



Repurposing Juvenile Delinquency

RETHINKING INCORRIGIBILITY & STATE
JUVENILE JUSTICE PURPOSE CLAUSES
MANDATES?

Jones v. Mississippi, the Eighth Amendment, and Juvenile Life Without Parole

The U.S. Supreme Court's ruling on three cases which has made a significant impact on the sentencing of Juveniles who commit murder to "Life Without Parole."

1. Miller v. Alabama, 567 U.S. 460 (2012).
2. Montgomery v. Louisiana, 136 S. Ct. 718 (2016).
3. Jones v. Mississippi, 593 U.S. ____ (2021)

Miller v. Alabama

In July 2003, Evan Miller, along with Colby Smith, killed Cole Cannon by beating Cannon with a baseball bat and burning Cannon's trailer while Cannon was inside. Miller was 14 years old at the time. In 2004, Miller was transferred from the Lawrence County Juvenile Court to Lawrence County Circuit Court to be tried as an adult for capital murder during the course of an arson. In 2006, a grand jury indicted Miller. At trial, the jury returned a verdict of guilty. The trial court sentenced Miller to a mandatory term of life imprisonment without the possibility of parole.



Miller v. Alabama

Miller filed a post trial motion for a new trial, arguing that sentencing a 14-year-old to life without the possibility of parole constituted cruel and unusual punishment in violation of the Eighth Amendment. The trial court denied the motion. On appeal, the Alabama Court of Criminal Appeals affirmed the lower court's decision. The Supreme Court of Alabama denied Miller's petition for writ of certiorari.

The U.S. Supreme Court accepted Miller's writ of certiorari.

The Court held that the Eighth Amendment's prohibition against cruel and unusual punishment forbids the ***mandatory sentencing*** of life in prison without the possibility of parole for juvenile homicide offenders. Children are constitutionally different from adults for sentencing purposes. While a mandatory life sentence for adults does not violate the Eighth Amendment, such a sentence would be an unconstitutionally disproportionate punishment for children.

Miller v. Alabama

Justice Kagan writing the opinion of the court in *Miller v. Alabama*:

That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between “the juvenile offender whose crime reflects unfortunate yet transient immaturity, and ***the rare juvenile offender whose crime reflects irreparable corruption.***” *Roper*, 543 U. S., at 573. ***Although we do not foreclose a sentencer’s ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.***

Justice Thomas writing his dissent of the holding in *Miller v. Alabama*:

...even though its decision leaves intact the discretionary imposition of life-without-parole sentences for juvenile homicide offenders, it “think[s] appropriate occasions for sentencing juveniles to [life without parole] will be uncommon.”

Montgomery v. Louisiana

Montgomery was 17 years old in 1963, when he killed a deputy in Louisiana. The jury returned a verdict of “guilty without capital punishment,” which carried an automatic sentence of life without parole.



AWAITS VERDICT—Negro Henry (Wolf Man) Montgomery, flanked by two deputies, awaits the verdict in his trial here, charging him with the murder of Deputy Sheriff Charles H. Hurt. The case is in the hands of

a 12-man jury which resumes deliberations Tuesday morning. Guarding Montgomery are Deputies W. T. Bunch, left, and Herman Melancon.

—Staff Photo by John Boss

Montgomery v. Louisiana

The Supreme Court reversed. Courts must give retroactive effect to new watershed procedural rules and to substantive rules of constitutional law. Substantive constitutional rules include “rules forbidding criminal punishment of certain primary conduct” and “rules prohibiting a certain category of punishment for a class of defendants because of their status or offense.” Miller announced a substantive rule of constitutional law, which is retroactive because it necessarily carries a significant risk that a defendant faces a punishment that the law cannot impose. A state may remedy a Miller violation by extending parole eligibility to juvenile offenders. This would neither impose an onerous burden nor disturb the finality of state convictions and would afford someone like Montgomery, ***who may have evolved from a troubled, misguided youth to a model member of the prison community***, the opportunity to demonstrate the truth of Miller’s central intuition—that children who commit even heinous crimes are capable of change.

Jones v. Mississippi

A Mississippi jury convicted Jones of murder for killing his grandfather when Jones was 15 years old. Under Mississippi law, murder carried a mandatory sentence of life without parole. That sentence was affirmed on appeal. The Supreme Court subsequently held, in *Miller v. Alabama*, that the Eighth Amendment permits a life-without-parole sentence for a defendant who committed homicide when he was under 18 only if the sentence is not mandatory and the sentencer has the discretion to impose a lesser punishment. The Mississippi Supreme Court ordered that Jones be resentenced.



Jones v. Mississippi

The judge at resentencing acknowledged that he had discretion under Miller to impose a sentence less than life without parole but determined that life without parole remained the appropriate sentence. The Supreme Court had recently held (*Montgomery v. Louisiana*) that Miller applied retroactively on collateral review. The Mississippi Court of Appeals rejected Jones's argument that, under Miller and Montgomery, a sentencer must make a separate factual finding that a murderer under 18 is permanently incorrigible before sentencing the offender to life without parole.

Jones v. Mississippi

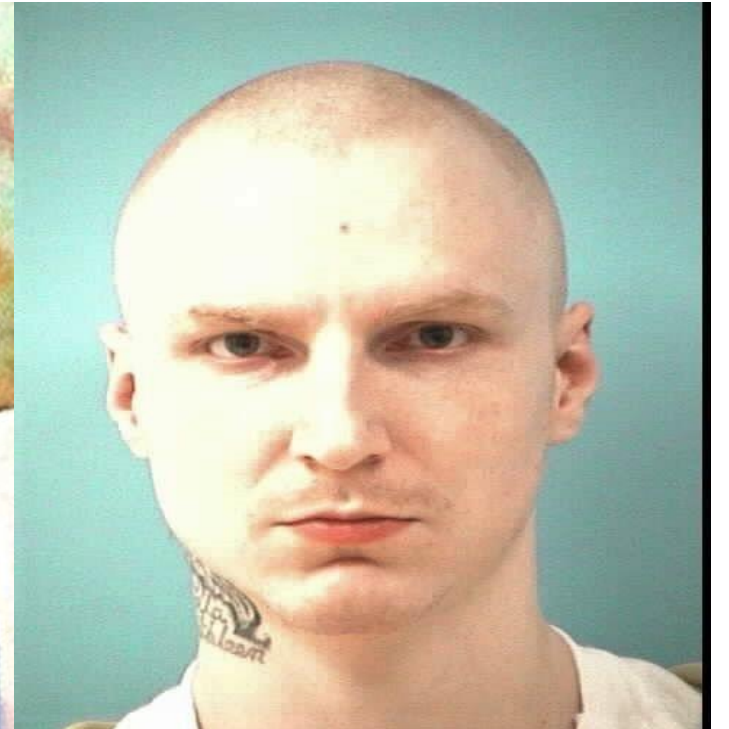
The Supreme Court affirmed. In the case of a defendant who committed homicide when he was under 18, Miller and Montgomery do not require the sentencer to make a separate factual finding of *permanent incorrigibility* before sentencing the defendant to life without parole; a discretionary sentencing system is both constitutionally necessary and constitutionally sufficient. The cases require consideration of an offender's youth but not any particular factual finding nor an on-the-record sentencing explanation with an "implicit finding" of permanent incorrigibility before sentencing a murderer under 18 to life without parole. Jones's resentencing complied with Miller and Montgomery because the sentencer had discretion to impose a sentence less than life without parole in light of Jones's youth.

When Jones appealed his sentence a second time, he was deemed permanently incorrigible.

Evan Miller

Henry Montgomery

Brett Jones





Do States' Purpose Clauses Emphasizing a Positive Youth Development Framework Matter for Youth Juvenile Justice Outcomes?

Incorrigibility

Taken as a whole, the Supreme Court cases do not ban life without parole sentences for juveniles outright; rather, life without parole sentences were reserved for the rarest of juvenile offenders, those whose crimes reflect *permanent incorrigibility*

But what is ‘Incorrigibility’?

- A status offense typically defined as habitually disobeying reasonable and lawful commands of a parent, guardian, or custodian;
- In some states, incorrigibility is referred to in various statutes as unruly, uncontrollable, or ungovernable behavior

And, what happens to youth after being labeled incorrigible?

- Some status delinquents are referred to the child welfare or social service systems, while in others status delinquents are dealt with in the juvenile justice system

☐ **INCORRIGIBILITY (MCL 712A.2(a)(3)):** The juvenile is repeatedly disobedient to the reasonable and lawful commands of his or her parent(2) or guardian(2), as follows:

- ☐ The child leaves home without his or her parent's or guardian's permission and violates his or her curfew.
- ☐ The child threatens to cause or causes deliberate physical harm to family members.
- ☐ The child uses foul and abusive language to family members.
- ☐ The child allows other people into the home against the directives of his or her parents.
- ☐ The child has damaged the home or destroyed property of other family members.
- ☐ The child has stolen money or property from family members.
- ☐ The child associates with undesirable people.
- ☐ The child uses alcohol or other drugs.
- ☐ The child did not follow the reasonable request of his or her parents.
- ☐ The child does not attend school on a regular basis, against the directives of his or her parents.
- ☐ The child's behavior, while in school, is disrupting his or her learning and disruptive to the school environment.

☐ Other: _____

Judges Are Locking Up Children for Noncriminal Offenses Like Repeatedly Disobeying Their Parents and Skipping School

In Midland County, Michigan, juveniles can be deemed incorrigible for leaving home without permission, using foul and abusive language and associating with "undesirable people."

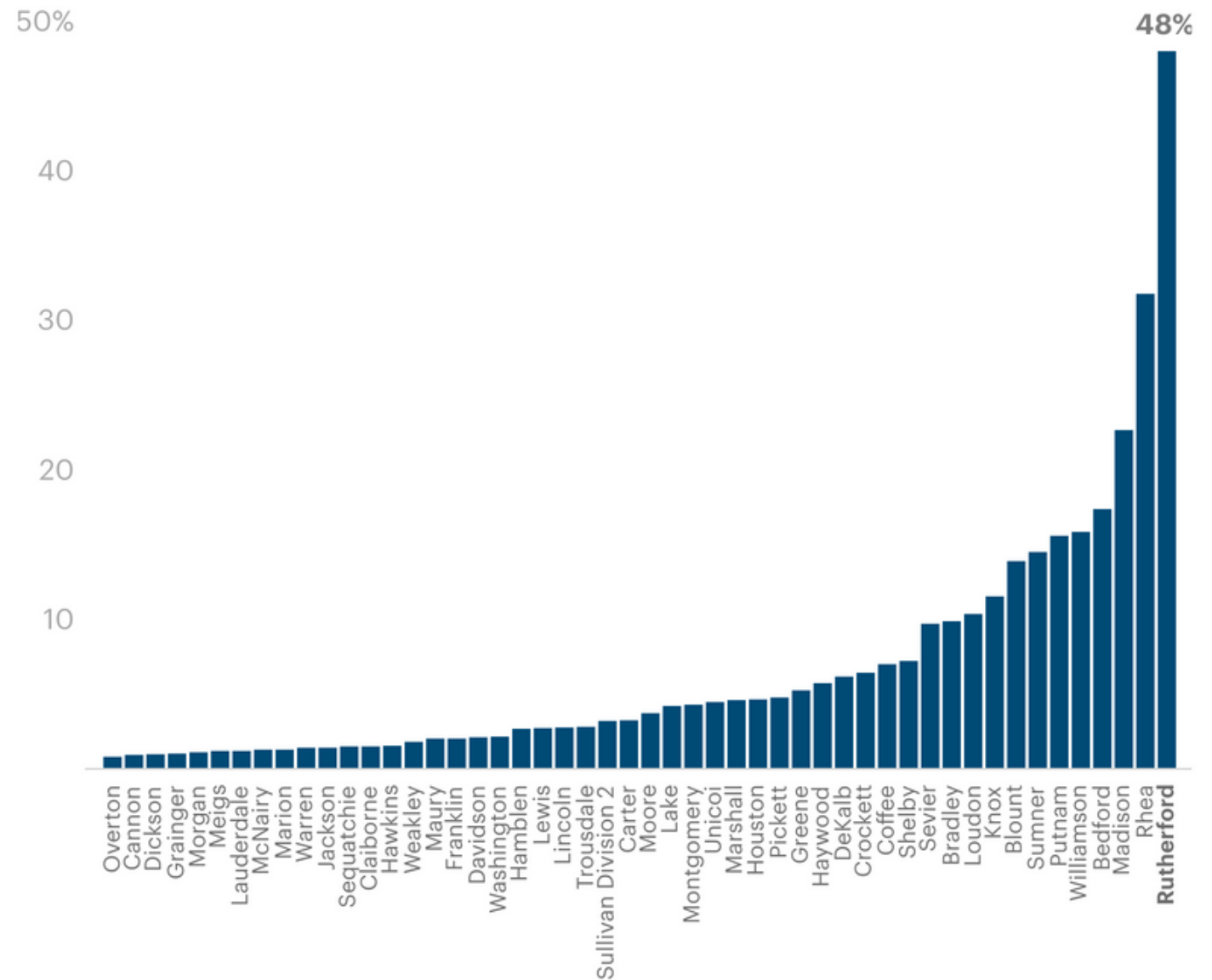
County Level Differences in Youth Outcomes

In Rutherford County, Tennessee, 48% of cases in Rutherford County resulted in children being locked up

These children are as young as 7, 8 and 9

One judge was on tape saying “I want the children that come in front of me to leave better than they came in”

The county’s high detention rate runs contrary to the reform movement and there is no evidence these children are better off than when they “came in”



Source: Propublica

Juvenile Justice Case Resolution

JUVENILE SANCTIONS

- Dismissed
- CYFD commitment
- Judgment
 - Detention
 - Fines
 - Probation
- Consent decree
- Time Waiver
- Nolle Prosequi or Time Expired

ADULT SANCTIONS

- DOC facility
- DOC probation
- Jail
- Probation and incarceration

Probation is the most common disposition in youth justice

In 2019, roughly 265,000 youth were placed on probation by juvenile courts nationwide

- Restitution; No contact orders; Community service requirements; Letters of apology to victims; Curfews; Forfeiture of driving privileges; Referrals to local social service agencies; Substance abuse or mental health counseling; Required attendance to a treatment program

These measures are often infeasible or unreasonable due their lack of development

These measures result in systems overlap

Youth Development & the Juvenile Justice System

Existing research about adolescent development and behavior has led to a better understanding about the

- Pathways by which adolescents become delinquent;
- Effectiveness of treatment & prevention; and
- Long-term impacts of transferring youth to adult prisons.

Relevant research shows:

- Adolescents are less able to regulate their own behavior in **emotionally charged contexts**
- Adolescents are more sensitive to external influences such as **peer pressure** and immediate rewards
- Adolescents show less ability to make judgments and decisions that require **future orientation**
- **Adolescents' brains are not fully developed until their mid-twenties**

Youth Development & the Juvenile Justice System

The overwhelming majority of extant research suggests that criminalizing juvenile offenses is not productive

On this basis, many jurisdictions have taken steps to reform its juvenile justice system in order to be more aligned with research on youth development

The Court first incorporated scientific research on child development in their reasoning in *Roper v Simmons* 543 U.S. 551 (2005).

- Since Roper, children are viewed as a distinct class of offenders and due to these developmental differences, should be punished differently.
- Nevertheless, the Court has provided no clear definition of incorrigibility and there are no legal standards by which to proceed in such cases

Justice by Geography

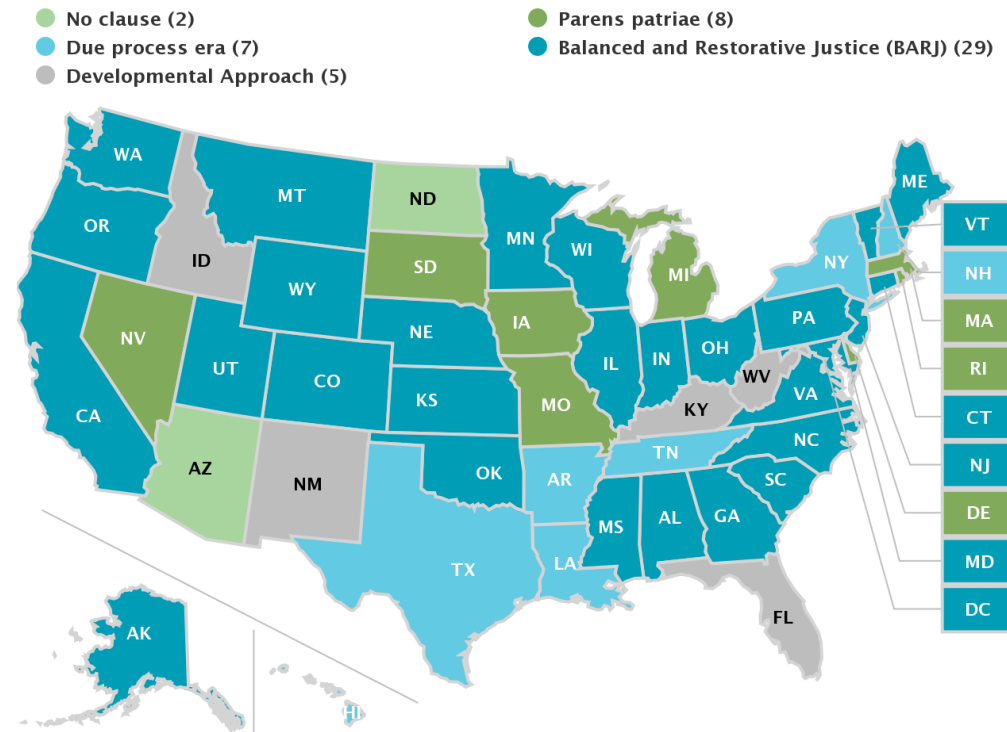
Purpose Clauses for Juvenile Justice Systems, 2016

Parens patriae

Due process era

Balanced and Restorative Justice (BARJ)

Developmental Approach



Young people may have very different experiences of the juvenile justice system depending upon where they live



Youth Developmental Framework

Orientation & Outcome

The “5C’s” of Positive Youth Development

Positive Youth Development (PYD) is a **strengths-based** framework that emphasizes **building** on the **abilities, skills, and interests** that a young person has, and **supporting youth** in discovering and cultivating their **identity**

To achieve these goals, the PYD framework focuses on developing six key areas:

- Attachment to caring adults
- Connections to the school, youth organizations, and community
- Social and emotional competencies
- Prosocial peer relationships
- Social capital networks that can deliver support and resources
- Coherence across the organizations and environments in which youth grow

Notice that the “6th” and “7th” C’s are typically missing – culture and community

Key Concepts

Adolescent Development

- Courts should consider the **impact of context** (*i.e.* families, peers, schools, neighborhoods, culture) on adolescents' development, and how such contexts contribute to both positive and negative outcomes

Developmental Immaturity

- Courts should consider **deficits in adolescents' thinking, reasoning, and/or decision-making**

Developmentally Appropriate Language

- Court should consider the **language used and the structure of questions** asked when communicating with adolescents

1. Developmental Contextualism

Adverse Child Experiences






- More than 90% of youth in contact with the juvenile justice system experienced at least one traumatic event, and over half (57 percent) experienced complex trauma of 6 or more traumatic episodes (Abram et al., 2004)
- Between 65–70% of youth in the juvenile justice system have at least one diagnosable mental health condition (Shufelt & Cocozza, 2006)
- In determining that Jones was permanently incorrigible, the Court noted the holding in *Miller v Alabama* that the inherent attributes of youth must be considered in determining a sentence of LWOP
- This decision ignored multiple developmental contextual factors including the fact that Jones committed the crime when he was a **child**, that he was **abandoned by his mother**, that he was **abused by his grandfather**, and he had a **family history of mental health issues**.

2. Developmentally Appropriate Language

An **incorrigible person** is one who is incapable of being corrected or amended (1) not reformable; depraved (2) delinquent; (3) not manageable; unruly. - [Merriam-Webster](#)

Incorrigible behavior is behavior that is bad beyond correction or reform; or that is impervious to constraints or punishment; willful; uncontrollable; not easily changes - [Dictionary.com](#)

- In determining that Jones was permanently incorrigible, the Court ignored evidence that Jones was a **model inmate** during the decade of his incarceration, that he earned a **high school certificate**, did **not** have a record of **disciplinary action** and was seeing a **psychologist**.
- The Court nevertheless held that Jones was incapable of rehabilitation (consistent with the very definition of incorrigible but contrary to a developmental approach that emphasizes assets)

 Idaho	 West Virginia	 Kentucky	 Florida	 New Mexico
Humane, disciplined confinement for ‘dangerous’ juveniles	Assure each child care, safety and guidance; Serve the mental and physical welfare of the child;	Protection children, strengthen and encourage family life, strengthen and encourage biological families	increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services	to remove from children committing delinquent acts the adult consequences of criminal behavior
Strengthen opportunities for the juveniles’ development of competency and life skills	Serve the mental and physical welfare of the child;	Emphasis on involving families in youth interventions and providing families with access to services necessary to address issues	to assure due process through which children, victims, and other interested parties are assured fair hearings and the protection of constitutional rights	to provide a program of supervision, care and rehabilitation, including rehabilitative restitution by the child to the victims
Hold juveniles accountable through restitution and sharing of correctional costs	Develop family-focused programs and involve the child and family in service development	low risk services for low-risk youth and rehabilitation; accountability	To provide an environment that fosters healthy social, emotional, intellectual, educational, and physical development;	to strengthen families and to successfully reintegrate children into homes and communities
Invoke participation of parents and hold them responsible	Provide community-based services in the least restrictive settings that are consistent with the needs and potentials of the child	less restrictive alternatives and treatments/sanctions that advance personal responsibility, accountability, and reformation	To ensure the protection of society, by providing for a comprehensive standardized assessment of the child's needs so that the most appropriate control, discipline, punishment, and treatment can be administered	to provide effective deterrents to acts of juvenile delinquency, including an emphasis on community-based alternatives; o achieve reductions in the number of warrants issued, the number of probation violations and the number of youth awaiting placements.
Develop meaningful programs for juveniles who have not been committed	Provide for early identification and prevent abuse, neglect or delinquency and rehabilitation	Children have the right to evidence-based treatment	To preserve and strengthen the child's family ties	to develop objective risk assessment instruments
Probation Statutes in States Using A			To provide children committed to the department with training in life skills, including	to eliminate or reduce disparities based upon race or gender;

The Case of New Mexico



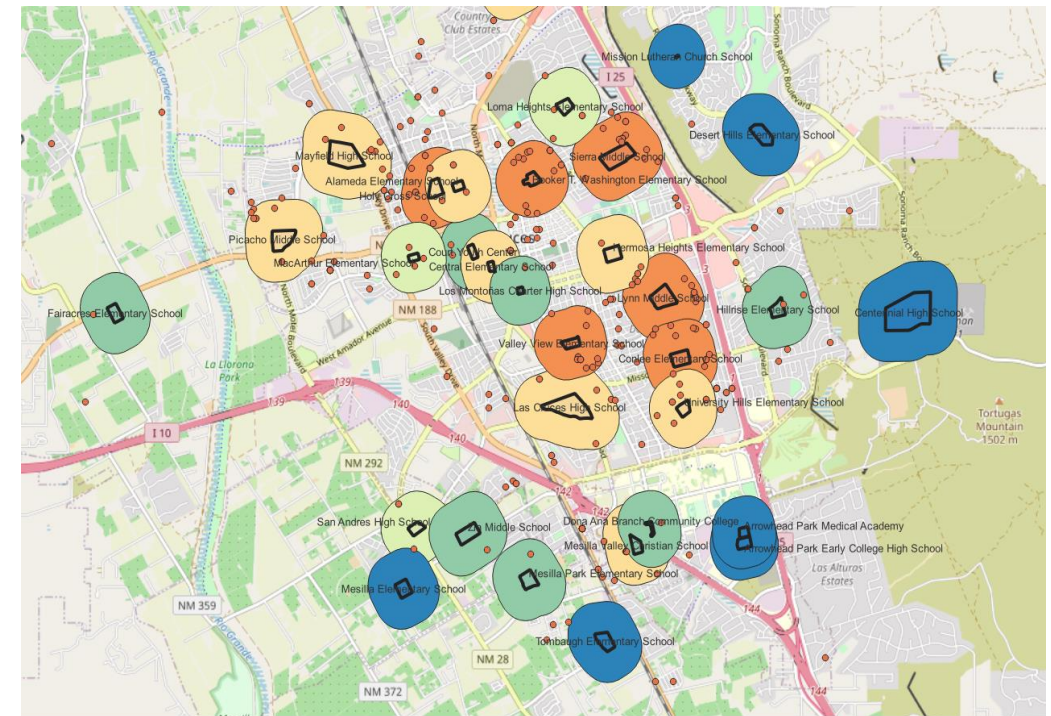
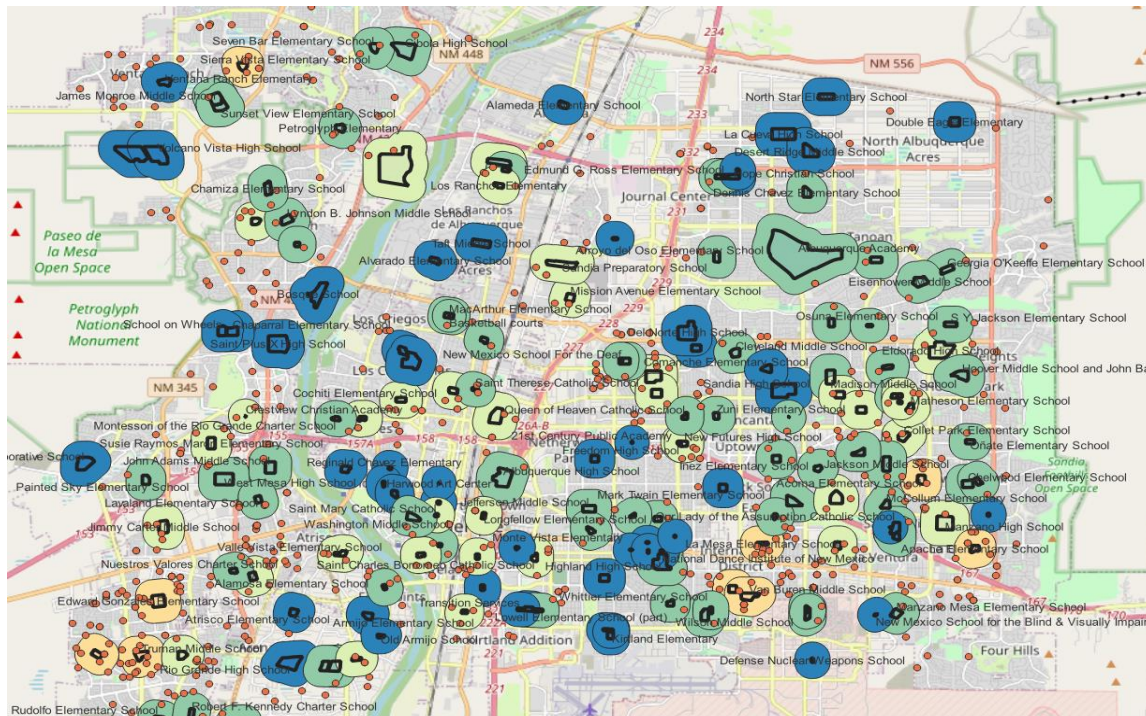
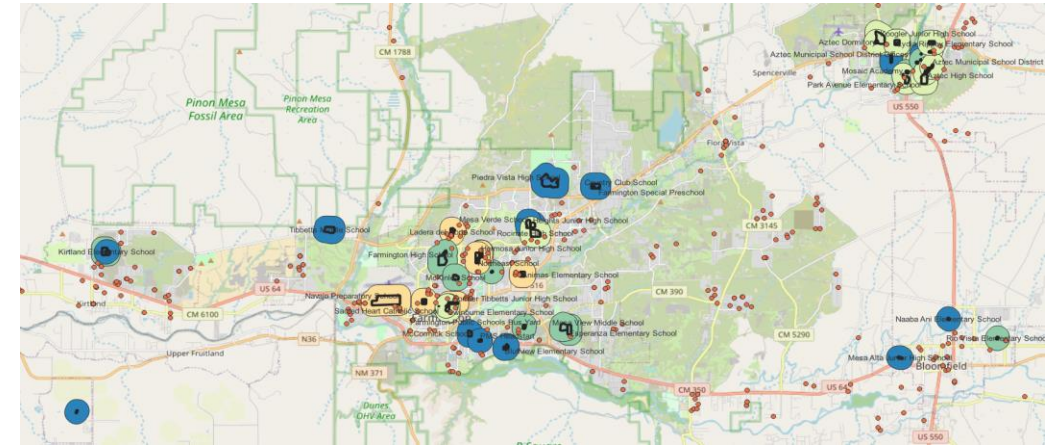
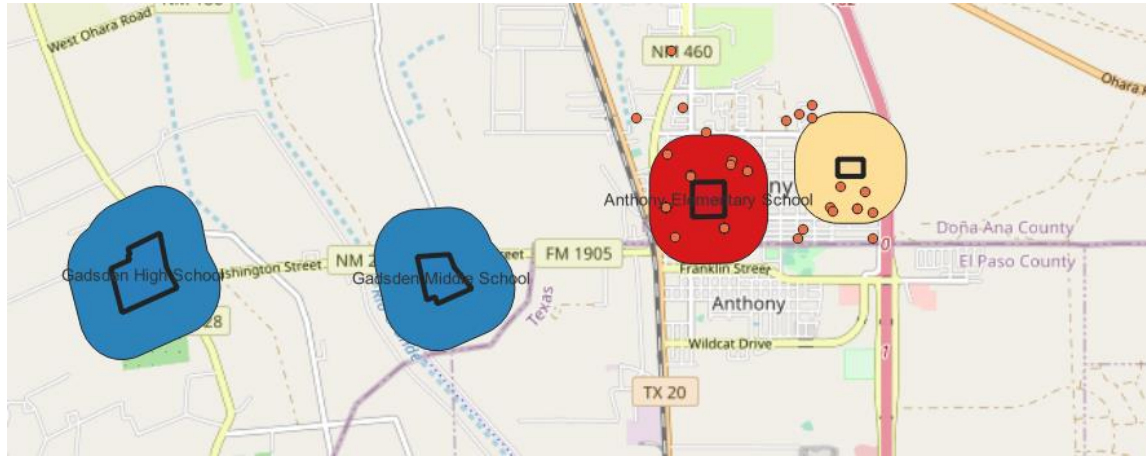
Incorrigible Offenses By Race					Average Age of Incorrigible Offense				Totals	
	Non-Hispanic Black	Latinx	Native American	Non-Hispanic White	Non-Hispanic Black	Latinx	Native American	Non-Hispanic White	Incorrigible Offenses per Year	Average Age per Year
2008	12	213	32	77	14.71	14.80	15.45	15.05	334.00	14.92
2009	8	191	28	63	15.38	14.78	15.80	15.11	290.00	14.97
2010	12	197	39	70	14.34	14.78	15.18	14.70	318.00	14.80
2011	15	165	26	76	13.12	14.71	14.95	14.94	282.00	14.71
2012	10	154	40	71	13.80	14.66	15.58	15.31	275.00	14.93
2013	6	147	29	50	16.09	14.76	15.12	14.86	232.00	14.86
2014	15	191	48	64	14.74	14.84	15.10	14.78	318.00	14.86
2015	10	159	71	60	14.87	14.68	14.89	15.11	300.00	14.82
Grand Total	88 (3.47%)	1417 (60.3%)	313 (13.3%)	531 (22.6%)	14.46	14.76	15.21	14.99	2,349.00	14.86

In 2014, the population demographics were: Native Americans 8.8%; Black/African American: 2%; Latinx: 46.4% and White 41.4%. 5.63 were deemed incorrigible every week on average from 2008 - 2015

Females						Males					
	Non-Hispanic Black	Latinx	Native American	Non-Hispanic White	Female Total	Non-Hispanic Black	Latinx	Native American	Non-Hispanic White	Male Total	Total
2008	6	102	13	24	145	6	110	16	53	185	330
2009	6	91	17	33	147	2	99	9	29	139	286
2010	8	74	15	27	124	4	120	22	41	187	311
2011	2	78	14	22	116	13	86	12	51	162	278
2012	3	66	21	36	126	6	88	19	34	147	273
2013	2	67	14	26	109	4	80	15	24	123	232
2014	3	81	20	26	130	12	108	27	38	185	315
2015	3	74	37	29	143	7	85	33	31	156	299
Grand Total	33	633	151	223	1040	54	776	153	301	1284	2324

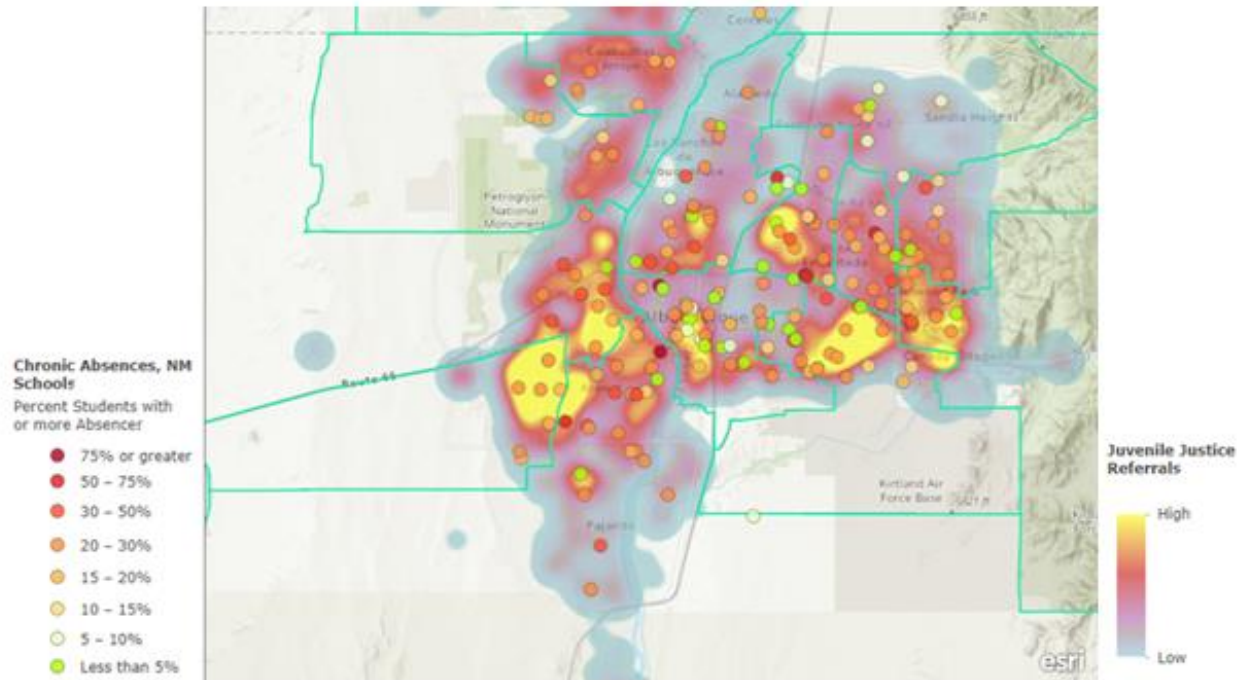
Almost as many females as males deemed incorrigible which is not a pattern we see in other offenses. In fact, in some years, more females were incorrigible than males.

914 of 2,324 offenses took place in proximity to N = 663 schools (mean = 1.38, sd = 2.52, max = 23)



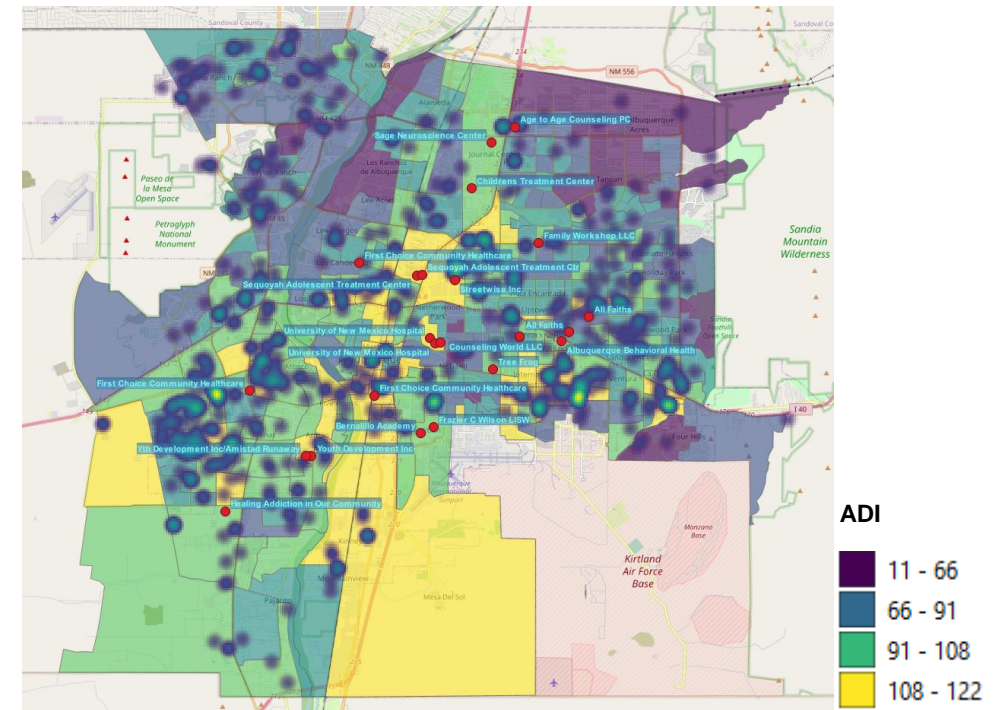
Juvenile Justice Referrals, Chronic Absenteeism & Area Level Deprivation

Chronic Absenteeism and Referral Rates for Delinquency



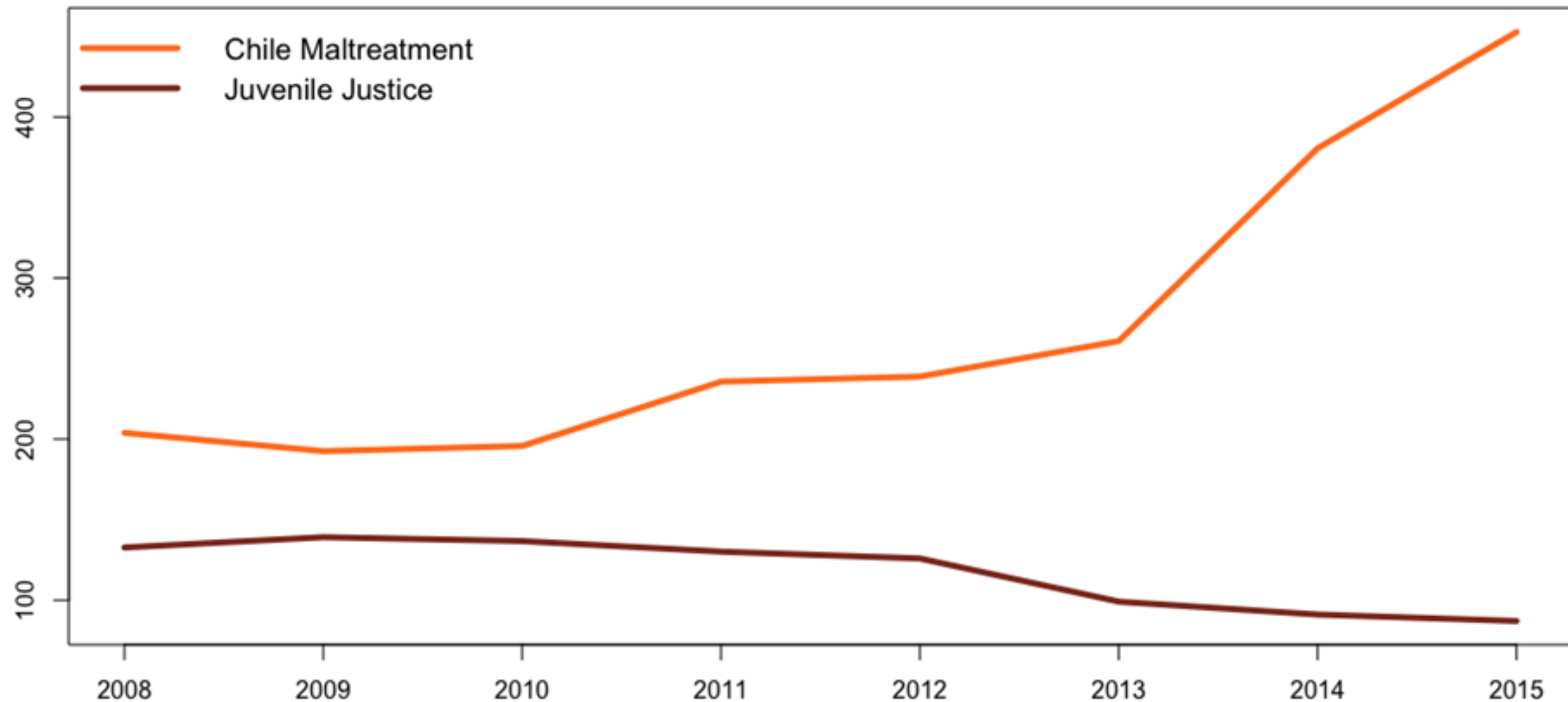
Spatial overlap between chronic absenteeism and delinquency

Area deprivation, Behavioral Health and Delinquency



Only 24 behavioral health care facilities (red dots) are child/youth focused in the whole county of Bernalillo, NM

Crude Referral Rates per 100,000 Children



Incorrigibility and Recidivism

Of the 160,770 cases, only 1.5% involved an incorrigible offense

Youth referred to juvenile justice for incorrigibility perpetrated 2.73 offenses on average (sd = 3.64)

In 69.2% of cases where more than one offense was committed in addition to incorrigibility, incorrigibility was the first juvenile offense committed

Youth whose first offense was incorrigibility perpetrated an average of 4.20 additional offenses (sd = 4.03)

Summary / Implications

Incorrigibility standard is unconstitutional

- No clear guidelines/impossibility of determining who is incorrigible
 - In Idaho and Mississippi there is no requirement for an evidence-based determination of incorrigibility it is left to the judge's discretion
- The incorrigibility standard is disproportionately applied to BIYOC
 - In New Mexico, *disproportionately* more (female) youth of color are deemed incorrigible
- Our treatment of youth even in states with youth development purpose clauses is cruel and unusual

No evidence that the system is rehabilitating children, giving them the help they need, or preventing recidivism

- Labeling children as incorrigible leads to more criminal behavior, not less
- Little access to mental health services in general, and with a focus on specific subpopulations (i.e., children, indigenous populations, etc.)

Prevention and intervention requires addressing behavioral health needs both within the juvenile justice system, as well as at school and in the community

Thank you!

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