Georgia Law Review

Volume 54 | Number 4 Article 2

2020

Bending the Arc Toward Justice: The Current Era of Juvenile Justice Reform in Georgia

Melissa D. Carter
Emory Law School

BENDING THE ARC TOWARD JUSTICE: THE CURRENT ERA OF JUVENILE JUSTICE REFORM IN GEORGIA

*Melissa D. Carter**

America's juvenile justice system is experiencing another era of reform. The formal juvenile justice system originated from the ideology and methods of social reformers who viewed deviant behavior as a treatable condition and sought redemption of criminal youth. In the first era of reform, that view powered the state's exercise of its parens patriae authority and produced a paternalistic judiciary and institutions that used custody as a means of achieving social control. Over time, changing political and social views of childhood and a growing recognition in the law of children as rights-holders shifted the system's focus away from the rehabilitative ideal. At its extreme, this second era of reform abandoned the developmental view of youth crime in favor of a public safety orientation and resulted in a system overcorrection. The present era of juvenile justice system reform preserves the developmental approach and restores the rehabilitative ideal while striking a better balance between state interests and the rights of individual children.

This Article traces the history of the juvenile justice system and reflects on the present era of system reform. Early indications suggest that, through the use of evidence previously not available, the current era of juvenile justice system reform has the potential to restore

* Clinical Professor of Law and Executive Director of the Barton Child Law and Policy Center, Emory Law School. I would like to extend a special thank you to Jon Parker Leckerling for his generosity of time and skill to finalize this piece; Raerani Reddy and Luke Meyerson for their research assistance; Kaitlyn Barnes and James Farnan for reviewing and commenting on drafts; and my Juvenile Justice symposium co-presenters Professor Sarah Gerwig-Moore, Judge Amanda Trimble, and T.J. BeMent, all of whom make valuable contributions to this field of work every day.

the rehabilitative ideal on which the system was founded without compromising public safety goals or the legal rights of system-involved children. This Article specifically documents the effort, engagement, and leadership across public and private sectors to effectuate such balanced state-level reform in Georgia—the focus of this Symposium.

TABLE OF CONTENTS

I. INTRODUCTION

America's juvenile justice system is reforming one state at a time in a concerted attempt to move away from "tough-on-crime" strategies to an approach that better reflects available evidence about effective interventions and youth development.[1] Accelerated by the capacity of national institutions, state leadership, philanthropic support, and advocates on the ground, these reform efforts present opportunities to achieve greater moral justice, improved financial stewardship, and better outcomes for communities and youth who come in contact with the law.[2] If these aims are achieved, the juvenile justice system could realize the rehabilitative ideal on which it was formed, and do so in a way that respects the legal rights and interests of system-involved children. This Article reflects on the recent era of juvenile justice reform and documents the effort, engagement, and leadership across public and private sectors to effectuate state-level reform in Georgia.

II. PURPOSE AND HISTORY OF THE JUVENILE JUSTICE SYSTEM

The modern juvenile justice system traces its origins back to the early nineteenth century Progressive Era and the social and legal artifacts that had persisted through time.[3] Industrialization spurred significant population growth, particularly in urban areas and among immigrants.[4] The visibility of concentrated child poverty led to the perception of a "new" social affliction: wayward and destitute children roaming the streets.[5] Existing criminal laws were ill-suited to contend with the social problem of incorrigible children, which required a new legal response that made special provisions

---

[1] Dana Shoenberg, *How State Reform Efforts Are Transforming Juvenile Justice*, PEW CHARITABLE TR., (Nov. 26, 2019), https://www.pewtrusts.org/en/research-and-analysis/articles/2019/11/26/how-state-reform-efforts-are-transforming-juvenile-justice.

[2] *Reform Trends*, JUV. JUST. INFO. EXCHANGE, https://jjie.org/hub/community-based-alternatives/reform-trends/ (last visited Mar. 19, 2020) (detailing different approaches taken by advocates for juvenile justice over the past few decades).

[3] Theodore N. Ferdinand, *History Overtakes the Juvenile Justice System*, 37 CRIME & DELINQ. 204, 205–07 (1991).

[4] *Id.* at 205–06 ("During the Jacksonian era[,] industrialization took firm root in several American cities. . . . The slow drift of population to centers of commerce and industry grew very quickly . . . .").

[5] *Id.* at 206.

for these children.[6] At the same time, society's conception of childhood was evolving.[7]

The child labor reform movement shifted the social and legal view of children towards a focus on development.[8] The oppressive treatment and conditions to which children had once been subjected were no longer tolerated as popular understanding and concern grew about children's biological and psychological vulnerabilities.[9] These influences combined to create a new social status of "juvenile" and an emphasis on adult socialization through childhood discipline.[10]

A. PARENS PATRIAE AS A JUSTIFICATION FOR STATE POWER

The "juvenile" was perceived as morally vulnerable, particularly to environmental influences that were believed to lead to criminality.[11] Progressive Era reformers endeavored to rescue such children from futures corrupted by vice.[12] Thus, the early focus of the juvenile justice system was on children engaged in noncriminal or "predelinquent" behavior.[13] The concept of predelinquency encompassed a broad range of conduct, from vagrancy to incorrigibility to criminal acts.[14] This "unitary nature of predelinquency" led to a broad understanding of children's dependency which failed to make any distinction between children who were neglected and those who were delinquent.[15] All "predelinquent" conditions were regarded as presenting a social problem which required government intervention.

---

[6] *Id.* at 209 ("The older civil court . . . dealt with divorces, torts, contracts, and wills – all adult issues. The civil law was narrow and intricate, and few probate judges or lawyers had a strong interest in the psychology of juveniles or their facilities and potential.").

[7] *Id.* at 206.

[8] Frederica Perera, *Science as an Early Driver of Policy: Child Labor Reform in the Early Progressive Era, 1870–1900*, 104 AM. J. PUB. HEALTH 1862, 1865–66 (2014) ("Between the 1830s and 1870, the writings of social reforms concerned with the well-being of children, and child workers in particular . . . primarily stressed the need for their education as an antidote to immorality and crime.").

[9] *See id.* at 1866.

[10] *See* John R. Sutton, *Social Structure, Institutions, and the Legal Status of Children in the United States*, 88 AM. J. SOC. 915, 921 (1983).

[11] *Id.*

[12] *See* Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1192 (1970) (discussing boys' participation in "vile" behavior as a predictor of "antisocial conduct").

[13] *Id.* at 1191 (discussing the concept of "predelinquency").

[14] *Id.* at 1193.

[15] *Id.* at 1192–93.

The doctrine of parens patriae provided the necessary justification for such intervention. Believed to have derived from the royal prerogative, the term is Latin for "parent of his or her country."[16] As a doctrine, parens patriae vests in the state a responsibility to guard and protect its most vulnerable citizens.[17] Historically, states invoked this power on behalf of those who lacked legal capacity, which included children on the basis of their minority. Moreover, government was seen as responsible for ensuring the proper care and socialization of children, especially the wayward, destitute, and deviant.[18] The parens patriae doctrine remains a central precept of the modern-day juvenile justice system despite the growing recognition of children as independent rights-holders. The result has been unavoidable tension, both in the law and societal attitudes, between the exercise of individual rights and autonomy and the paternalistic interests and authority of the state.[19]

B. CUSTODY AS A DETERMINER OF RIGHTS

In 1839, the doctrine of parens patriae first received judicial sanction in the case of *Ex parte Crouse*.[20] Mary Anne Crouse had been committed to a reformatory after her mother testified that Mary Anne's "vicious conduct" was beyond her control.[21] Mary Anne's father subsequently sought a writ of habeas corpus to have her released, arguing that Pennsylvania's law authorizing the detention of incorrigible children deprived them of their constitutional right to a trial by jury.[22] By unanimous opinion, the Pennsylvania Supreme Court upheld the law, reasoning that the natural duty of parents to educate a child may "be superseded by the parens patriae, or common guardian of the community."[23] Thus, for children who were beyond parental control or dependent due to

---

[16] *Parens Patriae*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[17] Gregory Thomas, *Limitations on Parens Patriae: The State and the Parent/Child Relationship*, 16 J. CONTEMP. LEGAL ISSUES 51, 51 (2007) (describing "the ancient prerogative of the British Crown to act as the guardian of persons such as children and the mentally disabled").

[18] *See* Sutton, *supra* note 10, at 924; *see also* Fox, *supra* note 12, at 1193.

[19] Thomas, *supra* note 17, at 52 (observing that the parens patriae doctrine has expanded without "any meaningful constitutional scrutiny").

[20] *Ex parte* Crouse, 4 Whart. 9 (Pa. 1839).

[21] *Id.* at 10.

[22] *Id.*

[23] *Id.* at 11.

parental neglect or abandonment, parens patriae empowered the state to intrude on the constitutionally-protected parent-child relationship[24] and, if needed, to assume custody.

A child's right to custody is central to the juvenile justice narrative. Historically and today, custody provides a mechanism of social control over children both for their benefit and to their detriment. Custody is the legal construct that ensures children's needs are met, particularly as laws reinforce the privatization of dependency within families. Common law confers upon parents the legal and moral responsibility to protect, support, and educate their children.[25] When parents are unable or unwilling to fulfill that duty, the state can—through its parens patriae authority—intervene and assume familial authority for the sake of the protection and welfare of the child.[26] In this way, custody is also a legal means through which children are deprived of their liberties.

As with others whom the state deemed incapable of taking proper care of themselves, the assertion of parens patriae power over predelinquent and delinquent children primarily took the form of institutionalization.[27] Initially, children of all ages routinely were confined alongside adult criminals and those suffering from mental illness.[28] Then, between 1824 and 1828, the "first legislatively sanctioned custodial institutions designed especially for children in the United States" were established as houses of refuge starting in New York, Pennsylvania, and Massachusetts.[29] Houses of refuge, like the one housing Mary Anne Crouse, were charitable institutions established ostensibly for the purpose of housing and socially and morally reeducating poor, destitute, and deviant children.[30] As the Pennsylvania Supreme Court observed:

---

[24] Early in the twentieth century, the U.S. Supreme Court recognized the state's parens patriae authority in traditional family matters. *See, e.g.,* Meyer v. Nebraska, 262 U.S. 390 (1923) (striking down a state law forbidding the teaching of foreign languages to children before the eighth grade); Pierce v. Soc'y of Sisters, 268 U.S. 510 (1925) (invalidating a state law that required children to attend public school).

[25] 2 WILLIAM BLACKSTONE, COMMENTARIES *447–50.

[26] The parental prerogative established at common law is not absolute. *See* Prince v. Massachusetts, 321 U.S. 158, 169 (1944) (upholding a state child labor law against constitutional challenge on the basis of the state's broader authority to regulate in the interest of children's welfare).

[27] *See* Sutton, *supra* note 10, at 922.

[28] *Id.* at 916; *see also* Fox, *supra* note 12, at 1189.

[29] *See* Sutton, *supra* note 10, at 916.

[30] *Id.*

> [T]he House of Refuge is not a prison, but a school. . . . The object of the charity is reformation, by training its inmates to industry; by imbuing their minds with principles of morality and religion; by furnishing them with means to earn a living; and, above all, by separating them from the corrupting influence of improper associates.[31]

These institutions, despite their lauded purpose, operated in reality to punish and confine children in overcrowded, deteriorating, and abusive conditions.[32] Calls for reform resulted in the replacement of houses of refuge with reform schools, familiar today as youth correctional institutions.[33]

C. THE EMERGENCE OF THE JUVENILE COURT

Efforts to address the problem of predelinquent and delinquent youth were organized into a formal system with the creation of the first juvenile court in the United States, which opened in Chicago (Cook County), Illinois in 1899.[34] Consistent with the prevailing ideology of the time, the focus of this new tribunal was on children believed to be in need of "correction, reeducation, redirection and rehabilitation" as a result of their criminogenic environments.[35] As the first juvenile court act affirmed:

> The fundamental idea of the Juvenile Court Law is that the state must step in and exercise guardianship over a child found under such adverse social or individual conditions as develop crime. . . . It proposes a plan whereby he may be treated, not as a criminal, or legally charged with a crime, but as a ward of the state, to receive practically the care, custody, and discipline that are accorded the neglected and dependent child, and

---

[31] *Ex parte* Crouse, 4 Whart. 9, 11 (Pa. 1839).

[32] *Juvenile Justice History*, CTR. ON JUV. & CRIM. JUST., http://www.cjcj.org/education1/juvenile-justice-history.html (last visited Mar. 19, 2020).

[33] *Id.*

[34] Leo J. Yehle, *The Role of the Juvenile Court in Our Legal System*, 41 MARQ. L. REV. 284, 284 (1958).

[35] *Id.*

> which shall approximate as nearly as may be, that which should be given by its parents.[36]

Sometimes described as a "socialized court," the design of the juvenile court involved multiple professional disciplines—including law, medicine, and mental health—in the joint enterprise of youth rehabilitation.[37] Proceedings were conducted informally, and judges exercised broad discretion in the handling of each case. The oft-cited quote of Judge Julian Mack, forefather of the juvenile court, captures well the approach and spirit of this problem-solving body:

> The problem for determination by the judge is not, [h]as this boy or girl committed a specific wrong, but [w]hat is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career. . . .
>
> The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the court-room [sic] are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.[38]

Support for juvenile courts spread rapidly, and by 1945, all states had a juvenile court.[39]

The relaxed setting and non-adversarial process was embraced as consistent with the court's rehabilitative focus and the expression of the state's parens patriae concerns. These defining features

---

[36] *Id*. at 284–85.
[37] *Id*. at 285.
[38] Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119–20 (1909).
[39] Robert G. Caldwell, *The Juvenile Court: Its Development and Some Major Problems*, 51 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 493, 496 (1961).

turned out to be not as well-suited to the protection of the individual rights of the child.

D. THE DUE PROCESS REVOLUTION

Critiques of the court's due process failures were quick to develop.[40] The parens patriae doctrine had justified the separate and unique treatment of juveniles for decades.[41] But ultimately, the arbitrariness that resulted from the judge's broad discretion and court's lack of procedural protections led to a due process revolution that began with the 1967 case of *In re Gault*. Gerald Gault, age 15, and a friend made a lewd call to a neighbor, after which Gerald was taken into police custody.[42] His parents were not notified of their son's arrest and, upon discovering his detention, were denied access and instructed to appear the following day in court.[43] The arresting officer filed a petition on the day of the hearing, which was not served upon the Gaults and contained no specifics as to the court's jurisdiction or basis for arrest.[44] No witnesses were sworn in at the hearing, no transcript or recording was made, and Gerald was adjudicated delinquent on the basis of admissions he allegedly made to police on the night of his arrest.[45] As a result, Gerald was committed to an institution until he reached the age of 21, a sentence of six years. The same law, if violated by an adult, would result in a $5–$50 fine or imprisonment for a maximum of two months.[46] Gerald's parents petitioned for his release, and the case eventually reached the U.S. Supreme Court.

The Court began its opinion by recounting the history of the juvenile court system, acknowledging that its "highest motives and most enlightened impulses led to a peculiar system for juveniles, unknown to our law in any comparable context."[47] The Court noted the parens patriae justification for subordinating the child's individual liberty to the societal interest in the child's custody:

---

[40] Emily Buss, *The Missed Opportunity in* Gault, 70 U. CHI. L. REV. 39, 39–41 (2003).
[41] *Id.*
[42] Application of Gault, 387 U.S. 1, 4–5 (1967).
[43] *Id.* at 5.
[44] *Id.*
[45] *Id.* at 6.
[46] *Id.* at 8–9.
[47] *Id.* at 17.

> The right of the state, as parens patriae, to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right 'not to liberty but to custody.' He can be made to attorn to his parents, to go to school, etc. If his parents default in effectively performing their custodial functions—that is, if the child is 'delinquent'—the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the 'custody' to which the child is entitled.[48]

Within this context, the Court affirmatively pronounced children as constitutional actors, observing that "whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."[49] Accordingly, procedural regularity in juvenile proceedings is constitutionally required as a matter of due process. As a result of *Gault*, juveniles alleged to have committed a delinquent offense have a right to notice of the charges, a right to counsel, a right to confrontation and cross-examination of witnesses, and to the privilege against self-incrimination.[50]

The *Gault* decision has been celebrated as a "wellspring for the rights of children."[51] As some evidence of that, developments in juvenile law following *Gault* include the requirement for proof beyond reasonable doubt to establish guilt,[52] protection against double jeopardy,[53] certain interrogation-related rights,[54] and

---

[48] *Id.*

[49] *Id.* at 13.

[50] *Id.* at 34–57 (discussing the rights of alleged juvenile offenders).

[51] ROBERT H. MNOOKIN & D. KELLY WEISBERG, CHILD, FAMILY, AND STATE: PROBLEMS AND MATERIALS ON CHILDREN AND THE LAW 793 (7th ed. 2014); *see also* Fox, *supra* note 12, at 1187 (characterizing the immediate post-*Gault* period as one "being nourished and supported by the Supreme Court" and predicting significant transformation of the juvenile courts as a result).

[52] *See In re* Winship, 397 U.S. 358, 368 (1970) ("[W]here a 12-year-old child is charged with an act of stealing which renders him liable to confinement for as long as six years, then, as a matter of due process . . . the case against him must be proved beyond a reasonable doubt.").

[53] *See* Breed v. Jones, 421 U.S. 519, 541 (1975) ("We hold that the prosecution of respondent in Superior Court, after and adjudicatory proceeding in Juvenile Court, violated the Double Jeopardy Clause of the Fifth Amendment, as applied to the States through the Fourteenth Amendment.").

[54] *See* J.D.B. v. North Carolina, 564 U.S. 261, 281 (2011) (holding that a child's age properly informs *Miranda's* custody analysis).

protection against unreasonable search and seizure.[55] The *Gault* Court was clear, however, that it was not undertaking to determine "the totality of the relationship of the juvenile and the state."[56] The remaining gaps maintain the purposeful distinction between adult criminal proceedings and juvenile delinquency proceedings while allowing the state's historical parens patriae responsibility to dictate much of the ordinary practice, policy, and laws that affect outcomes for individual children who encounter the justice system.

Nearly two decades after *Gault*, the U.S. Supreme Court again confronted the constitutionality of a law that required the confinement of youth without due process of law. In *Schall v. Martin*, juveniles who had been detained pre-trial sought a declaration that a New York law violated due process.[57] The Court disagreed. Recalling the history and tradition of the parens patriae doctrine, the Court acknowledged the child's right to be free from institutional restraints but deemed that right as inferior to considerations of custody, reasoning

> that interest must be qualified by the recognition that juveniles, unlike adults, are always in some form of custody. Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as parens patriae. In this respect, the juvenile's liberty interest may, in appropriate circumstances, be subordinated to the State's "parens patriae interest in preserving and promoting the welfare of the child."[58]

Thus, despite the apparent shift in momentum toward greater recognition of children's constitutional rights, the parens patriae interest of the state prevails in the grand balance of interests even where children's liberties are directly at stake.

---

[55] *See generally* New Jersey v. T.L.O., 469 U.S. 325 (1985) (examining the reasonableness of a search carried out by public school authorities against a minor).

[56] Application of Gault, 387 U.S. 1, 13 (1967).

[57] *See* 467 U.S. 253, 261 (1984) ("[T]hree class representatives sought a declaratory judgment that § 320.5(3)(b) violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment.").

[58] *Id.* at 265 (internal citations omitted).

How the parens patriae interest of the state is expressed and operationalized, in turn, is susceptible to shifting social, legal, and political views on children and corresponding desires for social control, as history illustrates. Coinciding with the due process revolution of the 1960s and 1970s, juvenile arrest rates began to increase, raising a new—but familiar—social alarm about adolescent deviance rooted in moral poverty.[59] Research studies suggesting that rehabilitation did not work only perpetuated the growing concern and fueled a call for a new approach.[60] That new approach was energized by the work of John DiLulio, Jr., who is credited with popularizing the theory of the "super-predator" in the early 1990s.[61] DiLulio's super-predator theory predicted a generation of morally-depraved adolescents incapable of remorse and inclined toward violence.[62] In 1995, he wrote an article in *The Weekly Standard* warning of "the coming of the super-predators" and sharing the bases of his theory of juvenile crime:

> In the extreme, moral poverty is the poverty of growing up surrounded by deviant, delinquent, and criminal adults in abusive, violence-ridden, fatherless, Godless, and jobless settings. In sum, . . . kids of whatever race, creed, or color are most likely to become criminally depraved when they are morally deprived.
>
> . . . .
>
> On the horizon, therefore, are tens of thousands of severely morally impoverished juvenile super-predators. They are perfectly capable of committing the most heinous acts of physical violence for the most trivial reasons . . . . They fear neither the

---

[59] *See* NAT'L RESEARCH COUNCIL OF THE NAT'L ACADEMIES, REFORMING JUVENILE JUSTICE 37 (Richard J. Bonnie et al. eds., 2013) (discussing how due process reform moved away from rehabilitation as the sole aim of juvenile hearings and challenged the rosy characterization of young offenders as innocent children).

[60] *See generally* DOUGLAS S. LIPTON, ROBERT MARTINSON & JUDITH WILKS, THE EFFECTIVENESS OF CORRECTIONAL TREATMENT (1975) (reviewing 200 studies of rehabilitation programs and concluding that rehabilitation in general was an ineffective strategy for controlling juvenile crime).

[61] *See* John DiLulio, *The Coming of the Super-Predators*, WKLY. STANDARD (Nov. 27, 1995), https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators.

[62] *See id.* (describing the "rash of youth crime and violence" committed by "kids who have absolutely no respect for human life").

> stigma of arrest nor the pain of imprisonment. They live by the meanest code of the meanest streets, a code that reinforces rather than restrains their violent, hair-trigger mentality. In prison or out, the things that super-predators get by their criminal behavior—sex, drugs, money—are their own immediate rewards. Nothing else matters to them. So for as long as their youthful energies hold out, they will do what comes "naturally": murder, rape, rob, assault, burglarize, deal deadly drugs, and get high.[63]

The juvenile justice system had already begun its as-of-yet incomplete convergence with the adult criminal justice system through the recognition of shared procedural due process paradigms, and these legal and social moments further threatened the rehabilitative ideal. The super-predator myth has since been debunked, but it left an indelible mark on the juvenile justice system.[64] The fear-based reaction it induced to what was perceived as a rash of youth crime and violence led to more punitive approaches and a greater insistence on incarceration as a tool of social control.[65]

The rehabilitative ideal is reemerging from this dark chapter as the nation reforms its juvenile justice laws and practices in what is the third era of the juvenile justice system. In retrospect, the constitutionalization of children's rights that began with *Gault* might actually be what ultimately is returning the juvenile justice system to its founding principles of rehabilitation and treatment, but the path there has been anything but straight. The recognition of children as autonomous beings who possess individual rights necessarily has placed tension on the sweeping reach of the parens patriae power of the state. Rather than pursuing social control from a place of moral authority, the juvenile justice system is reorienting to an individualized approach that responds to children's behavior from a developmental perspective. The experience of the state of

---

[63] *Id.*

[64] *See* Clyde Haberman, *When Youth Violence Spurred 'Superpredator' Fear*, N.Y. TIMES (Apr. 6, 2014), https://www.nytimes.com/2014/04/07/us/politics/killing-on-bus-recalls-superpredator-threat-of-90s.html (explaining that, despite the fact that violence by children sharply declined after the super-predator forecast, "once [the idea] was out there, there was no reeling it in").

[65] *Id.*

Georgia tracks closely this universal narrative of the juvenile justice system, and the current era of reform in Georgia signals a promising direction forward.

III. THE HUMBLY AMBITIOUS BEGINNINGS OF GEORGIA'S JUVENILE JUSTICE SYSTEM REFORM

The history and evolution of Georgia's juvenile justice system follows the arc of the national narrative. A complete system with familiar institutional features emerged and committed itself to a rehabilitative ideal. Nonetheless, the theme of social control through custodial institutionalization was fully present in this system, which allowed for a range of dispositions including out-of-home placement and confinement for years under conditions demonstrated to be harmful to children. When the fear of super-predators inspired an era of reactive, fear-based policies, Georgia embraced the tough-on-crime direction.[66] Georgia adopted laws providing for automatic filing, prosecutorial discretion, and judicial waiver, all of which function to subject children as young as thirteen to prosecution and sentencing by the adult criminal justice system for certain crimes.[67] Even now, the state is fond of treating children as adults under these and other circumstances. But the juvenile justice system has been put back on its rehabilitative course in recent years. Legislative reforms enacted within the past half-decade, dedicated resources and capacity, and leadership in the public and private sectors have created an opportunity for meaningful and lasting systemic change and improved outcomes for system-involved children. Early indications point to the state's success at achieving its reform aims of holding juvenile offenders accountable, stewarding taxpayer dollars responsibly, and using effective interventions with youth to ensure the safety of the community.

---

[66] For example, Georgia adopted what is now codified as O.C.G.A. § 15-11-560 (2017) (providing for the exclusive jurisdiction of the superior court over certain enumerated crimes committed by those thirteen to seventeen years of age and concurrent jurisdiction of the superior court for other delinquent acts).

[67] *See id.*

A. THE HISTORY OF GEORGIA'S JUVENILE JUSTICE SYSTEM

Following the national trend of the time, the Georgia General Assembly enacted enabling legislation for the state's first children's court in 1906, passed its first Juvenile Court Act in 1908, and opened the state's first juvenile court in Fulton County in 1911.[68] Created as a separate division of the superior court, the children's court exercised jurisdiction over cases involving delinquent and wayward children under the age of sixteen.[69] In 1915, the Juvenile Court Act was struck down for violating a provision of the Georgia Constitution requiring all courts of the same class to be uniform in their powers and practices and was replaced with a version that endured until 1951.[70] The 1951 Act increased the age of criminal responsibility by granting juvenile courts exclusive original jurisdiction over all allegedly delinquent children under the age of seventeen, consistent with state constitutional limits granting superior courts jurisdiction over cases punishable by death or life imprisonment.[71] Georgia's Juvenile Court Act underwent its next major transformation in 1968, responding to the change in legal precedent effectuated by the *Gault* decision.[72] At the same time, the Georgia General Assembly created a commission to consider further legislative changes which, after three years of study, proposed a new Juvenile Code in 1971.[73] That code set the minimum age of criminal responsibility at seventeen, where it remains today.[74]

The modern version of the Georgia Department of Juvenile Justice (DJJ) was created by the state legislature in 1997 as a successor to the Department of Children and Youth Services.[75] The statutory change was of name only, however. Its central purpose of providing for the supervision, detention, and rehabilitation of

---

[68] Carl Vinson Inst. of Gov't, *The Juvenile Justice System*, GA. LEGAL AID, https://www.georgialegalaid.org/es/resource/the-juvenile-justice-system?lang=EN (last visited Mar. 18, 2020); *see also* GA. APPLESEED CTR. FOR LAW & JUSTICE, COMMON WISDOM: MAKING THE CASE FOR A NEW JUVENILE CODE 19 (2008) (providing an overview of the Juvenile Court in Georgia).

[69] GA. APPLESEED CTR. FOR LAW & JUSTICE, *supra* note 68, at 19.

[70] *Id.*

[71] *Id.*

[72] *Id.* at 19–22.

[73] *Id.* at 19.

[74] *See* O.C.G.A. § 15-11-2(10)(B) (2019) ("'Child' means any individual who is . . . [u]nder the age of 17 years when alleged to have committed a delinquent act . . . .").

[75] *See* Carl Vinson Inst. of Gov't, *supra* note 68 (explaining the process of a juvenile being committed to the DJJ).

juvenile delinquents committed to the state's custody remained constant.[76] At the time, a youth adjudicated delinquent by the court could be committed to DJJ for up to five years, and the status of being committed allowed the agency to determine where a child would be placed and for how long, and what level of monitoring and treatment services would be provided.[77]

Such custodial discretion, however, did not ensure the protection or promoted the welfare of the juveniles subjected to it. On February 13, 1998, the U.S. Department of Justice (DOJ) issued a findings letter to Georgia Governor Zell Miller in which it "identified a pattern of egregious conditions violating the federal rights of youth in the Georgia juvenile facilities."[78] Specifically-documented violations included:

> [T]he failure to provide adequate mental health care to mentally disturbed youths throughout the system; overcrowded and unsafe conditions in the Regional Youth Detention Centers; abusive disciplinary practices, particularly in the boot camps, including physical abuse by staff and abusive use of mechanical and chemical restraints on mentally ill youths; inadequate education and rehabilitative services; and inadequate medical care in certain areas.[79]

The letter went on to cite to a lack of resources as a primary cause and concluded:

> [M]any youths have suffered grievous harm, such as being injured or hospitalized due to fights with other youths or physical abuse by staff; mentally ill youths have degenerated in the State's care; youths have suffered needless pain and continued illness from undiagnosed or inadequately treated medical

---

[76] *See* Act No. 443, 144th Gen. Assemb., Reg. Sess. (Ga. 1997).

[77] *See* Carl Vinson Inst. of Gov't, *supra* note 68 (providing an overview of the process for committing a child to the DJJ for five years).

[78] Letter from Bill Lann Lee, Acting Assistant Attorney Gen., U.S. Dep't of Justice, to Zell Miller, Governor, State of Ga. (Feb. 13, 1998), https://www.justice.gov/crt/state-juvenile-justice-facilities-findings-letter.

[79] *Id.*

> conditions; and youths' educations have been damaged by grossly substandard DJJ educational programs.[80]

DJJ was subject to federal oversight for eleven years as it worked to correct these systemic deficiencies.[81] Monitoring ended in 2009.[82]

In retrospect, 2009 was an inflexion point in Georgia's juvenile justice system. DOJ oversight had put a spotlight on conditions of confinement within the state's juvenile justice system and introduced standards for system performance in areas of key services to children that supported rehabilitation. That year also marked the introduction of the first legislative proposal to comprehensively revise the Georgia Juvenile Code, an effort that ultimately drove wide-ranging system reform.[83] From beginning to end, that legislative effort required nearly a decade of research and advocacy efforts.[84]

B. AN IRRESISTIBLE INVITATION

In 2004, the Young Lawyers Division of the State Bar of Georgia (YLD) accepted the challenge of DeKalb County Juvenile Court Judge Robin Nash to rewrite the state's Juvenile Code.[85] The Juvenile Code in effect at the time was first released in 1971 and had been amended many times.[86] It did not reflect research-based best practices and the latest scientific findings on child and adolescent brain development. Judges and lawyers described the code as difficult to use, lacking in clarity, and outdated.[87] And, a broad consensus of juvenile court judges, probation officers, social workers, attorneys, and others agreed that the code needed, at a minimum, to be modernized and streamlined.[88] The YLD took the

---

[80] *Id.*

[81] GA. DEP'T OF JUVENILE JUSTICE, YOUTH DEVELOPMENT: A SYSTEM PRIORITY 5 (2009), https://www.yumpu.com/en/document/read/32417699/a-system-priority-georgia-department-of-juvenile-justice.

[82] *Id.*

[83] *See* GA. APPLESEED CTR. FOR LAW & JUSTICE, *supra* note 68, at 41 (discussing the recommendation of a new juvenile code during the 2009–10 Georgia General Assembly legislative session).

[84] *See id.* (providing comprehensive research and analysis to support the recommendation that the 2009–10 General Assembly enact a new juvenile code).

[85] *Id.* at 7.

[86] *Id.* at 10.

[87] *Id.* (explaining that "the juvenile code is so disorganized that even lawyers and judges who refer to it on a daily basis come away from it confused and frustrated").

[88] *Id.* at 28.

lead, hiring reporters and editors and working to develop a research-based Proposed Model Code (PMC).[89] The PMC was released in 2008 as a comprehensive and well-organized best practice model for juvenile law policy and practice in the state.[90]

The handoff from the YLD was to the newly-formed JUSTGeorgia Coalition.[91] JUSTGeorgia was led by a partnership formed in 2006 between the Georgia Appleseed Center for Law and Justice, the Barton Child Law and Policy Center at Emory Law School, and Voices for Georgia's Children, with funding from the Sapelo Foundation.[92] The goal of JUSTGeorgia was to create a long-term coalition to advocate, monitor, and report on the conditions, laws, and policies that affect Georgia's youth and promote safer communities.[93] Thus, the defining project of JUSTGeorgia was to prepare the PMC for legislative introduction and advocate for its passage.[94]

That work began with a commitment to engage system and issue stakeholders.[95] Georgia Appleseed and a team of more than 200 pro bono attorneys led one-on-one and small group stakeholder interviews across the state to solicit feedback on the current Juvenile Code.[96] In addition, townhall meetings in each Judicial Circuit were facilitated by the University of Georgia's Fanning Institute, and reaction to the PMC was invited during an online comment period from March through June 2008.[97] Additional stakeholder meetings focusing on the PMC were held with agencies, legislators, and advocacy organizations.[98]

Stakeholders identified a range of issues with existing law, procedure, and system functioning and expressed overwhelming

---

[89] *Id*. at 17.

[90] *Id*. ("In March 2008, while Georgia Appleseed volunteers were continuing to interview stakeholders about the current juvenile code, the Young Lawyers Division of the State Bar of Georgia (YLD) released its Proposed Model Juvenile Code (PMC).").

[91] *Id*. at 7.

[92] *Id*. at 4.

[93] *Id*. at 15.

[94] *Id*. at 10 (observing that "JUSTGeorgia's initial objective is to secure passage of a new juvenile code").

[95] *Id*. at 4 (discussing the "multi-faceted effort to realize a new juvenile code in Georgia").

[96] *Id*. at 15.

[97] *Id*. at 16–17.

[98] *Id*. at 17 (discussing the incorporation of the views of "supervisors, Department of Juvenile Justice officials, legislators, business representatives, school officials, victims, [and] law enforcement" into the PMC).

support for a new juvenile code.[99] Stakeholders pointed to the need for that new code to reduce excessive court continuances and delays, open juvenile court proceedings to the public, and prepare courts to meet the challenges presented by a growing population of immigrant children.[100] Stakeholders also lamented a lack of adequate resources, particularly in the area of mental health and lack of coordination among the multiple agencies and entities that comprise the juvenile justice system.[101] Specific to the handling of juvenile delinquency cases, stakeholders desired an expanded range of sentencing options and greater judicial discretion in selecting from among those options; improvements to DJJ's Detention Assessment Instrument; and efforts to curb the "school-to-prison pipeline," a phenomenon caused by schools referring student discipline problems to juvenile courts.[102]

These identified challenges were all symptoms of the "wicked problem" of juvenile justice.[103] They required both technical and adaptive solutions—the same set of solutions that the system had been in need of for its history. The body of evidence now available, which pointed to therapeutic interventions being effective at addressing delinquent behavior, predicted a different result from this era.

IV. WHEN PREPARATION MEETS OPPORTUNITY

JUSTGeorgia incorporated the input received from hundreds of system stakeholders into a legislative proposal designed to effectuate the aims of the PMC. Senate Bill (SB) 292 was introduced on April 2, 2009 by Senator Bill Hamrick, who had taken a personal interest in juvenile crime following a high-profile child murder in his hometown and had sponsored a bill to allow greater judicial discretion to sentence minors up to the age of twenty-one for violent

---

[99] *Id.* at 23 (discussing the report's general findings).

[100] *Id.* at 24–25 (discussing the report's general findings).

[101] *Id.* at 26 (discussing the report's general findings).

[102] *See id.* at 27–34 (discussing the report's findings regarding delinquency).

[103] *See What's a Wicked Problem?,* STONY BROOK U., https://www.stonybrook.edu/commcms/wicked-problem/about/What-is-a-wicked-problem (last visited Mar. 18, 2020) (explaining that "wicked problem" is a term to describe complex social policy problems that are challenging to solve and identifying ten characteristics of such problems).

crime.[104] The introduction of the bill started the multi-year process of review and deliberation by the state legislature. That deliberative process continued with the introduction of House Bill (HB) 641 by Representative Wendell Willard on April 12, 2011 and his subsequent introduction of HB 242 on February 8, 2013.[105] As this legislative strategy in Georgia was progressing, a bigger political moment was taking shape that would catalyze efforts for comprehensive, meaningful system reform.

A. CRIMINAL JUSTICE REFORM COUNCIL

In 2011, the bipartisan, interbranch Special Council on Criminal Justice Reform for Georgians (Council) was created by legislative enactment based on the leadership vision of Governor Nathan Deal.[106] This Council—in its structure, function, and membership—proved to be a keenly successful model for policy development and system reform.[107] The Council's mandate required it to address the dramatic growth in Georgia's prison population, contain costs associated with corrections, improve public safety, and hold offenders accountable through effective interventions.[108] The Council spent its first year studying the adult correctional system and considering policy proposals to address the findings from that review.[109] Its work was embodied in HB 1176, which passed and was thereafter signed into law.[110] Building on the momentum of its early success, the Council then turned its focus to the state's juvenile

---

[104] *See* Susanna Capelouto, *Killing of 8-Year-Old Spurs Changes to Georgia Law*, NPR (July 18, 2005, 12:00 AM), https://www.npr.org/templates/story/story.php?storyId=4759113 (reporting on the murder of a young girl and the questions it raised about Georgia juvenile law); *see also Johnathan Adams*, NAT'L REGISTRY EXONERATIONS (June 2012), https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=2981 (reporting on the confession by Christopher Gossett, vacation of Jonathan Adams' conviction, and dismissal of charges against Gossett).

[105] Mike Klein, *Juvenile Justice Bill Would Revise Designated Felony Act,* GA. PUB. POL'Y FOUND., https://www.georgiapolicy.org/issue/juvenile-justice-bill-would-revise-designated-felony-act/ (last visited Mar. 18, 2020).

[106] *See* MICHAEL P. BOGGS & CAREY A. MILLER, REPORT OF THE GEORGIA COUNCIL ON CRIMINAL JUSTICE REFORM 3 (Feb. 2018) (describing the origins of the Council). In 2013, the Georgia General Assembly passed and Governor Deal signed HB 349, which codified the Georgia Council on Criminal Justice Reform and directed it to evaluate laws, conditions, and issues related to criminal and juvenile justice and recommend any action it deems necessary or appropriate. *Id.* at 14.

[107] *Id.* at 21.

[108] *Id.* at 63.

[109] *Id.* at 56.

[110] *Id.*

justice system at the request of Governor Deal.[111] The juvenile system at the time was cumbersome, ineffective, and expensive.[112] Supported by technical assistance provided by the Pew Charitable Trust, the Annie E. Casey Foundation, and the Crime and Justice Institute, the Council conducted an extensive analysis of system data and solicited input from a broad and diverse set of stakeholders to inform its crafting of policy recommendations.[113]

That system assessment revealed that despite declining trends in the number of youth involved with the juvenile justice system, the system was being operated at a substantial cost and achieving poor outcomes.[114] In fiscal year 2013, the state budget for the DJJ exceeded $300 million, the majority of which was used to operate residential facilities.[115] The long-term Youth Development Campuses (YDCs) cost $91,126 per bed per year, and the short-term Regional Youth Detention Centers (RYDCs) cost $88,155 per bed per year.[116] Despite these investments, the recidivism rate remained high, with more than half of delinquent youth committing a subsequent offense leading to a re-adjudication of delinquency or an adult conviction of a crime within three years.[117] To address the factors contributing to these unacceptable results, the Council proposed a number of policy recommendations, which together were projected to significantly decrease the number of juvenile offenders in detention and realize an estimated $88 million in state savings through 2018.[118] These anticipated savings, in turn, presented opportunities for investment in local, evidence-based programs proven to reduce recidivism.[119]

The specific strategies to achieve these reforms were combined with previously introduced legislation proposing a comprehensive revision to the Georgia Juvenile Code. HB 242, sponsored by Representative Wendell Willard, then-Chairman of the House Judiciary Committee, was passed unanimously by the Georgia

---

111 *Id.*

112 *Id.* at 57.

113 *Id.*

114 REPORT OF THE SPECIAL COUNCIL ON CRIMINAL JUSTICE REFORM FOR GEORGIANS 7 (2012).

115 *Id.*

116 *Id.*

117 *Id.* at 8.

118 *Id.* at 12.

119 *Id.* at 3 (discussing the General Assembly's decision to heed the Council's suggestion and reinvest millions of dollars of savings into measures designed to reduce reoffending).

General Assembly and was signed into law by Governor Deal on May 2, 2013.[120] HB 242 comprehensively revised the Juvenile Code, effectuating technical and structural changes and advancing substantive policies.[121] The result is a more developmentally appropriate approach to administering justice for children involved in dependency (abuse and neglect), delinquency, competency, and status offense cases that is based in research and best practice.[122] The new code is stylistically consistent and reflects a new organizational structure in which provisions relating to different types of cases are separated into integrated, self-contained sections (or articles).[123] Substantive provisions also were amended to comply with federal law, incorporate social science research and best practices, and reflect consensus among practitioners and stakeholders.[124] Accordingly, HB 242:

- provides legal definitions of essential terms;[125]
- creates two categories of "designated felonies" to differentiate dispositional options for non-violent and low-risk offenders from more serious offenders;[126]
- clarifies applicable timelines for various proceedings and decisions;[127]
- creates Children in Need of Services (CHINS) as a new approach for intervening with children who have committed an act that would not be against the law but for the fact it was committed by a child, commonly referred to as status offenses (e.g., running away or skipping school);[128]
- provides a process for responding to children who have been found to be unrestorably incompetent to stand trial, meaning that because of a permanent disability or limitation they will never be able to

---

120 *See* H.B. 242, 152d Gen. Assemb., Reg. Sess. (Ga. 2014).
121 *See id.*
122 *See id.*
123 *See id.*
124 *See id.*
125 *See* JUSTGEORGIA, 2013 JUVENILE JUSTICE REFORM LEGISLATION: HOUSE BILL 242, at 1 (2013) (providing a summary of key elements of HB 242).
126 *Id.*
127 *Id.* at 3.
128 *Id.* at 6.

understand the charges or legal proceedings and assist an attorney in their defense;[129]
- provides that a child's right to be represented by an attorney cannot be waived by the child's parent;[130]
- prohibits status offenders and certain misdemeanants from being held in residential facilities;[131]
- mandates use of a validated risk and needs assessment and detention assessment instrument prior to detention and disposition decisions;[132]
- allows the court to order behavioral health evaluations and competency evaluations under certain circumstances;[133] and
- requires enhanced data collection and reporting.[134]

The new Juvenile Code took effect January 1, 2014.[135] To ensure these statutory reforms had the greatest potential for success, a corresponding financial investment was made to build capacity in community programs that serve youth through evidence-based models.[136] This financing and technical assistance mechanism—referred to as the Juvenile Justice Incentive Grant (JJIG) Program—was structured as a competitive grant for local jurisdictions, initially targeting those jurisdictions with the highest rates of juvenile detention.[137] Governor Deal and the Georgia General Assembly appropriated $5 million through the Criminal Justice Coordinating Council (CJCC) to the JJIG Program in its

---

[129] *Id.* at 7.
[130] *Id.*
[131] *Id.* at 9–10.
[132] *Id.* at 12.
[133] *Id.* at 7.
[134] *Id.* at 8.
[135] *See 2013-2014 Regular Session - HB 242*, GA. GEN. ASSEMBLY, http://www.legis.ga.gov/Legislation/en-US/display/20132014/HB/242 (last visited Mar. 18, 2020) (providing a status history of Georgia HB 242).
[136] *See Juvenile Justice Incentive Grant Program*, CRIM. JUST. COORDINATING COUNCIL, https://cjcc.georgia.gov/grants/grant-subject-areas/juvenile-justice/juvenile-justice-incentive-grant-program (last visited Mar. 18, 2020) (providing an overview of the JJIG Program).
[137] *See id.* (noting the $5 million investment by former Governor Deal and the Georgia General Assembly). The Georgia DJJ also receives state appropriations to support the DJJ Community Services Grant Program, which supplements the JJIG Program to ensure capacity of evidence-based community alternatives to detention in all geographic areas of the state. *See id.* (examining the DJJ's role in the JJIG Program).

first year.[138] The JJIG Program was funded the following year with $7.62 million.[139] CJCC explains that the JJIG Program provides "funding and technical support for a set of nationally recognized treatment programs appropriate for youth scoring moderate- to high-risk on the Pre-Disposition Risk Assessment," which is an assessment tool designed to measure the risk of recidivism.[140] The specific treatment programs eligible for funding through the JJIG Program include Functional Family Therapy, Thinking for a Change, Aggression Replacement Training, Multisystemic Therapy, Seven Challenges, and Brief Strategic Family Therapy.[141]

B. LEGISLATING CONTINUING REFORM

Over the course of the first year of implementation of the revised Juvenile Code and related reforms, legal practitioners and other system stakeholders identified certain challenges to applying the new law. Accordingly, the year following the enactment of HB 242, the Council entertained a proposal to correct deficiencies in statutory language and further refine the style of reforms.[142] The Georgia General Assembly passed SB 364 (Act 635) in 2014 to advance those proposed amendments into law.[143]

Efforts to perfect the new Juvenile Code continued in the 2015 legislative session, during which HB 361 was considered and passed.[144] HB 361 includes additional corrections that needed to be made as a result of drafting errors or omissions from HB 242.[145] Two substantive reforms also were made in the bill, consistent with recommendations made by the Council.[146] The "extraordinary

---

[138] *See id.* (noting the early stages of the JJIG Program).

[139] *See id.* (describing the progression of the JJIG Program).

[140] *Id.*

[141] *Id.*

[142] MICHAEL P. BOGGS & W. THOMAS WORTHY, REPORT OF THE GEORGIA COUNCIL ON CRIMINAL JUSTICE REFORM 24–28 (Jan. 2014).

[143] *See 2013-2014 Regular Session – SB 364*, GA. GEN. ASSEMBLY, http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/364 (last visited Mar. 18, 2020) (providing a status history of Georgia SB 364).

[144] *See 2015-2016 Regular Session – HB 361*, GA. GEN. ASSEMBLY, http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/361 (last visited Mar. 18, 2020) (providing a status history of Georgia HB 361).

[145] *See id.*

[146] *See* MICHAEL P. BOGGS & W. THOMAS WORTHY, REPORT OF THE GEORGIA COUNCIL ON CRIMINAL JUSTICE REFORM 32–33 (Feb. 2015) (noting recommendations made by the Council regarding the role of district attorneys in CHINS proceedings and the "extraordinary cause" standard for transferring an SB 440 case involving a child aged thirteen to seventeen).

cause" standard for post-indictment transfer of a case involving a child age thirteen to seventeen alleged to have committed voluntary manslaughter, aggravated sodomy, aggravated child molestation, or aggravated sexual battery to juvenile court was replaced with a list of factors the superior court judge must consider to make a developmentally-appropriate and individualized determination as to the appropriate court to hear the case.[147] Additionally, prosecuting attorneys were authorized to file a CHINS complaint and to intervene in CHINS cases to represent the interests of the state.[148]

SB 367 was introduced in the 2016 legislative session to advance those recommendations in the 2016 report of the Criminal Justice Reform Council that required legislative action.[149] With regard to continuing juvenile justice reforms, the Council's recommendations built on the success of the previous three years, during which time the state had witnessed impressive reductions in the number of youth in secure confinement, awaiting placement, and committed to the DJJ.[150] These system improvements demonstrate what research consistently proves—that is, children experience better outcomes when their needs are met in the community. Most young offenders outgrow their delinquent and criminal behavior as engagement in school and work increases.[151] Accordingly, the Council's juvenile justice recommendations focused on schools as a primary source of referrals to the juvenile justice system.[152] The Council made the following specific recommendations:

---

147 *See* O.C.G.A. § 15-11-562 (2017) (listing the criteria courts must consider in determining whether to transfer a child to superior court).

148 *See id.* § 15-11-390 (noting who may file a complaint alleging a child is in need of services).

149 *See 2015-2016 Regular Session – SB 367*, GA. GEN. ASSEMBLY, http://www.legis.ga.gov/legislation/en-US/Display/20152016/SB/367 (last visited Mar. 19, 2020) (providing a summary of Georgia SB 367).

150 "Since 2013, Georgia has decreased its population of youth in secure confinement by 17 percent and reduced the number of youth awaiting placement by 51 percent. . . . [O]verall juvenile commitments to the Department of Juvenile Justice have dropped 33 percent . . . ." *See* MICHAEL P. BOGGS & W. THOMAS WORTHY, REPORT OF THE GEORGIA COUNCIL ON CRIMINAL JUSTICE REFORM 7 (Feb. 2016).

151 *See* LAURENCE STEINBERG ET AL., U.S. DEP'T OF JUSTICE, PSYCHOSOCIAL MATURITY AND DESISTANCE FROM CRIME IN A SAMPLE OF SERIOUS JUVENILE OFFENDERS 1 (Mar. 2015), https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248391.pdf (noting findings of a study that tracked the behavior of more than 1,300 juvenile offenders for seven years after their conviction).

152 *See* BOGGS & WORTHY, *supra* note 146, at 10 (explaining the basis for the 2016 juvenile justice recommendations).

- mandate the use of educational approaches to address a student's problematic behavior rather than over-relying on the juvenile justice system;[153]
- improve the fairness of school disciplinary proceedings by establishing minimum qualifications and training standards for school disciplinary officers;[154] and
- clarify the role of School Resource Officers in responding to school discipline by requiring a written agreement between local schools and local law enforcement.[155]

The combined aim of these proposals was to emphasize the inclusion of children in classroom learning rather than exclusionary discipline practices that predictably lead to encounters with the juvenile and criminal justice systems.[156] In addition to these school-based reforms, the Council confronted an unintended consequence of the Juvenile Justice Reform Act of 2013: the juvenile courts' expansion of the use of secure detention for younger children.[157] Since the reforms took effect in 2014, the rate of detention of children ages thirteen and under had more than tripled.[158] In 2015 alone, 450 youth ages thirteen and younger were detained.[159] Thus, the Council recommended establishing a statutory presumption against detention of youth in this age category except for those who have committed a serious offense.[160] In such serious cases, detention can be considered if indicated by the validated assessment instrument and is met with judicial approval.[161] Finally, the Council continued its support for the use of accountability courts as alternatives to traditional approaches of

---

153 *See id.* (outlining the Council's recommendations based on the fact that the majority of juveniles outgrow criminal behavior with involvement in school and work).

154 *See id.*

155 *See id.*

156 *See id.* at 35 (noting why the Council entertained the proposals).

157 *See id.* at 9–10 (explaining the Council's reasoning for its recommendations).

158 *See id.* at 35–36.

159 *See id.*

160 *See id.* at 10 (explaining that "the Council recommends statutory language that would prohibit secure detention for all first-time youthful offenders aged thirteen and under, except for those charged with serious offenses, where a clear and public safety issue is present").

161 *See id*. (explaining that "[s]ecure detention in these serious cases may only be considered if indicated by the validated assessment instrument, and with judicial approval").

disposing cases.[162] SB 367 expands the definition of "accountability court" to recognize specially-focused programs including those "operating under the influence court divisions" and "family treatment court divisions," and authorizes juvenile courts to establish such programs.[163]

Building on the popularity of accountability courts as a criminal and juvenile justice reform strategy, the Council's 2017 report recommended enhanced flexibility and clarified procedures to ensure the success of Family Treatment Courts (FTC).[164] The goal of an FTC is to facilitate reunification between parents and their children by assessing a parent's level of substance abuse treatment and implementing evidence-based programs.[165] Interested in expanding the capacity of these courts to meet the growing need of substance-affected families, the Council identified the lack of judicial time to focus on FTC operations as one barrier.[166] Accordingly, the Council recommended allowing judicial circuits to employ part-time juvenile court judges as a dedicated staffing resource to preside over FTCs.[167] In addition, the Council recommended requiring a written protocol to clarify the referral procedure and including Division of Family and Children Services employees in collaborative planning groups.[168] These recommendations were advanced by SB 174, which passed in the 2017 legislative session.[169]

The Council's 2017 report also contained recommendations for continued adjustments to juvenile justice interventions based on three years of experience operating under the new Juvenile Code.[170] As the Council began its work looking toward the 2017 legislative

---

[162] *See id.* at 9 (discussing the Council's recommendation to authorize creation of a Family Dependency Treatment Court and a "DUI Court").

[163] *See id.* at 26–27 (discussing the first recommendation regarding accountability court judges).

[164] *See* MICHAEL P. BOGGS & CAREY A. MILLER, REPORT OF THE GEORGIA COUNCIL ON CRIMINAL JUSTICE REFORM 34 (Feb. 2017) (discussing the Council's accountability court recommendation).

[165] *See id.* (providing background on the FTC and its partnership with Casey Family Programs).

[166] *See id.* (noting a barrier to FTCs reaching their maximum capacity).

[167] *See id.* (recommending a solution to the FTC capacity issue).

[168] *See id.* at 34–35 (providing additional details about the Council's accountability court recommendation).

[169] *See 2017-2018 Regular Session – SB 174*, GA. GEN. ASSEMBLY, http://www.legis.ga.gov/legislation/en-US/Display/20172018/SB/174 (last visited Mar. 18, 2020) (providing a summary of Georgia SB 174).

[170] *See* BOGGS & MILLER, *supra* note 164, at 34.

session, a few juvenile court judges expressed their concerns about children charged with serious delinquent offenses who the court later found to be incompetent to proceed and, therefore, released to the community.[171] One particularly high-profile case in Atlanta underscored the urgent need to address this gap.[172] Therefore, the Council recommended that an allowance be made in the law for a juvenile court to temporarily detain a child deemed incompetent to proceed when he or she is determined to present a significant risk to public safety and when no less restrictive alternatives exist.[173] Moreover, the Council recommended that DJJ and the Department of Behavioral Health and Developmental Disabilities collaborate to develop forensic residential services and a protocol for long-term treatment and rehabilitation of youth who are deemed incompetent to stand trial but present a risk to public safety.[174] This recommendation was enacted by passage of SB 175 in the 2017 legislative session.[175]

SB 175 also enacted the Council's final juvenile justice recommendation for 2017, which was intended to encourage greater parental accountability and involvement in delinquency and CHINS cases.[176] Based on the theory that increased parental participation may deter further delinquent conduct, SB 175 authorized a juvenile court to enter an order in any CHINS or delinquency proceeding directing the behavior of the child's parent, guardian or legal custodian to promote the child's treatment, rehabilitation, and welfare.[177] Such an order can require the parent to ensure the child's attendance at school, monitor homework, attend school meetings, prohibit the child from associating with certain people, cooperate with probation officials, complete a substance abuse program, pay the costs of treatment and other

---

[171] *See id.* at 12 (noting the recommendation made to the Council regarding the system's ability to effectively address children who are delinquent and deemed incompetent to stand trial).

[172] Raisa Habersham, *Teen Brothers Indicted on Murder Charges,* ATLANTA J. CONST. (Jan. 31, 2017), https://www.ajc.com/news/breaking-news/teen-brothers-indicted-murder-charges/T75wB69pltSGwsiM2Y1LmK/ (describing a case where two teens (ages fifteen and sixteen), who had over 100 interactions with police and were released each time due to incompetency, commit murder).

[173] *See* BOGGS & MILLER, *supra* note 164, at 34.

[174] *See id.* at 42.

[175] *See 2017-2018 Regular Session – SB 174*, *supra* note 169.

[176] *See* BOGGS & MILLER, *supra* note 164, at 48.

[177] *See 2017-2018 Regular Session – SB 174*, *supra* note 169.

services, and pay restitution or a judgment.[178] The parent's compliance with the order is enforced through a contempt action.[179]

C. GEORGIA AS A NATIONAL LEADER IN JUVENILE JUSTICE REFORM

SB 367[180] and SB 175,[181] and broader policy and resource plans, represent distinct efforts in a sequenced and comprehensive agenda to structurally reform juvenile justice in Georgia. They earned Georgia a place among a handful of other states leading the United States in what has taken hold as a nationwide movement to legislate change.[182] Along with Kentucky, Hawaii, South Dakota, West Virginia, and Utah, Georgia undertook to systematically examine its juvenile justice system, develop data-driven, evidence-based policies, and pursue comprehensive implementation of those reforms.[183] The model presented by the Public Safety Performance project of the Pew Charitable Trusts (Pew) reforms statewide juvenile justice policies to protect public safety, hold youth accountable, and control taxpayer costs.[184] The Smart on Juvenile Justice Strategy adopted by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) articulated similar reform goals. Together, OJJDP and Pew focused on strategies and implementation support that emphasized using effective community-based approaches, limiting secure placement, and supporting strategic reinvestment of savings.[185]

Not surprisingly, common themes emerged among the five states. Reforms in each state sought to:

---

178 *See id.*

179 *See id.*

180 *See 2013-2014 Regular Session – SB 364*, *supra* note 143.

181 *See 2017-2018 Regular Session – SB 174*, *supra* note 169.

182 *Georgia Council on Criminal Justice Reform*, GA. DEP'T COMMUNITY SUPERVISION, https://dcs.georgia.gov/important-links/georgia-council-criminal-justice-reform (last visited Mar. 18, 2020) ("Georgia became a national model for criminal justice reform.").

183 JULIA DURNAN ET AL., URBAN INST., STATE-LED JUVENILE JUSTICE SYSTEMS IMPROVEMENT 1 (May 2018), https://www.urban.org/research/publication/state-led-juvenile-justice-systems-improvement (listing Georgia, Kentucky, Hawaii, South Dakota, West Virginia, and Utah as states that have passed legislation and are now implementing system improvements to juvenile justice policy).

184 *Public Safety Performance Project*, PEW CHARITABLE TR., https://www.pewtrusts.org/en/projects/public-safety-performance-project (last visited Apr. 3, 2020).

185 U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS & OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, OJJDP FY 2014 SMART ON JUVENILE JUSTICE: A COMPREHENSIVE STRATEGY TO JUVENILE JUSTICE REFORM 5 (June 16, 2014).

- decrease low-level offenders in out-of-home placements,[186]
- increase community-based programs and diversion opportunities,[187]
- focus on evidence-based programs to support effective and quality interventions,[188]
- make better use of newly available technology,[189] and
- use community-based alternatives to detention and better assess and handle youth during probation.[190]

The experience of these states clearly demonstrates how a thoughtful approach, quality data, and strong leadership can reengineer an entire system that operated for decades on deeply entrenched values and strong ties to history. Rarely does reform promise such meaningful and lasting change, but the results in Georgia point to a promising future for system-involved children.

V. RETURN ON INVESTMENT

Though the reforms are still relatively new, evaluation and reporting of early outcomes demonstrate steady, positive, and sustained improvements.[191] CJCC's five-year evaluation report on the outcomes of the JJIG Program detailed 5640 youth served by the grant in its first five years.[192] As a matter of geography, those youth represented a coverage area of fifty-eight Georgia counties whose services were supported by funds distributed to thirty-one grantee juvenile courts.[193] Most notably, this population of youth represents sixty-six to seventy percent of the at-risk youth population across the five-year life of the grant program.[194] But the real questions are whether youth are better-off for these efforts and investment and whether the reformed system offers a greater

---

186 *Id*.
187 *Id*.
188 *Id*.
189 *Id*. at 7.
190 *Id*. at 4–5.
191 *See, e.g.*, CARL VINSON INST. OF GOV'T, GEORGIA JUVENILE JUSTICE INCENTIVE GRANT: FIVE YEAR EVALUATION REPORT (Dec. 2018).
192 *Id*. at 4.
193 *Id*.
194 *Id*. at 9.

measure of justice. The best indication of the answers of these questions is the dramatic and sustained reduction in the use of out-of-home placement as a result of the availability of evidence-based community alternatives. In each year between 2014 and 2018, the percentage of out-of-home placement reduction ranged from fifty-three to sixty-two percent.[195] These statistical results offer a strong indication that the systemic impulse toward institutionalization and coercive control of delinquent youth has been restrained in favor of less restrictive and more effective alternatives that respect the developmental needs and legal rights of those youth.

VI. THE UNFINISHED BUSINESS OF GEORGIA'S JUVENILE JUSTICE SYSTEM REFORM

The vestiges of the past threaten the future of Georgia's juvenile justice system despite the promising progressive direction of these legislative and system reforms. Those pages of history must be consulted if the system is ever going to break free of its history and commit itself to a different and more productive direction. The keys to unlocking that potential are found both in policy and in the resources that fuel policy. Both must be constantly tended to sustain meaningful and lasting change.

A. RESOURCING REFORM

Though the structure and language of the Juvenile Code influence the direction of practice and system administration, the key to the success of Georgia's juvenile justice system reform is the financing mechanism that propels it. Through the JJIG Program and its counterpart (the DJJ Community Services Grant Program), savings realized from reduced reliance on detention is reinvested, along with additional funding, into community-based alternatives for low- and moderate-risk juvenile offenders. Essentially, Georgia proves its commitment to the policy aims of the juvenile justice system—moral justice, improved financial stewardship, and better outcomes for the community and for youth in contact with the law—by paying for it. That financial commitment provides, at a systemic level, the necessary resistance to the draw toward confinement as

---

[195] *Id.*

an approach for achieving social control. Adequate resourcing, then, is essential to making system reform meaningful and sustaining positive outcomes for youth and the community.

Adequate resourcing is not guaranteed, however. The most often-mentioned example of this in Georgia's reform experience is the complete lack of funding provided to support the implementation of the CHINS paradigm that is intended to redirect status offenders away from more formal juvenile justice system involvement. The theory of CHINS recognizes that a child's problematic behavior may be indicative of a larger family difficulty, and accordingly, that the involvement of the family in a service and treatment plan is necessary to address the presenting need.[196] This aim is best effectuated through a "community[-]based risk reduction program," which the juvenile court is authorized to create "for the purpose of utilizing available community resources in assessment and intervention in cases of delinquency, dependency, or children in need of services."[197] The catch is that the authority to establish such a program is contingent on the availability of sufficient funds.[198] No new or dedicated funding source is associated with CHINS, however. That lack of funding has caused fractured and inconsistent implementation of the intervention model, undermining its power to achieve the outcomes it is designed to achieve.

The under-resourcing of the CHINS model illustrates well the threat to core juvenile justice reforms if funding is dramatically reduced or cut. Just five years after institutionalizing the new direction for Georgia's juvenile justice system, the threat to the investments that have been made is very real. Severe cuts to the budget of DJJ—in the form of non-security positions most critical to the rehabilitative mission of the system—and directly to the JJIG Program are currently being considered, as are cuts to public defenders that provide juvenile defense representation.[199] The calculation is a simple one: the positive direction of reform cannot be sustained without sufficient funding to reinforce its direction.

---

196 *See* O.C.G.A. § 15-11-380 (2014).
197 *Id.* § 15-11-38(a).
198 *Id.*
199 BRIAN P. KEMP, THE GOVERNOR'S BUDGET REPORT: AMENDED FISCAL YEAR 2020 & FISCAL YEAR 2021, at 271–72 (2020).

B. RAISING THE AGE

As a matter of political pragmatism at the time HB 242 was being considered, an original proposal to raise the age of criminal responsibility to eighteen, the age of legal majority, was set aside.[200] Similar proposals have been debated episodically in Georgia for well over a decade but have attracted little political support. As of this writing, Georgia is one of only three remaining states that set an age lower than eighteen years as the age of criminal responsibility.[201] The Georgia House of Representatives is presently considering a proposal to effectuate this policy change,[202] but the policy continues to be met with resistance based on projected costs and strong fear rhetoric.[203] This problem further propagates the historical narrative of juvenile justice which elevates state interests and institutional convenience over the welfare of children. Research clearly demonstrates that processing youth in the juvenile justice system rather than in adult court reduces rates of recidivism,[204] yet the long shadow of fear of morally-depraved, violence-prone adolescents and a lack of commitment to provide adequate funding suggest the status quo will prevail over the empirical wisdom.

VII. CONCLUSION

Since the 1990s, youth crime rates have plummeted, but the public and political demand for social control of delinquent youth remains high. The approaches of the past, primarily custodial institutionalization, remained popular until a growing body of

---

[200] This information comes from my direct involvement with the development of the new code and the legislative advocacy that led to its enactment. For a discussion of the proposed model code, see *Juvenile Justice Reform HB 242*, 30 GA. ST. U. L. REV. 63, 69 (2014).

[201] Maya T. Prabhu, *Georgia Lawmakers Consider 'Raising the Age' to Charge Juvenile Offenders as Adults*, ATLANTA J. CONST. (Nov. 15, 2019), https://www.ajc.com/news/state--regional-govt--politics/georgia-lawmakers-consider-raising-the-age-charge-juvenile-offenders-adults/ioUCSDA5Krvw7zvhBPTkzL/ ("Georgia is one of three states in the nation that charge 17-year-olds who commit crimes as adults . . . .").

[202] H.B. 440, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

[203] *See Juvenile Justice: Hearing on H.B. 440 Before the H. Juvenile Justice Comm., 2019-2020 Leg. Sess.* (Ga. 2020), *available at* https://livestream.com/accounts/25225474/events/8729747/videos/201601261.

[204] *See* Eric Fowler & Megan C. Kurlycheck, *Drawing the Line: Empirical Recidivism Results from a Natural Experiment Raising the Age of Criminal Responsibility*, 16 YOUTH VIOLENCE & JUV. JUST. 3 (2017); *see also* Jeffrey Fagan, *The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders*, 18 LAW & POL'Y 1–2 (1996).

evidence provided an alternative in more effective, and less costly, interventions. States are now instituting major systemic reforms designed to reduce reliance on institutional confinement in favor of less restrictive approaches that respond to the developmental needs of youth and respect their individual rights.