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Caroline R. Alder

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COMMENT

“FLAWED FROM THE INCEPTION”: 167 YEARS OF MALTREATMENT AT THE CHARLES H. HICKEY, JR. SCHOOL

CAROLINE R. ALDER*

We boys don't need to be driven, we need to be treated like human beings and like gentlemen. We have hearts and feelings, and tender sensitive feelings too, until they are hardened by brutal treatment and injustice. . . . [W]hen a fellow has no mother and no one to love him or sympathize with him or to teach him, it's mighty hard to be put into an institution and beaten often when he doesn't deserve it. . . . We are full of life when it's not taken out of us and mischievous, but not one of us is criminally inclined unless we're made so and that is not our fault. . . . Be gentle and kind to us; let us feel that you are our friend and love us and want to help us, and you will soon find that you can win us and we will honor and love and obey you. . . . It takes 21 years to become a man and you can't turn a boy into a man in a few weeks, and you can never do it by beating him. . . . I think one of the greatest sins in this world is to make a young person sorrowful. Heaven knows he will have sorrow enough coming to him anyhow! . . . We don't want to be bad. We want more love and encouragement, and the proper examples to make us good men.¹

INTRODUCTION

The Charles H. Hickey, Jr. School, a juvenile detention facility (“JDF”) in Baltimore County, Maryland, opened its doors in 1855 with the goal of

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* J.D. Candidate, 2024, University of Maryland Francis King Carey School of Law. The author would like to thank the staff of the *Maryland Law Review* for their thoughtful feedback and support, especially Maya Vazquez and Thespina Fegaras. She is also endlessly grateful to Professor Kathryn Frey-Balter for guiding her on the road from “writer” to “legal writer,” and to Professor Michael Millemann for his enthusiasm, expertise, and belief in this Comment. Finally, she would like to thank her friends and family for their love and encouragement, especially John, Tracy, and Katie Alder.

1. Excerpt from a letter written to *The Baltimore Sun* in 1908 by a child incarcerated at what is now the Hickey School. *What One Boy Says*, BALT. SUN, May 14, 1908, at 12.

rehabilitating the state's most troubled children.² In the time since, it has become synonymous with poor living conditions, abuse, and neglect.³ Reports and investigations have resulted in public outrage and attempts at reform every few years,⁴ but the problems that exist at Hickey today are essentially the same ones that existed a century and a half ago, and there is little reason to believe that this will ever change.

While Hickey may be infamous, it is far from the only JDF with a reputation for inhumane conditions—in fact, it is not even the only one in Maryland.⁵ However, the reality that Hickey is not unique is exactly what makes it worthy of study. 167 years of evidence paints a picture of not only a facility that is beyond repair, but a *system* that is beyond repair. As author and journalist Nell Bernstein observed in her book *Burning Down the House: The End of Juvenile Prison*, the national model for the incarceration of children is “flawed from the inception, failed by every measure, subject to one renovation after another, yet impervious (to date) to the genuine transformation its faulty premise and abysmal performance demand.”⁶

This Comment will explain why Hickey and its counterparts across the country cannot be reformed and should be closed instead. Part I will provide an overview of the poor conditions found in JDFs nationwide.⁷ Part II will

2. MANAGERS OF THE HOUSE OF REFUGE, SEVENTH ANNUAL REPORT MADE TO THE LEGISLATURE OF MARYLAND 26 (1858) [hereinafter SEVENTH ANNUAL REPORT].

3. See generally Jamie Stockwell & Ovetta Wiggins, *Beatings, Abuse Assailed at Md. Juvenile Facilities*, WASH. POST (Apr. 17, 2004), <https://www.washingtonpost.com/archive/politics/2004/04/17/beatings-abuse-assailed-at-md-juvenile-facilities/73695b84-4018-4d38-a85a-69ea23b33f4b/> [https://perma.cc/8P3B-N8V4]; SEKOU M. FRANKLIN, *AFTER THE REBELLION: BLACK YOUTH, SOCIAL MOVEMENT ACTIVISM, AND THE POST-CIVIL RIGHTS GENERATION* 223–28 (2014).

4. See, e.g., U.S. Dep't of Just., *Justice Department Finds Unconstitutional Conditions at Two Maryland Juvenile Justice Facilities* (Apr. 16, 2004), https://www.justice.gov/archive/opa/pr/2004/April/04_crt_247.htm [https://perma.cc/8ZGU-6AYE].

5. See, e.g., Serena Marshall, ‘Unsafe and Dangerous Conditions’ for Maryland Juvenile Justice Centers, WUSA9 (Sept 27, 2022, 7:41 PM), <https://www.wusa9.com/article/news/local/maryland/unsafe-and-dangerous-conditions-maryland-juvenile-justice-centers/65-2e70fb77-3109-4b69-8319-e4c380c42642> [https://perma.cc/8G5X-B84M] (discussing Hickey, Baltimore City Juvenile Justice Center, and Cheltenham Youth Detention Facility); Editorial, *The Problem with Victor Cullen*, BALT. SUN (June 6, 2016, 3:37 PM), <https://www.baltimoresun.com/opinion/editorial/bs-ed-juveniles-20160606-story.html> [https://perma.cc/X3P9-3XHY] (discussing the Victor Cullen Center); Greg Garland, *Closing of Girls’ Facility Urged: Waxter Center Unsafe for Young Residents, State Finds in New Report*, BALT. SUN (Sept. 15, 2007), at A1 (discussing the Thomas J.S. Waxter Children’s Center); Eileen Canzian & Amy Goldstein, *Closing of Montrose School Advocated: Troubled Children Need More*, Md. SAYS, BALT. SUN (Sept. 11, 1986), at 1A;

6. NELL BERNSTEIN, *BURNING DOWN THE HOUSE: THE END OF JUVENILE PRISON* 308 (2014).

7. See *infra* Part I.

trace the history of Hickey from its founding to present day.⁸ Part III will explain why the time is right to close Hickey.⁹ Part IV will explore what alternatives to juvenile incarceration would look like in Maryland.¹⁰

I. CONDITIONS IN JUVENILE DETENTION FACILITIES NATIONWIDE

To assess conditions in JDFs, the Youth Law Center developed C.H.A.P.T.E.R.S., a mnemonic device that broadly encompasses eight of the main areas in which facilities tend to underperform:

- C – Classification and Separation Issues
- H – Health and Mental Health Care
- A – Access to Counsel, the Courts, and Family
- P – Programming, Education, Exercise, and Recreation
- T – Training and Supervision of Institutional Staff
- E – Environment, Sanitation, Overcrowding, and Privacy
- R – Restraints, Isolation, Punishment, and Due Process
- S – Safety Issues for Staff and Confined Children¹¹

In recent years, reports of poor conditions that fit into these categories have emerged from JDFs across the country.

A. *Classification and Separation Issues*

JDF populations are highly heterogenous in terms of risk factors, personal characteristics, and treatment needs.¹² For example, some juvenile offenders require a higher degree of mental health treatment or display more violent tendencies than their peers.¹³ Problems arise when JDFs fail to implement classification systems (criteria for sorting youths into different

8. *See infra* Part II.

9. *See infra* Part III.

10. *See infra* Part IV.

11. SUE BURRELL, ANNIE E. CASEY FOUND., 6 PATHWAYS TO JUVENILE DETENTION REFORM: IMPROVING CONDITIONS OF CONFINEMENT IN SECURE JUVENILE DETENTION CENTERS 23 (1999), <https://assets.aecf.org/m/resourcedoc/AECF-ImprovingConditionsOfConfinement-1999.pdf> [<https://perma.cc/NE4L-JX4U>].

12. Sanne L. Hillege et al., *Serious Juvenile Offenders: Classification into Subgroups Based on Static and Dynamic Characteristics*, 11 CHILD & ADOLESCENT PSYCHIATRY & MENTAL HEALTH 67 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5740506/pdf/13034_2017_Article_201.pdf [<https://perma.cc/52CH-XMRE>].

13. *Id.*

groups for housing, services, and supervision)¹⁴ that properly account for these differences.¹⁵

According to Dr. David W. Roush of the National Juvenile Detention Association, “[o]ne of the most crucial classification issues . . . is the separation of known violent individuals from more vulnerable children. Much of the case law on classification arises from situations when someone was injured or killed because he or she was placed with violent individuals.”¹⁶ In Kentucky, for example, a riot occurred at a JDF in 2022, leaving several inmates and staff members hospitalized.¹⁷ When reports revealed that a girl had been sexually assaulted by multiple boys during the riot, sources told news outlets that male and female inmates were being housed in the same units.¹⁸ Some believed that a lack of separation between violent and non-violent offenders had also contributed to the violence, with state Senator Whitney Westerfield lamenting that “[a] kid that’s been truant is in the same facility with the most violent youth offenders that Kentucky has, and that’s unconscionable.”¹⁹

A classification system is meaningless if that system is not properly applied.²⁰ In an investigation of Terrebonne Parish Juvenile Detention Center in Houma, Louisiana, the DOJ found that the facility’s policy, despite “impl[y]ing a structured classification process,” was insufficient because it

14. “Classification’ refers to the categorization of prisoners into different groupings (e.g., high, medium or low security) based on certain established criteria that is applied to facilitate both their allocation to a suitable custody or supervision regime (e.g., maximum, medium, minimum security) and the matching of their risks and needs to an appropriate prison or correctional setting and resources.” ANDREA MOSER, U.N. OFF. OF DRUGS & CRIME, HANDBOOK ON THE CLASSIFICATION OF PRISONERS 3 (May 2020), https://www.unodc.org/documents/dohadeclaration/Prisons/HandBookPrisonerClassification/20-01921_Classification_of_Prisoners_Ebook.pdf [<https://perma.cc/7AGH-UQRW>].

15. DAVID W. ROUSH, U.S. DEP’T OF JUST., OFF. JUV. JUST. & DELINQ. PREVENTION, DESKTOP GUIDE TO GOOD JUVENILE DETENTION PRACTICE 56 (Oct. 1996), <https://ojjdp.ojp.gov/library/publications/desktop-guide-good-juvenile-detention-practice> [<https://perma.cc/EKS3-L4EQ>].

16. *Id.* (citing *Smith v. Wade*, 461 U.S. 30 (1983)).

17. Natalia Martinez, *Violent Sexual Assault Alleged During Riot at Adair County’s Juvenile Detention Center*, WAVE (Nov. 16, 2022, 11:40 AM), <https://www.wave3.com/2022/11/16/violent-sexual-assault-alleged-during-riot-adair-countys-juvenile-detention-center/>.

18. *Id.*

19. Anna Azallion, *Changes Coming to Kentucky Juvenile Justice System After Riot Breaks Out at Maximum-Security Juvenile Center*, WCPO CINCINNATI (Dec. 16, 2022, 11:46 PM), <https://www.wcpo.com/news/state/state-kentucky/changes-coming-to-kentucky-juvenile-justice-system-after-riot-breaks-out-at-maximum-security-juvenile-center> [<https://perma.cc/VLG5-FWS7>].

20. See Letter from Assistant Attorney General Thomas E. Perez to the Honorable Michel Claudet, President, Terrebonne Parish 21 (Jan. 18, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/02/01/TerrebonneJDC_findlet_01-18-11.pdf [<https://perma.cc/UK4H-WKAK>] [hereinafter DOJ Findings Letter (Louisiana)].

was “entirely subjective, unsupported by procedures and tools to assess youths’ risk, silent on the process for making subsequent unit and bed assignments, and lack[ed] enhancements to supervision and programming to mitigate the risks posed by highly aggressive youth.”²¹ The policy “appear[ed] to be aspirational but ha[d] no bearing on the actual practices at the Facility,” and was “ineffective to the task of protecting youth from harm.”²²

B. Health and Mental Health Care

Studies have found that the health needs and conditions of incarcerated youths tend to mirror those of non-incarcerated members of their sociodemographic peer groups.²³ Economically disadvantaged and racial minority youths are subject to significant disparities in “insurance coverage, lack of a usual source of care, use of the emergency department, and not receiving adequate mental health care, dental care, or prescription medications.”²⁴ Thus, the overrepresentation of these groups in the juvenile justice system results in a disproportionate prevalence of health issues in JDF populations stemming from such disparities.²⁵ Once these youths enter JDFs, their pre-existing health issues may be exacerbated by a lack of adequate health care.²⁶ In the long term, incarceration during youth leads to worse health outcomes in adulthood and a shortened life expectancy.²⁷

Insufficient health care in JDFs sometimes escalates to the level of medical neglect.²⁸ At Florida’s Brevard Juvenile Detention Center, for example, a fourteen-year-old died of untreated bacterial meningitis.²⁹ In a wrongful death suit, the boy’s grandmother alleged that the facility’s staff

21. *Id.*

22. *Id.*

23. Paula K. Braverman & Pamela J. Murray, *Health Care for Youth in the Juvenile Justice System*, 128 AM. ACAD. PEDIATRICS 1219, 1220 (2011).

24. *Id.* at 1221.

25. *Id.*

26. RICHARD MENDEL, SENT’G PROJECT, WHY YOUTH INCARCERATION FAILS: AN UPDATED REVIEW OF THE EVIDENCE 16 (Mar. 1, 2023) [hereinafter WHY YOUTH INCARCERATION FAILS], <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/> [https://perma.cc/A35G-SCQW].

27. *Id.* at 5.

28. Carol Marbin Miller, *Cause of Death: ‘Lack of Empathy.’ Medical Neglect in Florida’s Juvenile Justice*, UNIV. S. CAL. ANNENBERG SCH. FOR COMM’N & JOURNALISM, CTR. FOR HEALTH JOURNALISM (Oct. 10, 2017), <https://centerforhealthjournalism.org/our-work/reporting/cause-death-lack-empathy-medical-neglect-floridas-juvenile-justice> [https://perma.cc/8Z2S-BDP3].

29. *Id.*

ignored his “objective symptoms that any reasonable registered nurse would have identified as emergent” and refused to provide treatment.³⁰

Many facilities require youths to submit requests for medical attention to line staff, rather than allowing them to speak directly to medical staff.³¹ In addition to compromising confidentiality, this practice allows staff members without medical training to screen requests and effectively make judgment calls on the legitimacy and urgency of children’s health concerns.³²

Much of the conversation about health care in JDFs revolves around mental health. This is unsurprising, considering that seventy percent of youths in the juvenile justice system have been diagnosed with a mental health condition.³³ A 2022 report about Tennessee’s Wilder Youth Development Center illustrates the types of inadequacies typical of JDF mental health care.³⁴ At Wilder, staff frequently place youths experiencing psychiatric crises in solitary confinement, despite evidence that this practice increases risks of suicidality and self-harm.³⁵ There is no psychologist or psychiatrist on staff, and children who are entering custody are not evaluated for mental health issues.³⁶

30. Complaint and Demand for Jury Trial at 3, *Sheffield v. Greene*, No. 6:17-cv-00273-GKS-KRS (M.D. Fla. Feb. 16, 2018).

31. *See, e.g.*, U.S. DEP’T OF JUST., C.R. DIV., INVESTIGATION OF THE ARTHUR G. DOZIER SCHOOL FOR BOYS AND THE JACKSON JUVENILE OFFENDER CENTER, MARIANNA, FLORIDA 25 (Dec. 1, 2011) https://www.justice.gov/sites/default/files/crt/legacy/2011/12/02/dozier_findltr_12-1-11.pdf [hereinafter DOJ FINDINGS (FLORIDA)]; Letter from Assistant Attorney General Ralph F. Boyd, Jr. to Governor Ronnie Musgrove, CRIPA Investigation of Oakley and Columbia Training Schools in Raymond and Columbia, Mississippi 25 (June 19, 2003), https://www.justice.gov/sites/default/files/crt/legacy/2011/04/14/oak_colu_miss_findinglet.pdf [<https://perma.cc/D989-6NPU>] [hereinafter DOJ Findings Letter (Mississippi – Oakley/Columbia)]; Letter from Assistant Attorney General Wan J. Kim to Governor Ted Strickland, Investigation of the Marion Juvenile Correctional Facility, Marion, Ohio 8 (May 9, 2007), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/marion_findlet_5-9-07.pdf [<https://perma.cc/Z4K6-6N5Y>] [hereinafter DOJ Findings Letter (Ohio – Marion)].

32. Letter from R. Alexander Acosta to Governor Jennifer M. Granholm, CRIPA Investigation of W.J. Maxey Training School Whitmore Lake, MI 13 (Apr. 19, 2004), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/granholm_findinglet.pdf [<https://perma.cc/J542-3BVQ>] [hereinafter DOJ Findings Letter (Michigan)].

33. *Mental Health by the Numbers*, NAT’L ALL. ON MENTAL ILLNESS, <https://nami.org/mhstats> [<https://perma.cc/JC33-L6WX>] (last updated Apr. 2023) (citing ALY FEYE ET AL., NAT’L CTR. FOR YOUTH OPPORTUNITY & JUST., CARING FOR YOUTH WITH BEHAVIORAL HEALTH NEEDS IN THE JUVENILE JUSTICE SYSTEM: IMPROVING KNOWLEDGE AND SKILLS OF THE PROFESSIONALS WHO SUPERVISE THEM (Jan. 2020), <https://www.praire.com/wp-content/uploads/2022/03/CaringforYouthwithBehavioralHealthNeedsinJJ-946799-1.pdf>).

34. DISABILITY RTS TENN., YOUTH L. CTR., DESIGNED TO FAIL: A REPORT ON WILDER YOUTH DEVELOPMENT CENTER, A DEPARTMENT OF CHILDREN’S SERVICES FACILITY (Apr. 2022), <https://www.ylc.org/wp-content/uploads/2022/04/DRTN-wilderreport.pdf> [<https://perma.cc/TV98-8NBK>] [hereinafter WILDER REPORT].

35. *Id.* at 35.

36. *Id.* at 33, 35.

Despite this lack of medical oversight, seventy-eight percent of Wilder detainees take psychotropic medication, often at high dosages.³⁷ While some of these children likely need and benefit from medication, others may be overmedicated as a means of control.³⁸ This practice is known as “chemical restraint,” which the American Association of Child and Adolescent Psychiatry defines as “the use of a drug without a therapeutic purpose and with the sole purpose of sedating and immobilizing the child.”³⁹ Children at many JDFs receive medication in lieu of, rather than in addition to, other mental health services like individual therapy.⁴⁰ Where medication is not necessary, this can mask underlying issues and frustrate efforts at rehabilitation.⁴¹

Mental health clinicians at JDFs also tend to miss, minimize, or ignore youths’ well-documented histories of trauma, diagnosing them with behavioral disorders when trauma-related diagnoses may be appropriate instead or in addition.⁴² For example, a boy at Manson Youth Institution in Connecticut who described witnessing a beheading at the age of twelve, was subsequently diagnosed with a conduct disorder.⁴³ Another boy who had been

37. *Id.* at 33–35; *see also* Letter from Assistant Attorney General Loretta King to Governor David A. Paterson, Investigation of the Lansing Residential Center, Louis Gossett, Jr. Residential Center, Tryon Residential Center, and Tryon Girls Center 20 (Aug. 14, 2009), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/NY_juvenile_facilities_findlet_08-14-2009.pdf [<https://perma.cc/7VNR-7BTE>] [hereinafter DOJ Findings Letter (New York)] (“One 15-year-old youth was on six psychotropic medications at the time of our tour. We were unable to determine from his records either his agreed-upon psychiatric diagnoses or the target symptoms for the six medications.”).

38. Ashley A. Norton, *The Captive Mind: Antipsychotics as Chemical Restraint in Juvenile Detention*, 29 J. CONTEMP. HEALTH L. & POL’Y 152, 155 (2012).

39. *Id.* at 166.

40. *See, e.g.*, Letter from Assistant Attorney General Ralph F. Boyd, Jr. to Governor Mike Huckabee, CRIPA Investigation of Alexander Youth Services Center Alexander, Arkansas (2002), <https://www.justice.gov/crt/i-background-0> [<https://perma.cc/HG2C-8CGR>] [hereinafter DOJ Findings Letter (Arkansas)]; Letter from Assistant Attorney General Thomas E. Perez to Governor Phil Bryant, Investigation of the Walnut Grove Youth Correctional Facility 23 (Mar. 20, 2012) <https://www.justice.gov/sites/default/files/crt/legacy/2012/04/09/walnutgrovefl.pdf> [<https://perma.cc/SKB9-LHG>] [hereinafter DOJ Findings Letter (Mississippi – Walnut Grove)].

41. *See* Norton, *supra* note 38, at 166.

42. Letter from Assistant Attorney General Kristen Clarke to Governor Ned Lamont, Investigation of Manson Youth Institution 9–10 (Dec. 21, 2021), <https://www.justice.gov/opa/press-release/file/1458001/download> [<https://perma.cc/59JW-KDQC>] [hereinafter DOJ Findings Letter (Connecticut)].

43. *Id.* at 10–11; *see Conduct Disorder*, AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY (June 2018), https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Conduct-Disorder-033.aspx [<https://perma.cc/TN6Y-DZ3W>] (“‘Conduct disorder’ refers to a group of repetitive and persistent behavioral and emotional problems in youngsters. Children and adolescents with this disorder have great difficulty following rules, respecting the rights of others, showing empathy, and behaving in a socially acceptable way.”).

“stabbed and then hospitalized for five days with a chest tube” was diagnosed with oppositional defiant disorder.⁴⁴

Clinicians and staff may also fail to address the impact that trauma can have on behavior, often using language implying that misbehavior stemming from trauma exposure is within a child’s control and can be eliminated with a simple attitude adjustment.⁴⁵ For example, at a JDF in New York, the special education plan of a youth who had endured sexual abuse described her as “disruptive, argumentative and aggressive[,] . . . rude, disrespectful, loud, obnoxious.”⁴⁶ When evaluating a teenager who had experienced a serious sexual assault, a psychiatrist at the same facility developed a treatment plan with just one goal: “Youth will identify one way that her behavior has consequences for her and for others.”⁴⁷ She attempted suicide a few days later, and her treatment plan remained unchanged.⁴⁸

C. Access to Counsel, the Courts, and Family

Although the Supreme Court established a constitutional right to counsel for juveniles in 1967,⁴⁹ many system-involved youths still lack access to quality representation. Indigent defense services for juveniles are frequently overwhelmed by high caseloads, inadequate funding, and a lack of effective oversight.⁵⁰ Youths who rely on such services face harsher outcomes than those who can afford private counsel.⁵¹ Timing of appointment of counsel is often a significant issue as well. In states like Michigan and Tennessee, for example, investigators have found that courts

44. See DOJ Findings Letter (Connecticut), *supra* note 42, at 11; see *Oppositional Defiant Disorder*, AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY (Jan. 2019), https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Children-With-Oppositional-Defiant-Disorder-072.aspx [<https://perma.cc/X7JW-KRWZ>] (“In children with Oppositional Defiant Disorder (ODD), there is an ongoing pattern of uncooperative, defiant, and hostile behavior toward authority figures that seriously interferes with the child’s day to day functioning.”).

45. See DOJ Findings Letter (Connecticut), *supra* note 42, at 10 (“[M]any children with such untreated mental health needs end up exhibiting related behaviors for which they subsequently are punished.”).

46. See DOJ Findings Letter (New York), *supra* note 37, at 26 (alteration in original).

47. *Id.* at 25.

48. *Id.*

49. See *In re Gault*, 387 U.S. 1, 41 (1967) (holding that juvenile criminal defendants are entitled to Due Process protection under the Fourteenth Amendment).

50. Katayoon Majd & Patricia Puritz, *The Cost of Justice: How Low-Income Youth Continue to Pay the Price of Failing Indigent Defense Systems*, 16 GEO. J. ON POVERTY L. & POL’Y 543, 549–51, 559 (2009).

51. *Id.* at 568.

do not consistently appoint counsel to juvenile defendants early enough before an initial hearing to allow sufficient time for preparation.⁵²

Even youths who are able to access counsel during the pretrial and trial phases often find themselves without representation in the post-disposition phase.⁵³ The majority of states cut off juveniles' right to counsel once they have been sentenced, despite the fact that their need for representation is ongoing.⁵⁴ Legal needs in the post-disposition phase include in-court advocacy for matters like appeals and parole review, as well as ensuring that the child's needs are met in custody and that appropriate action is taken if they are not.⁵⁵ According to the National Juvenile Defender Center, "[h]aving an attorney that is keeping a watchful eye can, in and of itself, affect how facilities treat a particular child."⁵⁶

Access to family is also essential for children in detention. According to a report by the Vera Institute of Justice, detainees who receive family visits tend to perform better in school and exhibit lower rates of behavioral incidents.⁵⁷ However, for many families, visiting a child in a JDF presents enormous logistical difficulties.⁵⁸ For example, JDFs are often located in remote areas that are difficult to access via public transit.⁵⁹ In a 2019 report, the Center on Juvenile and Criminal Justice explained the predicament of one mother in California who had not seen her son in over two years: "As a parent

52. See KIM TANDY, NAT'L JUV. DEF. CTR., OVERDUE FOR JUSTICE: AN ASSESSMENT OF ACCESS TO AND QUALITY OF JUVENILE DEFENSE COUNSEL IN MICHIGAN 23–24 (Amy Borrer et al. eds., June 2020), <http://defendyourrights.org/wp-content/uploads/Michigan-Assessment-Web.pdf> [<https://perma.cc/4A5N-95SA>] ("Counsel's effectiveness can be severely impacted if they are not appointed early in the process."); U.S. DEP'T OF JUST., C.R. DIV., INVESTIGATION OF THE SHELBY COUNTY JUVENILE COURT 51 (2012), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/investigation-shelby-county-juvenile-court> [<https://perma.cc/68N5-B8J6>].

53. NAT'L JUV. DEF. CTR., ACCESS DENIED: A NATIONAL SNAPSHOT OF STATES' FAILURE TO PROTECT CHILDREN'S RIGHT TO COUNSEL 32 (May 2017), https://www.defendyourrights.org/wp-content/uploads/2017/05/Snapshot-Final_single-4.pdf [<https://perma.cc/BQ7J-A5KB>].

54. *Id.* at 30–35.

55. *Id.* at 30.

56. NAT'L JUV. DEF. CTR., JUVENILE DEFENDER POST-DISPOSITION PRACTICE TOOL 5 (Oct. 2017), <https://www.defendyourrights.org/wp-content/uploads/JDA/NJDC-Post-Disposition-Practice-Tool.pdf> [<https://perma.cc/4URB-PGVL>].

57. SANDRA VILLALOBOS AGUDELO, VERA INST. FOR JUST., THE IMPACT OF FAMILY VISITATION ON INCARCERATED YOUTH'S BEHAVIOR AND SCHOOL PERFORMANCE 3–4 (Apr. 2013), <https://www.vera.org/downloads/publications/impact-of-family-visitation-on-incarcerated-youth-brief.pdf> [<https://perma.cc/ADQ4-QRTA>] ("Youth who were visited regularly committed an average of four behavioral incidents per month, compared to six among those visited infrequently and 14 among those who were never visited. . . . Youth who were visited regularly (weekly) had a GPA that was 2.1 points higher than those who were visited infrequently or never visited.")

58. See JUST. FOR FAMS., FAMILIES UNLOCKING FUTURES: SOLUTIONS TO THE CRISIS IN JUVENILE JUSTICE 24 (Sept. 2012), https://www.justice4families.org/media/Families_Unlocking_FuturesFULLNOEMBARGO.pdf [<https://perma.cc/D6CY-LBMA>].

59. *Id.*

facing poverty and relying on public transportation, travelling to a remote facility that is inaccessible by public transit, and hours by car, is simply not feasible.”⁶⁰ Additional barriers arise in the form of JDF policies, such as strictly limited visiting hours or lack of accommodation for non-traditional families.⁶¹

The realities of child development mean that “juveniles as a class are ill-equipped to understand, manage, or navigate the complexities of the modern juvenile (or adult) justice system on their own.”⁶² When JDFs make it difficult for children to access counsel and their own families, they deprive them of advocacy and support when they need it the most.

D. Programming, Education, Exercise, and Recreation

Education is the most significant form of programming that JDFs can provide to confined children.⁶³ Children in JDFs who receive a high-quality education during incarceration tend to have more positive outcomes upon release, such as reduced recidivism.⁶⁴ However, they miss out on these benefits when their educational experiences are characterized by frequent and unpredictable school closures and interruptions.⁶⁵ For example, children at Acadiana Center for Youth in St. Martinville, Louisiana went five months without school during the 2021–2022 school year because the facility simply had not hired a teaching staff when it opened.⁶⁶ Such gaps in learning may also be a result of JDFs placing a greater focus on security objectives than academic opportunities, creating an environment “built entirely around a

60. MAUREEN WASHBURN & RENEE MENART, CTR. ON JUV. & CRIM. JUST., UNMET PROMISES: CONTINUED VIOLENCE & NEGLECT IN CALIFORNIA’S DIVISION OF JUVENILE JUSTICE 68 (2019), http://www.cjck.org/uploads/cjck/documents/unmet_promises_continued_violence_and_neglect_in_california_division_of_juvenile_justice.pdf [<https://perma.cc/2DUK-7J5X>].

61. See JUST. FOR FAMS., *supra* note 58, at 24 (“Families also reported that visitation rules generally do not accommodate alternative familial arrangements, often limiting visits to an arbitrary set of ‘immediate family members.’”).

62. Marsha Levick & Neha Desai, *Still Waiting: The Elusive Quest to Ensure Juveniles a Constitutional Right to Counsel at All Stages of the Juvenile Court Process*, 60 RUTGERS L. REV. 175, 182 (2007).

63. See ROUSH, *supra* note 15, at 58.

64. PAUL BEACH ET AL., BELLWETHER EDUC. PARTNERS, DOUBLE PUNISHED: LOCKED OUT OF OPPORTUNITY: HOW EDUCATION POLICY FAILS STUDENTS BEHIND BARS 7 (2022), <https://bellwether.org/wp-content/uploads/2022/06/2022-06-16-Double-Punished.pdf> [<https://perma.cc/3978-ZUNR>] (citing U.S. DEP’T OF JUST., OFF. JUV. JUST. & DELINQ. PREVENTION, EDUCATION FOR YOUTH UNDER FORMAL SUPERVISION OF THE JUVENILE JUSTICE SYSTEM (Jan. 2019), https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/education_for_youth_under_formal_supervision_of_the_juvenile_justice_system.pdf [<https://perma.cc/FA5C-TXUA>]).

65. *Id.*

66. Annie Waldman et al., *Shackles and Solitary: Inside Louisiana’s Harsheset Juvenile Lockup*, PROPUBLICA (Mar. 10, 2022, 6:00 AM), <https://www.propublica.org/article/shackles-and-solitary-inside-louisianas-harsheset-juvenile-lockup> [<https://perma.cc/4AHG-PRQW>].

public safety orientation. Rather than being a focal point in juvenile facilities, education programs in these settings must contort themselves to fit within this system.”⁶⁷ At the Hawaii Youth Correctional Facility, for example, DOJ investigators observed: “During [a four-month] time period, youth did not attend school for days on end. Security staff made the choice whether or not youth would attend school. . . . [E]ducational staff stated that each day when they show up for work, security staff inform them if classes will be held that day.”⁶⁸

Even when JDFs manage to get youths into the classroom, problems continue to arise. This is likely because JDFs “operate in ways that are fundamentally incompatible with everything we know about delivering high-quality education programs for anyone—and they are especially poorly designed for kids who have complicated relationships with school and for those with significant unmet needs.”⁶⁹ Student populations change almost daily, making it nearly impossible for teachers to develop long-term, individualized plans.⁷⁰ Teachers must also attempt to appropriately tailor instruction to classes in which grade levels, skillsets, special education needs, language proficiencies, and traumatic histories vary wildly.⁷¹ Additionally, JDFs often impose policies that prohibit or limit internet usage for educational purposes, cutting students off from resources to which students in traditional schools have access.⁷²

JDF education systems do a particular disservice to children with special needs, who make up a significant percentage of JDF populations—estimates typically range from thirty to sixty percent, with some as high as eighty-five percent.⁷³ DOJ investigations have uncovered violations of the Individuals with Disabilities Education Act (“IDEA”), a federal law that requires schools to develop and execute Individualized Education Programs (“IEPs”) for

67. See BEACH ET AL., *supra* note 64, at 6.

68. Letter from Assistant Attorney General Bradley J. Schlozman to Governor Linda Lingle, Investigation of the Hawaii Youth Correctional Facility 26 (Aug. 4, 2005), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/hawaii_youth_findlet_8-4-05.pdf [<https://perma.cc/48DP-ZRNS>] [hereinafter DOJ Findings Letter (Hawaii)].

69. See BEACH ET AL., *supra* note 64, at 8.

70. *Id.* at 12.

71. *Id.* at 13.

72. *Id.* at 11.

73. *Supporting Youth with Disabilities in Juvenile Corrections*, U.S. DEP’T OF EDUC.: OFF. SPECIAL EDUC. & REHAB. SERVS. BLOG (May 23, 2017), <https://sites.ed.gov/osers/2017/05/supporting-youth-with-disabilities-in-juvenile-corrections/> [<https://perma.cc/2DD4-3S5U>].

students with disabilities,⁷⁴ by JDFs in states including Arizona,⁷⁵ Arkansas,⁷⁶ Connecticut,⁷⁷ Hawaii,⁷⁸ Indiana,⁷⁹ Michigan,⁸⁰ Mississippi,⁸¹ and Ohio.⁸² For example, a student whose local school district IEP mandated twenty-three hours of special education services per week received only thirty minutes per week at a JDF in Connecticut.⁸³ At Scioto Juvenile Correctional Facility in Ohio, investigators found that there was “substantially no difference” between general education and special education classrooms, and that all IEPs contained “an identical, barely exploratory list of services,” despite the wide range of student needs.⁸⁴

Outside of the classroom, all children must have access to exercise⁸⁵ and recreational activities,⁸⁶ and those in JDFs are no exception. Physical exercise may be particularly important for this population, as a 2014 study found that children in Massachusetts JDFs experienced higher rates of obesity than their

74. *Guide to Disability Rights Laws*, ADA.GOV (Feb. 28, 2020), <https://www.ada.gov/resources/disability-rights-guide/> [<https://perma.cc/EZF5-48DX>].

75. Letter from Assistant Attorney General R. Alexander Acosta to Governor Janet Napolitano, CRIPA Investigation of Adobe Mountain School and Black Canyon School in Phoenix, Arizona; and Catalina Mountain School in Tucson, Arizona 20–25 (Jan. 23, 2004), https://www.justice.gov/sites/default/files/crt/legacy/2011/04/13/ariz_findings.pdf [hereinafter DOJ Findings Letter (Arizona)].

76. See DOJ Findings Letter (Arkansas), *supra* note 40.

77. See DOJ Findings Letter (Connecticut), *supra* note 42, at 14–22.

78. See DOJ Findings Letter (Hawaii), *supra* note 68, at 24–26.

79. Letter from Assistant Attorney General Thomas E. Perez to Governor Mitch Daniels, Investigation of the Pendleton Juvenile Correctional Facility, Pendleton, Indiana 27–32 (Aug. 22, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2012/08/23/pendleton_findings_8-22-12.pdf [<https://perma.cc/5ZQS-LTM5>] [hereinafter DOJ Findings Letter (Indiana)].

80. See DOJ Findings Letter (Michigan), *supra* note 32, at 7–11.

81. Letter from Principal Deputy Assistant Attorney General Vanita Gupta to Governor Phil Bryant, Investigation of Compliance with the Individuals with Disabilities Education Act at Leflore County, Mississippi, Juvenile Detention Center (Jan. 12, 2016), https://www.justice.gov/d9/lefllore_findings_1-12-16.pdf [<https://perma.cc/46JG-6P5D>] [hereinafter DOJ Findings Letter (Mississippi – Leflore)].

82. See DOJ Findings Letter (Ohio – Marion), *supra* note 31, at 7–15; Letter from Assistant Attorney General Wan J. Kim to Governor Ted Strickland, Investigation of the Scioto Juvenile Correctional Facility, Delaware, Ohio (May 9, 2007), https://www.justice.gov/sites/default/files/crt/legacy/2011/04/14/scioto_findlet_5-9-07.pdf [<https://perma.cc/AGM9-QED3>] [hereinafter DOJ Findings Letter (Ohio – Scioto)].

83. See DOJ Findings Letter (Connecticut), *supra* note 42, at 15.

84. See DOJ Findings Letter (Ohio – Scioto), *supra* note 82, at 16.

85. See *Physical Activity Guidelines for School-Aged Children and Adolescents*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/healthyschools/physicalactivity/guidelines.htm> [<https://perma.cc/W9NS-RNXG>] (last updated July 26, 2022).

86. See Gaëlle Amerijckx & Perrine Humblet, *Uses and Perceived Benefits of Children’s Recreational Activities: The Perspectives of Parents and School Professionals*, 9 INT’L J. CHILD CARE & EDUC. POL’Y 11 (2015).

non-incarcerated peers.⁸⁷ When confined children are disciplined, however, exercise and recreation are often among the first “privileges” to be revoked.⁸⁸ At the Oakley Training School in Raymond, Mississippi, DOJ investigators found that over half of the youths housed in one unit had not been allowed outside for more than ninety days, despite the existence of a secure outdoor area attached to the building.⁸⁹ One youth reported that he had never once been allowed outside in his two years of confinement.⁹⁰

E. Training and Supervision of Institutional Staff

There are many valuable training options that JDFs often fail to provide to their staff members. For example, the policy on use of force at Louisiana’s Terrebonne Parish Juvenile Detention Center states that “staff will be trained in approved methods.”⁹¹ In reality, “[a]ll staff reported that they had never been trained on specific restraint techniques and were forced to rely on their own judgment or training received in other settings (e.g., military or adult correctional facilities).”⁹² Unsurprisingly, DOJ investigators went on to find numerous examples of “inappropriate or unnecessary use of force” at the facility.⁹³

Proper training can make a big difference in JDF conditions. Training on trauma-informed care—“a set of organizational policies and practices that seeks to both acknowledge the impact of trauma in youth behavior and provide effective treatment environments for trauma-exposed individuals”—can improve staff’s interactions with detainees and reduce staff turnover.⁹⁴ Training practices that focus on changing staff culture and perceptions can reduce the use of solitary confinement and isolation.⁹⁵ Children in JDFs also

87. Lori Keough et al., *Weight Patterns of Youth Entering an Urban Juvenile Justice Facility*, 21 J. CORR. HEALTH CARE 45 (2014).

88. See ROUSH, *supra* note 15, at 59 (“Children need fresh air and need to be active as part of their growth and development. . . . Often, children being disciplined are denied recreation and large-muscle exercise, which is a violation of the youth’s rights.”); see also Letter from Assistant Attorney General to Governor Henry McMaster, Investigation of South Carolina Department of Juvenile Justice’s Broad River Road Complex 13 (Feb. 5, 2020), <https://www.justice.gov/media/1063081/dl?inline> [<https://perma.cc/DF2D-YR58>] [hereinafter DOJ Findings Letter (South Carolina)]; DOJ FINDINGS (FLORIDA), *supra* note 31, at 5–6.

89. See DOJ Findings Letter (Mississippi – Oakley/Columbia), *supra* note 31, at 39–40.

90. *Id.*

91. See DOJ Findings Letter (Louisiana), *supra* note 20, at 9.

92. *Id.*

93. *Id.*

94. Keller G. Sheppard et al., *Reducing Staff Burnout and Turnover Intentions in Juvenile Justice Residential Commitment Programs: The Promise of Trauma-Informed Care*, 82 J. CRIM. JUST. 1, 1 (2022).

95. Thomas Stickrath & Christine Blessinger, *Reducing Use of Restrictive Housing in Juvenile Facilities Through a Change in Staff Culture*, CORR. TODAY, Mar.–Apr. 2016, at 6.

benefit from staff being well-informed on suicide risk factors⁹⁶ and issues surrounding sexual violence.⁹⁷ According to the National Institute of Corrections:

Research shows that the more education, training, and experience an individual who works in a juvenile confinement setting has, the more likely it is he or she will have good communication skills, be able to effectively implement behavior management programming, and encourage and reinforce positive program participation and behavioral outcomes of youth.⁹⁸

However, training is unlikely to be a priority when JDFs struggle to keep staff on board. North Carolina reports a thirty-eight percent vacancy rate for direct care staff in JDFs statewide,⁹⁹ while the vacancy rate at a facility in Martinsburg, West Virginia stands at fifty-eight percent.¹⁰⁰ The effects of understaffing can be devastating. In Texas, government officials say that they do not have enough staff to ensure the safety of inmates or address increases in suicidal behavior.¹⁰¹ At Long Creek Youth Development Center in Maine, staff shortages lead to inmates spending most of the day locked in their cells because there is no one to supervise them.¹⁰²

96. Joseph V. Penn et al., *Juvenile Correctional Workers' Perceptions of Suicide Risk Factors and Mental Health Issues of Incarcerated Juveniles*, 11 J. CORR. HEALTH CARE 333 (2005).

97. David W. Roush, *Staff Sexual Misconduct in Juvenile Justice Facilities: Implications for Work Force Training*, CORR. TODAY, Feb. 2008, at 32.

98. Pam Clark, *Desktop Guide to Quality Practice for Working with Youth in Confinement, Ch. 4: Developing and Maintaining a Professional Workforce*, NAT'L INST. CORR., <https://info.nicic.gov/dtg/node/12> [<https://perma.cc/63V7-BBRH>] (citing D.W. ROUSH, U.S. DEP'T OF JUST., OFF. JUV. JUST. & DELINQ. PREVENTION, JUVENILE DETENTION TRAINING NEEDS ASSESSMENT: RESEARCH REPORT (1996)).

99. Kelan Lyons, *Staffing Shortages at NC Juvenile Detention Centers: So Bad That, 'If You Show Up to Work Today, You Get a Bonus'*, N.C. NEWSLINE (Dec. 14, 2022, 6:00 AM), <https://ncnewsline.com/2022/12/14/staffing-shortages-at-ncs-juvenile-detention-centers-reaches-crisis-levels/> [<https://perma.cc/8KKQ-RH8U>].

100. Steven Allen Adams, *Staffing Levels at West Virginia Prisons Still at Crisis Level*, WVNEWS (Jan. 10, 2023), https://www.wvnews.com/news/wvnews/staffing-levels-at-west-virginia-prisons-still-at-crisis-level/article_98b836f0-9125-11ed-8e01-2b92f8208fc7.html [<https://perma.cc/4H4T-H9Y4>].

101. Jolie McCullough, *Understaffed, and Under Federal Investigation, Texas Juvenile Detention System Halts Intake*, TEX. TRIB. (July 7, 2022, 3:00 PM), <https://www.texastribune.org/2022/07/07/texas-juvenile-justice-staffing/> [<https://perma.cc/MFL9-M77M>]. A Texas Juvenile Department letter noted that “[t]he current risk is that the ongoing secure facility staffing issue will lead to an inability to even provide basic supervision for youth locked in their rooms,” which “could cause a significantly impaired ability to intervene in the increasing suicidal behaviors already occurring by youth struggling with the isolative impact of operational room confinement.” *Id.*

102. Callie Ferguson, *Maine Kids in Youth Prison Are Often Locked in Cells Because of Staff Shortages*, ME. PUB. (Oct. 24, 2022, 8:37 AM), <https://www.mainepublic.org/news/2022-10-24/maine-kids-in-youth-prison-are-often-locked-in-cells-because-of-staff-shortages> [<https://perma.cc/QE5Q-Z9LZ>].

F. Environment, Sanitation, Overcrowding, and Privacy

JDFs tend to have a prison-like appearance, which Sue Burrell of the Youth Law Center describes in an essay for the National Child Traumatic Stress Network:

The clanging metal doors; paucity of natural light; modular plastic furniture bolted to the floor; cramped cement spaces offered for recreation; scratched metal mirrors; concrete slab beds; stripped isolation rooms; and sterile sleeping cells all contribute to an unfriendly, surreal environment for youth at a critically vulnerable point in their lives.¹⁰³

This does not need to be the norm. JDFs should take a trauma-informed approach to provide a setting that is both comfortable and comforting.¹⁰⁴ This idea is reflected in the concept of normative design, which seeks to make detention feel more like a “normal” environment and, according to the Vera Institute of Justice, “reflect[s] the idea that those who are incarcerated deserve dignity and have the capacity for a life of social and moral virtue.”¹⁰⁵

Unsanitary conditions are alarmingly common and severe in JDFs, according to a number of reports and lawsuits. At facilities run by the South Carolina Department of Juvenile Justice, children encountered sewage water in their cells, feces on the walls, and cockroaches in their food.¹⁰⁶ At California’s Barry J. Nidorf Juvenile Hall, menstruating girls were not provided with proper feminine hygiene products.¹⁰⁷ If blood leaked down their legs, they were not allowed to shower until nighttime.¹⁰⁸ At the Youth

103. SUE BURRELL, YOUTH L. CTR., NAT’L CHILD TRAUMATIC STRESS NETWORK, TRAUMA AND THE ENVIRONMENT OF CARE IN JUVENILE INSTITUTIONS 5 (Aug. 2013), https://www.nctsn.org/sites/default/files/resources/trauma_and_environment_of_care_in_juvenile_institutions.pdf [<https://perma.cc/AB2V-MS3R>].

104. *Id.*

105. VERA INST. JUST., REIMAGINING PRISON: DESIGN STRATEGIES TO INCREASE PUBLIC SAFETY AND IMPROVE SOCIETAL WELL-BEING 57 (2018), <https://www.vera.org/downloads/mass-design-group-reimagining-prison-booklet.pdf> [<https://perma.cc/N7TH-UCUQ>]. Johnson County Youth and Family Services Center in Olathe, Kansas is a JDF that has implemented normative design. The facility has features like natural light in ninety-eight percent of the building, “home-like” furniture, and outdoor spaces. *Thoughtful Design Improves Juvenile Outcomes*, TREANORHL (June 6, 2017), <https://www.treanorhl.com/thinking/news/thoughtful-design-improves-juvenile-outcomes> [<https://perma.cc/EBS2-FNJV>].

106. *Children in Custody at South Carolina Juvenile Justice Centers Held in Nightmarish Conditions, New LawsUIT Alleges*, ACLU S.C. (Apr. 27, 2022), <https://www.aclusc.org/en/press-releases/sc-djj-case-apr-2022> [<https://perma.cc/4UTP-R9TN>].

107. ERICA REYNOSO, L.A. CNTY. PROB. OVERSIGHT COMM’N, ANNUAL FACILITY INSPECTION REPORT: 2021, at 3 (2021), <https://file.lacounty.gov/SDSInter/bos/supdocs/POC21-0136.pdf> [<https://perma.cc/XNH8-V377>].

108. *Id.*

Rehabilitation and Treatment Center in Geneva, Nebraska, unaddressed mold and mildew made detainees sick.¹⁰⁹

Although still an issue, overcrowding in JDFs is greatly improving, with one percent of facilities operating over capacity in 2018 as compared to eight percent in 2000.¹¹⁰ This can most likely be attributed to the national trend of decreasing JDF populations,¹¹¹ rather than any efforts made by the JDFs themselves. In those facilities where overcrowding remains an issue, such as the Philadelphia Juvenile Justice Services Center, children face the possibility of being sent to different facilities far away from their families and attorneys¹¹²

G. Restraints, Isolation, Punishment, and Due Process

The negative effects of using restraints on children in JDFs are well known. Children, especially children of color,¹¹³ are more likely to be restrained than adults, and they associate the experience with fear, anger, and re-traumatization.¹¹⁴ The Substance Abuse and Mental Health Administration has described the practice as a “treatment failure,”¹¹⁵ and Dr. David W. Roush of the National Juvenile Detention Association says that “restraints should not be used just because staff do not want to deal with a minor’s problems. This practice demonstrates laziness and can result in significant liability.”¹¹⁶ Despite this, reports of excessive use of restraints by

109. HEALTH & HUM. SERVS. COMM., REPORT TO THE NEBRASKA LEGISLATURE ON THE YOUTH REHABILITATION AND TREATMENT CENTERS (2020), https://nebraskalegislature.gov/pdf/reports/committee/health/yrtc_2020.pdf [<https://perma.cc/Z8BZ-BARD>].

110. Charles Puzanhera et al., *Youth and the Juvenile Justice System: 2022 National Reporter*, NAT’L CTR. FOR JUV. JUST. 198 (Dec. 2022), <https://ojjdp.ojp.gov/publications/2022-national-report.pdf> [<https://perma.cc/5Z4R-T76D>].

111. See *infra* Part III.A.

112. Joe Holden, *Overcrowding at Philly’s Juvenile Detention Center Creating Problems*, CBS PHILA. (Nov. 15, 2022, 6:12 PM), <https://www.cbsnews.com/philadelphia/news/philadelphia-juvenile-justice-services-center-overcrowding-problems/> [<https://perma.cc/39XQ-4PB3>].

113. See, e.g., Caroline Love, *Kids of Color are Disproportionately Punished in the Harris County Juvenile Justice System*, HOUS. PUB. MEDIA (Feb. 1, 2022, 2:16 PM), <https://www.houstonpublicmedia.org/articles/news/criminal-justice/2022/02/01/418094/young-people-of-color-are-more-likely-to-receive-harsher-punishments-in-juvenile-justice-system/> [<https://perma.cc/227U-5NR5>].

114. Malcolm L. Smith & Karen Myers Bowman, *The Restraint Spiral: Emergent Themes in the Perceptions of the Physical Restraint of Juveniles*, 88 CHILD WELFARE 57, 60 (2009).

115. Charles G. Curie, *SAMHSA’s Commitment to Eliminating the Use of Seclusion and Restraint*, 56 PSYCHIATRIC SERVS. 1139, 1139 (2005).

116. See, e.g., ROUSH, *supra* note 15, at 60; Letter from Assistant Attorney General Ralph F. Boyd, Jr. to Governor Kenny Guinn, Findings of Investigation of Nevada Youth Training Center, Elko, Nevada, (Nov. 12, 2002), <https://www.justice.gov/crt/investigation-navada-youth-training-center> [<https://perma.cc/R8H2-NR69>] [hereinafter DOJ Findings Letter (Nevada)] (“Staff and youths [] indicated that, typically, the triggers for the use of force were youths disobeying or failing

JDFs have continued to emerge across the country. At Wyoming Boys' School, for example, use of mechanical restraints including handcuffs, leg restraints, and belly chains increased from thirteen incidents in 2017 to fifty-eight in 2021.¹¹⁷ At Ware Youth Center in Louisiana, staff were trained in a method of physical restraint known as "chicken wings," in which "[g]uards would cross your arms behind your back, then force them up until it seemed that your shoulders would pop out of their sockets."¹¹⁸

Solitary confinement is a particularly insidious form of punishment for children,¹¹⁹ as well as a paradoxical one:

Our response when already vulnerable, needy, and impulse-prone youth do *not* adapt well to being isolated from family, friends, and community and commit some sort of infraction on the inside—fighting with one another, breaking a rule, or simply breaking down—is to isolate them further, in solitary confinement, an environment that often succeeds in breaking them entirely.¹²⁰

Children who have endured solitary confinement are at a heightened risk for anxiety, depression, and paranoia, as well as violent behavior.¹²¹ Their risk of suicidal ideation and behavior also increases, as demonstrated by the suicides of multiple children in isolation at Ware Youth Center.¹²² According to a study by the DOJ's Office of Juvenile Justice and Delinquency Prevention, half of all suicides at JDFs occur while a youth is in isolation,

to follow directions, rather than youths posing an immediate threat of harm to themselves or others."); DOJ FINDINGS (FLORIDA), *supra* note 31, at 9 ("[W]e learned that staff used force as a first resort against youth engaged in non-violent and non-threatening behavior.").

117. Tennessee Watson & Victoria Eavis, *Violence, Restraints, Isolation Increase at Wyoming Boys' School*, WYOFILE (Nov. 11, 2022), <https://wyofile.com/violence-restraints-isolation-increase-at-wyoming-boys-school/> [<https://perma.cc/3ATL-R4JN>].

118. Megan Shutzer & Rachel Lauren Mueller, *'Dying Inside': Chaos and Cruelty in Louisiana Juvenile Detention*, N.Y. TIMES (Oct. 30, 2022), <https://www.nytimes.com/interactive/2022/10/29/us/juvenile-detention-abuses-louisiana.html> [<https://perma.cc/2Q87-PA3G>].

119. *Solitary Confinement and Harsh Conditions*, JUV. L. CTR., <https://jlc.org/issues/solitary-confinement-other-conditions> [<https://perma.cc/9B6C-CJ2P>] (last visited Oct. 25, 2023); *see Mental Health by the Numbers*, *supra* note 33; Jessica Lee, *Lonely Too Long: Redefining and Reforming Juvenile Solitary Confinement*, 85 FORDHAM L. REV. 845, 856 (2016) ("Because juveniles are still developing, the negative effects of solitary are escalated and appear after a shorter amount of time than they do in adults.").

120. NELL BERNSTEIN, BURNING DOWN THE HOUSE: THE END OF JUVENILE PRISON 11 (2014).

121. *See* Lee, *supra* note 119, at 858.

122. *See* Shutzer & Mueller, *supra* note 118 (reporting that two children at Ware died by suicide two days apart, after the state had already cited Ware multiple times for keeping children in isolation for too long). *See generally Reel South: 8 Days at Ware* (PBS television broadcast Apr. 24, 2023), <https://www.pbs.org/video/8-days-at-ware-cvtbb0/>.

while sixty-two percent occur among children who were isolated at some point before their deaths.¹²³

Alarming, a number of JDFs have used isolation to punish children exhibiting suicidal thoughts or behaviors, rather than providing them with mental health support.¹²⁴ The DOJ's investigation of the Oakley Training School and the Columbia Training School in Mississippi found:

Girls in the SIU [Special Intervention Unit] at Columbia are punished for . . . being suicidal by being placed in a cell called the "dark room[.]" . . . a locked, windowless isolation cell with lighting controlled by staff. When the lights are turned out, as the girls reported they are when the room is in use, the room is completely dark. The room is stripped of everything but a drain in the floor which serves as a toilet. Most girls are stripped naked when placed in the "dark room" [because] there is metal grating on the ceiling and the cell door which could be used for hanging attempts by suicidal girls. . . . Furthermore, in the isolation units or SIUs at both facilities, children's mattresses are taken away during the day, leaving them with the option of lying or sitting on concrete or standing. Boys at Oakley who are judged to be suicide risks are placed in an empty day room . . . where they sit on the floor all day without access to books, school, or outdoor exercise. They also are not permitted to interact with other boys in the room. The counselor assigned to counsel suicidal youth attempts to see each youth once per day, but if she is unavailable, no one provides mental health counseling in her absence.¹²⁵

In the JDF setting, both Due Process considerations and the goal of rehabilitation require that children be treated fairly when punished.¹²⁶ This is especially important when punishments like solitary confinement are possible.¹²⁷ Rules should have a clear purpose and be thoroughly explained, and children should be given the opportunity to give their side of the story when facing punishment. Instead, children are frequently subjected to arbitrary rules and punished severely for not following them. Offenses that

123. LINDSAY M. HAYES, NAT'L CTR. OF INSTS. & ALTS., U.S. DEP'T OF JUST., JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY 27 (Feb. 2009), <https://www.ojp.gov/pdffiles1/ojdp/213691.pdf> [<https://perma.cc/R2RS-AJUX>].

124. See, e.g., DOJ FINDINGS (FLORIDA), *supra* note 31, at 18.

125. See DOJ Findings Letter (Mississippi – Oakley/Columbia), *supra* note 31, at 7, 17.

126. See ROUSH, *supra* note 15, at 61; *In re Gault*, 387 U.S. 1, 20 (1967) (holding that juvenile criminal defendants are entitled to Due Process protection under the Fourteenth Amendment).

127. "[A]ny use of segregation and isolation of young people must be tightly regulated, monitored, used for the shortest duration possible, and only to the extent strictly necessary to maintain the immediate safety of the young person or others." HUM. RIGHTS WATCH & ACLU GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 88 (Oct. 2012), <https://www.aclu.org/files/assets/us1012webwcover.pdf> [<https://perma.cc/KR6J-595R>].

have resulted in isolation, restraint, or use of force in JDFs across the country include “moving too slowly,”¹²⁸ “repeatedly request[ing] a snack,”¹²⁹ asking for the time, looking out a window,¹³⁰ “laughing loudly in the cafeteria,” “pouring sugar into a glass of orange juice,” glaring at a staff member,¹³¹ using profanity, drawing on one’s own shoes with a marker, “speaking extremely loudly,”¹³² “having playing cards,” “being unable to urinate to complete a drug test,”¹³³ “being loud at bedtime,”¹³⁴ failing to return a pencil lent by a staff member,¹³⁵ name calling, “excessive horseplay,” and “talking to other youth.”¹³⁶

H. Safety Issues for Staff and Confined Children

Violence against staff is certainly a safety issue in JDFs. For example, a staff member at St. Louis Juvenile Detention Center was injured by children who escaped from their cells in 2022.¹³⁷ However, due to power imbalances, lack of oversight, and the total control that JDFs have over the lives of those detained within them, the threat of violence by staff against children is greater and more varied. At Delaware County Juvenile Detention Center in Pennsylvania, accusations against staff have included forcing a mentally ill

128. Letter from Assistant Attorney General Grace Chung Becker to Chairperson Yvonne B. Burke, Investigation of the Los Angeles County Probation Camps 11 (Oct. 31, 2008), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/lacamps_findings_10-31-08.pdf [<https://perma.cc/8BXU-PC97>] [hereinafter DOJ Findings Letter (California)]; DOJ Findings Letter (Arizona), *supra* note 75, at 13.

129. Letter from Assistant Attorney General R. Alexander Acosta to Governor Brad Henry, Investigation of the L.E. Rader Center, Sand Springs, Oklahoma 14 (June 8, 2005), https://www.justice.gov/sites/default/files/crt/legacy/2011/04/14/split_rader_findlet_6-15-05.pdf [<https://perma.cc/QT3W-UZLU>] [hereinafter DOJ Findings Letter (Oklahoma)].

130. DISABILITY RTS. OR., “DON’T LOOK AROUND”: A WINDOW INTO INHUMANE CONDITIONS FOR YOUTH AT NORCOR 15 (2017), https://www.opb.org/pdf/report-don_t_look_around-a_window_into_inhumane_conditions_for_youth_at_norcor-december_5_2017_ut9hbs_1526507310954.pdf [<https://perma.cc/3LQZ-XSPM>].

131. *See* DOJ Findings Letter (New York), *supra* note 37, at 6, 8.

132. *See* DOJ Findings Letter (Connecticut), *supra* note 42, at 6–7.

133. *See* DOJ Findings Letter (South Carolina), *supra* note 88, at 10.

134. *See* DISABILITY RTS. TENN., *supra* note 34, at 23.

135. *See* DOJ Findings Letter (Arizona), *supra* note 75, at 13.

136. *See* DOJ FINDINGS (FLORIDA), *supra* note 31, at 18.

137. Katie Kull, *Staff Member Injured After Teens Escape Cells at St. Louis Juvenile Detention Center*, ST. LOUIS POST DISPATCH (Sept. 27, 2022), https://www.stltoday.com/news/local/crime-and-courts/staff-member-injured-after-teens-escape-cells-at-st-louis-juvenile-detention-center/article_cdab243f-c7d2-581c-851d-d88e0b41c5a8.html [<https://perma.cc/Y8NR-KLGS>]; *see also* Julie O’Donoghue, *After Violent Attacks, Louisiana Considers Reversing Juvenile Justice Approach Focused on Therapy*, LA. ILLUMINATOR (May 4, 2022, 6:00 AM), <https://lailluminator.com/2022/05/04/after-violent-attacks-louisiana-considers-reversing-juvenile-justice-approach/> [<https://perma.cc/TG72-HQ27>].

child to drink toilet water, punching a child in the face, and putting a child's head through a window screen.¹³⁸

Sexual violence in particular presents an outsized safety risk for children in JDFs. In 2006, the Bureau of Justice Statistics found that the rate of sexual abuse was five times greater in JDFs than in adult facilities.¹³⁹ In an investigation, the *New York Times* was able to identify thirty staff members at Louisiana's Ware Youth Center who had sexually assaulted children detained there.¹⁴⁰ Despite this, Louisiana has changed its hiring policy for JDFs to allow applicants who are considered "high risk for sexually abusing children" to move forward in the application process.¹⁴¹

II. HISTORY OF THE HICKEY SCHOOL

Since its opening in 1855, the institution now known as the Charles H. Hickey, Jr. School has existed in two locations under four names.¹⁴² It initially opened in Baltimore City as the "House of Refuge."¹⁴³ After moving to a new location in Loch Raven, it became the "Maryland School for Boys" and then the "Maryland Training School for Boys."¹⁴⁴ In 1985, it assumed its current name.¹⁴⁵ Through all of these changes, the facility's culture of abuse and neglect has persisted.

It is essential to note that the information below reflects only what is available in public reports and likely fails to convey the full extent of what

138. Complaint, Doe #1 v. Pa. Dep't Hum. Servs., No. 2:21-cv-01408, 2021 WL 1164965 (E.D. Pa. filed Mar. 24, 2021); see also Emma Ockerman, *Juvenile Detention Center Staff Accused of Sexually Abusing Kids and Forcing One to Drink Toilet Water*, VICE NEWS (Mar. 26, 2021, 10:11 AM), <https://www.vice.com/en/article/4adj83/juvenile-detention-center-staff-accused-of-sexually-abusing-kids-and-forcing-one-to-drink-toilet-water> [<https://perma.cc/B822-GBG9>].

139. BRENDA V. SMITH & JAIME M. YARUSSI, U.S. DEP'T OF JUST., ADDRESSING SEXUAL VIOLENCE AGAINST YOUTH IN CUSTODY 12 (Feb. 2013), <https://nicic.gov/addressing-sexual-violence-against-youth-custody-youth-workers-handbook-identifying-and-addressing> [<https://perma.cc/P8JG-8VTV>].

140. See Shutzer & Mueller, *supra* note 118.

141. Julie O'Donoghue, *Louisiana Youth Prison Job Applicants Who Fail Abuse Screening Get Second Chance*, LA. ILLUMINATOR (Aug. 9, 2022, 3:38 PM), <https://lailluminator.com/2022/08/09/louisiana-youth-prison-job-applicants-who-fail-abuse-screening-get-second-chance/> [<https://perma.cc/8G8K-3EAK>]. A Deputy Secretary from the Office of Juvenile Justice "said the state agency has hired six or seven people recently who initially failed" the screening program used to flag job applicants who "fail to recognize adult-child sexual boundaries or who are at high risk for having abused a child in the past." *Id.*

142. *Charles H. Hickey, Jr. School*, MD. DEP'T JUV. SERVS., <https://djs.maryland.gov/Pages/facilities/Charles-H-Hickey-Jr-School.aspx> [<https://perma.cc/J9U6-34PV>] (last visited Oct. 25, 2023). This web page incorrectly states that the school began operating in 1850 rather than 1855. See SEVENTH ANNUAL REPORT, *supra* note 2, at 26.

143. See *supra* Part II.A.

144. See *supra* Part II.B.

145. See *supra* Part II.C.

children have endured at Hickey. This is a result of both underreporting by victims and—all too frequently—a lack of action by those in power.¹⁴⁶ In October 2023, the Maryland Child Victims Act went into effect, eliminating the statute of limitations for civil sexual abuse claims.¹⁴⁷ Eleven of the people who sued the State under the Act allege that they were sexually abused by staff at Hickey during years spanning 1962 to 2007.¹⁴⁸ One plaintiff was just seven years old when he was abused,¹⁴⁹ and those who reported their abuse at the time allege that nothing was done to help them.¹⁵⁰ These new revelations underscore the importance of recognizing that what we know about the last century and a half at Hickey may very well be only the tip of the iceberg.

A. “House of Refuge” Era

In the first half of the nineteenth century, Baltimore residents began to demand a detention center specifically devoted to housing juveniles.¹⁵¹ They were concerned about increases in juvenile crime and the prospect of imprisoning minors alongside adults, and they considered the opening of similar facilities in New York, Philadelphia, and Boston to be a great success. The Maryland House of Delegates passed legislation providing for the establishment of such a facility in 1842, and builders began construction in 1852 on Baltimore’s Frederick Avenue.¹⁵²

In December of 1855, the House of Refuge opened its doors to children who had committed offenses such as “[i]ncorrigible conduct,” “[v]icious conduct,” “[v]agrancy,” and theft.¹⁵³ In a report to the state legislature, the first president of the House of Refuge’s board of managers wrote that the facility’s mission had “been largely blessed of God, in the saving of hundreds of young persons from the inevitable consequences of neglect and early

146. See BERNSTEIN, *supra* note 120, at 104.

147. Erin Cox & Steve Thompson, *Lawsuits Allege Dozens Were Sexually Abused in Md. Juvenile Facilities*, WASH. POST (Oct. 2, 2023), <https://www.washingtonpost.com/dc-md-va/2023/10/02/maryland-sex-abuse-juvenile-detention/> [<https://perma.cc/9X5V-4UD9>].

148. Complaint at 29–32, *McClain v. Maryland*, No. C-03-CV-23-003939 (Cir. Ct. Balt. Cnty. Md. Oct. 1, 2023).

149. *Id.* at 32.

150. *Id.* at 30.

151. *Opinion: House of Refuge*, BALT. SUN, Sept. 10, 1838, at 2 (“Every day furnishes additional evidence of the great necessity which exists for having an institution wherein to confine juvenile delinquents. The amount of misery, suffering and crime which such an institution would prevent, is enormous.”).

152. MANAGERS OF THE HOUSE OF REFUGE, FOURTEENTH ANNUAL REPORT MADE TO THE LEGISLATURE OF MARYLAND 3 (1865) [hereinafter *FOURTEENTH ANNUAL REPORT*].

153. SEVENTH ANNUAL REPORT, *supra* note 2, at 26.

crime.”¹⁵⁴ He also emphasized that “the object of the institution is to *reform and educate, and not to punish*.”¹⁵⁵

The board of managers made its first of many complaints to the Maryland General Assembly about overcrowding in 1865, reporting that children were being forced to share beds.¹⁵⁶ Further, a Maryland Senate committee’s finding in 1876 noted that the building was “badly adapted to the purposes for which it is used.”¹⁵⁷ Despite these serious statements, reports about the House of Refuge were largely positive.¹⁵⁸ This changed the following year, when the *Baltimore Sun* alleged that superintendent Dr. Charles Leas had been whipping the children and subjecting them to punishments of “unnecessary and injudicious severity.”¹⁵⁹ The board fired Dr. Leas after an investigation.¹⁶⁰

Five years later, the House of Refuge was back in the public eye. A fifteen-year-old inmate named Howard Perry was beaten into a coma, and his family sued the facility.¹⁶¹ The administration claimed that Perry was beaten by a fellow inmate, and the court excluded damning testimony from inmates claiming that he was actually beaten by a staff member.¹⁶² The House of Refuge was found not liable for Perry’s injuries, and the Court of Appeals upheld the decision.¹⁶³

By the turn of the century, the House of Refuge’s reputation still had not improved. Inspections revealed that “a bad condition of morals prevail[ed] at the institution,”¹⁶⁴ and it was “[a]ntiquated [a]nd [l]oosely [m]anaged.”¹⁶⁵

154. MANAGERS OF THE HOUSE OF REFUGE, FIRST ANNUAL REPORT, TOGETHER WITH THEIR MEMORIAL, MADE TO THE LEGISLATURE OF MARYLAND 5 (1852).

155. *Id.* at 4.

156. FOURTEENTH ANNUAL REPORT, *supra* note 152, at 4.

157. *Charitable and Reformatory Institutions: Visit to the Insane Asylum, House of Refuge, Blind Institution, Etc., by a Committee of the Maryland Senate—How They Are Managed, Etc.*, BALT. SUN, Feb. 7, 1876, at 1.

158. *Id.* (“[Committee members] speak highly of the management of Dr. Charles A. Leas, the present superintendent. The boys are well disciplined, and under good control. They found everything as comfortable as the accommodations of the house would admit.”).

159. *The House of Refuge: Charges Against the Superintendent—Report of an Investigating Committee—Action of the Board of Directors*, BALT. SUN, Nov. 12, 1877, at 1.

160. MANAGERS OF THE HOUSE OF REFUGE, TWENTY-SEVENTH ANNUAL REPORT 10–11 (1877).

161. *Cruel Treatment of a Boy: Taken from the House of Refuge by His Friends in a Comatose Condition*, BALT. SUN, May 14, 1883, at 1.

162. *The Perry Case. All the Evidence In—A Sharp Tilt Between Counsel*, BALT. SUN, June 11, 1884, at 4.

163. *Perry ex rel. Perry v. House of Refuge*, 63 Md. 20 (1885).

164. *Scandal at a Reformatory: House of Refuge Inquiry—Eastern High School—City Hall Notes*, BALT. SUN, Mar. 21, 1889, at 4.

165. *Report on House of Refuge: Antiquated and Loosely Managed, Says Jail Board Committee*, BALT. SUN, Aug. 8, 1900, at 7.

Boys escaped frequently, often in large groups,¹⁶⁶ and one died in 1898 when he “either jumped or fell” from a fourth-story window.¹⁶⁷ The need for a change was obvious. “Believing that the people of Maryland [were] fully convinced of the necessity for a great stride forward in the methods of helping delinquent and dependent minors,”¹⁶⁸ the board of managers began making plans to bring the institution into a new era.¹⁶⁹

B. “Maryland Training School for Boys” Era

In 1906, the House of Refuge rebranded itself as the “Maryland School for Boys.”¹⁷⁰ Construction had begun on a new facility in Loch Raven, Baltimore County, which the board of managers promised would have “homelike conditions”¹⁷¹ and enough outdoor space to immerse “the wayward lads of the city” in nature.¹⁷² Old patterns reemerged, however, when another superintendent was accused of viciously beating and whipping the children in his care.¹⁷³ Boys testified that superintendent J. M. Hendrix had beaten them multiple times a week for years, resulting in broken ribs, lacerations, black eyes, and even hospitalization.¹⁷⁴ Ultimately, an investigatory committee found that Hendrix had not committed any acts of cruelty or mismanagement.¹⁷⁵ However, the boys’ testimony and the fact that the committee was made up of numerous members of the school’s board of managers cast doubt on this conclusion.¹⁷⁶

166. See, e.g., *Escaped from the House of Refuge*, BALTIMORE SUN, May 27, 1897, at 10; *Sixteen Boys Escaped: Ten House of Refuge Students Brought Back in Chains*, BALTIMORE SUN, July 7, 1900, at 7.

167. *A Youth Killed by a Fall: Edward P. Brown’s Death at the House of Refuge Decided to Have Been the Result of an Accident*, BALTIMORE SUN, Mar. 26, 1898, at 12.

168. *For Reform of Youth*, BALTIMORE SUN, May 6, 1906, at 7.

169. *Want New House of Refuge: Directors Believe Present Place Suitable as Jail and Hospital*, BALTIMORE SUN, Oct. 3, 1902, at 12.

170. *Would Change Its Name: “Maryland School for Boys” Instead of House of Refuge*, BALTIMORE SUN, Jan. 5, 1906, at 14.

171. *Where Boys Are Trained: Maryland School Aims at Homelike Conditions*, BALTIMORE SUN, Jan. 4, 1907, at 7.

172. *Going Back to the Soil: Maryland School for Boys Gives Them a Better Chance*, BALTIMORE SUN, Aug. 29, 1907, at 9.

173. *Boys Tell of Beatings: They Accuse Mr. Hendrix of Merciless Punishment*, BALTIMORE SUN, May 8, 1908, at 14.

174. *Id.*; see also *Complains of Cruelty: Mother Says Son Was Misused at School for Boys*, BALTIMORE SUN, Apr. 9, 1908, at 12.

175. *State and City Should Take a Hand in the Control of the Maryland School for Boys*, BALTIMORE SUN, May 17, 1908, at 4.

176. *Id.*

Hendrix went on to resign,¹⁷⁷ but the situation—as well as three suicide attempts,¹⁷⁸ multiple escapes,¹⁷⁹ and a riot¹⁸⁰ that occurred during the course of the investigation—called the moral underpinnings of juvenile detention into question. One Marylander wrote in the *Baltimore Sun*: “Every instinct of humanity revolts against depriving boys of all the pleasure and happiness to which youth is fairly entitled and subjecting them to treatment which seems to have no other object than the gratification of a cruel instinct. The time has come when these things should be stopped”¹⁸¹ Another lamented that children are ostensibly sent to the Maryland School for Boys to be reformed but are then subjected to “such harsh treatment as tends to make criminals out of some of them. There is some good in every human being, and a person who knows how to deal with boys finds no difficulty in appealing to the good that is in them.”¹⁸² Still another wrote: “Mr. Hendrix must admit that there is something wrong about a ‘school’ from which boys will constantly risk their bones to escape. For some time there seems to have been something wrong in this school.”¹⁸³

Many believed that the Hendrix incident and the resulting outcry would force the institution to improve,¹⁸⁴ and, for a time, this appeared to be true. Despite continued reports of authority figures inflicting violence on the boys,¹⁸⁵ inspectors declared the school to be “a model institution of its kind.”¹⁸⁶

The State took control of the institution in 1918¹⁸⁷ and changed its name to the “Maryland Training School for Boys.”¹⁸⁸ By 1920, the school was

177. *Mr. Hendrix Resigns*, BALT. SUN, May 20, 1908, at 14.

178. *Boy Attempts Suicide: Said He Was Kept in Cell at Maryland School for Boys*, BALT. SUN, Apr. 29, 1908, at 12; *Boys Try Suicide at Refuge*, BALT. SUN, May 9, 1908, at 14.

179. *Four More Boys Escape*, BALT. SUN, May 10, 1908, at 12.

180. *Young Pearman Paroled: Boy Hurt in Riot Placed in Custody of Prisoners’ Aid Society*, BALT. SUN, May 8, 1908, at 14.

181. *See State and City Should Take a Hand*, , *supra* note 175.

182. *The Right and the Wrong Way to Manage Boys*, BALT. SUN, May 13, 1908, at 4.

183. *The Way to Make a Boy Want to Be an Angel*, BALT. SUN, July 1, 1908, at 4.

184. *Good Result Expected: New Era of Usefulness Predicted for School for Boys*, BALT. SUN, May 18, 1908, at 12.

185. *Boy Accuses Teacher: Wellington Andrews, of Maryland School for Boys, In Hospital*, BALT. SUN, Jan. 26, 1909, at 7; *27 Escape in a Week: Boys Ran Away from Maryland School at Loch Raven*, BALT. SUN, June 11, 1910, at 14.

186. *Reform Work Pleases: Magistrates Visit Institution for Boys at Loch Raven*, BALT. SUN, Sept. 9, 1912, at 12.

187. Prior to 1918, ownership was split between the state, the city of Baltimore, and private subscribers. The state took control in order to assume the school’s debts and mortgage. Douglas Adams, *Giving Wayward Boys a Fair Chance: Training School at Loch Raven*, BALT. SUN, Apr. 10, 1932, at 12.

188. *Id.*; *In Suburbs and County: Maryland School for Boys is Conveyed to State*, BALT. SUN, July 13, 1918, at 4.

“filled to its utmost capacity,” and the administration expressed concerns about the lack of a classification system that could separate “problem cases” from the rest of the school’s population.¹⁸⁹

In 1951, three former teachers spoke out about inhumane treatment occurring at the school:

The former teachers, in their complaints, said that supervisory employees encourage older, and usually huskier boys, to “work over” small boys; that punishments have included forcing a boy’s head into a toilet and then flushing it; of compelling boys to chew and swallow cigarettes, and of isolating recalcitrant boys in “lockup” cells in their underwear shorts, without exercise for as long as three weeks.¹⁹⁰

When the State launched an investigation into these claims, thirty-two detained children signed a letter defending the school and calling the allegations “a lot of bunk.”¹⁹¹ Soon after, one of the boys told the *Baltimore Sun* that he had signed the letter out of fear and because “it wouldn’t be good if [he] didn’t.”¹⁹² The investigation ultimately turned up nothing and the school yet again avoided consequences.¹⁹³

In the years that followed, overcrowding continued to worsen.¹⁹⁴ Additionally, the General Assembly rejected a number of calls for a centralized authority to oversee all of the State’s JDFs, passing up a valuable

189. BD. OF MANAGERS OF THE MD. TRAINING SCH. FOR BOYS, THE SIXTY-FIFTH REPORT FOR THE FISCAL YEAR ENDING SEPT. 30, 1919, at 10, 18 (1920).

190. *2-Way Probe Ordered at Boys’ School: Inhumane Treatment at State Institution in Towson is Charged*, BALT. SUN, June 30, 1951, at 24.

191. *32 Boys Come to Defense of Probed School*, BALT. SUN, July 8, 1951, at 24.

192. *Boy Says Fear Made Him Sign School Letter*, BALT. SUN, Aug. 6, 1951, at 26.

193. *The Meat in the Report on the Training School for Boys*, BALT. SUN, Aug. 29, 1951, at 10.

194. STATE FISCAL RSCH. BUREAU, REPORT ON THE MARYLAND STATE DEPARTMENT OF PUBLIC WELFARE 62 (1951) (“The school recently experienced considerable growth in population resulting from the closing of St. Mary’s Industrial School. Rising costs have delayed construction of buildings scheduled to accommodate the increased population. On February 28, 1951, the school’s population was 364 compared with 340 on June 30, 1950, and 258 on June 30, 1949.”); *4 Schools Are Overcrowded: Report Issued on Conditions at Training Institutions*, BALT. SUN, Aug. 23, 1951, at 7 (noting that the Maryland Training School for Boys was “55 percent overcrowded at the end of last month”); Ernest B. Furgurson, *Children in Trouble: Largest Training School for Boys Also Strictest*, BALT. SUN, July 10, 1958, at 32; LEGIS. COUNCIL OF MD., REPORT TO THE GENERAL ASSEMBLY OF 1958: PROPOSED BILLS & SPECIAL COMMITTEE REPORTS 119 (1958); *Crowding Cited at State School: ‘Concern’ Voiced Over Boys Training Institution*, BALT. SUN, Aug. 24, 1963, at 28; LEGIS. COUNCIL OF MD., REPORT TO THE GENERAL ASSEMBLY OF 1966: PROPOSED BILLS & SPECIAL COMMITTEE REPORTS 248 (1965); 2 LEGIS. COUNCIL OF MD., REPORT TO THE GENERAL ASSEMBLY OF 1968: PROPOSED BILLS & SPECIAL COMMITTEE REPORTS 427 (1968); LEGIS. COUNCIL OF MD., REPORT TO THE GENERAL ASSEMBLY OF 1971: PROPOSED BILLS AND SPECIAL COMMITTEE REPORTS 375 (1970); *The ‘Options’ for Delinquents*, BALT. SUN, Aug. 24, 1982, at A8.

opportunity to improve the quality and accountability of the facilities.¹⁹⁵ Dr. E. Preston Sharp, the executive director of the Youth Study Center,¹⁹⁶ told the Legislative Council of Maryland that the state was “lucky there [hadn’t] been a major crisis” resulting from overcrowding.¹⁹⁷ In 1964, a school official said “[w]e all have the feeling that this place could burst out at any moment.”¹⁹⁸ The following year, a juvenile court judge said “[i]f this situation continues the way it has been permitted to by the State, somebody’s going to get killed.”¹⁹⁹

As predicted, the 1970s and 1980s were marked by increased violence, in addition to (and perhaps as a result of) overcrowding. Notably, a teacher was indicted for beating an eleven-year-old boy.²⁰⁰ In the wake of a racially motivated riot that left seven boys injured, the superintendent said that “[a]bout [twenty] per cent [sic] of these boys belong in maximum security institutions.”²⁰¹ According to *The Baltimore Sun*, “[t]he dominant problem at the school [was] ‘fear.’ Inmates run away ‘out of fear.’ Many guards ‘fear for their lives.’ Fear of what? Attacks, assaults, molestation.”²⁰² Three boys hanged themselves between 1974 and 1977, and some Marylanders felt that the school was to blame.²⁰³ Administrative morale was “nonexistent,” educational and recreational programs were “at a standstill,” and teachers said that the school was prioritizing control over education.²⁰⁴

195. COMM. ON ADMIN. ORG. OF THE STATE, ELEVENTH REPORT ON THE ADMINISTRATION OF JUVENILE DELINQUENCY CONTROL IN MD. 5 (1953); LEGIS. COUNCIL OF MD., REPORT TO THE GENERAL ASSEMBLY OF 1954: PROPOSED BILLS 138 (1953); LEGIS. COUNCIL OF MD., REPORT TO THE GENERAL ASSEMBLY OF 1957: PROPOSED BILLS & SPECIAL COMMITTEE REPORTS 311 (1956).

196. LEGIS. COUNCIL OF MD., REPORT TO THE GENERAL ASSEMBLY OF 1959: PROPOSED BILLS & SPECIAL COMMITTEE REPORTS 119 (1958) (“Dr. Sharp stated he had been engaged by the Planning Commission to work with the Department of Correction and the Department of Public Welfare in the problems faced by youths in the sixteen to eighteen-year old group.”).

197. *Id.*

198. Stuart S. Smith, *Lack of Facilities, Personnel Cited at School for Boys*, BALT. SUN, Dec. 18, 1964, at 46.

199. A. Davis Brashears, Jr., *Conditions at Training School Hit: Raine Calls Situation at Boys’ Institution ‘Explosive’*, BALT. SUN, Jan. 29, 1965, at 40.

200. Barry Rascovar, *Teacher Accused in Boy’s Beating*, BALT. SUN, Oct. 28, 1970, at A10.

201. *Training School Has Mini-Riot*, BALT. SUN, Mar. 20, 1971, at B8.

202. *From Jail to School: A Problem*, BALT. SUN, May 25, 1972, at A18.

203. *Boy Found Hanged at Cottage*, BALT. SUN, June 11, 1974, at C1; Robert P. Wade, *Youth Who Committed Suicide Here Had Warned Officials of His Intentions*, BALT. SUN, Oct. 24, 1974, at C4; *Youth Kills Self at Unit in Parkville*, BALT. SUN, Feb. 26, 1977, at B4.

204. Gordon W. Chaplin, *Too Young for Jail: ‘I’d Like to Blow Place Up,’ Aide Says, But Reformatory Not ‘Worth Powder’*, BALT. SUN, July 2, 1973, at C20.

C. “Charles H. Hickey, Jr. School” Era

In 1985, the facility entered a new chapter when it was renamed to honor former Baltimore County sheriff Charles H. Hickey, Jr.²⁰⁵ The same old problems persisted, however, with a grand jury describing conditions as “deplorable”²⁰⁶ and *The Baltimore Sun* calling the institution “a perennial headache for the state.”²⁰⁷

1. Privatization Attempts

With public opinion of the newly named Hickey School at an all-time low, a task force appointed by Governor William Donald Schaefer in 1991 suggested a new strategy: privatization.²⁰⁸ The governor agreed with this assessment, conceding that “[n]o matter what you do, it can’t get any worse”²⁰⁹ After reviewing a number of proposals from private operators, the Maryland Board of Public Works offered a three-year, \$50 million contract to Rebound, Inc., a Colorado-based firm with “a philosophy of habilitation.”²¹⁰ Things quickly went downhill, with numerous fights and injuries occurring and about eighty inmates escaping under Rebound’s watch.²¹¹

Youth Services International (YSI) took over the institution’s operations in 1993, and many Maryland taxpayers felt that the modest improvements being made were not enough to justify the costs.²¹² High staff turnover, use of physical restraints, and academic inadequacy continued to present problems and disturbing incidents kept the school under public scrutiny.²¹³ For example, in 1994, a counselor for the school’s sex offender rehabilitation

205. *Charles H. Hickey, Jr. School*, *supra* note 142.

206. Phillip Davis, *Progress Reported on ‘Deplorable’ State at Training School*, *BALT. SUN*, Feb. 4, 1986, at 10D.

207. Peter Jensen, *Report Rips Facility for Delinquents*, *BALT. SUN*, Feb. 27, 1991, at 1C.

208. ROBERT A. PASCAL, TASK FORCE ON CHARLES H. HICKEY, JR. SCHOOL, FINAL REPORT 2 (Apr. 30, 1991), <https://mdlaw.ptfs.com/awweb/pdfopener?md=1&did=8058> [<https://perma.cc/N78Z-L2DD>].

209. John W. Frece & Eileen Canzian, *State Moves Quickly on Private Operator for Hickey School*, *BALT. SUN*, May 9, 1991, at 1B.

210. Sandy Banisky, *Colo. Company Picked to Run Hickey School*, *BALT. SUN*, July 18, 1991, at 1C.

211. Jim Ross, *Jail Firm Hopes to Rebound in Citrus from Troubles*, *TAMPA BAY TIMES* (Oct. 3, 2005), <https://www.tampabay.com/archive/1995/01/15/jail-firm-hopes-to-rebound-in-citrus-from-troubles/> [<https://perma.cc/Y4EM-WH2J>].

212. Kate Shatzkin & Matt Ebnet, *New Operator May Be on the Right Track, But It’s Not Moving Fast Enough for State*, *BALT. SUN*, Aug. 21, 1994, at 1B.

213. *Id.*

program was raped by a nineteen-year-old inmate.²¹⁴ The counselor had been left alone with the boy in the high security unit, in violation of YSI's contract requiring that at least two staff members be present in that unit at all times.²¹⁵

Despite this, YSI renewed its contract in 1999²¹⁶ and continued to run Hickey until the contract expired in 2004.²¹⁷ At that point, the State reassumed control and found "an out-of-control wreck of a juvenile detention center where housing units reeked of urine, graffiti covered walls, and locks didn't work on the doors of the rooms of dozens of potentially dangerous offenders."²¹⁸ Child advocates were unconvinced by the state's attempts to place all of the blame on YSI, with one representative from the Annie E. Casey foundation saying as such: "If you're going to go the private route, you have to monitor The state had a contractual obligation to oversee the contract with these folks. The fact that you contract something out doesn't mean you wash your hands of responsibility."²¹⁹ The United States Department of Justice agreed and, in 2002, launched an investigation into both Hickey and the Cheltenham Youth Facility in Prince George's County.²²⁰

2. DOJ Investigation

The DOJ completed its investigation in 2004 and reported its findings in a letter to Governor Robert Ehrlich.²²¹ Investigators found both Hickey and Cheltenham to be deficient in several areas, including suicide prevention,²²²

214. Kate Shatzkin, *Rape Accuser at Hickey Was Alone with Inmate*, BALT. SUN, Nov. 22, 1994, at 1B1; Kate Shatzkin, *Hickey Workers Disciplined After Rape of Counselor*, BALT. SUN, Nov. 30, 1994, at 2B.

215. *Id.*

216. *YSI Gets Contract with Hickey School Renewed*, BALT. BUS. J. (Feb. 2, 1999, 5:26 PM), <https://www.bizjournals.com/baltimore/stories/1999/02/01/daily7.html>.

217. Dan Fesperman, *Hickey Turns a Violent Page*, BALT. SUN, Mar. 30, 2004, at 1A.

218. Jeff Barker, *Conditions at Hickey School Shocked Md. Officials; Contractor Mismanaged School, State Discovered*, BALT. SUN, May 27, 2004, at 1A.

219. *Id.*

220. Letter from Assistant Attorney General R. Alexander Acosta to Governor Robert L. Ehrlich, Jr., Investigation of the Cheltenham Youth Facility in Cheltenham, Maryland, and the Charles H. Hickey, Jr. School in Baltimore, Maryland 1 (Apr. 9, 2004), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/cheltenham_md.pdf [<https://perma.cc/QU27-AAB6>] [hereinafter DOJ Findings Letter (Maryland)].

221. *Id.*

222. *Id.* at 13–18. Hickey staff failed to monitor youths on suicide watch. *Id.* at 13. Youths on suicide watch were housed in areas with fixtures on which they could hang themselves, with multiple incidents of attempts to do so occurring. *Id.* at 16. Staff lacked training on suicide prevention and warning signs. *Id.* at 17–18.

mental health care,²²³ medical care,²²⁴ education for youth with disabilities,²²⁵ and fire safety.²²⁶

In addition, they found that both facilities had been engaging in abusive practices. The report identified a “deeply disturbing degree of physical abuse of youth by staff” at Hickey and provided several examples.²²⁷ In March 2003, a staff member injured a boy’s arm and attempted to conceal it.²²⁸ In May 2003, a staff member hit a boy in the face and another “slammed [a] youth to the ground, choking, punching and kicking him.”²²⁹ In January 2004, two staff members were charged with criminal assault for hitting a boy and grabbing him around the neck.²³⁰ Investigators also found that Hickey had hired staff with previous felony convictions or a record of using excessive force with juveniles.²³¹ Additionally, female staff members were found to have sexually abused boys under their supervision.²³²

Regarding violence between youths, the investigators learned of incidents in which children ended up with injuries including a broken jaw and a facial wound requiring thirty stitches.²³³ Investigators pointed to failures that allowed for such violence to occur, such as lack of supervision and a lack of an adequate classification system.²³⁴ The investigation also found that Hickey staff excessively put youths in solitary confinement without due process, good reason, or proper documentation, and that staff failed to give youths sufficient access to restrooms.²³⁵ There were also several incidents in which children were injured by dangerous restraint techniques,

223. “Deficiencies include: (i) inadequate mental health screening, identification and assessment; (ii) inadequate clinical assessment, treatment planning, and case management; (iii) inadequate medication management practices; (iv) inconsistent and ineffective mental health counseling; and (v) the failure to place youth in appropriate treatment settings even when ordered by a court.” *Id.* at 18.

224. “The programs for providing medical care at Cheltenham and Hickey are inadequate and substantially depart from generally accepted professional standards in the following areas: (i) access to medical treatment; (ii) health assessments; (iii) treatment of chronic conditions and physical injuries; (iv) medication administration practices; and (v) dental care.” *Id.* at 34.

225. “The deficiencies we observed stem from: (i) inadequate assessments of youth who are eligible for special education services; (ii) inadequately developed Individualized Education Programs (“IEPs”); (iii) lack of related services; (iv) lack of adequate instruction for youth with disabilities; and (v) inadequate vocational instruction for youth with disabilities.” *Id.* at 41.

226. *Id.* at 47 (“Hickey has a campus-wide automated fire alarm system, but the failure to maintain that system places youth at risk of serious harm in the event of a fire emergency.”).

227. *Id.* at 4.

228. *Id.* at 5.

229. *Id.*

230. *Id.*

231. *Id.* at 6–7.

232. *Id.* at 13.

233. *Id.* at 8–9.

234. *Id.* at 9–12.

235. *Id.* at 12–13.

including a time when “a 300-pound staff member sat on a youth and the staff mocked the youth when he complained that he could not breathe.”²³⁶

In 2005, the State reached a settlement agreement with the DOJ in which it committed to improving conditions at Hickey and Cheltenham.²³⁷ The Maryland legislature established a Juvenile Justice Monitoring Unit (“JJMU”) the following year, giving it the authority “to investigate and determine whether the needs of children under the jurisdiction of the Department of Juvenile Services are being met in compliance with State law, that their rights are being upheld, and that they are not being abused.”²³⁸ By 2008, the DOJ found that Hickey had successfully met all of the terms of its improvement agreement.²³⁹ However, reports from the JJMU and the media indicate that the conditions at Hickey have not improved in any meaningful way.

D. The Current State of the Hickey School

1. Classification and Separation Issues

Although classification issues are typically characterized as a failure to separate more “dangerous” children from the rest of the JDF population, Hickey has proven to be overzealous in its separation efforts in a manner that does more harm than good. For example, youths who are housed in the Intensive Services Unit (typically children with aggression issues) or who have been involved in recent incidents are not allowed to participate in recreational programs, even though they are the most likely to benefit from positive programming.²⁴⁰ In 2016, two children were denied the opportunity to attend religious services because they had gotten in a fight several days prior.²⁴¹ Staff also physically separated groups in housing units who were

236. *Id.* at 7.

237. *Justice Department Settles Lawsuit Regarding Conditions of Confinement at Two Maryland Juvenile Justice Facilities*, U.S. DEP’T OF JUST., C.R. DIV. (June 30, 2005), https://www.justice.gov/archive/opa/pr/2005/June/05_crt_352.htm [https://perma.cc/AAE7-X7G4].

238. MD. CODE ANN., STATE GOV’T § 6-402.

239. *Detention Centers Dropped from Federal Lawsuit*, DAILY REC. (June 24, 2008), <https://thedailyrecord.com/2008/06/24/detention-centers-dropped-from-federal-lawsuit/> [https://perma.cc/K73K-4C3R].

240. JUV. JUST. MONITORING UNIT, OFF. OF THE ATT’Y GEN., 2014 ANNUAL REPORT 25 (2015), https://www.marylandattorneygeneral.gov/JJM%20Documents/JJMU_2014_ANNUAL_REPORT.pdf [https://perma.cc/WHK6-FPT9] [hereinafter 2014 REPORT].

241. JUV. JUST. MONITORING UNIT, FOURTH QUARTER REPORT AND 2016 ANNUAL REVIEW OF FACILITIES 33 (2017), https://www.marylandattorneygeneral.gov/JJM%20Documents/JJMU_2016_Annual.pdf [https://perma.cc/KV58-KE7P] [hereinafter 2016 REPORT].

experiencing interpersonal, non-violent conflict, rather than assisting them in constructively addressing and resolving their issues.²⁴²

Additionally, classification issues have arisen in Hickey's placement of transgender girls. One girl reported that she was placed in a male residential unit and was harassed and threatened by boys on three separate occasions.²⁴³ This goes against practices recommended by LGBTQ+ advocacy groups and puts transgender girls in danger.²⁴⁴

2. Health and Mental Health Care

Mental health services at Hickey are not extensive enough to meet the day-to-day needs of its population. There are no full-time mental health staff members,²⁴⁵ and private vendor-provided clinicians are only available for crisis management and debriefing after incidents.²⁴⁶ The JJMU has recommended almost every year since its establishment that Hickey hire a full-time mental health director to oversee and coordinate care, but it has yet to do so.²⁴⁷ Additionally, frequent turnover of the limited number of mental health staff members makes it more difficult for staff to build the type of trust and rapport that allows children to feel safe opening up.²⁴⁸

3. Access to Counsel, the Courts, and Family

Despite the positive impact that family contact can have on detained youths, the children at Hickey are limited to two ten-minute phone calls per

242. *Id.* at 31.

243. JUV. JUST. MONITORING UNIT, FOURTH QUARTER REPORT AND 2017 ANNUAL REVIEW 42 (2018), https://www.marylandattorneygeneral.gov/JJM%20Documents/17_Quarter4.pdf [<https://perma.cc/M6WE-TQKM>] [hereinafter 2017 REPORT].

244. *See generally* SHANNON WILBER, ANNIE E. CASEY FOUND., A GUIDE TO JUVENILE DETENTION REFORM: LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH IN THE JUVENILE JUSTICE SYSTEM (2015), <https://assets.aecf.org/m/resourcedoc/AECF-lesbiangaybisexualandtransgenderyouthinjj-2015.pdf> [<https://perma.cc/UZU7-T833>]; CHRISTINA WILSON REMLIN ET AL., LAMBDA LEGAL, SAFE HAVENS: CLOSING THE GAP BETWEEN RECOMMENDED PRACTICE AND REALITY FOR TRANSGENDER AND GENDER-EXPANSIVE YOUTH IN OUT-OF-HOME CARE (Apr. 2017), https://www.lambdalegal.org/sites/default/files/tgnc-policy-report_2017_final-web_05-02-17.pdf [<https://perma.cc/79EN-MAD9>].

245. JUV. JUST. MONITORING UNIT, FOURTH QUARTER REPORT AND 2021 ANNUAL REVIEW 26 (2022), https://www.marylandattorneygeneral.gov/JJM%20Documents/2021_Annual_Report.pdf [<https://perma.cc/ACY7-S7KV>] [hereinafter 2021 REPORT].

246. JUV. JUST. MONITORING UNIT, FOURTH QUARTER REPORT AND 2019 ANNUAL REVIEW 29 (2020), https://www.marylandattorneygeneral.gov/JJM%20Documents/19_Annual_Report.pdf [<https://perma.cc/RRZ9-ECBB>] [hereinafter 2019 REPORT].

247. *See, e.g.*, JUV. JUST. MONITORING UNIT, FOURTH QUARTER REPORT AND 2020 ANNUAL REVIEW 14 (2021), https://www.marylandattorneygeneral.gov/JJM%20Documents/2020_Annual_Report.pdf [<https://perma.cc/892H-N7AW>] [hereinafter 2020 REPORT].

248. JUV. JUST. MONITORING UNIT, FOURTH QUARTER REPORT AND 2018 ANNUAL REVIEW 20 (2019), https://www.marylandattorneygeneral.gov/JJM%20Documents/JJMU_2018_Annual_Report.pdf [<https://perma.cc/BBJ8-92P7>] [hereinafter 2018 REPORT].

week to immediate family members.²⁴⁹ Family members often struggle to visit in person because Hickey is not accessible via public transit.²⁵⁰ One child with a history of suicidal ideation who had been involved in a fight said “I want to just hear my mom’s voice more. I wouldn’t get involved in so much stuff if I got to talk to her and my brother and sisters more.”²⁵¹ He was also unable to see his mother in person on a regular basis because she was unable to find transportation to the facility and take time off work.²⁵²

4. Programming, Education, Exercise, and Recreation

While “[e]xcessive downtime is a long-standing problem” at Hickey, recreation and exercise fell even further to the wayside at the height of COVID-related restrictions.²⁵³ In 2021, youth reported that their only recreation options were watching a limited catalogue of movies and playing video games.²⁵⁴

The problems with Hickey’s education system are numerous. For example, staff members do not have the capacity to efficiently transfer records from students’ home schools.²⁵⁵ Many students come from Baltimore County, which uses a different software system than Hickey that requires staff to manually input all transcripts and records.²⁵⁶ This leads to gaps in data that negatively affect students’ academic transitions into and out of Hickey.²⁵⁷ Hickey also does not offer a range of courses equivalent to those offered in public schools, including higher level courses.²⁵⁸ For example, a youth who was enrolled in trigonometry at his home high school was given basic word problems and algebra assignments in his math class at Hickey.²⁵⁹ Additionally, staffing shortages have led to interruptions in special education instruction because special education teachers have been forced to fill in for

249. See 2017 REPORT, *supra* note 243, at 42–43.

250. The closest bus stop is a fifty-two minute walk away. See *Walking Directions from Charles H. Hickey, Jr. School, 9700 Old Harford Road, Baltimore, MD 21234 to Carney Park & Ride Lot, Carney, MD 21234*, GOOGLE MAPS, <https://www.google.com/maps> [<https://perma.cc/E42X-YZQN>] (last visited Oct. 25, 2023).

251. See 2016 REPORT, *supra* note 241, at 32–33.

252. *Id.* at 33.

253. See 2021 REPORT, *supra* note 245, at 26.

254. *Id.*

255. See 2017 REPORT, *supra* note 243, at 43.

256. *Id.*

257. *Id.*

258. *Id.* at 66.

259. *Id.*

teachers in standard classes.²⁶⁰ In the fourth quarter of 2015, students went several days without instruction because of teacher shortages.²⁶¹

5. Training and Supervision of Institutional Staff

Staff do not receive sufficient training in conflict resolution and de-escalation, and they frequently fail to intervene in physical altercations in a timely fashion.²⁶² The JJMU says that staff also need more training on “staff professionalism, maintaining appropriate boundaries with youth, incident reporting requirements, and supervision of youth movement,”²⁶³ as well as mental health issues and basic security protocols.²⁶⁴

6. Environment, Sanitation, Overcrowding, and Privacy

Issues regarding environment and sanitation include infestation of mice and bugs, hair in food, dirty HVAC units,²⁶⁵ soiled floors and walls, weak flooring, a leaky roof,²⁶⁶ mold issues,²⁶⁷ sewage leaks, and freezing cells and showers.²⁶⁸ In 2018, youths went four days without running water.²⁶⁹ Overall, the JJMU reports indicate that “[t]he physical plant at Hickey is aged and in near constant need of repair which affects youth quality of life.”²⁷⁰

7. Restraints, Isolation, Punishment, and Due Process

Due process issues at Hickey arise out of a lack of accountability and transparency. On multiple occasions, security cameras have not been functioning properly when incidents have occurred.²⁷¹ Additionally, staff frequently fail to follow incident reporting procedures.²⁷² This is particularly

260. See 2016 REPORT, *supra* note 241, at 34.

261. JUV. JUST. MONITORING UNIT, FOURTH QUARTER REPORT AND 2015 ANNUAL REVIEW 32 (2016), https://www.marylandattorneygeneral.gov/JJM%20Documents/JJMU_2015_Annual.pdf [<https://perma.cc/9FN5-HLBK>] [hereinafter 2015 REPORT].

262. See 2019 REPORT, *supra* note 246, at 23; 2018 REPORT, *supra* note 248, at 13; 2017 REPORT, *supra* note 243, at 41–42; 2016 REPORT, *supra* note 241, at 31; 2015 REPORT, *supra* note 261, at 31.

263. See 2019 REPORT, *supra* note 246, at 23.

264. See 2015 REPORT, *supra* note 261, at 31.

265. See 2021 REPORT, *supra* note 245, at 25.

266. See 2020 REPORT, *supra* note 247, at 14.

267. See 2019 REPORT, *supra* note 246, at 23.

268. See 2018 REPORT, *supra* note 248, at 14.

269. Ian Duncan, *Water Service Restored at Juvenile Detention Facility in Baltimore County*, BALT. SUN (Jan. 10, 2018, 12:45 PM), <https://www.baltimoresun.com/maryland/bs-md-hickey-water-showers-20180110-story.html> [<https://perma.cc/AAE8-NK2E>].

270. See 2019 REPORT, *supra* note 246, at 23.

271. See 2018 REPORT, *supra* note 248, at 14.

272. See 2016 REPORT, *supra* note 241, at 36.

concerning when restraints are used and the incident is not documented, as occurred in 2015.²⁷³

8. *Safety Issues for Staff and Confined Children*

In the fourth quarter of 2017 alone, there were four assault incidents that resulted in youths being sent to the emergency room.²⁷⁴ The mental health problems, failure of staff to intervene, and lack of effective programming, among other shortcomings, all contribute to the violent and unsafe environment at Hickey School.

III. THE ARGUMENT TO CLOSE THE HICKEY SCHOOL

If state governments believed that brutal, inhumane conditions were reason enough to shut down a JDF, there would likely be none left standing. There are several reasons that Hickey in particular is a good candidate for closure that go beyond its conditions: It is economically unsustainable,²⁷⁵ it fails to fulfill either of the key rationales underlying its existence,²⁷⁶ and it has exhausted all reform options.²⁷⁷

A. *Keeping Hickey Financially Afloat is No Longer Feasible*

In a 1957 report to the Maryland Department of Welfare, a consultant observed: “Good training school care is expensive. But poor training school care is even more expensive.”²⁷⁸ After the DOJ’s investigation of Hickey and Cheltenham, Maryland added millions of dollars to its JDFs’ budgets.²⁷⁹ The Annie E. Casey Foundation describes the money that states spend on complying with these JDF settlement agreements as “[a]dded [c]osts of [d]efending the [i]ndefensible,”²⁸⁰ and, as demonstrated by the lack of improvement in Hickey’s conditions,²⁸¹ such spending is rarely a good investment.

273. See 2015 REPORT, *supra* note 261, at 31.

274. See 2017 REPORT, *supra* note 243, at 40–41.

275. See *infra* Part III.A.

276. See *infra* Part III.B.

277. See *infra* Part III.C.

278. RICHARD CLENDENEN, REPORT TO THE STATE DEPARTMENT OF PUBLIC WELFARE 17 (1957).

279. *Settlement Agreement*, U.S. DEP’T OF JUST. (June 29, 2005), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/split_maryland_agree_6-29-05.pdf [<https://perma.cc/4E6E-TYQN>].

280. RICHARD A. MENDEL, ANNIE E. CASEY FOUND., NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION 21 (2011), <https://assets.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf> [<https://perma.cc/L2XQ-DYJP>] [hereinafter NO PLACE FOR KIDS].

281. See *supra* Part II.D.

Several JDFs that were investigated by the DOJ ultimately closed.²⁸² These closures were not the result of public outcry over facility conditions, even though each of the JDFs was found to have violated the constitutional and federal statutory rights of its residents.²⁸³ Rather, they all closed for financial reasons.²⁸⁴ For example, when Mississippi's Walnut Grove Correctional Facility, once described by a federal judge as "paint[ing] a picture of such horror as should be unrealized anywhere in the civilized world,"²⁸⁵ closed in 2016, the *New York Times* reported that it was "not because of the often-unrestrained violence at the facility, but for budget cuts."²⁸⁶ Incarcerating juveniles comes with many costs—children's physical and mental health, emotional development, identities, and future prospects, to name a few²⁸⁷—but dollars and cents are the easiest to quantify, and thus more likely to inspire opposition to spending. Describing several JDF closures that occurred during the 2008 recession, Nell Bernstein wrote: "Not

282. See DOJ Findings Letter (Arizona), *supra* note 75; DOJ Findings Letter (Michigan), *supra* note 32; DOJ Findings Letter (Mississippi – Oakley/Columbia), *supra* note 31; DOJ Findings Letter (Mississippi – Walnut Grove), *supra* note 40; DOJ Findings Letter (Ohio – Scioto), *supra* note 82; DOJ Findings Letter (Oklahoma), *supra* note 129.

283. See, e.g., DOJ Findings Letter (Maryland), *supra* note 220, at 2.

284. *Tucson's Catalina Mountain School for Troubled Youths to Close*, TUCSON (Aug. 12, 2011), https://tucson.com/news/local/crime/tucson-catalina-mountain-school-for-troubled-youths-to-close/article_5941bb8f-6273-52cc-a74d-89feb2c26de5.html [<https://perma.cc/CUN7-JXPL>] ("The shutdown will save the state nearly \$1.5 million this fiscal year and \$3.8 million in 2013."); Jennifer Eberbach, *Maxey School for Boys Closes in Livingston County*, DETROIT FREE PRESS (Oct. 7, 2015, 12:03 PM), <https://www.freep.com/story/news/local/michigan/2015/10/07/maxey-school-boys-closes-livingston-county/73515420/> [<https://perma.cc/T2UZ-PXB7>] (noting that state legislature anticipated \$7.5 million in savings); *DHS Asking Lawmakers to Close Columbia Training School*, MERIDIAN STAR (Feb. 14, 2008), https://www.meridianstar.com/dhs-asking-lawmakers-to-close-columbia-training-school/article_8f03d751-fae2-5e0d-8896-956c0622f222.html [<https://perma.cc/9J4X-3L84>] ("The state will save about \$2.7 million a year by shutting the school," he said.); Alan Johnson, *Scioto Juvenile Correctional Facility in Delaware to Close*, COLUMBUS DISPATCH (Nov. 22, 2013, 10:10 AM), <https://www.dispatch.com/story/news/crime/2013/11/21/scioto-juvenile-correctional-facility-in/23413125007/> [<https://perma.cc/P5LG-DUUL>] ("DYS officials said one of the reasons the Delaware [County, Ohio] facility was targeted for closing is because of its age and need for \$5.6 million worth of repairs."); Barbara Hoberock, *L.E. Rader Center to Close with No Plans for a New Site*, TULSA WORLD (Aug. 31, 2020), https://tulsaworld.com/news/local/govt-and-politics/l-e-rader-center-to-close-with-no-plans-for-a-new-site/article_99b4e4f3-9228-5472-954a-b1cce73086cf.html [<https://perma.cc/E6DP-7URK>] ("Sen. Dan Newberry, R-Tulsa, said Rader's closing is an unfortunate result of budget shortfalls the state has faced for the last few years.").

285. Order Approving Settlement at 6, *Depriest v. Walnut Grove Corr. Auth.*, No. 3:10-cv-00663-CWR-FKB (S.D. Miss. filed Mar. 26, 2012).

286. Timothy Williams, *Privately Run Mississippi Prison Called a Scene of Horror, Is Shut Down*, N.Y. TIMES (Sept. 15, 2016), <https://www.nytimes.com/2016/09/16/us/mississippi-closes-private-prison-walnut-grove.html> [<https://perma.cc/6BJ9-5YDJ>].

287. See YOUTH L. CTR. & E. BAY CMTY. L. CTR., *CALLING OUT THE HARMS OF INCARCERATION: USING RESEARCH TO FIGHT CONFINEMENT OF YOUTH* (Sept. 2022), <https://www.ylc.org/wp-content/uploads/2022/09/Calling-Out-the-Harms-of-Incarceration-Handout.pdf> [<https://perma.cc/WPR6-YVLF>].

only were our juvenile prisons brutal, inhumane, and entirely counterproductive—all things that had been evident for quite some time—they were now, finally, out of our price range.”²⁸⁸

JDFs are indisputably expensive,²⁸⁹ but total costs are only half of the equation. In the eyes of a state government, a JDF is no longer worth keeping open when it is operating so far below capacity that its cost-per-youth becomes impossible to justify.²⁹⁰ Such findings of financial nonviability are becoming more common nationwide as numbers of incarcerated children hit all-time lows.²⁹¹ The number of youths in JDFs across the country decreased by 77% between 2000 and 2020,²⁹² and as of 2020, 85% of JDFs operate below capacity.²⁹³ As explained by the Justice Policy Institute, “[t]here is not a 1:1 relationship between a facility budget and the confined population. The fixed costs of staffing and operating a facility are not reduced dollar-for-dollar by the average daily population.”²⁹⁴

Hickey has been consistently operating below capacity for the past decade.²⁹⁵ In line with national trends, its yearly and daily costs-per-youth

288. See BERNSTEIN, *supra* note 120, at 206.

289. During fiscal year 2021, the state of Maryland spent \$126,351,379 on JDF operations. MD. DEP’T OF JUV. SERVS., DATA RESOURCE GUIDE: FISCAL YEAR 2021, at 211 (2021) [hereinafter DJS 2021 DATA], https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2021.pdf [<https://perma.cc/P4DT-BK5V>].

290. VINCENT SCHIRALDI, SQUARE ONE PROJECT, CAN WE ELIMINATE YOUTH PRISON? (AND WHAT SHOULD WE REPLACE IT WITH?) 10 (June 2020), <https://squareonejustice.org/wp-content/uploads/2020/06/CJLJ8234-Square-One-Youth-Prisons-Paper-200616-WEB.pdf> [<https://perma.cc/74CC-PYTY>] (“As the cost per youth in confinement has increased, the already limited utility of all of these facilities at the state and local level declines, making it harder to argue to keep them open.”); see, e.g., *Youth Prison and Juvenile Detention Facility Closures During COVID-19*, NO KIDS IN PRISON (June 16, 2020), <https://www.nokidsinprison.org/youth-prison-juvenile-detention-facility-closures-during-covid19> [<https://perma.cc/AE7A-TDZC>] (describing how Olmsted County Juvenile Detention Center in Minnesota and Santa Fe County Juvenile Detention Facility in New Mexico closed because they were operating below capacity and no longer cost effective).

291. Brian Rinker, *It’s Not Just a Jail Break’: Juvenile Prison Populations Reach All-Time Lows*, JUV. JUST. INFO. EXCH. (Jan. 10, 2023), <https://jjiie.org/2023/01/10/its-not-just-a-jail-break-juvenile-prison-populations-reach-all-time-lows/> [<https://perma.cc/5YZJ-GQMY>].

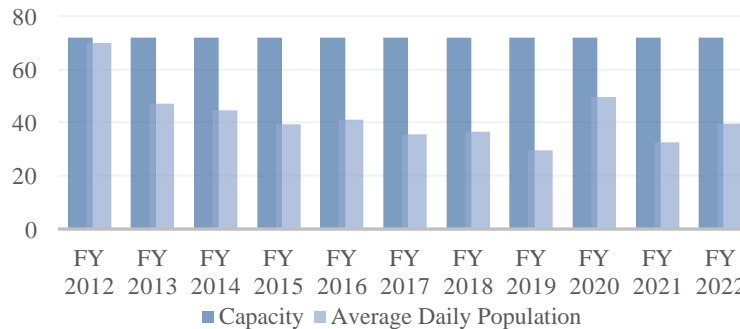
292. U.S. DEP’T OF JUST., OFF. OF JUV. JUST. & DELINQ. PREVENTION, HIGHLIGHTS FROM THE 2020 JUVENILE RESIDENTIAL FACILITY CENSUS (2020), https://www.ojjdp.gov/ojstatbb/snapshots/DataSnapshot_JRFC2020.pdf [<https://perma.cc/PVM8-CWYG>].

293. *Statistical Briefing Book, Juveniles in Corrections, Facility Characteristics*, U.S. DEP’T OF JUST., OFF. JUV. JUST. & DELINQ. PREVENTION (Jan. 10, 2023), <https://www.ojjdp.gov/ojstatbb/corrections/qa08522.asp?qaDate=2020&text=yes&maplink=link1> [<https://perma.cc/CKA5-4NV4>].

294. JUST. POL’Y INST., STICKER SHOCK 2020: THE COST OF YOUTH INCARCERATION 6 (July 30, 2020), https://justicepolicy.org/wp-content/uploads/2022/02/Sticker_Shock_2020.pdf [<https://perma.cc/48W8-M389>] [hereinafter STICKER SHOCK].

295. See MD. DEP’T OF JUV. SERVS., DATA RESOURCE GUIDE: FISCAL YEAR 2022, at 122 (2022), https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2022.pdf

have skyrocketed in response. During the 2012 fiscal year, it cost taxpayers \$216,562.00 per year and \$593.32 per day to incarcerate a child at Hickey.²⁹⁶ By the end of the 2022 fiscal year, those numbers more than doubled to \$491,973.33 per year and \$1,347.87 per day.²⁹⁷ The cost of sending one child to Hickey for a year is almost forty-three times the cost of a year of in-state tuition at the University of Maryland.²⁹⁸



[<https://perma.cc/F8DK-HRSD>] [hereinafter DJS 2022 DATA]; DJS 2021 DATA, *supra* note 289, at 118; MD. DEP'T OF JUV. SERVS., DATA RESOURCE GUIDE: FISCAL YEAR 2020, at 282 (2020), https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2020.pdf [<https://perma.cc/LA6R-K4JX>] [hereinafter DJS 2020 DATA]; MD. DEP'T OF JUV. SERVS., DATA RESOURCE GUIDE: FISCAL YEAR 2019, at 267 (2019), https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2019.pdf [<https://perma.cc/9VN7-BSPN>] [hereinafter DJS 2019 DATA]; MD. DEP'T OF JUV. SERVS., DATA RESOURCE GUIDE: FISCAL YEAR 2018, at 260 (2018), https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2018_full_book.pdf [hereinafter DJS 2018 DATA]; MD. DEP'T OF JUV. SERVS., DATA RESOURCE GUIDE: FISCAL YEAR 2017, at 250 (2017), https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2017_full_book.pdf [<https://perma.cc/HS6L-4SWS>] [hereinafter DJS 2017 DATA]; MD. DEP'T OF JUV. SERVS., DATA RESOURCE GUIDE: FISCAL YEAR 2016, at 244 (2016), https://djs.maryland.gov/Documents/DRG/2016_full_book.pdf [<https://perma.cc/9JYH-SWRF>] [hereinafter DJS 2016 DATA]; MD. DEP'T OF JUV. SERVS., DATA RESOURCE GUIDE: FISCAL YEAR 2015, at 238 (2015), https://djs.maryland.gov/Documents/DRG/2015_Full_DRG_revised_Nov_2016.pdf [<https://perma.cc/R8RF-5T7H>] [hereinafter DJS 2015 DATA]; MD. DEP'T OF JUV. SERVS., DATA RESOURCE GUIDE: FISCAL YEAR 2014, at 234 (2014), https://djs.maryland.gov/Documents/DRG/Full_2014_DRG.pdf [<https://perma.cc/V3GJ-ZTHJ>] [hereinafter DJS 2014 DATA]; MD. DEP'T OF JUV. SERVS., DATA RESOURCE GUIDE: FISCAL YEAR 2013, at 230 (2013), https://djs.maryland.gov/Documents/DRG/Full_DRG_With_Pullouts_2013.pdf [<https://perma.cc/QA86-EH7H>] [hereinafter DJS 2013 DATA]; MD. DEP'T OF JUV. SERVS., DATA RESOURCE GUIDE: FISCAL YEAR 2012, at 223 (2012), https://djs.maryland.gov/Documents/DRG/DRG_2012_Whole_book_with_Pullouts_updated_recidivism_data.pdf [<https://perma.cc/7VCN-4XSX>] [hereinafter DJS 2012 DATA].

296. See DJS 2022 DATA, *supra* note 295, at 213.

297. See DJS 2012 DATA, *supra* note 295, at 223.

298. In-state tuition for the 2023–2024 school year is \$11,505. *Cost of Attendance*, UNIV. OF MD., <https://admissions.umd.edu/tuition/cost-of-attendance> [<https://perma.cc/FN7V-ET8V>] (last visited Oct. 25, 2023).

For nearly half a million dollars, a child gets to spend a year in horrendous conditions and, too often, endure abuse and neglect. It raises the questions of how much more money it would take for Hickey to improve its conditions and provide something resembling rehabilitation, and how much more the State will give before it recognizes that its investment has failed.

B. The Rationales Underlying Juvenile Detention Have Been Disproven

The House of Refuge was established with the goal of serving as both a “reformatory of morals” and “a powerful instrument in the prevention of crime.”²⁹⁹ These dual aims of rehabilitation and public safety have always served as the justification for juvenile incarceration, and the belief that JDFs play a role in furthering these ideals continues to persist, despite substantial evidence to the contrary.³⁰⁰ As juvenile justice scholar Barry Feld said: “A century of experience with training schools and youth prisons demonstrates that they constitute the one extensively evaluated and clearly *ineffective* method to treat delinquents.”³⁰¹ Closing Hickey requires the dismantling of the idea that it is or ever could be effective in helping children or communities.³⁰²

1. Rehabilitation

The idea of reforming troubled children and putting them on a better path is essential to the concept of incarceration as rehabilitation. According to a study by the Arkansas Division of Youth Services, however, “incarceration is the single most significant factor in predicting whether a youth will offend again, more so even than poor family relationships or gang affiliation.”³⁰³ There are several theories behind this. For example, researchers at the Oregon Social Learning Center concluded that congregating delinquent youths together for the purpose of punishment can lead to “negative changes in attitudes toward antisocial behavior, affiliation

299. *House of Refuge: Important Memorial*, BALT. SUN, Feb. 22, 1849, at 2.

300. *Desktop Guide to Quality Practice for Working with Youth in Confinement, Ch. 10: Effective Programs and Services*, NAT’L INST. OF CORR., <https://info.nicic.gov/dtg/node/16> [<https://perma.cc/MKS5-ZRN7>] (last visited Oct. 25, 2023).

301. RICHARD A. MENDEL, ANNIE E. CASEY FOUND., *THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS*, SUMMARY REPORT 4–5 (2010) (emphasis added), https://static1.1.sqspcdn.com/static/f/658313/9749173/1291845016987/aecf_mo_fullreport_webfinal.pdf?token=JEHWVEfuO4wetwlg3N0GeKUGE%3D [<https://perma.cc/4LYM-UCPC>].

302. See, e.g., *Remove Youth from Facilities*, NAT’L JUV. JUST. NETWORK, <https://www.njjn.org/about-us/reduce-institutionalization> (last visited Nov. 16, 2023) (“Placing youth in large group confinement facilities is not justified from the perspective of treatment effectiveness or the prevention of future recidivism.”).

303. Jennifer Bellamy, *Keeping Children in the Classroom and Out of the Courtroom*, ACLU (July 22, 2015), <https://www.aclu.org/news/juvenile-justice/keeping-children-classroom-and-out-courtroom> [<https://perma.cc/7VAV-FH27>].

with antisocial peers, and identification with deviancy.”³⁰⁴ Another study from Carnegie Mellon University found that incarceration for minor delinquency can psychologically disrupt and delay the process of “aging out” of such behaviors.³⁰⁵ Additionally, incarceration often inflicts or exacerbates trauma, which “may actually increase poor behavior, as youth struggle to cope with the emotional impact of confinement and to manage their subsequent externalizing behaviors.”³⁰⁶

Recidivism is far from the only measure of the damage that incarceration can do to the children it is supposed to rehabilitate. Physical and mental health issues get worse during incarceration, and youths leave JDFs more likely to deal with depression and suicidal thoughts that follow them into adulthood.³⁰⁷ One study found that justice-involved youths have a 48% higher chance of dying prematurely than their peers, while people who were incarcerated as children are two-and-a-half times more likely to die prematurely than those who were arrested but never confined in a JDF.³⁰⁸ Chances of future professional and educational success are also severely diminished. Two-thirds of youths never reenroll in school after serving time in a JDF,³⁰⁹ and the average person who was incarcerated as a child is likely to earn lower wages, work fewer weeks per year, and have less job experience by the age of thirty-nine.³¹⁰

304. BARRY HOLMAN & JASON ZIEDENBERG, JUST. POL’Y INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 5 (2013), https://justicepolicy.org/wp-content/uploads/2022/02/06-11_rep_dangersofdetention_jj.pdf [<https://perma.cc/5YCS-TK47>] (quoting Thomas J. Dishion, Joan McCord & François Poulin, *When Interventions Harm: Peer Groups and Problem Behavior*, 54 AM. PSYCH 755 (1999)).

305. *Id.* at 7 (citing Andrew Golub, *The Termination Rate of Adult Criminal Careers*, (Carnegie Mellon Univ. Sch. Urb. & Pub. Affs. Working Paper No. 90-30, 1990), <https://www.ojp.gov/pdffiles1/Digitization/132878NCJRS.pdf>).

306. See WHY YOUTH INCARCERATION FAILS, *supra* note 26, at 21 (quoting Shantel D. Crosby, *Trauma-Informed Approaches to Juvenile Justice: A Critical Race Perspective*, 67 JUV. & FAM. CT. 5 (2016)).

307. See *id.* at 16 (citing Elizabeth S. Barnet et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?*, 139 PEDIATRICS 1 (2017)); HOLMAN & ZIEDENBERG, *supra* note 304, at 8–9.

308. See WHY YOUTH INCARCERATION FAILS, *supra* note 26, at 16 (citing Matthew C. Aalsma et al., *Mortality of Young Offenders Along a Continuum of Justice System Involvement*, 50 AM. J. PREVENTIVE MED. 303 (2015)).

309. U.S. DEP’T OF JUST., OFF. JUV. JUST. & DELINQ. PREVENTION, EDUCATION FOR YOUTH UNDER FORMAL SUPERVISION OF THE JUVENILE JUSTICE SYSTEM 6 (Jan. 2019), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/education-for-youth-in-the-juvenile-justice-system.pdf> [<https://perma.cc/63V3-8XPX>] (first citing Gary Sweeten, Shawn D. Bushway & Raymond Paternoster, *Does Dropping Out of School Mean Dropping Into Delinquency?*, 47 CRIMINOLOGY 47 (2009); and then citing D. Wayne Osgood, E. Michael Foster & Mark E. Courtney, *Vulnerable Populations and the Transition Into Adulthood*, 20 FUTURE CHILD 209 (2010)).

310. See WHY YOUTH INCARCERATION FAILS, *supra* note 26, at 15 (citing ROBERT APEL & GARY SWEETEN, THE EFFECT OF CRIMINAL JUSTICE INVOLVEMENT IN THE TRANSITION TO

Testifying before the Attorney General's National Task Force on Children Exposed to Violence, Patrick McCarthy, former president of the Annie E. Casey Foundation, said:

You would be hard-pressed if you tried to design a less effective response to a child's exposure to violence than to lock him or her up in overcrowded, loud, brightly lit, depressing, frightening conditions with a large group of other children with similar problems, little or no privacy and no sense of personal safety, and then fail to provide a decent education or an opportunity to build skills; neglect to address the mental health, substance abuse, trauma and family issues that contributed to the delinquent behavior; and then release him or her to the streets with little hope for a future of promise or possibility. This is not a recipe for success.³¹¹

Hickey and other JDFs are simply not conducive to rehabilitation, and no number of reforms can fix the flawed premise on which they are built.

2. Public Safety

National and state-level statistics indicate that there is essentially no correlation between juvenile incarceration and public safety.³¹² Confining more children to JDFs does not reduce juvenile crime,³¹³ and reducing JDF populations does not increase juvenile crime.³¹⁴ The biggest reason for this is that many, if not most, confined children pose little to no genuine threat to public safety.³¹⁵ For example, 24.7% of the youths in Hickey's pre-adjudication population are charged with property offenses, and 5.8% for drug offenses.³¹⁶ The data available is not specific enough to gauge how many youths at Hickey are confined for the kinds of violent crimes that could be reasonably understood to threaten public safety, like murder, rape,

ADULTHOOD (Sept. 15, 2009), <https://www.ojp.gov/pdffiles1/nij/grants/228380.pdf> [<https://perma.cc/T5R7-HWAH>] (report submitted to the US Department of Justice)).

311. See BERNSTEIN, *supra* note 120, at 68.

312. See NO PLACE FOR KIDS, *supra* note 280, at 26 (“[S]harply reducing juvenile custody populations seems not to exert any independent upward impact on juvenile offending rates. . . . A more detailed analysis comparing trends at the state level finds no correlation between juvenile confinement rates and violent youth crime.”).

313. HOLMAN & ZIEDENBERG, *supra* note 304, at 7.

314. PATRICK MCCARTHY ET AL., THE FUTURE OF YOUTH JUSTICE: A COMMUNITY-BASED ALTERNATIVE TO THE YOUTH PRISON MODEL 19 (Oct. 2016), https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/ntcc_the_future_of_youth_justice.pdf [<https://perma.cc/BP5T-WLSR>]. For example, when Texas reduced its JDF populations by 65%, it simultaneously saw a 33% decrease in youth arrests. *Id.*

315. *Id.* (“Part of the reason that the pipeline can be reduced so significantly without risk to public safety is that so many of those who are sent to youth prisons are incarcerated for offenses that the public finds more amenable to community-based placement.”); see BERNSTEIN, *supra* note 120, at 54.

316. See DJS 2022 DATA, *supra* note 295, at 141.

robbery, and aggravated assault. However, national statistics show that such crimes made up just 8% of youth arrests in 2020.³¹⁷

In April of 2020, the Supreme Court of Maryland³¹⁸ ordered local judges to limit detention and identify juveniles for potential release to minimize COVID-19 exposure in JDFs.³¹⁹ Prior to ordering detention, judges were to consider and make findings on the following factors:

- (1) [W]hether detention poses serious health risks to the juvenile, other detained individuals, staff, or the community; and (2) whether any condition of release, including supervision, can mitigate that risk of physical harm to self or others such that the juvenile can be released safely into the community; and (3) any additional circumstances specific to the juvenile that are warranted in the interest of justice.³²⁰

This order led to a 53% decrease in Maryland's JDF populations in just a few months,³²¹ with no impact on the decreasing juvenile arrest rate.³²² The implementation of this order shows the Maryland government's willingness to recognize that the dangers posed by conditions in a place like Hickey, pandemic-related or otherwise, are a valid reason to decide against confining a child, especially when he or she does not pose a safety threat.³²³

317. JOSHUA ROVNER, SENT'G PROJ., *YOUTH JUSTICE BY THE NUMBERS 7* (May 16, 2023), <https://www.sentencingproject.org/app/uploads/2023/05/Youth-Justice-by-the-Numbers.pdf> [<https://perma.cc/85G8-VUVM>].

318. At the time, the Supreme Court of Maryland was referred to as the Court of Appeals of Maryland. *Voter-Approved Constitutional Change Renames High Courts to Supreme and Appellate Court of Maryland*, MD. CTS. (Dec. 14, 2022), <https://www.courts.state.md.us/media/news/2022/pr20221214> [<https://perma.cc/GXD3-A6SK>].

319. *Administrative Order Guiding the Response of Circuit Courts Sitting as Juvenile Courts to the COVID-19 Emergency as It Relates to Those Juveniles Who Are Detained, Committed Pending Placement or in Commitments*, CT. OF APPEALS OF MD. (Apr. 13, 2020), <https://mdcourts.gov/sites/default/files/admin-orders/20200413guidingresponseofcircuitcourtssittingasjuvenilecourts.pdf> [<https://perma.cc/GDA4-JTQY>].

320. *Id.* at 5.

321. Nell Bernstein & Vincent Schiraldi, *The Successful Closing of Youth Prisons Shows a Path to Police Reform*, WASH. POST (June 16, 2020, 12:28 PM), <https://www.washingtonpost.com/opinions/2020/06/16/successful-closing-youth-prisons-shows-path-police-reform/> [<https://perma.cc/EH4K-Y6XE>].

322. *Juvenile Arrests in Maryland*, ANNIE E. CASEY FOUNDATION, <https://datacenter.aecf.org/data/tables/4461-juvenile-arrests#detailed/2/any/false/574,1729,37,871,870,573,869,36,868,867/any/10020,15102> [<https://perma.cc/UTU4-PNN7>] (last updated May 2023).

323. JUST. POL'Y INST. ET AL., *YOUTH JUSTICE IN THE COVID-19 PANDEMIC: ADVOCACY STRATEGIES TO ADVANCE DECARCERATION 6* (Feb. 2023), <https://justicepolicy.org/wp-content/uploads/2023/02/JJ-COVID-Advocacy-Strategies.pdf> [<https://perma.cc/LW5K-UBFD>] (“During the pandemic, several jurisdictions formally considered the public health risks to young people when making detention and placement decisions. The success of these arguments highlights an opportunity for advocates to continue to leverage *well documented research* into the public health harms of detention and incarceration beyond the pandemic to further decarcerate youth.”). *See*

C. Hickey Cannot Be Reformed, but It's Not for Lack of Trying

When something is as wrong as what we are doing to young people behind the walls of our juvenile prisons, it calls for a remedy more immediate and more profound than incremental and partial reform. We don't have the luxury of patting ourselves on the back for simply cutting down on abuse, no more than a parent in family court can get away with telling the judge he is beating his children less often, or breaking fewer bones. When it comes to an institution as intrinsically destructive as the juvenile prison, there is no middle road.³²⁴

In a 2007 special report, the Juvenile Justice Monitoring Unit wrote that the state of Maryland “continues to ‘throw good money after bad,’ spending hundreds of thousands of dollars to bring Hickey into compliance with federal standards. We believe no amount of renovations, no matter how extensive, will ever make the Hickey facility appropriate for the housing of youth.”³²⁵ Trying to reform Hickey is futile, and nothing is more illustrative of this fact than the countless reform attempts that have already been made.

Hickey has existed under numerous carceral philosophies, including a “cottage plan” with an emphasis on farm work³²⁶ and a military-inspired scheme complete with marching and crewcuts.³²⁷ It has been operated by the State,³²⁸ the city of Baltimore,³²⁹ and numerous private companies.³³⁰ Its leaders have employed limits on corporal punishment³³¹ and banned it outright,³³² but staff members have not stopped using force on children.³³³ They tightened³³⁴ and loosened³³⁵ security measures, but escapes have

generally JUST. POL'Y INST. ET AL., YOUTH JUSTICE IN THE COVID-19 PANDEMIC: MARYLAND (Feb. 2023), <https://justicepolicy.org/wp-content/uploads/2023/02/JJ-COVID-Maryland.pdf> [<https://perma.cc/TUN9-CHVN>].

324. BERNSTEIN, *supra* note 120, at 13.

325. MD. OFF. OF THE ATT'Y GEN. JUV. JUST. MONITORING UNIT 4 (2007), <https://www.marylandattorneygeneral.gov/JJM%20Documents/Hickey%20Special%20Report%20Final102507.pdf> [<https://perma.cc/9V3M-M56D>].

326. *Home Life – Not Reform: Formation of Character the Aim of Maryland School for Boys*, BALT. SUN, Mar. 11, 1906, at 14.

327. Ernest B. Furgurson, *Largest Training School for Boys Also the Strictest*, BALT. SUN, July 10, 1958, at 32.

328. *See supra* note 187.

329. *See supra* note 187.

330. *See supra* Part II.C.1.

331. *To Reform the Boy: Prisoners' Aid Committee Reports on Investigation*, BALT. SUN, July 29, 1908, at 6.

332. MYLES KATZ ET AL., GRAND JURY REPORT 35 (1948).

333. *See supra* Part II.D.8.

334. Michael K. Burns, *Reform School Staffs Due 'Body Alarms' to Thwart Escapes*, BALT. SUN, May 16, 1990, at 4B.

335. Doug Struck, *Responsibility is Training School Key*, BALT. SUN, Aug. 25, 1982, at A1.

continued.³³⁶ They tried to limit overuse of isolation and medication to no avail.³³⁷ They agreed to meet the DOJ's demands for improvements and technically succeeded in doing so,³³⁸ but there still has not been any meaningful change in conditions.³³⁹

IV. WHAT CLOSING HICKEY WOULD LOOK LIKE

In June of 2005, facing significant political pressure leading up to his bid for reelection,³⁴⁰ Governor Robert Ehrlich made a bold announcement:

Since the Hickey School was established . . . it has had a long and frequently troubled history. Today we write the final chapter in the story of the Hickey School. Today, I am directing Secretary [of Juvenile Services] Montague to close the Charles H. Hickey, Jr. School. In other words: Hickey is history On November 30, the children will be gone, the lights will be out, and the doors will be locked, never to open again.³⁴¹

A few weeks later, the *Baltimore Sun* reported that state legislators “knew nothing of the governor’s plans until he announced them at a news conference,” and that Ehrlich’s team lacked answers to logistical questions.³⁴² The Department of Juvenile Services was left “scrambling,”³⁴³

336. Jessica Anderson, *Problems Cited at Juvenile Facilities*, BALT. SUN, Dec. 17, 2010, at 8.

337. Eileen Canzian, *Rossi, Hickey Staff Clash on How to Punish, Turn Around Young Criminals*, BALT. SUN, Oct. 1, 1989, at 1B.

338. *See supra* Part II.C.

339. *See supra* Part II.D.

340. Kristin Sette, *Hoping for a New Hickey School: Juvenile Advocates, Lawmakers Press for Change*, CAP. NEWS SERV. (Mar. 7, 2003), https://cnsmaryland.org/cns/wire/2003-editions/03-March-editions/030307-Friday/HickeyHopes_CNS-UMCP.html [<https://perma.cc/J947-U3HK>] (“Juvenile justice advocates aren’t surprised to find Ehrlich taking an interest in Hickey operations - it was a campaign promise.”); *Governor Announces Plans to Close Hickey School, Implements Reforms*, DAILY REC. (June 30, 2005), <https://thedailyrecord.com/2005/06/30/governor-announces-plans-to-close-hickey-school-implement-reforms/> [<https://perma.cc/7VG9-2TW9>] (“The governor promised to implement juvenile justice reforms in a white paper published during his 2002 campaign. Two of Ehrlich’s likely opponents in the next gubernatorial election . . . recently criticized the governor for his failure to deal with allegations of violence at several juvenile detention facilities in the area.”); Robert L. Ehrlich, Jr., *Ehrlich on Washington Column: Ninety Days to Make a Difference*, TOWSON UNIV. SPECIAL COLLECTIONS & UNIV. ARCHIVES, ROBERT L. EHRlich, JR. COLLECTION FOR PUB. LEADERSHIP STUD. 2 (Jan. 13, 2002), <https://archives.towson.edu/Documents/Detail/ehrllich-on-washington-column-january-13-2002/66089?item=66090> [<https://perma.cc/BX2A-592R>].

341. *Juvenile Services Announcement*, TOWSON UNIV. SPECIAL COLLECTIONS & UNIV. ARCHIVES, ROBERT L. EHRlich, JR. COLLECTION FOR PUB. LEADERSHIP STUD. 3-4 (June 30, 2005), <https://archives.towson.edu/Documents/Detail/juvenile-services-announcement-june-30-2005/64559?item=64563> [<https://perma.cc/TP3E-8ZDS>].

342. Greg Garland, *Plans to Close Hickey School Questioned; Critics of Proposal Voice Concern for Public Safety*, BALT. SUN, July 13, 2005, at 2B.

343. Greg Garland, *Plan for Placement of Hickey Youths is Uncertain; Critics Say State Lacks Strategy Weeks Before Facility Is to Close*, BALT. SUN, Nov. 6, 2005, at 4A.

and the *Washington Post* criticized the governor for failing to “devise[] a coherent plan” and devote adequate funding to the endeavor.³⁴⁴ The November 30 deadline came and went, and Ehrlich lost the 2006 gubernatorial election a year later.³⁴⁵ By the time his successor, Governor Martin O’Malley, took office in 2007, only “parts” of Hickey had actually closed, and poor conditions persisted in the parts that remained.³⁴⁶

Ehrlich’s halfhearted, politically motivated attempt at closing Hickey is a lesson in the importance of careful planning. To successfully close Hickey and make a positive difference in the lives of the children who would otherwise be confined there, we must have answers to all of the pertinent logistical questions.

A. *What are the Possible Alternatives?*

There are many alternatives to juvenile incarceration that explicitly improve upon Hickey’s biggest pitfalls. In addition to ensuring that youths are no longer subjected to unacceptable conditions,³⁴⁷ proper alternatives will be cost-effective³⁴⁸ and will legitimately serve the ideals of rehabilitation and public safety.³⁴⁹ The alternatives below are funded by capturing and reallocating the resources spent on traditional JDFs,³⁵⁰ and they are premised on the idea that “[i]nstitutionalizing young people must be the choice of last resort, reserved only for those who pose such a serious threat that no other solution would protect public safety.”³⁵¹

1. *Non-Residential Programs and Services*

While traditional non-residential alternatives like probation are certainly preferable to incarceration,³⁵² the best options for children and communities are models that limit youths’ formal contact with the justice system

344. *Hickey’s Closed. Now What?*, WASH. POST (Dec. 2, 2005), <https://www.washingtonpost.com/archive/opinions/2005/12/02/hickeys-closed-now-what/a9b8bd24-a92f-4848-9016-9484f7ddc244/> [<https://perma.cc/UR3T-F859>].

345. *Official 2006 Gubernatorial General Election Results for Governor/Lt. Governor, STATE BD. OF ELECTIONS*, https://elections.maryland.gov/elections/2006/results/general/office_Governor__Lt_Governor.html [<https://perma.cc/J7TX-77NN>] (last visited Oct. 25, 2023).

346. *Md. to Take Over Security Functions at Hickey School*, DAILY REC. (Aug. 13, 2007), <https://thedailyrecord.com/2007/08/13/md-to-take-over-security-functions-at-hickey-school/> [<https://perma.cc/N67R-VRSL>].

347. *See supra* Part II.D.

348. *See supra* Part III.A.

349. *See supra* Part III.B.

350. *See, e.g.*, SCHIRALDI, *supra* note 290, at 38–43; BERNSTEIN, *supra* note 120, at 311–12.

351. *Remove Youth from Facilities*, *supra* note 302.

352. *See, e.g.*, NO PLACE FOR KIDS, *supra* note 280, at 12 (“In Virginia, low-risk youth released from correctional facilities had substantially higher rearrest rates than similar youth placed on probation.”).

entirely.³⁵³ One such model is a “continuum of community-based care and opportunity.”³⁵⁴ The Urban Institute defines this as a collection of programs and services that include “a range of supports and opportunities that build on youth and family strengths and assets to promote healthy development, improve family functioning, meet essential needs, and strengthen neighborhoods . . . [, as well as] advance community development strategies that expand educational, workforce, and enrichment opportunities.”³⁵⁵ An effective continuum will simultaneously serve youth who have run afoul of the law and deter others from engaging in crime in the first place.

Programs within the continuum fit into six categories: prevention, intervention, opportunities, community development, supports, and treatment.³⁵⁶ Prevention is defined by the Office of Juvenile Justice and Delinquency Prevention as “[e]fforts that support youth who are ‘at-risk’ of becoming involved in delinquent behavior,”³⁵⁷ which can include school-based initiatives³⁵⁸ and parenting programs³⁵⁹ that set children and families up for success. Intervention, which is “intended to disrupt a juvenile’s delinquency process . . . and/or build skills and prevent a youth from

353. See RICHARD MENDEL, SENT’G PROJECT, EFFECTIVE ALTERNATIVES TO YOUTH INCARCERATION 23 (June 2023), <https://www.sentencingproject.org/app/uploads/2023/06/Effective-Alternatives-to-Youth-Incarceration.pdf> [<https://perma.cc/Y8HG-Z78M>] [hereinafter EFFECTIVE ALTERNATIVES].

354. SAMANTHA HARVELL ET AL., URB. INST., PROMOTING A NEW DIRECTION FOR YOUTH JUSTICE: STRATEGIES TO FUND A COMMUNITY-BASED CONTINUUM CARE AND OPPORTUNITY (2019), https://www.urban.org/sites/default/files/publication/100013/innovative_strategies_for_investing_in_youth_justice_1.pdf [<https://perma.cc/5EJ6-TANY>].

355. *Id.* at 6.

356. *Id.* at 7.

357. *Model Programs Guide - Glossary*, U.S. DEP’T OF JUST., OFF. JUV. JUST. & DELINQ. PREVENTION, <https://ojjdp.ojp.gov/model-programs-guide/resources/glossary#07byc> [<https://perma.cc/B4TT-N8KP>] (last visited Nov. 16, 2023) [hereinafter *OJJDP Glossary*].

358. Investments in schools should be directed toward creating positive, non-punitive environments staffed by trustworthy adults. See generally MELISSA CORETZ GOEMANN, NAT’L JUV. JUST. NETWORK, MAPPING TRANSFORMATIVE SCHOOLS: FROM PUNISHMENT TO PROMISE (Dec. 2022), https://www.njjn.org/uploads/digital-library/NJJN_Mapping-Transformative-Schools_FINAL_1222_WEB.pdf [<https://perma.cc/3Y59-6873>].

359. See, e.g., NURSE-FAM. P’SHIP, NURSE-FAMILY PARTNERSHIP OVERVIEW: GENERAL INFORMATION (2023), <https://www.nursefamilypartnership.org/wp-content/uploads/2022/03/Nurse-Family-Partnership-Overview-2.pdf> [<https://perma.cc/K8TQ-SL8G>] (“Nurse-Family Partnership succeeds by having specially educated nurses regularly visit first-time moms, starting early in the pregnancy and continuing until the child’s second birthday. Research consistently proves that the partnership between a nurse and the mom is a winning combination that makes a measurable, long-term difference for the whole family.”); *Practice Profile: Preventive Child Maltreatment Programs*, CRIME SOLUTIONS, NAT’L INST. OF JUST. (Oct. 9, 2019), <https://crimesolutions.ojp.gov/ratedpractices/93#mam> [<https://perma.cc/3Q6L-CHQG>] (“Preventive child maltreatment programs are designed to prevent physical child abuse or neglect by educating expectant and new parents in parenting skills, coping with stressors, and stimulating child development.”).

penetrating further into the juvenile justice or child welfare systems,”³⁶⁰ may include restorative justice programs as alternatives to traditional court processing³⁶¹ and mobile crisis units as mental health-informed alternatives to police involvement.³⁶² Opportunities should be geared toward prosocial development and enrichment, with programs for civic engagement and service learning, as well as recreational activities in sports and the arts.³⁶³ Community development “draw[s] a more direct connection between meeting basic needs and broader safety and stability” through investments in areas like infrastructure, affordable housing, nutrition, and transportation.³⁶⁴ This is “an important precursor to other programs and services, since lacking basic resources . . . can preclude participation in other activities, services, and programs.”³⁶⁵ The supports category emphasizes relationships and resiliency.³⁶⁶ It may include mentoring,³⁶⁷ life skills programs, trauma recovery programs,³⁶⁸ and family respite services.³⁶⁹ Finally, treatment programs address physical health, mental health, and substance abuse issues.³⁷⁰ This category also includes family therapy, which has proven to be

360. See *OJJDP Glossary*, *supra* note 357357.

361. Restorative justice “focus[es] on repairing the harm caused by an offense rather than solely ascertaining guilt and punishing the person responsible. These programs may involve mediation or a conferencing process led by expert facilitators where the youth, victim, and important people in their lives meet to discuss the harm caused by the offense and craft a plan to repair the harm and to provide the young person with support and assistance to reduce the likelihood of reoffending.” EFFECTIVE ALTERNATIVES, *supra* note 353, at 10.

362. WHITNEY BUNTS, CTR. FOR L. & SOC. POL’Y, YOUTH MOBILE RESPONSE SERVICES (2022), https://www.clasp.org/wp-content/uploads/2022/01/Youth-Mobile-Response-Services_0.pdf [<https://perma.cc/B987-DN7Y>].

363. HARVELL ET AL., *supra* note 354, at 6–8.

364. *Id.* at 11–12 (“Youth involved in the justice system disproportionately come from communities that have experienced long-standing underinvestment . . . Investing in programming without addressing these larger structural barriers can reduce the value of the programming or even be counterproductive. For example, youth may not be able to take advantage of mentoring or job-readiness programs if they do not have access to transportation.”).

365. *Id.* at 11.

366. *Id.* at 6.

367. See generally STEPHANIE HAWKINS ET AL., NAT’L MENTORING RES. CTR., MENTORING FOR PREVENTING AND REDUCING DELINQUENT BEHAVIOR AMONG YOUTH (Feb. 2020), https://nationalmentoringresourcecenter.org/wp-content/uploads/2021/03/Mentoring_for_Preventing_and_Reducing_Delinquent_Behavior_Among_Youth_Research_Review.pdf [<https://perma.cc/335U-P59X>].

368. HARVELL ET AL., *supra* note 354, at 6.

369. “Respite care provides parents and other caregivers with short-term child care services that offer temporary relief, improve family stability, and reduce the risk of abuse or neglect. Respite can be planned or offered during emergencies or times of crisis.” *Respite Care Programs*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/preventing/prevention-programs/respite/> [<https://perma.cc/9ALV-ZCFS>] (last visited Nov. 16, 2023).

370. HARVELL ET AL., *supra* note 354, at 6–7.

extremely effective in improving outcomes for children who would otherwise be incarcerated.³⁷¹

2. Residential Placement

While the “overwhelming majority” of juvenile offenders can be safely and successfully rehabilitated in their own communities, the very few children who pose a clear and present threat to the public may still require out-of-home placement.³⁷² Even (or perhaps especially) in these rare cases, placement in a facility like Hickey does more harm than good, exacerbating the issues that lead these children to commit crimes in the first place and increasing the chances that they will reoffend later on.³⁷³

In sharing her observations of JDFs across the country, Nell Bernstein wrote:

Nowhere in my travels did I find . . . a “best practice” for keeping children away from home and community and in the care of strangers . . . I saw excellent programs, carefully planned and adequately funded, staffed by wise and warmhearted people. But even in the best of these, I never felt I’d stumbled upon the secret blueprint: the facility that, if replicated, could elevate our nation’s juvenile justice system to meet, or even approach, its stated goals.³⁷⁴

To develop a more humane and effective version of residential placement for the exceedingly few children who truly need it, Maryland should look to the state of Missouri, whose residential programs have been nationally lauded.³⁷⁵ However, decisionmakers must take care not to confuse a model that should only be used in extreme circumstances with a “secret blueprint” that can turn out-of-home placement into an acceptable measure of first resort. Notably, the positive conditions associated with the “Missouri Model”

371. See BERNSTEIN, *supra* note 120, at 275.

Multisystemic Therapy (MST) is an intensive three- to five-month process designed for serious juvenile offenders and their families. Specially trained therapists meet their clients where they are—at home, at school, and elsewhere in the community. The thinking behind this is to help young people navigate the world in which they live, rather than removing them from it. . . . A range of studies has found that MST reduces subsequent arrests between 25 and 70 percent. Functional Family Therapy (FFT) is similar in principle to MST. The main difference is that FFT therapists work with young people and their family members in their own offices rather than clients’ homes and neighborhoods. Both programs share the aim of stabilizing a young person within, and along with, her family, and a strong focus on communication and conflict management. . . . As researcher Richard Mendel points out, “the most favorable real-world outcomes have occurred when MST and FFT are employed as an alternative to incarceration or other residential placements.

Id. at 276–77.

372. *Remove Youth from Facilities.*, *supra* note 302.

373. BERNSTEIN, *supra* note 120, at 9–10.

374. *Id.* at 309.

375. See *Award: Division of Youth Services*, HARV. KENNEDY SCH. ASH CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION (Jan. 1, 2008), <https://ash.harvard.edu/news/division-youth-services> [<https://perma.cc/SYA4-FVNE>].

rely on facilities being small, which, in turn, hinges on an overall reduction in the population of youths sentenced to confinement.³⁷⁶ Thus, the model's success in Maryland would require zealous implementation of non-residential programs and services.³⁷⁷

The Missouri Model is premised on six core characteristics.³⁷⁸ First, youths are placed in small, comfortable facilities close to their homes and families.³⁷⁹ Missouri's Department of Youth Services ("DYS") implements this hyperlocal approach by dividing the state into five regions, each of which has its own four-level system of facilities based on risk level and treatment needs.³⁸⁰ Second, the treatment process combines group therapy and activities with individualized case management, sparing youths from the intense loneliness that is common in JDFs and giving them the opportunity to grow together.³⁸¹ Third, highly trained staff members keep children safe with "eyes-on, ears-on, hearts-on supervision"³⁸² and interpersonal accountability, rather than violent restraints and isolation.³⁸³ Fourth, DYS seeks to help youths develop tools for communication, problem-solving, and emotional regulation, as well as academic and pre-vocational skills.³⁸⁴ Fifth, families remain systematically engaged and play an integral role in every step of the treatment process.³⁸⁵ Finally, DYS ensures that children maintain and build upon their progress after release by developing detailed aftercare plans and providing continued access to service coordinators and community-based mentors.³⁸⁶

Missouri taxpayers pay \$96,159 to confine one youth in a DYS facility for one year.³⁸⁷ This is still an exorbitantly high cost, and the fact that eight DYS facilities operate below fifty-percent capacity shows that there is ample opportunity for further downsizing.³⁸⁸ However, this level of spending pales in comparison to the nearly half a million dollars Marylanders spend to send

376. THE MISSOURI MODEL, *supra* note 301, at 3, 5.

377. *See supra* Part IV.A.1.

378. THE MISSOURI MODEL, *supra* note 301, at 13.

379. *Id.* at 15.

380. *Id.* at 15–20.

381. *Id.* at 20–25.

382. *Who We Are*, MO. DIV. OF YOUTH SERVS., THE MO. APPROACH, <http://missouriapproach.org/> [<https://perma.cc/38AS-9M8Q>] (last visited Nov. 16, 2023).

383. THE MISSOURI MODEL, *supra* note 301, at 25–31.

384. *Id.* at 31–33.

385. *Id.* at 33–35.

386. *Id.* at 35.

387. *Youth Incarceration in Missouri*, NO KIDS IN PRISON, <https://www.nokidsinprison.org/explore/missouri> [<https://perma.cc/WJT3-X7EA>] (last visited Nov. 18, 2023).

388. *Id.*

one child to Hickey for a year,³⁸⁹ especially considering the difference in quality of conditions and outcomes.³⁹⁰

B. What Will Happen to the Vacant Facility?

The question of what to do with Hickey's physical plant once it closes presents both complications and opportunity. If the facility is left vacant and unchanged, Maryland and its taxpayers will have to pay for its ongoing maintenance while getting nothing out of it.³⁹¹ Failing to convert it and actively use it for a new purpose also preserves the possibility of reopening it as a new correctional facility, which would effectively undo all of the efforts made to close Hickey in the first place.³⁹²

Looking to examples set by other states, Maryland can repurpose the facility in a way that will have a positive impact on the surrounding community. For instance, the Al Price Juvenile Correctional Facility in Beaumont, Texas will be transformed into a "one-stop shop for social services," with initiatives including a "faith-based recovery program; vocational training; a drop-in center for veterans; a health center with volunteer chiropractors, dentists, and doctors; sports programs for at-risk youth; GED classes; and dorms for veterans returning from service," as well as several affordable mobile housing communities.³⁹³ Instead of repurposing the facility, Maryland can also consider leveraging the value of the land to fund community-based resources.³⁹⁴

CONCLUSION

As one of the nation's oldest juvenile detention facilities, the Charles H. Hickey, Jr. School developed alongside the American juvenile justice system itself. On parallel tracks, Hickey and every JDF like it have demonstrated time and time again that they primarily serve to cause further harm to children

389. See DJS 2022 DATA, *supra* note 295, at 213.

390. See THE MISSOURI MODEL, *supra* note 301, at 4–12.

391. HANNA LOVE ET AL., TRANSFORMING CLOSED YOUTH PRISONS: REPURPOSING FACILITIES TO MEET COMMUNITY NEEDS 3–4 (2018), https://backend.nokidsinprison.org/wp-content/uploads/2019/02/transforming_closed_youth_prisons.pdf [<https://perma.cc/BC29-XGJT>]; see, e.g., Sarah Fowler, *Walnut Grove Prison Sits Empty. Could Reopening It Save Mississippi Millions?*, CLARION LEDGER (Jan. 10, 2019, 9:41 AM), <https://www.clarionledger.com/story/news/2019/01/10/could-reopening-walnut-grove-correctional-facility-save-ms-millions/2464400002/> [<https://perma.cc/YM4X-D9QA>] ("Twenty-four hours a day, seven days a week, two guards are on duty at Walnut Grove Correctional Facility in Leake County. Electricity runs throughout the 376,000 square-foot space. . . . While the inmates have been gone since the state closed the facility in 2016, Mississippi taxpayers are still paying \$97.4 million the state owes on the facility and related services.").

392. See LOVE ET AL., *supra* note 391, at 1.

393. *Id.* at 7.

394. See HARVELL ET AL., *supra* note 354.

who are already vulnerable. Matters of financial prudence and carceral philosophy weigh in favor of ending the JDF experiment for good, but the most important reason why Hickey must be closed is also the simplest: no one should be living in such deplorable conditions—especially not children, and especially not when better options exist. The state of Maryland has invested countless dollars and 167 years into attempting to fix a facility and a system that are unfixable. What would happen if it invested in our children and communities instead?