Prioritizing the Welfare of Youth: Design Failure in Juvenile Justice and Building the Restorative Alternative

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PRIORITIZING THE WELFARE OF YOUTH: DESIGN
FAILURE IN JUVENILE JUSTICE AND BUILDING THE
RESTORATIVE ALTERNATIVE

Michael Friedman†

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† Michael Friedman has served as the Executive Director of the Legal Rights Center since 2006. The Legal Rights Center is a Minneapolis-based nonprofit that was established in 1970. See THE LEGAL RTS. CTR., www.legalrightscenter.org [https://perma.cc/KL52-2QK7]; see also Our History, THE LEGAL RTS. CTR., https://www.legalrightscenter.org/our-history.html [https://perma.cc/C4LJ-8HDC].
I. THE CURRENT SYSTEM OF JUVENILE ADJUDICATION

A. Wanted: A System Designed for Children

Should children who commit crimes be processed as criminals? One might argue that Minnesota has formally answered this as no. The juvenile justice system operates with procedural rules that are distinct from adult criminal law. A criminal complaint does not begin a juvenile case; instead the case initiates with a petition.¹ The title and procedures associated with a petition suggest that the purpose is not to enforce the power of the state or its people collectively, but to best seek the welfare of the child. Officially, youth cannot be convicted, only adjudicated as delinquent.²

Yet behind the curtain, Minnesota’s answer to this question, unfortunately, has been yes. In significant ways, there is little distinction between the prosecution of juvenile crimes and the prosecution of adult crimes. The same elected county attorney is responsible,³ abstract notions such as victims’ rights and public safety considerations are given primacy,⁴ and guilt can lead to criminal offender registration requirements⁵ and are tabulated for criminal history scores.⁶

¹ MINN. R. JUV. DEL. P. 6.03; see also MINN. R. JUV. DEL. P. 1.02 (including the child’s constitutional rights and “opportunities for personal and social growth” in purposes for the juvenile rules).
² MINN. STAT. § 260B.007, subdiv. 6 (2018).
³ In Hennepin County, where the Legal Rights Center provides defense representation, the elected county attorney designates a deputy for its criminal division who supervises adult and juvenile prosecutions. See Divisions, HENNEPIN COUNTY ATT’Y, https://www.hennepinattorney.org/about/divisions/divisions [https://perma.cc/LD7A-PAEY].
⁴ Many state public safety departments support efforts to prioritize victim restitution, irrespective of the consideration that children rarely have personal financial resources, over all other criminal justice fines, fees, and obligations. Resolution to Prioritize Victim Restitution, AM. LEGIS, EXCHANGE COUNCIL (June 29, 2015), https://www.alec.org/model-policy/resolution-to-prioritize-victim-restitution/ [https://perma.cc/382G-7JRL]; see also MINN. STAT. § 609.10, subdiv. 2 (2018) (allowing restitution as an available sentence without distinguishing juveniles).
⁵ MINN. STAT. § 243.166 (2018) (outlining offender registration as applied to adults and juveniles, differentiated only with regard to recordkeeping).
The contradictory internal dynamics of juvenile justice are reflected in case law. For instance, juveniles accused of crimes have the constitutional right to a lawyer, as well as the same Fourth and Fifth Amendment constitutional protections as adults. However, juveniles have not been granted the right to a jury, much less a jury of one’s peers. One can claim that youth are not sent to prison in Minnesota. But one can only do so honestly if unfamiliar with the Red Wing placement facility for juveniles. Red Wing is identified in statute as a correctional facility and, as such, is operated by the Department of Corrections and supervised by a warden. Yet, so as to obscure its true nature, it presents its work as consisting of “treatment, education, and transition services.” In a nutshell, the Red Wing facility has a contradictory status as something that must self-identify as a treatment center while functioning semi-openly as a prison.

If not a prison, what can Red Wing tell us about its treatment, education, and transition services? What can other out-of-home placements, ones not run by the Department of Corrections, share about the accom-

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7. The full history of the contradictory nature of the juvenile justice system is worth its own examination but is not the focus of this article. See, e.g., Justice Joan Ericksen Lancaster & Cheryl Wilder Heilman, *Juvenile Justice in Minnesota: Making a Difference?*, 58 Bench & B. Minn. 27, 28 (2001); Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System: Final Report, 20 WM. MITCHELL L. REV. 595 (1994).


10. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971). Not having a jury is particularly problematic when a judge who potentially excluded evidence due to a Fourth Amendment violation is also responsible for determining the guilt of the juvenile, ostensibly redacting from memory any evidence that was illegally obtained.


12. If found delinquent by a juvenile court, the commissioner may “order the child’s confinement to the Minnesota Correctional Facility-Red Wing” for purpose of treatment and rehabilitation. MINN. STAT. § 242.19 (2018).


14. MINN. DEP’T CORRECTIONS, supra note 13.

plishments of their treatment, education, or transitional and supportive services? Those to which probation recommends, prosecution argues for, and the judge orders?

Community-oriented public defenders, such as at the Legal Rights Center (“LRC”), do not know the answers to these questions because, to date, juvenile courts have not allowed them to be seriously posed. Community-oriented public defenders have demanded that juvenile out-of-home placements carry the burden of providing some evidentiary basis that they serve the welfare of youth.\textsuperscript{16} Unfortunately, there is de facto disinterest within the juvenile system for examining the evidence-basis of its own chosen course.\textsuperscript{17} Instead, the default is that certain facilities and programs are the exclusive tools provided by the state or county and are presumed to be beneficial when: (1) a victim has been, or could have been, substantially harmed; or (2) past responses in juvenile court have been ineffective in preventing new incidents.

For juveniles, as well as adults, Minnesota is a state that is relatively low on the national scale for the number of people behind bars, however, it is rather high on punitive sentencing that incorporates probation supervision.\textsuperscript{18} The general rule is the same, even when out-of-home placement is not contemplated: probation has no burden of proving the evidentiary basis for its chosen course, which may be limited to a few options selected to be government funded for the purpose of such referrals.\textsuperscript{19} In addition, the default remains that the authoritarian aspect of court and the power of its sanctions, both imposed and threatened, is applied without evidence of particular value. This is true even for lesser offenses. In Hennepin Coun-

\begin{enumerate}
\item See Minn. R. Juv. Del. P. 15.03 Subd. 2(B)(3) (“Out-of-Home Placement. Public policy mandates that the best interests of the child are normally served by parental custody.”).
\item “Where an out-of-home placement is being considered, the placement should be suitable to the child’s needs.” (emphasis added) Id. That suitability is the standard for a placement implicitly diminishes any burden on probation or the court to find evidence basis of a disposition’s relative desirability or effectiveness.
\item See State-by-State Data, THE SENTENCING PROJECT, https://www.sentencingproject.org/the-facts/detail?state1Option=Minn&state2Option=0 (last visited May 18, 2019). Minnesota is also one of the worst states for racial disparities for correctional control. Id.
\item See Minn. R. Juv. Del. P. 15.05 (listing no substantive requirements for a predisposition report by a probation officer).
\end{enumerate}
ty, such punishment is applied most often through forced labor, like picking up trash, in a program euphemistically named: Sentence to Serve.20

B. Movement Toward an Alternative System

Shaming and punishment have long roots in western justice systems, deriving from a desire to reform behavior in adults.21 Still, there is no evidentiary basis to demonstrate that an admonishing judge or a material consequence, like picking up trash, has any motivational or deterrent value for youth.22 Indeed, research into adolescent brain development has led to the understanding that a youth’s natural rejection of adult authority could cause shame and punishment strategies to backfire.23 As Russell Skiba, an educational psychologist specializing in youth behavioral motivation and the impact of discipline, wrote, “[t]he literature on negative consequences has consistently demonstrated a host of serious side-effects in using punishment-based approaches, including escape and counter-aggression, habituation to progressively stiffer consequences, and reinforcement of the punishing agent.”24 Research related to the impacts of childhood trauma,

20. Sentencing to Service, Hennepin County, Minn., https://www.hennepin.us/residents/public-safety/sentencing-service [https://perma.cc/QC32-ZU3W]. One might also complain that the nature of such a punishment implicitly attaches shame and thereby denigrates certain workers in our economy who perform similar functions.


22. See Donna M. Bishop, The Myth That Harsh Punishments Reduce Juvenile Crime 142 (ResearchGate, 2015) (“The effectiveness of punishment depends on the context in which it is administered. . . . Punishment delivered by a police officer, judge, or correctional officer with whom we have no relationship (and toward whom we may have negative attitudes) is much less likely to produce the desired results.”); see also M. Eve Hanan, Decriminalizing Violence: A Critique of Restorative Justice And Proposal for Diversionary Mediation, 46 N.M. 123, 143 (2016) (“When restorative justice comes to mean merely a therapeutic consequence for a criminal offender, the breadth of activities deemed as restorative justice becomes startling. Programs in which inmates pick up trash have been called “restorative justice.”).”


from which many juvenile defendants have suffered, demonstrates that trauma similarly triggers a strong instinct to rebel against or ignore adult authority that is perceived as unsafe.  

Even as we fundamentally retain this adult-copied system for juvenile justice, enhanced scientific understanding of adolescent brain development, alongside other factors, has helped bring about new considerations that support differentiating the juvenile system from the adult system. Most notably, the U.S. Supreme Court has held that the death penalty and life without parole are unconstitutionally cruel consequences if the convicted was a juvenile, even if the crime was murder. Recognition has also taken hold that juveniles should not be prosecuted for prostitution because youth participation in such activity is likely due to the child being a victim of circumstances for which positive and supportive programming to address harm and prevent continuation is the preferred course of action.  

There appears to be an increased awareness of childhood trauma and how a sentence to Red Wing or other placements risks exacerbating trauma—not only removing the youth from community risks and dangers, as such dispositions may have previously been misunderstood by some as beneficial, but also from the care and protection of loved ones and positive attachments. To the extent that counties make the effort and direct funds, there is more interest in therapeutic responses for juvenile crimes.  


27. See generally Megan Annitto, Consent, Coercion, & Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors, 30 YALE L. & POL’Y REV. 1 (2011). As of this writing, the concept has not locally been allowed to extend to other crimes, even those which may raise similar suspicions of victimhood, such as when a preteen commits a sex crime.  


over, there is growing interest in diversion practices. But in its totality, the structure of the juvenile justice system, administered by attorneys in a model built for adults and insufficiently adapted for children, is an impediment to doing all it can for the welfare of the child.

II. AUTHORITY AND RESISTANCE ACROSS DISPOSITION MODELS

A. The Therapy Alternative

It is in the escalation of punitive sanctions, this battle of authority between the judge, prosecutor, and probation versus the youth, that the juvenile justice system most fundamentally reveals itself as equivalent in structure and outlook to adult criminal justice and corrections. Completely disregarded is the fact that human adolescents are believed by experts to be genetically programmed to test the limits of adult authority, and to not yet have brain development sufficient for rationally interpreting the benefits of compliance. Therefore, the value of a court’s authority to impose or threaten a sanction against juveniles bears no relationship to what is presumed valuable for adult criminals. Moreover, youth brain development suggests a far greater flexibility than adults for changing behavioral tendencies on one’s own, sometimes absent any intervention, and certainly without need for a heavy-handed state response.

30. See S’Lee Arthur Hinshaw II, Juvenile Diversion: An Alternative to Juvenile Court, 1993 J. DISP. RESOL. 305 (1993). While the growing availability of diversion can suggest progress in addressing juveniles for their unique needs, its administration often indicates otherwise. Typically, diversion is reserved only for those who have not appeared in juvenile court before. Aside from problems of disproportionate racial impacts (due to police allocation of resources and implicit bias impacting those most likely to be a repeat visitors), such a gatekeeping practice completely misses the point of juvenile brain development not yet holding a mature sense of consequence. A further problem is that diversion is often seen as the resolution itself, as resources are not committed to distinguishing the outcomes for why some programs succeed more often than others.


32. Id. at 94.

33. See id.

34. See One in Four People in the U.S. has a Criminal Record: Four in Four Have a Criminal Past, WE ARE ALL CRIMINALS, https://www.weareallcriminals.org/ [https://perma.cc/3ATP-4B8P] (demonstrating through personal narratives that a substantial number of juveniles are able to self-correct their behavior and have positive adult lives without any justice system intervention, even after committing more serious crimes); see also EMILY BAXTER, WE ARE ALL CRIMINALS (1st ed. 2017) (same).
For both adult and juvenile court systems, when an alternative to punishment is allowed, it most often is based on the paradigm of therapy, whether through informal practice or formal medical or psychological application. From the system’s perspective, an opportunity has generously been extended—an alternative to the normal punishment regimen—to fix the underlying condition that in some manner contributed to the criminal behavior. Interest in such alternative approaches has increased—especially for the younger entrants into the justice system, as awareness of the problems of applying adult-like punitive sanctions for juveniles has expanded and concerns about the distinct nature of children have been considered.

Setting aside the aforementioned correctional “treatment” programs that function as prisons and even when only considering evidence-based psychological therapies, one can still find problems in relying on such a course in juvenile justice. Foremost is the stigma surrounding the assessment and treatment of psychological deficits, which in both practice and effect follow a top-down therapeutic model for medical investigation and treatment. The issue is not the psychological therapy per se, but rather its design and implications for participants. The same therapeutic structure may be problematically followed even outside of medical or psychological territories. Social workers and probation officers, for instance, follow the same basic construct: a youth with needs or deficits consults with a trained, well-educated person who takes an assessment, renders a formal or informal diagnosis, and creates a treatment plan. While some may offer the youth opportunity for input, the plan is chosen by the therapist, not the youth. If the youth follows this plan, the youth is compliant; if not, the

35. For the purposes of this article, this category includes approaches mirroring the structure of psychological treatment but with less practitioner training, such as those carried out by probation officers or staff at diversion programs.


37. See Perlin & Weinstein, supra note 36, at 101 (discussing “social-work-based legal practice” and “paternalistic advocacy”).


youth is pejoratively non-compliant and will therefore be exiled back to the punishment model. 40

While the therapeutic approach is, relatively speaking, less authoritarian than the default punitive process and can offer hope for a more supportive experience, it still fails to depart from the fundamental dynamic of putting the youth in a submissive and passive role, which is apparent to the youth on an intuitive level at minimum. When given the context of a juvenile justice system that has severe disproportionate racial disparities, from intake through outcome, that are driven by disproportionate police contact, 41 expecting youth or involved family members to share the perception that therapy is some sort of helping hand is misguided.

For youth of color, there can be especially negative responses to the enforcement of diminished social classification that derives from justice system involvement, given the context of significant racial disparities in justice and education systems and in reaction to racism in general. Even the best-meaning and problem-solving judges, probation officers, therapists, and social workers can be associated with a form of hierarchy that engenders resistance irrespective of the race or ethnicity of the professional. That resistance may be overt, but it may also be passive, where the juvenile plays along in order to be done with programming but does not truly engage in it.

Fundamentally, the therapeutic model shares with the punitive default the basis for youth to be unmoved, if not resistant. That is not to say therapies do not sometimes use techniques that productively inspire youth to cooperate to some extent, but the key difficulty remains that the drive for taking on responsibility for change is not fundamentally the youth’s, but externally imparted. The youth neither chooses trash pick-up nor going to therapy and, as stated, perceives the process as authority demanding his or her compliance. For too many, the young brain is just not ready to accept that.

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40. See Joshua Page & Shelly Schaefer, The Unraveling of the American Dream, 41 CURA REP. 1, 33 (2011). In writing about juvenile probation, University of Minnesota Sociologists Joshua Page and Shelly Schaefer identify this as the risk needs-based approach to juvenile justice reentry, and they criticize its effectiveness. Id. at 34–40.

B. The Restorative Alternative

For the juvenile justice system to be effective, it needs to reorient towards strategies and techniques in which (1) the youth agency in addressing their own misbehavior is paramount; (2) there is no external “expert” seen as an authority figure who can become the focal point of overt or passive resistance; and (3) neither power imposition nor the delivery structure reinforces the historical racialized messaging that generations have experienced with justice systems. All three happen to be consistent with the tenets of restorative justice, central to its very purpose.

All methods of restorative justice practice, such as circles, community conferencing, restorative mediation, and family group conferencing, share the underlying value that the people who are most impacted by any breach of trust or any misbehavior, including a criminal act, are the ones best positioned and best motivated to repair, correct, and restore that trust. That includes the person who is typically labelled the “offender.” Social anthropology has established that the valuing of human interconnectedness or relationships is the most driving motivation present in human nature. It is far more effective than fear, particularly when the adolescent brain has not developed sufficiently to even hold a mature concept of consequences.

For youth, the special importance of supportive adult relationships has also become well established and is summarized best in research de-

43. GORDON BAZEMORE & MARA SCHIFF, RESTORATIVE COMMUNITY JUSTICE: REPAIRING HARM AND TRANSFORMING COMMUNITIES (1 ed. 2001).
44. Id.
46. See Amanda McMasters, Effective Strategies for Preventing Recidivism Among Juveniles (June 2015) (unpublished honors senior thesis/project, Western Oregon University) (on file with the Western Oregon University digital commons). “Lawrence W. Sherman led a team of criminologists in a study that evaluated the effectiveness of crime-prevention programs. . . . The study concluded that the following programs do not work . . . ‘Scared Straight’ programs, shock probation/parole, DARE, drug prevention classes that focus on fear . . . . Programs that were consistently shown to work included family therapy, parental training focused on delinquent and at-risk youth . . . .” Id at 30.
scribed under the term Positive Youth Development. In addition, Positive Youth Development emphasizes another aspect aligned with restorative justice practices: taking an asset or strengths-based approach.

C. Barriers to the Restorative Model

Such a direction obviously suggests a deep departure from juvenile court or court-imposed therapy, the latter including both formal referrals for psychological therapy and informal risk or needs assessment by probation or others. Instead of a spotlight on deficits that will be condemned and punished by a judge or fixed by a trained outsider (i.e., with youth in a passive role), the ideal emphasis for youth is their assets by which they will self-address behavior with care and support from the most important people in their lives. For a youth, the experience of exercising agency to restore positive standing is itself a practice of resilience, an asset the youth may deepen in the process. This skill-building and earning of the restorative opportunity through the youth’s own agency is risk reductive and highly protective as understood through a public health lens, and therefore could provide deterrence to future impulses or environmental magnets towards criminal behavior that the juvenile justice system has proven itself unable to match.

Our society has not moved quickly towards reform because the legal profession as a whole has been a barrier, as neither bad experience nor research has created the hesitancy. Prosecutors and some judges may

51. See id.
claim to be open to restorative alternatives, but have demonstrated little practical interest in moving the system design away from its adult criminal constructs for all but the most minor of situations. A substantial degree of juvenile dispositions thus concern crimes for which no restorative justice practice is allowed to pilot its own alternative approach, denying opportunity for a scientifically-based comparison of relative benefit.

Restorative programs for juveniles, where they exist, are generally provided with limited funding to handle allowed referrals but not to support research. Thus, the system is limited to a short-term look at whether the youth later commits a new offense, something those making the referrals can determine on their own through court records if they choose to inquire. Restorative programs generally have come to rely on anecdotes or case studies to demonstrate success when seeking expanded opportunity. This is not a particularly persuasive means for structural reform as most programs of any sort, even correctional programs such as at Red Wing, can find a few positive examples to highlight.

The lack of research into outcomes has allowed for the perpetuation of a problematic myth: the potential success of restorative justice is inversely proportional to the degree of the crime. To frame the myth affirmative-

53. See Diversion Programs, YOUTH.GOV, https://youth.gov/youth-topics/juvenil-justice/diversion-programs [https://perma.cc/2AAP-ZC5D] (recommending diversion programs for youth who have committed minor offenses). Typically, minor offenses are those in which no individual was physically harmed. Minor offenses may include: low-level property damage, shoplifting, minor drug possession, or brief altercations with no injuries. Even for minor offenses, the primary motivation is not necessarily true enthusiasm for the practice, but more likely a means to triage and take some matters off the caseload. See id. (stating that diversion programs cost less than further court processing).

54. See PETROSIKO ET AL., supra note 52, at 37 (identifying gaps in the research).

55. See Askew, supra note 41, at 377 (“Existing programs designed to rehabilitate youth are inadequate and often underfunded . . . .”); Page & Schaeffer, supra note 40, at 38, 41 (citing a lack of resources as an impediment to implementing a diversion program).

56. As juvenile records are not typically available to the general public, programs themselves cannot access such data for evaluation. See COUNCIL ON CRIME & JUSTICE, JUVENILE RECORDS IN MINNESOTA 10–11, https://dps.mn.gov/entity/jjc/Documents/Juvenile%20Records%20in%20Minnesota.pdf [https://perma.cc/3JQZ-3BYY] (stating that juvenile records are private except when extended jurisdiction juvenile prosecution takes place, a juvenile is certified to adult criminal court, and in certain instances of felony offenses).

57. See Page & Schaeffer, supra note 40, at 37–40 (relying on case studies). But see Umbrecht et al., supra note 42, at 270–90.

58. See Sara Sun Beale, Still Tough on Crime? Prospects for Restorative Justice in the United States, 2003 UTAH L. REV. 413, 432 (2003) (emphasizing that public perception of the criminal system’s efficacy is not always based on fact and stating that “|o|nce the pub-
ly: the greater the crime, the higher the risk restorative justice will lead to a less safe and productive result than what the court would impose. There is no scientific basis for such thinking; it is simply believed.30

III. SCHOOLS TAKE THE LEAD IN BEING RESTORATIVE

A. The School-to-Prison Pipeline

The link between school discipline and interactions with the criminal justice system, known as the school-to-prison pipeline, has been well researched and demonstrated.60 One study out of Kentucky found that “school suspensions account for approximately one fifth of black-white differences in school performance, demonstrating that exclusionary disciplinadopts the view that harsh measures are needed to deal with a crime wave or crisis, it is difficult to dispel this view”).


60. For example, over seven hundred educators, researchers, policymakers, and advocates agreed in a report that suspensions and expulsions cause more harm than good and made recommendations for how schools and educators can address student behavior. See Morgan, E., Salomon et al., Council of State Gov’ts Justice Ctr., The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System, (2014), http://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf [https://perma.cc/C9HR-TT3C]. For a summary of research into the link between exclusionary school policies and interactions criminal justice system, see generally Abiodun Raufu, School-to-Prison Pipeline: Impact on School Discipline on African American Students, 7 J. Educ. & Soc. Pol’y 47 (2017), http://jespnet.com/journals/Vol_4_No_1_March_2017/6.pdf [https://perma.cc/SQ66-5F7W]. The pipeline, it is argued, is the result of a shift among lawmakers, school officials, and teachers toward criminalizing school discipline. See Jason P. Nance, Students, Police, and the School-to-Prison Pipeline, 58 Wash. U. L. Rev. 919, 929 (2010). It is further argued that this shift paralleled the “tough on crime” and “war on drugs” movements in the United States. Id.
pline may be a key driver of the racial achievement gap. The American Civil Liberties Union (ACLU) has found that students suspended or expelled for a discretionary discipline violation are almost three times as likely to have contact with the juvenile justice system the following year. Long-term, the economic impacts of denied opportunity for youth are severe, reflected by deficiencies in educational outcomes and, after juvenile justice documents the experience, in employment, professional licensing, housing, health, and so much more. The impact of systemic dysfunction in addressing the welfare of youth who misbehave is real, and the community urgency for rectifying cannot be overstated.

B. The Education System’s Incentive to Improve Disciplinary Practices

When punishment and deficit-based therapies inevitably do not work as behavior remediation in juvenile justice, the default reaction from prosecutors, judges, and probation workers is to blame the youth, thereby perpetuating the failed practices while pushing youth deeper into the juvenile justice system.

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63. See Christopher A. Mallett, A Lost Generation of Students: The School to Prison Pipeline, 52 CRIM. L. BULL. art. 6 (2016) (“This pipeline disproportionately impacts and involves certain child and adolescent groups: those who experience poverty, students of color, students who have special education disabilities, children and adolescents who have been traumatized or maltreated, and young people who identify as LGBT. School discipline is not evenly distributed; it is these students who more often experience suspensions, expulsions, and school-based arrests, making school failure and dropping out of school more likely.”).

64. Juvenile court proceedings, and the documents that accompany them, are not confidential, as is often thought. See Joy Radice, The Juvenile Record Myth, 106 GEO. L.J. 365, 383 (2018). Thus, a juvenile offense can and frequently does create a permanent record which comes with collateral consequences on the juvenile’s future. Id. These consequences include being denied admission into college after disclosing juvenile adjudication on a college application, being denied state financial aid for a juvenile adjudication, and losing out on future employment. Id. at 387–88. Additionally, a juvenile record could lead to immigration consequences, eviction, public housing denial, loss of a driver’s license, and receiving an increased sentence if the juvenile is convicted of a crime as an adult. Id. at 388.

65. See Askew, supra note 40, at 377 (“For ‘training school’ juvenile justice model states nationwide . . . , the average recidivism rate stands between 50-70%.”).
There is no reconsideration of the tools of their trade or self-accountability for the failed result. The pressure to radically change their approaches, even with daily reminders that they are not effective, is minimal. Given that their entire professional training presumes the legitimacy of exercising state authority in ways that resemble the constructs of the adult criminal system, it is common for these persons to inevitably blame the youth for reoffending just as they would an adult, with no reexamination of the strategy used or consideration for alternative practices.

Educators, in contrast, do not have an inherent stake in punitive or deficit-based practices; their training, standing, and purposes are not oriented to responding to behavioral issues, but to successfully educating students. Behavioral problems are one potential impediment to meeting this central goal. The education system’s policy apparatus for addressing student misbehavior is most often based upon escalating punitive structures that clearly share a philosophical lineage with justice system practices. However, unlike with juvenile justice, revisioning this approach does not creatively destroy its own business model.

Individual educators may still seek to blame students, parents, or social environments. However, this externalization has not effectively im-

66. To be fair, sometimes this is done with a modicum of sympathy for the youth’s difficult social environment, which may become a justification for sending the youth to Red Wing or another “treatment” center.

67. For example, the MPS Policy on Discipline and Student Behavior states “[effective discipline maximizes the amount of student and staff time and attention spent on teaching and learning and minimizes the amount of student and staff time and attention directed toward behavior that disrupts the learning process.” (emphasis added). MINNEAPOLIS PUB. SCH., 5200 BEHAVIOR STANDARDS AND CODE OF CONDUCT 1 (2014), http://policy.mpls.k12.mn.us/uploads/policy_5200_2014.pdf [https://perma.cc/5P94-7ZX8].

68. See id. (“Minneapolis Public Schools recognizes that appropriate school behavior is critical to academic success and sustaining a rich and effective learning community.”).

69. See Nance, supra note 60, 932–33 (arguing that the “tough on crime” approach in the 1990s spilled into school policies on discipline).

70. Research has shown schools that have successfully implemented restorative justice have seen the opposite effect: the schools are better able to serve their purpose of educating their students. See Emily Moss et al., Strategy Brief, RESTORATIVE PRACTICES 3–4 (2013), https://k12engagement.unl.edu/strategy-briefs/Restorative%20Practices%20Briefs/2015-03-24-2015.pdf [https://perma.cc/7GKZ-RX6M] (describing the benefits seen by schools implementing restorative justice).

71. See, e.g., Emma Brown, A Principle Met a Student She Expelled, and it Changed her Approach to Discipline, WASH. POST (Mar. 8, 2016), https://www.washingtongpost.com/news/education/wp/2016/03/08/a-principal-met-a-student-she-expelled-and-it-changed-her-approach-to-discipline/?utm_term=0.61c5a57a798
munized the profession against community complaints about failing in its central purpose: to educate all students through to graduation, enabling the basis for youth to socially contribute as adults. Educators face pressure to change their disciplinary policies when they impede the positive mission associated with schools—successfully educating students. The juvenile justice system carries no comparable quality measure of accountability linked to youth outcome, and therefore, remains more resistant to change.

Juvenile justice prosecutors, judges, and probation officers have, for the most part, been able to get away with claiming the evenhandedness of their own roles and that any problems lie elsewhere. When prosecutors or courts are challenged with systemic issues proven by data, such as racial disparities, the problem is externalized—not only by blaming individuals

[https://perma.cc/F7KX-YRJV] (“Part of our problem is when we talk about the issue of the school to prison pipeline, some of us are looking for someone to blame—a group, a system, an antagonist or villain to pin this issue on.”).  


73. The Minnesota Department of Education, in responding to calls for change in how discipline is delivered in Minnesota schools, was forced by the legislature to form a Student Discipline Working Group. See MINN. DEP’T OF EDUC., STUDENT DISCIPLINE WORKING GROUP (2017), https://www.house.leg.state.mn.us/comm/docs/6af29a9c-0fde-462f4dd1-c083e917c6ce.pdf [https://perma.cc/2X2P-KKD8]. In Minnesota, multiple advocacy groups have rallied around reforming school discipline in light of the dramatic racial disparities in suspension rates, expulsion rates, and the negative effects of these practices on the education outcomes for children. See, e.g., ALEX MIGAMBI et al., THE ROLE OF RACE AND EXCLUSIONARY PRACTICES IN MINNESOTA’S SPECIAL EDUCATION 1, 12 (2018), https://mneep.org/wp-content/uploads/2018/09/AbilityDisability_Final-Web.pdf [https://perma.cc/7ANY-TTLV].  

74. Formally stated, the purpose of the juvenile justice system is “to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior.” See MINN. STAT. § 260B.001, subdiv. 2 (2018).  

75. See Janet Ainsworth, Youth Justice in a Unified Court: Response to Critics of Juvenile Court Abolition, 36 B.C. L. REV., 927–29 (1995) (“The unhappy truth is that we as a society do not particularly value young people, and inequities in the current juvenile justice system betray that lack of regard . . . . Despite the earnest endeavors of many well-intentioned and hard-working juvenile court judges and lawyers, young offenders do not, and in many jurisdictions now, cannot receive dispositions tailored to address their social needs.”) (footnote omitted).
and their circumstances but, handily enough, by shifting the racial bias accountability to its entry point, namely the police. As for the fact that the so-called treatment programs that function as youth prisons have a poor correctional track record, the system either blames the inmates/residents or turns a blind eye. Unlike in the medical profession, there is no ethical mantra equivalent to “Do No Harm” that guides decision-making for youth, despite the fact that the welfare of youth would appear in every single case to be the juvenile justice system’s outcome responsibility. Not so in school systems, at which each level up the chain faces, and properly so, its own accountability for outcomes, including the racial disparities. Principals cannot get away with laying the blame on teachers for sending more

76. See, e.g., Felipe Goncalves & Steven Mello, A Few Bad Apples?, Racial Bias in Policing 1, 4, 22 (March 2017) (unpublished working paper) (on file with the Princeton University Industrial Relations Section). “Our paper follows a long line of research exploring the role of law enforcement discretion in generating racial disparities.” Id. at 4.


78. In a 2014 Work Group report on Juvenile Justice, authors discussed how to reduce recidivism rates among youth and stated that many problems in the juvenile justice system in Minnesota had previously been identified in reports, yet recommendations to solve the problems have not been implemented even years later. Again, the Work Group recommended using evidence-based, community-based intervention practices. See NAT’L ALLIANCE ON MENTAL ILLNESS MINN., JUVENILE JUSTICE WORK GROUP REPORT TO THE MINNESOTA LEGISLATURE 3 (2014), http://www.njinn.org/uploads/digital-library/Minnesota-Juvenile-Justice-Work-Group-Report-3.14.pdf [https://perma.cc/8LSW-Q8PE].

79. NAT’L CONFERENCE OF STATE LEGISLATURES, PRINCIPLES OF EFFECTIVE JUVENILE JUSTICE, Policy, http://www.ncsl.org/Portals/1/Documents/cj/jjReform_trifold_31901.pdf [https://perma.cc/3W8U-36LS] (“State lawmakers face the challenge of constructing juvenile justice systems that are both fiscally responsible and improve outcomes on many important fronts: protecting and enhancing public safety, holding youth accountable, helping youth develop the skills they need to succeed. . . Juvenile justice policies should strive to keep youth in the community, employ evidence-based methods to promote positive youth development, and build on the strengths of youth and their families.”).

80. Under Minnesota’s state plan to comply with the Federal Every Student Succeeds Act, each school and district reports on student performance, by subgroup, on various metrics of academic performance. See MINN. DEPT OF EDUC., MINNESOTA’S CONSOLIDATED STATE PLAN UNDER THE EVERY STUDENT SUCCEEDS ACT (ESSA) 1, 2 (2018), https://education.mn.gov/mdeprod/groups/communications/documents/hiddencontent/bwr1/mde73206.pdf [https://perma.cc/82X3-H3LR]. “For the first time, every school that serves 20 or more English learners will be held accountable for their progress, and every school serving 10 or more will be required to report progress.” Id. at 2.
kids of color to them while dispensing suspensions that have disparate impacts, nor can school districts avoid scrutiny by simply blaming their own principals.

Schools, far more than juvenile courts, have had to respond to the justifiable complaints regarding substantial disparate results because those disparities do not stop with behaviors but track to basic educational outcomes: their very mission.81 The education system, at all levels, is pushed to accept responsibility for who gets targeted for disciplinary intervention, as it must respond to community groups that have arisen from the need to challenge the overt or hidden biases causing such targeting and who demand school accountability for which restorative justice is often named as a key solution.82

Reintegration of the student provides additional incentive for the school to handle discipline differently. So long as the youth is not pushed out completely, the student with the problem behavior will remain with the

81. In 2016, the Department of Education released a report detailing the impact of exclusionary discipline practices. Exclusionary discipline practices “can contribute to a number of adverse outcomes for childhood development in areas such as personal health, interactions with the criminal justice system, and education. . . . Reliance on exclusionary discipline has also contributed to the development of the school-to-prison pipeline.” EXEC. OFFICE OF THE PRESIDENT, REPORT: THE CONTINUING NEED TO RETHINK DISCIPLINE 7 (2016), https://www.aclupa.org/files/9514/8493/3029/WH_-_Continuing_Need_to_Rethink_Discipline.pdf; see also U.S. DEPT. OF HEALTH AND HUMAN SERVS., POLICY STATEMENT ON EXPULSION AND SUSPENSIONS POLICIES IN EARLY CHILDHOOD SETTINGS 3, https://www2.ed.gov/policy/gen/guid/school-discipline/policy-statement-ece-expulsions-suspensions.pdf (“Young students who are expelled or suspended are as much as 10 times more likely to drop out of high school, experience academic failure and grade retention, hold negative school attitudes, and face incarceration than those who are not.”); JENNI OWEN ET AL., INSTEAD OF SUSPENSION: ALTERNATIVE STRATEGIES FOR EFFECTIVE SCHOOL DISCIPLINE (2015), https://law.duke.edu/childedlaw/schooldiscipline/downloads/instead_of_suspension.pdf.

82. The Dignity in Schools Coalition (“DSC”) serves as a national example for the advocacy and community groups that have rallied on this issue. See Mission, DIGNITY IN SCHOOLS, http://dignityinschools.org/about-us/mission/ (“The DSC challenges the systematic problem of pushout in our nation’s schools and works to dismantle the school-to-prison pipeline.”). In Minnesota, the local Educators for Excellence chapter has advocated for a new approach to discipline. See EDUCATORS FOR EXCELLENCE, PUTTING PLANS INTO ACTION: AN ADDENDUM TO ENDING RACIAL DISCIPLINE DISPARITIES: AN EDUCATORS’ GUIDE TO SCHOOL-BASED CHANGE (2016), https://e4e.org/what-we-do/policy-solutions/ending-racial-discipline-disparities.
school or district. Therefore the school or district has additional self-interest to improve relationships and correct problems as beneficially as possible—another aspect with no true juvenile justice system equivalent.\textsuperscript{83} Thus, the education system’s openness to new and improved approaches provides great opportunity to implement restorative justice practices, especially as yesterday’s strategies of overt or covert pushout receive community backlash and, in some places, create the conditions for a voluntary exodus of other students from districts into charter schools. Students whom the district would not only rather keep, but may depend on keeping in order to maintain adequate finances.\textsuperscript{84}

C. The Legal Rights Center and Minneapolis Public Schools Partnership

1. Motivation and Opportunity

As a community nonprofit, primarily established for, and known as, an alternative provider of public defense representation but which developed its own restorative justice program to meet community need,\textsuperscript{85} the

\textsuperscript{83} Many schools, aware of how this situation plays out, have developed re-engagement processes for bringing students back from suspensions into the classroom. See N.J. DEP’T OF EDUC., NEW JERSEY SCHOOL REENTRY: STRATEGIES TO SUPPORT STUDENTS RETURNING TO SCHOOL AFTER CONFINEMENT 1 (2017), https://www.state.nj.us/education/students/safety/sandp/reentry/strategies.pdf [https://perma.cc/7Yt5-BDJ4].

\textsuperscript{84} Alejandro Matos, Thousands of Minneapolis children leaving district for charters, suburban schools, STAR TRIB., (March 19, 2015 10:16 A.M.), http://www.startribune.com/thousands-of-minneapolis-children-leaving-for-charters-suburban-schools/296814591/ [https://perma.cc/KZ9H-8F6J] (“The number of Minneapolis students who don’t attend the public schools has grown by 20 percent in five years, causing a $5 million budget shortfall . . .”).

\textsuperscript{85} The introduction of restorative justice practices in Minnesota in the 1990s coincided with the growth of mass criminalization in general, suggesting a desire to offset harms whose impact was only beginning to be understood. The LRC’s primary experience with restorative justice prior to turning to schools had been in using the family group conferencing method in a pilot program for youth charged with domestic assault against an adult member of their household (i.e., usually their parent). Prosecutors and probation agreed to this program and set the rules. The LRC worked with the family following a conditional plea and a stay of adjudication, and after probation did its usual deficits assessment and imposed plan, which included the referral to the program. The LRC’s restorative process typically did not take place until months after the incident, leading some families to make the best of a shared problem-solving structure long after they felt they had already basically solved problems well enough without it. See Our History, supra note †.
LRC long has battled at the front lines of zero tolerance in juvenile court, representing hundreds of juvenile-defense cases. Many of these cases originated from schools that criminalized behaviors, like fights and threats, that practically all youth have committed on occasion. In combination with recognizing the factors described in the preceding section, the experience led the LRC to determine that schools offered a better opportunity than juvenile justice for exploring the expanded use of restorative practices to effectively transform youth lives, both in school and fundamentally as prevention for harmful juvenile justice system entry.

Schools further provide an opportunity to practice outside of the hard delineations custom to juvenile justice, meaning that they would not use as practical consideration for appropriateness whether or not the legislature had classified a particular act as a felony. Working in schools would allow the LRC to best advocate for school-to-prison pipeline reme-

86. The LRC had heard complaints from the parents of several youth defendants that the charges were intended to harass them out of school so as to cover for not meeting Individual Education Plan (IEP) requirements or other educational needs. And, from parents with children in suburban schools, that the charges were an attempt to subvert the voluntary school desegregation settlement that allowed Minneapolis students to attend these districts. This program is known as “The Choice is Yours.” See Elisabeth A. Palmer, The Choice is Yours After Two Years: An Evaluation (2003), https://education.mn.gov/mdeprod/groups/educ/documents/basic/mdaw/mday/~edisp/002924.pdf [https://perma.cc/2JHL-2R6Z].

87. The LRC had experienced prosecutors using diversion only in a limited and formulaic fashion, clearly as a triage of caseload and without serious interest in the methodology. The diversion functioned as an alternative probation, more community-savvy but structurally using a top down informal therapeutic risk/needs approach. To the extent they used restorative justice it was as a component of the imposed compliance plan and generally limited to victim-offender mediation for shoplifting or graffiti. Overall, juvenile court was experienced with all of the negative connotations of a giant processing facility, one that did not have the time nor interest to concern itself sufficiently with the welfare of the youth, all the unique experiences underlying why each one was compelled to take the day away from school and wait for their five minutes before a judge.

88. For a deeper look at the range of restorative practices at schools, see generally Margaret Thorsborne et al., Getting More Out of Restorative Practice in Schools: Practical Approaches to Improve School Wellbeing and Strengthen Community Engagement (2018).

89. In essence, a school could pilot a program that would challenge the myth that the value of restorative justice was in some manner proportionate to an offense. See RAMSEY Cnty. Attorney’s Office, RCAO Juvenile Diversion Guidelines 1 (2016), https://www.ramseycounty.us/sites/default/files/County%20Attorney/DIVERSION%20GUIDELINES%20REvised%20FINAL%20APRIL%202016.pdf [https://perma.cc/7AE8-RJFJ] (outlining bright-line rules as to when juveniles are ineligible for diversion, including the nature of the offense).
dies by having direct knowledge of both ends, while addressing the racial impacts common to each end. In short, the LRC embarked on creating a cross-systems form of advocacy through developing unique cross-practice expertise.

2. Restorative Justice Models

Basic restorative theory promotes sourcing the delivery of ideal outcomes with the people affected, instead of having outsiders impose outcomes on people, or even for them. Practices that are identified as restorative span the widest range one might imagine: from before any problem has even arisen in an elementary school classroom (prevention or community-building) to a truth and reconciliation process in the aftermath of genocide. The LRC’s restorative practices simultaneously address two different points of the spectrum as determined by the system impacted. In juvenile justice it serves a preventative function, while in education it serves as an intervention step after the admission of the problem and when accountability steps are planned.

While elaboration of various restorative justice models and how they evolved (or the indigenous roots for many) is beyond the scope of this arti-

90. Because of the differing definitions and interpretations of restorative justice, there is disagreement within the field about what truly constitutes a restorative justice practice and what does not; however, there is no disagreement about this central distinguishing philosophy. See generally Ted Watchel, Defining Restorative 2 (2016), https://www.iirp.edu/images/pdf/Defining-Restorative_Nov-2016.pdf [https://perma.cc/E8ZG-TCS3] (“We respect the fact that others may define terms differently and, of course, have every right to do so. Rather, we simply want to define and share a consistent terminology to create a unified framework of understanding.”).


the key understanding needed is that different restorative methods orient towards the particular relational healing most desired. Accordingly, restorative mediation may best address a problem that is primarily a one-to-one conflict, such as a fight between two individuals. Community conferencing orients the needed healing within a defined community, most often understood as geographic, though adaptable so that a school could be perceived as a community. This defined community comes to support the person who misbehaved, in part by evoking the harms suffered and in part by making itself welcoming towards, and interested in, a better future relationship. Circles are the best known and most practiced restorative form, benefitting by a structure that allows the most flexibility for identifying all the relationships invoked that may contribute to healing. Circles might, for instance, mix family and community, or orient to healing relationships within a cultural community. In schools, circles are most commonly used for building the identity of a classroom community that together seeks to relate juveniles with each other and prevent harm, while

93. Absent from this article is a deeper investigation into whether some restorative justice practices make a similar mistake to the juvenile justice system in that they use a template designed for adults without sufficient consideration of what adaptations are necessary for use with youth, or whether it should be used for youth at all. For various reasons that go beyond difficult access to supporting research outcomes, restorative justice as a field too often appears to lack an appropriate self-interest in deeply exploring why its philosophy in practice works, which sometimes leads it to come across to outsiders as self-indulgent if not in the mystical/religious category, itself a barrier to expansion. It works because we know it works, or at best there’s some empirical data. This same lack of a theoretical framework for understanding its success may impede needed attention to designing all practices to be ideally structured for youth. As will be described, the LRC felt confident that the family group conferencing, innovatively adapted for school use, works distinctly for youth because it is not an adult oriented practice. And one reason for that confidence is the LRC’s understanding of the method as linked with the theoretical underpinnings of positive psychology and the research demonstrating the motivational benefits of Positive Youth Development. The LRC has since learned how well it adheres to recommendations for working with youth who have had adverse childhood experiences (i.e., trauma). Within education, it is also seen as supportive of strategies to promote social-emotional learning.

94. See Watchel, supra note 90, at 3–4.
95. See Restorative Practices, supra note 91, at 3 (describing different types of restorative practices, including restorative justice in the form of one-to-one resolution and community conferencing).
intentionally modeling power sharing and the positive responsibilities that accompany such.\textsuperscript{97}

The restorative justice model practiced by the LRC, family group conferencing, rather obviously places special importance on family relationships.\textsuperscript{98} The LRC sought to implement its restorative practice at the level of behavioral problems that would otherwise lead to juvenile justice involvement. In such instances, family\textsuperscript{99} members are inevitably called upon by schools to help reinforce the need for the youth to adhere to school expectations, so family inclusion seemed pertinent.\textsuperscript{100} But as the healing desired is not contained within the family itself,\textsuperscript{101} the method required adaptation for school use, so that it could best re-engage youth with the most cooperative adult support possible, orienting to positive relationships in all directions amongst youth, family, and school.\textsuperscript{102}

3. \textit{School-Based Family Group Conferencing as Adapted by the LRC}

Amongst restorative justice models, family group conferencing best emphasizes key Positive Youth Development concepts.\textsuperscript{103} The first step at

\begin{itemize}
  \item \textsuperscript{97}RIESTENBERG, \textit{supra} note 91.
  \item \textsuperscript{98}Family group conferencing derives from Maori practices and has been used extensively in juvenile justice and child protection in South Pacific nations. In other countries, it has been most widely replicated for use in the latter. To our knowledge, the LRC is the only organization that uses an adapted form within schools.
  \item \textsuperscript{99}The term \textit{family} is intended to be inclusive for all means by which a parental role might be fulfilled.
  \item \textsuperscript{100}Minnesota requires that guardians be notified when students are suspended and expelled. See M\textsc{inn. Stat.} § 121A.46 (2018). Notification for other behavioral issues can vary by policy and practice.
  \item \textsuperscript{101}The LRC’s practice in juvenile court has allowed us to observe how parents often felt overwhelmed by the difficulty in addressing their child’s behavior, an experience all parents of adolescents may have at times. The LRC has observed parents at times excessively blaming their child or excessively blaming anyone or anything other than their child. In school crime cases, parents would often see the school as blameworthy, or model—intentionally or otherwise—negative feelings about school due to their own prior school experiences. Thus, while not centered on family healing, the LRC considers the method’s inclusion of family healing very helpful.
  \item \textsuperscript{102}School and family each provide components of the most significant adult relationships youth will likely have.
\end{itemize}
a family group conference, after the introduction of those present, is for all in the room to identify the strengths of the youth and for the facilitator to record this lengthy list where it will remain visible throughout the conference. This is often an impactful experience, as the youth and family typically have rarely, if at all, heard school personnel expressing a positive view about them. Sometimes youth greatly benefit from hearing positive expressions from their family as well. The immediate message is that the youth is defined by far more than whatever problems led to the school seeking intervention. By establishing they have such assets, the presumption takes form that the youth has the internal ability to overcome issues and move towards a positive (and restored) future, and because they have that ability, they have that responsibility.

The positive emphasis stands in stark contrast with juvenile court, where youth are only identified by what they did wrong in a particular instance and with therapeutic processes, in which youth identification is mainly limited to an outsider’s assessment of pathology or deficits. Neither of those approaches contain any messaging about the youth’s strengths or capabilities. Youth are either to be motivated by threats and shame, or are expected to go along with whatever some stranger (with elevated status) says needs fixing and to comply with this person’s plan.

After the establishment of strengths, the family group conference takes on the issues that have led to the reasons for referral. At this stage as well, there are some key departures from juvenile justice. Most significantly, the youth has the expectation and responsibility for contributing to

104. Before the convening, the LRC facilitator conducts extensive interviews of all participants to best prepare for the most productive discussion possible.
106. See id. at 9 (identifying “pro-social connections” as a youth asset and positing that “student offenders may be most in need of supportive adult relationships and opportunities to be successful”).
107. Id. at 9.
108. Id. at 11.
109. See BUTTS ET AL., supra note 103, at 11 (“Youth justice agencies traditionally focus their treatment efforts on the problems and deficits that affect justice-involved youth, including drug use, mental health problems, violence, and anger.”).
110. Id.
111. See MCCORMIS ET AL., supra note 105, at 11.
the conversation. They are listened to, not just told.\textsuperscript{112} However, the responsibility for how things will positively change is not entirely on the youth—there are things supportive adults can and should do to help.

The discussion of strengths and then concerns culminates in the drafting of an agreed upon plan.\textsuperscript{113} While intentionally far less formal, this may resemble a mediated contract. Everyone present will have some action to accomplish, not just the youth.\textsuperscript{114} Accountability is truly shared, and everyone participating must agree to each aspect of the plan before the family group conference process is closed.\textsuperscript{115}

Follow-up timelines for the initial family group conference are incorporated into the agreement and usually include scheduled check-ins and target dates to review and measure success.\textsuperscript{116} All participants are provided the means to contact the LRC facilitator for help in resolving inadequate follow-through—for anyone, not just the youth—or other arising issues, which most often leads to a full reconvening for a new family group conference.\textsuperscript{117} There will also be a final family group conference to celebrate success and prepare for the future in which the positive relationships established will go forward without the assistance of a neutral facilitator such as the LRC.\textsuperscript{118}

\textsuperscript{112} In many Family Group Conferences, this sheds light on why an offense was committed while giving impetus to a particular strategy to resolve that issue and not allow it to reoccur, a step which has no equivalent in juvenile justice.

\textsuperscript{113} See McMorris et al., supra note 105, at 11.

\textsuperscript{114} While not specifically tested in the evaluation process, the LRC’s operating theory and empirical observation is that the youth instinct to avoid personal accountability as a means to resist authority is mitigated when accountability is shared with adults. See id. at 7 (“Restorative justice engages all those with a stake in the situation to define the harm caused, . . . An important aspect of restorative justice is that it empowers victims, families, school staff and offenders by putting them in active roles: all are given the opportunity to express needs and problem-solve . . . ”).

\textsuperscript{115} It is important to make clear that the accountability plan may very well include the use of psychological or other therapies. The difference from juvenile court is that the therapy is not ordered for the youth but absolutely has the buy-in of both youth and family and emerges from the context of an asset-based and inclusive process. Therefore, it is not perceived as being tied to a system’s hierarchical framework of youth/family pathology, deficits, or inferiority. One might gather that this enhances the basis for the therapy to be successful under its own terms.

\textsuperscript{116} See id. at 11.

\textsuperscript{117} See id.

\textsuperscript{118} See id.
4. Expanded Restorative Justice Practices in Minneapolis Public Schools

The LRC’s first use of family group conferencing at Minneapolis Public Schools (“MPS”) occurred during 2007, arranged through staff relationships with particular schools, such as Roosevelt High School and Green Central Middle School. By the end of that year, district staff, who were interested in restorative practices and working with youth referred for expulsion consideration, had heard rave reviews from administrators at these schools. They invited LRC to partner with the district, beginning in January 2008, and worked with LRC to design a pilot project comprising the following.

Eligibility Criteria:
1. the youth acknowledges a behavior which by statute gives grounds for expulsion;\(^{119}\)
2. the family waives rights to challenge a disciplinary decision and accepts a placement at a contract alternative school, with the record not described as expelled but only as “recommended for expulsion;” and
3. the youth and family agree to participate in the family group conference process.

Program Process:
1. after a short transitional suspension, the family group conferencing process will be used to plan for success in the new school placement;
2. the harm to repair will not be limited to the expellable incident but framed more broadly as the student’s re-engagement with education;
3. the district social worker will participate in all family group conferences, in addition to a representative of the school to be attended, both to carry forth information about the problem.

\(^{119}\) “Since 2008, Minneapolis Public Schools have been offering restorative services to students who are recommended for expulsion due to behavior incidents . . . through . . . partnership with the Legal Rights Center.” See J. McMorris et al., supra note 105, at 10. “MPS recognized that students with significant behavioral concerns could benefit from a conference where re-engagement and restoration of the student was the primary goal. . . . By the second year of implementation, MPS had moved to include the expansion of restorative practices in a more deliberate way in both strategic planning and in policy work on climate and discipline . . . . Administrators generally reported finding the RCP to be a positive experience.” Id. at 36–37.

\(^{120}\) See Fair Pupil Dismissal Act, Minn. Stat. § 141A.45, subd. 2 (2018) (listing statutory grounds for expulsion).
incident and to make support available through district resources or community partners; and
4) if the plan succeeds, the district will reinstate the student—if requested—back to a regular district school as soon as practical, typically at the transition to the next grading period, and remove “recommended for expulsion” from the student record.122

a. Results: Basis for System Change

For a few years before the pilot commenced, steps one and two constituted the means by which expulsions could be avoided at MPS, without any restorative process but still requiring that the remainder of the school year be attended at the contract alternative school placement.123 Absent the restorative and Positive Youth Development components, feeling like they were sent to a new school without voice in the matter and without any change in support from family or school, youth often exhibited further problems—a true negative trajectory exemplifying the early stages of the school-to-prison pipeline.124 In the year before the LRC’s district partnership, 19 percent of youth recommended for expulsion at MPS committed a second statutory expellable incident that same year. In the first full year of the LRC’s restorative partnership with the district, that number was reduced to zero.125 The MPS social workers who worked with the LRC to create the design had expected good results, yet they particularly noted how many of the youth and families faced significant barriers in their lives, which made the success even more impressive.126

121. It remains untested whether district involvement also helps ensure engaged participation of school staff.
122. See McMorris et al., supra note 105, at 10–12.
123. This led to inequitable alternative school placement durations depending on when the instigating behavior occurred, for instance, whether it occurred in October or May. This inequity was addressed by the pilot design with the LRC.
125. Restorative Students Support Servs. of Minneapolis Pub. Sch., Restorative Measures Placement 2008-09 School Year (Internal Review that was shared with the LRC).
126. Id. Fifteen risk categories were identified by district social workers, and seventy-two percent of students receiving family group conferences were described as having at least one risk factor, with thirty-eight percent having at least two. Id.
The early positive results reported by MPS district staff helped enable the LRC to receive a grant from the Minnesota Office of Justice Programs (through a special American Recovery and Reinvestment Act opportunity). The funding supported not just the programming but also an extensive multi-year evaluation. Given some societal movement towards thinking of youth violence as a public health issue, more so than a public safety issue and the emphasis of the LRC’s restorative work, the LRC was fortunate to find the Healthy Youth Development Prevention Research Center, a Centers for Disease Control and Prevention funded institute located within the University of Minnesota’s Department of Pediatrics, which specializes in applications of Positive Youth Development. Moreover, the Principal Investigator, Dr. Barbara McMorris, happens to be a criminologist by training and also is associated with the Center for Adolescent Nursing at the university’s nursing school.

The evaluation covered a two-year dataset, with school records review spanning the academic year before program referral to the academic year after program involvement ended. Independent surveying of students and parents also took place before and after each participated in the restorative program.

The findings documented the initially observed experiences. The process did not just create a short-term boost; it demonstrably reversed the downward trajectory associated with the school-to-prison pipeline, creating a rebound that transformed youth as the table below demonstrates.

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127. See Barbara J. McMorris et al., supra note 105, at ii ("The funding for this program evaluation comes from the Minnesota State Office of Justice Programs (ARRA JAG: 2009-SU-B9-0051l; Bureau of Justice Assistance: 2010-DJ_BX-0438).”).
128. See id. at 11.
129. The City of Minneapolis had developed a publication called the Blueprint for Youth Violence that laid out strategies and a commitment to ongoing organization, using a public health, risk, and prevention factor analysis.
131. See Barbara J. McMorris, PhD, Univ. of Minn., https://www.nursing.umn.edu/bio/faculty-staff/barbara-mcmorris [https://perma.cc/W6CN-B3KY].
132. McMorris et al., supra note 105, at 16. The research therefore incorporated data for the year before and after the two-year study period, a total of four years. Id.
133. Id. at 15.
Seventy-eight percent of the students in the data pool indicated they had at some point in their lives seen someone get beat up, stabbed, or shot by a gun.\textsuperscript{135} While not a fully investigated question, this appears to indicate that the method worked very well even when youth had a history of trauma. Other survey findings are summarized on a graphic produced by the University of Minnesota.\textsuperscript{136} They demonstrate the enhancement of protective factors and reduction of risk factors for youth welfare generally and also implicitly in regard to the ability to behave within the law.

Of special significance, eighty-two percent of middle grades students and seventy-one percent of high school students had been referred for assault or weapons possession,\textsuperscript{137} the very kinds of offenses that the juvenile justice system typically has considered off limits for restorative justice referral, presumed to be unsuitable simply because they could have been processed as felonies. In this regard, working restoratively with youth

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<th>Year Before</th>
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<td>65%</td>
<td>20%</td>
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<td>2.38</td>
<td>2.75</td>
<td>1.38</td>
</tr>
<tr>
<td>Average Number Suspensions Per Days Attended\textsuperscript{134}</td>
<td>1/54</td>
<td>1/24</td>
<td>1/101</td>
</tr>
</tbody>
</table>

\textsuperscript{134} Id. at 30–32.
\textsuperscript{135} See id. at 20.
\textsuperscript{136} BARBARA J. MCORRIS ET AL., EXECUTIVE SUMMARY: APPLYING RESTORATIVE PRACTICES TO MINNESOTA PUBLIC SCHOOLS STUDENTS RECOMMENDED FOR POSSIBLE EXPULSION (2013), HTTPS://WWW.LEGALRIGHTSCENTER.ORG/UPLOADS/2/5/7/3/25735760/LRC_EXEC_SUMM_FINAL.PDF [HTTPS://PERMA.CC/GB2V-F9RZ]
\textsuperscript{137} See id. at 54. Weapons do not include firearms because there are separate statutory requirements which prevent a student who brings a firearm to a school from being referred to the program. See MINN. STAT. § 121A.44 (requiring expulsion for a "pupil who is determined to have brought a firearm to school").
through school-based family group conferencing, instead of sending them to the juvenile justice system, provided a transformative opportunity with lifelong implications.

b. Results: Expansion and Advocacy

The demonstrated success of school-based restorative family group conferencing, as developed by the LRC at MPS, has led to expanded applications in the Twin Cities area. MPS itself has grown the program for broader scenarios, including when school stability is maintained and contract alternative schools are not used, such as when youth behaviors are indicative of needing to positively transform school engagement, but no expellable behavior has occurred. Across the river, the practice has been introduced and expanded at St. Paul Public Schools (“SPPS”) and has begun to be used by other schools and districts. 138 The method has also been adapted and implemented for when youth persistently fail to meet the legal requirements for school attendance, another crossover area of juvenile justice and education. 139

Achieving success has also led to policy advocacy opportunities. In 2014, MPS overhauled their discipline policy, in restorative fashion, rebranding it more positively as the behavioral standards policy. 140 Restorative practices are recommended at each of the violation levels, with family group conferencing specifically named as the practice for the highest two levels. 141 Nationally, the demonstrated benefit of the LRC’s restorative pro-


139. See Mike Freeman, Be@school, HENNEPIN CTY. ATTORNEY, https://www.hennepinattorney.org/prevention/students-youth/be-at-school [https://perma.cc/786T-RFC2] (“The Hennepin County Attorney’s Office manages the be@school program, an important initiative to support our children’s education and their future.”).

140. See MINNEAPOLIS PUB. SCHL., supra note 67, at 1 (“Effective discipline includes building relationships, repair of harm and restoring relationships and restorative practices to reengage students in their learning community.”).

gramming, along with the contextual need for systemic reform as argued herein, has formed the basis of the LRC’s working relationship with the International Academy of Trial Lawyers, which has established its Youth Restorative Justice Initiative for the purpose of supporting best practices across the country.\(^\text{142}\) Due largely to the advocacy needs informed by our unique cross-systems and cross-practice expertise, the LRC has also become Minnesota’s sole representative within the National Juvenile Justice Network.

LRC attorneys continue to make an extensive effort to train professionals who work with youth in education and within the legal profession.\(^\text{143}\) The program evaluator, Dr. Barbara McMorris, presented her report at the annual meeting of the American Society of Criminology, which has led to further discussion in the research community.\(^\text{144}\)

**IV. CONCLUSION**

During the 2006–07 academic year, the year before the LRC began to provide restorative interventions in crisis situations at MPS, nine hundred nineteen students were referred by the district to juvenile prosecution. Ten years later, that number was reduced to sixty-six.\(^\text{145}\) In 2015–16, fifty-six students were arrested at SPPS. The LRC began its pilot there that

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\(^\text{143}\) Among many other audiences, we have presented our work at the Booth Law and School Law conferences, to Public Defenders and Legal Aid, to Minneapolis School Resource Officers (typically police officers assigned as liaisons), at MEA and many other Department of Education seminars, and for many schools and districts.


\(^\text{145}\) Matt Sepic, *Minneapolis Could Reduce Number of Police Officers in Schools,* MPR NEWS (July 12, 2017), https://wwwmprnews.org/story/2017/07/12/minneapolis-schools-consider-how-many-police-officers-to-keep [https://perma.cc/2M8C-J8UF]). The statistic was provided by Tom Arneson, the Managing Attorney for Juvenile Prosecution with the Hennepin County Attorney’s office, though credited without evidence to his office’s relationship with School Resource Officers. *Id.*
February. The following year—the LRC’s first year as a fully implemented option—only five students were arrested at school.146

Changing the status quo of systemic failure requires not just valid critique, but the demonstration of an alternative practice that earns support and changes mindsets about what is possible, which happens when outcomes radically improve. Through the experience of LRC’s school-based family group conferencing method, school districts have seen how youth, whom they may have presumed destined for failure, could become fully engaged with their education and proceed towards graduation.

In the juvenile justice system, the fundamental questions for best addressing juvenile crime remain: What better motivates youth? Is it supportive adults in positive ongoing relationships who appreciate the youth’s strengths while seeking to support them through school? Or, is it distant adults who punish, shame, focus exclusively on flaws, and demand compliance? And most fundamentally, how can the juvenile justice system be persuaded to abandon its self-interest in perpetuating harmful practices and allow itself to experience, as schools did, that no child is destined for failure with the right support in place?

Only when such questions receive evidence-based answers will Minnesota truly administer to the “welfare of the youth” and determine once and for all that youth should not be processed as criminals.

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