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# Youth Justice in Wisconsin: A Clear Perspective

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The **Lutheran Office for Public Policy in Wisconsin (LOPPW)** is an advocacy ministry of the Evangelical Lutheran Church in America (ELCA) and represents the coordinated witness of the ELCA on issues of public policy advocacy in the state of Wisconsin. LOPPW's ministry is expressed through a partnership of the World Hunger Program and the six ELCA synods with congregations in Wisconsin.



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## **Youth Justice in Wisconsin: A Clear Perspective**

The Lutheran Office for Public Policy in Wisconsin is working to improve our state's inadequate juvenile justice system and ensure all of our state's young people have the resources and rehabilitative programming to avoid incarceration or justice-involvement altogether.

Emboldened by our ELCA Social Statements and driven by our call to care for all of God's creation, our office works to ensure everyone, especially our children, should be treated with dignity, empathy, and justice. As Lutherans, we should do all we can to equip God's children to live out their full potential, and that starts with improving Wisconsin's youth justice system and improving outcomes for those who are justice-involved.

However, before we can start to analyze youth justice policy or advocate for juvenile justice reform, it is important to learn more about what drives youth in the justice system and who justice-involved youth are. Many of the current problems with our juvenile justice and adult corrections systems stem from caricaturizing justice-involved youth and why many are committing crimes. We harken back to the 1990's "superpredator" language vilified that youth in the justice system and neglected the systemic deficiencies that have led to the current mass incarceration crisis. Unwilling to repeat this same mistake, we start this report by learning more about those currently in our juvenile corrections and gaining a clear perspective on what drives youth into the justice system.

### **Who Are the Children in Our Juvenile Justice System?**

So let's start by briefly learning more about who is being swept into the youth justice system and who are being incarcerated in our juvenile corrections facilities. In 2019 there were over 10,000 youth referred to the youth justice system across the state. How did they end up being referred to the youth justice system, and what underlying factors pushed them towards criminality? A quick analysis of quantitative and qualitative research reveals some startling trends among youth who commit crimes and become adjudicated in the justice system.

***Have a History of Trauma.*** There is a common thread that ties many justice-involved youth: trauma. Most of the youth brought into the justice system come from homes or backgrounds filled with trauma and violence. The Wisconsin Department of Children and Families reports that 4 out of 5 children referred to the youth justice system in 2019 had previous

contact with Child Protective Services.<sup>1</sup> Of those with prior CPS contact, over 80% had had at least one screened-in CPS involvement, meaning the state assessment had found probable cause of abuse or neglect towards the child. In concrete terms, this means between 64% and 80% of youth who are referred to the justice system have a history of trauma, abuse, or neglect.<sup>2</sup> Unfortunately, national studies and surveys, particularly those that track trauma using the popular Adverse Childhood Experiences (ACES) model reinforce the bond between trauma and justice involvement. A comprehensive study of over 64,000 justice-involved youth found that those in the youth justice system were more than 12 times more likely to have experienced an Adverse Childhood Experience compared to the general youth population.<sup>3</sup> The same study found that youth in the justice system were four times more likely to have an ACES score of 4 or more, which puts them in the “high risk” category.<sup>4</sup> These ACEs scores are significant: those in the high risk category were four times more likely to be a smoker, seven times more likely to become an alcoholic, and 12 times more likely to commit.<sup>5</sup> The connection is clear: experiencing trauma funnels children into the youth justice system.

In addition to previous contact with the Child Protective Services and a background of trauma, we find a disproportionate number of youth in the justice system have a history of out-of-home care placement by the state. Children who have experienced out-of-home placements, which includes foster homes, group homes, shelters, and other accommodations away from the family home, are exponentially more likely to end up in the youth justice system compared to the general population. Despite accounting for a tiny fraction of the total Wisconsin youth population, an astounding 17% of youth in the juvenile system has a background in out-of-home care placement.<sup>6</sup> Simply put, there is a direct and powerful tie between an unstable, abusive, or trauma-filled background with becoming justice-involved.

***Struggle with Mental Health Challenges.*** Unfortunately, trauma and adverse childhood experiences aren’t the only external forces pushing young people into the juvenile court system; there is a startling correlation between being in juvenile detention and having a mental health challenge. The Wisconsin State Department of Corrections both that 100% of females at the Copper Lake youth correctional facility and 86% of males at Lincoln Hills have a mental health condition.<sup>7</sup> The National Alliance on Mental Health reports that close to 1 in 6 youth aged 6-17

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<sup>1</sup> Wisconsin Youth Justice Referrals and Intakes (2021, January). *Wisconsin Department of Children and Families*. <https://dcf.wisconsin.gov/files/cwportal/yj/pdf/yj-referrals-intake-rpt.pdf>

<sup>2</sup> *Wisconsin Youth Justice Referrals and Intakes* (2021, January).

<sup>3</sup> Baglivio, Michael T., Epps, Nathan, et. al. (2014). The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders. *Journal of Juvenile Justice*. [https://www.prisonpolicy.org/scans/Prevalence\\_of\\_AC.pdf](https://www.prisonpolicy.org/scans/Prevalence_of_AC.pdf)

<sup>4</sup> Baglivio, Michael T., Epps, Nathan, et. al. (2014).

<sup>5</sup> Take the ACES test for yourself here: <https://developingchild.harvard.edu/media-coverage/take-the-ace-quiz-and-learn-what-it-does-and-doesntmean/#:~:text=An%20ACE%20score%20is%20a,health%20problems%20later%20in%20life.>

<sup>6</sup> *Wisconsin Youth Justice Referrals and Intakes* (2021, January).

<sup>7</sup> Division of Juvenile Corrections (2020, November). Corrections at a Glance. *Wisconsin Department of Corrections: Division of Juvenile Corrections*. [https://doc.wi.gov/DataResearch/DataAndReports/DJCA\\_tAGlance.pdf](https://doc.wi.gov/DataResearch/DataAndReports/DJCA_tAGlance.pdf)

experience a mental health challenge, which means that Wisconsin youth in juvenile detention are roughly 5-6 times more likely to have a mental health challenge compared to the general youth population.<sup>8</sup>

***Often Struggle with Poverty.*** Available research and data tells us that, on a national level, poverty is one of the greatest predictors of juvenile justice system involvement.<sup>9</sup> Although “few juvenile courts formally keep track of the income-level of a youth’s family [income], jurisdictions that do so have confirmed that nearly sixty percent of families of justice-involved youth were either on public assistance or had annual incomes of less than twenty thousand dollars [in 2011 dollars]. Another twenty percent had incomes of less than thirty thousand dollars.”<sup>10</sup> Poverty and juvenile justice system involvement are closely linked. There are many contributing factors that experts cite to help explain this connection.

First, children from low-income households are more likely to be referred to Child Protective Services, which, as mentioned above, exponentially grows that child’s chance of landing in the youth justice system. While this is statistically true, research is also quick to point out that “rates of child abuse and neglect are, in fact, similar across socioeconomic lines but that suspected child maltreatment in low-income families is reported more frequently to CPS because the poor have more contact with are under greater scrutiny from individuals who are legally mandated reporters.”<sup>11</sup> Secondly, children raised in poverty are more likely to experience trauma and adverse childhood experiences (ACE), so much so that medical journals have argued that poverty is in itself a form of trauma.<sup>12</sup> Because trauma has a direct tie to juvenile justice system involvement, poverty once again proves to be a root cause of justice involvement for young people.

Third, being subjected to poverty as a child increases that child’s susceptibility to a whole host of obstacles and problems, which only heightens their chances of falling into the youth justice system. For example, experiencing poverty as a child can increase susceptibility to behavioral and emotional issues, ADHD, anxiety, depression, and others issues.<sup>13</sup> Conditional environments associated with poverty create other problems. For example, exposure to lead through paint and water pipes can lead to irreversible damage to brain development, the nervous system, and kidneys in children. Finally, children in poverty are more likely to attend underfunded or under resourced schools, where school administrators are unable to provide

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<sup>8</sup> National Alliance on Mental Health (n.d.) *Mental Health by the Numbers*. <https://www.nami.org/mhstats>

<sup>9</sup> Rekker, Roderik, Pardini, Dustin, et. al. (2015). *Moving in and out of Poverty: The Within-Individual Association between Socioeconomic Status and Juvenile Delinquency*. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4648521/>

<sup>10</sup> Birckhead, Tamar R. (2012, January). Delinquent by Reason of Poverty. *Washington University Journal of Law & Policy*. [https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1015&context=law\\_journal\\_law\\_policy](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1015&context=law_journal_law_policy)

<sup>11</sup> Birckhead, Tamar R. (2012, January).

<sup>12</sup> Hughes, Michelle, and Tucker, Whitney (2018, March). Poverty as an Adverse Childhood Experience. *North Carolina Medical Journal*. <https://www.ncmedicaljournal.com/content/79/2/124>.

<sup>13</sup> *Effects of Poverty, Hunger, and Homelessness on Children and Youth* (2009). American Psychology Association. [https://www.apa.org/pi/families/poverty#:~:text=Children%20living%20in%20poverty%20are,\(ADHD\)%20and%20conduct%20disorder.](https://www.apa.org/pi/families/poverty#:~:text=Children%20living%20in%20poverty%20are,(ADHD)%20and%20conduct%20disorder.)

individualized care or adequately respond to misbehavior. Because of these school's disadvantages, "the vast majority of low-income children attend public elementary, middle, and high schools in which disciplinary policies criminalize the same behavior that is addressed internally at private schools" or other well-funded schools.<sup>14</sup> As a result, these students are treated less like children and more like future criminals, as "acts that may have resulted in an adolescent being sent to the principal's office now end up in juvenile court charged as disorderly conduct or vandalism." The problems with criminalizing children within the school walls is only exacerbated when we recognize that "school administrators often fail to identify poor and minority children as having special education needs and impose punitive sanctions for misbehavior that is a manifestation of their disability, rather than implement an individualized behavior management plan."<sup>15</sup> Simply put, children in poverty often attend schools which are under resourced, unable to identify children with disabilities or mental health challenges, and strictly criminalize misbehavior. As discussed later, these factors all contribute to the school-to-prison pipeline.

Unfortunately, there are other causal factors that connect poverty to justice involvement among our state's young people. Addressing poverty is one of the best ways to increase public safety and decrease justice involvement among our state's youth.

***Are Disproportionately Youth of Color.*** Unfortunately, children in Wisconsin's juvenile justice system are disproportionately children of color. While black youth only constitute 11.2% of the Wisconsin youth population, the Department of Children and Families report that they make up almost one quarter of the youth justice referrals.<sup>16</sup> However, the disparities grow when we look at youth in juvenile detention. For example, black boys make up 73% of the population in Division of Juvenile Corrections supervision.<sup>17</sup> Native American youth, who constitute 2% of the youth justice population, are also disproportionately represented by youth justice referrals (5.6% of referrals). The Sentencing Project found that Wisconsin has the third highest racial disparity in our youth justice system in the country.<sup>18</sup> "These disparities are not only caused by differences in offending" writes Josh Rovner of The Sentencing Project, "but also by harsher enforcement and punishment of youth of color."<sup>19</sup> White youth are less likely to be arrested than youth of color and they are also more likely to be referred out of juvenile justice system if they are arrested.<sup>20</sup> Youth of color, on the other hand, are "more likely to be detained pre-adjudication

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<sup>14</sup> Birckhead, Tamar R. (2012, January).

<sup>15</sup> Birckhead, Tamar R. (2012, January).

<sup>16</sup> *Wisconsin Youth Justice Referrals and Intakes* (2021, January). Wisconsin Department of Children and Families. <https://dcf.wisconsin.gov/files/cwportal/yj/pdf/yj-referrals-intake-rpt.pdf>

<sup>17</sup> *State of Wisconsin Department of Corrections* (2020, May). Corrections at a Glance. [www.doc.wi.gov/Pages/DataResearch/DataAndReports](http://www.doc.wi.gov/Pages/DataResearch/DataAndReports).

<sup>18</sup> Rovner, Josh (2021, Feb. 3). Racial Disparities in Youth Incarceration Persist. *The Sentencing Project*. <https://www.sentencingproject.org/publications/racial-disparities-in-youth-incarceration-persist/>

<sup>19</sup> Rovner, Josh (2021, Feb. 3).

<sup>20</sup> *Wisconsin Youth Justice Referrals and Intakes* (2021, January). Wisconsin Department of Children and Families. <https://dcf.wisconsin.gov/files/cwportal/yj/pdf/yj-referrals-intake-rpt.pdf>

and committed post adjudication. They are also less likely to be diverted from the system. These patterns hold across a range of offenses.”<sup>21</sup> Finally, youth of color are more likely to be held in secure confinement: while black youth comprise 23% of youth referred to the youth justice system, they represent roughly 70% of the 2020 population of Lincoln Hills and Copper Lake.<sup>22</sup>

Unfortunately, this means Wisconsin is sweeping youth of color into the juvenile justice system and juvenile detention at disproportionate rates. Because youth who experience juvenile detention are less likely to finish high school and significantly more likely to recidivate compared to youth in community-based programs or rehabilitative counseling, the racial disparities in our youth justice system lay the groundwork for disturbing racial disparities in our adult corrections system. Unfortunately, this has already come to bear: Wisconsin has the second highest black/white disparity in incarceration rates among all fifty states. When black youth are more likely to be arrested, adjudicated, and held in confinement, it creates compounding downstream effects that exacerbate and all but guarantees that racial disparities will persist in the adult system.

## **Conclusion**

To summarize, youth that become involved with the juvenile justice system are more likely to have a background of trauma or abuse, suffer from mental health challenges, come from low-income or struggling families, and are disproportionately youth of color. These drivers into the youth justice system reinforce our philosophy that we need to address the underlying causes of youth incarceration to ensure less children are becoming justice-involved in the first place. It also underpins the responsibility we have to create a youth justice system that takes a rehabilitative lens instead of a punitive one. The juvenile justice system should be a place where we can address underlying trauma, identify and treat mental health challenges, and provide the opportunities and resources for youth to grow into productive, healthy, successful adults. Unfortunately, however, Wisconsin’s justice system often falls short of this ideal.

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<sup>21</sup> Rovner, Josh (2021, Feb. 3). Racial Disparities in Youth Incarceration Persist. *The Sentencing Project*. <https://www.sentencingproject.org/publications/racial-disparities-in-youth-incarceration-persist/>

<sup>22</sup> Division of Juvenile Corrections (2020, November). Corrections at a Glance. *Wisconsin Department of Corrections: Division of Juvenile Corrections*. <https://doc.wi.gov/DataResearch/DataAndReports/DJCA tAGlance.pdf>

## **In Dire Need of Reform**

Clearly, youth who become justice-involved often that have unique needs and challenges which drive them to the justice system. When we recognize and properly address these needs, we can improve outcomes for justice-involved youth and for our rest of our state. However, Wisconsin's current youth justice system is falling short due to abusive environments for our kids, outdated and expensive correctional facilities, and a lack of effective programming.

### **Our Youth Justice System Hurts Our Kids**

While there are a number of structural deficiencies and pitfalls in Wisconsin's juvenile justice, the most glaring and striking problems stem from the long history of abuse, trauma, and neglect at Wisconsin's largest juvenile detention complex: Lincoln Hills School and Copper Lake School. A systematic evaluation of Wisconsin's youth justice system cannot occur without mentioning the disturbing patterns of abuse at these detention centers. The following summary is not exhaustive, but instead provides a brief overview of abuse and trauma at these juvenile detention centers.

***Abuse and Trauma at Wisconsin Correctional Facilities.*** The Wisconsin juvenile justice system was ripe for abuse and maltreatment.<sup>23</sup> As far back as 2007, the U.S. Department of Justice discovered "that Wisconsin was submitting fraudulent reports to the Justice Department" regarding the state's juvenile detention centers.<sup>24</sup> This discovery prompted a six year investigation that found that Wisconsin was not properly monitoring and supervising their state's juvenile facilities. This neglect led to a rise in abuse and maltreatment, which was centered on Lincoln Hills and Copper Lake. In 2011, Racine County case workers discovered an incident of trauma and neglect so egregious that Racine Circuit Court Judge Richard Kreul directed his county to no longer send any juveniles to Lincoln Hills and Copper Lake.<sup>25</sup> For a full recount of this particularly abhorrent incident of violence and neglect, see "Racine County Pulled youths from Lincoln Hills because of botched case."<sup>26</sup> Judge Kreul described the events as "shocking" and "absolutely inexcusable" in his letter to then-Governor Walker. Governor Walker claimed to have not seen the letter.<sup>27</sup>

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<sup>23</sup> Milwaukee Journal Sentinel (n.d.) *How the Lincoln Hills Crisis Unfolded*. <https://projects.jsonline.com/topics/lincoln-hills/timeline/>

<sup>24</sup> Daprile, Lucas. (2015, August 8). *Federal Freeze on Juvenile Justice Grant Hits Crime Prevention Efforts*. Milwaukee Journal Sentinel. <https://archive.jsonline.com/watchdog/watchdogreports/federal-freeze-on-juvenile-justice-grant-hits-crime-prevention-efforts-b99546464z1-321088811.html/>

<sup>25</sup> Stein, Jason & Marley, Patrick (2016, February 11). *Racine County Pulled Youths from Lincoln Hills Because of Botched Case*. Milwaukee Journal Sentinel. <http://archive.jsonline.com/news/statepolitics/racine-county-pulled-youths-from-lincoln-hills-because-of-botched-case-b99668911z1-368536621.html>

<sup>26</sup> Stein, Jason & Marley, Patrick (2016, February 11).

<sup>27</sup> Daprile, Lucas (2015, August 8).

Unfortunately, this incident was simply a warning flag for future abuse, neglect, and maltreatment. Between 2013 and 2016, there were over a dozen reports of abuse and administrative malpractice. These include juveniles having their arms broken, being choked, and feet crushed. Harassment claims were also reported, including a chief psychologist mocking a girl with disabilities and harassing female staff members.<sup>28</sup> Finally, a staff member at the facilities leaked that youth were given next to no educational opportunities, and in many cases spent most of their day in solitary confinement. These reports first prompted an investigation from the State Department of Justice, before the case was taken over by the FBI and the U.S. Department of Justice. All of this malfeasance culminated into a class-action civil suit, *JJ v. Litscher*, filed by the ACLU against Lincoln Hills and Copper Lake, alleging that the treatment of residents at these facilities violated their fourth and eighth amendment rights. The judge in the case agreed, and issued a broad injunction ordering numerous reforms and changes to practices at the facilities.<sup>29</sup>

This brief overview into the abuse and malpractice at Lincoln Hills and Copper Lake highlights broader problems that face youth sent to juvenile detention. Large detention centers, labelled “youth prisons,” across the country have faced scrutiny for creating traumatic, abusive environments that aren’t effective in rehabilitating young people.

In addition to providing inadequate youth facilities, an LOPPW records request to the Department of Corrections found that between 2011 and 2020 there were almost 1300 admissions into Wisconsin adult prisons of youth who were under aged 18. Housing juveniles in adult prisons has been found to be dangerous and destructive. Youth in the adult prison system are targeted more than any other racial or age group for sexual and physical abuse. The MacIver Institute reports that “despite comprising less than 1% of adult prison populations, juveniles represent over 20% of its sexual abuse victims.”<sup>30</sup> In order to try and protect youth from abuse, prison officials often rely on solitary confinement, which further compounds mental health illness and trauma.<sup>31</sup> Fear, intimidation, and abuse characterize the experience of youth incarcerated with adults. This traumatic and abusive environment helps explain why youth in the adult system are up to 36 times more likely to commit suicide compared to youth in juvenile detention.<sup>32</sup>

<sup>28</sup> Marley, Patrick and Edmondson, Catie (2016, July 9). *Former Lincoln Hills Psychologist not Disciplined for Crass Remarks*. Milwaukee Journal Sentinel. <http://archive.jsonline.com/news/statepolitics/former-lincoln-hills-psychologist-not-disciplined-for-crass-remarks-b99757959z1-386159711.html>

<sup>29</sup> J.J. V. Litscher, 42 U.S.C. § 1983 (2017) [http://jlc.org/sites/default/files/case\\_files/2017.4.17%20Amended%20Complaint%20adding%20strip%20search.pdf](http://jlc.org/sites/default/files/case_files/2017.4.17%20Amended%20Complaint%20adding%20strip%20search.pdf)

<sup>30</sup> The MacIver Institute. (2013, October 23). *Mandatory Sentencing 17 year-olds in Adult Court – Is There a Better Alternative for Wisconsin’s Youth and Taxpayers?* <https://www.maciverinstitute.com/2013/10/mandatory-sentencing-17-year-olds-inadult-court/>

<sup>31</sup> Awad, Jasmine; Marshall, Rachel; Rico, Eric; and Thomas, Jeree (2018). *Is it Enough: The Implementation of PREA’s Youthful Inmate Standard*. Campaign for Youth Justice. [http://www.campaignforyouthjustice.org/images/Issue\\_Brief\\_\\_Is\\_It\\_Enough\\_\\_The\\_Implementation\\_of\\_PREAs\\_Youthful\\_Inmate\\_Standard\\_Updated.pdf](http://www.campaignforyouthjustice.org/images/Issue_Brief__Is_It_Enough__The_Implementation_of_PREAs_Youthful_Inmate_Standard_Updated.pdf)

<sup>32</sup> Campaign for Youth Justice (2019, September 3). *Remembering Youth in Adult Jails & Prisons During Suicide Prevention Awareness Month*. [http://www.campaignforyouthjustice.org/2019/item/remembering-youth-in-adult-jails-prisons-during-suicide-prevention-awarenessmonth#:~:text=According%20to%20the%202018%20report,peers%20in%20the%20general%20population](http://www.campaignforyouthjustice.org/2019/item/remembering-youth-in-adult-jails-prisons-during-suicide-prevention-awarenessmonth#:~:text=According%20to%20the%202018%20report,peers%20in%20the%20general%20population.). See also: Arya, Neelum. *Getting to Zero: A 50-State Study of*



***The Use of Solitary Confinement.*** Almost as frightening as the documented cases of abuse, the *J.J. v. Litscher* lawsuit revealed just how widespread solitary confinement was at Lincoln Hills and Copper Lake:

“Approximately 15-20% of the youth population in these facilities are in solitary confinement, isolated for 22 to 23 hours per day in a seven by ten-foot cell. Youth are often sent to solitary for 30 to 60 days at a time, and many are forced to spend their one free hour outside of solitary “on the belt,” meaning that they are in handcuffs attached to a belt. Often they are also chained to a table. While in solitary, youth only get one hour of education per day and are even denied therapeutic programs that are supposed to help rehabilitate them.”<sup>33</sup>

The use of solitary confinement was one of the key issues in the *Litscher* suit, and Wisconsin continues to utilize this damaging practice in juvenile detention facilities today.

The use of solitary confinement has been questioned for decades. In 1890, the U.S. Supreme Court noted that those who were subjected to solitary confinement “often developed mental illnesses, attempted suicide, and were not able to contribute to society when returning to their community after release due to insufficient mental capacity.”<sup>34</sup> Recent research have found that while solitary confinement is psychologically damaging for all people, it is especially harmful for youth and adolescence. Because our brains continue to develop and mature into our mid-twenties, long-term isolation and solitary confinement disrupts the development of impulsivity [control], judgment, planning for the future, foreseeing consequences of actions,” and coping mechanisms.<sup>35</sup> Youth who have been exposed to solitary confinement have described the experience as “dying a slow death from the inside out.”<sup>36</sup>

Research and data findings on the effects of juvenile solitary confinement match anecdotal descriptions. The ACLU’s report “Alone and Afraid” found that youth subjected to solitary confinement can develop:

“hypersensitivity to stimuli; perceptual distortions and hallucinations; increased anxiety and nervousness; revenge fantasies, rage, and irrational anger; fears of persecution; lack of impulse control; severe and chronic depression; appetite loss and weight loss; heart palpitations; withdrawal; blunting of affect and apathy; talking to oneself; headaches; problems sleeping; confusing thought processes; nightmares; dizziness; self-mutilation;

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Strategies to Remove Youth from Adult Jails. Los Angeles, CA: UCLA School of Law, 2018.

<sup>33</sup> *J.J. V. Litscher*, 42 U.S.C. § 1983 (2017) [http://jlc.org/sites/default/files/case\\_files/2017.4.17%20Amended%20Complaint%20adding%20strip%20search.pdf](http://jlc.org/sites/default/files/case_files/2017.4.17%20Amended%20Complaint%20adding%20strip%20search.pdf)

<sup>34</sup> Scialabba, Nicole (2016, June 27). Making the Case to End Solitary Confinement for Juveniles. *American Bar Association*. <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2016/making-case-end-solitary-confinement-juveniles/>

<sup>35</sup> Scialabba, Nicole (2016, June 27).

<sup>36</sup> *Human Rights Watch* (2012, October 10). Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States. <https://www.hrw.org/report/2012/10/10/growing-locked-down/youth-solitary-confinement-jails-and-prisons-across-united>

and lower levels of brain function, including a decline in EEG activity after only seven days in solitary.”

Due to the extreme psychological destruction, the Human Rights Watch have labelled juvenile solitary confinement a “serious human rights violation and can constitute cruel, inhuman, or degrading treatment under international human rights law.”<sup>37</sup> Clearly, Wisconsin’s use of solitary confinement and problematic and creates obstacles to the healthy rehabilitation of young people in the juvenile justice system.

***Isolation from Family and Positive Role Models.*** Finally, the large confinement model often isolates and disconnects youth from any family or positive role-models that may have exist in their communities. This separation from their home communities was intentional, as lawmakers during the “tough on crime” phase thought that the removal of youth from their communities could untether them from bad influences. This logic helps explain why Lincoln Hills and Copper Lake reside in the small town of Irma, even though most justice-involved youth come from communities that are hours away from this small town. Unfortunately, severing youth from any and all community ties was a mistake, as researchers now know that moving children far away from their families and support systems only isolates, depresses, and further traumatizes them. Institutional placement in facilities such as Lincoln Hills and Copper Lake “deprives youth of the moorings in their lives — support from family and friends, school, sports, and other activities that would otherwise help them to cope with anxiety and uncertainty. It subjects youth to a complete loss of control and forced exposure to a negative peer culture.”<sup>38</sup> As one could imagine, isolating a child from their family, community role models, or homes is often traumatic and damaging to their mental health and emotional well-being.

***Wisconsin’s System Traumatizes Youth.*** Documented trauma and abuse, ineffective educational and rehabilitative programming, and the use of adult prisons and solitary confinement to house juveniles all contribute to a youth justice system that is dangerous and harmful for our state’s young people. While youth need to be held accountable for any criminal acts, no person, especially a child, should be sentenced to sexual and physical abuse, intimidating or traumatic environments, or inhumane practices such as solitary confinement.

## **Our Youth Justice System is Ineffective**

With the documented abuse and chaos that seems to plague Lincoln Hills and Copper Lake, it is unsurprising to learn that the traditional confinement model of juvenile justice used in Wisconsin is largely ineffective at rehabilitating youth and setting them up for a future away from the justice system. According to the most recent Wisconsin Department of Corrections data that

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<sup>37</sup> *Human Rights Watch* (2012, October 10).

<sup>38</sup> Burrell, Sue (n.d.). Trauma and the Environment of Care in Juvenile Institutions. *The National Child Traumatic Stress Network*. [https://www.nctsn.org/sites/default/files/resources/trauma\\_and\\_environment\\_of\\_care\\_in\\_juvenile\\_institutions.pdf](https://www.nctsn.org/sites/default/files/resources/trauma_and_environment_of_care_in_juvenile_institutions.pdf)

tracked Wisconsin youth in juvenile detention centers from 2011-2014, Wisconsin youth in these correctional facilities had a recidivism rate of almost 63%.<sup>39</sup> This means almost two-thirds of all youth in detention were either reincarcerated (24.5%) or returned to probation (38.2%) within three years of their release. This abysmal failure of our youth justice system is multifaceted and complex, but a few key factors contribute to our state's high youth recidivism rate.

***The Large Confinement Model Has Been Proven Ineffective.*** Wisconsin's current youth justice system is centered on youth confinement in large juvenile detention centers, even though the large-scale confinement model has been found to increase the odds that youth in these facilities "are more likely to commit worse crimes, are less employable, are more likely to be on a path toward [a] lifelong [cycle of reincarceration], and are more likely to pass their problems on to their children."<sup>40</sup> One study found that youth "incarcerated for their offenses are 23 percentage points more likely to end up in adult jails later in life compared to those who were sentenced to alternatives such as counseling, rehabilitation, or community service."<sup>41</sup> This is because adult-style prisons that emphasize confinement and control are "devoid of the essentials required for healthy adolescent development — engaged adults focused on their development, a peer group that models prosocial behavior, opportunities for academic success, and activities that contribute to developing decision-making and critical thinking skills."<sup>42</sup> The cognitive development and maturation that occurs in a person's adolescence is well-documented, and placing these young people in a prison-like environment eradicates the opportunity for them to continue to develop, grow, and learn in a healthy way. The use of solitary confinement only fortifies these barriers to the healthy rehabilitation of young people in the juvenile justice system.

Because Wisconsin currently utilizes this "youth prison" model for many justice-involved youth, including the use of solitary confinement, our youth justice system does very little to steer youth away from future criminality or address the underlying causes that may have contributed to justice involvement in the first place.

***Not Properly Treating Underlying Trauma & Mental Health Challenges.*** Two of the most startling threads that connect youth who become justice-involved are their struggles with a mental health challenge and their history of trauma. As previously stated, 85% of boys and 100% of girls who currently reside in Lincoln Hills and Copper Lake struggle with a mental health challenge, while roughly 80% of referrals to the justice system have a history with Child

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<sup>39</sup> *Wisconsin Legislative Fiscal Bureau* (2013, January). Juvenile Justice and Youth Aids Program. [https://docs.legis.wisconsin.gov/misc/lfb/informational\\_papers/january\\_2013/0057\\_juvenile\\_justice\\_and\\_youth\\_aid\\_s\\_program\\_informational\\_paper\\_57.pdf](https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2013/0057_juvenile_justice_and_youth_aid_s_program_informational_paper_57.pdf)

<sup>40</sup> McCarthy, Patrick, and Schiraldi, Vincent, and Shark, Miriam (2016, October). *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model.* *Harvard Kennedy School.* <https://www.ojp.gov/pdffiles1/nij/250142.pdf>

<sup>41</sup> Jamieson, Kerry (2018, November 7). ACEs and Juvenile Justice. *Center for Child Counseling.* <https://www.centerforchildcounseling.org/aces-and-juvenile-justice/>

<sup>42</sup> McCarthy, Patrick, and Schiraldi, Vincent, and Shark, Miriam (2016, October).

Protective Services.<sup>43</sup> The data is clear: those who are justice-involved struggle with past trauma and ongoing mental health challenges. Yet our current youth justice system falls short in prioritizing the mental health treatment and trauma-informed care that might help treat these underlying drivers of youth justice involvement and incarceration.

Shortcomings in addressing mental health challenges and trauma in the juvenile justice system are two-fold, especially for those in the large youth correctional facilities. First, the ongoing trauma and inherent environment of confinement is extremely damaging to the mental health of young people, especially those with a history of trauma. Besides the documented cases of abuse and solitary confinement, housing youth in large, unwelcoming facilities far away from their family or loved ones can be isolated and trauma-inducing. “Those who work in juvenile facilities know only too well that youth with mental health issues (including a history of trauma) emotionally deteriorate in custody, and their conditions often worsen” says Sue Barrell of the Youth Law Center.<sup>44</sup>

Secondly, these confinement facilities have under resourced and inadequate mental health treatment and programming. The Wisconsin Department of Children’s and Family Services, which are responsible for a many of Wisconsin’s justice-involved youth, reported that mental health programming and services are “in urgent need of attention.”<sup>45</sup> Key shortcomings in mental health services to those in the youth justice system include an “insufficient array of services, lack of in-home providers, long waiting periods for getting assessments, and shortage of child psychiatrists.”<sup>46</sup> Finally, youth at Lincoln Hills and Copper Lake have been found to be barred from some of the few programs that are available to them. For example, the *JJ v. Litscher* complaint found that youth put into solitary confinement are “revoked access to the very programs which might help to rehabilitate the youth, such as Aggression Replacement Training (ART) and the Juvenile Cognitive Intervention Program (Phases I and II).”<sup>47</sup>

The damaging environment of large correctional facilities and a lack of appropriate programming combine to create a justice system that does not properly address the mental health and trauma crises among justice-involved youth. The Wisconsin Office of Children’s Mental Health aptly described the situation when they asserted that “most of the youth who return to the community after incarceration have unmet mental health needs, leaving them at high risk for re-

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<sup>43</sup> *Wisconsin Department of Children and Families* (2021, January). Wisconsin Youth Justice Referrals and Intake Annual Report for Calendar Year 2019. <https://dcf.wisconsin.gov/files/cwportal/yj/pdf/yj-referrals-intake-rpt.pdf>

<sup>44</sup> Burrell, Sue (n.d.). Trauma and the Environment of Care in Juvenile Institutions. *The National Child Traumatic Stress Network*. [https://www.nctsn.org/sites/default/files/resources/trauma\\_and\\_environment\\_of\\_care\\_in\\_juvenile\\_institutions.pdf](https://www.nctsn.org/sites/default/files/resources/trauma_and_environment_of_care_in_juvenile_institutions.pdf)

<sup>45</sup> Bureau of Youth Services (2016, December). Wisconsin’s Community-Based Juvenile Justice System: Summary of Input Gathered and Visions for the Future of Youth Justice. *Wisconsin Department of Children and Families*. <https://dcf.wisconsin.gov/files/cwportal/yj/pdf/yjsmry-rpt.pdf>

<sup>46</sup> Bureau of Youth Services (2016, December).

<sup>47</sup> *J.J. V. Litscher*, 42 U.S.C. § 1983 (2017) [http://jlc.org/sites/default/files/case\\_files/2017.4.17%20Amended%20Complaint%20adding%20strip%20search.pdf](http://jlc.org/sites/default/files/case_files/2017.4.17%20Amended%20Complaint%20adding%20strip%20search.pdf)

incarceration and recidivism.”<sup>48</sup> Improving the effectiveness of our youth justice system starts with addressing these two key drivers of recidivism among justice-involved youth and ensuring that youth are given the rehabilitative programming they need to live happy, successful lives.

***Ineffective at Moving Youth Away from the Justice System.*** Not surprisingly, the current large-scale confinement model that isolates youth in large, prison-like facilities and does little to address underlying concerns is ineffective at keeping young people out of the justice system. Wisconsin’s 62.7% three year youth recidivism rate speaks to the abysmal failure in providing effective rehabilitative programming in a safe and healthy environment. Simply put, Wisconsin’s traditional model does not work, and it certainly doesn’t make our communities any more safe. When speaking of traditional juvenile justice approaches, researchers from Harvard’s Kennedy School commented that “if one were looking to create a feeder system for adult prisons, one could hardly do better than our current approach.”<sup>49</sup>

## **Our Youth Justice System is Expensive**

In addition to being largely ineffective at preventing recidivism and properly addressing the needs of justice-involved youth, our traditional confinement model is also very expensive. According to the Justice Policy Institute, it costs Wisconsin taxpayers \$144,905 per year to hold one child in confinement.<sup>50</sup> This is over five times the cost of sending an undergraduate student to attend the University of Wisconsin – Madison! Wisconsin’s model of youth justice is expensive for a variety of reasons, nearly all of which could be reduced by moving away from the traditional confinement model.

1. ***Cost Per Person Rises as Juvenile Populations Decline.*** One of the reasons why the confinement costs per child is so high is because the total population of confined juveniles in Wisconsin is at an all-time low. For a variety of reasons, which are beyond the scope of this report, youth arrests in the state of Wisconsin have been trending downward over the last 20 years. For example, the average daily population of juvenile detention centers in Wisconsin have dropped from 819 in 2000 to just 169 in 2018. This rapid decline in youth incarceration is excellent news, especially since youth crime rates are also at an all-time low.<sup>51</sup> But while Wisconsin has experienced this extraordinary drop in youth incarceration, our juvenile justice system has not responded accordingly, resulting in shocking government spending on these ineffective juvenile corrections

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<sup>48</sup> Wisconsin Office of Children’s Mental Health (2020, October). Highlighting Disparities in Youth Justice. <https://children.wi.gov/Documents/ResearchData/OCMH%202020%20Fact%20Sheet%20Highlighting%20Disparities%20in%20Youth%20Justice.pdf>

<sup>49</sup> McCarthy, Patrick, and Schiraldi, Vincent, and Shark, Miriam (2016, October).

<sup>50</sup> Justice Policy Institute (2020). *Stick Shock 2020: The Cost of Youth Incarceration*. [http://www.justicepolicy.org/uploads/justicepolicy/documents/Sticker\\_Shock\\_2020.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/Sticker_Shock_2020.pdf)

<sup>51</sup> Speckhard Pasque, Lisa (2018). *Report: Wisconsin youth arrest rates falling faster for whites than African-Americans*. The Capital Times. [https://madison.com/ct/news/local/neighborhoods/report-wisconsin-youth-arrest-rates-falling-faster-for-whites-than-african-americans/article\\_b037a427-7c33-54bc-9ad0-0f6d87de1f9c.html](https://madison.com/ct/news/local/neighborhoods/report-wisconsin-youth-arrest-rates-falling-faster-for-whites-than-african-americans/article_b037a427-7c33-54bc-9ad0-0f6d87de1f9c.html)

facilities. For example, Wisconsin has yet to close the Lincoln Hills and Copper Lake schools, despite the fact that these facilities are almost empty. Lincoln Hills was designed to hold over 500 youth, yet only 133 young people currently reside there, according to recent DOC data. That means it is only at 26.6% capacity. Similarly, Copper Lake is only at 44.8% capacity. However, the cost of operating these large corrections centers does not decline at the same rate as the decline in youth population. That is because many of the costs to maintain and operate these facilities, such as staffing and utilities, are fixed costs that require almost the same amount of funding each year no matter how many youth are confined there.<sup>52</sup> These fixed costs help explain why the per capita cost of juvenile corrections have risen 36% over the past 6 years, despite no noticeable increase in programming.<sup>53</sup>

Let us be clear; the rising per child costs reflect positive changes from juvenile diversion and prevention efforts, and we are obviously not advocating for increasing the populations at Lincoln Hills and Copper Lake to lower per person costs. As one will see later, however, this does mean that we can and should be moving to alternative models of youth rehabilitation that are more cost-effective and provide more flexibility. Wisconsin taxpayers shouldn't be penalized for lower youth arrests and youth incarceration, just as justice-involved youth shouldn't be punished by being placed in ineffective and traumatic corrections facilities.

2. ***Harmful Corrections Practices Cost Taxpayers Millions.*** In addition to the burdensome fixed costs of large corrections facilities, the trauma, abuse, and malpractice of these facilities have cost Wisconsin millions of dollars. First, the use of solitary confinement, which is practiced at both Lincoln Hills and Copper Lake, have been found to cost up to three times as much as youth incarceration in general population.<sup>54</sup> Secondly, abusive and negligent behavior at these facilities have cost Wisconsin taxpayers millions in legal fees. The *JJ v. Litscher* case cost the state millions in legal fees, while a more recent case of abuse, *Briggs v. Yorde*, ended with a \$18.9 million settlement from the state.<sup>55</sup>
3. ***Ineffective Rehabilitation has a Massive Price Tag.*** Finally, the abysmal track record of these corrections facilities does significant damage on our state's budget and tax base. Ineffective juvenile justice systems that do nothing to address underlying causes of justice involvement among youth exacerbates long-term costs to the state, both through state spending and an erosion of the state's tax base. To illuminate this point, let us hypothesize two separate people: Person A and Person B. Person A spent time in an effective juvenile justice system that helped them cope with any past trauma, address any addiction or abuse issues, and allowed them to finish high school on time. Since then they have not had any other interactions with the justice system and got a steady job making

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<sup>52</sup> Justice Policy Institute (2020). *Stick Shock 2020: The Cost of Youth Incarceration*. [http://www.justicepolicy.org/uploads/justicepolicy/documents/Sticker\\_Shock\\_2020.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/Sticker_Shock_2020.pdf)

<sup>53</sup> Justice Policy Institute (2020).

<sup>54</sup> Justice Policy Institute (2020).

<sup>55</sup> *Briggs v. Yorde*, U.S.D.C. (W.D. Wisc.), Case No. 3:17-cv-00062-jdp

\$40,000 per year for a 45 year career. Person B was treated in an ineffective justice system, where they were subjected to large youth corrections facilities that provided minimal programming, limited educational opportunities, and maybe even compounded trauma. This person struggled to finish high school or even dropped out. The underlying factors that contributed to Person B's incarceration were unaddressed, so they unable to leave the justice system behind. Over that person's life, they spent 20 years in prison.

In this example, Person A became a contributing taxpayer to the state of Wisconsin to the tune of \$66,735 in lifetime state tax contributions.<sup>56</sup> Person B, on the other hand, had fewer years in the workforce and more years in prison. Additionally, the years spent in the workforce provided less tax income for the state, as those who have spent time in prison make, on average, 52% less.<sup>57</sup> In this scenario, Person B would work for 25 years at \$19,200 per year, meaning they would contribute just \$7,625 in lifetime state taxes. However, the 20 years in prison, costing almost \$37,000 per year.<sup>58</sup>

	<b>Person A</b>	<b>Person B</b>
Years in Workforce	45	25
State Taxes Paid Per Year	\$1483	\$305
Total State Taxes Paid	\$66,735	\$7,625
Years Incarcerated	0	20
Cost of Incarceration	\$36,923.40	\$36,923.40
Total Cost of Incarceration	\$0	\$738,468
Total Budgetary Impact	\$66,735.00	(\$730,843.00)

This simplified example demonstrates how effective programming in the juvenile justice system can drastically reduce long-term state costs. Unfortunately, our current system pushes youth towards a path similar to Person B instead to Person A; over 60% of youth in the justice system recidivate, including 22.4% of justice-involved youth who end up in adult prisons. Simply put, effective juvenile justice systems keep communities safer and drastically lower costs.

<sup>56</sup> Using the tax calculator at <https://smartasset.com/taxes/wisconsin-tax-calculator#yeghIUmOCB>

<sup>57</sup> Craigie, Terry-Ann, Grawert, Ames, & Kimble, Cameron (2020, September 15). Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality. *Brennan Center for Justice*. <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>

<sup>58</sup> Hughes, Patrick (2020, February 11). Tougher on Taxpayers. *The Badger Institute*. <https://www.badgerinstitute.org/News/2019-2020/Tougher-on-Taxpayers.htm>

Reimagining Wisconsin's youth justice system can not only improve outcomes for justice-involved youth, but it can also save Wisconsin taxpayers millions of dollars every single year. By moving away from the archaic, expensive confinement model, Wisconsin can create a flexible, efficient, and cost-effective juvenile justice system that actually works.

### **A Better Juvenile Justice System Improves Outcomes for All**

The data, research, and news headlines covering Wisconsin's youth justice system all point to the same conclusion: the prominent "confinement model" in Wisconsin's juvenile justice system is ineffective and in need of dire reform. Juvenile detention in large facilities such as Lincoln Hills and Copper Lake do not provide the environment or the resources to help developing children mature into a life away from the justice-system. Instead, these facilities often compound existing trauma, neglect mental health challenges, and subject children to abusive and reprehensible environments. However, making tangible improvements to our youth justice system is a win-win; when we help justice-involved youth, we help our whole state. Justice-involved youth who are given the help they need to overcome past trauma or mental health challenges are more likely to grow up to become successful employees, parents, neighbors, and citizens. When we create more effective youth justice programs that reduce future recidivism and keep kids out of prison, we also create more safe communities and neighborhoods across the state. And when our youth justice system properly addresses the unique needs and challenges that face a child the first time they become justice involved, our state saves millions of dollars in the future corrections spending. Our youth justice system needs to change, and fortunately these changes can help make our state a healthier, safer, and better place to live.



## Fixing Our Juvenile Justice System

Wisconsin's juvenile justice and corrections system is expensive, ineffective, and unable to properly rehabilitate the young people in its care. Clearly, Wisconsin needs to start making significant changes into how we treat and rehabilitate justice-involved youth. Fortunately, Wisconsinites, including Wisconsin lawmakers, have recognized the need for reform. In 2018, in response to the egregious reports of abuse coming from Lincoln Hills and Copper Lake, then-Governor Scott Walker signed Act 185, a bipartisan piece of legislation designed to close these two facilities and restructured youth corrections facilities. However, the state of Wisconsin has missed both of their deadlines to close Lincoln Hills and Copper Lake, and many of the other provisions in this bill have not come to fruition. So while awareness on the need for youth justice reform has risen, there are still a number of tangible steps that need to be taken to improve outcomes for both justice-involved youth and for our state.

### Preventing Youth Incarceration

The best way to improve our youth justice system is by dedicating effective tools and resources to preventing young people from becoming justice-involved in the first place. There are a number of avenues that should be considered in prevention policy.

***Stop Criminalizing Low-Level Misbehavior Among Children and Teens.*** One of the first steps to preventing youth justice involvement is by reorienting our youth justice system to ensure we only incarcerate youth who pose a danger to the safety of our communities. Unfortunately, Wisconsin youth are becoming justice-involved for the minor offenses that often result from unmet mental health challenges, a history of trauma or unstable home life, or as a result of immature behavior that characterizes adolescence. For example, less than 3% of arrests of 17-year-olds in Wisconsin were for “violent” crimes, while almost 30% of 2020 arrests were for loitering, disorderly conduct, and underage consumption of alcohol.<sup>59</sup> Nationwide, we know that criminalizing this type of misbehavior disproportionality impacts youth of color, LGBTQ+ youth, and children with mental challenges.<sup>60</sup> This does not mean that we should not hold youth accountable, but we should do so in age-appropriate ways that utilizes diversion and community-based programming. Simply put, our justice system should not be the primary option to address low-level misbehavior. The state should only use youth incarceration when there are no other options to ensure the safety of our communities.

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<sup>59</sup> Data taken from the Wisconsin Uniform Crime Reporting Database: <https://www.doj.state.wi.us/dles/bjia/ucr-arrest-data>.

<sup>60</sup> Jafarian, Mahsa and Ananthakrishnan, Vidhya (2017, August). *Just Kids: When Misbehaving is a Crime*. Vera Institute. <https://www.vera.org/when-misbehaving-is-a-crime>

***Limit and Strictly Define the role of School Resource Officers (SROs).*** One could argue that nowhere is the criminalization of low-level misbehavior more prevalent than in our school buildings, particularly since the rise of School Resource Officers. School Resource Officers were originally placed in schools across the country with the idea that they could help protect students and teachers within the building. But while SROs were originally brought into schools to protect students, this largely untrained class of law enforcement personnel has led to a growth of criminalizing minor youth misbehavior that would have previously been addressed by a school administrator.<sup>61</sup> The presence of School Resource Officers in schools is stark; reports from the Justice Policy Institute “showed that schools with SROs had five times as many arrests for disorderly conduct as schools without SROs.”<sup>62</sup> A review of police presence in schools closer to home found a similar result. For example, data from the Madison Metropolitan School District shows that black students made up 65% of all arrests and 82% of all citations from SROs in the district, despite making up less than one quarter of the student body.<sup>63</sup> Likewise, when the La Crosse Area School District investigated their district’s own SRO practices, they found that the presence of police in their schools “shows that that the current practices contribute to the school-to-prison pipeline, specifically for marginalized students.”<sup>64</sup> The report also found that “not only does the district discipline students in a way that inhibits learning, like suspensions and arrests, at higher rates than other districts, but that these actions are disproportionately taken against students of color, students in poverty, male students and students with disabilities — all of this leading to achievement gaps.”<sup>65</sup>

To combat the over criminalization of children, Wisconsin must reverse this trend of over policing in schools and rethink the way SROs are deployed and trained. SROs were put in schools to protect children, and any school district that opts to put SROs in their schools should create strong guardrails and restrictions to ensure they aren’t criminalizing students or exacerbating racial disparities in juvenile justice involvement. First, SROs must be trained more heavily in behavior management, child development, communication techniques, working with children with mental illness, and other topics that promote child well-being over child criminalization. Second, the roles and responsibilities of SROs need to be restricted and monitored so that teachers, counselors, and administrators are disciplining children, not SROs. “SROs should not criminalize behavior that school officials should properly handle,” and school districts, with the guidance of the Department of Public Instruction, should clearly the define the

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<sup>61</sup> Ryan et. al. (2017). The Growing Concern Regarding School Resource Officers. *Intervention in School and Clinic* 53(3). <https://files.eric.ed.gov/fulltext/EJ1163923.pdf>

<sup>62</sup> Ryan et. al. (2017).

<sup>63</sup> Ermon, Brittany (2020, August 2). *Madison School District SRO report reveals racial disparities in school arrests*. WMTV News. <https://www.nbc15.com/2020/08/03/madison-school-district-sro-report-reveals-racial-disparities-in-school-arrests/>

<sup>64</sup> Herken, Olivia (2020, November 17). *La Crosse Schools SRO review report finds it contributes to school-to-prison pipeline*. La Crosse Tribune.

<sup>65</sup> Herken, Olivia (2020, November 17).

roles of SROs within schools.<sup>66</sup> While the Wisconsin Department of Public Instruction and Department of Justice issued best practices for SROs in schools, the state needs to be more diligent and firm in their commitment to ensuring SROs are properly trained and know their roles within the schools.<sup>67</sup> Because SROs have traditionally had little training and even less accountability, our school administrators need to be diligent in correcting this dangerous trend.

The Council of State Governments finds that “research shows that juvenile justice systems can do more harm than good by actively intervening with youth who are at low risk of reoffending.” SROs and other systems that criminalize minor misbehavior only create greater problems in the future. Addressing the over criminalization of children in schools will have a drastic affect at preventing youth who pose no danger to society from becoming justice involved.

***Better Addressing the Needs of Students in the Classroom.*** The school-to-prison pipeline is a popular adage that describes the all-too-common channel from the school building to the youth justice system, especially for students of color, students from low-income communities, and students with mental health challenges. While redefining the roles of Student Resource Officers would help stop the school-to-prison pipeline, there are a couple of additional steps that Wisconsin school administrators can take to ensure fewer children are moved from the school building into the justice system.

1. *Increased funding for counselors and other support staff in Wisconsin schools.* Well-trained and resourced school counselors and other support staff hold a valuable key in slowing the school-to-prison pipeline. Trained school counselors are able to help identify and address mental health challenges and provide alternative treatments to the punitive measures too often taken by schools to address misbehavior. They also have been proven to boost graduation and attendance rates and lower rates of disciplinary action in schools, especially among students of color and students from low-income households.<sup>68</sup> Finally, a majority of incarcerated youth in Wisconsin suffer from a mental health challenge, and having an appropriate number of school counselors is crucial to catching and addressing those with mental health challenges before they reach the youth justice system.

Unfortunately, Wisconsin suffers from a counselor shortage as a result of state policies that do not prioritize funding and resources to school counselors. The American School Counselors Association recommends a ratio of one school counselor for every 250 students. Unfortunately, Wisconsin’s student-to-counselor ratio is 403:1, with this number rising to over 600:1 in large districts such as Waukesha, Milwaukee, and Madison school districts.<sup>69</sup> Fortunately, state leaders are recognizing the shortage in

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<sup>66</sup> Ryan et. al. (2017). The Growing Concern Regarding School Resource Officers. *Intervention in School and Clinic* 53(3). <https://files.eric.ed.gov/fulltext/EJ1163923.pdf>

<sup>67</sup> See <https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/srobestpractices.pdf>

<sup>68</sup> Lapan, R. T., Gysbers, N. C., Stanley, B., & Pierce, M. E. (2012). Missouri Professional School Counselors: Ratios Matter, Especially in High-Poverty Schools. *Professional School Counseling*. <https://doi.org/10.1177/2156759X0001600207>

<sup>69</sup> American School Counselor Association (n.d.). *School Counselor Roles and Ratios*. <https://www.schoolcounselor.org/About-School-Counseling/School-Counselor-Roles-Ratios>

school counselors here in Wisconsin. In this year's Wisconsin biennial budget proposal, Governor Tony Evers inserted "over \$22 million each year to help schools pay for social workers, psychologists, counselors and nurses to assist students facing mental health challenges," which would be a "significant expansion in state support for youth mental health."<sup>70</sup> This investment would help close the student-to-counselor gap and ensure more students have access to the services they need to succeed in the classroom, address crucial needs, and avoid justice involvement. The Lutheran Office for Public Policy supports increasing funding for school counselors, social workers, and psychologists across the state to ensure every student has ready access to a trained school counselor and support system throughout their K-12 education.

2. *Better fund schools to improve attendance and graduation rates.* Truancy and dropping out of high school both have direct correlations to justice involvement in young people. Chronic absenteeism in elementary and middle school students is an accurate predictor of future justice involvement; "50 percent of all truants ended up with a criminal charge by the time they turned 18 years old—a level statistically significant when compared to only 12 percent of nontruant students."<sup>71</sup> Additionally, those who drop out of high school are far more likely to become justice involved compared to graduates; a Stanford study found that high school dropouts were 3.5 times more likely to become incarcerated compared to graduates.<sup>72</sup> Because the connections between truancy, dropping out of high school, and juvenile justice involvement are so strong, Wisconsin must create, expand, and fund programs to address these warning signs before the student becomes justice-involved. Because chronic absenteeism often stems from factors in the home, involving parental outreach and engagement is important. Finally, truancy prevention programs must begin early to address chronic absenteeism in students before these young people fall behind. Fortunately, the programs that address truancy will also bolster high school graduation rates and decrease the number of students going to the juvenile justice system even further. However, programs to reduce truancy or dropping out should not be punitive to the student, as this has been shown to be counterproductive. Schools should instead seek to address the underlying causes of their absenteeism and create programs that "foster a positive and inclusionary school climate where students feel welcome and wanted."<sup>73</sup>

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<sup>70</sup> Mueller, Chris (2021, March 7). *Gov. Tony Evers' budget looks to expand access to student mental health services*. Appleton Post Crescent. <https://www.postcrescent.com/story/news/2019/03/07/kids-crisis-governor-tony-evers-seeks-boost-school-mental-health-services-wisconsin-education-budget/2905809002/> See also: <https://wasb.org/gov-evers-to-propose-54-million-boost-for-school-based-mental-health-services-in-budget/>

<sup>71</sup> Ahmad, Farah Z. & Miller, Tiffany (2015, August). *The High Cost of Truancy*. *Center for American Progress*. <https://cdn.americanprogress.org/wp-content/uploads/2015/07/29113012/Truancy-report4.pdf>

<sup>72</sup> Hanson, Katherine & Stipek, Deborah (2015, May 15). *Schools v. prisons: Education's the way to cut prison population*. *Stanford Graduate School of Education*. <https://ed.stanford.edu/in-the-media/schools-v-prisons-educations-way-cut-prison-population-op-ed-deborah-stipek>

<sup>73</sup> Ahmad, Farah Z. & Miller, Tiffany (2015, August). *The High Cost of Truancy*. *Center for American Progress*. <https://cdn.americanprogress.org/wp-content/uploads/2015/07/29113012/Truancy-report4.pdf>

3. *Redefine the role of School Resource Officers (SROs).* As we have touched on previously, the growth in the use of Student Resources Officers in schools have led to a tremendous increase in the number of children in schools becoming justice involved. In order to better address the needs of students and keep more kids in the classroom, schools must deemphasize the use of SROs in managing student misbehavior.

***Improved State Mental Health Services for Children and Youth.*** Unfortunately, we know that a nearly all of the youth in Wisconsin’s juvenile justice system struggle with mental illness, and a majority have a history of trauma. Currently, adequate mental health services are unavailable to many youth across the state due to the many “barriers to receiving needed mental health services [including] insufficient array of services, lack of in-home providers, long waiting periods...and a shortage of child psychiatrists.”<sup>74</sup> Because of these barriers to vital mental health services and programs, many children are not diagnosed or treated for mental health challenges until they reach the juvenile justice system. And once youth become involved in the juvenile justice system, mental health treatment programming varies widely across individual counties.

Struggling with a mental health challenge isn’t a crime, and youth who struggle with mental health challenges should be given the treatment and assistance they need before they enter the youth justice system. Besides strengthening the presence of school counselors, social workers, and psychologists in schools to help identify and treat mental illness, Wisconsin needs to provide a more comprehensive range of mental health services and programs that are accessible to children across the state. Fortunately, Governor Evers and the Wisconsin Department of Children & Families (DCF) recognize the need for additional mental health services for youth; in addition to the \$22 million per year in school-based mental health funding his 2021-2023 biennial budget proposal, Governor Evers budgeted over \$10 million per year in grant funding to help connect students struggling with mental illness to local health agencies. Additionally, Governor Evers proposed expanding the Wisconsin Child Psychiatry Consultation Program, which “provides consultation, education, and referral support to enrolled primary care providers caring for children and adolescents with behavioral health concerns.”<sup>75</sup> Finally, the Department of Children and Families committed to working towards a Wisconsin where “mental health and well-being are understood broadly and on a continuum and a wide array of services to address the full continuum is easily accessible to all youth” and where “youth with mental health needs can access services without entering the youth justice system.”<sup>76</sup> The Lutheran Office for Public Policy supports an extensive expansion of mental health programs and services that address mental health concerns among our state’s youth. Not only will these programs stop many

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<sup>74</sup> Bureau of Youth Services (2016, December). Wisconsin’s Community-Based Juvenile Justice System: Summary of Input Gathered and Visions for the Future of Youth Justice. *Wisconsin Department of Children and Families*. <https://dcf.wisconsin.gov/files/cwportal/yj/pdf/yjsmry-rpt.pdf>

<sup>75</sup> Wisconsin Department of Health Services (n.d.) The Wisconsin Child Psychiatry Consultation Program. (CPCP). <https://www.dhs.wisconsin.gov/mch/cpcp.htm>

<sup>76</sup> Bureau of Youth Services (2016, December). Wisconsin’s Community-Based Juvenile Justice System: Summary of Input Gathered and Visions for the Future of Youth Justice. *Wisconsin Department of Children and Families*. <https://dcf.wisconsin.gov/files/cwportal/yj/pdf/yjsmry-rpt.pdf>

youth from falling into the justice system, but it will also provide the quality care and treatment they need to live as healthy, successful children of God.

***Adopt BadgerCare Expansion.*** Expanding Medicaid coverage in Wisconsin would dramatically reduce barriers to access to mental health services for low-income families. This increased access to federal funding would further strengthen mental health programs and treatments for the thousands of young people across Wisconsin that struggle with a mental health challenge.<sup>77</sup> Medicaid expansion has also served as a valuable resource in combatting the mental health crisis that currently plagues juvenile justice systems across the country. State governments across the U.S. “have seized upon recent Medicaid expansion as a powerful opportunity to move behavioral health issues from institutional corrections to community-based alternatives.”<sup>78</sup> As we will touch on, community-based programs are key to properly addressing the underlying causes of youth incarceration (including mental health challenges), and Medicaid expansion will help accelerate the rise of these types of programming. Currently, Wisconsin is the last of the six “great lakes” states to adopt Medicaid expansion, but choosing to adopt Badgercare expansion “has the potential to increase access to community-based behavioral health services for both justice-involved young adults and low-income young adults generally.”<sup>79</sup> Because justice-involved youth are more likely than their peers to have unmet physical and mental health needs, “access to appropriate medical and mental health care could prevent initial justice involvement as well as decrease the likelihood of recidivism.”<sup>80</sup>

The state of Wisconsin must accept Badgercare expansion and bring hundreds of millions of dollars back to Wisconsin. In doing so, we will further strengthen the healthcare infrastructure in Wisconsin and ensure more youth are receiving the mental health care and treatment they need before they reach the justice system.

***Addressing the Underlying Causes of Incarceration.*** Finally, any discussion on prevention efforts must also acknowledge the broad underlying drivers of youth incarceration, including poverty and hunger, lack of quality educational opportunities, over policing and mass incarceration, human trafficking, and climate injustice. These broader problems need to be addressed and prioritized, but they are largely beyond the scope of this particular policy report.

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<sup>77</sup> National Alliance on Mental Illness (n.d.) *Medicaid Expansion*. <https://www.nami.org/Advocacy/Policy-Priorities/Improving-Health/Medicaid-Expansion>

<sup>78</sup> Jannetta, Jesse, and Okeke, Cameron (2017, November). Strategies for Reducing Criminal and Juvenile Justice Involvement. *Urban Institute*. <https://www.urban.org/sites/default/files/publication/94516/strategies-for-reducing-criminal-and-juvenile-justice-involvement.pdf>

<sup>79</sup> Jannetta, Jesse, and Okeke, Cameron (2017, November).

<sup>80</sup> Earle, Maggie (2018, August). The Complex Maze of the Juvenile Justice System in Wisconsin and Its Impact on Youth of Color. *Kids Forward*. <https://kidsforward.net/assets/The-Complex-Maze-of-the-Juvenile-Justice-System.pdf>

## Community Over Confinement

Many of the problems with our current youth justice system, particularly in how we try to rehabilitate young people, revolves around the archaic confinement model. This model, manifested in Lincoln Hills and Copper Lake, locks a large population of youth in a prison-like environment, utilizes solitary confinement, lacks appropriate educational and rehabilitative programs, and often moves children hundreds of miles from their families and support system. Wisconsin must reimagine this confinement model if we are to improve outcomes for our state's youth and better protect them from the abuse and trauma that often plagues these facilities. We must move from centralized corrections facilities that isolate and traumatize our kids towards a community-based model that brings youth closer to home and is void of the abusive, prison-like environment that has characterized Lincoln Hills and Copper Lake. Luckily, states around the country have already started to move away from this outdated "youth prison" model of corrections, and we can learn and chart a path forward based on what works in other states. In no place are these models more successful than in the state of Missouri.

In the 1980's and 90's, while many states were building large, prison-like youth correctional facilities, Missouri started to move in a different direction. Recognizing that these large facilities didn't seem to be working, Missouri pivoted towards more numerous, smaller youth facilities across the state. These facilities were design to resemble college dorm rooms, as opposed to adult prisons, and they eventually grew into four different models for how to treat youth that better addressed the broad continuum of different needs. These four models were Community Care Facilities, Group Homes, Moderately Secure Facilities, and a few small Secure Care Facilities for those who posed the most danger to public safety.<sup>81</sup> Missouri's innovative youth justice model has become the envy of states across the country. It was deemed "the right model for juvenile justice" by the New York Times and, in 2008, won Harvard University's Kennedy School of "Innovations in American Government" award in children and family system reform.<sup>82</sup> Most recent data shows that Missouri's 3 year recidivism rate among justice-involved youth was only 31%, which fared much better than Wisconsin's 63% rate from the same time period, especially when you realize that Wisconsin's youth justice program is significantly more expensive than Missouri's.<sup>83</sup> Finally, Missouri's model was safer for justice-involved youth and led to better educational outcomes. To summarize, Missouri's model has better youth outcomes, costs less, is safer for children, and led to higher future success.

Wisconsin must move away from the large youth correctional facilities such as Lincoln Hills and Copper Lake. We must also look to Missouri's Model for Youth Justice as we facilitate this transition to a new way of more effectively and humanely rehabilitating our state's young

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<sup>81</sup> Mendel, Richard A. (2010). *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*. The Annie E. Casey Foundation. <https://assets.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>

<sup>82</sup> Mendel, Richard A. (2010).

<sup>83</sup> Justice Policy Institute (2020, July). *Sticker Shock: The Cost of Youth Incarceration*. [https://www.justicepolicy.org/uploads/justicepolicy/documents/Sticker\\_Shock\\_2020.pdf](https://www.justicepolicy.org/uploads/justicepolicy/documents/Sticker_Shock_2020.pdf)

people. What, then, made Missouri's Model so successful, and how can Wisconsin emulate their success?

***Moving Away from Large Prison-like Environments.*** The hallmark transformation of Missouri's juvenile justice system started when they moved from a few large detention facilities to smaller, local facilities that better cater to the individual needs of the youth. Missouri's facilities are not only smaller, but less institutionalized (i.e. they look less like a prison). Wisconsin's Lincoln Hills and Copper Lake have a capacity of over 500 and 100, respectively, while Missouri's largest facilities have a capacity of merely 50 children. Additionally, these facilities are much healthier environments for young people. While Lincoln Hills and Copper Lake place youth in prison cells, a vast majority of Missouri's youth live in carpeted "dorm-like" environments. Missouri facilities are brightly colored, have live plants, and are structured more like a group home. Additionally, Wisconsin facilities, like many others across the country, require youth residents to wear uniforms, while Missouri allows all of their youth to wear their own clothes.<sup>84</sup>

Not only are these facilities designed to be better suited for children, but their staffing also sets a healthier, more empathetic tone. Ned Loughran, Executive Director of the Council of Juvenile Correctional Administrators, describes how Missouri's small, focused facilities are better able to rehabilitate justice-involved youth:

"The kids coming into juvenile facilities need a lot of specialized attention, and they need to develop a relationship with staff." Loughran [says], "A small facility allows the staff to get to know the kids on a very individual basis. [This allows] the kids to interact better with peers and staff. Because large facilities routinely suffer with high rates of staff turnover and absenteeism, "kids spend a lot of time sitting in their rooms... With large [facilities] it's like going to a large urban high school. Kids get lost, and these kids can't afford to get lost."<sup>85</sup>

Missouri's focus on individualized care in a healthy institutional environment strongly contributes to the healthy rehabilitation of the young people that go through its system. Wisconsin must transition away from large, prison-like environments and towards smaller facilities that provides individualized and personal program for the young people in its care.

***Keeping Youth Close to Home.*** During the "tough-on-crime" phase in the 1990's, the common thought was that youth needed to be fully removed from their neighborhoods and home communities to sever any negative influences that led them into the justice system. While this thought process was well-intended, recent research and data shows us that this philosophy was misguided. This new research, epitomized by the Anne E. Casey Foundation's recent report and pilot program called "Close to Home," found that keeping youth in smaller facilities closer to

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<sup>84</sup> Mendel, Richard A. (2010). The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders. *The Annie E. Casey Foundation*. <https://assets.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>

<sup>85</sup> Mendel, Richard A. (2010).



their families led to a “68 percent reduction of youth placed in facilities; 58 percent fewer youth arrests; and a drastic increase in the percentage of youth who passed their classes.”<sup>86</sup> Analysis from the Harvard Kennedy School reinforces the need for children to stay near their families and support systems:

“[youth] services should emphasize evidence-based family intervention models. A family is the best place for kids — birth families where possible, or other family settings such as kin or supportive foster care when it is not. Effective programs help families provide the guidance, support, and structure that help kids get back on track.”<sup>87</sup>

Currently, many of Wisconsin’s confined youth are housed in facilities hundreds of miles away from their families. For example, Lincoln Hills and Copper Lake is located in the small town of Irma, Wisconsin, which is more than 170 miles from four of Wisconsin’s five largest cities. This means that youth see their families or other support systems much less frequently, if at all. As one could imagine, facing a corrections environment without ready access to positive family connections further compounds any trauma or mental health problems and puts healthy rehabilitation even farther out of reach. If Wisconsin is to provide programming that actually works, we must keep kids closer to home and nurture any healthy relationships and positive role models that they currently have.

Missouri’s successful model of youth justice emphasizes the importance of family bonds and encourages families to become active participants in the rehabilitation of the justice-involved youth. As soon as that child is placed in the youth justice system, “juvenile justice service coordinator meets with parents and delivers a message that ‘the youths and their families are encouraged to engage, invest and take ownership in the process as active collaborators.’”<sup>88</sup> Families continue to be involved in the process throughout the youth’s time in the youth corrections system. The Missouri model places a heavy emphasis on family therapy sessions and actively works with the youth’s families to address any underlying needs, nurture the child’s current support system, and create a plan for that child with the family that helps them avoid future justice involvement. Missouri’s deep emphasis on family consultation and involvement is a cornerstone to their success. Wisconsin must begin by moving youth to facilities closer to home and end with the comprehensive, strategic involvement of the support systems and family relationships that are instrumental to the development of youth.

***A Step in the Right Direction.*** Fortunately, Wisconsin is already imagining alternative solutions to the large juvenile detention facilities we currently utilize. Since 2014, the state of Wisconsin, especially in Milwaukee county and surrounding areas, have started to deemphasize

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<sup>86</sup> Wiltz, Teresa (2018, March 16). Keeping Youth Close to Home Reduces Juvenile Arrests. *Pew Research*. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/03/16/keeping-youth-close-to-home-reduces-juvenile-arrests>

<sup>87</sup> McCarthy, Patrick, and Schiraldi, Vincent, and Shark, Miriam (2016, October). The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model. *Harvard Kennedy School*. <https://www.ojp.gov/pdffiles1/nij/250142.pdf>

<sup>88</sup> Mendel, Richard A. (2010). The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders. *The Annie E. Casey Foundation*. <https://assets.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>

the confinement model and shift their focus to community-based programming and smaller facilities close to home. Milwaukee County, in partnership with nonprofits such as Youth Justice Milwaukee, have committed to “expanding community-based programs, addressing policy issues, establishing better alternatives to revocations, and finding alternatives to incarceration for youth that present a low-to-moderate risk to reoffend.”<sup>89</sup> This has led to programs such as Milwaukee County Accountability Program (MCAP) and Wraparound Milwaukee. MCAP looks to help youth “navigate through difficult peer and family situations and connect youth with social services aimed at changing negative behaviors.”<sup>90</sup> Wraparound Milwaukee provides community-based services and educational enrichment opportunities to help youth “who have serious behavioral, emotional, and mental health needs.”<sup>91</sup>

Wisconsin needs to expedite the transition away from isolating confinement facilities and towards these types of community-based programs that better address the needs of justice-involved youth. Luckily, the closing of Lincoln Hills and Copper Lake is a bipartisan issue; both former Governor Scott Walker and Governor Tony Evers have made tangible steps towards closing these facilities. However, youth still reside in these facilities, demonstrating the need for advocates to continue to prioritize the transition away from large youth prisons and towards community-based programs immediately. The Lutheran Office for Public Policy fully supports accelerating our state’s transition towards more community-based programming and smaller facilities closer to home.

### **Individualized Care that Addresses the Underlying Causes of Incarceration**

Another shining success of the Missouri model of youth justice is their personalized rehabilitation plans and programs that address the individual needs of each justice-involved youth. While moving away from large prison-like environments and towards community-based programs closer to home is a great improvement, Wisconsin can continue to improve by offering a wider, more accessible list of programs that address the underlying causes of incarceration and equip students for success after they leave the youth justice system.

***Assessments and Programming for Each Child.*** A functioning, effective youth justice system will identify the needs of each child and provide the programming, treatment, and services to address those needs and mitigate the risk of reoffending. Effectively assessing the needs of an individual young person including their risk of recidivism, identifying any mental health challenges or trauma background, or spotting any addiction issues, is a crucial first step to addressing these needs. After identifying the unique needs, the youth justice system should have the infrastructure and resources to properly address them. However, Missouri’s youth justice

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<sup>89</sup> Mendez, Edgar (2021, February 27). *Milwaukee County Reduces Number of Inmates in Youth Prisons*. Associated Press. <https://apnews.com/article/milwaukee-prisons-6d969260734be8b842a19307ad7eb559>

<sup>90</sup> Mendez, Edgar (2021, February 27).

<sup>91</sup> National Gang Center (2021, April 7). *Wraparound Milwaukee*. U.S. Department of Justice Office of Justice Programs. <https://nationalgangcenter.ojp.gov/spt/Programs/131>

system goes one step further by recognizing that a singular advocate within the justice system helps ensure each young person is given the proper treatment, developing and learning from their experience in the justice system, and set up to succeed after their release. As soon as someone is committed into the juvenile justice system, they are “immediately assigned to a single staff person – known as a service coordinator - who will oversee his or her case before, during, and after placement in a DYS facility.”<sup>92</sup> This staff person administers an individual risk and needs assessment, recommends care levels and organizes appropriate programming, engages and involves any family or support systems, and serves as the point person in all matters involving the particular child. Because Missouri juvenile court judges hand down indeterminate sentencing, the service coordinator is even instrumental in determining how long a youth will be in the youth justice system and whether they are appropriately rehabilitated. Finally, this staff member meets with the child at least once a week to talk about their experiences, reflect on their programming, and ensure that each child is having a safe, fruitful experience that is leading to correct outcomes. This individualized approach lends to the success of the system; when a child can develop a relationship with one person, they can begin to trust that person. This aids in the appropriate development and growth of that child and also increases youth accountability through healthy relationships and not coercion or force.

Wisconsin has made admirable progress in providing needs assessment for each child and screening for mental health and addiction issues. Most notably, Wisconsin’s Department of Children & Families is working with counties across the state to implement the “Youth Assessment & Screening Instrument (YASI),” which is designed to “estimate the likelihood that the same delinquent behaviors will continue if there is no intervention.”<sup>93</sup> The YASI assessment will be available to every referred youth in Wisconsin by the end of 2021. This is a great first step in assessing the needs of youth coming into the justice system and ensuring that the state knows what types of treatment and programming would best serve each young person.

We applaud Wisconsin’s effort to implement the YASI assessment statewide. However, assessments should be followed up with individualized advocates and programming that truly addresses the unique needs and challenges outlined in the assessment. Wisconsin falls short in responding to these assessments with adequately resourced programming and individualized care. Wisconsin needs to consider replicating the individualized approach used by Missouri’s youth justice system to better respond to the needs identified in the YASI assessments. While moving to smaller facilities, as already proposed, will make individualized programming and relationship-building much easier compared to housing children in large, institutionalized settings, we must start thinking about the unique needs of each individual child. The Missouri model has shown us that cookie-cutter approaches to rehabilitation are much less effective than individualized care.

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<sup>92</sup> Mendel, Richard A. (2010). *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*. *The Annie E. Casey Foundation*. <https://assets.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>

<sup>93</sup> *Wisconsin Department of Children & Families* (n.d.). *Wisconsin’s Plan for Assessment & Case Planning in Youth Justice Statewide*. <https://dcf.wisconsin.gov/files/cwportal/yj/pdf/yasi-plan.pdf>

***Offering More Treatment Programs for Youth Across the State.*** In addition to offering more individualized program offering for justice-involved youth, Wisconsin must ensure these programs are available to all youth and eliminate barriers to these programs. Accessibility to programming is one area of particular concern. There are two accessibility problems that create programming disparities across the state: geography and resource scarcity.

Many justice-involved youth do not have access to programming simply because of what county they reside in. Because Wisconsin's juvenile justice system is largely run at the county level, there are significant disparities in the variety, quality, and accessibility of treatment programs for youth. Additionally, some counties are hours away from appropriate mental health or rehabilitative services, creating additional geographic obstacles for youth. Scarcity of resources and capacity is another barrier to ensuring all youth have the programming and resources they need. The Wisconsin Department of Children and Families found that the main barrier "to receiving needed mental health services include insufficient array of services, lack of in-home providers, long waiting periods for getting assessments, and shortage of child psychiatrists."<sup>94</sup> Building up the programming infrastructure by hiring more in-home providers and psychiatrists, increasing assessment capacity, and expanding the array of services could help provide every child with the programming they need. Fortunately, DCF is looking to tackle this accessibility issue by striving to make "services easily accessible with minimum exclusionary criteria or requirements for entry" so that "youth and families have access to a full range of individualized services to effect true behavior and family systems change."<sup>95</sup> Building this infrastructure and offering a more broad continuum of available services will require additional resources from the state. This should be done through two channels.

First, the state can increase funding for Youth Aids, the state program that "provides each county with an annual allocation of state and federal funds from which a county may pay for juvenile delinquency-related services, including out-of-home placements and non-residential, community-based services for juveniles."<sup>96</sup> In his reiteration of the 2021/23 budget, Governor Evers proposed a roughly \$19 increase in Youth Aids funding.<sup>97</sup>

Second, the state should drastically increase funding for the Care and Treatment Services Division of the Department of Health Services (DHS). Care and Treatment Services is tasked with operating "care and treatment facilities, community mental health and substance use services, community treatment services, and the protection of client rights for individuals

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<sup>94</sup> Bureau of Youth Services (2016, December). Wisconsin's Community-Based Juvenile Justice System: Summary of Input Gathered and Visions for the Future of Youth Justice. *Wisconsin Department of Children and Families*. <https://dcf.wisconsin.gov/files/cwportal/yj/pdf/yjsmry-rpt.pdf>

<sup>95</sup> Bureau of Youth Services (2016, December).

<sup>96</sup> Wisconsin Legislative Fiscal Bureau (2013, January). *Juvenile Justice and Youth Aids Program*. [https://docs.legis.wisconsin.gov/misc/lfb/informational\\_papers/january\\_2013/0057\\_juvenile\\_justice\\_and\\_youth\\_aid\\_s\\_program\\_informational\\_paper\\_57.pdf](https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2013/0057_juvenile_justice_and_youth_aid_s_program_informational_paper_57.pdf)

<sup>97</sup> Evers, Tony (2021). *2021-23 Executive Budget*. State of Wisconsin Department of Administration. <https://doa.wi.gov/Pages/2021-23%20Executive%20Budget.aspx>

receiving services for developmental disability, mental health, and substance use.”<sup>98</sup> This division is responsible for providing these services to justice-involved youth. In Governor Evers’ 2021/23 biennial budget, he allocated a 25% increase in Care and Treatment Services funding for 2022, with an additional 20% increase in FY 2023.<sup>99</sup> LOPPW fully supports these increases in funding for Youth Aids and DHS as it pushes Wisconsin closer to our goal of providing robust, equitable, and accessible programming for youth in every one of Wisconsin’s 72 counties.

***Equipping Youth for Future Success.*** One of the keys to Missouri’s low recidivism rate among justice-involved youth was their intense focus in equipping youth for a successful life after they leave the juvenile justice system. First, Missouri’s youth justice system focused on intangible development, such as improving communications skills, conflict resolution, and increasing their own self-awareness. These programs were designed to give youth “crucial insights into the roots of their delinquent behavior and the new social competence to acknowledge and solve personal problems.”<sup>100</sup> However, their programs also emphasized tangible steps and tools needed to become successful, including high-quality (and properly resourced) education program, hands-on learning and community service opportunities, and the opportunity to earn a wage and gain real work experience through job placements.<sup>101</sup> The results of these programs speak for themselves; Missouri’s high school graduation rates (or GED equivalent) for justice-involved youth were over 3 times the national average in 2014, and over “90% [of young people] were ‘productively involved’ at the time of their discharge, meaning they were actively attending school (secondary or college) and/or actively employed.”<sup>102</sup>

Wisconsin must improve our resources and programs that seek to prepare and equip youth for their discharge from the youth justice system. Not only do these programs pay for themselves by limiting recidivism and lowering future incarceration costs, but improved outcomes for youth also strengthens our state’s workforce and expands our tax base. We all benefit when our youth succeed, and our state should strongly invest in the success of justice-involved youth.

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<sup>98</sup> Wisconsin Department of Health Services (n.d.) *Division of Care and Treatment Services (DCTS)*. <https://www.dhs.wisconsin.gov/dcts/index.htm>

<sup>99</sup> Evers, Tony (2021). *2021-23 Executive Budget*. State of Wisconsin Department of Administration. <https://doa.wi.gov/Pages/2021-23%20Executive%20Budget.aspx>

<sup>100</sup> Mendel, Richard A. (2010). *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*. *The Annie E. Casey Foundation*. <https://assets.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>

<sup>101</sup> Mendel, Richard A. (2010).

<sup>102</sup> Missouri Division of Youth Services (2018). *Results*. *The Missouri Approach*. <http://missouriapproach.org/results/>

## **Ban the Use of Solitary Confinement for Juveniles**

As previously stated, the use of solitary confinement in youth “constitute[s] cruel, inhuman, or degrading treatment” that can be counterproductive to proper youth rehabilitation and lead to dozens of mental health challenges.<sup>103</sup> Fortunately, the state of Wisconsin has recognized the damage done by the use of solitary confinement in youth facilities. Among other important reforms, one of the key terms of the settlement in *JJ v. Litscher* is the end of punitive solitary confinement in youth corrections centers. However, a Wisconsin Public Radio report from 2019, almost two years after the *Litscher* settlement, found that solitary confinement is still used at Lincoln Hills and Copper Lake. Sometimes children in this facility were isolated for over 7 days.<sup>104</sup> Further assessments reported by the Associated Press in 2019 found that while these have been “vast improvements” to conditions at these facilities, the use of solitary confinement remains. If our state is to develop a more humane, effective, and rehabilitative juvenile justice system, we must immediately cease any and all use of punitive solitary confinement.

## **Raise the Age of Juvenile Court Jurisdiction**

Any discussion on youth justice reform would not be complete without mentioning Raise the Age policy. Raise the Age refers to raising the age of juvenile court jurisdiction to bring 17-year-olds back to their rightful place in the juvenile justice system. In 1994, Wisconsin joined a number of states across the country in bringing 17-year-old youth up to the adult court system, no matter what offense they may be charged with. Since the turn of the 21<sup>st</sup> century, however, states across the country, from Louisiana to New York, have realized the improved outcomes of serving 17-year-olds in the juvenile system.<sup>105</sup> Currently, Wisconsin is one of only three states that still tries all 17-year-olds in the adult court system. One of the most pressing steps for youth justice reforming is bringing all 17-year-olds back under juvenile court jurisdiction. Not only does Raise the Age improve outcomes for justice-involved youth, it also helps state budgets, improves our workforce, and makes our communities safer.

First and foremost, raising the age provides better treatment and programming for youth, which, in turn, improves outcomes for these justice-involved youth. As we know, a majority of adolescent youth involved in the justice system struggle with mental illness and have a history of trauma. The youth justice system better addresses these needs than the adult system. For

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<sup>103</sup> *Human Rights Watch* (2012, October 10). Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States. <https://www.hrw.org/report/2012/10/10/growing-locked-down/youth-solitary-confinement-jails-and-prisons-across-united>

<sup>104</sup> White, Laurel (2019, January 14). *Report: Pepper Spray, Solitary Confinement Continue At Wisconsin Youth Prisons*. Wisconsin Public Radio. <https://www.wpr.org/report-pepper-spray-solitary-confinement-continue-wisconsin-youth-prisons>

<sup>105</sup> *Justice Policy Institute* (2017, March 17). Raising the Age: Shifting to a safer and more effective juvenile justice system. <https://justicepolicy.org/wp-content/uploads/2021/06/raisetheage.fullreport.pdf>

example, the juvenile system now requires individualized assessments and screening for mental health challenges and trauma, which informs sentencing and programming. The adult system does not require any assessments, and it largely neglects any underlying factors that may have led that young person into the justice system. Secondly, the juvenile system offers more mental health programming, counseling, AODA, and community-based programming to help address and solve these underlying factors that pushed youth into the justice system. Young people in the adult system, on the other hand, are subjected to trauma and treatment that largely compounds any underlying problems, including physical and sexual abuse, solitary confinement, and even fewer mental health services and educational opportunities. Youth in adult prison are more targeted for sexual abuse than any other single group; “despite comprising less than 1% of the adult prison population, juveniles represent over 20% of its sexual abuse victims.”<sup>106</sup> Youth confined with adults are also up to 36 times more likely to commit suicide compared to youth in the juvenile system.<sup>107</sup> While Wisconsin’s juvenile justice system is in dire need of improvement, “adult prisons and jails are unquestionably the worst places for youth.”<sup>108</sup> Moving 17-year-olds back to the juvenile system is a necessary step to protecting them from additional abuse, trauma, and victimization.

The sharp contrast between youth in the juvenile and adult systems directly translates to life outcomes, starting with future justice involvement. Youth in the juvenile system are 34% less likely to recidivate compared to youth tried in adult court, even when we adjust for offense committed.<sup>109</sup> This number rises to 39% for violent crime and 44% for felony property crime.<sup>110</sup> When youth are tried in the juvenile system, they are less likely to commit crimes in the future, which leads to safer communities across the state. Youth treated in the juvenile system are also more likely to be successful and healthy adults. Youth in the juvenile system are more likely to obtain higher education levels, steady employment, and earn higher wages. As one would imagine, this translates to a stronger economy and heartier tax base. Missouri State Economist Dr. David Mitchell found that for every one 17-year-old that Missouri treated in the juvenile system, that youth would pay an additional \$170,000 in taxes due to higher lifetime earnings.<sup>111</sup> A reduction in recidivism and an increase in the tax base makes Raise the Age fiscally

<sup>106</sup> The MacIver Institute. (2013, October 23). *Mandatory Sentencing 17 year-olds in Adult Court Is There a Better Alternative for Wisconsin’s Youth and Taxpayers?* <https://www.maciverinstitute.com/2013/10/mandatory-sentencing-17-year-olds-in-adult-court/>

<sup>107</sup> Arya, Neelum (2018). *Getting to Zero: A 50-State Study of Strategies to Remove Youth from Adult Jails*. Los Angeles, CA: UCLA School of Law.

<sup>108</sup> Sawyer, Wendy (2019, December 19). *Youth Confinement: The Whole Pie 2019*. *Prison Policy Initiative*. <https://www.prisonpolicy.org/reports/youth2019.html>

<sup>109</sup> *Center of Disease Control* (2007, November 30). *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*. <https://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>

<sup>110</sup> MacIver Institute (2013, October 23). *Mandatory Sentencing of 17 year-olds in Adult Court – Is There a Better Alternative for Wisconsin’s youth and Taxpayers*. <https://www.maciverinstitute.com/2013/10/mandatory-sentencing-17-year-olds-in-adult-court-is-there-a-better-alternative-for-wisconsins-youth-and-taxpayers/>

<sup>111</sup> Mitchell, David (2017). *Economic Costs and Benefits of Raise the Age Legislation in Missouri*. *Missouri State University*. <https://blogs.missouristate.edu/econ/files/2017/12/Economic-Costs-and-Benefits-of-Raise-the-Age-Legislation-in-Missouri.pdf>

responsible: an Urban Institute study in Connecticut found that for “every \$1 spent on raising the age, the state could expect to gain \$3 in reduced crime, incarceration costs, and public benefits.”<sup>112</sup> Simply put, for every 17-year-old that we move from the adult justice system to the juvenile justice system, Wisconsin becomes a safer, more empathetic, and more fiscally-responsible state. This is especially true if Wisconsin move towards a community-based model, provides individualized care, and creates better rehabilitative programming in the juvenile justice system.

For these reasons, all youth aged 17 and under must have original court jurisdiction in the juvenile justice system. Raising the Age is common-sense policy that has been adopted and proven successful in states across the country. It is also one of the easiest first steps to youth justice reform, which is why LOPPW has formed Raise the Age – Wisconsin, a statewide coalition of advocacy partners dedicated to raising the age of juvenile court jurisdiction. For more information on Raise the Age – Wisconsin or to get involved in Raise the Age advocacy, go to [www.raisetheagewi.org](http://www.raisetheagewi.org).

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<sup>112</sup> Roman, John (2006, February 21). The Economic Impact of Raising the Age of Juvenile Court Jurisdiction in Connecticut. *Urban Institute*. <https://www.urban.org/research/publication/economic-impact-raising-age-juvenile-jurisdiction-connecticut>



## Conclusion

Wisconsin's youth justice system is expensive, does not treat the underlying drivers of youth incarceration, and is ineffective at preventing future justice involvement. Fortunately, Wisconsin leaders and advocates are recognizing the need for change, and first steps are already being done by the state to improve youth outcomes and end the abuse and trauma too often inflicted on youth in the state's corrections systems. However, there is still a long way to go. First, Wisconsin must recognize that those who are swept into the justice system are disproportionately children of color, come from low income households, have a history of trauma and abuse, and/or suffer from mental illness. Second, we must end the criminalization of misbehavior among youth and work to prevent youth from becoming justice-involved in the first place. This starts by redefining the role of Student Resource Officers and properly resourcing schools to address student needs through school counselors and other constructive measures. Third, our state needs to quickly move away from large correctional facilities, which are often rampant with abuse while short on rehabilitative programming, to smaller, less institutionalized facilities that are closer to home. This transition must be done in lock-step with an improved selection of individualized programming that is able to address the individual needs of each child. The state should also ensure that this robust selection of programming is easily accessible to youth in all of Wisconsin's 72 counties.

This report does not cover the entire scope of needed changes and improvements to Wisconsin's youth justice system. However, by working to prevent youth incarceration, focusing on the individual needs of justice-involved youth, limiting the use of confinement, and raising the age of juvenile court jurisdiction, Wisconsin can make significant strides towards a more effective justice system. The Lutheran Office for Public Policy in Wisconsin supports these important reform efforts, and stands in solidarity with the youth justice advocacy organizations, faith-based organizations, and directly impacted people who advocate for improved outcomes for justice-involved youth in Wisconsin.

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