SOUTH CAROLINA
SENATE SELECT COMMITTEE ON RAISE THE AGE
REPORT TO THE SENATE

September 1, 2020

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Executive Summary

Creation of the Select Committee on Raise the Age Implementation

On June 5, 2019, President of the Senate, Harvey S. Peeler appointed a Senate Select Committee on Raise the Age with Senator Gerald Malloy and Senator Shane Martin co-chairing the committee. President Peeler assigned the Committee to look at the impact of implementation of Act No. 268 of 2016 on the juvenile justice system. Act No. 268 of 2016, colloquially know as Raise the Age, was implemented with an effective date of July 1, 2019, contingent upon funding. The 2019-2020 Appropriations Act directed the Department of Juvenile Justice (DJJ) to use carry-forward funds for the implementation of Raise the Age (RTA).

The Senate Select Committee on Raise the Age included two working groups-the Probation and Commitment Working Group and the Diversion Working Group. The working groups and staff visited sites throughout the DJJ system.

Stakeholders participated in the process during meetings and by submitting information and proposals for review.

The Committee held seven meetings between June and December 2019, and visited DJJ and community resource sites. The Committee researched issues, reviewed materials, and met with or discussed issues and concerns with stakeholders regarding the implementation of Raise the Age. Many of the issues and concerns were incorporated into the draft bill. Other issues and concerns are identified in of this report for the General Assembly's information.

During the Committee meetings, several stakeholders and experts attended, presented, and provided information to the Committee including DJJ, Protection and Advocacy for People with Disabilities, Department of Mental Health, Dr. David E. Barrett, and Dr. Dan Edwards.

Senators Malloy and Martin designated two working groups and assigned Senator Hutto and Senator Davis to chair the working groups.

1) The Probation and Commitment Working Group visited the DJJ Juvenile Detention Center (DTC), Midlands Evaluation Center (MEC), and the Broad River Road Complex (BRRC). The Probation and Commitment Working Group also visited the Clemson Youth Development Center

2) The Diversion Working Group visited the DJJ Juvenile Detention Center, MEC, BRRC, DJJ's Coastal Evaluation Center, and the Georgetown-Marine Institute, which is operated by AMIKids.

Senator Malloy presented information concerning the Committee's work at both the Solicitors' Conference and the Public Defenders' Conference and invited those attending the conferences to submit comments.

On December 11, 2019, the Committee held a public hearing to review the draft bill and vote on the provisions of the draft bill the Committee would file during the 2020 session. The provisions voted on by the Committee to be included in the filed bill have been included in this

report as recommendations. During the December 2019 meeting, the members of the Committee reserved their rights in regards to how they may vote on the bill, which was filed as Senate Bill 1018 ("South Carolina Juvenile Justice Reform Act of 2020"), or any subsequent legislation related to this report. Other proposals that were submitted by stakeholders and not included in the bill have been referenced in "Other Issues, Ideas, and Concerns Not Adopted in Final Recommendations."

Overview of Act No. 268 from 2016 ("Raise the Age")

The legislature passed the Raise the Age Act unanimously in 2016, reflecting the consensus view that 17-year-olds are children and that all children should receive rehabilitative, not punitive, responses when they break the law. Both ideas find ample support in research on adolescent development, and South Carolina joined 45 other states and the District of Columbia in giving family courts jurisdiction over 17-year-old children.

The concern about RTA is with implementation: how would the Department of Juvenile Justice handle the influx of cases involving 17-year-olds, especially with DJJ's pre-trial detention center already near capacity, and with the high costs associated with taking care of and working to rehabilitate children in its custody, supervision, or responsibility, while under court-ordered probation. The Senate formed the Select Committee on Raise the Age to propose statutory reforms, funding priorities, and any other changes that would help the Department implement the RTA law.

This report summarizes various proposals that can accomplish that goal by codifying rehabilitation's central place in the South Carolina Children's Code and proposing reforms at every stage of the juvenile justice process to effectuate that purpose, thereby ensuring that DJJ only has to supervise and have custody of children when necessary. Such reforms reduce the fiscal burden on DJJ by reducing the number of cases DJJ must process and the number of children on its probation dockets and in its custody. Even more importantly, these reforms serve both children's interests and the public's interest by emphasizing the least restrictive environment and most rehabilitative steps. The Committee heard testimony and received evidence of research that supports these goals, showing, for instance, that charging children increases the risks that they will not graduate high school,[1] prosecuting rather than diverting children increases the risk of recidivism,[2] and incarcerating children can increase recidivism.[3]

Several states have incorporated statutory reform in efforts to implement comparable RTA acts and other juvenile justice reform. Changes in other states include:

[1] Gary Sweeten, Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement, 23 JUST. Q. 462, 463 (2006).
[2] David E. Barrett & Antonis Katsiyannis, The Clemson Juvenile Delinquency Project: Major Findings from a Multi-Agency Study, 26 J. CHILD & FAM. STUD. 2050 (2017).
[3] Cheri J. Shapiro, *et al.*, *Natural Experiment in Deviant Peer Exposure and Youth Recidivism*, 39 J. of Clinical Child & Adolescent Psych. 242 (2010).

- **New York** - provided in statute for adjournment upon contemplation of dismissal where terms and conditions as set by the court have been met.[4] New York raised the age to include 17-year-olds as juveniles in 2019.[5]
- **New Jersey** - was the first statewide model jurisdiction under the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI).[6]
- **Kansas** - imposed limits on probation of 6 months for misdemeanors or low-risk felonies, 9 months for high-risk offenders with misdemeanors or medium-risk offenders with felonies; or 12 months for high-risk offenders. These limits may be extended for good cause shown.[7] Kansas also created a juvenile justice oversight committee.[8]
- **Missouri** - decentralized long-term detention and focused on rehabilitative and therapeutic options in a least restrictive environment.[9]
- **Georgia** - raised the age to 17 for its family court and focused on limiting commitments to violent, serious, and repeat offenders with no residential commitment for status offenders. Georgia used an evidence-based program to address minor offenses, created a county level voluntary incentive grant program, and reinvested cost savings into community based programs to help reduce recidivism.[10]
- **Florida** - added a Civil Citation Program, in which children are issued a ticket for a court date. They are not taken into custody and nothing is entered into their juvenile record. Upon successful completion, the citation is dismissed.[11]
- **South Dakota** - added a civil citation program.[12]

Status of Juvenile Justice and Raise the Age Implementation from July 1, 2019, through January 8, 2020

The Department of Juvenile Justice reported the following statistics from July 1, 2019 through January 8, 2020:

- Total number of referrals was 7,016. Out of this number, 1,153 were 17-years-old at the time of the offense.
- Total of 1,349 children were detained state-wide, of which 208 were 17-years-old at the time of admission.
- Total of 793 children were detained at (DTC), of which 131 were 17-years-old at the time of admission.
- Total of 352 secure evaluation dispositions and 41 were 17-years-old at the time of the offense.
- Total of 364 community evaluation dispositions and 22 were 17-years-old at the time of the offense.

[4] N.Y. Crim. Proc. Law § 170.55 (McKinney)
[5] State Fiscal Plan, N.Y. Gen. Assembly 2017, A.B. 3009-C
[6] https://www.aecf.org/blog/new-jersey-becomes-first-state-to-implement-jdai-statewide/
[7] Kan. Stat. Ann. § 38-2391 (West)
[8] Kan. Stat. Ann. §46-2801 (West)
[9] https://www.aecf.org/resources/the-missouri-model/
[10] https://www.ncsl.org/Portals/1/Documents/cj/JJ_Principles_122017_31901.pdf
[11] Fla Stat. §985.12 (West)
[12] https://www.ncsl.org/Portals/1/Documents/cj/JJ_Principles_122017_31901.pdf

- Total of 423 "Suspended and Final Commitment Dispositions" and 31 were 17-years-old at time of offense
- Total of 318 "Suspended/Final Commitments" and 22 were 17-years-old at the time of offense.
- Total of 87 referrals for "Age 16 at time of offense with Felony Class A through D."
- Total of 13 secure evaluations for "Age 16 at time of offense with Felony Class A through D."
- Total of 15 "Suspended/Final Commitments for Age 16 at time of offense, with Felony Class A through D."

For background, Court Administration reported that the Family Court Nature of Action Filings for the time period of July 1, 2018, through June 30, 2019, showed a total of **9,457** filings under the heading of Juvenile Delinquency. Of note, 104 were status offenses, 1,400 were truancy, 193 were listed as incorrigible, and 233 listed as runaway (for a total of 1,930, which constitutes 20.4% of the total filings).[13]

During the time period of July 1, 2018, through December 31, 2018, there were a total of **4,356** action filings in the Family Court under the Juvenile Delinquency category.[14] Of note, 31 were status offenses, 344 truancy; 82 incorrigible; and 123 were runaway (for a total of 549, which constitutes 12.6% of the total filings).

Court Administration reported that since RTA went into effect on July 1, 2019, through December 31, 2019, there was a total of **5,436** action filings in the Family Court under the Juvenile Delinquency category.[15] Of note, 33 were status offenses, 399 truancy, 89 incorrigible, and 135 runaway (for a total of 656, which constitutes 12.06% of the total filings).

Overall, since July 1, 2019, there has been an increase of 1,080 action filings in the Family Courts compared to the same time period last year.

[13] https://www.sccourts.org/annualReports/2018-2019/FCNOA_F.pdf

[14] Available upon request

[15] Available upon request

Background

The Juvenile Justice System in South Carolina

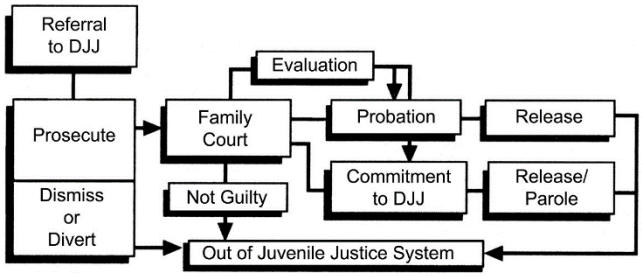

Figure 1. From the S.C. Department of Juvenile Justice[16]

In South Carolina, a child facing a charge for a criminal offense or for a status offense[17] is subject to the juvenile justice system. A child enters the juvenile justice system when law enforcement takes the child into custody for a violation of a law or an ordinance.[18]

If law enforcement determines a child should be detained, the child is transported either to DJJ's Juvenile Detention Center (DTC) in Columbia, South Carolina or to one of the few county detention centers with a unit for children that is separated by sight and sound from the adult population. The DTC in Columbia has a capacity for seventy-two (72) children. Five of the units are designated for boys and one unit is designated for girls.

The maximum capacity in the DTC was exceeded on 161 days or 75.23% of the days between July 2, 2019, and January 28, 2020, and the number of children in custody went as high as 100 children.[19] When reaching maximum capacity and as security needs have required, DJJ has resorted to using sleep pods, colloquially known as "boats," to provide beds for children.

Figure 2. Photograph of cell in DJJ's Juvenile Detention Center

[16] https://djj.sc.gov/agency/south-carolina-juvenile-justice-process
[17] A status offense is defined as "an offense which would not be a misdemeanor or felony if committed by an adult" and includes incorrigibility, truancy, running away, playing in a billiard room or a pinball machine, or "gaining admission to a theater by false identification." (S.C. Code Ann. §63-19-20(9).
[18] Taking a child into custody is not an arrest. (S.C. Code Ann. §63-19-810)
[19] Statistics provided by DJJ.

After forty-eight hours in a detention center, excluding weekends and holidays, if a child has not been released from a detention center to a parent, guardian, or responsible person, a child then appears in the Family Court for a detention hearing. DJJ provides a recommendation to the Solicitor. The case is reviewed by the Solicitor's Office to determine whether the case should be diverted for pre-trial intervention, prosecuted, or dismissed. During this hearing the Family Court determines whether continued detention is necessary or whether the child may be released to a parent/guardian or to short-term alternative placement. The Family Court may require restrictions or certain requirements for release, including electronic monitoring, curfews, etc.

If the Family Court determines continued detention is necessary, the Family Court may order that the child remain in DJJ custody, but not in excess of 90 days (SC Code Ann. §63-19-830). A child may have an additional review in front of the Family Court 10 days after the initial hearing, then 30 days after that hearing, and at any other time for good cause shown. During the child's detention, teachers and tutors are assigned to the DTC, but a child's education is impacted by the disruption in their studies at their home school and the possibility that they will not be able to return to their school upon release.

If the solicitor decides to prosecute, the child may plead delinquent or have a trial in front of the Family Court to determine if the child should be adjudicated delinquent. If a child is adjudicated delinquent[20] by a family court judge for any offense, an evaluation generally is ordered, which may be administered in the community as a community evaluation or administered in detention with DJJ as a secure evaluation (also known as a residential evaluation).

A child ordered to a secure evaluation is detained at either the Midlands Evaluation Center (MEC), the Upstate Evaluation Center (UEC), or the Coastal Evaluation Center (CEC). Each evaluation center contains four pods - 3 pods for boys and 1 pod for girls.[21] The pods for boys hold approximately 24 boys and contain one "wet cell" per pod. The pods for girls hold approximately 42 girls and one "wet cell" per pod. A wet cell is a room with a toilet and sink, designated for a disruptive child to remain in until they become calm, cooperative, and safe.[22]

A child can be held in custody for up to 45 days awaiting an evaluation during which the actual time spent with a psychologist may be for only a few hours.[23] The remainder of the time the child is in detention waiting for the evaluation report to be finalized. The evaluation centers have classrooms for the children.[24] Children receive instruction while they are in the evaluation center, but their schooling is impacted by whether or not DJJ has received instructional information from the child's local school district.

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[20] A family court judge does not rule on whether a child is guilty or not guilty. Rather, a family court judge adjudicates a child delinquent or not delinquent. (S.C. Code Ann. §63-19-1410)

[21] DJJ has presented that it intends to implement a regionalization plan which would include converting the evaluation centers to long-term detention facilities and sending the children to a centralized evaluation at MEC. https://djj.sc.gov/sites/default/files/Documents/DJJ%20Resource%20Guide%20Final%20Draft%20FOR%20WEB.pdf

[22] DJJ, Juvenile Behavior Management- Incentive System and Progressive Discipline, Policy No. G-9.19

[23] DJJ Presentation, July 23, 2019 (audio)

[24] https://djj.sc.gov/SCDJJ-school-district/birchwood-school

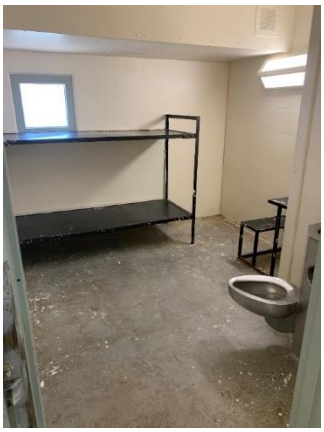

Figure 3. Photograph of a "wet cell" from Coastal Evaluation Center

After the evaluation is completed, the Family Court holds a dispositional hearing in which a judge may send the child home, place the child on probation, or commit the child to the custody of DJJ for a determinate sentence or an indeterminate sentence. A child sentenced to a determinate sentence or an indeterminate sentence serves time in the Broad River Road Complex (BRRC).

During the child's commitment to BRRC, the child is assigned to a unit with up to 10 other children who have also been adjudicated delinquent. Three units are similar to barracks and have open floor plans with individual spaces for a child and a child's bed, desk, and locker. Furniture is bolted to the floor for the security of both the children and the staff. Efforts are supposed to be made to house children with similar offenses in the same unit depending on availability of space. There is also an honor dorm for boys, which is more similar to a transitional unit. There is one unit for girls, which is structured like a transitional living unit with a kitchen, living room area, and bedrooms.[25] Because there is only one unit for girls, there is a possibility that co-defendants may have to be housed together.

Figure 4. Photograph of Long-Term Commitment Unit for boys

The children in long-term detention have structured days that include school, activities. Children in long-term detention at BRRC attend Birchwood School, but their schooling is often

[25] https://djj.sc.gov/facilities

impacted by delays in assessing and receiving information from the child's prior school district. In addition to school, there are opportunities for children to learn trade skills in woodworking, upholstery, and food service.

The Crisis Management Unit (CMU) is utilized for isolation of a child. After a child leaves the CMU, the Intensive Treatment Unit (ITU) may be used as a step-down if the child still needs to be removed from the general population temporarily. Children in the ITU receive some education while in the unit and receive some counseling. They work toward returning to their unit.

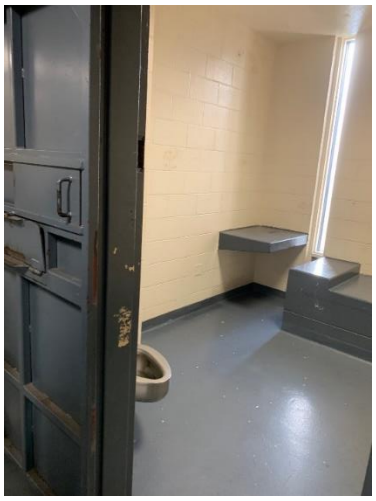

Figure 5. Photograph of cell in Intensive Therapy Unit

If a child is given a determinate sentence, then at the end of that time period, the child is released. However, if a child is ordered for an indeterminate sentence, then the actual amount of time served is determined by an established set of guidelines set by the department, subject to an evaluation of the child's behavior while in custody. The Board of Juvenile Parole meets monthly and may determine that the child should be released based on the guidelines or for exceptional good behavior.

In 2019, the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) issued a Model Program Guide related to the education outcomes of children involved in the juvenile justice system. In that report the OJJDP identified numerous barriers or hurdles experienced by children returning from custody, including academic difficulties, frequent school transitions, and an increase in dropout rates. [26]

Recommendations of Reforms to the South Carolina Children's Code

(Members reserve their rights regarding Senate Bill 1018 and any subsequent legislation)

The South Carolina Children's Code (Title 63 of the South Carolina Code Ann.) governs juvenile procedure, including intake, pre-trial detention, probation, and commitment decisions.

[26] Office of Juvenile Justice Diversion Program, *Education for Youth Under Formal Supervision of the Juvenile Justice System*, https://www.ojjdp.gov/mpg/litreviews/Education-for-Youth-in-the-Juvenile-Justice-System.pdf

To implement RTA, the Committee recommends that the legislature should reform the South Carolina Children's Code to reflect that the juvenile justice system should follow a rehabilitative model, and children should only be prosecuted, detained, or committed to DJJ custody when that is the least restrictive option to achieve those rehabilitative goals. The rest of this section discusses specific statutory reforms consistent with that goal for the General Assembly to consider.

A diversion program is designed to allow a child to complete numerous educational and rehabilitative requirements while allowing them to avoid the negative effects of the juvenile justice system. For children who have committed an offense, diversion permits them to take responsibility without obtaining a juvenile record or the risk of incarceration. For DJJ, diversion programs are shorter and less expensive to operate than probation, and certainly more so than incarceration. Many prosecutors around the state and around the country have embraced diversion programs for many children.[27] Also, diversion is good for the public, as research shows that children who participate in diversion have *lower* recidivism rates than children who are prosecuted and adjudicated.[28] DJJ's data presentation to the committee shows that recidivism rates for children in arbitration are about 10 percent lower than for children on probation or committed to DJJ custody.

The Committee recognizes that diversion programs come with a financial cost, and that said cost may fall on DJJ or on local solicitors' offices or law enforcement programs. Generally, however, the cost of diversion programs is far less than the cost of prosecution and disposition, and the cost-benefit analysis is even stronger towards diversion when considering the associated lower recidivism rates. To the extent that larger diversion programs require more funding, steps are recommended to ensure funds saved from reduced numbers of children in DJJ custody are re-invested in community programs to rehabilitate young offenders, especially diversion. Steps are also recommended to increase the usage of diversion programs and thus reduce crime while also reducing financial and staffing burdens on DJJ.

Recommendations on Diversion Programs:
(Members reserve their rights regarding Senate Bill 1018 and any subsequent legislation)

i. Establish the presumption of diversion for first-time non-violent offenses

Enact legislation to presume first-time non-violent offenses by children will be diverted. This is a presumption for diversion and authorities may prosecute children if it is shown that diversion is not in the best interest of the child and the public safety. The Committee heard testimony and received information on research regarding South Carolina's juvenile justice system, which indicated that first-time offenders benefit from diversion even with offenses that are more serious.[29] A longitudinal study of children referred to the Family Court in South

[27] Right on Crime, *New Prosecutorial Perspectives; A Framework for Effective Juvenile Justice*, http://rightoncrime.com/2016/12/new-prosecutorial-perspectives-a-framework-for-effective-juvenile-justice/.
[28] *E.g.* David E. Barrett and Antonis Katsiyannis, *The Clemson Juvenile Delinquency Project: Major Findings from a Multi-agency Study*, 26 J Child & Fam Stud 2050, 2051 (2017).
[29] Senate Select Committee, September 19, 2019

Carolina found that children referred for less serious first-time offenses had lower recidivism rates when diverted than when adjudicated.[30]

The Committee acknowledges diversion is not always appropriate. The longitudinal study referred to above found that diversion was less effective when children had an aggression-related DSM diagnosis.[31] In addition, particularly severe crimes – violent offenses – often call for responses other than diversion.

The Committee recommends that the legislature make diversion the presumptive option for all first-time offenders referred to a family court for any offense other than a violent offense.

ii. Establish at least one pre-detention intervention program in each circuit

Enact legislation to require a pre-detention program to provide an alternative to referring children to the juvenile justice system. This program would be available only for minor, first-time, non-violent offenses and would be funded by state funds. DJJ would be tasked with funding programs that help the community with diversion, intervention, and education by utilizing funds identified as savings as a result of decreased reliance on out-of-home placement for children. DJJ would award the funds to a program in each circuit, and would develop the criteria and requirements for eligibility for the award. DJJ would provide law enforcement with referral information.

iii. Establish a civil citation program

Enact legislation to require each circuit solicitor to establish a civil citation program, which will provide a civil alternative to criminal prosecution for eligible children (no prior adjudications of delinquency and no prior referrals to a diversion program). Children are ineligible if the offense involves a violent crime, an allegation of stalking, harassment, or the allegations involve a firearm or failing to stop for a blue light. Civil citations are an effective mechanism to respond promptly to minor offenses and divert children from the court system. A civil citation process has been used successfully since 2017 in Florida[32] and one is currently used in York County, SC.[33]

iv. Establish specialty treatment programs in each circuit

Enact legislation to allow the solicitors, with Supreme Court authorization, to establish specialty treatment courts as needed. Children with mental health or substance abuse issues may be referred to these courts and may choose to participate. In the event the child successfully completes the treatment court program, the charges would be dismissed and automatically expunged at no expense to the child.

v. Require diversion programs to be available for more than first time offenders

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[30] *Id*. at 2051-2.
[31] *Id*. In the South Carolina data set, the vast majority of children did not have such diagnoses – about 82,000 did not, while about 14,000 did.
[32] Fla. Stat. §985.12
[33] Senate Select Committee, September 17, 2019

Enact legislation to allow diversion program eligibility for offenders after a first-time offense in limited circumstances. Diversion is valuable and effective for more than first-time offenders. A child who is caught shoplifting at age 13 and successfully participates in a diversion program may still benefit from a diversion program if he gets into a fight in his neighborhood and is charged with simple assault at age 17. Other states have recognized this principle. South Dakota, for example, made diversion presumptive for children whenever at least 12 months had passed since participation in a previous diversion program.

vi. Prohibit fees for juvenile diversion programs

Enact legislation to prohibit fees for juvenile diversion programs. Diversion programs are valuable because, for most children, they are proven to reduce recidivism and more effectively rehabilitate than prosecution and imposing formal court dispositions. Accordingly, poverty should not be a barrier to participation in such diversion programs.

Some current diversion programs charge children fees to participate, and these fees may be large – and sometimes prohibitive – for the indigent families whose children have entered the juvenile justice system. Charging a fee forces deeply impoverished children who cannot afford a fee to be adjudicated, while less poor children can be diverted – in other words, it criminalizes poverty. Many children who may be otherwise eligible to participate in diversion are limited by labor regulations as to the type and hours of work they may perform or may not be old enough to work in order to pay the fee.

While some circuits waive fees for a child that is indigent, imposing the fee on some families who can afford it may take away money that could be directed towards family necessities or restitution payments to victims of crime.

To the extent that these fees help pay for diversion programs, the Committee recommends that children in the justice system – who are overwhelmingly impoverished – should not be made to pay the cost for diversion. These programs serve the public interest in public safety through rehabilitation and reduced recidivism. Therefore, making children pay harms both children and the public. The legislature should provide any necessary funds for the operation of diversion programs.

Research from a variety of national experts strongly recommend against charging these fees. According to the U.S. Department of Justice, "[j]uvenile justice agencies should not condition entry into a diversion program or another alternative to adjudication on the payment of a fee if the youth or the youth's family is unable to pay the fee."[34] The National Council of Juvenile and Family Court Judges adopted a resolution providing that rehabilitative programs "should be fully funded by governmental revenue and not by revenue generated by fines, fees,

[34] U.S. Dep't of Justice, *Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on levying Fines and Fees on Juveniles*, at 8 (2017), https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf.

and costs," and prompting "courts to work towards reducing and eliminating fines, fees, and costs."[35]

Recommendations on Changes to Commitment and Probation:
(Members reserve their rights regarding Senate Bill 1018 and any subsequent legislation)

i. Adjournment Upon Contemplation of Dismissal

Enact legislation to allow the court to adjourn a petition in contemplation of dismissal upon the fulfillment of terms and conditions as the court considers appropriate in a particular case. In the event a child did not fulfill the terms as determined by the court, or upon motion of any party, the matter could be restored to the Family Court.

ii. Limit probation caseloads by limiting the length of probation

Enact legislation to limit the length of probation, which will limit probation caseloads. RTA raised the upper age for a child to remain on probation from 18 to 20. However, this change also exacerbates a risk for all children, especially younger children, that they will be subject to probation orders for too long. The statute currently allows a specified term that could go as long as expiring on the child's 20th birthday.[36]

Lengthy probation sentences have been shown to set children up for failure. National juvenile justice experts have recommended against "unnecessarily long periods of probation supervision," and have pointed to probation lengths measured in years as too long.[37] The Pew Charitable Trusts has worked with multiple states to reform their juvenile justice system, and helped to implement important reforms, which are now codified in Kansas.[38]

The Kansas reforms are illustrative and set presumptive maximum limits on the length of probation based on the severity of the child's offense and the results of a risk assessment. Children convicted of only misdemeanors are now subject to a presumptive maximum of 6 months' probation, and 9 months' if they are assessed to be high risk. Children convicted of felonies are subject to a presumptive maximum of 6 months' probation if low risk, and 12 months' if moderate or high risk. (The most severe offenses are exempted).[39] Probation may be extended beyond these limits only in certain circumstances and only for modest lengths of time.[40]

DJJ also presented to the Committee on "Limit length of probation" during the meeting on July 23, 2019. The Committee recommends a reform similar to the Kansas reform model,

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[35] National Council of Juvenile and Family Court Judges, *Resolution Addressing Fines, Fees, and Costs in Juvenile Courts*, https://www.ncjfcj.org/wp-content/uploads/2019/08/resolution-addressing-fines-fees-and-costs-in-juvenile-courts.pdf.
[36] S.C. Code Ann. § 63-19-1410(A)(3)
[37] Annie E. Casey Foundation, Transforming Juvenile Probation: A Vision for Getting It Right, 17 (2018), https://www.aecf.org/resources/transforming-juvenile-probation/.
[38] Kan. Stat. Ann. § 38-2391
[39] *See* Pew Charitable Trusts, *Kansas' 2016 Juvenile Justice Reform*, 12 (2017) http://www.pewtrusts.org/~/media/Assets/2017/06/PSPP_Kansas_2016_Juvenile_Justice_Reform_brief.pdf
[40] Kan. Stat. Ann. § 38-2391

which would create a presumptive maximum length based only on the severity of an offense (maximum of two years for a felony and one year for a misdemeanor or status offense). Evidence from a risk assessment would still allow a judge to exceed those presumptions, but the order could not extend the probation past the child's 20th birthday. A child that violates the terms of probation may be placed on probation for up to an additional six months.

The Committee notes that the time limits proposed here are *longer* than those required by statute in Kansas. The Court may impose even longer terms of probation if agreed to by the parties; that provision permits solicitors and defense attorneys to negotiate appropriate plea bargains and dispositions in cases with individual needs to divert from these presumptive probation lengths.

iii. Eliminate fines and limit restitution to be imposed on children

Enact legislation to eliminate fines. Fines are punitive and should not play a role in a rehabilitative system. Fines are particularly inappropriate for children, who generally lack the financial means to pay them. In addition, the recommendation is to strike existing language permitting fines to be imposed on children as a condition of probation[41].

Enact legislation to limit restitution. Restitution orders of reasonable amounts to help repair the damage caused by offenses can play an important role in rehabilitation. Restitution should be limited to an amount of $500.00 and should be limited to children 16 years of age or older. However, this presumption can be overcome if the child has the ability to pay restitution. If the court's order does not specify a monthly payment schedule, DJJ will establish a payment schedule.

iv. Codifying administrative supervision of children by DJJ

Enact legislation codifying administrative supervision of children by DJJ. There are two situations where administrative supervision of a child would be used.

The first situation would be where a child has completed the terms and conditions of probation, but the child may need additional time to complete the terms and conditions.

The second situation would be when a child does not need the additional supervision provided by probation but has yet to complete restitution or community service; in that case, a child may be placed on administrative supervision, which allows DJJ to supervise a child for a period of a year to complete restitution or community service. Administrative supervision would terminate upon completion of the court's sanction.

v. Limit children committed to DJJ custody

a. Least Restrictive Environment language for any disposition

Enact legislation stating the court should impose the least restrictive placement possible dependent upon the facts in each case as an essential principle for a rehabilitative system. Rehabilitation is generally more effective without incarcerating children, and the most effective

[41] Senate Bill 1018, SECTION 34, Section 63-19-1410(A)(3)(d)

rehabilitation services are mental health treatment and other clinical interventions. The less money DJJ spends on incarceration, the more it can spend on those services.

b. Significantly reduce commitments for secure evaluations

Enact legislation to create a presumption for community evaluations and reduce the maximum length for secure evaluations. One area of juvenile practice that is in need of reform is the determination of who should get a "secure evaluation," also referred to in the statute as a "residential evaluation." By statute, a secure evaluation is when a family court commits a child to DJJ's custody for up to 45 days for the purposes of DJJ evaluating the child and making disposition recommendations to the court.[42]

However, a secure evaluation is not just an evaluation – an evaluation can be done based on interviews and psychological testing that takes hours, not days. Rather, a secure evaluation is comparable to adult incarceration. A visit to DJJ's secure evaluation facility makes clear that these facilities are similar to adult jails. They are surrounded by barbed-wire fences and contain many security features throughout. Upon entry, children are strip searched. They are placed in pods – large, institutional rooms with bolted-down furniture – of up to 20 children, where each sleeps in their own cell. Security threats to children are constant concerns.

Research associates children being sent to these secure evaluation centers with *increased* recidivism. Comparing children sent to these secure evaluation centers with those ordered to comply with a community evaluation, University of South Carolina researchers found that children forced to undergo secure evaluations had 33 percent *higher* recidivism rates.[43] Secure evaluations, like any form of incarceration, are also expensive. DJJ told the committee that a secure evaluation in FY 2017-2018 cost an average of $18,911 (approximately 35 days at a rate of $540 per day) per child, compared to the average cost of a community evaluation of approximately $5,319 ($110 per day).

Some children need to be incarcerated to protect the public. However, DJJ's data confirm that far too many children are incarcerated for secure evaluations even when they do not pose a public safety threat. DJJ reported that only 7 percent of children committed for secure evaluations or final commitments had been adjudicated for violent offenses.[44] The Sentencing Project also provided more detailed figures showing that only 38 percent of children committed for secure evaluations were adjudicated for felonies (both violent and non-violent felonies), and 62 percent of children incarcerated for secure evaluations were adjudicated for only status offenses or misdemeanors.[45]

The vast majority of children who are sent to DJJ for secure evaluations are not committed to DJJ after an evaluation – less than 25 percent, according to DJJ's presentation to

[42] S.C. Code Ann. § 63-19-1440(C)
[43] Cheri J. Shapiro, *et al.*, *Natural Experiment in Deviant Peer Exposure and Youth Recidivism*, 39 J. of Clinical Child & Adolescent Psych. 242, 250 (2010). These researchers focused on children with single adjudications to minimize the risk that prior justice system interventions affected the data.
[44] DJJ Presentation to Senate Select Committee on Raise the Age, July 23, 2019
[45] Rovner Memo, July 2019

the committee[46]. In most cases, a community evaluation is far more appropriate than a secure evaluation.

Enact legislation amending the statute to limit secured evaluations to 30 days. When secure evaluations are necessary, they should not take 45 days, which is the statutory maximum. Given the work that goes into them, a much shorter timeline is appropriate.

c. Limit determinate commitments

Enact legislation to prohibit a determinate commitment from exceeding minimum parole guidelines. This legislation would prevent a situation where the child would have received less time if he or she had been committed to an indeterminate commitment. Currently, the Board of Juvenile Parole sets a minimum parole guideline and provides the guideline to the child upon commitment.[47] There are no provisions requiring that a determinate commitment should not exceed the minimum parole guidelines, which in effect means a child sentenced to a determinate commitment may spend more time in commitment than a child with an indeterminate commitment that is released by the Board of Juvenile Parole upon reaching the minimum parole guideline.

d. Reduce indeterminate commitments

Enact legislation to reduce indeterminate commitments. DJJ's data shows that final commitments to DJJ custody are not reserved for the most serious offenders. DJJ reported that only 7 percent of children committed to its custody had been adjudicated for a violent offense.[48]

If the court determines that a less restrictive disposition does not protect the public safety and will not adequately rehabilitate the child, the court should issue individualized written findings.

e. Prohibit incarceration of status offenders

Enact legislation to prohibit the detention and secure commitment of status offenders. Voices from across the political spectrum have endorsed reducing the confinement of status offenders. Federal law – the Juvenile Justice and Delinquency Prevention Act (JJDPA) – has long prohibited the detention of any child accused only of a status offense in any secure facility. Detention is only contemplated if a child violates a valid court order – but in late 2018, a bipartisan majority in Congress passed and President Trump signed amendments to the JJDPA which limited the valid court order exception. Now, no detention of status offenders (even those who have violated a court order) may extend beyond 7 days.[49] Right on Crime, which promotes itself as "the conservative approach to criminal justice: fighting crime, supporting victims, and protecting taxpayers," has opposed what it calls the "overincarceration of status offenders."[50]

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[46] DJJ Presentation to Senate Select Committee on Raise the Age, July 23, 2019
[47] SC Code Ann. § 63-19-1820
[48] DJJ Presentation to Senate Select Committee on Raise the Age, July 23, 2019.
[49] 34 U.S.C. § 11133(23)(iii).
[50] Right on Crime, Kids Doing time for What's Not a Crime: The Over-Incarceration of Status Offenders, http://rightoncrime.com/2014/03/kids-doing-time-for-whats-not-a-crime-the-over-incarceration-of-status-offenders/.

Enact legislation to prohibit the secured detention of status offenders, which will provide reform and should bring South Carolina into compliance with the JJDPA. Some stakeholders have commented that detention of status offenders is necessary because South Carolina lacks sufficient alternative facilities to house these children.

f. Limit detentions and commitments based on technical violations of probation.

Enact legislation to limit commitments based on technical violations of probation and to limit detention of children based on probation violations alone that do not involve new, serious crimes or public safety threats. In the event that the court determines extending probation is not sufficient to address the violation, the court may issue a determinate commitment of up to 72 hours for a probation violation or contempt of court; however, the court should make individualized findings as to what less restrictive alternatives are not appropriate, or have been ordered previously but with which the child has failed to comply

DJJ has recognized that too many children are committed to its custody for minor violations of probation orders and that they would prefer to "[s]erve youth who have an alleged technical violation of probation (other than a community safety violation) with a Notice of Administrative Sanctions in lieu of filing a probation violation or parole revocation."[51]

Indeed, detention or commitments to DJJ following probation violations contribute significantly to the population of DJJ's pre-trial detention center (as established in memos by Josh Rovner of the Sentencing Project and shared with the committee). They also contribute significantly to the population of children committed to DJJ's custody and placed in secure facilities; DJJ shared probation violations were the majority of the referral offenses[52].

Some of these pre-trial detentions and commitments are appropriate, for example, when the probation violation involves further crimes (especially violent crimes) or attempts to flee DJJ alternative placements (when complying with such placements is a condition of probation). Some of these detentions may be for less serious causes. Consistent with DJJ's recommendation, absent public safety risks or flight, probation violations should not lead to either pre-trial detention or commitments to DJJ custody.

g. Post-disposition review

Enact legislation to grant the Family Court power to modify disposition orders, including the power to grant early release from residential placement, or to close cases early when the rehabilitative aims of the South Carolina Children's Code so require. Amend the South Carolina Children's Code to permit a child who is in DJJ detention or under community supervision, DJJ, or the solicitor to petition the court to review and, in the court's discretion, to amend the dispositional order based on new evidence, including, but not limited to, the child's substantial completion of rehabilitation-focused programs and services, regardless of whether the child has reached the minimum length of his or her parole guidelines, and regardless of any decisions of

[51] DJJ Presentation to Senate Select Committee on Raise the Age, July 23, 2019

[52] DJJ Presentation to the Senate Select Committee on Raise the Age, August 20, 2019. 40 out of the 84 referral offenses related to probation violations.

the juvenile parole board or the Department's internal release authority. Further, the releasing entity should utilize evidence-based practices in determining length-of-stay guidelines.

The South Carolina Commission of Indigent Defense (SCCID)'s "Performance Standards for Indigent Defense in Juvenile Cases" makes clear that juvenile defense attorneys have a continuing duty to their client. Guideline 10.6 says, "The lawyer's responsibility to the client does not necessarily end with dismissal of the charges or entry of a final dispositional order. The attorney should be prepared to counsel and render assistance to the child in securing appropriate legal services for the client in matters arising from the original proceeding. No matter the outcome, if Counsel feels that counseling services are necessary for the child and/or the parent or guardian, Counsel should do everything in his/her power to assist them in receiving this assistance. Counsel should embrace a holistic approach to the client that not only addresses the immediate legal needs of the client but also seeks to place the client in the best position possible to succeed after the Court matters are resolved."

Moreover, the guidelines explicitly state that the attorney has post-dispositional duties to their clients. According to Guideline 11.1, "Counsel must be informed about and be able to handle contempt proceedings and probation violation matters. The Performance Standards for non-capital representation apply to Counsel in these matters as well."[53]

The National Juvenile Defense Standards say that juvenile defenders should stay in contact with their clients after disposition while the client is under court or agency jurisdiction, and should continue their representation, including at disposition review and parole revocation hearings. For youth in secure placement, defenders have a heightened responsibility to monitor the treatment, safety, and mental health of their clients and to help ensure that a reentry plan is in place so that the child can effectively reintegrate into the community and is not set up for failure once released. Further, defenders have a post-dispositional duty to inform their clients of the right to appeal, and to explain that the decision to appeal ultimately belongs to the client.[54]

Professors Sandra Simkins and Laura Cohen stated in an article "[…] access to post-dispositional representation is critical both because of the broad range of legal issues that children confront after their cases have concluded in juvenile court and the developmental characteristics of youth in custody."[55]

The stated goal of juvenile court is rehabilitation, however, rehabilitation is a vague and often subjective standard. Professor Simkins stated, "Despite the juvenile system's supposed goal of 'rehabilitation,' after the court steps in as *parens patria* and doles out indeterminate sentences to children, there is no structure in place to ensure that what the court intended for the

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[53] South Carolina Commission on Indigent Defense, Performance Standards for Indigent Defense in Juvenile Cases (2013), https://sccid.sc.gov/docs/SCCID%20Juvenile%20Representation%20Performance%20Standards%20as%20adopted%20by%20SCCID%206-7-2013%20With%20Preamble%20Disclaimer%208-22-2013.pdf

[54] National Juvenile Defender Center, National Juvenile Defense Standards (2013), https://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf

[55] Sandra Simkins and Laura Cohen, The Critical Role of Post-Disposition Representation in Addressing the Needs of Incarcerated Youth, 2 JOHN MARSHALL LAW JOURNAL, 319 (2015), http://youthviolence.rutgers.edu/wp-content/uploads/2015/11/8JohnMarshallLJ-311-Simkins-and-Cohen.pdf

child actually occurs. Connected to this void of accountability is the nightmare situation, occurring with alarming regularity, of institutional abuse of children at juvenile treatment facilities. Whether a placement is 1,000 miles away or in a neighboring county, our critical role as attorneys for children requires that we are able to answer the question of where we are sending our kids."[56]

Determining when, how, or if a child will be released from juvenile court jurisdiction gives tremendous power to the facility or the probation or parole board, and that power requires checks and balances. Absent judicial oversight, review hearings, or access to counsel, children may fall through the cracks of complex child-serving agencies.

At post-disposition review hearings, defense attorneys "can raise concerns if the youth is not receiving the education or treatment and rehabilitative services they are entitled too [sic], challenge harmful or unconstitutional conditions of confinement, monitor and advocate for reentry planning and community based after-care programs that will assist the youth when he or she ultimately returns to the community, and seek early release for a youth who has demonstrated positive development and is no longer in need of services in an institutional setting."[57] Early release with community-based after-care may be a good public policy to consider and could provide significant cost-savings to society.[58] This type of advocacy, as stated by Professor Ortega, "requires a young person to get before the court, which in turn requires representation by counsel."[59]

vi. Amend the sex offender registry statutes as applied to children

Enact legislation to amend the sex offender registry as applied to children. Current law places child sex offenders on the sex offender registry for life. However, much research demonstrates that child sex offenders have particularly low recidivism rates, especially when they receive sex offender treatment, making mandatory lifetime registry placements ill advised, and inconsistent with the juvenile justice system's rehabilitative goals. Moreover, these long registry placements can also undermine rehabilitative goals; a child who knows he will be branded a sex offender for life no matter what he does will have less incentive to participate in treatment.

Legislation should differentiate between adults on the sexual offender registry for offenses committed as an adult and adults on the sexual offender registry for offenses committed as a child, and establish a process for an adult who was placed on the sex offender registry as a child to petition the Family Court for removal from the sex offender registry list with specific

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[56] Sandra Simkins, Out of Sight, Out of Mind: How the Lack of PostDispositional Advocacy Increases the Risk of Recidivism and Institutional Abuse, 60 RUTGERS L. REV. 207, 208-09 (2007). *See also* Fare v. Michael C., 442 U.S. 707, 722 (1979) ("It is [the] pivotal role of legal counsel . . . A probation officer simply is not necessary, in the way an attorney is, for the protection of the legal rights of the accused, juvenile or adult.").

[57] Bridgett E. Ortega, "Introduction to the 2015 Robert D'Agostino Symposium Edition: Decreasing Youth Incarceration Through Quality Juvenile Defense," 2 JOHN MARSHALL LAW JOURNAL, 315 (2015). (See also, https://njdc.info/wp-content/uploads/2014/01/Post-Dispo-Inno-Brief-2013.pdf).

[58] See Amanda Petteruti, Marc Schindler and Jason Ziedenberg, *Calculating the Full Price Tag for Youth Incarceration,* Justice Policy Institute, 9, 14 (2014).

[59] Ortega, *supra* at 305-306

criteria for the court to consider including the likelihood of re-offense based on assessments conducted by specifically trained psychologists and/or psychiatrists, the age of the petitioner at the time of the offense, aggravating factors, mitigating factors, and any other factors a family court determines to be relevant. Further, legislation should be enacted so that the Family Court retains jurisdiction for the purpose of reviewing petitions for removal from the sex offender registry, if the Family Court made the adjudication from which the now-adult is petitioning removal.

Clarify language in the statute to limit the dissemination of information regarding children on the sex offender registry to schools, childcare facilities, and businesses or organizations that serve children, women, or vulnerable adults.[60]

vii. Prohibit solitary confinement and limit room confinement of children

Enact legislation to prohibit solitary confinement and limit corrective room restrictions to circumstances where the security of the child, staff, or others requires corrective room restriction and less-restrictive options have been exhausted. The United States Department of Justice - Civil Division recently issued a report finding reasonable cause that DJJ's use of isolation violates children's constitutional rights.[61] In the report, the Department of Justice cited examples of times CMU was used by facility staff for extensive periods of time and for the purpose of punishment as opposed to a legitimate government objective.

DJJ has an existing policy, G-3.4, on "Isolation of Youth," and a statute would codify the central principles that solitary confinement is inappropriate for children and that use of any kind of isolation on a child should be extremely limited.[62] DJJ's policy establishes that the use of an "isolation cell or room" should be for neutralizing "out-of-control, unsafe behavior" and to keep children and staff safe. The policy also explicitly states, "[i]solation will never be used as punishment." This policy establishes the process for staff to apply Calm, Cooperative, Safe (CCS) assessment and compliance including steps to take for separation to help the child "regain self-control." The policy outlines how isolation and room confinement may be used, including to ensure the safety of the child, other children, and/or the staff.

In December 2018, Congress passed and President Trump signed the First Step Act, which prohibited solitary confinement of children in the federal justice system, and sharply limited room confinement.[63] This action reflects the consensus view that solitary confinement can cause serious psychological, physical, and developmental harm to children that may result in trauma, depression, anxiety, and increased risk of suicide and self-harm. Research shows that more than half of all suicides in juvenile facilities occurred while young people were held in

[60] S.C. Code Ann. §23-3-490(D)
[61] https://www.justice.gov/opa/press-release/file/1245181/download
[62] S.C. Department of Juvenile Justice, *Isolation of Youth*, Policy and Procedures, Policy No.: G-3.4, effective May 9, 2016.
https://www.scstatehouse.gov/CommitteeInfo/SenateSpecialStudyCommitteeOnDJJ/November12016Meeting/DJJ%20Procedures%20Updated%20(Behavior%20Management-Hearings-Isolation).pdf
[63] The First Step Act, PL 115-391, 18 U.S.C. § 5043.

isolation.[64] As stated in the 2013 ACLU report on children in solitary confinement, "solitary confinement is the most extreme form of isolation, and involves physical and social isolation in a cell for 22 to 24 hours per day."[65] The report further stated that "[i]n addition to solitary confinement, juvenile facilities frequently use a range of other physical and social isolation practices, many distinguishable from solitary confinement only in their duration (stretching for many – but fewer than 22 – hours). Instead of the terms 'solitary confinement' or 'isolation,' juvenile facilities often adopt euphemisms, including 'time out,' 'room confinement,' 'restricted engagement,' or a trip to the 'reflection cottage.'"[66]

Solitary confinement does nothing to address the underlying causes of a youth's acting out behavior; worse, it exacerbates existing problems and thus makes a child more likely to reoffend upon release. This places greater burdens on DJJ, thus undermining RTA implementation. Solitary confinement removes youth from staff interactions and programming that they need to develop awareness and skills to control problematic behavior in the future.[67] As stated by Professor Simkins and her colleagues, "[b]ehind problematic youth behavior is a combination of immature thinking and identity, learning disabilities, and trauma. And, as a result of isolation, the very behaviors that are the cause for placement in isolation, are exacerbated."[68]

National and international experts agree that solitary confinement of children should be banned.[69] Other, shorter-term isolation practices should be strictly limited and regulated because

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[64] Council of Juvenile Correctional Administrators, *Toolkit: Reducing the Use of Isolation* (March 2015), http://www.stopsolitaryforkids.org/wp-content/uploads/2016/04/CJCA-Toolkit-Reducing-the-use-of-Isolation.pdf.

[65] ACLU, *ALONE & AFRAID: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*, (Nov. 2013), http://njjn.org/uploads/digital-library/ACLU-Alone-and-Afraid_Nov2013.pdf The definition of solitary confinement can be found in: HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES (2012), http://www.aclu.org/growinguplockeddown. This is also the definition used by the United Nations Special Rapporteur on Torture. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ¶ 26, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf. Although isolation practices in many facilities do not rise to the level of solitary confinement, because the conditions and effects of various segregation practices are substantially the same, the ACLU uses a single term – solitary confinement – based on the level of social isolation and environmental deprivation to describe the most extreme forms of physical and social isolation.

[66] ACLU, *ALONE & AFRAID: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*, (Nov. 2013), http://njjn.org/uploads/digital-library/ACLU-Alone-and-Afraid_Nov2013.pdf

[67] Jason Szanyi, "Testimony of the Center for Children's Law and Policy for the House Legislative Oversight Committee of the South Carolina General Assembly," **(**May 18, 2016). Available upon request.

[68] Sandra Simkins, Marty Beyer, Lisa M.Geis, *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 WASH. U.J.L. & POL'Y, 261 (2012).

[69] A number of international instruments and human rights organizations have declared that the solitary confinement of children violates human rights laws and standards prohibiting cruel, inhuman or degrading treatment and called for the practice to be banned, including: the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Committee on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Beijing Rules), and the Inter-American Commission on Human Rights. Based on the harmful physical and psychological effects of solitary confinement and the particular vulnerability of children, the Office of the U.N. Special Rapporteur on Torture has repeatedly called for the abolition of solitary confinement of persons under age 18 (as cited in the ACLU report, *Supra*., 10).

of their harmful and traumatic effect on children and because they are often accompanied by other serious deprivations (like the denial of education).[70]

Children should never be subjected to any practice that involves significant levels or durations of physical or social isolation. Isolation should only be used as an emergency measure and for as short a duration as necessary. Separation practices to protect, manage, or discipline youth should be used sparingly and should never rise to the level of solitary confinement.

Recommendations on Procedures:
(Members reserve their rights regarding Senate Bill 1018 and any subsequent legislation)

i. Amend statute to raise the age on concurrent jurisdiction with summary courts

Enact legislation to amend Section 63-3-520(A), to make it consistent with Act No. 268 (RTA). Section 63-3-520(A) establishes concurrent jurisdiction with the summary courts and family courts for the traffic and wildlife violations, and was not amended to reflect the raise in age change.

ii. Require attorney consultation before a custodial interrogation of children under 16

Enact legislation to require a child to consult with legal counsel in person or by phone or video conference prior to a request for a child to waive *Miranda* rights. However, a consultation would not be required in the event law enforcement reasonably believed the information was needed to protect life or property from imminent harm.

For adults, the law has long required that law enforcement officers provide *Miranda* warnings to criminal suspects before conducting a custodial interrogation. Such warnings help ensure that suspects make informed and voluntary decisions whether or not to speak with law enforcement.

Those concerns are particularly strong for children, who are used to being required to speak with adult authority figures. Professor Grisso, in discussing the Supreme Court's decision *In re Gault*, notes: "[e]ven greater protection might be required where juveniles are involved, since their immaturity and greater vulnerability place them at a greater disadvantage in their dealings with police."[71] Moreover, scholars have long established that simply telling children that they do not need to speak with authorities is not sufficient for them to understand their rights,[72] a concern that is particularly strong for younger children.[73]

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[70] ACLU, *Ibid*. 11
[71] Thomas Grisso, Juveniles' Capacities to Waive *Miranda* Rights: An Empirical Analysis, 68 Cal. L. Rev. 1134, 1137 (1980)
[72] For instance, Professor Thomas Grisso found that only 20.9 percent of children demonstrated understanding of all elements of a *Miranda* warning. Thomas Grisso, Juveniles' Capacities to Waive *Miranda* Rights: An Empirical Analysis, 68 Cal. L. Rev. 1134, 1153-54 (1980).
[73] *Id*. at 1157, 1160.

To truly protect children's rights, states are beginning to recognize that children need the ability to speak with an attorney to understand fully the choice of whether or not to speak with law enforcement, and the consequences of that choice. Accordingly, California has enacted a statute that requires a consultation with an attorney for children under 16, with exceptions for situations in which questioning a child is necessary to respond to an imminent threat.[74]

iii. Exempt social workers employed by attorneys from mandatory reporting requirement

Enact legislation to allow social workers that work with attorneys participating in the representation of a child to be exempted from the mandatory reporting requirement of abuse and neglect, and to eliminate potential conflicts of interest. This exemption will enable social workers to participate more fully in holistic defense of a child.

iv. Require children to undergo a comprehensive assessment in reception and evaluation

Enact legislation to clarify that a "comprehensive, individualized biopsychosocial assessment to include an examination of [a] child's social, physical, and mental health functioning" must be conducted on an adjudicated child in the reception and evaluation center prior to assignment.[75] Current law requires "a complete social, physical, and psychological and mental examination."[76] The clarification requires the use of comprehensive assessments, which include evidence-based tools, rather than merely a psychological examination, which may not delve into all of a child's needs.

v. Provide a right to counsel for all petitions.

Enact legislation to provide a right to legal counsel for children's petitions to the Family Court. Under current law and practice, children receive counsel in most status offense cases – but not in initial truancy cases. Leading national organizations have rightly criticized this denial of counsel.[77] Being labeled a truant and being subject to family court jurisdiction is a significant infringement on children's and families' liberties – reason enough to provide counsel. Moreover, children have a range of substantive and procedural rights regarding truancy cases,[78] and these rights will only have meaningful protection if children have legal counsel. The Committee recommends amending the statute to allow the right to counsel in any matter for which a child receives a petition referring the child to the Family Court.[79]

vi. Limit pre-trial detention

[74] Cal. Welf. & Inst. Code § 625.6
[75] Senate Bill 1018

[76] S.C. Code § 63-19-360(3)
[77] National Juvenile Defender Center, South Carolina Juvenile Indigent Defense: A Report on Access to Counsel and Quality of Representation in Delinquency Proceedings (2010).
[78] S.C. Code Regs. § 43-274.
[79] S.C. Code § 63-19-1030(D)

Enact legislation that limits pre-trial detention. The most immediate pressure point for implementing RTA relates to pre-trial detention. DJJ's pre-trial detention facility has a maximum capacity of 72, but DJJ reports that the number of pre-trial detainees have exceeded that figure on several occasions in recent months. DJJ also specifically endorsed limiting who can be detained by lowering "the reliance on secure detention for youth charged with low-level offenses."[80]

It is particularly telling that the vast majority of children detained pre-trial are *not* detained for violent offenses. DJJ reported that of 2,043 children detained pre-trial in CY 2018, only 240 – less than 12 percent – were detained based on violent offenses.[81]

At the August 20, 2019, committee hearing, DJJ announced that it was beginning to work with the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) with a goal of reducing reliance on pre-trial detention.[82] JDAI has a long and proven track record of working effectively with state and local jurisdictions to more accurately identify who needs to be detained and to identify alternatives to detention for those who do not need detention. As of January 2020, JDAI awarded a technical assistance grant to DJJ. JDAI conducted its first site visit in January, where it visited eleven camps and 3 other detention centers (Richland, Charleston, and Greenville).

There are two specific reforms would also help DJJ achieve its goal:

1) Narrow pre-trial detention eligibility

Enact legislation to narrow pre-trial detention eligibility. A central reason so many children are detained pre-trial – again, the vast majority of whom are children who are not even accused of a violent offense – is that the existing statute permits it. That statute permits authorities to detain virtually any child pre-trial. Legislation would continue to permit detention of violent offenders, but would sharply limit the detention of less serious offenders who pose less risk to the public – benefitting children spared the harms of pre-trial detention, sparing the public the increased recidivism that unnecessary detention causes, and saving DJJ resources better spent on community-based services. A child should not be placed in pre-trial detention if the detained child could not be committed to the custody of DJJ after adjudication due to mental illness or intellectual disability.

2) Require parents/guardians to make efforts at counseling or parenting classes prior to filing a petition for incorrigibility or runaway

Enact legislation to require parents or guardians to make efforts at counseling or other family resources prior to filing a petition of incorrigibility. By requiring parents or guardians to establish that efforts at counseling, parenting classes, etc. have not worked prior to filing a petition for incorrigibility or runaway, family or community-based services may prevent the need for the juvenile justice system to be involved with the family. In the event the family seeks a

[80] DJJ Presentation to Senate Select Committee on Raise the Age, July 23, 2019
[81] *Id*.
[82] Senate Select Committee on Raise the Age, August 20, 2019

referral to the juvenile justice system and has not sought family or community-based services, DJJ should refer parents or guardians to providers in the community.

vii. Allow family courts to order alternative non-secured placements

Enact legislation to allow family courts to order alternative non-secured placement. In some circumstances, it may not be appropriate to return a child to his or her home. The court should have other options available including an approved home, program, or facility. These additional alternative placements should not be in excess of 90 days unless extraordinary circumstances exist. If a court orders short-term alternative placements as part of a sentence, the time spent in a short-term alternative placement (STAP) should count toward the credit of the time the child has to serve.

The Family First Prevention Services Act (FFPSA), passed by Congress in 2018, is likely to seriously limit the funding for, and subsequently, the availability of group homes used for short-term placements,[83] so alternative programs must be developed to provide an acceptable alternative. The Family First Prevention Services Act went into effect on October 1, 2019. While South Carolina currently has a waiver related to portions of the implementation, these changes eventually will impact funding for group homes. Qualified Residential Treatment Programs (QRTP) will be qualified for Title IV-E funds,[84] but they will have additional requirements, including whom they serve, to qualify as a QRTP (as opposed to a group home). [85]

viii. Provide for a bond hearing in front of a magistrate for a 17-year-old that has not been released to a parent, guardian, etc.

Enact legislation to provide for a bond hearing in front of a magistrate for a 17-year-old that has not been released to a parent or guardian. Some 17-year-olds have left home to attend college and there have been incidents where a minor with a parent/guardian out of state was taken into custody and had to remain in DTC pending release to a parent. By allowing a 17-year-old with minor charges who has not been released to a parent or guardian to appear in front of a summary court judge to have a bond set on his own recognizance, or with surety if the court determines it is necessary to assure the appearance of the child, the child may be released and have the court place a condition on his or her release to ensure attendance in the Family Court at the next available date.

ix. Prevent the unlawful incarceration of children with a severe mental illness at DJJ.

Enact legislation to update the antiquated terms in the statute and to allow the Family Court to order an evaluation for a determination of serious mental illness (referred to as "SMI")

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[83] Family First Prevention Services Act was included in the Bipartisan Budget Act of 2018. HR 1892, https://www.congress.gov/bill/115th-congress/house-bill/1892/text (last viewed 2/19/2020)

[84] Title IV-E of the Social Security Act establishes the Federal Foster Care Program, which provides for out-of-home care for children waiting to return home or be placed in a permanent living arrangement. The funds under this Act are awarded to states for the administration of the program and have fixed allowable uses. https://www.acf.hhs.gov/cb/resource/title-ive-foster-care

[85] https?www.familyfirstact.org/sites/default/files/PLAW-115publ123_FFPSAS%20.pdf

or intellectual disability. Enact further legislation to amend the statute to allow the Family Court, when an evaluation determines a child has an SMI or intellectual disability, to hold a hearing to determine whether the child should be committed to the supervision of the Department of Mental Health or the Department of Disabilities and Special Needs.

Currently, the statute prohibits the incarceration of any child with a severe mental illness or developmental disability in DJJ custody.[86] This law reflects an understanding that DJJ is not equipped to house such seriously disabled children and that placing them in DJJ custody is harmful to those children and creates risks for other children in DJJ custody as well as for DJJ staff. Further, the statute should be amended to allow the Family Court, when an evaluation determines a child has an SMI or intellectual disability, to hold a hearing to determine whether the child should be committed to the supervision of the Department of Mental Health or the Department of Disabilities and Special Needs.

In their review, the Children's Law Center found "the number of children in DJJ custody who have a serious mental illness—and thus, by law, should not be in DJJ custody—spiked to 118 in 2015. That figure was as high as the four previous years *combined*."[87] Those numbers remain high. DJJ reported to the committee on August 20, 2019, that more than 90 children with a serious mental illness were in its custody. Appropriate placements for these children have not kept pace, and many of them wait far too long for appropriate placements, because of a lack of available resources, facilities, providers, and because private providers are not required to take children from DJJ.

x. Changes to the waiver of children's cases to General Sessions

Enact legislation to amend statutes to clarify that certain crimes may be waived to General Sessions Court if committed by children of certain ages. Amend the statute to remove the mandatory minimum sentence for children convicted of murder. Amend the statute to allow a waiver up to General Sessions Court to be immediately appealable. Currently, a child waived up to General Sessions Court has to go through the General Sessions trial before having the ability to appeal the waiver.[88] If the appeal is granted and the child is returned to the Family Court, a significant time may have passed, which would impact sentencing.

xi. Expunge records at 18-years-old in certain cases

Enact legislation to expunge a child's record when child turns 18-years-old if the child has no pending cases or sentences waiting to be completed. The expungements should occur at the earliest of (1) written notification to the child; (2) a quarterly system-wide check of children in the system eligible to receive an expungement; or (3) if technology allows, on the eligible child's 18th birthday.

a. Prohibit fees for expungement of juvenile records

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[86] S.C. Code Ann. § 63-19-1450

[87] Josh Gupta-Kagan, Nancy McCormick, Robert Meriwether, and Jase Glenn, *Effective Solutions to South Carolina's Juvenile Justice Crisis: Safety, Rehabilitation, and Fiscal Responsibility*, http://www.pandasc.org/wp-content/uploads/2017/04/Juvenile-Justice-Report.pdf.

[88] S.C. Code Ann. §63-19-1210

Enact legislation to amend the expungement statute to prohibit a person from being charged a fee to process an application or petition for expungement of a juvenile record.[89] When a child completes all that is required of him or her by the Family Court and DJJ, the child should be eligible for expungement. (Certain exceptions already apply in the statute, such as when the child was adjudicated for a violent offense, or when the child has subsequent charges.) Expungement recognizes the child's successful completion of the rehabilitative court process. It also can come with important benefits to children, ensuring that their juvenile record will remain confidential and in their past. Even when the child may later have to disclose their juvenile record – doing so is a requirement of applying to join the South Carolina Bar, for example, and to enlist in several branches of the military – he or she can rest easier knowing that he or she will be able to provide an expungement order as proof of their successful rehabilitation along with that record.

Children are charged a total of $310 in fees,[90] which is cost prohibitive for many, if not most, children in the juvenile justice system. Just as fees to participate in diversion are inappropriate, so too are fees to obtain an expungement after a child has completed all that is required of him.

Recommendations related to Education:
(Members reserve their rights regarding Senate Bill 1018 and any subsequent legislation)

Several sections of the criminal code disproportionately affect children – especially those criminalizing certain conduct at school. The Committee recommends amending sections, particularly those that involve school-based offenses, and recommends changes to the requirements for petitions for school-based offenses in addition to other recommendations to limit collateral consequences of involvement with the juvenile justice system.

i. Statutes related to student threats

Enact legislation to amend statutes related to student threats. Current law makes it a crime for "a student of a school or college in this State to make threats to take the life of or to inflict bodily harm upon another by using any form of communication whatsoever."[91] This statute was intended to criminalize threats against schools, especially threats of mass violence against schools, and such criminalization is fully appropriate. However, this statute is remarkably broad – a child could be guilty for making a relatively minor threat against anyone – the threat need not even be related to something at school. Moreover, other statutes already prohibit threats against individual teachers, principals, other school staff, or school resource officers.[92] Threats via social media and other forms of communications are already criminalized as unlawful communications.[93]

[89] S.C. Code Ann. § 63-19-2050
[90] S.C. Judicial Branch, Expungement Application Process for Juvenile Records, https://www.sccourts.org/expungementinfo/expAppProcessJuveniles.cfm.
[91] S.C. Code Ann. § 16-17-425
[92] S.C. Code § 16-3-1040(A)
[93] S.C. Code Ann. § 16-17-430

For comparison, North Carolina adopted a more narrowly tailored statute in 2018, prohibiting the threat of mass violence on educational property.[94]

ii. Changes to possession of non-lethal weapons on school grounds statute

Enact legislation to amend the statute related to possession of non-lethal weapons on school grounds. It is essential to keep schools safe. It is also essential that the juvenile justice system be able to distinguish cases involving firearms and other deadly weapons from less severe cases – such as when children are caught with readily available personal protection devices, such as pepper spray or Tasers.

Enact legislation to amend the statute which currently makes carrying a much wider set of weapons on school property a felony, and amend the statute to distinguish cases involving carrying with the intent to inflict serious bodily harm with more serious weapons from less serious weapons by creating a misdemeanor option.[95] Possession of a firearm on school property is already a felony and no changes to that section are recommended.[96]

iii. Establish petition requirements for misdemeanor school-based offenses

Enact legislation that requires petitions arising from school-based offenses to include explanations of steps the school took to handle the situation on its own, and information that South Carolina solicitors have used to determine whether to prosecute or divert a child – such as the child's disability status and the connection, if any, between a disability and the child's conduct. This is a procedural statute – it only requires petitions regarding school-based offenses to include certain information – and, as such, does not prevent authorities from prosecuting school-based offenses when appropriate. It does ensure authorities consider facts highly relevant to the prosecution or diversion decision when completing a petition.

South Carolina has made significant progress in limiting the school-to-prison pipeline in recent years. The legislature significantly narrowed the disturbing schools statute, the Department of Education promulgated regulations limiting when minor incidents become law enforcement measures, and some local jurisdictions have enacted new policies and developed precedent-setting trainings for school resource officers.

The principle uniting all of these reforms is the recognition that relatively minor school-based offenses do not generally need to be prosecuted. School disciplinary procedures can and should handle most school fights and incidents of similar severity. Of course, some school-based offenses – those that cause or risk significant harm to children, or when children continue to offend after multiple school-based interventions or diversion programs – should be prosecuted.

iv. Limit unnecessary referrals to law enforcement by reducing the school-to-prison pipeline

Enact legislation to amend the statute to require notice to law enforcement for activity that if committed by an adult would be a felony or a crime punishable by a maximum of five

[94] N.C. Gen. Stat. § 14-277.6
[95] S.C. Code Ann. § 16-23-430
[96] S.C. Code Ann. § 16-23-420

years.[97] This amendment would not limit when schools can report incidents to law enforcement. Rather, it would give school districts more authority to determine which circumstances require a law enforcement referral and which do not.

The existing law requires schools to report all incidents to law enforcement whenever some behavior at school "*may result* or results in injury . . . to the person or to another person *or his property* as defined in local board policy."[98] This very broad language was adopted in 1994 – at the height of juvenile crime nationally, and at the height of tough-on-crime reforms, many of which are now widely seen as going too far. The Committee suggests that this statute is an example of going too far – it turns any incident of pushing or shoving (which "may result . . . in injury") or of a child taking another child's property, even if that property is promptly returned (which "may result . . . in injury . . . to another person[s] property") into a law enforcement matter. The recommendation is to amend the statute to limit referrals to only those incidents where serious injury occurs.

South Carolina authorities have recognized that much conduct that can lead to juvenile justice system involvement is more effectively handled by school authorities than by the Family Court or DJJ.[99]

v. Limiting collateral consequences of juvenile justice system involvement at school.

Enact legislation to amend the statute to require that communications from law enforcement emphasize that law enforcement is relaying only allegations to update schools, including colleges and universities, and to require law enforcement and DJJ to update schools when the reported charges have been reduced or dismissed. Existing law requires law enforcement to inform schools which children are "charged with" certain more serious offenses.[100] The Committee recognizes that, ultimately, charges are inherently just allegations. However, the impact of the charge on a child's education can be immediate – the child may be suspended for a charge even though the charge is quickly dropped because of lack of evidence or the child's innocence regarding that charge.

Enact legislation to amend the statute to limit school authority to punish those cases in school to acts that if committed by an adult would be a felony or a crime punishable by a maximum term of imprisonment of five years or more, any violation related to school threats, or any act for which a victim who attends the school has a reasonable fear for his or her safety.[101]Further, if an incident occurs outside of school at a school-sponsored event, a disciplinary action by the school district or board of trustees should be applicable only where the conduct amounts to a violent offense or resulted in moderate or great bodily injury.

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[97] S.C. Code Ann. § 59-24-60

[98] S.C. Code Ann. § 59-24-60 (emphasis added)

[99] Josh Gupta-Kagan, *The School-to-Prison Pipeline's Legal Architecture: Lessons from the Spring Valley Incident and Its Aftermath*, 45 Ford. Urb. L.J. 83 (2018).

[100] S.C. Code Ann. §§ 63-19-2020(E) (1) and 63-19-2030(E). (More changes to this statute are recommended in Section ix.)

[101] S.C. Code Ann. § 59-63-210

vi. Prohibition on automatic placement in an alternative school upon release from DJJ

Amend the statute governing placement in alternative school programs to include specific language about children returning from DJJ custody.[102] Also, enact legislation striking a reference to S.C. Code Ann. § 59-18-500, which was omitted from Title 59 in 2008.

When children return home after being in DJJ custody, many school districts automatically require them to attend alternative schools. This practice is harmful to the child's continuity of education and should be severely limited. This practice imposes unnecessary punishment – especially on children who have already been punished by being placed in DJJ custody. This practice denies children with disabilities – who are dramatically over-represented among children who are in DJJ custody – an individualized school placement decision, contrary to state and federal special education laws. This practice also adds an extra barrier to children's rehabilitation.

vii. Assisting justice-involved children with timely graduation

Enact legislation to assist justice-involved children (and other children who experience disruptions to their education) with the transfer of their education records, to help children with placement in classes, and to ensure special education services are provided. When children are brought into DJJ custody, even briefly, significant school disruptions can result. In particular, records reflecting their accurate level of school credits are too often delayed, and children's ability to enroll in appropriate schools is too often limited – either because they are enrolling late in the school year or because information regarding prerequisite courses is not readily available. These situations make it harder for children to succeed at school and beyond school after release from DJJ custody, and thus hinder rehabilitation efforts.

New Mexico has adopted model legislation to address these problems.[103] The New Mexico statute requires schools to share promptly records regarding a student – both helping DJJ serve children in its custody, and helping children returning to their home school districts after a stint in DJJ custody. The New Mexico statute also helps improve children's odds of graduating high school by giving children whose education has been disrupted priority placement in classes necessary for graduation.

viii. School liaisons to facilitate children's reentry into local school districts

Enact legislation to require schools to have a point of contact for justice-involved children to facilitate children's reentry. Children in the juvenile justice system face major educational disruption. Their constant movement results in discontinuity of curriculum, lost instruction time and loss of credits towards a diploma. Most of these students already exhibit academic deficits from disengagement and subpar educational opportunities in their community. Once students enter the justice system, they are moved between multiple settings and there are few systems in place to ensure their educational records move with them. Without records, continuity of coursework is impossible to achieve and individual progress is difficult to

[102] S.C. Code §59-63-1320
[103] N.M. Stat. § 22-12A-14

document. Students returning from placement without proof of academic advancement find themselves secluded in alternative schools.

Recognizing that these challenges occur across the nation, Congress included in the 2015 Every Student Succeeds Act (ESSA) provisions designed to require state education agencies and school districts to work to aid children's transition from DJJ custody to local schools.[104] On October 13, 2017, South Carolina divulged its plan submitted to the United States Department of Education to comply with ESSA.[105] Part of the plan addresses "Transitions between Correctional Facilities and Local Programs." Some of the specific goals of the plan include eliminating barriers to reentry "such as timeliness of academic/psycho-social records transfer and sharing for successful transition in an effort to minimize delays in admissions or re-entry back to the [Local Education Agency] or an alternative education program as appropriate."

In South Carolina, school districts already have liaisons to serve the needs of homeless students.[106] In some districts, the same official could be the liaison for children returning from DJJ custody, thus reducing the administrative burden on districts.

ix. Update confidentiality statutes

The South Carolina Children's Code governs the confidentiality of juvenile records. Several provisions require updating to be consistent with other changes in the criminal code. For instance, there are two references to assault and battery against school personnel under the statute, which no longer exists in the criminal code.[107]

Enact legislation to delete S.C. Code Ann. §63-19-810(C). This paragraph speaks to disclosures of children's arrests to school officials. The limited circumstances in which such disclosures are appropriate are governed by the confidentiality statutes.[108] Enact legislation to add universities and colleges to the schools that may be updated under the confidentiality statutes.

Additional Recommendations for Juvenile Justice Reform:
(Members reserve their rights regarding Senate Bill 1018 and any subsequent legislation)

i. Amend the policy statute

Enact legislation to provide that the juvenile justice system is a rehabilitative one and to provide that the system is to ensure the safety and security of the child and the public. Under the South Carolina Children's Code's purpose clause, the policy statute does not discuss juvenile justice directly.[109]

ii. Strike antiquated provisions

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[104] 20 U.S.C. §§ 6434(a) (1) (B), 6434(a) (2) (E), 6438(A) (1).
[105] Available at: https://ed.sc.gov/newsroom/every-student-succeeds-act-essa/sc-draft-essa-plan-submitted-10-13-2017/
[106] https://ed.sc.gov/policy/federal-education-programs/essa-title-ix-part-a-mckinney-vento-homeless-assistance-act/mckinney-vento-district-liaison-contact-information/
[107] S.C. Code Ann. §16-3-612 (Repealed by Act 273 of 2010)
[108] S.C. Code Ann. §§ 63-19-2020 and 63-19-2030
[109] S.C. Code Ann. § 63-1-20

Enact legislation to strike antiquated provisions from the South Carolina Children's Code. As with any statutory code that has been on the books for many decades, the South Carolina Children's Code includes some antiquated provisions. One in particular is long overdue for repeal: the statute currently prohibiting children from "playing or loitering in a billiard room, playing a pinball machine, or gaining admission to a theater by false identification." Such activities should not bring a child under court jurisdiction.

iii. Enact a Children's Bill of Rights

Enact legislation to establish a Children's Bill of Rights. In 2017, Nevada adopted a bill of rights for children in the state's custody through the juvenile justice system.[110] While the individual rights listed in this reform are not specifically controversial, enshrining them in legislation communicates a state's commitment to a rehabilitative system that respects the dignity of all children who enter its custody.

iv. Require specific DJJ data reporting to aid ongoing oversight

Enact legislation to amend the statute to require DJJ to report essential data to the legislature and the public annually.[111] Implementing RTA effectively requires careful consideration of who is prosecuted, who is detained, and who is committed to DJJ custody, and requires ensuring that those steps are taken only when that is the least intrusive or least restrictive option. Moving forward, it is therefore essential to future oversight of the juvenile justice system to know what crimes lead to what consequences, and in particular to know what crimes lead children to be incarcerated with DJJ. If children are incarcerated for petty offenses – which imposes a financial and staffing burden on DJJ, and which research indicates is contrary to the system's rehabilitative goals – the public and the legislature need to know. Indeed, data analyzed during public discussions of RTA have suggested reforms described in this report.[112]

Existing law does require DJJ to produce an annual public report, but that statute does not require DJJ to report specific data such as the categories of crimes that lead children to be detained or committed to DJJ custody.[113] Existing annual report data is useful, but could provide more details. For instance, DJJ reports the top 10 most frequent charges referred to family courts, and the top 10 charges associated with detention and other actions – but those referrals only account for a minority of all cases. DJJ does not report the proportion of violent offenses, for instance, which lead to detention or commitments.

v. Requiring community-based services provided by DJJ to use structured decision making tools

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[110] Nev. A.B. 180, https://www.leg.state.nv.us/Session/79th2017/Bills/AB/AB180.pdf.
[111] S.C. Code Ann. §63-19-340
[112] In particular, Josh Rover of the Sentencing Project, using data supplied by DJJ, produced several memos demonstrating that many children are detained pre-trial and committed to DJJ for secure evaluations for misdemeanor, status, and other nonviolent offenses. DJJ also reported to the committee that only 12 percent of children detained pre-trial in 2018 were detained for violent offenses, and only 7 percent of children committed to DJJ for a secure evaluation were committed for violent offenses.
[113] S.C. Code Ann. §63-19-340

Enact legislation to direct community services provided by DJJ to use structured decision-making tools and evidence-based practices.

vi. Redirect DJJ funds saved by reduced detentions and commitments

Enact legislation to redirect the funds that DJJ saves through the reduction of detentions and commitments toward community-based programs and interventions to assist at-risk children. Reducing the number of children detained pre-trial, committed to DJJ for secure evaluations or for indeterminate periods, and on DJJ's probation dockets will save significant expenditures for DJJ. It is crucial that these savings are re-invested in community-based services for children.

Accordingly, DJJ should be required to devote unspent money appropriated for secure confinement (including pre-trial detention, secure commitments, and long-term commitments) to support expansion and provision of evidence-based services such as Multisystemic Therapy (MST) in the community, and the Department should publicly report how much it has saved and how it has used the savings.

In the event DJJ expends less money than budgeted for pre-trial detention, secure evaluations, secure facilities for long-term placements, or alternative placements for children committed to DJJ's custody, DJJ should use any leftover funds for the provision of community-based services to children at risk of prosecution, detention, or commitment through diversion programs and provision of evidence-based services in the community.

vii. Clarify DJJ's authority to enter inter-agency agreements to provide appropriate services to children returning home from DJJ custody

Enact legislation to ensure DJJ can contract with other agencies – such as the Department of Education or the Department of Mental Health – to provide important services to children. It is not DJJ's duty alone to serve all children in the community, even children returning home from DJJ custody.

viii. Consistent word choice: "child"

The South Carolina Children's Code currently is inconsistent in how it refers to children. For example, S.C. Code Ann. § 63-19-1010(B) refers to the "child" in one sentence and the "juvenile" in the next. The Committee recommends using "child" or "children" throughout the South Carolina Children's Code. That word choice is consistent with the name of the South Carolina Children's Code and, as importantly, with the judgment behind the RTA statute – developmental evidence clearly demonstrates that individuals under 18 are children and deserve to be treated as children. Moreover, the term "juvenile" has taken on a pejorative connotation over time, and the recommendation is to avoid it accordingly.

The Committee has changed the noun "juvenile" to "child" throughout the bill, but has not searched for every such usage in the South Carolina Children's Code. The use of "juvenile" as an adjective (i.e. the "juvenile parolee" or the "juvenile justice system") has been maintained.

Other Issues, Ideas, and Concerns Not Adopted in Final Recommendations:

This report does not present a comprehensive reform agenda. In particular, it leaves out actions that do not require legislative reform. DJJ can take many important steps without new legislation, for instance, by developing and expanding various community-based alternatives to incarceration, and DJJ has begun to do so.

i. Budgetary concerns

As noted in the previous section, reducing the number of children detained, incarcerated, or on the probation dockets will result in a significant cost savings for the state. However, there is also a cost to implementing this reform in order to realize the reduction in incarcerations and recidivism. DJJ included in their 2020-2021 State Budget Request the funding they need in order to fully implement the reforms suggested by this Committee.

$2,240,000 was requested to operate community-based diversion or intervention programs for at-risk children and families. Currently, each of the 16 circuits receives $60,000 to administer arbitration services. This request would bring that allocation up to $200,000 per circuit to allow them to enhance their diversion efforts by adding programs such as the Civil Citation system, Drug Court, and Mental Health Court.

$4,800,000 was requested to implement four regional MST/FFT teams throughout the state. This would fund four regional teams of stacked MST/FFT services, serving approximately 500 community-based moderate to high-risk youth. This service would ensure a continuum of care for justice-involved youth that is age and developmentally appropriate; and would improve positive outcomes for the youth and for South Carolina communities. DJJ structured this request as a four-year phase in, with an initial request of $1,200,000.

$460,000 was requested to obtain Pearson iPad testing devices to expedite screening and testing for community evaluations and to hire twelve additional personnel to assist with the administrative functioning of the tests and evaluations statewide. DJJ also requested this allocation to be phased in over a two-year period with the first year's request being $230,000.

$320,000 was requested toward expansion of the electronic monitoring program. Electronic monitoring is used as an alternative to the detention of children in some circumstances and DJJ would use the requested funds to expand the number of monitors they have available to ensure that all communities have this option as an alternative to detaining a child. These monitors are used both for children awaiting a community evaluation or adjudication, and as a graduated sanction in lieu of a violation.

$560,000 was requested over two years to hire ten additional full-time employees to monitor community evaluations, intensively monitor youth remaining in the community as an alternative to detention, and to monitor the administrative services for state-wide diversionary programs. These ten positions would have a salary of $35,457 and a fringe benefit amount of $14,183 each. This year's request was for $280,000.

DJJ Juvenile Justice Reform Budget Requests	
Requst for FY 20-21	Future Request
$2,240,000	
$1,200,000	$3,600,000
$230,000	$230,000
$320,000	
$280,000	$280,000
Total FY 20-21	Total
$4,270,000	**$8,380,000**

The total request from DJJ for FY 20-21 is almost $4.3 million dollars with the remaining $4,110,000 to be requested over the next three fiscal years.

ii. Create/expand services to provide to children in the community (in diversion, on probation, and upon release from DJJ custody)

Expanding the availability of evidence-based services for DJJ-involved children is essential to serving those children and their families effectively in their community. These services cost money to provide. Two essential points bear emphasis: first, these services are investments in preventing recidivism and preventing the need for incarceration, and they are significantly cheaper over the long run than incarceration; and second, evidence-based services could be paid for largely through Medicaid, and thus more than 70% of the cost could be covered by the federal government rather than South Carolina funds.[114]

a. Direct the South Carolina Department of Health and Human Services to issue a billing code for Multisystemic Therapy

Multisystemic Therapy (MST) focuses on the social and environmental factors contributing to a youth's problems and strategies to address those factors.[115] This model emphasizes empowering families to play an active role in a youth's recovery and rehabilitation.[116] Studies of this method have shown up to a 70 percent reduction in long-term re-arrest rates.[117] MST was originated at the Medical University of South Carolina,[118] but, despite its local origins, MST is offered to few South Carolina children.

In particular, the understanding is that Medicaid funding is not available for MST because the South Carolina Department of Health and Human Services (DHHS) does not currently have a billing code for MST. Without such a code, Medicaid funds at a reasonable rate are not available for providers, and any funds used for MST are purely South Carolina funds rather than Medicaid funds (more than 70% of which are federal).

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[114] For a summary of Medicaid financing including a description of how the federal reimbursement rate is calculated, see the Kaiser Family Foundation publication "Medicaid Financing: The Basics," available at https://www.kff.org/report-section/medicaid-financing-the-basics-issue-brief/.
[115] *Id.* at 5.
[116] *Id.*
[117] MENDEL, *supra* note 7, at 17; NAT'L MENTAL HEALTH ASS'N, *supra* note 62, at 5.
[118] MEDICAL UNIV. OF S.C., https://web.musc.edu/innovation/start-ups (last visited February 14, 2020).

b. Need for additional mental health facilities

The Committee received recommendations to ensure that DJJ has sufficient funds to build an appropriate mental health facility, or that another agency does so. This would also require a clear plan for long-term funding. Such a funding plan should ideally include Medicaid whenever possible to avoid paying for treatment in such a facility with entirely state funds.

The U.S. Department of Justice, Civil Rights Division, noted in a recent report that many children who were identified as having serious mental illness were not transferred to a psychiatric residential treatment facility (PRTF[119]).[120] The report further found that youth who had displayed suicidal ideations were not placed outside of DJJ's facilities into psychiatric hospitals, because providers would not accept children with a "history of delinquent conduct." In its Remedial Measures, DOJ has directed DJJ to "(e)liminate the use of isolation for minor misbehavior, protective custody, and mental health observation." DOJ further directed DJJ to use a "short-term cool-down room" in each housing unit, rather than use long-term isolation for children that are threats to safety.

The Legislative Audit Council discussed the lack of state-run PRTFs in its report on the Department of Health and Human Services. They identified that alternative placements are needed for children in the juvenile justice system and recommended that DJJ assess the need for placement, "including the establishment of an intensive group home."[121] Their report identified that there is not a PRTF that accepts children regardless of their involvement in the juvenile-justice system (referred to as a "no-eject, no-reject"), and that agencies have identified that children need a step-down treatment after being released from a PRTF to help families and children.

c. Create an interagency study group to evaluate causes and solutions for children with serious mental illness

Another proposal the Committee received was for the General Assembly to create an interagency study group to examine this issue and possible causes and solutions. A frequently hypothesized problem among advocates for people with disabilities is that South Carolina's Medicaid rates for PRTF are far too low, leading to a shortage of such placement options. The study group would be charged with examining that or other possible causes, and identifying solutions (such as increasing that Medicaid rate, or other steps). Stakeholders have also suggested the creation of a study group to present a plan to the legislature for providing and

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[119] A Psychiatric Residential Treatment Facility is a "a provider of inpatient psychiatric services who: has a provider agreement with a State Medicaid Agency to provide the inpatient services benefit to Medicaid-eligible individuals under the age of 21, provides PRTF services under the direction of a physician" and meets accreditation and federal regulatory requirements. https://www.cms.gov/Outreach-and-Education/American-Indian-Alaska-Native/AIAN/PRTFGeneralRequirementsandConditionsofParticipation.pdfr

[120] https://www.justice.gov/opa/press-release/file/1245181/download

[121] Legislative Audit Council, *A Review of Children's Behavioral Health Services,* September 2019 https://lac.sc.gov/sites/default/files/Documents/Legislative%20Audit%20Council/Reports/A-K/DHHS_Child_Health_Svc_2019.pdf

funding MST in South Carolina with a goal of making it available to children in every county by the end of 2021.

iii. Amend constitutional provision requiring 17-year-olds to be housed separately from 16-year-olds.

As the legislature is aware, the South Carolina Constitution provides that "juvenile offenders under the age of 17" committed to DJJ custody must have "separate confinement . . . from older confined persons."[122] This provision prohibits 17- and 16-year-olds from being housed in the same quarters – even though both are children and both are under the Family Court jurisdiction. This provision requires a constitutional amendment. Senate Bill 46 addresses this issue.

iv. Changes to Youth Arbitration Program

The Committee received a suggestion to allow participation in the Youth Arbitration Program for an additional referral provided the child's prior referral occurred at least six month prior to the subsequent alleged offense. The suggestion could be addressed by proviso.

v. Multidisciplinary Representation/Holistic representation

a. Civil attorneys for children returning from DJJ custody

The Committee received testimony about the juvenile reentry program, which includes a civil attorney, in the Richland County Public Defender's Office. Children encounter challenges with school districts or a range of other civil legal needs after they are released from DJJ custody. Civil legal services can be an essential part of helping those children succeed upon release, thus lowering recidivism rates and reducing caseload burdens on DJJ.

b. Youth Reentry Program at the Richland County Public Defender's Office

The Richland County Public Defender's Office began a juvenile reentry pilot program in 2015, now entitled Youth Reentry Program. Program staff consists of the program director, who is an attorney, a social worker, and a reentry attorney. The members of the program are tasked with providing post-disposition representation and focus on numerous collateral consequences of being in the juvenile system including issues related to education, counseling, housing, expungement, etc. In the nearly three years of operation, the Youth Reentry Program has contributed to a significant reduction of youthful offending and recidivism rates in Richland County. For example, prior to establishing the pilot program, the number of probation violation (PV) cases had remained relatively stable at an average of 150 cases a year in the years 2005-2015. The numbers have been declining after the Youth Reentry Program began to operate; 81 violations occured in 2016 and by 2017 there were 27 violation cases.[123] Although other factors likely also contributed to that decline, there are strong correlations between the decline of the

[122] S.C. Const. art. XII, § 3

[123] See, "System Wide Solution Evaluation of the Richland County Public Defender's Holistic Reentry Program," pp. 16-17, 2017. Available upon request.

numbers of probation violation cases in Richland County and the post-disposition representation the Program provided to the youth in Richland County.

Moreover, as part of the advancement of reentry clients' needs beyond their criminal charges in the Family Court, the Program was involved in two lawsuits addressing systemic problems for youth in South Carolina. The Program provided the plaintiffs both the necessary information and connections for the lawsuit against the Department of Social Services (filed on January 12, 2015 and settled on October 4, 2016) and one challenging the school-to-prison pipeline (filed by ACLU on November 28, 2016). By providing post-disposition advocacy, the Program was able to monitor the conditions of confinement for its reentry clients. The post-disposition attorney was able to challenge both the overuse of solitary confinement and lack of appropriate educational services by filing complaints to state agencies and involving other advocacy groups (i.e., ACLU, P&A, DOJ).[124]

vi. Additional services that stakeholders suggested for children:

- **a.** Gang Intervention and Treatment services.
- **b.** Programming for kids and families that includes Mental Health Services, Life Skills Programs, Family Engagement Services, and Individual and Family Therapy. Requested an emphasis be placed on these types of programs across the State.
- **c.** Treatment for sex trafficking victims.
- **d.** Programs addressing youth homelessness and emergency sheltering.
- **e.** Day and evening programs for children to provide a place for children to go with adult supervision and access to services, homework assistance, etc.
- **f.** Truancy programs
- **g.** Community alternatives

vii. Stakeholder suggestions

- **a.** Care should be taken with focusing too much on recidivism rates - this figure can speak more about the amount of police presence than changes in behavior. Recidivism rates can also be deceptive when groups are only focused on low-level offenders and claim more far-reaching implications.
- **b.** There may be concerns with disproportionate minority contact and law enforcement.
- **c.** There may be a lack of qualified experts for community evaluations.
- **d.** Concerns were expressed over the regionalization of DJJ facilities.

[124] Ibid., p.11.

e. A definition of Due Process in § 59-63-1320, *Referral or placement of students in alternative school programs*; and would like to see some specific language for justice-involved children that prohibits undue transfers without due process and actual threat assessments.

f. Expansion of the Truancy diversion program (TAP).

g. The need for a closer detention center (Columbia is closest) because families from farther parts of the state cannot be as involved in visitations at DJJ.

h. The need for a program for 9-11 year olds because they cannot use arbitration until they are older.

i. A docket management order for juvenile cases.

j. Juvenile Arbitration restitution amount limits should increase to at least $2500 (up from current limit of $500).

k. Limiting probation to 19 year olds (vs. the current 20 year olds).

l. Residential evaluation/secure evaluation only for felonies.

m. Transferring children to SCDC when they turn 18 (instead of 19).

n. Looking at a reentry model with case management, job training/placement, and mentoring services.

o. Reviewing how status offenders are handled in North Carolina. (They are considered "undisciplined juveniles," may be placed on "protective supervision," and may be eligible for structured day programs.)

p. Funding community-based continuum of care.

q. Eliminating pretrial detention for any juvenile charged with a misdemeanor, to include status offenders.

r. Addressing the shortage of mental health care workforce and the difficulties in access mental health care in the rural communities

viii. Alternative placements

Stakeholders have mentioned the upcoming changes under the Family First Prevention Services Act (FFPSA) and the limitations on the use of group homes for children in the foster care system. South Carolina currently has a waiver until October 1, 2021 for implementation of portions of FFPSA. Upon full implementation, the state may only claim Title IV E reimbursement for 14 days, unless the child needs specific treatment or support services allowed under FFPSA. As there is some overlap between children in the foster care system and children in the juvenile justice system, there is a need for planning for alternative placements, including

planning for group homes that may shift to Qualified Residential Treatment Programs (QRTP), which will have specific requirements under FFPSA.[125]

ix. Reforms to Status Offenses and Children in Need of Supervision

Status offenses are not crimes, and would not be crimes if committed by adults. They typically involve a range of adolescent mental health and behavioral challenges, which coincide with family difficulties. As such, they do not fit comfortably on a delinquency docket.

Many other states call status offenders by a different name – children in need of supervision – and assign responsibility for them to their Department of Social Services. This change would be more dramatic than other status offense provisions noted throughout this report.

x. Reforms will take time and resources for implementation

Multiple stakeholders noted that neither RTA nor related reforms will be fully implemented in a short period of time. The General Assembly should ensure that the tools exist to ensure effective implementation of these reforms. Moreover, the legislature should take this opportunity to ensure DJJ reports data that will enable adequate oversight for years in the future.

An additional source of resources may be legal services offices, and local nonprofits may also be a source of support for children involved in the juvenile justice system and their families. Referrals to South Carolina Legal Services could help families in various ways, including assisting with education matters. Another suggestion is to look at the Collaborative Organization of Services for Youth and Adults (COSY) in Beaufort, which provides coordination of services for youth and families to support families in need of services with a focus on "family centered practices and local services in the least restrictive setting possible"[126] and expand such services to other communities.

[125] Information provided by the Department of Social Services to the Committee, November 18, 2019
[126] https://www.beaufortcountysc.gov/human-services/COSY-homepage.html