

REDUCE JUVENILE RECIDIVISM: WHY INDIANA SHOULD MANDATE THE INDIVIDUALIZED EDUCATION PROGRAMS (IEPs) TO JUVENILES WITH DISRUPTIVE BEHAVIOR DISORDERS

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I. INTRODUCTION

The son of VirSarah Davis spent enough time in juvenile detention that the reasons for detainment blur together in her memory.¹ He had an outburst at school.² He was caught with a weapon.³ He fled house arrest.⁴ But Davis does know one thing for certain: her son was only ten years old the first time and afterwards kept referring to it as “a scary place.”⁵ Davis thought the ordeal was over when he was released fifteen days later, but instead it was just the beginning.⁶ Indiana detains and commits youth at a rate that is roughly 40% higher than the national average, and higher than almost every state in the Midwest.⁷ During the eight years Davis’s son was in and out of detention, his mother said he was always different when he came back home, and often behaved like he was still there.⁸ She stated, “I feel like my son is becoming institutionalized.”⁹

The consequences of a detention can be dire for youth.¹⁰ There is abundant research on juvenile incarceration, and many indicate that when youth are locked up, they are less likely to graduate from high school, even upon release.¹¹ There is also a far greater increase in the risk of recidivism in the future.¹² Advocates in Indiana indicate that courts detain many adolescences who should remain in the

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1. Dylan Peers McCoy & Katrina Pross, *Why Indiana Locks up More Children and Teens than New York*, WFYI INDIANAPOLIS (Nov. 16, 2022), <https://www.wfyi.org/news/articles/indiana-detains-commits-at-a-rate-40-above-the-national-average> [<https://perma.cc/JX85-Y2R5>].

2. *Id.*

3. *Id.*

4. *Id.*

5. *See id.* (Quoting a direct quote from VirSarah Davis, the mother of the son who is held in juvenile detention mentioned within the article).

6. *Id.*

7. *Id.*

8. *Id.*

9. *See id.* (Quoting a direct quote from VirSarah Davis).

10. Molly McCluskey, *What if This Were Your Kid*, THE ATLANTIC (Dec. 2017), <https://www.theatlantic.com/politics/archive/2017/12/juvenile-solitary-confinement/548933/> [<https://perma.cc/N56W-92VW>].

11. *Id.*

12. *Id.*

community.¹³ There are plenty of intervention methods that can be put in place to prevent juveniles from coming in contact with detention centers.¹⁴ But what about those who will inevitably spend a good portion of their adolescence here? What can be done to help them?

A child commits a delinquent act if, before becoming eighteen years of age, the child commits an act that would be an offense if committed by an adult, except for acts committed by the person over which the juvenile court lacks jurisdiction under IC § 31-30-1.¹⁵ Youth who are involved in the justice system are particularly vulnerable to academic challenges and failure.¹⁶ Youth who have been detained are less likely to graduate from high school or may not even return to school once released.¹⁷ This Note discusses the effectiveness of current education for juvenile detention centers which are used by the state of Indiana and many other states across the nation in an effort to minimize recidivism.

Central to this Note is the Individualized Education Programs. Individualized Education Programs (IEPs) are specialized education programs uniquely developed for each individual child with a disability in order to enhance and progress through their learning effectively.¹⁸ Currently, IEPs are frequently implemented in public and private school alike across the country and are guided by the U.S. Department of Education and state education programs.¹⁹ IEPs can be extraordinarily effective and provide the ability for multiple impactful adults, including the child's parents, school administrators, and even therapists or doctors, to come together as a group and advocate for the best course of action to help a child educationally.²⁰ Another main pillar to this note are disruptive behavior disorders (DBDs). According to the American Psychiatric Association, DBDs are defined as a group of disorders that are connected by varying difficulties controlling aggressive behaviors and self-control impulses.²¹ Further, the resulting behaviors are considered "a threat primarily to others' safety and/or societal norms. Some examples include fighting, destroying property, defiance,

13. McCoy & Pross, *supra* note 1.

14. *Id.*

15. IND. CODE § 31-37-1-2 (2017).

16. *Data Report: Youth in the Justice System*, IND. YOUTH INST. (Mar. 2021), https://www.iyi.org/wp-content/uploads/2021/03/Juvenile-Justice-Report_FINAL.pdf [<https://perma.cc/T9KG-GR94>].

17. *Id.*

18. *Access Computing: What is the Difference Between an IEP and a 504 Plan*, UNIV. OF WASH. (2006-2023), <https://www.washington.edu/accesscomputing/what-difference-between-iep-and-504-plan> [<https://perma.cc/37PV-B5S7>].

19. *A Guide to the Individualized Education Program*, U.S. DEPT. OF EDU. (Aug. 30, 2019), <https://www2.ed.gov/parents/needs/speced/iepguide/index.html>, [<https://perma.cc/6FPA-WLUM>].

20. *Id.*

21. *What are Disruptive, Impulse Control, and Conduct Disorders*, AMERICAN PSYCHIATRIC ASSOC. (Sept. 2021), <https://www.psychiatry.org/patients-families/disruptive-impulse-control-and-conduct-disorders/what-are-disruptive-impulse-control-and-conduct> [<https://perma.cc/LZ2Y-MWPL>].

stealing, lying, and rule breaking.”²²

Juveniles with DBDs are at a higher likelihood of recidivism just by the nature of their disorders.²³ Additionally, Indiana requires children between the ages of 7 and 18 (unless graduation prior to 18), to obtain a formal education, whether it be public, private, or home school.²⁴ Therefore, it is paramount that children receive a quality education, even when incarcerated. However, education for youth who are incarcerated may lag due to the limited number of services available, especially for special education.²⁵

Even a short time in the justice system can have a profound negative influence on youth. Locked detention with harsh conditions and intensive supervision can also intensify symptoms for youth with serious mental health problems or a history of trauma and abuse.²⁶ When compared to their peers, youth who spend time in detention centers were less likely to complete high school and less likely to find employment.²⁷ In 2017, Indiana’s rate of youth under 21 residing in juvenile detention centers was higher than the national average and higher than all its neighboring states.²⁸ Many youths enter the justice system with significant educational deficits.²⁹ “The academic achievement levels of adolescents who are adjudicated as delinquent rarely exceed the elementary school level.”³⁰ Furthermore, the national estimate of youth in the justice system who have learning disabilities is as high as 70 percent.³¹

Children with DBDs have one of the highest risks of reoffending, and by nature of the behavior, this population of youth usually struggles academically.³² Therefore, these youth stand to greatly benefit from a supportive and personalized education programs in addition to the children who have basic learning disabilities.

This Note clearly upholds the reasons why Indiana must mandate the use of Individualized Education Programs for youth in detention centers, specifically for children with DBDs through passing legislation and adopting the Pendleton Model as the minimum standard. To support this claim, this Note discusses in detail what both DBDs and IEPs are and highlights material on juvenile education systems and juvenile recidivism as a whole. More specifically, this Note examines the relationship between academic performance and delinquency and how implementing IEPs will help to reduce recidivism in delinquent minors. Lastly, this note will analyze how Indiana can and must effectively implement

22. *Id.*

23. *Data Report: Youth in the Justice System*, *supra* note 16.

24. IND. CODE § 20-8.1-3-17 (2021).

25. *Data Report: Youth in the Justice System*, *supra* note 16.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

IEPs for institutionalized juveniles and the urgency of adopting such a necessary statute.

II. BACKGROUND

A. Disruptive Behavior Disorders

1. Types of Disruptive Behavior Disorders in Minors

Disruptive behavior disorders (DBDs) can seriously impact a child's daily life.³³ Children with DBDs display continued patterns of uncooperative and defiant behavior.³⁴ They can respond hostilely to authority figures or can display indifference.³⁵ Children who suffer from DBDs can assert behavior that impacts everyone around them, including teachers, peers, and family members especially.³⁶ The most commonly diagnosed behavior disorders are Oppositional Defiant Disorder (ODD), Conduct Disorder (CD), Attention Deficient Hyperactivity Disorder (ADHD), impulse-control disorder, and other unspecified disruptive disorders.³⁷ Children with these behavioral disorders also frequently exhibit stubborn, irritable, disobedient, and defiant behavior.³⁸ Children with conduct disorder show the same responses previously discussed, but will additionally tend to exhibit "physically aggressive and sometimes violent behavior and a tendency to actively and intentionally violate others' rights."³⁹

These behaviors are stressful to the individual and alarming to others.⁴⁰ Anger, defiant behaviors, and malevolence cause disruptions with relationships and can drastically affect school and work environments.⁴¹ Individuals with DBDs often experience conflict with adults and authority figures.⁴² Those who are diagnosed with a DBD have a substantially higher likelihood of developing another mental illness in their lifetime, particularly, "anxiety disorders, mood disorders, substance abuse, and personality disorders."⁴³ Fortunately, DBDs are not necessarily chronic conditions.⁴⁴ About 70% of children diagnosed with

33. *Disruptive Behavior Disorder*, NATIONWIDE CHILD. HOSP. (2023), <https://www.nationwidechildrens.org/conditions/disruptive-behavior-disorders> [<https://perma.cc/ZS6W-8ML3>].

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* (Anxiety, depression, and bipolar disorder can frequently be considered behavior disorder in minors, as well, but because these usually stem from a more emotional side, they will not be specifically addressed in this review).

38. *Id.*

39. *Id.*

40. *What are Disruptive, Impulse Control, and Conduct Disorders*, *supra* note 21.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

certain DBDs, like Oppositional Defiant Disorder, will resolve before they turn eighteen years old.⁴⁵

2. Identification and Causes of Disruptive Behavior Disorders in Minors

Children with DBDs are often diagnosed because they are showing various types of uncooperative behavior. These include: “arguing (especially about less important things), refusal to follow rules, deliberately annoying others, blaming others for misbehavior, and lack of respect for others, especially authority.”⁴⁶ Additionally, these children will behave in angry, resentful, and vindictive ways.⁴⁷

In particular, children with oppositional defiant disorder often lose their temper, have aggressive behavior towards others, intentionally destroy property, lack remorse for their unacceptable behavior, and oftentimes run away from home.⁴⁸ Many adolescents are capable of displaying any one or numerous of these behaviors throughout their youth.⁴⁹ However, children with DBDs display them more often than others, frequently face discipline in school or at home, and frequently engage in conflicts with peers and family members.⁵⁰

The root causes of DBDs are unknown, but psychologists believe that various influences work together to contribute to these disorders.⁵¹ Some of the factors that contribute or increase the likelihood of a child developing a DBD are: if the child suffers from mood disorders, ADHD, and various other types of psychotic mental health disorders and/or if the parents suffer from substance abuse.⁵² Furthermore, children who are raised in emotionally or physically abusive homes, children who are the recipients of overly harsh discipline, and children who are lacking adequate parental supervision are at a higher risk for developing DBDs.⁵³

3. Impact on Minors Who Suffer a Lack of Treatment

For children who display symptoms of a DBD, it is essential for them to both be diagnosed and receive help from a qualified doctor. As previously stated, minors who have these disorders and are left untreated are at an increased risk for developing other mental disorders as an adult.⁵⁴ Children with DBDs are further

45. *Id.*

46. *Disruptive Behavior Disorder, supra* note 33.

47. *Id.*

48. *Id.*

49. *Disruptive Behavior Disorders*, BOS. CHILD. HOSP. (2022), <https://www.childrenshospital.org/conditions/disruptive-behavior-disorders> [<https://perma.cc/G4TA-5JHY>].

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Disruptive Behavior Disorders*, THE RECOVERY VILL. DRUG & ALCOHOL REHAB (2022), <https://www.therecoveryvillage.com/mental-health/disruptive-behavior-disorder/> [<https://perma.cc/2B5X-4VH5>].

at risk of “problems at school, including failing and/or dropping out, self-harm or harm to others, substance abuse, criminal delinquency, and suicide.”⁵⁵ Their disorder can also become more severe, and frequently can lead to criminal/legal trouble, which lands minors in juvenile detention centers.⁵⁶ Having a DBD can be difficult enough in and of itself, but when you add juvenile institutionalization to the mix, creating even less access to the necessary help, the outcome can be catastrophic.

4. Minors with Disruptive Behavior Disorders and Juvenile Delinquency

Substantial analysis indicates the prevalence of psychiatric disorders and substance abuse among youth in correctional facilities that surpasses that of the general adolescent population.⁵⁷ Literature published by the American Academy of Pediatrics includes additional information that youth who are in contact with the juvenile justice system experience an abnormal frequency of mental health disorders with a high rate of DBDs.⁵⁸ Furthermore, most minors would not be incarcerated unless they brought attention to themselves through their significant DBDs.⁵⁹ Many youth who come in contact with the justice system have histories of trauma that develop into mental, emotional and behavioral disorders that are linked to future involvement in the system.⁶⁰ Additionally, juvenile mental health is compounded when left untreated and coupled with an abundance of substance abuse issues, leaving them ultimately defeated in their fight against recidivism before they have even been charged with their first crime.⁶¹ This endless cycle can be changed. It starts with more targeted trainings for facility professionals to identify mental health and DBDs upon contact with the juvenile system.⁶² This in turn can identify the youth who would benefit from assistance in their education to prevent future reoffending.⁶³

B. Individualized Education Programs

1. IEPs Defined

The Indiana Code defines individualized education programs as written statements developed for a child by a group that includes: a representative of the

55. *Id.*

56. *Id.*

57. Paula K. Braverman & Pamela J. Murray, *Health Care for Youth in Juvenile Justice System*, 128 AM. ACAD. OF PEDIATRICS 6, 1219-35 (2011).

58. *Id.*

59. *Youth Involved with the Juvenile Justice System*, YOUTH.GOV (2021), <https://youth.gov/youth-topics/juvenile-justice/youth-involved-juvenile-justice-system> [<https://perma.cc/HSU4-UJ6L>].

60. *Id.*

61. *See id.*

62. *Disruptive Behavior Disorders*, *supra* note 49.

63. *Id.*

school, the child's teacher, the child's parent/guardian, the child (if appropriate), and a mental health professional if necessary.⁶⁴ Public schools are required to have IEPs for each child who receives any form of special education or related services.⁶⁵ These IEPs must be truly individualized for each child who receives one and are intended to maximize and improve the child's education based on that child's specific needs.⁶⁶ In order to have an effective IEP, the personnel tasked with creating it "pool their knowledge, experience, and commitment to design an educational program that will help the student be involved in, and progress in, the general curriculum."⁶⁷ The IEP then "guides the delivery of the support and services for the student" and requires a sure amount of teamwork.⁶⁸

2. *Writing and Reviewing the IEP*

When deciding what types of services a child needs, the IEP team first looks at the child's test results and how the child is currently doing in school.⁶⁹ Those results, combined with regular observations of the child in a learning environment, are taken together to determine goals. These goals will look at the child's strengths and participation in extracurricular activities, as well.⁷⁰ Based on the discussion and development of these goals, the team will then write the child's IEP. As an example, for a child whose behavior interferes with learning, the IEP team would create an IEP with goals to effectively address that behavior to positively impact the child's education.⁷¹ This may include "positive behavioral interventions and strategies that support the child's needs in order to learn how to control or manage his or her behavior."⁷²

Furthermore, a "Behavioral Intervention Plan" can be agreed upon by the case conference committee and can be incorporated into a student's IEP.⁷³ The Indiana Code describes a Behavioral Intervention Plan as the following:

The pattern of behavior that impedes the student's learning or the learning of others, the purpose or function of the behavior, the position interventions to support or address the behavior, and if applicable, the skills that will be taught and monitories in an effort to change a specific pattern of behavior of the student.⁷⁴

If the team chooses to implement a Behavioral Intervention Plan as part of the

64. IND. CODE § 20-18-2-9 (2021).

65. *Id.*

66. *A Guide to the Individualized Education Program*, *supra* note 19.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. IND. CODE § 20-20-40-1 (2021).

74. *Id.*

child's IEP, they must write and incorporate the specifics into the plan.⁷⁵ Finally, the team then discusses the positive behavioral strategies and interventions that the child needs in order to manage his or her behavior.⁷⁶ Specific services that are decided upon must also have a statement to that effect written into the IEP.⁷⁷

3. *Implementing the IEP*

Once the IEP is written, the next step is to implement the IEP. This means that the student is provided with the special education and related services that are outlined within their specific IEP.⁷⁸ All the supplementary aids and services that the team has identified as being essential for the child to advance in their IEP goals, which typically include progressing in their curriculum and participating in activities.⁷⁹ Teamwork plays an integral role in successfully carrying out the IEP. Sharing insights and expertise among all those involved in carrying out the IEP will create the best results for the child.⁸⁰ It may also be beneficial to have one person in charge of coordinating and monitoring the services that the child receives as a part of their IEP to make sure it is being carried out appropriately.⁸¹ Lastly, as the child continues through their education, it is important to monitor the child's progress reports.⁸² IEPs can always be modified as circumstances change, or methods prove ineffective.⁸³ As laid out in the Americans with Disabilities Act, Indiana has a *duty* to provide youth with educational resources tailored to a student's individual needs, especially when those youth are already at a disadvantage by their nature of being institutionalized.⁸⁴

C. *Juvenile Justice Education Systems*

Are minors in juvenile detention centers entitled to education? Specifically, are they entitled to special education? As a rule of thumb and unless laws of a particular state say otherwise, children who are detained are entitled to the same level of services and support in their education as children who are not.⁸⁵ In the state of Indiana, juvenile detention centers allow for school corporations to provide the facility with school materials for the grade level or courses in which the child is enrolled.⁸⁶ This is available for children who are in detention facilities

75. *Id.*

76. *Id.*

77. *Id.*

78. *A Guide to the Individualized Education Program*, *supra* note 19.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. Americans with Disabilities Act of 1989, PL 336, U.S. Statutes at Large 104 (1990): 327-78, <https://www.govinfo.gov/app/details/STATUTE-104/STATUTE-104-pg.327>.

85. McCluskey, *supra* note 10.

86. IND. CODE § 20-26-5-38 (2021).

for more than seven days.⁸⁷ The school corporation is not required to provide school materials that have been requested *only if* the child is released or the facility or the parents request that the school no longer provide the materials.⁸⁸

Regardless of the laws, education is usually substandard within the walls of juvenile detention centers. All too frequently, classes are grouped by age instead of grade level and are being taught by unaccredited education programs and faculty who are akin to substitute teachers.⁸⁹ Moreover, even in the facilities that are trying to improve the education they provide, there are still significant restrictions on what can be brought inside.⁹⁰ An example of this being that science classes cannot be taught without a majority of experiment instruments and other hands-on activities.⁹¹ Homework is also rarely, if ever, assigned.⁹²

Additionally, in some jurisdictions, youth offenders receive neither schoolwork nor dedicated instruction while in solitary confinement.⁹³ A study conducted from 2015 to 2016 showed that more than half of teenage offenders were regularly locked in solitary confinement.⁹⁴ In particular, a New York Justice Center showed that more than 80% were regularly locked in solitary confinement and many spent up to twenty-three hours a day, seven days a week in dimly lit, tiny cells.⁹⁵ “In lieu of regular schooling, they were given photocopied pages of a high-school equivalency workbook, which they were left to complete, or not, without supervision or review.”⁹⁶ Many of those children had IEPs in special education prior to detention, however, and these plans were not being continued and the facilities were not making sure the children were where they needed to be academically.⁹⁷ Here, there were children who were already at risk for struggles with their education and the facilities made it worse by not giving them the basic educational support and attention that was needed.⁹⁸

These circumstances are far from isolated. Across the country juveniles experience gaps in their education that can leave them ill-prepared to return to school upon their release—if they return at all.⁹⁹ Additionally, a lack of coordination between schools and correctional facilities leads to various delays, including a delay in sending the student’s IEP (if they already had one with their

87. *Id.*

88. *Id.*

89. McCluskey, *supra* note 10.

90. *Id.*

91. *Id.*

92. *Id.*

93. See Patrick McCarthy et. al., *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, NATL. INST. OF JUST. 2, 9 (2016), <https://www.ojp.gov/pdffiles1/nij/250142.pdf> [<https://perma.cc/ZS9G-SYQ9>].

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

public school) to the correctional facilities, which causes a delay in the special services.¹⁰⁰ Even when the IEP is passed along, the level of implementation of the IEP doesn't always meet the same level of services that were received by the child at their public school. Mandating IEPs will solve many issues of youth recidivism because it does not abandon the youth to the inadequacies of juvenile facility education, but rather provides an accountable system to maintain academic success.

Since 1975, individuals have filed over thirty class action lawsuits under the Individuals with Disabilities Education Act (IDEA) that challenge the educational services provided in detention centers.¹⁰¹ There are very few court opinions that have been published from these suits because they usually ended in settlements.¹⁰² However, some have been successful in broadly reforming juvenile correctional facilities.¹⁰³ In *Johnson v. Upchurch*, a group of disabled students brought suit under the IDEA because no special education services were provided at the Catalina Mountain Juvenile Institution.¹⁰⁴ The case settlement included broad reforms for juvenile detention centers throughout Arizona.¹⁰⁵ Additionally, in *Andre H. v. Sobol*, a group of disabled students brought suit against a juvenile detention center because it did not comply with the IDEA.¹⁰⁶ Specifically, the suit alleged that the detention center refused to accommodate youth who had already been diagnosed as disabled and had been placed in a special education program before going to the detention center.¹⁰⁷ Once at the detention center, there were no evaluations, classifications, or placement of disabled youth in appropriate educational programs, regardless of their needs and what they were received in schools.¹⁰⁸ Many years later, the suit was settled, and a multidisciplinary team was formed to implement IDEA provisions at the detention center in the future.¹⁰⁹

For many young offenders, education has always been a struggle. Peter Leone, a professor of behavior disorders at the University of Maryland said that "kids who do poorly in school early on are more likely to be truant or to participate in the sorts of low-level criminal activity that sends many kids to

100. *Id.*

101. See *Class Action Litigation Involving Special Education Claims for Youth in Juvenile and Adult Correctional Facilities*, NATL. CTR. ON EDU., DISABILITY, & JUV. JUST. (2005).

102. *Id.*

103. *Id.*

104. *Id.*, see also Patricia Puritz & Mary Ann Scali, *Beyond the Walls: Improving Conditions of Confinement for Youth in Custody*, OFF. OF JUV. JUST. & DELINQ. PREVENTION 17-18 (1998) (discussing *Johnson v. Upchurch*. because the case was settled before trial, no reporter citation is available).

105. *Id.*

106. Peter E. Leone et al., *Special Education Programs for Youth with Disabilities in Juvenile Corrections*, 53 J. CORR. EDU. 46, 4 (2002).

107. *Id.*

108. *Id.*

109. *Id.*

detention facilities.”¹¹⁰ Many young offenders never make it back to school at all. A booklet issued by the Department of Education notes that, while 90% of juveniles wish to enroll back in their traditional public school after being released, only one-third actually do.¹¹¹ This is in part to a lack of reintegration support and resources provided to youth after they leave the facility and re-enter society.¹¹² Thus, the product is a higher percentage of adolescents who stay out on the streets, commit new offenses, and get themselves further into trouble.¹¹³

D. Juvenile Recidivism

1. Characteristics of Effective Recidivism Methods on Minors

General consistencies about program effectiveness indicate that the application of various practice principles is key to improving both institutional and community-based interventions.¹¹⁴ These practice principles include a focus on the most serious adolescent offenders, matching the needs of offenders with program orientation, and clear treatment strategies.¹¹⁵ Additionally, any intervention must be provided with enough intensity to have an effect. Research work with adult corrections indicates that “more time in a program ensures that an individual has sufficient exposure to a program’s effect, but also that the largest effect from program involvement will occur when sufficient resources are provided to the most high-risk individuals.”¹¹⁶ Maintaining careful, quality program implementation has been acknowledged as one of the main factors linked to a reduction in reoffending for adolescent offenders.¹¹⁷

2. Why Are Juvenile Justice Systems Not Working on Some Minors?

For some youth offenders, too much program involvement can be as ineffective as too little program involvement. A study conducted by the Office of Juvenile Justice and Delinquency Prevention concluded that “long-term juvenile incarceration does not decrease reoffending and may actually increase recidivism rates for lower-level youth offenders.”¹¹⁸ Instead of long-term incarceration, community-based interventions that assist in reintegrating juveniles back into

110. McCluskey, *supra* note 10.

111. *Id.*

112. *Id.*

113. *Id.*

114. RICHARD J. BONNIE ET AL., REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH, THE NATIONAL ACADEMIES PRESS 157 (2013).

115. *Id.*

116. *Id.* at 158.

117. *Id.* at 160.

118. Brian Heller de Leon, *Study: Long-Term Juvenile Incarceration Fails to Decrease Reoffending Rates*, CTR. ON JUV. & CRIM. JUST. (May 3, 2012), <https://www.cjcr.org/news/blog/study-long-term-juvenile-incarceration-fails-to-decrease-reoffending-rates> [<https://perma.cc/9FXQ-B83R>].

their lives have proven the most effective.¹¹⁹ Those interventions include substance-abuse programs, behavior therapies, family therapies, mental health programs, and specialized education programs.¹²⁰ There seems to be the least amount of focus on specialized education programs, which is why mandating the usage of IEPs on the population of students who struggle the most with their behavior is a another solution to the problem.

Environmental factors such as economic conditions, population density, quality of education, and access to health care can also affect recidivism rates.¹²¹ Specifically, characteristics of where youth reside, like in high-crime neighborhoods, can influence recidivism among juveniles, especially in drug-related offenses.¹²²

3. Pre-Trial Juvenile Detention Increases Risks of Reoffending

Depending on certain jurisdictions, juveniles may be confined prior to trial to ensure they attend their court hearings.¹²³ Researchers have found that a stay in pre-trial detention, regardless of the length, increases the likelihood of recidivism in general.¹²⁴ One specific study published in 2020 found that “a stay in pre-trial juvenile detention increases a person’s likelihood of felony recidivism by 33% and misdemeanor recidivism by 11%.”¹²⁵ The study concludes that youth are thrown off course by even a single day in pretrial detention.¹²⁶ These youth are separated from their families, schools, and communities with lasting effects before there has even been a determination of guilt.¹²⁷

E. Relation Between Academic Performance and Delinquency

1. Peer Influence on Academic Performance

Delinquent peer associations may result when a student comes to reject academic achievement and leans towards prosocial behavior as a reasonable value. When a child feels he or she is not receiving academic or emotional support from caring adults, this can lead to isolation and further plays a role in delinquent or aggressive behaviors.¹²⁸ Additionally, aggression has been

119. *Id.*

120. *Id.*

121. Amanda McMasters, *Effective Strategies for Preventing Recidivism Among Juveniles*, WESTERN OR. UNIV 1, 18 (2015) https://digitalcommons.wou.edu/honors_theses/58/ [<https://perma.cc/RDT7-N2TX>].

122. *Id.*

123. Sarah Cusworth Walker & Jerald R. Herting, *The Impact of Pretrial Juvenile Detention on 12-Month Recidivism: A Matched Comparison*, 66 SAGE J. 13-14, 1865 (2020).

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. National Research Council & Institute of Medicine, *EDUCATION AND DELINQUENCY:*

suggested to explain the connection between peer rejection and delinquency, a common symptom of children who have DBDs.¹²⁹

Not only is there a link between poor academic performance leading to delinquent peer associations, but certain peer associations can lead to poor academic performance. Adolescents who experience peer rejection, gang involvement, alcohol or drug use by peers or association with peer delinquents are linked to a decrease in academic performance and an increase in delinquency.¹³⁰ Research studies have found that delinquent peer groups organize their social interactions and talk with one another around positive reinforcement “rule-breaking” discussions.¹³¹ This is called “deviancy training.”¹³² Based on a specific study conducted on males aged thirteen and fourteen, this deviancy training predicted an increased probability of escalating disruptive behaviors, addictive substance use, delinquency, and violent behavior within the next two years.¹³³

2. Why Do Minors Who Do Poorly in School Have a Higher Likelihood of Becoming Delinquent?

Juveniles spend majority of their adolescence in their school environment. It makes sense that what their life is like at school would have a major effect on youth development. Therefore, education comes with risk factors, which include truancy and dropping out, low academic achievement, learning disabilities, negative labeling by peers or teachers, and lack of parental involvement in the minor’s academics.¹³⁴ Regarding the association between underachievement and delinquency, “research supports the basic proposition that academic underachievement is positively associated with increases in delinquent behavior.”¹³⁵ Further, exploration in this area also indicates that minors with attention deficits were associated with *both* underachievement and delinquent behavior.¹³⁶

Studies have shown that children who exhibit early aggressive behavior may experience difficulties in the classroom.¹³⁷ This result can also cause a child to receive disparaging assessments from teachers and peers and cause a child to turn to delinquency.¹³⁸ Moreover, children with one or more DBDs can be

SUMMARY OF A WORKSHOP 14 (Joan McCord et al. eds., 2000).

129. *Id.* at 16.

130. McMasters, *supra* note 121, at 22.

131. McCord, *supra* note 129, at 15.

132. *Id.*

133. *Id.*

134. McMasters, *supra* note 122, at 23.

135. John P. Hoffman, *Academic Underachievement and Delinquent Behavior*, 52 SAGE PUB. 5, 19-20 (2018).

136. *Id.*

137. McCord, *supra* note 129, at 13.

138. *Id.*

uncooperative, combative, and/or distracted, and their behavior affects their ability to learn and get along with others.¹³⁹ Subsequently, this leads to poor academic performance, anti-social behaviors, and poor impulse control.¹⁴⁰ Equally, delinquency can also be another manifestation of what got the child into trouble at school in the first place.¹⁴¹

F. Evidence-Based Services for Juvenile Offenders

Over a number of years, there has been significant analysis that has enhanced the understanding of what interventions work with juvenile offenders.¹⁴² One of the most progressive policy reforms of recent years is “the drive for evidence-based practice, which focuses on effective treatments, services, and supports for children and families.”¹⁴³ This subject has been addressed in the policy reforms of education, mental health, child welfare services, and juvenile justice systems.¹⁴⁴ The best available research suggests that evidence-based programs and investments in services such as education and employment are the best ways to improve public safety while saving money.¹⁴⁵ “Although effective interventions have been developed and validated during the past twenty years, it remains the case that the vast majority of current services utilized in the juvenile justice system have not proven effective or simply have not been evaluated.”¹⁴⁶ The impact of evidence-based programs is not quite where it was hoped to be. However, the rate of adoption and scale at which the intervention programs are implemented is reasonably similar to other areas of preventative science.¹⁴⁷

139. Carolyn Reinach Wolf et al., *Students with Disabilities and the Juvenile Justice System: What Parents Need to Know*, AUTISM SPECTRUM NEWS (2015), <https://www.autismspectrumnews.org/students-with-disabilities-and-the-juvenile-justice-system-what-parents-need-to-know/> [<https://perma.cc/GB7H-S8DJ>].

140. *Id.*

141. McCord, *supra* note 128, at 13.

142. Randy Borum, *Managing At-Risk Juvenile Offenders in the Community: Putting Evidence-Based Principles Into Practice*, 19 J. CONTEMP. CRIM. JUST. 1, 116 (2003).

143. Mark W. Lipsey et al., *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice*, CTR. FOR JUV. JUST. REFORM 1, 9 (2010).

144. *Id.*

145. *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense*, JUST. POL. INST. 1, 19 (2009).

146. Scott W. Henggeler & Sonja K. Schoenwald, *Evidence-Based Interventions for Juvenile Offenders and Juvenile Justice Policies that Support Them*, 25 SOC. RES. CHILD DEV. SOC. POL. REP. 1, 4 (2011).

147. Delbert S. Elliott et. al., *Evidence-based Juvenile Justice Programs and Practices: a Critical Review*, CRIMINOLOGY & PUB. POL. 1, 1319-1320 (2020).

III. ANALYSIS

A. How Implementing IEPs Will Reduce Recidivism in Delinquent Minors

Individualized education programs serve as roadmaps to student success. The IEP outlines the time, services, curriculum, and supplementary aids that the student needs to be successful in their education.¹⁴⁸ Incarceration during youth is a crucial point of intellectual development. Children who already have DBDs and who don't have any support of an IEP while in public school, will likely face poor academic performance.¹⁴⁹ "A disabled youth may enter the 'School-to-Prison Pipeline' because of the lack of an Individualized Education Plan (IEP), bullying, and social absences."¹⁵⁰ Furthermore, self-control and self-regulation issues themselves are associated with academic underachievement. This in turn "increases the likelihood of children experiencing peer rejection, gang involvement, alcohol or drug use, and association with peer delinquents."¹⁵¹ Youth who receive the appropriate support with their education while in detention centers will develop a sense of achievement. When youth experience academic achievement, it strengthens their mental health and their self-confidence.¹⁵² Further, areas of self-control and self-regulation, maturity, and knowledge allow for adolescents to move toward being a productive member of society and decreases their likelihood of running into the law again.¹⁵³

According to a comprehensive evaluation conducted by the RAND team, inmates who participated in correctional education programs had a 43% lower change of recidivating than those who did not.¹⁵⁴ Juveniles with correctional education will also increase their likelihood of employment.¹⁵⁵ Strengthened ability for employment is nearly always linked to lower rates of recidivism because of the ability for an individual to support themselves without resorting to criminal activities and fosters independence and responsibility.¹⁵⁶

In the Pendleton facility in Indiana, many students have received their high school diplomas behind bars, and the faculty work with the students to help them think about work opportunities after release, including resumes, cover letters, and college or job applications.¹⁵⁷ According to statistics, the work is paying off. Only

148. Wolf et al., *supra* note 139.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. Lois M. Davis et. al., *How Effective is Correctional Education, and Where do We Go from Here?*, RAND CORP. (2014), https://www.rand.org/pubs/research_reports/RR564.html [<https://perma.cc/N79B-AVAX>].

155. *Id.*

156. *See, Education for Youth Under Formal Supervision of the Juvenile Justice System*, OFF. OF JUV. JUST. & DELINQ. PREVENTION 1, 1 (2019).

157. Leo Doran, *Inside Indiana's Juvenile Justice System*, INSIDE SOURCES: EDUCATION

about one-third end up back in a juvenile facility and more than 80% are able to stay out of adult corrections.¹⁵⁸ One of the adolescent students at Pendleton who achieved his diploma and is set to be released soon told a reporter that “between the lack of distractions and being surrounded by an adults that are invested in his success, [he] explains that he has been able to focus on his schoolwork and has blossomed into becoming an avid reader.”¹⁵⁹

B. Costs and Benefits of Juvenile Justice Intervention

In light of the compelling evidence that a variety of juvenile intervention programs significantly reduces one-year rearrests, it is worth it from a broader social policy perspective to encourage these types of programs.¹⁶⁰ Cost-benefit analysis identifies and measures the benefits and costs of a program. If the benefits exceed the costs, the program is proven economically efficient because the value of the output exceeds the cost of producing it.¹⁶¹ As a result, society is then economically and socially better off because of the positive outcomes that have been achieved as a result of the program’s impacts on juveniles.¹⁶² However, if costs exceed benefits, society is better off not operating the program and devoting those resources to other beneficial purposes.¹⁶³

Juvenile facilities were originally intended to be places for rehabilitation and support for adolescents to learn from their mistakes, while still holding them accountable for their actions.¹⁶⁴ However, the rise in individuals at these facilities has caused overcrowding and a changed philosophy for some from one of rehabilitation to one of punishment.¹⁶⁵ Even in facilities without overcrowding, these youth often do not develop the social skills of self-control and conflict resolution as well as those who are never incarcerated. Further, because the large number of overcrowded facilities often times create violent and chaotic environments for youth, those with behavioral health problems may only get worse while in detention and not better.¹⁶⁶ Additionally, youth who spend time in facilities “have higher recidivism rates; are less likely to naturally age out of illegal behavior; suffer from more mental illness and are at a higher risk of suicide, and they are less likely to succeed at education and employment” at the same level as those who remain in the community.¹⁶⁷

(2017), <https://insidesources.com/inside-indianas-juvenile-justice-system/> [<https://perma.cc/3FFG-FJD6>].

158. *Id.*

159. *Id.*

160. BONNIE ET AL., *supra* note 114, at 167.

161. *Id.*

162. *Id.*

163. *Id.*

164. *The Costs of Confinement*, *supra* note 145, at 9.

165. *Id.*

166. *Id.* at 18.

167. *Id.* at 9.

Based on research by the Justice Policy Institute, Missouri's Department of Youth Services has become a model for juvenile justice systems. They have an emphasis on small facilities of no more than forty beds per facility and their focus on support and rehabilitation has had positive effects on the youth in their care.¹⁶⁸ Youth in these facilities are able to receive education in a purposeful way that allows them to meet educational benchmarks at similar rates to their peers in the community.¹⁶⁹ This combined approach has allowed for recidivism rates of less than 10%.¹⁷⁰ If children must be confined instead of being placed in community-based programs, the Missouri Model is one of the most effective juvenile incarceration methods.¹⁷¹

Research continually links education and continuing illegal behavior.¹⁷² Locking up youth can interrupt the learning process even if there are educational opportunities behind bars.¹⁷³ There is rarely a fluid transition from a juvenile facility back to education in the community.¹⁷⁴ Lack of adequate education during confinement creates barriers to employment that limit a person's ability to positively contribute to society upon release.¹⁷⁵ One of the recommendations by the Justice Policy Institute is to invest in policies that increase employment, educational attainment, and treatment for those who need it.¹⁷⁶ The Alliance for Excellent Education reported that "a 5% increase in male high school graduation rates would produce an annual savings of almost \$5 billion in crime-related expenses."¹⁷⁷ Clearly, by focusing on a supportive education that continues even when incarcerated, and encourages youth to succeed towards employment, the benefits outweigh the costs with requiring IEPs in Juvenile Detention Facilities.

C. Possible Challenges

The only state supreme court that has directly challenged the education provided in juvenile detention under its state constitution and statutes is the Washington Supreme Court in *Tunstall v. Bergeson*.¹⁷⁸ Even though the results in *Tunstall* are not binding on other states, it still gives an insight into the mindset that courts might take in approaching this topic. In *Tunstall*, a class of juvenile inmates challenged a lack of education during their incarceration as unconstitutional and as a violation of the Basic Education Act (BEA).¹⁷⁹ The trial

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.* at 15.

173. *Id.* at 19.

174. *Id.* at 9.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Tunstall v. Bergeson*, 141 Wash. 2d 201, 5 P.3d 691 (2000).

179. WASH. REV. CODE §§ 28A.150.200–.150.310 (2006).

court granted summary judgment for the inmates, but the Washington Supreme Court reversed, finding no violation of the inmates' constitutional rights.¹⁸⁰ It is also important to note that these youth were incarcerated at an adult facility not a juvenile detention facility, despite being under 18 years old.¹⁸¹

The court held that these inmates had a constitutional right to education under Article IX of the Washington Constitution.¹⁸² However, the court rejected the plaintiff's challenge, because, although the education may not have been adequate, the state still had provided some educational services to inmates.¹⁸³ The BEA statute required that the correctional facility provide education to help inmates achieve a high school diploma, and the court held that this statute was sufficient enough on its face.¹⁸⁴ It is important to note that the court explicitly rejected the argument that the children had forfeited their right to education by engaging in the conduct that resulted in their incarceration.¹⁸⁵ Ultimately, the court held that "individuals under age 18 incarcerated in adult Washington State Department of Correction (DOC) facilities have a constitutional right to public education," and that this right was satisfied by the BEA.¹⁸⁶ On its face, this ruling can be considered significant, since the court held that children have a constitutional right to education, even while incarcerated. Yet, the problem remains on what is considered adequate.

IV. THE FUTURE OF JUVENILE JUSTICE EDUCATION

A. A Statute Adopting the Requirement of IEPs for Minors in Detention Centers with Disruptive Behavior Disorders

For the state of Indiana to adopt a uniform, effective program to ensure youth with DBDs receive the educational support they need, the state legislature would need to effectuate legislation that mandates following a pattern of screening and developing educational support for all juveniles in state detention facilities. A hypothetical statute or structure of important aspects to add to a statute would state the following:

1. Faculty shall be employed at each states juvenile detention facility who are qualified by the state to be a teacher and shall be qualified in the implementation and understanding of individualized education programs. If the teacher does not already have a license, the facility will be responsible for job training in order to be qualified.
2. Juveniles who will be staying at a detention facility for at least sixty

180. *Tunstall*, 5 P.3d at 696, 702-04, 708.

181. *Id.* at 694.

182. *Id.* at 702.

183. *Id.*

184. *Id.* at 702-03.

185. *Id.* at 701.

186. *Id.* at 694.

days shall receive a mental health intake at the beginning of their detention.

3. Those diagnosed with a disruptive behavior disorder (DBD) will be flagged and within 7 days of their arrival, shall start the development of an Individualized Education Program (IEP).
4. The facility's IEP and teaching faculty and the juvenile's previous school (prior to detention) shall work together to create an individualized education program for the juvenile, and shall begin no later than fifteen days after the child's arrival at the facility.
5. For any juvenile who has a lengthened stay at a facility—every two or three months, the individualized education program shall be reviewed and the progress of the juvenile assessed. The IEP shall be adjusted as needed, as the juvenile progresses and develops in their education.
6. Upon the juvenile's release, the IEP and all documents used for the education and implementation of the plan shall be provided to the school at which the child will be enrolled.

Simple implementation of a statute will not be enough, however. Having supplemental aids to coincide with the statute will help to effectively carry out this solution. Maintaining plans for enforcement, plans for integration of the IEPs, and plans to continue to re-evaluate and monitor the progress will be essential to having the best possible results for juveniles. The following sections delve into these plans further, as well as a model that all of Indiana should look to as the standard.

B. Enforcement Through Assessment and Intake

Health and social services have come to rely more significantly on research and analysis-based screening methods.¹⁸⁷ These methods include checklists that identify specific problems and their severity for further assessment.¹⁸⁸ For example, one method assesses how ready and equipped an individual is to leave a restrictive environment.¹⁸⁹ Another method assesses high-risk individuals of their imminent serious violence, and how this can be avoided in the institutional environment.¹⁹⁰ Furthermore, detention screening instruments are frequently implemented to assess a youth's risk of failing to appear in court or of committing another crime upon release.¹⁹¹ Mental health screening instruments are also becoming standard practice with youth when they initially arrive at the facility to assess the minor's mental state.¹⁹²

187. BONNIE ET AL., *supra* note 114, at 145.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.* at 146.

192. *Id.* at 145.

In particular, there are juvenile assessment instruments designed to detect how intervention methods can be addressed by identifying the youth's needs.¹⁹³ All too frequently, the conduct that leads to their involvement with the juvenile justice system relates to unknown or underdiagnosed disability or mental health disorder.¹⁹⁴ Implementing and coordinating early screening, assessment, and intervention strategies as early as possible is key to determine whether having the support of an IEP is essential. The Division of Youth Services through the Indiana Department of Corrections conducts initial intakes on youth sent to their units.¹⁹⁵ These intakes include assessments for "criminogenic needs, mental health needs, educational, vocational, and aftercare needs."¹⁹⁶ However, neither the Division of Youth Services nor the Indiana Juvenile Justice Plan for 2021-2024 specifically identify their approach to the components of the intake process.¹⁹⁷ Therefore, the research analyzed for this Note centered on the methods of intake through adult prisons to determine the recommendation for specific juvenile intake components.

Analysis of a juvenile's medical, mental, and educational needs should constitute a significant portion of the initial intake assessment and should begin as soon as a youth is subject to detention at a juvenile detention center. These should include, medical screening, physical examinations, substance abuse tests, mental health and psychological screenings, and academic achievement tests.¹⁹⁸ Nationwide, these tests are required to be administered in 96% of states in adult prison facilities and should be required to be administered in juvenile detention facilities as well, if they aren't already.¹⁹⁹ Also, as part of the mental health and psychological screenings, juveniles should specifically be screened and assessed for DBDs. Those who have a positive indication of both DBDs and learning disabilities should be flagged to receive an IEP assessment after intakes.

Based on the results of the various screenings and tests through the intake process, classification staff should compile a profile for each individual

193. *Id.*

194. *Youth with Undiagnosed or Mistreated Disabilities*, COA. FOR JUV. JUST., <https://www.juvjustice.org/our-work/safety-opportunity-and-success-project/national-standards/section-i-principles-responding-2> [<https://perma.cc/6NTY-LPKY>] (last visited Mar. 26, 2023).

195. *Treatment Programming and Mental Health Services*, IND. DEPT. OF CORR. – DIV. OF YOUTH SERVS. (2023), <https://www.in.gov/idoc/dys/juvenileprograms/#:~:text=After%20being%20committed%20by%20a,%2C%20vocational%2C%20aftercare%2C%20etc> [<https://perma.cc/4U6F-757G>].

196. *Id.*

197. *Id.*; see also IND. CRIM. JUST. INST., IND. JUVENILE JUST. PLAN 2021–2024 (Aug. 3, 2021).

198. See *Prisoner's Intake Systems: Assessing Needs and Classifying Prisoners*, U.S. DEPT. OF JUST. NATL. INST. OF CORR. (2004), (This source was used to analyze what methods worked and how prison intakes typically are done to develop ideas for juvenile detention centers in Indiana's intake system), <https://info.nicic.gov/nicrp/system/files/019033.pdf> [<https://perma.cc/6VQW-XJ2H>].

199. See *id.*

juvenile.²⁰⁰ These classification profiles will help to determine (among other program and treatment needs) those who would benefit from an IEP in their education at the facility. These profiles and needs assessment classifications should be able to be shared among facilities, courts, and other correctional agencies the juvenile comes in contact within the future.²⁰¹ Through utilizing a mental health intake assessment that includes DBDs, Indiana will be able to effectively determine if a child would benefit from the educational support of an IEP.

C. Quality Education that Integrates the IEPs

According to The Division of Youth Services, after intake, youth are assigned a correctional counselor/case manager at their facility who manages their treatment plan and coordinates the usage of programs.²⁰² Typically, these programs focus more on substance abuse and mental health treatment, learning to regulate their emotions, better decision-making support, and reintegration with their families.²⁰³ Additionally, an emphasis on core cognitive-behavioral programs are usually a part of a juvenile's rehabilitation programs at their facility.²⁰⁴ However, there seems to be a lack of information on what the precise educational support will look like for juvenile offenders, based on information provided by the Division of Youth Services and the Indiana Juvenile Justice Plan for 2021-2024.²⁰⁵

Youth in correctional facilities are just as entitled to an education as their peers who are not incarcerated.²⁰⁶ Yet, they aren't receiving the services they need, which in part stems from a lack of training for teachers in correctional facilities, and improper record transfers, to name a few.²⁰⁷ Additionally, there are a larger portion of youth with special needs who qualify for services who are in detention centers, but less faculty and resources available to them than public school systems.²⁰⁸ This disproportionality and lack of qualified staffing is a large part of the reason why juveniles aren't receiving the educational help they need.²⁰⁹

This is further compounded by the fact that nearly one half (48%) of incarcerated youth are functioning below their appropriate grade level.²¹⁰

200. *See id.*

201. *See id.*

202. IND. CRIM. JUST. INST., IND. JUVENILE JUST. PLAN 2021–2024, *supra* note 197.

203. *Id.*

204. *Id.*

205. *Treatment Programming and Mental Health Services*, *supra* note 195.

206. Allison Thibault, *Using Hindsight Evidence When Evaluating IEPs for Youth with Disabilities in Adult Correctional Facilities*, 31 GEO. MASON U. C.R. L.J. 1, 157 (2021).

207. *Id.*

208. *See id.* at 161.

209. *Id.*

210. *Id.* at 163.

Additionally, youth in public schools usually spend six hours a day in school, whereas fewer than half of incarcerated youth spend that amount of time in school while in detention centers.²¹¹ Having these procedures, or lack thereof, is diminishing the goals of the Individuals with Disabilities Education Act, the Equal Protection Clause of the Fourteenth Amendment, and the Civil Rights Act of 1964.²¹²

It is significantly difficult balancing the safety and rehabilitation of juveniles with their quality of education.²¹³ Yet, there are still effective methods to ensure that IEPs are utilized and integrated in effective ways. Having staff and teachers who are trained either by having an Indiana teaching license or by receiving on the job training that effectively equates to a license, coupled with specialized IEP and DBD, will be essential to making this whole process work. The teachers can meet with the juvenile's case worker, any psychological therapists or other program specialists the juvenile has, and parents (if appropriate) to create the IEPs. Furthermore, incarcerated youth should be receiving thirty to thirty-five hours of learning per week just like their non-incarcerated peers are receiving, or else risk falling behind. This can be broken up into segments that include evening and weekend learning in order to reach that number of hours. The amount of time spent in the classroom and learning is imperative, as children with DBDs may require additional time to master their academics due to their IEP plans.

D. Continuing to Re-Evaluate and Monitor Academic Progress

Integrated treatment programs must be effective in reducing recidivism or they will have little value to the juvenile justice system. Adolescents do not have a fixed set of characteristics and are constantly evolving.²¹⁴ Relying on one initial evaluation will create inaccurate assessments of the likelihood of reoffending and is a poor indicator of later outcomes.²¹⁵ The federal appellate courts have varying views on how IEPs should be evaluated, causing further confusion in an already complex program.²¹⁶ The Eighth Circuit has the best approach. This Circuit interprets academic progress as an "important factor in evaluating an IEP's appropriateness and creates an evaluation standard that ensures that an IEP must be responsive to an individual's academic and behavioral needs."²¹⁷ The Seventh Circuit, which is the jurisdiction that the entirety of Indiana is in, does not hold this view. The Seventh Circuit has a more limited involvement when evaluating whether an IEP is appropriate after it has been implemented.²¹⁸

Progress monitoring is *essential* to evaluating the appropriateness of a

211. *Id.* at 164.

212. *Id.*

213. *Id.* at 173.

214. BONNIE ET AL., *supra* note 114, at 178.

215. *Id.*

216. Thibault, *supra* note 206, at 171.

217. *Id.* at 166.

218. *Id.* at 167.

juvenile's IEP plan, but many IEP teams fail to develop or include plans to monitor progress or simply do not know how to appropriately measure the child's progress.²¹⁹ Indiana is one of those places.²²⁰ According to a report conducted by the Indiana Department of Education in 2022, there were hundreds of non-compliance violations by public schools for children with IEPs.²²¹ That report indicated that some schools were not establishing IEPs as required or not following up with their progress correctly.²²² With Indiana public schools struggling to have satisfactory IEPs that comply with IDEA, juveniles in correctional facilities are suffering all the more.²²³ There are less people focusing on these juvenile's education and thus they are getting the brunt end of the situation. Now more than ever, not only implementing the IEPs, but having effective training for teachers and faculty within the juvenile correctional facilities is necessary. The most useful and valid assessments on adolescents are when they focus on short-term outcomes and goals that are as evolving as the youth themselves.²²⁴ Thus, in order to be most informative and effective, juveniles in Indiana must have assessments and screenings done more regularly to consider all the influential factors in their lives.²²⁵

The best approach would be to implement IEPs in juvenile facilities with the same goals and intentions as how IDEA requires them to be administered in public schools. First, the student's current level of performance is determined by the IEP team, followed by deciding several goals that will take place over time.²²⁶ There are several dates and duration of services that are included in the goals section of the IEP, as well as specifics on monitoring progress.²²⁷ All too frequently there are considerable failures in reporting a student's progress within their IEP, so this is the most crucial step in maintaining a successful plan.²²⁸ Therefore, the IEP team who makes the IEP, especially teachers, should review the juvenile's progress every 2-3 months at minimum. If the team conducts assessments as frequently as this, they will be able to make any necessary changes or updates to the plan for moving forward. It will also be a great indicator if any methods included in the IEP plan work better or worse than others.

Additionally, since those with DBDs in juvenile detention facilities would be required to receive an IEP, it would be ideal to also include a Behavior

219. Susan K. Etscheidt, *Progress Monitoring: Legal Issues and Recommendations for IEP Teams*, 38 TEACHING EXCEPTIONAL CHILD. 3, 56 (2006).

220. Angela Brauer, *Data shows hundreds of special education plan violations in Indiana*, CBS4 (July 14, 2022), <https://cbs4indy.com/news/data-shows-hundreds-of-special-education-plan-violations-in-indiana/> [<https://perma.cc/GA7K-G6UM>].

221. *Id.*

222. *Id.*

223. *See id.*

224. BONNIE ET AL., *supra* note 114, at 178.

225. *Id.*

226. Etscheidt, *supra* note 219, at 56.

227. *Id.*

228. *Id.* at 57.

Intervention Plan within each IEP. Even IDEA requires IEP teams to consider including Behavior Intervention Plans in cases where a child's behavior impedes his or her learning progress, and this includes children with DBDs.²²⁹ The goal should be to develop proactive, preventative approaches to behavioral problems and to monitor and determine the effect of the planned interventions.²³⁰ Because the juvenile's behavior and learning are intertwined, including the Behavior Intervention Plans and assessing this at the same 2-3 month minimum is crucial to the student's success.

E. The Pendleton Model

One facility in Indiana, Pendleton Juvenile Correctional Facility, has actually worked on utilizing IEPs with juveniles at their facility with a stronger focus on quality education as their form of rehabilitation.²³¹ Pendleton has a school building within the facility that was purposefully designed to have the look and feel of a regular public school.²³² The teachers are also required to have special education certifications.²³³ A good portion of the juveniles in the school have IEPs, their good behavior is rewarded with comfort food and extra privileges, and if they act out in class they are sent to the counselor's office.²³⁴ Additionally, they have significantly cut down on their use of solitary confinement and focus more on leading adolescents to make the right decisions.²³⁵ The main full-time teacher is assigned a caseload of students to work with and get to know.²³⁶ This teacher is responsible for advocating on their behalf with other teachers and meets with them at least once per month.²³⁷

Additionally, the guards and administrators refer to the boys living there as "students" instead of any other term equating to "prisoner."²³⁸ The term is all the more appropriate because the students spend so much time in class—their school year runs from July 1st to June 30th, with no breaks.²³⁹ A former counselor at Pendleton who is now an executive director explained that to leave Pendleton, must maintain at least a 4.0 behavioral average.²⁴⁰ She stated that, "We don't like to think in terms of punishment here, more consequences. Ultimately, it's about leading them to make the right decisions."²⁴¹ The administrators at Pendleton

229. *Id.* at 58.

230. *Id.*

231. Doran, *supra* note 157.

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.* (quoting a direct quote from one of the students at Pendleton discussed in this article).

prefer the students transfer their credits they earn back to their home school districts, but when that's not possible, they usually sit for high school equivalency exams to determine academic placement.²⁴² For any student who hopes to attend community college or obtain employment upon release, the faculty help them put together college or job applications, resumes, and cover letters.²⁴³ The youth respond well to the attention from an adult role model who seem to care about their success. Overall, the program seems to work for many students.²⁴⁴ This is a phenomenal model that would be a basis for recreation in all juvenile detention facilities in Indiana and even more so nationally.

V. CONCLUSION

This educational success while incarcerated can only be achieved if the education is adequate. Kids who do poorly in school early on are more likely to be truant or to participate in the sorts of low-level crimes that send many kids to detention facilities.²⁴⁵ This is a really big issue that speaks volumes about the vulnerability of youth with needs in a judicial system that “is not very responsive or does not acknowledge the fact that . . . kids with disabling conditions are much more likely to be detained. And then, once they're detained, they're more likely to be committed and kept in confinement for longer periods of time.”²⁴⁶ Not all the population in Indiana is aware of this problem, though, and without having experienced it themselves or having children involved within the justice system, it may be hard to grasp the desperate need for reform still. Therefore, pushback will be expected, especially involving legislation that involves increased spending. In order to implement these changes, more faculty, more training, and qualified teachers will be needed. However, this solution has long lasting effects, substantial results, and is absolutely viable in Indiana, as seen in the Pendleton model.

If incarcerated youth have disabilities that affect their learning abilities, they need individualized educational plans to ensure their educational needs are still being met. Having plans in place that ensure juveniles can succeed academically are also more likely to find employment when released from prison/juvenile detention centers. Furthermore, successful correctional education reduces recidivism among juvenile offenders since it provides them with opportunities to change their personal behavior and values, and their higher rates of academic competencies are associated with lower rates of recidivism.²⁴⁷ By effectively addressing these issues, other issues within the criminal justice system will be

242. *Id.*

243. *Id.*

244. *Id.*

245. McCluskey, *supra* note 10.

246. *Id.*

247. Sonia Pace, *From Correctional Education to School Reentry: How Formerly Incarcerated Youth can Achieve Better Educational Outcomes*, 23 TEXAS J. CIVIL LIB. 2, 127-143 (2018).

mitigated. When combined with other interaction methods such as mental health and substance abuse resources, Indiana can effectively and continuously reduce recidivism rates among juvenile offenders. It may take some time to see the effects, but we owe it to our youth to make these changes the solution.