

OKLAHOMA'S JUVENILE JUSTICE SYSTEM: WHERE WE ARE TODAY, THE PROBLEMS WE FACE, AND WHERE CHANGES SHOULD START

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I. INTRODUCTION

The Oklahoma House of Representatives, Senate, and Governor Mary Fallin all agree that Oklahoma's juvenile justice system needs to be reformed.¹ In fact, on May 16, 2013, Governor Fallin established the Juvenile Justice Reform Committee to conduct a complete study of Oklahoma's juvenile justice system and to recommend improvements.² Recognizing the desire for change, this Note explains the Oklahoma juvenile justice system's evolution and operation, points out some of the system's weaknesses, and proposes some potential solutions to the problems it faces.

Oklahoma's juvenile justice system fails to sufficiently account for the differences in the culpability and the rehabilitative potential between adults and children, and it carries numerous financial and social costs. Under the law, children and adults are treated differently in several

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1. See H.R.J. Res. 1023, 54th Leg., 1st Reg. Sess. (Okla. 2013) (vetoed by Governor Fallin, Apr. 29, 2013). On April 29, 2013, Governor Fallin vetoed House Joint Resolution 1023, which would have established a Juvenile Justice Reform Committee. H.R. JOURNAL, 54th Leg., 1st Reg. Sess. 1129 (Okla. 2013). But in her letter to the House, Governor Fallin acknowledged that "possible reform of Oklahoma's juvenile justice system is an important issue." *Id.* Governor Fallin later issued Executive Order No. 2013-18 on May 16, 2013, establishing the committee. See Exec. Order No. 2013-18 (Okla. 2013), <http://www.sos.ok.gov/documents/executive/866.pdf> [<http://perma.cc/8Z4U-QSLM>].

2. Exec. Order No. 2013-18 (Okla. 2013).

recognizable ways; however, in the criminal context, these differences have largely eroded over the past forty years. Also, the current system, which is focused more than ever on detention, costs too much, and it imposes several social costs that are often overlooked. For instance, the most significant social cost is the risk of creating a lifetime criminal out of a child who simply made a bad decision because no one took the opportunity to help that child become a contributing member of society. That cost, in addition to several others, is discussed in greater detail later in this Note; however, the treatment of juveniles in the juvenile justice system must first be understood before any other issues can be analyzed.

II. BACKGROUND

Since the inception of written law, juveniles who have committed a crime have been treated differently than adult-age criminals.³ However, the disparity in treatment was generally in the form of different rules, not necessarily lighter punishments.⁴ At the turn of the twentieth century, Chicago, Illinois, founded a juvenile court—the first of its kind—“centered on a concern for the welfare of children and an emphasis on specialized, noncriminal treatment of youths.”⁵ “Today, all [fifty] states and the District of Columbia and the federal government have two distinct systems for dealing with adults and juveniles, and corrections systems [have] kept pace by developing different systems for dealing with the youth.”⁶ Although present in today’s adult system, the “[t]echnicalities and formalities were largely abolished” in the new juvenile systems to facilitate judicial maintenance of each child’s rehabilitation plan; this made the process “faster, cheaper, and easier to understand.”⁷ The cost and ease of this new system “led to the rapid expansion of the juvenile court system in America.”⁸ However, the newly created system spawned abuses and inequities, forcing a response

3. Craig J. Herkal, Comment, *You Live, You Learn: A Comment on Oklahoma’s Youthful Offender Act*, 34 TULSA L. REV. 599, 600–01 (1999) (evaluating Oklahoma’s Youthful Offender Act and offering criticism and suggestions).

4. *Id.* at 601.

5. *Id.* at 602.

6. JASON ZIEDENBERG, U.S. DEP’T OF JUSTICE, YOU’RE AN ADULT NOW: YOUTH IN ADULT CRIMINAL JUSTICE SYSTEMS 2 (2011), <http://static.nicic.gov/Library/025555.pdf> [<http://perma.cc/G8DP-PFNV>] (discussing the current state of juvenile justice systems nationwide and some of the challenges that are facing them).

7. Herkal, *supra* note 3, at 603.

8. *Id.*

from the United States Supreme Court.⁹ “Disturbed that ‘the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children,’ the Court ushered in an era of due process requirements for juveniles.”¹⁰ These decisions forced juvenile courts to change their procedures, making them more like their adult-court counterparts.¹¹

Oklahoma's juvenile justice system, like most others, began with the idea that “any delinquent child [must] be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.”¹² Although that statutory language was modified in 1968, the legislative focus remained exclusively on rehabilitation until 1982.¹³ After that, the legislative focus expanded to include “the prevention of delinquency” and the “protection of the public.”¹⁴ Therefore, the purpose of Oklahoma's juvenile justice system, which is no longer focused exclusively on rehabilitation, shifted to a system with the tripartite goals of rehabilitation, delinquency prevention, and public protection.¹⁵ These changes followed the general trend in the United States as “legislators in the 1970s and 1980s found get-tough on crime measures to be popular with the public.”¹⁶

In Oklahoma, the number of violent crimes committed by juveniles increased in accordance with the national trend, but Oklahoma's juvenile crime rates ascended at a much faster rate.¹⁷ From 1983 to 1992, the number of juvenile offenders who committed violent crimes in Oklahoma exceeded the national increase by almost ten times.¹⁸ In 1982,

9. *See id.*

10. Mary Sue Backus, *Achieving Fundamental Fairness for Oklahoma's Juveniles: The Role for Competency in Juvenile Proceedings*, 65 OKLA. L. REV. 41, 50 (2012) (footnote omitted) (quoting *Kent v. United States*, 383 U.S. 541, 556 (1966)).

11. *Id.*

12. OKLA. COMP. LAWS § 603 (1909).

13. *See Herkal, supra* note 3, at 610.

14. *See id.*

15. *See id.* at 609–10.

16. *Id.* at 611.

17. Edward L. Thompson, *Juvenile Delinquency: A Judge's View of Our Past, Present, and Future*, 46 OKLA. L. REV. 655, 655 (1993); *see also Herkal, supra* note 3, at 612.

18. *See Thompson, supra* note 17 (“Juvenile crime is quickly becoming a national epidemic. In the last decade alone violent juvenile crime rose 27%. The statistics in Oklahoma are far worse. From 1983 to 1992, violent crimes committed by Oklahoma's juveniles skyrocketed 262%.” (footnote omitted)).

the Oklahoma juvenile justice system was under the control of the Oklahoma Department of Human Services (“ODHS”), which lacked local and national supervision.¹⁹ Oklahoma’s juvenile justice system was thrust into the spotlight when “[a] highly publicized series of investigative newspaper articles, national TV coverage, and congressional hearings all uncovered the abuse and neglect of children in institutions under the auspices of the [ODHS].”²⁰

“The Oklahoma system was characterized by a former administrator of the Office of Juvenile Justice and Delinquency Prevention [(“OJJDP”)] as ‘one of the worst in the country, one of the most archaic, and one with widespread abusive practices.’”²¹ At that time, “runaways and truants, and nonoffenders made up about half of the institutional population. . . . Also, Oklahoma was one of the few remaining states to house dependent and neglected children in large, secure institutions located in remote areas.”²² The Oklahoma legislature began revising the juvenile justice system—a decision spurred in large part by the events in 1982 and the decision in *Terry D. v. Rader*.²³ Ultimately, in 1998, the legislature’s revisions culminated in the Youthful Offender Act.²⁴

A. An Overview of Oklahoma’s Juvenile System

1. Preadjudicatory Detention

Once a juvenile is suspected of a crime, the juvenile immediately feels the impact of the juvenile justice system. Before any court proceedings can begin, the first stage in the process requires a decision

19. JOSEPH DEJAMES, OKLAHOMA COMMISSION ON CHILDREN AND YOUTH: A GOVERNMENTAL RESPONSE TO MONITORING THE JUVENILE JUSTICE SYSTEM 1 (n.d.), <https://www.ncjrs.gov/pdffiles1/Digitization/126367NCJRS.pdf> [http://perma.cc/6HSZ-DMRT] (examining the drastic changes in Oklahoma’s juvenile justice system made in response to problems discovered in the early 1980s).

20. *Id.*

21. *Id.* at 2 (quoting a former administrator of the OJJDP).

22. *Id.*

23. See *Terry D. v. Rader*, 93 F.R.D. 576, 577–78 (W.D. Okla. 1982) (denying approval of a class action settlement agreement between the State and a group of juvenile offenders). The district court noted that “[a] state government which cannot even agree on who represents its institutions can hardly be expected to successfully implement the proposed changes in its juvenile treatment program.” *Id.* at 577.

24. Herkal, *supra* note 3, at 600, 612 (“Passed in 1994, and funded in 1997, [the Youthful Offender] Act became effective January 1, 1998.” (footnote omitted)).

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regarding what to do with the accused.²⁵ Oklahoma's detention policy states that "a child . . . taken into custody . . . shall be detained only if it is necessary to assure the appearance of the child in court or for the protection of the child or the public."²⁶ The Oklahoma Administrative Code requires that the Juvenile Services Unit ("JSU") make a "recommend[ation] to the judge . . . when a juvenile is picked up."²⁷

(1) *Release.* Release may be appropriate in the following circumstances:

- (A) The parent, guardian, or responsible person can be located and is willing and able to accept responsibility for the juvenile;
- (B) The juvenile is willing to go home and is likely to appear as requested for preliminary inquiry/court intake; and
- (C) There is reasonable belief that the juvenile is not a threat or a danger to the public.²⁸

If it is determined that the juvenile should be detained, then the JSU must decide whether secure or nonsecure detention is appropriate.

(2) *Non-secure detention.* A juvenile is eligible for non-secure detention services based on the [following] criteria . . . :

- (A) There is no record or history of seriously assaultive or destructive behavior by the juvenile to others; and
- (B) The use of non-secure detention services is not likely to place the juvenile or community at risk; or
- (C) The juvenile is being held as a runaway.²⁹

Conversely, there are certain conditions where a child may be placed in secure detention. Those conditions are found in title 10A, section 2-3-101(B) of the Oklahoma Statutes, which states as follows:

- B. No child shall be placed in secure detention unless:
- 1. The child is an escapee from any delinquent placement;
 - 2. The child is a fugitive from another jurisdiction with a

25. See generally OKLA. STAT. tit. 10A, § 2-3-101 (2011 & Supp. 2015).

26. *Id.* § 2-3-101(A).

27. OKLA. ADMIN. CODE § 377:25-3-2 (2011).

28. *Id.* § 377:25-3-2(1).

29. *Id.* § 377:25-3-2(2).

warrant on a delinquency charge or confirmation of delinquency charges by the home jurisdiction;

3. The child is seriously assaultive or destructive towards others or self;

4. The child is currently charged with any criminal offense that would constitute a felony if committed by an adult or a misdemeanor and:

- a. is on probation or parole on a prior delinquent offense,
- b. is on preadjudicatory community supervision, or
- c. is currently on release status on a prior delinquent offense;

5. The child has willfully failed or there is reason to believe that the child will willfully fail to appear for juvenile court proceedings;

6. A warrant for the child has been issued on the basis that:

- a. the child is absent from court-ordered placement without approval by the court,
- b. the child is absent from designated placement by the Office of Juvenile Affairs [(“OJA”)] without approval by the [OJA],
- c. there is reason to believe the child will not remain at said placement, or
- d. the child is subject to an administrative transfer or parole revocation proceeding.³⁰

2. Adjudication

As the philosophy shifted from an exclusively rehabilitative system to one also focused on delinquency prevention and public protection, Oklahoma split child offenders into three classes: (1) juveniles; (2) youthful offenders; and (3) juveniles classified as adults.³¹ These three groups are treated differently regarding adjudication, sentencing, and placement.³² For instance, juveniles are afforded the least amount of procedural protection but are subject to the least punitive punishment

30. tit. 10A, § 2-3-101(B).

31. Herkal, *supra* note 3, at 610, 612; *see also* tit. 10A, § 2-1-103(6) (2011) (defining *child* and *juvenile*). *See generally id.* §§ 2-5-101 to -205 (outlining treatment and certification of a child as an adult or youthful offender and defining *youthful offender*).

32. *See* Herkal, *supra* note 3, at 618–20.

options.³³ Those not fortunate enough to be classified as a juvenile face traditional-type court proceedings, and they can be placed in an adult prison in one of two ways.³⁴ First, a juvenile can be classified as an adult; therefore, the juvenile is subject to the adult criminal justice system. Alternatively, upon a district attorney's request and a judge's determination, a juvenile can be classified as a youthful offender and given an adult sentence.³⁵ Because of the importance of this classification system to the accused, it is necessary to discuss the system's operation and the potential punishment alternatives under each classification.

Offender classification through the certification program is one of the most critical phases of Oklahoma's criminal proceedings. The default classification for offenders who are charged with serious crimes between the ages of fifteen and seventeen is that of a youthful offender.³⁶ If they are charged with first-degree murder, offenders as young as thirteen are automatically classified as youthful offenders.³⁷ Offenders may change this classification by moving that the court classify them as juveniles. On the other hand, the district attorney can—with good cause—file a motion requesting that a particular child be eligible to be sentenced as an adult.³⁸

During classification, offenders have the burden to prove that the court should reclassify them; however, the judge must decide whether that burden is met.³⁹ After the OJA takes custody of a youthful offender, the OJA must “prepare and file with the court a written rehabilitation plan” within thirty days.⁴⁰ To sentence the youthful offender as an adult, the court must be persuaded by clear and convincing evidence that there is good cause to deviate from the statutorily prescribed treatment of the accused.⁴¹

A court uses the same seven-factor test to determine whether an

33. *See id.* (detailing the procedural and punitive options that courts can use to deal with each offender category).

34. *See id.* at 615; *see also* tit. 10A, §§ 2-5-101, -204, -206(A)–(B), -208(F) (2011 & Supp. 2015).

35. *See* §§ 2-5-204, -208; *see also* Herkal, *supra* note 3, at 614–15.

36. *See* tit. 10A, §§ 2-5-202, -206(A)–(B) (2011).

37. *Id.* § 2-5-205(A).

38. *Id.* §§ 2-5-206(F)(1), -208(A), (D) (2011 & Supp. 2015).

39. *See* J.D.P. v. State, 1999 OK CR 5, ¶ 6, 989 P.2d 948, 949 (“By operation of law, the accused is treated as a youthful offender, and the burden to sustain his or her motion to be remanded to the juvenile system should fall upon the accused. Whether or not the proof is sufficient lies within the discretion of the magistrate” (citations omitted)).

40. tit. 10A, § 2-5-210(A).

41. *Id.* § 2-5-208(D).

offender should be classified as a juvenile, a youthful offender, or an adult.⁴² The test's first three factors (subsections (a), (b), and (c)) carry the most weight, but all of the following factors are considered:

- a. whether the offense was committed in an aggressive, violent, premeditated or willful manner,
- b. whether the offense was against persons and, if personal injury resulted, the degree of injury,
- c. the record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions,
- d. the sophistication and maturity of the accused person and the capability of distinguishing right from wrong as determined by consideration of the psychological evaluation, home, environmental situation, emotional attitude and pattern of living of the accused person,
- e. the prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system,
- f. the reasonable likelihood of rehabilitation of the accused person if the accused person is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court, and
- g. whether the offense occurred while the accused person was escaping or on escape status from an institution for youthful offenders or delinquent children.⁴³

Once the offender is classified, the proceedings follow the specific legal path based on that classification.

Upon conviction or successful plea agreement, juveniles and youthful offenders are typically sentenced and placed in the custody of the OJA.⁴⁴ The sentencing determinations for juveniles and youthful offenders are based on the same seven factors discussed above, but the

42. *See id.* § 2-5-208(C)–(D).

43. *Id.* § 2-5-208(C)(2); *see also* A.R.M. v. State, 2011 OK CR 25, ¶¶ 8–13, 279 P.3d 797, 799–800 (evaluating the age limitation of the Youthful Offender Act, applying the seven-factor test, and holding that the trial court's decision to treat the juvenile as an adult did not violate the offender's due process or equal protection rights).

44. *See* tit. 10A, § 2-5-204(E)–(F) (2011).

sentence must be within the statutory range prescribed for the offense.⁴⁵ However, upon a proper request by the district attorney, a court may still impose an adult sentence upon a youthful offender.⁴⁶ Certified adults and those sentenced as adults are placed in the custody of the Department of Corrections (“DOC”);⁴⁷ however, a court may “suspend or delay sentence, defer judgment, or otherwise structure, limit, or modify the sentence” as long as “[t]he sentence [does] not exceed the amount of time of a possible sentence for an adult convicted of the same offense.”⁴⁸

a. Classification as an Adult

Placement in the custody of the DOC—regardless of whether a child is actually classified as an adult or as a youthful offender who is sentenced as an adult—is the worst possible outcome for an offender’s potential rehabilitation and his or her likelihood of becoming a productive member of society. When a child is tried for an offense that would be considered a felony for adults, the offender may (if the court so certifies) stand trial as an adult.⁴⁹ “The purpose of [certification] is to determine whether a sixteen or seventeen-year-old offender should be prosecuted as an adult or whether he should be treated as a juvenile. . . . [T]he standards set out by [this process] are appropriate and protect the constitutional guarantees of the individual offender.”⁵⁰ The district attorney can “elect[] to file a motion for imposition of [an] adult sentence while the matter is still pending before a magistrate.”⁵¹ The magistrate’s decision “[is] a final order, appealable to [the Oklahoma Court of

45. *See id.* § 2-5-209(A)(2)–(B)(1).

46. *See id.* § 2-5-208(A)–(B) (2011 & Supp. 2015); *see also* W.L.A. v. State, 2002 OK CR 38, ¶ 16, 60 P.3d 1043, 1047 (holding that the magistrate properly decided the State’s motion to impose an adult sentence).

47. *See* § 2-5-204(F) (2011) (“Upon certification for the imposition of an adult sentence . . . the person may be detained as an adult and, if incarcerated, may be incarcerated with the adult population.”).

48. *G.G. v. State*, 1999 OK CR 7, ¶ 7, 989 P.2d 936, 938. The court held that “an order granting or denying the State’s motion for imposition of an adult sentence is a final order, appealable when entered.” *Id.* ¶ 11, 989 P.2d at 939; *see also* tit. 10A, § 2-5-208(E) (2011 & Supp. 2015).

49. tit. 10A, § 2-2-403(A) (2011).

50. *Mooney v. State*, 1999 OK CR 34, ¶ 26, 990 P.2d 875, 885 (declaring the appropriateness of the statutory provisions governing reverse certification and requiring sixteen- and seventeen-year-olds charged with murder to be tried as adults).

51. W.L.A., 2002 OK CR 38, ¶ 16, 60 P.3d at 1047.

Criminal Appeals] when entered.”⁵² Alternatively, the district attorney may choose to wait “to file the motion for adult sentencing in the District Court after bind over.”⁵³

b. Sentencing as an Adult

The purpose of Oklahoma’s adult criminal system is exclusively punitive,⁵⁴ differentiating it from the purposes of both the Oklahoma Juvenile Code (“OJC”) and the Youthful Offender Act—both of which emphasize rehabilitation.⁵⁵ If “there is good cause to believe that a person charged as a youthful offender would not reasonably complete a plan of rehabilitation or the public would not be adequately protected,” the district attorney will need to move for an adult sentence in order to protect the public.⁵⁶ The district attorney must then convince the court by clear and convincing evidence that an adult sentence is appropriate.⁵⁷ It is important to note that the youthful-offender eligibility ends five months after an offender turns eighteen; therefore, all the district attorney needs to show in order to meet the burden of proof for imposing an adult sentence on the offender is that the proposed treatment plan cannot be completed before the offender reaches the age of eighteen years and five months.⁵⁸ And although this limitation has been characterized as “‘arbitrary and ridiculous’ . . . , the Legislature’s intent could not have been more clear.”⁵⁹

If the court certifies an offender as an adult, that offender is treated as an adult during sentencing, “supervision, incarceration and in all subsequent criminal proceedings” for the rest of his or her life.⁶⁰

Upon a verdict or plea of guilty or upon a plea of nolo

52. *Id.*

53. *Id.*

54. *See generally* tit. 21, §§ 1–11 (2011 & Supp. 2015) (defining crimes and punishments and discussing the purpose of punishment).

55. *See* tit. 10A, §§ 2-1-102(4), -5-202(B); *see also* Herkal, *supra* note 3, at 609–10.

56. tit. 10A, § 2-5-208(A).

57. *See id.* § 2-5-208(D).

58. *See* A.R.M. v. State, 2011 OK CR 25, ¶ 8, 279 P.3d 797, 799. The court affirmed the trial judge’s determination “that the public could not reasonably be protected if [the individual] was treated as a youthful offender within the time remaining for rehabilitation.” *Id.* ¶ 12, 279 P.3d at 800.

59. *Id.* ¶ 4, 279 P.3d at 799.

60. tit. 10A, § 2-5-208(F).

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contendere, but before a judgment of guilt, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a ten-year period.⁶¹

If the defendant completes the conditions to the court's satisfaction, "the court shall order the verdict or plea of guilty or plea of nolo contendere to be expunged from the record and the charge shall be dismissed with prejudice to any further action."⁶² Conversely, if the defendant fails to satisfy the conditions necessary for deferral,⁶³ or if no deferral is granted, the court has the power (upon conviction) to suspend the sentence; order restitution or reimbursement; impose a fine, as authorized by law; order community service; or commit the person to confinement with the DOC.⁶⁴ However, the community service option is available only to offenders who have committed nonviolent felonies.⁶⁵ In addition, the court maintains offense-specific powers, such as requiring the offender to participate in a drug-treatment program, receive counseling, or register as a sex offender.⁶⁶

c. Classification as a Juvenile

Oklahoma defines *juvenile* as follows:

"Child" or "juvenile" means any person under eighteen (18) years of age, except for any person charged and convicted for any offense specified in the Youthful Offender Act or against whom judgment and sentence has been deferred for such offense, or any person who is certified as an adult . . . for any offense which results in a conviction or against whom judgment and sentence has been deferred for such offense⁶⁷

Once classified as a juvenile, the offender is not tried in an adult criminal

61. tit. 22, § 991c(A).

62. *Id.* § 991c(C).

63. *Id.* § 991c(E) ("Upon violation of any condition of the deferred judgment, the court may enter a judgment of guilt and proceed as provided in [s]ection 991a . . . or may modify any condition imposed.").

64. *Id.* § 991a(A)(1)(a)–(f).

65. *Id.* § 991a(A)(6).

66. *Id.* § 991a(A)(1)(l), (p), (dd), (ee).

67. tit. 10A, § 2-1-103(6).

proceeding; instead, he or she is tried under the OJC.⁶⁸ Juveniles have some additional protections and rights;⁶⁹ however, they are afforded less due process protection. For instance, the procedures of a normal criminal trial need not be followed as long as the procedures used are sufficient to ensure that the accused receives fair treatment.⁷⁰ The OJC prevents the use of information obtained during custodial interrogation “unless the custodial interrogation . . . is done in the presence of the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian of the youthful offender or child” and they “have been fully advised of the constitutional and legal rights of the youthful offender or child.”⁷¹ The additional protections provided to juveniles focus on their potential for rehabilitation in order to protect the public and to reduce juvenile delinquency.⁷²

d. Classification as a Youthful Offender

Starting at the age of thirteen, children may be automatically classified as youthful offenders, but that classification depends on the crime for which they are charged.⁷³ Once the statute requires a person to be classified as a youthful offender, the offender must prove to the court that reverse certification as a juvenile is appropriate.⁷⁴ The magistrate determines whether that burden is met, “and, on appeal, the magistrate’s

68. See *id.* § 2-1-102(1) (stating that “[t]he purpose of the laws relating to juveniles alleged or adjudicated to be delinquent is to promote public safety and reduce juvenile delinquency[, and t]his purpose should . . . [r]ecognize the unique characteristics and needs of juveniles”). See generally *id.* §§ 2-1-101 to -5-501.

69. See, e.g., *id.* § 2-2-301(A) (requiring “the presence of the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian” during custodial interrogation).

70. See *Wood ex rel. Wood v. Benson*, 740 P.2d 1196, 1198 (Okla. Crim. App. 1987) (“While [the court] agree[d] that a juvenile may not be entitled to all the ramifications and procedures provided in an ordinary criminal trial, [the juvenile] is entitled to receive sufficient due process to assure fair treatment.”). The case was remanded for a determination of whether the procedures provided were sufficient to ensure that the accused received fair treatment. *Id.* at 1199.

71. tit. 10A, § 2-2-301(A).

72. See *id.* § 2-1-102(4).

73. See *id.* § 2-5-202(A)(1) (2011).

74. See *J.D.P. v. State*, 1999 OK CR 5, ¶ 6, 989 P.2d 948, 949 (finding that “[b]y operation of law, the accused is treated as a youthful offender, and [he or she has] the burden to sustain [a] motion to be remanded to the juvenile system” and holding that denial of a motion, when “supported by the record[,] . . . d[oes] not constitute an abuse of discretion”).

ruling will not be disturbed absent an abuse of discretion.”⁷⁵ The burden for adult certification, however, is more concrete. The district attorney must show the court, through clear and convincing evidence, that the offender deserves to be classified as an adult.⁷⁶ This standard is much less discretionary, and it can be argued that the State has less control over the court’s decision.⁷⁷

“[T]he purpose of the Youthful Offender Act [is] to better ensure the public safety by holding youths accountable for the commission of serious crimes, while affording courts methods of rehabilitation for those youths the courts determine, at their discretion, may be amenable to such methods.”⁷⁸ Once an individual is classified as a youthful offender “the court shall impose [a] sentence[,] . . . and [the] youthful offender shall be subject to the same type of sentencing procedures and duration of sentence, except for capital offenses, including suspension or deferment, as an adult.”⁷⁹ The youthful offender is then placed “in the custody or under the supervision of the [OJA] until the expiration of the sentence, the youthful offender is discharged, or the youthful offender reaches eighteen (18) years of age.”⁸⁰

Alternatively, the court retains the power to add the youthful offender’s sentence to (or substitute it for) another punishment or rehabilitative measure used in cases of juvenile delinquency.⁸¹ The court may also sentence the youthful offender as an adult.⁸² However, by classifying a person as a youthful offender, the court has the option to place the offender in a more rehabilitative setting than is available to an adult, but the court must follow the more formal structure of an adult criminal proceeding that is not required for juveniles.⁸³

75. *Id.*

76. tit. 10A, § 2-5-208(D) (2011 & Supp. 2015).

77. *See Herkal, supra* note 3, at 617.

78. tit. 10A, § 2-5-202(B) (2011).

79. *Id.* § 2-5-209(B)(1).

80. *Id.*

81. *Id.* § 2-5-209(B)(5).

82. *See id.; see also* G.G. v. State, 1999 OK CR 7, ¶ 7, 989 P.2d 936, 938 (“[T]he court may impose [a] sentence in the manner provided by law for an adult for punishment of the offense committed, subject to the power and authority of the court to suspend or delay sentence, defer judgment, or otherwise structure, limit, or modify the sentence.”).

83. *See Herkal, supra* note 3, at 618–20 (reviewing the three different classifications of offenders under the juvenile code and the effects of each category on sentencing). *See generally* tit. 10A, § 2-5-209(B) (discussing the presentence investigation, listing the factors the court should consider for determination of placement, and detailing the court’s options for confinement).

B. Custody of the OJA

Once a juvenile or youthful offender is sentenced and placed in the custody of the OJA, the offender has “the right to receive individualized care and treatment in the least restrictive setting consistent with the juvenile’s care and treatment needs and, in the case of a delinquent juvenile, with the protection of the public.”⁸⁴ That placement should be “in the closest location to the juvenile’s home.”⁸⁵ When determining an offender’s placement, the OJA must review the offense history, conduct a risk assessment, and consider the offender’s treatment needs.⁸⁶ There are four different levels of offense-history classification:

- (1) *Class I Delinquent/Youthful Offender*. Class I refers to a multiple victim endangering offender. The [c]lass I offender has committed more than one seriously violent, aggressive, or assaultive offense and may have a history of property offenses;
- (2) *Class II Delinquent/Youthful Offender*. Class II refers to a one-time, seriously violent, aggressive, or assaultive offender who may have a history of property offenses;
- (3) *Class III Delinquent/Youthful Offender*. Class III refers to property offenders. The [c]lass III offender has committed multiple, habitual, or chronic property or misdemeanor offenses; or
- (4) *Class IV Delinquent/Youthful Offender*. Class IV offenders have committed:
 - (A) a single spree of property offenses or misdemeanors;
 - (B) a single property offense or misdemeanor; or
 - (C) two property offenses or misdemeanors occurring over a widely spaced period of time.⁸⁷

To evaluate the amount of risk offenders pose to both the public and themselves, the OJA assigns a score for each of the following factors:

- (1) most recent offense upon the juvenile’s commitment, recommitment, revocation, or administrative transfer;

84. OKLA. ADMIN. CODE § 377:10-1-2(a) (2011).

85. *Id.* § 377:10-3-2(a)(1).

86. *Id.* § 377:10-3-3.

87. *Id.* § 377:10-3-4(1)–(4).

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- (2) most serious prior offense;
- (3) number of offenses the juvenile has committed in the past three years;
- (4) age of the juvenile when he or she first committed a felony for which there was an official finding of fact;
- (5) number of times the juvenile was previously placed out of the home above the foster care level by [the] OJA or a juvenile bureau;
- (6) substance abuse by the juvenile; and
- (7) juvenile's school attendance at the time of commission of the most recent offense or at the time of the request for a change of parole setting or change of placement.⁸⁸

Finally, the OJA considers several factors in evaluating the offender's placement: "(1) education; (2) intellectual ability; (3) home stability; (4) drug or alcohol use; (5) interaction with authority figures; (6) reaction to stress; (7) stressors; (8) self-image; (9) history of abuse/neglect; (10) social alienation; (11) aggressiveness; (12) emotional stability; and (13) employment."⁸⁹

The placement options currently available to the OJA include therapeutic foster care, kinship foster care, specialized community homes, and four different levels of contract-based residential-care facilities.⁹⁰ "A therapeutic foster home is a foster family home, which provides specific services to eliminate social and behavioral problems of a juvenile placed in the home."⁹¹ A specialized community home is different:

A specialized community home . . . is a community-based, family-structured home for up to five OJA-custody juveniles. . . . The contractor shall provide an intensive, individually-focused, therapeutic intervention program of social services in addition to basic residential care. The contractor shall also provide counseling, educational opportunity, employment opportunity, cultural enrichment, and independent living skills training

88. *Id.* § 377:10-3-5(b). These factors are scored to determine the juvenile's risk "to both the public and himself or herself." *Id.* § 377:10-3-5(a).

89. *Id.* § 377:10-3-6.

90. *See generally id.* §§ 377:10-7-4 to -7, -15 to -20 (2011 & Supp. 2014) (listing the different care options available and detailing the requirements of each).

91. *Id.* § 377:10-7-4(a).

consistent with each juvenile's treatment plan.⁹²

Placement in either of the options described above is the most desirable situation because both placement options are small in size and rehabilitative in nature.

A contract-based residential-care facility "is a group home . . . or a community residential center, operated by a private, licensed Child Placing Agency or Residential Child Care Facility."⁹³ The four levels of contract-based residential-care facilities are (1) standard specialized residential care ("Level C"); (2) moderate-intensity specialized residential care ("Level D"); (3) moderate-to-high-intensity specialized residential care ("Level D Plus"); and (4) high-intensity specialized residential care ("Level E").⁹⁴ Standard facilities offer basic counseling in a residential model of care, whereas the higher-intensity facilities focus on a therapeutic model of rehabilitation, offering on-site individual, group, and family therapy.⁹⁵ As the facilities increase in intensity, the facilities decrease the emphasis on independent-living skills (i.e., training that is designed to help the offenders successfully transition into adult living). In fact, high-intensity facilities are not required to offer this type of training at all.⁹⁶

Level C and D facilities are designed for offenders with behaviors that include "(i) repeated minor criminal offenses; (ii) difficulty in school; (iii) problems with authority figures; (iv) sexual acting out; (v) verbal aggression; (vi) peer difficulties; and (vii) runaway incidents."⁹⁷ Acts of physical aggression toward authority figures may justify placing an offender in a moderate-intensity specialized residential facility; that is also true in situations where there is some combination of the previously mentioned seven behavioral problems.⁹⁸ The commission of repeated crimes not considered minor criminal offenses will justify placing the juvenile in a moderately high-intensity facility, but combining more serious crimes with acts of violence or substance abuse will land the juvenile in a high-intensity facility.⁹⁹ All of the facilities

92. *Id.* § 377:10-7-5(a).

93. *Id.* § 377:10-7-15 (2011).

94. *See id.* §§ 377:10-7-15 to -20 (2011 & Supp. 2014).

95. *See id.*

96. *Id.*

97. *Id.* § 377:10-7-17(2)(A); *see also id.* § 377:10-7-18(2)(A) (2011).

98. *Id.* § 377:10-7-18(2)(A).

99. *See id.* §§ 377:10-7-19(2)(A), -20(2)(C), (E) (2011 & Supp. 2014).

offer educational assistance programs; however, unlike the lower-intensity facilities, the high-intensity facilities do not partner with the local schools, offering only in-house educational services.¹⁰⁰

“After a juvenile is placed out of the home, the juvenile may be transferred to a similar facility or to a less restrictive facility without a hearing.”¹⁰¹ For an offender to be placed in a more restrictive facility, the JSU worker and the supervisor must agree to the change in placement, and the offender must be afforded a district review hearing¹⁰² to determine if the “juvenile’s behavior and alleged failure to respond to established individualized treatment and service plans or rules” justify a change in placement.¹⁰³ For an offender to be removed from a community-based facility and institutionalized, an administrative-transfer hearing or a parole-revocation hearing must be held.¹⁰⁴ In both hearings, the court considers how serious the offense was, how the offender is adjusting to the placement, and whether the offender is responding to treatment.¹⁰⁵ On the other hand, the “OJA [has the] authority to place a juvenile or youthful offender on parole whenever [the] OJA determines that such release shall not be detrimental to society and that the juvenile or youthful offender is ready to be returned to the community or has reasonably completed a plan of rehabilitation.”¹⁰⁶ This release must be granted by either the parole board or “through an administrative parole.”¹⁰⁷

C. Transfer from the OJA

Even though placement in the custody of the OJA is much better than placement in the custody of the DOC, the offender may still end up in adult prison.¹⁰⁸ “Whenever a youthful offender is placed in the custody of or under the supervision of the [OJA], the [OJA] shall . . . prepare and file with the court a written rehabilitation plan for the youthful

100. *See id.* §§ 377:10-7-17(3), -18(3), -19(3), -20(3).

101. *Id.* § 377:25-7-3(b) (2011).

102. *See id.* § 377:25-7-3(c).

103. *Id.* § 377:25-7-29(a).

104. *Id.* § 377:25-7-3(d).

105. *See id.* §§ 377:5-5-3(a), -4(b)(1) (2011 & Supp. 2014).

106. *Id.* § 377:5-3-1 (2011).

107. *Id.* § 377:5-3-3(a) (“The granting of parole is an administrative function This function is carried out through a parole hearing or through an administrative parole.”).

108. *See* OKLA. STAT. tit. 10A, § 2-5-210(B)(5) (2011 & Supp. 2015) (listing conduct that can result in a transfer to the DOC).

offender.”¹⁰⁹ “The rehabilitation plan [must] be tailored to the needs and goals of the youthful offender while ensuring protection of the public while the offender is in the custody or supervision of the [OJA].”¹¹⁰ The court reviews the youthful offender’s sentence annually to evaluate the rehabilitation plan and make any necessary changes.¹¹¹ After completion of the review hearing, the court may decide to (1) “[o]rder the youthful offender discharged from the custody of the [OJA]”; (2) “order the verdict or plea of guilty or plea of nolo contendere expunged from the record”; (3) “[r]evoke an order of probation”; (4) “[p]lace the youthful offender on probation”; (5) “[p]lace the youthful offender . . . in a sanction program”; or (6) “[t]ransfer the youthful offender to the custody or supervision of the [DOC].”¹¹²

When a district court with proper jurisdiction issues an order, an offender may be transferred or released from the OJA’s custody.¹¹³ “If the offender fails to substantially comply with the terms and conditions of his or her plan of rehabilitation, the court can bridge the offender to the adult system, transferring custody of the offender from the [OJA] to the [DOC].”¹¹⁴ The decision to bridge an offender to the custody of the DOC is an appealable order.¹¹⁵ Accordingly, to bridge an offender to the DOC, “the State [is] required to file a motion setting forth the grounds” for the request, properly serve the offender and any required parties, and present “[c]ompetent evidence justifying bridging.”¹¹⁶ “Written findings of fact and conclusions of law [must] be made by the trial judge,”

109. *Id.* § 2-5-210(A).

110. *Id.*

111. *Id.* § 2-5-210(B).

112. *Id.*

113. *See id.*

114. *R.M.J. v. State*, 2006 OK CR 18, ¶ 21, 135 P.3d 1286, 1290.

115. *B.J.B. v. State*, 2004 OK CR 17, ¶¶ 5–7, 88 P.3d 931, 932 (holding that courts must follow the statutory requirements for converting a juvenile’s sentence to be served in the custody of the DOC).

[T]he State will henceforth be required to file a motion setting forth the grounds for bridging the Youthful Offender to DOC. Proper service must be made upon the Youthful Offender and, if required, the custodial parent, guardian or next friend of the Youthful Offender. Competent evidence justifying bridging the Youthful Offender must be presented to the trial court at a hearing to be held for that purpose. Written findings of fact and conclusions of law shall be made by the trial judge.

Id. ¶ 7, 88 P.3d at 932.

116. *Id.*

justifying the court's decision.¹¹⁷

III. PROBLEMS

The differences between the adult criminal system, which is exclusively punitive,¹¹⁸ and the juvenile justice system, which was originally focused on rehabilitation, have eroded over time.¹¹⁹ As the line separating the adult and juvenile justice systems has dissolved, juveniles (who should be held less culpable for their actions) are being given punishments that are equal to—or harsher than—those received by adults who commit similar crimes.¹²⁰ Treating juveniles like adults increases recidivism, decreases the likelihood that a juvenile will become a productive member of society, and costs more to implement than the more rehabilitative options that other states use.¹²¹ Also, the more punitive the environment an offender is placed in, the more these problems are magnified.¹²²

A. Erosion of Oklahoma's Juvenile Justice System

The increase in violent juvenile crime during the late 1980s and early 1990s led legislatures in nearly every state, including Oklahoma,¹²³ to institute major changes to their juvenile systems, which reduced the differences between the juvenile and adult structures.¹²⁴ “In 1985, Alfred

117. *Id.*

118. *See generally* tit. 21, §§ 1-10 (2011) (classifying crimes as felonies or misdemeanors, defining felonies and misdemeanors, and highlighting the punishment for those crimes).

119. *See generally* Herkal, *supra* note 3, at 600–12 (comparing the historical treatment of juveniles and adults and analyzing the shift in treatment by both state and federal courts).

120. *See generally* Kristy N. Matsuda, *The Impact of Incarceration on Young Offenders* (Apr. 27, 2009) (unpublished Ph.D. dissertation, University of California, Irvine) (on file with National Criminal Justice Reference Service), <http://www.ncjrs.gov/pdffiles1/nij/grants/227403.pdf> [<http://perma.cc/24Z7-82ZX>].

121. *See* RICHARD A. MENDEL, ANNIE E. CASEY FOUND., *THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS* 4, 6–7 figs.2, 3 & 5, 10–11 (2010), <http://www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf> [<http://perma.cc/QR3Z-BTKZ>].

122. *See* Matsuda, *supra* note 120, at 29–31.

123. *See* Herkal, *supra* note 3, at 612.

124. *See* Backus, *supra* note 10, at 53–54, 58 (discussing the shift from rehabilitation to punishment as juvenile justice systems changed their focus due to an increase in juvenile crime and violence); *see also* Herkal, *supra* note 3, at 612.

Regnery, the administrator of the [OJJDP] under President Ronald Reagan, stated that juvenile offenders ‘are criminals who happen to be young, not children who happen to commit crimes.’¹²⁵ However, ‘‘the U.S. Supreme Court relied upon, at least in part, [the] newly understood neuroscientific distinction between adult and adolescent brains.’’¹²⁶ Professor Mary Sue Backus noted that by adopting this view, the Court was ‘‘reminding us that ‘children cannot be viewed simply as miniature adults.’’’¹²⁷ Professor Backus goes on to note the significance of adopting this view: ‘‘This distinction led the Court to abolish the juvenile death penalty, both juvenile sentences of life without the possibility of parole for non-homicide crimes and mandatory life without parole for homicide, and to rule that the *Miranda* custody test must include a child’s age in its analysis.’’¹²⁸

The Supreme Court’s decision and the declining number of youth entering into the juvenile justice system seem to suggest that the juvenile justice system is improving;¹²⁹ however, ‘‘[d]espite a steady decline in juvenile crime and violence rates since the 1994 peak, [most] states have not sought to roll back the shift in focus’’ of their juvenile justice systems to emphasize rehabilitation.¹³⁰ In 2010, fewer children were in juvenile facilities than at any point since the mid-1970s, but the United States ‘‘still lead[s] the industrialized world in the rate at which we lock up young people.’’¹³¹ ‘‘In 2006, 16% of the national adult prison population was composed of young offenders between the ages of [eighteen] and [twenty-four].’’¹³² ‘‘[M]ore than 219,600 young offenders were

125. Matsuda, *supra* note 120, at 6 (quoting Alfred S. Regnery, *Getting Away with Murder: Why the Juvenile Justice System Needs an Overhaul*, POL’Y REV., Fall 1985, at 65, 65).

126. Backus, *supra* note 10, at 55.

127. *Id.* (quoting *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2404 (2011)).

128. *Id.* (footnotes omitted).

129. See Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, CRIM. JUST., Summer 2013, at 9, 10 [hereinafter Sherman, CRIM. JUST.] (discussing juvenile justice and its impact on female offenders). For an expanded version of this article, see Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 59 UCLA L. REV. 1584 (2012).

130. Backus, *supra* note 10, at 53.

131. ANNIE E. CASEY FOUND., REDUCING YOUTH INCARCERATION IN THE UNITED STATES I (2013) [hereinafter AECF DATA SNAPSHOT], <http://www.aecf.org/m/resource/doc/AECF-DataSnapshotYouthIncarceration-2013.pdf> [<http://perma.cc/ZJV4-7LNP>] (discussing youth confinement rates throughout the United States); see also Sherman, CRIM. JUST., *supra* note 129.

132. Matsuda, *supra* note 120, at 1.

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incarcerated in either a state adult or [f]ederal prison. In addition, there were over 37,000 young offenders serving time in state juvenile correctional facilities.”¹³³ Also, “[a]ll states have made it easier to transfer juveniles to adult court[,] and the age at which this has become acceptable has decreased” over the years.¹³⁴ “Twenty-three states have set no minimum age at which transfer can occur (i.e., youth of any age are eligible). For states that have [set] a minimum age,” the standard is now fourteen.¹³⁵ It is important to note that “nearly 40[%] of juvenile commitments and detentions are due to technical violations of probation, drug possession, low-level property offenses, public order offenses and status offenses.”¹³⁶ These changes have not only led to the “erosion of the boundary between the adult and juvenile systems”¹³⁷ but have also led to the detention and incarceration of juveniles for actions that would not be considered crimes for adults, “such as possession of alcohol or truancy.”¹³⁸

B. Culpability of Juveniles

Oklahoma’s default offender-classification process, which bases classification on the offender’s age and the crime committed, should be reconsidered, and Oklahoma’s juvenile justice system should reemphasize rehabilitation as its primary goal.

[L]ess culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult. . . . Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult. The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible

133. *Id.* (citation omitted).

134. *Id.* at 6.

135. *Id.* at 15–16.

136. AECF DATA SNAPSHOT, *supra* note 131, at 2. Status offenses are charges for conduct that is only illegal because of the offender’s age, “such as possession of alcohol or truancy.” *Id.*

137. Backus, *supra* note 10, at 54.

138. AECF DATA SNAPSHOT, *supra* note 131, at 2.

conduct is not as morally reprehensible as that of an adult.¹³⁹

It is difficult for the law to define when an offender's maturity level should be taken into consideration and when the juvenile's age and severity of offense should completely determine culpability.¹⁴⁰ "The result has been the belief in inherent irresponsibility and immaturity of young offenders under some conditions, and the assumption of fully responsible and mature offenders under others."¹⁴¹ For example, the Youthful Offender Act automatically classifies a thirteen-year-old as a youthful offender when he or she is accused of first-degree murder, whereas the same person would automatically be classified as a juvenile for any other crime.¹⁴²

1. Brain Development

"The highly elastic and malleable adolescent brain may leave young people more vulnerable to negative influences and compromise rational decision-making[,] but it also provides a window of opportunity where appropriate guidance and support will help them become responsible members of society."¹⁴³ Recent studies show that young brains continue to change as adolescents move into young adulthood; therefore, "children and young adults are developmentally different than adults and should be treated so under the law."¹⁴⁴ "New research has disproven the long-held assumption that brain development is complete by puberty. Rather, neurologists have found that adolescence is a critical time for brain development, with dramatic changes to the brain's structure and function."¹⁴⁵ This recent scientific discovery, coupled with the Supreme Court's recognition of evidence suggesting that juvenile and adult brains are developmentally and cognitively different,¹⁴⁶ "reaffirms the historic justification for juvenile rehabilitation over punishment as the focus of juvenile" justice systems,¹⁴⁷ and it confirms that Oklahoma should reduce the punitive emphasis within its current juvenile justice system.

139. *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (footnote omitted).

140. Matsuda, *supra* note 120, at 6.

141. *Id.*

142. OKLA. STAT. tit. 10A, § 2-5-205(A) (2011).

143. Backus, *supra* note 10, at 59.

144. *Id.*

145. *Id.* at 54.

146. Sherman, CRIM. JUST., *supra* note 129, at 12.

147. Backus, *supra* note 10, at 59.

2. Aging Out

“Decades of social science research ha[ve] concluded that participation in delinquent behavior is a common occurrence during adolescence,”¹⁴⁸ and “as many as a third of young people will engage in delinquent behavior before they grow up.”¹⁴⁹ But for the most part, adolescents grow out of this behavior—a phenomenon referred to as “aging out.”¹⁵⁰ Even serious criminals will age out as they start families, get jobs, or experience other major life events.¹⁵¹ Similarly, delinquents can age out by building meaningful relationships.¹⁵² Failure to experience these major events or develop these relationships delays the typical aging-out process and may increase the likelihood of criminal behavior.¹⁵³ Accordingly, incarcerating juveniles delays their normal pattern of aging out due to the disruption it causes in their natural engagement with their family, school, and work.¹⁵⁴ In fact, “incarceration . . . ‘may have the greatest impact on young offenders’ ability to achieve psychological maturity.”¹⁵⁵ This means that any detention or incarceration plan for adolescents should seek to minimize the disruptions in connection with family, school, and work, and it should help the adolescents develop relationships with mentors.

C. Increased Recidivism

Oklahoma’s policy that allows children to be tried and sentenced as adults¹⁵⁶ needs to be modified to give children and adolescents

148. Matsuda, *supra* note 120, at 2.

149. BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 6 (2006) (footnote omitted), http://www.justicepolicy.org/uploads/justice-policy/documents/dangers_of_detention.pdf [<http://perma.cc/3AYK-7LT6>].

150. *Id.*

151. See Matsuda, *supra* note 120, at 13, 138.

152. See HOLMAN & ZIEDENBERG, *supra* note 149 (“For those who have more trouble [transitioning], . . . establishing a relationship with a significant other (a partner or mentor) as well as employment correlates with youthful offenders of all races ‘aging out’ of delinquent behavior as they reach young adulthood.”).

153. Matsuda, *supra* note 120, at 18.

154. *Id.* at 19; see also *id.* at 22 n.8.

155. *Id.* at 19 (quoting He Len Chung et al., *The Transition to Adulthood for Adolescents in the Juvenile Justice System: A Developmental Perspective*, in ON YOUR OWN WITHOUT A NET: THE TRANSITION TO ADULTHOOD FOR VULNERABLE POPULATIONS 68, 79 (D. Wayne Osgood et al. eds., 2005)).

156. Backus, *supra* note 10, at 59, 66 (summarizing the policy of the Youthful

opportunities to make a positive change and to become productive members of society.¹⁵⁷ Individuals “who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for . . . violent or other crimes.”¹⁵⁸ In addition, “laws that make it easier to transfer youth to the adult court system have little or *no general deterrent effect on youth*.”¹⁵⁹ The higher recidivism rate can be explained by multiple factors: (1) “Youth have less access to rehabilitation and family support in the adult system”; (2) they “may be impacted by the stigmatization or negative labeling effects of being labeled a convicted felon”; (3) they “may have a sense of resentment and injustice about being tried as an adult”; and (4) they are more susceptible to criminal education in an adult prison.¹⁶⁰ Furthermore, the reduction of civil liberties resulting from a felony conviction¹⁶¹ can negatively impact a juvenile’s ability to reintegrate into his or her community and to obtain employment.¹⁶² Also, juveniles in “transferred cases were more likely to be convicted than [in] cases retained by the juvenile court and generally received longer sentences as well.”¹⁶³

1. Preadjudicatory Detention

The way in which Oklahoma uses court proceedings to make detention decisions needs to change, and the criteria on which those decisions are based should be reexamined. “[J]uvenile detention is not a cost-effective way of promoting public safety[] or meeting detained young people’s needs.”¹⁶⁴ “Two-thirds of detained youth are held for non-violent offenses[, and m]any, if not all, of these youth would benefit

Offender Act as one that “elevates public safety and accountability over rehabilitation”).

157. *Id.* at 59.

158. ZIEDENBERG, *supra* note 6, at 5 (“[Y]outh tried as adults are more likely to reoffend, even when [accounting] for offense background and other characteristics, than comparable youth retained in the juvenile system.”).

159. *Id.*

160. *Id.* at 19 (summarizing a study comparing juveniles tried in criminal courts to those tried in adult courts).

161. *See id.* at 24.

162. *Id.* at 22.

163. Aaron Kupchik et al., *Punishment, Proportionality, and Jurisdictional Transfer of Adolescent Offenders: A Test of the Leniency Gap Hypothesis*, 14 STAN. L. & POL’Y REV. 57, 69 (2003).

164. HOLMAN & ZIEDENBERG, *supra* note 149, at 11.

from community services.”¹⁶⁵ Although temporary, “detention has a profoundly negative impact on young people’s mental and physical well-being, their education, and their employment.”¹⁶⁶ And “once young people are detained, . . . they are more likely than non-detained youth to end up going [further] into the [juvenile justice] system.”¹⁶⁷ Those juveniles “who are detained are three times more likely to end up being committed to a juvenile facility than [those] who are not detained.”¹⁶⁸ Also, “upwards of two-thirds of young people in detention centers could meet the criteria for having a mental disorder,” and those with behavioral-health problems may “need ongoing clinical care” to keep those problems from getting worse while in detention.¹⁶⁹ The detention itself may cause some of the observed mental disorders exhibited among those in detention.¹⁷⁰ Because cutting the number of individuals in detention will cut the detainment cost for those individuals (i.e., money that could be spent more effectively on alternative programs),¹⁷¹ detention should be a last resort.

2. Incarceration

“Harder” time and longer prison stays have profound and lifelong effects on young people, so lawmakers must consider these consequences.¹⁷² Because of their youth, most juvenile or youthful offenders will serve out their sentences and then be reintroduced into society.¹⁷³ Upon release, many offenders will be young adults; consequently, lawmakers should question the system and the type of individuals that are sent back into the community.¹⁷⁴ Being incarcerated “is the most significant factor in increasing the odds of recidivism”—greater than a poor parental relationship, gang membership, and weapon

165. CMTY. SERVS. DIV., NAT’L ASS’N OF CTYS., *JUVENILE DETENTION REFORM: A GUIDE FOR COUNTY OFFICIALS* 13 (2d ed. 2011) [hereinafter *JUVENILE DETENTION REFORM*] (footnote omitted) <http://www.aecf.org/m/resourcedoc/aecf-JuvDetentionReformForCountyOfficials-2011.pdf> [<http://perma.cc/76NN-FTHV>].

166. HOLMAN & ZIEDENBERG, *supra* note 149, at 2.

167. *Id.* at 5.

168. *Id.* (emphasis omitted).

169. *Id.* at 8.

170. *See id.*

171. *See id.* at 11; *see also* *JUVENILE DETENTION REFORM*, *supra* note 165.

172. Matsuda, *supra* note 120, at 7.

173. *Id.*

174. *See id.*

possession¹⁷⁵—and one study indicates that the suicide rate for these offenders is two to four times higher than the average rate of youth suicides.¹⁷⁶ This suggests that incarcerating more children and adolescents creates additional crime and potentially endangers their lives.¹⁷⁷

a. Adult Facilities

Placing children and adolescents in adult prisons seems to eradicate any hope of rehabilitating the offender; therefore, this placement should be used in only the most extreme circumstances. “[A]dult prisons [are] substantively different than juvenile facilities,”¹⁷⁸ and “the environmental condition matters more in prison than in juvenile facilities.”¹⁷⁹ Studies show that children in adult facilities are influenced by the more experienced adult criminals, learning how to commit crimes and how to avoid getting caught.¹⁸⁰ These young offenders also “recidivate more often than their older adult counterparts.”¹⁸¹ This is not surprising since young offenders are easier to influence and have not yet aged out of delinquent behavior.¹⁸² Moreover, an offender’s age at incarceration directly relates to recommitment; younger prisoners are more likely to end up back in prison after release,¹⁸³ with “the rate of recommitment decreas[ing] by 12% for each increased year of age at admission.”¹⁸⁴

175. HOLMAN & ZIEDENBERG, *supra* note 149, at 4 (summarizing study results identifying “incarceration [as] the most significant factor in increasing the odds of recidivism”).

176. *Id.* at 9; see also Karen M. Abram et al., *Suicidal Thoughts and Behaviors Among Detained Youth*, JUV. JUST. BULL., July 2014, at 2, <http://www.ojjdp.gov/pubs/243891.pdf> [<http://perma.cc/88SY-VC6K>].

177. See Donna Bishop & Charles Frazier, *Consequences of Transfer*, in THE CHANGING BORDERS OF JUVENILE JUSTICE: TRANSFER OF ADOLESCENTS TO THE CRIMINAL COURT 227, 247, 252, 257–61 (Jeffrey Fagan & Franklin E. Zimring eds., 2000) (highlighting a drastic increase in suicides and noting increases in opportunity for criminal education, victimization by other inmates, and recidivism rates among offenders transferred to adult prisons); see also HOLMAN & ZIEDENBERG, *supra* note 149, at 2–3; Matsuda, *supra* note 120, at 32.

178. Matsuda, *supra* note 120, at 143.

179. *Id.*

180. Bishop & Frazier, *supra* note 177, at 257, 263–64.

181. Matsuda, *supra* note 120, at 32; see also HOLMAN & ZIEDENBERG, *supra* note 149.

182. See Matsuda, *supra* note 120, at 32.

183. *Id.* at 111.

184. *Id.* at 113.

Although supporters of transfers argue that “transferring older offenders out of juvenile facilities [will safeguard] younger offenders,” research suggests this is not the case; in fact, transfers are actually detrimental to the future of the transferee, the system, and the community.¹⁸⁵ On top of that, every additional transfer increases the likelihood of recommitment by 18%; one study noted that “more than two institutional moves increased the speed to recommitment by about seven months.”¹⁸⁶ Because of the detrimental effects that result from systematically sending adolescent offenders to adult facilities, only the *most dangerous* child or adolescent offender should *ever* be placed in, or transferred to, an adult facility.¹⁸⁷

b. Juvenile Facilities

Despite the benefits of juvenile facilities, Oklahoma’s juvenile facilities should be modified to provide a setting that is less institutional and more rehabilitative.¹⁸⁸ Placement of children and adolescents in juvenile facilities “vastly improve[s] the chances of success five years post-release,”¹⁸⁹ but these facilities still have their costs. Juvenile facilities focus more on education and therapy—benefits that juveniles do not usually get in adult facilities.¹⁹⁰ However, children placed in custody-oriented facilities are more aggressive,¹⁹¹ commit more crimes after release,¹⁹² and face other serious lifelong effects.¹⁹³ Further, “[t]he costs of correctional incarceration vastly exceed those of other

185. See Bishop & Frazier, *supra* note 177, at 264–65; see also Matsuda, *supra* note 120, at 146 (concluding that the research showed no additional protection for young offenders when older offenders were transferred out of the youth facility).

186. Matsuda, *supra* note 120, at 113–14 tbls.10 & 11, 116.

187. See OKLA. STAT. tit. 10A, § 2-5-207 (2011 & Supp. 2015) (“[I]t is the intent of the Legislature that [a] youthful offender shall not remain in the custody or under the supervision of the [OJA] beyond the youthful offender’s maximum age of eighteen (18) years and five (5) months.”); see also *A.R.M. v. State*, 2011 OK CR 25, ¶ 4, 279 P.3d 797, 799.

188. MENDEL, *supra* note 121, at 43.

189. Matsuda, *supra* note 120, at 143.

190. See *id.* at 35 (“[S]tudies found youth in juvenile facilities have more access to programs (educational and therapeutic) than those in adult prisons. These programs were shown to have an impact on their attitudes and behaviors.”).

191. *Id.* at 31–32.

192. *Id.* at 32.

193. HOLMAN & ZIEDENBERG, *supra* note 149, at 8–10 (discussing detention’s effect on the mental health, education, and employment of young offenders); see also MENDEL, *supra* note 121.

approaches to delinquency treatment with equal or better outcomes” for the child and the community.¹⁹⁴

D. Costs

“[S]teering just one high-risk delinquent teen away from a life of crime saves society \$3 million to \$6 million in reduced victim costs and criminal justice expenses, plus increased wages and tax payments over the young person’s lifetime.”¹⁹⁵ The annual cost of maintaining a single juvenile facility bed can far exceed \$65,000.¹⁹⁶ On top of that, very few juveniles released from juvenile correction facilities return to complete high school; they often struggle to keep a job, and from 70% to 80% of offenders “are rearrested within two or three years for a new offense.”¹⁹⁷ It is estimated that offenders (between the ages of fourteen and twenty-four) who have been released from a juvenile facility work an average of three weeks fewer per year than those who have never been locked up.¹⁹⁸

One study found that incarcerating teenagers and young adults resulted in a 25% to 30% decrease in total time worked during the ten-year period following release.¹⁹⁹ Another study found that “just 12[%] of formerly incarcerated youth earned a high school diploma or GED by young adulthood, compared to a national average of 74[%].”²⁰⁰ Some estimates show that less than 60% of formerly incarcerated youth actually return to school, and almost a fifth of those students dropped out soon after returning—even after “receiving remedial education services.”²⁰¹ “High school dropouts face higher unemployment, poorer health (and a shorter life), and earn substantially less than [those] who do successfully return and complete school.”²⁰² They are also “3.5 times more likely than high school graduates to be arrested.”²⁰³ These costs, coupled with the increased recidivism associated with incarceration,²⁰⁴ demonstrate that the focus of the juvenile justice system should be on

194. MENDEL, *supra* note 121, at 4.

195. *Id.* at 12.

196. HOLMAN & ZIEDENBERG, *supra* note 149, at 10.

197. Patrick T. McCarthy, *Preface* to MENDEL, *supra* note 121, at 2.

198. HOLMAN & ZIEDENBERG, *supra* note 149, at 10.

199. *Id.*

200. MENDEL, *supra* note 121, at 10.

201. HOLMAN & ZIEDENBERG, *supra* note 149, at 9.

202. *Id.*

203. *Id.*

204. *Id.* at 4–5.

rehabilitation. Accordingly, detention and incarceration should be a last resort, reserved only for those who pose a serious threat to the community.

IV. SOLUTIONS

“[T]here are two fundamentally different (but complementary) approaches” to improving juvenile corrections.²⁰⁵ The first approach, established by the Annie E. Casey Foundation (“AECF”), “is to substantially reduce the population confined in juvenile correctional institutions by screening out youth who pose minimal dangers to public safety—placing them instead into cost-effective, research- and community-based rehabilitation and youth development programs.”²⁰⁶ Most of the jurisdictions that have implemented this strategy have seen a decrease in both the crime rates for juvenile and youthful offenders and the burden on taxpayers; moreover, “none of these jurisdictions ha[ve] seen a substantial uptick in crime as incarcerated youth populations [declined].”²⁰⁷ The second alternative, pioneered by Missouri, is to “eschew[] large, prisonlike correctional institutions in favor of smaller, regionally dispersed facilities” that “offer[] a demanding, carefully crafted, multilayered treatment experience designed to challenge troubled teens and to help them make lasting behavioral changes and prepare for successful transitions back to the community.”²⁰⁸ Oklahoma should learn from Missouri and the AECF,²⁰⁹ choosing to implement a plan that will reduce detention and incarceration and place offenders in smaller, more rehabilitative facilities that are closer to their homes.

A. Reduce the Population Confined

Youth who are not grouped together for treatment have lower recidivism rates and better outcomes than those who are

205. MENDEL, *supra* note 121, at 5.

206. *Id.*

207. *Id.*

208. *Id.*

209. See ANNIE E. CASEY FOUND., JUVENILE DETENTION ALTERNATIVES INITIATIVE: DRAFT 2011 ANNUAL RESULTS REPORT 1 (2013) [hereinafter AECF RESULTS REPORT], <http://www.aecf.org/m/resourcedoc/aecf-JDAIResults2011-2013.pdf> [<http://perma.cc/ULF8-FE5U>] (discussing the “gains that sites are making” in the areas of detention, commitment, and crime rates).

“congregat[ed] . . . together for treatment in a group setting.”²¹⁰ The road to reducing the population of juvenile and youthful offenders in confinement starts with reducing the number of juveniles detained before and during trial.²¹¹ “The Juvenile Detention Alternatives Initiative [“JDAI”] is a nationwide effort of local and state juvenile justice systems, initiated and supported by the [AECF], to eliminate unnecessary and inappropriate use of secure detention for juveniles.”²¹²

The AECF started the JDAI during the 1990s, and it is now “the most widely replicated juvenile justice initiative in the United States, reaching youth in more than 200 counties across [thirty-nine] states as of 2013.”²¹³ In 2011, JDAI “[s]ites reported detaining 41[%] fewer youth on an average day,” “detained 39[%] fewer youth of color,” and “reduced the number of youth they commit by 38[%], or by more than 4,200 youth annually.”²¹⁴ Data from 2011 also demonstrated that JDAI sites reduced reports of “[j]uvenile crime indicators . . . by an average of 32[%],” and preadjudication, rearrest, and failure-to-appear rates saw “modest improvements”; however, “the number of sites reporting on these indicators remains much too low.”²¹⁵

The JDAI has several objectives: (1) “[t]o reduce unnecessary or inappropriate secure confinement of children”; (2) “[t]o reduce crowding and to improve conditions for children in secure detention facilities”; (3) “[t]o encourage the development of non-secure alternatives to secure juvenile confinement”; and (4) “[t]o discourage failures to appear in court and subsequent delinquent behavior.”²¹⁶ The JDAI offers specific state- and county-level plans to help implement, evaluate, and maintain the program.²¹⁷ The initiative uses “eight interrelated core strategies” to

210. HOLMAN & ZIEDENBERG, *supra* note 149, at 5.

211. AECF RESULTS REPORT, *supra* note 209.

212. *Id.*

213. *Id.*; see also *Juvenile Detention Alternatives Initiative*, ANNIE E. CASEY FOUND., <http://www.aecf.org/work/juvenile-justice/jdai/> [<http://perma.cc/9YDH-VPUD>] (last visited Jan. 7, 2016).

214. AECF RESULTS REPORT, *supra* note 209.

215. *Id.* at 1–2.

216. DAVID STEINHART, ANNIE E. CASEY FOUND., *JUVENILE DETENTION RISK ASSESSMENT: A PRACTICE GUIDE TO JUVENILE DETENTION REFORM 5* (2006), <http://www.jdaihelpdesk.org/objecttech/Practice%20Guide%20to%20Juvenile%20Detention%20Risk%20Assessment.pdf> [<http://perma.cc/29H2-7QQJ>].

217. See *JUVENILE DET. ALTS. INITIATIVE*, ANNIE E. CASEY FOUND., *STATE-LEVEL DETENTION REFORM: A PRACTICE GUIDE FOR STATE ADVISORY GROUPS 4–7* (2008) [hereinafter *STATE-LEVEL DETENTION REFORM*], <http://www.aecf.org/m/resourcedoc/aecf-practice3stateleveldetentionreform-2008.pdf> [<http://perma.cc/G2MJ-MVUJ>].

accomplish its goals: (1) “[c]ollaboration”; (2) “[u]se of accurate, comprehensive data”; (3) “[u]se of objective admissions criteria and instruments”; (4) “[n]ew or enhanced alternatives to detention”; (5) “[c]ase processing reforms”; (6) “[c]areful management of ‘special’ detention cases”; (7) “[d]eliberate commitment to reducing racial disparities”; and (8) “[i]mproving conditions of confinement.”²¹⁸

Overall, implementation of the JDAI reduces the costs of a juvenile justice system by eliminating the need to construct new detention facilities, allowing entire existing detention facilities or portions of those facilities to close, increasing efficiencies across the entire system, promoting public safety, and improving a child’s likelihood of success.²¹⁹

B. Risk Screening

Oklahoma’s juvenile justice system should begin the road to improvement by implementing a new risk-screening program for determining which children or adolescents should be placed in secured detention.²²⁰ The JDAI provides a comprehensive guide to help develop such a program. This risk-screening program should be based on objective criteria for determining whether detention is appropriate, “applied equally to all minors referred for a detention decision,” and capable of measuring “the risk of reoffending before adjudication and the risk of failing to appear at a court hearing.”²²¹ It should be “tailored to fit state and local laws, policies, and procedures,” but it should also follow particular design principles in order to be successful.²²² Additionally, the screening assessment should be designed to measure the risk that a child or an adolescent may “commit[] another public offense prior to adjudication and disposition of the case” and the risk that he or she may “fail[] to appear in court . . . after release.”²²³

There is another risk—a child’s or an adolescent’s protection.

See generally JUVENILE DETENTION REFORM, *supra* note 165, at 3–12 (detailing the effects of juvenile detention on counties, explaining cost-effective alternatives, and offering examples of successful sites).

218. STATE-LEVEL DETENTION REFORM, *supra* note 217.

219. JUVENILE DETENTION REFORM, *supra* note 165, at 5.

220. STEINHART, *supra* note 216.

221. *Id.* at 7.

222. *Id.* at 8. These design elements “are all grounded in the principles of objectivity, uniformity, and [a tailored] risk assessment.” *Id.*

223. *Id.* at 10.

Oklahoma specifically addresses that risk, but the JDAI does not.²²⁴ “[H]istorically, protection of the minor has been widely abused as a justification for secure pre-trial detention”;²²⁵ consequently, it should be abandoned. Detention does not protect a child or an adolescent from self-harm in situations where the problem is undiagnosed and untreated.²²⁶ Rather, detention can possibly subject a child or an adolescent to injury by facility staff or other detainees, and it can increase the suicide risk for those who are otherwise healthy.²²⁷ Detention also fractures a child’s or an adolescent’s normal relationships and routines with family, work, and school.²²⁸ Accordingly, if a child or an adolescent, who would not otherwise be detained, has medical or mental-health needs that require treatment, the risk-screening assessment must be capable of detecting and identifying those needs, and appropriate treatment should be provided outside of secure detention.²²⁹ The JDAI recommends several core design principles, which include (1) “[s]elect[ing] proven risk factors”; (2) “[a]void[ing] redundant risk factors”; (3) “[using] objective and balanced aggravation/mitigation criteria”; (4) “balanc[ing] between points and decision or outcome sales”; (5) “[p]rovid[ing] for mid-range alternatives”; (6) “[c]ontrol[ing] special and mandatory detention cases”; and (7) “[i]nclud[ing] specific override criteria.”²³⁰

After developing the appropriate risk-screening assessment tool, the next major objective is to establish the proper decision-making procedure.²³¹ “Children who are initially detained have a high probability of having their detention continued at a first court appearance and then extended until adjudication or disposition of the case, which may be several weeks away.”²³² There are JDAI sites that keep the detention decision in the hands of the judiciary (as in Oklahoma), and children are

224. See OKLA. STAT. tit. 10A, § 2-3-101(A) (2011 & Supp. 2015); see also STEINHART, *supra* note 216, at 10. “When a child is taken into custody pursuant to the provisions of the [OJC], the child shall be detained only if it is necessary to assure the appearance of the child in court or *for the protection of the child or the public.*” tit. 10A, § 2-3-101(A) (emphasis added).

225. STEINHART, *supra* note 216, at 10.

226. See *id.*

227. *Id.*

228. See *id.* at 5, 7.

229. *Id.* at 10.

230. *Id.* at 15–17 (emphasis omitted).

231. *Id.* at 5.

232. *Id.* at 18. This scenario is common when children are brought in after hours, but some systems have after-hours assessment procedures in place. *Id.*

occasionally held overnight or over the weekend in situations where they cannot see a judge that day.²³³ However, the juvenile justice leaders at these sites are working on ways to “move[] the screening process closer to the point of arrest.”²³⁴ Oklahoma should do the same. This will allow law enforcement officers to perform the screening either directly or indirectly in the field,²³⁵ which “reduc[es] the time and costs incurred by transporting all arrested youth to the detention facility.”²³⁶

Oklahoma should also reevaluate its special- and mandatory-detention overrides. Excessive overrides can bring the entire system's integrity into question.²³⁷ Overrides allow the evaluator to detain or release a child or an adolescent even when the risk-evaluation assessment recommends otherwise.²³⁸ Oklahoma currently imposes mandatory detention, which would override a decision not to detain, for individuals who have escaped from delinquent placement; fled from another jurisdiction; displayed seriously assaultive or destructive behavior toward others or themselves; received a felony charge; or received a misdemeanor charge while on probation or parole, preadjudicatory community supervision, or release.²³⁹ All of these considerations should be taken into account, and some should still require mandatory detention; however, these factors need to be reevaluated exclusively in terms of the risks of reoffending before adjudication and the failure to appear at future court proceedings.

C. Community-Based Programs

If the rehabilitation programs “keep [children] at home and provide targeted and evidence-based supports to help the young people and their families,” juveniles are more likely to succeed.²⁴⁰ Missouri, a JDAI state, has created the most successful juvenile justice reforms to date.²⁴¹ Like Missouri, “[s]tates as politically diverse as Alabama, California[,] and

233. *See id.* at 18–19.

234. *Id.* at 19.

235. *See id.* at 19–20.

236. *Id.* at 19.

237. *Id.* at 17.

238. *Id.*

239. OKLA. STAT. tit. 10A, § 2-3-101(B) (2011 & Supp. 2015).

240. McCarthy, *supra* note 197, at 3.

241. CHIEF JUSTICE EARL WARREN INST. ON LAW & PUB. POLICY, BERKELEY LAW, JDAI SITES AND STATES 73 (2012), <https://www.law.berkeley.edu/wp-content/uploads/2015/04/JDAI-Rep-1-FINAL.pdf> [<http://perma.cc/C9X5-GZFN>].

Texas[] have recently revised their juvenile codes to explicitly prohibit commitments for less-serious offenses,” detaining children only when it is necessary to facilitate protection of the public.²⁴² Some of these changes were made upon realizing that youth placed in supervised community-based facilities are 14% less likely to recidivate.²⁴³ In fact, other studies found that alternative programs reduce the risk of recidivism even more.²⁴⁴

In fact, Missouri’s system provides an excellent model for other states that are considering changes to their juvenile justice system.²⁴⁵ It is founded on an “unwavering . . . set of longstanding core beliefs”—of which three stand out:²⁴⁶

(1) that all people—including delinquent youth—desire to do well and succeed; (2) that with the right kinds of help, all youth can (and most will) make lasting behavioral changes and succeed; and (3) that the mission of youth corrections must be to provide the right kinds of help, consistent with public safety, so that young people make needed changes and move on to successful and law-abiding adult lives.²⁴⁷

Additionally, there are six key components that make Missouri’s system successful.²⁴⁸ First, “Missouri places youth who require confinement into smaller facilities located near the youths’ homes and families, rather than incarcerating delinquent youth in large, far-away, prisonlike training schools,”²⁴⁹ like those found in Oklahoma.²⁵⁰ Second, Missouri does not place children “in individual cells or leav[e] them to fend for themselves among a crowd of delinquent peers.”²⁵¹ Instead, “Missouri places youth into closely supervised small groups and applies a rigorous group

242. AECF DATA SNAPSHOT, *supra* note 131, at 4.

243. HOLMAN & ZIEDENBERG, *supra* note 149.

244. *Id.*

245. McCarthy, *supra* note 197.

246. MENDEL, *supra* note 121, at 36.

247. *Id.*

248. *Id.* at 13–15.

249. *Id.* at 13.

250. See OFFICE OF JUVENILE AFFAIRS, STATE OF OKLA., 2012 ANNUAL REPORT 11 (Paula Christiansen ed., 2012), <http://ok.gov/oja/documents/AR2012.pdf> [<http://perma.cc/RM2R-AHF6>].

251. MENDEL, *supra* note 121, at 13.

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treatment process offering extensive and ongoing individual attention.”²⁵² Third, “Missouri . . . keep[s] youth safe not only from physical aggression but also from ridicule and emotional abuse; and it does so through constant staff supervision and supportive peer relationships rather than through coercive techniques that are commonplace in most youth corrections systems.”²⁵³ Fourth, “Missouri helps confined youth develop academic, pre-vocational, and communications skills that improve their ability to succeed following release—along with crucial insights into the roots of their delinquent behavior and new social competence to acknowledge and solve personal problems.”²⁵⁴ Fifth, Missouri attempts to develop partnerships with the child’s family by “involv[ing] them as partners in the treatment process and as allies in planning for success in the aftercare transition.”²⁵⁵ Finally, “Missouri . . . conduct[s] intensive aftercare planning prior to release, monitoring and mentoring youth closely in the first crucial weeks following release, and working hard to enroll them in school, place them in jobs, and/or sign them up for extracurricular activities in their home communities.”²⁵⁶

Another aspect of Missouri’s juvenile justice system that makes it successful is the fact that 82% of children and adolescents are provided indeterminate sentences.²⁵⁷ These sentences give the Division of Youth Services (“DYS”), which is like Oklahoma’s OJA, the discretion to decide what program is best for juveniles or youthful offenders; the security level required for their detainment; how long they should be held; when they should be released; and how long they should be supervised on aftercare status.²⁵⁸ The DYS can then customize the treatment plan, placing accountability for the length of stay with the offender.²⁵⁹ This heavily incentivizes active participation in the offender’s own treatment and prompts completion because once the treatment plan is complete, the offender may be eligible for release (subject to reconfinement in situations where the child displays a risk of reoffending).²⁶⁰

252. *Id.*

253. *Id.* at 13–14.

254. *Id.* at 14.

255. *Id.*

256. *Id.* at 14–15.

257. *Id.* at 22.

258. *Id.*

259. *Id.*

260. *Id.*

V. CONCLUSION

Oklahoma's juvenile justice system needs to be reformed. In 2012, OJA Director T. Keith Wilson²⁶¹ said, "While available resources were declining, our institutions were experiencing an increase in the average age of youth in residence, youth with serious mental issues, youth that have committed serious violent crimes and an increase in youth with ties to various gangs."²⁶² When deciding how to address these problems, Oklahoma must broaden its view and look at the juvenile justice system as a whole before it makes any changes.

Oklahoma's criminal system needs to recognize that children and adolescents are fundamentally different from adults in terms of their behavior, ability to make rational choices, and ability to make lasting changes in their own lives.²⁶³ These differences between children and adults are recognized throughout the law in several different contexts, which include laws regarding voting, drinking, consenting to contracts, driving, suing and being sued, making wills and acting as a witness or executor, changing a name, and being employed.²⁶⁴ It seems odd to say that children and adolescents are as culpable as adults when they are not even capable of making "adult decisions" in any of the previously mentioned contexts. These differences need to be taken into account during all phases of the criminal process, starting with detention and ending with release.²⁶⁵

The decision regarding whether to detain a child accused of a crime needs to be made outside the courtroom. It should be based exclusively on whether the child will commit another offense prior to the disposition of the pending case and whether the child will, if released, appear in future court proceedings;²⁶⁶ this will reduce detention, save the money required for detainment, and eliminate the negative impacts detention has

261. In September 2012, T. Keith Wilson took over as Executive Director of the OJA. Barbara Hoberock, *Juvenile Affairs Has New Director*, OKLAHOMAN, Sept. 10, 2012, at 5A.

262. T. Keith Wilson, *Letter from the Director* in OFFICE OF JUVENILE AFFAIRS, *supra* note 250, at 4.

263. See *supra* Section III.B; see also Backus, *supra* note 10, at 55–56.

264. See generally 2 THOMAS A. JACOBS, CHILDREN AND THE LAW: RIGHTS AND OBLIGATIONS § 11:9–:28, at 496–549 (2012 ed. 2012) (discussing the rights, privileges, and liabilities of children and highlighting certain age limitations).

265. See *supra* Sections III.B–C.

266. See *supra* Section IV.B.

on a child or adolescent.²⁶⁷ Then, Oklahoma needs to leverage its existing system of community-based facilities to increase the options for treating all children and adolescents who are convicted of committing a crime.²⁶⁸ Reducing the amount and the utilization rate of institutional facilities will save taxpayers money and provide suitable environments for rehabilitation.²⁶⁹

Plenty of guidance exists to assist in revising the juvenile justice system; Oklahoma should look at the thirty-nine states that have embraced the JDAI (especially Missouri), seeking to learn from their mistakes and successes.²⁷⁰ Oklahoma should also learn from its own mistakes to avoid falling so far behind that it is once again labeled as one of the worst juvenile justice systems in the country.²⁷¹ The first step toward solving the problems with the juvenile justice system is to realize the impracticality of maintaining a costly system that fails to provide the very benefits it claims to generate.²⁷² Oklahoma needs to recognize that its juvenile justice system should focus on crime reduction and on helping these juvenile and youthful offenders become productive members of society.²⁷³ Shifting focus away from institutionalization toward rehabilitation may create fewer hardened criminals and may allow those accused of even the worst crimes—who are likely to reenter society because of their youth—a chance to recognize the mistakes they made and the impact of those decisions, which will help them make better decisions in the future.²⁷⁴

267. *See supra* Part IV.

268. OKLA. STAT. tit. 10A, § 2-7-303 (2011 & Supp. 2015); *see also supra* Section IV.C.

269. *See supra* Section III.D; *see also supra* Part IV.

270. *See supra* Section IV.A.

271. *See supra* Part II.

272. *See supra* Section III.D.

273. *See supra* Section III.B–C.

274. *See* MENDEL, *supra* note 121, at 49.