

CASE NO. 21-2166

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

CAROLINA YOUTH ACTION PROJECT, *et al.*,

Plaintiffs - Appellees,

v.

ALAN WILSON,

Defendant – Appellant

On Appeal from the United States District Court for the District of South Carolina, Charleston Division
Civil Action No. 2:16-cv-2794-MBS

**BRIEF OF THE JUVENILE DEFENDER ADVOCATE AS AMICUS CURIAE IN SUPPORT OF
PLAINTIFFS-APPELLEES**

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Amicus states that no party's counsel authored the brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person — other than Amicus— contributed money that was intended to fund preparing or submitting the brief.

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I. STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE

Amicus files this brief with the consent of all the parties. *See Fed. R. App. P. 29(a)(2)*.

This brief is submitted on behalf of the Juvenile Defender Advocate and the South Carolina Commission on Indigent Defense (SCCID). The SCCID oversees the administration of criminal indigent defense services through a unified system of Circuit Public Defenders and their staffs in the state's 16 judicial circuits and 46 counties. At its offices in Columbia, the agency also handles all criminal indigent appeals in the state's appellate courts, maintains a statewide capital trial division, supervises the payment to court appointed private attorneys for legal representation performed on behalf of indigent clients in certain types of cases, and through the position of a Juvenile Defender Advocate provides resources and trainings to all juvenile defenders in the state. Additionally, the Commission establishes guidelines and standards for representation of indigent clients, initiates and supervises training programs for public defenders and staff across the state and works with the legal community and other organizations in developing best practices criteria for public defenders and criminal defense practitioners.

In 2013 the Commission authored "The South Carolina Juvenile Collateral Consequences Checklist," a booklet delineating the range of collateral consequences that affect the opportunities available to youth involved in the juvenile and criminal justice systems. In 2017, the Commission assisted the National Juvenile Defender Center in creating "Have a Juvenile record? Plan for Your Future." This booklet is a guide to collateral consequences of juvenile court involvement for youth and families, as well as juvenile defenders. The Juvenile Defender Advocate's main goals are to mitigate the risk of juvenile reoffending and ultimately to enhance public safety by developing and implementing strategies to enhance juvenile representation in South Carolina; to ensure that youth involved with the juvenile justice system have fair and equal

access to high quality legal representation; and to ensure that children involved with the juvenile justice system have access to resources that address the collateral consequences of justice system involvement. The Juvenile Defender Advocate is an expert in children's rights, has years of experience of children's representation in South Carolina, and is a national and international speaker and trainer on issues related to trauma, school-to-prison pipeline, reentry and racial and ethnic disparities. She has an interest in children being treated fairly and without any discrimination.

Plaintiffs have proven that the constitutional violations in this case are clear. Plaintiffs-Appellees' Br. 20. They have also demonstrated that the injury to students is real and substantial. Plaintiffs-Appellees' Br. 13-14. This Amicus Brief will expand on the harmful effects of the involvement in the juvenile justice system, supporting the Plaintiffs' position that the relief granted by the district court was necessary to redress the ongoing harm to Plaintiffs. The court found that "the state's enforcement of the Disturbing Schools and Disorderly Conduct laws against schoolchildren was unconstitutional and that, because of the stigmatization and adverse housing, education, and employment consequences that flow from the continued existence of these charges in their juvenile records, the harm inflicted upon Plaintiffs would persist in the absence of an injunction against the retention and reliance on records reflecting enforcement of an unconstitutional law." Plaintiffs-Appellees' Br. 58.

The enjoinder of the vague Disorderly Conduct Law and an expungement of relevant records under both Disturbing Schools and Disorderly Conduct statutes is the necessary relief for the group-wide injury suffered by the Plaintiff class. Plaintiffs stated, and this Amicus will show, that "a record of charges under these unconstitutional laws unfairly generates stigma, escalates future penalties, and interferes with future life opportunities. The district court enjoined retention

of records related to enforcement against schoolchildren. The court determined that expungement was an appropriate remedy in this case” Plaintiffs-Appellees’ Br. 59.

“Class-wide expungement was the only way for the district court to remedy the constitutional violation—i.e., to restore Plaintiffs and class members to the position they would have occupied without the State’s unconstitutional conduct, preventing the ongoing injury a criminal record would.” Plaintiffs-Appellees’ Br. 59. Thus, the Juvenile Defender Advocate urges this Court to affirm the district court’s class certification and summary judgment orders in full.

II. ARGUMENT

A. Direct Consequences

Children in South Carolina face numerous harmful direct consequences when they are charged and subsequently prosecuted for misdemeanor offenses, such as offenses of Disturbing Schools and Disorderly Conduct.

1. Diversion Programs in South Carolina

Diversion occurs when children participate in various interventions that do not require going to court or being adjudicated guilty of a crime. Diversion has many benefits. Mainly, for children who have committed an offense, it permits them to take responsibility without obtaining a juvenile record or the risk of incarceration. Many prosecutors around our state and around the country have embraced diversion programs for many children.¹ And, perhaps most important,

¹ See Derek Cohen & Susan Broderick, *New Prosecutorial Perspectives: A Framework for Effective Juvenile Justice*, TEXAS PUBLIC POLICY FOUNDATION, (2016), <http://rightoncrime.com/2016/12/new-prosecutorial-perspectives-a-framework-for-effective-juvenile-justice/>.

diversion is good for the public, as research shows that children who participate in diversion have *lower* recidivism rates than children who are prosecuted and adjudicated.² South Carolina Department of Juvenile Justice (DJJ)'s data shows that recidivism rates for children in the Youth Arbitration Program are about 10 percent lower than for children on probation or committed to DJJ custody.³ Put more simply: diversion reduces crime.

Diversion is not only valuable and effective for first-time offenders. A child who is caught shoplifting at age 13 and successfully participates in a diversion program may still benefit from a diversion program if he gets into a fight in his neighborhood and is charged with simple assault at age 17. Other states have recognized this principle. South Dakota, for example, made diversion presumptive whenever a child has gone at least 12 months since a diversion program.

Unfortunately, one of the largest and most effective diversion programs in South Carolina has a strict rule preventing children from participating more than once. The Youth Arbitration Program (YAP) is structured via a contract between DJJ and the sixteen circuit solicitor's offices (and, in Richland County, the Sheriff's Department). The legislature has directed DJJ to contract with those entities for YAP via budget proviso.⁴ The legislature has not, however, directed DJJ to ensure children are eligible for YAP who ought to be. Therefore, children in South Carolina do not get the benefit of diversion if they re-offend.

Diversion programs are valuable because, for most children, they are proven to reduce recidivism and to do so much more effectively than prosecution and imposing formal court dispositions. Yet, children in South Carolina face barriers to participation in such diversion

² E.g., David E. Barrett & Antonis Katsiyannis, *The Clemson Juvenile Delinquency Project: Major Findings from a Multi-agency Study*, 26 J. CHILD. & FAM. STUD. 2050, 2051 (2017).

³ 2019 Data Resource Guide, S.C. DEP'T OF JUV. JUST., 18 (2019), <https://djj.sc.gov/research-and-data/publications-documents>.

⁴ General Appropriations Bill for Fiscal Year 2019-2020, H.B. 4000, 123rd Sess. § 67.6 (2019) (enacted).

programs. Some current diversion programs charge children fees to participate in diversion programs. Richland County's Juvenile Court Arbitration Program comes with a \$150 fee to participate. That is a large – and sometimes prohibitive – sum for the indigent families which disproportionately populate the juvenile justice system. Charging that fee forces deeply impoverished children who cannot afford it to be adjudicated, while less poor children can be diverted. In other words, it criminalizes poverty. For many families who can pay these fees, the fees can take away money for necessities for their family. It could also take away money that could be spent on restitution payments to victims of crime.

2. *Detention Law in South Carolina*

In South Carolina, a child, as young as 11 years old, charged with a misdemeanor is eligible for detention in a secure juvenile detention facility if the child is already on probation or has a pending charge. S.C. Code Ann. § 63-19-820(B)(2)(a). A child who is incarcerated has a right to a detention hearing within forty-eight hours from detention, excluding weekends and holidays. S.C. Code Ann. § 63-19-830(A). That means that a child charged with a Disorderly Conduct offense can spend four to five days in jail before their first detention hearing. If the Family Court determines that continued detention is necessary, the Family Court may order that the child remain in DJJ custody, but not in excess of 90 days. S.C. Code Ann. § 63-19-830. A child may have an additional review in front of the Family Court 10 days after the initial hearing, then 30 days after that hearing, and at any other time for good cause shown. *Id.*

Incarceration has many harmful effects on a child, even if it lasts a few days. In *Schall v. Martin*, Supreme Court Justice Marshall for the minority said that “fairly viewed, pretrial detention of a juvenile gives rise to injuries comparable to those associated with the

imprisonment of an adult.” 467 U.S. 253, 291, 104 S. Ct. 2403, 2423 (1984). Detained youth are physically and emotionally separated from the families and communities who are the most invested in their recovery and success. A recent literature review of youth corrections shows that detention has a profoundly negative impact on young people’s mental and physical well-being, their education, and their employment.⁵ According to the report,

one psychologist found that for one-third of incarcerated youth diagnosed with depression, the onset of the depression occurred after they began their incarceration, and another suggests that poor mental health, and the conditions of confinement together conspire to make it more likely that incarcerated teens will engage in suicide and self-harm. Economists have shown that the process of incarcerating youth will reduce their future earnings and their ability to remain in the workforce and could change formerly detained youth into less stable employees. Educational researchers have found that upwards of 40 percent of incarcerated youth have a learning disability, and they will face significant challenges returning to school after they leave detention. Most importantly, there is credible and significant research that suggests that the experience of detention may make it more likely that youth will continue to engage in delinquent behavior, and that the detention experience may increase the odds that youth will recidivate, further compromising public safety.⁶

In South Carolina, the juvenile detention centers are often overcrowded and understaffed, leading to children being locked in their cells for hours or days at a time and with no meaningful opportunity to receive education and necessary exercise.⁷

⁵ See generally Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, JUST. POL’Y INST. (2006) https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/dangers_of_detention.pdf.

⁶ *Id.* at 2.

⁷ See Legislative Audit Council, *A Limited Review of the S.C. Dep’t of Juvenile Justice and Follow Up to Our January 2017 Audit* (2021) <https://lac.sc.gov/sites/default/files/Documents/Legislative%20Audit%20Council/Reports/A-K/DJJ-2021.pdf>



Figure 1. Photograph of a cell at the SC DJJ Juvenile Detention Center (taken by the author on August 7, 2020).



Figure 2. Photograph of a common area at the SC DJJ Juvenile Detention Center (taken by the author on August 7, 2020).

3. Adjudication Law in South Carolina

a. Evaluations

If a solicitor decides to prosecute, a child may plead delinquent or have a trial in front of the family court to determine if the child should be adjudicated delinquent. If a child is adjudicated delinquent by a family court judge for any offense, an evaluation generally is ordered, which may be administered in the community as a community evaluation or administered in detention with DJJ as a secure evaluation (also known as a residential evaluation). S.C. Code Ann. § 63-19-1440(C). A secure evaluation is when the family court

commits a child to DJJ's custody for up to 45 days for the purposes of DJJ evaluating the child and making disposition recommendations to the court. *Id.*

But a secure evaluation is not just an evaluation – an evaluation can be done based on interviews and psychological testing that takes hours, not days. Rather, a secure evaluation is incarceration. A visit to any of DJJ's three secure evaluation centers makes clear that these facilities are prisons. They are surrounded by barbed-wire fences and contain many security features throughout. Upon entry, children are strip searched. They are placed in pods – large, institutional rooms with bolted-down furniture – of up to 20 children, where each pod sleeps in their own cell. Security threats to children are frequent. Children wear jump suits and are placed in isolation (a “wet cell” when they display disruptive behavior).⁸

⁸ “A wet cell is a room with a toilet and sink, designated for a disruptive child to remain in until they become calm, cooperative, and safe.” S.C. Dep't of Juv. Just. Pol'y and Proc., *Juvenile Behavior Management - Incentive System and Progressive Discipline*, Policy No. G-9.19 (May 9, 2016).



Figure 3. Photograph of a "wet cell" at the Coastal Evaluation Center (taken by the author on August 7, 2020).



Figure 4. Photograph of detained children walking at the Coastal Evaluation Center.

It should therefore be no surprise that research links sending children to these secure evaluation centers with *increased* recidivism. Comparing children sent to these secure evaluation centers with those ordered to comply with a community evaluation, University of South Carolina researchers found that children forced to undergo secure evaluations had 33 percent *higher* recidivism rates.⁹

DJJ reports that only seven percent of children committed for secure evaluations or final commitments had been adjudicated for violent offenses, which means the majority committed do

⁹ Cheri J. Shapiro, et al., *Natural Experiment in Deviant Peer Exposure and Youth Recidivism*, 39 J. OF CLINICAL CHILD & ADOLESCENT PSYCH. 242, 250 (2010) (focusing on children with single adjudications to minimize the risk that prior justice system interventions affected the data).

not pose a public safety threat.¹⁰ “The Sentencing Project also provided more detailed figures showing that only 38 percent of children committed for secure evaluations were adjudicated for felonies (both violent and non-violent felonies), and 62 percent of children incarcerated for secure evaluations were adjudicated for only status offenses or misdemeanors.”¹¹

When children are brought into DJJ custody, even briefly (i.e., for 45 days of a secure evaluation) significant school disruptions can result. Records reflecting their accurate level of school credits are too often delayed, and children’s ability to enroll in appropriate schools is too often limited – either because they enroll late in the school year or because information regarding prerequisite courses is not readily available. As stated in the Senate Select Committee on Raise the Age Report (Report), “these situations make it harder for children to succeed at school and beyond upon release from DJJ custody, and thus hinder rehabilitation efforts.”¹²

b. Probation

A child placed on probation by the court remains under the authority of the court only until the expiration of the specified term of the child's probation. This specified term of probation may expire before but not after the twentieth birthday of the child. S.C. Code Ann. § 63-19-1410(A)(3). There are no other guidelines for the length of probation. Therefore, children in South Carolina can be sentenced to probation for many years, even for misdemeanor charges. As a condition of probation, the court may impose upon the child a fine not exceeding two

¹⁰ S.C. Senate Select Committee on Raise the Age, *Report to the Senate*, 17 (2020) <https://www.scstatehouse.gov/CommitteeInfo/RaiseTheAgeSelectCommittee/RaiseTheAgeSelectCommittee.php> [hereinafter *Raise the Age Report*] (citing DJJ Presentation to Senate Select Committee on Raise the Age, July 23, 2019).

¹¹ *Id.* (citing Rovner memo, July 2019).

¹² *Id.* at 32.

hundred dollars when the offense is one in which a magistrate, municipal, or circuit court judge has the authority to impose a fine. *Id.*

c. Commitment to the Department of Juvenile Justice

As stated above, DJJ's data shows that final commitments to DJJ custody are not reserved for the most serious offenders.¹³ Commitment in South Carolina means that a child can be sentenced to either a determinate sentence of up to 90 days for an offense, for 90 days suspended to an alternative placement or for an indeterminate sentence not to exceed a child's twenty-second birthday. S.C. Code Ann. § 63-19-1410(A)(5) and S.C. Code Ann. § 63-19-1440(B).

DJJ has recognized that too many children are committed to its custody for minor violations of probation orders.¹⁴ "Detention or commitments to DJJ following probation violations contribute significantly to the population of DJJ's pre-trial detention center."¹⁵ They also contribute significantly to the population of children committed to DJJ's custody and placed in secure facilities.¹⁶ It is important to mention that on February 5, 2020 the Department of Justice issued a notice that it has found the "totality of the conditions, practices, and incidents" it discovered at Broad River Road Complex, South Carolina's long-term juvenile commitment facility, violated the children's Fourteenth Amendment Rights.¹⁷ Moreover, as stated by the South Carolina Legislative Audit Council, DJJ "does not maintain sufficient security to ensure

¹³ *Id.* at 17.

¹⁴ *Id.* at 19.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Letter from Eric S. Dreiband, Assistant Attorney General, U.S. Dep't of Justice, to Henry McMaster, Governor, (Feb. 5, 2020), <https://www.justice.gov/crt/page/file/1244381/download>.

safety for staff and juveniles, presenting substantial long-term and short-term hurdles to its ability to effectively provide rehabilitation and other services within secure facilities.”¹⁸

B. Collateral Consequences

Children in South Carolina face numerous serious collateral consequences when they are charged and subsequently prosecuted for misdemeanor offenses, such as an offense of Disturbing Schools and Disorderly Conduct. Federal and state laws impose a range of collateral consequences that affect the opportunities available to youth involved in the juvenile justice systems. Children who have pled or have been found guilty of juvenile delinquency offenses face challenges in gaining employment, finding housing and accessing educational opportunities.

1. Adjudication of Delinquency

Under South Carolina law, a delinquency adjudication is not a criminal conviction. S.C. Code Ann. § 63-19-1410(C). However, for many practical purposes, delinquency adjudications are treated like criminal convictions.

2. Records Open to the Public

A child’s criminal offense history must be maintained by DJJ and the South Carolina Law Enforcement Division (SLED). See S.C. Code Ann. § 63-19-2020(G). All law enforcement records of children must be kept separate from records of adults, and any information identifying a child must not be open to public inspection. S.C. Code Ann. § 63-19-2030(B). All law enforcement records of children are confidential and must be kept separate from records of

¹⁸ Legislative Audit Council, *supra* note 7, at 7.

adults. *Id.* Any information that identifies the child must not be open to public inspection. *Id.* However, law enforcement records identifying the child may be released to the victim of a crime, a school that the child is enrolled in or to a newspaper when specific circumstances are present. See S.C. Code Ann. § 63-19-2030(E); S.C. Code Ann. § 63-19-2040(A). Law enforcement records may be shared among law enforcement agencies for criminal justice purposes. S.C. Code Ann. § 63-19-2030(D). Additionally, each family court must create and maintain records of all cases brought before it. See S.C. Code Ann. § 63-19-2010. The records of court are confidential and open to inspection only by court order to persons having a legitimate interest in the records to the extent necessary to respond to that legitimate interest. However, records are available without a court order where the records are necessary to defend against an action initiated by the child. *Id.* Certain state agencies, such as DJJ, the Department of Social Services, and other agencies that provide services to youth may also view juvenile records. S.C. Code Ann. § 63-19-2030(B). Schools receive incident reports and disposition information for students charged with violent crimes, crimes involving weapons, crimes relating to schools, or drug distribution or trafficking offenses. S.C. Code Ann. § 63-19-2020(E); S.C. Code Ann. § 63-19-2030(E).

3. *Juvenile Court Open to the Public*

Cases involving children must be taken up as separate hearings without a jury. S.C. Code Ann. § 63-3-590. South Carolina law generally requires the public to be excluded. However, the judge may admit persons he or she finds to have a direct interest in the case. The South Carolina Constitution creates a right of access to court proceedings subject to a balancing of the interests with the parties involved. See S.C. Const. art. I, § 9. If a member of the public or press challenges the statutory rule, the presiding judge must produce findings which explain the

balancing of the interests and the need for closure of the proceeding. *Ex parte Columbia Newspapers, Inc.*, 286 S.C. 116, 118, 333 S.E.2d 337, 338 (1985). The judge's findings must include more than a conclusory statement that public access will adversely affect the juvenile's chances of rehabilitation to justify closing the record. *Id.* at 119, 333 S.E.2d at 338.

4. *Employment Opportunities*

A delinquency adjudication does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in a future civil service application or appointment. S.C. Code Ann. § 63-19-1410(C). Many employment applications only ask potential employees to reveal past criminal convictions, which do not include delinquency adjudications. Employers are not barred from considering delinquency adjudications, but, in order to access juvenile court records, employers must demonstrate a legitimate interest and obtain a court order. S.C. Code Ann. § 63-19-2010.

Delinquency adjudications do not disqualify a candidate from state employment, but they may hinder a candidate's ability to obtain a license to practice many trades and professions in South Carolina. S.C. Code Ann. § 63-19-1410(C). Many professions require both a SLED and FBI criminal background check as a prerequisite to licensure. Although juvenile records are subject to stricter protections than adult criminal records, criminal background checks will occasionally return juvenile delinquency adjudications.

Additionally, specific types of employment opportunities may consider delinquency adjudications to a greater degree than others. For example, jobs involving work with children or the elderly may trigger a background check by the prospective employer. *See* 34 U.S.C. § 40101. Also, in order to gain admission to many state bars to practice law, including the South Carolina

State Bar, it is required that you disclose any violation of a law that you were taken into custody or accused of, including juvenile offenses, regardless of whether the records are sealed or expunged.¹⁹ While a juvenile adjudication is not a conviction, it may be treated as such by a prospective employer in these fields. This means an employer may deny employment to a person with a juvenile adjudication.

5. *Driver's License*

“If a child is adjudicated delinquent for the violation of a criminal offense or is found in violation of a court order relating to a criminal offense or a term or condition of probation, the court may suspend or restrict the child’s driver’s license until the child’s twentieth birthday.” S.C. Code Ann. § 63-19-1420(B).

6. *Military*

A delinquency adjudication may affect an application for military service in many ways. A delinquency adjudication is considered a conviction for a criminal offense under Army regulations. See Army Regulation 601-210, § 2-11(a). The Air Force, Navy and Marines examine delinquency adjudications on a case-by-case basis.²⁰ Military recruiters frequently assist young recruits in getting their juvenile records expunged if those records are not lengthy and the juvenile offenses are not extremely serious. Those convicted of felonies are not eligible for military service without special approval from the Secretary of Defense. 10 U.S.C. § 504(a).

¹⁹ See S.C. Bar Application § 12(a), <https://barapplication.sccourts.org/Documents/SamplePartB.pdf>; see also N.C. General Application, <https://www.ncble.org/browseform.action?sid=122410001&ssid=164110001&applicationId=1>.

²⁰ See Air Force Instruction 36-2002 (1999); Navy Recruiting Manual-Enlisted 2-95-2-98 (2002); 2 Military Personnel Procurement Manual, MCO P1100.72C (2004).

7. *Public Housing*

A delinquency adjudication can affect eligibility for public benefits and housing. Public housing authorities have the right to evict families of delinquent children, even if their delinquent conduct does not occur on public housing property. *See generally Dep't of Hous. v. Rucker*, 535 U.S. 125, 122 S. Ct. 1230 (2002).

8. *Access to Schools*

Education is essential to rehabilitating children and reducing recidivism rates. Unfortunately, justice involved children in South Carolina face many collateral consequences related to school. A child's enrollment in a South Carolina school may be affected by his or her previous conduct as well as any prior record. *See generally* S.C. Code Ann. § 59-63-210(A). Each school district's board of trustees may authorize or order the expulsion, suspension, or transfer of any student for: the commission of any crime, gross immorality, gross misbehavior, persistent disobedience; or the violation of written rules and promulgated regulations established by the district board, county board, or the State Board of Education; or when the presence of the pupil is detrimental to the best interest of the school. *Id.* When "determining whether or not the student meets the standards of conduct and behavior promulgated by the board of trustees necessary for first time enrollment and attendance, the board shall consider non-school records, the student's disciplinary records in any school in which the student was previously enrolled as these records relate to the adjudication of delinquency in any jurisdiction... of violations or activities which constitute: violent crimes under Section 16-1-60, the unlawful use or possession of weapons, or the unlawful sale of drugs whether or not considered to be drug trafficking." S.C. Code Ann. § 59-63-217(A). Based on this consideration of the student's record, the board may

bar his enrollment in the schools within the district. A student may challenge this decision by filing an appeal with the Circuit Court. S.C. Code Ann. § 59-63-217(B); S.C. Code Ann. § 59-63-240.

When children return home after being in DJJ custody, many school districts automatically require them to attend alternative schools. This practice is harmful to children. It imposes unnecessary punishment – especially on children who have already been punished by being placed in DJJ custody. This practice denies children with disabilities – who are dramatically over-represented in among children who are in DJJ custody – of an individualized school placement decision, contrary to state and federal special education laws. Most importantly, this practice adds an extra barrier to children’s rehabilitation.²¹ To transfer the student to an alternative school, the district must follow certain guidelines. S.C. Code Ann. § 59-63-1320(3). If a student is transferred to another school (including an alternative school), the student may challenge the transfer decision by appealing to the school board. S.C. Code Ann. § 59-63-250. If a student is expelled, the student may petition for readmission for the succeeding school year and the board must order the student enrolled if he otherwise meets enrollment criteria. These rules do not preclude enrollment and attendance in any adult or night school. S.C. Code Ann. § 59-63-210(A).

Moreover, as emphasized in the Report, children in the juvenile justice system face major educational disruption.²² Their constant movement results in discontinuity of curriculum, lost instruction time and loss of credits towards a diploma. Most of these students already exhibit academic deficits from disengagement and subpar educational opportunities in their community,

²¹ *Raise the Age Report*, *supra* note 10, at 32.

²² *Id.*

including some alternative schools that do not offer minimal educational opportunities. Once students enter the justice system, they are moved between multiple settings and there are few systems in place to ensure their educational records move with them. Without records, continuity of coursework is impossible to achieve, and individual progress is difficult to document. Students returning from placement without proof of academic advancement find themselves secluded in alternative schools. School frustration leads to school disengagement, disciplinary problems and dropping out. The result is a large cohort of permanent 9th graders and drop-outs, with limited earnings potential and curtailed futures.²³

9. *School-to-prison Pipeline*

Not even two-thirds of all students graduate in South Carolina. This is one of the lowest rates in the country.²⁴ As stated above, involvement in the juvenile justice system has many serious direct and collateral consequences for a child. Moreover, it disrupts a child's education and is often a direct path to school dropout. Court involvement may hurt a student's ability to stay in school in several ways. First, appearing before a judge means missing hours of class—weeks if the student is placed in a residential facility. Children with frequent classroom absences are likely to fall further behind their peers. Second, involvement in the juvenile justice system is likely to have a harmful effect on how students are treated at school. It also affects how students perceive themselves and their educational potential.²⁵ The detrimental effects of involvement in

²³ See Josh Gupta-Kagan, *The School to Prison Pipeline's Legal Architecture: Lessons from the Spring Valley Incident and its Aftermath* (2017).

²⁴ S.C. Appleseed Legal Justice Center, *Effective Discipline for Student Success: Reducing Student and Teacher Dropout Rates in S.C.*, 4 (2013) https://www.scjustice.org/wp-content/uploads/2013/10/sc_reducing_dropouts_briefing_book_final.pdf [hereinafter *Reducing Dropout Rates*].

²⁵ *Id.* at 11.

juvenile justice system are backed by empirical evidence. One study found that a first-time arrest during high school nearly doubles the odds of a student dropping out while a court appearance nearly quadruples those odds.²⁶ When students are assigned in-school or out-of-school suspension, or when they are referred to court for a school-based charge, their education is interrupted, and often this punishment starts a chain of events that will permanently harm a child. Missed classes can lead to academic failure which causes many students to give up on school and drop out. Research proves that students who drop out of school are much more likely to end up in prison than students who graduate.

A school-to-prison pipeline exists in South Carolina.²⁷ Students are placed into the school-to-prison pipeline when students are suspended or expelled for minor offences or charged with a crime for actions that are not violent or severe.²⁸ Appleseed, the South Carolina Legal Justice Center issued a Briefing Book with proposed regulatory changes concerning school discipline practices in 2013.²⁹ It is stated in the Book that,

the “school-to-prison pipeline” is the name for the trend of incarcerating, rather than educating our nation’s children. It becomes much more likely that a student will drop out of school when he or she is arrested at school, receives zero-tolerance discipline or other punishment that takes the student out of the classroom and learning process.³⁰

Instead of handling relatively minor disruptive behavior through traditional, non-exclusionary discipline methods such as after-school detention or contacting parents, many

²⁶ Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 24 JUST. Q. 462, 473 (2006), available at https://www.masslegalservices.org/system/files/library/H.S.ed_and_arrest_-_ct_involvement_study_by_Sweeten.pdf.

²⁷ See *Reducing Dropout Rates*, *supra* note 24.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 10.

schools are turning to the court system.³¹ When students are removed from school, they are being denied the educational opportunity that we believe is every child's right. Research shows these removals are counterproductive and more likely to lead to academic failure and student dropouts.³²

These instances of relatively minor disruptive behavior could be handled through traditional, nonexclusionary discipline methods such as after-school detention or contacting parents, but instead many schools are turning to the court system.³³ Moreover,

[s]tudents in need of special education services are another group of students particularly at risk of being caught in the pipeline. These students are arrested or referred to court at higher rates than others. The rate of students with special needs in juvenile justice facilities often greatly outpaces the rate of students with special needs in schools.³⁴

In fact, according to a 2011 report by the Joint Citizens and Legislative Committee on Children, a special state commission created to study and address children's needs, "most children in the Department of Juvenile Justice are nonviolent and the majority of them have a diagnosable mental health condition or learning disability."³⁵ Students suspended from school are much more likely to engage in troublesome behavior.³⁶ According to the Centers for Disease Control, "out of school" youth are significantly more likely than "in school" youth to fight, carry a weapon, smoke, use alcohol, marijuana and other drugs as well as engage in sexual intercourse.³⁷

³¹ *Id.* at 10.

³² Am. Acad. of Pediatrics Comm. on Sch. Health, *Policy Statement: Out-of-School Suspension and Expulsion*, 112 AM. ACAD. OF PEDIATRICS 1000, 1005 (2013), available at <https://www.ncsl.org/documents/fsl/aap-out-of-school-suspension-and-expulsion.pdf>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 11.

³⁶ *Id.* at 9.

³⁷ Ctrs. for Disease and Control Prevention, *Health Risk Behaviors among Adolescents Who Do and Do Not Attend School – United States, 1992*, 43 MORBIDITY & MORTALITY WKLY. REP. 129, 129 (1994).

10. Expungement

Juvenile records are often compiled by courts and law enforcement agencies as soon as the child is detained or charged with an offense, long before the child is found guilty. These records do not automatically disappear on a child's 18th birthday. The South Carolina Children's Code allows a person who has been adjudicated for a status or nonviolent offense to petition the court for an order destroying all official records relating to being taken into custody, the charges filed against the child, the adjudication, and the disposition of the child's case. S.C. Code Ann. § 63-19-2050(A). To begin the petition process, a person must apply to the solicitor's office in the county that the offense was committed. The applicant must pay \$310 in fees at this time, \$275 which is non-refundable even if the charge or adjudication is not eligible for expungement.³⁸ The solicitor's office will then request approval for the destruction of the juvenile files from the Department of Juvenile Justice. If approved, SLED will then verify that the following conditions are met: the applicant is 18 years of age or older, and the applicant does not have a prior adjudication for an offense that would carry a maximum term of five years imprisonment if committed by an adult; and if adjudicated, the applicant has successfully completed any dispositional sentence imposed by the Court and the applicant has not been subsequently charged with any other delinquent or criminal act.³⁹ The solicitor will then obtain the signature of the family court judge and the order will be filed with the clerk of court. The solicitor will then provide copies of the expungement order to the applicant, as well as all

³⁸ S.C. Judicial Branch, *Expungement Application Process for Juvenile Records*, <https://www.sccourts.org/expungementinfo/expAppProcessJuveniles.cfm> (last visited Mar. 21, 2022).

³⁹ Children's Law Center University of South Carolina School of Law, *Training & Resource Manual for Juvenile Defense Attorneys*, 73 (2019), https://sc.edu/study/colleges_schools/law/centers/childrens_law/docs_general/jj_defender_manual.pdf.

pertinent government agencies. The successful completion of this process will restore the recipient to the same position “in the contemplation of the law” as he was before the offense, and the person may deny the existence of the record. S.C. Code Ann. § 63-19-2050(E). However, a youth’s juvenile record cannot be expunged if the youth had any previous adjudication for an offense that would carry a maximum sentence of five years or more if committed by an adult. S.C. Code Ann. § 63-19-2050(A)(2).

If the juvenile does not pay the court costs, fines, or restitution, then probation could be extended or terminated unsuccessfully. Consequently, the child might not be able to apply to have his or her record expunged. S.C. Code Ann. § 63-19-2050(C)(3). If these are not paid, then the family court judge also has the discretion to deem the child in violation of the terms of his or her probation and send the child to a detention facility. *See* S.C. Code Ann. § 63-19-1440(F); *see also In re Timothy C.M.*, 348 S.C. 653, 560 S.E.2d 452 (Ct. App. 2002). Expunged juvenile records may still appear in a background check completed by the Federal Bureau of Investigations. “FBI background checks may be required for jobs relating to work with children or vulnerable adults, law enforcement, the federal government, or the military.”⁴⁰

11. Adult Sentencing

Delinquency adjudications trigger sentencing enhancements in both the state and federal criminal systems. In South Carolina courts, a circuit court may consider the materiality of a prior juvenile adjudication when assessing the appropriate sentence of an adult who has been convicted of a crime. *See Hayden v. State*, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984).

⁴⁰ National Juvenile Defender Center, *Have a Juvenile Record? Plan for Your Future!*, 15 (2018) <https://njdc.info/wp-content/uploads/2018/04/SC-CC-Booklet-Final-2.pdf>.

However, a juvenile adjudication cannot be used as an offense that triggers a sentence of life without parole. *See State v. Standard*, 351 S.C. 199, 203, 569 S.E.2d 325, 328 (2002). A juvenile adjudication also may enhance a sentence in the federal criminal system. For example, delinquency adjudications count toward the three convictions necessary to impose a mandatory 15-year prison term for a crime relating to the unlawful possession, sale, manufacture, or transfer of firearms. See 18 U.S.C. § 924(e)(2)(B).

12. Public Benefits

Most applications for public benefits ask about conviction. Since juvenile adjudications are not considered convictions, a juvenile record should not prevent access to most public benefits. § 63-19-1410(C). However, detention in a juvenile facility might affect certain benefits like Supplemental Nutrition Assistance Program (SNAP), Medicaid, Supplemental Security Income (SSI), and Temporary Assistance for Needy Families (TANF). While a child is in detention, his or her family cannot receive SSI checks, and the family's SNAP and TANF benefits may be reduced. S.C. Code Ann. Regs. § 114-1130(H)-(I). Medicaid benefits can also be suspended or terminated while a child is detained but can be restored when he or she is released. S.C. Code Ann. Regs. § 126-365(B)(4).

III. CONCLUSION

For the foregoing reasons, this Court should affirm the district court's order on class certification, the award of summary judgment for Plaintiffs, and the ordered relief.

Respectfully submitted this 21st day of March, 2022.

s/Dr. Aleksandra Chauhan

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This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 6,187 words from the Statement of Interest through the Conclusion, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word with Times New Roman 12-point font.

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I hereby certify that on March 21, 2022, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

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