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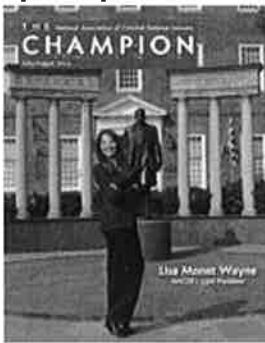
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Addressing the Collateral Consequences of Convictions for Young Offenders

By Ashley Nellis



People exiting the custody of the criminal justice system encounter substantial challenges in gaining employment, finding housing, and accessing medical and mental health care. A popular area of focus among advocates, practitioners, law enforcement, and right-minded policymakers over the past decade has been the strengthening of re-entry support so that the odds of recidivism and return to the system are minimized. Some of this advocacy centers on easing the restrictions that frequently accompany a conviction such as housing bans, placement on public registries, and employment barriers. Less attention has been paid to the consequences that accompany a juvenile conviction, but young people also face system-imposed obstacles to success based on a delinquent or criminal record.

This article explores areas in need of attention and reform so that young people who have been adjudicated delinquent or convicted of a crime are not punished subsequently by other systems they encounter. The informed defense attorney is in an ideal position to ensure that clients are not subjected to unwarranted collateral consequences.

Overview of The Juvenile Offender Population

Two million juveniles are arrested each year,¹ and the collateral consequences they could face begin at this first point of contact with the system, regardless of whether charges are subsequently applied and the individuals are convicted. Juveniles are processed either in the juvenile court system (66 percent) or the criminal court system (10 percent). The remaining arrests are handled by the enforcement agencies and formal charges are not made. Approximately 1.6 million cases are heard in juvenile courts each year² and about 250,000 cases are processed in the adult court.³ Each year approximately 200,000 young people under the age of 25 exit formal custody of the juvenile justice system⁴ and an estimated 10,000 people under 25 leave the adult criminal justice system.⁵

Juveniles and young adults who become delinquent are handled by the system during a key developmental phase of adolescence. Often lacking the necessary skills to cope with adult responsibilities when they are released, many youth face unemployment, school re-enrollment challenges, and homelessness. Plans are rarely in place to support youth as they attempt to move past their convictions. Moreover, youth are frequently unaware of the consequences of their actions within the court system; a guilty plea, for instance, may be offered to expedite the process but may be accompanied by an assortment of problems in later years.

Youth who have been transferred to the adult system face additional problems. Juveniles incarcerated in adult facilities are 30 percent more likely to be rearrested than those retained in the juvenile justice system, both sooner and for more serious offenses.⁶ Incarcerated juveniles receive significantly less access to age-appropriate rehabilitative, educational, or vocational services than they would in the juvenile justice system. This sets them up for failure upon release. Additionally, programs offered in the adult system are not structured for juveniles, and correctional officers are often not aware of developmental differences between adults and youth, who require specialized handling and treatment. As a result, youth housed in adult facilities and released as young adults exhibit more negative outcomes than if they had been held in a juvenile facility.⁷

When a juvenile is transferred to the adult court, the juvenile's rights and protections are the same as an adult's. The collateral consequences of a criminal conviction for a young person are no different than they are for adults. In addition to the problems mentioned above, the young offender may have a permanent criminal record, lose the right to vote, and face deportation.

While record expungement is possible in many cases that are retained in the juvenile justice system, it is not an option after a juvenile has been transferred. And, while voting rights are not lost for juveniles adjudicated delinquent in the juvenile justice system, an adult conviction brings with it disenfranchisement from some state and federal elections. This means that in some cases, a young person might lose the right to vote — meaning a lifetime disenfranchisement in some states — even before reaching legal voting age. The consequence associated with the loss of this civil right can be viewed as the same consequence when applied to an adult because it is a longer period of time.⁸ Finally, the criminal conviction of an alien resident can and frequently does result in deportation. For juvenile cases transferred to the adult court, the individual may be deported upon conviction regardless of age.⁹

The issue of requiring counsel to advise a client about collateral consequences was recently addressed in *Padilla v. Kentucky*.¹⁰ Padilla, a U.S. resident of 40 years, was not informed that he faced deportation when he pled guilty to a drug distribution charge. He successfully argued on appeal that ineffective assistance of counsel was provided in his case. The Supreme Court ruled that criminal defense attorneys must warn their clients of a potential deportation if they plead guilty and are not U.S. citizens. This case raises the important issue of whether and how clients should be notified of collateral consequences of a conviction.

Original Intent of the Juvenile Justice System

The juvenile justice system was created in the late 19th century out of a societal desire to handle juvenile matters in a separate, less formal system that could correct misbehavior and place wayward youth back on track. Until that time, juveniles were processed in the adult court system and received the same sanctions as adults. It became clear over time that young people were not handled appropriately in the adult criminal justice system, and a separate system of justice exclusively for juveniles was necessary.

The philosophical beginnings of the juvenile justice system rested on the notion that young people who become delinquent were amenable to reform and the system should respond by providing ample rehabilitation services. It was also emphasized that youth should be spared from the stigma of involvement with the adult criminal justice system and not be branded as "criminals." Proceedings in the juvenile justice system were to be handled in an informal, non-adversarial, and highly confidential manner. Jane Addams, one of the original visionaries of the juvenile justice system, noted that the goal of the system should be "a determination to understand the growing child and a sincere effort to find ways for securing his orderly development in normal society."¹¹ Society placed an emphasis on correcting misbehavior and minimizing disruptions in the transition to adulthood for young people who break the law.

In the late 1960s and 1970s, the U.S. Supreme Court decided a series of cases that responded to growing concerns that the juvenile court system's focus on informality had done more harm than good. In 1967, the Court established that juveniles, even though they were in a different system, were still entitled to the basic safeguards that an adult would be granted in the courtroom. In *re Gault* concluded that juveniles were protected by the constitutional right to counsel, the opportunity to confront witnesses, the right against self-incrimination, the right to a transcript of the hearing, and a right to appeal the court's decision.¹² In its opinion, the Court acknowledged that applying these legal safeguards would move the juvenile court more in the direction of the adult court proceedings, but still emphasized the importance of protecting youth from the stigma of being labeled as a criminal.

One of the important benefits of the special juvenile court procedures is that they avoid classifying the juvenile as a "criminal." The juvenile offender is now classified as a "delinquent." There is, of course, no reason why this should not continue. ... It is also emphasized that, in practically all jurisdictions, statutes provide that an adjudication of the child as delinquent shall not operate as a civil disability or disqualify him for civil service appointment. There is no reason why application of due process requirements should interfere with such provisions.^[13]

The Supreme Court emphasized the importance of keeping youth matters out of the public eye in its 1971 ruling that juveniles do not have a right to a trial by jury. One reason for reaching this conclusion, the Court opined, is that such jury trials might bring publicity that could negatively affect the youth.¹⁴ Again, privacy was paramount.

The court decisions of this period attempted to balance the competing concerns of protecting legal rights and retaining the original intent of the juvenile court. Juvenile reform advocates knew that publicity brings with it additional scrutiny and collateral consequences, regardless of the outcome of the case. This mindset confirmed the approach of the founding principles of the juvenile justice system: youth mature out of their misdeeds with the right guidance. For this reason their past should not be allowed to dictate their chances in the future.

The late 1980s and 1990s brought a near reversal from this perspective, involving de-emphasis of youth privacy and heightened interest in public accountability. Increases in crime, community fears about public safety, dire warnings from misguided policymakers, and the rise of the victim's rights movement shaped the majority belief that increased publicity around juvenile punishments would deter potential

offenders and hold young people accountable for their actions.

Many felt the juvenile justice system was treating juveniles too lightly. Some pointed to singular events of serious juvenile crimes and sought to present them as commonplace. Legal changes that developed in this era centered on easing ways that certain individuals or groups could learn about one's delinquent behavior and impose additional sanctions. To date, these collateral consequences have been most apparent in the areas of education, housing, employment, and placement on public registries.

In the past two decades, information sharing about adjudicated juveniles has become easy and encouraged, and rules surrounding youth privacy and confidentiality have loosened in the interest of public safety. Today, agencies enter into agreements to share delinquency data, school data, and family data. While information sharing is a useful tool to keep track of youth across systems, many find that the lack of discretion with which sensitive information is shared outweighs this usefulness.

Schools, for instance, have been granted unparalleled power to access juvenile records and impose new disciplines that involve law enforcement, arrests, convictions, and the possibility of a record. Courts, too, have become much more willing to reveal information; today only four states maintain complete confidentiality for juveniles who go to court in response to a delinquency charge. In addition, a set of Supreme Court cases around this time restricted the power to sanction the media for releasing a juvenile's name to the public as long as it was obtained lawfully.¹⁵ And, many states now allow media the right to release not only the identity but also the physical images of juveniles in court proceedings.¹⁶

Collateral Consequences Of a Conviction or Delinquency Adjudication

Zero Tolerance and Other School Push-out Policies

Attendance at school is a strong protective factor against delinquency; youth who attend school are much less likely to commit crime both in the short term and in the long term. Emphasis on finishing one's education should be a high priority for any system designed to assist youth in their developing years. Despite the strong connection between school truancy, dropouts and delinquency, maintaining a connection to school for delinquent youth is sometimes a challenge.

The consequences of school push-out policies are numerous. Part of the sweeping legal changes of the 1990s included expansion of zero tolerance laws, spearheaded by the federal government in the passage of the Gun-Free Schools Act (GFSA),¹⁷ which mandates that states receiving funds under the Elementary and Secondary Education Act (ESEA) establish laws regarding firearms, requires one-year expulsion for certain weapons offenses, and provides incentives to states to tighten their laws around weapons in schools. A student can still be subject to the provisions of the GFSA even if found not guilty of the offense, and schools have the authority to terminate all educational services to a person who violates this statute. In New Jersey, the scope of the GFSA was expanded to include students convicted of using a firearm in the commission of a crime even if it was off school property, anywhere in the state. In Missouri, schools can suspend or expel students who were charged but not convicted of a felony.¹⁸ And in North Carolina, a student who is charged, convicted, or adjudicated of a criminal offense can be suspended or expelled from school even if the offense is alleged to have occurred off school grounds.¹⁹

Public demand for stricter gun laws in schools grew in response to select instances of school shootings around this time. These events demonstrated the ease with which guns could be brought on campus, and schools took appropriate measures to restrict such opportunities in the future by installing security systems and metal detectors. However, less emphasis was placed on how infrequently school violence occurs. Instead, a sense developed that schools are dangerous, but this perception is not supported by statistical reality. In fact, school-related violence is rare and has been dropping for more than a decade.²⁰ Nevertheless, distinct incidents frightened parents about the safety of their children at school, and this fear led to many of today's school exclusion laws.

Challenges to Re-enrollment

Pressure on schools to excel through performance on standardized test scores may have the effect of bolstering a school district's trend to create obstacles to re-enrollment for formerly incarcerated youth. Some schools exclude formerly incarcerated youth because these individuals are considered difficult to manage. And, in many instances schoolwork completed by youth in detention is not counted by the school toward credit completion.

More than half of youth in secure placements have not completed the eighth grade and two-thirds of those leaving formal custody do not return to school.²¹ In the absence of federal policy disallowing it, some states have enacted laws that create clear obstacles for youth attempting to re-enroll in high school upon re-entry from secure detention. In 2002, the Pennsylvania Legislature amended its school code to permit Philadelphia public schools to exclude youth who had been in secure placement or who were on probation from returning to the regular classroom. Instead, these youth were to be enrolled in an alternative education setting. However, in 2005, the state Supreme Court in Pennsylvania ruled this to be unconstitutional.²² Students in Pennsylvania can now be placed in alternative schools only

after an individualized assessment of their education needs has been conducted; they cannot be categorically excluded from public schools.

School exclusion policies carry into higher education as well since college applications ask candidates about their criminal record. While applications used to restrict the question to whether one had been convicted of a crime (for which most adjudicated juveniles could respond negatively since an adjudication is technically not a crime), many applications now also ask whether the individual has been arrested or been adjudicated delinquent.²³ Only in an instance in which the record has been expunged would a young person be able to keep this information private.

Barriers to Employment

Employment status is another strong predictor of criminal behavior. Individuals who have a job are less likely to commit crime, as evidenced by the findings in numerous studies on the subject.²⁴ Yet when youth seek employment, they may be turned away if a criminal conviction is revealed.

A common assumption is that individuals who are processed in the juvenile justice system have their records destroyed (expunged) when they turn 18. This is not the case. The laws governing whether a juvenile record is sealed (not accessible by the general public) or expunged vary from state to state.²⁵ All states except Rhode Island allow for records expungement under certain criteria. However, in 29 states and the District of Columbia, certain permanent exclusions to expungement apply. Even when a record is expunged, in reality sometimes the record still exists. Records destruction sometimes means the files are kept in a separate file accessible by specified parties through a court order.²⁶ Juveniles transferred to the adult system are not protected from any restrictions on record expungement. Having a criminal record leads to numerous lifelong barriers that greatly reduce access to stabilizing life characteristics including permanent housing, education, and employment.

Individuals usually need to complete an application to have their record expunged, even if they were arrested but found not guilty of the offense. In North Carolina, for example, the application process entails submitting the following: an affidavit by the petitioner stating that the petitioner has been out of trouble since the adjudication and has not had any subsequent adjudications or convictions; a verified affidavit of two adults who are unrelated to the petitioner, substantiating that the petitioner has exhibited positive behavior; and a statement determining whether the petitioner was adjudicated delinquent or undisciplined.²⁷ In cases of less serious offenses or when the youth completed the necessary diversion program, the record can often be expunged upon approval by the court. In about half of the states, however, adjudication for offenses that would be felonies if committed by an adult are not eligible for record expungement.²⁸ Thus, regardless of age at offense, this offense could stay on one's record forever.

In Pennsylvania, for example, the records of youth 14 years of age or older may be accessible to the public if the offense would have been considered a felony if committed by an adult. If the youth was 12 or 13 years old at the time of the offense, only certain types of adjudications would result in a record that may be available to the public. If the juvenile was previously adjudicated delinquent for an offense mentioned above, and another petition has since been filed, that juvenile's court record will be public regardless of the most recent charge.²⁹

Surveys of the post-incarceration employment application process find that having a criminal record places job seekers in a very undesirable position.³⁰ Moreover, the months or years spent out of the labor force while in detention, jail, or prison can place these individuals at a distinct disadvantage in finding a job.

The Internet creates an easily accessible way to search someone's criminal record and draw assumptions about the aptitude for one's position. For a small fee, a criminal record can be obtained almost instantly. In addition, information on the Internet is permanent, so even criminal offenses that were committed decades ago can appear. Understandably, employers do not want to hire someone who will put their companies or organizations at risk. Yet, criminologists who study the impact of criminal records on future offending find that after a crime-free period of six years, offenders display virtually no difference in offending risk compared to those who never committed a crime.³¹

The time youth spend in out-of-home placement is generally not spent in preparation for employment, despite the protection employment serves against future offending. Some have noted that in residential settings, vocational programming designed to prepare young people for a job upon release is not accompanied by any industry certification, or associated with high-growth jobs in the communities where the youth would be returning.³²

Completion of education is also closely related to employment. The consequences of dropping out of school were recently reinforced in the findings from a Northeastern University study.³³ The economists found that, in 2008, 45.7 percent of the nation's high school dropouts were employed, versus 68.1 percent of those who completed high school. High school dropouts aged 16-24 were about half as

likely to be employed as those with a college degree. The study also found that youth who dropped out of high school were 63 times more likely to be in an institution (jail, prison, or juvenile detention center) than those who had completed college. Nearly 10 percent of young high school dropouts were in a correctional institution; for high school graduates, 2.8 percent were incarcerated.

Eviction and Homelessness

In 1996 during the Clinton administration, Congress passed a federal law that drastically broadened eviction policies governing low income housing. The National Affordable Housing Act in that year required eviction for "[a]ny criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control. ..."³⁴ This policy also rendered evicted family members ineligible for public housing for at least three years following the eviction. In 2002, the issue went to the Supreme Court in *Department of Housing and Urban Development v. Rucker*, in which the Court affirmed that residents could lawfully be evicted from public housing based on the offenses of their relatives.³⁵

Because of this law, a juvenile conviction might result in an eviction of the entire family. In fact, in a 2002 study of Chicago evictions shortly after Congress passed this law, researchers determined that 25 percent of the "One Strike" evictions resulted from a juvenile conviction.³⁶

The work of the defense attorney becomes more complicated when a conviction can also affect family members, as in the case of a potential eviction. It might seem appropriate to turn to the defendant's parents for instruction on the best interests of the child, but not if they are influenced by potential collateral consequences imposed on them as well. The ability of the defense attorney to understand, convey, and navigate these competing concerns is vital to the case, and the attorney must keep allegiance foremost to the client.³⁷

Youth re-entering their communities from out-of-home placement struggle to achieve housing stability.³⁸ Factors contributing to high mobility and residential displacement include severe and unresolved conflicts with parents, abuse from parents, homeless parents, overcrowding, lack of rental history, income levels insufficient to afford market rate rent, criminal history, and deficits in independent living skills. Some youth return to supportive homes while others do not.

If juvenile offenders become homeless after discharge from secure placement, they experience higher risks for reoffending. Many times, youth are released from confinement only to return to families in which there is chemical dependency, physical or sexual abuse, or criminal activity. Unfortunately, detention facilities often fail to work with families of the detained youth. Many youth released from detention return to families with severe internal conflicts and communities lacking in opportunities for positive youth development or employment. Two separate studies found that one in four youth (25 percent) released from foster care, a group home, or juvenile detention center spent their first night either in a shelter or on the street.³⁹

The communities to which youth return are also often rife with problems. Adults have more independence regarding their mobility upon release, but youth may not. Family reunification is certainly ideal, but this may not make sense in situations in which the child will be placed at risk. Sometimes it is best to remove youth from high-crime neighborhoods.

Placement on a National or State Sex Offender Registry

Sex offender registries are gaining in popularity and are used widely to track the whereabouts of persons convicted of a wide range of sex offenses. Since 1996, all states have passed some type of law that mandates the registration of sex offenders in a searchable database and requires notification each time the offender changes residence.⁴⁰ This information is often publicly available and individuals remain on the registry for the rest of their lives in many jurisdictions.

In many states laws also exist that require offenders to inform the community that they are a registered sex offender directly through distribution of flyers or notices on community bulletin boards. The high volume of sex offender laws passed in the last 15 years was unfortunately precipitated by highly sensationalized crimes rather than the development of specialized knowledge about how to prevent, respond to, and reduce repeat sex offenses. While the stated purpose of sex offender laws is to inform interested parties of strangers in their midst who have been convicted of a sex offense, lawmakers remain ignorant to the fact that over 96 percent of sex offenses are committed by a victim's relative,⁴¹ rendering victims unaided by these laws.

As the knowledge base about sex offenders develops, it has become increasingly clear that placement on a sex offender registry is especially harmful to young people, ineffective at accomplishing its intended purpose, and wasteful of taxpayer resources. Nevertheless, over half of the states require juveniles to be placed on the sex offender registry and the remaining states are either silent about the inclusion of juveniles or include juveniles once transferred to the adult system. New Mexico is the only state that specifically excludes all juveniles from sex offender laws.⁴²

The dangers of sex offender registries are especially real for juveniles who are adjudicated delinquent for sex-related offenses. Juveniles who engage in sex offenses are especially amenable to treatment and frequently exhibit low reoffending rates, particularly in relation to other crimes.⁴³ In addition, some juveniles have engaged in consensual sexual acts when they were below the age of consent, and as a result they have been convicted of sex offenses and must register as sex offenders. Youth who are already under the close scrutiny of the juvenile justice system are the most likely to fall under this scenario.

Sex offender laws ensnare young people in the laws they were established to protect. Most states have adopted strict requirements for young people convicted of sex offenses. For instance, individuals as young as 11 years old are required to be placed on North Carolina's sex offender registry if convicted of committing or attempting to commit first-degree rape, second-degree rape, first-degree sexual offense, or second-degree sexual offense. Registry information is circulated to various statewide databases and retained until the individual reaches the age of criminal majority.

In Michigan, more than eight percent of the state's sex offender registry is made up of juveniles, some as young as nine years old.⁴⁴ According to state law, identified sex offenders must stay on the registry for at least 25 years and stay for life under some circumstances. Unlike some states that restrict sex offender registry to particular sex-related crimes, Michigan law dictates that all sex-related offenses must be registered, though their placement is on a non-public registry only available to law enforcement. And illogically, unless the case is transferred to the adult court, the juvenile cannot petition the court to avoid the sex offender registry, putting the juvenile in a bind about which option is worse.⁴⁵

Congress enacted the Adam Walsh Act in 2006 to strengthen the federal response to sex offenders. It signified the first time in U.S. history that federal law required children 14 years old and over who have been adjudicated delinquent for certain sex-related offenses to be placed on a national sex offender registry for 25 years to life. Title I of the Act pertains to the Sex Offender Registry and Notification System (SORNA), which sets national standards for sex offender registration and notification. It has received much criticism, especially for the mandatory inclusion of children.⁴⁶

After individuals have been added to the registry, they face strict limitations on where they can live, attend school, and work. Anytime registrants change residency they must notify the authorities and update their registration; failure to do so promptly can and frequently does result in incarceration. The registry is available on the Internet, but it is on a protected website not accessible by the general public. States that do not amend their laws to comply with the Act face a 10 percent withholding of their federal Justice Assistance Grant (JAG) funds.

Despite the law's intent to make children and the community safer, it does the opposite. Young people face social stigma, branding as predators, housing bans, and exclusion from schools as a result of placement on the registry. Registration may also foreclose opportunities for obtaining much-needed treatment. It is widely established that one's attachment to the community, engagement in school, and stable housing are predictors of delinquency; those who are presented with these sorts of challenges may thus be more inclined to continue delinquent behavior. In addition, the entire family may be treated like pariahs if it is revealed that a child in the family is on the federal sex offender registry.

Sex offender laws exemplify how the treatment of juveniles has drifted off course from the founding vision for juvenile justice. The original aim of the juvenile justice system was to create a system whereby delinquent acts would not disrupt the pathway to adulthood by placing barriers in the youth's way that made it difficult or impossible to succeed. Instead, the system's focus on rehabilitation stressed the belief in reformation. Registries and community notification laws represent departures from this line of thinking by labeling the young person as a danger to society — a predator — sometimes for the rest of the person's life.

Conclusion

Today juveniles experience consequences that go well beyond their initial encounters with the law. The formalization of the juvenile court proceedings through the legal protections established in the Supreme Court rulings of the late 1960s and early 1970s was necessary, but also led to a reduced ability for the defendant to comprehend the court proceedings and consider long-term consequences of actions taken in court.⁴⁷ Research now shows that the adolescent brain is not fully formed until the early 20s. Until this time, a young person's pre-frontal cortex — the location for executive functioning and long-term planning — is not yet matured. It is well-established in medical science that young people fail to consider and appreciate the importance of the future and instead focus on the short-term gains of their decisions.⁴⁸ Defense attorneys should be mindful that their clients may not understand the process and will need to be provided with age-appropriate explanations to calculate the impact of their decisions in the court proceeding. For this reason, the role of a competent juvenile defender to translate the potential consequences of a conviction so that the young person can understand has become critical. The collateral consequences of a juvenile conviction should not be an afterthought.

A juvenile adjudication of guilt has far more drastic consequences than existed just 10 years ago, and both lawyers and their juvenile clients need to be aware of these effects — even if the disposition consists only of probation and includes no active period of incarceration. Some of these consequences may not be apparent for a number of years, but their possibility should be anticipated, fully considered, and planned for, wherever possible.^{49]}

Defense attorneys also must be aware of possible conflicts of interest between family members and clients if the conviction could impact family members as well. Matters pertaining to housing, education, employment, and offender registry and community notification laws should be discussed early and comprehensively so that the client proceeds with the best knowledge of his or her choices. Navigating the legal maze of collateral consequences of a conviction might be assisted through consulting state resources or national initiatives such as the American Bar Association's Collateral Consequences Project.⁵⁰

Every effort should be made to keep youth off sex offender registries, criminal record checks, and community notification systems. While the prospects for society's return to the vision for the juvenile justice system of the early 20th century have diminished, efforts can be made at the courtroom level to mitigate some of the harms inflicted as a result of the recent shifts in juvenile justice laws and practices. Informed defense attorneys should be aware of the collateral consequences and stay abreast of legal developments that might worsen the outcomes for youth.

The United States must establish a policy agenda that supports juvenile justice systems focused on rehabilitation and re-entry services to connect youth with meaningful opportunities for self-sufficiency and community integration. At the same time, greater emphasis must be placed on keeping delinquency matters confined to the justice system so that outside systems and agencies do not impose additional punishments for delinquent and criminally convicted youth.

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