

WHAT GOES UP BUT NEVER COMES DOWN? JUVENILE PUNITIVE PRACTICE WITHIN THE UNITED STATES

ARIANA D'AGOSTINO*

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* *Juris Doctor Candidate at California Western School of Law, Class of 2024, Executive Editor for California Western International Law Journal. I sincerely thank Professor William J. Aceves for his insightful comments on this note. I would also like to thank the dedicated editors of this Journal for their excellent attention to this publication. Last, I extend my most heartfelt thanks to my friends and loved ones who support me wholly.*

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INTRODUCTION

Imagine you are fourteen years old. Your parents are absent; you struggle with your mental health; and you are unsure where you fit in this world. This path of challenge and struggle culminated in you ending up in jail. Despite this less than ideal scenario, you are given a choice: Prison One or Prison Two. Prison One operates like a college dorm. You cook for yourself, you grow vegetables in a garden, you meet with a counselor daily, and you go to a normal school. In Prison Two, you sit in isolation for twenty-two hours a day, relieve yourself in water bottles because a guard has not come to take you to the restroom, and only go outside every other day. Which prison would you choose?

Obviously, you would choose Prison One. While this may seem like an extreme example, Prison One and Prison Two exist throughout the world. Prison One seems like a shining example of how an advanced country treats their youth and Prison Two is an example of how one would imagine an underdeveloped, poor, and unstable country treats theirs. Prison One is seen in countries that have implemented and excelled beyond the international guidelines, rules, and conventions governing the treatment of juveniles.¹ However, the reality is that Prison Two exists throughout the United States (“U.S.”).²

1. These international standards offer countries inspiration and guidance on the best treatment of juveniles. *See infra* Part II.

2. *See* J.J. v. Litscher, No. 3:17-cv-00047 (W.D. Wis. July 10, 2017) (order granting preliminary injunction); J.J. v. Litscher, JUV. L. CTR., <https://jlc.org/cases/jj-v-litscher> (last visited Oct. 3, 2023); *Case: J.J. v. Litscher*, CIV. RTS. LITIG. CLEARINGHOUSE (Mar. 17, 2019), <https://clearinghouse.net/case/15931/> [hereinafter *J.J. v. Litscher Case Summary*]; Jolie McCullough, *Almost 600 Texas Youths are*

Youths in the juvenile justice system cannot choose their institutions of incarceration like the scenario above. Instead, state specific juvenile justice laws decide for them. Juvenile justice systems vary worldwide in their approach to incarcerating adolescent offenders, particularly in violent crime cases.

The United Nations (“U.N.”) has multiple guidelines and rules that the vast majority of nations follow.³ As of October 2023, the most widely ratified human rights treaty relates to juvenile justice.⁴ However, the U.S. is the only country who refused to join the 196 countries that ratified that treaty.⁵ Countries that have not only looked to these standards, but excelled past them, have a thirty percent adolescent re-incarceration rate within three years of release, as opposed to the U.S.’s astonishing seventy-five percent.⁶

In the absence of a federal “United States Juvenile Justice Code,” juveniles within the U.S. are governed by state law, which often vary based on the respective political majority, location, and funding. A majority of the U.S.—forty-two out of fifty states—claim to have a

Trapped in a Juvenile Prison System on the Brink of Collapse, TEX. TRIB. (Aug. 2, 2022, 5:00 AM), <https://www.texastribune.org/2022/08/02/texas-juvenile-prisons-crisis/>.

3. *See infra* Part II.

4. *How Do U.S. States Measure Up on Child Rights*, HUM. RTS. WATCH, <https://www.hrw.org/feature/2022/09/13/how-do-states-measure-up-child-rights> (Sept. 7, 2023) [hereinafter *How Do U.S. States Measure Up*].

5. *Id.*

6. Jeremy Loudonback, *Progressive Prosecutors Look to Germany for Juvenile Justice Reform*, IMPRINT (June 14, 2022, 11:10 AM), <https://imprintnews.org/justice/juvenile-justice-2/progressive-prosecutors-look-to-germany-for-juvenile-justice-reform/65753>; ELIZABETH SIEGEL ET AL., CORE PRINCIPLES FOR REDUCING RECIDIVISM AND IMPROVING OTHER OUTCOMES FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM 1 (2014), <https://csgjusticecenter.org/wp-content/uploads/2020/01/Juvenile-Justice-White-Paper-with-Appendices-1-1.pdf>. Germany, for example, has a nationwide juvenile justice system that emphasizes rehabilitation and reintegration of youthful offenders back into society, and is praised as one of the most progressive and effective juvenile systems in the world. *German Prisons Better and Cheaper*, JOHN HOWARD SOC’Y CAN. BLOG (Mar. 6, 2020), <https://johnhoward.ca/blog/german-prisons-better-and-cheaper/>. *See* Jugendgerichtsgesetz [JGG] [Youth Courts Act], Aug. 4, 1953, BGBI I at 3427, last amended by Gesetz [G], June 25, 2021, BGBI I at 2099 (Ger.), https://www.gesetze-im-internet.de/englisch_jgg/index.html.

rehabilitative juvenile justice system.⁷ However, reality reflects how the U.S. juvenile justice system is a punitive system with slow advancement in rehabilitative practices. The U.S. meets its youth with a “tough-on-crime” approach plagued with punishment and incarceration rather than effectively reintegrating juvenile offenders into society.⁸ A large reason for this dichotomy is the complete lack of a strong, uniform juvenile justice system that incorporates and follows international standards.⁹

The U.S.’s failure to implement an internationally abiding federal law regulating juvenile justice has important implications on the treatment of incarcerated adolescent populations while incarcerated, rehabilitated, and reintegrated into society. This article will analyze the harmful and outdated legal frameworks and institutional structures of the U.S. juvenile justice systems. Looking to international standards for inspiration and guidance, this article proposes strong federal legislation to better protect the rights of incarcerated juveniles.

Part I of this paper will provide an overview of the “modern” U.S.’s juvenile justice systems as it relates to incarceration, highlighting the lack of federal regulation and individual state practices. Part II will discuss the international standards for juvenile justice, focusing on the United Nations Standard Rules for the Administration of Juvenile Justice,¹⁰ the United Nations Convention of the Rights of a Child,¹¹ the United Nations Guidelines for the Prevention of Juvenile Delinquency,¹² and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.¹³ Lastly, Part III argues that

7. See HUM. RTS. FOR KIDS 2020 STATE RATINGS REPORT (2020), https://humanrightsforkids.org/wp-content/uploads/State-Ratings-Report_2020.pdf. But see *Youth in the Juvenile Justice System: An Overview*, JUV. L. CTR., <https://jlc.org/youth-justice-system-overview> (last visited Nov. 13, 2023).

8. *2020 State Ratings Report*, supra note 7.

9. Alison S. Burke, *10.5. Juvenile Justice Process*, OPEN OR. EDUC. RES., <https://openoregon.pressbooks.pub/ccj230/chapter/13-5-juvenile-justice-process/> (last visited Mar. 13, 2023) [hereinafter *10.5. Juvenile Justice Process*].

10. G.A. Res. 40/33, Standard Minimum Rules for the Administration of Juvenile Justice (Nov. 29, 1985) [hereinafter Beijing Rules].

11. U.N. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 27531 [hereinafter UNCRC].

12. G.A. Res. 45/112, annex, Guidelines for the Prevention of Juvenile Delinquency (Dec. 14, 1990) [hereinafter Riyadh Guidelines].

13. G.A. Res. 45/113, Rules for the Protection of Juveniles Deprived of Their Liberty (Dec. 14, 1990) [hereinafter Havana Rules].

exceeding the international standards by codifying a federal juvenile justice code, encompassing a new minimum and maximum age of criminal responsibility, emphasizing imprisonment as a last resort, and outlawing solitary confinement are needed to protect juvenile human rights and dignity in the U.S.

I. THE “MODERN” UNITED STATES JUVENILE JUSTICE SYSTEM

Juvenile justice is the criminal legal system of laws, policies, and procedures designed for adolescents not old enough to be held responsible for criminal acts.¹⁴ Before the creation of a separate juvenile court, children experienced the same system adults did.¹⁵ Meaning, children from the ages of seven to eighteen could be sentenced to adult prison or even to death for their crimes.¹⁶ This idea dates back to the creation of Catholic religious texts, where it is written, “He who curses father or mother, let him be put to death.”¹⁷

A. *Historical Context*

The concept of treating youth separately from adults originated in England during the late twelfth century.¹⁸ These first rights were called *parens patriae*, translated as “father of the country.” Children over the age of seven were seen as property of which the king took charge over and responsibility for.¹⁹ A child under the age of seven was thought to

14. *Juvenile Justice*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/juvenile_justice (last visited Oct. 3, 2023).

15. NAT’L RSCH. COUNCIL & INST. MED., *JUVENILE CRIME, JUVENILE JUSTICE* 157 (Joan McCord et al. eds., 2001) [hereinafter *Juvenile Crime*].

16. *Id.* at 157.

17. *Matthew* 15:4 (New King James). *See also Matthew* 15:4 (English Standard Version) (“Whoever reviles father or mother surely must die”); *Matthew* 15:4 (The Message Bible) (“Anyone denouncing father or mother should be killed”).

18. Alison S. Burke, *10.3. History of the Juvenile Justice System*, OPEN OR. EDUC. RES., (last visited Mar. 13, 2023) [hereinafter *10.3. History of the Juvenile Justice System*]; ALIDA V. MERLO & PETER J. BENEKOS, *JUVENILE JUSTICE SYSTEM: DELINQUENCY, PROCESSING, AND THE LAW* (9th ed. 2019).

19. MERLO & BENEKOS, *supra* note 18, at 4.

have no mens rea, or the ability to form the necessary criminal intent needed to hold a person accountable for a crime.²⁰

Parens patriae influenced early familial structures and relationships in the early U.S.²¹ In colonial U.S., the family served as the end-all-be-all of societal ideals and was the model of *parens patriae* for discipline and social control.²² Often obtained through the use of corporal punishment, parents insured their children were literate, well behaved, and socialized.²³ The developing U.S. saw the doctrine of *parens patriae* influence its politics as well, with the government believing it needed “absolute authority.”²⁴

In 1825, the first house of refuge emerged in New York and acted as a center for youth with a high risk of entering the criminal system due to their social circumstances.²⁵ Over the next two decades, fifty-one reform schools or houses of refuge emerged throughout the U.S.²⁶

20. *Id.* at 3; G. LARRY MAYS & L. THOMAS WINFREE, JR., *JUVENILE JUSTICE* 138 (3rd ed. 2012).

21. MAYS & WINFREE, *supra* note 20, at 138. In 1641, a Massachusetts law embracing the ideology of *parens patriae* stated, “If any child, or children, above sixteen years of age, and of sufficient understand, shall CURSE or SMITE their natural FATHER or MOTHER, he or they shall be [sic] putt to death.” BARRY KRISBERG & JAMES F. AUSTIN, *REINVENTING JUVENILE JUSTICE* 13 (1993).

22. KRISBERG & AUSTIN, *supra* note 21.

23. *Id.* at 13-14. While this section is discussing the history of the incarceration of children, it is not lost on the Author that Black and Indigenous children are left out of the historical perspective while being exploited and harmed as slaves. *Id.* at 13.

24. *Id.* See generally HENRY B. DAWSON ET AL., *THE FEDERALIST: A COLLECTION OF ESSAYS WRITTEN IN FAVOUR OF THE NEW CONSTITUTION, AS AGREED UPON BY THE FEDERAL CONVENTION, SEPTEMBER 17, 1787* (1863).

25. ROBERT M. MENNEL, *THORNS & THISTLES: JUVENILE DELINQUENTS IN THE UNITED STATES FROM 1825-1940* (1973); KRISBERG & AUSTIN, *supra* note 21, at 8. The Conservative Reformers, wealthy men interested in protecting their social status, established the houses of refuge in New York. KRISBERG & AUSTIN, *supra* note 21, at 16. The Reformers justified the houses as a way to spread their religious beliefs in an attempt to curb the increases in crime. *Id.* During this period of time, jails were plagued with terrible conditions and the houses of refuge insured the convicted youth would not be released as a result of the conditions of the jails. *Id.* at 17.

26. Barry Krisberg, *Historical Legacy of Juvenile Corrections*, in *JUVENILE JUSTICE PROGRAMS AND TRENDS* 45 (Alice Fins ed. 1996). The terms “reform schools” and “houses of refuge” were often used interchangeably based on its location. See *id.* This system can still be seen in some juvenile justice systems today.

State legislatures began regulating these houses, which often required the houses to receive children from parents who deemed them beyond control and children who were committed by the court.²⁷

Just over a decade after the creation of the first house of refuge, the legitimacy of the houses were challenged in the Pennsylvania Supreme Court.²⁸ The parent of a child committed to a house of refuge submitted a *habeas corpus* petition in an attempt to have his daughter released from the house.²⁹ The Court denied the motion, holding that a parent's right of control to their natural born child is indeed a natural right, but it is not an inalienable right.³⁰ Accordingly, the Court reasoned the houses acted as charities of reformation which aided in teaching children morals and religion while separating them from corrupting influences.³¹

By 1876, the government controlled three-fourths of the schools and used *parens patriae* to justify the legal authority to commit children to the legally recognized community-based schools.³² However, the government operated schools often used corporal punishment to discipline juveniles, and the schools experimented by placing children in a class system based on their behavior.³³

10.3. *History of the Juvenile Justice System*, *supra* note 18. Yet, in the Nineteenth Century, the reform schools often exploited children for labor. *Id.*

27. *Ex Parte Crouse*, 4 Whart. 9, 9 (Pa. 1839). Immigrant children made up a majority of the Houses of Refuge. KRISBERG & AUSTIN, *supra* note 21, at 18. This happened due to the distrust of Irish Immigrants, with the upper-class society viewing the Irish as corrupt and unsuitable parents. *Id.* Moreover, children of any race other than white were excluded from the houses. *Id.* at 18-19. Non-white children were often left to segregated facilities called "House of Refuge for Colored Juvenile Delinquents." *Id.* at 19. Women were also excluded from houses of refuge because delinquent girls were seen as sexually promiscuous. *Id.*

28. *Ex Parte Crouse*, 4 Whart. at 9.

29. *Id.* at 9-10.

30. *Id.* at 11.

31. *Id.*

32. KRISBERG & AUSTIN, *supra* note 21, at 24.; 10.3. *History of the Juvenile Justice System*, *supra* note 18.

33. KRISBERG & AUSTIN, *supra* note 21, at 19. There is ample evidence that the schools used solitary confinement and whipping as a form of control. *Id.* A House of Refuge Superintendent, Elijah Devoe, wrote adamantly of the cruelties and injustices in the Houses. *Id.* at 20; ELIJAH DEVOE, *THE REFUGE SYSTEM, OR PRISON DISCIPLINE APPLIED TO JUVENILE DELINQUENTS* (1848).

In 1870, the Illinois Supreme Court declined to follow the broad doctrine of *parens patriae*, holding that the state may only take control of a child if the child committed an act of “gross misconduct” or the parents were utterly unfit.³⁴ Subsequently, almost all reform schools in Illinois closed because they stopped housing non-criminal children.³⁵ As a result of the reform schools closing, the Illinois legislature codified the Illinois Juvenile Court Act of 1899, which created the first juvenile court.³⁶ It exercised jurisdiction over all youth-related matters, including dependency, delinquency, and neglected children, and was dubbed the Chicago Juvenile Court of Law.³⁷ Illinois paved the way for what we know to be the modern juvenile justice system, and states around the U.S. began creating separate children’s courts.³⁸ Within twenty-six years of establishing the Chicago Juvenile Court, only two states did not have specialized juvenile courts.³⁹

34. *People ex rel. O’Connell v. Turner*, 55 Ill. 280, 284-85 (1870) (“Before any abridgment of the right [to parent], gross misconduct or almost total unfitness on the part of the parent, should be clearly proved. This power is an emanation from God, and every attempt to infringe upon it, except from dire necessity, should be resisted in all well governed States.”). *See also Ex Parte Becknell*, 119 Cal. 496, 498 (1897).

35. 10.3. *History of the Juvenile Justice System*, *supra* note 18.

36. *Id.*; KRISBERG & AUSTIN, *supra* note 21, at 30.

37. 10.3. *History of the Juvenile Justice System*, *supra* note 18. Dependency court is when a child is taken into custody for their own well-being and at no fault of their own, often as a result of parental abuse, neglect, or abandonment. *Guide to Dependency Court – For Children*, JUD. COUNCIL CAL., <https://www.courts.ca.gov/29205.htm?rdeLocaleAttr=en> (last visited Nov. 14, 2023); Donald J. Shoemaker & Gary Jensen, *Juvenile Justice*, ENCYLC. BRITANNICA, <https://www.britannica.com/topic/juvenile-justice> (Oct. 3, 2023) [hereinafter *Britannica Juvenile Justice*]. Delinquency is when a child is taken into custody resulting from a violation of the law. *Id.*; 10.3. *History of the Juvenile Justice System*, *supra* note 26; KRISBERG & AUSTIN, *supra* note 21, at 30.

38. KRISBERG & AUSTIN, *supra* note 21, at 30. *See generally Commonwealth v. Fisher*, 213 Pa. 48, 56-57 (1905) (Pennsylvania court defended the implementation of juvenile courts, granting legal authority under *parens patriae*).

39. KRISBERG & AUSTIN, *supra* note 21, at 30; CHARLES PUZZANCHERA ET. AL., OFF. JUV. JUST. & DELINQ. PREVENTION, YOUTH AND THE JUVENILE JUSTICE SYSTEM: 2022 NATIONAL REPORT 78 (2022), <https://ojjdp.ojp.gov/publications/2022-national-report.pdf>.

The 1960s started an era where courts altered the juvenile system.⁴⁰ In the 1970s, there began a shift towards increased punishment of juveniles.⁴¹ Beginning in 1976, over half of the states made transferring youths into adult court with hardened sentencing guidelines easier.⁴² From 1979 to 1984, the number of juveniles transferred to adult court rose forty-eight percent.⁴³ This “tough-on-crime” approach still plagues juvenile systems today.⁴⁴ The fight between government officials wanting to implement quick-fix solutions, and the media’s crazed intent on reporting violent crimes, more than successful crime prevention efforts, plague each state’s efforts to amend its juvenile justice systems.⁴⁵

B. Operation of the United States Juvenile Justice System at the Federal Level

The death penalty—as applied to juveniles—serves as a dark example of the consequences a lack of a robust, comprehensive U.S. federal juvenile justice system poses. The youngest person executed in the U.S., James Arcene, a Cherokee Nation child, was sentenced to hang to death in Arkansas in 1885 for a robbery and murder he helped commit at *ten* years old.⁴⁶ In 1944, South Carolina electrocuted George

40. *Kent v. United States*, 383 U.S. 541, 554-55 (1966) (Court warns juvenile courts against “procedural arbitrariness”); *In re Gault*, 387 U.S. 1 (1967) (affording juveniles similar protections given to adults in the constitution, such as protection against self-incrimination, the right to confront witnesses, and the right to have a transcript of their proceedings); *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (whether jury trials are rights afforded to juveniles under the Sixth Amendment).

41. KRISBERG & AUSTIN, *supra* note 21, at 50.

42. *Id.* at 50-51.

43. *Id.*

44. *See generally infra* Part II(C).

45. *ACLU Fact Sheet on the Juvenile Justice System*, ACLU (July 5, 1996), <https://www.aclu.org/other/aclu-fact-sheet-juvenile-justice-system> [hereinafter *ACLU Fact Sheet*].

46. Amy Linn, *History of Death Penalty for Juvenile Offenders*, JUV. JUST. INFO. EXCH. (Feb. 13, 2016), <https://jjie.org/2016/02/13/history-of-death-penalty-for-juvenile-offenders/>. The state did not execute Arcene until he was twenty-two years old because of his evasion of police. *Testimony on the Death Penalty for Juveniles Offered to the Subcomm. on Criminal Justice regarding H. B. 343 and Related B.*, 99th Cong. at 5 (1986) (statement of Victor L. Streib, Professor, Cleveland-Marshall College of Law).

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Stinney Jr., a fourteen-year-old Black child, after an all-white jury found him guilty after only ten minutes of deliberation.⁴⁷ During the “modern” era of juvenile justice, between 1974 and 2005, over a century after the U.S. executed its first child, 226 children received death sentences.⁴⁸

As of October 2023, there is no codified federal law outlawing the death penalty for juveniles.⁴⁹ Instead, the Supreme Court precedent in *Roper v. Simmons*, which outlaws the death penalty for juveniles, is the only authority standing in the way.⁵⁰ However, recent Supreme Court decisions, like *Dobbs v. Jackson Women’s Health Organization*, demonstrate that the Court can easily overturn longstanding precedent.⁵¹ When analyzing the U.S. standards enacted via legislation or court precedent, the lack of an overarching U.S. juvenile justice system leaves juveniles unprotected from this human rights violation.

1. Legislation Effecting Incarcerated Juveniles

On October 1, 2019, the Juvenile Justice Reform Act (“JJRA”) of 2018 took effect with broad bipartisan support.⁵² The JJRA reauthorized and substantially amended the former Juvenile Justice Delinquency Prevention Act.⁵³ The JJRA’s core included increased

47. Linn, *supra* note 46. George Stinney Jr. is the youngest person to be put to death in the 20th century. *Id.* His lawyer failed to file an appeal on his behalf. *Id.*

48. Linn, *supra* note 46.

49. CHARLES DOYLE, CONG. RSCH. SERV., R47548, JUVENILE DELINQUENTS AND FEDERAL CRIMINAL LAW: THE FEDERAL JUVENILE DELINQUENCY ACT AND RELATED MATTERS IN SHORT 5 (2023).

50. *Id.*; *Roper v. Simmons*, 543 U.S. 551 (2005).

51. *Dobbs v. Jackson Women’s Health Org.*, 142 S.Ct. 2228 (2022) (the Court historically overturned the precedent set by *Roe v. Wade* and *Planned Parenthood v. Casey*, which outlined a woman’s right to abortion).

52. An Act to Reauthorize and Improve the Juvenile Justice and Delinquency Prevention Act of 1974, and for Other Purposes, Pub. L. 115-385, 132 Stat. 5123 (2018); *Authorizing Legislation*, OFF. JUV. JUST. & DELINQ. PREVENTION, <https://ojjdp.ojp.gov/about/legislation> (last visited Mar. 30, 2023); COAL. FOR JUV. JUST. & NAT’L CRIM. JUST. ASS’N, SUMMARY OF THE JUVENILE JUSTICE REFORM ACT OF 2018 (2018), <https://www.juvjustice.org/sites/default/files/resource-files/Summary%20of%20the%20Juvenile%20Justice%20Reform%20Act%20of%202018.pdf> [hereinafter SUMMARY OF THE JUVENILE JUSTICE REFORM ACT OF 2018].

53. *Authorizing Legislation*, *supra* note 52.

attention to racial and ethnic disparities, sight and sound removal for youth awaiting trial, and de-incarceration of status offenses.⁵⁴ The JJRA requires state juvenile justice codes to consider scientific knowledge and statistics regarding adolescent development and behavior but does not require policy change due to the scientific findings.⁵⁵ The JJRA also called for individualized case plans for juveniles to re-enter society.⁵⁶ Notably, the JJRA asks states to eliminate the use of dangerous practices within incarceration facilities.⁵⁷ However, this legislation only truly impacts a small subset of juveniles who have committed a federal crime or were transferred to federal court.⁵⁸ Federal law provides that state authorities should handle the matter as opposed to the federal courts.⁵⁹ Indeed, if a juvenile is going to be subjected to state law regardless of whether their alleged crime was a state or federal violation, federal law holds little weight in ensuring the rights of juveniles will be upheld. Regardless, the legislature codified seemingly superfluous penalties for states who refused to comply with the JJRA.

The JJRA includes a twenty percent monetary penalty for states that do not comply with its provisions.⁶⁰ For a cost-benefit analysis, Title II

54. SUMMARY OF THE JUVENILE JUSTICE REFORM ACT OF 2018, *supra* note 52, at 1. “Sight and sound removal” mean juveniles cannot see or hear adults while awaiting trial. *Id.*

55. *Id.*

56. ACT 4 JUV. JUST., NAT’L JUV. JUST. & DELINQ. PREVENTION COAL., OVERVIEW OF THE JUVENILE JUSTICE REFORM ACT OF 2018 at 2 (2018), <http://www.act4jj.org/sites/default/files/resource-files/JJDP%20Reauthorization%20Summary%20December%202018.pdf> [hereinafter OVERVIEW OF THE JUVENILE JUSTICE REFORM ACT].

57. *Id.*

58. CHARLES DOYLE, CONG. RSCH. SERV., RL30822, JUVENILE DELINQUENTS AND FEDERAL CRIMINAL LAW: THE FEDERAL JUVENILE DELINQUENCY ACT AND RELATED MATTERS I (2018); 18 U.S.C. § 5032.

59. *See* 18 U.S.C. § 5032. Due to the fact that many federal cases arise outside of state authority, this section of the code disparately impacts Indigenous communities. DOYLE, *supra* note 59, at 3. Indigenous children accused of a federal crime are disproportionately subject to federal jurisdiction. *Id.* at 3 n.24 (quoting *United States v. Juvenile Male*, 492 F.3d 1046, 1049 n.3 (9th Cir. 2007) (per curiam)). *See generally* Amy J. Standefer, *The Federal Juvenile Delinquency Act: A Disparate Impact on Native American Juveniles*, 84 MINN. L. REV. 473 (1999).

60. *See* 34 U.S.C. § 11133(c). If found out of compliance, States would lose 20% of their Title II grant. OVERVIEW OF THE JUVENILE JUSTICE REFORM ACT, *supra* note 56, at 3. The Title II grant program supports local efforts to “plan, establish,

early intervention programs aimed at crime prevention cost less than imprisonment.⁶¹ In 2020, the average cost of incarcerating a juvenile for one year ranged from a minimum of \$100,000 to over \$500,000.⁶² The average cost of incarceration for one child is \$588 per day, which equates to \$214,620 per year.⁶³ On the other hand, community-based intervention programs can cost as little as \$75 per day, which equates to \$27,375 per child.⁶⁴ Focusing on community intervention programs, in addition to the cost-benefit analysis, yielded up to a 5.7% lower recidivism rate for juveniles within the two years following a program.⁶⁵ This concept is not new: a 1996 report from Connecticut’s state-wide evaluation of alternative sentencing programs for juveniles concluded that sending juveniles to alternative programs instead of incarceration yielded lower rearrest rates.⁶⁶ States have no excuse for non-compliance with the JJRA—a law that only scratches the surface of the rights juveniles deserve—especially when state law primarily dictates juvenile proceedings regardless of if the allegation is a violation of federal or state law.

The Civil Rights of Institutionalized Persons Act (“CRIPA”) allows the U.S. Department of Justice (“DOJ”) to review the conditions and

operate, coordinate, and evaluate” any projects in which public or private agencies implement effective education, training, research, prevention, diversion, treatment, and rehabilitation into juvenile justice. *See, e.g., Federal Title II Formula Grants*, CAL. BD. STATE & CMTY. CORR., https://www.bscc.ca.gov/s_cpptitleiiprogram/#:~:text=The%20federal%20Title%20II%20Formula,prevention%2C%20diversion%2C%20treatment%2C%20and (last visited July 30, 2023).

61. COAL. FOR JUV. JUST., PROTECTING OUR CHILDREN AND COMMUNITIES: THE ESSENTIAL ROLE OF FUNDING UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT at 8 (2017), <https://juvjustice.org/sites/default/files/resource-files/JJDPA%20Funding.pdf>. *See generally* GREENWOOD PETER ET AL., DIVERTING CHILDREN FROM A LIFE WITHOUT CRIME, MEASURING COSTS AND BENEFITS (1996); U.S. DEP’T JUST., FY 2024 PERFORMANCE BUDGET (2023), https://www.justice.gov/d9/2023-03/ojp_fy_2024_presidents_budget_final_draft_clean_3.17.23.pdf.

62. JUST. POL’Y INST., STICKER SHOCK 2020: THE COST OF YOUTH INCARCERATION 1 (2020), https://justicepolicy.org/wp-content/uploads/2022/02/Sticker_Shock_2020.pdf.

63. *Id.* at 6.

64. *Id.*

65. *Id.* at 9.

66. *See* JUST. EDUC. CTR., LONGITUDINAL STUDY: ALTERNATIVES TO INCARCERATION SENTENCING EVALUATION, YEAR 3 (1996).

practices within state or local government juvenile justice institutions.⁶⁷ However, the Act is severely limited. The DOJ has no authority to help with individual claims, cannot correct problems within federal facilities, and cannot assist in criminal cases.⁶⁸ A CRIPA investigation must expose a systemic pattern or practice that causes harm to children in order to elicit enforcement—harm to only one person, no matter how serious, is not enough to allow action.⁶⁹ Similarly, the Violent Crime Control and Law Enforcement Act of 1994 (“VCCLEA”) allows DOJ intervention in juvenile detention centers.⁷⁰ The DOJ has intervened in many juvenile detention centers⁷¹—that have violated children’s rights and dignity. While there is more federal legislation affecting juveniles, it has little effect on their incarceration.⁷²

Unfortunately, the fate of children when left to the legislature has become highly politicized.⁷³ The conservative Republican Party attacks the juvenile system for its leniency.⁷⁴ Simultaneously, the liberal Democratic Party criticizes the system for high youth incarceration

67. See 42 U.S.C. § 1997(a).

68. *Children’s Rights in the Juvenile Justice System*, U.S. DEP’T JUST., <https://www.justice.gov/crt/rights-juveniles> (July 22, 2016).

69. *Id.*

70. See 34 U.S.C. § 12601. The Clinton-era VCCLEA is a deeply punitive Act which places emphasis on higher prison sentences and more police intervention. Carrie Johnson, *20 Years Later, Parts of Major Crime Bill Viewed as Terrible Mistake*, NPR (Sept. 12, 2014, 3:32 AM), <https://www.npr.org/2014/09/12/347736999/20-years-later-major-crime-bill-viewed-as-terrible-mistake>. However, this Act is an example of insufficient federal legislation. *Id.*

71. *Children’s Rights in the Juvenile Justice System*, *supra* note 68.

72. On December 29, 2022, President Biden signed the Consolidated Appropriations Act of 2023 into law. H.R. 2617; *Juvenile Justice Update March 2023*, NAT’L CONF. STATE LEGISLATURES (Mar. 20, 2023), <https://www.ncsl.org/resources/details/juvenile-justice-update-march-2023>. This law requires State’s Medicare programs to provide services to youth thirty days before the juvenile is released from incarceration. *Id.* However, the law does not take effect until January 1, 2025. *Id.* See also, e.g., Adoption Promotion Act of 2003, Pub. L. No. 108-145, 117 Stat. 1879; Runaway, Homeless, and Missing Children Protection Act, Pub. L. No. 108-096, 117 Stat. 1167; Title I—Child Abuse Prevention and Treatment Act, Pub. L. No. 108-036, 117 Stat. 801; No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425; Division B—Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1491.

73. KRISBERG & AUSTIN, *supra* note 21, at 1-2.

74. *Id.*

rates and excessive use of detention.⁷⁵ Each party focuses on the politics when the focus should be on the wellbeing of our children. The lack of strong legislation and the implications of the political divide, results in a juvenile justice system at odds with itself, leaving the courts to fight over the interpretation of the various codes.⁷⁶ The juxtaposition lies in the courts' ideals: to protect the public but be a guardian of children; to preserve families but provide care and guidance; hold a child accountable for their actions but take into consideration the unique circumstances of each child; to be fair and uniform in disposition and application of law but individualize any rulings to meet the specific and best needs of each child.⁷⁷

2. A Brief Note on the United States Supreme Court's Precedent

The U.S. Supreme Court has interpreted the rights of juveniles on many occasions. The Court banned the death penalty for children under the age of eighteen in 2005.⁷⁸ In 2010, the Court banned juvenile life without parole ("JLWOP") sentences only for youth convicted of non-homicide crimes.⁷⁹ Two years later, in *Miller v. Alabama*, the Court banned JLWOP for youths convicted of homicide, noting that juvenile sentences should be rare, uncommon, and reserved only for individuals the court deems incapable of rehabilitation.⁸⁰ There are no concrete guidelines for what "incapable of rehabilitation" means.

At the time of the *Miller* decision, 2,800 juveniles were serving JLWOP.⁸¹ That number has since come down to 542 individuals serving JLWOP sentences for crimes committed as a child, including

75. *Id.*

76. See California Assembly Bill No. 2361 (Proposition 57) (outlining new criteria for juvenile transfer to criminal court jurisdiction). See also *Jones v. Mississippi*, 141 S. Ct. 1307 (2021) (sentencing juveniles); *Mathena v. Malvo*, 893 F.3d 265 (4th Cir. 2018) (discussing the retroactivity of sentencing for juveniles).

77. KRISBERG & AUSTIN, *supra* note 21, at 2.

78. *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

79. *Graham v. Florida*, 560 U.S. 48, 82 (2010).

80. *Miller v. Alabama*, 567 U.S. 460, 479 (2012).

81. *Sentencing Children to Life Without Parole: National Numbers*, CAMPAIGN FOR FAIR SENTING YOUTH, <https://cfsy.org/sentencing-children-to-life-without-parole-national-numbers/> (last updated June 6, 2023).

those awaiting resentencing.⁸² Alarming, the percentage of Black children sentenced to JLWOP increased from sixty one percent to seventy three percent since the *Miller* decision.⁸³ The U.S. is the only country in the world that allows JLWOP sentences,⁸⁴ a practice expressly condemned by international law.⁸⁵ As of 2021, *Jones v. Mississippi* was the most recent Supreme Court case addressing age in sentencing.⁸⁶ The Court confirmed that age matters when sentencing an individual but gave states latitude in creating youth procedures.⁸⁷

Each of these Supreme Court cases are significant because the Court specifically relied on scientific research which concluded that even youths who commit the most serious violent crimes have the capacity to change.⁸⁸ Most children, who violate the law or not, will naturally grow out of criminal tendencies by their mid-twenties.⁸⁹ Accordingly, disproportionately long sentences, such as JLWOP, hold children well past their rehabilitation period and increase their risk of re-offending.⁹⁰

Juvenile justice scholars argue that juvenile justice programs are complex and require significant resources, attributing much of the differences in application of juvenile law to a lack of concise and widely held definitions, which leads to different interpretations and

82. *Id.* The decrease in individuals serving JWLOP sentences is current as of June 6, 2023.

83. *Id.*; *Juvenile Life Without Parole (JLWOP)*, JUV. L. CTR., <https://jlc.org/issues/juvenile-life-without-parole> (last visited Mar. 17, 2023).

84. *Juvenile Life Without Parole (JLWOP)*, JUV. L. CTR., <https://jlc.org/issues/juvenile-life-without-parole> (last visited Mar. 17, 2023).

85. UNCRC, *supra* note 11.

86. *Juvenile Life Without Parole (JLWOP)*, *supra* note 85. See *Eighth Amendment—Cruel and Unusual Punishment—Juvenile Sentencing—Jones v. Mississippi*, 135 HARV. L. REV. 381, 385 (2021); *Jones v. Mississippi*, 141 S. Ct. 1307 (2021).

87. See *Jones*, 141 S. Ct. at 1322-23; see also *Eighth Amendment—Cruel and Unusual Punishment—Juvenile Sentencing—Jones v. Mississippi*, *supra* note 86.

88. *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

89. *Juvenile Life Without Parole (JLWOP)*, *supra* note 85.

90. *Id.* For a comprehensive list of States which ban and allow JLWOP, see *States that Ban Life Without Parole for Children*, CAMPAIGN FOR FAIR SENT'G YOUTH, <https://cfsy.org/media-resources/states-that-ban-juvenile-life-without-parole/> (last visited Oct. 8, 2023).

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implementation jurisdictionally.⁹¹ The federal government must implement robust, concrete legislation requiring states to adhere to higher juvenile justice standards. As recently as 2023, states still treat juveniles as they see fit—meaning juveniles are sent to prison for cash,⁹² are pepper sprayed,⁹³ kept in isolation for twenty-three hours a day,⁹⁴ and denied education.⁹⁵ The opportunities for the abuse of discretion here are many.

C. Operation of the United States Juvenile Justice System Across the Fifty States

In 2019, officers arrested 696,620 children across the United States, equating to arresting a child every forty-five seconds.⁹⁶ Half of those arrests involved “theft, simple assault, drug abuse violations, [or] disorderly conduct offenses.”⁹⁷ And within the last two decades, almost every state has cut the number of incarcerated youths in half, now favoring probation, therapy, and community programs.⁹⁸ However, the children who *are* sentenced to incarceration in juvenile court continue to face inhumane conditions that not only violate international standards but also their human rights.⁹⁹

Many juvenile courts in the States are called courts of delinquency, defined as “an act committed by a juvenile that, if committed by an

91. MAYS & WINFREE, *supra* note 20, at 341-42.

92. Associated Press, *Former Judges Who Sent Kids to Jail for Kickbacks Must Pay More Than \$200 Million*, NPR (Aug. 18, 2022, 7:48 AM), <https://www.npr.org/2022/08/18/1118108084/michael-conahan-mark-ciavarella-kids-for-cash>.

93. Beth Schwartzapfel et al., “No Light. No Nothing.” *Inside Louisiana’s Harsheset Juvenile Lockup*, MARSHALL PROJECT (Mar. 10, 2022, 6:00 AM), <https://www.themarshallproject.org/2022/03/10/no-light-no-nothing-inside-louisiana-s-harsheset-juvenile-lockup>.

94. *Id.*

95. *Id.*

96. *The State of America’s Children 2021: Youth Justice*, CHILD. DEF. FUND, <https://www.childrensdefense.org/state-of-americas-children/soac-2021-youth-justice/> (last visited Oct. 8, 2023). See MAYS & WINFREE, *supra* note 20, at 67-102, for a full discussion on the relationship between police and juvenile offenders.

97. *Juvenile Justice Update: March 2023*, *supra* note 72.

98. Schwartzapfel et al., *supra* note 93.

99. See *infra* Part II.

adult, would require prosecution in a criminal court.”¹⁰⁰ The age of minority, or the age at which a child may fall under the juvenile court’s jurisdiction, varies from state to state.¹⁰¹ Solely because an adolescent commits an act, the juvenile court has jurisdiction.¹⁰² Juveniles are either held in juvenile detention centers, juvenile units within adult jails or police lockups, or secure or nonsecure shelter care facilities.¹⁰³

State juvenile detention centers are “total institutions,” which are “a place of confinement . . . where persons of a specific type live, following formalized life routine under the control and direction of a bureaucratic staff, and having limited contact with the rest of society.”¹⁰⁴ How an institution operates through its rituals, customs, rules, and laws, creates an inmates’ reliance on the institution such that they are likely unable to function outside of it.¹⁰⁵ Instead of rehabilitation, juvenile inmates have come to favor qualities like physical and mental toughness, self-sufficiency, exploitative nature, and loyalty to their group.¹⁰⁶ State systems do not foster an environment where a juvenile may address the behaviors or the root causes that may have led to the conduct that led them to prison.¹⁰⁷

All states allow juveniles to be transferred to adult courts, a practice widely condemned by juvenile justice experts.¹⁰⁸ Generally, states rely on one of four methods, or a combination of methods, for deciding when juveniles should be transferred to adult court.¹⁰⁹ The most

100. MAYS & WINFREE, *supra* note 20, at 3.

101. MAYS & WINFREE, *supra* note 20, at 141. The age of minority, here, refers to the minimum age in which a child must be to form the required mens rea to be held accountable for a crime. For a comprehensive list of ages of majority—the age where a juvenile can be prosecuted as an adult—by State, see *Age Matrix*, INTERSTATE COMM’N FOR JUVS., <https://www.juvenilecompact.org/age-matrix> (last updated Mar. 15, 2023).

102. MAYS & WINFREE, *supra* note 20, at 3.

103. *Id.* at 107.

104. *Id.* at 229.

105. *Id.*

106. *Id.* at 230. Usually, the groups which are favored form though prison gangs based on race, ethnicity, and politics. *Id.*

107. *Id.*

108. *Id.* at 230.

109. *Id.* at 143.

common is through judicial waiver,¹¹⁰ sometimes called a discretionary transfer,¹¹¹ which forty-six states use.¹¹² Under a judicial waiver, a judge determines the suitability of transferring the jurisdiction to an adult criminal court.¹¹³ The second method is via prosecutorial waiver, also known as a direct or mandatory file.¹¹⁴ Under a direct file, the prosecutor can decide to file in juvenile or adult court.¹¹⁵ The third method is known as either a legislative waiver, a statutory exception, or a presumptive transfer, where a statute excludes certain offenses from juvenile court, and that case is automatically filed in adult criminal court.¹¹⁶ The final method is the demand waiver, which allows juveniles or their parents to request that the case be transferred to adult court.¹¹⁷

As of 2019, thirty-five states had “once an adult, always an adult” statutes, which require juveniles previously tried as adults to be prosecuted as adults in all subsequent offenses.¹¹⁸ These transfer laws are primarily a product of the early-1990’s tough-on-crime approach,¹¹⁹ and disproportionately affect minority populations. In 2018, the likelihood of a Black youth transferring to adult criminal court was more than double that of their White counterpart.¹²⁰

Leaders in Louisiana have promised for decades to reform its incarceration centers, yet its children are still experiencing inhuman

110. *Id.*

111. *Id.*; *Judicially Waived Cases*, Youth.Gov, <https://youth.gov/youth-topics/juvenile-justice/judicially-waived-cases> (last visited Aug. 31, 2023).

112. MAYS & WINFREE, *supra* note 20, at 143.

113. *Id.* Most judges take into account offense type and age when deciding to grant judicial waiver. *Id.* Public safety and lack of amenability to treatment influences the judges’ decisions as well. *Id.*

114. *Id.* at 143-144; *Judicially Waived Cases*, *supra* note 111.

115. MAYS & WINFREE, *supra* note 20, at 144; *Judicially Waived Cases*, *supra* note 109. Under a prosecutorial waiver, there is concurrent jurisdiction over juveniles between both juvenile and adult criminal court. MAYS & WINFREE, *supra* note 20, at 144.

116. MAYS & WINFREE, *supra* note 20, at 144. The large number of States which allow legislative waiver usually include crimes such as murder and crimes against the person. *Id.*

117. *Id.* This is rarely seen.

118. Puzanchera, *supra* note 39, at 95.

119. *Id.* at 80, 98.

120. *Judicially Waived Cases*, *supra* note 111. For example, more than 80% of the children in Louisiana detention centers are Black.

conditions.¹²¹ In 2022, a fifteen-year-old incarcerated child received twenty-four hours of solitary confinement a day after being convicted of joyriding in a stolen car.¹²² He received neither an education nor substance abuse counseling, violating both federal education laws and court orders.¹²³ Although Louisiana considers solitary confinement for juveniles a last resort, most children, many of whom have serious mental illnesses, find themselves locked in their cells for up to twenty-three hours a day.¹²⁴ Guards shackled children with handcuffs and leg irons while they showered.¹²⁵ Children had their hands slammed in doors, were pepper sprayed, and hit on their knees with various instruments by guards.¹²⁶ The Center for Children's Law and Policy executive director blatantly called this "child abuse."¹²⁷ At one center in Louisiana, two teenagers committed suicide while in solitary confinement.¹²⁸ There is absolutely no excuse for incarcerated children to face these horrors.

In 2022, two former judges in Pennsylvania orchestrated a scheme to send children to for-profit jails in exchange for monetary kickbacks.¹²⁹ Dubbed the "kids-for-cash" scandal, the judges accepted over \$2.8 million in illegal payments for pushing a zero-tolerance policy, which yielded large numbers of children sent to for-profit institutions.¹³⁰ Children as young as eight years old received incarceration for crimes like jaywalking and petty theft.¹³¹ After

121. Schwartzapfel et al., *supra* note 93.

122. *Id.*

123. *Id.*

124. *Id.* As a result of these stories and reports coming out, Governor Edwards signed into law a bill which puts limits on juvenile solitary confinement in Louisiana to no more than eight hours a day. *Id.* However, the law leaves discretion to the incarceration center's staff, allowing them to leave the juvenile in isolation longer if they pose a physical threat to themselves or others. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Former Judges Who Sent Kids to Jail for Kickbacks Must Pay More Than \$200 Million*, *supra* note 92.

130. *Id.*

131. *Id.*

uncovering the scheme, the Pennsylvania Supreme Court threw out 4,000 convictions that involved more than 2,300 children.¹³²

In Wisconsin, children as young as fourteen received solitary confinement for twenty-two hours a day, and guards routinely sprayed juveniles in the face with bear mace.¹³³ In California, there were 102 allegations of juvenile officer misconduct between 2007 and 2010 in Los Angeles County *alone*.¹³⁴ In a 2022 lawsuit, many of the 70 victims said juvenile center staff threatened the victims with continuing sexual liaisons even after their release under the threat of being returned to detention centers.¹³⁵

Texas juvenile incarceration centers have a similar story. Children have reported using water bottles as toilets because detention officers did not release them from their cells.¹³⁶ The conditions have led nearly half of the juvenile prison population to be on suicide watch due to distress or as a method to get attention in their isolation.¹³⁷ Juvenile detention officers often face charges for sexually assaulting girls and using excessive violence while working at the juvenile centers.¹³⁸ Reform efforts have been unsuccessful thus far. A strong federal juvenile justice code would help curb egregious human rights violations such as these and ensure our incarcerated juveniles receive protection.

Stories like these are not few and far between.¹³⁹ Some states are beginning to change their flawed laws and policies. In 2019, seventy-

132. *Id.*

133. *J.J. v. Litscher*, *supra* note 2; Parker & Kempa, *supra* note 2.

134. Richard Winton, *70 Girls Sexually Assaulted in Juvenile Camps by Probation Employees, Lawsuits Allege*, L.A. TIMES (Aug. 19, 2022, 6:00 AM), <https://www.latimes.com/california/story/2022-08-19/70-girls-sexually-assaulted-in-juvenile-camps-suits-allege>.

135. *Id.*

136. McCullough, *supra* note 2.

137. *Id.*

138. *Id.*

139. To document all the recent, known atrocities which happen in each state would fill a paper in itself, and would even fill the content of a whole semester. This author chose the above stories to paint a vivid example of what happens nationwide, but the stories do not end there. For example, in California, at least eleven juvenile probation officers were convicted of crimes or disciplined for molesting or beating youth. *See* Winton, *supra* note 133. In 2020, a Maine lawsuit was settled for \$250,000 after a guard was accused of knocking out a juvenile's teeth by bashing his face into a metal bed frame and then refusing medical care to the minor. Judy Harrison, *Mother*

two bills in thirty-three states sought to reform their juvenile justice incarceration facilities.¹⁴⁰ In 2021, North Dakota overhauled their juvenile justice system for the first time since 1969, allowing youths access to services without them formally entering the system.¹⁴¹ Additionally, in 2021, six states increased the minimum age of their juvenile court's jurisdiction.¹⁴² Missouri changed its juvenile justice system to incorporate more education and therapy programs, leading to seventy percent of youth released from juvenile correction facilities not returning to the system.¹⁴³ However, the tough-on-crime approach still plagues most states' laws, which harms their juvenile population. Most alarmingly, Louisiana, Michigan, and Pennsylvania still allow JLWOP, accounting for two-thirds of nationwide JLWOP sentences.¹⁴⁴

Much of the reform came in response to public outcry after an incident surrounding six-year-old Kaia Rolle. In 2019, officers arrested Kaia at her school for kicking and punching educators while throwing a tantrum in her first-grade class.¹⁴⁵ Officers handcuffed the six-year-old using zip ties, placed her in the back of a police car, and took her

Who Said Guards Knocked Out Son's Teeth at Maine's Youth Prison Settles Lawsuit, BANGOR DAILY NEWS (Dec. 9, 2019), <https://www.bangordailynews.com/2019/12/09/news/mother-who-said-guards-knocked-out-sons-teeth-at-maines-youth-prison-settles-lawsuit/>. In 2020, staff at a Michigan boy's reform school were charged with manslaughter for improperly restraining a juvenile who subsequently died of restraint asphyxia. Franco LaTona & Victoria Traxler, *Employee Misconduct: The Abuse and Mistreatment of Juveniles in Lockup*, KIDS IMPRISONED (Aug. 21, 2020), <https://kidsimprisoned.news21.com/employee-abuse-kids-juvenile-detention/>.

140. Mark Holden, *It's Time to Rethink Juvenile Justice in America*, MORNING CONSULT (Feb. 12, 2020), <https://morningconsult.com/opinions/its-time-to-rethink-juvenile-justice-in-america/>.

141. H.B. 1035, 67th Leg. Assemb., Reg. Sess. (N.D. 2021); *Juvenile Justice 2021 Year-End Report*, NAT'L CONF. STATE LEGISLATURES, <https://www.ncsl.org/civil-and-criminal-justice/juvenile-justice-2021-year-end-report> (last updated Jan. 31, 2022).

142. *Juvenile Justice 2021 Year-End Report*, *supra* note 139. Connecticut, Delaware, Mississippi, New Hampshire, New York, and North Carolina all "made statutory changes increasing the minimum age of juvenile court jurisdiction." *Id.*

143. Holden, *supra* note 138.

144. *Id.*

145. Cheryl Corley, *In Some States, Your 6-Year-Old Child Can be Arrested. Advocates Want That Changed*, NPR (May 2, 2022, 5:55 PM), <https://www.npr.org/2022/05/02/1093313589/states-juvenile-minimum-age-arrested-advocates-change>.

mugshot.¹⁴⁶ Pictures of Kaia sitting handcuffed in the back of a police car went viral.¹⁴⁷ Florida responded by raising the minimum age eligible for arrest by only *one year* to the age of seven.¹⁴⁸

Public opinion shows people believe that young people can change, with seventy-eight percent of study participants believing that youth who commit crimes have the full capacity to change for the better.¹⁴⁹ Interestingly, one thing all party affiliations agree on is that youths should be treated differently than adults.¹⁵⁰ Furthermore, seventy-nine percent of Democrats, eighty percent of Independents, and seventy-one percent of Republicans believe the juvenile justice system should shift from punishment to rehabilitation.¹⁵¹ In 2021, a bipartisan sixty-two percent of Americans favored closing youth prisons altogether.¹⁵² Nevertheless, the states are not responding to public opinion nor enacting or implementing consistent or efficient changes.

146. *Id.* The officer who arrested Kaia Rolle has since been fired for his misconduct. Ashlyn Webb, ‘*It Was Horrific for Us*’: *Family of 6-Year-Old Girl Arrested Sues City of Orlando, Officers*, WFTV (Sept. 18, 2023, 7:17PM), <https://www.wftv.com/news/local/it-was-horrific-us-family-6-year-old-girl-arrested-sues-city-orlando-officers/33EP7YYULNEH7HAYM5WBMTV5LU/>; Andrea Ball et al., ‘*She Looks Like a Baby*’: *Why Do Kids as Young as 5 or 6 Still Get Arrested at Schools?*, CTR. FOR PUB. INTEGRITY (Feb. 10, 2022) <https://publicintegrity.org/education/criminalizing-kids/young-kids-arrested-at-schools/>.

147. Corley, *supra* note 143. In September 2023, Kaia Rolle’s parents sued the Orlando Police Department, among others involved in the incident, alleging Kaia’s civil rights were violated, that she was falsely arrested, and that the officers used excessive force. Webb, *supra* note 144.

148. C.S./H.B. 303, 2021 Judiciary Comm. Sess. (Fla. 2021), <https://www.flsenate.gov/Session/Bill/2021/303/Analyses/h0303.CRM.PDF>.

149. *Polling on Public Attitudes: Treatment of Youth in Trouble with the Law*, NAT’L JUV. JUST. NETWORK (Oct. 2016), <https://www.njjn.org/our-work/polling-on-public-attitudes-treatment-of-youth-in-trouble-with-the-law> (citing *Memo: Poll Results on Youth Justice Reform*, Gerstein, Bocian, Agne Strategies (Feb. 1, 2016), <https://njjn.org/uploads/digital-library/Youth-First-National-Poll-Memo-Feb-2016.pdf>).

150. *Id.*

151. *Id.*; *Memo: New Poll Results on Youth Justice Reform*, GBAO (Feb. 18, 2021), <https://backend.nokidsinprison.org/wp-content/uploads/2021/02/Youth-First-National-Poll-Memo-Feb-2021-Final-4.pdf>.

152. *New Poll Results on Youth Justice Reform*, *supra* note 151. The alternative view argues juveniles who committed crimes must be incarcerated to protect society and keep the streets “clean.” *Id.* at 5. Those who take this side argue juveniles are unlikely to change and that rehabilitation programs will cost taxpayers too much money. *Id.* at 5-6.

Juvenile laws throughout the States are inconsistent and vague. Currently, the systems parallel society in ways, divided by class and racial prejudice.¹⁵³ Uncertainties, unfair standards, and questions riddle the systems. Ultimately, the reliance on each state to regulate its juvenile justice system fails children and continues to violate their rights.

How can one country have such starkly different approaches to treating its children—with some states being in direct opposition to their neighbors only a few miles apart? In some cases, it lies within the political majority of each State. In others, it comes down to localized funding. There are many possible contributing factors informing these differences. The bottom line is that a country that praises itself as a world superpower has no excuse for treating its children with such opposing policies regarding incarceration, abuse, and blatant disrespect for a child's dignity. Ultimately, there is no strong, overarching federal juvenile justice code in the U.S. that regulates the treatment of children and teenagers while incarcerated under state law. Instead, a juvenile is either indicted in federal delinquency proceedings, left to the state's policy, or transferred to adult court, where criminal laws and policies apply.¹⁵⁴

II. THE EMERGENCE OF INTERNATIONAL STANDARDS FOR JUVENILE JUSTICE

The implementation of the first formal juvenile justice system in the U.S. began a movement throughout the world. In 1908, Great Britain codified The Children Act, which created a juvenile justice system separate from the adult system.¹⁵⁵ The Children Act granted the court jurisdiction over children ages ten through sixteen.¹⁵⁶ Other countries worldwide followed the Chicago Juvenile Court of Law's

153. See generally Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENT'G PROJECT (Oct. 13, 2021), <https://www.sentencingproject.org/reports/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons-the-sentencing-project/>; *Deep Divisions In Americans' Views of Nation's Racial History—and How To Address It*, PEW RSCH. CTR. (Aug. 12, 2021), <https://www.pewresearch.org/politics/2021/08/12/deep-divisions-in-americans-views-of-nations-racial-history-and-how-to-address-it/>.

154. Doyle, *supra* note 58.

155. Children Act 1908, 8 Edw. 7 c. 67 (UK).

156. *Id.*

lead and modeled its children's courts around Chicago's, with differences that reflected their respective histories, cultures, and values.¹⁵⁷

Juvenile justice has become an important and highly debated aspect of the global justice system.¹⁵⁸ International governing bodies have developed several legal frameworks, rules, and guidelines to protect young people's rights.¹⁵⁹ These guidelines ensure that the treatment of youths complies with international human rights standards. Overall, these standards ensure convicted children are treated with dignity and respect and their treatment focuses on reintegration into society. The most notable international guidelines that affect incarcerated children are the United Nations Standard Rules for the Administration of Juvenile Justice,¹⁶⁰ the United Nations Convention on the Right of a

157. See *Britannica Juvenile Justice*, *supra* note 37. Canada and Great Britain in 1908; France in 1912; Russia in 1918; Poland in 1919; Japan in 1922; Germany in 1923. *Id.*

158. The debates began at the onset of juvenile justice, questioning whether kids should be tried in separate courts from adults. As the juvenile justice system has evolved, debates have stemmed into various policy, political, and moral arguments. See generally *Race and Juvenile Justice*, NAT'L ASS'N CRIM. DEF. LAW. (Nov. 29, 2022), <https://www.nacdl.org/Content/Race-and-Juvenile-Justice> (discussing racial disparity in the juvenile justice system); Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, SENT'G PROJECT (March 1, 2023), <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/> (arguing incarceration of youth undermines public safety, harms a juvenile's health, and impedes on their success); Danielle Petretta, *Juveniles Make Bad Decisions, but Are Not Adults & Law Continues to Account for This Difference: The Supreme Court's Decision to Apply Miller v. Alabama Retroactively Will Have a Significant Impact on Many Decades of Reform and Current Debate Around Juvenile Sentencing*, 37 PACE L. REV. 765 (2017) (discussing the effect of *Miller v. Alabama*'s holding that juveniles are not adults).

159. These standards were developed within the United Nations system, which acts as an international organization to promote international law. International law is broader than solely the United Nations and comprises many treaties and organizations. Here, the United Nations standards discussed were chosen because of how widely ratified they are and their overall influence on Member States. UNICEF, 15 YEARS OF JUVENILE JUSTICE REFORMS IN EUROPE AND CENTRAL ASIA (n.d.), https://www.unicef.org/eca/sites/unicef.org.eca/files/2018-11/Key%20Results%20in%20Juvenile%20Justice%20in%20Europe%20and%20Central%20Asia_0.pdf [hereinafter 15 YEARS OF JUVENILE JUSTICE REFORMS].

160. Beijing Rules, *supra* note 10.

Child,¹⁶¹ the United Nations Guidelines for the Prevention of Juvenile Delinquency,¹⁶² and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.¹⁶³

A. *The United Nations Standard Rules for the Administration of Juvenile Justice*

International communities started discussing children's rights shortly after countries independently established juvenile justice systems.¹⁶⁴ The League of Nations in 1924 and the United Nations in 1959 independently adopted declarations on children's rights.¹⁶⁵ Subsequently, the drafters expressly wrote provisions into human rights treaties and humanitarian law treaties recognizing juvenile rights.¹⁶⁶ The most notable first set of rules are the United Nations Standard Rules for the Administration of Juvenile Justice, commonly known as the Beijing Rules.¹⁶⁷ In 1985, the sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders laid out basic principles that it felt should be developed to protect the fundamental rights of offending juveniles.¹⁶⁸ The Beijing Rules acted as *standard, minimum* guidelines, which did not bind States.¹⁶⁹ However, the United Nations invited all Member States to comply with the rules and submit data in compliance with the Beijing Rules.¹⁷⁰

The Beijing Rules outlined the protection of children by detailing basic principles surrounding the fundamental rights of adolescents.¹⁷¹ The Rules offered a thoughtful consideration of the best practices within a juvenile justice system while also leaving broad discretion to

161. UNCRC, *supra* note 11.

162. Riyadh Guidelines, *supra* note 12.

163. Havana Rules, *supra* note 13.

164. *Britannica Juvenile Justice*, *supra* note 37.

165. *Background to the Convention*, U.N. HUM. RTS. OFF. HIGH COMM'R, <https://www.ohchr.org/en/treaty-bodies/crc/background-convention> (last visited Mar. 13, 2023).

166. *Id.*

167. Beijing Rules, *supra* note 10.

168. *Id.*

169. *Id.* r. 2 cmt.

170. *Id.* r. 30.

171. *Id.* r. 1.

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States to develop their systems and procedures.¹⁷² The Rules placed incredible importance on the welfare of the child.¹⁷³ Notably, the Beijing Rules state that a juvenile must have full access to well-funded programs that allow them to receive positive affirmations, ultimately leading to a meaningful life within their community.¹⁷⁴ The Rules recommend that States,

[D]evelop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behavior, will foster a process of personal development and education that is as free from crime and delinquency as possible.¹⁷⁵

The Rules dictate that States should implement proportionality, where the juvenile justice system ensures any criminal punishment is proportional to the circumstances of the offender's crime.¹⁷⁶ Proportionality dictates that a court must not punish a youth offender solely for punitive purposes; the court must consider the gravity of the offense related to the offender's circumstances.¹⁷⁷ A child's social status, family situation, and the harm caused by the alleged offense are all factors the Beijing Rules outlined for a court to consider.¹⁷⁸ These suggested factors require juvenile courts to respond individually, encouraging new and innovative court reactions based on every child's individualized needs. The Beijing Rules encourage States to provide juveniles the same procedural safeguards within criminal proceedings as adults—including the right to remain silent, the right to counsel, the right to appeal, the right to a presumption of innocence, and the right to the presence of a parent or guardian.¹⁷⁹

172. *Id.* r. 1.5.

173. *E.g., id.* r. 5 cmt. ("Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile.").

174. *Id.* r. 1.3.

175. *Id.* r. 1.2.

176. *Id.* r. 5.

177. *Id.* r. 5 cmt.

178. *Id.*

179. *Id.* r. 7.

B. The United Nations Convention on the Right of a Child

In 1979, the International Year of the Child, the Government of Poland submitted the first draft of the United Nations Convention on the Rights of a Child (“UNCRC”) to the U.N.¹⁸⁰ While children received some protections within international treaties, such as the Beijing Rules, countries lobbied for a binding statement on children’s rights.¹⁸¹ The UNCRC is a *legally binding* international agreement that outlines children’s civil, political, economic, social, and cultural rights regardless of race, religion, or abilities.¹⁸² The UNCRC is the core human rights treaty setting out the rights of a child.¹⁸³

On November 20, 1989, the United Nations General Assembly unanimously adopted the UNCRC.¹⁸⁴ Although unanimously adopted by the Assembly, the Convention still had to be ratified within each State’s respective governmental body to be legally bound by its provisions.¹⁸⁵ By 1990, less than a year after the adoption of the UNCRC, twenty States ratified the Convention, legally entering it into force.¹⁸⁶ The States pledged to protect children from socioeconomic and sexual exploitation, violence, and abuse by advancing a child’s right to education, healthcare, and a decent standard of living.¹⁸⁷

Only a month after the first twenty States ratified the UNCRC, the U.N. Headquarters in New York City hosted the World Summit for Children with the United Nations International Children’s Emergency Fund (“UNICEF”).¹⁸⁸ As the largest gathering of world leaders to that date, the World Summit adopted a Declaration on the Survival, Protection, and Development of Children and a Plan of Action for

180. *Background to the Convention*, *supra* note 163.

181. *Id.*

182. UNCRC, *supra* note 11, art. 2, § 1.

183. *Id.* pmb1.

184. *Background to the Convention*, *supra* note 163.

185. *Id.*

186. *Id.*

187. *25th Anniversary of the Convention on the Rights of the Child*, HUM. RTS. WATCH (Nov. 17, 2014, 11:50 AM), <https://www.hrw.org/news/2014/11/17/25th-anniversary-convention-rights-child>.

188. *World Summit for Children, 29-30 September 1990, New York, United States*, U.N., <https://www.un.org/en/conferences/children/newyork1990> (last visited Mar. 13, 2023).

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implementing the UNCRC.¹⁸⁹ By the end of 1990, fifty-seven States ratified the UNCRC.¹⁹⁰ The UNCRC is the fastest and most widely ratified human rights treaty in history.¹⁹¹ As of 2023, over one hundred ninety-six countries have ratified the UNCRC; the U.S. was the only country electing not to ratify the Convention.¹⁹²

The UNCRC defines a child as anyone under the age of eighteen.¹⁹³ The UNCRC contains four general principles:¹⁹⁴ (1) nondiscrimination;¹⁹⁵ (2) the best interests of the child;¹⁹⁶ (3) a child's right to life, survival, and development;¹⁹⁷ and (4) the views of a child.¹⁹⁸ These principles make it clear that a child's best interest must be the State's primary consideration for decisions regarding children, irrespective of immutable characteristics and political affiliation.¹⁹⁹ These principles apply to decisions in a court of law, administrative authority, legislative bodies, and social welfare institutions.²⁰⁰ The State must ensure "to the maximum extent possible" that the child has a right to life, survival, and

189. *Id.*

190. *Background to the Convention*, *supra* note 163.

191. *25th Anniversary of the Convention on the Rights of the Child*, *supra* note 185.

192. *Frequently Asked Questions on the Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org/child-rights-convention/frequently-asked-questions> (last viewed Oct. 8, 2023); *Chapter IV: 11. Convention on the Rights of the Child*, U.N. Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4 (Oct. 8, 2023, 9:15:32 AM), [hereinafter *11. Convention on the Rights of the Child*].

193. UNCRC, *supra* note 11, art. 1.

194. In addition to the four general principles, the Convention has three optional protocols. G.A. Res. 54/263, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* (May 25, 2000); G.A. Res. 54/263, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution* (May 25, 2000); G.A. Res. 66/138, *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* (Dec. 19, 2011) (outlining the filing of complaints under the convention).

195. UNCRC, *supra* note 11, art. 2.

196. *Id.* art. 3, § 1.

197. *Id.* art. 6; *Background to the Convention*, *supra* note 163.

198. UNCRC, *supra* note 11, art. 12.

199. *Id.* art. 2-3.

200. *Id.* art. 3.

development that includes physical health, mental health, emotional health, cognitive dissonance, and social and cultural development.²⁰¹

Notably, the UNCRC outlines rules for children in detention and those who break the law.²⁰² Article 37 articulates that States shall ensure that they subject no child to torture or cruel, inhuman, or degrading treatment or punishment.²⁰³ This includes, but is not limited to, capital punishment and life imprisonment without the possibility of release.²⁰⁴ Article 37 explicitly states that detention and imprisonment should only be used as a measure of last resort and for the shortest appropriate period.²⁰⁵ Any child subjected to imprisonment must be met with humanity and inherent dignity while accounting for the child's individualized needs and age.²⁰⁶

The U.S. has not ratified the UNCRC.²⁰⁷ Some politicians argue that existing U.S. Laws comply with the Convention, so there is no need to ratify it.²⁰⁸ However, the U.S. violates the UNCRC in instrumental ways. For example, many U.S. States still allow convicted juveniles, when tried as adults, to be sentenced to JLWOP, which directly violates the UNCRC.²⁰⁹

The UNCRC is unparalleled in its subject matter and acceptance. Indeed, there is only one country which has not ratified it. The failure to ratify the UNCRC calls into question this country's values—values claiming to elevate liberty and justice for all.

201. *Id.* art. 6; *Background to the Convention*, *supra* note 163; UNCRC, *supra* note 11, art. 6.

202. *Id.* § 37.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Convention on the Rights of the Child*, *supra* note 190; Sarah Mehta, *There's Only One Country that Hasn't Ratified the Convention on Children's Rights: US* (Nov. 20, 2015), <https://www.aclu.org/news/human-rights/theres-only-one-country-hasnt-ratified-convention-childrens>.

208. *25th Anniversary of the Convention on the Rights of the Child*, *supra* note 185.

209. *Juvenile Life Without Parole (JLWOP)*, *supra* note 86. Other examples include the transfer of juveniles to criminal court and not explicitly outlawing the death penalty. *See supra* Part I(B).

C. The United Nations Guidelines for the Prevention of Juvenile Delinquency and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty

The United Nations Guidelines for the Prevention of Juvenile Delinquency, known as the Riyadh Guidelines, were authored and implemented in the 1990 U.N. Plenary Meeting.²¹⁰ The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, commonly known as the Havana Rules, were drafted simultaneously in the 1990 United Nations General Assembly.²¹¹ The Havana Rules and Riyadh Guidelines came to light only a year after the implementation of UNCRC and acted as further standards for States to follow regarding juvenile detention.²¹²

The Riyadh Guidelines (“Guidelines”) offer States guidance on how to avoid the incarceration of juveniles altogether through a community-based approach.²¹³ Although the Guidelines are not legally binding on States, they emphasize the core elements of prevention programs that need addressing and the need for a holistic approach to juvenile justice.²¹⁴ However, applying the Guidelines depends on each country’s specific laws. The Guidelines recognize that society benefits from investing in its youth through community-based programs related to crime prevention, which focus on the juvenile before they commit any crime.²¹⁵ The Riyadh Guidelines emphasize the need to avoid penalization or criminalization.²¹⁶ Positive socialization through community-based services instead of formal institutionalization is encouraged.²¹⁷ Most notably, the Guidelines state that labeling a child as “deviant, delinquent, or pre-delinquent” contributes to a child’s undesirable mental health.²¹⁸

210. Riyadh Guidelines, *supra* note 12.

211. Havana Rules, *supra* note 13.

212. *25th Anniversary of the Convention on the Rights of the Child*, *supra* note 185.

213. Riyadh Guidelines, *supra* note 12, § 5.

214. *Id.* §§ III-IV.

215. *See id.* § I, paras. 1-2.

216. *See id.* § V.

217. *Id.* §§ V-VI.

218. *Id.* § I, para. 5(f).

The Riyadh Guidelines implore governments to place the prevention of juvenile delinquency at “high priority.”²¹⁹ Mirroring the UNCRC, the Guidelines state that a State’s social policy must make institutionalization of a juvenile a “measure of last resort and for the minimum necessary period, and the best interest of the young person should be of paramount importance.”²²⁰ An instance where a child should be institutionalized is “when a serious physical or psychological danger to the child or young person has manifested itself in his or her own behavior” and cannot rectify their behavior through community services.²²¹ The institutionalization program should be based on reliable scientific research findings and provide full-time education.²²²

A State can achieve the goals of the Guidelines through specific laws and procedures that prevent victimization, abuse, exploitation, and use of criminal methods—instead promoting the rights and well-being of juveniles.²²³ In conjunction, States must train law enforcement to adequately respond to children in a manner which respects their development and rights.²²⁴

The Riyadh Guidelines suggest an ombudsperson should oversee the implementation of the Havana Rules should a child be formally incarcerated.²²⁵ The Havana Rules articulate the steps a State should take regarding already incarcerated juveniles.²²⁶ If incarceration is necessary, the detention center’s main goal should be to provide treatment designed to assist the juvenile’s return to society, family life, education, or employment after release.²²⁷ The Havana Rules understand that a child is a highly vulnerable individual; thus, they need special attention and protection.²²⁸

219. *Id.* § V, para. 45.

220. *Id.* § I, para. 5.

221. *Id.* § V, para. 46. The other situations in which formal intervention into a child’s life is justified include where a child has suffered harm, abuse, neglect, abandonment, or exploitation inflicted by parents or guardians. *Id.* When formal intervention is acted upon due to those reasons, a child is not incarcerated, but often put into foster care, a juvenile home, or into care of family. *Id.* § IV, para. 14.

222. *Id.* § V, paras. 47-48.

223. *Id.* § VI, paras. 52-53.

224. *Id.* § VI, para. 58.

225. *Id.* § VI, para. 57.

226. Havana Rules, *supra* note 13.

227. *Id.* § IV(N), r. 80.

228. *See id.* § IV.

The Havana Rules begin by noting that if a State incarcerates a child, the detention facility should perform an intake interview to outline the psychological and social factors relevant to the specific level of care the child needs.²²⁹ This information then gets relayed to a trained faculty member with an individualized treatment objective and time frame.²³⁰ If incarceration is absolutely necessary, the State should place a child in a facility that guarantees meaningful activities and programs that prepare youths for reintroduction into society and promote the youth's health, self-respect, and a sense of responsibility.²³¹ While incarcerated, the Havana Rules note that facilities should provide juveniles with privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical activity, and leisure time activities.²³² Furthermore, juveniles should be allowed to keep personal effects and wear their own clothing.²³³

The Rules suggest open detention facilities—meaning places with little to no security—should be allowed for juveniles.²³⁴ Furthermore, detention facilities should hold the smallest capacity of juveniles possible to facilitate easy access to resources.²³⁵ While under arrest or awaiting trial, the child should be allowed to work or continue education while incarcerated.²³⁶ Additionally, facilities should give juveniles materials for leisure and recreation.²³⁷

The Havana Rules stress that using restraint or force should be strictly prohibited²³⁸ unless done to prevent the individual from inflicting self-injury, injury to others, or serious destruction of property.²³⁹ The staff of juvenile incarceration facilities should never carry weapons.²⁴⁰ Moreover, all treatment and disciplinary measures

229. *Id.* § IV(C), r. 18(c).

230. *Id.*

231. *Id.* § II, r. 12.

232. *Id.* § IV(D), r. 32.

233. *Id.* § IV(D), r. 35-36.

234. *Id.* § IV(C), r. 30.

235. *Id.*

236. *Id.* § III, r. 18(b).

237. *Id.* § III, r. 18(c).

238. *Id.* § IV(K), r. 63.

239. *Id.* § IV(K), r. 64.

240. *Id.* § IV(K), r. 65.

should not be cruel, inhuman, or degrading.²⁴¹ These measures include corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that jeopardizes the child's physical or mental health.²⁴²

The International Standards provide an exhaustive and comprehensive analysis for addressing youth in the justice system, especially when considering juvenile incarceration policies. These principles aim to co-exist with each other and the Member States' juvenile laws, ensuring each country's youth get treated with the utmost dignity and respect. The States within the U.N. have taken great strides to implement the guidelines and improve the treatment of their children. However, the U.S. is a different story; often preaching a rehabilitative system, the U.S. resorts to a punitive approach.

III. CHANGE IS NECESSARY FOR THE PROTECTION OF JUVENILE RIGHTS

The American criminal justice system is still “at its most punishing point in history” despite “a small decline in incarceration rates over the last decade.”²⁴³ By allowing a child's dignity and human rights to become reliant on political argument, funding, and systematic failure, it is clear the U.S. is failing its children, and failing to implement the minimum international standards. While a systematic overhaul of the juvenile justice system and criminal justice reform would take years to implement, there are immediate steps the U.S. can take to ensure a juvenile's essential rights. While this article's suggestions for a robust, comprehensive federal juvenile justice code is non-exhaustive, it serves as a stepping-stone for codification. The suggestions provide broad outlines that require direct, express language within a code.

The Beijing Rules, UNCRC, Havana Rules, and Riyadh Guidelines (together referred to as the “International Standards”) offer an exhaustive list of what the *minimum* standards for incarcerated juveniles should be. The International Standards must be looked to as the minimum inspirations to excel past when the U.S. adopts a federal

241. *Id.* § IV(L), r. 67.

242. *Id.*

243. Jeremy Travis & Bruce Western, *The Era of Punitive Excess*, BRENNAN CTR. FOR JUST. (Apr. 13, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/era-punitive-excess>.

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juvenile justice code. For example, the proposed code must exceed the standards in establishing juvenile court jurisdiction beyond the International Standards' eighteen years of age. While the U.S. contributed significantly to the UNCRC drafting,²⁴⁴ the U.S. has not yet ratified it.²⁴⁵

Like the International Standards, the UNCRC acts as a *minimum* guideline for juvenile justice, with the notion that ratifying countries would exceed the guidelines. In a study of U.S. compliance conducted by the Human Rights Watch, New Jersey adheres the closest to the UNCRC, having incorporated approximately seventy-four percent of the Convention.²⁴⁶ Compare that to the worst complying state, Mississippi, following only approximately twenty percent of the UNCRC.²⁴⁷

Less than five percent of the world's population is in the U.S., but twenty percent of the world's incarcerated people are in the United States.²⁴⁸ To be clear, the U.S. not only has the highest incarceration rate in the world, but every U.S. state incarcerates more people per capita than almost any independent democracy in the world.²⁴⁹ It is imperative that the U.S. not only meet the standards outlined in the UNCRC and the International Standards but it should exceed the minimum provisions they set forth. Here, even the best U.S. state fails

244. Presidents Ronald Regan and George H.W. Bush proposed many of the UNCRC's provisions. Arjun Sethi, *US Joins Somalia and South Sudan in Failing to Support Child Rights*, ACLU (Nov. 20, 2014), <https://wp.api.aclu.org/news/speakeasy/us-joins-somalia-and-south-sudan-failing-support-child-rights>. Further, American policy leaders and psychologists provided input on the UNCRC. *How Do U.S. States Measure Up*, *supra* note 4.

245. *How Do U.S. States Measure Up*, *supra* note 4.

246. *Id.*

247. *Id.*

248. Peter Wagner & Wanda Bertram, "What Percent of the U.S. Is Incarcerated?" (*And Other Ways to Measure Mass Incarceration*), PRISON POL'Y INITIATIVE (Jan. 16, 2020), <https://www.prisonpolicy.org/blog/2020/01/16/percent-incarcerated/#:~:text=Nearly%20one%20out%20of%20every,in%20a%20prison%20or%20jail.&text=We%27re%20often%20asked%20what,state%20prison%20or%20local%20jail>.

249. Emily Widra & Tiana Herring, *States of Incarceration: The Global Context 2021*, PRISON POL'Y INITIATIVE (Sept. 2021), <https://www.prisonpolicy.org/global/2021.html>. Even in states with progressive laws like California that yield incarceration rates below the U.S. average, individuals are locked up at more than double the rates of many international allies. *Id.*

to do this. The U.S. must not only consider these guidelines as its baseline when drafting a national code but exceed these guidelines.

A. The United States Must Implement National Code Instead of Relying on Insufficient Localized Legislation

The U.S. should not allow its children's future to rest on whichever immutable location they are domiciled. Children in states that have made efforts to establish a basic legal framework protecting juvenile rights have the opportunity for rehabilitation—states give them tools to live a life free from the system solely because they had the pleasure of being born in a state whose leaders implemented progressive legislation.²⁵⁰ However, the overwhelming majority of the U.S.—forty-two states, including traditionally “blue” or “liberal states”—lead children down a path of constant punitive punishment simply because of the state's ever-daunting “tough-on-crime” approach.²⁵¹ States have proven that being left to their own legislation leads to gross disrespect for a child's dignity.

The federal government must immediately draft a robust juvenile justice code requiring a rehabilitative focus. However, to do so, Congress must have the power to enact the legislation, either expressly or impliedly, within the limits of the Tenth Amendment of the U.S. Constitution.²⁵² The anti-commandeering doctrine, located within the Tenth Amendment, notes that the federal government cannot command the States to administer federal laws if they are within the scope of the Tenth Amendment.²⁵³

250. 2020 *State Ratings Report*, *supra* note 7, at 3.

251. *Id.* (“Our findings reveal that the overwhelming majority of the nation – 42 states – have made minimal to no efforts to create a legal framework to protect the human rights of children in the justice system.”)

252. See Jessica Bulman-Pozen, *Fair-Weather Federalism: Strategic Uses of the 10th Amendment*, BRENNAN CTR. FOR JUST. (July 5, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/fair-weather-federalism-strategic-uses-10th-amendment>. The Tenth Amendment states, “The power not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people.” U.S. CONST. amend X.

253. Bulman-Pozen, *supra* note 252.

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As of publication, this anti-commandeering doctrine was argued most recently in *Haaland v. Brackeen*.²⁵⁴ In *Brackeen*, petitioners argued the Indian Child Welfare Act²⁵⁵ violated the anti-commandeering doctrine because the Act commanded states and private parties to implement federal law.²⁵⁶ The Supreme Court of the United States disagreed, holding the Act was within Congress's power and did not violate the anti-commandeering doctrine.²⁵⁷ Cities that do not want to enforce federal immigration law and those that see to shield a state's legalization of marijuana in light of the federal Controlled Substances Act are further examples some argue should invoke the Tenth Amendment.²⁵⁸ However, broad legislation that applies evenhandedly does not implicate the Tenth Amendment.²⁵⁹ A statute that applies to both public and private parties and not exclusively to the states does not implicate the Tenth Amendment's anti-commandeering doctrine.²⁶⁰

Therefore, Congress possesses the power to enact this code under the U.S. Constitution.²⁶¹ As one of the enumerated powers, the Necessary and Proper Clause allows federal legislative authority to enact laws that are convenient, useful, or conducive to the authority's exercise.²⁶² The Supreme Court expanded the federal government's power to enact legislation relating to criminal law in *McCulloch v. Maryland* and *United States v. Comstock*.²⁶³

254. *Haaland v. Brackeen*, 143 S. Ct. 1609 (2023) (in a petition against the Indian Child Welfare Act, the Supreme Court ruled an overarching federal statute commanding the states and private parties did not violate the Tenth Amendment's anti-commandeering principle).

255. Author transcribes the original name of this Act for clarity. However, recognizing the best practice is to ask an individual how they prefer to be addressed, the United States continued use of the term "Indian" is often a painful reminder of the harsh racism Indigenous peoples faced and continue to face. Courts have recognized this issue, and even so, sadly, continue to use this term. *See In re S.S.*, 90 Cal. App. 5th 694, 696 (2023).

256. *Haaland*, 143 S. Ct. at 1622-23.

257. *Id.*

258. *Bulman-Pozen*, *supra* note 252.

259. *Haaland*, 143 S. Ct. at 1633.

260. *Id.* at 1632-33.

261. *See U.S. v. Comstock*, 560 U.S. 126, 133-34 (2010).

262. *Id.* at 133 ("The Necessary and Proper Clause grants Congress broad authority to enact federal legislation.").

263. *Id.* (The Necessary and Proper Clause, among other things, grants Congress the authority to engage in laws governing prisons and prisons while in the

In addition to the 10th Amendment hurdle, another argument against enacting a federal juvenile justice code is the funding. However, funding is not truly a hurdle in enforcing a federal juvenile justice code. The U.S. government spends billions annually to fund state and local criminal justice agencies.²⁶⁴ The Justice Department alone distributes more than five billion dollars annually in federal grants to State and local governments.²⁶⁵ States receive millions more from the Department of Homeland Security and the Department of Defense.²⁶⁶ Therefore, funding a new code is not a hurdle.

A federal Juvenile Justice Reform Act can be likened to the Violence Against Women Act and the Indian Child Welfare Act.²⁶⁷ Even if a national juvenile justice code fails to pass the legislature, the U.S. must publish the standards to guide states. This approach is similar to the Uniform Commercial Code, from which many states have adopted almost identical variations.²⁶⁸

Most importantly, the new federal code must emphasize the shift from a punitive justice system to a truly rehabilitative system. Not only will this shift reduce juvenile prison incarceration rates, but it will also form a better society.²⁶⁹ A rehabilitative system will decrease re-incarceration rates and encourage successful reintegration into

course of carrying into execution the enumerated powers vested by the Constitution.); *M'Culloch v. Maryland*, 17 U.S. 316, 421 (1819) (“Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.”).

264. Lauren-Brooke Eisen, *The Federal Funding that Fuels Mass Incarceration*, BRENNAN CTR. FOR JUST. (June 7, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/federal-funding-fuels-mass-incarceration>.

265. *Id.*

266. *Id.*

267. In the Violence Against Women Act, the federal government established a mechanism that incentivized and rewarded States for sending individuals to prison for prolonged periods, expanding prison capacity, and making these grants dependent on a State's participation. *Id.*

268. *See generally* U.C.C. Gen. Comment (AM. L. INST. & UNIF. LAW COMM'N). The Uniform Commercial Code acknowledges Congress's lack of authority to enact related legislation but gives consistency in authoring evenhanded standards.

269. David Newton, *Restorative Justice and Youthful Offenders*, FBI LAW ENF'T BULL. (Oct. 6, 2016), <https://leb.fbi.gov/articles/featured-articles/restorative-justice-and-youthful-offenders>.

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society, ultimately benefiting the criminal justice system.²⁷⁰ Additionally, the federal code must include unambiguous definitions to avoid differences in interpretation and implementation across jurisdictions.²⁷¹

Eliminating the ambiguity around the juvenile system would also rectify the loopholes created by the jurisprudence of the U.S. Supreme Court. The Court did not outlaw the death penalty for juveniles until 2005 in *Roper v. Simmons*.²⁷² In contrast, the International Standards expressly outlawed the death penalty via the Beijing Rules in 1985.²⁷³ It took the U.S. twenty years to adhere to the International Standards. Notably, legislation did not change this; Supreme Court precedent did. That precedent can be easily overturned by filing a new lawsuit or enacting contradicting legislation.

There are over 48,000 children incarcerated across the U.S., with one in ten held in an adult facility.²⁷⁴ While the number of children in the juvenile justice system is down by almost fifty percent since 2004, 43,580 children remained in an incarceration facility on any night in 2017,²⁷⁵ and 633 children resided in adult prisons on any given night in 2019.²⁷⁶

The federal juvenile justice code must accompany the ratification of the UNCRC. Despite contrary arguments surrounding UNCRC ratification, the U.S. is not close to meeting the minimum standards set forth in *any* of the International Standards.²⁷⁷ The U.S. needs clarity to expel all ambiguity whether their argument that the U.S. does not need

270. *Id.*

271. A Law should be interpreted by its plain meaning wherever possible and every word within a statute should be given its due significance. *Russello v. United States*, 464 U.S. 16, 23 (1983). *See also* *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972) (“[I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law permissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.”).

272. *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

273. *See supra* Part II.

274. Holden, *supra* note 140.

275. *The State of America’s Children 2021: Youth Justice*, *supra* note 96.

276. *Id.*

277. *How Do U.S. States Measure Up*, *supra* note 4.

to ratify the Convention because it already adheres to the UNCRC standards holds weight.²⁷⁸ The ratification of the UNCRC would simply provide a baseline for the U.S. states by showing its dedication to upholding minor's rights. The federal code, however, should exceed the UNCRC's standards. The fact that so many countries have ratified and implemented the UNCRC ideals into practice shows that the U.S. not only has the capacity for change but should be able to excel past the bounds of the International Standards. Furthermore, accepting the UNCRC would give credibility to the U.S. in the international arena.²⁷⁹

A new juvenile justice code must include a uniform minimum and maximum age for criminal responsibility and emphasize imprisonment as a last resort through the use of individualism and proportionality requirements. It should also set standards for the staff employed by juvenile justice detention centers, and criminalize a facility's use of solitary confinement.²⁸⁰

B. Minimum and Maximum Age of Criminal Responsibility

Federal code must address a minimum and maximum age of responsibility for juveniles. The law must recognize that children below the age of fifteen are incapable of forming mens rea. Stories in the news continue to depict children younger than fifteen as monsters, completely ignoring the child's dignity.²⁸¹ American children as young as twelve appear on front page news—pictured in handcuffs, completely shirtless, flanked by police officers boasting that the child may be tried as an adult.²⁸² This treatment of our youth is unacceptable; firm age guidelines can help rectify it.²⁸³

278. LUISIA BLANCHFIELD, CONG. RSCH. SERV., R40484, THE UNITED NATIONS CONVENTION ON THE RIGHTS OF A CHILD 7 (2015), <https://crsreports.congress.gov/product/pdf/R/R40484/25#:~:text=Opponents%20argue%20that%20ratification%20would,educate%20or%20discipline%20their%20children>.

279. *Id.* at 16.

280. *See infra* Parts III(A)-(C).

281. *See, e.g.,* Selim Algar, *Babyfaced 12-Year-Old Charged in Florida Triple Murder Led Cuffed to Jail*, N.Y. POST (Apr. 7, 2023), <https://nypost.com/2023/04/07/babyfaced-12-year-old-accused-of-florida-triple-murder-led-cuffed-to-jail/>.

282. *Id.*

283. *Raising the Minimum Age for Prosecuting Children*, NAT'L JUV. JUST. NETWORK, <https://www.njjn.org/our-work/raising-the-minimum-age-for-prosecuting-children> (last viewed Oct. 9, 2023).

In the U.S., more than 30,000 children under the age of *twelve* are referred to juvenile court each year.²⁸⁴ No state meets the minimum age of juvenile jurisdiction set forth by International Standards, with only five States setting the minimum age higher than ten years old.²⁸⁵ Appellate courts agree that federal legislation does not clearly articulate what should happen to a juvenile whose alleged crime spans past their eighteenth birthday.²⁸⁶ With an evident lack of uniformity and standards, the U.S. is violating International Standards for the minimum age of juvenile jurisdiction.

The International Standards recognize that children below the age of fourteen should not be held responsible for a crime within the juvenile or criminal justice systems.²⁸⁷ The new U.S. Code must follow suit, raising the minimum age to fifteen years old. Studies have shown that children are most vulnerable and crime-prone between the ages of fifteen and twenty-five.²⁸⁸ The Governor of Connecticut visited a foreign juvenile prison that exceeded the International Standards, which influenced him to introduce legislation to treat youth between the ages of eighteen and twenty as juveniles.²⁸⁹

In addition to the minimum age, the U.S. must exceed the International Standards and allow people up to the age of twenty-five to remain in juvenile court jurisdiction and incarceration centers. This means the juvenile cannot be transferred to adult court, no matter the severity of the crime, if the individual's age lies between fifteen and twenty-five years of age. All fifty States and the District of Columbia have laws that allow the transfer or waiver of juveniles to adult court for one reason or

284. *See US States Fail to Protect Children's Rights*, HUMAN RTS. WATCH (Sept. 13, 2022, 12:01 AM), <https://www.hrw.org/news/2022/09/13/us-states-fail-protect-childrens-rights>; *How Do U.S. States Measure Up*, *supra* note 4.

285. *US States Fail to Protect Children's Rights*, *supra* note 284.

286. Taylor Imperiale, *Keeping Juvenile Conduct in Juvenile Court: Why the Federal Juvenile Delinquency Act Does Not and Should Not Contain a Ratification Exception*, 2018 U. CHICAGO L. F. 287, 297 (2019).

287. UNCRC, *supra* note 11, art. 40, § 3 (States should establish a minimum age of criminal responsibility); U.N. Committee on the Rights of the Child, General Comment on Children's Rights in the Child Justice System, § V(C), U.N. Doc. CRC /C/GC/24 (Sept. 18, 2019) [hereinafter UNCRC General Comment].

288. MAYS & WINFREE, *supra* note 20, at 213.

289. Sarah Gonzalez, *Kids in Prison: Germany Has a Different Approach, Better Results*, WNYC News (Oct. 6, 2016), <https://www.wnyc.org/story/being-kid-adult-prison-here-vs-other-countries/>.

another.²⁹⁰ While initially implemented as a deterrent to juveniles, the deterrence has failed—the U.S. is now harming its children. In a study of fifteen states, juveniles prosecuted in adult criminal court had a rearrest rate of eighty-two percent.²⁹¹ The U.S. must immediately make this switch, solidifying the juvenile court's jurisdiction. This solidification would eliminate the transfer of juveniles to adult criminal court.

Juveniles need access to the resources available in juvenile incarceration centers that are not available to them within adult centers. Most importantly, the government must mandate that juvenile prisons give juveniles access to these resources, including treatment, primary education, and counseling aimed at rehabilitation. The International Standards note that no child should ever be tried as an adult.²⁹² However, the U.S. tries over 50,000 children in adult court per year.²⁹³ Children in U.S. adult institutions are 500 percent more likely to be sexually assaulted, 200 percent more likely to be beaten by staff, and fifty percent more likely to be attacked with a weapon.²⁹⁴ The recidivism rate for juveniles transferred to adult court is significantly higher than those in juvenile court.²⁹⁵

Solidifying the age jurisdiction with no exceptions will significantly reduce the systemic racism that plagues the juvenile court.²⁹⁶ In California, *eighty-six percent* of juveniles tried as adults over the past decade are Black and Latinx—*eighty-six percent*.²⁹⁷ Only

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

291. *Id.*

292. UNCRC General Comment, *supra* note 287.

293. MARCY MISTRETT & MARIANA ESPINOZA, *YOUTH IN ADULT COURTS, JAILS, AND PRISONS 1* (2021), <https://www.sentencingproject.org/app/uploads/2022/09/Youth-in-Adult-Courts-Jails-and-Prisons.pdf>.

294. Amanda Garrett, *Sending Kids to Adult Prisons Creating New Generation of Criminals*, CINCINNATI.COM, <https://www.cincinnati.com/story/news/2023/11/11/ohio-law-mandates-some-ohio-kids-moved-system-built-for-adults-juvenile-prison-rape-justice-brain/70786570007/#> (Nov. 12, 2023, 2:14 PM).

295. MISTRETT & ESPINOZA, *supra* note 293, at 3, 5.

296. *See* Evan Sernoffsky & Joaquin Palomino, *Locked Up, Left Behind*, S.F. CHRON., <https://www.sfchronicle.com/bayarea/article/California-once-sent-thousands-of-juveniles-to-14480958.php> (last visited Apr. 8, 2023).

297. *Id.*

nine percent of white children are tried as adults.²⁹⁸ In Los Angeles County, California, *ninety-six percent* of juveniles prosecuted as adults from 2007 to 2016 were Black or Latinx.²⁹⁹ In Oakland, California, a Black juvenile is eleven times more likely than a white juvenile to have their case prosecuted within adult court.³⁰⁰ Systemic racism towards children who are not white plagues the entire country.³⁰¹ California, for example, is significant because of its relative size and diverse population compared to other states.³⁰²

Setting the juvenile jurisdictional age between fifteen and twenty-five across the country will yield less systemic racism, a higher possibility for rehabilitation, and ultimately, a better society. The minimum age of fifteen would adhere to the International Standards, and the maximum age would allow the most time for rehabilitation. However, creating a uniform age jurisdiction must be coupled with juvenile imprisonment reform. Three immediate steps are using imprisonment as a last resort, staffing juvenile incarceration centers with exemplary training, and eradicating solitary confinement.

C. Imprisonment Must be a Last Resort

The government should only deny a juvenile's right to liberty if it took all possible steps to rehabilitate the juvenile before incarceration—it should be a last resort. One way to ensure implementation within the U.S. is to codify proportionality and individualism requirements. *Graham v. Florida* addressed proportionality by noting that “[t]he concept of proportionality is central to the Eighth Amendment.”³⁰³ Here, the Court held that imposing JLWOP on a juvenile in a non-homicide-

298. *Id.*

299. *Id.*

300. *Id.*

301. See Wendy Sawyer, *Visualizing the Racial Disparities in Mass Incarceration*, PRISON POL'Y INITIATIVE (July 27, 2020), <https://www.prisonpolicy.org/blog/2020/07/27/disparities/>.

302. HANS JOHNSON ET. AL., CALIFORNIA'S POPULATION: FACT SHEET, PUB. POL'Y INST. CAL. (2023), https://www.ppic.org/wp-content/uploads/JTF_PopulationJTF.pdf.

303. *Graham v. Florida*, 560 U.S. 48, 59 (2010). The Eighth Amendment outlaws cruel and unusual punishment. Cruel and unusual punishment, however, looks different for a juvenile than it does for an adult. *Id.* at 81.

related case directly violates the Eighth Amendment.³⁰⁴ The Court discussed proportionality in two different contexts: (1) by challenging the relation between disproportionate sentencing and the crime itself³⁰⁵ and (2) by categorizing particular sentencing practices as impermissible.³⁰⁶ Recognizing that JLWOP violated International Standards, the Court held that, in addition to sentencing juveniles to death, JLWOP for non-homicidal crimes is unconstitutional under the Eighth Amendment.³⁰⁷

In *Miller v. Alabama*, the Court recognized that children have diminished capacities, providing a greater chance for reform.³⁰⁸ Still, the door is left open for children “whose crimes reflect permanent incorrigibility” to receive a JLWOP sentence.³⁰⁹ The sentencer has the discretion to determine what permanent incorrigibility means. The Court decided *Miller* in 2016; that is far too current to debate whether the U.S. should adhere to International Standards.

These decisions and justifications fail U.S. juveniles. Codification must recognize that imprisonment is to be used in rare cases where all other rehabilitative measures have failed. There is no debate that a juvenile has a different cognitive profile than an adult. A U.S. juvenile justice code must recognize this difference.

The International Standards note that JLWOP should be prohibited.³¹⁰ At the beginning of 2020, 1,465 incarcerated individuals were serving JLWOP sentences.³¹¹ While incarceration rates have dropped, the perverse, extreme racial disparities persist.³¹² Although sixty-three percent of children arrested in the U.S. are white, Indigenous

304. *Id.* at 82.

305. *Id.* at 59-60.

306. *Id.* at 60-61.

307. *Id.* at 82.

308. *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

309. *Montgomery v. Louisiana*, 577 U.S. 190, 209 (2016) (“*Miller*, it is true, did not bar a punishment for all juvenile offenders, as the Court did in *Roper* or *Graham*. *Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.”).

310. UNCRC General Comment, *supra* note 285, § V(E), para. 92.

311. Joshua Rovner, *Juvenile Life Without Parole: An Overview*, SENT’G PROJECT (Apr. 7, 2023), <https://www.sentencingproject.org/policy-brief/juvenile-life-without-parole-an-overview/>.

312. *The State of America’s Children 2021: Youth Justice*, *supra* note 96.

children are 1.5 times more likely to be arrested and detained, and Black children are 2.4 times more likely.³¹³ The juvenile justice system consists of sixty-seven percent children of color—forty-one percent Black and twenty-one percent Hispanic.³¹⁴ In 2018, Black children only represented fifteen percent of the delinquent youth population but accounted for fifty-two percent of the youth prosecuted in adult criminal court.³¹⁵ Black children are nine times more likely than white children to receive an adult criminal sentence, Hispanic children are four times more likely, and Indigenous children are two times more likely.³¹⁶ The International Standards expressly state that children should be treated without discrimination, irrespective of race, color, sex, language, religion, political, national, ethnic or social origin, property, disability, birth or other status.³¹⁷ The racial discrimination within the U.S.’s juvenile justice system indicates a much larger systemic issue and further violates the International Standards sense of justice, a child’s dignity, and a child’s human rights.

The Court must use a holistic, individualized approach to determine if a point of “last resort” has been reached.³¹⁸ Factors concerning the individual may include, but are certainly not limited to, the child’s socioeconomic status, family life, educational records, personality, disabilities, and the crime itself. A juvenile must complete a community-based program designed to meet their needs before imprisonment.³¹⁹ States fail to educate the incarcerated children to a standard they would have received in regular public schools. California and Florida spend more on corrections than higher education, with most other States not far behind.³²⁰ Within the juvenile justice system, at least

313. *Id.*

314. *Id.*

315. *Id.*

316. *Id.*

317. UNCRC, *supra* note 11, art. 2.

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

319. Examples of community programs include group and family counseling, psychiatry or therapy programs, drug rehabilitation, or adverse educational programs.

320. STEPHANIE STULLICH ET AL., POL’Y & PROGRAM STUD. SERV. IN THE U.S. DEP’T EDU., OFF. OF PLAN., EVALUATION & POL’Y DEV., STATE AND LOCAL EXPENDITURES ON CORRECTIONS AND EDUCATION (2016), <https://www2.ed.gov/rschstat/eval/other/expenditures-corrections-education/brief.pdf>.

one in three youths has a disability that qualifies for special education under the Individuals with Disabilities Act.³²¹ However, less than half receive special education services during custody.³²² Using imprisonment as a last resort would ensure children receive an individualized approach to rehabilitation and provide them with their rightful education.

The new code must also include standards for prison center staffing and training. There is conclusive evidence of systemic maltreatment of children in fourteen states since 2011.³²³ Children have been beaten, pepper sprayed, screamed at, raped, and left alone in cells for twenty-four hours a day.³²⁴ Youth reported that forty-five percent of correctional facility staff “use force when they don’t really need to.”³²⁵ Corporal punishment in correctional facilities is legal in twenty states.³²⁶ Each prison must employ multiple caseworkers, psychiatrists, therapists, doctors, educators, and counselors—trained employees who can address the factors that put the child in prison, not just correctional officers. Correctional officers are no doubt needed but should have two years minimum training in working with children. Under no circumstances should the juvenile detention center staff be armed with any weapon or chemical that can harm a child.

While this approach inevitably takes longer, no child should feel like just another number in the system. Codifying the definition of last resort, its factors, and the minimum requirements must be implemented to ensure all juveniles receive the same resources for rehabilitation. In making imprisonment a last resort, the focus needs to be on community programs that aid in rehabilitation. Ideally, with juvenile prison populations falling, the monetary incentives incarceration systems receive can be reallocated to programs that educate, rehabilitate, and help the child.

321. *The State of America’s Children 2021: Youth Justice*, *supra* note 96.

322. *Id.*

323. RICHARD A. MENDEL, MALTREATMENT OF YOUTH IN U.S. JUVENILE CORRECTION FACILITIES, AN UPDATE 2 (2015), <https://assets.aecf.org/m/resourcedoc/aecf-maltreatmentyouthuscorrections-2015.pdf>.

324. *See generally id.*; *See also* Schwartzapfel, *supra* note 93.

325. MENDEL, *supra* note 323, at 7.

326. GLOB. P’SHIP END VIOLENCE AGAINST CHILD., CORPORAL PUNISHMENT OF CHILDREN IN THE USA 4 (2023), <https://www.endcorporalpunishment.org/wp-content/uploads/country-reports/USA.pdf>.

D. No Solitary Confinement

The American Medical Association, the American Academy of Pediatrics, and the U.N. have expressly condemned using solitary confinement for juveniles as it leads to depression, anxiety, and psychosis.³²⁷ The majority of children who die by suicide while incarcerated are, or recently were, in solitary confinement.³²⁸ However, only twenty-four states have placed limits on juvenile solitary confinement.³²⁹

If a child is incarcerated as a last resort, that child should not be subject to solitary confinement under any circumstances because solitary confinement has devastating effects on children. Incarceration centers with appropriate and well-trained staff must use alternative methods to deal with behavioral or aggressive outbursts.

Juvenile prisons must mirror the outside world in every way they can. If a parent locked their child in a closet as a punishment, they may be subject to child abuse charges.³³⁰ Prisons must adhere to the same standards. International Standards condemn solitary confinement but leave the door open for children at risk of harming themselves, others, or property. The U.S. must exceed this standard and outlaw the practice.

The psychological stress caused by solitary confinement inhibits the development of the brain's prefrontal cortex, which governs impulse control.³³¹ Children may never recover from a stint in solitary confinement. The U.S. must outlaw solitary confinement and corporal punishment in juvenile detention centers.

327. Schwartzapfel et al., *supra* note 93.

328. *Id.*

329. *Id.*

330. *When Does Discipline Cross the Line to Child Abuse?*, HG LEGAL RES., <https://www.hg.org/legal-articles/when-does-discipline-cross-the-line-to-child-abuse-50043> (last visited Mar. 30, 2023).

331. Amy Roe, *Solitary Confinement is Especially Harmful to Juveniles and Should Not be Used to Punish Them*, ACLU WASH. (Nov. 17, 2017), <https://www.aclu-wa.org/story/solitary-confinement-especially-harmful-juveniles-and-should-not-be-used-punish-them>.

IV. CONCLUSION

The U.S. juvenile justice system currently acts as a response to crime—and needs to shift to preventing crime. The United States needs to invest in its people and stop investing in crime. The current generation facing the juvenile justice system are the future's leaders. While a complete overhaul of the criminal justice system is needed, we can start with the shift from crime response to crime prevention, beginning with a more comprehensive federal juvenile code.

In Europe and Central Asia, the number of children in detention fell almost sixty percent between 2006 and 2012 due to countries exceeding the International Standards.³³² However, UNICEF has estimated that more than one million children are behind bars worldwide,³³³ with approximately 60,000 in the U.S.³³⁴ More than ninety percent of the practitioners surveyed attributed the success of the drop in juvenile incarceration to both legislative and regulatory frameworks, as well as practices that adhered to and exceeded the International Standards.³³⁵ The U.S. is not one of the countries praised, but that can change with strong federal legislation.

The U.S. needs a major overhaul of its juvenile justice system to treat its children with the upmost care and human dignity they are entitled. The U.S. must invest in children, not punish them for crimes committed at an age where they are still developing. The U.S. should practice the standards they helped draft in the UNCRC and other U.N. justice standards. Leaving the states to their own devices has led to incredible human rights violations. A stronger, more rehabilitative federal juvenile justice system is imperative and of the utmost importance. A focus on children is a focus on the future.

332. 15 YEARS OF JUVENILE JUSTICE REFORMS, *supra* note 158, at 1.

333. *Children Behind Bars, The Global Overuse of Detention of Children*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2016/country-chapters/africa-americas-asia-europe/central-asia-middle-east/north> (last visited Mar. 30, 2023).

334. Peter J. Tomasek, *Incarcerating Kids: The U.S.'s Problem with Putting Children Behind Bars*, INTERROGATING JUST. (Dec. 24, 2021), <https://interrogatingjustice.org/https-interrogatingjustice-org-governmental-accountability/https-interrogatingjustice-org-governmental-accountability-2/incarcerating-kids-the-u-s-s-problem-with-putting-children-behind-bars/>.

335. 15 YEARS OF JUVENILE JUSTICE REFORMS, *supra* note 157, at 2.

