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***BEYOND THE BENCH:***  
**SOLUTIONS TO REDUCE THE**  
**DISPROPORTIONATE NUMBER OF**  
**MINORITY YOUTH IN THE FAMILY AND**  
**CRIMINAL COURT SYSTEMS**

*Jessica Jean Kastner*\*

INTRODUCTION

On September 19, 2006, a Judicial Conference on the Disproportionate Number of Minority Youth in the Family and Criminal Court Systems was held in White Plains, New York. The conference was sponsored by the Franklin H. Williams Judicial Commission on Minorities and the New York State Family Court Judges Associations, as well as the Unified Court System of New York and Chief Judge Judith S. Kaye. In attendance were legal professionals, social psychologists, social workers and judges from around New York. The purpose of the conference was to discuss practical solutions to the epidemic problem of overrepresentation of minority youth in the criminal and family court systems. The conference was organized by and

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\* Brooklyn Law School Class of 2007; B.A. State University of New York at Purchase College 2004. The author wishes to thank her parents, Maryellen and Brian LeClerc and Theodore Kastner, her brother, Joshua LeClerc, and her friends, Michelle Hreha, Shaina Itkin, Sheryl Carrier, Jennifer Schriever, and Sarah Ernst, for their love, support and patience. She would also like to thank Chief Judge Judith S. Kaye, Judge Cheryl E. Chambers, and Marian Wright Edelman for their contribution and inspiration, and Lee Jacobs, Jane Andersen, Deanna DeFrancesco, Maryanne Mendenhall, Kate Kennedy, Margureite Ruel, and the members of the *Journal of Law and Policy* for all of their help and hard work in creating this final product.

predominantly directed toward judges, but the solutions proposed during the conference relate to all aspects of the system. This article discusses several of the solutions proposed during the conference which have the potential to be the most instrumental in effecting change for minority youth and their contact with the criminal justice system.

“Disproportionality” and “overrepresentation” refer to “a larger number of people of a particular racial or ethnic group being represented in the criminal justice system than would be expected based on their proportion in the general population.”<sup>1</sup> The “overrepresentation of African-American, Latino, and Native American youth and adults has been well documented in the juvenile and criminal justice systems.”<sup>2</sup> Determining the cause and beginning to remedy this problem is not a simple task. As the introductory speakers noted, the problems associated with youth entering and staying within the criminal justice system are varied and numerous.

One of the most significant obstacles in finding solutions to this problem, is that “the criminal justice system is exactly that, a network of agencies, including the police or sheriff’s department, the jail, the district attorney’s office, the public defender’s office, the court, the prison, and community corrections agencies.”<sup>3</sup> Decisions are made by individuals at each stage of the process. These decisions function together and have cumulative effects that comprise our criminal justice system.<sup>4</sup> In a study on the disproportionate treatment of minorities in the juvenile justice system, disproportionate treatment was found at some or all of the “decision points” in two-thirds of the studies.<sup>5</sup> “In those studies where

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<sup>1</sup> Carolyn Copps Hartley & Carrie J. Petrucci, *Practicing Cultural Competent Therapeutic Jurisprudence: Collaboration Between Social Work and Law*, 14 WASH. U. J. L. & POL’Y 133, 148 (2004).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 150.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 150 (citing Carl E. Pope & William Feyerherm, *Minorities and the Juvenile Justice System: Research Summary* 5 (1995)).

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disproportionate treatment was found, the effects were often cumulative.”<sup>6</sup> “This indicated that racial differences, even small ones, that occurred earlier in the process, at intake, for example, impacted decisions at a later point in case-processing, putting minority youth at an increased disadvantage as they traveled further into the system.”<sup>7</sup>

In order to begin to remedy the problem of overrepresentation of minority youth in the court systems, there must be changes at all stages of the criminal justice system. Although the conference was directed mainly toward the judiciary’s ability to effectuate change in this area, it did stress the importance for change to come from all corners of the system. This article addresses three proposed solutions that could begin to remedy this problem. The solutions addressed in this article were chosen from a host of recommendations that were voiced by speakers and attendees during the day-long judicial conference.

Part I suggests providing cultural competency training for legal professionals is the first step in reducing the disproportionate number of minority youth in criminal and family courts. Part II suggests that a large portion of this problem originates with deficiencies in the foster care system, and proposes that a program to help foster youth with the

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The decision points examined included: decision to arrest (arrest or order to appear in court without arrest; made by law enforcement); intake decision (handle the case at intake or submit the case for further processing; can be made by probation and/or prosecution); placement decision (detain the youth or allow the youth to remain home prior to adjudication; can be made by probation or court decision); petition decision (file a formal petition or use an informal resolution to the case; prosecutor); resolution decision (resolve the case through probation or custody; judge or jury).

Hartley & Petrucci, *supra* note 1, at n.103 (citing Pope & Feyerherm, *supra* note 4, at 5).

<sup>6</sup> Hartley & Petrucci, *supra* note 1, at 150 (citing Pope & Feyerherm, *supra* note 5, at 5).

<sup>7</sup> *Id.*

transition from foster care to independent living would greatly decrease homelessness, drug use and ultimately criminal conduct among these young people—the majority of whom are African American or Latino. Part III discusses the connection between the grave deficiencies in the juvenile confinement system and high rates of recidivism among minority youth, and recommends decentralized community houses, such as those implemented in Missouri, in lieu of tradition confinement, as it is a more rehabilitative and cost effective solution.

#### I. PROVIDE CULTURAL COMPETENCY TRAINING TO LEGAL PROFESSIONALS

In order to remedy the problem of overrepresentation of minority youth in the criminal and family court systems, the system's key players should receive cultural competency training. This training should educate professionals about the cultural and historical differences among different racial groups, enable them to become aware of their own attitudes towards other racial groups, introduce them to the concept of institutional racism, and teach effective cross-cultural communication skills.

Cultural competence has been defined as a “set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals and enable that system, agency, or those professionals to work effectively in cross-cultural situations.”<sup>8</sup> This should be a constant priority for the criminal justice system—“to work effectively in cross-cultural situations.”<sup>9</sup> “Culturally competent practice involves integrating and transforming knowledge about individuals and groups of people into specific standards, policies, practices, and attitudes to increase the quality of responses.”<sup>10</sup> In order to begin to break the cycle of overrepresentation of minorities in the criminal justice system, it is critical that professionals at every level of the criminal justice system, not just judges, but police

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

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officers, corrections officers, probation officers, district attorneys, and public defenders, receive cultural competency training.<sup>11</sup>

The mere fact that “the majority of legal professionals are members of the white dominant culture,” while racial minorities disproportionately appear on the other side of the criminal justice system, is an indication that cultural competency training should be a part of the training process for legal professionals.<sup>12</sup> To some legal professionals, especially those who are in the racial majority, cultural competency training may seem unnecessary, since racial discrimination on an individual level may not be commonplace in the legal system today.<sup>13</sup> Many people view racism as “a problem of individual prejudice or the racist beliefs and actions of a few individuals.”<sup>14</sup> This understanding shows a limited “conceptual grasp of the connections between prejudice and larger societal, institutional, or cultural forces” as well as a lack of responsibility for perpetuating societal norms that favor the racial majority.<sup>15</sup> Cultural competency education is needed to move individuals away from these simplistic notions of racism and discrimination “toward a more complex understanding of the multiple dimensions of racism, discrimination, and oppression in this country.”<sup>16</sup>

The purpose of cultural competency training goes beyond combating individual discrimination.<sup>17</sup> Cultural competency

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<sup>11</sup> *Id.* Given the inherent power in the hands of judges, who are predominantly white, and the vulnerability of the accused, who are disproportionately minorities, cultural competency training for judges in particular is crucial to securing effective solutions to the problem of overrepresentation of minorities.

<sup>12</sup> Hartley & Petrucci, *supra* note 1, at 137.

<sup>13</sup> *Id.* at 149.

<sup>14</sup> *Id.* at 178 (citing Thomas R. Bidell et al., *Developing Conceptions of Racism Among Young White Adults in the Context of Cultural Diversity Coursework*, 1 J. ADULT DEV. 185, 196 (1994)).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Hartley & Petrucci, *supra* note 1, at 149.

training is needed to battle “institutional discrimination.”<sup>18</sup> “Institutional discrimination” suggests that the rules, policies and procedures of an institution “result in discriminatory outcomes for racial or ethnic groups.”<sup>19</sup> This type of racial discrimination often is unintentional, goes unrecognized by those in power, and is pervasive throughout the system.<sup>20</sup> Legal professionals “must be able to intellectually understand how systematic racial inequalities function to assign roles of racial advantage within the social system and how the racial majority benefits from these advantages.”<sup>21</sup>

“Both common knowledge and social science research support the notion that certain beliefs about differences among racial groups affect interpersonal interactions between racial groups.”<sup>22</sup> “Research has found that whites generally have more positive constructions of their own racial group and fewer positive constructions of other racial groups.”<sup>23</sup> One study showed that males and older white individuals are more apt to be confused about racial identity issues, less comfortable dealing with cross racial relations, and more likely to hold unfavorable

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* (citing SAMUEL WALKER ET AL., *THE COLOR OF JUSTICE: RACE, ETHNICITY, AND CRIME IN AMERICA* 15, 17 (2d ed. 2000)).

<sup>20</sup> *Id.* “Prior to the civil rights era, the criminal justice system, as a whole, was characterized by systematic discrimination.” Hartley & Petrucci, *supra* note 1, at 149. Currently “at the national level, the data is simply not comprehensive enough to ascertain with certainty that discrimination exists in the juvenile justice system.” *Id.* at 150 (citing Howard N. Snyder & Melissa Sickmund, *Juvenile Offenders and Victims: 1999 National Report* 192, 193 (1999)). However, the authors agree that overrepresentation and disparity are clearly evident in the system. *Id.*

<sup>21</sup> Hartley & Petrucci, *supra* note 1, at 178 (citing Bidell, *supra* note 14, at 14).

<sup>22</sup> Hartley & Petrucci, *supra* note 1, at 162 (citing J. Blaine Hudson & Bonetta Hines-Hudson, *A Study of Contemporary Racial Attitudes of Whites and African Americans*, 23 W. J. BLACK STUD. 22, 27 (1999)).

<sup>23</sup> Hartley & Petrucci, *supra* note 1, at 162-63 (citing Michael W. Link & Robert W. Oldendick, *Social Construction and White Attitudes Toward Equal Opportunity and Multiculturalism*, 58 J. POL. 149, 163 (1996)).

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views of other racial groups.<sup>24</sup>

“Different models of cultural competency education have similar threads, but can vary in their emphasis or focus.”<sup>25</sup> A critical component of cultural competency training is an exploration of one’s own racism.<sup>26</sup> “Cultural perspectives tend to be invisible . . . and, therefore, [most] do not pay attention to how our culture influences” the perception or judgment of others.<sup>27</sup> “If cultural competency education does not include a strong anti-racism component, [individuals], especially white [individuals], will continue to deny responsibility for rac[ism].”<sup>28</sup> Developing “multicultural competence requires facing discomforting truths about ourselves and our society, especially for those of us who enjoy the privileges of the dominant culture.”<sup>29</sup> Other common components of cultural competency training include: increasing individual knowledge

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<sup>24</sup> According to these studies, men are less comfortable with cross racial interactions and dealing with race-related issues than women, and “men are also more apt to be confused about racial identity issues than women.” Hartley & Petrucci, *supra* note 1, at 163; *See also* Robert T. Carter, *The Relationship Between Racism and Racial Identity Among White Americans: An Exploratory Investigation*, 69 J. COUNSELING & DEV. 46, 71 (1994); Donald B. Pope-Davis & Thomas M. Ottavi, *The Relationship Between Racism and Racial Identity Among White Americans: A Replication and Extension*, 72 J. COUNSELING & DEV. 293 (1993). “With regard to age, older white individuals held less positive views of racial minorities compared to whites than younger individuals, and older people also reported greater discomfort with racial interactions.” Hartley & Petrucci, *supra* note 1, at 163 (citing Link, *supra* note 23, at 159).

<sup>25</sup> Hartley & Petrucci, *supra* note 1, at 170.

<sup>26</sup> *Id.* at 178, (citing Sue & Sue, *infra* note 33, at 73-74).

<sup>27</sup> Hartley & Petrucci, *supra* note 1, at 178.

<sup>28</sup> *Id.* at 178 (citing Silver, *infra* note 29, at 237-38).

<sup>29</sup> Hartley & Petrucci, *supra* note 1, at 178 (internal citations omitted). “Members of the dominant culture, in this case whites, are likely to have the most difficulty with cultural competency because they enjoy the most privileges in our society. These privileges are unconscious for many whites, even ‘liberal’ whites.” Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219, 231 (2002); *See also* Bidell et al., *supra* note 14, at 188.

about diverse populations; recognizing the systematic advantages of the racial majority compared to racial minorities;<sup>30</sup> and assisting individuals in acquiring effective cross-cultural communication skills.<sup>31</sup>

In regards to cultural competency training in the legal profession in particular, there should be “an exploration of issues of power and oppression in perpetuating institutional racism.”<sup>32</sup> Additionally, to be effective, cultural competency training should include a skill development component, which allows participants “to move beyond awareness to action.”<sup>33</sup>

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<sup>30</sup> Being able to “cognitively conceptualize the systemic aspects of racism is necessary, but not sufficient, for young white adults to challenge patterns of racism in their own lives.” Hartley & Petrucci, *supra* note 1, at 178 (citing Bidell, *supra* note 21, at 186).

<sup>31</sup> Hartley & Petrucci, *supra* note 1, at 170 (citing PAUL PEDERSEN, A HANDBOOK FOR DEVELOPING MULTICULTURAL AWARENESS (2d ed. 1995)). See generally Michael D’Andrea et al., *Evaluating the Impact of Multicultural Counseling Training*, 70 J. COUNSELING & DEV. 143 (1991). Another author suggests that cultural competency training should include:

- (a) the capacity to understand and appreciate different values, languages, dialects, cultures and life styles;
- (b) a capacity for empathy that transcends cultural differences;
- (c) avoidance of conduct that may be perceived as demeaning, discourteous, or insensitive to persons from other cultural groups; and
- (d) a critical understanding of stereotyped thinking and a capacity for individualized judgment.

Suelyn Scarnecchia, *State Responses to Task Force Reports on Race and Ethnic Bias in the Courts*, 16 HAMLINE L. REV. 923, 935 (1993) (discussing judicial, staff, and attorney training in response to state court reports of racial and ethnic bias).

<sup>32</sup> Hartley & Petrucci, *supra* note 1, at 171. This includes recognizing the perspective of minorities when coming in contact with the criminal justice system. Minorities have historically been oppressed and discriminated against by the racial majority. When involved in the criminal justice system, minorities are again put in a position of subordination to an institution created by the racial majority.

<sup>33</sup> Hartley & Petrucci, *supra* note 1, at 179 (citing DERALD WING SUE & DAVID SUE, COUNSELING THE CULTURALLY DIFFERENT: THEORY AND PRACTICE 166 (2d ed. 1990)).

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“Such skill development involves presenting and discussing the skill, demonstrating the skill, practicing the skill in a role-play situation with feedback, and transferring the skill into real-world interactions.”<sup>34</sup> There should be an infusion of cultural competency content into the legal system and practical skilled based training, rather than offering one-time lecture courses.<sup>35</sup>

Cultural competency training is the first step towards eradicating institutional discrimination in the criminal justice system, and reducing the disproportionate effects of the system on racial minorities. Social science research has found that participating in cultural competency training has had positive results in changing racial attitudes and bridging cultural gaps,<sup>36</sup> and helps individuals to acquire a more complex understanding

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<sup>34</sup> Hartley & Petrucci, *supra* note 1, at 180 (citing PEDERSEN, *supra* note 31, at 41).

<sup>35</sup> Hartley & Petrucci, *supra* note 1, at 136. A study found that: one-third of students made no progression in their understanding of racism’s complexities after participating in one cultural diversity class, indicating that one course on racism may not be sufficient to challenge [individual]’s racial beliefs and move students toward more mature racial identity development, cultural awareness, or cultural competence.

Hartley & Petrucci, *supra* note 1 at 175 (citing Bidell, *supra* note 14).

<sup>36</sup> Hartley & Petrucci, *supra* note 1, at 170 (finding that numerous social science research studies support the importance of developing cultural competencies for effective helper-client relationships); *see also* Sherlon P. Brown et al., *Influence of a Cross-Cultural Training Course on Racial Identity Attitudes of White Women and Men: Preliminary Perspectives*, 74 J. COUNSELING & DEV. 510, 514 (1996) (reporting that participating in a cross-cultural counseling course positively changed the racial identity attitudes of white counselors-in-training); Sharron M. Singleton-Bowie, *The Effect of Mental Health Practitioners’ Racial Sensitivity on African Americans’ Perceptions of Services*, 19 SOC. WORK RES. 238, 241 (1995) (stating that clients whose mental health case managers “scored higher on the Racial Oppression Sensitivity Scale felt better about the services they received and had less difficulty in receiving services” than clients whose case workers were less sensitive to racial issues). Further, “[p]rocedural justice theory suggests that people comply with the law if they believe that legal institutions are legitimate and fair, even when legal outcomes are unfavorable.” Hartley & Petrucci, *supra* note 1, at 157.

of racial issues.<sup>37</sup> Awareness and education are the beginning of change. Cultural competency training allows legal professionals to recognize the problem so they can begin to form and implement solutions. Once legal professionals recognize that institutional racism exists, take responsibility for their role in perpetuating it, acknowledge the possibility of change, and learn effective methods of cross-cultural communication, the road to an ultimate solution can begin.

## II. FOSTER CARE REFORM

A large portion of the discussion at the conference focused on the foster care system.<sup>38</sup> Numerous studies have shown that there is a correlation between youth who spend time in foster care and those who have contact with the criminal justice

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<sup>37</sup> Hartley & Petrucci, *supra* note 1, at 170.

<sup>38</sup> Laura Harper characterizes state foster care statutes as ones that allow for the placement of abandoned, abused or neglected children in the homes of adults selected and licensed by the social service agency to serve as foster parents. The eligibility of adults to serve as foster parents is typically limited by certain statutory criteria. The individuals who are selected enter into a contract with the state. Under the contract, the foster parents receive compensation to provide care for the child under the direction and supervision of the agency.

See Laura Harper, *The State's Duty to Children in Foster Care—Bearing the Burden of Protecting Children*, 51 *DRAKE L. REV.* 793, 796 (2003). Furthermore,

[y]outh enter foster care for a multitude of reasons. Some enter the system as babies, while others may have no contact with a government agency until they are teenagers. Some children are “voluntarily” given up to foster care by parents who are unable to take care of them; others enter foster care as a result of the government’s decision to remove them “involuntarily” from abusive or neglectful homes.

Michele Benedetto, *An Ounce of Prevention: Foster Youth’s Substantive Due Process Right to Proper Preparation for Emancipation*, 9 *U.S.D.J.J.L.& P.* 381, 384 (Summer 2005).

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system.<sup>39</sup> Among these studies, statistics of children in foster care who become involved in the criminal justice system range from one third to an alarmingly high 75%.<sup>40</sup> Statistics and studies clearly show that placement in foster care puts children at risk of being committed to a juvenile detention facility,<sup>41</sup> or ending up in prison.<sup>42</sup>

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<sup>39</sup> David E. Cichon, *Encouraging a Culture of Caring for Children With Disabilities: a Cooperative Approach*, 25 J. LEG. MED. 39, 56 (2004) (citing Gary. R. Anderson, Aging Out of Foster Care: Policy Implications for the State of Michigan, <http://www.ippsr.msu.edu/AppliedResearch/Anderson.htm> (Feb. 27, 2002)) (reporting that approximately one-third of young men and women have an encounter with the criminal justice system within 12 months of leaving foster care); Mark E. Courtney et al., Chapin Hall Center for Children at the University of Chicago, *Midwest Evaluation of the Adult Functioning of Former Foster Youth* 42 (2004), <http://www.about.chapinhall.org/index.html> (“A 2004 study by the Chapin Hall Center for Children at the University of Chicago found more than half of emancipated foster youth had been arrested, more than one-third spent at least one night at a correctional facility, and one-fifth reported being convicted of a crime”); TANYA KRUPAT, VISITING IMPROVEMENT EFFORTS: THE IMPORTANCE OF MAINTAINING FAMILY BONDS. LITIGATION AND ADMINISTRATIVE PRACTICE COURSE HANDBOOK SERIES, CRIMINAL LAW AND URBAN PROBLEMS 201 (Practicing Law Institute Sept. 2002) (“In New York City, 51% of youth in detention have had prior ACS [Administration for Children’s Services] contact, 16% of youth in detention have an open foster care bed, and 1 in 5 women offenders had spent time in foster care”); Shannon DeRouselle, *Welfare Reform and Administration for Children’s Services: Subjecting Children Families to Poverty and Then Punishing Them for it*, 25 N.Y.U. REV. L. & SOC. CHANGE 403 (1999) (finding that more than half of the inmates in Ohio prisons were once in the foster care system); Fred Bayles & Sharon Cohen, *Chaos Often the Only Parent for Abused and Neglected Children*, L.A. TIMES, Apr. 30, 1995, at 1 (stating that 75% of youths in Connecticut’s criminal justice system were once in foster care).

<sup>40</sup> Fred Bayles & Sharon Cohen, *Chaos Often the Only Parent for Abused and Neglected Children*, L.A. TIMES, Apr. 30, 1995, at 1 (stating that 75% of youths in Connecticut’s criminal justice system were once in foster care).

<sup>41</sup> M.L. ARMSTRONG, VERA INSTITUTE OF JUSTICE, ADOLESCENT PATHWAYS: EXPLORING THE INTERSECTION BETWEEN CHILD WELFARE AND JUVENILE JUSTICE, PINS, AND MENTAL HEALTH 18 (1998).

<sup>42</sup> Richard P Barth. *On Their Own: The Experience of Youth After Foster*

These statistics become especially relevant to the issue of the disproportionate representation of minority youth in criminal courts, when looking at the racial make-up of children in foster care. In 2006, 60% of the children in foster care in New York City are African-American, 35% are Latino and 2% are white. Statewide across New York, 50% of children in foster care are African-American, almost 30% are Latino and 10-15% are white.<sup>43</sup> Nearly half of all children in foster care nationwide are African American, even though African American children are only 17% of the population.<sup>44</sup>

#### A. From Foster Care to Criminal Justice

From looking at the statistics, it becomes apparent the foster care system feeds youth into the criminal justice system. The reasons for this could be many. Extensive challenges exist for youth in foster care, including multiple foster home placements, repeated school transfers and substandard or no medical care whatsoever.<sup>45</sup> Youth in foster care are more likely to suffer from

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*Care*, 7 CHILD & ADOLESCENT SOC. WORK 419, 419 (1990).

<sup>43</sup> Statistics were presented by Mr. Gregory Owens during the conference. Mr. Gregory Owens, LMSW, Director of Special Project, New York State Office of Children and Family Services.

<sup>44</sup> Admin for Children and Families, U.S. Dep't of Health & Human Svcs., The AFCARS Report: Current Estimates as of October 2000, at 2 (2000) (reporting that 42% of children in foster care are black). Though it is not the focus of this section, it is worth mentioning that "a combination of socioeconomic factors and various state and federal policies as well as disparate reporting and service delivery increase the likelihood that poor and minority children will enter the foster care system." Ruth McRoy, *Expedited Permanency: Implications for African-American Children and Families*, 12 VIRGINIA J. SOC. POL'Y L. 475 (2005) available at <http://academic.udayton.edu/RACE/04NEEDS/adopt04.htm>. Specifically, four factors have been identified which lead to the disproportionate number of African-American children in foster care: "poverty and welfare legislation, parental substance abuse and drug trafficking, length of incarceration, and disparate service delivery." *Id.*

<sup>45</sup> Benedetto, *supra* note 38, at 384. "The reasons for these abuses are many. The child welfare system is severely underfunded, poorly organized,

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medical and psychological conditions than youth in the general population,<sup>46</sup> which may result from the fact that there is a grave amount of abuse that occurs in the foster care system. Studies conducted by the National Foster Care Education Project “found rates of abuse and neglect of children in foster family care, at the highest levels, to be ten times higher than the rates for children in the general population.”<sup>47</sup>

In addition to neglect and abuse, youth in foster care experience a form of state custody that could condition them for further state detention. The United States Supreme Court in *DeShaney v. Winnebago County Dep’t of Soc Servs.*, held that foster care is “analogous to incarceration or institutionalization” and is “a form of state custody because children are involuntarily removed from their homes by an affirmative act of the state and confined in a state foster care system.”<sup>48</sup> This type of experience in formative years could lead to dependence on and a level of comfort with being in state custody, animosity toward the government and a disconnection from society, which can often lead to further state confinement. However, out of all these problems, one seems to have the most direct effect on the criminal involvement of foster youth—the lack of adequate services for foster youth upon their exit from the system.

After their eighteenth birthday, foster youth are abandoned by the system; one day having their physical needs taken care of by the state and the next day virtually thrown out on the street. For many foster youth, this leads to homelessness, lack of education, lack of employment and ultimately incarceration.<sup>49</sup>

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and continually fails to comply with a system of professional standards. Child welfare agency are understaffed, and caseworkers receive low pay and are overburdened by substantial caseloads.” Harper, *supra* note 39 at 796-97.

<sup>46</sup> Benedetto, *supra* note 38, at 384 (reporting that 50.6% of foster youth interviewed had been professionally diagnosed with a psychological disorder at some point in their childhood).

<sup>47</sup> Harper, *supra* note 38, at 796-97.

<sup>48</sup> *Id.* at 803 (quoting *DeShaney v. Winnebago County Dep’t of Soc Servs.*, 489 U.S. 189, 199-200 (1989)).

<sup>49</sup> Benedetto, *supra* note 38.

Society's failure to prepare foster youth for independent adult living is creating a new population of young adults in poverty, and turning to crime, most of whom are minorities.

*B. The Biggest Challenge: Emancipation from Foster Care*

Experts, including "academics, lawmakers, and service providers, have recognized the need for extended services to foster youth" beyond emancipation.<sup>50</sup> Every year, approximately 25,000 foster youth turn 18 and leave the foster care system.<sup>51</sup> Many of these young adults enter the community with emotional difficulties, educational deficiencies, no family or community ties, and little job skills.<sup>52</sup> One study revealed that "one year after leaving the system, 50% of these men and women are unemployed, 40% have been homeless, and approximately 40% of the young women were pregnant."<sup>53</sup> Providing simple preparation in basic life skills and support services to foster youth after emancipation is needed to prevent large amounts of minority youth from being homeless, unemployed, drug-addicted, and ultimately turning to crime.

For most youth in the general population, turning eighteen marks a developmental milestone. It represents becoming an adult, and along with it, brings the freedoms and rights of adulthood, i.e., the right to vote, to marry, to enter into contracts, and to join the military. For foster youth, turning eighteen means being evicted from their foster home. It means

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<sup>50</sup> *Id.* at 382.

<sup>51</sup> Cichon, *supra* note 39, at 56 (relying on Gary. R. Anderson. *Aging Out of Foster Care: Policy Implications for the State of Michigan*, <http://www.ippsr.msu.edu/AppliedResearch/Anderson.htm> (Feb. 27, 2002). With few exceptions, most youth "age out" of foster care at age 18. Benedetto, *supra* note 38, at 385.

<sup>52</sup> Cichon, *supra* note 39, at 56.

<sup>53</sup> Cichon, *supra* note 39, at 56. "Former foster care youth are an invisible population in America. Unlike other vulnerable populations, former foster youth do not usually self-identify once they have left state care. As a result, emancipated foster youth generally disappear with little fanfare into mainstream society." Benedetto, *supra* note 38, at 385.

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losing the only family most of them knew, whether it be their foster family, their foster care caseworker, or their dependency attorney. It means they suddenly have to support themselves, with little or no skills, poor education and no employment experience, and are suddenly responsible for making adult decisions such as leasing an apartment, obtaining health care, and handling credit cards, tasks for which they are poorly equipped.

Without proper preparation for adulthood, including a solid education or vocational training, emancipated foster youth have a high risk of becoming homeless, unemployed, and incarcerated.<sup>54</sup> According to case files, many youth sleep on their friend's couches immediately after being evicted from their foster homes.<sup>55</sup> Many find it difficult to secure employment due to lack of stable housing, lack of transportation, and lack of an adequate education.<sup>56</sup> Many times, youth are homeless within a few months after emancipation from foster care, and end up in adult shelters.<sup>57</sup> From there, many young people feeling abandoned, hopeless and useless, turn to drugs, crime, prostitution, or join gangs to find a sense of belonging and are ultimately incarcerated.<sup>58</sup> The state, acting as a legal custodian, fails to prepare youth for "emancipation from the sheltered world of foster care" into independent adult living.<sup>59</sup> The government removes these children from their natural families with a promise to take care of them, but ultimately allows foster children to suffer extensive harm by failing to adequately prepare them for adulthood.<sup>60</sup>

Most youth are forced to leave their foster homes

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 382 (*relying on Youth Outreach Project case files, San Diego, Cal. (2002-2004)*).

<sup>56</sup> *Id.*

<sup>57</sup> Benedetto, *supra* note 38, at 382.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 382-83.

<sup>60</sup> *Id.*

immediately after turning eighteen.<sup>61</sup> This occurs mainly because “foster care payments to foster families and group homes officially end on the day the youth is emancipated.”<sup>62</sup> “According to a national foster care alumni study conducted by Casey Family Programs, only 10% of ‘permanent foster care’ youth returned to their birth families immediately upon emancipation.”<sup>63</sup> Although new conflicts may arise from returning to an unstable home, studies show that emancipated foster youth who retain connections with their birth families fare better than youth who do not retain such connections.<sup>64</sup>

A small percentage of youth stay with their foster care families after the foster care payments have stopped. The Casey Alumni study “found that less than 5% of youth extended their stays with their foster families.”<sup>65</sup> The remaining foster youth are forced to make it on their own, with little or no familial support. Some of their options include “Job Corps,<sup>66</sup> military service, psychiatric treatment hospitals, or supportive adult living,” but the majority of emancipated foster youth move into “independent living.”<sup>67</sup> “The high learning curve of adulthood

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<sup>61</sup> *Id.* at 386.

<sup>62</sup> *Id.*

<sup>63</sup> Benedetto, *supra* note 38, at 382 (citing Casey Family Programs, The Foster Care Alumni Studies, Assessing the Effects of Foster Care Early Results From the Casey Alumni National Study 19, 23 (2003), [www.casey.org](http://www.casey.org) (the Casey Alumni Study included 1,609 foster care youth served by the Casey Family Programs in 1998)).

<sup>64</sup> Benedetto, *supra* note 38, at 382 (citing Mark E. Courtney & Richard P. Barth, *Pathways of Older Adolescents Out of Foster Care: Implications for Independent Living Services*, 41 SOC. WORK 75, 81 (1996)).

<sup>65</sup> Benedetto, *supra* note 38, at 386 (citing Casey Family Programs, *supra* note 64, at 24).

<sup>66</sup> “Job Corps is a no-cost education and vocational training program administered by the U.S. Department of Labor that helps young people ages 16 through 24 get a better job, make more money, and take control of their lives.” See <http://jobcorps.dol.gov/about.htm>.

<sup>67</sup> Benedetto, *supra* note 38, at 382 (citing Casey Family Programs, *supra* note 64 (Over 50% of emancipated foster youth go to independent living)). Youths who attempt to be self-sufficient are considered to be “independently living.” See also <http://www.independentliving.org/>

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can be overwhelming for a foster youth on his or her own for the first time.”<sup>68</sup> A lack of basic life skills, adequate education, or employment experience can quickly lead “to the downward spiral into homelessness” and ultimately incarceration.<sup>69</sup>

### *1. Lack of Housing*

The number of foster youth who become homeless after emancipation is overwhelming.<sup>70</sup> “The Child Welfare League of America reported to Congress in 1999 that 40% of persons in federally funded homeless shelters were former foster youth.”<sup>71</sup> A study conducted in 2003 “found that 42.2% of emancipated foster youth nationwide have spent one or more nights homeless.”<sup>72</sup> “Almost one out of five youth (19.4%) were homeless for a week or more after leaving foster care.”<sup>73</sup> However, these numbers may not reflect the actual number of

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toolsforpower/tools8.html and <http://www.akmhweb.org/recovery/Independentliving.html>.

<sup>68</sup> Benedetto, *supra* note 38, at 387.

<sup>69</sup> *Id.*

<sup>70</sup> Under the McKinney-Vento Homeless Assistance Act, the definition of homeless children and youth includes youth “who lack a fixed, regular, and adequate nighttime residence,” as well as youth “sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason.” Additionally, youth who have “a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, regular sleeping accommodations for human beings,” including cars, parks, public spaces, are considered homeless under the federal definition. Thus, applying the McKinney-Vento Act, all emancipated foster youth sleeping in cars, crashing on friends’ couches, or sharing unstable homes are, by definition, homeless. 42 U.S.C. § 11431-11435 (Supp. 2002).

<sup>71</sup> Benedetto, *supra* note 38, at 387 (citing Challenges Confronting Children Aging Out of Foster Care: Hearing Before the House Comm., 106th Cong. (Mar. 9 1999) (statement of Robin Nixon, Director for Youth Services Child Welfare League of America), <http://waysandmeans.house.gov/legacy/humres/106cong/3-9-99/3-9nixo.htm>).

<sup>72</sup> Benedetto, *supra* note 38, at 387 (citing Casey Family Programs, *supra* note 64, at 25).

<sup>73</sup> *Id.*

emancipated foster youth who are without homes. "The large majority of homeless former foster youth are invisible to the general public; that is, they are 'crashing' on a friend's couch or sleeping in their cars."<sup>74</sup>

A "lack of housing presents a host of competing problems, including lack of food and adequate medical care, but emancipated youth are already facing an uneven playing field when they leave foster care. Many are truly alone, without support from either birth families or their former foster care community."<sup>75</sup> Even temporary homelessness can cause lifelong problems for emancipated foster youth. "Association with peers in similar situations can encourage youth to join gangs to find a sense of community."<sup>76</sup> "Youth frustrated by a lack of resources and educational opportunities may turn to drug use."<sup>77</sup> Both of these, which may seem enticing to a youth facing homelessness, can result in incarceration. "Stable housing is the prerequisite to successful independent living."<sup>78</sup> Without stable, safe housing emancipated foster youth remain at risk for a host of problems, including incarceration. "Unless federal, local, and state governments can increase housing resources for this population, the negative effects of homelessness will continue to cause substantial harm to the lives of emancipated youth."<sup>79</sup>

## 2. Lack of Education

Education brings with it empowerment, freedom, financial independence and stability. It is the gateway to employment and a successful life for many young adults. However, "the educational and foster care systems are consistently failing to educate youth while they are still in foster care, and the results

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<sup>74</sup> Benedetto, *supra* note 38, at 387.

<sup>75</sup> *Id.* at 388.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

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of these failures follow youth after emancipation.”<sup>80</sup> “A lack of education, combined with a lack of family support and social connections, relegates a foster youth with no job skills to unemployment,” menial or temporary jobs, or even worse, a life of crime.<sup>81</sup>

Foster youth are more likely to fail out of school than youth in the general population. In 1991, a rare study of national foster care alumni found only 54% of youth had completed high school.<sup>82</sup> “More recently, a May 2002 study of emancipating foster youth in California found only 6% of females and 7% of males passed a GED exam.”<sup>83</sup> Statistics show that youth exiting the probation system, as well as incarcerated youth, are better prepared for the GED than foster youth.<sup>84</sup> “A 2004 survey of 732 youths by the Chapin Hall Center for Children at the University of Chicago found that foster youth: (1) are at a higher risk of being held back a grade, (2) are twice as likely to have been suspended from school, and (3) are four times as likely to have been expelled.”<sup>85</sup> The foster youth surveyed were mostly in the upper grades of high school, but had an average reading ability at a seventh grade level.<sup>86</sup> “In addition, although 55% of emancipated youth attended community college after exiting foster care, only 2% actually earned an Associate of Arts degree. In contrast, 37% of general population students who

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<sup>80</sup> Benedetto, *supra* note 38, at 390.

<sup>81</sup> *Id.* at 391.

<sup>82</sup> *Id.* (citing R. Cook et al., Executive Summary to a National Evaluation of Title IV-E Foster Care Independent Living Programs for Youth: Phase 2 Final Report at xiv (Westat 1991)).

<sup>83</sup> Benedetto, *supra* note 38, at 390 (citing Barbara Needell et al., Center for Social Services Research, University of California Berkeley Youth Emancipating From Foster Care in California: Findings Using Linked Administrative Data 75 (May 2002), [http://cssr.berkeley.edu/childwelfare/pdfs/youth/ffv\\_entire.pdf](http://cssr.berkeley.edu/childwelfare/pdfs/youth/ffv_entire.pdf)).

<sup>84</sup> *Id.* at 58 (stating that approximately 16% of females and 14% of males passed the GED exam); Benedetto, *supra* note 38, at 391.

<sup>85</sup> Benedetto, *supra* note 38, at 299 (citing Courtney, *supra* note 39, at 42).

<sup>86</sup> *Id.*

attend community college complete an Associate of Arts degree.”<sup>87</sup> By not providing adequate education for youth in foster care, society inhibits and even prohibits their potential for success as adults.<sup>88</sup>

### 3. Lack of Employment

“In addition to stable housing and educational opportunities, stable employment is a crucial component of a youth’s successful transition from foster care” into adult living.<sup>89</sup> Unfortunately, emancipated foster youth are poorly prepared for the challenges of finding work as independent adults. “In 2002, a study found that no more than 45% of youth who aged out of foster care in California, Illinois, and South Carolina were working for income.”<sup>90</sup> “In 2004, the numbers were lower; one study revealed that only 35.1% of youth who aged out of foster care in the Midwest were currently employed.”<sup>91</sup> “However, even former foster youth who earn income rarely make enough to meet their financial needs. The high unemployment rate for emancipated youth can be traced to a number of causes. Lack of education, as described above, prevents youth from being able to get stable and higher-paying jobs. Youth without training in résumé preparation, job interviewing, and work skills are at a distinct disadvantage when applying for jobs.”<sup>92</sup>

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<sup>87</sup> *Id.* Legal problems can also prevent emancipated youth from accessing education. For example, because most foster youths’ social security numbers are accessible to many people, identity theft is common. As seen in several Youth Outreach Project cases, a youth applying for financial aid who is a victim of identity theft may be denied the financial ability to go to school. Benedetto, *supra* note 38, at 390.

<sup>88</sup> *Id.*

<sup>89</sup> Benedetto, *supra* note 38, at 391.

<sup>90</sup> *Id.* (citing Robert George et al., Chapin Hall Center for Children at the University of Chicago, Employment Outcomes for Youth Aging Out of Foster Care 15 (2003)).

<sup>91</sup> Benedetto, *supra* note 38, at 391 (citing Courtney, *supra* note 39, at 42).

<sup>92</sup> Benedetto, *supra* note 38, at 392.

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Moreover, foster youth have a lack of community ties, which often lead to employment opportunities. Many youth experienced medical and psychological problems while in foster care that were never fully remedied and can inhibit obtaining employment.<sup>93</sup> “Youth who are currently homeless, or who experienced the instability of multiple placements while in foster care, can have difficulty adapting to a steady work environment.”<sup>94</sup>

“For youth who are able to secure jobs, the workplace can sometimes become a hostile place.”<sup>95</sup> Former foster youth who, “do not have family or community support, can be easily intimidated by employers. Intimidation can take the form of harassment, discrimination, and unpaid wages.”<sup>96</sup> “These issues affect an individual’s ability to retain stable employment, and present major obstacles for former foster youth attempting to become contributing members of society.”<sup>97</sup>

*C. Suggested Solutions*

“Given the housing, educational, and employment barriers facing foster youth upon emancipation, it is perhaps not surprising that a disproportionate number of former foster youth turn to crime.”<sup>98</sup> These statistics, showing the correlation between foster youth and crime, should serve as a “distress signal” to lawmakers and service providers.<sup>99</sup> The successful handling of foster youth must include preparation for adult living after exiting the system. “Without sufficient resources to ensure stable housing, education, and employment for emancipating foster youth, society may ultimately pay the higher costs of

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Benedetto, *supra* note 38, at 393 (citing Youth Outreach Project case files, San Diego, Cal. (Aug. 2004)).

<sup>97</sup> *Id.*

<sup>98</sup> Benedetto, *supra* note 38, at 394.

<sup>99</sup> *Id.* at 394.

incarceration.”<sup>100</sup> Programs need to be in place to help foster youth find housing, acquire adequate education and find employment upon emancipation.<sup>101</sup>

### 1. Housing

Housing services need to be in place for emancipated foster youth, and foster youth should not be evicted from their foster homes without a stable living arrangement in place. “Housing must be a priority; without stable housing, most youth are unable to achieve stability in other areas, including work and school.”<sup>102</sup> “The Chafee Act currently allows up to 30% of the Department of Human Services ILP (Independent Living Program) funds to be used to support housing for former foster youth.”<sup>103</sup> However, given the prevalence of homelessness among emancipated foster youth, this amount is either inadequate or distributed inefficiently. The current 30% cap on housing funds in the Chafee Act should be raised. Foster youth should be guaranteed some type of stable housing for at least the first 12 months after emancipation.<sup>104</sup> Also, programs should be in place to ensure the ILP funds are distributed properly and efficiently. Though the financial costs may seem substantial, society will ultimately pay more in the form of shelters or incarceration for foster youth who become homeless. “[T]he potential for youth to be successful in all areas of life would ultimately reduce social costs.”<sup>105</sup> Specific ideas to reduce homelessness include: creating emergency shelters only for

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<sup>100</sup> *Id.* at 393-94.

<sup>101</sup> In 2002, in response to the legal needs of foster youth, the Legal Aid Society of San Diego created the Youth Outreach Project (YOP). The Youth Outreach Project (YOP) is the first program to provide legal services solely to former and current foster youth. Services are provided through outreach clinics, drop-in centers, and referrals. *Id.*

<sup>102</sup> *Id.* at 420.

<sup>103</sup> 42 U.S.C. § 677(b)(3)(B) (Supp. 2002).

<sup>104</sup> Benedetto, *supra* note 38, at 420.

<sup>105</sup> *Id.*

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former foster youth (to prevent them from mixing with the adult homeless population), creating housing vouchers for emancipated foster youth, and subsidizing part of their rent payments.<sup>106</sup>

### *2. Employment and Education*

Stable employment is a “major obstacle for many former foster youth, who do not have the interview skills or job experience to be competitive in today’s job market.”<sup>107</sup> Providing monetary subsidies to employers for hiring former foster youth would promote employment.<sup>108</sup> The subsidy could be in the form of a monetary bonus or a tax credit for employers.<sup>109</sup> “In many cases, once a youth has secured his/her first entry-level job, stable employment becomes a less

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<sup>106</sup> *Id.* New York City’s Chelsea Foyer program has been characterized as a model program because it

provides a supportive housing-based job training program for 40 young adults. The 18 to 24 month individualized program includes a congregate living setting, onsite case management, and connections to job training and placement, education, and life-skills development resources. This type of wraparound service model, offering personalized assistance to help youth achieve the independent living and employment skills necessary to obtain affordable housing could be successful throughout the country.

*Id.*

<sup>107</sup> *Id.* at 422.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* Employment subsidies and assistance seem feasible because of Congress’

recent focus on educational and vocational scholarships. In 2001, Congress added a sixth purpose to the Chafee Bill providing for educational vouchers for former foster youth. Congress clearly recognizes the need for foster youth to obtain needed skills to become competitive job-seekers. Employment subsidies are a natural next step, enabling emancipated youth who obtained job skills to utilize these skills in a “real world” work environment.

*Id.*

intimidating goal.”<sup>110</sup>

Basic training in life skills such as how to obtain educational loans, create a resume, interview at a job, interact with employers, or how to maintain good credit would improve the lives of newly emancipated foster youth.<sup>111</sup> In the general population, youth often learn these lessons from their parents. But for foster youth, many of whom are moved around to multiple homes, this type of guidance is sorely lacking. Additionally, states must make it a priority that foster youth receive an adequate education. This should be a foremost concern for foster care caseworkers. Most former foster youth lack familial or community support. Extending the amount of contact foster youth have with their foster families or caseworker after emancipation can be helpful to provide some sense of stability and motivation for productive living.

### 3. Legislative Reform

Although recent federal legislation has been enacted to improve services for emancipating foster youth, additional legislative developments are needed. Foster youth must be adequately prepared for their entry into society as independent adults.<sup>112</sup> States also need to “play an important role in improving the lives of former foster youth.”<sup>113</sup> States should expand their emancipation services for former foster youth, which in many states is sorely lacking. Some states have already

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<sup>110</sup> Benedetto, *supra* note 38, at 422.

<sup>111</sup> For example, a youth’s failure to fully understand a cell phone contract can result in improper charges. In one case handled by the Youth Outreach Project, a youth agreed to pay a cell phone store’s \$500 cancellation charge, in addition to the cell phone company’s regular cancellation charge of \$175. When the youth was unable to keep the cell phone and cancelled service, she was unable to pay the resulting \$675 charge. The bill went to collections and had a negative impact on her credit report. The youth herself reported, a proper understanding of basic contract principles could have prevented her from signing the contract. *Id.* at 418.

<sup>112</sup> *Id.* at 383. See also 42 U.S.C. § 677 (Supp. 2002).

<sup>113</sup> Benedetto, *supra* note 38, at 423.

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begun to enact statutes that provide additional services after emancipation.<sup>114</sup> New York has recently adopted legislation that allows foster youth to remain in foster care until the age of 21, so long as the youth is a student, is in vocational training or is unable to support themselves.<sup>115</sup> This added support gives foster youth the additional preparation they need to be successful as independent adults. This type of statute is a starting point for expanded preparation services for emancipated youth, and should be adopted in other jurisdictions.

With the expansion of services for emancipated foster youth such as providing adequate educational and vocational training, employment subsidies and housing services, foster youth will not turn to crime for survival. The amount of foster youth, and consequently the amount of minority youth, in the criminal justice system would therefore decrease.

### III. ALTERNATIVES TO JUVENILE INCARCERATION

There are more than 106,000 youths housed in juvenile correctional facilities nationwide.<sup>116</sup> The conditions of many of

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<sup>114</sup> *Id.* In 2004 Florida passed section 409.1451 which is designed to implement Chafee Act funds more effectively. The law specifically provides for aftercare support services for young adults formerly in foster care, including but not limited to (a) mentoring/tutoring, (b) mental health services and substance abuse counseling, (c) life skills classes (including credit management and preventive health services), (d) parenting classes, (e) job skills training, (f) counselor consultations, and (g) temporary financial assistance.

*Id.* The law also enables foster youth as young as 13 to be eligible for similar services, called "preindependent living services." *Id.*

<sup>115</sup> New York state law defines a foster child as a person (i) under the age of 18; or (ii) between the ages of 18 and 21 but consented to remain in foster care past his/her 19th birthday, and (a) is a student at a school, college, or university; (b) is attending a vocational or technical training course; (c) lacks the skills or ability to live independently. N.Y. Comp. Codes R. & Regs. Tit. 18 § 427.2(1) (2004).

<sup>116</sup> Cichon, *supra* note 39, at 39.

these facilities are shocking. Often times, these facilities breed criminals, and are far from rehabilitative. U.S. News & World Report found “Juvenile justice facilities are in a dangerously advanced state of disarray, with violence an almost everyday occurrence and rehabilitation the exception rather than the rule. Abuse of juvenile inmates is routine.”<sup>117</sup> “In 2005, the U.S. Justice Department found that sexual violence is reported in juvenile prisons at rates ten times higher than in adult lock-ups.”<sup>118</sup> Vincent Schiraldi, Executive Director of the Center on Juvenile and Criminal Justice (for Maryland), contends that if a society “deliberately [wanted to] make kids into criminals, you could hardly do any better than what’s going on in Maryland’s juvenile facilities . . . you have to work hard to cripple kids worse than they’re being crippled now.”<sup>119</sup>

More than a century after the creation of the nation’s first juvenile court grounded in rehabilitative impulses, many states still maintain inhumane, thoroughly ineffective juvenile prisons that neither rehabilitate children nor protect public safety . . . . Recidivism rates frequently exceed fifty percent, compromising public safety because most repeat juvenile offenders do not turn to white collar crime. Instead they commit new violent crimes against innocent victims whom a lower rate would spare.<sup>120</sup>

We are entrusting our troubled youth to these facilities.

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<sup>117</sup> Angie Cannon, *Juvenile Injustice: Overcrowding, Violence and Abuse*, U.S. NEWS & WORLD REP., Aug. 9, 2004, at 28.

<sup>118</sup> Abrams, *infra* note 120, at 1002 (citing Press Release, U.S. Dep’t of Justice, Office of Justice Programs, Almost 2,100 Sexual Violence Incidents Took Place in the Nation’s Correctional Facilities During 2004 (July 31, 2005), <http://www.ojp.usdoj.gov/bjs/pub/press/svrc04pr.htm>).

<sup>119</sup> Todd Richissin, *Lt. Gov. Is Urged to Close Teen Jail*, BALTIMORE SUN, Nov. 27, 2001, at 1A (quoting Vincent Schiraldi, Executive Director of the Center on Juvenile and Criminal Justice).

<sup>120</sup> Douglas E. Abrams, *Reforming Juvenile Delinquency Treatment to Enhance Rehabilitation, Personal Accountability, and Public Safety*, 84 OR. L. R. 1001, 1004 (2005).

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Youth who are incarcerated in juvenile detention facilities and boot camps are exposed to intense abuse and a life style that encourages criminal behavior, which in turn increases the chance of re-incarceration. Ideally, traditional juvenile incarceration should be disposed of altogether. Instead, a system similar to the “Missouri model” should be adopted. This “Missouri model” employs small community based facilities run by professional youth specialists. This model not only reduces recidivism, but is also more cost effective than traditional incarceration.

*A. A System in Crisis*

The atrocious instances of abuse in juvenile detention centers can be seen throughout the country. The Los Angeles Times characterizes juvenile prisons as “irredeemable rathole[s],” “modern-day Bedlams,” and “junkyard[s]for young lives.”<sup>121</sup> The San Jose Mercury News contends that if the purpose of California’s system “were to take teenage troublemakers and turn them into career criminals, it would be a national model.”<sup>122</sup> “Kids are treated like animals.”<sup>123</sup> In 2000, California’s Inspector General admitted that “it would be impossible to overstate the problem of brutality, sexual misconduct, and other abuses in the state’s juvenile prisons.”<sup>124</sup> In 1996, the Atlanta Journal and Constitution described Georgia’s prisons as “an abomination to humanity.”<sup>125</sup>

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<sup>121</sup> *Id.* at 1017 (citing Editorial, *State Prisons’ Revolving Door; An Education in Brutality*, L.A. TIMES, Feb. 19, 2004, at B12 and Editorial, *A Junkyard for Young Lives*, L.A. TIMES, Feb. 4, 2004, at B12).

<sup>122</sup> Abrams, *supra* note 120, at 1017 (citing Editorial, *Troubled Teenagers Need a Second Chance*, SAN JOSE MERCURY NEWS, Oct. 22, 2004).

<sup>123</sup> Abrams, *supra* note 120, at 1017 (citing Editorial, *More Than New Name*, CONTRA COSTA TIMES (Walnut Creek, Cal.), Aug. 1, 2005, at F4).

<sup>124</sup> See Carl Ingram, *Probe Paints State Youth Authority as a System in Chaos*, L.A. TIMES, May 17, 2000, at A21; Evelyn Nieves, *Youth Prisons in California Stay Abusive, Suit Contends*, N.Y. TIMES, Jan. 26, 2002, at A10.

<sup>125</sup> Abrams, *supra* note 120, at 1028 (citing Editorial, *Kids’ Futures*

In 1999, minority youth accounted for 62% of the juveniles in custody, but only 34% of the population.<sup>126</sup> Of this 62%, 39% were African American, 18% were Hispanic, 2% were Native American, and 2% were Asian.<sup>127</sup> In order to decrease the disproportionate number of minority youth who become career or life-long criminals, the number of minority youth sent to traditional juvenile detention facilities and boot camps must decrease.<sup>128</sup>

The frequency and severity of abuse in juvenile detention facilities is unconscionable.<sup>129</sup> Some examples of abuse seen in

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*Back in Courts*, ATLANTA J.-CONST., Apr. 1, 1996, at A10).

<sup>126</sup> Abrams, *supra* note 120, at 1076 (citing Melissa Sickmund, *Juveniles in Corrections, Juvenile Offenders & Victims Nat'l Rep. Series*, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, (Wash., D.C.), June 2004, at 9-10, <http://www.ncjrs.org/pdffiles1/ojjdp/202885.pdf>).

<sup>127</sup> *Id.*

<sup>128</sup> A boot camp is a military style environment, where boot camp participants are separated from regular inmates. Boot camp designed to be an alternative to long term of confinement and often includes hard labor. Incapacitation, rehabilitation, punishment, cost control and deterrence are the goals of boot camp. Experts sponsored by the Office of Juvenile Programs agreed that the confrontational approach used in military style boot camps are "not an appropriate model to induce the type of behavioral change sought through the correctional juvenile boot camp." "To be effective, boot camps must satisfy the fanatic demand for fairness seen in most adolescents, and provide encouragement, not punishment." Stephen A. Campbell, *Alternatives in the Treatment of Juvenile Offenders: Current Options and Trends*, 19 J. JUV. L. 318 (1998). Studies have shown that recidivism for youths leaving boot camps is higher than traditional confinement. Michael Peters et al., U.S. Dep't of Justice, *Boot Camps for Juvenile Offenders 3* (1997). See also Doris L. Mackenzie, Eugene E. Herbert, U.S. Dep't of Justice, *Correctional Boot Camps: A Tough Intermediate Sanction* 129 (1996) (reporting that boot camp participants stayed in custody 78% longer than those in traditional confinement).

<sup>129</sup> In 1995, a South Carolina federal district court held:

that conditions in the state's juvenile corrections facilities violated the youths' substantive due process rights to reasonably safe conditions of confinement. Staff indiscriminately used potent tear gas on the youths 'on a fairly regular basis,' even when no danger existed to staff or others. Food frequently was

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juvenile detention facilities include:

- Physical and sexual assaults from guards and other youth, especially at night, or while being restrained;<sup>130</sup>
- Youth being “paid” with cigarettes, special protection, or pornography by guards to assault other youth;<sup>131</sup>
- The overuse or misuse of chemical and mechanical constraints;<sup>132</sup>

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infested with cockroaches and other foreign matter. The State had not adequately identified youths who needed special education and in some instances had not formulated individual education plans for identified youths. Medical resources at the juvenile prisons were ‘stretched to the limit,’ plagued by shortages that risked the youths’ health.

Abrams, *supra* note 120, at 1009. See Alexander S. v. Boyd, 876 F. Supp. 773 (D.S.C. 1995). “In early 2004, the Orlando Sentinel found 661 confirmed cases of abuse or neglect since 1994 in Florida juvenile lockups operated by the State or by private contractors. Records showed that guards hit confined youths, threw them against walls, and twisted their arms until they snapped.” Abrams, *supra* note 120, at 1011. See Megan O’Matz, *Young Offenders’ Antidepressant Use Draws Concern After an ADA Warning About Suicides, Some Fear Overmedication in the Juvenile-Justice System*, ORLANDO SENTINEL, June 22, 2004, at B5; Rene Stutzman, *661 Kids Abused in Juvenile Centers*, FORT-LAUDERDALE SUN-SENTINEL, Apr. 13, 2004, at 1A.

<sup>130</sup> *Id.* Further,

In late 2005, a seventeen-year-old convicted male sex offender confined in a Tallahassee juvenile detention center was charged with raping a severely retarded fifteen-year-old inmate who had an IQ of thirty-two and the mental capacity of a toddler. According to reports from local police and the State Department of Juvenile Justice, guards had assigned the sex offender to bathe the victim and change his diaper.

Abrams, *supra* note 120, at 1012 (citing Brendan Farrington, *Rape Charges Filed Against Teen*, BRADENTON HERALD (Fla.), Oct. 21, 2005, at 8).

<sup>131</sup> *Id.*

<sup>132</sup> Abrams *supra* note 121, at 1023 (citing Letter from Deval L. Patrick, Assistant Att’y Gen., Civ. Rights Div., U.S. Dep’t of Justice, to the Hon. Mike Foster, Governor of La. (July 15, 1996)).

- Youth being placed in solitary confinement for extended periods of time wearing only their underwear;<sup>133</sup>
- Youth being denied access to toilet paper, sheets, blankets, or a change of clothes;<sup>134</sup>
- Youth being whipped with belts on their birthdays;<sup>135</sup>
- Forcing youths to drink from toilets because of lack of running water;<sup>136</sup>
- Youth being forced to sit naked on the cold concrete floor of their cell for hours;<sup>137</sup>
- Deprivation of medical care, mental health care, and education;<sup>138</sup>
- The denial of water, personal hygiene items, and adequate bathroom facilities;<sup>139</sup>
- Hog tying youth;<sup>140</sup>
- Spraying youth with harmful chemicals such as oleoresin capsicum (pepper spray) and tear gas as punishment for minor infractions;<sup>141</sup>
- Staff members shoving youths' heads into the toilet;<sup>142</sup>

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<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Abrams, *supra* note 120, at 1026.

<sup>136</sup> See Beverly Shepard, *Five Teens Sue State Over Youth Jail; Inmates Allege Abuse, Unsanitary Conditions*, ATLANTA J.-CONST., Mar. 27, 1993, at C1.

<sup>137</sup> Abrams, *supra* note 120, at 1047 (citing Letter from Bill Lann Lee, Acting Assistant Att'y Gen., Civ. Rights Div., U.S. Dep't of Justice, to the Hon. Zell Miller, Governor of Ga. (Feb. 13, 1998), <http://www.usdoj.gov/crt/split/documents/gajuvfind.htm> (regarding findings of investigation of Georgia's juvenile justice facilities)).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> See Letter from Ralph F. Boyd, Jr., Assistant Att'y Gen., U.S. Dep't of Justice, to the Hon. Ronnie Musgrove, Governor of Miss. 7 (June 19, 2003), [http://www.usdoj.gov/crt/split/documents/oak\\_colu\\_missfindinglet.pdf](http://www.usdoj.gov/crt/split/documents/oak_colu_missfindinglet.pdf)

<sup>142</sup> Abrams, *supra* note 120, at 1048.

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- Youths being forced to urinate and defecate in plastic bottles and laundry bins because they are not allowed to leave their rooms to use the bathroom at night;<sup>143</sup>
- Youth being forced to eat meals standing up;<sup>144</sup>

Additionally, many of the facilities operate at 150-300% capacity, which means youth have to sleep in crowded cells, often laying mattresses side by side on the floor.<sup>145</sup> These overcrowded facilities “are often little more than roach-infested cages reeking of sewage and urine.”<sup>146</sup> In many detention facilities, kitchens are often found to be infested with insects and rodents.<sup>147</sup> With conditions such as these, it seems to follow that suicide attempts are a regular occurrence at many of these institutions.<sup>148</sup>

Some of the worst instances of abuse include a seventeen-year-old who died from a ruptured appendix after crying in pain for three days and begging for care.<sup>149</sup> “An angry

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<sup>143</sup> *Id.* at 1053 (citing Letter from R. Alexander Acosta, Assistant Att’y Gen., U.S. Dep’t of Justice, to the Hon. Janet Napolitano, Governor of Ariz. (Jan. 23, 2004)).

<sup>144</sup> *Id.*

<sup>145</sup> Abrams, *supra* note 120, instances cited throughout article.

<sup>146</sup> *Id.* at 1004.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* The sheer amount of attempted suicide amongst youths is shocking.

Eighty youths attempted suicide in Florida juvenile detention facilities in the first six months of 2004 alone, leading some children’s advocates to worry that the facilities overmedicated teens with antidepressants and other mental health drugs that the federal Food and Drug Administration warns might induce suicidal tendencies if administered to children without monitoring.

Abrams, *supra* note 120, at 1011. *See, e.g.*, Anna Wilde Mathews, *FDA Revisits Issue of Antidepressants for Youths*, WALL ST. J., Aug. 5, 2004, at A1 (reporting new FDA analysis of clinical-trial data that showed evidence of a link between antidepressant drugs and suicidal tendencies among young people).

<sup>149</sup> Abrams, *supra* note 120, at 1011 (citing Marc Caputo, *State Fires Officer in Rape Case*, MIAMI HERALD, Oct. 21, 2005, at A1; Carol Marbin

legislator charged that dogs are treated better than the boy, who was in [juvenile] detention while awaiting a bed at a school for troubled teens.”<sup>150</sup>

Another instance of shocking abuse occurred on January 6, 2006. A 14 year-old boy died a day after being savagely beaten for half an hour by guards at Florida’s Bay County boot camp. The guards stated the boy was “uncooperative.” The beating occurred three hours after he was admitted for taking his grandmother’s car for a joyride.<sup>151</sup> The incidence started when,

after running several laps on the boot camp track under the guards’ instructions, [the boy] fell to the ground complaining of shortness of breath. A video camera captured 7 to 9 guards kneeling, choking, punching and slamming the limp, nonresistant boy to the ground while applying painful ‘pressure points’ to his neck and head. Unable to fend off the blows, the boy tried rising to his feet at least 13 times, sometimes with the guards’ help, but each time he fell back to the ground. Several times the guards appeared to shove ammonia in the boy’s face in attempts to revive him. A boot camp nurse stationed just a few feet away watched the beating before the boy’s nearly lifeless body was removed to the hospital on a gurney.<sup>152</sup>

One state legislator called the videotaped beating “the most

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Miller, *Cameras Don’t Record Boy’s Death*, MIAMI HERALD, Dec. 1, 2003, at 1B.)

<sup>150</sup> *Id.*

<sup>151</sup> See, e.g., Elisa Cramer, *Out of Savage Beating, Awareness?*, PALM BEACH POST (Fla.), Feb. 24, 2006, at 22A; Alex Leary & Joni James, *Boot Camp Rules Likely to Cut Pain, Raise Safety*, ST. PETERSBURG TIMES (Fla.), Feb. 24, 2006, at 1B; Carol Marbin Miller, *Hours After Entering Camp, Panhandle 14-Year-Old Dies*, MIAMI HERALD, Jan. 7, 2006, at 1B; Jay Weaver, *Boot Camp Death*, MIAMI HERALD, Mar. 5, 2006, at B1; Editorial, *Legislature Should Pull Financial Plug on Boot Camps*, MIAMI HERALD, Jan. 12, 2006, at A22.

<sup>152</sup> Abrams, *supra* note 120, at 1012-13.

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heinous treatment of a human being [he had] ever seen.”<sup>153</sup>

Much of the problem stems from the fact that many juvenile detention facilities are run by private contractors who pay guards menial wages.<sup>154</sup> The pay scale attracts inexperienced, poorly trained staff members. The résumés of staff members show past employment experience at places like donut shops, turnpike toll booths, and grocery stores.<sup>155</sup> In 2003, the Florida Department of Juvenile Justice workers included approximately 350 ex-felons and persons with arrest records, including four superintendents and four assistant superintendents of juvenile detention facilities.<sup>156</sup> For years, “private contractors have also hired juvenile prison guards previously fired for punching, choking, tackling, head-butting, or having sex with teens under their care in other juvenile facilities.”<sup>157</sup> “It’s hard to rehabilitate boys and girls using people who need rehabilitation themselves.”<sup>158</sup>

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<sup>153</sup> See Cramer, *supra* note 151.

<sup>154</sup> Abrams, *supra* note 120, at 1015. “About ninety percent of the [Florida] state’s juvenile detention facilities are run by private contractors, which pay guards and counselors an average of only \$8.36 per hour or \$17,398 a year, barely above the federal poverty level if the guard or counselor has a family.” *Id.* at 1015 (citing Kathleen Chapman, *Guards’ Low Pay: A Burden on Juvenile System, Some Say*, PALM BEACH POST (Fla.), Feb. 7, 2005, at 1A).

<sup>155</sup> See Abrams, *supra* note 120, at 1016; Chapman, *supra* note 154; Tom Lyons, *Private Juvenile Jails Cut Costs by Not Being Picky About Who Is Hired*, SARASOTA HERALD TRIB. (Fla.), Dec. 7, 2004, at 1; Op-Ed, *Update Juvenile Justice With Scrutiny of Hiring*, PALM BEACH POST (Fla.), Dec. 11, 2004, at 10A.

<sup>156</sup> Abrams, *supra* note 120, at 1016 (citing Carol Marbin Miller, *Hundreds With Rap Sheets Work for Prisoner Agency*, MIAMI HERALD, Dec. 4, 2003, at 1B). The offenses ranged from child abuse and burglary to assault and weapons violations. *Id.*

<sup>157</sup> Abrams, *supra* note 120, at 1016 (citing Kathleen Chapman & William M. Hartnett, *Revolving Door for Fired Workers*, PALM BEACH POST (Fla.), Dec. 5, 2004, at 1A).

<sup>158</sup> Abrams, *supra* note 120, at 1016.

*B. A Possible Solution—The Missouri Model*

Missouri employs a juvenile corrections system that “has emerged as a national model of excellence against which other state systems are measured.”<sup>159</sup> After frustration with the traditional system of juvenile confinement that fosters abuse, violence and delinquent behavior, Missouri eliminated the traditional model and adopted a system of decentralized community houses run by professional youth specialists. Missouri’s system employs trained professionals who provide youth with therapy and supervision in “small community-based facilities near their homes and other sources of community support.”<sup>160</sup> Treatment, not incarceration, is the goal. As a result of this system, Missouri’s juvenile recidivism rate is among the lowest in the nation, and Missouri’s cost per youth is considerably lower than that spent by most other states.<sup>161</sup> Missouri is “the best model we have” for the correctional phase of juvenile justice.<sup>162</sup>

In contrast to the traditional model of juvenile incarceration that employs poorly qualified guards and corrections officers, Missouri’s Division of Youth Services (DYS) staff are college-educated “youth specialists” who focus on therapy rather than punishment.<sup>163</sup> Each youth who enters the system undergoes a comprehensive needs and risk assessment. An individual treatment plan is then designed to help youth “develop self-esteem and make positive behavioral changes in their lives.”<sup>164</sup> Each youth is assigned an “individual case manager”

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<sup>159</sup> *Id.* at 1004.

<sup>160</sup> *Id.*

<sup>161</sup> See Richard A. Mendel, AMERICAN YOUTH POLICY FORUM, LESS COST, MORE SAFETY: GUIDING LIGHTS FOR REFORM IN JUVENILE JUSTICE 11-13 (2001); Dick Mendel, *Small Is Beautiful: The Missouri Division of Youth Services*, 5 ADVOCASEY 35-36 (2003), available at <http://www.aecf.org/publications/advocasey/spring2003/small/small.htm>.

<sup>162</sup> Abrams, *supra* note 120, at 1006.

<sup>163</sup> *Id.* at 1064.

<sup>164</sup> Abrams, *supra* note 120, at 1065 (citing Mo. Dep’t of Soc. Servs.,

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who supervises the youth throughout their stay in the program and their release into the community.<sup>165</sup>

“Missouri’s DYS has divided the state into five regions, with thirty-one residential facilities that house the more than 1,300 delinquents committed to the Agency each year.”<sup>166</sup> Decentralized community houses treat youth within 30 to 50 miles of their homes, which allows for family and community support during rehabilitation.<sup>167</sup> In addition, to community and family support, small facilities allow youth to receive the treatment they need from the youth specialists. “No DYS facility contains more than eighty-five beds, and all but three contain 33 beds or fewer.”<sup>168</sup>

Missouri employs a range of residential facilities that deal with violent offenders separately from other youths.<sup>169</sup> Youth who commit minor or non-violent offenses are assigned to nonsecure group homes, “each with 10 to 12 beds, under responsible twenty-four-hour adult supervision, or ‘proctor homes’ where youths live with college student mentors in settings that offer structure, support, and supervision.”<sup>170</sup> Many states “lock up status offenders and nonviolent youths who could be treated more effectively in less expensive community-based alternative settings.”<sup>171</sup> Recognizing and separating youth who commit minor offenses from more violent youth is a major step in rehabilitating the corrections system.

Under the model, youth who have committed more serious

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Missouri’s Division of Youth Services: Programs and Services 1 (2003), available at <http://dss.missouri.gov/dys/articles/progservice.pdf>.

<sup>165</sup> Mendel, *supra* note 161, at 11.

<sup>166</sup> Abrams, *supra* note 120, at 1065 (citing Douglas E. Abrams, *A Very Special Place in Life: The History of Juvenile Justice in Missouri* 205 (2003)).

<sup>167</sup> *Id.*

<sup>168</sup> Abrams, *supra* note 120, at 1065 (citing Mendel, *supra* note 161, at 13).

<sup>169</sup> Abrams, *supra* note 120, at 1065 (citing Douglas Abrams, *supra* note 166, at 205).

<sup>170</sup> Abrams, *supra* note 120, at 1065-66.

<sup>171</sup> *Id.* at 1004.

crimes are assigned to moderately secure group homes, with 20 to 30 beds.<sup>172</sup> Violent and chronic offenders are assigned to “secure care facilities” where they receive education, counseling, and vocational guidance in groups of ten to twelve.<sup>173</sup> These facilities are locked with a perimeter fence, but still strive to maintain “an atmosphere conducive to treatment.”<sup>174</sup> For example, staff are dressed in their own clothes and do not carry weapons or handcuffs, only walkie-talkies.<sup>175</sup> Dorm rooms resemble a youth’s bedroom rather than an institution, with such touches as scented candles, fish tanks and flowered shower curtains.<sup>176</sup>

Violent offenders are prescribed a program that provides “the least restrictive environment possible without compromising public safety.”<sup>177</sup> Despite what people may assume, unlike traditional forms of confinement, Missouri’s facilities have seen “little violence or gang activity and no suicides.”<sup>178</sup> Youth are encouraged to spend time on community service projects, and “youths who demonstrate trustworthiness may get jobs at local nonprofit or government agencies.”<sup>179</sup>

Missouri also runs day treatment facilities and a comprehensive after care program. The day treatment facilities provide “a minimum of six hours of daily education, counseling, tutoring, and community service activities” to youth who are relatively minor offenders and youth who were previously confined and require assistance transitioning back to life in the

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<sup>172</sup> *Id.* at 1066.

<sup>173</sup> *Id.* (citing Mo. Dep’t of Soc. Servs., Missouri’s Division of Youth Services: Programs and Services 1, 5 (2003), available at <http://dss.missouri.gov/dys/articles/progservice.pdf>).

<sup>174</sup> Abrams, *supra* note 120, at 1067.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> Abrams, *supra* note 120, at 1004 (citing IRA M. SCHWARTZ & RUSSELL K. VAN VLEET, Center For the Study of Youth Policy, INCARCERATING YOUTH: THE MINNESOTA AND MISSOURI EXPERIENCES 10 (1996)).

<sup>178</sup> Abrams, *supra* note 120, at 1065.

<sup>179</sup> *Id.*

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community.<sup>180</sup> Missouri's aftercare program includes each youth being counseled by a youth specialist during the youth's transition back into the community.<sup>181</sup> "The aim of aftercare is to provide youths a smooth transition that keeps them from drifting back to the unwholesome habits and local peer influences that contributed to criminal behavior in the first place."<sup>182</sup> Youth specialists also assist the youth in finding employment and furthering their education, such as, receiving their high school diploma, admission to GED, or attending college.<sup>183</sup>

Missouri's model is both successful in terms of recidivism and in terms of cost. "A 2003 report showed that 70% of youths released from Missouri DYS custody in 1999 avoided recommitment to a correctional program within 3 years."<sup>184</sup>

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<sup>180</sup> *Id.* at 1067 (citing Ctr. on Juvenile & Criminal Justice, Reforming the Juvenile Justice System, available at <http://www.cjcj.org/jjic/reforming.php>).

<sup>181</sup> *Id.* (citing Mo. Dep't of Soc. Servs., Missouri's Division of Youth Services: Programs and Services 1, 3, 6 (2003), available at <http://dss.missouri.gov/dys/articles/progservice.pdf>).

<sup>182</sup> Abrams, *supra* note 120, at 1067.

<sup>183</sup> *Id.* (citing Mo. Dep't of Soc. Servs., Missouri's Division of Youth Services: Programs and Services 1, 3 (2003), available at <http://dss.missouri.gov/dys/articles/progservice.pdf>).

<sup>184</sup> Dick Mendel reports that:

of the 1,386 teens released from custody in 1999, just 111 (8 percent) were sentenced to state prison or a state-run 120-day adult incarceration program within 36 months of release, and 266 (19 percent) were sentenced to adult probation. . . . [Also] 94 youth were recommitted to DYS for new offenses following release. [A] 2000 recidivism study in Maryland found that 30 percent of youth released from juvenile corrections facilities in 1997 were incarcerated as adults within three years. In Louisiana, 45% of youth released from residential programs in 1999 returned to juvenile custody or were sentenced to adult prison or probation by mid-2002. In Florida, 29 percent of youth released from a juvenile commitment program in 2000-2001 were returned to juvenile custody or sentenced to adult prison or probation within 12 months; the comparable figure in Missouri is just 9 percent.

“The American Youth Policy Forum (AYPF) found that Missouri enjoys a recidivism rate one-half to two-thirds below that of most . . . states and spends one-third less on juvenile corrections than [its] eight surrounding states.”<sup>185</sup> “Missouri spends about \$103 per day for each youth in the DYS program, considerably less than the amounts spent per day by other states with significantly higher recidivism rates, such as Florida (approximately \$271) and Maryland (\$192 per youth ages ten to seventeen).”<sup>186</sup> Adopting a model of small community based houses staffed with trained youth specialist is not only proven to be more successful in rehabilitating and correcting delinquent behavior, but also more cost effective. In order to reduce the rate of incarceration of youth, and minority youth in particular, states should adopt this model.

In order to change from a system of traditional juvenile incarceration to the Missouri model, several large obstacles need to be overcome. First, attitudes must change. In the 1990’s, in response to criminologists who predicted a significant increase in juvenile crime, and pressure from a fearful public, lawmakers enacted harsher penalties for juvenile offenders. “Meaningful juvenile justice reform requires commitment to therapeutic attitudes from top to bottom, from the governor and legislature providing leadership and funding to the corridors of the juvenile facilities themselves where staff members interact with juveniles daily.”<sup>187</sup> Since the “get tough on crime” wave in the 1990’s, the public mood has shifted to be more accepting of alternative rehabilitative treatment, even if the political mood may not

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Abrams, *supra* note 120, at 1069 *citing* Mendel, *supra* note 161, at 35. Approximately seventy percent of youths released from secure care in Louisiana since 1994 have committed another crime. *See* COALITION FOR EFFECTIVE JUVENILE JUSTICE REFORM, BLUEPRINT FOR JUVENILE JUSTICE REFORM: A LEGISLATOR’S BRIEFING BOOK 6, 11 (2003).

<sup>185</sup> Abrams, *supra* note 120, at 1069 (citing Mendel, *supra* note 161, at 3).

<sup>186</sup> Abrams, *supra* note 120, at 1069 (citing Mendel, *supra* note 161, at 35-36).

<sup>187</sup> Abrams, *supra* note 120, at 1080.

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have.<sup>188</sup> In 2002, a nation-wide survey reported 85% of respondents stated “they supported placement of more youthful offenders in community prevention programs that teach job skills, moral values, and self esteem” rather than prison.<sup>189</sup> Douglas E. Abrams, a Professor of Law at the University of Missouri states:

The roadmap to juvenile justice reform begins with the capacity of decision-makers in all three branches of state government to make the difficult choices necessary to recalibrate the delicate balance between rehabilitation and incarceration. In appropriate cases, police and prosecutors must accept non-secure programming for ‘juvenile criminals.’ The governor and legislature must fund and advocate for an array of alternative community-based programs, which judges must embrace as integral components of the continuum of delinquency sanctions.<sup>190</sup>

Obtaining political backing also poses a problem. In order to sustain political favor, Missouri’s Department of Youth Services employs a “fifteen member, bipartisan advisory board comprised of judges, former legislators, civic officials, and concerned citizens from all walks of life and all areas of the state.”<sup>191</sup> “The board provides expertise concerning juvenile corrections policy and helps develop political support for the Agency’s innovations. Missouri DYS has enjoyed bipartisan support from governors and the legislature, and a budget that has quadrupled from about fifteen million dollars to sixty million dollars in fifteen years.”<sup>192</sup>

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<sup>188</sup> *Id.* at 1072.

<sup>189</sup> *Id.*; See PETER D. HART RESEARCH ASSOCS., Inc., Open Soc’y Inst., CHANGING PUBLIC ATTITUDES TOWARD THE CRIMINAL JUSTICE SYSTEM 3, 11, 14-15 (2002).

<sup>190</sup> Abrams, *supra* note 120, at 1071.

<sup>191</sup> Abrams, *supra* note 120, at 1068 (citing Abrams, *supra* note 166, at 205).

<sup>192</sup> *Id.* at 207 (quoting Barry Krisberg, President of the National Council on Crime and Delinquency).

Acquiring the needed funding also presents a challenge. “Despite clear evidence that alternative delinquency programs are indeed considerably less expensive in the long run than operating large juvenile prisons, initial outlays for these programs may rankle voters squeezed by already tight state budgets.”<sup>193</sup>

Changing the system’s course now would cost money, lots of it, without any immediate results. 10 years down the line, juvenile crime may recede . . . but it would call for political and economic commitments no one wants to make. On the other hand, if you build a prison cell today, then fill it, the results appear immediate, even if crime continues unabated.<sup>194</sup>

Despite these challenges, moving towards alternatives to juvenile incarceration, such as the Missouri model, is crucial to saving our country’s youth from a life of continued criminality, which is fed by the abuse and trauma present in traditional facilities. Traditional juvenile incarceration perpetuates the cycle of crime that ensnares many minority youth. In order to reduce the number of minority youth in the criminal justice system, alternatives to traditional incarceration should be implemented.

#### CONCLUSION

In order to sufficiently reduce the overrepresentation of minority youth in the criminal and family court systems, there needs to be significant changes in all aspects of these systems. The racial majority has set in place systems, such as the foster care and criminal justice systems which ignore the cultural and racial issues at play in our society; and in doing so, fall prey to institutional discrimination. In order to truly help this country’s minority youth escape the criminal justice system, and stay in

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<sup>193</sup> *Id.* at 1075.

<sup>194</sup> *Id.* at 1075 (citing EDWARD HUMES, NO MATTER HOW LOUD I SHOUT: A YEAR IN THE LIFE OF JUVENILE COURT 178 (1996)).

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the classroom, there needs to be a cooperative movement in all aspects of society. Cultural competency education seems to be the first step. Once racial discrimination is defined as more than just individual prejudices or biases, but something that is perpetuated by the policies and rules of our institutions, change can begin to take place. Additionally, while implementing such changes as providing support for emancipated foster youth, and creating alternatives to traditional juvenile incarceration will not change the entire system, they will begin to chip away at the disproportionately large numbers of minority youth that are offered up to the criminal justice system each year.