

THERE ARE TWO SIDES TO EVERY STORY: COLLABORATION BETWEEN  
ADVOCATES AND DEFENDERS IN ACHIEVING SYSTEMIC JUVENILE JUSTICE  
REFORM

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*We realized that children needed a continuum of treatment. Not only in an institution in  
some instances, but back in the community.*

Senior Judge Eugene N. Hamilton, Washington, D.C. Superior Court;  
Chair, Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform<sup>1</sup>

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<sup>1</sup> DVD: The Road to Rehabilitation and Reform: A Short Film About D.C. and its Most Disconnected Youth (DC Lawyers for Youth 2011) (on file with organization).

## INTRODUCTION

Following a disturbing trend of the hyper-criminalization of young people in the 1980s and early 1990s,<sup>2</sup> promising reforms in a number of juvenile justice systems across the nation give hope that the U.S. may return to the rehabilitative theory on which the juvenile courts were founded.<sup>3</sup> A critical component of the success of these efforts comes before a young person has been adjudicated of a crime—a well resourced and well educated juvenile defender.<sup>4</sup> Successful rehabilitation also requires systemic components that are aimed at returning at-risk youth to their home communities equipped to be successful and contributing members of society.

The goal of a properly functioning juvenile justice system is to return a young person to his or her community better off than when they left. A successful reentry process, or rehabilitation, must begin when a young person first comes into contact with the juvenile justice system. For most young people the first point of contact, apart from the police, is when they met their defense attorney.

Juvenile defenders are charged to zealously represent the expressed legal interests of their clients.<sup>5</sup> But, in addition to providing zealous advocacy on behalf of their clients in court, juvenile defenders must also be familiar with the range of services available to them during and after the pendency of their case. Connecting a youth to services as part of the disposition of his or her case will ultimately support a successful reentry process.

However, juvenile defenders are not the only actors who are concerned with the successful rehabilitation of youth. Juvenile justice reform advocates are also committed to instituting systemic reforms and implementing service provision regimes that support rehabilitation and reduce the likelihood of recidivism. Given their congruous interests, juvenile defenders and juvenile justice advocates can each contribute meaningfully to enhance the work of the other.

This article challenges juvenile defenders to participate in the growing demand for holistic reforms in the broader juvenile justice system. In order to achieve long lasting results for their clients, juvenile defenders are challenged to build their knowledge and awareness of juvenile

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<sup>2</sup> See Katayoon Majd, *Students of the Mass Incarceration Nation*, 54 HOW. L.J. 343, 356-57 (2011) (discussing the gradual shift from rehabilitative purpose towards a punitive one in the American juvenile justice system in the mid-1980s and early 1990s); Shelley Zavlek, *Planning Community-Based Facilities for Violent Juvenile Offenders as Part of a System of Graduated Sanctions*, JUV. JUST. BULL. (Office of Juvenile Justice & Delinquency Prevention, U.S. Dep't of Justice, Washington, D.C.), Aug. 2005, at 1, 2-3 (reviewing public perceptions of juvenile crime in the mid-1980's and early 1990's and corresponding legislative responses, as well as actual juvenile crime rates and detention statistics).

<sup>3</sup> See generally RICHARD A. MENDEL, ANNIE E. CASEY FOUND., TWO DECADES OF JDAI: FROM DEMONSTRATION PROJECT TO NATIONAL MODEL (2009) (reporting on the progress of jurisdictions involved in system reform under the Annie E. Casey Foundation's "Juvenile Detention Alternatives Initiative"); JASON ZIEDENBERG, JUSTICE POLICY INST., MODELS FOR CHANGE: BUILDING MOMENTUM FOR JUVENILE JUSTICE REFORM (2006) (highlighting the reform efforts of four states involved in the MacArthur Foundation's "Models for Change" juvenile justice reform efforts).

<sup>4</sup> We do not use the term "defender" to refer to a court-appointed attorney or public defender. Rather, as we believe that all defense attorneys should be well resourced and well educated, in this article we use the term "defender" to refer to any attorney representing youth.

<sup>5</sup> *In Re Gault*, 387 U.S. 1, 30-31 (1967) (holding that juveniles are granted the same Constitutional procedural protections as adults).

justice reform by participating in youth and policy advocacy, in addition to the daily work of legal representation. This article also challenges juvenile justice advocates to include juvenile defenders when devising advocacy strategies and building coalitions to push for reforms. Juvenile defenders are necessary, knowledgeable, and powerful allies in the fight for juvenile justice reform.

## I. BACKGROUND

Juvenile justice reform is not an action that is undertaken lightly. Jurisdictions that have chosen to either overhaul their juvenile justice system or to add components that reflect the latest trends in youth justice do so only after an analysis of the political, fiscal, legal, and social costs. Often, the political cost is the accusation or public perception that legislators or administrations are sacrificing public safety and coddling young criminals to prove an ideological point.<sup>6</sup> The initial fiscal costs to overhaul a juvenile justice system can appear staggering and not worth the expenditure. This problem can be particularly acute where a jurisdiction decides to abandon pre-existing facilities in favor of building new ones.<sup>7</sup>

As reform advocates often use litigation as a tactic, it is not uncommon for jurisdictions to enter into consent decrees that dictate in whole or in part various steps of the reform process. The consent decrees can contain work plans that require certain components be in place to satisfy the terms of the decree. Often, these consent decrees result in years of monitoring of the jurisdiction's juvenile justice system by the court.<sup>8</sup>

The social cost of juvenile justice reform is that states, municipalities and communities must accept that young offenders, even those who have been found guilty of criminality, will be treated in a community-based setting. Therefore, it is not inconceivable that a victim could come face-to-face with their attacker not long after the occurrence of the incident that brought them together. For many victims, this concept is understandably tough to bear. However, administrations and legislatures must also consider the high social costs of reliance on secure detention and deterrence-based systems, which are largely borne by youth.

The analysis of all these costs must be weighed against the benefits of a system that relies on treatment and prevention rather than confinement and punishment. There are political, fiscal, legal, and social benefits to a reformed juvenile justice system. The political benefits include legislatures and administrations that can take credit for drops in recidivism as a result of a more rehabilitative system. The fiscal benefits from reformed systems include less money spent on housing, clothing, feeding, and educating youth in large secure facilities.<sup>9</sup> Reforming a

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<sup>6</sup> See, e.g., Colbert I. King, *Under 'Supervision,' but Free to Kill*, WASH. POST, Aug. 29, 2009, at A15.

<sup>7</sup> See *id.* (“[R]eplacing Oak Hill with the much smaller and laughably insecure \$46 million New Beginnings campus is an idea it seems only the young inmates could have dreamed up.”).

<sup>8</sup> See, e.g., Consent Decree, *Jerry M. v. District of Columbia*, No. 1519-85 (D.C. Super. Ct. July 24, 1986), available at <http://www.clearinghouse.net/chDocs/public/JC-DC-0003-0003.pdf>; Settlement Agreement for Medical, Dental, Mental Health, Rehabilitation and Juvenile Justice Issues, *United States v. Louisiana*, (M.D. La. Aug. 17, 2000), available at <http://www.clearinghouse.net/chDocs/public/JI-LA-0001-0020.pdf>; Consent Decree, *Farrell v. Allen*, No. 03079344 (Ca. Super. Ct. Nov. 19, 2004), available at [http://www.prisonlaw.com/pdfs/farrell\\_cd2.pdf](http://www.prisonlaw.com/pdfs/farrell_cd2.pdf).

<sup>9</sup> See Elizabeth K. Drake et al., *Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State*, 4 VICTIMS AND OFFENDERS 170, 191-93 (2009), available at <http://www.wsipp.wa.gov/rptfiles/09-00-1201.pdf> (finding that avoided expenditures through lowering the recidivism rate greatly outweighed the costs of family therapy programs for juvenile offenders).

juvenile justice system can also result in reduced legal liability for abuses such as those that were common in larger prison-like settings.<sup>10</sup> The social benefits include the transition of at-risk youth from “criminals” to productive and educated members of society.<sup>11</sup> Often, these benefits are not easy for administrations, legislatures, and the general public to grasp. The benefits may seem ethereal or theoretical when compared to the contemporaneous outrage exhibited by a victim who has seen his or her attacker strolling down the street, seemingly released without any consequences.<sup>12</sup> However, the long-term political, fiscal and social benefits to entire communities are long lasting and are experienced by all citizens. Further, the young people in the juvenile justice system most acutely feel these benefits as they are most affected by these policies.

A key component in a truly transformed juvenile justice system that works for youth is a cadre of defenders that are trained in identifying critical points of need from the moment a young person has contact with the system. This concept is based in the theory of client-centered representation,<sup>13</sup> which has been highlighted as a model by which to deliver high quality representation to criminal defendants.<sup>14</sup> A number of components lead to successes in the attorney-client relationship under a client-centered model. Early meetings with clients coupled with consistent meetings and visitation in a manner that focuses on the need of the client before the attorney increases the potential of fostering a trusting relationship<sup>15</sup> that may lead to addressing not only the criminal charge at hand, but also those social factors that may have contributed to the situation.<sup>16</sup>

This manner of holistic representation is especially critical when working with young people.<sup>17</sup> Often youth have experienced neglect and trauma prior to committing alleged offenses

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<sup>10</sup> See discussion *infra* Part V.B-C.

<sup>11</sup> Drake et al., *supra* note 9, at 194.

<sup>12</sup> See Colbert I. King, *D.C.'s Juvenile Justice Farce*, WASH. POST, June 12, 2010, at A15 (quoting criticism of public officials and the current system by a mother of a victim).

<sup>13</sup> See generally Katherine R. Kruse, *Fortress In The Sand: The Plural Values Of Client-Centered Representation*, 12 CLINICAL L. REV. 369 (2006) (discussing the history and development of the client-centered theory of representation).

<sup>14</sup> See, e.g., NAT'L LEGAL AID & DEFENDER ASS'N, EVALUATION OF PUBLIC DEFENDER SERVICES FOR THE DISTRICT OF COLUMBIA: HALTING ASSEMBLY LINE JUSTICE – PDS: A MODEL OF CLIENT-CENTERED REPRESENTATION I (2008), available at [http://www.nlada.net/sites/default/files/dc\\_halingassemblylinejusticejseri08-2008\\_report.pdf](http://www.nlada.net/sites/default/files/dc_halingassemblylinejusticejseri08-2008_report.pdf).

<sup>15</sup> See Katayoon Majd & Patricia Puritz, *The Cost of Justice: How Low-Income Youth Continue to Pay the Price of Failing Indigent Defense Systems*, 16 GEO. J. POVERTY ON L. & POL'Y 543, 555 nn. 90-91 (2009) (discussing the mistrust often felt by a young person about their defense attorney, especially when appointed by the state).

<sup>16</sup> It should also be noted that a key component of supporting this type of relationship is small caseloads. For an in depth discussion of the problems of high caseloads, see Heidi Reamer Anderson, *Funding Gideon's Promise by Viewing Excessive Caseloads as Unethical Conflicts of Interest*, 39 HASTINGS CONST. L.Q. 421 (2011); see also ABA STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, EIGHT GUIDELINES OF PUBLIC DEFENSE RELATED TO EXCESSIVE WORKLOADS (2009), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_eight\\_guidelines\\_of\\_public\\_defense.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.authcheckdam.pdf) (providing ethical guidance to indigent defense attorneys who may be burdened by such excessive caseloads that they are challenged in achieving responsibilities under professional rules of conduct).

<sup>17</sup> While this proposition is generally accepted by many in the youth advocacy community, there remain challenges to and resistance surrounding client-centered representation for youth. See, e.g., Barbara Fedders, *Losing Hold Of The Guiding Hand: Ineffective Assistance Of Counsel In Juvenile Delinquency Representation*, 14 LEWIS & CLARK L. REV. 771, 799-800 (2010) (describing the “notion that the values and views of their child clients are worthy of respect” are a reason why some attorneys may resist client-centered representation); Katherine Hunt Federle, *Lawyering in Juvenile*

and by providing holistic and meaningful representation, the attorney can at minimum prevent repeat neglect by the representation and court systems.<sup>18</sup> Further, young people are so often marginalized in the juvenile court proceedings, excluded from meaningful participation in decision-making that has very real impacts on their lives.<sup>19</sup> Holistic representation not only includes a young person in the decision-making process, but also helps them learn skills, such as responsibility and accountability, which can be beneficial for success upon reentry.<sup>20</sup> In providing holistic representation, the juvenile defender may at times be required to step out of his or her role of legal advocate to act as a social worker, educational advocate, substance abuse counselor, or family therapist. Holistic representation for court-involved youth involves advocacy that goes beyond merely working for the expressed legal interests of the client and necessarily includes working for the expressed interests of the youth in non-legal areas as well.

Through developing a client-centered relationship with young clients, an attorney is positioned to not only better represent that young person in the instant matter, but also to work towards ensuring they are provided with the supports and services necessary to reduce chances of recidivism and encourage future successes. Connecting clients with essential services not only requires a general understanding of the various points of knowledge unique to youth representation—such as stages of development, indicators of learning disabilities, and the effects of abuse, neglect, and trauma<sup>21</sup>—it also requires a specific knowledge of the range of services available to youth in the given jurisdiction. Therefore, no matter how diligently a juvenile defender works to provide community-based reentry services for their clients, if the juvenile justice system does not support such efforts, successes may be minimal. Successfully defending youth in crisis demands that juvenile justice systems are designed, equipped, and empowered to meet the various needs of the whole child.

## II. SHIFTS IN TRENDS

In addition to a defense theory that accepts that the role of the juvenile defender is to represent the expressed interests of their clients,<sup>22</sup> a number of juvenile justice systems across the United States have begun to transform their heavily punitive nature to focus more on the tenets of rehabilitation and positive youth development.<sup>23</sup> The most significant shift has been for jurisdictions to move away from the traditional incarceration and detention-based model to a community-based treatment model, in which young people are provided with alternatives to

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*Court: Lessons From A Civil Gideon Experiment*, 37 *FORDHAM URB. L.J.* 93, 108 (2010) (“This resistance to client-directed lawyering for children is in no small part attributable to an underlying doubt about children as autonomous and capable actors.”).

<sup>18</sup> See JULIAN D. FORD ET AL., *NAT’L CTR. FOR MENTAL HEALTH & JUVENILE JUSTICE TRAUMA AMONG YOUTH IN THE JUVENILE JUSTICE SYSTEM: CRITICAL ISSUES & NEW DIRECTIONS* (2007) (discussing the “prevalence and impact of trauma and traumatic stress among youth in the juvenile justice system”).

<sup>19</sup> See Emily Buss, *Failing Juvenile Courts, and What Lawyers and Judges Can Do About It*, 6 *NW. J.L. & SOC. POL’Y* 318, 319 (2011) (discussing the exclusion of the young person from the hearing or in the “worse cases, where the judge and lawyers ignore the young person and his family altogether or speak with shocking disrespect”).

<sup>20</sup> *Id.* at 322-24, 327.

<sup>21</sup> See Maureen Pacheco, *The Defense Of Children: A Call To Arms*, 34 *CHAMPION* 49, 49, 50-51 (2010).

<sup>22</sup> See, e.g., Kristin N. Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child’s Counsel in Delinquency Cases*, 81 *NOTRE DAME L. REV.* 245, 255-59 (2005).

<sup>23</sup> See *infra* Part V.

incarceration that provide therapeutic, family, and strength-based supports.<sup>24</sup> These developments are largely due to the emergence of studies indicating that traditional models of juvenile justice based on institutionalization of youth have less than desirable impacts on youth and communities, including minimal effects on recidivism rates and physical and emotional abuses perpetrated by the very system charged with caring for youth.<sup>25</sup>

The state of Missouri has led the charge in these reform efforts, pioneering a model that has been hailed as a beacon of success and that has been adopted in various forms throughout the nation.<sup>26</sup> The two central tenets of the “Missouri Model” are reducing the number of youth in detention by identifying youth who pose minimal threat to public safety and providing them with community-based services and for those youth who do require secure detention, abandoning the warehousing model of detention in favor of smaller facilities based in local communities that provide intensive, clinical-based services aimed at behavior modification and successful reentry into society.<sup>27</sup> Through this model, the state has not only reduced expenditures on juvenile corrections, but has most importantly reduced the number of young people in secure detention, significantly reducing recidivism rates among system-involved youth.<sup>28</sup>

### III. THE INTERSECTION OF JUVENILE JUSTICE ADVOCACY AND JUVENILE DEFENSE

Since *In re Gault*, the Supreme Court case that ushered in the juvenile justice system as it is currently configured, juvenile justice reform has been a fluid and constantly changing concept. During the 1980s and early 1990s, “juvenile justice reform” referred to moving away from the rehabilitative constructs imagined by *Gault*.<sup>29</sup> However, following this period, from the mid-to-late 1990s to the present, juvenile justice reform has increasingly referred to the movement away

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<sup>24</sup> See *infra* Part V.

<sup>25</sup> See, e.g., BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 2-3 (2006).

A recent literature review of youth corrections shows that detention has a profoundly negative impact on young people’s mental and physical well-being, their education, and their employment. . . . [T]here is credible and significant research that suggests that the experience of detention may make it more likely that youth will continue to engage in delinquent behavior, and that the detention experience may increase the odds that youth will recidivate.

*Id.*

<sup>26</sup> See Dick Mendel, *Small Is Beautiful: The Missouri Division of Youth Services*, ADVOCASEY, Spring 2003, at 28, 34-38; RICHARD A. MENDEL, ANNIE E. CASEY FOUND, THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDER 5 (2010) [hereinafter REINVENTING THE PRACTICE]; see generally Solomon Moore, *Missouri System Treats Juvenile Offenders With Lighter Hand*, N.Y. TIMES, Mar. 26, 2009, <http://www.nytimes.com/2009/03/27/us/27juvenile.html> (discussing the Missouri Model adaptation).

<sup>27</sup> REINVENTING THE PRACTICE, *supra* note 26, at 5.

<sup>28</sup> RICHARD A. MENDEL, AM. YOUTH POLICY FORUM, LESS COST, MORE SAFETY: GUIDING LIGHTS FOR REFORM IN JUVENILE JUSTICE 11-13 (2001) (presenting findings that Missouri has both lower costs than the eight surrounding states—\$94 versus \$140 per young person from ages 10-17—as well as a “failure rate one-half to two-thirds below that of most other states” as measured by preventing parole violations and recommitting of youths).

<sup>29</sup> See D.A. Andrews & James Bonta, *Rehabilitating Criminal Justice Policy and Practice*, 16 PSYCHOL. PUB. POL’Y & L. 39, 41-42 (2010) (discussing the trend away from rehabilitation and towards punishment in the decades following *Gault*).

from deterrence-based juvenile justice systems.<sup>30</sup>

The components that comprise juvenile justice systems have also changed accordingly. Implementing juvenile justice reform during the juvenile “super-predator” era meant moving away from systems focused on rehabilitation. These type of reforms often meant increased reliance on incarceration.<sup>31</sup> Currently, juvenile justice reform has come to refer to the movement to implement the Missouri Model, or a modified version thereof, in a particular jurisdiction. This model seeks to allow low- to medium-risk youth to remain in the community while receiving intensive rehabilitative services.<sup>32</sup> The highest risk youth are alternatively held in small, homelike facilities close to their communities.<sup>33</sup> The shuttering of large, warehouse-like detention facilities in favor of smaller, more therapeutic-focused facilities is a hallmark of a reformed juvenile justice system.<sup>34</sup>

An effective and coordinated advocacy platform is crucial to highlighting the benefits of juvenile justice reform to the general public and political decision makers. This effort needs both policy advocates and juvenile defenders to articulate the political, fiscal, legal, and social benefits of a reformed system. This is where the work of juvenile justice advocates and juvenile defenders intersect. The work to make plain the benefits of juvenile justice reform is done most effectively when advocates and attorneys combine their various skill sets and knowledge bases to make clear for policymakers the benefits of juvenile justice reform.

Importantly, the work of each of these groups also has a positive impact on, and increases the options available to, the other. This section will examine how juvenile justice policy advocacy can enhance legal representation of at-risk youth and increase the options available to juvenile defenders in working to fulfill their clients’ stated interests. Also, this section will explain how juvenile defenders can contribute to policy advocacy and how effective policy advocacy must include the participation of juvenile defenders.

Juvenile justice reform advocates utilize personal stories, research and data, studies of evidence-based programs, and grassroots advocacy to persuade legislatures, administrations, and the general public of the long-term benefits of juvenile justice reform. They seek to improve outcomes for young people who are in contact with the criminal justice system and to install systems that provide meaningful opportunity for rehabilitation. Research has continued to show this rehabilitation is best achieved by applying positive youth development principles and by implementing systems that are designed, equipped, and empowered to meet the various needs of the whole child.<sup>35</sup> At the core of this mission is the belief that young people have the ability to

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<sup>30</sup> See Elizabeth S. Scott & Laurence Steinberg, *Social Welfare and Fairness in Juvenile Crime Regulation*, 71 LA. L. REV. 35, 62-63 (2010).

<sup>31</sup> *Id.* at 41-43.

<sup>32</sup> See REINVENTING THE PRACTICE, *supra* note 26, at 5.

<sup>33</sup> *Id.*

<sup>34</sup> See Kirk Mitchell, *With Fewer Kids Held, Colorado to Close Two Juvenile Detention Facilities*, DENVER POST, Oct. 6, 2011, [http://www.denverpost.com/news/ci\\_19050999](http://www.denverpost.com/news/ci_19050999) (discussing the closure of juvenile facilities in Colorado as a result of fewer juvenile detentions); see also Editorial, *Better Care for Troubled Youth*, N.Y. TIMES, Jan. 26, 2012, at A30.

<sup>35</sup> Christopher Peterson, *Preface*, ANNALS AM. ACAD. OF POL. & SOC. SCI., Jan. 2004, at 6, 9.

The vision of the good youth that emerges is a young person who experiences more positive affect than negative affect, who is satisfied with his or her life as it has been lived, who has identified what he or she does well and uses these talents and strengths in a variety of fulfilling pursuits, and who is a contributing member of a social community. And of course, safety and health are importantly in

change, rise above their present circumstances, and move past youthful mistakes. Providing youth with alternatives to detention is more likely to allow court-involved youth to avoid the collateral consequences of incarceration that can derail their progress to successful adulthood. The push to implement such alternatives is a cornerstone of juvenile justice reform. Alternatives to detention also expand the options for defense attorneys representing court-involved youth.<sup>36</sup>

The effects of successful juvenile justice reform advocacy are evident in the juvenile defender's courtroom. In most jurisdictions, the first contact a defense attorney has with an arrested youth is immediately prior to their first court appearance. At their first appearance, the stated interests or the needs of a young person before the court are likely to be simple: "I want to go home" or "I don't want to be locked up anymore." A defense attorney should be equipped to make an argument to the court in favor of granting these basic requests. This is usually an exercise in examining some basic social factors. For example, does the youth have a family member or guardian willing to take him home? Is the youth connected to school and attending regularly? Is the youth engaged in pro-social activities? Is this occasion the youth's first appearance before the court? If the answer to these questions, or most of them, is yes, and the attorney can show the youth is not a danger to himself or the community, it is likely that the argument for release will be successful.

Community-based supervision is a core principle of juvenile justice reform advocacy.<sup>37</sup> Advocates have consistently sought to implement community-based alternatives to detention for court-involved youth. These efforts have resulted in a number of alternatives that are now considered essential components of a reformed juvenile justice system. At the core of the movement to supervise youth in the community is the idea that youth should be housed in the least restrictive setting consistent with public safety.<sup>38</sup> Evening reporting centers,<sup>39</sup> group homes,

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place as the background or context of this vision. A positive youth development program is one that effectively targets one or more of these facets.

*Id.*

<sup>36</sup> See REINVENTING THE PRACTICE, *supra* note 26, at 5 (explaining alternatives available under the Missouri Model).

<sup>37</sup> See NAT'L JUVENILE JUSTICE NETWORK, BRINGING YOUTH HOME: A NATIONAL MOVEMENT TO INCREASE PUBLIC SAFETY, REHABILITATE YOUTH AND SAVE MONEY 8 (2011) (recommending that the closure of poorly run facilities should not result in the transfer of youth to more secure facilities but rather to less costly and more effective community-based programs).

<sup>38</sup> James Austin et. al., *Alternatives to the Secure Detention and Confinement of Juvenile Offenders*, JUV. JUST. BULL. (Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, Washington D.C.), Sept. 2005, at 1, 9.

Some youth may require long-term placement in a maximum security facility, while others may be better suited to a short-term program with fewer security restrictions. These decisions should be based on the seriousness of the youth's current offense, prior system involvement, history of escape, and other factors shown to be related to the risk posed to public safety. In the detention risk assessment process, youth are sometimes placed in restrictive settings regardless of their level of risk because agency policy or state law requires it. The custody classification system strives to place the youth in the least restrictive custody level required to ensure the safety of staff and other youth.

*Id.* at 9.

<sup>39</sup> Evening reporting centers provide youth with supervision and educational and recreational counseling during the afternoon and evening. The youth are picked up from either school or home, and returned home in the evening following the program. See, e.g., Keri D. Brown & Nancy H. Baird, *Rethinking Juvenile Detention In Harris County*, HOUSTON LAW, Nov./Dec. 2010, at 28, 29 (discussing juvenile detention policy reform in Harris County Texas).

Global Positioning System (“GPS”) monitoring, and supervision by participation in community-based programs such as mentoring programs, athletic programs or educational programs are all potential alternatives to detention that are now in use due to the work of juvenile justice reform advocates.<sup>40</sup>

The absence of these positive social factors does not relieve the juvenile defender of the duty to make arguments for release if that is the stated interest of their client.<sup>41</sup> Though most defense attorneys wish that each of their clients had a great amount of positive social factors, unfortunately, that is rarely the case. In many jurisdictions, young people who are in contact with the court are among the community’s most disadvantaged youth.<sup>42</sup> In these situations, it is the responsibility of the defense attorney to hear the stated interest of the young person and make the argument that the availability of community-based services can either make up for or approximate positive social factors and make release the proper decision. Evening reporting centers can be an alternative for young people who are deemed to possess a risk level that may warrant constant supervision outside of school hours, but not secure detention.<sup>43</sup> Shelter houses and group homes are available for young people who do not have a stable or supportive family available to participate in their rehabilitation, but are not deemed a danger to themselves or the community. GPS monitoring can be used alone or in combination with another alternative to detention and can assure the court and supervisory agencies that the young person is where they should be when they should be there. Supervision through participation in community-based organization programming can be used for the lowest risk youth whom the court nonetheless wants to ensure are connected to positive peer influences and participating in pro-social activities.

The existence of pre- and post-disposition alternatives to detention and the availability of community-based services that provide the requisite supervision for court-involved youth are all characteristics of a reformed juvenile justice system. This continuum of care is a system that juvenile justice advocates continually work to implement in jurisdictions across the country. Juvenile defenders can enhance their practice by becoming aware of the variety of existing alternatives to detention. Where these alternatives exist, the juvenile defender should also become familiar with community-based organizations that provide services to young people. Through connecting clients to these organizations and familiarizing themselves with their programmatic benefits, defense attorneys are provided with an alternative argument to secure detention. This argument still allows defense attorneys to advocate for release from secure detention even if that release is not completely supervision-free.

Juvenile justice reform advocates employ coalition-building tactics that bring together a variety of professionals, practitioners, and youth workers to persuade administrations and legislatures to adopt system-wide reform. Juvenile defense attorneys are important members of these coalitions. Advocates for juvenile justice reform optimize their effectiveness in the fight for reform when the coalition for change includes juvenile defenders in advocacy campaigns because

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<sup>40</sup> See *infra* Part V.C.

<sup>41</sup> There is the possibility that a particular youth may not want to be released into the community; however, that is a rare occurrence and in our experience, we have rarely seen a client who wished to stay detained if given the opportunity to be released.

<sup>42</sup> See Elizabeth K. Anthony et al., *Coming Back Home: The Reintegration of Formerly Incarcerated Youth with Service Implications*, 32 CHILD. & YOUTH SERVICES REV. (2010), 1273-75 (describing both the characteristics of system-involved youth, such as living in a high-crime neighborhood, limited educational and employment opportunities, and largely untreated health problems, as well as the service needs of youth upon reentry).

<sup>43</sup> Brown & Baird, *supra* note 39, at 29.

the defenders perform three important functions. First, they provide contemporaneous feedback on how the juvenile justice system in a particular jurisdiction is performing.<sup>44</sup> Second, they contribute personal anecdotes from their work with the youth in the justice system.<sup>45</sup> Third, defense attorneys are able to provide advice and counsel on the practical effects of proposed reform and warn advocates of potential negative unintended consequences of reform.<sup>46</sup>

Defense attorneys are early witnesses to the performance of the continuum of care in the juvenile justice system. As they are closest to young people in the juvenile justice system, defense attorneys can provide crucial identification and clarification of broader systemic issues and provide advocates examples of injustices or inadequacies in the system.<sup>47</sup> If defense attorneys witness the same youth coming back through the system, they can draw attention to the fact that there are clearly system components that are not functioning properly.

Defense attorneys also provide advocates information on the sentencing behavior of judges. Absent a youth being deemed a danger to themselves or the community, the level of supervision or community-based services ordered by judges as part of the disposition of a case indicates how confident they are in the performance of the components that comprise the juvenile justice system.<sup>48</sup> Judges are less inclined to order alternatives to detention or to allow youth to be supervised by community-based services if they believe those components are not performing properly, not adequately supervising youth, or not protecting public safety.<sup>49</sup> Possessing this real-time information from defense attorneys improves the effectiveness of juvenile justice advocates. This information is invaluable in crafting strategies to improve existing alternatives to detention and in crafting proposals for expanded community-based services.

Juvenile justice reform advocates must always be cognizant of the real-life impacts of proposed reforms. Some reform programs have a human cost as well as a benefit for youth. Defense attorneys can provide advice and counsel on the practical effects of proposed policies as well as help advocates strategically devise policy positions that do not have unintended and harmful consequences for court-involved youth.<sup>50</sup> For example, a program that diverts youth by issuing a citation in lieu of arrest on its face seems to follow reform principles: diversion rather than arrest, reducing time spent in secure detention, and treating low-risk youth appropriately.

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<sup>44</sup> Jody Kent Lavy & Naoka Carey, *Juvenile Justice: Juvenile Life Without Parole: An Opportunity For Advocates And Attorneys To Work Together To Effect Change*, 35 CHAMPION 46, 48 (2011).

<sup>45</sup> *Id.*

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

<sup>47</sup> *Id.*

<sup>48</sup> There is a belief that in Washington, D.C. some judges were more inclined to commit youth to DYRS knowing that they would receive services not available anywhere else in the juvenile justice system.

<sup>49</sup> See ANNIE E. CASEY FOUND., *JDAI interviews Cook County Juvenile Judge Carol Kelly*, <http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/Resources/JDAI/2011/Spring%202011/JDAI%20Interview/JDAI%20interviews%20Cook%20County%20Juvenile%20Judge%20Carol%20Kelly.aspx> (last visited Mar. 10, 2012). When asked her opinion on what factors helped reduce the juvenile population in the Cook County Juvenile Temporary Detention Center, Judge Carol Kelly said the following:

A simple thing like switching our electronic monitoring program from radio frequency technology to global positioning systems eliminated the requirement for a home phone. Judges have more confidence in this system, being able to locate youth at any time, and are now more likely to put a youth on electronic monitoring without an overnight stay in detention.

*Id.*

<sup>50</sup> Lavy & Carey, *supra* note 44, at 48.

However, a concern brought by defense attorneys is that such a program has “net-widening” potential. That is, because police do not have to make a formal arrest that has accompanying lengthy procedures, they are able to issue citations to more youth, thereby causing more youth to become involved with the court. This unintended consequence may not be readily discernible to advocates who are often not privy to police conduct to the extent juvenile defenders are.

#### IV. EXAMPLES OF ADVOCACY EFFORTS TO IMPLEMENT SYSTEMIC REFORMS

As the Missouri Model has been adopted and adapted in various state and local jurisdictions in response to specific histories and acute needs, it is generally accepted that holistic system reform includes some or all of a number of critical indicators: “[l]arge scale institutional reform,” “[r]eturning young people to juvenile court jurisdiction,” “[s]trengthening aftercare services to help young people return to their communities,” “[i]mproving juvenile conditions of confinement,” “[p]roviding mental health treatment to young people who need it,” “[i]nvesting in services rather than state confinement,” and “[i]mproving juvenile defense.”<sup>51</sup>

The following three reform efforts provide promising examples of communities taking steps to convert their systems into youth-supporting institutions. While at varying stages of the reform effort, they provide insight into how communities, advocates, and legal professionals can leverage power and resources to demand positive change. The examples focus on three of the key aspects of the reform efforts: raising the age of juvenile court jurisdiction, closing large-scale detention facilities in favor of smaller, community-based facilities, and investing in wrap-around services to meet the needs of the whole youth.

##### A. Connecticut – Raising the Age<sup>52</sup>

In 1995, the Connecticut state legislature implemented a “tough on crime” bill that resulted in the criminalization of the juvenile court and made transfers to adult court an easier process.<sup>53</sup> The results of the shift in policy eventually led to a state-mandated review of conditions in the system,<sup>54</sup> which yielded findings in a 2001 report by the Connecticut Policy & Economic Council (CPEC) indicating that the system was actually causing *increased* delinquency in the youth population and recommending evidence based programming and less supervision of

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<sup>51</sup> ZIEDENBERG, *supra* note 3, at 4-5.

<sup>52</sup> See Merrill Sobie, *Pity the Child: The Age of Delinquency in New York*, 30 PACE L. REV. 1061, 1065 (2010).

[T]he juvenile delinquency age limitation is not absolute. Most states adhere to the general rule, but exempt very violent offenses committed by older adolescents. . . . The majority of states provide for “transfer,” whereby juvenile courts determine whether an older adolescent who is accused of committing a violent felony should be treated as a juvenile or, alternatively, should be transferred to adult courts for criminal prosecution. Other states permit a prosecutor to “direct file” in the criminal court, thereby by-passing the juvenile court. Still others exempt certain enumerated offenses committed by older children from juvenile court jurisdiction entirely.

*Id.*

<sup>53</sup> 1995 Conn. Pub. Acts 1081, 1081-82; *see also* 2000 Conn. Pub. Acts 739, 739 (expanding the age of jurisdiction for status offenses).

<sup>54</sup> 2000 Conn. Pub. Acts 678, 678-89.

low-risk youth.<sup>55</sup>

The CPEC report brought attention to the fact that Connecticut had a system that was failing young people and failing the community by not taking effective steps to provide for public safety. A number of advocacy groups came together to advocate for systemic reform in 2001 and created the Connecticut Juvenile Justice Alliance, which made a number of strides that have resulted in a much-reformed system.<sup>56</sup>

Advocacy efforts began to gain real traction after the tragic suicide of a 17-year old youth with a history of mental illness, who was detained on a parole violation.<sup>57</sup> In addition to decriminalizing status offenses in 2005,<sup>58</sup> after a strategic “Raise the Age” advocacy campaign, the Connecticut state legislature adopted legislation changing the processing and treatment of status offenders in the system and raising the age of juvenile delinquency.<sup>59</sup> The bill included a staged implementation plan, with sixteen year olds rejoining the juvenile system in 2010 and seventeen year olds scheduled to rejoin in 2012.<sup>60</sup> Although members of the opposition sought for a repeal of “Raise the Age”, the plan was implemented and has resulted in more than 6,000 sixteen year olds being kept out of adult court in the first eighteen months of implementation.<sup>61</sup>

### B. Louisiana – Closing a Warehouse-like Facility

Prior to implementing system-wide reform, the state-run juvenile institutions in Louisiana bore the hallmarks of a failed justice system—disproportionate numbers of youth of color, often charged with non-violent offenses, were serving time in detention in inhumane conditions where they were victims of physical and emotional abuse.<sup>62</sup> In part, the conditions of confinement came to the DOJ’s attention due to the work of juvenile justice advocates.<sup>63</sup> Their advocacy contributed to the creation of the Louisiana Juvenile Justice Commission in 2001 with benchmarks that include increasing transparency and the availability of information to the public

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<sup>55</sup> VICTORIA DOUGHERTY ET. AL., CONNECTICUT POLICY AND ECON. COUNCIL, STATE OF CONNECTICUT JUVENILE JUSTICE PROGRAMS: RECIDIVISM OUTCOME EVALUATION iii-iv (2002).

<sup>56</sup> CONN. JUVENILE JUSTICE ALLIANCES, HOW TO CATCH LIGHTNING IN A BOTTLE: THE CONNECTICUT JUVENILE JUSTICE ALLIANCE’S FIRST 10 YEARS 5 (2011).

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

<sup>58</sup> 2005 Conn. Pub. Acts 778, 780 (codified as amended at CONN. GEN. STAT. § 46b-148 (2011)) (repealing the provision which allowed for children from families “with service needs”—specifically, if the child runs away from home or is truant from school—to be processed, held, or convicted as a delinquent if a court order is violated).

<sup>59</sup> 2007 Conn. Acts 1590, 1641 (Spec. Sess.).

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

<sup>61</sup> CONN. JUVENILE JUSTICE ALLIANCES, *supra* note 56, at 21.

<sup>62</sup> The conditions in four of the state’s secure juvenile facilities were found so deplorable that they resulted in a 2000 settlement agreement between the state and the U.S. Department of Justice (DOJ), whereby responsibility for the provision of medical, dental, and mental health services was transferred to the Louisiana State University School of Medicine and the state was mandated to improve conditions for incarcerated youth to protect them from harm—including abuse and excessive force—while in confinement. *See* Settlement Agreement for Medical, Dental, Mental Health, Rehabilitation and Juvenile Justice Issues, *supra* note 8, at 53-54.

<sup>63</sup> The coalition to end the abuses in the Louisiana juvenile justice system was led by concerned community members and local non-profits, such as the Juvenile Justice Project of Louisiana (JJPL) and Families and Friends of Louisiana’s Incarcerated Children (FFLC). *See id.*; *Statewide Juvenile Justice Reform*, JUVENILE JUSTICE PROJECT OF LA., <http://jjpl.org/programs/statewide-juvenile-justice-reform> (last visited Feb. 29, 2012).

on the state's juvenile justice system, identifying long and short term strategies for improving the system as a whole,<sup>64</sup> as well as enacting legislation to close one of the state's most notorious youth detention facilities.<sup>65</sup>

However, reforms have not been fully implemented and there is still much work to be done in Louisiana. Advocacy groups such as the Juvenile Justice Project of Louisiana (JJPL) and Families and Friends of Louisiana's Incarcerated Children (FFCL) continue to bring attention to the conditions at various state facilities through multiple advocacy strategies, such as report writing<sup>66</sup> and first-person testimonials.<sup>67</sup>

### C. Washington, D.C. – Implementing Community-based Services

The story of Washington, D.C.'s juvenile justice reform is generally accepted as beginning in 1985, when the District of Columbia's Public Defender Service and the American Civil Liberties Union's National Prison Project filed the *Jerry M.* class action lawsuit,<sup>68</sup> which resulted in a Consent Decree the following year.<sup>69</sup>

In 2000, the Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform (BRC) was established,<sup>70</sup> comprised of members of the juvenile justice and stakeholder communities, with the charge of developing policy recommendations to bring the District into compliance with the Decree based on best practices. While the BRC initially began exploring reform efforts that ran counter to those tenets presented by the Missouri Model, members of the local and national advocacy communities joined forces<sup>71</sup> to make positive recommendations that

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<sup>64</sup> H.R. Con. Res. No. 94, 2001 Leg., Reg. Sess. (La. 2001), available at [http://legis.la.gov/leg\\_docs/01RS/CVT3/OUT/0000IUTS.PDF](http://legis.la.gov/leg_docs/01RS/CVT3/OUT/0000IUTS.PDF).

<sup>65</sup> One of the most impressive community successes was the passage of the Juvenile Justice Act of 2003. 2003 La. Acts 3697, 3697-3700 (codified at LA. REV. STAT. ANN. §§ 15:902.2-3, :1110). This piece of legislation not only required the closure of the Tallulah Center for Youth, it set the state on a path towards creating a model of juvenile justice shaped after the Missouri Model and established an implementation committee to oversee implementation of key aspects of the Act. See *id.*

<sup>66</sup> See, e.g., JUVENILE JUSTICE PROJECT OF LA., NO BETTER OFF: AN UPDATE ON SWANSON CENTER FOR YOUTH 2-3 (2010), available at <http://media.nola.com/politics/other/No-Better-Off-Final-Report-2.pdf> (reporting on concerns at the Swanson Center such as incarceration of non-violent youth and excessive use of lockdown as well as recommending improvements).

<sup>67</sup> See, e.g., Katy Reckdahl, *Council Refuses to Show Teen's Video Testimony*, TIMES-PICAYUNE (Nov. 11, 2008, 3:46 PM), [http://www.nola.com/news/index.ssf/2008/11/council\\_refuses\\_to\\_show\\_teens.html](http://www.nola.com/news/index.ssf/2008/11/council_refuses_to_show_teens.html).

<sup>68</sup> See Amended Complaint, *Jerry M. v. District of Columbia*, No. 1519-85 (D.C. Super. Ct. Jan. 15, 1986).

<sup>69</sup> See Consent Decree, *Jerry M. v. District of Columbia*, No. 1519-85 (D.C. Super. Ct. July 10, 1986). The decree required the city to address the deplorable conditions at the Oak Hill Youth Center, as well as commit to reducing situations of overcrowding and identifying a plan to implement a continuum of care and services for youth. The Decree also required a monitor be put in place to observe, collect information, and make recommendations to the District in its implementation of the Decree. See *id.*

<sup>70</sup> Mayor's Order 2000-130, Establishment—Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform (D.C. Aug. 18, 2000).

<sup>71</sup> This coalition was included the Youth Law Center, the Justice Policy Institute, the Latin American Youth Center, the Alliance of Concerned Men and others, and went on to form the Justice for D.C. Youth Coalition (JDCY). LIZ RYAN & MARC SCHINDLER, NOTORIOUS TO NOTABLE: THE CRUCIAL ROLE OF THE PHILANTHROPIC COMMUNITY IN TRANSFORMING THE JUVENILE JUSTICE SYSTEM IN WASHINGTON, D.C. 10 (2011).

resulted in the BRC recommending more holistic-based reforms.<sup>72</sup>

The coalition that had formed to work with the BRC in shaping recommendations, the Justice for DC Youth Coalition (JDYC) continued its advocacy by partnering with then-Councilmember Adrian Fenty to draft comprehensive reform legislation implementing the recommendation of the BRC, which was ultimately approved by a unanimous vote of the council in 2003 and signed into law in 2004.<sup>73</sup>

Under the leadership of the Department of Youth Rehabilitation Services (DYRS)—the new cabinet-level juvenile justice agency created by the reform legislation—Oak Hill, an inhumane institution, has been closed, a smaller homelike facility has been built, and funds have been directed to the expansion of community-based alternatives to incarceration.<sup>74</sup> Additionally, the city now supports a network of shelter homes for youth as well as after school reporting centers run by DYRS and Courts Supervision Services. Since these reforms were enacted, the District has experienced reduced incarceration rates, reduced abscondence rates, and lower recidivism rates.<sup>75</sup>

## V. EVALUATING A JURISDICTION AND ITS JUVENILE JUSTICE SYSTEM

It is important for practitioners to be aware of the components that comprise their jurisdiction's juvenile justice system. Therefore, this section will discuss some of the factors to consider when analyzing a particular jurisdiction's system. A system that contains many of these components will be a system that is focused on using treatment-based methodology to rehabilitate youth, while a system with fewer of these components may not be as far along on the spectrum of juvenile justice reform. However, a system with fewer of these components will be a jurisdiction that is ready for juvenile justice advocates and juvenile defenders to work together for reform.

### A. *Community-Based Services/Continuum of Care*

When determining in which setting to place an adjudicated youth, a rehabilitation-

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<sup>72</sup> Such recommendations included the closure of Oak Hill to be replaced by a “smaller, rehabilitative program; expansion of community-based programs; and a reduction of the transfer of youth into the adult criminal justice system.” *Id.*

<sup>73</sup> Omnibus Juvenile Justice Act of 2004, 52 D.C. Reg. 1188 (Feb. 11, 2005) (codified at D.C. CODE §§ 16.2301-2340). Reforms included the mandate to close the Oak Hill facility within five years and redirect substantial resources to community-based alternatives. See RYAN & SCHINDLER, *supra* note 71, at 11.

<sup>74</sup> In November 2009, the “Lead Entities and Service Coalitions” initiative was announced as the program that would provide youth under the care of DYRS with community-based services and supports. The stated goal of the Initiative is to “work closely with families in their own communities to ensure a youth’s successful transition to adulthood and safer neighborhoods for all.” DEP’T OF YOUTH & REHAB. SERVS., *Lead Entity and Service Coalition Initiative*, <http://dc.gov/DC/DYRS/Youth+Services/Lead+Entity+and+Service+Coalition+Initiative/Lead+Entity+and+Service+Coalition+Initiative> (last visited Feb. 28, 2012) (discussing New Beginnings and Lead Entities).

<sup>75</sup> D.C. DEP’T OF YOUTH REHAB. SERVS., A JUVENILE JUSTICE SYSTEM FOCUSED ON IMPROVING PUBLIC SAFETY 3 (2010) (“Six months after they have been released from DYRS, most young people (75 percent) are not re-arrested. This compares favorably with other jurisdictions, and the system is working hard to further reduce the recidivism rate.”). DYRS has decreased incarceration rates by using the alternative of evening reporting centers “where young people can receive educational and vocational support, mentoring, counseling, and are supervised to ensure that these young people meet their court obligations.” *Id.* at 2. Abscondence, the escape of youths from facilities, has fallen from 23% to 7% from 2003 to 2010. *Id.* at 3.

focused juvenile justice system will decide on a placement that is the least restrictive setting consistent with public safety.<sup>76</sup> In order to determine what level of supervision is necessary to protect public safety, a rehabilitation-focused juvenile justice system will use a risk assessment instrument (RAI) to determine the risk level of the youth, whether detention is warranted, and/or what level of supervision is necessary.<sup>77</sup> Use of this tool allows court social workers, probation officers, judges, and attorneys to make recommendations as to a youth's treatment regime based on a uniform and objective assessment and results in more consistent placement decisions.

A reformed juvenile justice system will use an RAI that looks at factors beyond those that led to the youth's arrest. This expanded view of all of the youth's circumstances results in youth that present low and medium risk levels being supervised in the community and not in a secure detention facility. Therefore, to be considered a reformed system, the court must have the option to order a youth into a variety of facilities with varying levels of supervision appropriate to the youth's risk level. Consequently, a reformed system will have in place a continuum of care that includes community-based secure residential treatment centers, secure group homes, "unlocked" group homes, and shelter houses, all of which provide a less intensive level of supervision and allow youth to be supervised in their communities rather than in secure detention facilities.

A reformed system will also have a system of graduated sanctions, which provide a systematic range of appropriate sanctions and treatment and are grounded in the idea that state and local criminal justice staff must approach each juvenile delinquent as an individual.<sup>78</sup> The model program of graduated sanctions developed by the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) combines treatment, rehabilitation, and appropriate sanctions, and offers a continuum of care consisting of diverse programs. This continuum includes the following regime of graduated sanctions: 1) "[i]mmediate sanctions within the community for first-time, nonviolent offenders," 2) "[i]ntermediate sanctions within the community for more serious offenders," and 3) "[s]ecure care programs for the most violent offenders."<sup>79</sup>

Another key characteristic of a reformed juvenile justice system is a structure consisting of community-based organizations that can provide a variety of services to at-risk youth. A treatment-based system will provide youth who are being supervised in the community a menu of services that address their educational, social, therapeutic, and supervisory needs. Some examples of these services are Multi-Systemic Therapy,<sup>80</sup> mentoring,<sup>81</sup> life skills and workforce

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<sup>76</sup> See Austin et al., *supra* note 38, at 8-9 (discussing the use of risk assessment to determine the need for detention or some alternative disposition).

<sup>77</sup> Edgar Cahn & Cynthia Robbins, *An Offer They Can't Refuse: Racial Disparity in Juvenile Justice and Deliberate Indifference Meet Alternatives That Work*, 13 UDC/DCSL L. REV. 71, 94 (2010).

<sup>78</sup> OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, GUIDE FOR IMPLEMENTING THE COMPREHENSIVE STRATEGY FOR SERIOUS, VIOLENT, AND CHRONIC JUVENILE OFFENDERS 8-10 (James C. Howell ed., 1995).

<sup>79</sup> *Id.* at 133.

<sup>80</sup> See Mark Soler et al., *Juvenile Justice: Lessons For A New Era*, 16 GEO. J. ON POVERTY L. & POL'Y 483, 490 (2009).

*Multisystemic Therapy* (MST) is an intensive treatment program for serious youth offenders focused on improving the family's capacity to overcome the known causes of delinquency. A masters-level therapist with a very small caseload comes to the youth's home and other places where the youth is involved in the community, and is available to the family 24 hours per day, 7 days per week. MST

development<sup>82</sup>, and GPS monitoring.<sup>83</sup>

### B. *Secure Detention Facilities*

When determining where to place an adjudicated youth, a rehabilitation-focused juvenile justice system will ask the threshold question: what is the least restrictive [housing] setting for that youth that is consistent with public safety? This type of system will utilize a variety of housing options to provide appropriate supervision corresponding to the youth's risk level. Large, warehouse-like facilities, which are the foundation of the adult criminal system, are inappropriate for low-risk youth, more likely to have a detrimental effect on youth placed in them, and have little deterrent effect.<sup>84</sup> A treatment-based juvenile justice system will place only the highest risk youth in a secure detention facility. Additionally, the secure detention facility should be a small, dorm-like facility. For example, New Beginnings, the secure detention facility in Washington, D.C. houses only sixty youths.<sup>85</sup> Residents are housed in five twelve-bed dorms with individual rooms that empty out into a common room.<sup>86</sup> Though a secure facility, each bedroom has windows that can be opened and are under the control of the resident.<sup>87</sup>

### C. *Location*

The location of a secure detention facility is an indication of whether a juvenile justice system is committed to treatment-based care of adjudicated youth. The principle that disruption and removal from the community is not conducive to rehabilitation dictates that a secure facility should be located near the communities it serves. A location that is near the community makes it possible for youth to see their family on a regular basis, allows the family to participate in therapeutic activities with the young person, and makes the connection to other community-based services upon release easier and more seamless. Family participation, connection to community-based services, and regular contact with family are all factors that increase the likelihood of successful reintegration.<sup>88</sup>

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interventions typically aim to improve families' discipline practices and abilities to communicate, decrease youth association with deviant peers, increase youth association with positive peers and recreational activities, improve youth school or vocational performance, and develop a support network of extended family, neighbors, and friends to help youth and their families achieve and maintain such changes.

*Id.*

<sup>81</sup> D.C. DEP'T OF YOUTH REHAB. SERVS., ANNUAL PERFORMANCE REPORT 21 (2011).

<sup>82</sup> *Id.* at 7.

<sup>83</sup> *Id.* at 21.

<sup>84</sup> See Scott & Steinberg, *supra* note 30, at 63 (describing how certain settings may prevent juveniles from "accomplishing developmental tasks of adolescence that are essential to the transition to non-criminal adulthood").

<sup>85</sup> Robert E. Pierre, *Oak Hill Center Emptied and its Baggage Left Behind*, WASH. POST, May 29, 2009, at B1, B4.

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

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

<sup>88</sup> See generally Anthony et al., *supra* note 42 (discussing community supports that are likely to result in successful community reintegration of youth).

#### D. Educational Programming for Detained Youth

Not only does detention interrupt incarcerated children's education, but also creates difficulties when they return to school.<sup>89</sup> Therefore, providing viable educational programming to detained youth is another component of a juvenile justice system that is focused on rehabilitation. Educational programs should provide a variety of options for young people that take into account their particular educational needs and address any special education requirements with the goal of discharging detained youth who are able to continue their education as seamlessly as possible.

Secure facilities should also allow outside organizations to provide educational support to detained youth. Allowing outside organizations, including community-based organizations, advocacy organizations, and educational groups, to provide programming increases the variety of services available to youth and helps to identify their strengths and interests, which is an important element of positive youth development and reentry planning. Additionally, allowing outside organizations into juvenile justice facilities allows educators and advocates to witness first-hand how youth are being treated and can help prevent abuse.

#### E. Youth Tried as Adults

A foundational principle of juvenile justice reform is that the juvenile justice system should be one that is based on treatment, appropriate consequences, and rehabilitation rather than punishment and deterrence. Trying youth as adults, or "transfer," is contrary to this principle, as the adult criminal justice system is not a treatment-based or rehabilitation-focused system. Unfortunately, "all states have transfer laws that allow or require criminal prosecution of some young offenders, even though they fall on the juvenile side of the jurisdictional age line."<sup>90</sup> Statutory judicial waiver<sup>91</sup> and reverse waiver<sup>92</sup> provisions ensure that the decision to charge a youth as an adult is not left merely to the discretion of the individual prosecutor. However, juvenile justice systems (and in this case, adult criminal justice systems) should allow, at a minimum, the decision whether to charge a youth as an adult to be reviewed and approved by a neutral third-party.<sup>93</sup>

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<sup>89</sup> See HOLMAN & ZIEDENBERG, *supra* note 25, at 9 (citing a Department of Education study which showed that "43 percent of incarcerated youth receiving remedial education services in detention did not return to school after release, and another 16 percent enrolled in school but dropped out after only five months"); Emily N. Winfield, *No School Left Behind: Providing Equal Educational Opportunities: Student Note: Judicial Policymaking and Juvenile Detention Reform: A Case Study of Jimmy Doe et al. v. Cook County*, 12 J. GENDER RACE & JUST. 225, 249-51 (2008) ("The exact number of detained juveniles returning to traditional or alternative Chicago public schools is not readily available, but studies suggest that very few return after release from detention.").

<sup>90</sup> Patrick Griffin et al., *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting, Office of Juvenile Justice and Delinquency Prevention, JUV. OFFENDERS & VICTIMS: NAT'L REPORT SERIES* (Office of Juvenile Justice & Delinquency Prevention, U.S. Dep't of Justice, Washington, D.C.), Sept. 2011, at 2, *available at* <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf>.

<sup>91</sup> *Id.* ("Judicial waiver laws allow juvenile courts to waive jurisdiction on a case-by-case basis, opening the way for criminal prosecution.").

<sup>92</sup> *Id.* ("Reverse waiver laws allow juveniles whose cases are in criminal court to petition to have them transferred to juvenile court."); see also CAMPAIGN FOR YOUTH JUSTICE, *THE CONSEQUENCES AREN'T MINOR: THE IMPACT OF TRYING YOUTH AS ADULTS AND STRATEGIES FOR REFORM* 5 (2007) (describing reverse waiver generally and reporting on the different reverse waiver provisions in seven states).

<sup>93</sup> Griffin et al., *supra* note 90, at 5.

## VI. COMBINING JUVENILE JUSTICE POLICY ADVOCACY AND A JUVENILE DEFENSE PRACTICE

Juvenile justice policy advocates across the country continue to work to implement system components that prioritize rehabilitation and reduced recidivism. Juvenile defenders are an essential part of these efforts and should incorporate developments in juvenile justice systems into their representation of at-risk youth. Integrating policy advancements into legal representation of court-involved youth will increase the effectiveness of juvenile defenders and expand the options that they have to advocate for their clients' stated interests. In order to inform effective advocacy and representation, defenders should 1) remain educated about the latest developments in juvenile justice reform, 2) consider alternative treatments and alternatives to detention outside of the existing services provided by that jurisdiction's juvenile justice system, 3) participate in juvenile justice advocacy coalitions, 4) engage in budget-focused advocacy either as individuals or as part of a coalition, and 5) get involved with the state juvenile justice advisory group.

There are numerous resources available to juvenile defenders to help them remain educated on the latest developments in juvenile justice reform. National advocacy organizations and foundations such as the Annie E. Casey Foundation, the National Juvenile Justice Network, Vera Institute, and the Macarthur Foundation regularly publish policy briefs that are meant to educate fellow advocates and juvenile justice practitioners as to the latest developments and best practices in juvenile justice policy. Remaining cognizant of these resources can assist defenders in staying current on scholarship in system components, medical, social science, and developmental studies that may assist them in placing their clients in therapeutic settings.

Defenders can also increase their effectiveness by looking for alternative treatment options outside of the existing services provided by the juvenile justice system. They should consider mental health, educational, or vocational assessments to determine what type of services or programming from which their clients may benefit so clients can receive services or treatment in non-custodial placements. Many jurisdictions have community-based organizations that provide family, mental health, substance abuse, and educational counseling. These organizations can serve as proxies for court supervision and allow youth and their families to receive treatment rather than custodial supervision.<sup>94</sup>

Coalition-building is an effective strategy for achieving juvenile justice reform. Juvenile justice advocates in Connecticut, Louisiana, and Washington, D.C. formed coalitions to achieve important systemic reforms. Among their many members and participants, these coalitions included advocates, community leaders, attorneys and other stakeholders. Similarly, juvenile defenders should seek out statewide and/or local coalitions who are working to reform youth

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[P]rosecutorial discretion laws are usually silent regarding standards, protocols, or appropriate considerations for decisionmaking. Even in those few states where statutes provide some general guidance to prosecutors, or at least require them to develop their own decisionmaking guidelines, there is no hearing, no evidentiary record, and no opportunity for defendants to test (or even to know) the basis for a prosecutor's decision to proceed in criminal court. As a result, it is possible that prosecutorial discretion laws in some places operate like statutory exclusions, sweeping whole categories into criminal court with little or no individualized consideration.

*Id.*

<sup>94</sup> *Our Mission*, HEALTHY FAMILIES/THRIVING COMMUNITIES COLLABORATIVE COUNCIL, <http://dccollaboratives.org> (last visited Feb. 29, 2012).

justice policies. For example, the National Juvenile Justice Network (NJJN) is a national coalition that is comprised of 33 state coalitions working to reform juvenile justice policies in their particular jurisdictions.<sup>95</sup> If no such organization exists in your state, start your own coalition!

Another tactic for increasing the effectiveness of legal representation of at-risk youth is to work to insure that rehabilitation-focused components of a juvenile justice system receive adequate funding to provide services. To that end, defenders can participate in budget-focused advocacy at the state and/or municipal level(s). Many funding decisions for state and municipal systems are reviewed annually as part of the budget process. Defenders should educate themselves on how these budgeting processes work, which public officials have oversight over the juvenile justice system budget, and the funding priorities of the jurisdiction. Organizing advocacy efforts such as postcard campaigns, mass meetings, one-on-one meetings, and staff briefings around budget season can be effective tools in pushing elected officials to adequately fund juvenile justice reform. Organizing these efforts is a skill that does not come readily to many attorneys; however, there are multiple training resources available that address how to engage in grassroots organizing.<sup>96</sup>

Attorneys can also participate in their jurisdiction's State Advisory Group (SAG). SAGs consist of fifteen to thirty-three individuals appointed by the chief executives in each state, territory and the District of Columbia, who have training, expertise, or special knowledge concerning the intervention, prevention and treatment of juvenile delinquency, and the administration of juvenile justice.<sup>97</sup> Attorneys who seek appointment to this advisory group will necessarily increase their engagement with systemic issues as well as their knowledge and understanding of new programs, projects, or activities that state has implemented.

## VII. WHAT IS NEXT?

The movement to implement juvenile justice systems that place youth in appropriate supervisory settings has made substantial gains since the early 1990s. These gains would not have been possible without the cooperation and collaboration of defense attorneys and juvenile justice advocates. Yet, while youth justice advocates across the country have succeeded in convincing city and state governments to adopt juvenile justice reforms, advocates and attorneys must continue to work to ensure that these reforms remain the foundation of the juvenile justice system. Youth advocates can have difficulty advancing additional reforms and maintaining support for reformed juvenile justice systems if public perception is that the juvenile justice system does not mete out appropriate consequences or punishment to youthful offenders. Negative press is one threat to juvenile justice reform that has the potential to derail efforts of lawmakers, policymakers, advocates, and activists.<sup>98</sup> Therefore, advocates for juvenile justice reform and defense attorneys must continue to work to ensure that the benefits to court-contacted

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<sup>95</sup> *About Us*, NAT'L JUVENILE JUSTICE NETWORK, <http://www.njjn.org/about-us/about-us> (last visited Feb. 29, 2012).

<sup>96</sup> *See, e.g., Training*, MIDWEST ACADEMY, <http://www.midwestacademy.com/training> (last visited Feb. 29, 2012).

<sup>97</sup> 42 U.S.C. § 5633(a)(3) (2006).

<sup>98</sup> *See, e.g., Harry Jaffe, Time to Shed Light on Juvenile Killers*, EXAMINER, May 7, 2010, <http://washingtonexaminer.com/local/dc/harry-jaffe-time-shed-light-juvenile-killers> (discussing serious crimes committed by juveniles with "long rap sheets" who "should have been detained by the [D.C.] Department of Youth Rehabilitation Services").

youth that stem from juvenile justice reforms are not lost due to sensational media coverage, pressure on politicians to be “tough on crime,” or lack of desire to fund or lack of funding for the components of a treatment-based system.