

# A BRIGHTER PATH TO THEIR FUTURE: COMPARING THE ILLINOIS AND KENTUCKY JUVENILE DELINQUENCY PROCEDURES AND PROPOSING A NEW PROGRAM IN ILLINOIS

Brook L. Vandever\*

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## I. INTRODUCTION

The juveniles of today are the future of tomorrow. There is no denying that fact. Those who are teenagers now will someday grow up to be the next generation of doctors, lawyers, Supreme Court justices, and presidents. However, as teenagers, we all make foolish decisions. For some, those dumb mistakes could take away those big dreams of being the next Ruth Bader Ginsburg. A juvenile record can influence future employment, housing options, and future educational opportunities.<sup>1</sup>

During the first quarter for the Illinois Circuit Court, Illinois reported 32,342 juvenile delinquency cases statewide.<sup>2</sup> During the second quarter, Illinois reported 32,065 juvenile delinquency cases statewide.<sup>3</sup> During the third quarter, the Illinois Circuit Courts reported 31,749 juvenile delinquency cases statewide.<sup>4</sup> At the end of 2018, Illinois had 31,904 delinquent juvenile cases pending.<sup>5</sup>

Throughout this comment, two different juveniles will be frequently referenced. Katie is sixteen and is charged with being beyond the control of her parents. Katie has been abusing her siblings, sneaking out at night, and destroying items around the house when she is angry with her parents. Her parents do not know how to handle her anymore and wish to file charges in an attempt to get Katie's issues resolved. Josh is thirteen and is charged with domestic violence for an assault against one of his parents or guardians.<sup>6</sup> Neither juvenile has any previous complaints filed against them. This comment walks through the differences in the Kentucky and Illinois process of juvenile delinquency and refers back to Katie and Josh as examples of how the two states differ. It also highlights issues within the Illinois juvenile delinquency procedures and proposes a new method, based on the programs in place in Kentucky, to help minimize these issues.

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\* Brook Vandever is a third-year law student at the Southern Illinois University School of Law. Before coming to law school, she worked as a Court Designated Worker for the Kentucky Administrative Office of the Courts.

<sup>1</sup> ILLINOIS JUVENILE JUSTICE COMMISSION, BURDENED FOR LIFE: THE MYTH OF JUVENILE RECORD CONFIDENTIALITY AND EXPUNGEMENT IN ILLINOIS. 42 (2016), [http://www.njjn.org/uploads/digital-library/IL\\_Burdened-for-Life\\_Expungement-Report\\_April-2016.pdf](http://www.njjn.org/uploads/digital-library/IL_Burdened-for-Life_Expungement-Report_April-2016.pdf).

<sup>2</sup> CIRCUIT COURT OF ILL., JUVENILE CASELOAD STATISTICS BY COUNTY FIRST QUARTER (2018), <https://courts.illinois.gov/CircuitCourt/Stats/JUV-1Q18.pdf>.

<sup>3</sup> CIRCUIT COURT OF ILL., JUVENILE CASELOAD STATISTICS BY COUNTY SECOND QUARTER (2018), <https://courts.illinois.gov/CircuitCourt/Stats/JUV-2Q18.pdf>.

<sup>4</sup> CIRCUIT COURT OF ILL., JUVENILE CASELOAD STATISTICS BY COUNTY THIRD QUARTER (2018), <https://courts.illinois.gov/CircuitCourt/Stats/JUV-3Q18.pdf>.

<sup>5</sup> ADMIN. OFFICE OF THE ILL. COURTS, ILLINOIS COURTS STATISTICAL SUMMARY 2018 at 54 (2018), [https://courts.illinois.gov/SupremeCourt/AnnualReport/2019/2018\\_Statistical\\_Summary-Amended.pdf](https://courts.illinois.gov/SupremeCourt/AnnualReport/2019/2018_Statistical_Summary-Amended.pdf).

<sup>6</sup> These are not actual cases. Rather, these are fictional names with charges that are commonly seen throughout the Kentucky juvenile system.

Section II explains the essential terminology to aid the reader in understanding the complex juvenile justice system. Section III walks through the current juvenile justice procedures in place in Kentucky. Section IV walks through the current juvenile justice procedures in place in Illinois. Section V identifies different states' juvenile justice procedures. Section VI proposes a new juvenile justice system for implementation in Illinois and addresses common concerns which may arise when considering implementation.

## II. TERMINOLOGY

To make the comment more comprehensible, it is necessary to understand a few terms that are common throughout the juvenile justice system. Some of the key terms are outlined below to enable the reader to understand the precise issue at hand.

Juvenile refers to anyone under the age of eighteen.<sup>7</sup>

A status offense is any offense that a juvenile can be charged with, but an adult cannot.<sup>8</sup> These include underage drinking, runaway, habitual truancy, and beyond the control of their parents/guardians/or school.<sup>9</sup>

Habitual truancy is defined by missing, without valid cause, five percent or more of the prior 180 days of regular school attendance.<sup>10</sup>

Beyond Control is defined as a juvenile who continues to fail to follow reasonable directives of their parents/guardian/or anyone in control, and the behavior could reasonably result in a danger to the child or others around them.<sup>11</sup>

A public complaint is any complaint that is not considered a status offense (initiated through a formal complaint and can also be a crime for an adult), which can include charges such as possession, disorderly conduct, assault, etc.<sup>12</sup>

A court designated worker (CDW) is an employee of the state of Kentucky who serves as a pre-trial advocate for juveniles in their district.<sup>13</sup>

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<sup>7</sup> KY. REV. STAT. ANN. § 610.010(1) (West 2020).

<sup>8</sup> See KY. REV. STAT. ANN. § 610.010(4) (West 2020); see also KY. REV. STAT. ANN. § 610.010(2) (West 2020).

<sup>9</sup> KY. REV. STAT. ANN. § 610.010(2) (West 2020).

<sup>10</sup> 105 ILL. COMP. STAT. ANN. 5/26-2a (West 2020).

<sup>11</sup> DEP'T. OF FAM. AND JUV. SERVICES, KY. CT. DESIGNATED WORKER PROGRAM 2017 ANN. REP. 17 (2017), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

<sup>12</sup> *Court Designated Workers Make a Difference*, KY. CT. OF JUST., <https://kycourts.gov/aoc/familyjuvenile/Pages/CDW.aspx> (last visited Oct. 7, 2020).

<sup>13</sup> NAT'L CTR. FOR MENTAL HEALTH AND JUVENILE JUST., IMPROVING DIVERSION POLICIES AND PROGRAMS FOR JUSTICE-INVOLVED YOUTH WITH CO-OCCURRING MENTAL AND SUBSTANCE USE DISORDERS: KENTUCKY'S PRE-COURT DIVERSION (2013),

A diversion agreement is a “contract” between the CDW and the juvenile to attempt to resolve the complaint, steer the juvenile on a different path, and keep the complaint out of the court system.<sup>14</sup>

With this terminology in mind, this comment will analyze and compare the history and practical effects of the juvenile systems currently in effect in Kentucky and Illinois and propose a new juvenile system for Illinois.

### III. KENTUCKY

#### A. History

The Court Designated Worker’s (CDW) program was enacted in 1986.<sup>15</sup> It operates as a division under the Family and Juvenile Services department of the Kentucky Administrative Office of the Courts.<sup>16</sup> After the passage of Kentucky Senate Bill 200 in 2014, the CDW’s Program has begun to work more closely with state and local agencies to establish local committees to work closely together to ensure the most beneficial process for juveniles.<sup>17</sup>

The purpose of the program is to hold juveniles accountable for their actions while attempting to keep them out of formal processing and out of a juvenile detention facility.<sup>18</sup> The average cost to detain a juvenile in a detention facility is roughly \$241 per day.<sup>19</sup> Out of the diversions, which resulted from public complaints in 2017, 92% of them were recorded as a successful completion.<sup>20</sup> Out of the diversions, which resulted from status complaints in the same year, 84% were recorded as a successful

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[https://ncyoj.policyresearchinc.org/img/resources/mproving\\_Diversion\\_Policies\\_and\\_Programs\\_for\\_Justice-involved\\_Youth-057544.pdf](https://ncyoj.policyresearchinc.org/img/resources/mproving_Diversion_Policies_and_Programs_for_Justice-involved_Youth-057544.pdf).

<sup>14</sup> *Court Designated Workers Make a Difference*, KY. CT. OF JUST. (2019), <https://kycourts.gov/aoc/familyjuvenile/Pages/CDW.aspx>.

<sup>15</sup> COURT DESIGNATED WORKER PROGRAM, ADMIN. OFFICE OF COURTS, COURT DESIGNATED WORKER PROGRAM: MAKING A DIFFERENCE FOR KENTUCKY YOUTH (rev. 2018), <https://kycourts.gov/resources/publicationsresources/Publications/P20CDWProgramBrochure.pdf>.

<sup>16</sup> *Id.*

<sup>17</sup> *See CDWs help give Young People a Brighter Future*, Court Designated Worker Program, at 2 (October 2018), <https://kycourts.gov/resources/publicationsresources/Publications/P20CDWProgramBrochure.pdf>. *See also* Act of Apr. 25, 2014, ch. 132, 2014 Ky. Acts.

<sup>18</sup> NAT’L CTR. FOR MENTAL HEALTH AND JUVENILE JUST., *IMPROVING DIVERSION POLICIES AND PROGRAMS FOR JUSTICE-INVOLVED YOUTH WITH CO-OCCURRING MENTAL AND SUBSTANCE USE DISORDERS: KENTUCKY’S PRE-COURT DIVERSION* (2013), [https://ncyoj.policyresearchinc.org/img/resources/Improving\\_Diversion\\_Policies\\_and\\_Programs\\_for\\_Justice-involved\\_Youth-057544.pdf](https://ncyoj.policyresearchinc.org/img/resources/Improving_Diversion_Policies_and_Programs_for_Justice-involved_Youth-057544.pdf).

<sup>19</sup> PRESTON ELROD & R. SCOTT RYDER, *Juvenile Justice: A Social, Historical, and Legal Perspective* 180 (Jones & Bartlett Learning ed., 4th ed. 2014).

<sup>20</sup> DEP’T. OF FAM. AND JUV. SERVICES, KY. CT. DESIGNATED WORKER PROGRAM 2017 ANN. REP. 10 (2017), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

completion.<sup>21</sup> This equals a total of 10,802 complaints that were successfully completed through diversion procedures rather than formal court proceedings.<sup>22</sup> While status complaints are not likely to result in detaining a juvenile, some public complaints might. Out of the 10,802 complaints, 6,564 of them were public complaints.<sup>23</sup> Even if only half of those complaints ended with the juvenile being placed in a facility, that would equal over \$790,000 being spent on the placement of juveniles for just one single day.<sup>24</sup>

## B. Court Designated Workers

“The mission of court designated workers is to reduce delinquency among Kentucky’s youth through a collaboration of statewide pre-court services and programs that promote education and accountability.”<sup>25</sup> The Kentucky CDW’s program helps to eliminate the problem of juveniles growing up with a court record and allows them a chance to avoid having one mistake potentially ruin their life.<sup>26</sup> This program gives a juvenile three “diversions” for misdemeanors and one for a lower-class felony charge.<sup>27</sup> After the three diversions have been utilized, the future cases then get referred to court and handled by the juvenile judge.<sup>28</sup>

A CDW has many duties.<sup>29</sup> Some of the most important include receiving and investigating complaints, performing screenings for human trafficking, identifying any risks/needs of a child and their family, entering into diversion agreements with sanctions, and making dispositional recommendations.<sup>30</sup>

A status offense is defined as any action which would not be considered criminal if it were performed by an adult rather than a juvenile.<sup>31</sup> These include offenses such as “beyond the control of school or beyond the control

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* See also Preston Elrod & R. Scott Ryder, *Juvenile Justice: A Social, Historical, and Legal Perspective* 180 (2014).

<sup>23</sup> DEP’T. OF FAM. AND JUV. SERVICES, KY. CT. DESIGNATED WORKER PROGRAM 2017 ANN. REP. 10 (2017), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

<sup>24</sup> *Id.* See also PRESTON ELROD & R. SCOTT RYDER, *Juvenile Justice: A Social, Historical, and Legal Perspective* 180 (Jones & Bartlett Learning ed., 4th ed. 2014).

<sup>25</sup> COURT DESIGNATED WORKER PROGRAM, ADMIN. OFFICE OF COURTS, COURT DESIGNATED WORKER PROGRAM: MAKING A DIFFERENCE FOR KENTUCKY YOUTH (rev. 2018), <https://kycourts.gov/resources/publicationsresources/Publications/P20CDWProgramBrochure.pdf>.

<sup>26</sup> *Id.*

<sup>27</sup> DEP’T OF FAM. AND JUV. SERVICES, KY. CT. DESIGNATED WORKER PROGRAM 2013 ANN. REP., 9 (2015), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2013.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> See KY. REV. STAT. ANN. § 605.030 (West 2020).

<sup>30</sup> *Id.*

<sup>31</sup> KY. REV. STAT. ANN. § 600.020(65)(a) (West 2020).

of parents; habitual runaway; habitual truant, tobacco offenses...; and alcohol offenses.”<sup>32</sup> Status complaints can only be filed with the CDW’s office against juveniles.<sup>33</sup> These are commonly filed by school systems for truancy complaints and by parents for runaway and beyond control complaints.<sup>34</sup>

Instead of the complaint going to the court system and creating a court record for the juvenile, the complaint goes to the CDW’s office.<sup>35</sup> The CDW then sends out a notice to the family, indicating a time to meet for an intake interview.<sup>36</sup> The intake process includes gaining basic knowledge about the juvenile and asking a series of screening questions to indicate whether there are issues within the home or if there are issues indicating that the juvenile is a victim of human trafficking.<sup>37</sup> For this portion, whether the parents stay in the room is the juvenile’s discretion<sup>38</sup> (as some juveniles are more comfortable answering questions involving their drug use and sexual activity without their parents present).<sup>39</sup> If the screening indicates that there are issues of this sort, the CDW is to report it to Child Protective Services.<sup>40</sup>

After this screening, the paperwork is sent to the County Attorney (C.A.)<sup>41</sup> for approval to enter into a diversion.<sup>42</sup> If the C.A. declines, the case gets sent to court or is dismissed based on their recommendations.<sup>43</sup> If he accepts the case gets entered into a diversion program, which acts as a probationary period for the juvenile.<sup>44</sup> If the juvenile successfully completes

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<sup>32</sup> *Id.*

<sup>33</sup> *See* KY. JUV. R. PRAC. & PROC. 4.

<sup>34</sup> *Id.*; *see* COMMONWEALTH OF KY. COURT OF JUSTICE, AFFIDAVIT AND BEYOND CONTROL OF PARENT EVALUATION FORM, <https://kycourts.gov/resources/legalforms/LegalForms/JV38.pdf>; COMMONWEALTH OF KY. COURT OF JUSTICE, AFFIDAVIT AND TRUANCY EVALUATION FORM, <https://kycourts.gov/resources/legalforms/LegalForms/JV41.pdf>. These affidavits are completed by the parent/school in order to file these complaints.

<sup>35</sup> KY. JUV. R. PRAC. & PROC. 4.

<sup>36</sup> KY. REV. STAT. ANN. § 610.030(4) (West 2020).

<sup>37</sup> DEP’T OF FAM. AND JUV. SERVICES, KY. CT. DESIGNATED WORKER PROGRAM 2017 ANN. REP. 18 (2019), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

<sup>38</sup> I personally have never had a parent refuse to leave when the juvenile has indicated they would be more comfortable with the parent out of the room. I was always told by my supervisor that it was up to the juvenile and the parent had to abide by their wishes, but there is no statutory language behind this. The parents always received a copy of the questions we intended to go through with their juvenile before leaving the room.

<sup>39</sup> KY. REV. STAT. ANN. § 610.030 (West 2020).

<sup>40</sup> *Id.*

<sup>41</sup> *See Pretrial Diversion Program*, KY. CT. OF JUST. (2020), <https://kycourts.gov/courtprograms/pretrialservices/Pages/PretrialDiversion.aspx>. Generally, the County Attorney bases his approval on factors such as the individual’s court history and the current crime that they are being charged with.

<sup>42</sup> KY. REV. STAT. ANN. § 610.030(6-7) (West 2020).

<sup>43</sup> *See* KY. REV. STAT. ANN. § 610.030(6)(d) (West 2020); *see also* KY. REV. STAT. ANN. § 635.010 (West 2020).

<sup>44</sup> KY. REV. STAT. ANN. § 610.030(8) (West 2020).

the diversion process, the complaint will be recorded as closed with no formal court record ever filed.<sup>45</sup>

Every county has at least one CDW who is on call twenty-four hours a day, seven days a week.<sup>46</sup> For smaller counties there may just be one CDW unless they rotate with a different county and for bigger counties the CDWs will rotate between weeks to be on call. CDWs are also tasked with being on call after regular office hours.<sup>47</sup> The CDW will get a call from the police officer when the officer has come into contact with a juvenile who is a runaway or who would otherwise be eligible to be detained in a juvenile detention facility.<sup>48</sup> The CDW goes to the custody site<sup>49</sup> with the intent of finding the least restrictive placement option for the juvenile.<sup>50</sup> The worker has five alternatives to detention that they can consider.<sup>51</sup> The alternatives include being released to the parent or guardian, being released to a responsible adult, being taken to an emergency shelter, crisis stabilization units, or being taken for in-patient mental health assessments.<sup>52</sup>

When the worker gets called to these situations they have to perform an initial assessment<sup>53</sup> on the juvenile.<sup>54</sup> This assessment will guide the CDW to which placement alternative will be the most beneficial.<sup>55</sup> If the juvenile answers questions which indicate an intent to self-harm, then the worker is required to lean more toward a mental health placement if they perceive an

<sup>45</sup> DEP'T OF FAM. AND JUV. SERVICES, KY. CT. DESIGNATED WORKER PROGRAM 2017 ANN. REP. 3 (2019), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

<sup>46</sup> COURT DESIGNATED WORKER PROGRAM, ADMIN. OFFICE OF COURTS, COURT DESIGNATED WORKER PROGRAM: MAKING A DIFFERENCE FOR KENTUCKY YOUTH (rev. 2018), <https://kycourts.gov/resources/publicationsresources/Publications/P20CDWProgramBrochure.pdf>.

<sup>47</sup> *Id.*

<sup>48</sup> 15 LOUISE EVERETT GRAHAM & JAMES E. KELLER, KENTUCKY PRACTICE SERIES DOMESTIC RELATIONS LAW §6:33 (2019).

<sup>49</sup> The location of the custody site is usually either the sheriff/police station or the CDW office, depending on the county.

<sup>50</sup> See COURT DESIGNATED WORKER PROGRAM, ADMIN. OFFICE OF COURTS, COURT DESIGNATED WORKER PROGRAM: MAKING A DIFFERENCE FOR KENTUCKY YOUTH (rev. 2018), <https://kycourts.gov/resources/publicationsresources/Publications/P20CDWProgramBrochure.pdf>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> This assessment asks questions about drug use, family life, school life, and sexual tendencies to get a better understanding of the juvenile. KY. JUV. R. PRAC. & PROC. 10.

<sup>54</sup> 15 LOUISE EVERETT GRAHAM & JAMES E. KELLER, PROTECTIVE SERVICE-STATUS OFFENDERS-CHILD TAKEN INTO CUSTODY BY PEACE OFFICER, KY. PRAC. DOMESTIC RELATIONS L. § 6:33 (2019); see also 8 LESLIE W. ABRAMSON, PRELIMINARY INQUIRY INTERVIEW-FORM, KY. PRAC. DOMESTIC RELATIONS L. § 9:23 (5TH ED. 2019) (providing the actual preliminary inquiry form that asks questions about the juvenile's family life, past trauma, past social service involvement, school history, physical/mental health history and more).

<sup>55</sup> 15 LOUISE EVERETT GRAHAM & JAMES E. KELLER, PROTECTIVE SERVICE-STATUS OFFENDERS-CHILD TAKEN INTO CUSTODY BY PEACE OFFICER, KY. PRAC. DOMESTIC RELATIONS L. § 6:33 (2019).

imminent threat.<sup>56</sup> If the juvenile answers questions indicating a fear to go home, then the worker should look more towards an emergency placement.<sup>57</sup> Emergency placements should also be considered when the parents indicate that they do not want to take the child back home, or if they are frightened of the repercussions of bringing the child back home.<sup>58</sup>

After the assessment the CDW contacts the judge who is on call.<sup>59</sup> The CDW will have already called the emergency placements, spoken with the parents/guardians, or contacted a mental health facility to see who would be able to retain control over the juvenile until the juvenile's next meeting or court date.<sup>60</sup> The CDW will also have determined if the juvenile meets the criteria to be detained in a juvenile detention facility.<sup>61</sup> The juvenile is eligible if:

[t]here is a reasonable belief the young person is unlikely to appear in court. Detention is essential to protect the youth or the community. The youth is charged with a serious offense. A parent, guardian, or custodian cannot be located or is unwilling to take custody. The youth has a reasonable basis for requesting detention.<sup>62</sup>

The judge will then decide the most beneficial placement for the juvenile.<sup>63</sup> If no one is willing to take the juvenile then the judge will decide either to send the juvenile to a detention facility or make the parents/guardians take control over the juvenile, even if they do not want to.<sup>64</sup> For more serious crimes, the juvenile will always be sent to a detention facility.<sup>65</sup> If the juvenile is sent to detention, the worker will print off the

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*; see also KY. REV. STAT. ANN. § 600.020 (West 2020) (defining emergency shelter as “a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child”).

<sup>58</sup> 15 LOUISE EVERETT GRAHAM & JAMES E. KELLER, PROTECTIVE SERVICE-STATUS OFFENDERS-CHILD TAKEN INTO CUSTODY BY PEACE OFFICER, KY. PRAC. DOMESTIC RELATIONS L. § 6:33 (2019).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> 2017 Annual Report, KENTUCKY COURT DESIGNATED WORKER PROGRAM, at 9 (May 2019), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

<sup>62</sup> *Id.*

<sup>63</sup> 15 LOUISE EVERETT GRAHAM & JAMES E. KELLER, PROTECTIVE SERVICE-STATUS OFFENDERS-CHILD TAKEN INTO CUSTODY BY PEACE OFFICER, KY. PRAC. DOMESTIC RELATIONS L. § 6:33 (2019).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*; see also KY. REV. STAT. ANN. § 635.020 (West 2020) (indicating that if a juvenile is charged with a Class A or Class B felony once they have reached the age of 14, if they are charged with a Class C or Class D felony once they have reached the age of 16 and have been adjudicated for a felony offense prior to this offense, or if they have reached the age of 14 and are charged with a felony with the use of a firearm then they are to be tried as a youthful offender).

forms with the judge's name who authorized the detention for the officer to take as admission into the facility.<sup>66</sup>

### C. Diversion

“The goal of diversion is to reduce further involvement in the court system.”<sup>67</sup> The diversion is a three to six month probationary period for juveniles.<sup>68</sup> Each juvenile is given the opportunity of three diversions for status complaints or non-felony public offenses, and one diversion for a felony complaint that did not include the use of a deadly weapon or a sexual offense.<sup>69</sup> If a juvenile receives complaints after their allotted diversions have been used, the complaint automatically gets sent to court.<sup>70</sup> Once a complaint is filed either formally or with the CDW the juvenile has the option to voluntarily enter into a diversion agreement.<sup>71</sup> The CDW has discretion in developing the diversion to be most beneficial to that particular child.<sup>72</sup> During the pre-complaint stage, the worker gains access to information about the juvenile's life, which helps develop the diversion agreement.<sup>73</sup> The diversion agreement must address four categories: “prevention, education, accountability, and treatment when appropriate.”<sup>74</sup>

The CDW has the most discretion in the prevention and education categories.<sup>75</sup> Typically, the CDW will assign an educational workbook either about the charge itself or about other issues that were indicated during the initial screening.<sup>76</sup> For the accountability program, every diversion is required to prohibit missing any school except for excused absences.<sup>77</sup> The

<sup>66</sup> 15 LOUISE EVERETT GRAHAM & JAMES E. KELLER, PROTECTIVE SERVICE-STATUS OFFENDERS-CHILD TAKEN INTO CUSTODY BY PEACE OFFICER, KY. PRAC. DOMESTIC RELATIONS L. § 6:33 (2019).

<sup>67</sup> 2017 *Annual Report*, KENTUCKY COURT DESIGNATED WORKER PROGRAM, at 3 (May 2019), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

<sup>68</sup> *Court Designated Workers Make a Difference*, Kentucky Court of Justice (2019), <https://kycourts.gov/aoc/familyjuvenile/Pages/CDW.aspx>.

<sup>69</sup> 2013 *Annual Report*, KENTUCKY COURT DESIGNATED WORKER PROGRAM, at 12 (February 2015), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2013.pdf>.

<sup>70</sup> *Id.*

<sup>71</sup> 2017 *Annual Report*, KENTUCKY COURT DESIGNATED WORKER PROGRAM, at 3 (May 2019), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

<sup>72</sup> *Id.* at 10.

<sup>73</sup> *Id.* at 4.

<sup>74</sup> *Id.* at 11.; *see also* 2013 *Annual Report*, KENTUCKY COURT DESIGNATED WORKER PROGRAM, at 10 (February 2015), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2013.pdf> (providing a list of diversion terms with diversion agreements).

<sup>75</sup> 2017 *Annual Report*, KENTUCKY COURT DESIGNATED WORKER PROGRAM, at 11 (May 2019), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

<sup>76</sup> *Id.* (listing the terms of diversion agreements which were used in 2017).

<sup>77</sup> *Definition on Unexcused Absence*, LAW INSIDER, <https://www.lawinsider.com/dictionary/unexcused-absence> (defining an unexcused absence as an absence that is not backed by a valid or legitimate excuse).

CDW will continuously call the school to check the juvenile's attendance records and call the parents/guardians to ensure the juvenile is staying out of trouble at home.<sup>78</sup> This may also include a curfew that the juvenile must abide by, and the worker will contact the parents to make sure the curfew is enforced.<sup>79</sup> The initial screening also indicates if treatment (counseling) is necessary.<sup>80</sup> The screening includes an assessment to determine the level of needs the juvenile requires on a scale from one to nine.<sup>81</sup> If the juvenile scores a three or above, then the juvenile is often referred to complete a counseling assessment.<sup>82</sup>

#### D. Walking Through the Process

Now, let's walk through how our two juveniles from the introduction make their way through the Kentucky Juvenile Justice System.

Katie was charged for being beyond the control of her parents. The only people who can file a beyond control charge are the parents/guardians of the juvenile or the school system (more often than not, it is the parents or guardians<sup>83</sup>).<sup>84</sup> Katie's parents/guardians would have to physically come to the CDW's office along with Katie to file this complaint.<sup>85</sup> The CDW would then have a pre-complaint conference before the complaint is officially filed.<sup>86</sup> This conference provides the CDW with information about Katie's "family history, behavioral issues, previous assessments or services [such as counseling services], and assessments or services that may be beneficial moving forward."<sup>87</sup> After this conference, Katie's parents/guardians will have the option to file a formal complaint.<sup>88</sup> This will allow the CDW to enter into a diversion agreement with Katie.

From here, the CDW will construct a diversion agreement specifically made for Katie's needs. Katie's diversion agreement will consist of not missing any unexcused days of school, and will most likely include a curfew, counseling assessment, and an educational packet. This educational packet will most likely revolve around respect for her parents, responsibility, or a

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<sup>78</sup> 2017 Annual Report, KENTUCKY COURT DESIGNATED WORKER PROGRAM, at 11 (May 2019), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*; KY. REV. STAT. ANN. § 610.030 (West 2020).

<sup>83</sup> Throughout my time as a CDW it was mostly the parents or guardians who filed a beyond control charge. This could be different for varying jurisdictions.

<sup>84</sup> KY. REV. STAT. § 600.020 (West 2020).

<sup>85</sup> KY. JUV. R. PRAC. & PROC. 4.

<sup>86</sup> 2017 Annual Report, KENTUCKY COURT DESIGNATED WORKER PROGRAM, at 4 (May 2019), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

family workbook. If Katie completes her educational packet, does not miss any school, and does not give her parents any more trouble, then her diversion is likely to end within three months.<sup>89</sup> If Katie does not get in any more trouble, then she will go through the rest of her life with no formal court record.

Josh's complaint will go through a more complicated process. In the introduction, Josh was charged with domestic violence for an assault against his parent/guardian.<sup>90</sup> When the assault occurs, the police department will be called to file a complaint. Once that complaint is filed, the officer will call the CDW to complete a diversion screening and a Pre-Adjudicative Detention Screening. The officer will then take Josh to the custody site (usually the police station or the CDW office).<sup>91</sup> The CDW will then arrive at the custody site, even after business hours, to determine if Josh is eligible for detention, placed into temporary custody of a group home, or released to his parents/guardians.<sup>92</sup> After conducting the screening, the CDW must contact the on-call judge for these cases.<sup>93</sup> The CDW will give the judge all of the relevant information relating to Josh, including the current charge (domestic violence), his previous record (none), whether his parents are willing to take him back into the home, and whether there is an alternative to detention (such as a group home) available. The judge will then determine where Josh is to be placed for the night, or weekend if it is on a Friday/Saturday.

If Josh is not sent to detention, the CDW would enter his screening results the next day and contact his parents/guardians to set up a meeting to enter into a diversion agreement, if eligible. Josh's agreement would consist of requirements such as: not missing school unless excused, a counseling assessment if he is not already undergoing counseling or a counseling referral if he is, consistent calls to his home and school to make sure he is following the orders and not getting into any more trouble, and a learning assessment which would address his issues of violence or any other issues which were discovered during the screening.<sup>94</sup> Within three months, Josh's diversion could be closed out as successful if he has complied with all of the regulations set out for him. However, if these are not completed within three months or

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<sup>89</sup> KY. REV. STAT. ANN. § 610.010 (West 2020) (requiring that diversion must not exceed six months, however experience has shown me that status offenses are usually dismissed within three months).

<sup>90</sup> *Supra* Section I.

<sup>91</sup> 2017 Annual Report, KENTUCKY COURT DESIGNATED WORKER PROGRAM, at 9 (May 2019), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

<sup>92</sup> *Id.*

<sup>93</sup> *The Simple Law on Kentucky Juvenile Court*, KYJUVENILECOURT.COM (2012), <https://www.thesimplelaw.com/court-designated-workers>.

<sup>94</sup> *CDWs Help Give Young People a Brighter Future*, COURT DESIGNATED WORKER PROGRAM, (October 2018), <https://kycourts.gov/resources/publicationsresources/Publications/P20CDWProgramBrochure.pdf>.

the CDW sees a reason for keeping the diversion open longer, then the diversion can last for six months.<sup>95</sup>

If Josh goes through the diversion program and successfully completes it, then this charge will not include any court action. This means that although the CDW's office will have records of this domestic violence incident, there will be no official domestic violence charge or any reference to it on Josh's court record.<sup>96</sup>

#### IV. ILLINOIS

##### A. History

The first juvenile court in the United States was established in Chicago, Illinois in 1899.<sup>97</sup> This court was built with the intent of rehabilitating juvenile offenders rather than punishing them.<sup>98</sup> The court's responsibility was to step into the role of the parent or guardian and give the juvenile all the resources that they would need for reform.<sup>99</sup> As juvenile rights evolved with Supreme Court decisions, the court began to shift its outlook on the juvenile delinquency process.<sup>100</sup> It was not until 2014 that Illinois adopted any sort of program to provide additional measures to help rehabilitate juveniles without severe punishments such as detention.<sup>101</sup>

Many officers tend to give juveniles chances and are reluctant to charge them for first offenses, giving them multiple opportunities to get on the right track before charges are brought.<sup>102</sup> However, it is mostly at the officer's or the state's attorney's discretion whether to charge the juvenile.<sup>103</sup>

##### B. Juvenile Delinquency Procedures

Juveniles may not be placed in a detention center for any "crime" that would not be illegal if it were to be committed by an adult.<sup>104</sup> This would

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<sup>95</sup> KY. REV. STAT. ANN. § 610.010 (West 2020).

<sup>96</sup> KY. JUV. R. PRAC. & PROC. 4.

<sup>97</sup> 6A LINDA S. PIECZYNSKI, ILLINOIS PRACTICE SERIES, CRIMINAL PRACTICE AND PROCEDURE § 35:1 (2d ed. 2005).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> 730 ILL. COMP. STAT. ANN. 110/16.1 (West 2020).

<sup>102</sup> *The Juvenile Justice System: A Guide for Families in Illinois*, MODELSFORCHANGE, at 21 (last visited Oct. 25, 2020), <https://www.law.northwestern.edu/legalclinic/cfjc/documents/ParentHandbook.pdf>.

<sup>103</sup> *Id.* at 23.

<sup>104</sup> 6A LINDA S. PIECZYNSKI, ILLINOIS PRACTICE SERIES, CRIMINAL PRACTICE AND PROCEDURE § 35:15 (2d ed. 2005).

include crimes such as possession of tobacco, habitual truancy, runaway, and underage drinking.<sup>105</sup>

When a juvenile is taken into custody by an officer, the officer must make an immediate and reasonable attempt to notify that juvenile's parent or guardian that the juvenile has been arrested and must inform the parent or guardian of where the juvenile is being held.<sup>106</sup> The juvenile must immediately be transferred to the court or the designated area for holding.<sup>107</sup> The court has held that officers take on a "physical guardian" role when taking a juvenile into custody.<sup>108</sup> This means that the officer has the duty to make sure the parents/guardians are notified of the detention, give *Miranda* warnings, and make sure that the juvenile "is properly treated, fed, allowed the use of the washroom, allowed to rest, and not coerced in any way."<sup>109</sup> The police officer has the option to do one of the following:

- (1) station adjustment<sup>110</sup> and release of the minor; (2) release the minor to his or her parents and refer the case to Juvenile Court; (3) if ... there is an urgent and immediate necessity to keep the minor in custody, ... deliver the minor ... to the court or to the place designated...; (4) any other appropriate action with consent of the minor or a parent.<sup>111</sup>

When choosing to detain the juvenile the officer can use the following factors to make the determination:

- (1) the nature of the allegations against the minor; (2) the minor's history and present situation; (3) the history of the minor's family and the family's present situation; (4) the educational and employment status of the minor; (5) the availability of special resource or community services to aid or counsel the minor; (6) the minor's past involvement with and progress in social programs; (7) the attitude of complaint and community toward the minor; and (8) the present attitude of the minor and family.<sup>112</sup>

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<sup>105</sup> 2013 Annual Report, KENTUCKY COURT DESIGNATED WORKER PROGRAM, at 3 (February 2015), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2013.pdf>.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> "An informal station adjustment is defined as a procedure when a juvenile police officer determines that there is probably cause to believe that the minor has committed an offense. It is a program set in place by police officers which has similarities to a diversion program." 705 ILL. COMP. STAT. ANN. 405/5-301 (West 2020).

<sup>111</sup> 6A LINDA S. PIECZYNSKI, ILLINOIS PRACTICE SERIES, CRIMINAL PRACTICE AND PROCEDURE §35:15 (2d ed. 2005).

<sup>112</sup> *Id.*

A written authorization from a probation officer or detention officer suffices as authority for a juvenile detention home to hold a juvenile for up to forty hours excluding Saturdays, Sundays, and holidays.<sup>113</sup>

If the juvenile is being held for a crime of violence, the officer must consult with the State's Attorney.<sup>114</sup> However, the State's Attorney does not have to be consulted if a scorable detention screening instrument<sup>115</sup> was used.<sup>116</sup> Illinois implemented the Youth Assessment and Screening Instrument, which seeks to measure a juvenile's risk level.<sup>117</sup> This instrument acquires information regarding the juvenile's "legal history, family, school, community/peers, alcohol/drug use, mental health, violence/aggression, attitudes/values/beliefs, skills and use of free time."<sup>118</sup> It also seeks to help develop probation plans and assign probation supervision levels.<sup>119</sup>

Juveniles who are twelve or older may be held in an adult jail for up to forty hours, with the exclusion of weekends and holidays during the time of their adjudicatory hearing.<sup>120</sup> However, they are not allowed to have any interaction with the adults held in the same facility.<sup>121</sup> The juveniles are not allowed to be placed in the same cell, be in the same room, or even in the same recreation yard as any of the adults placed in the facility.<sup>122</sup>

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<sup>113</sup> *Id.*; see also 705 ILL. COMP. STAT. ANN. 405/5-410(b) (West 2020).

<sup>114</sup> The term crime of violence is defined by the Substance Use Disorder Act to include: "murder, voluntary manslaughter, criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, armed robbery, robbery, arson, kidnapping, aggravated battery, aggravated arson, or any other felony that involves the use or threat of physical force or force against another individual." 20 ILL. COMP. STAT. ANN. 301/1-10 (West 2020).

<sup>115</sup> A scorable detention screening instrument is a tool to provide officers with information to help guide their decisions on the care, supervision, and services needed for the specific juvenile. The Youth Assessment and Screening Instrument in particular, is used to determine the likelihood of the juvenile reoffending to assure that the juvenile receive the right type of services. *Illinois Juvenile Justice Research and Information Consortium Briefing Document: Overview of Screening and Assessment in Illinois' Juvenile Justice System*, ILLINOIS JUVENILE JUSTICE COMMISSION,, <http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/BRIEFING%20SERIES%20-%20ASSESSMENT.pdf>.

<sup>116</sup> 6A LINDA S. PIECZYNSKI, ILLINOIS PRACTICE SERIES, CRIMINAL PRACTICE AND PROCEDURE §35:15 (2d ed. 2005).

<sup>117</sup> *Illinois Juvenile Justice Research and Information Consortium Briefing Document: Overview of Screening and Assessment in Illinois' Juvenile Justice System*, ILLINOIS JUVENILE JUSTICE COMMISSION, <http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/BRIEFING%20SERIES%20-%20ASSESSMENT.pdf>.

<sup>118</sup> *Id.*

<sup>119</sup> *Juvenile justice services*, JUVENILE JUSTICE GEOGRAPHY, POLICY, PRACTICE & STATISTICS, <http://www.jjgps.org/juvenile-justice-services/illinois>.

<sup>120</sup> *Definition of Terms*, ILLINOIS DEPARTMENT OF HUMAN SERVICES, <http://www.dhs.state.il.us/page.aspx?item=52211>.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

### C. Re-Deploy Illinois

As of January 2014, Illinois has adopted a program, called Re-Deploy Illinois, dealing with juvenile delinquents, but only in limited counties.<sup>123</sup> This program was created with the purpose of decreasing the institutionalization of juveniles.<sup>124</sup> The program seeks to reallocate funds from juvenile correctional confinement facilities to the local county jurisdictions for implementation of community-based sanctions and alternatives to detention for juveniles who would otherwise be incarcerated.<sup>125</sup> Each county involved in this program must create a plan demonstrating how it plans to reduce juvenile detention through services or programs.<sup>126</sup> These can include assessment and evaluation services “including mental health, substance abuse, educational, and family information”; services to the juvenile “including educational, vocational, mental health, substance abuse, supervision, and service coordination”; and restoration programs, aiming to restore the juvenile to the community which can include programs such as victim offender panels or community service.<sup>127</sup> Only those juveniles who are facing commitment are eligible to be involved in the Re-Deploy Illinois program.<sup>128</sup>

This program creates an agreement between the counties and the Department of Human Services to attempt to decrease the number of juveniles incarcerated within that county, excluding juveniles who have been convicted of first-degree murder or any class X<sup>129</sup> felony.<sup>130</sup> The counties involved agree to decrease the number of incarcerated juveniles to 75% of the average number of juveniles incarcerated over the past three years from implementation.<sup>131</sup> Counties which are not part of the Re-Deploy program may work with the Department of Human Services to implement a program but are not required to.<sup>132</sup>

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<sup>123</sup> 730 ILL. COMP. STAT. ANN. 110/16.1 (West 2020). As of April 2015, Re-Deploy Illinois was operating throughout 45 out of the 102 counties in Illinois. *Redeploy Illinois*, ILLINOIS DEPARTMENT OF HUMAN SERVICES, <https://www.dhs.state.il.us/page.aspx?item=31991>.

<sup>124</sup> See generally *Redeploy Illinois*, STATE OF ILLINOIS DEPARTMENT OF HUMAN SERVICES (Mar. 1, 2016), <http://www.redeployillinois.org/sites/www.redeployillinois.org/files/assets/Redeploy%20Illinois%202014%20Annual%20Report.pdf>.

<sup>125</sup> 730 ILL. COMP. STAT. ANN. 110/16.1 (West 2020).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Redeploy Illinois*, REDEPLOY ILLINOIS OVERSIGHT BOARD, <http://www.redeployillinois.org/redeploy-illinois>.

<sup>129</sup> See generally 6A LINDA S. PIECZYNSKI, ILLINOIS PRACTICE SERIES, CRIMINAL PRACTICE AND PROCEDURE §28:6 (2d ed. 2019) (last visited Oct. 8, 2020) (describing the sentencing for Class X felonies).

<sup>130</sup> 730 ILL. COMP. STAT. ANN. 110/16.1 (West 2020).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

#### D. Walking Through the Process

Josh and Katie would experience a different process in the Illinois Juvenile Courts compared to the Kentucky Juvenile Courts.

Just like in Kentucky, Katie would not be placed in a detention facility for her offense.<sup>133</sup> She is being charged with being beyond control of her parent or guardian, which is classified as a status offense.<sup>134</sup> A juvenile being charged with a status offense generally gets released to a parent or guardian.<sup>135</sup>

When Josh gets arrested for his domestic violence charge, the police officer will have the discretion to charge him. If the officer chooses to charge him, then Josh is not sent to a detention facility. However, Josh will have to appear in court at a later date, leaving him with a juvenile court record.<sup>136</sup> As mentioned previously, in Kentucky, Josh may have been sent to detention (although highly unlikely), but unless he has used his three available diversions, is unsuccessful with his diversion, or chooses to go to court, he will not have an official juvenile court record.<sup>137</sup>

Neither Josh nor Katie would be eligible to participate in the Re-Deploy Illinois Program. This is because neither juvenile has committed an offense which would result in their placement in an Illinois detention facility. If the officer decides to file a complaint (which would be unlikely for a first offense), then they may end up with a court record for their first offense. Whereas in Kentucky, they would automatically both get sent to the CDW's Office to begin a diversion program and if completed successfully they would avoid a formal court record.

### V. OTHER STATES' JUVENILE JUSTICE PROCEDURES

#### A. Michigan

Michigan State University assisted in developing the Adolescent Diversion Project.<sup>138</sup> The goal of this project is to divert the number of arrested juveniles from entering the juvenile justice system through formal

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<sup>133</sup> *Definition of Terms*, ILLINOIS DEPARTMENT OF HUMAN SERVICES, <http://www.dhs.state.il.us/page.aspx?item=52211>, KY. REV. STAT. ANN. § 630.010 (3) (West 2020).

<sup>134</sup> *Status Offense Issues*, JUVENILE JUSTICE GEOGRAPHY, POLICY, PRACTICE & STATISTICS, <http://www.jjgps.org/status-offense-issues/illinois>.

<sup>135</sup> Lindsay Bostwick, *Policies and Procedures of the Illinois Juvenile Justice System*, ILLINOIS JUVENILE JUSTICE COMMISSION, at 29-30 (August 2010).

<sup>136</sup> *Policies and Procedures of the Illinois Juvenile Justice System*, ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY, at 7 (August 2010), [http://www.icjia.state.il.us/assets/pdf/Research\\_Reports/IL\\_Juvenile\\_Justice\\_System\\_Walkthrough\\_0810.pdf](http://www.icjia.state.il.us/assets/pdf/Research_Reports/IL_Juvenile_Justice_System_Walkthrough_0810.pdf).

<sup>137</sup> *Policies and Procedures of the Illinois Juvenile Justice System*, *supra* Section III Part D.

<sup>138</sup> *Program Profile: Adolescent Diversion Project (Michigan State University)*, NATIONAL INSTITUTE OF JUSTICE (Nov. 19, 2013), <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=332>.

processing.<sup>139</sup> The project prevents this by increasing the juvenile's activity and resources within the community and attempting to strengthen the juvenile's attachment to their family and other individuals, which will provide a positive impact in the juvenile's life.<sup>140</sup>

This program pairs undergraduate psychology students at Michigan State University with juveniles who are referred by the Ingham County Juvenile Court.<sup>141</sup> These students spend six to eight hours every week with the juveniles to help them develop the skills needed to improve relationships, school life, future employment, and hobbies. Additionally, they locate resources within the community specific to the juvenile's needs.<sup>142</sup> Estimates show that this program saves roughly \$1,799,404 per year.<sup>143</sup>

## B. Missouri

Missouri has community-based diversion services which juvenile officers use whenever deemed appropriate.<sup>144</sup> These programs attempt to provide rehabilitative services for juveniles while avoiding the formal court process.<sup>145</sup> These services do not last longer than a six-month term without approval by the juvenile officer for a one-time six-month extension.<sup>146</sup> In fiscal year 2017, 9,142 law violating juveniles were provided with diversion services.<sup>147</sup> In that same year, 8,842 less serious juvenile offenders were successfully provided with diversion opportunities.<sup>148</sup>

These programs are broken up into four different categories. The first level is prevention programs, the second level is a diversion program from a juvenile officer's referral, the third level is a diversion which comes from formal court proceedings, and the fourth level is diversion which comes from commitment to the division of youth services.<sup>149</sup>

The first and second levels are both community-based programs.<sup>150</sup> The prevention programs are aimed at reducing the number of juveniles referred to the juvenile officer.<sup>151</sup> The second level programs are aimed at providing services for those juveniles whose actions could lead to a referral to the

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> MO. R. JUV. PROC. 129 app. B §2.4.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Division of Youth Services Annual Report Fiscal Year 2017*, MISSOURI DEPARTMENT OF SOCIAL SERVICES, at 16 (2017), <https://dss.mo.gov/re/pdf/dys/youth-services-annual-report-fy17.pdf>.

<sup>148</sup> *Id.*

<sup>149</sup> MO. R. JUV. PROC. 129 app. B §2.4.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

juvenile officer.<sup>152</sup> This level implements a diversion program for the juvenile which would allow them to take responsibility for what they have done while not resulting in referral to the juvenile officer.<sup>153</sup> Neither level includes the juvenile's placement in a case management system.<sup>154</sup> Additionally, neither level has any effect regarding prior referral histories, nor do they show up as a past assessment.<sup>155</sup>

Level three is any program which seeks to keep the juvenile away from formal court proceedings.<sup>156</sup> Even though the juvenile may have been referred to a juvenile officer, the program seeks to enter them into a diversion program before the case enters court.<sup>157</sup> Level four is any program which seeks to keep the juvenile away from being committed to the Division of Youth Services.<sup>158</sup> This program connects the juvenile and their family to any community services they may need.<sup>159</sup> This level of program can also provide supervision or sanctions to the juvenile if it is deemed necessary.<sup>160</sup>

### C. Nebraska

In Nebraska, a county attorney has the authority to establish a juvenile pretrial diversion program.<sup>161</sup> The goal of this program includes several objectives such as: providing an alternative to adjudication through the courts, reducing recidivism rates, reducing the costs and caseloads which burden the criminal justice system, and promoting the collection of restitution.<sup>162</sup> The implementing statute requires, in relevant part, that the program shall be offered to a juvenile before the filing of a petition or before criminal charges are filed but after the arrest or issuance of a citation.<sup>163</sup> However, the juvenile cannot be forced to participate in the program and must make that decision for him/herself.<sup>164</sup> The Nebraska diversion program had between a 59% to 61% success rate between 2012 and 2015.<sup>165</sup>

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<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> MO. R. JUV. PROC. 129 app. B §2.4.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> MO. R. JUV. PROC. 129 app. B §2.4.

<sup>160</sup> *Id.*

<sup>161</sup> NEB. REV. STAT. ANN. § 43-260.02 (West 2020).

<sup>162</sup> NEB. REV. STAT. ANN. § 43-260.03 (West 2020).

<sup>163</sup> NEB. REV. STAT. ANN. § 43-260.04 (West 2020).

<sup>164</sup> *Id.*

<sup>165</sup> Lindsey E. Wylie & Anne Hobbs, *Evidence-Based Nebraska: Nebraska Juvenile Diversion Programs 2012-2015*, UNIVERSITY OF NEBRASKA OMAHA at 15, <https://ncc.nebraska.gov/sites/ncc.nebraska.gov/files/doc/JJI-Diversion-Report-2016.pdf>.

These diversion programs can include different treatments, restitution payments, counseling services, education services, and community service.<sup>166</sup> The diversion agreement must include at least one of the following: “(1) A letter of apology; (2) [c]ommunity service ...; (3) [r]estitution; (4) [a]ttendance at education or informational sessions...; (5) [Curfew Requirements]; and (6) [p]articipation in an appropriate restorative justice practice or service.”<sup>167</sup> The exact makeup of the diversion program will vary due to the mandate that the program be tailored to the juvenile’s specific needs. After an assessment and the successful completion of this program, the petition or juvenile charges at issue shall be dismissed.<sup>168</sup>

#### D. New York

The New York Juvenile Justice Systems has a couple of different methods relating to juvenile delinquency.<sup>169</sup> The Brookhaven Youth Court in New York is a diversionary program.<sup>170</sup> This court deals with juveniles under the age of sixteen who are first-time offenders charged with a misdemeanor.<sup>171</sup> The first step in this program is the juvenile admitting guilt to whatever it is they are being charged with.<sup>172</sup> Juveniles entering into this program typically have to perform community service, write essays, attend peer groups, and sit on a youth court jury.<sup>173</sup> The purpose of this program is to provide the juveniles with knowledge of the court system and possible job opportunities throughout the community.<sup>174</sup>

Furthermore, New York City runs a program called Musical Connections through the Weill Music Institute,<sup>175</sup> which enables juveniles involved in the Juvenile Justice System to work with those in the community to express themselves through music.<sup>176</sup>

Also, New York has the Youth Justice Board.<sup>177</sup> This is an afterschool program which seeks to partner with juveniles to address public policy issues, with which they likely have previous experience.<sup>178</sup> The juveniles gain

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<sup>166</sup> NEB. REV. STAT. ANN. § 43-260.05 (West 2020).

<sup>167</sup> NEB. REV. STAT. ANN. § 43-260.06 (West 2020).

<sup>168</sup> NEB. REV. STAT. ANN. § 43-260.04 (West 2020).

<sup>169</sup> *The State of Youth Justice in New York: An Overview of the Juvenile Justice System Across the State*, NEW YORK STATE AFTERSCHOOL NETWORK, 26-28 (Oct. 2013), <https://networkforyouthsuccess.org/wp-content/uploads/2014/08/Youth-Justice-Overview-Final.pdf>.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* at 7.

<sup>173</sup> *Id.* at 13.

<sup>174</sup> *Id.* at 26.

<sup>175</sup> *Id.* at 27.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 28.

<sup>178</sup> *Id.*

experience researching these issues and conducting interviews within the community to gain knowledge and make policy recommendations around the proposed issue.<sup>179</sup> The juveniles then get to work with officials and government agencies to implement their recommendations to fix the issues.<sup>180</sup>

## VI. PROPOSAL

While some counties<sup>181</sup> in Illinois have been required to adopt the Re-Deploy Illinois Program, there are still many counties without any protections in place for juveniles.<sup>182</sup>

Illinois should adopt a pre-trial diversion program similar to that which has been adopted by Kentucky. The purpose of this program would be to keep the juveniles accountable for their actions while attempting to keep the juveniles away from formal processing procedures. While it is great that most officers will give juveniles the benefit of the doubt and will not press charges for first offenses, without a system in place, the child's fate is in the hands of the officer. This program will seek to protect those juveniles who make a simple mistake once or twice from receiving a permanent formal record, that will follow them for the rest of their life.

Illinois needs a unified program throughout the state which seeks to not only decrease the number of juveniles being placed in detention facilities, but also decrease the number of juveniles formally going through the court system. Which, in turn, would decrease the number of juveniles with an official juvenile court record through informal processing.

The Office of Juvenile Justice and Delinquency Prevention<sup>183</sup> provides a model guide for implementing a diversion program.<sup>184</sup> This model guide provides a ten-step program to implement one of these programs.<sup>185</sup> The ten steps include establishing clear goals for the program, conducting needs assessments, doing supportive research, getting stakeholder buy-in, identifying the specific issues within the jurisdiction, getting funding, providing training for the program, addressing adaptation when needed, handling problems or setbacks that were not originally anticipated, and

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<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> Redeploy Illinois: Redeploy Program Sites and County Eligibility 2016, ILLINOIS DEPARTMENT OF HUMAN SERVICES, (2016), <https://www.dhs.state.il.us/OneNetLibrary/27897/documents/CHP/RedeployIllinois/RedeployIL2016Map11216.pdf>.

<sup>182</sup> *Id.*

<sup>183</sup> The Office of Juvenile Justice and Delinquency Prevention is a federal agency within the U.S. Department of Justice which seeks to decrease juvenile delinquency and improve the juvenile justice system. <https://ojjdp.ojp.gov/about>.

<sup>184</sup> *The Categories and Steps of the I-Guides*, OFFICE OF JUSTICE PROGRAMS, <https://www.ojjdp.gov/mpg-iguide/topics/diversion-programs/EstablishGoals.html>.

<sup>185</sup> *Id.*

ensuring that this program has long-term sustainability.<sup>186</sup> This comment seeks to propose a diversion program with the goal of improving the outcomes for the juveniles who have interacted with the juvenile justice system.<sup>187</sup> This would cause the program to be more restorative in nature to attain the end goal of holding juveniles accountable for their actions while at the same time keeping them away from the court system if possible.<sup>188</sup>

Illinois needs to provide every county with an officer or multiple officers, depending on the size of the county population, to enter into diversion processes with the juveniles. The officer should meet with the juvenile and conduct a “needs assessment” to decide what services should be required for the particular juvenile’s diversion. This assessment will help determine whether counseling is required and what educational services would be most beneficial to the juvenile.

The assessments given will determine if the juvenile is considered a “high-needs”<sup>189</sup> juvenile or not.<sup>190</sup> If a juvenile is deemed “high-needs” then their diversion would need to include more services than someone who is not “high-needs.”<sup>191</sup> The whole diversion must be individualistic in nature, so the juvenile can get the most out of the program. These assessments allow the workers to identify key issues going on in the juvenile’s life such as family problems, peer-pressure, self-esteem, or if it was just a one-time simple mistake. By identifying specifics about the juvenile’s life, the worker is then able to prepare a diversion program suited to their specific needs rather than the needs of every juvenile who has committed that same crime.

Additionally, there should be cooperation between the school officials, law enforcement officials, community programs, and the officers who are enforcing these diversion programs. Every diversion program should require the juvenile to have no unexcused absences at school. The Juvenile Officer (or Court Designated Worker) and the school systems will work together so that the worker can call whoever is in charge of attendance at each school to gain access to the juvenile’s attendance records since the beginning of diversion.

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<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> High-needs juveniles are typically defined as juveniles whose needs are so great that the diversion program by itself cannot meet. This would include juveniles such as those who need psychiatric assistance. *2017 Annual Report, KENTUCKY COURT DESIGNATED WORKER PROGRAM*, at 17-18 (May 2019), <https://kycourts.gov/resources/publicationsresources/Publications/CDWAnnualReport2017.pdf>.

<sup>190</sup> *Id.*

<sup>191</sup> KY. JUV. R. PRAC. & PROC. 13.

### A. Walking Through the New Process

The opportunities available for juveniles will vary to some degree across counties. For instance, Cook County has more resources and more opportunities than Jackson County, but Jackson County has more opportunities than Pulaski County.<sup>192</sup> If Katie and Josh were to go through this new program, it would have different outcomes based on what county they live in. If Katie was from Jackson County, then the CDW has the advantage of being close enough to work with the SIU Psychology Department. Just like in Michigan,<sup>193</sup> Illinois could develop a program between the CDW office and the university. This would allow Katie to be paired with a graduate psychology student. This student could meet with Katie one or two times a week to help her develop the skills she needs. Since Katie's charge was for being "beyond control" of her parents, the student can help her develop the skills she needs to be able to interact effectively with her family. This would also help the student gain experience within their field of study.

Cook County has the benefit of having more resources than the smaller counties. Chicago already has a program with the Chicago Symphony Orchestra which seeks to use music to transform the lives of young adults.<sup>194</sup> As of right now this partnership is only with incarcerated juveniles.<sup>195</sup> However, the County may seek to expand this partnership to include juveniles on diversion. If Josh was to indicate that music was one of his interests during the preliminary inquiry, then Josh could meet with this program and seek to channel his anger into music.

Within both of these case scenarios, Katie and Josh would still have to complete some of the basic diversion procedures. They would be required to attend school, attend counseling if deemed necessary, and complete at least one educational program about their charge. The educational program could be as minimal as an interactive packet explaining the charge, how to better get along with family, or deal with their inner emotions.

Some smaller counties will not have the luxury of being able to pair juveniles with music programs, psychology students, community service opportunities at horse stables, or other programs of the child's interest. For these counties a more basic diversion approach would be appropriate to keep the juvenile out of a detention facility while still trying to rehabilitate. These would include the basic diversion procedures listed above such as no unexcused absences from school, counseling, and educational programs

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<sup>192</sup> *QuickFacts*, U.S. CENSUS BUREAU (July 1, 2019). <https://www.census.gov/quickfacts/IL>.

<sup>193</sup> *See supra* Section V. Part A.

<sup>194</sup> *Juvenile Justice*, CHI. SYMPHONY ORCHESTRA (2020). <https://cso.org/institute/community-partnerships/juvenilejustice/>.

<sup>195</sup> *Id.*

which seek to educate the juvenile about their misconduct and how to keep from repeating the offense.

#### B. Concerns: Financial Efficiency and a Clean Record

The biggest issue with implementation of this program is its cost effectiveness. For the fiscal year of 2019, the recommended total funding for the department of juvenile justice was around \$120 million.<sup>196</sup> The majority of this budget is estimated to be spent on basic prison operations.<sup>197</sup> On the basic prison operations alone, it costs roughly \$187,765 per juvenile detained per year.<sup>198</sup> In 2018, Illinois reported 96,156 juvenile delinquency cases.<sup>199</sup> Hypothetically, if all of these were to result in incarceration, it would cost around \$18 billion for the year. Instead it costs roughly \$1.2 billion a year to incarcerate juveniles in Illinois.<sup>200</sup> While there will always be some juveniles who require incarceration, a diversion program would eventually lead to a decrease in the amount spent on incarcerating juveniles. The diversion programs would come with their own costs, such as the hiring of officers to set up and monitor the programs, but would ultimately result in a decrease in the amount spent on incarceration by keeping first and minor offenders out of detention and reducing the risk of recidivism.

The Re-Deploy Illinois program seeks to provide similar opportunities to eligible juveniles in certain counties. Their prediction was that the cost avoidance for the fiscal year of 2014 was \$14,983,009.06.<sup>201</sup> During 2014, it was estimated that there was a 64% decrease in the number of juveniles being sent to detention facilities.<sup>202</sup> This proposed program is seeking to expand to every county in Illinois and decrease the amount of juveniles still being incarcerated. The state would ultimately be saving roughly \$187,765 for

<sup>196</sup> Bruce Rauner, *Illinois State Budget Fiscal Year 2019 at 271 (Feb. 14, 2018)*, <https://www2.illinois.gov/sites/budget/Documents/Budget%20Book/FY%202019/Fiscal-Year-2019-Operating-Budget-Book.pdf>.

<sup>197</sup> Stephanie Kollmann, *The Costliest Choice: Economic Impact of Youth Incarceration*, 3 COMMUNITY SAFETY & THE FUTURE OF ILLINOIS' YOUTH PRISONS 2 (March 2018).

<sup>198</sup> *Id.*

<sup>199</sup> See Circuit Court of Illinois, JUVENILE CASELOAD STATISTICS BY COUNTY FIRST QUARTER (2018), <https://courts.illinois.gov/CircuitCourt/Stats/JUV-1Q18.pdf>; Circuit Court of Illinois, JUVENILE CASELOAD STATISTICS BY COUNTY SECOND QUARTER (2018), <https://courts.illinois.gov/CircuitCourt/Stats/JUV-2Q18.pdf>; and Circuit Court of Illinois, JUVENILE CASELOAD STATISTICS BY COUNTY THIRD QUARTER (2018), <https://courts.illinois.gov/CircuitCourt/Stats/JUV-3Q18.pdf>.

<sup>200</sup> Stephanie Kollmann, *The Costliest Choice: Economic Impact of Youth Incarceration*, 3 COMMUNITY SAFETY & THE FUTURE OF ILLINOIS' YOUTH PRISONS 4 (March 2018).

<sup>201</sup> *Redeploy Illinois*, STATE OF ILLINOIS DEPARTMENT OF HUMAN SERVICES at 23 (Mar. 1, 2016), <http://www.redeployillinois.org/sites/www.redeployillinois.org/files/assets/Redeploy%20Illinois%202014%20Annual%20Report.pdf>.

<sup>202</sup> *Id.*

every juvenile not being incarcerated. Ultimately, the amount to fund the program would be outweighed by the amount being saved by the state.

Aside from the financial aspect of implementing a state-wide program, there may be concerns about allowing a juvenile to erase their record, especially for those who consider their past crimes to be relevant to their propensity to repeat the past misconduct. At first blush, this concern might seem backed with merit, however, it is not backed with science. The brain does not fully develop until an individual is around 25 years old.<sup>203</sup> It is not until an individual reaches adulthood that they begin to think with the rational part of the brain rather than be driven by the emotional part.<sup>204</sup> This is because the prefrontal cortex has yet to fully develop in a juvenile.<sup>205</sup> The prefrontal cortex controls the ability to consider all of the options given, understand the nature of the risks and consequences of an action, and to stop and think about what they are doing.<sup>206</sup> This tends to make juveniles more apt to being impulsive, easily influenced, and prone to risk taking.<sup>207</sup>

The labeling theory suggests that by giving the juvenile a “label” of a delinquent or an offender, the system is setting them up to reoffend.<sup>208</sup> Through that labeling and the cycle of arrests and involvement in the court system, these juveniles begin to see that as how their lives are supposed to be and continue down that path.<sup>209</sup> Giving juveniles the opportunity to keep their record clean after a first offense is a way to prevent the negative consequences that this theory produces. This allows juveniles to be free from worrying that their minor mistake is something that is going to define the rest of their childhood because the diversion program gives them the opportunity to essentially start over. Having this opportunity could decrease the likelihood that first or second time offenders will reoffend.<sup>210</sup>

## VII. CONCLUSION

Illinois has taken some strides towards adopting diversion-like procedures, but in order to fully reap the benefits the procedures must be adopted statewide. Currently, Illinois leaves a multitude of juveniles without

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<sup>203</sup> *Understanding the Teen Brain*, UNIVERSITY OF ROCHESTER MEDICAL CENTER (2020), <https://www.urmc.rochester.edu/encyclopedia/content.aspx?ContentTypeID=1&ContentID=3051>.

<sup>204</sup> *Id.*

<sup>205</sup> Morgan Tyler, *Understanding the Adolescent Brain and Legal Culpability*, ABA (August 01, 2015), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/).

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> Akiva L. Liberman, David S. Kirk, & KiDeuk Kim, *Labeling Effects of First Juvenile Arrests: Secondary Deviance and Secondary Sanctions*, CRIMINOLOGY at 4 (February 2014).

<sup>209</sup> *Id.* at 4-6.

<sup>210</sup> *See generally id.*

procedural protections because many counties have not adopted any form of diversion procedures. The consequence is that juveniles who have made minor mistakes at a very early stage in their life might have to suffer life-long consequences.

Not only are public policy and fairness best served by the adoption of a state-wide diversion procedure, but the implementation of these procedures is not only practical, as evidenced by Kentucky and Missouri, but financially efficient.<sup>211</sup> Illinois should look toward programs that are in place within states like Kentucky and Missouri. Both of these states have adopted a pre-trial diversion program which seeks to reduce the number of juveniles being committed to detention facilities and provide juveniles with a way of taking responsibilities for their actions while keeping them out of formal court proceedings.

Juveniles are known for making mistakes during their youth. These programs seek to prevent minor mistakes from ruining a juvenile's potentially successful future.

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<sup>211</sup> *Supra* Section VI. Part B.