BACK TO BENEVOLENCE: THE CASE FOR INTERNET ACCESS IN NEVADA'S JUVENILE DETENTION CENTERS

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"The problem for determination by the judge is not, Has this boy or girl committed a specific wrong, but What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career. . . . The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude." – Julian Mack[1]

"A door to employment and a buffer against recidivism, a diploma also functions as an antidote to stigma, debunking the notion that its holder will never be more than an 'ex-con.' " – Nell Bernstein[2]

I. THE STATUTE

Nevada Revised Statute ("NRS") 209.417 prohibits adult and juvenile offenders from having Internet access in Nevada's detention centers.[3] NRS 209.417 provides that "no offender in the institution or facility . . . [may have] access to a telecommunications device."[4] Included in the category of telecommunication devices is "a computer that is connected to a computer network, is capable of connecting to a computer network through the use of wireless technology or is otherwise capable of communicating with a person or device outside of the institution or facility."[5]

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[1] Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119–20 (1909).

[2] NELL BERNSTEIN, BURNING DOWN THE HOUSE: THE END OF JUVENILE PRISON 196 (2014).

[3] NEV. REV. STAT. § 209.417 (2015).

[4] *Id.* § 209.417(1).

[5] *Id.* § 209.417(4).

II. THE PROBLEM

Before contact with the juvenile court and subsequent detention centers, most juvenile offenders have access to online education programs in their public schools.[6] For example, Clark County School District uses the Internet-based Apex Learning system, among others.[7] The public school students who use the Apex system are given unique login usernames and passwords, exactly like e-mail or other social networking accounts.[8] From the Apex website, students take online courses to fulfill Advanced Placement credits, make up lost credits, or pursue extra credits for early graduation.[9]

Additionally, Nevada's public schools, at certain grade levels, require participation in Internet-based dynamic assessments known as Smarter Balanced Assessments.[10] These assessments are responsive, relying on students' answers to determine appropriate follow-up questions.[11] This feature works to remediate any gaps in learning students may experience and "provides a more accurate indicator for teachers, students, and parents as they work to meet the rigorous demands of college and career readiness."[12] Of course, like the Apex learning system, access to the Smarter Balanced Assessment requires access to the Internet.

In juvenile detention centers, pursuant to NRS 209.417, students are prohibited from having access to the online programs used in their public schools.[13] The detention centers do have computers, but students only have access to an inflexible intranet program named A+ Anywhere.[14] A+ Anywhere is a learning system similar to Apex in form, but A+ Anywhere is server-based and requires no Internet access, contains different coursework, is foreign to the students in the detention centers, and does not have as many courses as Apex, or other internet-based learning systems.[15] In this way, the statute provides a continuity and participation issue and places a stumbling block in front of our

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[6] Interview with Robert Tarter, Principal, Clark Cty. Juvenile Det. Ctr., in Las Vegas, Nev. (Oct. 2, 2015).

[7] *Id*.

[8] *Id*.

[9] *Individual Courses*, APEX LEARNING VIRTUAL SCH., http://www.apexlearningvs.com/courses [https://perma.cc/6Y3D-466J] (last visited Jan. 29, 2017).

[10] *Smarter Balanced Assessments for Grades 3–8*, NEV. DEP'T EDUC., http://www.doe.nv.gov/Assessments/Smarter_Balanced_Assessment_Consortium_(SBAC)/ [https://perma.cc/Y6F3-TZSB] (last visited Jan. 29, 2017).

[11] *See* NAT'L PTA, PARENTS' GUIDE TO NEW GRADES 3–8: ASSESSMENTS IN NEVADA (2013), http://www.doe.nv.gov/Assessments/SBAC_Smarter_Balanced/Documents/PTAAssessmentGuide/ [https://perma.cc/ZXK9-DFW9].

[12] SMARTER BALANCED ASSESSMENT CONSORTIUM, FOR TEACHERS (2015), https://www.smarterbalanced.org/wp-content/uploads/2015/09/TeacherFactsheet.pdf [https://perma.cc/WT6A-KCVL].

[13] NEV. REV. STAT. § 209.417(3) (2015); Interview with Robert Tarter, *supra* note 6.

[14] Interview with Robert Tarter, *supra* note 6.

[15] *Id*.

most vulnerable kids, the vast majority of whom are already credit-deficient.[16] If given Internet access, students in Nevada's detention centers could simply log in to their preexisting Apex accounts and continue the best they could under the admittedly strained circumstances. Alternatively, the detained juvenile, if he does not have a preexisting Apex account, would be able to create one, which would at least provide an avenue for continued academic participation for that student when he is released and back in his respective public school. If the leadership of juvenile detention centers were granted Internet access for their wards, the students would have at least a pathway to productivity upon release.

As it stands, Nevada's system forces the juvenile offender to start entirely new courses on an entirely different program. Often, the content of A+ Anywhere is different from that of Apex. In an interview with Bob Tarter, Principal of Clark County Juvenile Detention Schools, Mr. Tarter cited an example of a student studying fractions in detention on the A+ Anywhere program, when in public school, the same student had been busy studying advanced math.[17] How will this student perform when he re-enters his community? He has been completely removed from an already-challenging track and placed on a new path irrelevant to his educational progress.

From this point, it is not difficult to imagine the at-risk child flailing into adulthood with a criminal record and without a high school degree. Nevada policy should set our children on a trajectory for success. We want to help them move forward from the mistakes of youth. Permitting juvenile offenders to participate in an educational system that increasingly uses Internet resources is one simple way we can help them to move forward, which would benefit the offender and lessen the burden on the state of Nevada. In the face of the state's struggling education system[18] and the availability of Internet-based learning systems, restricting Internet access to juveniles in detention centers may work to the detriment of both the state and the child. With the prohibition in place, the struggling child's education is disrupted, and his future academic success is significantly compromised.[19] In response, our legislature should add a juvenile carve-out to NRS 209.417 because in addition to the continuity and participation issues, blocking Internet access to juvenile detention centers creates a recidivism problem.

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[16] *Id*.

[17] *Id*.

[18] *See generally* Trevon Milliard, *Nevada Falls Last on Education Ranking*, L.V. REV.-J. (Jan. 11, 2016 7:41 AM), http://www.rgj.com/story/news/education/2016/01/07/nevada-falls-last-education-ranking-despite-improvement/78397820/ [https://perma.cc/8GPA-TASP]; Press Release, Educ. Week Research Ctr., Quality Counts Marks 20 Years: Report Explores New Directions in Accountability (Jan. 7, 2016), http://www.edweek.org/media/qualitycounts2016_release.pdf [https://perma.cc/CY2Y-2RS7]; *Nevada*, NAT'L CTR. EDU. STAT., https://nces.ed.gov/nationsreportcard/states/ [https://perma.cc/84PN-RVFF] (last visited Jan. 29, 2017) (select "Nevada").

[19] Interview with Robert Tarter, *supra* note 6.

III. RECIDIVISM OR REHABILITATION

Black's Law Dictionary defines rehabilitation as "[t]he process of seeking to improve a criminal's character and outlook so that he or she can function in society without committing other crimes."[20] Recidivism is "[a] tendency to relapse into a habit of criminal activity or behavior."[21] In this rather standard theoretical framework, recidivism is the penological antithesis to the goal of rehabilitation. Recidivism represents an ultimate failure of the goal of rehabilitation. This incontrovertible truth—not especially groundbreaking in the context of adult prisons—is especially problematic in the context of the juvenile justice system because the juvenile justice system's origins are rooted in benevolence and the commitment to rehabilitating downtrodden children.[22]

With a lack of education feeding recidivism rates,[23] and educational achievement lowering the rate of recidivism,[24] Nevada's commitment to NRS 209.417 amounts to a commitment to juvenile recidivism, which is wholly inconsistent with the fundamental values and ideals underlying the juvenile justice system. NRS 209.417 imposes an educational stumbling block for our children, where the research emphasizes "it is critical that juvenile and adult criminal justice systems help provide young adults with viable pathways to high school and postsecondary success."[25]

A. Recidivism and Education

In a 2013 press release by the Department of Justice, Office of Public Affairs, the federal government formally recognized that inmates who were given and took advantage of the opportunity to achieve educational progress while in detention were substantially less likely to reoffend.[26] Specifically, a RAND Corporation study cited by the Department of Justice found that there was a

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[20] *Rehabilitation*, BLACK'S LAW DICTIONARY (10th ed. 2014).

[21] *Recidivism*, BLACK'S LAW DICTIONARY (10th ed. 2014).

[22] *See, e.g.*, Illinois Juvenile Court Act, § 12, 1899 Ill. Laws 131, 135 (current version at 705 ILL. COMP. STAT. 405 (2016)).

[23] COUNCIL OF STATE GOV'TS JUSTICE CTR., REDUCING RECIDIVISM AND IMPROVING OTHER OUTCOMES FOR YOUNG ADULTS IN THE JUVENILE AND ADULT CRIMINAL JUSTICE SYSTEMS 4 (Nov. 2015), https://csgjusticecenter.org/wp-content/uploads/2015/11/Transitional-Age-Brief.pdf [https://perma.cc/85UE-QN5U]; Antonis Katsiyannis et al., *Juvenile Delinquency and Recidivism: The Impact of Academic Achievement*, 24 READING & WRITING Q. 177, 188 (2008).

[24] ELIZABETH SEIGLE ET AL., COUNCIL OF STATE GOV'T JUSTICE CTR., CORE PRINCIPLES FOR REDUCING RECIDIVISM AND IMPROVING OTHER OUTCOMES FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM 30 (2014).

[25] COUNCIL OF STATE GOV'T JUSTICE CTR., *supra* note 23.

[26] Press Release, Dep't of Justice, Office of Pub. Affairs, Justice and Education Departments Announce New Research Showing Prison Education Reduces Recidivism, Saves Money, Improves Employment (Aug. 22, 2013), http://www.justice.gov/opa/pr/justice-and-education-departments-announce-new-research-showing-prison-education-reduces [https://perma.cc/7UP7-SJ29].

staggering 43 percent drop in the rate of re-offense in those subjects that had simply *participated* in any "correctional education programs."[27] Additionally, inmates participating in these educational programs were 13 percent more likely to find employment after their release.[28] In the press release, Attorney General Eric Holder characterized the correctional education programs as "smart," "innovative," and conducive to the creation of "productive citizens."[29]

In the juvenile context, 55 percent of young offenders will reoffend and return to detention.[30] One study on reduced juvenile recidivism as a result of in-detention educational achievement appears in *Reading and Writing Quarterly*.[31] This study found that "rates of re-offending and recidivism are highly correlated with low levels of academic achievement" and "[t]he completion of a general equivalency diploma program was strongly associated with longer survival times outside of prison."[32] The federal government, through U.S. Secretary of Education Arne Duncan and U.S. Attorney General Eric Holder, took notice of the positive correlation between in-detention academic achievement and reduced juvenile recidivism, and issued the Correctional Education Guidance Package.[33]

The Correctional Education Guidance Package was designed for state and local governments as a roadmap to improving the quality of education in juvenile detention centers.[34] Duncan's quote from the press release emphasizes the gravity of the change suggested in the Package:

> Students in juvenile justice facilities need a world-class education and rigorous coursework to help them successfully transition out of facilities and back into the classroom or the workforce becoming productive members of society. Young people should not fall off-track for life just because they come into contact with the justice system.[35]

In the face of all this evidence proving recidivism rates are increased by academic failure and lowered by in-detention academic accomplishment, even a potential solution (here, Internet access) should be adopted. In the juvenile context, even potential solutions should be embraced because of the juvenile justice system's origins in and commitment to rehabilitation. Additionally, as

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[27] *Id*.

[28] *Id*.

[29] *Id*.

[30] U.S. DEP'T OF EDUC., CORRECTIONAL EDUCATION GUIDANCE PACKAGE, http://www2.ed.gov/policy/gen/guid/correctional-education/fact-sheet.pdf [https://perma.cc/5QJW-T6P3] (last visited Jan. 29, 2017).

[31] *See generally* Katsiyannis et al., *supra* note 23.

[32] *Id*. at 188–89.

[33] Press Release, U.S. Dep't of Educ., Secretary Duncan, Attorney General Holder Announce Guidance Package on Providing Quality Education Services to America's Confined Youth (Dec. 8, 2014), https://www.ed.gov/news/press-releases/secretary-duncan-attorney-general-holder-announce-guidance-package-providing-qua [https://perma.cc/GE3Q-6LYJ].

[34] *Id*.

[35] *Id*.

mentioned in this Note, Nevada's Constitution, its statutes, and its legislative declarations regarding juvenile justice all suggest benevolent motivations and a commitment to rehabilitating the child offender.

IV. HISTORY AND PURPOSES OF NRS 209.417

NRS 209.417 was adopted in 1999 through Senate Bill ("SB") 485.[36] Research into the hearing minutes on SB 485 does not reveal any underlying intent for NRS 209.417. The legislative intent is announced only in the statute itself. The language articulating this intent is largely preserved in today's statute, which prohibits telecommunication devices "that can enable an offender to communicate with a person outside of the institution or facility at which the offender is incarcerated."[37]

There were nine hearings on SB 485, and six contained lengthy discussions of the bill.[38] The minutes of the six hearings show the legislators and the bill's sponsors were mostly concerned with establishing a high-tech task force, addressing the effects cybercrime have on Nevada, and identifying new types of cybercrime.[39] Additionally, in the 1999 Summary of Legislation, SB 485 is summarized in five paragraphs that focus mostly on the new task force and on various offenses.[40] The fifth paragraph, which contains only one sentence, departs from the themes of the overall summary and categorically prohibits those in detention from access to telecommunication devices.[41]

V. PURPOSES OF THE STATUTE TESTED

A. Preventing Communications To and From the Outside

The stated intent of the statute is to prevent inmate communications that reach beyond the detention center walls.[42] In 1999, a categorical restriction on Internet access was probably the proper strategy to achieve this goal. In 2015, that same strategy is overkill. Today, there is a plethora of software programs that filter access to a wide range of content including entire websites, keyword

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[36] Act of June 8, 1999, ch. 530, § 35, 1999 Nev. Stat. 2700, 2712 (codified as amended at NEV. REV. STAT. § 209.417).

[37] NEV. REV. STAT. § 209.417(4) (2015).

[38] *SB485*, NEV. LEGISLATURE, http://www.leg.state.nv.us/Session/70th1999/Reports/history.cfm?ID=3046 [https://perma.cc/J2X3-YGY5] (last visited Jan. 29, 2017). *See generally, e.g.*, *Hearing on S.B. 485 Before the S. Comm. on Judiciary*, 1999 Leg., 70th Sess. 2–6 (Nev. Apr. 2, 1999) [hereinafter *Hearing on S.B. 485*, Apr. 2, 1999].

[39] *See, e.g.*, *Hearing on S.B. 485*, Apr. 2, 1999, *supra* note 38.

[40] NEV. LEGISLATIVE COUNSEL BUREAU, RESEARCH DIV., SUMMARY OF LEGISLATION, 1999 Leg., 70th Sess., at 100–01 (1999), https://www.leg.state.nv.us/Division/Research/Publications/SoL/1999SoL.pdf [https://perma.cc/6J4D-U7CA].

[41] *Id.* at 101.

[42] NEV. REV. STAT. § 209.417(4) (2015) (defining devices prohibited as any device "that can enable an offender to communicate with a person outside of the institution or facility").

searches, and file types, like videos, or pictures.[43] These programs not only filter access from within the computer network, but also protect the network from outsiders attempting to access or send information to the network.[44] There are even pre-tailored software programs specifically designed for filtering Internet content in the education context.[45]

Additionally, any proposed carve-out legislation to NRS 209.417 could include security measures and contemplate any number of contingencies. For example, proposed legislation could require staff supervision of student Internet use, staff permission for students to use the Internet, live remote monitoring of Internet activity, etc. The appropriate security measures could be legislated without any boundaries, but a categorical ban on Internet access from within detention centers is unnecessary.

Today, there are more efficient and sophisticated methods of preventing Internet crime and communication from within a detention center than a categorical, legislative ban. Nevada should add a juvenile detention center exception to NRS 209.417 and develop methods to regulate Internet activity.

B. Preventing Further Criminality

The hearings on SB 485 reveal the purpose of the bill was to respond to high-tech crime,[46] and NRS 209.417 should reflect and serve that purpose. Preventing criminality is not an intent drawn from the statute, but it is the only intent expressed in the hearings on SB 485.[47] While it is difficult to determine the demographics of high-tech offenders, juvenile crime statistics reveal a pattern inconsistent with juvenile perpetration of cybercrime. The FBI's Uniform Crime Report ("UCR") shows the crimes perpetrated most by juveniles are property crimes (burglary, larceny, motor vehicle theft, and arson), larceny-theft, and "other assaults."[48] Juveniles are underrepresented in crimes reported

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[43] *See How to Limit Internet Access to Users?*, CCM, http://ccm.net/faq/1813-how-to-limit-internet-access-to-users [https://perma.cc/2SBK-ZNLA] (last visited Jan. 29, 2017); Jack Wallen, *Five Tips for Managing Employee Internet Access*, TECHREPUBLIC (Jan. 7, 2011, 4:08 AM), http://www.techrepublic.com/blog/five-apps/five-tips-for-managing-employee-internet-access/ [https://perma.cc/DD4B-WGAP]. *See generally, e.g.*, BARRACUDA, https://www.barracuda.com [https://perma.cc/G36F-H4HB] (last visited Jan. 29, 2017) (one provider of such filter software).

[44] Untangle's "NG Firewall Complete" offers protection in K-12 computing against outside and inside threats. *NG Firewall Complete*, UNTANGLE, https://www.untangle.com/shop/ng-firewall-complete/ [https://perma.cc/HB2P-EBJE] (last visited Jan. 29, 2017).

[45] *See generally, e.g.*, *Untangle for K–12 Schools*, UNTANGLE, https://www.untangle.com/solutions/k12/ [https://perma.cc/2DS5-XB5E] (last visited Jan. 29, 2017); *Web Filter 3.0*, LIGHTSPEED SYS., http://www.lightspeedsystems.com/products/web-filter/ [https://perma.cc/ZG87-HF3U] (last visited Jan. 29, 2017).

[46] *See, e.g.*, *Hearing on S.B. 485*, Apr. 2, 1999, *supra* note 38.

[47] *See, e.g.*, *Hearing on S.B. 485 Before the S. Comm. on Judiciary*, 1999 Leg., 70th Sess. 9 (Nev. May 11, 1999) [hereinafter *Hearing on S.B. 485*, May 11, 1999].

[48] FED. BUREAU INVESTIGATION, UNIFORM CRIME REPORT: CRIME IN THE UNITED STATES 2013 (2013), https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-

by the UCR that are closer in relation to cybercrime, such as white-collar crimes.[49] For example, in 2013, juveniles committed only 649 of the 37,884 cases of forgery or counterfeiting, 2,755 of the 88,245 cases of fraud, and 233 of the 10,202 cases of embezzlement.[50]

The juvenile offender, and children generally, are impulsive and opportunistic.[51] The UCR data strongly suggests that the juvenile offender is not as likely as his adult counterpart to commit crimes requiring planning or any thought at all. The characteristics of the juvenile offender do not correlate with high-tech crime. With all this in mind, it becomes clear that the risk of Internet-facilitated criminality by the juvenile in detention is quite low, and with basic, already-present supervision in combination with software protections, it likely would be nonexistent. If the statute's history and intent, specifically the sparse attention given to NRS 209.417, is not enough to convince the Nevada legislature to add a juvenile carve-out, the compassionate origins of the juvenile justice system itself certainly will.

VI. NEVADA'S FOUNDATIONS FOR JUVENILE JURISPRUDENCE

Preventing detained juveniles from having access to the Internet through NRS 209.417 is incompatible with the objectives and policy positions articulated in Nevada's Constitution and Chapter 62A of the Nevada Revised Statutes, which reorganizes Nevada's juvenile justice apparatus.

A. Nevada's Constitution

Nevada's Constitution was expediently written by territorial delegates and accepted by President Lincoln in 1864 to ensure the President's wartime re-election with Nevada providing new Republican electoral votes.[52] The Union government was under such strain that Congress waived its right to review Nevada's Constitution, leaving the decision of Nevada's statehood exclusively in the hands of President Lincoln.[53] With the election approaching and pressed for time, the territorial delegates telegraphed the entire constitution to President

2013/tables/table-32/table_32_ten_year_arrest_trends_totals_2013.xls [https://perma.cc/D3SX-SKMJ].

[49] Nevada's Chief Deputy Attorney General in 1999, Kevin Higgins, reflected on SB 485 and said, "this [SB 485] is only the beginning of 'tackling' the growth of white-collar crime into the next century." *Hearing on S.B. 485*, May 11, 1999, *supra* note 47.

[50] FED. BUREAU INVESTIGATION, *supra* note 48.

[51] Graham v. Florida, 560 U.S. 48, 78 (2010) (treating juvenile impulsiveness as a "given" to reject life without parole sentences for juveniles who had committed non-homicide offenses). *See generally* Brief for American Psychological Association et al. as *Amicus Curiae* in Support of Petitioners, Miller v. Alabama, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647).

[52] MICHAEL W. BOWERS, THE NEVADA STATE CONSTITUTION 16, 19 (2d ed. 2014).

[53] *Id.* at 16.

Lincoln.[54] The telegraph cost $3,416.77 and was "the longest and most expensive telegram ever dispatched in the United States up to that time."[55] The urgency in drafting and transmitting Nevada's Constitution shows that, while perhaps not every word was tailored to perfection, every subject was intentionally recorded and of a matter significant enough to include.

Nevada's Constitution is divided into articles, sections, and subsections.[56] In Article 13, entitled "Public Institutions," Nevada's founders called for the legislature to establish state prisons and institutions for the insane.[57] Article 13 appears immediately after Article 12, which establishes Nevada's militia, and immediately before Article 14, which defines the geographical boundaries of the state.[58] What could be so important as to warrant mention before the borders of the state? Within Article 13, Section 2 (on state prisons), the drafters make a distinction between adult and juvenile offenders and command the legislature to create an adult prison and a "House of Refuge for Juvenile Offenders."[59]

The term "House of Refuge" cannot be dismissed simply as antiquated constitutional language easily translated for twenty-first-century understanding as "kid prison," or a simple command to separate detained children and adults. The term "House of Refuge" refers to institutions created in the nineteenth century in response to increased urbanization and pressure from America's growing progressive constituency[60] to take in neglected, or abused children and juvenile delinquents who had already offended, both in the interest of preventing future crime.[61] For some influential reformers of the era, child offenders were viewed as "the innocent victims of culture conflict and the technological revolution."[62] The early reformers viewed themselves as saviors of the delinquent child, charged by their collective conscience to prevent continued delinquency and to protect the helpless child swept up by a global industrial transformation.[63]

The Houses of Refuge, like Nevada's Constitution, predate the formal separation of the juvenile and adult court systems.[64] The Houses of Refuge, how-

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[54] *Id*.

[55] *Id*. (quoting NEV. SEC'Y OF STATE, POLITICAL HISTORY OF NEVADA 90 (9th ed. 1990)).

[56] *See generally* NEV. CONST.

[57] *Id*. art. XIII, §§ 1–2.

[58] *See generally id*. art. XXII–XXIV.

[59] *Id*. art. XIII, § 2.

[60] *See* ANTHONY M. PLATT, THE CHILD SAVERS 31–38 (2d ed. 1977) [hereinafter PLATT, THE CHILD SAVERS]; Anthony Platt, *The Triumph of Benevolence: The Origins of the Juvenile Justice System in the United States*, *in* YOUTH JUSTICE: CRITICAL READINGS 177, 177–80, 189, 192 (John Muncie et al. eds., 2002) [hereinafter Platt, *The Triumph of Benevolence*].

[61] *See* David S. Tanenhaus, *The Elusive Juvenile Court: Its Origins, Practices, and Re-Inventions*, *in* THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE 419, 422 (Barry C. Feld & Donna M. Bishop eds., 2012).

[62] PLATT, THE CHILD SAVERS, *supra* note 60, at 36.

[63] *Id*. at 3, 36.

[64] *See* Tanenhaus, *supra* note 61, at 422.

ever, "laid the legal foundations for the juvenile court."[65] The first House of Refuge was established in New York[66] (James W. Nye's home state, before being appointed governor of Nevada by President Lincoln in 1861)[67] and it was "both a school and a prison" that ran on a strict "regimen of religious indoctrination, forced labor, and unyielding discipline."[68] While the New York Refuge was plagued with violence, runaways, and riots, the opportunity for the juvenile offender to progress was always present and central, at least on paper, to the entire operation.[69] An excerpt from Nell Bernstein's *Burning Down the House* captures the contradiction of the "optimistically"[70] named House of Refuge:

> In New York, home to the first House of Refuge, the state legislature gave this new institution a mandate as noble as its name. Its managers, according to the law that authorized the New York House of Refuge, were to provide wayward youth—whether delinquent or merely destitute—with education and employment "as in their judgment will be most for the reformation and . . . future benefit and advantage of such children."[71]

However,

> "Children confined in the houses of refuge were subjected to strict discipline and control. . . . Corporal punishments (including hanging children from their thumbs, the use of the 'ducking stool' for girls, and severe beatings), solitary confinement, handcuffs, the 'ball and chain,' uniform dress, the 'silent system,' and other practices were commonly used in houses of refuge."[72]

Regardless of New York State's individual failure with the House of Refuge experiment, the words "House of Refuge" appearing in Nevada's constitution in 1864 reflects the founders' agreement with those jurisdictions that had decided to treat juveniles separately, with a different penological model—one of reform and rehabilitation.[73] What may be even more significant is that Nevada made this decision before the formal creation of the first juvenile court in 1899.[74] Most important about its inclusion in our Constitution is what the Houses of Refuge stood for, which was, in its correct form, to save children

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[65] *Id*.

[66] Barry Krisberg, *Juvenile Corrections: An Overview*, *in* THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE 748, 749 (Barry C. Feld & Donna M. Bishop eds., 2012).

[67] BOWERS, *supra* note 52, at 9.

[68] Krisberg, *supra* note 66, at 750.

[69] *See id*.; Alexander W. Pisciotta, *Saving the Children: The Promise and Practice of* Parens Patriae*, 1838–98*, 28 CRIME & DELINQ. 410, 416 (1982).

[70] BERNSTEIN, *supra* note 2, at 38.

[71] *Id*.

[72] *Id*. at 44 (quoting RANDALL G. SHELDEN, OUR PUNITIVE SOCIETY 166 (2010) (footnote omitted)); see Pisciotta, *supra* note 69, at 413–15, for a discussion of other corporal punishment used in the house of refuge.

[73] *See* VICTOR L. STREIB, JUVENILE JUSTICE IN AMERICA 5 (1978).

[74] Tanenhaus, *supra* note 61, at 420. *See generally* PLATT, THE CHILD SAVERS, *supra* note 60, at 10 (explaining most states did not begin creating juvenile courts until the early 1900s).

through supervision and education.[75] Before contact with the juvenile justice system, Nevada's children participate in and have access to Internet-based educational programs.[76] Because of NRS 209.417, Principal Bob Tarter cites concerns with leveraging technology in today's Internet-centric educational environment.[77] Beyond all other arguments made in this note in support of a juvenile carve-out for NRS 209.417, our Constitution, and its early embrace of benevolent methods in handling the child who happens to offend, seems to require that the best education possible be provided to our children.

B. Nevada Revised Statutes Chapter 62A

In 2003, Nevada's 72nd Legislative Session passed Senate Bill 197, which became NRS Chapter 62A.[78] SB 197 was created and enacted "to reorganize the statutory scheme of things affecting juveniles and juvenile justice in Nevada."[79] The "Legislative Declaration" portion of NRS 62A.360 echoes the interests of the early juvenile justice reformers and would fully support a juvenile offender carve-out for NRS 209.417.[80]

The very first section of NRS 62A.360 calls for a liberal construction of everything that follows. Black's Law Dictionary defines "liberal constructionism" as a "[b]road interpretation of a text's language, including the use of related writings to clarify the meanings of the words, and possibly also a consideration of meaning in both contemporary and current lights."[81] Black's definition of "liberal interpretation" is also helpful, defining the term as an interpretation that takes into account "the spirit and broad purpose" of a law.[82]

Section 1(a) then reads, "Each child who is subject to the jurisdiction of the juvenile court must receive such care, guidance and control, preferably in the child's own home, as will be conducive to the child's welfare and the best interests of this State."[83] Here, the legislature creates a balancing test between the juvenile offender's best interests and the state's best interests. Importantly, the legislature also expresses an interest in treating the juvenile offender without incarcerating him, which lends more meaning to the spirit of the balancing-test section appearing immediately after. Simply, the calculus balancing the child's interests with the state's interests becomes sincerer after the statute expresses an in-home priority in disciplining the juvenile offender.

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[75] *See* Tanenhaus, *supra* note 61, at 422.

[76] Interview with Robert Tarter, *supra* note 6.

[77] *Id*.

[78] S.B. 197, 72d Leg., Reg. Sess. (Nev. 2003).

[79] *Hearing on S.B. 197 Before the S. Comm. on Judiciary*, 2003 Leg., 72d Sess. 2 (Nev. Mar. 7, 2003) (statement of Senator Valerie Wiener explaining her connection to SB 197).

[80] NEV. REV. STAT. § 62A.360 (2015)("The Legislature hereby declares that:[] This title must be liberally construed to the end that. . .").

[81] *Liberal Constructionism*, BLACK'S LAW DICTIONARY (10th ed. 2014).

[82] *Liberal Interpretation*, BLACK'S LAW DICTIONARY (10th ed. 2014).

[83] NEV. REV. STAT. § 62A.360(1)(a).

In the section above that tests the stated and implied purposes of the statute prohibiting Internet access from Nevada's inmates, it was established that (1) detained juvenile offenders are not likely to commit Internet crimes, and (2) Internet-facilitated communications can easily be restricted in the twenty-first century with various software programs. With this in mind, providing the juvenile offender the proper "care, guidance and control"[84] would require and permit access to the Internet, even in the face of the state's security interests. The next section states:

> When a child is removed from the control of the parent or guardian of the child, the juvenile court shall secure for the child a level of care which is equivalent as nearly as possible to the care that should have been given to the child by the parent or guardian.[85]

Here, the legislature declares the detained juvenile offender shall be provided with a level of care significantly comparable to the care a child receives at home. At home, even the bare-minimum level of parental care—sending the child to school, feeding the child, providing shelter—would suggest providing the detained child with Internet access for the purpose of education. Most of Nevada's public schools have Internet-based education programs,[86] and most children are provided with a public school education.[87] Additionally, the Nevada Department of Education is beginning to phase in reactive Internet-based assessments, which students are required to take.[88] Without the juvenile exception to NRS 209.417, the detained child is unnecessarily denied a resource accessible when in the care of his or her parents and required to meet Nevada's assessment requirements. Section 2 goes on to state, "One of the purposes of this title is to promote the establishment, supervision and implementation of preventive programs that are designed to prevent a child from becoming subject to the jurisdiction of the juvenile court."[89]

The final section of the legislative declaration emphasizes the priority for prevention of juvenile crime and contact with the juvenile court. In doing so, the legislature echoes the early principles of the juvenile justice system in general, and by extension, Nevada's Constitution. Restricting detained juveniles' access to the Internet is inconsistent with the early principles of the juvenile

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[84] *Id*.

[85] *Id*. § 62A.360(1)(b).

[86] Interview with Robert Tarter, *supra* note 6.

[87] CHILDREN'S DEF. FUND, CHILDREN IN NEVADA 1 (Mar. 2013), http://www.childrensdefense.org/library/data/state-data-repository/cits/2013/2013-nevada-children-in-the-states.pdf [https://perma.cc/WF54-G6JS] (showing that, in 2013, there were 477,335 school aged children in Nevada); NEV. LEGISLATIVE COUNSEL BUREAU, RESEARCH DIV., 2015 NEVADA EDUCATION DATA BOOK 16 (2015), https://www.leg.state.nv.us/Division/Research/Publications/EdDataBook/2015/2015EDB.pdf [https://perma.cc/S2AA-5FDJ] (showing that, in the 2012–13 school year, elementary and public school enrollment in Nevada was 445,737).

[88] *See Smarter Balanced Assessments for Grades 3–8*, *supra* note 10.

[89] NEV. REV. STAT. § 62A.360(2) (2015).

justice system, the legislative declaration of NRS 62A.360, and Nevada's Constitution. The inconsistency is not due to the interaction between prevention and Internet access, but because combining this section's preference for prevention with Nevada's Constitution, which establishes a House of Refuge for juvenile offenders, suggests Nevada uses traditional methods in the distribution of juvenile justice. NRS 209.417 is inconsistent with this traditional method.

VII. THE NATION'S FOUNDATIONS

Historians and legal scholars cite the Illinois Juvenile Court Act of 1899 as the first effort ever to establish a juvenile justice court, which drew a formal line between adult and juvenile offenders.[90] The Juvenile Court Act and similar legislation was spurred by an early progressive group, mostly women, named the Chicago Woman's Club.[91] The women characterized themselves as "disinterested reformers" serving children under the directives of morality, conscience, and benevolence, as opposed to any specific political or class interest.[92] The early juvenile courts focused not on the offense, but on the offender, with an overriding objective to rehabilitate the child.[93]

In his famous 1909 Harvard Law Review article, Julian W. Mack describes the sweeping reforms to the treatment of child offenders in terms of reform, contrasting the earlier order of punishment:

> To-day, however, the thinking public is putting another sort of question. Why is it not just and proper to treat these juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities? Why is it not the duty of the state, instead of asking merely whether a boy or a girl has committed a specific offense, to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.
>
> And it is this thought—the thought that the child who has begun to go wrong, who is incorrigible, who has broken a law or an ordinance, is to be taken in hand by the state, not as an enemy but as a protector, as the ultimate guardian, because either the unwillingness or inability of the natural parents to guide it toward good citizenship has compelled the intervention of the public authorities . . . .
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> . . . .

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[90] PLATT, THE CHILD SAVERS, *supra* note 60, at 9–10.

[91] *See id*. at 75, 78, 129–130 n.84, 134.

[92] *Id*. at 3 (footnote omitted).

[93] U.S. Dep't of Justice, *Juvenile Justice: A Century of Change*, 1999 NAT'L REP. SERIES JUV. JUST. BULL., Dec. 1999, at 1, https://www.ncjrs.gov/pdffiles1/ojjdp/178995.pdf [https://perma.cc/N74E-S49G].

> . . . If a child must be taken away from its home, if for the natural parental care that of the state is to be substituted, a real school, not a prison in disguise, must be provided.[94]

Mack perfectly captured the concepts and ideals endorsed by the early juvenile justice reformers in just a few short paragraphs. What motivated those early reformers was a belief that the child offenders could be, and should be, reformed and rebuilt into productive members of society upon re-entry into their respective communities. Indeed, the Office of Juvenile Justice and Delinquency Prevention, a branch of the Department of Justice, characterized the early reform efforts of the juvenile court system as being a "benevolent mission" to help children become "productive citizens—through treatment."[95] Especially relevant and interesting here is Mack's call for a "real school, not a prison in disguise."[96] To "reform," "uplift," and "develop"[97] child offenders, Nevada should give those children more than a perfunctory attempt at computer-assisted education. To wage an effective war on recidivism rates caused by lack in education, Nevada must add a juvenile carve-out to NRS 209.417 and provide to juvenile detention center leaders the Internet option. Three landmark events in the development of the juvenile courts support the assertion that rehabilitation has always been the objective of the juvenile justice system.

A. The Illinois Juvenile Court Act of 1899

As a culmination of the efforts by the late-nineteenth century progressives discussed above, the first formal juvenile court, and that which all others in the world are based on, was created in Cook County, Illinois through the Illinois Juvenile Court Act of 1899.[98] In reading the Act itself, it is not difficult to see it is a reflection of the progressives' benevolent motive in that it clearly calls for the treatment and care, as opposed to punishment, of child offenders.[99] The subtitle of the Act proves this point well: "An Act to regulate the treatment and control of dependent, neglected and delinquent children."[100] By even these first few words, it can be seen that the enacting legislature, the 41st General Assembly, barely contemplated juvenile offenders, but was more concerned with the "dependent, neglected" child.[101]

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[94] Mack, *supra* note 1, at 107, 114.

[95] U.S. Dep't of Justice, *supra* note 93, at 2.

[96] Mack, *supra* note 1, at 114.

[97] *Id*. at 107.

[98] Illinois Juvenile Court Act, § 3, 1899 Ill. Laws 131, 132 (current version at 705 ILL. COMP. STAT. 405 (2016)); KRISTIN M. FINKLEA, CONG. RESEARCH SERV., RL33947, JUVENILE JUSTICE: LEGISLATIVE HISTORY AND CURRENT LEGISLATIVE ISSUES 1 (2012).

[99] "This act shall be liberally construed, to the end that its purpose may be carried out, to-wit: That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents." Illinois Juvenile Court Act, § 3.

[100] *Id*.

[101] *Id*.

Section 1 of the statute (Definitions) illuminates the legislature's main cause of concern. It defines the dependent, or neglected child as:

> [A]ny child who for any reason is destitute or homeless or abandoned; or dependent upon the public for support; or has not proper parental care or guardianship; or who habitually begs or receives alms; or who is found living in any house of ill fame or with any vicious or disreputable person; or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, in an unfit place for such a child; and any child under the age of 8 years who is found peddling or selling any article or singing or playing any musical instrument upon the streets or giving any public entertainment.[102]

Of the last category, concerning the delinquent child, the act says only this: "The words delinquent child shall include any child under the age of 16 years who violates any law of this State or any city or village ordinance."[103]

It is clear by this distribution—118 words for the neglected/dependent child and twenty-seven for the delinquent child—that a majority of the legislature's concern in creating the juvenile court system was for the salvation of the downtrodden child. The section defining the dependent or neglected child contemplates many circumstances a child could find himself in, yet the definition does not once imply any sort of responsibility to the child. Instead, it discusses the defeated child as though he were alone in the wilderness of an emerging industrial society, completely subject to, and his circumstance wholly owed to, the whims and follies of his assigned adult. This suggests incredible compassion for the children who come in contact with law enforcement. This further suggests that the formal foundation of the juvenile court system sought to echo the rehabilitative ideal embedded in the earlier, informal attempts at handling the young offender, like the Houses of Refuge discussed above.[104]

B. Ex Parte Crouse

The *Ex parte Crouse* decision was essential to the functioning of the early juvenile courts established by the Illinois Juvenile Court Act of 1899, in that it announced the legal basis for detaining juveniles in the concept of *parens patriae*.[105] *Ex parte Crouse* arose out of a habeas corpus petition filed by the unnamed father of Mary Ann Crouse.[106] Mary Ann Crouse was taken from her family and committed to Philadelphia's House of Refuge without a jury trial.[107] Her commitment to the House of Refuge without a jury trial was the basis of

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[102] *Id.* § 1.
[103] *Id.*
[104] *See* discussion, *supra* Part VI.
[105] *Ex parte* Crouse, 4 Whart. 9, 11 (Pa. 1839).
[106] *Id.* at 9.
[107] *Id.*

her father's habeas corpus petition, which claimed the detention violated Mary Ann's constitutional rights under the Sixth and Ninth Amendments.[108]

The *Crouse* court held that because the object of the juvenile justice system was "reformation, and not punishment,"[109] the constitutional rights guaranteed to those subject to the traditional criminal courts were not a requirement in juvenile proceedings.[110] Additionally, the court decided that Mary Ann's detention without constitutional process was not unconstitutional because the concept of *parens patriae*, or a "common guardian of the community,"[111] when used for the purpose of protecting the child, provided sufficient safeguard against abuse and superseded the rights of the child's natural parent.[112] The court held that the parental right was alienable, and that Mary Ann's detention was not only constitutional, but also that "it would be an act of extreme cruelty to release her" to her petitioning father.[113]

Following the *Crouse* decision, the proper authorities ("any reputable person" according to Section 4 of the Illinois Juvenile Court Act of 1899)[114] could detain children they deemed unfit to remain in their parents' custody. In *Crouse*, the authorities with this great power were many: "the Court of Oyer and Terminer, or of the Court of Quarter Sessions of the peace of the county, or of the Mayor's Court of the city of Philadelphia, or of any alderman or justice of the peace, or of the managers of the Alms-house and house of employment."[115] The grounds for detention and commitment to the House of Refuge were just as numerous but more nebulous. Viciousness, incorrigibility, vagrancy, moral depravity, or a parental failure to provide a proper level of "care and discipline" could all justify a third party taking and committing a child to the House of Refuge.[116] In the early juvenile justice regime, extreme deference to judicial officers ruled the day.

Unless one is willing to accept the position that the early juvenile judges were truly evil and exclusively interested in detaining as many children as possible, the grant of such incredible power to take and detain children must represent something else. Justified by the "moral and future welfare"[117] of the child, the doctrine of *parens patriae*, coupled with a massive grant of power to those who may take and commit children on the basis of that doctrine, suggests the early, rudimentary juvenile courts truly believed in the reformative, or rehabilitative goal in detaining children. This confidence in the new system would

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[108] *Id*. at 11.
[109] *Id*.
[110] *Id*.
[111] *Id*.
[112] *Id*.
[113] *Id*. at 12.
[114] Illinois Juvenile Court Act, § 4, 1899 Ill. Laws 131, 132.
[115] *Ex parte Crouse*, 4 Whart. at 10.
[116] *Id*.
[117] *Id*.

seem to come at a high cost—after all, informing parents their rights to their children were alienable is a controversial endeavor. Indeed, the court announced in the first sentence of the opinion its interest in rehabilitation and education: "The House of Refuge is not a prison, but a school. Where reformation, and not punishment, is the end."[118]

This faith in the rehabilitation of the child, as opposed to an amazing disdain for children, is what ultimately influenced the *Crouse* decision. The *Crouse* court may have placed more faith in the state than was necessary or even preferable, but the goals were always the best education and conditions for the child who unfortunately becomes subject to the juvenile court system.

Even when the procedures in 'trying' and detaining children were found unconstitutional and completely rebuilt in *In Re Gault*, the Court was careful to note that the goal of the juvenile justice system was still, 128 years after the *Crouse* decision, rehabilitation.[119] This should emphasize our national commitment to the rehabilitation of our young offenders.

C. In Re Gault

In 1964, Gerald Gault and a friend made a prank call to a woman and used "lewd or indecent remarks . . . of the irritatingly offensive, adolescent, sex variety."[120] As a result, Gerald was deemed delinquent by the State of Arizona and held in juvenile detention.[121] Gerald's parents were at work when he was taken and received no notice of their child's arrest, or service regarding the proceedings where Gerald would be presented to a juvenile court.[122]

Like *Ex Parte Crouse*, *In re Gault* involved a parental petition of habeas corpus.[123] Also like *Ex Parte Crouse*, the petitioning parents claimed constitutional rights were denied to their detained son, fifteen-year-old Gerald.[124] This time, however, the Court decided that juvenile offenders had the "right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to privilege against self-incrimination."[125] This decision would alter the appearance of the juvenile court system, but not the goals underlying the system's existence.

Justice Fortas, acknowledging the historical narrative of the juvenile court as separate from the adult system, explains the early rationale for excluding constitutional procedural rights from the juvenile courts.

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[118] *Id*. at 11.
[119] *In re* Gault, 387 U.S. 1, 4 (1967).
[120] *Id*.
[121] *Id*.
[122] *Id*. at 5.
[123] *Id*. at 4.
[124] *Id*.
[125] *Id*. at 1.

> The early reformers were appalled by adult procedures and penalties . . . [t]he apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. . . . [t]he child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be "clinical" rather than punitive.[126]

Justice Stewart, dissenting in *Gault*, echoes the early concerns of imposing procedural requirements on the juvenile courts, saying "[t]he inflexible restrictions that the Constitution so wisely made applicable to adversary criminal trials have no inevitable place in the proceedings of those public social agencies known as juvenile or family courts."[127]

Led by Justice Fortas, the majority here found that the interests in excluding constitutional procedures at the juvenile courts had gone unserved and unfulfilled, citing continued unfairness, denial of rights, inefficiency, arbitrariness, and increasing recidivism in the juvenile courts under what was then the regime of informal hearings, complete denial of constitutional process, and incredible judicial discretion.[128] While these truths led the majority to impose procedural-due-process guarantees at juvenile proceedings, thereby drawing the juvenile court closer in similarity to the adult courts, it was careful to disclaim at the outset any change to the underlying goal of rehabilitation in the juvenile justice system. It explained its holding "will not compel the States to abandon or displace any of the substantive benefits of the juvenile process"[129] and "the commendable principles relating to the processing and treatment of juveniles separately from adults are in no way involved or affected by the procedural issues under discussion."[130]

Even when the entire structure of proceedings of the juvenile court is substantially altered, like it was in *Gault*, the underlying benefits and goals of that system remain lauded and reserved for future development. The goal of rehabilitation, more than a century after it was developed and deployed in the context of juvenile justice, is still admired and adhered to, despite much trouble and exceptional failure.[131] The goal of the juvenile justice system, from *Crouse* to *Gault*, has always been to rehabilitate the child. Whether we embrace a highly informal, deferential system, like in the *Crouse* era, or a less deferential system guided by constitutional procedural provisions like in *Gault*, the rehabilitation

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[126] *Id*. at 15–16.

[127] *Id*. at 79 (Stewart, J., dissenting).

[128] *Id*. at 18–19 (majority opinion).

[129] *Id*. at 21.

[130] *Id*. at 22.

[131] *Id*. at 14. The Court acknowledges the juvenile court's history of relaxed procedural requirements in the name of more compassionate and rehabilitative treatment, but comes to a semi-opposite conclusion saying some due process rights, intelligently applied, would eliminate arbitrary results in juvenile court and better accomplish the compassionate, rehabilitative treatment originally envisioned by the earliest proponents of a separate juvenile court. *Id*. at 19–20.

goal always remains. A regime change did not express a shift in attitude toward juvenile offenders. Instead, any regime change in the administration of juvenile justice is simply a shift in strategy for accomplishing the everlasting goal of rehabilitating wayward children.

In *Crouse*, the Court goes to great lengths, holding that the right to parent is not unyielding to the needs of the state, to secure the welfare of the child and to ensure that "by training its inmates to industry; by imbuing their minds with principles of morality and religion; by furnishing them with means to earn a living; and, above all, by separating them from the corrupting influence of improper associates" the child may be properly rehabilitated and reintroduced into society.[132] To emphasize the risk the Court was willing to accept, its holding was presented in the form of a rhetorical question, suggesting the Court was proposing an extreme solution and sought, instead of announcing its decision in a commanding sentence, to incorporate the mind of the reader, to lead the reader to the difficult conclusion on his own. It asks: "To this end, may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae*, or common guardian of the community?"[133]

In *Gault*, the entire decision is a cost-benefit analysis, comparing the remaining benefits of informal proceedings with the costs of denying due process. It cites sociologists to find that "[u]nless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel."[134] In this sentence, not written by Justice Fortas, is the whole of the *Gault* opinion, without, of course, the specific constitutional rights extended to child offenders subject to the juvenile courts. The primary concern is the juvenile offender's wellbeing, with particular attention given to the likelihood of his being rehabilitated, which is worn away by informal proceedings that create a sense of unfairness. *Crouse* and *Gault*, while decided more than a century apart, stand for the same proposition. Both opinions take on considerable risk to protect the juvenile offender and his interest in being rehabilitated. The goal of rehabilitation has been judged by history as worthy of great and risky undertaking.

VIII. EXAMPLES OF SUCCESSFUL ONLINE PROGRAM IMPLEMENTATION

A. Loysville Youth Development Center in Pennsylvania

In April 2012, the Pennsylvania Commission on Crime and Delinquency published *The Juvenile Justice System Enhancement Strategy*, seeking to improve outcomes for juveniles in detention and the communities they would in-

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[132] *Ex parte* Crouse, 4 Whart. 9, 11 (Pa. 1839).

[133] *Id.*

[134] *In re Gault*, 387 U.S. at 26 (quoting RUSSELL SAGE FOUND., JUVENILE DELINQUENCY 33 (1966)).

evitably re-enter.[135] Acting on the statewide enhancement strategy, the Loysville Youth Development Center ("LYDC") decided to implement the "online computer skills certificate program" known as the International Computer Driving License Program ("ICDL").[136] In addition to the online computer competency instruction, the LYDC also offers a full range of general education courses and grants diplomas and GEDs.[137]

The staff at LYDC reasoned computer literacy through the instruction of the ICDL program would facilitate personal growth and increase youth opportunities for employment once released from state custody.[138] Through the ICDL program, incarcerated youth are taught the basics that their general population peers may acquire in school, or at home: word processing, web browsing, sending and receiving e-mail, and organizing folders.[139] Additionally, the safety concerns identified above regarding Internet access were trumped at LYDC by state information technology workers and strategically organizing the classroom to permit instructor observation.[140] According to staff, the popularity of the ICDL program, its unchallenging implementation, and its assumed benefits are such that the Pennsylvania Department of Public Welfare is seeking to introduce the program at other juvenile facilities throughout Pennsylvania.[141]

B. Indiana—Accessing Supplemental Textbook Material

Textbooks now include supplemental educational material that is available *only* online. Responding to this growing trend, the Division of Youth Services of the Indiana Department of Corrections found it necessary to install an online classroom infrastructure consisting of SMART-brand interactive whiteboards, projectors, and Internet access to level the playing field between detention center students and public school students.[142] This ensured the children in detention had equal access to the supplemental educational material offered online only.[143]

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[135] JUVENILE COURT JUDGES' COMM'N ET AL., PENNSYLVANIA'S JUVENILE JUSTICE SYSTEM ENHANCEMENT STRATEGY 4 (2012).

[136] NAT'L TECH. ASSISTANCE CTR. FOR THE EDUC. OF NEGLECTED OR DELINQUENT CHILDREN AND YOUTH, PROGRAM HIGHLIGHTS: USING THE INTERNATIONAL COMPUTER DRIVING LICENSE PROGRAM AT LOYSVILLE YOUTH DEVELOPMENT CENTER (PENNSYLVANIA) (2014).

[137] *Id*.

[138] *Id*.

[139] *Id*.

[140] *Id*. Staff and IT workers worked together to develop a system to prevent access to the Internet outside of the ICDL platform, test and improve these barriers, monitor the students using ICDL, arrange the physical space to facilitate monitoring, track and report internet usage, and create consequences for students using the Internet outside of ICDL. *Id*.

[141] *Id*.

[142] NAT'L TECH. ASSISTANCE CTR. FOR THE EDUC. OF NEGLECTED OR DELINQUENT CHILDREN AND YOUTH, PROGRAM HIGHLIGHTS: ACCESSING ONLINE SUPPLEMENTAL TEXTBOOK MATERIAL IN INDIANA JUVENILE CORRECTIONAL FACILITIES (2014).

[143] *Id*.

The goal of Indiana's program is to provide equal access to educational materials to children in detention and to provide those same children with a meaningful, quality education comparable to what they would receive if they were not in contact with the juvenile justice system.[144] Their method, however, is creative and peculiar in that it excludes students from directly accessing the Internet.[145] Instead, addressing the obvious safety concerns presented whenever the argument is made for Internet access in detention, Indiana has chosen to permit only teachers to access the SMART whiteboards, which they use to access the Internet to present the supplemental, Internet-only, supplemental educational material.[146] So, the children in detention do not have direct access to the supplemental materials, but they are presented with the materials by their teachers.

Like the staff at Loysville, the staff involved in the SMART whiteboard experiment in Indiana are reporting back with positive results, saying they are now better equipped to instruct students and that the students are benefitted by the mode of instruction.[147] Also like the experiment at Loysville, Indiana's concerned policy makers are now trying to expand on their Internet-based education concept and are communicating with other states for solutions.[148]

C. Oregon Virtual School District

In 2013, the Oregon Youth Authority ("OYA"), acknowledging the success of the Oregon Virtual School District ("ORVSD") and with the goal of improving post-release outcomes for juveniles in detention, sought to introduce Internet-based educational programs to the detention centers it was charged with operating.[149] Facilitating the collaborative efforts between the OYA and the ORVSD, Oregon Administrative Rule ("OAR") 416, Division 040 was passed.[150] OAR 416-040 announces "[e]lectronic networks provide offenders access to education and employment information to assist in their successful reintegration from confinement into the community."[151]

All security concerns regarding offender access to and use of the Internet are addressed by statute in OAR 416-040. Internet access is "limited to educational or employment-seeking purposes," facility directors determine when access is for those purposes, staff must supervise an offender's activity, staff cre-

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[144] *Id*.
[145] *Id*.
[146] *Id*.
[147] *Id*.
[148] *Id*.
[149] NAT'L TECH. ASSISTANCE CTR. FOR THE EDUC. OF NEGLECTED OR DELINQUENT CHILDREN AND YOUTH, PROGRAM HIGHLIGHTS: JUVENILE CORRECTIONS FACILITIES CONNECT TO THE OREGON VIRTUAL SCHOOL DISTRICT (2014).
[150] OR. ADMIN. R. 416-040-0005 (2010); NAT'L TECH. ASSISTANCE CTR., *supra* note 149.
[151] OR. ADMIN. R. 416-040-0005.

ate reasonable restrictions on Internet activity,[152] offenders must have written permission to access the Internet, staff must notify offenders of expectations of use in writing,[153] e-mail is accessible at the discretion of staff, staff must prescreen websites offenders wish to visit, real-time communication must be approved and observed by staff, and offenders must notify staff of any communication received that may constitute inappropriate use.[154]

Like the examples above in Loysville and Indiana, the staff at the OYA are reporting positive effects following the implementation of the ORVSD programs at its detention facilities.[155] Teachers are enthusiastic about the unprecedented amount of content at their disposal, and students are enjoying the interactive mode of instruction.[156] Additionally, those detained at OYA facilities are now able to continue the coursework they were working on before entering detention.[157]

CONCLUSION

NRS 209.417 prevents school officials in Nevada's juvenile detention centers from fully leveraging technology in the classroom. As a consequence, a stumbling block is positioned right in front of our state's most vulnerable children. If Nevada's detained children do not have Internet access, they are unable to continue their education effectively, they are not participating like their public school peers, and they are at great risk for recidivating.

These problems and risks are significant because Nevada is statutorily and constitutionally committed to rehabilitating its wayward youth. Nevada's Constitution calls for the establishment of a "House of Refuge," which were early nineteenth century institutions dedicated to implementing the progressive movement's rehabilitative ideal in juvenile justice. Nevada's juvenile-justice statute similarly calls for the best treatment of juvenile offenders as possible—whatever is most conducive to the child's welfare. The linchpin in this entire argument, though, is the role a quality education plays in recidivism rates.

Recidivism is the theoretical antithesis to rehabilitation. Every sign in Nevada's stated objectives for treating juvenile offenders points to rehabilitation. Yet, a contradiction appears. Nevada has chosen to legislate a categorical ban on the Internet in its detention centers when the Internet plays an increasingly important and effective role in education. In 2016, a quality education requires access to the Internet. Moreover, a quality education has been shown to reduce recidivism rates. To accomplish its stated objective of rehabilitating juvenile

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[152] OR. ADMIN. R. 416-040-0010.
[153] OR. ADMIN. R. 416-040-0015.
[154] OR. ADMIN. R. 416-040-0020.
[155] NAT'L TECH. ASSISTANCE CTR., *supra* note 149.
[156] *See id.*
[157] *Id.*

offenders, Nevada must remove the unnecessary barrier to a quality education created by NRS 209.417.