

**MICHIGAN’S YOUTH JUSTICE REFORM: A POTHOLED BUT SURE ROAD
TO CHANGE**

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** Director, Michigan Center for Youth Justice. Both authors extend tremendous thanks to the members of the Task Force on Juvenile Justice Reform and all of those involved with the task force for their dedication and commitment to developing solutions to benefit young people and our state. We also extend our profound gratitude to the youth and families whose lives have been impacted by the juvenile justice system in Michigan; their courage and openness in sharing their experiences have not only informed policy discussions but also served as a vital motivation for the reforms discussed in this work. Thank you as well to the symposium participants and the editors at the *South Carolina Law Review*.

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I. INTRODUCTION

This Essay explores and documents the significant youth justice reforms taking place in Michigan, which include elimination of court fines and costs, a move to evidence-based decisions around diversion and disposition, a re-focus on community treatment of youth, and the establishment of a statewide floor for youth justice. We hope that by examining one state’s process, stakeholders in other states can take away their own strategies and learn lessons from our reform.

Every state has its own customs and histories that inform reform; Michigan is no different. Yet, Michigan is typical in ways that count. The state has a court system that has been historically decentralized and focused more on county control and operation.¹ This is similar to numerous other states, including Pennsylvania and Texas.² Michigan is neither squarely “red” nor “blue” politically,³ which means that change typically requires people to work together across political parties. Michigan has sporadically made legal changes based on evidence-based research, but has, by no means been a leader. A 2017 Pew-MacArthur report that examined the use of evidence-based policymaking slotted Michigan as one of seven states that were “trailing” in the implementation of best practices; the worst rating of the four categories available.⁴

Michigan’s reforms follow a similar path and address many of the same problems in youth justice seen in states around the country. These efforts around the country have, in the main, been bipartisan changes, based in developmental and best practices research, typically with the involvement of

1. See State Bar of Mich., *Michigan Courts: An Historical Perspective* (2017), https://www.michigan.gov/-/media/Project/Websites/treasury/MISC_9/State_Bar_Presentation_Trial_Court_Funding_Commission.pdf [<https://perma.cc/C7CR-NSKQ>].

2. See *Learn*, THE UNIFIED JUD. SYS. OF PA. (Nov. 2016), <https://www.pacourts.us/learn> [<https://perma.cc/QQ3B-N482>] (describing Pennsylvania’s system with Courts of Common Pleas following county lines and Minor Courts with greater county control); *About Texas Courts*, TEX. JUD. BRANCH, <https://www.txcourts.gov/about-texas-courts/trial-courts/> [<https://perma.cc/HF9U-QL6B>] (featuring Texas’ County Constitutional Courts).

3. Lee DeVito, *Gov. Whitmer: ‘Michigan’s Not a Blue State,’* DETROIT METRO TIMES (Mar. 30, 2023, 10:46 AM), <https://www.metrotimes.com/news/gov-whitmer-michigans-not-a-blue-state-32741118> [<https://perma.cc/ED34-TLPP>].

4. PEW-MACARTHUR RESULTS FIRST INITIATIVE, HOW STATE ENGAGE IN EVIDENCE-BASED POLICYMAKING: A NATIONAL ASSESSMENT 6 (2017), https://www.pewtrusts.org/~/-/media/assets/2017/01/how_states_engage_in_evidence_based_policymaking.pdf [<https://perma.cc/SEK9-TQMK>].

stakeholders across branches of government, as well as technical support and research assistance.⁵ These evidence-based reform trends are seen in an array of areas, such as behavioral health and child welfare.⁶

Michigan's changes also fit squarely within these continuing efforts by states over the past decade or two, and ongoing, to examine the juvenile court system from a developmental perspective, that aims implement research on what works, and what does not work, in youth justice.⁷ More broadly, the process and results, which focus on evidence-based practices, are part of a larger trend in states toward using research and data to inform effective policy.⁸

In Part II, this Essay, gives an understanding of the groundwork that gave rise to the current reforms in Michigan, including changes on discrete issues and high-profile failures. Part III examines the Michigan Task Force on Juvenile Justice, which took a comprehensive look at Michigan's current juvenile system, and the changes in law, rule and policy that resulted from the task force. Part IV reflects on the upcoming implementation challenges and (some of) the work left to be done in Michigan. The Essay concludes with a look at how Michigan's reforms fit within the national juvenile context.

There have been set backs, but Michigan's reforms in youth justice are something to be proud of. This Essay describes Michigan's experience with juvenile justice reform to lay out one state's experience and so that stakeholders in other jurisdictions can see their own path to making the changes needed to best serve young people in their states. We hope that by contributing to the small literature that gives a birds' eye view of the process

5. The Council of State Governments, which was a non-profit data and technical support in Michigan, has also worked with a number of other states and localities, including Colorado, Connecticut, Indiana, Nevada, New Mexico and North Dakota. See *Improving State Outcomes for Youth (IOYouth)*, COUNCIL OF STATE GOV'TS JUST. CTR., <https://csgjusticecenter.org/projects/improving-outcomes-for-youth/> [https://perma.cc/HAA7-BUR8]; Pew Charitable Trusts has worked with eight states between 2013 to 2018 to develop reforms and pass responsive legislation. These states are Georgia, Hawaii, Kansas, Kentucky, South Dakota, Tennessee, Utah and West Virginia. See Julie Wertheimer, *States Commit to Comprehensive Juvenile Legal System Reforms*, PEW (Dec. 15, 2023), <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2023/states-commit-to-comprehensive-juvenile-legal-system-reforms>. [https://perma.cc/UN74-KX4Q].

6. See e.g., PEW-MACARTHUR RESULTS FIRST INITIATIVE, *supra* note 4, at 2326.

7. See Caitlin Cavanagh et al., *The Developmental Reform in Juvenile Justice: Its Progress and Vulnerability*, 28 PSYCH., PUB. POL'Y., & L. 151, 152 (2022) (describing the current trends in state juvenile justice as a "fourth wave" that looks to reform based on developmental and empirical research).

8. PEW CHARITABLE TRS., HOW STATES USE DATA TO INFORM DECISIONS 1 (2018), https://www.pewtrusts.org/-/media/assets/2018/02/dasa_how_states_use_data_report_v5.pdf [https://perma.cc/V7HF-SPAX].

or result of broad scale reform;⁹ instead focusing on one or two important issues,¹⁰ we can demystify a complex and sometimes daunting process.

II. WHAT CAME BEFORE, BUILDING MOMENTUM FOR CHANGE, AND HIGH-PROFILE FAILURES: BENIGN NEGLECT OF MICHIGAN'S JUVENILE COURT SYSTEM

A. *What Came Before*

The wave of national youth justice reform in the early 2000s largely bypassed Michigan.¹¹

Many states and localities looked to the Annie E. Casey Foundation's Juvenile Detention Alternative Initiative (JDAI), which began over thirty years ago and focuses on decreasing youth who are unnecessarily detained.¹² For example, in 2005, Missouri received funding from Annie E. Casey for a JDAI pilot.¹³ As a result, Missouri has been a leader in custody placements that are small-scale and supportive, instead of those that mimic adult correctional facilities.¹⁴ Missouri initially undertook four pilots in the circuits

9. See, e.g., Wendy Hess & Emily Verhine, *South Dakota's Data-Driven, Evidence-Based Juvenile Justice Reform*, 62 S.D. L. REV. 579 (2017) (detailing the evidence-based, data-driven broad reforms of the juvenile justice system passed by South Dakota in the past decade); Marilyn Skoglund, *Vermont Enacts Comprehensive Juvenile Justice Reform: An Interview with Hon. Amy Davenport*, 34 VT. B.J. 48 (Winter 2008/2009) (providing a short overview describing in brief the newly enacted Juvenile Judicial Proceedings Act, which rewrote Vermont's juvenile code); Salma S. Safiedine et al., *Policy Reform in the Juvenile Justice Arena: Nationwide Reform Highlighting the ABA CJS Racial Justice Improvement Project*, 33 CRIM. JUST. 8 (2018) (focusing on racial justice as well as RTA, ABA's Racial Justice Improvement Project and NY Task Force Actions).

10. See Joel Weineke, *SB 368 Results in Long-Awaited Juvenile Justice Reforms*, 65 RES GESTAE 20 (2021) (describing changes in Indiana to competency proceedings and protections for arrested youth to keep them separate from adults).

11. See MICH. COMP. LAWS §§ 330.2062—2074 (1974) (setting a presumption of competency for a child 10 years or older, requiring evaluations by qualified forensic mental health examiners, required use of a standardized assessment, and which included some developmental considerations in the assessment).

12. *Juvenile Detention Alternatives Initiative (JDAI)*, THE ANNIE E. CASEY FOUNDATION, <https://www.aecf.org/work/juvenile-justice/jdai> [<https://perma.cc/S7KD-YBF4>]; see also David Kusnetz, *Addressing Structural Racism in Juvenile Justice Through Experimentalism*, 47 COLUM. J.L. & SOC. PROBS. 245, 25455 (2014) (describing JDAI as an "experimentalist regime" with eight core goals for each jurisdiction).

13. Richard B. Teitelman & Gregory J. Linhares, *Juvenile Detention Reform in Missouri: Improving Lives, Improving Public Safety, and Saving Money*, 76 ALBANY L. REV. 2011, 2012 (2012/2013).

14. Richard A. Mendel, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*, THE ANNIE E. CASEY FOUND. 5 (2010), <https://www.njjn.org/uploads/digital-library/model.pdf> [<https://perma.cc/2DMK-DZW5>].

with the largest detention center population to reduce the youth in custody and the time youth spent in detention and to reinvest in school-focused programs, therapy and other alternatives.¹⁵ Then, Missouri moved to implement evidence-based tools statewide, including detention assessments.¹⁶

As another example, in 2009, Hawaii was designated a JDAI model site and used the resulting collaboration to move to eliminate the “valid court order” exception for status offenses and moved to a more data-driven approach.¹⁷ Four years later, Hawaii partnered with the Pew Charitable Foundation,¹⁸ through the Juvenile Justice Reinvestment Initiative, and initiated a twenty-member task force.¹⁹ Like in Michigan, Hawaii’s working group made a series of recommendations,²⁰ which moved to the legislature. Hawaii’s legislative reform limits what youth can be committed to the Hawaii Youth Correctional Facility, standardized the use of a single assessment and screening instrument, inform decision-making at disposition, during probation and upon release from custody.²¹

Another major initiative in the 2000s was the Models for Change program, which the MacArthur Foundation launched in the early 2000s and which initially worked with four states on comprehensive reform based on adolescent development.²² For example, Illinois focused on raising the age of juvenile court jurisdiction to include seventeen-year-olds, expanding community-based placement, reducing secure confinement, improving data collection and analysis, and reducing disproportionate minority contact with the juvenile system.²³

15. Teitelman & Linhares, *supra* note 13, at 2012–13.

16. *Id.* at 2015.

17. Catherine H. Remigio, *Overview of Juvenile Justice Reform Efforts in Hawaii*, 20 HAW. BAR J. 4, 6 (2016).

18. See PEW CHARITABLE TRS., HAWAII’S 2014 JUVENILE JUSTICE REFORM (2014), <https://www.pewtrusts.org/-/media/assets/2014/07/pspphijuvenilejusticereformbrief.pdf> [<https://perma.cc/s6l2-ulf9>].

19. *Id.* at 2.

20. See HAW. JUV. JUST. WORKING GRP., FINAL REPORT 1 (Dec. 13, 2013), <https://www.pewtrusts.org/-/media/legacy/uploadedfiles/JJRIWorkingGroupFinalReportFinal.pdf> [<https://perma.cc/H9R6-5Z4>].

21. Remigio, *supra* note 17, at 7.

22. *About*, MODELS FOR CHANGE (Jan. 1, 2018), <https://www.modelsforchange.net/about/index.html> [<https://perma.cc/XP2-2AR3>]; see also *Juvenile Justice*, MACARTHUR FOUND., https://www.macfound.org/programs/pastwork/juvenile_justice/ [<https://perma.cc/USN9-LYVG>] (showing the MacArthur foundation began supporting training, research, and evidence-based reforms in 1996 following laws creating more punitive approaches to juvenile court).

23. *Illinois*, MODELS FOR CHANGE (Jan. 1, 2018), <https://www.modelsforchange.net/about/States-for-change/Illinois.html> [<https://perma.cc/XP5Q-LEPM>]; see also MODELS FOR CHANGE, MEASURABLE PROGRESS: A SUMMARY OF ILLINOIS JUVENILE JUSTICE REFORMS 2005-2012 20 (2012), https://www.modelsforchange.net/publications/456/Measurable_Progress_A_Summary_of_Illinois_Juvenile_Justice_Reforms.pdf [<https://perma.cc/SLGJ-69DB>] (illustrating the state’s formal report on their Models for Change work).

While pieces of this work echoed in Michigan,²⁴ Michigan had not taken a holistic look at its juvenile system in a long time, and that neglect meant that Michigan had work to do.²⁵ For example, as stated in the executive order establishing our reform body, “Michigan . . . detains youth at one of the highest rates in the nation and is nearly unparalleled in our practice of detaining youth for non-criminal behavior.”²⁶

The next sections describe discrete steps in Michigan that set the stage for more holistic reform.

B. *Raise the Age*

The “Raise the Age” legislation in Michigan, which aimed to have the cases of seventeen-year-olds originate in the juvenile courts represented a major shift in the state’s approach to juvenile justice.²⁷ Before this change, Michigan was among the last states in the U.S. to automatically treat seventeen-year-olds as adults, regardless of the offense.²⁸ This statutory limit on the juvenile court’s jurisdiction meant that these older teenagers were automatically convicted and sentenced within the adult system, which was ill-suited for their age and developmental status. This misalignment led to poorer outcomes, a heightened risk of harm in adult jails and prisons, and increased recidivism.²⁹ The process of changing this policy spanned three legislative sessions, gradually building momentum as other states across the country

24. See KIMBERLY LARSON ET AL., DEVELOPING STATUTES FOR COMPETENCE TO STAND TRIAL IN JUVENILE DELINQUENCY PROCEEDINGS: A GUIDE FOR LAWMAKERS (2011), https://www.modelsforchange.net/publications/330/Developing_Statutes_for_Competence_to_Stand_Trial_in_Juvenile_Delinquency_Proceedings_A_Guide_for_Lawmakers.pdf [<https://perma.cc/snu5-3jlr>] (citing Michigan’s pre-reform statute as “an example of the logic of a lower threshold for competence in juvenile court”); MICH. COMP. LAWS § 712A.18(n) (2013).

25. See Nina Salomon, *Explainer: The Significance of Michigan’s Justice for Kids and Communities Legislation*, COUNCIL OF STATE GOV’TS JUST. CTR. (Dec. 14, 2023), <https://csgjusticecenter.org/2023/12/14/explainer-the-significance-of-michigans-justice-for-kid-s-and-communities-legislation/> [<https://perma.cc/7W7P-J9BY>] (noting the need for holistic juvenile justice reform needed in Michigan based on high inconsistencies across the state in juvenile justice administration).

26. EXEC. OFF. OF THE GOVERNOR, EXEC. ORD. 2021-6: TASK FORCE ON JUVENILE JUSTICE REFORM (June 9, 2021).

27. STATE OF MICH., RAISE THE AGE IMPLEMENTATION (2021), https://www.michigan.gov/-/media/Project/Websites/mdhhs/Folder4/Folder27/Folder3/Folder127/Folder2/Folder227/Folder1/Folder327/Raise_the_Age_Info_and_FAQ.pdf [<https://perma.cc/6BGF-YZH5>].

28. Press Release, Gov. Gretchen Whitmer, Governor Whitmer Signs Bipartisan Bills to Raise the Age for Juvenile Offenders (Oct. 31, 2019), <https://www.michigan.gov/whitmer/news/press-releases/2019/10/31/governor-whitmer-signs-bipartisan-bills-to-raise-the-age-for-juvenile-offenders> [<https://perma.cc/DQ2A-9NSP>].

29. *Id.*

passed similar measures.³⁰ This milestone policy reform was achieved in October 2019 through the combined efforts of a diverse, bipartisan coalition, including advocacy groups, policymakers, juvenile justice professionals, and community stakeholders, including business groups and faith-based organizations, highlighting the importance of collaboration in effecting significant legislative changes.³¹ When Raise the Age went into effect in October 2021, it was estimated that 4,000 cases involving seventeen-year-olds would be handled by the juvenile court.³²

The Raise the Age advocacy campaign not only addressed the age of juvenile court jurisdiction but also brought to light other significant areas within the juvenile justice system that required systemic reform. In doing so, the campaign emphasized the need for a comprehensive approach to better serve the youth of Michigan and sparked an interest in the state legislature in continuing to work on legislation that impacts young people under juvenile court jurisdiction, as well as those at risk of becoming system-involved.

C. *Indigent Youth Defense and the Gault Center Assessment*

At the same time, an assessment of the Michigan indigent youth defense system by the Gault Center also highlighted the uneven and sometimes subpar provision of counsel for young people.³³ The youth indigent defense assessment followed over a decade of litigation, study, legislation, funding, and capacity building that reformed Michigan's adult indigent defense

30. HOUSE FISCAL AGENCY, LEGISLATIVE ANALYSIS: RAISE THE AGE 8 (2019), <https://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-4133-67514053.pdf> [<https://perma.cc/XM9W-2GP7>] (outlining legislative history of the bill and describing motivations of being in-line with the 46 other states to have enacted similar legislation).

31. *See News Release: MCC Applauds Bipartisan Success to 'Raise the Age' in Michigan*, MICH. CATH. CONF. (Oct. 31, 2019), <https://www.micatholic.org/advocacy/news-room/news-releases/2019/mcc-applauds-bipartisan-success-to-raise-the-age-in-michigan/> [<https://perma.cc/R7JS-GUQS>] (describing the support from the Michigan Catholic Conference for the law); Alex Rossman, *Alex Rossman: Raise the Age is a Criminal Justice Reform Win for the Ages*, MICH. ADVANCE (Nov. 1, 2019), <https://michiganadvance.com/2019/11/01/alex-rossman-raise-the-age-is-a-criminal-justice-reform-win-for-the-ages/> [<https://perma.cc/Z94S-SP8A>] (describing the work of the Michigan League for Public Policy's advocacy for the passage of the law).

32. HORNBY ZELLER ASSOCS., INC., THE COST OF RAISING THE AGE OF JUVENILE JUSTICE IN MICHIGAN: FINAL REPORT 13 (2018), <https://council.legislature.mi.gov/Content/Files/cjpc/MIRaisetheAgeFinalReport03.14.2018.pdf> [<https://perma.cc/B435-7AAA>].

33. NAT'L. JUV. DEF. CTR., OVERDUE FOR JUSTICE: AN ASSESSMENT OF ACCESS TO AND QUALITY OF JUVENILE DEFENSE COUNSEL IN MICHIGAN (2020), <https://www.defendyouthrights.org/wp-content/uploads/Michigan-Assessment-Web.pdf> [<https://perma.cc/3NVE-LXTV>].

system.³⁴ The Gault Center began this assessment in 2018 with stakeholder meetings and a review of Michigan's youth defense legal structures.³⁵ To take a deep dive at understanding youth defense practice in a range of Michigan jurisdictions, the assessment team visited ten heterogeneous counties, and conducted in-depth interviews, file reviews, and courtroom observations.³⁶ The key findings were that Michigan lacks a system of state oversight and funding of the youth indigent defense system that could ensure a constitutional floor of counsel across the state and adequate training of attorneys.³⁷ For example, the assessment team heard about a lawyer who "pleads kids to whatever is charged;" meanwhile, other lawyers, who are not paid to visit clients in detention, do not go to see them.³⁸ The report also highlighted that families were charged overwhelming and burdensome costs for young people's court cases, including the cost of a court-appointed lawyer.³⁹ For example, the "assessment team found that Michigan's practice of requiring parents and youth to reimburse attorney fees may work to discourage the appointment of counsel, terminate representation prematurely, and create conflicts of interest for attorneys."⁴⁰ The Gault Center recommended that Michigan create a system of state oversight of the youth defense delivery system, establish state standards for trial-level systems of counsel, grant the system independence from the court, expand the state appellate public defender to provide for appeals of juvenile delinquency matters,⁴¹ ensure adequate funding, and eliminate court fines and fees imposed on young people and their families.⁴²

D. Fines and Fees Advocacy, Report and Litigation

Parallel to the examination of the youth indigent defense system, which raised the assessment of fines and fees as an area of concern, a number of system actors were drawing explicit attention to the collection of fines and costs from young people and their families who were involved with the juvenile court.

34. *See id.* at 13, 47–48; *see also* MICHIGAN INDIGENT DEF. COMMISSION, <https://michiganidc.gov> [<https://perma.cc/9JZ5-ZWB7>] (stating the MIDC was created through legislation in 2013 and based in the work of the Michigan Defense Advisory Commission).

35. NJDC, *supra* note 33, at 12.

36. *Id.*

37. *Id.* at 7.

38. *See id.* at 34.

39. *Id.* at 68, 73.

40. *Id.* at 64.

41. The report found only two published juvenile court cases in the state court of appeals over a 5-year period and no appeals resulting in a decision or order in 85% of counties in that same period. *Id.* at 38.

42. *Id.* at 7.

“The “Debt-Free Justice Campaign,” coordinated by the Michigan Center for Youth Justice (MCYJ), which is directed by one of the co-authors, played a pivotal role in advancing policy reforms to eliminate or reduce juvenile court fines and fees. The campaign raised awareness among policymakers, community members, and the media about the harms caused by juvenile court debt to youth and families and how it hinders the effective engagement of these groups in treatment and services ordered by local juvenile courts.⁴³ In response to concerns related to lost county revenues if the reform became state law, MCYJ partnered with Macomb County’s juvenile court to examine the actual costs and inefficiencies of fee collection.⁴⁴ This partnership led to the elimination of the local courts’ assessment and collection of discretionary fines, thus setting a precedent for statewide reform.⁴⁵

The National Center for Youth Law, from 2018–2019, through Freedom of Information Act (FOIA) requests and stakeholder interviews, explored the significant assessments made in juvenile court and the inconsistent application of these costs, even on indigent youth and families.⁴⁶ The information gleaned on fees for the cost of care for a child were particularly startling. “Multiple families in one county reported an extremely high cost for detention and other facility stays, ranging from \$10,000 to hundreds of thousands of dollars in fees.”⁴⁷ Courts in some counties exercised their discretion to waive fees, while others did not; the difference was based in geography as opposed to ability to pay.⁴⁸ Further, some of the financial assessment processes were opaque and done through sometimes aggressive “extrajudicial” collections proceedings.⁴⁹ The impact of unpaid fees on youth, which disproportionately impacted Black and low-income youth, was prolonged court involvement and financial stress on the entire family.⁵⁰

43. See *The Problem*, DEBT FREE JUST., <https://debtfreejustice.org/problem> [https://perma.cc/65CH-V9HT].

44. LIZ GEORGE ET AL., MINORS FACING MAJOR DEBT: THE IMMENSE BURDEN OF COURT FEES ON MACOMB COUNTY YOUTH AND FAMILIES 4 (Nicole Faulds & Atasi Uppal eds., 2021), <https://finesandfeesjusticecenter.org/articles/minors-facing-major-debt-the-immense-burden-of-court-fees-on-macomb-county-youth-and-families/> [https://perma.cc/AN7B-FYUR] (click “you can access the full report here”).

45. *Id.* at 4, 6.

46. ATASI UPPAL, THE HIGH COST OF “JUSTICE”: A SNAPSHOT OF JUVENILE COURT FINES AND FEES IN MICHIGAN 2, 4 (2020), <https://youthlaw.org/sites/default/files/attachments/2022-02/2020.08.13-MI-Fines-Fees-1.pdf> [https://perma.cc/9FTW-HJBD].

47. *Id.* at 4.

48. *Id.* at 5.

49. *Id.*

50. *Id.* at 10.

E. 2020 Publicity and Tragedy

The inattention that had been given to Michigan's youth justice system came to state and national focus in 2020 through two high-profile cases: the homicide of Cornelius Frederick, a young person killed by staff during a restraint at a juvenile placement; and the case of "Grace," a girl who was locked in detention by a juvenile court judge for failing to do her homework for virtual school during the height of Covid-19 in spring of 2020.

1. Cornelius Frederick

On April 29, 2020, Frederick's threw a sandwich in the lunchroom at a placement called Lakeside Academy that served youth in delinquency cases and neglect and abuse cases.⁵¹ At least six staff members held him down in a prone restraint for twelve minutes,⁵² and he died soon after of cardiac arrest.⁵³ His death was ruled a homicide. The facility closed soon after, and two of the employees involved pled no contest to involuntary manslaughter and were sentenced to eighteen months of probation.⁵⁴ A June 2020 report by the

51. Tyler Kingkade & Hannah Rappleye, *The Brief Life of Cornelius Frederick: Warning Signs Missed Before Teen's Fatal Restraint*, NBC NEWS, (July 23, 2020, 2:15 PM), <https://www.nbcnews.com/news/us-news/brief-life-cornelius-frederick-warning-signs-missed-teen-s-fatal-n1234660> [<https://perma.cc/Y3TR-KAFG>]; see also Tyler Kingkade, *Video Shows Fatal Restraint of Cornelius Frederick, 16, in Michigan Foster Facility*, NBC NEWS (July 7, 2020, 8:52 PM), <https://www.nbcnews.com/news/us-news/video-shows-fatal-restraint-cornelius-fredericks-16-michigan-foster-facility-n1233122> [<https://perma.cc/CH95-EMJX>] (recounting the event that transpired with Cornelius Frederick including security camera footage of Frederick's encounter with Lakeside Academy staff members).

52. Autumn Pitchure, *Former Lakeside Academy workers sentenced to probation for teen's restraint death* WWMT (Dec. 19, 2023, 2:25 PM), <https://wwmt.com/news/local/lakeside-academy-student-cornelius-fredericks-michael-mosley-zachary-solis-restraint-homicide-death-probation-sentence-michigan> [<https://perma.cc/FRN7-AYNQ>]; STATE OF MICH. DEP'T OF HEALTH & HUM. SERV., SPECIAL INVESTIGATION REPORT #2020C0207030 LAKESIDE 4 (2020), <https://s3.documentcloud.org/documents/6990190/State-Investigation-of-Cornelius-Fredericks.pdf> [<https://perma.cc/35Q4-7KKB>] [hereinafter MDHHS] (indicating the length of the restraint as twelve minutes); see also Sara Tiano, *Lakeside Staffers Plead No Contest to Charges from Cornelius Fredericks' Death*, THE IMPRINT (May 3, 2023, 10:15 AM), <https://imprintnews.org/news-briefs/lakeside-staffers-plead-no-contest-to-charges-from-cornelius-fredericks-death/240921> [<https://perma.cc/7RMK-CHQE>] (noting that seven facility staff members conducted a prone restraint on Fredericks for twelve minutes).

53. Pitchure, *supra* note 52.

54. *Id.*; see also Sara Tiano, *Lakeside Staffers Plead No Contest to Charges from Cornelius Fredericks' Death*, THE IMPRINT (May 3, 2023, 10:15 AM), <https://imprintnews.org/news-briefs/lakeside-staffers-plead-no-contest-to-charges-from-cornelius-fredericks-death/240921> [<https://perma.cc/7RMK-CHQE>] (noting that seven facility staff members conducted a prone restraint on Fredericks for twelve minutes).

Michigan Department of Health and Human Services established numerous policy violations by the facility, including around the use of restraints.⁵⁵

2. *Grace*

First reported by a ProPublica reporter, Jodi S. Cohen, Grace was detained by a Michigan juvenile court judge for failing to do her homework for online school during Covid.⁵⁶ She spent seventy-eight days in juvenile detention before the Michigan Court of Appeals ordered her release.⁵⁷ Cohen's reporting led to national and international attention of the case.⁵⁸

While momentum for change had been slowly building, these two highly publicized incidents and the report on Michigan's indigent defense system in 2020 made clear the need for reform.⁵⁹

F. *Adult court changes that provided a road map or also impacted juvenile court.*

Two additional reforms, not solely related to juvenile court, were also key to setting the stage for youth justice reform: the state task force on jails and pretrial incarceration and Michigan's "clean slate" laws.

55. MDHHS, *supra* note 52, at 3.

56. Jodi S. Cohen et al., *Grace: A Failure in Michigan's Juvenile Justice System*, PROPUBLICA, <https://www.propublica.org/series/grace> [<https://perma.cc/6EXC-CKBX>].

57. Jodi S. Cohen, *Grace, Black Teen Jailed for Not Doing Her Online Coursework, Is Released*, PROPUBLICA, (July 31, 2020, 6:42 PM), <https://www.propublica.org/series/grace> [<https://perma.cc/46JH-8B4R>].

58. See, e.g., Louise Hall, *'It Just Doesn't Make Any Sense': Outrage in Detroit After Teenager Detained for Missing Online Homework*, INDEP. (UK) (July 17, 2020, 2:45 PM), <https://www.independent.co.uk/news/world/americas/homework-detorit-teenager-detained-grace-detention-us-america-a9625246.html> [<https://perma.cc/KCA7-4MLF>]; *Michigan Judge Refuses to Free Girl in Missed Homework Case*, BBC (July 20, 2020, 9:28 PM), <https://www.bbc.com/news/world-us-canada-53481539> [<https://perma.cc/8GG6-TKWP>]; Ashley Schwartz-Lavares et al., *Teen Sent to Juvenile Detention for Not Completing Homework Speaks on 'Injustice,'* ABC NEWS (July 8, 2021, 4:31 PM), <https://abcnews.go.com/US/teen-juvenile-detention-completing-homework-speaks-injustice/story?id=78692558> [<https://perma.cc/4JUR-CT8L>].

59. See Jodi S. Cohen & Dave Boucher, *After Grace's Story, Michigan Will Study Its Juvenile Justice System*, PROPUBLICA & DETROIT FREE PRESS (June 9, 2021, 3:55 PM), <https://www.propublica.org/article/after-graces-story-michigan-will-study-its-juvenile-justice-system> [<https://perma.cc/EW88-T78Q>].

1. *Pretrial Task Force*

In 2019, Michigan launched the Joint Task Force on Jail and Pretrial Incarceration,⁶⁰ to examine the state's jail population with an eye to safely reducing jail admissions, length of stay and cost, expanding alternatives to jail, and support consistent, evidence-based pretrial decision-making, among other goals.⁶¹ The task force dug into ten years of arrest and court data, three years of jail data, spoke with stakeholders, and took testimony from hundreds of people around the state.⁶² The task force learned that even as crime and violent crime rates fell, the incarceration rate in jail rose; that people were in jail for low-level offenses that posed little public safety threat; and that Black Michiganders were disproportionately sent to jail.⁶³ The task force issued a series of recommendations in January 2020 that were aimed at reclassifying most traffic offenses as civil infractions, expanding officer discretion to issue appearance tickets and reduce the use of warrants, strengthening the presumption of release on personal recognizance and providing timely detention hearings, presumptively imposing non-jail sentences for non-serious misdemeanors and "intermediate sanction" felonies, and shortening maximum probation terms, among other reforms.⁶⁴ In January 2021, the state legislature passed twenty jail reform bills that sought to implement the recommendations. The pretrial task force, and its ability to create bipartisan consensus leading to reform, serve as a model of how criminal system reform could occur.⁶⁵

60. MICHIGAN JOINT TASK FORCE ON JAIL AND PRETRIAL INCARCERATION, REPORT AND RECOMMENDATIONS 5 (2020), <https://www.courts.michigan.gov/48e562/siteassets/committees,-boards-special-initiatives/jails/jails-task-force-final-report-and-recommendations.pdf> [https://perma.cc/6FTW-TKQU] [hereinafter MICHIGAN JOINT TASK FORCE REPORT]; see also *Michigan Enacts Landmark Jail Reforms*, PEW CHARITABLE TRUSTS (Sept. 23, 2021), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2021/09/michigan-enacts-landmark-jail-reforms> [https://perma.cc/8FLM-KZS7] [hereinafter PEW CHARITABLE TRUSTS]. Pew Charitable Trusts and the Crime and Justice Institute provided technical assistance to the task force.

61. MICHIGAN JOINT TASK FORCE REPORT, *supra* note 60, at 5.

62. PEW CHARITABLE TRUSTS, *supra* note 60.

63. *Id.*

64. MICHIGAN JOINT TASK FORCE REPORT, *supra* note 60, at 4.

65. See, e.g., *Michigan's Juvenile Justice Reform Task Force*, MICH. COMM. ON JUV. JUST., <https://michigancommitteeonjuvenilejustice.com/jj-reform-task-force/> [https://perma.cc/GBZ2-WJKB] (tracing the model of criminal system reform that led to the youth task force to the prior pretrial task force).

2. *Clean Slate Confidentiality*

In 2020, Michigan also passed an innovative package of bills, known as “Clean Slate,” that made it easier and, in some cases, automatic for people to have their prior conviction records cleared.⁶⁶ Michigan’s bill was the first in the country to establish a system of automatic expungements for many felonies,⁶⁷ which, when it went into effect in 2023, was estimated to have affected the records of over one million Michiganders.⁶⁸ A related package, “Clean Slate for Kids,” created automatic expungement options for certain juvenile offenses two years after the end of court supervision or the person turns eighteen years old (whichever is later), shortened the waiting period for applications for set asides,⁶⁹ and made juvenile court records closed to the general public,⁷⁰ thus putting Michigan in line with 20 other states’ treatment of juvenile court matters.⁷¹

G. *Shackling During Juvenile Court Proceedings*

Another example of how the benign neglect in Michigan’s juvenile justice system negatively impacted young people was the persistence of policies that permitted indiscriminate shackling of juveniles. Nationally, over the course of the 2010s, many states moved to only allow shackling of youth with a specific court finding regarding established risk of harm or flight.⁷² By 2021, when the Michigan Supreme Court adopted a court rule on shackling, thirty-one states and the District of Columbia barred indiscriminate courtroom shackling. In Michigan, this practice involved using handcuffs, shackles, and other restraints on young people both charged and adjudicated in court, regardless

66. See *Michigan Clean Slate*, MICH. STATE POLICE, <https://www.michigan.gov/msp/services/chr/conviction-set-aside-public-information/michigan-clean-slate> [https://perma.cc/Y49P-F6CM]; see generally H.R. 4980, 100th Gen. Assemb., Reg. Sess. (Mich. 2020).

67. *Frequently Asked Questions: Michigan’s Clean Slate Legislation*, SAFE & JUST MICH. (2022), <https://cms5.revize.com/revize/oakpark/Clean%20Slate%20and%20Set%20Aside.pdf> [https://perma.cc/JUH4-VC9P].

68. *Michigan’s ‘Clean Slate’ Law Goes into Effect, Erasing Old Criminal Records*, NEWS CHANNEL 3 (Apr. 11, 2023), <https://wwmt.com/news/local/michigan-clean-slate-law-expunges-old-criminal-records-crime-free-state-police-courts-convictions> [https://perma.cc/JQ3U-QHQ A].

69. See S.B. 681, 100th Gen. Assemb., Reg. Sess. (Mich. 2020).

70. S.B. 682, 100th Gen. Assemb., Reg. Sess. (Mich. 2020).

71. Riley Beggin, *Michigan Eyes Reform to Costly, Confusing System of Expunging Criminal Records*, BRIDGE MICH. (Nov. 4, 2019), <https://www.bridgemi.com/michigan-government/michigan-eyes-reform-costly-confusing-system-expunging-criminal-records> [https://perma.cc/XG9B-B4Y5].

72. *Ending the Indiscriminate Shackling of Youth*, NAT’L JUV. DEF. CTR., <https://www.defendyouthrights.org/wp-content/uploads/Shackling-HR-10.9.14.pdf> [https://perma.cc/8BKY-GJME].

of their risk level or behavior. Justice Megan Cavanagh, supporting the new court rule, highlighted that shackling causes unnecessary stress and humiliation, undermines juveniles' rights, and contradicts the rehabilitative ideals of juvenile court.⁷³ The new rule prohibits indiscriminate restraint, allowing it only in cases of severe disruptive behavior, potential flight risk, or a clear threat of physical harm.⁷⁴ Moreover, judges are now required to provide a documented justification for each instance of shackling.⁷⁵

The adoption of this Michigan Supreme Court ruling marked another step, alongside raising the age of juvenile court jurisdiction and increasing confidentiality protections for juvenile records, toward shedding the state's reputation for harsh juvenile justice practices and embracing a more rehabilitative approach.

III. THE MICHIGAN TASK FORCE ON JUVENILE JUSTICE AND RESULTING LEGAL CHANGES

In 2021, Michigan Governor Whitmer created and appointed a state task force on juvenile justice, composed of stakeholders from around the state and from the executive, legislative, and judicial branches, as well as advocates and people impacted by the youth justice system.⁷⁶ The task force was given the "goal of developing ambitious, innovative, and thorough analysis of Michigan's juvenile justice system, complete with recommendations for changes in state law, policy, and appropriations to improve youth outcomes," and "conduct[ing] a comprehensive and data-driven needs assessment of Michigan's juvenile justice system."⁷⁷

73. MCR 3.906 (Cavanagh, J., concurring).

74. MCR 3.906.

75. *Id.*

76. EXEC. OFF. OF THE GOVERNOR, EXEC. ORD. 2021-6 TASK FORCE ON JUVENILE JUSTICE REFORM (June 9, 2021) (creating Task Force and listing required representation on the group). On July 22, 2021, Gov. Whitmer appointed the task force members. *See* Press Release, Governor Gretchen Whitmer, Governor Whitmer Makes Appointments to the Task Force on Juv. Just. Reform (July 22, 2021), <https://www.michigan.gov/whitmer/news/press-releases/2021/07/22/governor-whitmer-makes-appointments-to-the-task-force-on-juvenile-justice-reform> [<https://perma.cc/379U-88HU>]; *see also* MICH. TASK FORCE ON JUV. JUST. REFORM, REPORT AND RECOMMENDATIONS 2–3 (July 22, 2022), <https://michigancommitteeonjuvenilejustice.com/wp-content/uploads/Michigan-Taskforce-on-Juvenile-Justice-Reform-Final-Report.pdf> [<https://perma.cc/JY6M-FE9H>].

77. EXEC. OFF. OF THE GOVERNOR, EXEC. ORD. 2021-6 TASK FORCE ON JUVENILE JUSTICE REFORM (June 9, 2021).

A. *Task Force Process and What We Learned*

The task force and its subcommittees met for a year and had nine meetings of the entire task force.⁷⁸ Meetings, as well as the information presented at the meetings, were made available to the public.⁷⁹ The juvenile task force, as had the pretrial task force, partnered with a bipartisan non-profit, in this case, the Council of State Governments,⁸⁰ to help “conduct the assessment and facilitate the recommendation development process.”⁸¹ The committee had eight working groups, made up of task force members and other stakeholders, to review data and examine other state’s best practices in more narrowly defined areas, including diversion, indigent defense, and out-of-home placement.⁸² Advisory boards of tribal communities in Michigan, impacted parents, the State Court Administrative Office (SCAO), and advocates also provided feedback to the task force.⁸³

One of the first things that the task force learned was that Michigan, as a state, did not know much about our juvenile system. Michigan lacked statewide data to answer basic questions like “How many Michigan children are in juvenile detention or placements right now?”⁸⁴ To get a better sense of how the juvenile system was actually operating, the Council of State Governments (CSG) obtained case data on juvenile court cases from a four-year period, 2016–2020, from thirty-two county courts – data which represented fifty-five percent of the state’s juvenile population age ten to sixteen years old.⁸⁵ The Michigan Department of Health and Human Services provided data on statewide juvenile and dual status cases under state supervision from 2015 to 2020.⁸⁶ To help fill in additional gaps, CSG and task force members conducted over 100 focus groups and interviews with a broad range of stakeholders, including those with lived experience in the youth

78. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 2, 4.

79. See *JJ Reform Task Force Meeting Information: 2021-2022 Task Force Meetings*, MICH. COMM. ON JUV. JUST., <https://michigancommitteeonjuvenilejustice.com/jj-reform-task-force/jj-reform-task-force-meeting-information/> [<https://perma.cc/G7TC-NX7P>] (containing links to YouTube videos of prior meetings).

80. *About Us*, THE COUNCIL OF STATE GOV’TS, <https://www.csg.org/about-us/> [<https://perma.cc/S3W9-JHYM>].

81. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 2.

82. *Id.* at 10–11.

83. *Id.*

84. Jacob Agus-Kleinman et al., Council of State Gov’ts, Michigan Task Force on Juvenile Justice Reform 11 (Sept. 28, 2021), <https://michigancommitteeonjuvenilejustice.com/wp-content/uploads/MI-JJ-Task-Force-Initial-Presentation-September-28-2021.pdf> [<https://perma.cc/Z76N-H8E9>].

85. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 5.

86. *Id.*

system, health care professionals, law enforcement, court personnel, school personnel, and state health and human services staff.⁸⁷

One area of investigation was diversion away from formal court proceeding and adjudication. Diverting youth away from the formal justice system has shown notable benefits. Studies have consistently found that diverted youth exhibit significantly lower rates of re-offending when compared to those entering the formal justice system.⁸⁸ Additionally, diversion programs are cost-effective, requiring fewer resources than formal court processing, which not only benefits the justice system but also the broader community.⁸⁹ Like in other states, in Michigan, juvenile court diversion can and sometimes does play a crucial role in addressing the needs of youth who engage in risky and unlawful behavior.⁹⁰

Michigan law has a number of provisions that could achieve diversionary aims,⁹¹ but these laws were used inconsistently across the state and were not being robustly used to make sure that low-risk youth were diverted out of the juvenile system.⁹² One hurdle was funding incentives. While the Juvenile Diversion Act,⁹³ the state law governing diversion policy in Michigan, allows law enforcement agencies to divert youth, the primary funding source, the Child Care Fund, has historically restricted diversion programs to post-petition filing.⁹⁴ This restriction created a financial barrier for youth-serving institutions to implement pre-arrest or pre-petition programs, leading to delays in addressing the underlying issues that bring young people into contact with the legal system. In many counties, despite some broader statutory allowance

87. *Id.* at 4.

88. Holly A. Wilson & Robert D. Hoge, *The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review*, 40 CRIM. J. & BEHAV. 497, 514 (2013).

89. *See, e.g., Diversion in the Juvenile Justice System*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/civil-and-criminal-justice/diversion-in-the-juvenile-justice-system> [<https://perma.cc/FM7J-MV5E>] (May 23, 2022) (stating that “it costs an average of \$588 per day to incarcerate a young person; alternatives like diversion can cost approximately \$75 a day”).

90. In 2015, 10,000 delinquency cases were diverted from the formal adjudication process. JASON SMITH & MICHELLE WEEMHOFF, RESTORING KIDS, TRANSFORMING COMMUNITIES: ENHANCING MICHIGAN'S APPROACH TO JUVENILE JUSTICE 4 (Kristen Staley & Mary King eds., 2017), https://www.miyouthjustice.org/_files/ugd/03cb01_8549842ede8a40d9be8c19b29e422dca.pdf [<https://perma.cc/QF2B-W4AL>].

91. *See* MICH. COMP. LAWS § 712A.2f (2016) (detailing Michigan's placement of some juvenile cases on consent calendar rather than proceeding as a formal case); *Id.* §§ 722.821–831 (1988) (authorizing certain minors to be diverted from the court system having jurisdiction over minors).

92. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 6.

93. §§ 722.821–831.

94. *See* Mich. Task Force on Juv. Just. Reform, Council of State Gov'ts, Presentation of Findings: Petitions, Diversion, Court Process and Supervision 13 (Apr. 12, 2022), <https://michigancommitteeonjuvenilejustice.com/wp-content/uploads/MI-JJ-Task-Force-Presentation-of-Findings-04-12-2022.pdf> [<https://perma.cc/SC8V-R77G>].

for diversion, diversion was generally only considered and offered to youth with a first-time, low-level offense.⁹⁵ Screenings and assessments for diversion were either hit-or-miss or non-existent across some Michigan counties, leading to inconsistent diversion services despite youth having similar needs.⁹⁶ Diversion requirements also differed widely; including services offered, duration of participation, and requirements for successfully completing a diversion program.⁹⁷ Additionally, many diversion programs are managed by juvenile courts and do not always incorporate restorative practices that help repair harm caused to victims.⁹⁸

Best practice for detention is that only young people who pose a high-risk and a danger to public safety should be detained pretrial, given the negative effects of pretrial detention. One study of youth in Michigan between 2007–2020, found that, among similar youth, youth placed in pretrial detention were less likely to graduate from high school and more likely to be arrested as an adult.⁹⁹ It also found that even when these youth were given school support services, those services did not overcome the educational disruption of detention.¹⁰⁰ In response to research such as this, many states are moving to prohibit detention of youth for low-level offenses, a trend which aims to enhance outcomes for young people and minimize their unnecessary engagement with the deepest end of justice system.¹⁰¹

Contrary to these trends and findings, the available data on Michigan's practices around detention showed that the detention was not limited to high-risk youth who posed a public safety risk. The task force learned that Michigan lacked statewide policies or assessment tools, and many local jurisdictions similarly used no data or risk-screening to make detention decisions.¹⁰² The result was that, in eight counties studied from 2016 to 2020, more than half of those detained had a misdemeanor as their most serious charge. Almost nine percent of those detained had a status offense as their most serious offense,¹⁰³

95. SMITH & WEEMHOFF, *supra* note 90, at 20.

96. See Mich. Task Force Juv. Just. Reform, Council of State Gov'ts, Third Taskforce Meeting 20 (Nov. 19, 2021), <https://michigancommitteeonjuvenilejustice.com/wp-content/uploads/MI-JJ-Task-Force-Best-Practices-Presentation-11-19-2021.pdf> [<https://perma.cc/XA45-ME6M>].

97. *Id.*

98. SMITH AND WEEMHOFF, *supra* note 90.

99. E. JASON BARON ET AL., PRETRIAL JUVENILE DETENTION IN MICHIGAN 6 (2022).

100. *Id.* at 7.

101. See *generally* RICHARD MENDEL, WHY YOUTH INCARCERATION FAILS: AN UPDATED REVIEW OF THE EVIDENCE (2022), <https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf> [<https://perma.cc/U5E4-YDPA>] (outlining recommendations to enhance the juvenile justice system, including alternatives to incarceration).

102. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 7–8.

103. *Id.* at 8.

despite federal constraints on placing youth in custody for status offenses.¹⁰⁴ This is contrary to the national trend to ban the detention of youth who have not committed a criminal offense.¹⁰⁵ From 2016 to 2019, one in three youth spent more than thirty days in detention; at the time of the task force, many youth were housed for months in “temporary” detention facilities awaiting placement.¹⁰⁶

At the trial court level, decisions about level of supervision, probation terms, and services were not consistently evidence-based practices rooted in risk to community or need of the child.¹⁰⁷ The funding structure for the Child Care Fund, the main mechanism by which county justice systems were reimbursed for youth services, in fact incentivized greater services and court involvement through greater reimbursement of these more intensive programs.¹⁰⁸ Counties lacked investment in reentry programs, especially for older youth. Few funding mechanisms existed for local jurisdictions to develop community-based alternatives to detention and incarceration.¹⁰⁹

Similarly, post-adjudication youth were inconsistently placed outside of their homes in juvenile facilities, without relation to the youth person’s level of risk.¹¹⁰ While limited data existed on the risk of youth because of the lack of consistent assessments, available information indicated that about 2/3 of the youth placed in state-supervised placements in child caring institutions were either at low or moderate risk; 73% of those ordered to Michigan Department of Health and Human Services (MDHHS) facilities were low or moderate risk.¹¹¹ At the time of the task force, Michigan’s placements were facing the fallout from facility closure, as well as staffing shortages, due in

104. OFF. OF JUV. JUST. & DELINQ. PREVENTION, POLICIES AND PROCEDURES MANUAL FOR MONITORING COMPLIANCE WITH CORE REQUIREMENTS OF THE FORMULA GRANTS PROGRAM AUTHORIZED UNDER TITLE II, PART B, OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT 2 (Dec. 15, 2021), <https://ojjdp.ojp.gov/compliance-monitoring-manual> [<https://perma.cc/RWN7-9XT8>] (providing that juveniles who are charged with offenses that would not be criminal offenses if they were charged as adults shall not be placed in detention). *But see* MICH. DEP’T OF HEALTH & HUM. SERVS., JUVENILE JUSTICE FIELD SERVICES MANUAL: DETENTION ALTERNATIVES, DETENTION & JAIL REQUIREMENT 6–7 (Apr. 1, 2021), <https://dhhs.michigan.gov/OLMWEB/EX/JJ/Public/JJM/470.pdf> [<https://perma.cc/FGZ3-8N9T>] (providing an exception to the placement of juveniles charged with status offenses in detention if they violate a valid court order).

105. *See* Kati Mapa, *The Prohibiting Detention of Youth Status Offenders Act of 2022*, CWLA (2022), <https://www.cwla.org/the-prohibiting-detention-of-youth-status-offenders-act-of-2022/> [<https://perma.cc/QGQ9-WFAC>] (reporting that more states are refusing to use the valid court order exception).

106. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 8.

107. *Id.*

108. *Id.* at 6–7.

109. *Id.* at 8.

110. *Id.*

111. *Id.* at 8–9.

part to Covid.¹¹² County or court detention facilities looked to the lack of state investment as one of the sources of insufficient treatment and training.¹¹³ As the courts were sending youth at all levels of risk to placements in child care institutions, the waiting period for these placements had extended from weeks to months.¹¹⁴

The benign neglect seen in many aspects of the youth justice system was perhaps most pronounced in the ability of sufficient and effective residential youth services.¹¹⁵ While the availability of community-based services varies in Michigan's decentralized juvenile justice system, many local jurisdictions often lacked a robust array of community-based services due to inadequate funding, lack of prioritization, or a scarcity of providers offering in-home treatment and support.¹¹⁶ This shortfall led courts to routinely place youth of varying risk levels into residential facilities without thorough assessment of their needs, creating bottlenecks, extending waiting times, and causing children to languish in short-term detention centers not designed for long-term care.¹¹⁷ Even in situations where the local juvenile court deems a youth safe for discharge from short-term detention or a residential facility, barriers such as a parent/guardian refusing to pick the child up or family housing instability can prevent their return home.¹¹⁸ This issue is compounded by a lack of

112. See, e.g., Minnah Arshad, *Wayne County Declares Public Health Emergency at Juvenile Jail*, BRIDGE DETROIT (Mar. 22, 2023, 5:22 PM), <https://www.bridgedetroit.com/wayne-county-declares-public-health-emergency-at-juvenile-jail/> [<https://perma.cc/GKV5-TPX3>]; Jaden Beard, *Staffing Crisis at Juvenile Justice Facilities: Low Retention Rates, Overcrowding*, SPARTAN NEWS ROOM (Jan. 27, 2023), <https://news.jrn.msu.edu/2023/01/staffing-crisis-at-juvenile-justice-facilities-low-retention-rates-overcrowding/> [<https://perma.cc/L3WH-PCYD>].

113. See, e.g., Christine MacDonald & Gina Kaufman, *Overcrowded, Understaffed Juvenile Jail Forces Wayne County Officials to Act*, DETROIT FREE PRESS (Jan. 25, 2023, 9:41 PM), <https://www.freep.com/story/news/local/michigan/detroit/2022/08/25/wayne-county-juvenile-detention-facility-jail-overcrowding-understaffed/65418803007/> [<https://perma.cc/Q67S-AP6G>] (detailing the overcrowding at Wayne County's juvenile detention facility that officials blamed on lack of state investment and placement options).

114. See Jennifer Brookland, *Michigan has Nowhere to Send Vulnerable Kids as Placement Crisis Builds*, DETROIT FREE PRESS (Oct. 6, 2022, 12:56 PM), <https://www.freep.com/story/news/local/michigan/2022/10/06/michigan-abused-children-placement-crisis/69540669007/> [<https://perma.cc/ZVT9-LC57>] (outlining a lack of placement facilities for juveniles who have been abused, neglected, or are deemed a risk to themselves or others).

115. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 9.

116. See *id.*; Council of State Gov'ts, Michigan Justice for Kids and Communities Bill Package Summary 3 (Dec. 15, 2023), <https://www.courts.michigan.gov/48d247/siteassets/educational-materials/cws/ppt-presentations/mi-bill-package-webinar.pdf> [<https://perma.cc/QXQ2-2E9V>] (describing the bill package proposed as a solution to the lack of funding for community-based solutions in counties).

117. See MacDonald, *supra* note 113; Brookland, *supra* note 114.

118. See MICH. COMP. LAWS § 712A.2 (2021) (providing statutory authority for jurisdiction over the court of the juvenile if they are found to be homeless or if the court finds a repeated pattern of failure to obey their parents).

alternative community placements, such as specialized foster care homes or emergency youth shelters, leaving young people in a precarious position with limited options for safe and stable environments.¹¹⁹

This overreliance on out-of-home placements – rather than tailored, community-based interventions – reflected a punitive approach at odds with best practices in juvenile justice.¹²⁰ The recent transition emphasizes individualized care and growth, moving away from a system primarily focused on confinement to one that prioritizes effective, community-centered solutions.

Similar to the information gleaned from the Gault Center report on indigent defense, the task force found that there were “no centralized structure and minimal standards, supports, or resources for juvenile public defense statewide.”¹²¹

The task force also learned that “Black youth are disproportionately represented in all parts of the juvenile justice continuum, and few statewide structures exist to address disparities.”¹²² Based on the available data, Black youth are petitioned for court at two times the rate of white youth, are more than 1.5 times likely to be adjudicated as white youth, and are detained at six times the rate of white youth.¹²³ Black youth stayed longer in detention than white youth – on average seven days longer.¹²⁴ And Black youth were placed as state wards at three times the rate of white youth.¹²⁵

In sum, after a year of study, the task force learned some about our current system, which included highlights of innovative and evidence-based programs happening around the state.¹²⁶ In addition to revealing a dearth of statewide data, the task force discovered that young people’s experience with the juvenile court could best be described as “justice by geography;” formal court systems were heavily used for low-risk youth as well as non-person misdemeanor and status offense cases; pretrial detention was used for many reasons other than public safety or flight risk; and our youth justice system was characterized by tremendous racial disparity, among other things.

119. See Brookland, *supra* note 114.

120. OFF. OF JUV. JUST. & DELINQ. PREVENTION, ALTERNATIVES TO DETENTION AND CONFINEMENT 1 (2014), https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/alternatives_to_detection_and_confinement.pdf [<https://perma.cc/XH7T-L57P>] (stating that out-of-home secure detention may do more harm than good for juveniles and community-based interventions may be more effective).

121. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 7.

122. *Id.* at 10.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.* at 6.

B. Task Force Recommendations for Change

In July 2022, the task force made thirty-two recommendations for change.¹²⁷ These recommendations were almost all unanimous. These recommendations covered (broadly) the structure of the juvenile court system, diversion, court process, out of home placement, provision of indigent defense, data, and equity.¹²⁸ The recommendations had exceptions to ensure respect and compliance with tribal sovereignty.

A number of the recommendations sought to remedy the lack of statewide guidance or technical support for local jurisdictions.¹²⁹ These recommendations proposed changing certain funding incentives, enhancing the state-funded service reimbursement, setting up a new Juvenile Justices Services Division within the SCAO, and expanding the Michigan Indigent Defense Commission to include oversight and compliance of youth defense standards.¹³⁰ The SCAO should, among other things and in partnership with local communities, set up statewide, evidence-based probation standards and guidelines specific to juvenile court.¹³¹

The recommendations sought to align pre-court division and consent calendar with research and developmental science by using risk-screening tools and expanding the diversion act to cover all but the most serious enumerated offenses.¹³² Youth charged with status offense would be referred, pre-petition, for a validated risk screening and, if low risk, diverted to community programs or services.¹³³ Validated risk and needs assessment should also be done prior to disposition and used by parties to determine appropriate dispositions.¹³⁴ Similarly, a validated tool should be used prior to detention decisions and detention should be used for public safety reasons¹³⁵ and not, for example, for need-based reasons such as behavioral health treatment. The task force recommended that the factors for traditional

127. *Id.* at 12–20.

128. *See generally* MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 12–20.

129. *See id.* at 12–13.

130. *Id.*

131. *Id.* at 16.

132. *Id.* at 14.

133. *Id.* at 15.

134. *Id.* at 15–16.

135. *Id.* at 17–18.

waiver¹³⁶ and designation¹³⁷ account for youth developmental maturity and the rehabilitation available in the juvenile court.¹³⁸

The task force recommended eliminating court fines and fees, except for restitution or a fee related to the Crime Victims Fund,¹³⁹ and restricting the ability of the court to extend community supervision for restitution collection.¹⁴⁰

Out of home placements in Michigan were, at the time of the task force review, particularly under pressure. The task force recommendations sought to update the licensing and service standards for placements based on contemporary research and trauma-informed practices,¹⁴¹ and they sought to set a baseline, statewide, case management standard to guide post disposition placement.¹⁴² The task force sought to establish a cross-system case review team for youth in detention waiting for placement or in placement for longer stretches, to work to identify community options and optimal usage of limited facility space.¹⁴³ Two other recommendations would set up an administrative process and staff to make sure that youth leaving detention or long-term

136. MICH. COMP. LAWS § 712A.4 (2024). As one mechanism to charge children in adult criminal court, Michigan has traditional waiver that allows judges in juvenile court to waive jurisdiction upon motion of the prosecutor for juvenile defendants who are 14 or older and could have been charged in adult criminal court. In addition to waiver, prosecutors in Michigan can directly file criminal charges in adult court for youth who are 14 or older and who are alleged to have committed a list of enumerated offenses. *Id.* § 712A.2(a)(1) (giving juvenile court jurisdiction only if prosecutor files in juvenile court); MICH. COMP. LAWS. § 600.606 (2021) (giving circuit court jurisdiction in these instances).

137. *Id.* § 712A.2d. Designation in Michigan is where the child's proceedings are still held within the family division, but the child's case is otherwise "designated" as that of an adult, with the same procedural protections and resulting criminal conviction. The sentencing court has available both juvenile court and adult court sentencing options, unlike if the child is, for example, automatically charged in criminal court as an adult.

138. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 17.

139. *Id.*

140. *Id.*

141. *Id.* at 18.

142. *Id.* at 19. These standards would include "ongoing use of risk and needs assessments, service delivery, behavioral health treatment, family/team meetings, dual ward policies, and reentry planning processes." *Id.*

143. *Id.* This recommendation would set this short-term committee up through the residential advisory commission and would target youth in detention longer than 30–60 days awaiting placement and youth in facilities longer than 9–12 months. *Id.*

facilities have timely Medicaid reinstatement¹⁴⁴ and would give MDHHS authority to adjust per diem rates and other aspects of service agreements.¹⁴⁵

The task force also recommended funding and developing programmatic alternatives to detention.¹⁴⁶

The only recommendation that was not unanimous was the recommendation to set thirteen as the minimum age for juvenile court jurisdiction.¹⁴⁷ In Michigan, under current law, there is no jurisdictional minimum age and the age of presumed competence to proceed in the juvenile court is ten years old.¹⁴⁸ Recognizing that there was a need to address competency, but also not unanimous agreement about the appropriate age, the task force recommended that the age of presumed competence align with the minimum age of jurisdiction.

A few of the recommendations addressed the systematic, statewide gaps across youth justice-related systems, including a recommendation regarding standardized data collection and sharing;¹⁴⁹ setting statewide definitions and protocols to capture information about race, ethnicity, and tribal affiliation of justice; the creation of a public equity dashboard to track progress;¹⁵⁰ and quality assurance and training regarding data quality.¹⁵¹

144. *Id.* The coverage gaps created by Medicaid's failure to cover young people and adults in detention are significant, and a product of federal law. Elaine M. Albertson et al., *Eliminating Gaps in Medicaid Coverage During Reentry After Incarceration*, 110 AM. J. PUB. HEALTH 317, 317 (2020); Mira K. Edmonds, *The Reincorporation of Prisoners into the Body Politic: Eliminating the Medicaid Inmate Exclusion Policy*, 28 GEO. J. ON POVERTY, L. & POL'Y 279, 279 (2021).

145. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 19. This recommendation's goal is to allow MDHHS to have some flexibility in response to bed shortages, staff retention issues, and gaps in services. *Id.*

146. *Id.* at 18 (recommendation 22). Alternatives could include short-term shelters, respite care, and in home detention.

147. *Id.* at 14. See generally Destiny G. Tolliver et al., *Setting a Minimum Age for Juvenile Justice Jurisdiction in California*, 175 AM. MED. ASS'N 665, 665 (2017) (outlining the negative impact of incarceration on children and families); AM. ACAD. OF PEDIATRICS ET AL., HEALTH GROUP STATEMENT OF SUPPORT FOR INSTITUTING A MINIMUM AGE OF JURISDICTION FOR JUVENILE JUSTICE INVOLVEMENT (2021), <https://downloads.aap.org/AAP/PDF/JJMinimumAgeHealthGroupStatement.pdf> [<https://perma.cc/46ZJ-W7FL>]; see also Travis Wilson, *From the Playhouse to the Courthouse: Indiana's Need for a Statutory Minimum Age*, 53 IND. L. REV. 433, 433 (2021) (stating that 28 states do not have a minimum age and advocating one for Indiana).

148. MICH. COMP. LAWS § 330.2062(1) (2013) ("10 years of age or older is presumed competent to proceed unless the issue of competency is raised by a party.").

149. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 16. Sub-recommendations would expand court's ability to dismiss felony offenses for youth deemed incompetent, as well as improve ability to fund competency evaluations and restoration treatment. *Id.*

150. *Id.* at 20.

151. *Id.*

The recommendations recognized that some of the challenges required more sustained attention and long-term analysis. For example, a statewide residential advisory committee was proposed, as well as cross-systems and cross-government youth services committees to improve access to and availability of services for at-risk young people.¹⁵² As another example, with respect to charging and convicting children as adults, the task force recommended a statewide committee on juvenile waivers, to review data on the use of waivers and national best practices and make further recommendations.¹⁵³ Finally, the task force recommended a youth and family advisory group to inform policy change and resource allocation.¹⁵⁴

C. Resulting Legislation

A package of bills encapsulating the more structural aspects of the task force recommendations, as well as many of the key provisions, was introduced into the state house in May 2023¹⁵⁵ and the state senate in June 2023.¹⁵⁶ The bills drew bipartisan support and had both Republican and Democratic sponsors.¹⁵⁷ The resulting legislation passed both chambers of the state legislature in November 2023 and was signed on December 12, 2023, by Lt. Governor Garlin Gilchrist II.¹⁵⁸ The bills set to accomplish many of the statewide structural changes recommended by the task force and also needed to provide a framework for other reforms.

The new laws include changing the juvenile funding stream to incentivize community placement and the use of evidence-based risk assessment tools at significant decision points, the elimination of all non-restitution juvenile court

152. *Id.* at 13–14.

153. *Id.* at 17.

154. *Id.* at 20.

155. H.B. 4627, 102d Leg., Reg. Sess. (Mich. 2023), <https://www.legislature.mi.gov/documents/2023-2024/billintroduced/House/pdf/2023-HIB-4627.pdf> [<https://perma.cc/9ZY3-K6AK>].

156. S.B. 423, 102d Leg., Reg. Sess. (Mich. 2023), <https://www.legislature.mi.gov/documents/2023-2024/billintroduced/Senate/pdf/2023-SIB-0423.pdf> [<https://perma.cc/T7VE-3KEG>].

157. See *id.*; H.B. 4627; see also Press Release, Mich. House Republicans, House Approves Rep. Lightner’s Plan to Improve Michigan’s Juvenile Justice System (Oct. 17, 2023), <https://gophouse.org/posts/house-approves-rep-lightners-plan-to-improve-michigans-juvenile-justice-system> [<https://perma.cc/7FFH-PUV9>] (touting the passage of Republican Representative Lightner’s youth reform plan); Anna Liz Nichols, Michigan House Passes Bipartisan Bills Aimed at Improving Juvenile Justice System, MICH. ADVANCE (Oct. 17, 2023, 7:49 PM), <https://michiganadvance.com/2023/10/17/michigan-house-passes-bipartisan-bills-aimed-at-improving-juvenile-justice-system/> [<https://perma.cc/Y6GY-T4WX>].

158. Press Release, Exec. Off. of the Governor, Lt. Governor Gilchrist Signs Bipartisan Bills Reforming Michigan Juvenile Justice System (Dec. 12, 2023), <https://www.michigan.gov/whitmer/news/press-releases/2023/12/12/gilchrist-signs-bipartisan-bills-reforming-michigans-juvenile-justice-system> [<https://perma.cc/79ZQ-PJDU>].

finances and fees, the expansion of diversion to all but a limited set of offenses and limits on the time spent in diversion, and the expansion of our state appellate public defender to cover state youth appeals.

One key provision would shift financial incentives to provide greater support for community-based programming for youth, so that counties are reimbursed 75% for community-based services, up from the existing 50/50 split between state and counties for all services.¹⁵⁹ Other keystone new laws require adoption of validated risk and needs assessment tools to guide diversion and consent calendar, decisions on detention-screening, development of research-based juvenile probation standards, informed use of the assessment tool before disposition, and court consideration of the results of the assessment when imposing disposition.¹⁶⁰

An additional set of new laws would expand the Juvenile Diversion Act so that most offenses are eligible for pre-court diversion, base diversionary decisions on the use of a risk screening tool and other factors.¹⁶¹ A diversion agreement must not exceed three months, unless a longer period is needed for a specific treatment program.¹⁶²

Another series of bills would eliminate nearly all fines and costs for juvenile court,¹⁶³ including the cost of court-appointed counsel¹⁶⁴ and cost of out of home placement,¹⁶⁵ and would explicitly bar previously-imposed assessments for diversionary programs, community service, DNA assessments,¹⁶⁶ “minimum state costs,” and other commonly imposed juvenile court fees.¹⁶⁷ One of these bills still provides for restitution and orders that 100% of money collected from a child or family first goes to victim payments.¹⁶⁸ Reforming the state juvenile justice funding structure increased reimbursements to local jurisdictions, alleviating concerns about reduced county revenues from eliminating fines and fees.

159. Social Welfare Act, H.B. 4624, 102d Leg., Reg. Sess. (Mich. 2023), <https://www.legislature.mi.gov/documents/2023-2024/billintroduced/House/htm/2023-HIB-4624.htm> [<https://perma.cc/3JH2-KVRU>].

160. S.B. 418, 102d Leg., Reg. Sess. (Mich. 2023); S.B. 421, 102d Leg., Reg. Sess. (Mich. 2023); *see also* H.B. 4627, 102d Leg., Reg. Sess. (Mich. 2023); S.B. 422, 102d Leg., Reg. Sess. (Mich. 2023); SENATE FISCAL AGENCY, SENATE STAFF SUMMARY, S.B. 418 & 421 (Mich. 2023) (providing a fiscal and legislative analysis).

161. H.B. 4626, 102d Leg., Reg. Sess. (Mich. 2023); S.B. 419, 102d Leg., Reg. Sess. (Mich. 2023).

162. H.B. 4626; S.B. 419.

163. *See* H.B. 4634, 102nd Leg. Reg. Sess. (Mich. 2023).

164. *Id.*; *see* S.B. 428, 102nd Leg. Reg. Sess. (Mich. 2023).

165. S.B. 428.

166. *See* H.B. 4635, 102nd Leg. Reg. Sess. (Mich. 2023) (eliminating a \$60 fee for DNA collection).

167. *See, e.g.*, H.B. 4636, 102nd Leg. Reg. Sess. (Mich. 2023) (eliminating late fees).

168. *See* S.B. 428.

While the task force did not propose in-depth changes to waiver and transfer, the one change that was implemented was a requirement that, in assessing the factors for whether a child should be designated to be tried as an adult or waived to adult court, the court “shall consider” the youth’s “developmental maturity, emotional health and mental health,” the juvenile’s amenability to treatment and programming available in the youth justice system, and tribal membership.¹⁶⁹ The bill also eliminated a criticized “catch all” provision that allowed the court to consider under prior delinquency, “including, but not limited to, any record of detention, any police report, any school record, or any other evidence indicating prior delinquent behavior” and replaced it with “record of delinquency that would be a crime if committed by an adult.”¹⁷⁰

The new laws would also establish a process for handling, investigating, and reporting issues in juvenile facilitates through a newly named Office of the Child Advocate,¹⁷¹ an independent agency tasked to review actions of the DHHS; create residential facilities providing juvenile justice services; and ensure compliance with relevant law and procedure.¹⁷²

A bill that allowed existing adult appellate indigent defense services to represent youth appealing from their delinquency matters also passed.¹⁷³ However, the one proposed reform that was introduced but that did not pass the legislature was the expansion of the adult indigent trial defense system to provide statewide standards and training for youth indigent defense.¹⁷⁴

IV. WHERE WE ARE AND WHERE WE ARE GOING: THE ROAD AHEAD

A. *The Road Ahead to Implementation*

While the passage of a groundbreaking set of statutory changes was one finish line, now the hard work begins with implementation. After the new bills, Michigan is looking at (1) structural support, which did not previously exist, for implementing the changes; (2) the next wave of proposed changes in areas where solutions are longer-term and not yet fully developed; and (3)

169. H.B. 4633, 102nd Leg. Reg. Sess. (Mich. 2023).

170. *Id.* (amending Chapter XIIA, Sec 2d(2)(c)).

171. *See* H.B. 4638, 102nd Leg. Reg. Sess. (Mich. 2023); S.B. 432, 102nd Leg. Reg. Sess. (Mich. 2023).

172. *See* H.B. 4638; S.B. 432; *see also* H. FISCAL AGENCY, LEGISLATIVE ANALYSIS: OFFICE OF THE CHILD ADVOCATE, (Mich. 2023) (state legislature’s analysis of House Bills related to the Office of the Child Advocate).

173. *See* H.B. 4631, 102nd Leg. Reg. Sess. (Mich. 2023); S.B. 425, 102nd Leg. Reg. Sess. (Mich. 2023).

174. *See* H.B. 4630, 102nd Leg. Reg. Sess. (Mich. 2023); S.B. 424, 102nd Leg. Reg. Sess. (Mich. 2023).

re-examining areas that were recommended but left out of the first package of bills.

1. Structural Support

To achieve effective implementation, a key task is putting support structures in place for statewide reform. For example, an advisory committee, overseen by staff of the MDHSS, will play a crucial role in supporting the implementation of reforms in Michigan's juvenile justice system. Tasked with enhancing the Child Care Fund, the primary state funding source for juvenile justice, this Child Care Fund Advisory Committee will help set up a statewide framework of best practices which includes creating the policies and practices to support increasing the reimbursement rate for in-home and community-based services. The committee's responsibilities encompass revising administrative rules, streamlining the annual budgeting process, overhauling onsite review procedures, and evaluating programs for Child Care Fund eligibility.¹⁷⁵ These efforts are integral to ensuring that funding and support mechanisms are aligned with the broader goals of juvenile justice reform, focusing on rehabilitation and community-based services.

A group to ensure cross-system collaboration and communication for the implementation of the Juvenile Justice Reform Task Force recommendations was also set up. The Michigan Juvenile Justice Partnership Committee, formed through a collaboration between the Michigan Supreme Court and the Department of Health and Human Services, brings together a diverse group of stakeholders, including jurists, court administration, prosecuting and defense attorneys, education professionals, families with lived experience, private agencies, and law enforcement, focused on joint planning and coordination of efforts to fully implement the Task Force's recommendations and will coordinate with the other existing workgroups and committees focused on implementation.¹⁷⁶

As mentioned earlier, some of the recommendations were self-consciously aware that the state does not yet have all the information needed given the complexity of the problem. In Michigan, the myriad issues around residential placement are certainly an example of this. The problem is multifaceted. The state should consistently narrow the door to out of home placement, instead of filling our placements with low-risk young people who

175. MICH. DEPARTMENT OF HEALTH & HUM. SERS., CHILD CARE FUND HANDBOOK 2 (2023), <https://www.michigan.gov/mdhhs/doing-business/child-care-fund> [<https://perma.cc/WA3K-2S8D>].

176. This comprehensive approach is expected to take between 18 to 24 months. The committee also has three sub-workgroups focused on training; data and quality assurance; and updating court policies and procedures in line with the new reforms.

have committed status offenses and misdemeanors and/or who have behavioral health needs but are not a public safety risk.¹⁷⁷ The state should also create safe placements that provide education, therapy and rehabilitation for our young people, and have adequate trained staff for these residential facilities.¹⁷⁸ And, whereas right now, young people languish in detention centers for months or more waiting for a placement, the state needs a coordinated plan for timely placement of young people.

A few months after the task force recommendations were issued, the governor appointed the Juvenile Residential Facilities Advisory Committee, a two-year group, which, like the task force, contained an array of stakeholders.¹⁷⁹ The committee was tasked with reviewing licensing standards, training and length of stay guidelines, and case management standards, and recommending baseline standards as well as criteria to measure progress.¹⁸⁰

While this committee was working, Michigan had a series of incidents that re-highlighted the need for change in detention and placement in the detention center in Wayne County, which is Michigan's largest county. A series of complaints about conditions led to a move to a different facility, but complaints persisted and, in early 2023, a twelve-year-old youth was sexually assaulted and another youth "beaten so badly that he was hospitalized after he blacked out."¹⁸¹ The county executive declared a public health emergency at the facility, which was at over two times its capacity. The state took control of the facility in March 2023, ended supervision when the county reduced youth and increased staff, then re-resumed monitoring.¹⁸² State investigators also found that children were denied meals, lacked clean clothes and underwear, and endured feces on air vents for a housing pod for over three

177. See MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 8 (showing that, for kids where risk assessments were available, over 60% of the youth in child caring institutions and state placements were low or moderate risk).

178. See *id.* at 9 (noting structural problems, such as sufficient staff and staff expertise, as concerns with residential placements).

179. EXEC. OFF. OF THE GOVERNOR, EXEC. ORD. 2022-14: JUVENILE RESIDENTIAL FACILITIES ADVISORY COMMITTEE (Oct. 20, 2022).

180. See *id.*

181. Christine MacDonald, *Michigan Takes Action Against Wayne County Juvenile Jail After Violations*, DETROIT FREE PRESS (Nov. 2, 2023, 11:10 AM), <https://www.freep.com/story/news/local/michigan/wayne/2023/11/02/michigan-wayne-county-juvenile-jail-violations/71419640007/> [<https://perma.cc/95UA-6Z7P>].

182. See Kara Berg, *Nurses Say They Were Fired for Reporting Poor Conditions at Wayne Co. Juvenile Detention*, DETROIT NEWS, (Dec. 28, 2023, 12:02 PM), <https://www.detroitnews.com/story/news/local/wayne-county/2023/12/28/lawsuit-nurses-fired-for-reporting-issues-at-wayne-juvenile-detention/72040661007/> [<https://perma.cc/8Y6L-2RHE>].

months.¹⁸³ A few months later, another sexual assault occurred.¹⁸⁴ In October, the facility lost its license and was placed on a provisional license.

This need for continued study and collaboration going forward is to be expected. In some states, the federal Office of Juvenile Justice and Delinquency Prevention funded technical assistance to help implement reforms.¹⁸⁵ As an example, Hawai'i also engaged in continued training, including on mental health, and on its risk assessment tool.¹⁸⁶

2. *Recommendations Still to be Implemented*

Two recommendations of the task force are, as of yet, not implemented, and are worth further discussion, as they highlight the challenges that remain to systemic reform.

The first is youth indigent defense reform. The task force recommended expanding Michigan's adult indigent defense commission to "include development, oversight and compliance with youth defense standards in local county defense systems."¹⁸⁷ Michigan's indigent defense system for both youth and adults is county-based, but the adult system has a statewide body that promulgates minimum standards, monitors compliance, and provides training and technical assistance.¹⁸⁸ The recommendation would have brought the youth system into that same structure, with attention to developmental and other special considerations for youth. This recommendation was included in the series of bills introduced to the legislature.¹⁸⁹ Although this recommendation passed the state house it did not, unlike the other bills, pass

183. See Andres Gutierrez, *Violations mire Wayne County Juvenile Detention Center, License to Operate is in Jeopardy*, CBS DETROIT (Oct. 18, 2023, 5:38 PM), <https://www.cbsnews.com/detroit/news/violations-mire-wayne-county-juvenile-detention-center-license-to-operate-is-in-jeopardy/> [<https://perma.cc/G67B-M85G>].

184. See *id.*

185. See Remigio, *supra* note 17, at 9 (stating that Hawaii was one of three states in 2015 to received technical assistance funded by OJJDP for implementation of state juvenile legislative reform).

186. *Id.*

187. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 13.

188. See H.B. 4630, 102nd Leg. Reg. Sess. (Mich. 2023); S.B. 424, 102nd Leg. Reg. Sess. (Mich. 2023).

189. See, e.g., H.B. 4630; H.B. 4631, 102nd Leg. Reg. Sess. (Mich. 2023); S.B. 424; S.B. 425, 102nd Leg. Reg. Sess. (Mich. 2023); see also Anna Liz Nichols, *Bipartisan Lawmakers Introduce Youth Indigent Defense Bills*, MICH. ADVANCE (May 30, 2023, 4:21 AM), <https://michiganadvance.com/2023/05/30/bipartisan-lawmakers-introduce-youth-indigent-defense-bills/> [<https://perma.cc/V7LY-R7P7>].

the state senate. Following the legislative session, a number of organizations have advocated for its passage next session.¹⁹⁰

In contrast with the indigent defense reform, which was widely expected to occur, the state is unlikely to tackle reform around minimum age. Michigan, like about half of the states, currently has no minimum age of juvenile court jurisdiction.¹⁹¹ While international standards, such as those adopted by the United Nations, put the minimum age at fourteen,¹⁹² U.S. organizations have recommended minimum ages that range from twelve to fourteen years old.¹⁹³ In Michigan, the minimum age of juvenile court jurisdiction was recommended to be set at thirteen years old, with exceptions for youth committing the most serious enumerated offenses.¹⁹⁴ A “consensus” recommendation, no bills or other reform actions have yet addressed the lower end of juvenile court jurisdiction.

V. CONCLUSION

Both substantively and procedurally, Michigan’s process is representative of those in which significant reforms occur. Procedurally, states have required an intentional reform structure, involving the coordination and expertise of bipartisan think tanks. The technical and research expertise of CSG, or similar organizations, is invaluable. Of course, their knowledge will need to be contextualized for any particular jurisdiction, and each state and local system has its unique challenges. Yet, this non-profit support is essential; states and their relevant departments do not have the capacity to keep up with social science and criminal justice research, expertise in data collection and analysis,

190. See, e.g., State Bar of Michigan, *State Bar of Michigan Urges Additional Action on Juvenile Justice Reform*, STATE BAR OF MICH. (Dec. 11, 2023), <https://www.michbar.org/news/newsdetail/State-Bar-of-Michigan-Urges-Additional-Action-on-Juvenile-Justice-Reform?nid=6006> [<https://perma.cc/8ZMQ-2NJJ>] (describing joint letter urging the Senate to vote on the recommendation when it returns in January).

191. *Raising the Minimum Age for Prosecuting Children*, NAT’L JUV. JUST. NETWORK, <https://www.njjn.org/our-work/raising-the-minimum-age-for-prosecuting-children> [<https://perma.cc/NG2Y-SQ3R>] (last updated June 2023) (stating that 24 states have no minimum age).

192. See United Nations Convention on the Rights of the Child, General Comment No. 24 (2019) on children’s rights in the child justice system, U.N. Doc. C/GC/24 (Sep. 18, 2019) at 22 (encouraging nations to increase their minimum age of criminal responsibility to 14).

193. See, e.g., *Health Group Statement of Support for Instituting a Minimum Age of Jurisdiction for Juvenile Justice Involvement*, AM. ACADEMY OF PEDIATRICS, <https://downloads.aap.org/AAP/PDF/JJMinimumAgeHealthGroupStatement.pdf> [<https://perma.cc/A8Q4-G52A>] (last updated Aug. 16, 2021) (recommending a minimum age of at least 12 years old); Amanda Robert, *ABA House Addresses Treatment of Children and Youths in Pair of Resolutions*, ABA J. (Aug. 10, 2021, 12:22 PM), <https://www.abajournal.com/news/article/resolutions-505-and-506-aba-house-addresses-treatment-of-children-and-youth-in-pair-of-resolutions> [<https://perma.cc/CW65-KUPM>] (urging laws that raise the minimum age to fourteen years old).

194. MICH. TASK FORCE ON JUV. JUST. REFORM, *supra* note 76, at 14.

or ability as an outsider to work collaboratively with the broad range of stakeholders. Some reforms are outside the capacity of the states to change.¹⁹⁵

One laudable aspect of Michigan's recent process that was not strong in many prior reform efforts has been the emphasis on including the voices of people who have been impacted by the juvenile system; people who went through the system as juveniles and parents of youth who were court both involved. The task force included both an "individual who has lived experience as a justice-involved youth in Michigan" and a person with "lived experience as a parent or guardian" of such a youth.¹⁹⁶ The residential advisory committee that followed also included the possibility of a person with lived-experience being appointed.¹⁹⁷ Of the stakeholder interviews and listening sessions held by the task force, four listening sessions were dedicated to hearing the perspectives of court-involved youth and families.¹⁹⁸

Substantively, many of the reforms in Michigan align with prior reforms in other states,¹⁹⁹ especially the emphasis on evidence-based risk and needs assessments to inform decision-making. Others such as the elimination of fines and fees are ahead of the curve and look toward the future of juvenile justice. And the state still lags behind in other areas. Michigan made strides in the treatment of status offenses, but unlike some states which have eliminated juvenile court involvement for non-criminal acts,²⁰⁰ Michigan retained status offenses and, while it narrowed the ability to detain or place kids for non-criminal acts, Michigan did not eliminate it. Despite indigent defense being one of the limitations studied prior to our task force, our youth defense system is still currently characterized by a county-based system without any state standards and which provides its staff with lower paid and less training than the adult indigent defense system.

Michigan's journey through juvenile justice system reform illustrates a steadfast commitment to reshaping a system that is more developmental,

195. One, nearly uniformly maligned, federal law is the exclusion of children in detention and placement from Medicaid coverage, and the lack of continuity of care that the exclusion causes.

196. EXEC. OFF. OF THE GOVERNOR, EXEC. ORD. 2021-6L TASK FORCE ON JUVENILE JUSTICE REFORM (June 9, 2021).

197. *See id.* (listing positions appointed member may include); *see also* Press Release, Exec. Off. of the Governor, Gov. Whitmer, Lt Gov. Gilchrist Announce Appointments to Juvenile Residential Facilities Advisory Committee (May 9, 2023) (appointing Cole Williams, who was also a task force member, and who was a parent of a child in the juvenile system).

198. *See* Michigan Juvenile Justice Task Force, March 21, 2022, meeting PowerPoint (reporting on the takeaways from the listening sessions) (on file with author).

199. *See generally* Mark Soler et al., *Juvenile Justice: Lessons for a New Era*, 16 GEO. J. ON POVERTY L. & POL'Y. 483, 483 (2009).

200. *See, e.g.*, H.B. 1035, 67th Leg. Reg. Sess. (N.D. 2021) (decriminalizing "unruly behavior," relabeled these youth "children in need of services," and developed a referral to human services networks instead of court referral, starting in August 2022).

equitable, and effective. Through comprehensive analyses and the collaborative efforts of diverse stakeholders, Michigan has laid the groundwork for transformative changes that promise to serve its young people better. It is evident that while challenges remain, the path forward is marked by innovative approaches informed by evidence and community engagement. Michigan's experience not only sheds light on the complexities of systemic reform but also offers valuable insights for other jurisdictions aiming to undertake similar efforts. Embracing these changes is essential for building a juvenile justice system that upholds the principles of fairness, rehabilitation, and the potential for positive youth development. Michigan's reform story, though punctuated with trials, stands as an example of progress and a testament to the power of collective action and reformatory justice.