

2016

Chaining Kids to the Ever Turning Wheel: Other Contemporary Costs of Juvenile Court Involvement

Candace Johnson

Mae C. Quinn

University of Florida Levin College of Law, mae.quinn@law.ufl.edu

Follow this and additional works at: <https://scholarship.law.ufl.edu/facultypub>

 Part of the [Courts Commons](#), [Juvenile Law Commons](#), and the [Law and Race Commons](#)

Recommended Citation

Candace Johnson & Mae C. Quinn, *Chaining Kids to the Ever Turning Wheel: Other Contemporary Costs of Juvenile Court Involvement*, 73 Wash. & Lee L. Rev. Online 159 (2016)

This Article is brought to you for free and open access by the Faculty Scholarship at UF Law Scholarship Repository. It has been accepted for inclusion in UF Law Faculty Publications by an authorized administrator of UF Law Scholarship Repository. For more information, please contact kaleita@law.ufl.edu.

Chaining Kids to the Ever Turning Wheel: Other Contemporary Costs of Juvenile Court Involvement

Candace Johnson* & Mae C. Quinn**

Abstract

In this essay, Candace Johnson and Mae Quinn respond to Tamar Birckhead’s important article The New Peonage, based, in part, on their work and experience representing youth in St. Louis, Missouri. They concur with Professor Birckhead’s conclusions about the unfortunate state of affairs in 21st century America—that we use fines, fees, and other prosecution practices to continue to unjustly punish poverty and oppressively regulate racial minorities. Such contemporary processes are far too reminiscent of historic convict leasing and Jim Crow era efforts intended to perpetuate second-class citizenship for persons of color. Johnson and Quinn add to Professor Birckhead’s critique by further focusing on the plight of children of color and surfacing non-financial sanctions in our juvenile courts that similarly marginalize minority youth. They argue these practices—including shackling, intentional and unintentional shaming, and educational deprivation—also work to reproduce a secondary caste in communities across the country.

Table of Contents

I. Introduction	160
II. Shackled.....	162

* JD Candidate, 2017, Washington University School of Law; Rule 13 Student Attorney, Juvenile Law and Justice Clinic.

** Inaugural Director, MacArthur Justice Center at St. Louis; Former Professor of Law and Director, Juvenile Law and Justice Clinic, Washington University School of Law. Our thanks to our colleague Alona Sistrunk for editorial assistance.

III. Shamed	165
IV. Unschooled.....	170
V. Conclusion.....	173

I. Introduction

In her powerful article, *The New Peonage*,¹ Professor Tamar Birkhead masterfully mounts a convincing case that financial sanctions in today’s criminal justice system work to create a modern slave-like situation.² Similar to what was seen in the Jim Crow days of convict leasing, indigent defendants desperately try to work off court fines, fees, and restitution amounts to avoid imprisonment.³ However, vulnerable populations—all too often persons of color—are seldom able to satisfy the seemingly insatiable wants of their judicial overseers.⁴ As a result of their inability to extract themselves from the “ever-turning wheel of servitude,”⁵ they are jailed and imprisoned as a punishment for their poverty.⁶

Beyond painting a grim picture within our criminal courts, Birkhead sheds alarming light on how the same practices are frequently visited upon youth—in both our state juvenile and local municipal courts.⁷ Her historically rooted account shows how children, too, are subjected to modern indentured servitude through court orders mandating satisfaction of money debts for

1. Tamar R. Birkhead, *The New Peonage*, 72 WASH. & LEE L. REV. 1595 (2015).

2. *See id.* at 1626–63 (discussing the burdens imposed by legal financial obligations).

3. *See id.* at 1657–58 (“Under both the old and the new forms of peonage, the criminal justice system itself is complicit in their continued operation . . . Both the old and the new forms of peonage perpetuate the essence of involuntary servitude.”).

4. *See id.* at 1628 (observing the socioeconomic realities of many criminal defendants).

5. *Id.* at 1607.

6. *See id.* at 1628–29, 1643–49 (discussing the stories of those impacted, both directly and collaterally, by legal financial obligations).

7. *See id.* at 1641–47 (arguing that the new peonage brings not only economic hardships, but other intangible costs to children).

alleged wrongdoing.⁸ Although they are not old enough to buy cigarettes, lease an apartment, or sign a contract for a car,⁹ juveniles are routinely required to make regular monetary payments to ensure their freedom.¹⁰ When they do not, not only might their parents be held to account, but such children might also find themselves with extended probation terms or possibly denied liberty because of their poverty.¹¹ Here, too, Birckhead explains that kids of color are disproportionately impacted by this renewed peonage penalty scheme.¹²

As unacceptable as these sentences are when visited upon adults, they are even more reprehensible when applied to adolescents. Yet, few are aware of the extent and impact of these allegedly “rehabilitative” juvenile justice interventions used across the country, which Birckhead helped to surface with her important work. In fact, for a range of reasons—from the double-edged sword of confidential courts to the lack of court-appointed lawyers for kids—these and other dehumanizing sanctions have developed under the radar.¹³ Unchecked and unchallenged, such

8. See *id.* at 1643–49 (detailing the economic pressures suffered by children and families within the criminal justice system).

9. See, e.g., CHILDREN’S ACTION ALLIANCE, PROSECUTING JUVENILES IN THE ADULT CRIMINAL JUSTICE SYSTEM: KEY ISSUES AND RECOMMENDATIONS FOR ARIZONA 9 (2003) (noting the sad irony of sentencing children as adults when they are not old enough to legally enter into a contract); *The Need for Change*, FAIR SENTENCING FOR YOUTH, <http://fairsentencingforyouth.org/get-the-facts/the-need-for-change> (last visited May 7, 2016) (describing how children in California, who are not old enough to vote or even buy cigarettes, may be saddled with the same criminal responsibility as adults) (on file with the Washington and Lee Law Review).

10. See Birckhead, *supra* note 1, at 1641 (discussing one teenager who was required to make “monthly restitution payments of \$100”).

11. See *id.* at 1646 (noting that juvenile defendants “are frequently left with significant user fees, which can lead to incarceration for failure to pay, to appear in court, or to comply with probation”).

12. See *id.* at 1661 (observing that “large percentages of low-income juveniles of color are particularly vulnerable to criminal-justice debt”).

13. See Mark Solar & Amy Breglio, *Confidentiality Laws: Protection for Kids or Cloak of Secrecy for Agencies?*, ABELL REP., May 2010, at 1–10 (discussing the downsides and unintended consequences of confidentiality in the juvenile justice system); NAT’L JUV. DEFENDER CTR. & CENT. JUV. DEFENDER CTR., MISSOURI: JUSTICE RATIONED 33–35 (2013) [hereinafter JUSTICE RATIONED] (reporting on historic funding challenges facing the Missouri public defender system and the impact on the number defense attorneys in juvenile courts).

practices continue unabated without sufficient concern for the long-term implications for already at risk youth.

Here we join with Professor Birckhead in calling for reform of largely unregulated juvenile justice practices that perpetuate second-class citizenship. Based on our work representing Missouri youth—primarily kids of color—we highlight a different set of contemporary costs of court involvement. Specifically, this essay bears witness to the ways in which juvenile justice systems can work to subjugate an entire population of children through actual bondage, public disgrace, and denial of educational services.

II. Shackled

In 1967, when the U.S. Supreme Court decided *In Re Gault*,¹⁴ it noted that in order to adhere to the history and purpose of the juvenile court, “[t]he child was to be ‘treated’ and ‘rehabilitated’ and the procedures, from apprehension through institutionalization, were to be ‘clinical’ rather than punitive.”¹⁵ Yet, in many juvenile courts today, children are automatically shackled when moved throughout the juvenile court building with no regard for age, offense, history of aggression, or mental health status.¹⁶ Not only do such actions adversely impact the accused children who are forced to wear such chains, they can traumatize parents, unfairly influence judges, undermine the goals of the juvenile justice system, and contribute to a history of second-class citizenship in this country.

A far cry from *Gault*’s notion of “clinical,” the practice of shackling profoundly and adversely impacts children who come in contact with juvenile courts.¹⁷ Children feel degraded and

14. 387 U.S. 1 (1967).

15. *Id.* at 15–16.

16. See *Campaign Against Indiscriminate Juvenile Shackling*, NJDC, <http://njdc.info/campaign-against-indiscriminate-juvenile-shackling> (last visited May 7, 2016) [hereinafter *Juvenile Shackling*] (discussing the problem of “automatic” and “indiscriminate” shackling) (on file with the Washington and Lee Law Review).

17. See *id.* (“The indiscriminate shackling of youth unnecessarily humiliates, stigmatizes, and traumatizes them.”).

confused while they are chained.¹⁸ Such experiences can also negatively impact children in the long-term, disrupting their healthy psychological development and instilling feelings of distrust towards government and courts.¹⁹

Parents are similarly traumatized by the shackling experience. Sometimes without warning, their child might walk into the hearing room wearing chains at their ankles and wrists. Seeing their children physically restrained in this way can be “profoundly painful” for parents—particularly as it can make it impossible for parents to embrace their children.²⁰ Yet this practice sometimes continues throughout the prosecution process and at each subsequent hearing.

While the Supreme Court has not directly addressed the lawfulness of shackling in juvenile court, it has discouraged the practice in adult criminal proceedings.²¹ For instance, in *Illinois v. Allen*,²² the Court cautioned, “no person should be tried while

18. See Leah Rabinowitz, Comment, *Due Process Restrained: The Dual Dilemmas of Discriminate and Indiscriminate Shackling in Juvenile Delinquency Proceedings*, 29 B.C. THIRD WORLD L.J. 401, 410 (2009) (“Shackled juveniles suffer embarrassment and humiliation, particularly when surrounded by strangers in the court gallery Exceptionally young juveniles have been shackled, and often experience intense confusion at the experience.”).

19. The National Juvenile Defender Center has compiled affidavits from a range of youth development and other experts substantiating the negative impact of such practices. One such expert, clinical psychologist Marty Beyer, finds that children who have been shackled feel “ashamed” and may carry such negative self-impressions—and negative impressions of the “justice system”—long after the courtroom experience. *Affidavit of Dr. Marty Beyer*, NJDC (2015), <http://njdc.info/wp-content/uploads/2014/09/Beyer-Affidavit-w-CV-Jan-2015-Final.pdf>. Beyond the individual child, this also has important policy implications as studies show that “children are more likely to comply with the court and less likely to reoffend when they perceive that the system treats them fairly.” NAT’L JUV. DEFENDER CTR., CAMPAIGN AGAINST INDISCRIMINATE JUVENILE SHACKLING 3 (2016).

20. *Affidavit of Dr. Gwen Wurm*, NJDC (2015), <http://njdc.info/wp-content/uploads/2015/01/Gwen-Wurm-full-shackling-affidavit-Jan-2015.pdf>. In one case we handled, one parent broke into tears upon seeing one of her neighbor’s children—a friend of her son—moved through the court hallway in leg and wrist irons.

21. See, e.g., *Deck v. Missouri*, 544 U.S. 622, 624 (2005) (holding that blanket policies requiring all criminal defendants to appear in court while shackled are impermissible).

22. 397 U.S. 337 (1970).

shackled and gagged except as a last resort.”²³ The Court further explained that “not only is it possible that the sight of shackles and gags might have a significant effect on the jury’s feelings about the defendant, but the use of this technique is itself something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold.”²⁴ The same concerns apply in the juvenile court context, even if a jury is not present.

Presenting a child in shackles paints a vivid picture of criminality and likely impacts the perceptions of the judges, the ultimate decision makers in juvenile court. Placing children in an unnecessarily negative light, these non-evidentiary influences work to undermine the American promise of the presumption of innocence that exists even in child prosecution proceedings.²⁵ Thus, deploying such practices before adjudication can deny juveniles their right to a fair trial.²⁶

In addition to impacting individual youth and system stakeholders, the practice of shackling actually undermines the integrity of the entire juvenile justice system. That is because one of the main stated purposes of juvenile courts is youth rehabilitation.²⁷ But there is nothing about shackling that is rehabilitative, uplifting, or age-appropriate. Instead, the indiscriminate use of hand and leg irons reflects a singular vision for the prosecution of adults and children alike, without any concern for the supposed specialized goals, purposes, or principles underlying the juvenile justice system.²⁸

23. *Id.* at 344.

24. *Id.*

25. *See In re Winship*, 397 U.S. 358, 365 (1970) (finding that for juveniles, like adults, the state has the burden of proving each element of the offenses beyond a reasonable doubt); *see also In re Gault*, 387 U.S. 1, 41 (1967) (conferring protection of the Bill of Rights and the Fourteenth Amendment upon juveniles when the right in question is of a fundamental nature).

26. *See Allen*, 397 U.S. at 344 (explaining that it is possible that the sight of shackles and gags might have a significant effect on the jury’s feelings about the defendant).

27. *See supra* notes 22–26 (citing cases discussing the rehabilitative purposes of the juvenile justice system).

28. *See Juvenile Shackling, supra* note 16 (arguing that child shackling “draws into question the rehabilitative ideals of the juvenile court”).

Finally, like the “new peonage” practices described by Professor Birkhead,²⁹ current shackling practices cannot help but invite comparisons to the history of slavery in the United States. For example, in the 1800s, slaves were chained not only as a means of control, but as a way to reinforce their inferior status in the community.³⁰ More than a century later, juvenile court shackling reifies the idea that court-involved children—largely children of color—are violent, scary, and should be marginalized and controlled using the most severe methods.³¹ And as they are led down courthouse hallways wearing visible symbols of bondage they frequently pass by peers, strangers, and other members of the community. Thus a very clear narrative and message is left behind—one that is deeply reminiscent of our country’s shameful commitment to a caste system for persons of color.³²

III. Shamed

Unfortunately, shackling is not the only way that the juvenile court process shames children. During proceedings, a wide array of otherwise private, largely irrelevant, and prejudicial information may be presented in court in a manner that can feel gratuitous, stigmatizing, and judgmental. Intimate and potentially embarrassing family histories are highlighted without sufficient regard for the privacy of the family and feelings of the accused child. Probation officer reports may

29. See generally Birkhead, *supra* note 1 (discussing the similarities between the modern criminal justice system and slavery).

30. See Adjoa A. Aiyetoro, *Why Reparations to African Descendants in the United States Are Essential to Democracy*, 14 J. GENDER RACE & JUST. 633, 648 (2011) (noting that “shackles . . . visibly placed Africans in an unequal, inferior position as related to whites”).

31. See *Affidavit of Dr. Gwen Wurm*, *supra* note 20 (noting that the image of someone shackled is meant to convey a sense of danger); see also Perry L. Moriearty, *Framing Justice: Media, Bias, and Legal Decisionmaking*, 69 MD. L. REV. 849, 850–52 (2010) (calling attention to the impact and continuing prevalence of the “superpredator” myth perpetuated by modern media).

32. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010) (discussing Jim Crow laws and analogizing them to the realities of the modern criminal justice system).

describe whether a child's mother is married, how many different men had fathered her children, and if the children were born out of wedlock. These reports might also contain the "criminal" history of the child's parents, outlining everything from past drug use to outstanding traffic tickets.³³

Not only is this type of information frequently irrelevant and gratuitously prejudicial, it shames youth and diminishes their character in ways that go beyond the alleged delinquent act.³⁴ More importantly, such issues are not only raised in terms of treatment and therapeutic needs; instead, they may be used directly and indirectly to justify detention or out-of-court surveillance of a child.³⁵ Thus "unfavorable" family dynamics can both stigmatize and penalize children—all too frequently youth of color—before issues of guilt are even resolved.³⁶

Past educational performance, poor grades, and school disciplinary records are also surfaced in ways that can demoralize youth during court proceedings. While a child is in front of a judge for an alleged recent crime, probation reports might dredge up all manner of long-since-past school suspensions, detentions, and referrals. Sometimes the alleged school misconduct is not criminal at all; in fact, it reflects a manifestation of an

33. Of course these family histories are written from the perspective of the teller—in our experience, probation officers who may not be sufficiently attentive to the negative impact these reports have on families and their feelings towards the court system. *See generally* EVA J. KLAIN & AMANDA R. WHITE, IMPLEMENTING TRAUMA INFORMED PRACTICES IN CHILD WELFARE (2013) (calling on all court professionals who work with children to become better attuned to the traumas they may have previously suffered).

34. *See, e.g.*, JOHN MCDOWELL & BOB HOSTETLER, HANDBOOK ON COUNSELING YOUTH 212 (1996) (discussing the impact that information shared in juvenile court proceedings may have on youths).

35. *See* Anna Maria Barry-Jester et al., *The New Science of Sentencing*, MARSHALL PROJECT (Aug. 4, 2015, 7:15 AM), <http://www.themarshallproject.org/2015/08/04/the-new-science-of-sentencing#.thfQ3qM0W> (last visited May 7, 2016) (questioning the propriety of discerning future risk of an accused based on their family background or socio-economic status) (on file with the Washington and Lee Law Review).

36. *See* JESSICA SHORT & CHRISTY SHARP, DISPROPORTIONATE MINORITY CONTACT IN THE JUVENILE JUSTICE SYSTEM 13–14 (2005) (describing how family history as a juvenile court detention factor results in over-representation of youth of color); ANGÈLE CHRISTIN ET AL., COURTS AND PREDICTIVE ALGORITHMS 6 (2015) (raising concerns about certain applied risk factors amounting to little more than proxies for race).

undiagnosed disability or merely age-appropriate horseplay.³⁷ Yet such school-related offenses might be used to suggest criminal propensity on the part of the child without regard for weight of the evidence, context, his or her right to privacy, or the lawfulness underlying school disciplinary proceedings.³⁸ Thus such information not only works to make the child feel bad about him or herself, but might amount to an end-run around constitutional protections.

Unfortunately, shaming practices do not stop at the courthouse doors. Children are subjected to post-disposition and

37. See PACER CTR., STUDENTS WITH DISABILITIES AND THE JUVENILE JUSTICE SYSTEM: WHAT PARENTS NEED TO KNOW 3 (2013) (discussing “several school-related factors that make an arrest more likely for inappropriate, nonviolent behaviors that are often typical of a student’s disability”). This is especially concerning given the current school-to-prison pipeline trend. See *Policy Agenda: School-to-Prison Pipeline*, AFC, http://www.advocatesforchildren.org/policy_and_initiatives/policy_agenda/school_to_prison_pipeline (last visited May 7, 2016) (reporting that many youths are suspended for low-level misbehaviors) (on file with the Washington and Lee Law Review). Reports show that children of color are disproportionately impacted by harsh school discipline policies. See U.S. DEP’T OF EDUC., DIRECTORY OF FEDERAL SCHOOL CLIMATE AND DISCIPLINE RESOURCES 5 (2014) (advising “school staff to apply school discipline policies, practices, and procedures in a fair and equitable manner that does not disproportionately impact students of color”). And in the St. Louis region, this might begin at a very early age and stage in the education process. See Elisa Crouch, *Rash of Elementary Schools Suspensions in St. Louis Area Are a Pipeline to Problems*, ST. LOUIS POST-DISPATCH (Mar. 22, 2015), http://www.stltoday.com/news/local/education/rash-of-elementary-school-suspensions-in-st-louis-area-are/article_5efb0738-fda9-5532-b48b-eaae17f5f659.html (last visited May 7, 2016) (“Among those punished are kindergartners who bite. Preschoolers with toileting mishaps during nap time. Second-graders who throw snowballs. They also include children who commit more serious offenses, such as starting fights with classmates and carrying illegal drugs in their backpacks.”) (on file with the Washington and Lee Law Review).

38. See, e.g., *Goss v. Lopez*, 419 U.S. 565, 583 (1975) (declining to construe “the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident”); see also *New Jersey v. T.L.O.*, 469 U.S. 325, 328 (1985) (ruling that, as opposed to probable cause, “the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search”); *Commonwealth v. Snyder*, 597 N.E.2d 1363, 1369 (Mass. 1992) (“The *Miranda* rule does not apply to a private citizen or school administrator who is acting neither as an instrument of the police nor as an agent of the police pursuant to a scheme to elicit statements from the defendant by coercion or guile.”).

alternative release tactics in the community that reinforce, disgrace, and publically signal their involvement with the system. For example, many children are released from detention with global positioning surveillance (GPS) monitors strapped to their ankles.³⁹ These monitors often serve as a large, uncomfortable, and visible sign of youthful court involvement. They track children wherever they go—including when attending confidential meetings with their attorneys—sending alerts to probation staff if the child has gone outside of a permitted perimeter.⁴⁰ These monitors have come to replace pre-trial release on recognizance as the default rule. Thus, GPS bracelets are the go-to choice among many juvenile courts, regardless of the low-level nature of the charge or a child's risk of flight.⁴¹

Most children are still expected to attend school, play sports, and engage in community programming while out on a GPS bracelet.⁴² Yet they carry a weighty—and sometimes noisy—physical intrusion on their body, which serves as a stigmatizing reminder to everyone around them that they have a court case.⁴³ Moreover, the burden and shame of being forced to wear a monitor also may serve as an unfairly coercive incentive to take a guilty plea when juveniles are made to believe that after a guilty

39. See Kate Weisburd, *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 IOWA L. REV. 297, 299–300, 316 (2015) (cataloging the many unintended consequences and costs of electronic monitoring devices used by juvenile courts); see also, e.g., ST. LOUIS FAMILY COURT—JUVENILE DIVISION, DETENTION ALTERNATIVES PROGRAM 2 (2014) (providing GPS monitoring as an alternative to detention).

40. See Weisburd, *supra* note 39, at 330 (“Not only is the visibility of the device stigmatizing, it undermines the confidentiality of juvenile court proceedings. The device announces to teachers, coaches, friends, and community members the youths’ status as delinquent.”).

41. See Sayre Quevedo, *Double Charged: Teens on House Arrest on GPS*, MARKETPLACE ONLINE (May 8, 2014, 11:00 AM), <http://www.marketplace.org/2014/05/08/economy/double-charged-teens-house-arrest-gps> (last visited May 7, 2016) (reporting that juvenile court attorneys believe GPS bracelets are used far too often) (on file with the Washington and Lee Law Review); Weisburd, *supra* note 39, at 306 (referring to electronic monitoring as “the new normal”).

42. In some places, youth are also expected to pay for the privilege of wearing such devices. See Quevedo, *supra* note 41 (reporting that GPS “devices cost families up to \$15 a day”).

43. See *id.* (recounting one youth’s feelings of shame while wearing the bracelet with shorts).

plea the bracelet—as an alternative to pre-trial detention—will be removed. And, here again, the historic corollary of markings upon, and strict management of, youth of color is hard to ignore.⁴⁴

And it is not just bracelets that mark youth in the public school setting—but visitors too. In many places, probation staff and law enforcement engage in random, unannounced, and unwarranted visits to schools to check on court-involved kids.⁴⁵ Sometimes these visits are intended to save the youth the trouble of a trip to the courthouse. Other times they are made in the hopes of catching the youth out of class. Either way, these visits can be embarrassing, disruptive, and further label youth as delinquent to their peers and community.⁴⁶

For many students, school is a safe place where they can escape some of the stress and strife at home or in the community.⁴⁷ But this feeling of sanctity and security can be undermined by open visits by court staff. Despite the promised confidentiality of juvenile proceedings,⁴⁸ many youth are confronted—and even arrested—in front of their teachers and

44. See Weisburd, *supra* note 39, at 303 (“For African-American and Latino youth, who are already overrepresented in the juvenile justice system, electronic monitoring is part of what sociologist Victor Rios calls the ‘youth control complex,’ a system of constant surveillance in which every day youthful behavior is viewed as potentially criminal.”); see also Leonard Hoenig, *The Branding of African American Slaves*, 148 JAMA DERMATOLOGY 271, 271 (2012) (noting that the “branding of African American slaves was widespread and was performed either for identification purposes or as a punishment”).

45. See, e.g., IACP, PROBATION AND PAROLE: A PRIMER FOR LAW ENFORCEMENT OFFICERS 5 (2010) (discussing a program that “pairs one probation officer with two police officers, who then make unannounced visits to the home, workplace, or school of juvenile probationers”).

46. Cf. VICTOR RIOS, PUNISHED: POLICING THE LIVES OF BLACK AND LATINO BOYS 86 (2011) (describing the unintended consequences of holding probation meetings in public spaces with court-involved youth, including further stigmatization of youth of color).

47. See, e.g., Bill Zeeble, *In this Dallas School, A Safe Space for Homeless Kids*, KERA NEWS (May 19, 2015), <http://stories.kera.org/homeless-in-high-school/2015/05/19/in-this-dallas-school-a-safe-space-for-homeless-kids> (last visited May 7, 2016) (discussing a school that specializes in “homeless outreach efforts”) (on file with the Washington and Lee Law Review).

48. See *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 107 (1979) (Rehnquist, J., concurring) (noting that it “is a hallmark of our juvenile justice system in the United States” that proceedings are conducted outside of the public’s full gaze and youth brought before the juvenile courts have been shielded from publicity).

peers.⁴⁹ These practices are embarrassing, unnecessary, and potentially violative of youth privacy and federal educational rights.⁵⁰

IV. *Unschooling*

Beyond deploying probation staff and law enforcement into public schools to locate—and ultimately humiliate—court involved youth, juvenile courts frequently engage in practices that actually deny proper educational services to youth. Much has been written about the so-called school to prison pipeline—where school discipline policies result in youth being arrested on campus and funneled into courts for prosecution.⁵¹ But less has been said about a related reciprocal problem—where juvenile courts affirmatively remove prosecuted children from their local schools, provide them with substandard educational services while in detention or “treatment,” and then undermine their long-term success through a lack of educational reentry support.

Most children detained in juvenile court pending trial are not only removed from their family home, but also their local school. First, in Missouri, the Safe Schools Act allows public schools to deny youth educational services altogether based solely on

49. Sadly, sometimes these in-school arrests occur because of alleged school misconduct. *See, e.g.,* Udi Ofer, *Criminalizing the Classroom: The Rise of Aggressive Policing and Zero Tolerance Discipline in New York City Public Schools*, 56 N.Y.L. SCH. L. REV. 1373, 1374 (2011/2012) (discussing schools that “rely on student removals and referrals to the juvenile and criminal justice systems to handle school disciplinary problems, including for non-dangerous and non-criminal offenses”). Thus a child may be pulled from school and placed in detention for the “crime” of not taking full advantage of his educational services.

50. *See* AKIVA M. LIBERMAN ET AL., LABELING EFFECTS OF FIRST JUVENILE ARREST: SECONDARY DEVIANCE AND SECONDARY SANCTIONING 6 (2014) (observing that “school exclusionary policies and practices” can result in “an increased likelihood of high school dropout and diminished prospects for going to college . . . , thereby leading to a higher likelihood of future criminality”); *see also* JOSEPH B. TULMAN et al., SPECIAL EDUCATION ADVOCACY UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) FOR CHILDREN IN THE JUVENILE DELINQUENCY SYSTEM 68 (1998) (arguing that “the overriding principle that governmental intrusions require reasonable suspicions particularized to an individual person arguably controls all other instances of governmental intrusions upon students’ privacy within the public schools”).

51. *See generally* Policy Agenda: School-to-Prison Pipeline, *supra* note 37 (providing information on the phenomenon of the school-to-prison pipeline).

certain allegations—even if the alleged crime was not committed on school grounds and remains unproven.⁵² Frequently a prosecutor has options when faced with alleged facts and can choose—or not—to paper a case in such a way to implicate a possible Safe Schools Act exclusion from services. However, in our experience, we have seen little in the way of lenity when it comes to charging cases in such a way as to minimize educational collateral consequences. Instead, we hear juvenile prosecutors using the possibility of Safe Schools Act suspensions as a way of justifying secure pretrial detention. And, even when a charge does not implicate the Safe Schools Act, when a court orders pretrial secure detention it usually results in a child being withdrawn from their local school for at least thirty days until the case is resolved and he or she may be released from the detention center.

Thus, beyond being forced to lay his head down at night inside of a cement cell, a child in juvenile detention is denied community-based school options—even if he has an individualized special education plan in place—and instead receives educational services within the confines of the detention center. The quality of such services runs the gamut across the country—from some programs being called simply atrocious to others that strive to do the best they can to provide grade-level work.⁵³ However, almost all deny children the same curriculum they would receive if allowed to continue in their zoned school and deliver lessons in a setting that is less than ideal for learning.⁵⁴

52. See Mae C. Quinn, *The Other “Missouri Model”: Systemic Juvenile Injustice in the Show Me State*, 78 MO. L. REV. 1194, 1210 (2013) (noting that “a young person who merely has a petition filed against him for certain offenses—even if those offenses are alleged to have occurred nowhere near a school—may still face the collateral consequence of being removed from school in districts that read the provisions broadly”).

53. See, e.g., DIGNITY IN SCHOOLS CAMPAIGN, *THE RIGHT TO EDUCATION IN THE JUVENILE AND CRIMINAL JUSTICE SYSTEMS IN THE UNITED STATES* 8–11 (Dec. 31, 2008) (discussing the quality of education in various juvenile detention facilities).

54. See, e.g., COUNCIL FOR STATE GOVERNMENTS JUSTICE CENTER, *LOCKED OUT: IMPROVING EDUCATIONAL AND VOCATIONAL OUTCOMES FOR INCARCERATED YOUTH* 14 (Nov. 2015) (“The survey findings presented in this report demonstrate that many states are struggling to ensure that incarcerated youth are afforded access to the same educational and vocational services as their

For instance, some youth we have represented in the St. Louis region have reported receiving worksheets in detention that are disconnected from their prior course of study. Others have complained about being taught in groups with children both significantly younger and older than they are. And almost all report that the detention center classroom is a difficult learning environment, as many young people are distracted by their own liberty deprivation—or suffer because of the actions of other students who may be acting out due to stress, trauma, or other reasons.

We have received even worse reports from youth placed in drug treatment programs while awaiting resolution of their charges or as a condition of probation. In such placements, students have reported receiving word puzzles as schoolwork or “packets” of assignments without accompanying instruction. Others have indicated they were allowed to access on-line learning programs. But here, too, it seemed such tutorials were generally self-directed and lacked sufficient grounding in sound educational practices.

Perhaps worse yet, countless parents reported that they were unable to have their children receive course credit for the work done in court-placement—whether returning to the community from detention centers or drug treatment facilities. For some, issues seemed to flow from the child being placed outside of the county of residence for treatment. For others, the placement’s educational work simply did not qualify for credit. And some families report being given such a run-around by the different actors on both ends of the equation that they simply gave up the fight. Thus, already at-risk youth are frequently left further behind in school than when they entered the juvenile justice system, given the lack of meaningful educational re-entry services.⁵⁵ And rather than being rehabilitated by these “treatment” programs, they find themselves paying the price of being educationally discredited by the system.⁵⁶

peers in the community.”).

55. See *supra* notes 51–52 and accompanying text (discussing the frequent inability of juveniles to return to their local school post-detention).

56. With regard to youth drug courts in particular, where substance abuse treatment is the focal point, recent studies have shown they are actually counterproductive to youth rehabilitation and success. See LESLI BLAIR ET AL.,

V. Conclusion

Professor Birkhead is correct in calling for reform of juvenile justice practices that create a new peonage system through financial sanction of children and their families. This is one of the many ways our contemporary juvenile justice system works to perpetuate second-class citizenship for poor youth and youth of color in this country. Such practices are injurious departures from the juvenile system's purpose of restoring and uplifting youth in need.

Just months away from the fiftieth anniversary of the *Gault* decision, we must seriously rethink the range of reflexive practices in our juvenile courts that are anything but rehabilitative or supportive. We must release children from the ever-turning wheel that—whether purposely or unintentionally—degrades and disgraces through actual bondage, public humiliation, and denial of educational services. We can no longer expect vulnerable youth to pay the price for our lack of understanding or imagination when it comes to addressing their needs. At this historic moment, the costs for them—and our country—are just too great.

U.S. DEP'T OF JUST., OFF. OF JUV. JUST. & DELINQ. PREVENTION, JUVENILE DRUG COURTS: A PROCESS, OUTCOME, AND IMPACT EVALUATION 1 (2015) (“[T]here is still cause for concern about whether these [juvenile drug] courts follow evidence-based practices and how they may lead to counterproductive outcomes, such as increased referral and detention rates.”). Thus, such specialty courts are no response to the problems that currently exist in the juvenile justice system.