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SET UP TO FAIL:
ISSUES IN EDUCATION AND REENTRY FOR TENNESSEE'S COURT-INVOLVED YOUTH

Kristen D. Anderson[*]

> *Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities . . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.*[1]

I. Introduction

On a national level, we are failing to serve the educational needs of children reentering our communities following incarceration. Education plays a fundamental role in the development of our youth, and it should be the center of reentry policy. Some argue that "[p]ublic investments

[*] *Candidate for Doctor of Jurisprudence, Class of 2020, The University of Tennessee College of Law.* *I would like to thank those who have provided me great insights, both for this Article and in the world of juvenile justice. Thank you, Christina Kleiser, for your ongoing mentorship and unwavering dedication to bettering your clients' lives and the system in which they are involved. Thank you to Melissa DiRado, who introduced me to the world of criminal defense, and to Jonathan Harwell, who encouraged me to step out of my comfort zone and into juvenile advocacy. I wish to thank my partner, colleague, and classmate, Sean Roberts, for all of his patience, proofing, feedback, and advice. And I would like to especially thank Professor Dean Rivkin for directing my research to this topic and for his lifelong work in the field of juvenile justice and education reform.*

[1] Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).

can break the cycle of poverty,"[2] and the same notion is true for breaking the cycle of juvenile criminalization. It makes intuitive sense to invest heavily in court-involved youth's education and reentry programs because children who have support in place to succeed in their education are significantly less likely to end back in the system and far more likely to graduate.[3] However, protections afforded by federal law and evidence-based programs to improve children's outcomes are being ignored, and funding is sparse.

Reentry, by definition, is simply the process by which individuals in state custody return to their communities, and juvenile reentry is any "reintegrative services that prepare youth in out-of-home placements for their return home by establishing the necessary collaboration with the community and its resources to ensure the delivery of needed services and supervision."[4] Juvenile reentry programs are unique in the sense that they address more than just aftercare of children returned to the community from secure residential placement; rather, it encompasses any program in place to assist a child in transitioning into productive adulthood.[5]

Unfortunately, funding for programs geared specifically towards juvenile reentry has dwindled as of late. For example, the federal Juvenile Accountability Block Grant program, which was originally authorized two hundred and forty-nine million dollars in 2002, has subsequently failed to reauthorize.[6] In years past, Tennessee used these funds to "establish and

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2 David L. Kirp, *How to Break the Poverty Cycle*, N.Y. TIMES (Nov. 27, 2019), https://www.nytimes.com/2019/11/27/opinion/how-to-break-the-poverty-cycle.html.

3 *See* discussion *infra* Part II.

4 K. Nance Bates, *Here's How Reentry Can Be More Successful,* JUVENILE JUSTICE INFO. EXCH. (Nov. 20, 2019), https://jjie.org/2019/11/20/heres-how-reentry-can-be-more-successful/.

5 FED. INTERAGENCY REENTRY COUNCIL, A RECORD OF PROGRESS AND A ROADMAP FOR THE FUTURE 68 (Aug. 2016) [hereinafter A RECORD OF PROGRESS], https://csgjusticecenter.org/wp-content/uploads/2016/08/FIRC-Reentry-Report.pdf.

6 FIGHT CRIME: INVEST IN KIDS AND BAY AREA LEGAL AID, JUVENILE JUSTICE PRACTITIONERS' TOOLKIT: JUVENILE ACCOUNTABILITY BLOCK GRANTS PROGRAM, https://strongnation.s3.amazonaws.com/documents/379/395ecc59-2e52-4c69-8cc0-08d056b07ad4.pdf?1518733584.

maintain accountability-based programs designed to reduce recidivism among juveniles."[7] Without this funding, dozens of programs that could potentially address juvenile's educational issues now go unfunded.[8] This paper explores the data around education and delinquency, the dollars and cents behind juvenile reentry programs in Tennessee, and proposes improvements that must be made in order to improve our youth's outcomes.

II. The Relationship Between Education, Court-Involvement, and Delinquency

Academic performance as a measure of success in schools relying on systems "designed to evaluate, compare, and, eventually, judge student performances," directly contributes to children's self-concept early on in their lives.[9] Consequently, studies suggest that lower performing students are more likely to be involved in delinquent behavior.[10] "Delinquent" behavior simply refers to a minor violating criminal law by committing an action that would be a violation of the law if also committed by an adult.[11] This does not necessarily include the commission of status offenses—an act that is criminal by virtue of the offender's age, such as possession of tobacco products or skipping school.[12]

Several education-related traits are particularly indicative of a high risk of engaging in delinquent behavior, including: low intelligence, learning disabilities, attention deficient hyperactivity disorder, impulsivity, poor social skills, and poor problem solving skills.[13] There are many theories to why students with these experiences are more prone to illegal actions, but

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7 OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, FY 2009 JUVENILE ACCOUNTABILITY BLOCK GRANT PROGRAM AWARD # 2009-JB-FX-0052, https://ojjdp.ojp.gov/funding/awards/2009-jb-fx-0052.

8 *Id.*

9 DONALD J. SHOEMAKER, JUVENILE DELINQUENCY 162 (2009).

10 *Id.* (citations omitted).

11 T.C.A. §§ 37-1-102, 131 (2019); ROBERT AGNEW, JUVENILE DELINQUENCY: CAUSES AND CONTROL 4 (3rd ed. 2009).

12 T.C.A. §§ 37-1-102, 131 (2019); AGNEW, *supra* note 11, at 6.

13 AGNEW, *supra* note 11, at 212, 242.

most agree that low academic performance or disengagement with their school community may lead to feelings of frustration, lower motivation, and even rejection of the school as an institution and its values.[14] This is especially true for children from "broken homes" or minority students, whose lives may present challenges that "negate the positive benefits of educational effort," and, as a result, "find themselves disadvantaged in the marketplace."[15] Essentially, problems at home or problems related to social class may lead to academic issues at school, which leads to negative evaluations by peers, parents, or teachers, which in turn lowers a student's feeling of self-worth.[16] This lowering of self-worth initiates actions they believe could compensate for their perception of academic failure, eventually manifesting in delinquent behavior and court-involvement.[17]

Furthermore, many school-specific factors contribute to high rates of delinquency. Schools with high teacher-to-student ratios and schools with weak community involvement tend to suffer much higher rates of delinquent issues.[18] The same is true for schools with low or unreasonably high-standardized success goals for their students.[19] Unsurprisingly, private schools tend to have lower rates of delinquency compared to public and charter schools, likely due to the fact that private schools often suffer from very few of these factors.[20]

Regardless of the cause, many children end up involved in the criminal court system. There are several ways youth are introduced to the juvenile justice system following delinquent

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14 SHOEMAKER, *supra* note 9 (citations omitted).

15 *Id.* at 163 (citations omitted); *see also* AGNEW, *supra* note 11, at 225 (defining "broken homes" as any home other than one where both natural parents are present in the child's home).

16 SHOEMAKER, *supra* note 9, at 164–65 Fig. 8.1.

17 SHOEMAKER, *supra* note 9, at 165.

18 AGNEW, *supra* note 11, at 246–47.

19 *Id.* at 247.

20 *Id.*

behavior, and numerous levels of court-involvement lie within that system. Jurisdiction varies by state, but, in Tennessee, juvenile courts control any person under the age of eighteen, but the court retains jurisdiction until age nineteen if court-involvement originated prior to the person's 18th birthday.[21] Entry into the system generally starts with a referral due to delinquent behavior.[22] While about eighty percent of referrals to the juvenile court come from police—including school resource officers—the remaining referrals stem from sources like parents and school authorities.[23]

Schools—through their administrators, teachers, and school resource officers—play a significant role in pushing students into the justice system, and away from adequate educational opportunities.[24] This national trend has been coined the "school to prison pipeline."[25] Students of color and those with disabilities are especially impacted by this trend and are vulnerable to discriminatory practices.[26] This is partially driven by the "youth control complex," in which schools systematically treat the behavior of primarily racial minority student's "everyday behavior" as criminal, and the phenomenon serves as a mechanism for keeping students in line.[27]

In most states, schools are free to file referrals for behavior taking place on school property, unless other protections apply.[28] For instance, in Tennessee, students receiving special education services are protected from the school filing a criminal petition against the child until

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21 T.C.A. §§ 37-1-103, 1-3-105 (2019).

22 T.C.A. § 37-1-108 (2019).

23 SHOEMAKER, *supra* note 9, at 312 (citations omitted).

24 VICTOR RIOS, PUNISHED: POLICING THE LIVES OF BLACK AND LATINO BOYS xiv (2011).

25 *The School-to-Prison Pipeline,* AM. CIVIL LIBERTIES UNION, https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline (last visited Dec. 17, 2019).

26 *Id.*

27 RIOS, *supra* note 24, at xiv.

28 T.C.A. §§ 49-10-1304, 37-1-120 (2019).

after a formal manifestation hearing that "results in a determination that the behavior that resulted in the act requiring disciplinary action was not caused by the student's disability."[29] This manifestation determination is a process required by the Individuals with Disabilities Education Act of 2004,[30] and is conducted to "ensure that a student with a disability is not discriminated against by imposing disciplinary sanctions for behavior that is a manifestation of his or her disability."[31] Despite this, Tennessee special needs students are regularly summoned to court or suspended due to behavior that was never subject to a manifestation hearing.[32]

Referral to the juvenile justice system, however, does not necessarily mean that the child will go through the adjudication process for their behavior. Some children may be sent to social services, placed on preliminary probation, or their case be dismissed pre-adjudication.[33] Otherwise, a charging petition may be filed against the child, which formally initiates the adjudication process.[34] Unlike adults, juveniles are not "found guilty" for offenses; rather, juveniles are "adjudicated delinquent" by a trial judge.[35] Like adult proceedings, if a plea is not entered, then the child's case will proceed to adjudication.[36] Where a court finds a child

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29 T.C.A. §§ 49-10-1304(d)(3)(B), 37-1-120 (2019).

30 20 U.S.C. § 1415(k)(1)(E)-(F) (2019).

31 TENN. DEPT. OF EDUC., MANIFESTATION DETERMINATION INSTRUCTIONAL GUIDE, https://www.tn.gov/content/dam/tn/education/special-education/eligibility/se_eligibility_manifest_determ_guide.pdf.

32 Wayne D'Orio, *Discipline and special ed: Schools work to reduce suspensions*, THE CHRISTIAN SCIENCE MONITOR (May 31, 2018), https://www.csmonitor.com/EqualEd/2018/0531/Discipline-and-special-ed-Schools-work-to-reduce-suspensions; c*f.* Paul L. Morgan Ph.D., *Suspension, Discrimination and Students with Disabilities,* PSYCHOLOGY TODAY (Oct. 8, 2019), https://www.psychologytoday.com/us/blog/children-who-struggle/201910/suspension-discrimination-and-students-disabilities.

33 T.C.A. § 37-1-110 (2019); SHOEMAKER, *supra* note 9, at 312.

34 T.C.A. § 37-1-131 (2019); SHOEMAKER, *supra* note 9, at 312.

35 T.C.A. § 37-1-131 (2019); AGNEW, *supra* note 11, at 9.

36 T.C.A. § 37-1-131 (2019); SHOEMAKER, *supra* note 9, at 314.

delinquent the child will proceed to disposition—similar to "sentencing" in adult courts.[37] This phase will determine the terms of their "rehabilitation."[38] Oftentimes, this involves institutionalization in state-run juvenile justice facilities.[39]

If a child's disposition includes removal from his home, the child may be placed into a variety of placements, such as the foster care system, rehabilitation centers, or even hard-wired juvenile corrections facilities.[40] In Tennessee, this means placement in the custody of the Department of Children's Services ("DCS").[41] Tennessee's DCS was created in 1996, placing both child welfare services and juvenile justice programs under one state agency.[42] The creation of this "combination agency" was initially met with much debate, as many expressed legitimate concerns that juvenile justice funding would get lost amongst those allocated for custody issues, child neglect, and its other administrative departments.[43] So then, in 2006, DCS created within it a separate Division of Juvenile Justice, which specifically served children adjudicated delinquent, and funded those programs.[44] To this day, DCS moderates all placements for juvenile justice residential programs.[45]

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37 T.C.A. § 37-1-131 (2019); SHOEMAKER, *supra* note 9, at 314–16.

38 T.C.A. § 37-1-131 (2019); SHOEMAKER, *supra* note 9, at 314–16.

39 SHOEMAKER, *supra* note 9, at 315.

40 *Id.*

41 T.C.A. § 37-1-137 (2019).

42 TENN. DEPT. OF CHILDREN'S SERVS., TENNESSEE'S JUVENILE JUSTICE HISTORY [hereinafter TENNESSEE'S JUVENILE JUSTICE HISTORY], https://www.tn.gov/content/dam/tn/dcs/documents/juvenile-justice/JuvenileJusticeTimeline.pdf.

43 CTR. FOR THE STUDY OF SOC. POLICY, LESSONS LEARNED FROM CHILD WELFARE CLASS ACTION LITIGATION: A CASE STUDY OF TENNESSEE'S REFORM 5–7 (Feb. 2019), https://cssp.org/wp-content/uploads/2019/02/Tennessee-Case-Study-FINAL.pdf.

44 TENNESSEE'S JUVENILE JUSTICE HISTORY, *supra* note 42.

45 TENN. DEPT. OF CHILDREN'S SERVICES OFFICE OF JUVENILE JUSTICE, https://www.tn.gov/dcs/program-areas/juvenile-justice.html (last visited Dec. 17, 2019).

On a given day in the U.S., as many as sixty thousand youth are held in secure and non-secure residential placement facilities.[46] This is a huge reduction from years past, and Tennessee specifically has made significant strides in reducing the total number of children committed to residential facilities, going from over two thousand children in 1997 to fewer than seven hundred in 2015.[47] Unfortunately, for the students who are committed to state custody, the quality of their placements varies widely depending on the "level" of security, and by location.[48] Many of these facilities, which are deemed "youth development centers" and "training schools" in an attempt to stress their emphasis on rehabilitation, in fact resemble what most adults imagine when they picture a stereotypical adult prison.[49] The length of stay in placements is often undefined at the time of placement, and the administrators of that correctional program determine the timing of a child's release.[50] Unsurprisingly, processing through this system disparately affects some populations and not others. For instance, males are more likely to be petitioned for adjudication than females and race-minority children are more likely to be petitioned for adjudication and placed in correctional facilities than white children.[51]

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46 A RECORD OF PROGRESS, *supra* note 5; U.S. DEPT. OF EDUC. AND U.S. DEPT. OF JUSTICE, DEAR CHIEF STATE SCHOOL OFFICERS AND STATE ATTORNEYS GENERAL 1 (Dec. 8, 2014), https://www2.ed.gov/policy/gen/guid/correctional-education/csso-state-attorneys-general-letter.pdf.

47 *Query for Tennessee Adjudicated and Committed Juveniles*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PROGRAMS CENSUS ON JUVENILES IN RESIDENTIAL PLACEMENT, https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State_Adj.asp (last visited Dec. 17, 2019).

48 AGNEW, *supra* note 11, at 10; S. EDUC. FOUND., JUST LEARNING: THE IMPERATIVE TO TRANSFORM JUVENILE JUSTICE SYSTEMS INTO EFFECTIVE EDUCATIONAL SYSTEMS—A STUDY OF JUVENILE JUSTICE SCHOOLS IN THE SOUTH AND THE NATION 4 (2014) [hereinafter JUST LEARNING].

49 AGNEW, *supra* note 11, at 10.

50 T.C.A. § 37-1-137 (2019); SHOEMAKER, *supra* note 9, at 315.

51 SHOEMAKER, *supra* note 9, at 317–19.

The vast majority of youth who enter the juvenile justice system are academically behind already, and the juvenile justice school system does very little to remedy that situation.[52] Juvenile justice schools have significantly less access to subject-certified teachers, especially in math and science.[53] Some states, like Tennessee, require that all teachers in juvenile justice facilities be certified in a particular subject, but its policies also allow teachers to teach outside of their endorsed subjects for up to two classes per day, circumventing any need to hire teachers endorsed in critical core subjects.[54] Students in custody average less than 6 hours of instruction per week, and there is evidence that nearly half of students educated in juvenile justice facilities show no positive change in their pre/post testing in math and reading.[55] Less than half of those in high school earned course credits while attending juvenile justice schools.[56] In Tennessee, screening is required for any child committed to DCS custody to determine possible needs for special education services,[57] and countrywide, an estimated thirty to eighty percent of children in detention centers are eligible for some type of special education.[58] However, more than a fourth of students with qualified learning disabilities do not receive special education services while in state custody.[59]

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52 *Understand the JJDPA: Enhancing System Partnerships for Successful Educational Reentry,* EDUC. LAW CTR. (Oct. 23, 2019) [hereinafter *Understand the JJDP*], https://drive.google.com/file/d/1SWfaaTu3FiWDHywZE2HVRHl704OTM7KT/view.

53 *Id.*

54 TENN. DEPT. OF CHILDREN'S SERVS., ADMIN. POLICIES AND PROCEDURES 21.3 (2015), https://files.dcs.tn.gov/policies/chap21/21.3.pdf.

55 *Understand the JJDPA*, supra note 52.

56 JUST LEARNING, *supra* note 48, at 15.

57 TENN. DEPT. OF CHILDREN'S SERVS., ADMIN. POLICIES AND PROCEDURES 21.11-DOE (2008), https://files.dcs.tn.gov/policies/chap21/21.11DOE.pdf.

58 *Understand the JJDPA*, supra note 52.

59 JUST LEARNING, *supra* note 48, at 18.

Moral of the story: these delinquent youths, who are probably those with the greatest need to learn and advance in order to prosper, receive the least effective education in the country.[60] Juvenile justice schools are "denying troubled youth the means by which to turn around their own lives in the near future so that they can make full use of education in the long run."[61] Despite this, these students stay resilient and more than sixty percent of youth in custody aspire to continue school, even up into higher education settings.[62]

III. Issues in Education for Youth Returning to the Community

Juvenile justice disciplinary intervention has repeatedly shown to cause worse outcomes for youth instead of better.[63] Fittingly, the Southern Education Foundation reasons that school systems consciously and unconsciously move students into the juvenile justice system, and "at worst, the juvenile system has become a dumping ground where troubled children and youth are sent beyond any accountable system of education."[64] If schools continue to push children into the juvenile justice system, effective mechanisms should be utilized to reintegrate those same students back into the traditional community schools. There are several programs geared towards addressing at-risk youth and preventing delinquent behavior before it begins.[65] However, there

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60 *Id.*

61 *Id.* at 27.

62 FEDERAL INTERAGENCY REENTRY COUNCIL, REENTRY MYTHBUSTER: YOUTH ACCESS TO EDUCATION UPON REENTRY (Jan. 2017) [hereinafter REENTRY MYTHBUSTER], http://csgjusticecenter.org/wp-content/uploads/2012/11/Reentry_Council_Mythbuster_Youth_Access_Ed.pdf.

63 TENN. DEPT. OF CHILDREN'S SERVS., REPORT TO GOVERNOR BILL LEE AND THE CHIEF CLERKS OF THE SENATE AND HOUSE OF REPRESENTATIVES PURSUANT TO PUBLIC CHAPTER 1005, at 15–16 (Jan. 31, 2019) [hereinafter REPORT TO GOVERNOR], https://www.tn.gov/content/dam/tn/dcs/documents/quality_improvement/jj-reports/PC1005_Report_FY18.pdf.

64 JUST LEARNING, *supra* note 48, at 6.

65 *See, e.g.,* OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, KNOXVILLE AREA MENTORING INITIATIVE AWARD # 2019-JY-FX-0027 (2019), https://ojjdp.ojp.gov/funding/awards/2019-jy-fx-0027); OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, THE BOYS & GIRLS CLUBS OF THE TENNESSEE VALLEY'S GANG PREVENTION THROUGH TARGETED OUTREACH MENTORING (GPTTOM) PROGRAM AWARD # 2009-JU-FX-0050 (2009), https://ojjdp.ojp.gov/funding/awards/2009-ju-fx-0050; OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, SHELBY COUNTY PROJECT SAFE FUTURES AWARD # 2010-MU-MU-K005

are fewer programs dedicated toward assisting students already deeply involved in the criminal justice system, and those who are returning from incarceration. And those programs that are in place do not always overcome the enormous barriers that they face in maintaining progress towards an education.[66]

Frequent interruption in educational services serves as a huge barrier for youth to reenter the traditional education system.[67] Anyone who moved school districts while in primary school knows how difficult it can be to acclimate to a very different curriculum or standards. In the juvenile justice system, children transition through multiple placements very quickly: from the community to detention to secured facilities and back again; not to mention the movements that may take place for them within the facilities or the community.[68] Many kids—especially those from unstable homes to begin with—start to experience anxiety as they get closer to exiting the system, as they have grown accustomed to the disciplined routine that being in a confined facility provides, regardless of whether their educational needs were being met there.[69]

Most children who leave secure facilities remain under juvenile justice jurisdiction following placement but continue to receive subpar educational service.[70] Once released from

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(2010), https://ojjdp.ojp.gov/funding/awards/2010-mu-mu-k005; OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, G.R.E.A.T. (GANG RESISTANCE EDUCATION AND TRAINING) SOUTHEAST REGIONAL TRAINING CENTER AWARD # 2010-JV-FX-K005 (2010), https://ojjdp.ojp.gov/funding/awards/2010-jv-fx-k005; OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, G.R.A.S.S.Y. ENHANCEMENT – GANG REDUCTION ASSISTANCE FOR SAVING SOCIETY'S YOUTH ENHANCEMENT AWARD # 2019-PB-BX-0006 (2019), https://ojjdp.ojp.gov/funding/awards/2019-pb-bx-0006; *see also* OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, OJJDP FY 19 MENTORING OPPORTUNITIES FOR YOUTH INITIATIVE (2019), https://ojjdp.ojp.gov/funding/opportunities/ojjdp-fy-19-mentoring-opportunities-youth-initiative.

66 *Understand the JJDPA, supra* note 52.

67 CLARK H. GRILLER, ET. AL., TRANSITION TOOLKIT 3.0: MEETING THE EDUCATIONAL NEEDS OF YOUTH EXPOSED TO THE JUVENILE JUSTICE SYSTEM 1–2 (Washington, DC: National Evaluation and Technical Assistance Center for the Education of Children and Youth Who Are Neglected, Delinquent, or At Risk 2016), https://www2.ed.gov/students/prep/juvenile-justice-transition/transition-toolkit-3.pdf.

68 *Id.*

69 *Id.* at 21.

70 *Id.* at 24.

physical custody, these children struggle with delays, or flat-out denials, of school re-enrollment, often resulting in placement in "alternative schools."[71] In some jurisdictions, students are not automatically eligible for transfer of credits earned in juvenile justice placement, if they earned any credits at all.[72] This means many students end up placed in the incorrect grade level or losing whatever progress made, which just adds to a child's already-existing frustrations with school and academic performance.[73] To exacerbate the issue, resources, such as counseling and tutoring, are scarce for students transitioning back to traditional community schools.[74]

Potential negative treatment may also play a role in a student's willingness to reenter school. For instance, Tennessee school principals are automatically notified of any adjudication of student's delinquent acts, even those occurring from behavior off school grounds.[75] Those certain students particularly include students on aftercare, which is programming geared towards students returning from juvenile justice placement.[76] Some school boards even empower school administrators to suspend or expel students for adjudicated delinquency taking place off school grounds if they believe that student "poses a danger to persons or property or disrupts the education process."[77] On top of that, those same adjudications must be reported to each and every new school the child is enrolled or re-enrolled.[78] While records of the adjudication are to

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71 *Understand the JJDPA*, supra note 52.

72 *Id.*

73 *Id.*

74 *Id.*

75 TENN. DEPT. OF CHILDREN'S SERVS., ADMIN. POLICIES AND PROCEDURES 21.18 (2019), https://files.dcs.tn.gov/policies/chap21/21.18.pdf.

76 *Id.*

77 KNOX COUNTY BD. OF EDUC., J-191 MISBEHAVIORS AND DISCIPLINARY OPTIONS 5 (citing T.C.A. § 49-6-3401 (2019)), https://www.knoxschools.org/cms/lib/TN01917079/Centricity/domain/974/board%20policies/J-191%20Misbehaviors%20and%20Disciplinary%20Options.pdf.

78 TENN. DEPT. OF CHILDREN'S SERVICES, ADMIN. POLICIES AND PROCEDURES 21.18 (2019), https://files.dcs.tn.gov/policies/chap21/21.18.pdf).

be kept confidentially with the principal, she may openly discuss that adjudication with virtually any administrator within the school, including: "another principal, employees of the school having responsibility for classroom instruction of the child, the school counselor, the social worker or psychologist . . . , and the school resource officer."[79]

Failure to assist in reintegration is a highly-aggravating factor in why over half of those released from juvenile institutions are re-arrested within one year, nearly half are again referred to the court system, and a quarter are re-incarcerated.[80] Underlying issues that contributed to their delinquent behavior prior to juvenile justice placement—such as educational performance or mental health problems—were not properly addressed, or may have been exacerbated during incarceration.[81] According to one study, the great majority of children placed in detention centers and correctional facilities exhibit one or more psychiatric symptoms, not otherwise exhibited before, within six months of placement.[82] Additionally, any external factors that contributed to their original delinquency—such as problems at home and with family members—are reintroduced following incarceration, leading to a similar cycle as before.[83] In the end, as many as two-thirds of students detained in the juvenile justice system eventually drop out of school prior to graduation.[84]

IV. The Importance and Economic-Viability of Transition and Reentry Programs

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79 *Id.*

80 SHOEMAKER, *supra* note 9, at 384 (citations omitted); JUST LEARNING, *supra* note 48, at 7.

81 SHOEMAKER, *supra* note 9, at 384.

82 *Id.* at 371 (citing Linda A. Teplin, et al., U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE JUSTICE BULLETIN: PSYCHIATRIC DISORDERS OF YOUTH IN DETENTION 1 (2006)).

83 SHOEMAKER, *supra* note 9, at 384.

84 *Id.* at 168; JUST LEARNING, *supra* note 48, at 18.

In an effort to combat the ever-growing issues with recidivism and high school dropouts, youth reentry programs have become a critical aspect of each state's juvenile justice system over the last couple of decades. Implementing these reentry programs in communities have been proven to be effective in reducing juvenile recidivism,[85] and, ideally, the transition process begins as soon as a child enters the court system.[86] These programs vary from formal systems put in place by the state, to nonprofit involvement, to casual community support. One particularly effective method of formal transition success is student engagement; the child should be included in creating his own transition plan and working with those in charge of his goals.[87] These measures, along with action steps to attain them, should include goals related to school, employment, behavior, and decision-making.[88] Additionally, family buy-in and commitment to these same goals are particularly important where it is possible.[89] Some reentry programs have utilized online resources to encourage goal setting. For example, the U.S. Department of Labor released GetMyFuture.org, a web application that helps students plan their careers and explore education and training options, taking into account any challenges such as criminal conviction, lack of family support, or substance abuse issues.[90]

Traditional community school reentry is the most successful of all in reducing dropout and recidivism rates. Juveniles who return to school or begin work immediately following incarceration are significantly less likely to return to the system.[91] But as previously discussed,

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85 A RECORD OF PROGRESS, supra note 5.

86 REENTRY MYTHBUSTER, *supra* note 61; *see also* GRILLER, *supra* note 67, at 10.

87 GRILLER, *supra* note 67, at 25.

88 *Id.*

89 *Id.* at 26.

90 *CareerOneStop GetMyFuture*, U.S. DEPT. OF LABOR, https://www.careeronestop.org/GetMyFuture/ (last visited Dec. 17, 2019).

91 GRILLER, *supra* note 67, at 24.

reentry into a child's original community school can be particularly difficult when these students are not on track with understanding the subject matter due to subpar teaching during juvenile justice custody, or the system's failure to address a student's special education needs.[92] On top of that, test-based accountability measures actually create incentives for schools to push out lower-performing students in order to increase overall test scores.[93] One academic aptly stated: "kids coming out of juvenile justice are having trouble making transitions because the schools don't want them back because they're considered bad actors and low performers."[94]

Where traditional community schools are not an option, some academic programs that may be perfectly suited to the needs of a juvenile oftentimes have administrative barriers that close the doors. For example, Tennessee recently implemented the National Guard's Volunteer ChalleNGe Academy ("TNVCA"), which allows for various academic paths for "at-risk" youth to regain credits or graduate with a high school degree.[95] Similar to other programs throughout the country, the state and federal government share TNVCA's costs and placement in the program is executed in cooperation with TN DCS.[96] This program, which utilizes a residential military-style academic setting, intends to address students who are contemplating dropping out of school, and provide for a structured environment for those students to rebuild from a

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92 *Understand the JJDPA*, supra note 52.

93 *The School-to-Prison Pipeline*, supra note 25.

94 Kelan Lyons, *After 22 years educating incarcerated youth still a challenge*, THE CT MIRROR (Nov. 4, 2019), https://ctmirror.org/2019/11/04/after-22-years-educating-incarcerated-youth-still-a-challenge/?mc_cid=18620bcbda&mc_eid=6aab0356eb.

95 TENN. NAT'L GUARD, VOLUNTEER CHALLENGE ACADEMY, *Academics*, https://www.tn.gov/tnvolunteerchallenge/academics.html (last visited Dec. 17, 2019).

96 TENN. NAT'L GUARD, VOLUNTEER CHALLENGE ACADEMY, *What is Tennessee Volunteer ChalleNGe Academy?* 5 (Dec. 2017), https://www.etsu.edu/academicaffairs/veteransaffairs/documents/vets_voice_december.pdf (last visited Dec. 17, 2019).

potentially rocky childhood.[97] TNVCA participants are coached in various life skills, assessed for special education needs, earn substantial credits towards high school graduation, and are provided assistance in applying for college.[98] At first blush, it may appear that TNVCA may be an excellent option for many adjudicated delinquent children's educational deficiencies. Unfortunately, one of the key qualifications for enrollment in this program is that the child not be on parole or probation, "[n]ot awaiting sentencing, and not under indictment, charged, or convicted of a crime that is considered a felony when charged as an adult."[99]

Moreover, state funds continue to be allocated towards programs geared towards disciplinary action, rather than those that might address the root of the underlying issue motivating delinquent behavior or improve their ability to succeed following incarceration. For instance, recently there has been a significant amount of federal funding funneled toward increased law enforcement presence in schools and probation programs,[100] while ignoring or even eliminating educational offerings. From an economic standpoint, it does not make sense because if even a fraction of those disciplinary programs were redirected towards evidence-based treatment and education programs, the outcomes could be significantly more favorable.[101]

The expense of keeping children in custody or in probationary programs is enormous. The average daily cost for children in out-of-home community placements ranges from one

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97 TENN. NAT'L GUARD, VOLUNTEER CHALLENGE ACADEMY, *About the Program*, https://www.tn.gov/tnvolunteerchallenge/about-the-program.html (last visited Dec. 17, 2019).

98 TENN. NAT'L GUARD, VOLUNTEER CHALLENGE ACADEMY, *What is Tennessee Volunteer ChalleNGe Academy?* 4–6 (Dec. 2017), https://www.etsu.edu/academicaffairs/veteransaffairs/documents/vets_voice_december.pdf (last visited Dec. 17, 2019).

99 TENN. NAT'L GUARD, VOLUNTEER CHALLENGE ACADEMY, *Application,* https://www.tn.gov/content/dam/tn/tnvolunteerchallenge/attachments/TNVCA_cadet_full_app_fy19.pdf (last visited Dec. 17, 2019).

100 *See, e.g.,* OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE AND NEIGHBORHOOD SAFE PROGRAM AWARD # 2008-JL-FX-0018 (2008), https://ojjdp.ojp.gov/funding/awards/2008-jl-fx-0018.

101 *Cf.* REPORT TO GOVERNOR, *supra* note 63, at 11.

hundred to six hundred dollars per day.[102] Beds in secured youth development centers average over four hundred dollars per day to maintain, and cost the state over one hundred and fifty thousand dollars per bed per year![103] This is particularly concerning when children placed in out-of-home locations are statistically more likely to reoffend.[104] In terms of probation, the average daily cost per child in Tennessee is about twenty dollars to maintain.[105] Considering that over twenty-eight hundred youth received probation services in 2018, the cost is obviously extremely expensive for the state to maintain.[106]

On the other hand, one pilot education grant program in Tennessee comes at the low cost of five dollars per day per student—with a recidivism rate of less than two percent for the one thousand youth served last year![107] This treatment program, based out of learning centers in various counties throughout the state, implements therapeutic, cognitive behavioral intervention and school success measures to youth referred to it from the local court, in conjunction with the child's home school.[108] Tennessee DCS also funds a program in Knox County for students returning from out-of-home placement that primarily addresses mental health, drug abuse, and family reunification, but also serves as a case manager for students returning to school.[109] This

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102 *Id.* at 8.

103 REPORT TO GOVERNOR, *supra* note 63, at 8; *see also* TENN. JOINT AD-HOC TENN. BLUE RIBBON TASK FORCE ON JUVENILE JUSTICE, FINAL REPORT 10 (Dec. 2017) [hereinafter BLUE RIBBON TASK FORCE], https://www.tn.gov/content/dam/tn/tccy/documents/jj/JJ-BlueRibbon-Report-2018.pdf.

104 Beth Harwell & Mark Norris, *Tennessee Needs Juvenile Justice Reform,* THE TENNESSEAN (Jan. 18, 2018, 6:00 AM), https://www.tennessean.com/story/opinion/2018/01/18/time-has-come-reform-juvenile-justice-tennessee/1027741001/.

105 REPORT TO GOVERNOR, *supra* note 63, at 4.

106 *Id.*

107 *Id.* at 11.

108 *Id.*

109 *Id.*

program only served one hundred students in 2018, but it cost the state only twelve dollars per day per student and resulted in a recidivism rate of less than ten percent.[110]

V. Federally-Funded Reentry and Education Initiatives

The need for effective reentry plans and their funding has continuously received greater attention by policymakers in the last few years. Several federal laws have incorporated student reintegration plans into its requirements for states to receive federal justice and education funding, with varying levels of success.[111] Here, three of the most robust programs are examined: the Juvenile Justice and Delinquency Prevention Act of 1974, the Second Chance Act of 2008, and the Every Student Succeeds Act of 2015.[112] It should be noted that there are certainly initiatives other than those highlighted here,[113] but this part focuses narrowly at those that emphasize, at least in-part, juvenile reentry and education.

a. The Juvenile Justice and Delinquency Prevention Act

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110 *Id.*

111 Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat.; *Second Chance Act Grant Program,* NAT'L REENTRY RES. CTR., https://csgjusticecenter.org/nrrc/projects/second-chance-act/ (last visited Dec. 17, 2019); TENN. DEP'T. OF EDUC., EVERY STUDENT SUCCEEDS ACT: BUILDING ON SUCCESS IN TENNESSEE (May 22, 2018, updated Aug. 13, 2018), https://www.tn.gov/content/dam/tn/education/documents/TN_ESSA_State_Plan_Approved.pdf.

112 Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat.; *Second Chance Act Grant Program,* NAT'L REENTRY RES. CTR., https://csgjusticecenter.org/nrrc/projects/second-chance-act/ (last visited Dec. 17, 2019); TENN. DEP'T. OF EDUC., EVERY STUDENT SUCCEEDS ACT: BUILDING ON SUCCESS IN TENNESSEE (May 22, 2018, updated Aug. 13, 2018), https://www.tn.gov/content/dam/tn/education/documents/TN_ESSA_State_Plan_Approved.pdf.

113 *See, e.g.,* Adam Tamburin, *Haslam's Juvenile Justice Bill Advances with Broad Support,* THE TENNESSEAN (Mar. 20, 2018, 4:58 PM), https://www.tennessean.com/story/news/politics/2018/03/20/bill-haslam-juvenile-justice-bill-advances-broad-support-after-tweaks-judges/443167002/; *Press Release: Voca Grant for Juvenile Mediation,* NASHVILLE CONFLICT RESOLUTION CTR. (Oct. 31, 2018), https://nashvilleconflict.org/2018/11/02/press-release-voca-grant-for-juvenile-mediation/; Anita Wadhwani, *Task Force Weighs New Approaches to Juvenile Justice*, THE TENNESSEAN (Aug. 23, 2016, 5:05 PM), http://www.tennessean.com/story/news/2016/08/23/task-force-weighs-new-approaches-juvenile-justice/89194084/.

First, the Juvenile Justice and Delinquency Prevention Act of 1974 ("JJDPA") established the Office of Juvenile Justice and Delinquency Prevention ("OJJDP") within the U.S. Department of Justice as the entity charged with addressing the inconsistencies of the fifty-six different juvenile justice systems in the United States, and improving outcomes for those juveniles involved.[114] The original four aims of the JJDPA were: the deinstitutionalization of status offenders, separation of adults and juveniles in secure institutions, jail removal, and reduction of the disproportionate number of minority youth in the juvenile justice system, and namely, the OJJDP was charged with distributing federal funding to state and local agencies for improving their programs.[115] State funding is allocated annually among states on the basis of relative populations under the age of eighteen.[116] Each state is guaranteed at least three hundred and twenty-five thousand dollars per year, so long as they are compliant with the OJJDP's outlined requirements, and at least two-thirds of that allocation is mandated to be distributed by each state to local government programs.[117] Where states do not comply with federal requirements to receive funding, the OJJDP must make those funds available to local programs directly.[118] As of 2018, only three states decline to participate in the JJDPA—Connecticut, Wyoming, and Nebraska, who all administer their own state programing.[119]

All states receiving JJDPA funding are required to report data associated with their program activities each year, and subsequently, the OJJDP publishes a summary on their

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114 Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109 (codified as amended at 34 U.S.C. §§ 11101-11322 (2018)); *What is the JJDPA?,* ACT 4 JUVENILE JUSTICE, http://www.act4jj.org/what-jjdpa (last visited Dec. 17, 2019).

115 Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109.

116 28 C.F.R. § 31.301(a) (2019).

117 28 C.F.R. § 31.301(a)–(b) (2019).

118 28 C.F.R. § 31.301(e) (2019).

119 Lacey Johnson, *JJDPA Reauthorization Passes Congress After 16 Years,* JUVENILE JUSTICE INFO. EXCH. (Dec. 13, 2018), https://jjie.org/2018/12/13/jjdpa-reauthorization-passes-congress-after-16-years/.

findings.[120] Some of those reports are astounding. For instance, in 2017 alone, over eighty-eight thousand children were served by JJDPA grantees, and about one-third of those children were court-involved due to delinquency.[121] While these numbers seem promising, program performance is inconsistent and education outcomes are sometimes unfavorable.[122] Despite discouragement from doing so, over half of programs aimed at reducing juvenile delinquency are implemented using non-evidence-based practices, meaning that their policies have not gone "through rigorous evaluation and replication proving to be effective at preventing or reducing juvenile delinquency."[123] In terms of targeted behaviors, less than two percent of programs nationwide are reported to address grade point average and college admissions issues.[124] Only twenty-two percent attempt to address school attendance or enrollment issues, with only half of those seeing any improvement in the child's circumstances following the student's engagement with the program.[125]

Nonetheless, the JJDPA was reauthorized in 1992, and added incentives for states receiving formula grants to develop programs in specified "challenge" activities, including: "A) Basic System Services; B) Access to Counsel; C) Community-Based Alternatives; D) Violent Juvenile Offender Facilities; E) Gender Specific Policies and Programs; F) State Ombudsman; G) Deinstitutionalization of Status Offenders; H) Alternatives to School Suspension and

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120 OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, OVERVIEW OF THE PMT DATA FOR TITLE II FORMULA GRANTEES: FISCAL YEAR 2017 1 (2017), https://ojjdppmt.ojp.gov/help/FormulaFY2017.pdf.

121 *Id.* at 2.

122 *Model Programs Guide,* OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, https://www.ojjdp.gov/mpg/.

123 Overview of the PMT Data for Title II Formula Grantees: Fiscal Year 2017, *supra* note 121, at 2.

124 *Id.* at 4.

125 *Id.*

Expulsion; I) Aftercare Services; and J) State Agency Coordination/Case Review System."[126] After a long hiatus, the JJDPA was re-authorized in 2018 and implemented new protections to improve education services within state facilities and community education reentry plans.[127] Now, in order to receive federal funding, state plans must include a written case proposal based on the individual needs of each juvenile pre- and post-release.[128] The newly reauthorized JJDPA also requires increased coordination between juvenile justice placements and school districts.[129] Thus, states must provide for the timely transfer of education credits and records, regardless of local school board policy.[130]

In Tennessee, a state advisory group, The Tennessee Commission on Children and Youth ("TCCY"), oversees all JJDPA policy implementation and is made up of locally elected officials, law enforcement representatives, prosecutors, probation workers, and even a few individuals who have, at one point, been criminally involved in the juvenile justice system.[131] The TCCY also allocates federal funds promulgated by the JJDPA and monitors program compliance with federal mandates.[132] In 2018, funding for Tennessee programs amounted to a little over eight

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126 OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, TITLE II, PART E-STATE CHALLENGE GRANT PROGRAM AWARD # 2002-JE-FX-0042 (July 30, 2002), https://ojjdp.ojp.gov/funding/awards/2002-je-fx-0042.

127 *Understand the JJDPA, supra* note 52; *History,* ACT 4 JUVENILE JUSTICE*,* http://www.act4jj.org/history (last visited Dec. 17, 2019).

128 34 U.S.C. § 11133(a)(31)(A) (2019).

129 34 U.S.C. § 11133(a)(8) (2019); *Understand the JJDPA, supra* note 52.

130 34 U.S.C. § 11133(a)(32)(A) (2019).

131 *Juvenile Justice,* TENN. COMM'N. ON CHILDREN & YOUTH, https://www.tn.gov/tccy/administrate/jj.html (last visited Dec. 17, 2019); *Profile of Federal Juvenile Justice and Delinquency Prevention Funding: Tennessee,* ACT 4 JUVENILE JUSTICE [hereinafter *Profile of Federal JJDP Funding: TN*], http://www.act4jj.org/sites/default/files/resource-files/Tennessee%20FY18%20JJDPA%20Funding.pdf (last visited Dec. 17, 2019); *State Advisory Groups,* ACT 4 JUVENILE JUSTICE*,* http://www.act4jj.org/state-advisory-groups (last visited Dec. 17, 2019).

132 OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, 2019 TITLE II FORMULA GRANTS PROGRAM CATEGORY 2 AWARD # 2019-JX-FX-0013, https://ojjdp.ojp.gov/funding/awards/2019-jx-fx-0013.

hundred thousand dollars.[133] This may seem like an impressive number; however, Tennessee's federal funding has decreased fifty percent over the last decade.[134]

Using JJDPA funding, Tennessee currently grants fifteen programs, none of which solely address reentry or education.[135] Instead, the Tennessee programs are primarily targeted towards pre-delinquency intervention, trauma support, counseling, and drug abuse.[136] Focusing on preventative efforts, in its most recent formula grant application in 2019, the TCCY stated that it

> "believes prevention and early intervention methods can assist in deterring youth from ending up in the juvenile justice system. [The 2019] program will focus on: Planning and Administration, State Advisory Group (SAG) allocation, Compliance Monitoring, Jail Removal, Delinquency Prevention, Juvenile Justice System Improvement, Disproportionate Minority Contact (DMC) and Substance and Alcohol Abuse."[137]

And other than the OJJDP's yearly summary report, measurements of any of these programs' successes or failures are incredibly hard to find, especially on the state level. The OJJDP reports that data collection issues continue to be one of the greatest barriers in sufficiently reporting state programs, often due to lack of standardized definitions and differing data collection tools across states.[138] For example, Tennessee DCS states that "recidivism is a more complex concept than it appears on the surface," and no re-arrest data is produced and compiled statewide; therefore, "it is not possible to report recidivism in the way that is most informative about system performance."[139]

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133 *Id.*; *Profile of Federal JJDP Funding: TN*, supra note 131.

134 *Profile of Federal JJDP Funding: TN*, supra note 131.

135 *Id.*

136 TITLE II FORMULA GRANTS PROGRAM CATEGORY 2 AWARD # 2019-JX-FX-0013 (2019)*, supra* note 132.

137 *Id.*

138 OVERVIEW OF THE PMT DATA FOR TITLE II FORMULA GRANTEES: FISCAL YEAR 2017, supra note 120, at 7.

139 REPORT TO GOVERNOR*, supra* note 63, at 15–16.

Recognizing the need to better understand the unique circumstances and normalize measures for youth reentry, the OJJDP implemented a new Initiative to Develop Juvenile Reentry Measurement Standards ("RMS") in 2015.[140] RMS set out to measure current juvenile reentry programs countrywide, and is currently developing national standards and outcome measures reflecting best practices.[141] Since its inception, RMS has surveyed a total of 134 implemented practices ranging from mentoring programs to tutoring services, and 29 states.[142] As of late 2018, the program has moved on to phase two, which translates those identified factors into actionable measures for state and local agencies to utilize in their policymaking.[143] Unfortunately, until those actionable measures are utilized at the local level—which is estimated to take years—it will be difficult to determine if any progress at all has been made on a national scale.[144]

b. The Second Chance Act

Next, the Second Chance Act ("SCA"), passed in 2008, authorized one hundred and sixty-five million in federal funding to states, local governments, and nonprofits for "their work to reduce recidivism and improve outcomes for people returning from state and federal prisons, local jails, and juvenile facilities."[145] These programs are aimed at both adults and youths, and

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140 OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, OJJDP FY 2015 INITIATIVE TO DEVELOP JUVENILE REENTRY MEASUREMENT STANDARDS (July 2016) [hereinafter JUVENILE REENTRY MEASUREMENT STANDARDS], https://www.ojjdp.gov/grants/solicitations/FY2015/ReentryStandards.pdf.

141 *Reentry Measurement Standards,* PERFORMANCE BASED STANDARDS, https://pbstandards.org/programs/reentry-measurement-standards (last visited Dec. 17, 2019).

142 *Reentry Measurement Standards Progress Report: Field Scan Findings*, PERFORMANCE BASED STANDARDS, https://pbstandards.org/uploads/documents/PbS-FieldScanFindings.pdf (last visited Dec. 17, 2019).

143 *Reentry Measurement Standards*, supra note 141, at 2–3.

144 *Id.* at 2.

145 *Second Chance Act Grant Program,* NAT'L REENTRY RES. CTR., https://csgjusticecenter.org/nrrc/projects/second-chance-act/ (last visited Dec. 17, 2019).

proposals involving minors require "comprehensive strategies that address the challenges faced by youth returning to their communities after incarceration."[146] Funds are appropriated from the OJJDP.[147] Countrywide, over eight hundred programs have been funded through the SCA initiative, and a little over twenty percent of the total funds have been dedicated to juvenile-specific reentry.[148]

During its first six years, SCA programs served about twenty-four thousand youth.[149] Unlike the JJDPA programs, nearly eighty percent of those children were treated using evidence-based models proven effective at reducing juvenile delinquency and risk factors.[150] Of those receiving support related to school attendance and performance—which was about nine thousand students—six thousand of those students met their program goals.[151] Unfortunately, it is up to each state to self-report these metrics, and from SCA's reports, it is unclear how each individual student's objectives are set and measured for education-related goals.[152] Nevertheless, the overall success of SCA programs is based largely on recidivism rates of program youth.[153] Through 2015, the outcomes of countrywide program students were tracked on this basis, and the results were remarkably lower than those reflected in national averages: only eleven percent of

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146 *Id.*; OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, FACT SHEET ON OJJDP SECOND CHANCE ACT GRANT PROGRAM ACCOMPLISHMENTS, https://ojjdppmt.ojp.gov/help/SCAFactSheetJan2009Jun2015.pdf (last visited Dec. 17, 2019).

147 *Second Chance Act Grant Program, supra* note 145.

148 *National Criminal Justice Initiatives Map,* NAT'L REENTRY RES. CTR., https://csgjusticecenter.org/nrrc/national-criminal-justice-initiatives-map/ (last visited Dec. 17, 2019).

149 FACT SHEET ON OJJDP SECOND CHANCE ACT GRANT PROGRAM ACCOMPLISHMENTS, *supra* note 146, at 1.

150 *Id.*

151 *Id.* at 4.

152 *Id.* at 1.

153 *Id.* at 2.

participants were involved in some other adjudication within one year and only seven percent were committed to a residential facility.[154]

In Tennessee, only about five percent of the total grants received were distributed to juvenile reentry programs; in fact, only one juvenile reentry program was implemented in the entire state.[155] In 2010, the Boys and Girls Club of the Tennessee Valley received funding for their recidivism reduction initiative: Delinquency Prevention through Targeted Outreach Mentoring program.[156] This program, which was awarded nearly four hundred thousand dollars, proposed to serve fifty juvenile offenders detained in the Richard L. Bean Juvenile Detention Center in Knoxville, Tennessee by providing programming and mentoring relationships, even following the student's release.[157] This programming would include volunteers helping mentees with homework and setting academic goals on a weekly basis for the school year.[158] The Tennessee program outcome measures are not presently evident for review, and it is therefore difficult to speak on its ability to meet its goals.

Regardless, the national Boys and Girls Club organization has since received supplemental federal funds from SCA—over forty-eight million dollars—to continue mentoring programs varying from gang intervention to school tutoring in twenty-seven hundred different club locations.[159] Moreover, there is evidence to show that there are higher graduation rates,

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154 *Id.* at 3.

155 *National Criminal Justice Initiatives Map*, supra note 148.

156 OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, DELINQUENCY PREVENTION THROUGH TARGETED OUTREACH MENTORING (DPTTOM) PROGRAM AWARD # 2010-JU-FX-0006 (2010), https://external.ojp.usdoj.gov/SelectorServer/awards/pdf/award/2010-JU-FX-0006/2010-53013-TN-JU/2010.

157 *Id.*

158 *Id.*

159 OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, BOYS & GIRLS CLUBS NATIONAL YOUTH MENTORING PROGRAMS AWARD # 2011-MU-MU-0009 (2011), https://ojjdp.ojp.gov/funding/awards/2011-mu-mu-0009.

reduced truancy issues, and lower juvenile delinquency in areas with a Boys and Girls Club presence.[160] Therefore, it would be reasonable to suggest that an increase in this programing would serve court-involved students well in obtaining education support. Alas, programs universally report that they encounter issues recruiting dedicated volunteers, engaging parents and families, obtaining consistent funding, and establishing measurement goals—all of which hinders them from effectively expanding to serve a greater number of needs, including education.[161]

c. The Every Student Succeeds Act

Finally, the Every Student Succeeds Act ("ESSA")—signed into law in 2015 and administered by the U.S. Department of Education—was enacted to reauthorize the nation's tantamount education law for public schools.[162] The ESSA requires all states abide by flexible reporting standards, and was designed, in part, to improve educational services for children in and returning to the community from juvenile justice custody.[163] For instance, Title I, Part D of the ESSA specifically centers on the needs of delinquent children, and aimed to make the administrative transition back into school much smoother, preventing students from dropping out of school following incarceration.[164] Under this part, states are required to allocate no less than

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160 OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUMP AWARD # 2001-JG-FX-0004 (2001), https://ojjdp.ojp.gov/funding/awards/2001-jg-fx-0004; OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, PROJECT LEARN: THE EDUCATIONAL ENHANCEMENT PROGRAM AWARD # 2010-JL-FX-0050 (2001), https://ojjdp.ojp.gov/funding/awards/2010-jl-fx-0050.

161 OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, OVERVIEW OF THE DCTAT DATA FOR SECOND CHANCE ACT JUVENILE MENTORING GRANTEES 11, https://ojjdppmt.ojp.gov/help/SCAFactSheetJan2009Jun2015.pdf (last visited Dec. 17, 2019).

162 20 U.S.C. §§ 6301-7981 (2019).

163 20 U.S.C. § 6434(a)(2) (2019).

164 20 U.S.C. § 6434(a)(1)(B) (2019).

fifteen percent of funds received to support transition services for delinquent children, such as academic counseling and placement services.[165]

The ESSA requires increased coordination between juvenile justice placements and school districts, such as allowing academic record and credit transfer, providing educational needs assessments, and requiring timely re-enrollment in a school that best matches a student's needs.[166] It requires correctional facilities to assist youth in attaining a traditional high school diploma, and employ certified special education teachers for students with disabilities.[167] Finally, the ESSA puts special emphasis on including family involvement throughout the process.[168]

In order to receive funding each state must submit a formal plan for "assisting in the transition of children and youth between correctional facilities and locally operated programs."[169] And many states have already done so. California now provides for mandatory credit transfer.[170] Florida has implemented a plan for transitions between schools and juvenile justice programs.[171] Maine now recognizes schoolwork completed within juvenile corrections facilities in traditional community school districts.[172] Virginia now employs a comprehensive reentry plan lead by a reenrollment team made up of a special education teachers, social workers, and reentry coordinators in each school district.[173]

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165 20 U.S.C. §§ 6434(a)(1)(B), 6438(a) (2019).

166 20 U.S.C. § 6434(a)(2)(E) (2019).

167 20 U.S.C. § 6434(c) (2019).

168 20 U.S.C. § 6318 (2019).

169 20 U.S.C. § 6434(a)(1)(B) (2019).

170 *Understand the JJDPA*, supra note 52.

171 *Id.*

172 *Id.*

173 *Id.*

Tennessee outlined its state plan in accordance with ESSA in 2018, aligning it with its own state program called Tennessee Succeeds.[174] Under the ESSA, Tennessee now requires "districts align and integrate services to students in . . . delinquent facilities with other students in the district[s]," and provide for the effective transfer of student credits from placement to placement.[175] Tennessee's plan also emphasizes that programs implemented should be "evidence-based strategies that support strong leadership, effective instruction, and supportive learning environment."[176]

Unfortunately, Tennessee's strategic plan suffers from a number of drawbacks. First, the new plan runs the risk of promoting expulsion practices for "trouble" students. For funds distributed to schools, Tennessee's accountability guidelines drill down to the district level using graduation rates, student absenteeism, and test scores to weigh "success."[177] These measurements are designed to identify "districts failing to show minimum progress with their students."[178] Greater accountability could be positive in many ways, but it suffers a major drawback: it continues to incentivize school's utilization of expulsion to cull lower performing or "trouble" students.[179] The state recognizes this issue and has attempted to address the need for restorative practices, and has promoted policies that reduce the use of disciplinary suspensions.[180] However,

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174 TENN. DEP'T. OF EDUC., EVERY STUDENT SUCCEEDS ACT: BUILDING ON SUCCESS IN TENNESSEE (May 22, 2018, updated Aug. 13, 2018) [hereinafter BUILDING ON SUCCESS IN TENNESSEE], https://www.tn.gov/content/dam/tn/education/documents/TN_ESSA_State_Plan_Approved.pdf.

175 *Id.* at 209.

176 TENN. DEP'T. OF EDUC., SCHOOL IMPROVEMENT: ESSA UPDATES (May 2017), https://www.tn.gov/content/dam/tn/education/documents/ESSA_schl_improvement_fact_sheet.pdf).

177 BUILDING ON SUCCESS IN TENNESSEE, *supra* note 174, at 83; TENN. DEP'T. OF EDUC., SCHOOL ACCOUNTABILITY: ESSA UPDATES (updated May 14, 2018), https://www.tn.gov/content/dam/tn/education/documents/ESSA_school_accountability_fact_sheet.pdf.

178 BUILDING ON SUCCESS IN TENNESSEE , *supra* note 174, at 82.

179 *See* discussion *supra* Part III.

180 TENN. DEP'T. OF EDUC., TENNESSEE SUCCEEDS: ESSA IN TENNESSEE: CHRONICALLY OUT OF SCHOOL 31, https://www.tn.gov/content/dam/tn/education/documents/co_ESSA_Webinar_chronically_out_of_school.pdf.

these measures are not mandatory under the ESSA, and expulsion practices remain in many districts.[181]

Additionally, the new plan outlines one of its key tenets: to provide "youth who are neglected, delinquent, or at-risk access to the same state academic and career and technical educations. . . ."[182] Ironically, programs—such as the previously discussed TNVCA—have since been implemented that directly contradict this initiative by precluding adjudicated delinquent youth from consideration from its admissions.[183] Finally, because funds are distributed to each individual district, programs are monitored only in a high-level manner that does not allow for meaningful tracking of delinquent youth transition success.[184]

VI. Recent Changes in Tennessee Juvenile Justice Law

On top of the national outcry, local reformers have long called for Tennessee to establish more consistent, effective tracking of juvenile justice measures, such as recidivism.[185] In 2017, then-Governor Bill Haslam commissioned a Blue Ribbon Task Force on Juvenile Justice ("Task Force"), who found that "community-based interventions that effectively hold youth accountable, reduce recidivism, and keep families intact are not available across the state—especially in rural jurisdictions. Courts across Tennessee lack sufficient evidence-based alternatives to system processing, detention, and other out-of-home placements."[186] In the end,

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181 *See, e.g.,* discussion *supra* Part III; *see also* T.C.A. § 37-1-131(a)(2)(B) (2019).

182 BUILDING ON SUCCESS IN TENNESSEE, *supra* note 174.

183 *See* discussion *supra* Part IV.

184 TENN. DEP'T. OF EDUC., EVERY STUDENT SUCCEEDS ACT (ESSA) IMPLEMENTATION, https://www.tn.gov/education/finance-and-monitoring/elementary-and-secondary-education-act-esea.html (last visited Dec. 17, 2019); TENN. DEP'T. OF EDUC., RESULTS-BASED MONITORING, https://www.tn.gov/education/finance-and-monitoring/results-based-monitoring.html (last visited Dec. 17, 2019).

185 Harwell & Norris, *supra* note 104.

186 BLUE RIBBON TASK FORCE, *supra* note 103, at 5.

the Task Force recommended the state "tailor the use of DCS custody and reinvest into evidence-based services . . . reinvest in community programming . . . [and] improve data collection."[187] In response to the Task Force's recommendations, the Tennessee Assembly passed the Juvenile Justice Reform Act of 2018 ("JJRA"), which overhauled many detention and referral policies.[188] The JJRA also provided for the collaboration between the courts, DCS, and TCCY in data reporting for purposes of effectuating a "comprehensive, accurate collection of data and performance measures from all juvenile courts in the state," as recommended by the Task Force.[189]

Regrettably, many believe the JJRA was a "missed opportunity."[190] While it provides for several positive changes to Tennessee's juvenile justice system, the JJRA did little to address children who are already incarcerated and facing impending reentry to their community.[191] One positive aspect of the JJRA for reentry is the implementation of individualized assessment plans for each and every adjudicated child, and provides for a strategy for "appropriate reintegration of the child to . . . the community."[192] At this time, the effects of these individualized assessment plans are unclear, as are the resources that these plans utilize in referring services and programs to each child. And the Juvenile Justice Reform Implementation Council was formed to ensure the measures passed in the JJRA are effectively executed, including data collection.[193]

VII. Conclusion and Recommendations

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187 *Id.* at 22–24.

188 S.B. 2261, 110th Gen. Assemb., 2d Reg. Sess. (Tenn. 2018).

189 *Id.*

190 Tamburin, *supra* note 114.

191 S.B. 2261, 110th Gen. Assemb., 2d Reg. Sess (Tenn. 2018).

192 *Id.*

193 Jarod Word, *Haslam Announces Juvenile Justice Reform Council Before Leaving Office,* TENN. BAR ASS'N (Jan. 23, 2019), http://www.tba.org/connect/haslam-announces-juvenile-justice-reform-council-before-leaving-office.

Quality of education clearly correlates with many children's probable risk of delinquency and court-involvement.[194] Educational reentry programs established in communities are proven to be effective in reducing juvenile recidivism.[195] So why are there so few programs geared toward educational success in our communities? When re-admittance to traditional schools is the most effective academic reentry method, why are there so many barriers for students to get back into school or be admitted to appropriate alternatives? Given that it is so expensive to keep kids in a system that is so overwhelmingly ineffective in treating these children's underlying issues, why is that money not funneled into programs helping children treat their needs in the community?

Federal law purportedly protects the rights of students leaving the criminal justice system in a number of ways.[196] State and local agencies are required to work with juvenile facilities in transferring academic records and education plans,[197] facilities must ensure that students remain on track with reasonable educational goals,[198] and states must have specific plans to place children in an appropriate education program after leaving a facility.[199] Despite all of this, federal funding continues to be funneled to systems that do not have many of these safeguards in place. Prevention programs are abundant, but educational rehabilitation and reentry programs are sparse.

It is sad, but evident, that children adjudicated delinquent are essentially treated as a lost cause, whose educational needs have not been met and will continue to be ignored. The JJDPA's

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194 *See* discussion *supra* Part II.

195 A RECORD OF PROGRESS, supra note 5.

196 20 U.S.C. § 6301 (2019).

197 20 U.S.C. § 1232(b)(1)(E) (2019).

198 20 U.S.C. §§ 6434(a)(2)(B), 6435(a)(2)(B), 6436(3), 6453(3), 6455(6) (2019).

199 20 U.S.C. § 6434(a)(2)(E) (2019).

reauthorization in 2018 did little to modify its core requirements on reentry or education.[200] It did implement stronger language when encouraging programs implement evidence-based programs,[201] and SCA-funded programs have proven to be effective in lowering recidivism, but more can be done. In Tennessee, remittance to state custody requires that any treatments or services prescribed "be evidence-based and provided by a qualified provider."[202] The same cannot be said about the programs funded for reentry programs.

There are a number of evidence-based reentry programs proven to be effective, and readily available for implementation.[203] Funding should be funneled predominantly towards programs with proven effectiveness, and significantly more towards those with educational aims, such as the pilot program learning centers.[204] The ESSA requires state educational agencies monitor compliance and report results of funded programs through factor-based assessments, but it provides states too much autonomy in measuring student achievement.[205] Its flexibility prevents consistent measurements countrywide and accountability is, therefore, more difficult. And its mandatory allocation of fifteen percent of funding to reentry support is exemplary, but its piecemeal allocation to each individual school district makes it incredibly difficult to compile data for results.[206]

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200 34 U.S.C. §§ 11101–11322 (West 2019).

201 COALITION FOR JUVENILE JUSTICE, JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT: SUMMARY OF 2018 REFORMS 2 (2019).

202 T.C.A. § 37-1-131(a)(4)(A)(iii)(b) (2019).

203 *Model Programs Guide Programs,* OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, https://www.ojjdp.gov/MPG/Program (last visited Dec. 17, 2019).

204 *See* discussion *supra* Part IV.

205 EVERY STUDENT SUCCEEDS ACT (ESSA) IMPLEMENTATION, *supra* note 184; RESULTS-BASED MONITORING, *supra* note 184.

206 *See* discussion *supra* Part V(c).

Because the "state of Tennessee recognizes the inherent value of education and encourages its support,"[207] its policymakers should consider whether the JJRA is sufficient to address our children's needs. Strengthening the breadth of Tennessee's youth reentry programs requires more effective tracking and data collection, because "without a means to track recidivism, the state lacks the ability to measure the effectiveness of system processes and certain interventions or treatment services."[208] The state should be enabled to identify trends and propose deeper reforms where it is needed. It is yet to be seen whether the JJRA will do enough to put that data into the hands of its policymakers.

"A system of effective teaching and learning is a necessity for the juvenile justice system today because the effects of inadequate, ineffective education are profound and crippling for both troubled youth and their communities."[209] Thankfully, juvenile education and reentry can be bettered by several initiatives that are already in the works: establishing effective and timely methods of program testing and reporting,[210] requiring individualized education plans and special services upon release,[211] and providing for a more seamless transition by focusing on education throughout the child's involvement with the system and after.[212]

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207 TENN. CONST. art. XI § 12.

208 BLUE RIBBON TASK FORCE, *supra* note 103, at 5.

209 JUST LEARNING, *supra* note 48, at 7–8.

210 *Juvenile Reentry Measurement Standards*, supra note 141.

211 Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109.

212 GRILLER, *supra* note 68, at 1.