

**THE INTERNATIONAL CONVENTION ON THE RIGHTS
OF THE CHILD AND JUVENILE JUSTICE**

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INTRODUCTION

Juvenile criminal law reflects a country's larger attitude towards crime, punishment, and rehabilitation. The United States has continually chosen punishment as a remedy to juvenile crime, over other viable options.¹ Historically and presently, incarceration furthers racial and ethnic divides. The United States has fallen behind its global economic competitors by rejecting the rehabilitation of juveniles.² The United States should consider alternatives to juvenile incarceration by following the example of Germany and the standard set by the Convention on the Rights of the Child. The United States can strengthen juveniles' rights to due process and help lessen the racial divide in criminal justice by focusing on early diversion programs, as well as preventing juvenile waiver into adult court.

In Part I, this paper will explain the international Convention on the Rights of the Child and will analyze how this convention has influenced the United States and Germany in the making of juvenile criminal law. Part II will focus on the current juvenile criminal practices of the United States and Germany and examine the similarities, differences, and consequences of the two countries' approaches, including the overall incarceration rates of juveniles, the average sentencing length for a juvenile, and recidivism rates. Part III will examine the steps the United States can take to improve its juvenile criminal justice system. Part IV will argue that a rehabilitative system such as Germany's is a more effective criminal justice system and is better equipped to address racial disparities.

I. BACKGROUND: INFLUENCES ON JUVENILE CRIMINAL LAW AND CURRENT JUVENILE PRACTICES

In the early twentieth century, children were not internationally recognized as separate from adults.³ Children worked in dangerous

¹ Alternatives to Incarceration and Juvenile Detention Reform, NCSL, (Feb. 24, 2017), <https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-detention-reform.aspx#:~:text=Alternatives%20include%20supervised%20release%20programs,centers%20C%20and%20local%20treatment%20programs> [https://perma.cc/G5BQ-5KJC].

² See, e.g., *Crime Rate and Statistics by Country*, MACROTRENDS, <https://www.macrotrends.net/countries/ranking/crime-rate-statistics> [https://perma.cc/GE6S-PA46] (last visited Aug. 31, 2022).

³ *History of Child Rights*, UNICEF, <https://www.unicef.org/child-rights-convention/history-child-rights> [https://perma.cc/Q97E-LB2R] (last visited Jan. 15, 2022).

conditions alongside adults.⁴ There is no singular event that catalyzed the movement of children's rights. Rather, the exploitation of children through labor began an examination of other predatory practices. Beginning in the 1920s with the Geneva Declaration, the international community recognized the need to afford special protections to children.⁵ The Geneva Declaration recognized children as their own people, who should be afforded rights separate from their parents.⁶ In 1948, the United Nations General Assembly specifically mentioned children as needing special protection in the Universal Declaration of Human Rights.⁷ The General Assembly went a step further in 1959, adopting a specialized list of rights for children, titled the Declaration on the Rights of the Child.⁸ The increasing social awareness towards children's rights would eventually culminate in the Convention on the Rights of the Child.⁹

A. THE INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD

On November 20, 1989, the UN General Assembly adopted the Convention on the Rights of the Child.¹⁰ The Convention on the Rights of the Child ("CRC" or "the convention") evolved from the Geneva Declaration and the Declaration on the Rights of the Child.¹¹ The convention is the product of an open working party, an NGO ad hoc group, and several proposals by different nations.¹² The result is the most widely ratified human rights treaty in history.¹³ Only the United States has abstained from ratification.¹⁴

The goal of the CRC was to produce an international treaty recognizing that those under the age of eighteen are entitled to human rights.¹⁵ The CRC addresses a variety of children's rights, covering civil,

⁴ Paula Fass, *A Historical Context for the United Nations Convention on the Rights of the Child*, 633 CHILD CIT. 17, 17–29 (2011).

⁵ UNICEF, *supra* note 3.

⁶ *Id.*

⁷ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

⁸ G.A. Res. 1386 (XIV), Declaration on Rights of the Child (Nov. 20, 1959).

⁹ See EUGEN VERHELLEN, CONVENTION ON THE RIGHTS OF THE CHILD (2d ed. 1997).

¹⁰ G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989).

¹¹ VERHELLEN, *supra* note 9, at 65–66.

¹² *Id.* at 73–76.

¹³ *Frequently Asked Questions on the Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org/child-rights-convention/frequently-asked-questions> [https://perma.cc/JCG2-PA4M] (last visited Oct. 19, 2021).

¹⁴ *Id.*

¹⁵ *Id.*

political, economic, and cultural rights.¹⁶ The CRC has multiple provisions regarding juvenile justice.¹⁷ Among these is the declaration that no child shall be subject to capital punishment or life imprisonment, and imprisonment of a child should be a “measure of last resort.”¹⁸ Article 37(b) states that incarceration of a child must be for the “shortest appropriate period of time.”¹⁹ In 2007, the United Nations Committee on the Rights of the Child stated that Article 37 of the CRC, which prohibits torture and inhumane punishment for children, classifies solitary confinement as inhumane punishment.²⁰ Additionally, Article 40(2)(iii) gives each juvenile the right to a specialized court.²¹ However, the CRC by no means offers the most progressive interpretation of juvenile justice.²² Most notably, the CRC fails to offer protection against double jeopardy and status offenses.²³

Like most United Nations treaties, the CRC is aspirational.²⁴ The convention has no enforcement mechanisms for countries that disregard its provisions.²⁵ The enforcement of the convention relies entirely on each nation’s implementation.²⁶ The true power of the CRC lies in its normative value.²⁷ In spite of this, the convention has greatly influenced the human rights of children.²⁸ The CRC has incredible normative power from setting a world-wide foundation for children’s rights.²⁹ The wide-spread

¹⁶ *Id.* at 79.

¹⁷ Convention on the Rights of the Child, *supra* note 10, art. 37.

¹⁸ *Id.* art. 37(b).

¹⁹ *Id.*

²⁰ *United Nations Urges U.S. to Act, STOP SOLITARY FOR KIDS*, <https://stopsolitaryforkids.org/international-law-united-nations/> [https://perma.cc/4WRP-3257] (last visited Jan. 15, 2022).

²¹ Convention on the Rights of the Child, *supra* note 10, art. 40(2)(iii).

²² See Cynthia Price Cohen, *Juvenile Justice Provisions of the Draft Convention on the Rights of the Child*, 7 N.Y.U. J. HUM. RTS. 1, 12–15 (1989) (explaining the history of the Convention on the Rights of the Child).

²³ *Id.* at 12.

²⁴ John Tobin, *The Foundation for Children’s Rights, in THE UN CONVENTION ON THE RIGHTS OF THE CHILD: A COMMENTARY* 1, 2 (John Tobin ed., 2019).

²⁵ David A. Balton, *The Convention on the Rights of the Child: Prospects for International Enforcement*, 12 HUM. RTS. Q. 120, 128 (1990) (discussing enforcement mechanisms for the Convention).

²⁶ VERHELLEN, *supra* note 9, at 68.

²⁷ *Id.*

²⁸ See Per Milijeteig-Olsen, *Advocacy of Children’s Rights- The Convention as More than a Legal Document*, 12 HUM. RTS. Q. 148, 148–155 (1990) (analyzing the standard-setting of the convention).

²⁹ VERHELLEN, *supra* note 9, at 145.

ratification of the convention sets an almost universally agreed upon standard for juveniles.³⁰

B. THE CONVENTION'S INFLUENCE ON THE UNITED STATES AND GERMANY

1. *United States*

Despite President Bill Clinton signing the CRC on February 6, 1995, the United States has failed to garner the necessary support to ratify the treaty.³¹ To ratify the convention, the president would be required to sign the treaty, as President Clinton did in 1995.³² Next, the Senate would have to approve the treaty with a two-thirds majority.³³ This step is where the United States legislature refuses to ratify the CRC.³⁴ After Senate approval, the President officially ratifies the treaty.³⁵

Although many of the United States' domestic laws are in accordance with the CRC, the area of juvenile justice remains below par.³⁶ For example, in a decision the CRC would support, the United States recently held that juveniles cannot be executed as a punishment for crimes.³⁷ However, the lack of a nationwide ban on juveniles being imprisoned for life without the possibility of parole would run afoul of the CRC.³⁸ The debate to ratify the CRC is still ongoing.³⁹ Children's rights activists are the CRC's main supporters, and argue that ratification would demonstrate commitment to juvenile rights and would target areas for improvement, such as juvenile justice.⁴⁰ Federalist critics claim ratification

³⁰ *Id.*

³¹ Charlotte Galvin, *The U.S. Should Not Ratify the United Nations Convention on the Rights of the Child*, 39 CHILD.'S LEGAL RTS. J. 198, 198 (2019).

³² *United States Ratification of Human Rights Treaties*, HUM. RTS. WATCH (July 24, 2009, 12:24 PM), <https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties> [<https://perma.cc/33QZ-WM8E>].

³³ Galvin, *supra* note 31, at 198; *See also*, HUM. RTS. WATCH, *supra* note 32.

³⁴ Galvin, *supra* note 31, at 198.

³⁵ *Id.*

³⁶ Carly Helman, *Opposing Viewpoints: In Favor of United States Ratification of the Convention on the Rights of the Child*, 39 CHILD.'S LEGAL RTS. J. 191, 192–93 (2020).

³⁷ Galvin, *supra* note 31, at 198.

³⁸ Helman, *supra* note 36, at 193.

³⁹ *Compare id.* (arguing in favor of the ratification of the CRC), with Galvin, *supra* note 31 (arguing against the ratification of the CRC).

⁴⁰ Helman, *supra* note 36, at 191–193.

will diminish states' rights⁴¹ and the United States' national sovereignty.⁴² These federalists believe that human rights are better upheld by adhering to the United States Constitution, as opposed to international treaties.⁴³ Critics also view any change to state or federal law resulting from an international treaty as an infringement on the United States' sovereignty.⁴⁴ As of 2022, the United States remains the only country to have not ratified the CRC.⁴⁵

2. Germany

With the drafting of the convention, Germany established itself as a progressive representative for children's rights.⁴⁶ Two years before German reunification in 1990,⁴⁷ West Germany proposed that the convention explicitly state that all human rights apply to children.⁴⁸ This would give children even broader protection than offered by the CRC.⁴⁹ Germany ratified the convention in 1992, two years after reunification.⁵⁰ Germany submits reports to the United Nations Committee on the Rights of the Child every five years to ensure Germany follows the provisions set by the CRC.⁵¹

Germany, of course, has a dark past concerning children's rights. The Nazis murdered 1.5 million Jewish children.⁵² The Nazis also murdered tens of thousands of Romani children and as many as seven

⁴¹ *Id.* at 195.

⁴² Galvin, *supra* note 31, at 199.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Ratification Status for CRC – Convention on the Rights of the Child*, OHCHR: U.N. HUM. RTS. TREATY BODIES, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en [https://perma.cc/K4PS-6AZL] (last visited Aug. 31, 2022).

⁴⁶ See, e.g., VERHELLEN, *supra* note 9, at 75–76.

⁴⁷ Stefan Berger, *Historians and Nation-Building in Germany After Reunification*, 148 PAST & PRESENT 187, 187 (1995).

⁴⁸ VERHELLEN, *supra* note 9, at 75–76.

⁴⁹ *Id.*

⁵⁰ *Children's Rights to be Enshrined in the German Basic Law*, BUNDESREGIERUNG [FEDERAL GOVERNMENT] (Jan. 20, 2021), <https://www.bundesregierung.de/breg-en/news/rights-of-child-in-basic-law-1841338> [https://perma.cc/TH5N-DP3Y].

⁵¹ *Id.*

⁵² *Children During the Holocaust*, UNITED STATES HOLOCAUST MEMORIAL MUSEUM: HOLOCAUST ENCYCLOPEDIA, <https://encyclopedia.ushmm.org/content/en/article/children-during-the-holocaust> [https://perma.cc/FAG2-6BNY] (last visited Jan. 15, 2022).

thousand children with disabilities.⁵³ Any child the Nazis deemed “unwanted” or “dangerous” had a low chance of survival.⁵⁴ Adolescents had a higher survival rate, as the Nazis could use the older children for forced labor.⁵⁵

Enormous numbers of German children were indoctrinated into the Hitler Youth.⁵⁶ In 1939, 90 percent of German children belonged to the Nazi group.⁵⁷ This indoctrination left a mark on an entire generation of children, many of whom were separated from their parents to be more fully brainwashed in Nazi dogma.⁵⁸ For many children of the Hitler Youth, it would take years to step away from the Nazi indoctrination.⁵⁹ The Nazis also used the Hitler Youth to staff their armies, pulling Hitler Youth out of school to serve on the front lines.⁶⁰ Those who refused this suicide mission were executed.⁶¹

Separating German criminal law and juvenile justice from the dark history of Nazism is impossible. Because Germany has a civil law system, as opposed to a common law system, Nazi statutes had to be purged from the legal system.⁶² The Allies hired “an army of lawyers” to “comb through every governmental act of the Nazi regime to root out all signs of Nazi ideology.”⁶³ However, the widespread radicalization of Germany and the acceptance of the Nazi party made instituting trained professionals difficult.⁶⁴ After the split of Germany into East and West, with East being loyal to the Soviet Union and West to western democracies, the government and legal system of West Germany began to fill with former Nazis.⁶⁵ It would take a new generation to fully move away from Nazi

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Erin Blakemore, *How the Hitler Youth Turned a Generation of Kids into Nazis*, HISTORY (Aug. 29, 2018), <https://www.history.com/news/how-the-hitler-youth-turned-a-generation-of-kids-into-nazis> [<https://perma.cc/JF2G-HA8U>].

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *The Reconstruction of Justice in Post-Nazi Western Germany*, NAT'L WWII MUSEUM (Aug. 11, 2021), <https://www.nationalww2museum.org/war/articles/justice-in-post-nazi-western-germany> [<https://perma.cc/2JEC-ZWBD>].

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

rhetoric, aided by dedicated anti-Nazi groups.⁶⁶ Thus, the immediately following years after the downfall of the Nazi party were marked as a time of silence.⁶⁷ Germany would roll back the excesses of the Nazi party, but it would not be until the 1960s for significant criminal law reform.⁶⁸

In 1966, a group of German and Swiss criminology experts drafted an Alternative Draft Penal Code.⁶⁹ This alternative penal code focused on rehabilitation.⁷⁰ The Free Democratic Party supported the draft and formed a coalition with Christian Democrats and Social Democrats.⁷¹ Eventually the German Parliament adopted the draft as a formal bill, and more criminal law reforms followed.⁷² German lawmakers took a step-by-step approach to reform, decriminalizing certain offenses, such as adultery, lowering the penalty for other offenses, such as traffic violations, turning shorter jail or prison sentences to fines, and abolishing capital punishment.⁷³

II. ANALYSIS: THE CONSEQUENCES OF JUVENILE PUNISHMENT AND REHABILITATION

The practical effect of the United States' current juvenile practices is evidenced in the incarceration rates of juveniles, the average sentence length, and recidivism. In the United States, these practices are often divided along racial lines, creating racial disparities which follow juveniles into their adult lives and communities.⁷⁴ Although the CRC could never solve an issue as complex as institutional racism, implementing the convention's provisions offers a starting point for the United States to

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Joachim Herrmann, Development and Reform of Criminal Procedure in the Federal Republic of Germany, 11 COMP. & INT'L L.J. S. AFR. 183, 186–92 (1978).

⁶⁹ Emilio Binavince, *The Structure and Theory of the German Penal Code*, 24 AM. J. COMPAR. L. 594, 596 (1976).

⁷⁰ Luis Chiesa, *The Model Penal Code, Mass Incarceration, and the Racialization of American Criminal Law*, 25 GEO. MASON L. REV. 605, 651 (2018).

⁷¹ Joachim Herrmann, *Sanctions: German Law and Theory*, 24 AM. J. COMPAR. L. 718–719, 718–736 (1976).

⁷² *Id.*

⁷³ *Id.* at 722–725; see also A. Eser, *One Hundred Years of German Penal History: Retrospective and Trends*, in CRIMINAL LAW IN ACTION: An Overview of Current Issues in Western Societies, 49–68 (Jan van Dijk et al. eds., 1988).

⁷⁴ See Josh Rovner, *Black Disparities in Youth Incarceration*, THE SENTENCING PROJECT (July 15, 2021), <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/> [https://perma.cc/4XNX-6W2Q].

begin rehabilitating its juvenile justice system, and by extension, its treatment of communities of color.

A. LIFE IMPRISONMENT

Despite the international standard set by the convention, the United States has several juvenile justice practices that fail to meet this standard. The United States Supreme Court recently upheld the option of sentencing a juvenile offender to life-without-parole.⁷⁵ In *Jones v. Mississippi*, the court held that the sentencing judge does not need to make a finding of “permanent incorrigibility” before sentencing a juvenile to life-without-parole.⁷⁶ The court reasoned that it was enough that the sentence of life-without-parole was not mandatory.⁷⁷ So long as the sentencing judge has the discretion to not impose a life sentence, this practice is constitutional.⁷⁸ The CRC sets a guideline of life imprisonment being a measure of last resort.⁷⁹ The United States can follow this guideline by setting a baseline requirement of permanent incorrigibility.

Germany takes a rehabilitative approach to all criminal justice.⁸⁰ This attitude applies to adults, and especially juveniles.⁸¹ Before imprisonment of a juvenile is even considered, Germany prioritizes “diversion and minimized interventions, mediation and restorative practices, and educational community sanctions.”⁸² Victims are compensated through labor or payment, without the juvenile offender needing to be incarcerated.⁸³ In cases where a juvenile is unlikely to be

⁷⁵ *Jones v. Mississippi*, 141 S.Ct. 1307, 1311 (2021).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 1318–19.

⁷⁹ Convention on the Rights of the Child, *supra* note 10, art. 37(b).

⁸⁰ See Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung [Strafvollzugsgesetz – StVollzG] [Prison Act], Mar. 16, 1976, BGBl I at 581, 2088, last amended by Gesetz [G], June 19, 2019, BGBl I at 840 (Ger.).

⁸¹ See Jugendgerichtsgesetz [JGG][Youth Courts Act], Dec. 11, 1974, BGBl I at 3427, §1, last amended by Gesetz [G], June 25, 2021, BGBl I at 2099 (Ger.); see generally Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung [Strafvollzugsgesetz – StVollzG] [Prison Act], Mar. 16, 1976, BGBl I at 581, 2088, last amended by Gesetz [G], June 19, 2019, BGBl I at 840 (Ger.).

⁸² Vincent Schiraldi, *In Germany, It's Hard to Find a Young Adult in Prison*, THE CRIME REPORT (Apr. 10, 2018), [thecrimereport.org/2018/04/10/in-germany-its-hard-to-find-a-young-adult-in-prison](https://perma.cc/D98M-V2BB) [https://perma.cc/D98M-V2BB].

⁸³ *Id.*

imprisoned, juveniles do not even require representation in court.⁸⁴ Juveniles in Germany tend to only be incarcerated for violent offenses.⁸⁵

When Germany incarcerates a juvenile, the Federal Prison Act of 1976 prioritizes helping the individual reintegrate into public life.⁸⁶ German juvenile prisons are expected to always keep in mind that juveniles are to be rehabilitated to enter society.⁸⁷ Regarding juvenile justice, Germany adopted the Juvenile Court Act (“JCA”).⁸⁸ The JCA’s goal is to focus the juvenile criminal justice system on education.⁸⁹ Germany’s juvenile law applies to a large range of ages.⁹⁰ The Youth Law applies to youths, ages fourteen through seventeen, and young adults, ages eighteen through twenty.⁹¹ As opposed to the United States, Germany does not allow life sentences for juveniles.⁹² Juveniles in Germany can receive sentences up to ten years.⁹³ However, according to the *Crime Report* “Fewer than one percent receive sentences of five to 10 years; fewer than five percent receive sentences of between three and five years.”⁹⁴ Germany does not allow the transfer of juveniles to adult facilities.⁹⁵

In comparison to Germany, where every alternative is considered before even short-term imprisonment, continuing the practice of life-without-parole sets the United States behind the convention’s international standard.⁹⁶ The convention is very clear on the international norm for juvenile sentencing: “Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung [Strafvollzugsgesetz – StVollzG] [Prison Act], Mar. 16, 1976, BGBl I, 2088, last amended by Gesetz [G], June 19, 2019, BGBl I (Ger.).

⁸⁷ Schiraldi, *supra* note 82.

⁸⁸ Gunther Kaiser, *The Juvenile Justice System: The Case of Germany*, 18 LEGAL STUD. F. 319, 319 (1994).

⁸⁹ Claire Banks, Comment, *From Isolation to Independence: A Comparison Study of Juvenile Solitary Confinement Practices in the United States and Germany*, 8 PENN ST. J. L. & INT’L AFFS. 757, 767 (2020).

⁹⁰ See Jugendgerichtsgesetz [JGG][Youth Courts Act], Dec. 11, 1974, BGBl I at 3427, §1, last amended by Gesetz [G], June 25, 2021, BGBl I at 2099 (Ger.).

⁹¹ *Id.*

⁹² Schiraldi, *supra* note 82.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Maurice Chammah, *How Germany Treats Juveniles*, THE MARSHALL PROJECT (June 19, 2015), <https://www.themarshallproject.org/2015/06/19/how-germany-treats-juveniles> [https://perma.cc/439Z-WGJR].

⁹⁶ Convention on the Rights of the Child, *supra* note 10, art. 37(a).

persons below eighteen years of age.”⁹⁷ The international community agreed on this standard that the United States fails to uphold. Although the United States continues to resist ratifying the CRC, the United States could benefit from implementing this provision. The United States continues to be the only country that allows juvenile imprisonment for life-without-parole.⁹⁸

By ratifying the CRC, or at least by striking down the availability of juvenile imprisonment for life, the United States would show a commitment to children’s rights and racial equality. Black youth are disproportionately sentenced to life-without-parole, making this yet another area to disproportionately affect communities of color.⁹⁹ Germany also has a dark past of inequality in imprisonment. However, Germany has confronted the stain of its past in its current imprisonment practices.¹⁰⁰ Life imprisonment takes away any hope of reintegration and rehabilitation. The United States could learn from the example of Germany that no juvenile is permanently criminal. Juveniles should be given the opportunity of rejoining society after rehabilitation.

B. SOLITARY CONFINEMENT

A second area the United States fails to comply with the convention is in the practice of juvenile solitary confinement. President Obama issued an executive order banning juvenile solitary confinement in federal prisons in 2016.¹⁰¹ However, the effectiveness of this ban has been called into question.¹⁰² To begin, more juveniles are held in state prisons, which are unaffected by the executive order.¹⁰³ Secondly, no legislative

⁹⁷ *Id.*

⁹⁸ *Juvenile Life Without Parole*, JUV. L. CTR., <https://jlc.org/issues/juvenile-life-without-parole#:~:text=The%20United%20States%20is%20the,is%20condemned%20by%20international%20law> [https://perma.cc/Z3E2-NPE3] (last visited Sept. 8, 2022).

⁹⁹ Nikki Trautman Baszynski, *States Should Abolish Juvenile Life Without Parole*, THE APPEAL (Apr. 26, 2021), <https://theappeal.org/the-point/states-should-abolish-juvenile-life-without-parole/> [https://perma.cc/84GC-38H2].

¹⁰⁰ Amy Solomon, *Out From the Holocaust*, THE MARSHALL PROJECT (Dec. 20, 2018, 9:59 PM), <https://www.themarshallproject.org/2018/12/20/out-from-the-holocaust> [https://perma.cc/V6A7-VXUY].

¹⁰¹ Laura Wagner, *Obama Bans Solitary Confinement for Juveniles in Federal Prisons*, NPR (Jan. 26, 2016, 9:24 PM), <https://www.npr.org/sections/thetwo-way/2016/01/25/463891388/obama-announces-reforms-to-solitary-confinement-in-federal-prisons> [https://perma.cc/E373-89QY].

¹⁰² Banks, *supra* note 89, at 770–71.

¹⁰³ *Id.* at 771.

efforts to completely ban juvenile solitary confinement have succeeded.¹⁰⁴ However, the legislature has taken steps towards ending juvenile solitary confinement. Most notably, Congress passed the bipartisan First Step Act.¹⁰⁵ The First Step Act applies to juveniles in federal custody and allows solitary confinement only when a juvenile poses an immediate, physical risk.¹⁰⁶ However, this legislation suffers from the same problem as Obama's executive order, in that only a handful of juveniles in federal custody were affected.¹⁰⁷

Germany uses solitary confinement sparingly for adults and juveniles,¹⁰⁸ and only as the most severe disciplinary action against juveniles.¹⁰⁹ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommended abolishing the use of juvenile solitary confinement.¹¹⁰ Although Germany has not completely abolished solitary confinement, only a very small number of juveniles are currently in solitary confinement, and the maximum time allowed in solitary confinement is two weeks.¹¹¹

Following the CRC's international norm, juvenile solitary confinement should be officially ended. Prolonged isolation can lead to a variety of mental health issues, including psychosis and self-harm.¹¹² Isolation negatively affects social skills, making the isolated person less able to appropriately socialize.¹¹³ For incarcerated juveniles, social skills and good mental health are an important part of reintegration into society. To rehabilitate juveniles, the United States should utilize more

¹⁰⁴ See generally Juvenile Justice Reform Act, H.R. 1809, 115th Cong. (2017); MERCY Act, H.R. 901, 115th Cong. (2017); REDEEM Act, H.R. 1906, 115th Cong. (2017); Kalief's Law, H.R. 47, 115th Cong. (2017).

¹⁰⁵ First Step Act of 2018, S. 756, 115th Cong. (2018).

¹⁰⁶ 18 U.S.C. § 5043.

¹⁰⁷ Tigerlily Theo Hopson, *The First Step Act is Only the First Step for Juvenile Justice*, MEDIUM (Aug. 2, 2019), <https://medium.com/@nbcnewsylij/the-first-step-act-is-only-the-first-step-for-juvenile-justice-1d44d874b8bb> [https://perma.cc/35KP-389U].

¹⁰⁸ Christine Herrman, *Dispatches from Germany: Is Solitary Confinement Necessary?*, VERA INST. OF JUST. (June 29, 2015), <https://www.vera.org/blog/dispatches-from-germany-is-solitary-confinement-necessary> [https://perma.cc/M87P-EAY9].

¹⁰⁹ Banks, *supra* note 89, at 778–79.

¹¹⁰ *Report to the German Government on the Visit to Germany Carried Out by the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment of Punishment*, 2017, Doc. CPT/Inf 7.

¹¹¹ See *supra* note 89, at 778–779.

¹¹² Jayne Leonard, *What are the Effects of Solitary Confinement?*, MED. NEWS TODAY (Aug. 6, 2020), <https://www.medicalnewstoday.com/articles/solitary-confinement-effects#mental-health-effects> [https://perma.cc/3NCC-BX6L].

¹¹³ *Id.*

diversionary tactics, as opposed to punishing a juvenile with solitary confinement. This more correctly mirrors acceptable conflict resolution in the outside world as well. Conflict resolution cannot be through violence and isolation.

C. JUDICIAL WAIVER AND PRISON CONDITIONS

Finally, a significant issue in the United States' juvenile justice is the practice of judicial waiver. Judicial waiver is the practice of sending juveniles to adult criminal court.¹¹⁴ Each state has its own laws regarding judicial waiver into adult court.¹¹⁵ Most states have a minimum age where a juvenile can be transferred to adult court, but some states have no minimum age.¹¹⁶ Some states allow anyone being prosecuted for certain serious offenses such as arson or murder to be waived into adult court, regardless of age.¹¹⁷ Waiver into adult court has serious consequences for juveniles, most significantly the possibility for harsher sentencing since the juvenile is being sentenced as an adult offender.¹¹⁸

Juveniles in adult prison are at a greater risk for sexual and physical violence.¹¹⁹ Seventy-five percent of those who suffered sexual abuse in prisons have been repeatedly abused by the prison staff.¹²⁰ Additionally, juveniles housed in adult prisons are nine times more likely to die by suicide than those in juvenile facilities.¹²¹ The Prison Rape Elimination Act of 2003 requires juveniles to be incarcerated separately from adults.¹²² However, only eleven states follow this statute.¹²³ While

¹¹⁴ LARRY SIEGEL & BRANDON WELSH, *JUVENILE DELINQUENCY: THEORY, PRACTICE, AND LAW* 550 (13th ed. 2017).

¹¹⁵ PATRICK GRIFFIN ET AL., U.S. DEP'T OF JUST., *TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING* 4 (2011), <https://www.ojp.gov/pdffiles1/ojdp/232434.pdf> [<https://perma.cc/FLR2-CP5N>].

¹¹⁶ Interstate Commission for Juveniles, *Juvenile Compact* (June 29, 2021), <https://www.juvenilecompact.org/age-matrix> [<https://perma.cc/Q8HD-3AY5>].

¹¹⁷ *Id.*

¹¹⁸ Roger-Claude Liwanga & Patrick Ibe, *Transfer of Child Offenders to Adult Criminal Courts in the USA: An Unnecessary Exercise, Unconstitutional Practice, International Law Violation, or All of the Above?*, 49 GA. J. INT'L & COMP. L. 99, 104 (2021).

¹¹⁹ *Children in Adult Prison*, EQUAL JUST. INITIATIVE, <https://ej.org/issues/children-in-prison/> (last visited Jan. 15, 2022) [<https://perma.cc/48JP-KE3E>].

¹²⁰ Jessica Lahey, *The Steep Costs of Keeping Juveniles in Adult Prisons*, *The Atlantic*, (Jan. 8, 2016), <https://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adult-prisons/423201/> [<https://perma.cc/A6QS-HYD3>].

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

some facilities have attempted to address the potential for sexual and physical abuse in adult facilities, the execution creates another problem. These prisons separate juveniles in adult prisons from the adult population.¹²⁴ In practice, this means most juveniles in these facilities end up isolated.¹²⁵ Finally, juveniles housed with adults are thirty-four times more likely to recidivate than those housed in juvenile facilities.¹²⁶

For juveniles not sent to adult court, there are currently eighty youth prisons in the United States.¹²⁷ These youth prisons resemble adult prisons: “with locked doors and razor wire fences, a remote, rural location, solitary confinement, inmates with sentences measured in years instead of months, and staff whose job it is to provide security, not education or therapy.”¹²⁸ They are geographically isolated away from communities.¹²⁹

German juvenile prisons are a much different environment than prisons in the United States. Juveniles, in Germany ages nineteen to twenty-five, are always housed separately from adults.¹³⁰ In Germany, juvenile prisons emphasize the importance of therapy.¹³¹ German facilities give juveniles vocational training in welding,¹³² woodworking, and farming.¹³³ To foster independence and promote re-socialization, German facilities encourage outdoor activities such as horseback riding or raising animals such as rabbits, sheep, and goats.¹³⁴ Every incarcerated juvenile has a minimum wage job.¹³⁵ This focus on prioritizing transferable skills

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Eli Hager, *There are Still 80 ‘Youth Prisons’ in the U.S. Here are Five Things to Know about Them*, The Marsh. Proj. (Mar. 3, 2016), <https://www.themarshallproject.org/2016/03/03/there-are-still-80-youth-prisons-in-the-u-s-here-are-five-things-to-know-about-them> [<https://perma.cc/T9GW-FTYR>].

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ See Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung [Strafvollzugsgesetz – StVollzG] [Prison Act], Mar. 16, 1976, BGBl I, 2088, last amended by Gesetz [G], June 19, 2019, BGBl I 1 (Ger.).

¹³¹ *Id.*

¹³² See *supra* note 89, at 793.

¹³³ Rovner, *Supra* note 73.

¹³⁴ Claire Banks, *From Isolation to Independence: A Comparison Study of Juvenile Solitary Confinement Practices in the United States and Germany*, 8 PENN ST. 757, 793 (2020); Sarah Gonzales, *Kids in Prison: Germany has a Different Approach, Better Results*, WNYC NEWS (Oct. 10, 2016), <https://www.wnyc.org/story/being-kid-adult-prison-here-vs-other-countries/> [<https://perma.cc/5K3C-2NUA>].

¹³⁵ Sarah Gonzales, *Kids in Prison: Germany has a Different Approach, Better Results*, WNYC NEWS (Oct. 10, 2016), <https://www.wnyc.org/story/being-kid-adult-prison-here-vs-other-countries/> [<https://perma.cc/5K3C-2NUA>].

and dignity gives incarcerated juveniles a second chance to successfully join society.

German cells also reflect the ultimate goal of rehabilitation.¹³⁶ Life in prison is designed to reflect life in the outside world.¹³⁷ Male and female juveniles are housed together and are allowed any intimacy below the level of sex.¹³⁸ Every inmate has their own room and each room has natural light and decorations.¹³⁹ Incarcerated juveniles are allowed to decorate the walls however they like.¹⁴⁰ The German juvenile prisons are nothing like the isolated, United States' youth prisons.¹⁴¹

Psychologists have long recognized that the brains of young people are different than adults.¹⁴² The way the United States treats incarcerated young people does not reflect this scientific fact. Juveniles who commit crimes are often subject to the same punishments as adults. The conditions of adult prisons and even youth prisons in the United States discourage rehabilitation. Additionally, considering that children of color are more likely to be arrested, prosecuted, and incarcerated, this has a disproportionate impact on people of color. The CRC aimed to establish rights for children that were previously unrecognized. One of these rights is freedom from discrimination.¹⁴³ The United States engages in a system with discrimination at every step and fails to recognize the reality of children's psychological developments. While there is no surefire way to end discrimination in the United States, the country could begin with juvenile incarceration. Juveniles of color are a vulnerable population in the American justice system. Despite only accounting for 14 percent of the youth population, 47.3 percent of youths transferred to adult court by

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See Eli Hager, *There are Still 80 'Youth Prisons' in the U.S. Here are Five Things to Know about Them*, The Marsh. Proj. (March 3, 2016), <https://www.themarshallproject.org/2016/03/03/there-are-still-80-youth-prisons-in-the-u-s-here-are-five-things-to-know-about-them> [<https://perma.cc/T9GW-FTYR>]; Sarah Gonzales, *Kids in Prison: Germany has a Different Approach, Better Results*, WNYC NEWS (Oct. 10, 2016), <https://www.wnyc.org/story/being-kid-adult-prison-here-vs-other-countries/> [<https://perma.cc/5K3C-2NUA>].

¹⁴² Jesus Pujol et. al., *Differences Between the Child and Adult Brain in the Local Functional Structure of the Cerebral Cortex*, 237 *NeuroImage*, (Aug. 15, 2021) <https://www.sciencedirect.com/science/article/pii/S1053811921004274> [<https://perma.cc/3ZJL-H8TG>].

¹⁴³ Universal Declaration of Human Rights, *supra* note 7, at art. 2.

judicial waiver are black youth.¹⁴⁴ Taking steps to improve conditions of facilities holding juveniles can be the beginning of changing the United States' dehumanization of this vulnerable population.

D. INCARCERATION RATES OF JUVENILES

The United States has already made positive policy changes that has lowered the number of incarcerated juveniles.¹⁴⁵ These policies include investing in education and funding community alternatives to incarceration.¹⁴⁶ However, the disparities in incarceration that are present in adults are also present in juveniles.¹⁴⁷ Despite the decrease in incarcerated juveniles, the United States still incarcerates more juveniles than any other country.¹⁴⁸ The COVID-19 pandemic heightened already existing inequalities in the juvenile prison system. Detention centers released so many juveniles due to COVID-19 that juvenile incarceration was the lowest it has been since 1980s.¹⁴⁹ However, white juveniles were released at a 17 percent higher rate than black juveniles.¹⁵⁰ Because of racial disparities in juvenile justice, while the overall number of incarcerated juveniles has decreased, the disproportionate percentage of juveniles of color has increased.¹⁵¹ Black juveniles are incarcerated at a rate over four times higher than white juveniles.¹⁵² Forty-one percent of

¹⁴⁴ *Race and Juvenile Justice*, NACDL, <https://www.nacdl.org/Content/Race-and-Juvenile-Justice#:~:text=Judicial%20discretion%20certainly%20plays%20a,of%20the%20total%20youth%20population> [https://perma.cc/5HZ3-Z3VK].

¹⁴⁵ Children's Defense Fund, *The State of America's Children*, YOUTH JUSTICE (2021), <https://www.childrensdefense.org/state-of-americas-children/> [https://perma.cc/79W9-5397].

¹⁴⁶ Julia Durnam et al., *State-Led Juvenile Justice Systems Improvement: Implementation Progress and Early Outcomes*, URBAN INSTITUTE (May 1, 2018), <https://www.urban.org/research/publication/state-led-juvenile-justice-systems-improvementv> [https://perma.cc/WU8B-SDA5].

¹⁴⁷ *Supra* note 145.

¹⁴⁸ *America's Addiction to Youth Incarceration: State by State*, ACLU <https://www.aclu.org/issues/juvenile-justice/youth-incarceration/americas-addiction-juvenile-incarceration-state-state> [https://perma.cc/M3Z3-K7MF].

¹⁴⁹ *Supra* note 145.

¹⁵⁰ *Id.*

¹⁵¹ Eli Hager, *Many Juvenile Jails are Now Almost Entirely Filled with Young People of Color*, MARSHALL PROJECT (Mar. 8, 2021), <https://www.themarshallproject.org/2021/03/08/many-juvenile-jails-are-now-almost-entirely-filled-with-young-people-of-color> [https://perma.cc/FZ6Y-JGXF].

¹⁵² Josh Rovner, *Black Disparities in Youth Incarceration*, SENTENCING PROJECT (July 15, 2021), <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/> [https://perma.cc/JP4W-B9PR].

juveniles in facilities such as detention centers, group homes, and youth prisons are black.¹⁵³

Although the United States has not ratified the CRC, the aspirational norm of establishing human rights for juveniles includes the right of freedom from discrimination.¹⁵⁴ Racial disparity in incarceration rates for juveniles reflects the United States' larger attitude towards people of color. Psychology studies have found that black children are perceived as older and more accountable than their actual age reflects.¹⁵⁵ Although the legal system cannot cure the implicit and explicit biases that form racism, the legal practices the United States employs can work to limit racial disparities. People of color are overrepresented in the criminal system, and this holds true for the juvenile criminal system as well.¹⁵⁶

Comparatively, German juvenile justice covers ages fourteen to twenty.¹⁵⁷ In Germany, 2.3 percent of the prison population is comprised of juveniles.¹⁵⁸ Youth imprisonment is used in only 2 percent of juvenile cases.¹⁵⁹ Overall, juvenile imprisonment is much lower in Germany than the United States. This is reflective of larger incarceration trends, as the United States' incarceration rate is 693 per 100,000 whereas Germany's is 76 per 100,000.¹⁶⁰

If the overall goal of criminal law is to deter crime, the United States' overincarceration does not further that desired goal. The United States is ranked higher than Germany in every category of violent crime.¹⁶¹ The United States has three times more gun crime per capita than

¹⁵³ *Id.*

¹⁵⁴ See Universal Declaration of Human Rights, *supra* note 7, art. 2.

¹⁵⁵ See Philip Atiba Goff, Matthew Jackson, Brooke Lewis Di Leone, Carmen Culotta, Natalie DiTomasso, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCH. 526, 526–45 (2014).

¹⁵⁶ See Gonzalez, *supra* note 134.

¹⁵⁷ Freider Dünkel, *Youth Justice in Germany*, OXFORD HANDBOOK TOPICS IN CRIMINOLOGY AND CRIMINAL JUSTICE § 7 (2016), <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935383.001.0001/oxfordhb-9780199935383-e-68> [https://perma.cc/BN94-FXZ3].

¹⁵⁸ Germany, WORLD PRISON BRIEF: DATA, <https://www.prisonstudies.org/country/germany> (last visited Sep. 22, 2022) [https://perma.cc/Y226-WBN6].

¹⁵⁹ See Dünkel, *supra* note 157.

¹⁶⁰ RAM SUBRAMANIAN & ALISON SHAMES, VERA INST. JUST., SENTENCING AND PRISON PRACTICES IN GERMANY AND THE NETHERLANDS 5 (2013), <https://www.vera.org/downloads/publications/european-american-prison-report-v3.pdf> [https://perma.cc/5BDY-KM3P].

¹⁶¹ *Violent Crime Stats*, NATION MASTER, <https://www.nationmaster.com/country-info/compare/Germany/United-States/Crime/Violent-crime> [https://perma.cc/SCE3-H28Q].

Germany, nineteen times more murder, and eleven times more rape.¹⁶² While the causes of crime are multi-faceted, it is safe to say that the focus on incarceration and punishment has failed to prevent or even lower crime. To begin lowering the incarceration rates of juveniles, the United States can look to Germany's example.

Germany is, of course, not a perfect example to emulate. Due to the history of the Holocaust, Germany does not gather any data on racial demographics.¹⁶³ However, recent movements in Germany, galvanized by the Black Lives Matter Movement in the United States, have highlighted racism against Black Germans.¹⁶⁴ Racial profiling against Black Germans is an underreported problem.¹⁶⁵ Systems of incarceration will never be perfect and settled. These facilities should be regularly evaluated to properly reflect changing and static social dynamics.

E. SENTENCING PRACTICES FOR JUVENILES

The United States Supreme Court has made movement towards more progressive sentencing regarding juveniles. In 2005, the Supreme Court struck down the death penalty for juveniles in *Roper v. Simmons*.¹⁶⁶ In 2012, the Supreme Court found life-without-parole sentences as a mandatory minimum for juveniles unconstitutional in *Miller v. Alabama*.¹⁶⁷ However, the 2021 holding of *Jones v. Mississippi* clarified that sentences of life-without-parole are constitutional as long as they are at the judge's discretion.¹⁶⁸ Discrimination is once again present at this stage of juvenile justice. After being arrested, juveniles of color are more likely to experience legal consequences of some sort.¹⁶⁹ Additionally, juveniles of color are more likely to be charged with "aggravated" crimes,

¹⁶² *Id.*

¹⁶³ Valeriya Safronova, *Black Germans Say it's Time to Look Inward*, N.Y. TIMES (Oct. 5, 2020), <https://www.nytimes.com/2020/10/04/style/black-germans-say-its-time-to-look-inward.html> [https://perma.cc/FU3B-KLF8].

¹⁶⁴ *Id.*

¹⁶⁵ *See Id.*

¹⁶⁶ *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

¹⁶⁷ *Miller v. Alabama*, 567 U.S. 460, 489 (2012).

¹⁶⁸ *Jones v. Mississippi*, 141 S. Ct. 1307, 1322 (2021).

¹⁶⁹ *Studies Show Dramatic Racial Disparities in Front End of Juvenile Justice System*, ANNIE E. CASEY FOUND. (Apr. 20, 2021), <https://www.aecf.org/blog/studies-show-dramatic-racial-disparities-in-front-end-of-juvenile-justice-s> [https://perma.cc/KP8A-2FRP].

giving them longer sentences.¹⁷⁰ Finally, because juveniles of color are perceived as older than their white counterparts, judges are more likely to waive them into adult court, where they face longer sentences.¹⁷¹

As discussed above, seeing an incarcerated juvenile is rare in Germany.¹⁷² Having a maximum sentence time, as opposed to the United States which has no special maximum sentence length for juveniles, reduces the number of juveniles spending significant periods of time incarcerated. Taking from Germany's example and the CRC's aspirational goals, the United States should focus on abolishing life-without-parole for juveniles. Additionally, no juvenile under the age of eighteen should be waived into adult court, as this practice has an unfair effect on juveniles of color.

F. RECIDIVISM AND REHABILITATION

Germany has found the practice of 'diversion' to be effective in preventing reoffending.¹⁷³ As such, 70 percent of juvenile cases take this approach, as opposed to incarceration.¹⁷⁴ The practice of diversion has been in place since 1923.¹⁷⁵ Diversion allows a prosecutor to not bring a charge, even when there is no reasonable doubt that the juvenile is guilty.¹⁷⁶ Additionally, a juvenile judge can halt the proceedings.¹⁷⁷ Prosecutors can also divert felony charges if the juvenile has made some form of restitution or reparation.¹⁷⁸

¹⁷⁰ See Ryan King & Marc Shindler, *Reconsidering Police in Schools*, in BROOKINGS, AM. ENTER. INST., A BETTER PATH FORWARD FOR CRIMINAL JUSTICE 37, 38 (2021), https://www.brookings.edu/wp-content/uploads/2021/04/Better-Path-Forward_Brookings-AEI-report.pdf [<https://perma.cc/XWJ2-Y5NV>]; see also Eli Hager, *Many Juvenile Jails are Now Almost Entirely Filled with Young People of Color*, MARSHALL PROJECT (Mar. 8, 2021), <https://www.themarshallproject.org/2021/03/08/many-juvenile-jails-are-now-almost-entirely-filled-with-young-people-of-color> [<https://perma.cc/FNM7-A4YF>].

¹⁷¹ See JEREE MICHELE THOMAS & MEL WILSON, NAT'L ASS'N SOC. WORKERS, THE COLOR OF JUVENILE TRANSFER: POLICY & PRACTICE RECOMMENDATIONS, 1 (2017), <https://www.socialworkers.org/LinkClick.aspx?fileticket=30n7g-nwam8%3D&portalid=0#:~:text=Although%20Black%20youth%20are%20only,in%20the%20state%20in%202016> [<https://perma.cc/HE66-THYD>].

¹⁷² See Dünkel, *supra* note 157.

¹⁷³ Dünkel, *supra* note 157, § 5.

¹⁷⁴ *Id.*

¹⁷⁵ WOLFGANG HEINZ, DIVERSION IN GERMAN JUVENILE JUSTICE: ITS PRACTICE, IMPACT AND PENAL POLICY IMPLICATIONS 159 (Gunter Albrecht & Wolfgang Ludwig-Meyerhofer eds., 1992).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Dünkel, *supra* note 157, § 3.

Comparatively, the United States prioritizes criminalization and punishment. In the United States, fourteen million students are at schools that have no mental or physical health professionals but do have police.¹⁷⁹ Juvenile justice activists refer to the practice of criminalizing juvenile behavior as opposed to prioritizing access to psychologists, social workers, or counselors as the “school-to-prison pipeline.”¹⁸⁰ Juvenile arrests lowered during the pandemic, which the Annie E. Casey Foundation attributed to juveniles interacting less with school-based officers.¹⁸¹ The placement of school-based officers became popular with the 1990s’ “super-predator” rhetoric.¹⁸² Through the growing concern of school shootings, officers have become a main-stay for many schools.¹⁸³ However, these officers have been linked to an increase in arrests for non-criminal behavior.¹⁸⁴ Serious crimes rarely happen on school campuses, so officers spend most of their time pursuing minor, youthful indiscretions.¹⁸⁵ Following the United States’ general trend of criminal justice, this occurs along racialized lines.¹⁸⁶

There are no national figures for juvenile recidivism, but individual states have conducted studies on how many juvenile offenders end up in prison as adults.¹⁸⁷ A research study from the Massachusetts Institute of Technology found that out of thirty thousand juvenile offenders in Illinois, forty percent ended up in adult prison by age twenty-five.¹⁸⁸

Germany’s model of diversion could serve the United States well. Limiting juveniles’ interactions with the criminal justice system may even

¹⁷⁹ CHILD.’S DEF. FUND, THE STATE OF AMERICA’S CHILDREN 26 (2021), <https://www.childrensdefense.org/wp-content/uploads/2021/04/The-State-of-Americas-Children-2021.pdf> [https://perma.cc/7LUP-MXCZ].

¹⁸⁰ See Ryan King & Marc Shindler, *Reconsidering Police in Schools*, in BROOKINGS, AM. ENTER. INST., A BETTER PATH FORWARD FOR CRIMINAL JUSTICE 37, 38 (2021), https://www.brookings.edu/wp-content/uploads/2021/04/Better-Path-Forward_Brookings-AEI-report.pdf [https://perma.cc/XWJ2-Y5NV].

¹⁸¹ Hager, *supra* note 151.

¹⁸² King & Shindler, *supra* note 180, at 37–38.

¹⁸³ *Id.* at 37.

¹⁸⁴ *Id.* at 38.

¹⁸⁵ *Id.* at 40.

¹⁸⁶ *Id.* at 38.

¹⁸⁷ *What are Juvenile Recidivism Rates and How can They be Reduced?*, POINT PARK UNIV. (May 25, 2021), <https://online.pointpark.edu/criminal-justice/juvenile-recidivism/#:~:text=The%20highest%20juvenile%20recidivism%20rates,reached%20the%20age%20of%2025> [https://perma.cc/4M76-UB7L].

¹⁸⁸ *Id.*

work to deter future crime. As Germany has a lower recidivism rate than the United States, and employs a rehabilitative system, the United States' punitive approach does not have a better result than Germany's.

III. STEPS FOR IMPROVEMENT

A. RATIFYING THE CRC

The United States should ratify the CRC. The argument that ratification would undermine the United States' sovereignty does not hold water. The United States has ratified a number of international treaties while still maintaining its own sovereignty.¹⁸⁹ The convention would give states a baseline to aspire to, concerning juvenile facilities. All countries that ratify the CRC report to the UN Committee on the Rights of the Child every five years.¹⁹⁰ This would benefit the United States through the committee's suggestions for improvement. Additionally, the United States would be able to compare the results of its reporting to other countries. The United States could then see areas requiring improvement and areas where the United States fares well. Ratification would also send a message to state and local politicians that the rights of juveniles are a priority of the United States' national lawmakers. While mostly symbolic, ratification is an important and meaningful step towards change.

B. REESTABLISH FACILITIES FOR JUVENILES AS REHABILITATIVE

United States juvenile cell (left)¹⁹¹ compared to a German juvenile room (right).¹⁹²

¹⁸⁹ U.S. DEP'T OF STATE, TREATIES IN FORCE (2020), <https://www.state.gov/wp-content/uploads/2020/08/TIF-2020-Full-website-view.pdf> [<https://perma.cc/MHG2-ZZCB>].

¹⁹⁰ *Implementing and Monitoring the Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org/child-rights-convention/implementing-monitoring> [<https://perma.cc/F3KV-PKX3>].

¹⁹¹ Michael Fitzgerald, *Cuomo Administration's New Solitary Rules Might Keep New York Minors in Isolation*, THE IMPRINT (Sept. 9, 2019), <https://imprintnews.org/news-2/cuomo-solitary-new-york-minors/37475> [<https://perma.cc/9EGK-UJWV>].

¹⁹² Schiraldi, *supra* note 82.



Part of Germany's focus on rehabilitation is centered on the conditions of juvenile prisons. As shown in the picture above, German cells appear more as dorm rooms. This design is intentional to focus on a humanizing process.¹⁹³ Part of Germany's low recidivism rate comes from its focus on rehabilitation. Germany also focuses on educating juveniles in trade skills that can lead to careers upon release.¹⁹⁴ Although incarceration is a last resort, even this stage is intentionally settled in returning juveniles to the community.¹⁹⁵ Because communities of color are disproportionately impacted by the criminal justice system, allowing juveniles to be rehabilitated back into the community could be a vital step in repairing this racial disparity.¹⁹⁶

Legislators in the United States can begin to focus on the quality of juvenile cells. Laws such as HR 6964 illustrate bipartisan support to begin focusing on alternatives to the traditional punitive approach for juveniles.¹⁹⁷ Considering the international norm set by the CRC: "[e]very child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person."¹⁹⁸ Allowing juveniles to still have privacy in youth centers and juvenile prisons would help the rehabilitative process and bring the United States in line with the international standard. Because the United States' sentencing practices result in juveniles

¹⁹³ Banks, *supra* note 89, at 793–94.

¹⁹⁴ Anne Teigen & Lucia Bragg, Improving the Juvenile Justice System, NAT'L CONF. STATE LEGISLATURES: LEGISBRIEFS (Mar. 18, 2019), <https://www.ncsl.org/research/civil-and-criminal-justice/improving-the-juvenile-justice-system.aspx> [<https://perma.cc/X4FJ-DBKE>].

¹⁹⁵ Convention on the Rights of the Child, *supra* note 10, art. 37(c).

¹⁹⁶ See Bernadette Rabuy & Daniel Kopf, *Separation by Bars and Miles*, PRISON POL'Y INITIATIVE (Oct. 20, 2015), <https://www.prisonpolicy.org/reports/prisonvisits.html> [<https://perma.cc/5CVT-7A9V>].

¹⁹⁷ See *id.*

¹⁹⁸ See *id.*

spending much longer periods of time in prison than their German counterparts, the conditions of cells are all the more important.

Additionally, allowing more community contact would benefit incarcerated juveniles. Prisons are intentionally geographically isolated.¹⁹⁹ This geographical isolation means that prison visits from a loved one occur rarely, if at all.²⁰⁰ Compounding the geographical distance is the taxing process of being allowed into a prison to visit a loved one. Prisons often limit the duration of visits and the number allowed in one week.²⁰¹ Some prisons charge fees to run background checks before allowing visitors inside.²⁰² Still, more allow correctional officers discretion to turn visitors away, leaving family at the mercy of prison staff.²⁰³

Researchers have time and again illustrated that community ties are one of the single best ways to prevent reoffending,²⁰⁴ but prisons seem determined to prevent such connection. Juveniles should be kept at locations close to home, and visits should be reorganized to be as simple and easy as possible. This is a two-fold solution: by allowing juveniles to keep fostering family and community ties, they are less likely to reoffend. Additionally, family visits illustrate to the juvenile that life after incarceration is possible.

C. PREVENT ANYONE UNDER THE AGE OF EIGHTEEN BEING WAIVED INTO ADULT COURT

The CRC guarantees the right to a specialized court.²⁰⁵ The age of criminal responsibility is set at the state level and the federal level.²⁰⁶ Of the fifty states, thirty-two have no age specified for the lowest age a minor's conduct can be labeled delinquent.²⁰⁷ Germany never allows

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ See GARY C. MOHR, OHIO DEP'T OF REHAB. & CORR., AN OVERVIEW OF RESEARCH FINDINGS IN THE VISITATION, OFFENDER BEHAVIOR CONNECTION (2012).

²⁰² Convention on the Rights of the Child, *supra* note 10, art. 40(2)(b)(iii).

²⁰³ *Minimum Ages of Criminal Responsibility in the Americas*, CHILD RTS. INT'L NETWORK, <https://archive.crin.org/en/home/ages/Americas.html> [<https://perma.cc/X3X8-99VC>].

²⁰⁴ *Jurisdictional Boundaries*, JUV. JUST. GEOGRAPHY POL'Y & STAT., <http://www.jjgps.org/jurisdictional-boundaries> [<https://perma.cc/3J4B-PDT9>].

²⁰⁵ Gonzales, *supra* note 134.

²⁰⁶ *Minimum Ages of Criminal Responsibility in Europe*, CHILD RTS. INT'L NETWORK, <https://archive.crin.org/en/home/ages/europe.html> [<https://perma.cc/B3TD-2CB3>].

²⁰⁷ Tonya Alanez, *The Youngest Kid Ever Arrested in Florida Was a 4-Year-Old*, S. FLA SUN-SENTINEL (Jan. 23, 2016), <https://www.sun-sentinel.com/news/florida/fl-children-arrested-in-florida-20160122-story.html> [<https://perma.cc/H9LT-NQDZ>].

minors to be tried as adults.²⁰⁸ Additionally, Germany does not allow anyone under the age of fourteen to be held criminally liable.²⁰⁹ The United States, by contrast, has allowed a four-year-old child to be arrested and prosecuted on felony burglary and misdemeanor charges.²¹⁰

Logically following from establishing the criminal age of responsibility as eighteen, juveniles should no longer be allowed into adult court. Because juveniles of color are more likely to be perceived as adults, they are by extension more likely to be waived into adult court.²¹¹ The policy reasoning behind waiving juveniles into adult court is that certain crimes are so serious, the mitigating label of juvenile hinders justice.²¹² However, study after study continues to show juvenile brain development is not complete until well into their twenties.²¹³ Additionally, new research suggests that juveniles have trouble expressing remorse. By waiving juveniles into adult court, they are exposed to harsher sentences.²¹⁴ Because the expression of remorse at sentencing plays a significant role in more lenient sentences,²¹⁵ juveniles waived into adult court are set up for failure. Combined with the practice of charging juveniles of color with aggravated offenses, the school-to-prison pipeline disproportionately impacts communities of color. By cutting off the school-to-prison pipeline and preventing anyone under the age of eighteen being waived into adult court, the United States could begin the process of decreasing the overrepresentation of people of color in the U.S. prison system.

²⁰⁸ See Cydeney Carter, Comment, *Juvenile Justice: How the Theory of Rehabilitation Influences Procedural Protections and Punishment in Juvenile and Criminal Courts*, 8 LINCOLN MEM'L UNIV. L. REV. 78, 84–88 (2021).

²⁰⁹ Ryan Schill, *No Remorse? One Law Professor Studies the Impact of Emotion in the Juvenile Justice System*, JUV. JUST. INFO. EXCH. (Feb. 15, 2012), <https://jjie.org/2012/02/15/no-remorse-one-law-professor-studies-impact-of-emotion-juvenile-justice-system/> [<https://perma.cc/M5XJ-N2DN>].

²¹⁰ *Id.*

²¹¹ CTR. FOR PRISON REFORM, *DIVERSION PROGRAMS IN AMERICA'S CRIMINAL JUSTICE SYSTEM* 6 (2015), <https://centerforprisonreform.org/wp-content/uploads/2015/09/Jail-Diversion-Programs-in-America.pdf> [<https://perma.cc/XCH5-KLCY>].

²¹² See Will Brownsberger, *Young Adults in the German Criminal Justice System*, (Apr. 1, 2018) <https://willbrownsberger.com/young-adults-in-the-german-criminal-justice-system/>.

²¹³ Christine Herrman, *Dispatches from Germany: Is Solitary Confinement Necessary?*, VERA INST. OF JUST. (June 29, 2015), <https://www.vera.org/blog/dispatches-from-germany-is-solitary-confinement-necessary> [<https://perma.cc/7DP3-KPQ2>].

²¹⁴ See THOMAS & WILSON, *supra* note 171.

²¹⁵ *Id.*

D. INCREASE COMMUNITY INVOLVEMENT

Taking a note from Germany, juvenile incarceration should be a last resort, and should never last more than ten years. Sentencing should take a decidedly rehabilitative approach. In place of incarceration, diversion programs should serve as an alternative. Some states already have installed diversion programs in juvenile justice.²¹⁶ Nonviolent juveniles especially could benefit from diversion programs. By standardizing diversion programs through all fifty states, juveniles would benefit from limited contact with the legal system. More juveniles would be allowed to stay in their communities.

Because children under fourteen are not allowed into the criminal system in Germany, social service and health interventions are the norm.²¹⁷ In contrast, the United States' penal system for juveniles is entirely retroactive. The justice system gives little to no consideration to preventing juveniles committing crimes in the first place. For juveniles especially, prioritizing community involvement and social intervention at an early age could help prevent future criminal actions.

Diversion programs could take on a number of different forms: family or individual counseling, crisis interventions, job skills training, anger management classes, or even specialized extra-curricular activities. Any program that addresses potential criminal behavior without relying on the formal criminal justice system can benefit juvenile offenders. Informal community involvement is a way for the United States to proactively address crime.

E. RECONSIDER IN-HOUSE PUNISHMENTS FOR JUVENILES

Germany's system has proven that incarcerated juveniles can behave well when treated with dignity, as opposed to degradation. The deprivation of liberty inherent to incarceration is punishment enough. In-house prison punishments should be reconsidered to be less harsh and focused on reintegration. In Germany, when conflict breaks out between incarcerated individuals, or between the incarcerated and staff, the staff

²¹⁶ Edwina Rogers, *Diversion Programs in America*, CTR. PRISON REFORM (Aug. 2015), <https://centerforprisonreform.org/wp-content/uploads/2015/09/Jail-Diversion-Programs-in-America.pdf> [https://perma.cc/X68Q-QCQA].

²¹⁷ Will Brownsberger, *Young Adults in the German Criminal Justice System*, (Apr. 1, 2018) <https://willbrownsberger.com/young-adults-in-the-german-criminal-justice-system/> [https://perma.cc/YB9E-XJTP].

approach the issue with communication and problem-solving.²¹⁸ This relies on training prison correctional officers in social intervention, as opposed to physical intervention.

Recognizing that deprivation of liberty is the true punishment, additional punishment while incarcerated is pointless. By making prison and youth centers more akin to everyday life, recidivism would be lowered. Incarceration takes an obvious toll on physical and emotional health. The United States should allocate more funding to therapy for incarcerated individuals. Incarcerated juveniles should also receive credit for any in-house programs they participate in. Finally, corrections agencies should take a research-focused approach to juvenile facilities. Rather than relying on tough-on-crime rhetoric, the United States should pay more attention to local and national researchers.

IV. CONCLUSION

The comparison between the United States and Germany illustrates two competing models of criminality and the results of these models. The United States has chosen to embrace punishment as its overarching model to rectify criminality. Despite its entrenchment in the United States' society, countries such as Germany offer an alternative to incorporate a focus on rehabilitation into the United States' penal system. Juveniles offer a unique opportunity to incorporate the rehabilitation model. Intervening earlier in life allows a greater chance of rehabilitation as an adult.

By implementing the recommendations of the Convention on the Rights of the Child, the United States can simultaneously recognize how it has failed children in the juvenile justice system, specifically children of color, and begin to move towards a more equitable and just system. While adopting the Convention on the Rights of the Child remains controversial, there are many other practices in the spirit of the convention the United States can implement. Before incarceration is even considered, there are more pathways to intervene in juvenile criminality.

By prioritizing community involvement and diversion programs, juveniles who might have one day become repeat offenders are given an opportunity to pivot away from criminal behavior. One step to ensure this

²¹⁸ Christine Herman, *Dispatches from Germany*, VERA INST. OF JUST. (June 29, 2015), <https://www.vera.org/blog/dispatches-from-germany-is-solitary-confinement-necessary> [<https://perma.cc/K9FV-QG5M>].

is to prevent anyone under eighteen being waived into adult court. Alternative punishments can be considered for juveniles before incarceration as well. Community service and after-school involvements are less severe and limit involvement in the penal system. If incarceration does occur, the United States can take steps to ensure this does not create more criminality or encourage recidivism. By implementing sentencing limits and training workers in juvenile facilities in more lenient in-house punishments, the United States can begin to make juvenile incarceration a less traumatizing experience.

