

WHERE DRUGS ARE INVOLVED,  
UNIVERSITIES OFFER EDUCATION AND  
REHABILITATION, WHILE THE JUVENILE  
JUSTICE SYSTEM OFFERS DETENTION AND  
PUNISHMENT: WHY JUVENILE DRUG  
COURTS ARE THE ANSWER

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## I. INTRODUCTION

While some jurisdictions have started to implement juvenile drug courts into the juvenile justice system, they are limited in both capacity and number. Yet, as suggested by the success rate and future prosperity of individuals that have entered the program, they have proven to be successful. Additionally, the reality of the situation is that the juvenile justice system has placed an emphasis on a punitive model.<sup>1</sup> However, this fails to take into consideration the effectiveness that a rehabilitative approach may pose when handling juveniles within the juvenile justice system who are in the system for drug related offenses and suffer from substance abuse problems.<sup>2</sup>

In order to have a clearer understanding of the power that such a system may have in society today, it is important to recognize how non-criminal related establishments handle these issues. College campuses are a prime example of a system that comes into contact with young individuals and drugs on a frequent basis. Today, many campuses have established educational programs and rehabilitation programs to cope with the increasing number of substance abusing students. However, the juvenile justice system has failed to adequately do the same despite the success that has been shown by the limited number of juvenile drug courts already in place.<sup>3</sup> Although one may argue that simply getting rid of the system of juvenile drug related charges may be suitable, this approach seems unlikely to be implemented. First, it has been acknowledged that the Fourth Amendment and privacy laws

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<sup>1</sup> JEFFREY M. JENSON, YOUTH CRIME, PUBLIC POLICY, AND PRACTICE IN THE JUVENILE JUSTICE SYSTEM: RECENT TRENDS AND NEEDED REFORMS, SOCIAL WORK, 324, 325 (1991), <https://doi.org/10.1093/sw/43.4.324>.

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

<sup>3</sup> Denise C. Gottfredson et al., *How Drug Treatment Courts Work: An Analysis of Mediators*, 44 J. RES. CRIME & DELINQUENCY 3, 3 (2007).

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limit the amount of necessary drug related arrests.<sup>4</sup> As a result, only a small percentage of actual drug offenses are handled.<sup>5</sup> Juvenile courts have reported that they have handled only about three percent of all the “actual” fifteen-year-old drug offenders each year.<sup>6</sup> This information is gathered by taking into consideration all fifteen-year-olds that have used illegal drugs in relation to those that have been prosecuted for this type of offense.<sup>7</sup>

Taking the information discussed into consideration, the issue arises of why the juvenile justice system would not simply avoid prosecuting those specific individuals. There are many reasons that have been articulated addressing this issue, but, most importantly, it is crucial to understand that the odds of a particular youth being involved in the justice system varies depending on political decisions and structural disparities which heavily interplay in the level of resources available for prosecution in various communities.<sup>8</sup> Further, issues arise in various communities that affect a juvenile’s ability to avoid the juvenile justice system, issues that will be addressed below. Additionally, those same factors may have an impact on why a rehabilitative approach within the juvenile justice system may be more adequate than simply withholding a system altogether, in the sense that communities of lower socioeconomic class may not have access to rehabilitative measures as would be offered at prestigious universities. Therefore, the solution may not arise where prosecution is completely withheld; rather, the solution may lie with juvenile drug courts, which can provide an opportunity for rehabilitation for certain individuals as are available to individuals on college campuses, where such limitations are not present.

Below is a story to explain just how significant of an impact these juvenile drug courts may have. After struggling with substance abuse his whole life, Henry was admitted to drug court in Cole County, where he finally became clean.<sup>9</sup> When being interviewed about his experience, he stated that the key to success for any individual with substance addiction is changing one’s environment.<sup>10</sup> He further expressed that to be successful one must

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<sup>4</sup> REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 50 (Richard J. Bonnie et al. eds., 2013) [hereinafter REFORMING JUVENILE JUSTICE].

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

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

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

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

<sup>10</sup> *Drug Court Participants Work to Avoid Relapse*, NEWS TRIBUNE (Apr. 28, 2014, 12:15 AM), <https://www.newstribune.com/news/news/story/2014/apr/28/drug-court-participants-work-avoid-relapse/500342/>.

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“make sure that people around are supportive, if not you’ll have a hard time with your sobriety.”<sup>11</sup>

This quote is supported by a young girl’s success story; she was placed in Cole County, Missouri Juvenile Drug Court while struggling with drug addiction and was facing being sent to a detention facility for an extended stay.<sup>12</sup> Luckily, she was accepted into the drug court program despite the court’s judgement of unlikely success.<sup>13</sup> Her father failed to bring her to court reviews and she was frequently absent because of his failure to assist her.<sup>14</sup> She then participated in a sixty-day in-patient program, where she, someone who had failed to excel academically in the past, thoroughly engaged in school and in treatment.<sup>15</sup> Upon her release, as opposed to moving back with her father, she moved in with her aunt, who enforced rules heavily and made sure her niece attended school. Eventually, she was recommended to graduate from drug court.<sup>16</sup> Contrary to her own beliefs and the beliefs of those around her, became a straight-A student and even graduated from high school a semester early.<sup>17</sup>

These two stories shed some light on the impact that juvenile drug courts can have. Drug courts, as implemented today, provide intensive rehabilitation programs for drug involved offenders in the juvenile justice system.<sup>18</sup> The juvenile drug court system provides both intensive judicial supervision and community based interventions, which provide support from one’s family and community while in the program.<sup>19</sup> The program provides local officials with the discretion to set criteria regarding eligibility for drug court.<sup>20</sup> Commonly, the local district attorney’s office approves the juvenile’s legal eligibility.<sup>21</sup> The legal eligibility for admission into the drug court depends on the type of offense and age of the juvenile.<sup>22</sup> Drug courts

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<sup>11</sup> *Id.*

<sup>12</sup> Jacqueline van Wormer & Faith Lutze, *Exploring the Evidence: The Value of Juvenile Drug Courts*, JUVENILE & FAMILY JUSTICE TODAY (2011), <http://www.courtsv.gov/lower-courts/juvenile-drug/Exploring-the-Evidence.pdf>.

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

<sup>14</sup> *Id.*

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

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

<sup>17</sup> *Id.*

<sup>18</sup> Caroline S. Cooper, U.S. Dep’t of Justice, Office of Juvenile Justice & Delinquency Prevention, *Juvenile Drug Court Programs*, JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANTS PROGRAM: BULLETIN, May 2001, at 3, <https://www.ncjrs.gov/pdffiles1/ojjdp/184744.pdf>.

<sup>19</sup> Shelli Bailer Rossman et al., *What Juvenile Drug Courts Do and How They Do It*, in JUVENILE DRUG COURTS AND TEEN SUBSTANCE ABUSE 55, 57 (Jeffrey A. Butts & John Roman eds., 2004).

<sup>20</sup> Cooper, *supra* note 18, at 4.

<sup>21</sup> Cheryl L. Asmus et al., *Juvenile Drug Courts*, in DRUG COURTS: A NEW APPROACH TO TREATMENT AND REHABILITATION 263, 264, (James E. Lessenger et al., eds., 2007).

<sup>22</sup> *Id.*

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typically hear cases of drug related offenses though some drug courts have accepted juveniles with substance abuse problems, even when the charge itself is not drug related.<sup>23</sup>

As a result, states vary on eligibility requirements for juveniles being admitted to drug court.<sup>24</sup> Although some state juvenile drug courts have proven to be better than others, this Note does not focus solely on which state courts have gotten it right. Rather this Note proposes that all states adopt certain features of juvenile drug courts that are essential to a fair system in order to better handle the issues presented by substance abuse in the juvenile justice system.

As currently implemented, drug courts are not sufficient to deal with the vast number of juvenile offenders who have substance abuse related problems.<sup>25</sup> First, drug courts are limited in number since not all jurisdictions have incorporated drug courts into their juvenile justice system. This Note argues that implementation of juvenile drug courts should be in all jurisdictions, with mandatory referrals for eligible participants. However, there are limitations to the ability for all states to adopt and implement a fair system of drug courts. Most notable are the issues of funding and feasibility.<sup>26</sup> Additionally, the juvenile justice system generally has grappled between whether a punitive approach or a rehabilitative approach in the juvenile justice system is more suitable.<sup>27</sup> Due to the limitations with state-wide implementation of juvenile drug courts, this Note proposes that at the very least all states that have previously adopted juvenile drug courts should enforce that all referrals to juvenile drug court be mandatory where one is being prosecuted for a drug related offense.

Drug courts are also limited in scope. States vary on their requirements for admittance into drug courts and methods of accepting juveniles into the program.<sup>28</sup> Although no juvenile drug courts permit violent juvenile offenders to enter, some are more accepting of certain categories of crime and juvenile offenders than others.<sup>29</sup> Regardless of the system that states have chosen, this Note advocates that within the class of individuals who are eligible for acceptance into the program, the court should mandatorily enforce that such individuals enter the program. Therefore, this would broaden the scope of the program, in that more juveniles, who are deemed

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<sup>23</sup> *Id.*

<sup>24</sup> 34 U.S.C. § 10611 (2018).

<sup>25</sup> Carrie Camarena, *Inside Juvenile Drug Courts: The Recent Trend in Dealing with Juvenile Substance Abuse*, 4 U.C. DAVIS J. JUV. L. & POL'Y 20, 20 (2000).

<sup>26</sup> *Id.*

<sup>27</sup> Gottfredson, *supra* note 3, at 49–50.

<sup>28</sup> Camarena, *supra* note 25, at 21.

<sup>29</sup> *Id.* at 26–27.

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eligible will be accepted into the program. As a result, this would deal with the limitations that have been placed on the system due to its narrowness in scope.

Today, although some juveniles have the opportunity to enter the drug court system, the juvenile justice system as a whole takes a punitive approach to dealing with juvenile offenders.<sup>30</sup> Upon its origin, the juvenile justice system was established in order to encourage rehabilitation based on the individual's needs rather than imposing severe punishments such as those seen in adult criminal courts.<sup>31</sup> During the progressive era, juvenile court systems operated under a philosophy of *Parens Patriae*.<sup>32</sup> *Parens Patriae* was articulated in *Prince v. Massachusetts*,<sup>33</sup> which held that states should act "as a parent" and gave courts the power to intervene and thus, serve the best interest of the child.<sup>34</sup> Such a philosophy was established due to a rising fear that children entering the criminal justice system were being integrated into a life of criminality.<sup>35</sup>

However, in the mid-1980s, due to the rise in violent crime, state legislatures diverted from a rehabilitating method to a system of punishment.<sup>36</sup> Due to the rise in public safety concerns and the desire of society to hold offenders accountable, the system became fairly punitive.<sup>37</sup> Thus, the rehabilitative approach was diminishing, and the opportunity that juveniles were being presented in their futures, too, began to greatly diminish.

The current trend reflects a punitive approach despite widespread support for a rehabilitative one.<sup>38</sup> The rationale for a punitive approach stems from the public's concern for safety.<sup>39</sup> Yet, proponents of a rehabilitative approach, as well as the Supreme Court, in three notable decisions,<sup>40</sup> point to the limitations of a juvenile's decision-making capacity and the effects of socialization on the juvenile offenders and to argue that a punitive approach

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<sup>30</sup> *Id.*

<sup>31</sup> NATIONAL RESEARCH COUNCIL & INSTITUTE OF MEDICINE, *JUVENILE CRIME, JUVENILE JUSTICE* 154, (Joan McCord et al., eds. 2001) [hereinafter *JUVENILE CRIME, JUVENILE JUSTICE*].

<sup>32</sup> *Id.*

<sup>33</sup> 321 U.S. 158, 176 (1944).

<sup>34</sup> *History of the Juvenile Justice System*, FINDLAW, <https://criminal.findlaw.com/juvenile-justice/development-of-the-juvenile-justice-system.html> (last visited Jan. 17, 2019).

<sup>35</sup> *Id.*

<sup>36</sup> JENSON, *supra* note 1, at 328.

<sup>37</sup> *Id.* at 324.

<sup>38</sup> Linda F. Giardino, *Statutory Rhetoric: The Reality Behind Juvenile Justice Policies in America*, 5 *J.L. & POL'Y* 223, 224 (1996).

<sup>39</sup> JENSON, *supra* note 1, at 324.

<sup>40</sup> See *Rooper v. Simmons*, 543 U.S. 551; *Miller v. Alabama*, 567 U.S. 460; *Graham v. Florida*, 560 U.S. 48.

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may not be adequate.<sup>41</sup> Regardless of this support, the juvenile justice system as implemented today emphasizes a greater concern for public safety rather than a focus on the need to address the issues faced by juvenile offenders.<sup>42</sup> However, the issues that arise from concerns with public safety are greatly impacted by society's perception of what an offender looks like. Thus, this Note will discuss the impact that stereotyping and racial bias have on a juvenile's status as offender. More importantly, this Note will provide a comparative analysis of the juvenile justice system's method of punishment in contrast to the educational and rehabilitative efforts that have been implemented by universities in dealing with individuals facing substance abuse. This all suggests the impact that society plays in the juvenile justice system and why it is necessary to have reform in the system today.

Although this Note advocates for reform that will address the issues faced by juvenile offenders, it will also indirectly deal with the issues that arise from society's concern with inadequate public safety stemming from society's perception of juvenile delinquency due to stereotypes and racial bias. This Note proposes amendments to an already existing plan, the juvenile drug court system, which will not only provide for the needs of a juvenile offender and thus, provide rehabilitation, but will also reduce the population of repeat offenders in the future. Since repeat offenders make up a majority of the criminal justice system,<sup>43</sup> this strategy will deter criminal behavior in the future, and as a result combat public safety concerns. Additionally, in advocating for a rehabilitative approach to dealing with juvenile offenders, this Note specifically focuses on juvenile drug court reform, since the system is already in existence and has proven successful. Overall, this Note argues for mandatory referrals of and participation by juvenile offenders, with substance abuse issues, to juvenile drug courts as a necessary measure in society today.

Part I presents the history of the juvenile justice system, discusses the history of the juvenile drug court system, provides a comparative assessment of using a rehabilitative versus a punitive approach to juvenile justice, and addresses the rationale for establishing juvenile drug courts. Additionally, Part I presents current issues relevant to understanding the need to incorporate a rehabilitative approach in dealing with certain categories of juvenile offenders. Part II introduces the impact that community and upbringing have on a juvenile offender and the continuing inadequacy of the

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<sup>41</sup> REFORMING JUVENILE JUSTICE, *supra* note 4, at 58.

<sup>42</sup> Gottfredson, *supra* note 3, at 51.

<sup>43</sup> Brandon Gaille, *21 Juvenile Repeat Offender Statistics*, BRANDONGAILLE SMALL BUSINESS & MARKETING ADVICE (May 20, 2017), <https://brandongaille.com/20-jvenile-repeat-offenders-statistics/>.

juvenile justice system to address these concerns, despite Supreme Court decisions emphasizing juvenile incapacity.

Part III begins with the limitations of the juvenile justice system, the racial disparities presented by such a system and the comparison of such a system to dealings of substance abuse issues and punishments on college campuses. Part III also presents a comparative analysis of existing practices in the juvenile drug court system, particularly mandatory referrals, and concludes that mandatory referral to drug courts for eligible offenders are both, necessary and suitable. Part III also addresses the role of substance abuse issues among juvenile offenders, specifically focusing on the impact that socialization and socioeconomic status has on substance abuse tendencies and why the juvenile drug court system is crucial to dealing with these issues.

Part IV concludes that despite the limitations of drug courts, juvenile drug courts may evolve to solve problems associated with (1) recidivism, by deterring juveniles from eventually entering the criminal justice system, and (2) public policy concerns of public safety, by providing juvenile offenders with the resources to alter their status in society, limiting potential threats to society.

## II. INTRODUCTION TO THE PUNITIVE APPROACH OF THE JUVENILE JUSTICE SYSTEM AND THE BEGINNING OF JUVENILE DRUG COURTS

Understanding the history of the juvenile justice system and the effect that the juvenile justice system's punitive approach has on juvenile offenders is crucial to understanding the need for a rehabilitative approach within the system. Where individuals are placed under a punitive system, they are less likely to address those issues that might have caused or influenced their behavior in the first place.<sup>44</sup> A juvenile offender's ability to change their behavior often depends on placement in some sort of rehabilitation program, specifically where drugs are involved in the offense or are a contributing factor to the offending.

Part I. A focuses on the history of the juvenile justice system. Part I.B discusses the juvenile drug court system throughout history. Part I.C discusses the current practices and benefits of Juvenile Drug courts. Part I.D references the tradeoff between a punitive approach and a rehabilitative approach.

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<sup>44</sup> *Id.*



*A. History of The Juvenile Justice System*

The juvenile justice system was originally established under a rehabilitation methodology.<sup>45</sup> The original system was designed to serve the best interest of the child by addressing the needs of each child individually.<sup>46</sup> Specifically, the purpose of the juvenile justice system was not to punish the individual, which was the approach used in the adult criminal justice system, but rather to deter juveniles from entering a life of criminality.<sup>47</sup> On the contrary, today the juvenile justice system has transitioned into a punitive system, parallel to the adult criminal justice system, and jurisdictions have included public safety, accountability and punishment as the primary purposes of their juvenile laws.<sup>48</sup>

During the progressive era, juvenile court systems operated under a philosophy of *Parens Patriae*. *Parens Patriae* was articulated in *Prince v. Massachusetts*, which held that states should act “as a parent” and gave courts the power to intervene to serve the best interest of the child.<sup>49</sup> There, the Court recognized “that the state has a wide range of power for limiting parental freedom and authority in things affecting the child’s welfare.”<sup>50</sup> This recognition was premised on the notion that although a parent has a fundamental right to direct the upbringing of his child, this right is not absolute.<sup>51</sup> The Court found that where an action concerning the child relates either to the public welfare or the well-being of the child, the state may promote those interests.<sup>52</sup> The Court argued that children are developmentally different from adults and require the State’s attention and guidance to address the problems associated with their behavior.<sup>53</sup> Applying this rationale, the Court found a right of the State, the right to intervene in situations where the juvenile needed help on their life circumstances or their delinquent acts.<sup>54</sup> The Court sought to provide protective supervision for youth and thus established a system of rehabilitation.<sup>55</sup> This informal process provided the judge with a lot of discretion in handling each individual case.<sup>56</sup> As a result of the discrepancies among judges in handling similar cases and

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<sup>45</sup> Giardino, *supra* note 38, at 236.

<sup>46</sup> *Id.* at 245.

<sup>47</sup> *Id.* at 245–246.

<sup>48</sup> *Id.*

<sup>49</sup> *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

<sup>50</sup> *Id.* at 167.

<sup>51</sup> *Bykofsky v. Borough of Middletown*, 401 F.Supp. 1242, 1246 (1975).

<sup>52</sup> *Id.* at 1247.

<sup>53</sup> *Prince*, 321 U.S. at 158.

<sup>54</sup> JUVENILE CRIME, JUVENILE JUSTICE, *supra* note 31, at 154.

<sup>55</sup> *Id.* at 24.

<sup>56</sup> *Id.* at 23.

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the voluntary aspect of the program, in 1960 the Supreme Court began to formalize juvenile courts, introducing more due process protections, such as right to counsel.<sup>57</sup>

This development led to the establishment of two types of systems with regards to dealing with juveniles: (1) the child welfare system and (2) the juvenile justice system, as suggested by New York legislation.<sup>58</sup> The child welfare system permits the courts to intervene where there is abuse or neglect by the parents.<sup>59</sup> Meanwhile, the juvenile justice system is a method of punishing juvenile offenders.<sup>60</sup> Due to the progression towards two separate systems, juvenile courts have failed to adequately take into account those considerations that are paramount in the child welfare system, which should be considered due to its effect on a juvenile's behavior.<sup>61</sup>

Originally, the juvenile justice system provided limited procedural safeguards for juvenile offenders, and in fact adopted an informal system with regards to such cases.<sup>62</sup> However, in 1967, the Supreme Court held in *In re Gault*, that although juveniles and adults may be treated differently, where juveniles are faced with adjudication of delinquency and incarceration, the court is required to enforce certain procedural safeguards under the Due Process Clause of the Fourteenth Amendment.<sup>63</sup> This holding resulted in a more formal process, which ultimately led Congress to adopt the Juvenile Justice and Delinquency Prevention Act ("Act") in 1974.<sup>64</sup> The purpose of this act was to encourage courts to consider the needs and best interests of the respondent as well as the need for protection of the community.<sup>65</sup> This worked to encourage states to take into consideration the condition and situation of each juvenile, while also protecting the public.<sup>66</sup> The Act further stipulated that age should be a mitigating factor with regards to sanctions.<sup>67</sup> Additionally, this law required that juveniles be tried solely in the juvenile justice system, which aimed to deter states from transferring juveniles to

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<sup>57</sup> *Id.*; see also, *In re Gault*, 387 U.S. 1 (1967).

<sup>58</sup> N.Y. FAM. CT. ACT § 301.1 (McKinney 1983) (establishing procedures to determine whether a person is a juvenile delinquent).

<sup>59</sup> *Id.*

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

<sup>61</sup> Giardino, *supra* note 38, at 230.

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

<sup>63</sup> *In re Gault*, 387 U.S. 1, 10 (1967).

<sup>64</sup> Juvenile Delinquency and Prevention Act, 42 U.S.C. § 5601 (1974) (current version at 34 U.S.C. § 11101 et seq. (2017)).

<sup>65</sup> *Id.*

<sup>66</sup> KRISTIN C. THOMPSON & RICHARD J. MORRIS, *JUVENILE DELINQUENCY AND DISABILITY* 62 (2016).

<sup>67</sup> 42 U.S.C. § 5601(1974) (current version at 34 U.S.C. § 11102 (2017))

adult courts.<sup>68</sup> Additionally, the system forbids juveniles under the age of fifteen years old from being transferred to adult courts altogether.<sup>69</sup> Lastly, the Act encouraged states to implement special treatment programs in addition to detention facilities.<sup>70</sup>

However, while the Act took many important steps, it delegated authority and discretion to the states to each create sufficient programs, with only minimal federal requirements.<sup>71</sup> As a result, the system moved from an indeterminate method of sentencing to a determinate method of sentencing.<sup>72</sup> The Advisory Committee required a system classifying crimes for purposes of establishing sentencing guidelines, but states were allowed to establish their own statutory maximum sentences.<sup>73</sup> Additionally, judges were given discretion to modify a sentence for legal and equitable reasons.<sup>74</sup> States further delegated the authority of juvenile justice to juvenile courts by permitting them to use very broad discretion in confinement decisions.<sup>75</sup> Due to the vast discretion and various delegations of authority, this approach caused unpredictability and has led to discriminatory practices in the system.<sup>76</sup> Additionally, due to Congress' focus on two key purposes in adopting the Act, courts varied in determining what means would achieve those ends.<sup>77</sup> Yet it still created a more juvenile-friendly system than that which followed.

As discussed, prior to the decision in *In re Gault*, taking New York for example, family court had heard cases under Article Seven of the Family Court Act.<sup>78</sup> However, as a result of the need for more expansive procedural safeguards, the state adopted Article Three of the Family Court Act, which governs all aspects of the juvenile delinquency proceeding, making these matters more akin to criminal matters.<sup>79</sup> Following this trend, in the mid-1980s, due to the rise in violent crime, state legislatures moved from a rehabilitation approach to a system of punishment, circumventing some aspects of the Act.<sup>80</sup> The purpose of juvenile courts was no longer to serve

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<sup>68</sup> 18 U.S.C. § 5032 (1996).

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

<sup>70</sup> 42 U.S.C. § 5614 (1974) (current version at 34 U.S.C. § 11114 (2018)).

<sup>71</sup> 42 U.S.C. § 5631 (1974) (current version at 34 U.S.C. § 11131 (2018)).

<sup>72</sup> David Jaffee, *Strategies for Prosecuting Juvenile Offenders*, 66 DOJ J. FED. L. & PRAC. 91, 91 (2018).

<sup>73</sup> 42 U.S.C. § 5633 (1974) (current version at 34 U.S.C. 11133 (2018)).

<sup>74</sup> *Id.*

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

<sup>76</sup> JUVENILE CRIME, JUVENILE JUSTICE, *supra* note 31, at 228.

<sup>77</sup> 34 U.S.C. § 10611 (2018).

<sup>78</sup> N.Y. FAM. CT. ACT § 711 (McKinney 1983).

<sup>79</sup> N.Y. FAM. CT. ACT § 301.1 (McKinney 1983).

<sup>80</sup> Camarena, *supra* note 25, at 6.

the best interest of the child, but rather to address public safety concerns and enhance offender accountability,<sup>81</sup> in effect heavily focusing on the second key purpose of the Act passed by Congress.<sup>82</sup> Not only did tougher laws make it easier for youths to be transferred to the adult criminal justice system, but institutional confinement for minor offenses increased.<sup>83</sup> This punitive approach is still in practice today.<sup>84</sup> Although some states and the U.S. Supreme Court have addressed certain issues regarding the treatment of juvenile offenders, which will be further explained below, the approach is still fundamentally punitive.

### *B. History of the Juvenile Drug Courts*

Since being introduced in the 1980s, Drug Courts have been widely implemented.<sup>85</sup> An interest in creating Drug Courts arose in response to various social and political factors, such as the “War on Drugs,” which led to an overwhelming number of drug offenders in the prison system.<sup>86</sup> Today, drug courts have grown nationally and have reported positive outcomes for offenders, including reduction in crime and drug use and lower levels of recidivism.<sup>87</sup> Additionally, drug courts have been shown to have cost saving effects on the justice system.<sup>88</sup>

Drug courts provide substance abuse treatment for nonviolent, drug-involved offenders upon consideration of certain factors.<sup>89</sup> The purpose of drug courts was to cope with the issues of recidivism by providing a structured system to reduce levels of substance abuse and crime while providing the offender with the capacity for integration into society by improving mental health, social connections and employment opportunities.<sup>90</sup> Although drug courts vary from state to state, there are certain key common features of drug courts.<sup>91</sup> These features include efficient modes of assessment for eligible offenders and a non-adversarial approach by defense and prosecution counsel.<sup>92</sup> Additionally, the drug court

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<sup>81</sup> N.Y. FAM. CT. ACT § 301.1 (McKinney 1983).

<sup>82</sup> *Id.*

<sup>83</sup> Camarena, *supra* note 25, at 1.

<sup>84</sup> JUVENILE CRIME, JUVENILE JUSTICE, *supra* note 31, at 232.

<sup>85</sup> Gottfredson, *supra* note 3, at 3.

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

<sup>87</sup> *Id.* at 4.

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

<sup>89</sup> Jeffrey A. Butts & John Roman, *What Juvenile Drug Courts Do and How They Do It*, in JUVENILE DRUG COURTS AND TEEN SUBSTANCE ABUSE 55–107 (Jeffrey A. Butts & John Roman, eds., 2004).

<sup>90</sup> *Id.* at 55.

<sup>91</sup> Gottfredson, *supra* note 3, at 4.

<sup>92</sup> *Id.*

system provides frequent drug and alcohol testing, status hearings, sanctions, and an intense rehabilitation program.<sup>93</sup>

This system proved to be effective for adults, and, as a result, Juvenile Drug Courts were established in the 1990s.<sup>94</sup> Despite many differences, juvenile drug courts implement the same theoretical approach as adult drug courts, promoting that “a therapeutic approach to alcohol or drug abuse and dependence is more effective than a punitive one.”<sup>95</sup> Although similar theoretical principles govern both adult and juvenile drug courts, there are certain features of juvenile drug courts that cater specifically to the needs of juveniles such as parental involvement.<sup>96</sup>

### C. *Current Practices of Juvenile Drug Courts and Benefits*

Juvenile drug courts are rehabilitation programs for drug involved offenders in the juvenile justice system.<sup>97</sup> The juvenile drug court system has adopted a system encompassing both intensive judicial supervision and community based interventions.<sup>98</sup> The program provides local officials with the discretion to set criteria regarding eligibility for drug court.<sup>99</sup> Commonly, the local district attorney’s office approves the juvenile’s legal eligibility.<sup>100</sup> The legal eligibility focuses on the type of offense and age of the juvenile.<sup>101</sup> Drug courts typically hear cases of drug related offenses including possession of drug paraphernalia, alcohol, and other drugs.<sup>102</sup> Lastly, drug courts have permitted juveniles who knowingly have a substance abuse problem even though the charge is not drug related such as with regards to theft.<sup>103</sup> However, violent offenders, sex offenders, or offenders involved in selling drugs for profit are not admitted for federal funding reasons and public safety concerns, as required by the federal grant of authority act regarding grants for juvenile drug courts.<sup>104</sup> Despite the limitations set forth by Congress, where juvenile drug courts are established with federal grants, states have been provided discretion in deciding these matters, and, thus, they vary.<sup>105</sup> However, to serve the purpose for which drug courts were created, the

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

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

<sup>95</sup> Asmus, *supra* note 21, in DRUG COURTS, *supra* note 21, at 263.

<sup>96</sup> Gottfredson, *supra* note 3, at 4.

<sup>97</sup> Cooper, *supra* note 18, at 4.

<sup>98</sup> REFORMING JUVENILE JUSTICE, *supra* note 4, at 57.

<sup>99</sup> Cooper, *supra* note 18, at 4.

<sup>100</sup> Butts, *supra* note 89, at 61.

<sup>101</sup> *Id.* at 57.

<sup>102</sup> *Id.* at 64.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

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

legislature, or at least the Department of Justice, should require that all non-violent juvenile offenders committing drug related offenses, including those related to alcohol, be mandatorily referred to drug court at a minimum where a state decides to implement drug courts.

Currently, states have imposed differing requirements for entry into the juvenile drug court system. Although some have proven to be better than others, this proposal is not focusing solely on which state courts have gotten it right, but rather imposes a nation-wide scheme of implementing successful juvenile drug courts to deal with the issues that juveniles dealing with substance abuse issues face. Thus, this proposal is addressing that certain mandatory federal requirements should be imposed for juvenile drug courts where a state chooses to implement drug courts. With regards to the juvenile's legal status in the drug court, currently, the juvenile can either be admitted presentence or post-sentence. A presentence admission serves as a pretrial diversion program.<sup>106</sup> There, no formal charges are filed, and, thus, there is no official court record of the case.<sup>107</sup> As a result, upon successful completion of the program, no charges are filed.<sup>108</sup> A post-sentence admission applies where the juvenile has pleaded guilty.<sup>109</sup> This type of admission provides the juvenile with the opportunity for rehabilitation instead of initially being committed to a detention center.<sup>110</sup>

The drug court system is one step the juvenile justice system has taken in order to incorporate some sort of rehabilitation program into the system.<sup>111</sup> However, the system is still deeply punitive, and the tradeoff between a punitive approach and a rehabilitative approach stems from society's perceptions of offenders and the issues regarding public safety.<sup>112</sup>

*D. The Tension Between a Punitive Approach and Rehabilitative Approach in the Juvenile Justice System*

The tension between society's concern for public safety and a juvenile's limited capacity have presented issues for the juvenile justice system.<sup>113</sup> As discussed above, throughout the history of the juvenile justice system the legislature has struggled with resolving this tension. On one hand, the juvenile justice system was established to provide a rehabilitation system for

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<sup>106</sup> *Id.* at 56.

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

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

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 55.

<sup>112</sup> 34 U.S.C. § 10611 (2018).

<sup>113</sup> JENSON, *supra* note 1, at 328.

juvenile delinquents.<sup>114</sup> On the other hand, the system has evolved to hold a juvenile offender accountable for his actions.<sup>115</sup> However, despite the arguments made in favor of a punitive approach, evidence suggests, as supported by the establishment of juvenile drug courts, that rehabilitation may have a significant impact on deterring children from future offenses, and, thus, reducing the recidivism rate.<sup>116</sup>

Professionals have argued that delinquents are destined for failure.<sup>117</sup> This argument provides a rationale for why rehabilitation programs may be most beneficial. These arguments have been supported by notions that juvenile delinquents poorly adjust as young adults.<sup>118</sup> However, a reasonable explanation for this trend is that they fail to obtain the education and training necessary to adjust, while most other young individuals gain the level of education and training necessary for their future achievements.<sup>119</sup> In a study conducted assessing juvenile offenders after release, only about thirty percent of young adults were engaged in either school or work within twelve months.<sup>120</sup> Additionally, only about twelve percent of formerly incarcerated adolescents received a high school diploma or General Equivalency Degree as young adults.<sup>121</sup>

What is publicized in the news is not reflective of these statistics, but rather suggests the fearful depiction of youth offenders. Thus, the public is not aware of the various problems that have impacted the juveniles' lives, and as a result have played a role in their delinquency. Further, the failure to provide juvenile offenders with the level of preparedness that is required for an adult to prosper, and instead locking them in detention facilities without addressing issues such as those related to substance abuse, inhibits their psychological development during adolescence, the most significant time for development, and thus leads them to such failure in the future.<sup>122</sup> Therefore, taking this into consideration, it is important to acknowledge the negative impact on a juvenile delinquent's overall well-being due to the public's perception and the punitive approach implemented, specifically with regards to the juvenile justice system.

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Laurence Steinberg, *Reentry of Young Offenders from the Justice System: A Developmental Perspective*, YOUTH VIOLENCE AND JUVENILE JUSTICE, Jan. 1, 2004, at 19.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 22.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 24.

### III. THE IMPACT OF COMMUNITY AND UPBRINGING ON A JUVENILE OFFENDER AND THE CONTINUING INADEQUACY OF THE JUVENILE JUSTICE SYSTEM TO ADDRESS THESE CONCERNS DESPITE SUPREME COURT DECISIONS EMPHASIZING JUVENILE INCAPACITY.

The history of the juvenile justice system and the punitive approach articulated above plays a role in the handling of juvenile offenders. Today, however, the system as implemented has failed to address certain issues that lead juveniles to partake in delinquent behavior. Contrary to the original notion that the juvenile justice system should take a rehabilitative approach in handling juveniles, an approach that is necessary to dealing with adolescents, the system has turned to punishment.<sup>123</sup> This in turn has played a significant role in why juveniles tend to become repeat offenders and eventually mark their place in the criminal justice system.<sup>124</sup>

The system as it is today fails to address the background of juveniles and the leading causes of their delinquent behavior. In three major Supreme Court decisions, the Court has held that juveniles have limited capacity and, therefore, should not face certain categories of punishments.<sup>125</sup> However, this has not lead Congress to change the system holistically.

Part II.A of this section focuses on the Supreme Court's acknowledgement that youth have limited capacity. Part II.B focuses on the impact of a young person's socialization as a result of his upbringing, community, and social life. Part II.C focuses on the issues arising from the concern with public safety and stereotyping.

#### *A. Supreme Court's Acknowledgement That Youth Have a Limited Capacity*

The struggle between public safety, which encourages punitive measures, and a concern for a children's needs and their differences from adults, which encourages a rehabilitative approach was acknowledged in three Supreme Court decisions. In 2005, the Supreme Court issued a writ of certiorari to adjudicate *Rooper v. Simmons*.<sup>126</sup> There, the Supreme Court held that under the Eighth Amendment children who committed capital offenses under the age of eighteen could not be given the death penalty.<sup>127</sup> The Court

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<sup>123</sup> JENSON, *supra* note 1, at 328.

<sup>124</sup> *Id.*

<sup>125</sup> See *Rooper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012).

<sup>126</sup> *Rooper*, 543 U.S. at 551.

<sup>127</sup> *Id.* at 553.



referred to *Atkins*, which held that “capital punishment must be limited to those offenders who commit ‘a narrow category of the most serious crimes’ and whose extreme culpability makes them ‘the most deserving of execution.’”<sup>128</sup> In support of their decision, the Court emphasized that “juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.”<sup>129</sup> Therefore, the Supreme Court recognized the impact that socialization plays on a child’s delinquent behavior and rejected the death penalty.<sup>130</sup> This holding suggests the importance of dealing with less culpable individuals, such as juveniles, differently than with adults, and of preparing them for a successful re-entry into society.

A few years later, in 2010, the Supreme Court held in *Graham v. Florida* that the Eighth Amendment’s cruel and unusual punishment clause does not permit a juvenile offender to be sentenced to life in prison without parole for a non-homicide crime, establishing a categorical rule as in *Atkins* and *Rooper*.<sup>131</sup> The Court reasoned that this rule would provide a juvenile opportunity to demonstrate maturity and reform as opposed to permitting a judge to use discretion to determine which juveniles are mature enough to be held for life without parole, without considering that juveniles have the capacity to change.<sup>132</sup> Once again, the Supreme Court reiterated the differences between juveniles and adults, emphasizing that juveniles need to be afforded an opportunity to change.<sup>133</sup>

Eventually, in *Miller v. Alabama*, the Supreme Court extended the decision in *Graham*, holding that the Eighth Amendment forbids life in prison without the possibility of parole for juvenile homicide offenders.<sup>134</sup> The Court referred to its analysis in *Rooper* and *Graham*, that juveniles “‘lack of maturity’ and ‘underdeveloped sense of responsibility’” leads to recklessness, impulsivity, and heedless risk taking.”<sup>135</sup> Additionally, the Court emphasized that juveniles “‘are more vulnerable . . . to negative influences and outside pressures’ from their family and peers and as a result, don’t have the capacity to escape from crime-producing settings.”<sup>136</sup> Further, the court noted that allowing discretionary judgements without all the facts and circumstances is not justified, and, thus, a categorical rule is

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<sup>128</sup> *Id.* at 553.

<sup>129</sup> *Id.*

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

<sup>131</sup> *Graham v. Florida*, 560 U.S. 48, 81 (2010).

<sup>132</sup> *Id.* at 51

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

<sup>134</sup> *Miller v. Alabama*, 567 U.S. 460, 489 (2012).

<sup>135</sup> *Id.*; see also *Rooper v. Simmons*, 543 U.S. 551, 569 (2005).

<sup>136</sup> *Miller*, 567 U.S. at 489.

necessary.<sup>137</sup> The court refers to *Eddings*,<sup>138</sup> where a sixteen-year-old shot and killed a police officer.<sup>139</sup> There, the court invalidated the death sentence on the grounds that the judge did not consider evidence of his familial background, which provided that his mother was a drug addict and his father physically abused him, leaving the child to face serious emotional disturbance.<sup>140</sup> Therefore, the court held in *Miller* that “just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered in assessing his culpability.”<sup>141</sup>

These decisions suggest the significance of understanding the incapacities of a juvenile as well as understanding how these contribute to his delinquent behavior, specifically when it comes to more serious crimes.

### *B. The Impact of Socialization*

There are many issues that arise as a result of one’s community and one’s socialization including, a juvenile’s behavior resulting from circumstantial experiences, are especially important with regards to juveniles dealing with substance abuse problems. First, it is important to recognize that delinquent behavior often starts at home and persists.<sup>142</sup> Research has suggested that lack of parental supervision, parental rejection, and child abuse have a significant impact on juvenile delinquency.<sup>143</sup> Second, socioeconomic levels and community behavior additionally shapes a juvenile’s future. Juvenile delinquency has been linked to living in neighborhoods with drugs and firearms, adult joblessness, and adult criminal behavior.<sup>144</sup> Lastly, one’s likelihood of entering the juvenile justice system, as a result of upbringing and socialization, ultimately leads to hindered education levels,<sup>145</sup> and, thus, to more delinquency.<sup>146</sup> As a result of such hindrance, recidivism is more likely, since juveniles will re-enter the same

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<sup>137</sup> *Id.* at 2467.

<sup>138</sup> *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

<sup>139</sup> *Miller*, 567 U.S. at 489.

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

<sup>141</sup> *Id.*; see also *Eddings*, 455 U.S. at 115.

<sup>142</sup> JUVENILE DELINQUENCY: PREVENTION, ASSESSMENT, AND INTERVENTION 69 (Kirk Heilbrun et al., eds., 2005) [hereinafter JUVENILE DELINQUENCY].

<sup>143</sup> *Id.* at 70; see Marielsa Bernard, *Domestic Violence’s Impact On Children*, 36 MD. B. J. 10 (2003) (discussing the effects domestic violence has on children and their entry into the criminal justice system).

<sup>144</sup> David P. Farrington, *Early Predictors of Adolescent Aggression and Adult Violence*, 4 VIOLENCE AND VICTIMS 79, 79 (1989).

<sup>145</sup> Andrea J. Sedlak & Carol Bruce, U.S. Dep’t of Justice, *Youth’s Characteristics and Backgrounds: Findings from the Survey of Youth in Residential Placement*, JUV. JUST. BULL., Dec. 2010, at 7, <https://www.ncjrs.gov/pdffiles1/ojdp/227730.pdf>.

<sup>146</sup> JENSON, *supra* note 1, at 328.

community and lifestyle that initially contributed to their delinquency, and, as a result, reengage in similar delinquent behavior.<sup>147</sup> Eventually they will likely reenter the system, whether as an adult this time or as a juvenile, becoming a recidivist. This cycle significantly impacts the ability of juveniles to change their future and to redirect their path from a life of crime to a life of prosperity.

*C. Issues Arising From the Concern with Public Safety and Stereotyping*

Increasing public concern about the threat of youth crime has been a significant factor in the emergence of the punitive juvenile justice system.<sup>148</sup> Additionally, evidence suggests that the public's support for penal measures stems from the public's reaction to highly publicized crimes, such as school shootings.<sup>149</sup> However, there are many misconceptions about this rationale. It is important to understand the role that media has played in exacerbating the concern with public safety. The public reacts to what is publicized, which usually encompasses the most egregious of crimes by juveniles and, additionally, creates a racialized discourse around youth offenders.<sup>150</sup> Further, it has been suggested that "youth crime" has become coded language for "young black males."<sup>151</sup> The public's perception of the juvenile justice system has led to the discrepancy between the treatment of white offenders, whose actions are usually circumstantially justified such as by depression or social anxiety, and black offenders, who do not get the benefit of similar "excuses."<sup>152</sup> Instead, black offenders are negatively perceived by the public, and thus, are more likely to be held accountable for their actions.<sup>153</sup> As a result of these public perceptions and fears, juvenile delinquents are exposed to long-term, even lifelong, repercussions for their actions.

In fact, the public is generally unaware of the reality. The public sees what is publicized and is constantly influenced by the beliefs of their peers about a certain situation. Prior research has assessed the impact that media's

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

<sup>148</sup> Daniel S. Nagin et al., *Public Preferences for Rehabilitation Versus Incarceration of Juvenile Offenders: Evidence From a Contingent Valuation Survey*, 5 *CRIMINOLOGY & PUB. POL'Y* 627, 629 (2006).

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

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

<sup>151</sup> Justin T. Pickett et al., *Racial Crime Stereotypes and Offender Juvenility: Comparing Public Views About Youth-Specific and Non-Youth-Specific Sanctions*, 4 *RACE AND JUST.* 381, 389 (2014).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

coverage of juvenile crime has had on society.<sup>154</sup> Specifically, scripted television coverage of crime has “disproportionately put a black face on young criminals and reinforced the white public’s fear and racial animus.”<sup>155</sup> This media coverage gives rise to various stereotypes, most importantly, the stereotype that identifies a juvenile offender—black and male.

However, rarely is the public aware of the entirety of the facts. What is typically undisclosed is the offender’s upbringing and their communal influences. Setting aside the subjective facts, the public is unaware of the objective facts, such as the fact that a child does not have the same mental capacity as an adult, that a child is developing and growing, and so on.<sup>156</sup> Although society may inherently understand these concepts, the average member of society may not understand the consequences of placing a juvenile in a penal system. As a result, this has led to the establishment of a system of punishment, which in theory holds juveniles accountable for their actions, based on the assumption that this will deter delinquent behavior and thus, promote public safety.<sup>157</sup> However, in practice it is not apparent that this is the case, and it has been shown that rehabilitation does not pose a significant threat to public safety.<sup>158</sup>

The public’s concern for safety stems from a concern about violent offenders.<sup>159</sup> This gives rise to two issues that suggest that punitive measures may not be an adequate solution. First, research has suggested that the public perceives black youths as threatening.<sup>160</sup> Additionally, evidence suggests that black youths are perceived as adult-like offenders.<sup>161</sup> As a result, some studies have suggested that this may be consequential because judgements that categorize offenders, as either, a misguided youth or a cold calculating offender, may be grounded in biases rather than reality.<sup>162</sup> Therefore, this perception may negatively impact the severity of punishment inflicted upon a juvenile offender. As a result, the concern for public safety may not wholly be justified.

Additionally, if society continues to disregard the fact that juveniles have inadequate mental capacity compared to adults, and, thus, continues to increase punishment for juveniles, then the underlying factors that may have

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<sup>154</sup> Terrence T. Allen et al., *Public Attitudes Toward Juveniles Who Commit Crimes: The Relationship Between Assessments of Adolescent Development and Attitudes Toward Severity of Punishment*, 58 *CRIME & DELINQUENCY* 78, 81 (2012).

<sup>155</sup> PICKETT, *supra* note 151, at 389.

<sup>156</sup> *Id.*

<sup>157</sup> JENSON, *supra* note 1, at 328.

<sup>158</sup> PICKETT, *supra* note 151, at 384.

<sup>159</sup> *Id.* at 398.

<sup>160</sup> *Id.* at 389.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

contributed to a juvenile's delinquency may not get resolved. As a result, the juvenile is not given the opportunity to address those issues. Therefore, the juvenile returns to a social setting that may have a negative impact on their behavior, and so they may reoffend in the future. If this is the case, then the public's fear does not decline. Rather, the public's fear is settled when the juvenile is placed in a detention facility, but upon their reintegration in society, the fear is prevalent again. This time however, the result may even be a more serious crime.

The public's fears, which give rise to a punitive method of handling juvenile offenders, may not be justified. First, all juvenile offenders are being treated alike, regardless of their crime.<sup>163</sup> Thus, it is not just those committing violent offenses who are facing severe punishment; rather, all juvenile offenders face similar punishment. Second, the perception that young black males are perceived to have adult-like characteristics should not be a considering factor in the level of punishment available. Instead, the public should consider the upbringing, society, community interests, and access to resources of the juvenile. It is important to note the impact that these factors have on a juvenile's behavior. If these issues can be dealt with through means other than punishment, such as rehabilitation, then that may give rise to a more successful outcome for the child in the future. Additionally, if those juveniles, upon their first offense, are provided with resources to adequately address some of their issues, then they may not reoffend in the future, but rather grow in a positive direction.<sup>164</sup> As a result, this will deter juveniles from offending in the future, and if that proves to be the case, then society's public safety concerns may decrease.<sup>165</sup>

Second, violent offenders make up only a small percentage of the juvenile justice system. According to the Office of Juvenile Justice and Delinquency Prevention, of the 809,700 juvenile arrests in 2017, 910 were for murder and non-negligent manslaughter, 19,330 were for robbery and 28,220 were for aggravated assault;<sup>166</sup> in total, only 48,460 arrests were for violent offenses<sup>167</sup>—roughly six percent of the entire arrested-youth population. On the other hand, 95,830 arrests were a result of drug violations.<sup>168</sup> Thus, the concern for public safety and the heightened interest in a uniform punitive juvenile justice system stems from roughly six percent

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

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Juvenile Arrest Rates*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION: STATISTICAL BRIEFING BOOK, <https://www.ojjdp.gov/ojstatbb/crime/JAR.asp> (statistics current through 2018).

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

<sup>168</sup> *Id.*

of crimes. As a result, the other ninety-four percent of criminals are subject to the same system of punishment.

With regard to this issue, the juvenile justice system's punitive approach may be misguided. This uniform approach may not be adequate in handling those offenders who are, for example, arrested on drug charges. This isn't to say that the punitive approach may not be adequate in handling certain cases of violent offenders. But the public's interest in punitive measures for juveniles is premised on the need for public safety, and thus, should only extend to those offenders who threaten that safety, specifically violent offenders. The punitive approach currently ignores the fact that 95,830 arrests were a result of drug abuse violations. Instead, the system should incorporate a method of coping with the other issues prevalent in the juvenile justice system.

Specifically, the juvenile justice system should provide greater emphasis on the issue of drug abuse and drug violations. Throughout recent years, juvenile drug courts have been implemented, but currently they are limited in both scope and number.<sup>169</sup> If the success stories of drug courts were more widely known, then possibly society would favor this approach. The focus of these courts is not on rehabilitating a violent offender, but rather non-violent offenders with substance abuse issues by providing them with adequate resources to properly develop at such an age.<sup>170</sup> Therefore, the requirement of mandatory referrals to juvenile drug courts for juveniles with substance abuse issues would not undermine the public's concern for safety, but rather, protect the public from potential future threats by those juveniles who have gone through the drug court system.

#### IV. A COMPARATIVE ANALYSIS OF EXISTING PRACTICES IN JUVENILE DRUG COURTS SPECIFICALLY FOCUSING ON WHY MANDATORY REFERRALS ARE BOTH NECESSARY AND APPROPRIATE AS WELL AS THE SETBACKS TO SUCH A SYSTEM

Drug abuse and addiction have increased in the United States over the last decade or so, especially among adolescents.<sup>171</sup> Studies have provided a number of risk factors that relate to addiction such as poor education, mental illness, poverty, parental substance abuse, and the environment.<sup>172</sup> Additionally, familial relationships and patterns have been highly correlated

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<sup>169</sup> Gottfredson, *supra* note 3.

<sup>170</sup> 34 U.S.C. § 10611 (2018).

<sup>171</sup> *America Drug Use is on the Rise*, UNITY BEHAVIORAL HEALTH, <https://www.unityrehab.com/blog/american-drug-use-trend-on-the-rise/> (last visited Jan. 14, 2019).

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

to drug abuse and delinquency among juveniles. Lack of parental supervision, parental rejection, harsh discipline practices, and parent behavior have played significant roles in the development of delinquent tendencies among juveniles.<sup>173</sup> Child abuse and socioeconomic factors have also been shown to contribute to delinquency.<sup>174</sup> Thus, going back to the original point about socialization and the role it plays in the juvenile delinquency, these issues have lead juveniles to substance abuse and ultimately, academic failure, leading to placement in the juvenile justice system. As a result, the system should focus on programs, like drug courts, that lead to juvenile success in the future and deter recidivism. Therefore, juvenile drug courts should both be implemented universally and also require mandatory placement for those with substance abuse issues.

This section presents an analysis of existing practices in the juvenile drug court system, issues that arise with those existing practices, and concludes that mandatory referral to drug courts are both necessary and suitable. Part III.A introduces the history of substance abuse among the youth population. Part III.B presents examples of juvenile drug courts and issues that arise with the current trends available. Part III.C presents a comparative analysis of college campuses and the system proposed here. This analysis provides some insight into why such a system may be suitable, and, additionally, why it is necessary to coping with such issues. Part III.D introduces the setbacks due to society that impacts the tension between a rehabilitative approach and punitive approach. Part III.E addresses the question of why juvenile drug courts are proper and specifically focuses on why mandatory referrals are adequate in certain types of situations.

#### A. *The History of Substance Abuse Among the Youth Population*

In addition to the impact that socialization, lack of education, and familial practices have on delinquency and recidivism, they also have significant impact on substance abuse among juveniles, which has been found to be one of the most significant contributing factors to juvenile delinquency. Studies have shown that illicit drug use remains very common, typically begins during adolescence, and increases during young adulthood<sup>175</sup>—periods during which individuals are most vulnerable to its harmful effects.<sup>176</sup> Additional findings have shown that marijuana has been

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<sup>173</sup> JUVENILE DELINQUENCY, *supra* note 142, at 77.

<sup>174</sup> *Id.*; see Bernard, *supra* note 143, at 70 (discussing the effects domestic violence has on children and their entry into the criminal justice system).

<sup>175</sup> Jeffrey D. Schulden et al., *Substance Abuse in the United States: Findings From Recent Epidemiologic Studies*, 11 *Current Psychiatry Reps.* 353, 354 (2009).

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

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the drug most commonly used among young adults.<sup>177</sup> Today, because of continuing efforts to legalize marijuana, adolescents may be more likely to face substance abuse issues. It is important to note, however, that legalization of marijuana should not be perceived as having a direct impact on juveniles, since one must be eighteen years old to purchase. Yet, as suggested by the popularity of underage drinking, underage smoking, especially with regards to the new vaping fad, underage marijuana consumption may too pose a threat.<sup>178</sup> Specifically, the use will be normalized, it will be cheaper, and it will be more readily available.<sup>179</sup> Therefore, this may lead to substance abuse or dependency among juveniles and have an impact on the juvenile's delinquent behavior.

Scientific studies have shown that adolescent marijuana use has shown signs of impaired cognitive functioning, increased risk of developing marijuana dependence, elevated rates of school dropout, elevated risk of developing psychotic illnesses, and an increased rate of engaging in risky behaviors.<sup>180</sup> Thus, issues of substance abuse generally and issues as a result of legalization of marijuana among adolescents must be addressed adequately; as noted by the Center on Addiction, addiction should be viewed as "a disease, not a moral failing or easily abandoned self-indulgence."<sup>181</sup> Therefore, now more than ever, it is crucial that juvenile courts address the issues of substance abuse, utilize juvenile drug courts, and impose rehabilitation programs in order to decrease recidivism rates among juvenile delinquents and promote steady integration back into society.

In response to the prevalence of drugs in society today as well as the easy accessibility to marijuana with new legislation and policy, it is crucial that courts address these issues with regard to juveniles entering the system. Research has suggested that the punitive measures of the juvenile justice system are not adequate to address the problems faced by juveniles, and, thus, have led to repeat offending and a life of crime.<sup>182</sup>

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<sup>177</sup> *Id.*

<sup>178</sup> John W. Hickenlooper, *Experimenting with Pot: The State of Colorado Legalization of Marijuana*, 92 MILBANK QUARTERLY, 243, 246 (2014); *see also*, Kathleen Raven, *Teen Vaping Linked to More Health Risks*, YALE MEDICINE (December 18, 2019) <https://www.yalemedicine.org/stories/teen-vaping/>.

<sup>179</sup> Hickenlooper, *supra* note 178, at 246.

<sup>180</sup> Schulden, *supra* note 175, at 354.

<sup>181</sup> Joseph A. Califano, Jr., *High Society: How Substance Abuse Ravages America and What to do About It*, CENTER ON ADDICTION (Nov. 1, 2008), <https://www.centeronaddiction.org/newsroom/op-eds/high-society-how-substance-abuse-ravages-america-and-what-do-about-it>.

<sup>182</sup> Anne Schneider, *Restitution and Recidivism Rate of Juvenile Offenders: Results From Four Experimental Studies*, 24 CRIMINOLOGY 533, 536 (1986).



In response to such problems, Congress passed the Violent Crime Control and Law Enforcement Act of 1994.<sup>183</sup> The act authorizes the Attorney General to make grants to states and counties to establish drug courts.<sup>184</sup> It has been suggested that drug courts are important to dealing with juvenile substance abuse problems and preventing recidivism.<sup>185</sup> However, the drug courts established have been limited in number and scope, have set strict requirements for acceptance and as a result have only accepted a limited number of individuals fitting some specific criteria.

### 1. History of Drug Use in America and Societal Issues Resulting From Such Use

The War on Drugs initiated by President Nixon has had substantial implications on the criminal and juvenile justice systems.<sup>186</sup> In 1971, Nixon increased the number of federal drug control agencies and imposed mandatory sentencing and no-knock warrants in order to combat illegal drug use.<sup>187</sup> In 1986, Congress allocated \$1.7 billion to the War on Drugs,<sup>188</sup> which adopted largely punitive measures. From the 1980s to the 1990s, the rate of incarceration for nonviolent drug law offenses increased from 50,000 to 400,000.<sup>189</sup> Throughout the 2000s, policy changes were made to decriminalize the use of certain substances, such as by permitting states to enact medical marijuana laws.<sup>190</sup> However, today 700,000 people are still arrested for marijuana offenses each year, and almost 500,000 people are behind bars for nothing more than a drug law violation.<sup>191</sup> Additionally, the Trump Administration once again appears to move backwards to a 1980 style drug war.<sup>192</sup>

However, as advocated here, the solution does not lie with punitive measures, but rather with rehabilitative measures, specifically with regard to substance abuse among adolescents. Although the costs of such a program may raise concerns, rehabilitative programs have not actually been shown to be significantly greater than punitive ones. Rather, punitive sentencing has

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<sup>183</sup> Violent Control and Law Enforcement Act, 42 U.S.C § 13701 (1994); ANN H. CROWE & SHAY BILCHIK, DRUG IDENTIFICATION AND TESTING IN THE JUVENILE JUSTICE SYSTEM 3 (1998).

<sup>184</sup> CROWE & BILCHIK, *supra* note 183, at 3.

<sup>185</sup> *Id.*

<sup>186</sup> *A Brief History of the Drug War*, DRUG POLICY ALLIANCE, <http://www.drugpolicy.org/issues/brief-history-drug-war> (last visited Jan. 8, 2019).

<sup>187</sup> *Id.*

<sup>188</sup> *War on Drugs*, ENCYCLOPEDIA BRITANNICA (Dec. 5, 2018), <https://www.britannica.com/topic/war-on-drugs>.

<sup>189</sup> Cooper, *supra* note 18, at 4.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

operated at higher costs as a result of harsher sentencing periods and more incarcerations.<sup>193</sup> Thus, cost-conscious legislatures should pursue policies that place greater emphasis on rehabilitation and early childhood prevention.<sup>194</sup>

## 2. Drug Use and Drug Offenses Among Juvenile Offenders

The U.S. Department of Justice's Office of Justice program has reported high rates of drug use among juvenile detainees.<sup>195</sup> Further, studies show that nearly half of juvenile detainees have a substance abuse problem.<sup>196</sup> Similarly, the rate of arrests for drug-related crimes among juveniles is very high.

This concern is particularly pressing because forty-eight states and the District of Columbia permit youths to be tried as adults for drug charges.<sup>197</sup> This can come about in one of three ways. First, as a result of judicial discretion, where the judge ultimately decides if transfer is appropriate. The prosecutor requests the waiver and then the burden to disprove it is on the juvenile.<sup>198</sup> Forty-four states and the District of Columbia allow for judicial waivers rather than prosecutorial or automatic transfers. Second, prosecutorial discretion allows for a prosecutor to file charges directly in adult courts without being required to obtain a judicial waiver.<sup>199</sup> This type of discretion has been adopted in fourteen states as well as the District of Columbia.<sup>200</sup> Third, statutory exclusion, which provides exclusive jurisdiction over certain juvenile cases, thus resulting in mandatory waiver.<sup>201</sup> Twenty-nine states have adopted this tactic regarding certain crimes.<sup>202</sup> Lastly, it is important to note that once a juvenile has been charged as an adult, they will always be charged as an adult regardless of the crime.<sup>203</sup>

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<sup>193</sup> ALEX PIQUERO, REHABILITATION VERSUS INCARCERATION OF JUVENILE OFFENDERS: PUBLIC PREFERENCES IN FOUR MODELS FOR CHANGE STATES 8 (undated), [https://www.macfound.org/media/article\\_pdfs/WILLINGNESSTOPAYFINAL.PDF](https://www.macfound.org/media/article_pdfs/WILLINGNESSTOPAYFINAL.PDF).

<sup>194</sup> *Id.*

<sup>195</sup> NATIONAL INSTITUTE ON DRUG ABUSE, PRINCIPLES OF DRUG ABUSE TREATMENT FOR CRIMINAL JUSTICE POPULATIONS: A RESEARCH-BASED GUIDE 29 (2014), [https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice\\_0.pdf](https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf).

<sup>196</sup> *Id.*

<sup>197</sup> THE SENTENCING PROJECT, HOW TOUGH ON CRIME BECAME TOUGH ON KIDS: PROSECUTING TEENAGE DRUG CHARGES IN ADULT COURTS 3 (2016), <https://www.sentencingproject.org/publications/tough-crime-became-tough-kids-prosecuting-teenage-drug-charges-adult-courts/> (follow "Download PDF" hyperlink for pagination).

<sup>198</sup> *Id.* at 4.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

With regards to drug cases, only four states do not allow for transfer of juveniles to adult courts for drug offenses.<sup>204</sup> Thirty states have judicial discretion regarding transfers in any offenses, including drug offenses, which are the most common offenses for which juveniles are arrested.<sup>205</sup> For example, South Carolina permits any misdemeanor to be transferred on the grounds that the child is “amendable to the rehabilitative process.”<sup>206</sup> This policy supports that the mechanism for transfer is very discretionary. Some states have statutes on eligible transfer for drug charges.<sup>207</sup> For example, Missouri permits anyone over twelve to be transferred for distribution, Indiana permits sixteen and seventeen year olds to be transferred for violations of the controlled substances law, and in Idaho courts can transfer juveniles for manufacture, delivery or possession with intent to deliver in a school zone.<sup>208</sup> Additionally, twenty-one states automatically charge some juveniles as adults for drug-related offenses.<sup>209</sup> Five of those states automatically charge all youth as adults for certain drug-related offenses.<sup>210</sup>

Keeping in mind these sentencing implications it is important to note the impact that drugs have on juvenile delinquents. Due to the prevalence of drugs in society today and specifically, with regard to legalization of marijuana, substance abuse and addiction may be more threatening than ever. However, punitive measures are not an adequate means of addressing such issues. Instead, there must be a structured system, comprised of mandatory referrals to juvenile drug courts in order to cope with these issues and provide adequate assurance that juveniles will be given the opportunity to enhance their own well-beings in the future.

*B. Examples of Existing Practices in Juvenile Drug Courts and a Thorough Explanation of the System Proposed Here*

In order to cope with some of the issues presented at the federal level, the legislature enacted a statute that permits the Attorney General to make grants to states, state courts, local courts, units of local government, and Indian tribal governments acting directly or through agreements with other public or private entities, for juvenile drug courts.<sup>211</sup> Further, the legislature required that the drug courts have continuing judicial supervision over individuals with non-violent substance abuse offences and that it provide

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<sup>204</sup> *Id.*

<sup>205</sup> *Id.* at 5.

<sup>206</sup> *Id.* at 6.; *see also* S.C. CODE § 63-19-1210 (1976).

<sup>207</sup> THE SENTENCING PROJECT, *supra* note 197, at 6.

<sup>208</sup> *Id.*; *see also*, MO. JUV. CODE § 211.071.

<sup>209</sup> THE SENTENCING PROJECT, *supra* note 197, at 7.

<sup>210</sup> *Id.* at 8.

<sup>211</sup> 34 U.S.C. § 10611 (2018).

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sanctions and services including periodic drug testing, substance abuse treatment, diversion, probation or supervised release, aftercare services, and payment by the offender of treatment cost.<sup>212</sup> As a result of this federal grant, states have been more inclined to focus on juvenile drug court programs, but are limited by resources available for adequate programs and mass entry.<sup>213</sup> As a result, one issue that arises is how juvenile drug courts will allocate their resources and thus, who they will permit to enter the program.

Another issue that arises is how juvenile drug courts can ensure successful completion of the programs. Some juvenile drug courts offer positive reinforcement incentives and negative reinforcement sanctions in order to promote the child's success.<sup>214</sup> However, with regard to sanctions, it appears that juveniles may not be deterred, but rather will rebel further.<sup>215</sup> Additionally, as suggested by *In re Miguel*, juveniles may not wish to participate in such a program.<sup>216</sup> There, two juveniles appealed the court's decision that as a matter of their probation, they must participate in juvenile drug court alleging two issues: (1) that this decision violated their Fourteenth Amendment due process rights, and (2) that involuntary treatment does not promote rehabilitation and, thus, it is not reasonably related to the therapeutic purpose of juvenile probation.<sup>217</sup>

With regard to the argument about due process rights, here, the court articulates that the juveniles were provided notice about possible sanctions and additionally, were provided a hearing when possible sanctions were imposed.<sup>218</sup> Therefore, as long as their constitutional rights are not violated, mandatory admission to drug court is suitable and thus, should be more frequently utilized.

Additionally, the court disagrees with the argument that involuntary treatment is not reasonably related to the promotion of rehabilitation.<sup>219</sup> Rather, the court articulates that the goal of the program is to aid a juvenile with substance abuse issues; further, the court states that all court-ordered compliance is not voluntary and therefore it is permissible for the judge to use discretion to impose conditions that will lead to rehabilitation.<sup>220</sup> With regard to the proposal illustrated here, the court's decision is adequate. The

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<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> Nicole A Kozdron, *Midwestern Juvenile Drug Courts: Analysis and Recommendation*, 84 IND. L. J. 373, 383–384 (2009).

<sup>215</sup> *Id.*

<sup>216</sup> *In re Miguel*, 63 P.3d 1065, 1069 (Ariz. Ct. App. 2003).

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* at 1070.

<sup>220</sup> *Id.*

court should not base their determination on voluntary admission especially when it comes to juveniles, but rather make juvenile drug courts mandatory for those with substance abuse issues.

The juveniles make one additional argument in that not all juveniles are equally subject to juvenile drug court, thus raising an equal protection claim.<sup>221</sup> However, the juveniles fail to cite to a specific statute that articulates this violation of equal protection, and, thus, the court finds that all juveniles are treated equally.<sup>222</sup> Yet statistics have suggested that as a result of limited resources in juvenile drug courts, courts have discretion in who may or may not receive placement, which may suggest otherwise.<sup>223</sup> As a result, this Note proposes that juvenile drug courts must set up a per se rule that articulates criteria that will result in mandatory admittance to drug court, where such criteria is not in violation of due process; rather, it focuses on which types of juveniles would benefit most from such a program. Specifically, this proposal will address the concern that juvenile drug courts have failed to adequately articulate a target population for such a program, which may promote the purpose more readily.

For example, Illinois automatically excludes all individuals who deny their drug addiction or who do not demonstrate a willingness to participate in the program.<sup>224</sup> Thus, the program becomes voluntary and would deter many juveniles from benefitting from such a program. On the other hand, some courts are less voluntary and have enforced post-adjudication models where, upon a guilty plea, a juvenile is subject to drug court. Some have argued that juveniles are not aware of the circumstances that arise from such a plea and thus, are not able to appreciate the extent of the program.<sup>225</sup> However, this argument is not grounded on the condition that juveniles who a judge determines have substance abuse issues and should be sent to juvenile drug court program are aware of the possibility of sanctions in the future and the positive benefits that come with successful completion. With the enforcement of benefits and sanctions, juvenile drug courts will be able to determine whether the individual is adequately placed, in need of less or more severe treatment and assist the child in his or her needs.

The model adopted in Delaware County provides a good example of how juvenile drug courts should work, where there juveniles are permitted to enter in one of three tiers.<sup>226</sup> First, those who abuse drugs but do not yet

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<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at 1074.

<sup>223</sup> *Id.*

<sup>224</sup> 705 ILL. COMP. STAT. 410/20 (2019)

<sup>225</sup> JENSON, *supra* note 1.

<sup>226</sup> 10 DEL. CODE. § 1012 (2019).

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require outpatient services.<sup>227</sup> Second, those who show signs of dependency.<sup>228</sup> Third, those who suffer from mental health issues and substance abuse.<sup>229</sup> Unlike many jurisdictions that do not permit patients with mental health issues, this method caters to the individual needs of various types of individuals.<sup>230</sup> However, this approach, too, is voluntary.<sup>231</sup> Taking into consideration the arguments presented in this Note, it will be more suitable to have a non-voluntary program, in order to ensure that those who are deemed eligible must participate in the program. Although, this non-voluntariness gives rise to an issue of limited resources and possibly the issue that certain individuals will not adequately participate, creating different methods of participation and focusing on the needs of various juveniles will allow juveniles to benefit from the system. Therefore, this Note proposes that, upon a showing of eligibility, all juveniles must participate in juvenile drug courts where a focus on their specific needs is taken into consideration.

*C. Comparison to College Campuses—Support for System Proposed Here and Introduction to Why Mandatory Referrals are Adequate*

The method proposed here for juvenile drug courts will not undermine the public's interest in safety, but rather will provide juveniles with opportunities that may promote their ability to successfully reintegrate into society. As a result, juveniles will be able to prosper in their future, which ultimately will deter recidivism. The application of this system is to non-violent offenders who are suffering from substance abuse problems, who have been severely impacted by societal factors and upbringing, and who do not pose a threat to public safety in the same way as violent offenders.

The value of juvenile drug courts can be highlighted by looking at the high levels of alcohol and drug use on college campuses. Marijuana use as well as high levels of extensive alcohol and other drug use has been widely reported on college campuses.<sup>232</sup> However, certain groups and classes of individuals are much more likely to be penalized for marijuana use and possession. In 2001, one in six college students reported using marijuana in the last thirty days, and nearly one in two people reported having used marijuana in the past.<sup>233</sup> Additionally, in a study conducted by the University of Michigan in 2016, thirty-nine percent of full-time college students aged

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<sup>227</sup> Kozdron, *supra* note 214.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> H. Wesley Perkins et al., *Misperceptions of the Norms for the Frequency of Alcohol and Other Drug Use on College Campuses*, 47 J. AM. C. HEALTH 253, 255 (1999).

<sup>233</sup> *Id.*

nineteen to twenty-two indicated that they had used marijuana at least once in the prior twelve months, and twenty-two percent indicated that they used at least once in the prior thirty days.<sup>234</sup>

A study on arrests of college students who are caught with drugs showed that “small, private liberal arts colleges tend to have low number of arrests, even with proportionately high numbers of disciplinary referrals.”<sup>235</sup> For example, at Colgate University there were only six arrests after 245 students were referred for disciplinary action.<sup>236</sup> The majority of students, rather than facing criminal charges, are required to engage in some sort of disciplinary matter, which provides an educational component rather than a punitive one.<sup>237</sup> Educational components usually involve either taking a course about substance abuse or participating in community service.<sup>238</sup> The rationale behind this is providing the student with the knowledge to make better choices and helping them to do so in the future.

Similarly, research suggests that alcohol is the most commonly used drug on college campuses.<sup>239</sup> However, the majority of the undergraduate populations are not being arrested for partaking in such behavior. The Vice President of Public Safety at the University of Pennsylvania said, “we aren’t looking to see how many students we can arrest.”<sup>240</sup> The lack of arrests on college campuses is made clear by the way that police handle fraternity situations at the University, and large universities generally. In one instance at the University of Pennsylvania, a fraternity member suggested that police ask the students to shut the party down rather than taking them to the station, which was adhered to.<sup>241</sup> The university’s Office of Student Conduct explained that “there are things that shouldn’t be bad enough to affect a student’s future.”<sup>242</sup>

Additionally, where drugs or alcohol are found in dorm rooms, Resident Assistants are frequently given discretion about how to handle the situation, but they are typically lenient and told not to call the police.<sup>243</sup> If the student

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<sup>234</sup> Morgan Sherburne, *Marijuana Use Among College Students at Highest Level in 30 years*, U. REC., (Sep. 8, 2017), <https://record.umich.edu/articles/marijuana-use-among-college-students-highest-level-30-years/>.

<sup>235</sup> Jake New, *What Happens on Campus Stays on Campus?*, INSIDE HIGHER ED, (Feb. 27, 2015), <https://www.insidehighered.com/news/2015/02/27/how-institutions-handle-drug-violations-varies-greatly>.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> Jessica McDowell, *For Penn Kids, Arrest Not a Concern*, THE DAILY PENNSYLVANIA, (Dec. 12, 2014, 2:27 AM), <https://www.thedp.com/article/2014/12/penn-students-arent-arrested>.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

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faces punishment, it is usually a referral to an educational program on campus.<sup>244</sup> This is not to say that arrests are non-existent, and additionally, this is not to say that all colleges practice the same policies. But, given the cultural stigma associated with college campuses, and the high prevalence of alcohol and drug use, the arrest rate is comparatively low.

On college campuses, it is more likely that the administration will look at factors such as peer pressure to justify a juvenile's actions.<sup>245</sup> On the other hand, when a juvenile offender is placed in a detention center, rarely is circumstantial evidence permitted to justify the juvenile's behavior.<sup>246</sup> The layer of protection for college students, such as warnings or educational programs, are not reflected in the real world. However, the issues that arise in the real-world may be more justified in supporting certain behavior, so then why is that not the case?

Racial and socioeconomic disparities play a role in understanding why college students, who are binge drinking and smoking marijuana frequently, are not arrested at the same rate as young people outside of a college setting, particularly racial minorities. With regard to less serious crimes, such as drug possession, black youth are more likely to be formally processed at intake than white youth for drug related offenses.<sup>247</sup> These juvenile offenders are penalized for their behavior without regard to their circumstances that may have contributed to such behavior. Whether the discrepancy between those who are penalized and those who are not is due to racial disparities, or more specifically, whether the discrepancy is due to disparities between classes and groups of people, there is sufficient research suggesting that each of these factors are prevalent.

When it comes to college students, their drinking habits and their drug use, the issues have been regarded as part of the culture.<sup>248</sup> Thus, although there have been reports of the negative effects that this behavior has on young adults, it is only the most egregious cases that are reported and "criminalized." The students that do engage in these behaviors usually get away with it, and there is rarely a concern of public safety with regards to these situations. Meanwhile, the concern of public safety arises in the context of juvenile offenders due to the perception that society has placed upon them.<sup>249</sup> In reality, a juvenile offender who gets caught for using drugs and placed in the juvenile justice system is no different than a college student

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<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> REFORMING JUVENILE JUSTICE, *supra* note 4, at 50.

<sup>247</sup> Ronald E. Clause, Sarah Vidal, & Michele Harmon, *Racial and Ethnic Disparities in the Police Handling of Juvenile Arrests* (June 2017), at 3, <https://www.ncjrs.gov/pdffiles1/ojjdp/grants/250804.pdf>.

<sup>248</sup> New, *supra* note 235.

<sup>249</sup> REFORMING JUVENILE JUSTICE, *supra* note 4, at 81.



who, even if caught, may not get placed in the system. However, one is feared and the other is seen as partaking in the “college experience.”

Students, who have access to educational institutions and institutional privilege receive some sort of educational program as a punishment for their drug or alcohol related “offenses,” while those that do not have adequate access to such privilege are sent to detention facilities. The issue in focus here is not why this difference arises, but, rather, the benefits of educational or rehabilitative programs that have led college campuses to attempt to avoid legal consequences for their students.

College campuses have enacted various programs to assist those with drug and alcohol related issues.<sup>250</sup> Boston College’s Alcohol and Drug Education Program, for example, has established a comprehensive, community-based effort providing information, support and encouragement for students using alcohol or drugs.<sup>251</sup> Such a program is not offered to the general public, even those who may need it the most. Additionally, where a student is in violation of the code of conduct at their university, they are required, mandatorily, to participate in such a program.<sup>252</sup> Similarly, a juvenile should be mandatorily required to participate in a juvenile drug court program, especially when the student does not believe that they have a problem or does not want help.

The benefits of rehabilitation, and the growing number of situations where rehabilitation and education are offered, suggests that juveniles facing punitive measures in the juvenile justice system should have adequate opportunities to deal with these situations, such as mandatory referral to drug court. Therefore, juvenile drug courts can be viewed as analogous to the educational programs offered at universities. Due to the arguments presented above, they should be perceived as necessary and mandatory where a juvenile faces issues of substance abuse.

*D. Why Juvenile Drug Court is Proper and Specifically Why  
Mandatory Referrals are Proper*

It should appear that juvenile drug courts do not pose a threat for non-voluntary referrals of non-violent offenders with substance abuse problems. Where the judge decides that a mandatory referral is appropriate, the judge must disclose the requirements that a juvenile must follow during and after the program. Then the juvenile can either accept the referral or reject it, rather choosing to possibly face sentencing. As a result, two issues arise.

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<sup>250</sup> Perkins, *supra* note 232.

<sup>251</sup> *Alcohol and Drug*, BOSTON COLLEGE: PROGRAMS AND SERVICES, <https://www.bc.edu/offices/healthpro/alcohol-and-drug-education-program/eiep.html> (last updated August 14, 2018).

<sup>252</sup> *Id.*

First, the implementation of mandatory referrals for pre-adjudication and post-adjudication cases will have to be different. Second, there may be a policy and public interest concern with regard to deterring juveniles in the justice system from detention to rehabilitation and freedom. However, there are certain ways that the court can combat these issues.

First, with pre-sentence cases, mandatory referrals for juveniles who have not yet been sentenced will likely violate constitutional rights. However, prior to adjudication of the case, all juveniles who wish to enter the program should be admitted to the drug court upon a showing of eligibility. Where a juvenile is admitted and successfully completes the program, they will have their pending charges dropped. This will provide an incentive for juveniles to enter the program as well as deter juveniles from violating drug court requirements post-program.

Second, with regard to post-adjudication cases, mandatory referrals will be much easier to implement. Upon a guilty plea, the judge will have the opportunity to refer the juvenile if substance abuse is an issue. Upon such a verdict, the judge will present the juvenile with notice of their drug court treatment program and enforce the juvenile's participation in such a program subject to certain sanctions and benefits. This will not provide the juvenile with an option to complete the program, but make it a formal requirement.

Lastly, to combat the issues that may arise if the juvenile is released upon successful completion, the court should balance the interest between public safety, a policy issue which arises from juvenile delinquency, and the impact that detention may have on the juvenile. The judge should be able to use their discretion in assessing this based on factors such as program participation and crime committed in order to determine the best approach. However, where the judge decides that a juvenile would be best served by avoiding detention, the courts should impose mandatory requirements that must be adhered to in order to deter the juvenile from completing other acts. If the juvenile fails to comply, then the judge should be provided the opportunity to re-open the case, and impose detention. This will provide both an incentive for the juvenile to avoid re-offending and will also provide a mechanism for protecting the public interest.

## V. CONCLUSION

This Note proposes that juveniles with substance abuse issues who are in the juvenile justice system, specifically on charges related to drugs, should be mandatorily referred to the drug court system. Today juvenile drug courts are not implemented in each jurisdiction. Additionally, there is no coherent or uniform system being practiced in juvenile drug courts in the jurisdictions that have decided to implement them. Rather, the juvenile drug court system in each jurisdiction is implemented based on the discretion of the states,

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jurisdictions, or judges. Thus, the system as established today has many limitations and many issues. This proposal does not compare each jurisdiction to establish the right approach that should be implemented in all jurisdictions. Additionally, this proposal does not argue that juvenile drug courts should be implemented in all jurisdictions. The proposal does touch on that notion, as the ideal end goal, due to the positive attributes that such a system has; however, the main focus of this proposal is to ensure that all individuals are given the chance to enter into a juvenile drug court program. This stems from the notion that a rehabilitative effort within the juvenile justice system is both adequate and necessary. As discussed, the juvenile justice system has progressed from a rehabilitative system to a punitive one. Due to the issues arising from public safety concerns and stereotyping, the legislature has imposed a punitive system to deal with juvenile delinquents. Although the rationale may have been proper at the beginning of the systems' creation, the consequences resulting from such a system, the notion that juveniles have limited capacity, and the issues arising from socialization, all which have been sufficiently researched provide support that such a system in today's day and age is not suitable.

Today, drugs have become extremely prominent in society. Due to the legalization of marijuana in certain states and prevalence of drugs on college campuses, there is much to be learned about the impact that such drug access may have on society. However, placing juveniles in the juvenile justice system, based on punitive measures, rather than adequately addressing their needs resulting from the widespread acceptance of marijuana use may not be adequate. Additionally, juvenile drug courts have proven to be effective and have increased the prosperity of juveniles where they have been implemented. Many reports and stories of former juvenile delinquents who have been accepted into such a system have supported this finding. However, due to juvenile drug courts' limitations in both scope and number, they have not been able to achieve the level of success that they ultimately may achieve. If given the opportunity to participate in such a program, juveniles will be able to limit their probability of recidivism and a life of crime in the future. Additionally, this will present an opportunity for success and achievement of these individuals in the future. Lastly, individuals will learn and understand the impact that drugs and substance abuse may have on their life, build a stable system of support and escape their negatively impacting communities. Although this may not be the outcome for each individual that enters the system, this may tackle the issues of recidivism for those that wish to escape this system and way of life.

Additionally, as discussed, juveniles are still developing. The reasons that they are in the system are varied. However, due to their limited capacity in fact, they are more receptive of change and may be able to adequately

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benefit from the juvenile drug court system. Additionally, this may help deter some of the fears that are plagued by society today. First off, with regard to the fear of public safety, this may provide a system that adequately addresses the needs of juveniles, deters them from a life of substance abuse and in turn deters them from a life of crime. Second, with regard to the issue of stereotyping and perception, this may become a new type of story in and of itself. This may provide the proper and adequate belief that change is possible and foster an environment that permits such a change. Thus, these two issues may be more adequately addressed if the needs of juveniles are being handled and tackled properly and systematically.

Overall, this Note looks at the benefits that juvenile drug courts have today and proposes a system of incorporating certain existing practices while adding that referrals to such a system must be mandatory where the juvenile meets a categorical standard of criteria. Thus, based on certain elements that the judge finds are met, including type of crime age, and substance abuse issues, the judge must refer the juvenile to a juvenile drug court. There, the juvenile drug court judge will determine which program is most suitable for the juvenile. Additionally, upon acceptance, the juvenile will be aware of certain rules and requirements that must be met to continue participating in this program. Therefore, holistically, this program will provide a mandatory system for juveniles facing certain issues that will allow them to cope and handle the issues properly and ultimately prosper in the future.