

October 2024

Rehabilitation Over Retribution: Rethinking Juvenile Justice for Traumatized Youth

Brian L. Traub

University of Cincinnati College of Law

Follow this and additional works at: <https://scholarship.law.uc.edu/uclr>



Part of the [Criminal Law Commons](#), [Juvenile Law Commons](#), [Law and Society Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Brian L. Traub, *Rehabilitation Over Retribution: Rethinking Juvenile Justice for Traumatized Youth*, 93 U. Cin. L. Rev. 236 (2024)

Available at: <https://scholarship.law.uc.edu/uclr/vol93/iss1/8>

This Student Notes and Comments is brought to you for free and open access by University of Cincinnati College of Law Scholarship and Publications. It has been accepted for inclusion in University of Cincinnati Law Review by an authorized editor of University of Cincinnati College of Law Scholarship and Publications. For more information, please contact ronald.jones@uc.edu.

REHABILITATION OVER RETRIBUTION: RETHINKING JUVENILE JUSTICE FOR TRAUMATIZED YOUTH

*Brian L. Traub**

I. INTRODUCTION

I am convinced that imprisonment is a way of pretending to solve the problem of crime. It does nothing for the victims of crime, but perpetuates the idea of retribution, thus maintaining the endless cycle of violence in our culture.¹

A foundational understanding within society is that “bad actors” should be punished as a way of bringing justice to those who have been hurt, deterring future criminal conduct, and rehabilitating the perpetrator.² This concept appears, at least facially, as a valid premise for an institutionalized criminal justice system. The problem, however, manifests when the bad actor is merely a child. The complexity of this problem expands when that child has suffered countless amounts of abuse, neglect, sexual violence, and various other forms of childhood trauma at the hands of an abuser.³ The reality is that the U.S. criminal justice system, having been designed to punish bad actors, cannot adequately address the rehabilitative needs of juveniles who are themselves victims of violence. Instead, it merely subjects them to more of the same trauma they suffered prior to their first criminal act.

The current punishment-focused regime of the U.S. criminal justice system is incompatible with, and incapable of, providing real rehabilitative opportunities to juvenile actors who have suffered substantial traumas during their childhood.⁴ The current sentencing scheme in the U.S. desperately requires change that could give juvenile

* Articles Editor 2024-2025, Associate Member 2023-2024, *University of Cincinnati Law Review*. I would like to extend my deepest gratitude to the editorial board for their invaluable efforts and thoughtful suggestions throughout the editorial process. Your insightful feedback played a crucial role in refining and elevating this piece, and I am appreciative of the time and care you invested in helping bring this Comment to fruition. I am also deeply thankful for my wife, Erin, whose daily work in this field inspired me to explore the often-neglected topic of mental health and childhood trauma as it relates to the law. Her unwavering support and patience were indispensable to the completion of this project.

1. HOWARD ZINN, *YOU CAN'T BE NEUTRAL ON A MOVING TRAIN* (Beacon Press 2018) (1994).

2. See SANFORD H. KADISH ET AL., *CRIMINAL LAW AND ITS PROCESSES: CASES AND MATERIALS* 81 (11th ed. 2022).

3. This Comment addresses sensitive topics related to childhood trauma within the context of juvenile sentencing reform. While efforts have been made to handle the subject matter with care, readers are advised to be mindful of the potentially distressing nature of the content. If you find the discussion of childhood trauma uncomfortable, please consider your comfort level before proceeding with this Comment.

4. See Michal Gilad, *Falling Between the Cracks: Understanding Why States Fail in Protecting Our Children from Crime*, 2019 U. ILL. L. REV. 907, 908-10 (2019).

criminals an opportunity to escape the incessant cycle of reincarceration that it perpetuates.⁵

This Comment examines the tension existing between the philosophical understanding of criminal justice in the U.S. and the reality that criminality is often linked to trauma experienced during childhood. To illuminate the tension that exists between the U.S. punishment-focused criminal justice system and its cardinal goal of rehabilitation, Section II of this Comment first explains the philosophical foundation for justifying punishment. Next, Section II discusses the current statutory framework for U.S. federal sentencing. Then, Section II illuminates and discusses the statistically significant role that adverse childhood experiences (ACEs) play in the current legal system. Finally, Section II outlines the historical development of the U.S. criminal justice system.

Section III argues that the next step toward a system that more effectively facilitates rehabilitation is congressional reform of 35 U.S.C. § 3553 (§ 3553), and through trauma-informed sentencing practices. Section IV will conclude by reemphasizing the harsh realities of childhood trauma and its connection with the criminal justice system, recognizing the system's underlying intent to rehabilitate juvenile defendants while advocating for necessary conceptual transformation.

II. BACKGROUND

Before discussing the framework that addresses the issues embedded in the juvenile sentencing scheme for defendants who have suffered ACEs, this Section will explain the background necessary to understand why a systemic shift toward rehabilitation is critical to prevent future criminality of those defendants. Part A illustrates the philosophical underpinnings of the U.S. criminal justice system. Part B then outlines the current statutory guidelines that judges must adhere to when sentencing criminal defendants. Part C provides an overview of the complex world of childhood trauma and its consequential effects on individuals later in life. Finally, Part D explores the history of juvenile sentencing.

5. See *Research Central: Measuring What Works in Juvenile Reentry*, OFF. OF JUV. JUST. & DELINQ. PREVENTION (2020) [hereinafter *Delinquency Prevention*] (finding that “[w]hile national recidivism rates are not available, a review of state studies found that the rearrest rates for youth within [one] year of release averaged 55 percent, while reincarceration and reconfinement rates averaged 24 percent”), <https://ojjdp.ojp.gov/newsletter/ojjdp-news-glance-novemberdecember-2020/research-central-measuring-what-works-juvenile-reentry> [<https://perma.cc/M54E-8QJ3>]; ELIZABETH SEIGLE ET AL., CORE PRINCIPLES FOR REDUCING RECIDIVISM AND IMPROVING OTHER OUTCOMES FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM (2014) (finding that, while most jurisdictions do not track juvenile recidivism rates, states that do report rearrest rates as high as 75% for incarcerated juveniles within three years of release).

A. *The System of Punishment*

Formalized criminal justice systems are a foundation of human civilization.⁶ Having existed for over 4,000 years since the Sumerians, modern systems designed to address criminality are neither unique nor novel.⁷ Below, Subpart 1 provides insight into the ideologies that undergird the notion of just punishment. Then, Subpart 2 describes the evolution of the criminal justice system in the U.S. Finally, Subpart 3 illustrates the harsh realities of life in prison.

1. Philosophical Understandings of Just Punishment

Harsh punishment, for those who deviate outside the moral boundaries set by the collective, is a natural mechanism for correction.⁸ The innate desire to punish social nonconformity is neither unique to humans,⁹ nor based on a rational judgment of social equity.¹⁰ Rather, this Darwinian need for punishment stems from adaptive impulses shaped by human evolution.¹¹

Two philosophical approaches to punishment, generally, govern the world's legal systems.¹² First, the "consequentialist" approach stems from the utilitarian school of thought introduced by Jeremy Bentham.¹³ Under this approach, the primary justification for punishing criminal acts is the belief that such acts increase the totality of harm that exists within society.¹⁴ Punishment, as such, increases social welfare through the prevention of future harm;¹⁵ for future harm to be prevented under this

6. See Arnold & Smith, Attorneys at Law, *The History Of Criminal Law*, ARNOLD & SMITH, PLLC <https://www.arnoldsmithlaw.com/the-history-of-criminal-law.html> [<https://perma.cc/YLY9-PQDJ>].

7. *Id.*

8. See EMILE DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* 62-63 (1984) (discussing that, while an ordinary person may have formulated within their own mind a particular set of reasons for which a person is punished for breaking rules based on some abstract understanding of good and evil, the underlying propellant of criminal justice is the human desire for social cohesion and conformity).

9. Daniel A. Levy, *Optimizing the social utility of judicial punishment: An evolutionary biology and neuroscience perspective*, FRONTIERS IN HUMAN NEUROSCIENCE, Sept. 12, 2022, at 1-2.

10. *Id.*

11. *Id.*

12. *Id.* at 2; see also Kadish et al., *supra* note 2, at 81 (stating that, "[i]n general, there are six widely accepted understandings of the justifications for punishment within the United States, all of which derive from various points in history, geographical locations, and philosophical teachings. These understandings can be categorized as the utilitarian, retributive, specific deterrence, general deterrence, incapacitation, and reaffirmation views of why punishment for crimes is just. Each of these various schools of thought can be more broadly characterized into the two philosophical approaches" as are discussed in this Section).

13. See Levy, *supra* note 9, at 3.

14. *Id.* at 1.

15. *Id.*

theory, punishment must directly decrease future criminal acts.¹⁶

Future criminal acts are prevented in three ways: (1) incapacitating the original offender through punishment; (2) deterring future harm of other potential offenders in society who decide to forego criminal acts out of fear of similar punishment; and (3) rehabilitating the original offender by altering their attitude about criminal conduct through corrective pressures.¹⁷ Rehabilitation, which is defined as the action that restores something to an improved condition or state,¹⁸ remains one of the leading objectives in modern-day criminal justice systems.¹⁹ These three preventative efforts work in unison to minimize the degree of harm that exists in society.²⁰ The aggregated reduction in harm lends itself to the assumption that more space is available in the future for good to exist, which ultimately justifies such punishment.²¹

The second general approach is known as the “retributive” approach, founded upon the Kantian school of thought.²² Perhaps better understood as the proverbial “eye for an eye,”²³ the retributive approach is predicated on the Old Testament teaching that punishment ought to proportionately harm those who harm others.²⁴ The understanding that people must conform with socially accepted norms is what inevitably justifies punishing those who slip out of conformity.²⁵

Unlike the consequentialist approach, retributivism looks not to any future implications of punishment regarding future harm. Rather, it focuses entirely on a determination of adequate punishment in sole response to the harm committed—put simply, an “eye for an eye.”²⁶ It tailors itself to the primordial desire of humankind to seek revenge instead of rationalizing an adequate response to promote the future good.²⁷ While

16. *Id.* at 2.

17. *Id.*

18. *Rehabilitation*, MERRIAM-WEBSTER (2023), <https://www.merriam-webster.com/dictionary/rehabilitation> [<https://perma.cc/8NM6-62CL>]; see also *Recidivism*, NAT'L INST. OF JUST., <https://nij.ojp.gov/topics/corrections/recidivism> [<https://perma.cc/S97Z-AC7M>] (“Rehabilitation refers to the extent to which a program is associated with the ability to reduce crime and improve lives by addressing criminogenic risks and needs.”).

19. K. R. COCKLIN, *FUNCTIONS OF CRIMINAL JUSTICE – PROCEDURES, TASKS AND PERSONNEL* 6 (Paladin House Publishers 1977) (stating that “the goal of the correctional subsystem is to rehabilitate offenders or to alter their behavior so that they are socially acceptable and law abiding”).

20. See generally *id.*

21. *Id.*

22. *Id.* at 3.

23. *Id.*; See also *eye for an eye*, BRITANNICA, <https://www.britannica.com/topic/eye-for-an-eye-law> [<https://perma.cc/6QUF-CUCW>].

24. *Exodus* 21:23-24; *Leviticus* 24:20.

25. Levy, *supra* note 9, at 3; RALPH WALDO EMERSON, *ESSAYS: SECOND SERIES* 37 (1969) (“For nonconformity the world whips you with displeasure.”).

26. Levy, *supra* note 9, at 3.

27. *Id.*

society tends to believe that its view of punishment stems from a utilitarian perspective—one focused on making whole those who were harmed and thus promoting the greater good of society—retribution is what ultimately guides the minds of most people.²⁸ Thus, the ideological, and perhaps instinctual, fascination with retributive punishment has bloodied U.S. law since its conception.

2. Punishment and the Criminal Justice System

In 1789, Congress conceived, among other things, the original framework for the U.S. criminal justice system.²⁹ In addition to defining a limited number of laws, whipping and imprisonment were enshrined as desired forms of punishment.³⁰ The First Congress codified a system of punishment that has, throughout history, produced considerable consequences for the people who find themselves entangled in it.³¹ 234 years later, this system has matured into the present-day brutish regime of retribution, retaliation, and vengeance.

The integral first step to effectuating a criminal justice system is creating groups dedicated to enforcing laws.³² Much like the regionalized watch-groups of England,³³ the early Americas relied on small, non-uniform groups of civilians to enforce the rule of law and prevent crime.³⁴ These groups quickly became ineffective due to the rapid influx of urban populations during the 1700s.³⁵ As populations grew, so did crime.³⁶ The inability of local groups to maintain law and order resulted in the early formation of formalized law enforcement agencies.³⁷ These structured law enforcement agencies, now larger and more effective than ever, made the congruent development of prison systems necessary for dealing with the increasing number of arrests.³⁸ Ultimately, the exponential growth of prison populations, dwindling resources, and lack of state and federal

28. *Id.*; but cf. Brian Hare & Vanessa Woods, *Survival of the Friendliest*, xvi-xviii (Random House 2020) (positing that cooperation and altruism are key concepts in understanding the basis of the human species).

29. Judiciary Act of 1789 (1st Sess. 1789).

30. *Id.*

31. See Pfaff, *infra* note 41, at 173.

32. See *The History of Police*, 3, https://www.sagepub.com/sites/default/files/upm-binaries/50819_ch_1.pdf [<https://perma.cc/2DGL-SB8U>].

33. *Id.*

34. *Id.*

35. *Id.* at 4.

36. *Id.*

37. *Id.*

38. Samuel Walker, *Popular Justice: A History of American Criminal Justice*, 79 MICH. L. REV. 921, 922-25 (1981).

regulation created a breeding-ground for inhumane practices.³⁹ This issue was further exacerbated by the notion that rehabilitation for criminals would be achieved by subjecting them to harsh corrective pressures, which has played a significant role in shaping the punitive nature of the modern-day criminal justice system.

Today, over two million people are in prison or jail in the U.S.⁴⁰ Despite containing only 5% of the world's population, the U.S. incarcerates over 20% of the world's prisoners.⁴¹ Those two million people in U.S. prisons are also far more likely than the rest of the global populace to have experienced some form of childhood trauma.⁴² Approximately 98% of inmates have experienced at least one ACE,⁴³ and 90% of juveniles in the system report experiencing at least one extreme traumatic event during childhood.⁴⁴ In the context of incarcerated juveniles, the image of life behind bars does not look any better than that of adults.

Approximately 48,000 children are being held in facilities because of involvement in the criminal justice system.⁴⁵ Although this number has continually decreased since 2000,⁴⁶ over 30,000 children are still confined in the country's most restrictive facilities.⁴⁷ Approximately 17,000 children are in locked juvenile detention centers, 11,000 are held in long-term secured facilities, and 4,500 are confined to adult prisons and jails.⁴⁸ Juvenile offenders who are sentenced usually end up in facilities that are essentially adult prisons for children, where they are subjected to pepper spray, physical restraints, barbed wire fences, and solitary confinement.⁴⁹

39. *Id.*

40. Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2023*, PRISON POL'Y INITIATIVE (Mar. 14, 2023), <https://www.prisonpolicy.org/reports/pie2023.html> [<https://perma.cc/BYZ9-S2HN>].

41. Molly Connor, Note, *From First Steps to Second Chances: Addressing Mass Incarceration*, 95 NOTRE DAME L. REV. 1699 (2020); John F. Pfaff, *The War on Drugs and Prison Growth: Limited Importance, Limited Legislative Options*, 52 HARV. J. ON LEGIS. 173, 173 (2015).

42. Compassion Project, *infra* note 110.

43. *Id.*

44. Michael T. Baglivio, et al., *The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders*, 3 OHIO J. OF JUV. JUST. 1, 3 (2014).

45. Wendy Sawyer & Peter Wagner, *Youth Confinement: The Whole Pie 2019* (December 19, 2019), <https://www.prisonpolicy.org/reports/youth2019.html> [<https://perma.cc/48X8-25RH>].

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*; see also *Solitary Confinement & Harsh Conditions*, JUV. L. CTR., <https://jlc.org/issues/solitary-confinement-other-conditions> [<https://perma.cc/PQP9-NGFV>] (stating that “[e]very day, children in the justice system face solitary confinement, strip searches, shackling, pepper spray, restraints, and physical and sexual abuse. Children may be locked in cells as small as seven-by-ten feet, 22 to 24 hours per day, with no personal belongings, no access to educational services, counseling

Undoubtedly, juveniles placed in adult facilities fair far worse than any other group of incarcerated youth.⁵⁰ But those placed in juvenile facilities are not much safer. Juveniles in detention centers and long-term secure facilities report sexual violence, fear of physical violence, confinement and isolation, strip searches, use of restraints, exposure to excessive force by corrections officers, and generally poor treatment by staff.⁵¹

Unfortunately for traumatized juveniles, the trauma does not end once placed behind bars. Indeed, the centers that imprison such children have historically committed their fair share of criminal conduct.⁵² In 1980, Congress enacted the Civil Rights of Institutionalized Persons Act (CRIPA), authorizing the U.S. Department of Justice (DOJ) to bring cases against states accused of violating the civil rights of incarcerated persons.⁵³ Two reports on the conditions of juvenile correctional institutions have shown clear and convincing evidence of systemic maltreatment of confined youth since 1970.⁵⁴ Numerous lawsuits in thirty-seven states have resulted in court-sanctioned remedies in response to allegations of maltreatment.⁵⁵

Best highlighting this systemic maltreatment was the DOJ's 2010 complaint against the State of New York and its Office of Children and Family Services (OCFS).⁵⁶ Although the case settled in 2011,⁵⁷ the complaint itself painted a vivid picture. OCFS is the New York state agency responsible for the care and custody of youth confined in various facilities.⁵⁸ Entrusted with the care of confined juveniles, OCFS had

or mental health treatment, no interaction with peers and with nothing more than a lightly padded concrete slab to sleep on. They may be pepper-sprayed for simple rule violations, strip-searched after family visits, or shackled when they leave their cells.”)

50. *Id.* (finding that juveniles in adult facilities are five times more likely to commit suicide than those placed in juvenile facilities).

51. *Id.*; see also Andrea J. Sedlak & Karla S. McPherson, *Conditions of Confinement*, U.S. DEP'T OF JUST., OFF. OF JUV. JUST. & DELINQ. PROGRAMS (May 2010), <https://www.ojp.gov/pdffiles1/ojjdp/227729.pdf> [<https://perma.cc/82G2-D3VS>].

52. Erica Zunkel, *18 U.S.C. § 3553(a)'s Undervalued Sentencing Command: Providing a Federal Criminal Defendant with Rehabilitation, Training, and Treatment in "the Most Effective Manner,"* 9 NOTRE DAME J. INT'L & COMP. L. 49 (2019).

53. PATRICIA PURITZ & MARY ANN SCALI, *Civil Rights of Institutionalized Persons Act in Juvenile Correctional Facilities*, in BEYOND THE WALLS: IMPROVING THE CONDITIONS OF CONFINEMENT FOR YOUTH IN CUSTODY 1 (1998).

54. See, e.g., Patrick McCarthy et al., *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, NAT. INST. JUS., Oct. 2016 at 1.

55. *Id.* (stating that the reports “also identified [fifty-seven] lawsuits in [thirty-three] states, the District of Columbia, and Puerto Rico since 1970,” and that the suits “resulted in a court-sanctioned remedy in response to allegations of systemic problems with violence, physical or sexual abuse by facility staff, or excessive use of isolation or physical restraints”) (citations omitted).

56. Complaint, U.S. v. N.Y. et al., 1:10-cv-00858 (N.D.N.Y. July 14, 2010) [hereinafter New York Juveniles Complaint].

57. Settlement Agreement, U.S. v. N.Y. et al., 1:10-cv-00858 (N.D.N.Y. July 14, 2010).

58. New York Juveniles Complaint, *supra* note 56, at 2.

robust policies in place to ensure the health and safety of the juveniles it oversaw.⁵⁹ In practice, however, facility staff consistently used excessive force to gain control of the juveniles.⁶⁰ The staff relied on uncontrolled, unsafe applications of force to overpower and subdue the confined children.⁶¹ Substantial injuries, naturally, followed.⁶² The complaint illustrated this stark reality by highlighting that “[a]nything from sneaking an extra cookie to initiating a fistfight may result in a full prone restraint with handcuffs and ... an alarming number of serious injuries to youth, including concussions, broken or knocked-out teeth, and spinal fractures.”⁶³

As alarming as OCFS’s conduct was, this was just one of the fifty-seven lawsuits brought against thirty-seven states between 1970 and 2010.⁶⁴ Whether it stems from a lack of oversight or a complete disdain for incarcerated juveniles, the systemic maltreatment of such individuals unequivocally exists. One may argue that juveniles confined in state or federal facilities deserve to be there, since ultimately, they are sentenced only if they do something that justifies it. To fully understand the inaccuracy of this proposition, understanding how courts determine what constitutes a “justified sentence” is critical.

B. Determining a Justified Sentence

By creating the U.S. Sentencing Commission and Federal Sentencing Guidelines (Guidelines), the Sentencing Reform Act of 1984 (SRA) fundamentally altered the American criminal sentencing scheme.⁶⁵ Codified in § 3553, the Guidelines, which sought to alleviate widespread sentencing disparity, limited judicial discretion.⁶⁶ Thus, the Guidelines, as applied through § 3553(a), became the statutory reins on federal district

59. *Id.* at 5 (stating “[The facility’s] policy on physical restraint appropriately limits the use of physical restraint to exceptional circumstances when all other pro-active, non-physical behavior management techniques have been tried and failed. Moreover, the policy provides that when the use of physical restraint is necessary, staff shall employ only the minimum amount of physical control necessary to stabilize the youth/situation.”) (internal quotations omitted).

60. *Id.*

61. *Id.* (alleging that “[s]taff at the four facilities consistently used a high degree of force to gain control over nearly every type of situation” and that “staff at the facilities routinely used uncontrolled, unsafe applications of force, departing both from generally accepted standards and OCFS policy” and further, that “anything from sneaking an extra cookie to initiating a fistfight may result in a full prone restraint with handcuffs” and that these policies ultimately “led to an alarming number of serious injuries to youth, including concussions, broken or knocked-out teeth, and spinal fractures”) (citations omitted) (emphasis added).

62. *Id.* at 5-6.

63. *Id.* (internal quotations and citations omitted).

64. *Id.*

65. Zunkel, *supra* note 52, at 51-52.

66. *See id.* at 50-53.

judges tasked with imposing criminal sentences.⁶⁷

To illustrate the statutory scheme surrounding juvenile criminal sentencing, Subpart 1 discusses § 3553(a) broadly to depict the intention behind its enactment and its subsequent effect on criminal sentencing. Next, Subpart 2 outlines the intersection between § 3553(a) and statutory minimum sentencing to further emphasize the rigid bounds district judges are forced to operate within.

1. § 3553 and its Considerations

The driving force behind the SRA was a concern over the unrestrained discretion presiding judges had over criminal sentencing.⁶⁸ Such broad freedom resulted in considerable variances in sentences for nearly identical crimes committed by similarly situated defendants.⁶⁹ In *Burns v. United States*, Justice Marshall explained:

The Sentencing Reform Act of 1984 revolutionized the manner in which district courts sentence persons convicted of federal crimes. Before the Act, Congress was generally content to define broad sentencing ranges, leaving the imposition of sentences within those ranges to the discretion of individual judges, to be exercised on a case-by-case basis. Now, under the ‘guidelines’ system initiated by the Act, district court judges determine sentences based on the various offense-related and offender-related factors identified by the Guidelines of the United States Sentencing Commission. The purpose of this reform was to eliminate the ‘unwarranted disparit[ies] and . . . uncertainty’ associated with indeterminate sentencing.⁷⁰

At this time, legal scholars and judges began raising concerns over whether prison systems could truly achieve the purported aspiration of rehabilitating inmates.⁷¹ As a result, § 3553 broadened the scope of factors to consider when determining the sentence to be imposed.⁷² The Guidelines were mandatory until *United States v. Booker*, where the

67. See *id.* at 52 (stating that the original intent behind the SRA was to “cabin a judge’s discretion.”).

68. *Id.*

69. *Id.*

70. *Burns v. U.S.*, 501 U.S. 129, 132-33 (1991) (citations omitted).

71. See, e.g., *Mistretta v. U.S.*, 488 U.S. 361, 365 (1989) (recognizing the inadequacy of imprisonment for rehabilitation of a defendant); 18 U.S.C. § 3582 (stating that the sentencing judge, when determining whether to impose a sentence of imprisonment, must consider the § 3553 factors and recognize that “imprisonment is not an appropriate means of promoting correction and rehabilitation”).

72. 18 U.S.C. § 3553(a)(2) (stating that the court shall consider “the need for the sentence imposed (1) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (2) to afford adequate deterrence to criminal conduct; (3) to protect the public from further crimes of the defendant; and (4) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner”).

Supreme Court deemed them advisory—requiring the sentencing judge to consider the Guidelines, but affording them the ability to tailor the sentence depending on the unique facts and circumstances of the case.⁷³ It was commonly recognized that the sentencing judge was in the best position to properly weigh the § 3553(a) factors;⁷⁴ however, the mandatory Guidelines prevented the presiding judge from imposing a sentence reflective of the idiosyncratic nature of every trial.⁷⁵ The Court's ruling in *Booker* thus gave sentencing judges the ability to depart slightly from the Guidelines when the facts of a case demanded it.⁷⁶

The way in which a § 3553 analysis is undertaken and the role that the Guidelines play is quite simple. First, the district judge calculates, based on the Guidelines, the appropriate sentencing range for the given offense.⁷⁷ Next, the court considers the parties' arguments in light of the § 3553(a) factors.⁷⁸ The district judge may then either adopt the Guidelines' recommended sentence or deviate from it.⁷⁹ Deviating from the Guidelines, however, requires a significant reason and a written explanation supporting the departure.⁸⁰

A court's ability to depart from the Guidelines necessarily invokes the possibility that § 3553(a)(2)(D)—the consideration of a defendant's need for rehabilitation—could provide actual access to rehabilitation for criminal defendants.⁸¹ But the burden is on the judge to prove the

73. U.S. v. *Booker*, 543 U.S. 220, 245-246 (2005).

74. See, e.g., *Gall v. U.S.*, 552 U.S. 38, 51-52 (2007) (stating that "[t]he sentencing judge is in a superior position to find facts and judge their import under § 3553(a) in the individual case. The judge sees and hears the evidence, makes credibility determinations, has full knowledge of the facts and gains insights not conveyed by the record. The sentencing judge has access to, and greater familiarity with the individual case and the individual defendant before him than the Commission or the appeals court.") (citations omitted).

75. See *Zunkel supra* note 52, at 55-56.

76. *Peugh v. U.S.*, 569 U.S. 530, 536 (2013) (noting that under the resulting scheme left by the *Booker* Court, the district court judge is still required to consult the Guidelines but is not bound by them in the final sentencing determination).

77. Generally, the Guidelines provided by the Commission outline a standardized sentencing range (containing a minimum number of months and a maximum number of months) for any given criminal offense which a judge should use as the model to guide their sentencing decision; see, e.g., *Peugh*, 569 U.S. at 536 (noting that "the Guidelines should be the starting point and the initial benchmark") (citing *Gall*, 552 U.S. at 49).

78. *Peugh*, 569 U.S. at 536.

79. *Id.*

80. *Id.*; *Gall*, 552 U.S. at 50 (noting that a sentencing judge who departs from the established sentencing range is required by the rule to have a significantly justifiable reason for departing from it and must provide an explanation of its decision to do so).

81. See *Sawyer & Wagner, supra* note 40; see also 18 U.S.C. § 3553(a)(2)(D) (stating the consideration of providing "the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner").

necessity of such departure.⁸² As a result, only a minority of appellate courts, when reviewing a district court's decision to impose a non-incarceration-based sentence, actually value the § 3553(a)(2)(D) mandate to consider efforts to rehabilitate the defendant.⁸³ Rather, many appellate courts dismiss the mandate and fail to give it genuine consideration.⁸⁴ As a result, rehabilitative considerations are either ignored by the court,⁸⁵ or worse, an empathetic judge finds themselves helplessly handcuffed to the Guidelines, forced to lay down a sentence blind to the realities of the defendant's trauma.⁸⁶

2. Statutory Minimums

Because the Guidelines are still heavily restrictive, sentencing judges remain bound by legislatively pre-determined punishments for convicted defendants—having limited room to consider the unique situations or personal attributes of defendants.⁸⁷ These mandatory sentences deprive juvenile defendants of full recognition of their individual characteristics and diminished level of culpability.⁸⁸ That lack of individualized consideration offends the very essence of prior Supreme Court rulings addressing juvenile defendants.⁸⁹ In *State v. Lyle*,⁹⁰ the Iowa Supreme Court recognized this exact inconsistency.⁹¹

In *State v. Lyle*, the Iowa Supreme Court declared mandatory minimums unconstitutional as applied to juvenile defendants.⁹² The court found that mandatory minimums for juveniles serve no purpose,

82. *Peugh*, 569 U.S. at 536; *see also* 18 U.S.C. § 3553(c)(2) (stating that “the court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence . . . is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons”).

83. *See id.* at 541.

84. *See, e.g.*, *U.S. v. Friend*, 2 F.4th 369, 386 (2021) (noting that it is critical for appellate courts to hold sentencing judges to the mandates of § 3553(a) and speak up when they fail to do so, and here, the district court passively dismissed the substantial unique factors of the defendant that weighed in favor of a significantly reduced sentence) (Floyd, J. dissenting).

85. *See Zunkel*, *supra* note 52, at 68-69.

86. *See generally Mandatory Minimum Penalties*, U.S. SENT’G COMM. <https://www.ussc.gov/research/quick-facts/mandatory-minimum-penalties> [<https://perma.cc/UFN7-XU5S>].

87. Cara H. Drinan, *The Miller Trilogy and the Persistence of Extreme Juvenile Sentences*, 58 AM. CRIM. L. REV. 1659, 1665 (2021).

88. *Id.* at 1665-66.

89. Lindsey E. Krause, *One Size Does Not Fit All: The Need for a Complete Abolition of Mandatory Minimum Sentences for Juveniles in Response to Roper, Graham, and Miller*, 33 L. & INEQ. 481, 503 (2015).

90. *State v. Lyle*, 854 N.W.2d 378, 380 (Iowa 2014).

91. Drinan, *supra* note 87, at 1679.

92. *Id.*

needlessly impose unwarranted pain and suffering,⁹³ and that the intrinsic nature of childhood creates a diminished level of culpability in all cases. Therefore, the court found that the Iowa Constitution commands an individualized determination of sentencing for each juvenile.⁹⁴ Despite *Lyle*, however, many courts throughout the U.S. have continued to uphold mandatory minimums.⁹⁵

At the time of this Comment's publication, there is pending legislation that would do away with statutory minimums for certain juvenile offenders.⁹⁶ Although the likelihood of the legislation's success is uncertain, eliminating juvenile statutory minimums would go a long way in reforming the failing juvenile sentencing scheme.⁹⁷ Yet, eliminating legislatively imposed minimum sentences is only one small piece of the larger puzzle. The criminal justice system still fails to consider another, more significant piece: the profound impact that ACEs have on juveniles.

C. Adverse Childhood Experiences

Over two-thirds of children experience traumatizing events before their eighteenth birthday.⁹⁸ A direct link exists between these traumatizing experiences and the likelihood of future criminal conduct.⁹⁹ This Part depicts the harsh realities of ACEs by first, in Subpart 1, discussing what ACEs are and the likely results of repeated exposure to them. Then, Subpart 2 discusses the tested trauma-based treatments that show promise in combatting the effects of ACEs.

93. *Lyle*, 854 N.W.2d at 400 (stating that “[a]fter the juvenile’s transient impetuosity ebbs and the juvenile matures and reforms, the incapacitation objective can no longer seriously be served, and the statutorily mandated delay of parole becomes nothing more than the purposeless and needless imposition of pain and suffering”) (citing *Coker v. Ga.*, 433 U.S. 584, 592) (internal quotations omitted).

94. *Id.*

95. Drinan, *supra* note 87, at 1679.

96. See Sara’s Law and the Preventing Unfair Sentencing Act of 2023, H.R. 4724, 108th Cong. (2023).

97. See generally *infra* note 101.

98. See Vincent J Felitti, et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults, The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. PREVENTATIVE MED. 245 (1995) (a study of over thirteen-thousand participants where over 66% of participants had experienced at least one traumatic event during childhood); *Adverse Childhood Experiences (ACEs) Prevention Resource for Action: A Compilation of the Best Available Evidence*, CTRS. FOR DISEASE CONTROL & PREVENTION, NAT’L CTR. FOR INJURY PREVENTION & CONTROL, DIV. OF VIOLENCE PREVENTION (2019) (“About 64% of U.S. adults reported they had experienced at least one type of ACE before age 18, and nearly 1 in 6 (17.3%) reported they had experienced four or more types of ACEs.”); FUTURES WITHOUT VIOLENCE, <https://www.futureswithoutviolence.org/go/children-domestic-violence/> (two out of three children, or 15.5 million, live in homes where domestic violence occurs).

99. CTRS. FOR DISEASE CONTROL & PREVENTION, NAT’L CTR. FOR INJURY PREVENTION & CONTROL, DIV. OF VIOLENCE PREVENTION, *supra* note 98.

1. ACEs: Description and Effects

Research has been conducted on the negative effects that trauma has on children.¹⁰⁰ To put a name to these traumatic childhood experiences, Vincent Felitti, a doctor of internal medicine specializing in childhood trauma, coined the term ACEs.¹⁰¹ ACEs represent the individualized or repeated exposure to broadly identified categories of highly stressful and traumatic events or circumstances—including abuse, neglect, or situational hardship.¹⁰² Exposure to traumatic events tends to negatively impact a child’s life long after the initial exposure.¹⁰³ For the sake of this Comment, these categories of abuse, neglect, or situational hardship will be referred to collectively as “trauma” experienced during childhood.¹⁰⁴

Studies reveal that exposure to traumatic events can alter an individual’s brain chemistry.¹⁰⁵ Such exposure has significant impacts on the neurological and social development of children, which often leads to emotional disorders,¹⁰⁶ physical health problems,¹⁰⁷ and an increased

100. See, e.g., Erica M. Webster, *The Impact of Adverse Childhood Experiences on Health and Development in Young Children, Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults*, 9 GLOB. PEDIATRIC HEALTH 1 (2022); Karen Hughes, et al., *The effect of multiple adverse childhood experiences on health: a systematic review and meta-analysis*, 2 LANCET PUB. HEALTH e356 (2017); Mary Boullier & Mitch Blair, *Adverse childhood experiences*, 28 PEDIATRICS & CHILD HEALTH 132 (2018).

101. See generally Felitti, *supra* note 98.

102. *Id.* at 245 (the seven broad categories of ACEs studied were “psychological, physical, or sexual abuse; violence against mother; or living with household members who were substance abusers, mentally ill or suicidal, or ever imprisoned”); *What are the 10 Adverse Childhood Experiences*, INTEGRATIVE LIFE CTR. (Dec. 14, 2021), <https://integrativelifecenter.com/10-adverse-childhood-experiences/> [<https://perma.cc/9K4P-DV5M>] (identifying and defining the ten categories of ACEs as “physical abuse, sexual abuse, verbal abuse, physical neglect, emotional neglect, mental illness within the household, substance abuse or addiction within the household, imprisonment of a guardian, witnessing abuse between parents, and losing a parent to separation, divorce, or death”).

103. See generally Patrick M. Cobb, *The Effects of Adverse Childhood Experiences on the Future of Our Youth*, 11 CHILD & FAM. L. J. 31 (2023).

104. While a list of what constitutes an adverse childhood experience has been provided in this Comment and is generally the commonly accepted list of ACEs amongst psychiatric and psychological scholars and professionals, this Comment in no way purports this to be an exhaustive list of childhood traumatic experiences. The author recognizes and greatly appreciates the fact that many other events, facts, circumstances, words, and socioeconomic factors can, and often do, have pernicious effects on the child that experiences them. Thus, the list of commonly understood categories of ACEs has been provided to reflect the literature in this space and does not minimize the import of any unmentioned traumas.

105. See Charles B. Nemeroff, *Neurobiological Consequences of Childhood Trauma*, 65 J. CLINICAL PSYCHIATRY 18 (2004).

106. See Amanda L. Elmore & Elizabeth Crouch, *The Association of Adverse Childhood Experiences with Anxiety and Depression for Children and Youth, 8 to 17 Years of Age*, ACAD. PEDIATRICS (2020) (finding that “all ACE measures were associated with significantly higher odds of both anxiety and depression. Children exposed to four or more ACEs had higher odds of anxiety and depression than children with exposure to less than four ACEs”) (internal references omitted).

107. See generally *Adverse Childhood Experiences (ACEs) Preventing early trauma to improve*

likelihood of future criminality.¹⁰⁸ Among the host of negative consequences of childhood trauma is a direct correlation with adolescent violence.¹⁰⁹

The statistical correlation between ACEs and negative life outcomes is unequivocal, and the picture only gets worse as the number of ACEs an individual experiences increases.¹¹⁰ Studies generally differentiate based on the number of ACEs experienced by the individual. Typically, experiencing four or more ACEs places an individual at particular risk of substantial negative outcomes.¹¹¹ Nevertheless, the studies are abundantly clear: as the number of traumatic experiences during childhood increases, the severity and likelihood of negative life outcomes grows substantially.¹¹² Individuals who experience four or more ACEs are: (1) over four times more likely to have chronic depression; (2) over five times more likely to engage in illicit drug use; (3) nearly six times more likely to engage in problematic drinking; (4) seven times more likely to go to prison; (5) fifteen times more likely to attempt suicide; and (6) thirteen times more likely to abuse opiates.¹¹³ As a result, it cannot come as a shock that over 78% of the U.S. prison population has experienced four or more ACEs.¹¹⁴ The problem is apparent. And so is the challenge: combatting the predetermined destination of criminality through

adult health, CDC Vital signs (<https://www.cdc.gov/vitalsigns/aces/pdf/vs-1105-aces-H.pdf>) (providing an infographic which explains ACEs and the common effects associated with exposure to one or more traumatic events throughout a child's developmental years).

108. See generally James A. Reavis et al., *Adverse Childhood Experiences and Adult Criminality: How Long Must We Live before We Possess Our Own Lives?*, 17 PERMANENTE J. 44 (2013) (concluding that criminal behavior is one of many negative outcomes associated with elevated scores on ACE questionnaires).

109. See Naomi N. Duke, et al., *Adolescent Violence Perpetration: Associations With Multiple Types of Adverse Childhood Experiences*, 125 PEDIATRICS e778 (2010) (finding that “[e]ach type of adverse childhood experience was significantly associated with adolescent interpersonal violence perpetration (delinquency, bullying, physical fighting, dating violence, weapon-carrying on school property) and self-directed violence (self-mutilatory behavior, suicidal ideation, and suicide attempt). For each additional type of adverse event reported by youth, the risk of violence perpetration increased 35% to 144%.”).

110. See *How Common Are Adverse Childhood Experiences (ACEs)?*, COMPASSION PRISON PROJECT, <https://compassionprisonproject.org/childhood-trauma-statistics/> [<https://perma.cc/6GVQ-H2M4>].

111. See, e.g., E.C. Briggs, et al., *Why Two Can Be Greater than Four or More: What Mental Health Providers Should Know*, NAT'L CTR. FOR CHILD TRAUMATIC STRESS (2021), <https://www.nctsn.org/sites/default/files/resources/report/data-at-a-glance-synergy-why-two-can-be-greater-than-four-or-more.pdf> (“A cumulative score of 4 or more (4+) Adverse Childhood Experiences (ACEs), on many ACE screeners, has become a de facto threshold for identifying elevated risk for a wide range of negative medical, mental health, and social outcomes.”).

112. See Baglivio, *supra* note 44, at 3-4.

113. *Id.* The increased risk of criminal conduct as a direct result of childhood trauma is contemplated by each statistic noted in the preceding sentence.

114. *Id.*

therapeutic intervention and rehabilitation.¹¹⁵

2. Evidence-Based Intervention and Its Efficacy

Trauma-focused cognitive behavioral therapy (TF-CBT) is an evidence-based form of treatment aimed at healing traumatized children and adults.¹¹⁶ Studies suggest the use of TF-CBT may interrupt the pathway from childhood trauma to adult criminality by targeting the emotional and behavioral issues directly associated with ACEs.¹¹⁷ Having originated as a method of addressing post-traumatic stress disorder (PTSD), TF-CBT has adapted as a means of addressing various issues stemming from abuse and other traumas.¹¹⁸ The treatment helps address the negative effects of trauma by facilitating the healing process necessary to overcome the harmful thoughts and beliefs associated with them.¹¹⁹ TF-CBT utilizes elements of multiple practices recognized by the mental health field and focuses on helping children process traumatic memories and develop necessary coping strategies and interpersonal skills.¹²⁰

A TF-CBT program typically lasts twelve to sixteen weeks.¹²¹ During the course of the treatment, patients engage in various forms and degrees of psychoeducation, gradual exposure therapy, behavior modeling, coping strategies, and body safety skills training.¹²² TF-CBT treatment plans are, importantly, tailored to the particular needs of each child.¹²³ TF-CBT is a promising method of rehabilitation, and studies show that it is successful in combatting the various negative consequences of ACEs

115. See Eduardo R. Ferrer, *Transformation through Accommodation: Reforming Juvenile Justice by Recognizing and Responding to Trauma*, 53 AM. CRIM. L. REV. 549, 590 (2016) (arguing for “community-based therapeutic interventions that are proven to reduce recidivism, while avoiding ineffective or counterproductive sanction”).

116. *Trauma-Focused Cognitive Behavioral Therapy: A Primer for Child Welfare Professionals*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/pubPDFs/trauma.pdf> (“Trauma-focused cognitive behavioral therapy (TF-CBT) is an evidence-based treatment approach shown to help children, adolescents, and their parents (or other caregivers) overcome trauma-related difficulties, including child maltreatment” and “helps children address distorted or upsetting beliefs and attributions and learn skills to help them cope with ordinary life stressors” further “help[ing] parents who were not abusive to cope effectively with their own emotional distress and develop skills that support their children.”).

117. Michael A. Ramirez de Arellano et al., *Trauma-Focused Cognitive-Behavioral Therapy: Assessing the Evidence*, 65 PSYCHIATRIC SERVS. 591 (2014).

118. *Id.*

119. McCarthy, *supra* note 54, at 2.

120. *Id.*

121. Arellano, *supra* note 117, at 3.

122. *Id.*

123. *Id.*

in children.¹²⁴

Although numerous studies illustrate a strong likelihood of success for treating traumatized children with TF-CBT,¹²⁵ more research is necessary to establish a determinative link between the two.¹²⁶ Studies outside the context of PTSD are limited.¹²⁷ With PTSD, however, TF-CBT has shown its strongest degree of effectiveness.¹²⁸ Often, people who suffer from PTSD also suffer from Major Depressive Disorder (MDD) and other anxiety-related mental health disorders.¹²⁹ Approximately half of individuals diagnosed with PTSD are also diagnosed with MDD.¹³⁰ Direct evidence supports that TF-CBT can successfully treat the co-morbid symptoms of PTSD, including anxiety and depression.¹³¹ Further, PTSD is strongly correlated with, and naturally stems from, ACEs.¹³² Thus, TF-CBT can be intuitively seen as a promising form of treatment for ACEs and other underlying co-morbid disorders.¹³³

Creating a system of trauma-focused care is possible in today's correctional facilities.¹³⁴ However, prisons are often reluctant to take on such a large burden, and their limited resources make this concept nearly impossible to implement.¹³⁵ Thus, utilizing alternative sentencing models is imperative; without intervention at the outset, incarcerated individuals are destined to a life behind bars.¹³⁶ The Sentencing Project has identified six alternative sentencing options that have proven effective in

124. *Id.* at 11-12 (“[T]he results indicate a high level of evidence for TF-CBT for many types of traumas and some symptoms.”).

125. *See generally id.*; Theo Lorenc et al., *Interventions to support people exposed to adverse childhood experiences: systematic review of systematic reviews*, 20 BMC PUB. HEALTH 1 (2020) (finding that the success rates of TF-CBT with people exposed to ACEs is considered equivocal at this stage of the industry research due to a lack of extensive studies).

126. *See id.* at 8.

127. Arnon Bentovim et al., *Therapeutic interventions to reduce the harmful effects of Adverse Childhood Experiences – ACE’s – A modular trans- diagnostic, trauma-informed approach: An introductory guide for practitioners and managers*, CHILD & FAM. TRAINING, 6 (2018).

128. *Id.*

129. Janine D. Flory & Rachel Yehuda, *Comorbidity between post-traumatic stress disorder and major depressive disorder: alternative explanations and treatment considerations*, 17 DIALOGUES IN CLINICAL NEUROSCIENCE 141 (2015).

130. *Id.* at 141.

131. Bentovim, *supra* note 127, at 6.

132. Loni Philip Tabb, et al., *Examining Associations between Adverse Childhood Experiences and Posttraumatic Stress Disorder Symptoms among Young Survivors of Urban Violence*, 99 J. URB. HEALTH 669 (2022) (confirming “that young survivors of violence are at high risk of both childhood adversity and PTSD”).

133. *Id.*; *see generally* Lorenc, *supra* note 125.

134. *See generally* Niki A. Miller & Lisa M. Najavits, *Creating trauma-informed correctional care: a balance of goals and environment*. 3 EUR. J. PSYCHOTRAUMATOL, 1-3 (2012).

135. *Id.* at 6.

136. *See* Delinquency Prevention, *supra* note 5.

combatting juvenile recidivism.¹³⁷ These alternative options do not specify the use of TF-CBT, but instead, they create situations where juveniles can seek similar forms of trauma-informed care outside of the prison environment.¹³⁸

Roca, Inc. (Roca), a Massachusetts-based non-profit dedicated to juvenile rehabilitation, has created and implemented this very model.¹³⁹ Roca's model keeps juvenile offenders out of confinement and places them in a safe environment with access to mentors, cognitive behavioral therapy, and various other forms of rehabilitative care.¹⁴⁰ Roca's alternative model to juvenile sentencing is highly effective.¹⁴¹ Between 2018 and 2020, only 29% of Roca's participants recidivated within three years of beginning the program.¹⁴² This is far better than the reincarceration rates of 52% for similar adults released from state jails and 56% from prisons.¹⁴³ Further, for the 80% of Roca participants that had committed violent crimes, only 20% of them were arrested for a violent crime within three years of beginning the program.¹⁴⁴ The Roca model has been used outside of Massachusetts and experienced similar results.¹⁴⁵ This model demonstrates that taking intentional rehabilitative steps to target the cause of criminal behavior most effectively reduces recidivism rates among juvenile offenders—not punishment.¹⁴⁶

D. The Sentencing Regime and Juvenile Defendants

Balancing the need to punish and prevent crime with the unique, and

137. See generally *Effective Alternatives to Youth Incarceration*, THE SENT'G. PROJECT (June 2023), <https://www.sentencingproject.org/app/uploads/2023/06/Effective-Alternatives-to-Youth-Incarceration.pdf>.

138. *Id.* at 12.

139. *Id.* at 17-18; See ROCA, INC. (“Roca’s mission is to be a relentless force in disrupting incarceration, poverty, and racism by engaging the young adults, police, and systems at the center of urban violence in relationships to address trauma, find hope, and drive change.”), <https://rocainc.org/> [<https://perma.cc/BYW2-JXD6>].

140. THE SENT'G. PROJECT, *supra* note 137, at 17-18 (explaining that Roca, Inc., (Roca) “intervenes on its own initiative in the lives of youth living in violence-torn neighborhoods who are at extreme risk for future incarceration” and that “through a four phase intervention that can last up to four years, Roca youth workers go into the community and engage participants, train them using Roca’s tailored cognitive behavioral therapy treatment model, and connect them with education, employment, and other relevant services”).

141. *Id.*

142. *Id.* at 18.

143. *Id.*

144. *Id.*

145. *Id.* (“In Baltimore, of the 352 young people Roca served in 2022, 98% had a history of prior arrests, but only 28% were arrested during their first two years in the Roca program; and 95% of participants were not incarcerated for a new offense during their first two years.”).

146. *Id.* at 18.

often devastating, circumstances of juvenile defendants is a heavy burden for the sentencing judge. The previous two Parts explored the impacts ACEs have on children and the tools available to trial judges to consider them. This Part illustrates the historical development and current state of the juvenile criminal sentencing scheme in the U.S. Subpart 1 discusses juvenile sentencing jurisprudence laid down by the U.S. Supreme Court. Subpart 2 illustrates how the lower courts have responded to the most recent rulings on juvenile sentencing.

1. The Supreme Court's Recognition of Juveniles' Reduced Culpability

Over the last two decades, the Supreme Court has wrestled with issues regarding juveniles' culpability and the justifications for punishments imposed upon them.¹⁴⁷ Throughout these cases, the Supreme Court recognized that juveniles have a diminished moral culpability, a higher likelihood for change, and are more vulnerable to external factors, therefore requiring consideration of all relevant facts and circumstances prior to handing down a severe punishment.¹⁴⁸

Roper v. Simmons,¹⁴⁹ the second case in which the Supreme Court addressed the constitutionality of the death penalty for juvenile defendants,¹⁵⁰ was the first in the series of Supreme Court cases concerning juvenile sentencing reform. The Court recognized that juveniles have a diminished level of culpability because they tend to lack maturity in comparison to adults, they have an underdeveloped sense of morality, and they are more vulnerable to outside pressures.¹⁵¹ Thus, in recognizing juveniles' lesser culpability, the Court held that the Eighth Amendment barred the death penalty for defendants under the age of eighteen.¹⁵² The Court ultimately determined that capital punishment was reserved for offenders who commit the most serious crimes and have the highest level of culpability.¹⁵³

Five years after *Roper*, in *Graham v. Florida*, the Court addressed

147. Sparks v. U.S., 2018 U.S. Dist. LEXIS 46485, *9-10 (S.D. Tex. 2023).

148. See generally *Roper v. Simmons*, 543 U.S. 551 (2005) (recognizing that juveniles have diminished moral culpability compared to adults); *Graham v. Fla.*, 560 U.S. 48 (2010) (stating that juveniles are more vulnerable to external factors such as social pressures and the effects of their environment); *Miller v. Ala.*, 567 U.S. 460 (2012) (claiming that the unique factors that distinguish juveniles from adults must be carefully weighed in the sentencing determination).

149. *Roper*, 543 U.S. at 578 (2005).

150. *Id.* at 555-56 (noting that the Court had only addressed this issue one time prior in *Stan. v. Ky.*, 492 U.S. 361 (1989), where a split court rejected the notion that the constitution barred the death sentence for juvenile defendants).

151. *Id.* at 569-71.

152. *Id.* at 569.

153. *Id.* at 568.

whether a juvenile could be imprisoned for life, without the possibility of parole, for crimes other than murder.¹⁵⁴ The *Graham* Court discussed Eighth Amendment jurisprudence and the considerations for determining whether a sentence is cruel and unusual,¹⁵⁵ including the nature of the offense and the characteristics of the offender.¹⁵⁶ Just as in *Roper*, the *Graham* Court recognized that the age of the offender necessarily affects the proportionality analysis for determining whether the imposed sentence is justified, and therefore not cruel and unusual.¹⁵⁷ A sentence of life in prison without the chance of parole is effectively a judicial finding that rehabilitation is impossible, which directly contradicts the penological goals of the criminal justice system.¹⁵⁸ Such a sentence, for juveniles, neglects the commonly understood notion that juveniles have a greater capacity for change, and deprives juveniles of the opportunity for rehabilitation.¹⁵⁹ Therefore, the Court found that imposing a sentence of life without parole on a convicted juvenile, for a crime other than murder, could not be justified—placing a categorical ban on such sentences.¹⁶⁰

In the final case of the series, *Miller v. Alabama*, the Court attacked the constitutionality of mandatory life without parole sentences for juveniles convicted of homicide.¹⁶¹ The Court held that a mandatory life without parole sentence for a juvenile convicted of homicide violates the Eighth Amendment because the mandatory nature of such sentences deprives the judge of their ability to exercise discretion and impose a less severe sentence in light of certain mitigating circumstances.¹⁶² Failure by the courts to consider the nature of the offense in light of the particular characteristics and circumstances of the defendant falls short of an adequate analysis;¹⁶³ such analysis, in the Court's view, deprives offenders of their individual human characteristics by treating them as no more than a single member of a faceless class of individuals.¹⁶⁴ The Court in *Miller* held that stripping judges of the ability to consider the human aspects and individualized circumstances of offenders violates the constitutional requirement of imposing graduated and proportionate punishments.¹⁶⁵

154. See *Graham*, 560 U.S. at 56 (2010).

155. *Id.* at 60.

156. *Id.*

157. See generally *id.*

158. *Id.* at 73-74.

159. *Id.* at 74.

160. See *id.* at 82.

161. See generally *Miller v. Ala.*, 567 U.S. 460 (2012).

162. *Id.* at 465.

163. See *Woodson v. N.C.*, 428 U.S. 280, 303 (1976).

164. *Id.* at 304.

165. *Miller*, 567 U.S. at 469.

The holdings above represent a gradual shift that now recognizes the intrinsic differences between juveniles and adults.¹⁶⁶ For the next step in the analysis—looking at how the legal system’s view of juvenile culpability has shifted over time—it is critical to see how lower federal courts have applied the Court’s framework under circumstances where the juvenile defendant suffered harm at an early age.

2. Post-*Miller* Sentencing and Childhood Trauma in the Lower Courts

Despite the material shift in the Supreme Court’s attitude toward juvenile actors and sentencing, lower courts have refused to extend the holding of *Miller* any further than a narrow interpretation of the language.¹⁶⁷ The lower courts recognize the categorical ban set forth by the *Miller* Court, but only to the extent the ban narrowly applied to mandatory life sentences without parole for juveniles.¹⁶⁸ Thus, the lower courts uniformly declined to apply *Miller*’s categorical ban to non-mandatory life sentences laid down after a discretionary review.¹⁶⁹ Although the courts refused to extend the ruling of *Miller*, they conducted such discretionary reviews by considering the likelihood of rehabilitation and allowing that consideration to weigh in favor of less severe sentences for juvenile defendants.¹⁷⁰ Yet, in *United States v. Jefferson*, after conceding that the defendant had a high likelihood of successful rehabilitation and had already been an “extraordinary success” during their sixteen-year prison term prior to the *Miller* ruling,¹⁷¹ the Eighth Circuit affirmed the fifty-year prison sentence for crimes the defendant committed at the age of sixteen.¹⁷² *Jefferson* demonstrated that the mere likelihood of rehabilitation—or even actual and apparent rehabilitation—was insufficient to warrant a lesser sentence, or a merciful reduction thereof, for someone who committed serious crimes in their youth.

Two years after *Jefferson*, in *Sparks v. United States*,¹⁷³ a Texas district court reheard a juvenile offender’s case, seeking to resentence him in light of the *Miller* decision.¹⁷⁴ The Court imposed a reduced sentence of thirty-five years in prison.¹⁷⁵ Tony Sparks, at the age of sixteen, played a

166. See generally *id.*

167. See generally *U.S. v. Jefferson*, 816 F.3d 1016 (2016).

168. *Id.* at 1019.

169. *Id.*

170. *Id.* at 1020-21.

171. *Id.*

172. See generally *id.*

173. *Sparks v. U.S.*, 2018 U.S. Dist. LEXIS 46485 (S.D. Tex. 2023).

174. See *id.* at *2.

175. *Id.* at *41.

significant role in the theft of a car and the kidnapping of a couple in Texas.¹⁷⁶ Prior to the murder of both victims, Sparks requested to be dropped off at his home as he no longer wanted to participate in the ongoing crime.¹⁷⁷ This fact, along with Sparks's age and traumatic home life, involving repeated molestation, was considered under a § 3553 analysis to determine proportionality of the sentence to the crime and character of the defendant.¹⁷⁸ The court further considered Sparks's likelihood of rehabilitation prior to the initial eight years of his prison sentence,¹⁷⁹ along with the eight years following his incarceration.¹⁸⁰ After consideration of all facts and circumstances of the crime and characteristics of Sparks's home environment during his early years, the court determined that a 420-month sentence was proportionate and sufficiently justified as a means of instilling a sense of respect for the law in Sparks and deterring future criminality.¹⁸¹

In 2021, the Fourth Circuit refused to deviate from the path previously carved by its sister circuits following *Miller* when it affirmed a fifty-two-year resentencing decision for the criminal conduct of a fifteen-year-old boy.¹⁸² Philip Friend participated in two carjackings and vicious beatings, that later resulted in death, with his two older brothers (both of whom were adults at the time of the crimes).¹⁸³ Philip had a challenging childhood.¹⁸⁴ Following his father's death to cancer and his mother's

176. *See id.* at *2-8.

177. *Id.* at *6-7.

178. *Id.* at *15-22.

179. *Id.* at *29 (stating that “if this court considers the possibility of rehabilitation for Sparks at the time of Sparks's original sentencing, this factor weighs in favor of a sentence other than life, because Sparks's crime alone does not indicate irreparable corruption. The fact that Sparks backed out of the crime before the murders indicates, at a minimum, a window of possible rehabilitation. Sparks, at the time of his conviction, was at least as amenable to rehabilitation as any youth—and certainly as amenable as the youths in *Miller*.”).

180. *Id.* at *29-30 (In Spark's first eight years of prison, from 17-25 years old, he was heavily involved in gangs and committed numerous crimes within the prison system. “Sparks was disciplined for multiple violations associated with either producing or consuming alcohol” and “in 2004, Sparks participated in a riot involving approximately 600 inmates.” Further, “in January 2007, Sparks was punished for assaulting another inmate, causing seven puncture wounds and requiring the inmate to be transferred to a local hospital.” The list continues. However, following the eight-year period of violent criminal behavior within prison, over the subsequent eight years of his sentence prior to resentencing, “Sparks's prison record [was] free of violent conduct.”).

181. *Id.* at *39-40.

182. *See U.S. v. Friend*, 2 F.4th 369, 386 (2021) (The lower court first sentenced Philip Friend to sixty-five years. Following the *Miller* decision, which retroactively applies to juvenile sentences, the sentence was vacated and remanded for resentencing where the district court weighed various external factors and passed down a new sentence of fifty-two years. The Fourth Circuit affirmed this ruling, finding that the lower court did not abuse its discretion in its balancing of factors to determine a sentence graduated and proportionate to the offense.).

183. *Id.*

184. *Id.* at 374.

ongoing mental health issues,¹⁸⁵ Philip was regularly beaten, choked, and verbally abused by his two older brothers.¹⁸⁶ The same two older brothers that violently beat Philip were the ones leading the charge in the crimes Philip participated in.¹⁸⁷ The court recognized that Philip was likely unable to extract himself from the violent grip of his family and that, due to his young age, he was vulnerable to their influence.¹⁸⁸ Yet, these facts only weighed enough to justify a thirteen-year sentence reduction.¹⁸⁹ The district court's exhaustive review of all § 3553(a) factors left Judge Henry Floyd "troubled by the length of Philip's sentence and the majority's decision to bless it as substantively reasonable."¹⁹⁰ At best, the court performed only a mere recitation of its duty to consider Philip's individualized circumstances and, in Judge Floyd's view, the court failed to hand down a substantively reasonable sentence based on consideration of Philip's unique circumstances.¹⁹¹

But would "adequate weight and consideration" of those facts have actually changed anything? Special consideration to this question is given in the following Section.

III. DISCUSSION

A criminal justice system that ensures juvenile actors who have suffered numerous ACEs receive therapeutic intervention is essential for preventing reincarceration of those individuals.¹⁹² To facilitate a systematic shift toward rehabilitation rather than retribution, courts should be obligated to consider intensive rehabilitation programs in place of incarceration for juvenile defendants who satisfy the three-pronged "Rehabilitation Receptivity Test" (RRT) outlined in this Section.¹⁹³ This Comment posits that the best method for incorporating the RRT into the current legal system would be through congressional enactment or amendment to § 3553.¹⁹⁴ Alternatively, courts should embrace the sympathetic posture of Judge Floyd's dissenting opinion in *United States v. Friend* by adopting the RRT as an application of § 3553(a)(1). This alternative approach would afford substantially more weight to the reality of childhood trauma's profound effects on the development of children

185. *Id.*

186. *Id.*

187. *See id.*

188. *Id.* at 384-87 (Floyd, J. dissenting).

189. *See id.*

190. *Id.* at 385-86.

191. *Id.* at 385.

192. *See generally* Ferrer, *supra* note 115, at 589-90.

193. *See infra* Section III.C.1.

194. *See infra* Section III.B.2.

and would provide sentencing judges with an adequate justification for departing from the Guidelines.

Part A of this Section outlines how the punishment-focused means of addressing criminality is fundamentally incompatible with the rehabilitative command of § 3553. Further, Part A demonstrates that the U.S. criminal justice system is currently incapable of providing traumatized juvenile actors with the rehabilitative environment necessary to prevent future criminality. Then, Part B sets forth the RRT which seeks to alleviate this disparity by targeting a subset of juvenile actors most likely to be receptive to rehabilitative efforts. Next, Part C illustrates how existing juvenile sentencing jurisprudence indicates a receptiveness toward further reform. Lastly, Part D discusses other pressing considerations and constraints rehabilitation-focused scholars must consider.

A. Incompatibility of the Current System with the Rehabilitative Needs of Juvenile Defendants Who Have Suffered ACEs

A system that purports to treat individuals equally before the law, while still allowing judges to consider unique facts when determining the fate of the individuals before them, appears to be a facially fair system.¹⁹⁵ However, judges are not simply allowed to consider the unique circumstances of the defendant; judges are *required* to consider them. The factors that judges account for include the age of the individual when they committed the crime, the traumatic experiences they faced during their upbringing, and their potential for rehabilitation.¹⁹⁶ Yet, despite this duty to consider the individual facts and circumstances of each criminal actor,¹⁹⁷ the consideration often does no more than guide the determination of how long the individual will be incarcerated.¹⁹⁸

Rehabilitation remains one of the four primary considerations of § 3553.¹⁹⁹ Rehabilitation has been a primary goal of the U.S. criminal justice system for nearly 240 years.²⁰⁰ It is a valid expectation that a system should achieve at least a modicum of success over such an expansive period. Yet, the recidivism rates of juvenile actors today

195. See Sebastian W. Johnson, *The Normativity and Rule of Law: A Kantian Conception*, 28, (2022) (B.A. thesis, Ohio University) (OhioLINK) (stating that “to protect and establish each person’s rights, a legal system constituted by a set of reciprocally binding rules is required”).

196. See, e.g., *U.S. v. Friend*, 2 F.4th 369, 386 (2021); Drinan, *supra* note 87.

197. 18 U.S.C. § 3553(a)(1).

198. See, e.g., *Roper v. Simmons*, 543 U.S. 552 (2005); *Graham v. Fla.*, 560 U.S. 48 (2010); *Miller v. Ala.*, 567 U.S. 465 (2012).

199. 18 U.S.C. § 3553(a)(2)(D).

200. See *supra* note 18 and accompanying text.

demonstrate a near guarantee of reincarceration.²⁰¹ This demonstrates that the federal juvenile sentencing scheme is not currently facilitated in the “most effective manner.”²⁰² Perhaps the scheme is not effective at all.

The heart of the issue lies in the fact that imprisonment, America’s primary means of correcting criminal behavior,²⁰³ is fundamentally at odds with the ultimate result the system seeks to achieve.²⁰⁴ Under the language of § 3553, rehabilitation is an individual, yet equal, consideration for the sentencing judge in determining the sentence to be imposed.²⁰⁵ However, courts and lawmakers alike have recognized that imprisonment is incapable of achieving the goal of rehabilitation.²⁰⁶ Courts seek to relieve this tension by utilizing the command of § 3553 to lessen the length of prison terms, but in the end they fail to adequately facilitate rehabilitation because imprisonment is nevertheless the chosen punishment.²⁰⁷ In other words, a judge is mandated under § 3553 to impose a sentence that equally considers: (1) the seriousness of the offense;²⁰⁸ (2) the need to deter criminal conduct;²⁰⁹ (3) the need to protect the public;²¹⁰ and (4) *the desire to provide adequate rehabilitation to the defendant.*²¹¹ The judge determines the length of the prison sentence, most often within the range provided by the Guidelines,²¹² according to a weighty consideration of the aforementioned interests.²¹³ But, as argued previously, imprisonment is incapable of effectuating any form of rehabilitation.²¹⁴ Thus, the § 3553 analysis renders its fourth prong a nullity by justifying a punishment, after considering the

201. See Arnold & Smith, Attorneys at Law, *supra* note 6.

202. § 3553(a)(2)(D) (noting that one of the four considerations of a sentencing judge is to impose a punishment that “provide[s] the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner”).

203. See generally Sawyer & Wagner, *supra* note 40.

204. See *supra* Section II.A.

205. See, e.g., Zunkel, *supra* note 52, at 56 (noting that “Congress instead granted the principle of rehabilitation equal status with three other purposes of punishment: retribution, general deterrence, and specific deterrence.”).

206. Compassion Project, *supra* note 110.

207. See Seigle *supra* note 5 (finding that, while most jurisdictions do not track juvenile recidivism rates, states that do report rearrest rates as high as 75% for incarcerated juveniles within three years of release).

208. 18 U.S.C. § 3553(a)(2)(A).

209. 18 U.S.C. § 3553(a)(2)(B).

210. 18 U.S.C. § 3553(a)(2)(C).

211. 18 U.S.C. § 3553(a)(2)(D).

212. See *supra* Section II.B.

213. See, e.g., U.S. v. Jefferson, 816 F.3d 1016, 1021 (2016) (noting that “the district court has wide latitude to weigh the § 3553(a) factors and assign some factors greater weight than others” (citing U.S. v. Thibeaux, 784 F.3d 1221, 1227 (8th Cir. 2015)); see also U.S. v. Boneshirt, 662 F.3d 509, 519-20 (8th Cir. 2011) (affirming a 576-month sentence for a juvenile homicide offender after careful consideration of the § 3553 factors).

214. See 18 U.S.C. § 3582, *supra* note 71.

defendant's rehabilitative needs, that Congress has determined to be ineffective at rehabilitating a criminal.²¹⁵

The tension lies in the fact that a § 3553 analysis either results in a non-incarceration sentence—which embraces the rehabilitative needs of a defendant—or it renders the rehabilitative needs less important than the other factors, which is fundamentally at odds with the text of the statute. For example, courts may argue that imposing a prison sentence on a juvenile defendant after an equal weighing of all § 3553(a) factors would not render the fourth prong futile because it would still be afforded equal weight; it just did not carry the day in the analysis compared to the other three prongs. However, this is exactly the point. Even if afforded equal weight, the rehabilitative needs of a felonious juvenile defendant will always lose out to the other three prongs that will almost always cut against the defendant. The text of § 3553 leaves no room for felonious juvenile defendants who have committed serious crimes to avoid imprisonment, regardless of how potentially receptive to rehabilitation they may be. In cases where a severe criminal act was committed by a juvenile defendant who has suffered severe trauma and has been determined to be highly malleable and amenable to rehabilitative efforts, the three other prongs still cut against a non-carceral sentence. It is only in the least severe of crimes where prongs one, two, and three may not tip the scale away from a rehabilitation-focused sentence.

This issue is further compounded for juvenile actors who have suffered significant trauma. These children have been repeatedly exposed to trauma during their developmental years and are arguably most in need of rehabilitation. Not only are traumatized juveniles likely to be considered the most in need of rehabilitative efforts, but juveniles as a class have already been recognized by the legal system as being more receptive to such efforts and as having a lessened degree of culpability. Thus, it only makes sense that a criminal justice system concerned with rehabilitation would focus its efforts on the class of individuals who need it most and who are the most likely to benefit from it. Yet, the U.S. federal criminal sentencing scheme fails in precisely this regard.

Regardless of how much weight is afforded to the unique circumstances faced by a juvenile defendant, the final determination usually results in years of confinement and exposure to the horrors of U.S. penitentiaries. After being subjected to years of confinement and the various traumas associated with incarceration, the likelihood of true rehabilitation for juveniles is virtually obliterated.²¹⁶ There is an irrefutable correlation between childhood trauma and incarceration.²¹⁷

215. *Id.*

216. Seigle, *supra* note 5 and accompanying text.

217. *See supra* Section II.A.2.

Research demonstrates—and the judicial system has accepted—that incarceration fails to produce any restorative results for those subjected to confinement.²¹⁸ Recidivism rates of both juvenile and adult offenders demonstrate the stark reality that prisons are incapable of facilitating the rehabilitative goals of the criminal justice system. The idea that a juvenile who has suffered abuse, neglect, or some other form of trauma will miraculously heal from those wounds in a flawed American prison is the result of blind indifference.

The violence, isolation, neglect, and chaos of American prisons directly oppose the professional understanding of what facilitates the rehabilitation of trauma survivors.²¹⁹ A child who has been beaten throughout their childhood does not heal from their emotional scars by being locked in a cage with other violent offenders.²²⁰ The barbaric understanding that bad actors can be “whipped into shape” is outdated and has been vehemently refuted by mental health professionals.²²¹ Yet, the U.S. continues down the path laid before it by the First Congress,²²² relying on punitive measures to bend criminals into conformity.²²³ However, just because this is the current state of the criminal justice system does not mean the courts, and society at large,²²⁴ would be opposed to substantial reformation. The Supreme Court began this reform in *Roper v. Simmons*,²²⁵ and has since created a framework that could be used to institute a new, evidence-based, rehabilitation-focused scheme for juvenile sentencing.²²⁶ The next Part of this Section dives deeper into the previously discussed Supreme Court cases that demonstrate this readiness for change.

B. Judicial Readiness for Change

The courts have been the arbiters of juvenile sentencing reform for the last forty years. As outlined above, courts have gradually shifted to recognize the limited culpability and higher likelihood of rehabilitation

218. See Seigle, *supra* note 5 and accompanying text.

219. See *How to cope with traumatic stress*, AM. PSYCH. ASS'N, (October 30, 2019), <https://www.apa.org/topics/trauma/stress> [https://perma.cc/JL5A-EHPF].

220. See *id.*

221. See, e.g., *id.*

222. See Judiciary Act of 1789, *supra* note 29.

223. See *supra* Section II.A.1.

224. See Sawyer & Wagner *supra* note 40 (depicting an infographic outlining a survey of over 1,500 people who were victims to violent crime in 2022. 75% of participants indicated a preference for holding the criminals accountable through means other than prison and 80% of participants said they would prefer the U.S. to invest more money in mental health treatment instead of prisons and jails).

225. See generally *Roper v. Simmons*, 543 U.S. 551 (2005).

226. See Section II.D.1.

for juvenile defendants. This enlightened cognizance has led legislatures to create stricter sentencing guidelines for defendants under the age of eighteen. Such cognizance also indicates potential receptivity toward further juvenile sentencing reform.

The Supreme Court in *Roper v. Simmons* addressed the issue of whether the imposition of the death penalty on a juvenile violated the Eighth Amendment of the U.S. Constitution.²²⁷ While affording adequate weight to history and tradition, the Court recognized the cultural shifts in what society deemed decent and humane.²²⁸ Cases leading up to the *Roper* decision depicted a subtle yet definitive shift away from the utilization of the death penalty in cases involving juvenile or mentally disabled defendants.²²⁹ There was a national consensus against the use of the death penalty for juveniles, which did not escape the attention of the Court.²³⁰ Holding a juvenile as equally culpable to an adult offender would negate the reality that juveniles are far more vulnerable to negative influences and outside pressures.²³¹ Further, juveniles are, simply put, immature and more prone to impulsive acts.²³² These innate differences between juveniles and adults led to a general understanding that children should not be held accountable for criminal acts in the same way as adults.²³³ This holding effectively rejected retribution as a justification for punishing juvenile defendants.²³⁴

The next step forward in reforming juvenile sentencing came at the heels of *Roper* in *Graham v. Florida*.²³⁵ Here, the Court noted that retribution, deterrence, incapacitation, and rehabilitation were not valid justifications for imposing a life sentence on a juvenile who did not commit murder.²³⁶ In the Court's eyes, not even retributive vengeance was sufficient to justify such a sentence due to the substantially reduced moral culpability of a nonhomicidal juvenile defendant.²³⁷ The holding constricted the lower courts' abilities to use vengeance-based justifications for severe juvenile punishments.²³⁸ With *Graham*, the Court solidified its stance that juveniles have reduced culpability and that the

227. *Roper*, 543 U.S. at 561 (2005).

228. *Id.*

229. *Id.* at 561-63.

230. *Id.* at 564.

231. *Id.* at 569.

232. *Id.* at 570.

233. *See id.* at 572-73.

234. *See id.*

235. *Graham v. Fla.*, 560 U.S. 48 (2010).

236. *Id.*

237. *Id.*

238. *See id.*

proportionality of a juvenile's sentence hinges on that principle.²³⁹

In *Miller v. Alabama*, the Court considered the newfound understanding that, because juveniles are constitutionally different than adults and have greater prospects for reform, the most severe punishments are categorically disproportionate to their diminished culpability.²⁴⁰ In striking down mandatory life sentences for juvenile homicide offenders, the Court solidified its stance that even juveniles convicted of heinous crimes deserve an opportunity for rehabilitation.²⁴¹ Thus, despite the severity of the offense in *Miller*, the Court affirmed that the penological goal of rehabilitation ought to form the primary consideration of every juvenile case.²⁴²

Recent cases further display this shift toward judicial recognition of juveniles' reduced culpability and receptivity to rehabilitative efforts.²⁴³ However, some cases do not seem to afford it much weight. In *United States v. Jefferson*, the Eighth Circuit affirmed a 600-month sentence for juvenile defendant Robert Jefferson, finding that the lower court sufficiently weighed the age of the defendant against the severity of his crimes.²⁴⁴ Jefferson's crimes were undoubtedly abhorrent.²⁴⁵ During his first sixteen years in prison however, Jefferson demonstrated a high receptivity to rehabilitative efforts.²⁴⁶ Despite this high likelihood of successful rehabilitation, a fifty-year prison sentence was deemed appropriate after giving full weight and consideration to the facts.²⁴⁷ The lower court's ruling contradicts the prior holdings of the Supreme Court. Despite the recognized diminished culpability of juveniles, a fifty-year prison sentence was deemed proportional to crimes committed by a child.²⁴⁸

A subtle shift emerged in the Western District of Texas in *Sparks v. United States*.²⁴⁹ Here, the court made special mention of the defendant's

239. *See id.*

240. *Miller v. Ala.*, 567 U.S. 460, 471 (2012).

241. *Id.* at 476-77.

242. *See generally id.*

243. *See supra* Section II.D.2.

244. *See U.S. v. Jefferson*, 816 F.3d 1016, 1020-21 (8th Cir. Ct. App. 2015) (outlining Robert Jefferson's criminal acts committed as a minor by stating that "a federal jury convicted Jefferson of conspiracy to distribute cocaine and crack cocaine; two substantive drug trafficking offenses in 1997; the firebombing murder of five young children in February 1994, when Jefferson was sixteen; and the drive-by shooting of a drug debtor and an innocent bystander in February 1995, when Jefferson was seventeen").

245. *See id.* at 1017-18.

246. *Id.* at 1020.

247. *Id.* at 1020-21.

248. The disconnect here is that the length a fifty-year prison sentence imposed on a sixteen-year-old defendant ultimately results in the defendant spending more time in prison than three times his life lived at the time of the crime's commission.

249. *Sparks v. U.S.*, 2018 U.S. Dist. LEXIS 46485 (S.D. Tex. 2023).

difficult home life and the impact it likely had on his development.²⁵⁰ It was obvious to the Court that Sparks had endured numerous ACEs, underscoring the causal connection between childhood trauma and criminal conduct.²⁵¹ The Court recognized Sparks's trauma and imposed what it deemed to be a reasonable thirty-five-year prison sentence.²⁵² Similarly, in *United States v. Friend*, the fifty-two-year prison sentence imposed for crimes committed by Philip Friend (who was neglected and abused as a child), was affirmed by the Fourth Circuit after considering “numerous mitigating arguments.”²⁵³

The issue is clear: the Supreme Court created an assumption of limited culpability for juvenile defendants and § 3553(a) commands the sentencing judge to consider the unique experiences of the defendant—yet courts refuse to deviate from their historical practice of imposing long-term prison sentences on juvenile defendants. Courts stick to the tried-and-true method of locking criminals up and throwing away the key all while disregarding their constitutional and statutory commands to consider rehabilitation instead of imprisonment. Thus, real reform cannot be had without an amendment to § 3553 that would require judges to utilize rehabilitative alternatives to imprisonment for certain juvenile defendants.²⁵⁴

Considering the above, this Comment proposes and examines a three-pronged test—the RRT—that should be codified in Title 18 of the U.S. Code as a means of establishing a rehabilitation-focused juvenile sentencing scheme that creates opportunities for juvenile defendants to properly heal from their traumas. The desired result of the RRT would be to combat the astronomically high rates of recidivism currently seen among juvenile defendants.

250. *Id.* at *17-22 (S.D. Tex. 2023) (noting that the difficult upbringing, which included his parents' divorce at an early age, being neglected by his young mother, being molested on multiple occasions, being placed in foster care, being abused by his birth father, and witnessing domestic violence likely affected Sparks's development).

251. *See generally id.*; *supra* Section II.C.

252. *See Sparks*, 2018 U.S. Dist. LEXIS 46485 at *40-41.

253. *U.S. v. Friend*, 2 F.4th 369, 381 (2021) (including the defendant's “age,” testimony as to his “psychological condition and his difficulty extricating himself from his family's influence,” and “his exemplary record and voluntary participation in courses and workshops”).

254. The “select group” considered by this Comment refers primarily to first-time juvenile offenders that show a high likelihood of successful rehabilitation efforts. More on this select group is provided in the following Sections. The purpose of narrowing the scope of the application of the test would be to prove its efficacy over time. The test would ultimately apply to a very select group of juvenile defendants as a means of “choosing” only those who demonstrate a high likelihood of success. This would help combat the possibility of sweeping in juvenile defendants who do not necessarily demonstrate a high likelihood of rehabilitation, thus risking further endangerment of the public.

C. A Test to Combat Juvenile Recidivism

This Part describes a three-pronged test that should be utilized by sentencing judges under a § 3553 analysis when determining sentences for juvenile defendants.²⁵⁵ The RRT provides a framework for judges to adequately consider the impact of exposure to severe childhood trauma, identify juveniles who have the highest likelihood of being successfully rehabilitated, and facilitate the healing process necessary to avoid reincarceration. Subpart 1 establishes the framework of the proposed RRT by identifying each individual prong and discussing the role of each in effectuating the change for which this Comment advocates. Then, Subpart 2 discusses how the RRT could be integrated into the current juvenile federal sentencing scheme through congressional enactment. Finally, Subpart 3 outlines an alternative means of accomplishing substantially the same result as that intended by the RRT.

1. The Test to Selectively Effectuate
Juvenile Rehabilitative Efforts

The proposed three-pronged test would apply to felonious juvenile defendants and would require that they: (1) be a first-time felonious offender; (2) have been subjected to substantial amounts of childhood trauma (properly understood as four or more ACEs); and (3) have been analyzed by a clinical psychologist and determined to be sufficiently amenable to rehabilitative efforts. If a juvenile satisfies each prong of the RRT, a sentencing judge would be required to defer to rehabilitative alternatives in place of incarceration.

The narrow application of the RRT to only first-time offenders is strategic in that it would target individuals who likely have not been compromised by prolonged exposure to prison systems. As discussed earlier, the prisons in their current state subject incarcerated persons to substantial amounts of trauma. While this Comment in no way claims that exposure to prison would prevent or inhibit the likelihood of rehabilitative success, narrowing the focus of RRT and eliminating additional variables is critical to its initial implementation. A narrow focus allows for the highest likelihood of success because it will target the ideal candidates for such efforts. The end goal would be to broaden RRT's breadth after its efficacy has been proven in this narrow context. A broadened scope in the RRT's application will be further discussed later in this Subpart.

Prong two—the four or more ACEs requirement—is critical for targeting the desired demographic of individuals who have suffered

255. *Graham v. Fla.*, 560 U.S. 48, 60 (2010).

substantial childhood trauma.²⁵⁶ Creating a threshold of at least four ACEs facilitates the desire to target individuals whose criminal behavior is most likely linked to childhood trauma.²⁵⁷ With a lower ACE requirement, the targeted pool of individuals is diluted because there are increasingly higher odds that a selected individual's criminal conduct is not directly linked to underlying trauma. This bar keeps the causal connection between trauma and criminality at the forefront.

Lastly, the RRT would require a clinical evaluation of the juvenile defendant to determine the individual's receptivity to rehabilitative efforts.²⁵⁸ Utilizing psychologists to conduct mental health evaluations of defendants is not a novel practice.²⁵⁹ In fact, forensic psychologists already routinely evaluate criminal defendants.²⁶⁰ Thus, the only change necessary to implement the RRT would be to instruct psychologists to evaluate juveniles with the specific goal of determining receptivity and amenability to rehabilitative efforts.

Ultimately, the RRT is designed to be applied narrowly, only to cases where a select subset of juvenile defendants, whose criminality is most likely related to childhood trauma and who have a relatively high likelihood of rehabilitation, will be selected for rehabilitative treatment. Confining the application of the RRT to this subset of individuals is critical to the early stages of its use because it allows for more manageable case studies to determine the test's effectiveness in combating juvenile recidivism. As the RRT is utilized and tailored over time, case studies on juveniles who satisfy the test and qualify for alternative sentencing programs will demonstrate the test's ability to aid in the reduction of recidivism. Once the RRT's efficacy is proven, the scope of its application should be broadened to encompass more juveniles (i.e., those with fewer than four ACEs). This would also include applying the RRT retroactively to adult criminals currently in prison for committing first-time felonies as

256. By way of a brief reminder, four ACEs is the threshold number for what constitutes severe exposure to traumatic childhood events.

257. *Graham*, 560 U.S. at 60 (2010).

258. See, e.g., D.A. Andrews, et al., *Level of Service/Risk, Need, Responsivity (LS/RNR)*, MULTI-HEALTH SYS., <https://storefront.mhs.com/collections/ls-rnr> [<https://perma.cc/BK7C-X95E>] (last visited Oct. 17, 2024) (providing information regarding standard risk assessment and case management tests for children to determine receptivity to intervention efforts); see generally Vincent, G. M. et al., *Risk Assessment in Juvenile Justice: A Guidebook for Implementation*, MACARTHUR FOUND. (Nov. 2012), https://rfknrcjj.org/wp-content/uploads/2016/10/2-Risk_Assessment_in_Juvenile_Justice_A_Guidebook_for_Implementation-3.pdf.

259. See generally F. W. Kaslow, *Psychologists as Consultants to the Court*, NAT'L CRIM. JUST. REFERENCE SERV., <https://www.ojp.gov/ncjrs/virtual-library/abstracts/psychologist-consultant-court> [<https://perma.cc/R85L-JHPD>] (last visited July 21, 2024).

260. See Amy Novotney, *Helping courts and juries make educated decisions*, AM. PSYCH. ASS'N (September 2017), <https://www.apa.org/monitor/2017/09/courts-decisions> [<https://perma.cc/5NVG-ESTG>].

juveniles. Next, the scope could be further broadened by expanding the first-time felony requirement to include repeat offenders. The RRT could be modified in various ways to selectively target more individuals for rehabilitative efforts with the intention of eventually reorienting the criminal justice system to invariably seek to rehabilitate individuals.

2. How To Effectuate the Change

Creating the change that is contemplated within this Comment requires two actions. First, it requires a congressional amendment to 18 U.S.C. § 3553 to create a specialized sentencing scheme for juveniles. Currently, § 3553(b) requires “aggravating or mitigating circumstances” for a judge to deviate from the Guidelines.²⁶¹ In making sentencing determinations, judges may consider only the Guidelines, policy statements, and official commentary of the Sentencing Commission, further binding them to legislatively pre-determined sentences.²⁶² With the creation of a specialized juvenile sentencing scheme within § 3553, judges would be freed from the constrictive rules that present little opportunity for them to choose a rehabilitative mode of correction. This new § 3553 subsection could facilitate substantial reform.

To provide perspective on the type of changes that could be made within a specialized juvenile sentencing structure, this Comment proposes a few examples of how RRT could be used to support rehabilitation. First, judges would apply the proposed RRT to all juvenile felony cases to determine whether they are obligated to consider alternative sentencing options instead of incarceration. To further serve the purpose of allowing judges more freedom to consider these alternative approaches, there must be a reduction in the “aggravating or mitigating” bar to deviating from the Guidelines. Outside of the context of the rules, organizations and institutions dedicated to creating alternative models like Roca should receive more funding to support their rehabilitative programming.²⁶³

Alternatively, instead of waiting for Congress to act, sentencing judges should take steps toward supporting these changes while acting within their currently recognized power.²⁶⁴ A judge’s ability to deviate from the Guidelines inevitably falls on a judicial determination of whether the individual defendant’s unique circumstances are substantial enough to justify an alternative sentence.²⁶⁵ Sentences that fall outside of the

261. 18 U.S.C. § 3553(b).

262. *Id.*

263. ROCA, *supra* note 139.

264. *U.S. v. Friend*, 2 F.4th 369, 386 (2021) (Floyd, J. dissenting) (stating that the substantial unique factors of the defendant weighed in favor of a significantly reduced sentence).

265. 18 U.S.C. § 3553(b).

Guidelines are reviewed under the highly deferential abuse of discretion standard on appeal.²⁶⁶ Thus, in the absence of congressional enactment, district judges should adopt the empathetic posture of Judge Floyd in *United States v. Friend* and consider substantial childhood trauma as a mitigating factor under § 3553(b).²⁶⁷ These judges could adopt the RRT, or a substantially similar method, to determine whether the unique circumstances of juvenile defendants justify alternative sentencing options.

D. Other Considerations

While this Comment has focused primarily on the correlation between childhood trauma and incarceration—as well as the inadequacy of the current criminal justice system to deal with such issues—it would be disingenuous to disregard the paramount role that race, gender, and socioeconomic status play in the overall context of this issue. These factors are indispensable to the overall consideration of the issue of childhood trauma and incarceration.²⁶⁸ For instance, children that live below the federal poverty line (FPL) are far more likely to go to prison when they reach adulthood.²⁶⁹ Similarly, children below the FPL are at a significantly higher risk of experiencing four or more ACEs.²⁷⁰ Within minority communities, factors including hostile neighborhoods, police abuse of power, and exposure to historical systems of oppression are likely causes of the increased risk of ACEs.²⁷¹ Minority groups are systemically exposed to higher rates of psychological disparities that perpetuate the issue of generational exposure to ACEs.²⁷² Lastly, as of 2017, men made up roughly ninety-three percent of all incarcerated persons in the U.S., totaling over two million people.²⁷³

266. See *Gall v. U.S.*, 552 U.S. at 51-52 (2007).

267. *Friend*, 2 F.4th at 386 (Floyd, J. dissenting).

268. See generally Neal Halfon, et al., *Income Inequality and the Differential Effect of Adverse Childhood Experiences in US Children*, ACAD. PEDIATRICS (2017), [https://www.academicpedsjnl.net/article/S1876-2859\(16\)30497-1/fulltext](https://www.academicpedsjnl.net/article/S1876-2859(16)30497-1/fulltext).

269. *Id.*

270. *Id.* (stating that children who live below the FPL are five times more likely to experience four or more ACEs than those who live in families with income approximately four times higher than the FPL).

271. Andres J. Pumariega et al., *Trauma and US Minority Children and Youth*, CURRENT PSYCHIATRY REPORTS (2022), <https://pubmed.ncbi.nlm.nih.gov/35286562/> [https://perma.cc/W4HN-LE9R].

272. *Id.* (noting that these groups face higher rates of “poverty, lack of education, barriers to health and mental health services, and exposure to multiple stressors such as discrimination, racism, community violence exposure, and immigration and acculturation stresses”).

273. Nancy Wolff & Jing Shi, *Childhood and Adult Trauma Experiences of Incarcerated Persons and Their Relationship to Adult Behavioral Health Problems and Treatment*, INT. J ENV'T. RSCH. & PUB. HEALTH (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3386595/> [https://perma.cc/4QJS-XU4K].

There is a desperate need for continued scholarship on the impacts of childhood trauma, its link to incarceration, minority groups' disproportionate exposure to ACEs, and the impact of generational trauma on criminality. It is crucial to foster conversation in these areas to supplant the ineffective punishment-focused criminal justice system with a new system designed to rehabilitate and heal the broken people who commit crimes.

IV. CONCLUSION

A devastating reality is that children are subjected to physical and emotional abuse, neglect, and sexual violence every day.²⁷⁴ While I remain hopeful that one day these traumas will be forestalled from affecting the lives of so many children, nothing can undo the fact that an estimated 20% of the U.S. population has suffered four or more ACEs and currently suffer from the grave effects they cause.²⁷⁵

Unfortunately, many victims of severe childhood trauma eventually become perpetrators themselves.²⁷⁶ But if there is even the slightest possibility that we could break this vicious cycle, shouldn't we try? Judge Floyd in *United States v. Friend* seems to think so.²⁷⁷ These people deserve to have their childhood traumas healed, regardless of criminal acts they have committed. The U.S. criminal justice system seems to suggest the same. Despite the system's persistent failure to achieve its rehabilitative goals, the foundational structures for success are already in place. What is left is the need for additional supports, such as openness to alternative rehabilitation methods and pretrial psychological evaluations to assess receptivity to these efforts. Within this overarching framework, the system should recognize the rehabilitative needs of traumatized juvenile defendants and provide alternative sentencing options. Ultimately, the cycle of incarcerating traumatized individuals can be broken by embracing a rehabilitation-focused approach to criminal justice.

274. See *Child Abuse and Neglect Prevention*, CTRS. FOR DISEASE CONTROL & PREVENTION, (Feb. 14, 2024), <https://www.cdc.gov/child-abuse-neglect/prevention/index.html> [<https://perma.cc/FL-V7-DJLH>].

275. See Felitti, *supra* note 98.

276. See *supra* Sections II.C, II.D.

277. See generally *U.S. v. Friend*, 2 F.4th 369 (2021) (Floyd, J. dissenting).