement facilities. This use of alternatives has led to a decrease in the number of youth in detention centers nationwide.<sup>15</sup>

When juvenile offenders are placed in residential centers many are typically screened for educational needs either the same day or within one week of placement.<sup>16</sup> In 2014, 92% of facilities nationwide evaluate youth for educational needs.<sup>17</sup> Local and privately operated facilities evaluated youth for educational needs 86% of the time.<sup>18</sup> Furthermore, 86% of facilities performed an education evaluation on incoming juvenile offenders within one week of admission, and 20% of facilities evaluated youth for educational needs within 24 hours of ad-

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13. OFFICE OF JUV. JUST. & DELINQ. PREVENTION, JUVENILES IN CORRECTIONS: DEMOGRAPHICS (March 8, 2018), <https://www.ojjdp.gov/ojstatbb/corrections/qa08201.asp>.

14. *Id.*

15. Patrick McCarthy et al., *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model* 2 NAT'L INST. OF JUSTICE 1, 2 (2016), [http://www.aecf.org/m/resourcedoc/NIJ-The\\_Future\\_of\\_Youth\\_Justice-10.21.16.pdf](http://www.aecf.org/m/resourcedoc/NIJ-The_Future_of_Youth_Justice-10.21.16.pdf).

16. *When facilities evaluate youth for educational needs, by facility operation and facility type, 2014: Facility Practices and Services (2014 Facility Practices and Services Evaluations)*, OFFICE OF JUV. JUST. & DELINQ. PREVENTION, JUVENILES IN CORRECTIONS (Aug. 31, 2016), <https://www.ojjdp.gov/ojstatbb/corrections/qa08531.asp?qaDate=2014&text=yes&maplink=link1>.

17. *Facilities evaluating youth for educational needs, by facility operation and facility type, 2014: Facility Practices and Services (2014 Facility Practices and Services Evaluations)*, OFFICE OF JUV. JUST. & DELINQ. PREVENTION, JUVENILES IN CORRECTIONS (Aug. 31, 2016), <https://www.ojjdp.gov/ojstatbb/corrections/qa08530.asp?qaDate=2014>.

18. *Id.*

mission.<sup>19</sup> However, depending on the facility type, the percentage of students evaluated fluctuates. Ranch and wilderness camps evaluated the highest percentage of youth (97%), and shelters evaluated the lowest percentage of youth (69%).<sup>20</sup> Within detention centers, 89% of youth were evaluated.<sup>21</sup> This disparity is important because even short-term absences from school can have a detrimental effect on a delinquent youth's ability to keep up on classes and work toward graduation.<sup>22</sup> Shelters are used for youth in a "crisis situation or in a state of transition."<sup>23</sup> However, sometimes juveniles will stay in shelters for long periods of time. Some emergency shelters limit stays to 30 days, but other long-term shelters accept youth for a year or longer.<sup>24</sup> Within these shelters, the educational needs of more than 30% of juvenile offenders may be overlooked.<sup>25</sup> When youth are released from these shelters, having missed even just a few weeks of classes, they find themselves at a disadvantage compared to their classmates.

Another group of youth whose educational needs are often overlooked is juvenile delinquents who are placed in adult prisons. Between 1993 and 2014, 70-91% of inmates under age 18 were held as adults.<sup>26</sup> The Office of Juvenile Justice and Delinquency Prevention (OJJDP) does not track the rate at which youth placed in adult prisons are evaluated for educational needs. Youth in adult prisons often do not spend their entire lives in prison. But, when youth held in adult prisons or in juvenile detention centers are released, they often wind up re-

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19. *2014 Facility Practices and Services*, *supra* note 16.

20. *Id.*

21. *Id.*

22. Farah Z. Ahmad and Tiffany Miller, *The High Cost of Truancy*, CENTER FOR AMERICAN PROGRESS 1, 8 (Aug. 2015) <https://cdn.americanprogress.org/wp-content/uploads/2015/07/29113012/Truancy-report4.pdf>.

23. OFFICE OF JUV. JUST. & DELINQ. PREVENTION, *Literature Review: A Product of the Model Programs Guide—Shelter Care* (July 2011), [https://www.ojjdp.gov/mpg/litreviews/Shelter\\_Care.pdf](https://www.ojjdp.gov/mpg/litreviews/Shelter_Care.pdf).

24. *Id.*

25. *2014 Facility Practices and Services Evaluations*, *supra* note 16. ("Fewer than 7 in 10 shelters evaluated all youth in 2014." *Id.*)

26. *Jail inmates younger than 18, 1990–2014: Juveniles in Adult Jails and Prisons*, OFFICE OF JUV. JUST. & DELINQ. PREVENTION, JUVENILES IN CORRECTIONS (Dec. 13, 2015), <https://www.ojjdp.gov/ojstatbb/corrections/qa08700.asp?qaDate=2014>.

offending. Within 12 months of release, the Department of Justice reports, 55% of juvenile offenders will be arrested.<sup>27</sup> With education, that number significantly drops.<sup>28</sup>

### *B. Studies Show Decreased Recidivism Due to Education*

As established above, once juvenile offenders have been convicted of a crime, they are more likely to commit a second crime.<sup>29</sup> In a longitudinal study conducted in 2005, the Bureau of Justice Statistics found that among inmates from thirty states, “67.8% . . . were arrested within 3 years of release, and 76.6% were arrested within 5 years of release.”<sup>30</sup> Total “years of education, cognitive skills, grade point average, and attitude toward school”<sup>31</sup> indicate the likelihood of adult incarceration among a national sample of juveniles.

Continual education for youth and adults while they are in the justice system greatly affects recidivism rates.<sup>32</sup> A 2013 RAND Corporation study showed that participation in prison education, including both academic and vocational programming, was associated with a reduction in recidivism of more than 40%, “with a 41 investment in prison education reducing incarceration costs by \$4 to \$5 during the first three years post-release.”<sup>33</sup> As a result, the U.S. saves about \$2 million for each person who is successfully rehabilitated during the time spent in juvenile detention.<sup>34</sup>

Decreasing recidivism benefits both offender and community. Youth who break out of the cycle of offense can get jobs and put money back into the communities in which they live. In the

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27. Howard N. Snyder & Melissa Sickmund, *Juvenile offenders and victims: 2006 National Report*, NAT'L CTR. FOR JUV. JUST. 1, 234 (March 2006) <https://www.ojjdp.gov/ojstatbb/nr2006/downloads/NR2006.pdf>.

28. See, e.g., RAND CORPORATION, *supra* note 4.

29. *Id.*

30. Matthew Durose et al., *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, Bureau of Justice Statistics, 1 (April 2014), <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

31. Richard Arum & Irene R. Beattie, *High School Experience and the Risk of Adult Incarceration*, 37 *Criminology* 515, 518 (1999).

32. RAND CORPORATION, *supra* note 4.

33. *Id.*

34. Twomey, *supra* note 6, at 774.

words of Justice Warren Burger, “We must accept the reality that to confine offenders behind walls without trying to change them is an expensive folly with short-term benefits—winning battles while losing the war.”<sup>35</sup>

In *Brown v. Board of Education*, the U.S. Supreme Court highlighted the importance of education, saying, “[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”<sup>36</sup> That is because “education is perhaps the most important function of state and local governments. . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”<sup>37</sup>

Although *Brown* was specifically targeting the race and education question, this line of reasoning applies equally to the debate about juvenile offenders and education. There is no better way to prepare a juvenile offender to reintegrate into society after a period of reform in juvenile detention centers than through continual education in juvenile detention.<sup>38</sup> If society wants to reform juvenile offenders, education is the solution.<sup>39</sup> If society wants to awaken juvenile offenders to cultural values, education is the solution.<sup>40</sup> If society wants to prepare juvenile offenders for professional training and adjusting to life outside of detention centers, education is the solution.<sup>41</sup> It is in the interest of society to stop the cycle of recidivism, and education within juvenile detention centers provides a solution.

Not only is education the solution for success after release from detention centers, but it is also key to improving conditions within detention centers. Education programs have been

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35. Quoted in OPEN SOCIETY INSTITUTE, *supra* note 4, at 1.

36. 347 U.S. 483, 493 (1954).

37. *Id.*

38. Carol Rapp Zimmerman et al., *Desktop Guide to Reentry for Juvenile Confinement Facilities*, THE PARTNERSHIP: NAT’L PARTNERSHIP FOR JUV. SERV. 1, 19 (July 2004) [http://www.njjn.org/uploads/digital-library/resource\\_1244.pdf](http://www.njjn.org/uploads/digital-library/resource_1244.pdf).

39. *Brown*, 347 U.S. at 493 (“In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”).

40. *Id.*

41. *Id.*



linked to improved interpersonal relationships for adult inmates, and similarly relationships between juvenile offenders could be improved by education.<sup>42</sup> A study performed by the Institute of Higher Education Policy evaluated adult prison systems and found that attending college classes correlated with an improved social atmosphere and clear communications in the prison population.<sup>43</sup> In the juvenile justice system, clear communications, as fostered by learning, may improve relationships between offenders.

Education within the justice system is vital because inmates are generally an under-educated community lacking basic writing and math skills. Research shows that when public education is deficient, and other opportunities such as homeschooling or private education are unavailable, children are more likely to commit crimes and end up in a detention center.<sup>44</sup> Marginal literacy skills are predictors of involvement in the juvenile justice system. The median age of youth in juvenile detention centers is 15.5 years old, but the average reading level is fourth grade.<sup>45</sup> “[E]ducational measures including low achievement, low vocabulary, and low verbal reasoning increase delinquency predictions by 27%.”<sup>46</sup>

Individuals without a high school diploma are also three times more likely to be in poverty than high school graduates.<sup>47</sup> Juveniles in high-poverty neighborhoods are more likely to engage in criminal activity.<sup>48</sup> On the other hand, studies show that education leads to less poverty and less criminal activity.<sup>49</sup>

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42. INSTITUTE FOR HIGHER EDUCATION POLICY, *Educating the Nation's Prison Population May Spur Future Economic Growth and Reduce Public Expenses*, IHEP (May 4, 2011), <http://www.ihep.org/press/news-releases/educating-nations-prison-population-may-spur-future-economic-growth-and-reduce>.

43. *Id.*

44. *See* OPEN SOCIETY INSTITUTE, *supra* note 4, at 1–2.

45. *Id.* at 2.

46. Emily A. Mann & Arthur J. Reynolds, *Early Intervention and Juvenile Delinquency Prevention: Evidence from the Chicago Longitudinal Study*, 30 SOC. WORK RES. 153, 155 (2006).

47. THE NAT'L CTR. ON ED., DISABILITY AND JUV. JUST., *Juvenile Correctional Education Programs*, <http://www.edjj.org/focus/education/> (last visited Apr. 27, 2017).

48. Peter E. Leone et al., *Special Education Programs for Youth with Disabilities in Juvenile Corrections*, 53 J. CORRECTIONAL EDUC. 46, 47 (2002).

49. *See* THE NAT'L CTR. ON ED., DISABILITY AND JUV. JUST., *Juvenile Correctional*

When youth achieve success in school, they more often achieve success in life.<sup>50</sup>

In addition to preventing incarceration in the first place, education can prevent repeat offenses.<sup>51</sup> Consistently, studies show that “[i]nmates of all ages are half as likely to [be reincarcerated] if they participate in higher education. . . .”<sup>52</sup> Inmates in New York “who earned a [GED] while incarcerated were significantly less likely than those who did not earn a GED to return to prison.”<sup>53</sup> Another study focusing on juvenile offenders found that 41% of those without a high school diploma would be rearrested during the first year of their release; but only 22% of those who had earned a high school diploma reoffended during the first year following release.<sup>54</sup> These statistics illustrate that education is in the best interests of the community, as well as of each individual.

Education within juvenile detention facilities may be the last chance a youth will have to receive a public education.<sup>55</sup> Many students cannot return to the regular school system after being released from custody, because they are too old.<sup>56</sup> Education programs within juvenile detention systems are especially important for these offenders. A study that tracked “1,355 serious offenders between the ages of 14 and 17 in two cities over . . . eight years”<sup>57</sup> found that “only about one third of the [partici-

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*Education Programs*, <http://www.edjj.org/focus/education/> (last visited Apr. 27, 2017), <https://academic.oup.com/qje/article/116/2/655/1904197>.

50. *Id.*

51. DEP’T OF ED., CORRECTIONAL EDUCATION GUIDANCE PACKAGE, <https://ed.gov/policy/gen/guid/correctional-education/fact-sheet.pdf> (last visited Apr. 27, 2017).

52. *Id.*

53. CHAPTER 5: EDUCATION, EMPLOYMENT, AND RECIDIVISM: A REVIEW OF THE LITERATURE, 2006 ANNUAL REPORT TO THE FLA. DEPT. OF EDUC.: JUV. JUST. EDUC. ENHANCEMENT PROGRAM 55, 56 (2006), <http://criminology.fsu.edu/wp-content/uploads/Education-Employment-and-Recidivism-a-Review-of-the-Literature-Ch-5-2006-Annual-Report.pdf>.

54. Denise M. Ambrose & David Lester, *Recidivism in Juvenile Offenders: Effects of Education and Length of Stay* 63, PSYCHOL. REP., 778, 778 (1988).

55. Twomey, *supra* note 6, at 767.

56. *See Id.*

57. CHAPTER 5: EDUCATION, EMPLOYMENT AND RECIDIVISM: A REVIEW OF THE LITERATURE, *supra* note 53, at 57.

pants] were school-eligible at the time of release.”<sup>58</sup> The remaining youth had either turned 18, making them ineligible for public school, or had earned a “GED while committed.”<sup>59</sup> In another study of 532 juvenile offenders in Oregon, researchers found that youth who “participat[ed] in school after release were less likely to recidivate. However, less than one half of the youth were working or in school six months after release.”<sup>60</sup>

Truancy may lead a juvenile to detention in the first place, and truancy may continue to be a problem after release; however, if given the opportunity to catch up and keep up with their classmates while in detention, some juveniles may be less likely to avoid the classroom after conviction.<sup>61</sup> But the desire to skip school may be aggravated when the students are behind the rest of their classmates upon release from a detention center.<sup>62</sup> Since the purpose of juvenile detention centers is to reform juvenile offenders, education programs are essential.

Education reduces the likelihood that a child will commit a crime in the first place and is a powerful tool in reducing recidivism rates.<sup>63</sup> Education empowers the former offender to make decisions that will further a career and success in life, and rehabilitation also serves communities’ economic interests.<sup>64</sup>

### *C. The Purpose of Juvenile Detention*

The first juvenile court was created in Cook County, Illinois, following the 1899 Illinois Juvenile Court Act, which created separate prisons for juvenile offenders.<sup>65</sup> The Act was based on juvenile crime prevention rather than on the penal approach.<sup>66</sup> Reformers during the Progressive Era believed that children and adolescents should be treated with “empathy,

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58. *Id.*

59. *Id.*

60. *Id.*

61. Ahmad *supra* note 22, at 2.

62. *See Id.* at 1.

63. *See* RAND CORPORATION, *supra* note 4.

64. *See* Leone, *supra* note 48, at 47-9.

65. MCCORD ET AL., *supra* note 1, at 157.

66. Janet Gilbert et al., *Applying Therapeutic Principles to a Family-Focused Juvenile Justice Model (Delinquency)*, 52 ALA. L. REV. 1153, 1159-60 (2001).

trust, and a spirit of rapprochement.”<sup>67</sup> In an effort to avoid treating children as criminals, reformers wanted to bring juvenile offenders before a court aimed at intervention, guidance, and rehabilitation rather than simply punishment.<sup>68</sup>

Children in the original juvenile justice system had not necessarily committed a crime before entering the system.<sup>69</sup> Rather, parents could refer a child for offenses that would not be a crime if committed by an adult, such as being unruly or immoral.<sup>70</sup> States made their own laws regarding the treatment of children.<sup>71</sup> The doctrine of *parens patriae*, the state as a parent, was a motivating force in the development of the juvenile justice system across the nation.<sup>72</sup>

By 1925, every state except Maine and Wyoming had a functioning juvenile court.<sup>73</sup> From the time the first juvenile courts were created until the 1990s, the juvenile justice systems in each state underwent extensive changes. Originally, juveniles would have closed hearings, without a jury, and no charges were filed.<sup>74</sup> However, as court dockets grew increasingly long, controversy grew surrounding the constitutional question of giving a busy judge so much power. Cases brought before the United States Supreme Court reinstated the rights of juveniles to have many of the same protections afforded to adults in criminal trials.<sup>75</sup> Nevertheless, to this day, not all procedural due process rights exercised by adults are afforded to juvenile delinquents.<sup>76</sup> For instance, many hearings for juveniles are

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67. MCCORD ET AL., *supra* note 1, at 158.

68. *See id.* at 157.

69. *Id.*

70. *Id.*

71. *Id.* at 155.

72. Twomey, *supra* note 6, at 768.

73. *Id.* Maine and Wyoming established juvenile courts twenty years later. Jeffrey M.Y. Hammer et al., *Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court*, 36 LOY. U. CHI. L.J. 925, 929 n.21 (2005).

74. MCCORD ET AL., *supra* note 1, at 154.

75. *See Kent v. United States*, 383 U.S. 541 (1966) (right to a hearing on transfer to an adult court); *In re Gault*, 387 U.S. 1 (1967) (juveniles have a right to receive notice of the charges, legal counsel, confront and cross-examine witnesses, protection from self-incrimination, receive a transcript of the court hearing, and right to appeal); *In re Winship*, 397 U.S. 358 (1970) (juveniles charged with criminal acts must be proved beyond a reasonable doubt); *Breed v. Jones*, 421 U.S. 519 (1975) (double jeopardy applies to juveniles).

76. *See Mike L. Bridenback, Study of State Trial Courts Use of Remote Technology*,

held by tele-conference without a judge physically present.<sup>77</sup>

However, juveniles have gained many of the rights historically afforded to adults.<sup>78</sup> Prosecutors have the same burden of proof regardless of their client's age.<sup>79</sup> Juveniles also have the right to receive notice of the charges, use legal counsel, confront and cross-examine witnesses, avoid self-incrimination, receive a transcript of their court hearings, and appeal.<sup>80</sup>

In response to concerns about juvenile justice systems, the United States Congress passed the Juvenile Justice and Delinquency Prevention Act in 1974.<sup>81</sup> That law created the Office of Juvenile Justice and Delinquency Prevention within the Department of Justice. The purpose of this Office was "to support local and state efforts to prevent delinquency and improve the juvenile justice system."<sup>82</sup>

The Act also "[c]reated a Formula Grants program."<sup>83</sup> To receive funding, states had to abide by certain mandates. Each state had to designate a state agency tasked with creating a three-year juvenile justice and delinquency prevention plan.<sup>84</sup> Additionally, each state would establish a State Advisory Group to administer the Formula Grants program plan.<sup>85</sup> Finally, each state had to comply with the Act to receive allocated dollars.<sup>86</sup>

Compliance with the Act required fulfillment of four main points.<sup>87</sup> The first of these was the "deinstitutionalization of status offenders."<sup>88</sup> These status offenders were youth who had

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National Association for Presiding Judges and Court Executive Officers (Apr. 2016), <http://napco4courtleaders.org/wp-content/uploads/2016/08/Remote-Technology-Report-April-2016.pdf>.

77. *Id.*

78. *See* cases listed, *supra* note 75.

79. *See* 397 U.S. 358 (1970).

80. *See* 387 U.S. 1 (1967).

81. Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. §5601 et seq. (1974).

82. *Legislation/JJDP Act*, OFFICE OF JUV. JUST. & DELINQ. PREVENTION, <https://www.ojjdp.gov/about/legislation.html>, (last visited Apr. 27, 2017).

83. *Id.*

84. Shay Bilchik, *OJJDP Fact Sheet*, U.S. DEPT. OF JUST., (Nov. 1999), <https://www.ncjrs.gov/pdffiles1/ojjdp/fs99122.pdf>.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

perpetrated an act that would not be considered a crime if done by an adult.<sup>89</sup> Status offenders also included children who had been neglected by their parents and, therefore, found themselves in the juvenile justice system.<sup>90</sup> Second, juveniles had to be separated from adult inmates.<sup>91</sup> Third, states could not detain juvenile offenders in “adult jail[s] and lockup[s].”<sup>92</sup> Finally, states needed to demonstrate efforts to reduce the proportion of detained juveniles who belonged to minority groups.<sup>93</sup> The federal government incentivized states to tailor state systems to better fit the goal of juvenile justice—rehabilitation of minors.<sup>94</sup>

At this process of juvenile justice reform unfolded, many states also recognized the power of education in teaching children to be productive citizens.<sup>95</sup> Contemporaneously with the creation of juvenile justice systems, states instituted public education laws. Rhode Island was the first state to pass a general compulsory education law and did so in 1840.<sup>96</sup> By 1918, every state had a compulsory education statute.<sup>97</sup> Such compulsory education laws typically apply to delinquent youth residing in youth detention centers.<sup>98</sup>

## II. BACKGROUND OF EDUCATION

This section elaborates on the legal basis for controlling education as outlined by the U.S. Supreme Court, the U.S. Constitution, and state constitutions. This Part will discuss the ways the U.S. Supreme Court has been involved in the education discussion, as well as notable ways the Court has been silent on the matter. These silences occur because the Constitution has given power over educational policy decisions to the states. I

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89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. See MCCORD ET AL., *supra* note 1, at 284.

95. Twomey, *supra* note 6, at 792 n.144.

96. Mitchell L. Yell et al., *The Legal History of Special Education: What a Long, Strange Trip It's Been*, 19 REMEDIAL & SPECIAL EDUC. 219, 219 (1998).

97. *Id.* at 220.

98. See Twomey, *supra* note 6, at 788.

will evaluate how states have constructed their individual constitutions to provide a right to education for all youth.

### A. Courts on Education

Despite the importance of education in empowering youth for the future, neither the U.S. Constitution nor the U.S. Supreme Court list education as a fundamental right.<sup>99</sup> When the Court handed down the opinion in *Brown v. Board of Education*, some misconstrued the language as holding that education was a fundamental right.<sup>100</sup> However, the Court clarified that misunderstanding in 1973 with *San Antonio Independent School District v. Rodriguez*.<sup>101</sup> Applying rational basis judicial scrutiny, the court held that education is not a “fundamental right.”<sup>102</sup> Therefore, schoolchildren living in disadvantaged districts in Texas could not legally recover for wealth-based discrimination.<sup>103</sup> Unlike the decisions in *Brown*, which dealt with race-based discrimination, poor children are not a distinct, immutable, and isolated group, according to *Rodriguez*.<sup>104</sup>

Juveniles are not a suspect class; therefore, any case alleging discrimination against youth will be judged using rational basis scrutiny under equal protection analysis.<sup>105</sup> Even though courts use broad language to talk about the importance of education, the Equal Protection Clause of the Constitution does not protect schoolchildren, and *Rodriguez* clarified that education is not a fundamental right.<sup>106</sup>

The pendulum of justice did eventually swing somewhat toward protecting education in 1982, with *Plyler v. Doe*.<sup>107</sup> Here, the Court applied intermediate scrutiny when ruling that

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99. *See Id.* at 784.

100. *See* 347 U.S. at 493; *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 18 (1973).

101. *Rodriguez*, 411 U.S. 1 (1973).

102. *Id.* at 37.

103. *Id.* at 24.

104. *Id.* at 40.

105. *Id.*

106. *Id.*

107. 457 U.S. 202 (1982).

undocumented resident aliens could not be denied education.<sup>108</sup> “By denying these children a basic education,” the Court wrote, “we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.”<sup>109</sup> Therefore, although education is not explicitly called a fundamental right, it is widely recognized as fundamental to the success of individuals and the country as a whole.<sup>110</sup>

Nevertheless, some advocates continue to argue that the Court should apply strict scrutiny in cases dealing with education. These advocates point to racial factors as a call for judicial intervention in providing education to juvenile offenders.<sup>111</sup> Juvenile delinquents are disproportionately minority, poor, and disabled. As of 2003, 58% of male inmates were Black or Hispanic.<sup>112</sup> For this reason, advocates of national intervention in juvenile justice support the highest level of scrutiny in equal protection claims dealing with education.<sup>113</sup>

Some argue that even if education was a fundamental right, juvenile offenders have forfeited that right by committing crimes, just as they have forfeited their right to liberty.<sup>114</sup> However, this argument counters the purpose of juvenile justice, namely rehabilitation. It is in society’s best interest to provide juvenile offenders with an education because, as was discussed above, education is not simply a luxury item, but is a powerful tool to promote reform within individuals and progress in communities.

In addition to addressing the level of scrutiny a court should use in addressing education concerns, the courts have also addressed appropriate accommodations that need to be provided for students. In *Youngberg v. Romeo*,<sup>115</sup> the Court held that the state had to provide minimally adequate training to a mentally

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108. *Id.* at 218–19, n. 16, 230

109. *Id.* at 223.

110. See Twomey, *supra* note 6, at 767.

111. Twomey, *supra* note 6, at 770.

112. *Id.* (85% of juvenile inmates were male).

113. *Id.*

114. *Id.* at 795

115. 457 U.S. 307, 322 (1982).



retarded boy. Restricting the boy by using shackles during violent outbursts was held unconstitutional.<sup>116</sup> The Court held that when the state confines someone for “care and treatment,” it is obligated to provide treatment. Following this same vein of logic, it would make sense for education to be mandatory because it is an essential part of treatment for juvenile offenders.<sup>117</sup> However, since education is not a fundamental right, like freedom, the same constitutional, or federal, foundation for mandating education within the juvenile justice system does not exist.<sup>118</sup>

Rather, states consider the extent to which they will individually provide education.<sup>119</sup> Washington, for example stands as “[t]he only state supreme court that has directly considered a [constitutional] challenge to” juvenile detention education.<sup>120</sup> The Washington Supreme Court in *Tunstall v. Bergeson*<sup>121</sup> examined the extent to which education should be provided to juveniles under age 21 in state prisons. The court held that school districts are not obligated to provide education in Washington State prisons to individuals over age 18.<sup>122</sup> Instead, statutes establishing a system of corrections govern inmates’ education rights.<sup>123</sup> The Washington constitution required juvenile correctional facilities to help inmates toward a high school diploma.<sup>124</sup> The petitioner sought educational services for incarcerated persons under the age of 21.<sup>125</sup> However, the court rejected this challenge because it failed to provide specific facts showing violation.<sup>126</sup> No fundamental right of equal protection had been infringed.<sup>127</sup> Yet, at the same time, the court held that individu-

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116. *Id.* at 310, n. 4, 316.

117. Gilbert, *supra* note 66, 1159.

118. *See* cases listed *supra* note 75.

119. Emily Parker, *50-State Review: Constitutional obligations for public education*, EDUCATION COMMISSION OF THE STATES 1, 1 (March 2016), <http://www.ecs.org/ec-content/uploads/2016-Constitutional-obligations-for-public-education-1.pdf>.

120. Twomey, *supra* note 6, at 785.

121. 5 P.3d 691, 706 (2000).

122. *Id.* at 694-95.

123. *Id.* at 702.

124. *Id.*

125. *Id.* at 696.

126. *Id.* at 704.

127. *Id.*

als under the age of 18 incarcerated in adult Department of Correction facilities do have a constitutional right to public education.<sup>128</sup>

This case is important because the court explicitly rejected the argument that children forfeited their right to education by committing a crime, even a serious one.<sup>129</sup> In the absence of any other state supreme court cases specifically addressing juvenile education, this case indicates a mindset with sound reasoning that could mirror the treatment of juveniles in other states.

### *B. Constitutional Control Over Education*

The U.S. Constitution does not specifically discuss education. Therefore, there is no national right to education. However, the 10th Amendment designates that any right not specifically given to the federal government is reserved to the states individually.<sup>130</sup> Through the 10th Amendment, states claim control over education within their boundaries.<sup>131</sup> This includes control over education within juvenile correctional facilities.

Across the nation, there are more than 50 different ways to implement education.<sup>132</sup> Each state constitution and the District of Columbia mandates its own creation of a public education system.<sup>133</sup> Within the states, disparity exists in the level of detail included in each state's constitutional education provision.<sup>134</sup> For example, some state constitutions include language about public school funding, the age of students, and the length of the school year.<sup>135</sup> Thirty-seven state constitutions "include language [about] religious restrictions."<sup>136</sup> Nine state constitutions

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128. *Id.* at 694.

129. *Id.* at 710.

130. U.S. Const. amend. X.

131. Parker, *supra* note 119, at 1

132. *Id.*

133. *Id.* at 1–2. "Because Washington, D.C., is not a state," it has no constitution. *Id.* Instead, Washington D.C. "uses the [U.S.] Constitution" in place of a state constitution. *Id.* "However, [since] there is no mention of public education in the [U.S.] Constitution," Washington D.C. has "no constitutional foundation for public education." *Id.*

134. *Id.* at 1.

135. *Id.*

136. *Id.*

“require education for students with disabilities.”<sup>137</sup> Thirty state constitutions provide specifications for higher education.<sup>138</sup>

Each when state constitutions do include specific provisions for education; they often use vague language to describe precisely how those provisions must make public education available to students.<sup>139</sup> The most frequently used phrases are “thorough and efficient,” “general,” and “uniform.”<sup>140</sup> The importance of a “general diffusion of knowledge” to “secure to the people the advantages and opportunities of education” seems to be well understood; however, just what constitutes an adequate education is so vague that it leads to problems in school systems at large, and especially in detention centers.<sup>141</sup>

Where some state constitutions specifically lay out the foundation of their education system, others leave much of this up to the legislature.<sup>142</sup> To complicate matters, some of the education provisions in state constitutions are so out of date that they are virtually irrelevant today. For example, Alabama’s constitution still includes language about segregation in schools based on race.<sup>143</sup> And the state legislature struck down two ballot measures to eliminate the language.<sup>144</sup> This gridlock illustrates why many advocates have turned to the national government for education mandates.

Justice Thurgood Marshall stated in his *Rodriguez* dissent that education adequacy standards are “unintelligible and without directing principle.”<sup>145</sup> Indeed, today the vague and outdated language used in many state constitutions to generalize adequate education has led to a slew of court cases across the nation. In Kentucky, the Supreme Court held in *Rose v. Coun-*

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137. *Id.*

138. *Id.*

139. *See, e.g.*, the language highlighted in Molly A. Hunter, *State Constitution Education Clause Language*, EDUCATION JUSTICE, <http://www.edlawcenter.org/assets/files/pdfs/State%20Constitution%20Education%20Clause%20Language.pdf> (last visited Apr. 27, 2017).

140. *See id.*

141. *See id.*

142. *See id.*

143. *Id.*

144. Parker, *supra* note 119, at 3.

145. 411 U.S. at 90 (Marshall, J., dissenting).

*cil for Better Education, Inc.*<sup>146</sup> that schools must provide education that promotes sufficient oral and written communication skills; knowledge of economic, social, and political systems; understanding of government processes; knowledge of mental and physical wellness; grounding in arts; and training in academic or vocational fields to prepare for a career and to compete in the job market.<sup>147</sup> However, not all states employ these standards alike.

State courts have grappled with many questions in examining plaintiffs' claims that education is inadequate. Among those questions is how adequacy should be defined;<sup>148</sup> how to properly measure adequacy of education;<sup>149</sup> if a state can rely upon standardized testing results to assess adequacy of teaching and learning;<sup>150</sup> and what "pedagogical services" are important for an adequate education.<sup>151</sup> Since each state gets to answer these questions individually, there is no consistent, nationwide answer.<sup>152</sup> Additionally, some states do not specifically address education for students with disabilities.<sup>153</sup> That gap is especially important for youth in juvenile detention centers, because they "are more likely to have a special education disability as compared with the general population."<sup>154</sup> Therefore, although education is vitally important to all children, especially those in detention centers, educational resources often fall short in addressing the needs of offenders.

### III. PROBLEMS WITH EDUCATION WITHIN JUVENILE DETENTION CENTERS

Juvenile offenders contained in detention centers face vari-

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146. 790 S.W.2d 186 (Ky. 1989).

147. *Id.* at 212.

148. *See Bd. of Educ. v. Nyquist*, 439 N.E.2d 359 (N.Y. 1982).

149. *See Campaign for Fiscal Equity, Inc. v. State*, 655 N.E.2d 661 (1995).

150. *See Kagan, supra* note 9, at 2255.

151. *Id.*

152. *See id.*

153. Parker, *supra* note 119, at 1.

154. Kevin W. Alltucker et al., *Different Pathways to Juvenile Delinquency: Characteristics of Early and Late Starters in a Sample of Previously Incarcerated Youth*, 15 J. OF CHILD AND FAM. STUD. 475, 481 (2006).

ous problems when it comes to receiving an adequate education. The analysis below explains the problems at a national level. The final two sections will address how these problems have been discussed at national and state levels; then possible solutions will be articulated.

In many juvenile detention facilities, over-crowding, abuse, and inadequate services “are the norm rather than the exception.”<sup>155</sup> Policies like assessing educational needs of each juvenile admitted to the facility are sporadically applied.<sup>156</sup> School records are seldom forwarded from the offender’s home district, which makes it difficult to reach the individual student’s needs.<sup>157</sup>

Within juvenile detention centers, classes are not always held or are held infrequently.<sup>158</sup> So, some juvenile delinquents forfeit education entirely for lengthy periods of time; or they get only a fraction of state-mandated minimum instructional time.<sup>159</sup> Since the average stay of an incarcerated youth is six months,<sup>160</sup> if he or she does not keep up in school during these months, an entire year of education can be affected. Thus, that short stay in a detention facility can cause a negative ripple effect that alters the entire middle school or high school experience.<sup>161</sup>

The negative ripple is accentuated by the fact that educational resources are sparse within juvenile detention centers.<sup>162</sup> Many facilities lack basic education materials, such as books, teachers, and classrooms.<sup>163</sup> Additionally, juvenile detainees often must make do with limited instructional time, curriculum, and teachers with no standard teacher training.<sup>164</sup> Both the

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155. See, e.g., Douglas E. Abrams, *Reforming Juvenile Delinquency Treatment to Enhance Rehabilitation, Personal Accountability, and Public Safety*, 84 OR. L. REV. 1001, n.9 (2005).

156. See *2014 Facility Practices and Services*, *supra* note 16.

157. Robert B. Rutherford, Jr. et al., *Special Education in the Most Restrictive Environment: Correctional/Special Education*, 19 J. SPEC. EDUC. 59, 65 (1985).

158. See Twomey, *supra* note 6, at 771.

159. *Id.* at 767–67, 776.

160. Leone, *supra* note 48, at 47.

161. See *id.*

162. See Twomey, *supra* note 6, at 767.

163. *Id.*

164. *Id.*

teachers and the students working in juvenile detention facilities are put at a disadvantage when resources are not provided and when teachers are not properly trained.

Many students within juvenile detention centers suffer from mental health disorders, yet teachers are often unequipped to accommodate special needs.<sup>165</sup> Up to 70% of incarcerated youth have learning disabilities.<sup>166</sup> However, in a study of correctional facilities in several southern states, researchers found that only 30% of youth in detention centers were given required services in line with federal disability mandates.<sup>167</sup> According to the Individuals with Disabilities Act (IDEA), incarcerated youth with learning disabilities should receive instruction according to an Individual Education Plan (IEP), which is a learning plan drafted by psychologists and school officials, and tailored to the needs of each student with a learning disability.<sup>168</sup> However, juvenile detention centers often fall short in providing counseling, speech therapy, physical therapy, recreation, and other rehabilitation services.<sup>169</sup>

Youth placed in the juvenile justice system often have serious educational and mental health needs due to learning disabilities, family situations, or failures of the public education system. As discussed previously, education helps prevent crime in the first place and reduce recidivism. Yet, “many [incarcerated juveniles] perform below grade level,” and “for most . . . correctional education services are their last exposure to formal education.”<sup>170</sup> One study showed 32% of students in detention centers read at or below 4th grade level, 27% at 5th- or 6th-grade level, 20% at 7th- or 8th grade level, and 21% at or above 9th grade level.<sup>171</sup>

Youth admitted to detention centers are often behind in school prior to entering the facilities and are at high risk to fall

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165. Leone, *supra* note 48, at 46.

166. *Id.*

167. Harriet R. Morrison & Beverly D. Epps, *Warehousing or Rehabilitation? Public Schooling in the Juvenile Justice System*, 71 J. NEGRO EDUC. 218, 224 (2002).

168. The Individuals with Disabilities Act, 20 U.S.C. § 1412 (2016).

169. Twomey, *supra* note 6, at 775.

170. MCCORD ET AL., *supra* note 1, at 189.

171. *Id.*

further behind.<sup>172</sup> In fact, in one study “75 percent of students in custody advanced less than a full grade level per year while in custody.”<sup>173</sup>

Consistent education is important for even students who spend just a few days in a detention center because when youth are released, it becomes more difficult to re-enroll if the offender has fallen behind his classmates.<sup>174</sup> Few juveniles re-enroll in public school upon release—just 12% of formerly incarcerated youth out of a pool of 759 had completed a high school degree or GED after release from detention in 2004.<sup>175</sup> Therefore, adequate education is vital for offenders while they are still in juvenile detention, because that may be the last opportunity many youth have to gain an education.

#### IV. CLASH BETWEEN FEDERAL AND STATE LAWS

This Part summarizes the various federal and state education policies for juvenile detention centers. It introduces why and how the federal government has imposed laws on a national level. It also discusses how those federal laws fit with state constitutions. This Part will illuminate why the national government should not and cannot impose statutes upon the states to mandate educational systems. The most the national government can do is provide incentives for states to align policy with higher standards.

##### *A. Federal Laws Addressing Education*

Although both education and juvenile justice systems are directly governed by individual states, the Juvenile Justice Delinquency Prevention Act created federal leadership in reform and

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172. *Id.*

173. *Id.* at 190.

174. *Id.*

175. Michael Bullis et al., *The Importance of Getting Started Right: Further Examination of the Facility-to-Community Transition of Formerly Incarcerated Youth*, 38 J. SPEC. EDUC. 80, 80 (2004).

treatment of juveniles.<sup>176</sup> This Act provided that states receiving federal formula grants had to comply with certain mandates as well as monitor and improve correctional education services.<sup>177</sup> Following the initial Act, Congress proposed the Individuals with Disabilities Act (IDEA),<sup>178</sup> then President Bush introduced the No Child Left Behind Act (NCLBA),<sup>179</sup> and President Obama presented the Correctional Education Package (CEP).<sup>180</sup> Each of these were initiatives to address public education at large and for individuals in juvenile detention.

Importantly, IDEA requires education services for children with disabilities in juvenile detention.<sup>181</sup> The NCLBA requires states to monitor and improve correctional education services to receive federal funding.<sup>182</sup> The CEP aims to “enforce the rights of incarcerated youth to a quality education.”<sup>183</sup> These three statutes, however, simply provide incentives for change and best practices. The federal government offers states funding, but accepting that funding is up to the states. States can decide not to accept grants. The initiatives are an apple and not a bludgeon. States can choose to follow the Act and receive federal grants, but the federal government has been appropriately restrained and has not taken control from state decision-makers who know the local constraints. Ultimately, the power to make lasting change is still constitutionally reserved to the individual states.

### *B. Individuals with Disabilities Act.*

The IDEA was originally founded in the Education for All Handicapped Children Act (EHA), which was enacted in 1975.<sup>184</sup> In 1990, the EHA was amended and renamed the

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176. Twomey, *supra* note 6, at 770.

177. McCORD ET AL., *supra* note 1, at 155.

178. The Individuals with Disabilities Act, *supra* note 168.

179. No Child Left Behind (NCLB) Act of 2001, 20 U.S.C.A. § 6301 et seq. (2001).

180. CORRECTIONAL EDUCATION GUIDANCE PACKAGE, *supra* note 51.

181. The Individuals with Disabilities Act, 20 U.S.C. § 1412 (2016).

182. See 20 U.S.C.A. § 6301 § 4.

183. CORRECTIONAL EDUCATION GUIDANCE PACKAGE, *supra* note 51.

184. 94 P.L. 142, 89 Stat. 773 (1975).



IDEA.<sup>185</sup> The goal of the legislation was to ensure a “free appropriate public education” in the “least restrictive environment” for students.<sup>186</sup> States accepting federal grants must identify and evaluate qualifying students and create an Individualized Education Program (IEP) for each student with a learning disability.<sup>187</sup> Then the state must facilitate the IEP through “related services,”<sup>188</sup> such as counseling, speech therapy, and other rehabilitation services. This legislation applies to all students ages 3 to 21 with learning disabilities.<sup>189</sup> Since so many offenders have learning disabilities, this statute applies to many students in detention centers. Yet, delinquents without learning disabilities do not benefit from this legislation. Additionally, the statute eliminates the requirement for educational services for juveniles ages 18 to 21, sentenced to adult facilities, who were not diagnosed with a learning disability prior to sentencing.

### *C. The No Child Left Behind Act*

The NCLBA was spearheaded by President George W. Bush and passed both Houses of Congress in 2001.<sup>190</sup> The Act explicitly addresses the needs of all juveniles in detention. It provides that before states receive federal education funding each must monitor and improve correctional education services.<sup>191</sup> According to the NCLB, teachers must 1) be certified, 2) demonstrate competence in each subject they teach, and 3) must have at least a bachelor’s degree.<sup>192</sup> These are basic requirements. However, even these requirements are not always

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185. Yell, *supra* note 96, at 226.

186. 20 U.S.C. § 1412. The IDEA broadly defines disabled as a child: (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services.

187. *Id.* at 774–75.

188. *Id.* at 775.

189. *See* 20 U.S.C. § 1412(a)(1)(A) (2000).

190. 20 U.S.C.A. § 6301 et seq.

191. *Id.* at § 3.

192. *Id.* at § 4.

fulfilled.<sup>193</sup>

However, the Act does not have teeth to enforce adherence. Some states violate requirements and still accept funding.<sup>194</sup> In fact, one study found that at least nineteen states violated the Act's requirements and left juvenile justice schools out of their Adequate Yearly Progress assessments.<sup>195</sup> Some consider the limited consequences for violations as a failing of the legislation.<sup>196</sup> However, since the federal government has a limited constitutional foundation for involvement in education within the states, the legislation can only be an incentive. Therefore, while funds could be withheld, noncompliant states cannot be punished. There is no private cause of action for violations.<sup>197</sup> So consequences for these violations must come from a state level.

#### *D. Correctional Education Guidance Package*

President Obama announced an initiative in 2014 with an aim "to help all young people succeed in school and reach their potential in life."<sup>198</sup> The initiative created a 501(c)(3) charity to "address persistent opportunity gaps facing boys and young men of color and to ensure all youth can reach their full potential."<sup>199</sup> This initiative was part of President Obama's My Brother's Keeper initiative and included a plan to reform juvenile and criminal justice systems to "enforce the rights of incarcerated youth to a quality education."<sup>200</sup> The goal was that "by 2020 [the U.S. would] have the highest proportion of college graduates in the world and that all Americans [would] complete

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193. Twomey, *supra* note 6, at 771.

194. *Id.*

195. Bruce I. Wolford, *Juvenile Justice Education: "Who is Educating the Youth"* 4 (2000), available at [http://www.edji.org/Publications/educating\\_youth.pdf](http://www.edji.org/Publications/educating_youth.pdf); *Juvenile Justice Educational Enhancement Program, 2004 Annual Report to the Florida Department of Education* 84 (2004), available at <http://www.criminologycenter.fsu.edu/jjeep/research-annual-2004.php>.

196. *Id.* at 779.

197. *Id.*

198. CORRECTIONAL EDUCATION GUIDANCE PACKAGE, *supra* note 51.

199. *About Us, MY BROTHER'S KEEPER ALLIANCE*, *supra* note 10.

200. CORRECTIONAL EDUCATION GUIDANCE PACKAGE, *supra* note 51.

at least one year or more of college or career training.”<sup>201</sup>

This initiative addressed the situation of those in juvenile detention centers; especially the disproportionate number of minority, poor, and disabled individuals.<sup>202</sup> By targeting young men of color, the initiative sought to promulgate a solution within juvenile correctional facilities.<sup>203</sup> This initiative is an example of a solution from the national government that does not overstep the bounds of the Constitution. Using funds from the 501(c)(3) to encourage change, this solution appropriately layers a federal initiative on top of efforts by the states individually.

### *E. State Sovereignty and Education*

National incentives cannot be forced upon states, but national resources could and should be used to gather data for state decision-makers to consider. Data collected on the juvenile justice system differ from state to state, and little national data are collected, which makes tracking changes in practice difficult.<sup>204</sup>

The Office of Juvenile Justice and Delinquency Prevention has contracted with the National Center for Juvenile Justice to collect and analyze juvenile court statistics since 1975.<sup>205</sup> However, there is no published national data on the number of juveniles “convicted by offense” or “incarcerated by offense.”<sup>206</sup> No data are even collected nationally on “sentence length, time served in confinement, or time served on parole.”<sup>207</sup> Collection of this data is one area where the national government should be more involved because the data provides a significant benefit to states as juvenile education decisions are made within each state. This data would make a difference in the legislative actions taken by individual states. If legislators know how their

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201. *Id.*

202. *Id.*

203. *About Us*, MY BROTHER’S KEEPER ALLIANCE, *supra* note 10.

204. MCCORD ET AL., *supra* note 1, at 156.

205. *Id.* at n. 1.

206. *Id.* at 156.

207. *Id.*

state is doing compared to other states, they will have reason to follow successes or distinguish from failures when constructing their own legislation.

The role of the federal government should be one of highlighting best practices and encouraging states to advance from the status quo. The federal government should incentivize states to make changes to juvenile justice systems by gathering information about current practices and even providing federal funding. However, there is no constitutional provision for such federal roles to have the necessary “teeth” to enforce national mandates, as such an eventuality would, by its very nature, be unconstitutional.

## V. ARGUMENTS AND REMEDIES FOR STATES

At any stage during the court process, judges may inquire if a juvenile “pose[s] a threat to the community, will be at risk if returned to the community, or may fail to appear at an upcoming hearing.”<sup>208</sup> A juvenile “may also be detained for evaluation purposes.”<sup>209</sup> Over time the number of juveniles detained has fluctuated, but “the percentage of cases detained has remained steady.”<sup>210</sup> What this means is that if a juvenile’s case goes before a judge that youth is as likely now as in the past to be placed in detention. This continuity demonstrates the importance of education within juvenile justice systems.

Even short periods of time in residential detention centers can disrupt the lives of some detained youth because it interrupts their schooling.<sup>211</sup> Just a few days of school missed may “increase . . . educational difficulties” for marginal students.<sup>212</sup> Incarcerated offenders already have major disruptions to their lives and generally are not the types of students who would have the motivation to get caught up when behind in school. Education within juvenile justice can be the means to pull these

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208. *Id.*

209. *Id.*

210. *Id.*

211. *See id.* at 178.

212. *Id.*

individuals out of a cycle of crime and into a realm of success.<sup>213</sup>

Working toward remedies is not a simple task; however, just as pedagogical techniques evolve to account for classroom needs, policies can also expand to account for absentee students. Many schools are already equipped to deal with prolonged absences for children who have medical leave. By using the same type of policies for juvenile offenders, students in detention centers could stay up to speed with their classmates. School districts, juvenile detention centers, and individual teachers can coordinate to deliver work packets and homework that an incarcerated student would otherwise miss. To the extent that teachers utilize methods that are more interactive in the classroom, students that are in juvenile detention centers could watch remotely.

Modern technology makes it especially feasible to deliver assignments to incarcerated students through the internet. Teachers from the incarcerated student's home school district could even record the lectures they deliver to students in the classroom, and these recordings could be made available to incarcerated youth. Granted, it will require some extra work from the home teacher and school district, but the extra work can be minimal. A teacher can email worksheets, reading assignments, and recordings for the incarcerated student to review.

Recognizing that even minimal extra work may be burdensome to teachers, especially in resource-poor schools that service many at-risk students, administrators may take the lead in functioning as liaisons between the regular teacher and the juvenile detention center. By utilizing technology, the minimal additional work for teachers and administrators may make drastic positive impacts for incarcerated youth.

To implement such a program, however, school districts and juvenile detention centers will need to have better coordination. School records should be promptly delivered to the detention center so IEPs can be executed. If there was better communication between school districts and detention centers, juvenile offenders would not necessarily need an additional screening for educational needs when they enter a facility. Us-

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213. Leone, *supra* note 48, at 49.

ing federal gathered statistics about communication between school districts and juvenile detention centers, states could implement policies that would save funds in certain areas while making resources available for other needs within the juvenile justice education system.

Although policy changes require adequate funding, the costs saved by one policy change can fund another change. For instance, the resources saved by communication between home schools and juvenile detention facilities could remove the need for duplicative educational assessments for many minors entering detention facilities. Those funds could then be used to provide better resources, such as books and computers, in detention center classrooms.

## VI. CONCLUSION

Juvenile justice systems need reform. It is up to states to ultimately make the necessary changes. Yet, the national government can play an essential role in incentivizing progress and supplying data to assist in the “vitaly important and cost-effective strategy for ensuring [incarcerated juveniles] become productive members of their communities.”<sup>214</sup>

Currently, juvenile offenders enter the system with limited school skills and often struggle with learning disabilities.<sup>215</sup> However, as incarcerated individuals are educated the detention center environment improves and individual youth are empowered to rehabilitate and successfully reintegrate into society upon release.<sup>216</sup> Education also lowers recidivism rates, which benefits the community at large because there is less crime and less money spent on incarceration.<sup>217</sup>

Education programs are as varied as the number of states in the U.S.,<sup>218</sup> and that variety is not necessarily bad; it can allow states to try different solutions and learn from one another’s experiences. The U.S. Constitution is silent on the issue of ed-

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214. CORRECTIONAL EDUCATION GUIDANCE PACKAGE, *supra* note 51.

215. *See* OPEN SOCIETY INSTITUTE, *supra* note 4, at 2–3.

216. *See* INSTITUTE FOR HIGHER EDUCATION POLICY, *supra* note 42.

217. RAND CORPORATION, *supra* note 4.

218. Parker, *supra* note 119, at 1.

ucation. Therefore, the federal government cannot mandate how a state must form its own educational system. Nevertheless, the federal government can and has incentivized improvements in education at large, including education within juvenile detention centers. Federal funding that enables states to change and improve is beneficial. While the federal government cannot constitutionally mandate those changes, as state and federal actions align, juvenile detention centers will be better able to fulfill their purpose of rehabilitating youth.

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