

# A DECADE OF PROGRESS: PROMISING MODELS FOR CHILDREN IN THE TURKISH JUVENILE JUSTICE SYSTEM

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## ABSTRACT

*Turkey has improved its approach to interacting with children in conflict with the law over the past decade, moving closer to a system that ensures its children the opportunity to strive for a better future. This Article focuses on two promising Turkish reforms that hold potential to improve juvenile justice systems internationally, namely: open model incarceration and Turkey's approach to diversion. This Article demonstrates how a child-centered juvenile justice system can improve public safety and outcomes for youth. It also addresses potential challenges to each model and identifies broader issues that may require reform.*

“Mankind is a single body and each nation a part of that body. We must never say ‘What does it matter to me if some part of the world is ailing?’ If there is such an illness, we must concern ourselves with it as though we were having that illness.”<sup>1</sup>

—Mustafa Kemal Atatürk

## I. INTRODUCTION

Modern Turkey is a country with a vibrant legacy and a promising future. As Turkey strives to increase its profile as a political leader in the Middle East and positions itself to join the European Union (“EU”),<sup>2</sup> the issue of how this country responds to children<sup>3</sup>—especially those in conflict with the law—has become an

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<sup>1</sup> This quote is from the “father” of modern Turkey, Mustafa Atatürk, on the importance of public interest work and caring for vulnerable populations, such as youth. (Paul Wolfowitz in an address to the Washington Institute for Near East Policy, Washington, D.C. on March 13, 2002).

<sup>2</sup> See Selcuk Gultasli, *3 Oct 2005–Turkey Starts Full Membership Negotiations with EU*, Today’s Zaman (Oct. 4, 2005), available at [http://www.todayszaman.com/newsDetail\\_getNewsById.action?load=detay&link=24900](http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&link=24900).

<sup>3</sup> Children under the age of 18 make up the largest demographic group in Turkey, a nation of 79 million people. Children’s Day, celebrated each year on April 23, is a National holiday commemorating the establishment of the Turkish Grand National Assembly. The holiday is called Children’s Day because Children are considered to be the future of Turkey. See, e.g., *National Children’s Day*, Turkish Radio and Television Corp., available at <http://www.trt.net.tr/23nisan/>.

important topic of national dialogue.<sup>4</sup> Children are responsible for 15 percent of all crimes in Turkey and make up nearly 25 percent of suspects in crimes against property.<sup>5</sup> Although Turkey signed the United Nations Convention on the Rights of the Child (“CRC”)<sup>6</sup> as early as 1990 and ratified it in 1994,<sup>7</sup> the most significant changes affecting the youth population in Turkey have occurred more recently.<sup>8</sup> Over the last decade in particular, Turkey has successfully improved its juvenile justice system to ensure that its children have the opportunities they deserve and to bring the system in conformity with international standards.<sup>9</sup>

Accordingly, this Article focuses on Turkey’s development and innovation in the area of youth justice over the last ten years. More narrowly, this Article posits that Turkey’s implementation of open model incarceration and its distinctive diversionary approach serve as illustrations of the country’s improved commitment to juveniles and as promising models of juvenile justice for nations that aim to better promote their children’s best interests.<sup>10</sup> Part II begins with an overview and history of the juvenile justice system in Turkey. This includes a description of the current process of adjudication. Part III then focuses on the two most promising aspects of Turkey’s juvenile justice model, open model incarceration and diversion.

<sup>4</sup> This includes those discussions which took place at a November 2011 Conference on Youth and at a Turkish Parliament meeting with Children. Bernard Kennedy, *Children Get a Voice in Turkey’s Parliament*, UNICEF (last visited April 27, 2012), available at [www.unicef.org/infobycountry/Turkey\\_46601.html](http://www.unicef.org/infobycountry/Turkey_46601.html); see also Randi-Lynn Smallheer, *Sentence Blending and the Promise of Rehabilitation: Bringing the Juvenile Justice System Full Circle*, 28 HOFSTRA L. REV. 259, 260 (1999) (describing how many people have lost faith in the juvenile justice system’s ability to effectively adjudicate children).

<sup>5</sup> Crimes of property refer to crimes of theft where no force or threat of force is used. See Ayse Karabat, *Experts Call on Government to Fix Juvenile Justice System*, Today’s Zaman (Feb. 3, 2010), available at <http://www.todayszaman.com/news-200450-101-experts-call-on-govt-to-fix-juvenile-justice-system.html>.

<sup>6</sup> See *infra* II.B (detailing the contents of the CRC).

<sup>7</sup> This made the CRC part of the Turkish domestic law in January, 1995. See, Convention on the Rights of the Child, UNICEF (retrieved April 3, 2012), available at <http://www.unicef.org/crc>; [http://www.unicef.org/turkey/hm/hm2\\_2010.html](http://www.unicef.org/turkey/hm/hm2_2010.html); see also Kathryn Libal, *Children’s Rights in Turkey*, HUMAN RIGHTS REVIEW 35, 35 (Dec.- Jan. 2001), available at <http://humanrights.uconn.edu/documents/papers/ChildrensRightsInTurkeyLibal.pdf> [hereinafter “Convention on the Rights of the Child”].

<sup>8</sup> This Article will address ways in which the system has improved. To evidence the changing attitude towards children’s issues and rights, however, in 2000, Turkey launched an anonymous hotline “Alo SOS” for people to anonymously make reports concerning children subjected to violence.

<sup>9</sup> *Development of Work With Juveniles And Victims by Turkish Probation Service*, Ministry of Justice Report, available at <http://www.justice.gov.tr/projects/projects.html> [hereinafter Turkish Probation Service] (explaining that in 2005 alone, they amended the Turkish Penal Code, the Penal Procedures Code, the Law on the Enforcement of Penal and Security Measures, the Juvenile Code, in addition to introducing a new system for enforcement procedures.); See also Say Yes – Quarterly Newsletter of UNICEF Turkey, Winter 2008 (explaining that the changes have resulted in a more rehabilitative than retributive system.)

<sup>10</sup> This Article provides comparisons to various international legal systems—both in its footnotes and text—to provide a multi-national context. This Article relies on the American definition of preference as a measurement based on whichever model would maximize the best interest of the child and society, a primary and common standard in cases involving children. See, e.g., *In re Daily*, WL 368105 (2003) (“[T]he best interests and welfare of the child is a primary consideration in all children’s cases, regardless of the court or parties that are involved.”); *McDermott v. Dougherty*, 869 A.2d 751 (Md. 2005) (explaining that the best interests of the child standard is a non-constitutional but widely recognized standard in child custody and other cases that concern minors).

In isolating each model, this Part begins with a description of each juvenile justice practice, analyzes the models' implications for youth, and then addresses common critiques of each model. Finally, Part IV provides practical recommendations for legal practitioners and policy-makers, with particular focus on tactics to overcome potential challenges posed by each model. Further, this Part also suggests proposals for improving Turkey's overall juvenile justice system.

It should be noted that this Article does not endeavor to argue that Turkey's juvenile justice system is wholly and consistently commendable. There remain elements inherent in Turkey's juvenile justice system that demand reform to meet international protection standards, including the need to demonstrate a genuine and realistic commitment to protecting Kurdish youth.<sup>11</sup> This Article does, however, highlight recent and exemplary changes to Turkey's juvenile justice system that demonstrate progress, serve as illustrations of Turkey's commitment to the best interests<sup>12</sup> and rehabilitation<sup>13</sup> of children, and provide progressive models for countries to consider in reforming their own juvenile justice systems.

## II. BACKGROUND: TURKEY'S JUVENILE JUSTICE SYSTEM

Turkey has not always been at the forefront of youth justice. In fact, the country did not adopt a separate justice system for youth until the late 1980s.<sup>14</sup> Prior

<sup>11</sup> While beyond the scope of this Article, the reader should be aware of this controversy and debate addressing the treatment of Kurdish children in Turkey. Juveniles accused of crimes in violation of the Anti-Terror Law and the Turkish Penal Code (TCK) in Turkey are tried as adults, irrespective of age. In other words, while the juvenile code addresses persons under 18 in Turkey, those children charged with terrorist activities fall under the jurisdiction of the Anti-Terror Law, not the juvenile court. Most youth arrested under the Anti-Terror Law are of Kurdish ethnicity and are detained or arrested while participating in demonstrations or rallies in southeastern and eastern Anatolia. Some of them face prison sentences of up to 25 years for throwing stones at security forces. See Omer Taspınar, *Turkey's Kurdish Predicament*, Today's Zaman (Apr. 22, 2012), available at <http://www.todayszaman.com/columnist-278257--turkeys-kurdish-predicament.html>.

<sup>12</sup> Used more broadly here, it should be noted that the "best interests" of the child is the preeminent standard for a variety of family law issues, including adoption, placements, and child custody determinations in the United States. See U.S. Department of Health and Human Services Administration for Children and Families, *Determining the Best Interests of the Child: Summary of State Laws*, (Mar. 2010), available at [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/best\\_interest.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.cfm)

<sup>13</sup> See BLACK'S LAW DICTIONARY 594 (2d. ed. 2001) (defining rehabilitation in criminal law as the "process of seeking to improve a criminal's character and outlook so that he or she can function in society without committing other crimes."). Experts generally recognize three models that inspire global juvenile courts' systems: 1) the Welfare Model, 2) the Justice Model, and 3) the Restorative (Justice) Model; Turkey's current system is moving towards the latter, which includes more rehabilitative practices. See, e.g., Greg Mantle, et al., *Restorative Justice and Three Individual Theories of Crime*, INTERNET J. OF CRIM. (2005), available at <http://www.internetjournalofcriminology.com/Mantle,%20Fox%20&%20Dhami%20-%20Restorative%20Justice.pdf> (stating that the promotion of the rehabilitation of juveniles falls under a human rights framework where respecting the human dignity of each and every citizen, including children requires advocacy and promoting individuals to fulfill their human potential).

<sup>14</sup> The Juvenile Court Law, which establishes a definitive juvenile justice system in Turkey, was ratified in 1979 and came into force in 1982, but was not actually implemented until the end of 1987. Dr. S. Sveda Ulugtekin & Yüksel Baykara Acar, *Juvenile Courts and Probation Officers in Turkey*, 1 INT'L J. OF HUM. & SOC. SCI. 199, 199-200 (2011), available at [http://www.ijhssnet.com/journals/Vol.\\_1\\_No.\\_3;\\_March\\_2011/28.pdf](http://www.ijhssnet.com/journals/Vol._1_No._3;_March_2011/28.pdf).

to this division, children in conflict with the law were processed through the adult criminal system, without courts accounting for any developmental differences between children and adults. Accordingly, this section details the evolution of Turkey's juvenile justice system.<sup>15</sup>

### A. *From the Beginning: Early Motivations for the Protection of Children*

Modern Turkey has been a country for little less than a century. After Mustafa Kemal Atatürk formed the secular Turkish Republic in 1923, his government aimed to implement social and political reforms to modernize the former Ottoman Empire.<sup>16</sup> Perhaps surprisingly, the restructuring of Turkey's child welfare system was among primary reforms.<sup>17</sup> The republican government's motivation for protecting children was twofold: first, as a budding state, Turkey's leaders saw political value in complying with the international standards for social justice, which included children's welfare;<sup>18</sup> and second, many leaders saw children as a vehicle for modernization and change.<sup>19</sup> This impetus was accelerated after World War II, when the vulnerability of the many displaced and homeless children threatened to showcase "the possibility of danger, of futures not attained."<sup>20</sup> However, even with this political attention and early, vocal desire to protect juveniles from poverty, homelessness, and crime,<sup>21</sup> the

<sup>15</sup> See Interview with Zeynep Esmesz, Social Worker with the Youth Re-Autonomy Foundation of Turkey (TCYOV), Istanbul, Turkey (Mar. 6, 2012); see also Frédérique Geerdink, *The Anger of the Juvenile Judge*, WORDT VERVOLGD (Nov. 12, 2008), available at [http://www.journalistinturkey.com/stories/human-rights/the-anger-of-the-juvenile-judge\\_329/](http://www.journalistinturkey.com/stories/human-rights/the-anger-of-the-juvenile-judge_329/) (noting that before the implementation of a juvenile justice system, judges generally had to sentence children for small offenses like stealing candy).

<sup>16</sup> Atatürk is seen as the "George Washington" of Turkey. See History, Kemal Atatürk (1881-1938), BBC.com, [http://www.bbc.co.uk/history/historic\\_figures/ataaturk\\_kemal.shtml](http://www.bbc.co.uk/history/historic_figures/ataaturk_kemal.shtml) (last visited Apr. 16, 2012). See ANDREW MANGO, ATATURK: THE BIOGRAPHY OF THE FOUNDER OF MODERN TURKEY, PREFACE (1999) (noting that Atatürk, the founder of modern Turkey, is generally seen as a radical modernizer and "westernizer" and stating that he is arguably one of the most important statesman of the twentieth century).

<sup>17</sup> Kathryn R. Libal, National Futures: The Child Question in Early Republican Turkey 2-3 (Aug. 1, 2001) (unpublished Ph.D. dissertation, University of Washington) (on file with author).

<sup>18</sup> One indication of Turkey's desire to comply with national standards of law and policy is its entry into the League of Nations, the precursor to the United Nations, in 1923. See Yücel Güçlü, *Turkey's Entrance into the League of Nations*, 39 MIDDLE EASTERN STUDIES 186, 186 (Jan. 2003) (providing a more thorough history of Turkey's entry into the League of Nations); see also Michelle Domke, *Turkey's Human Rights Record Impedes European Integration*, THE HUMAN RIGHTS BRIEF (1997), available at <http://www.wcl.american.edu/hrbrief/v4i3/turkey43.htm> (stating that the Turkish republic based its secular legal code on other European civil code systems).

<sup>19</sup> See Libal, *supra* note 17, at 3, 4 ("The generative process of growing up [through childhood] was figuratively associated with the development of the Turkish nation-state. In the child resided the possibility of reform, of regeneration, of rebirth for the state and society").

<sup>20</sup> *Id.* at 4. (noting that writings of republican leaders indicated a dual image of the child in the early Turkish republic: a source of national strength and a threat of weakness due to the socioeconomic reality of juveniles after the war).

<sup>21</sup> Programs that officials discussed included creating financial allowances for low-income families, creating and managing more orphanages, enacting labor reform laws, and creating a juvenile justice system. *Id.* at 12-13.

country did not witness a formalized commitment to protecting youth until much later in the 20<sup>th</sup> century.<sup>22</sup>

### B. Turkey's Adoption of the Juvenile Court Law and the CRC

The first recognized outward display of progress in the area of juvenile protection was the adoption of the Juvenile Court Law in 1979,<sup>23</sup> which established a separate juvenile justice system in Turkey. While the Law was ratified in 1979, it did not come into force until 1982 or see implementation until 1987.<sup>24</sup> Further, despite progress in recognizing a distinct juvenile justice system, the Juvenile Court Law was ultimately unsuccessful because it resulted in the establishment of a single juvenile court yet lacked the legal or social infrastructure to support it.<sup>25</sup>

The next major development in Turkey's juvenile justice system came in 1994 when Turkey ratified the United Nations Convention on the Rights of the Child ("CRC").<sup>26</sup> This treaty outlined rights and provisions<sup>27</sup> for children, thereby urging Turkey to commit to a separate and sustainable youth justice system.<sup>28</sup> While the CRC displays recognition for rehabilitation and diversion—over punishment and incarceration—for youth, foreshadowing more recent advancements, scholars agree that actual reform did not take place until Turkey adopted the Juvenile Protection Law in 2005.<sup>29</sup>

<sup>22</sup> See *Infra* note 30 and accompanying text.

<sup>23</sup> See Ulugtekin & Baykara Acar, *supra* note 14, at 200.

<sup>24</sup> *Id.*

<sup>25</sup> See UNICEF REGIONAL OFFICE FOR CENTRAL AND EASTERN EUROPE/COMMONWEALTH OF INDEPENDENT STATES, ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN TURKEY, UNITED NATIONS CHILDREN'S FUND 5 (Jul. 2009), available at [http://www.unicef.org/ceecis/UNICEF\\_JJTurkey08.pdf](http://www.unicef.org/ceecis/UNICEF_JJTurkey08.pdf) [hereinafter "UNICEF 08"].

<sup>26</sup> The CRC is the first legally binding international instrument to grant children a broad range of human rights. It sets out rights and standards granted to all children. General Assembly, *Convention on the Rights of the Child*, United Nation, Treaty Series, Vol. 1577, Art. 1 (Nov. 20, 1989), available at <http://www.unhcr.org/refworld/docid/3ae6b38f0.html>.

<sup>27</sup> Convention on the Rights of the Child, Unicef (last visited Apr. 20, 2012), available at <http://www.unicef.org/crc/> (noting that the fundamental principles outlined by the CRC include: a) safeguarding the interest and well-being of juveniles; b) ensuring the participation of the juvenile and his/her family in the process via keeping them informed; c) following a procedure that is based on human rights, fair, effective and swift; d) employing special care appropriate to the situation of the juvenile throughout the investigation or prosecution process; and e) penalty of imprisonment and measures that restrict liberty shall be the last resort for juveniles).

<sup>28</sup> Additional fundamental principles outlined by the CRC include: a) safeguarding the interest and well-being of juveniles; b) ensuring the participation of the juvenile and his/her family in the process via keeping them informed; c) following a procedure that is based on accepted notions of human rights and is fair, effective and swift; d) employing special care appropriate to the situation of the juvenile throughout the investigation or prosecution process.

<sup>29</sup> See UNICEF 08, *supra* note 25, at 4 ("Turkey had a weak juvenile justice system at the time it became a party to the Convention on the Rights of the Child. This system strengthened considerably in 2005 by the adoption of new legislation . . ."). In addition to the juvenile code, relevant parts of the Turkish Civil Code, Labour Code, Criminal Code, Criminal Protection Code and the Law on Persons with Disabilities were amended in line with the provisions of the CRC. *Id.* at 7.

### C. *Real Progress: The Juvenile Protection Law of 2005*

The Juvenile Protection Law, established in July 2005, replaced the Juvenile Court Law and has laid the foundation for development and greater protection of children's rights in Turkey.<sup>30</sup> For the first time in Turkey's history, this Law set out the rights of the accused child and delineated details of the adjudicatory process. The Juvenile Protection Law passed in tandem with reforms to the Turkish Penal Code<sup>31</sup> has led to further gains for youth rights, including: raising the minimum age of criminal responsibility from 11 to 12, adding a provision of free legal assistance, introducing a probation system as an alternative to depriving a youth their liberty, increasing remission of sentences for children, encouraging more sensitive treatment of child victims, increasing protection for child victims, creating more juvenile courts, and adding a provision of protection for children generally by civil society.<sup>32</sup>

#### 1. *Progressive Language in the Juvenile Protection Act*

While the changes in the Juvenile Protection Law more appropriately accounted for the rights of Turkish juveniles in criminal proceedings,<sup>33</sup> the progressive language used in the Law itself is also significant. Article 1(1) of the Juvenile Protection Law reads:

[T]he purpose of this Law is to regulate the procedures and principles with regard to protecting juveniles who are in need of protection or who are *pushed* to crime, and ensuring their rights and well-being.<sup>34</sup>

Depicting children as victims of circumstance who are *pushed* to crime—as opposed to viewing them as delinquent and uncontrollable young individuals—helped dispel the notion that severe punishment for youth delinquency will remedy the underlying causes of their behavior. Further, viewing children as pushed to crime more accurately reflects the sobering reality surrounding the quality of life for many juveniles in Turkey and therefore more directly addresses their needs.

According to UNICEF, 80,000 children in Turkey currently live on the streets and have limited access to healthcare, education, and social welfare programs.<sup>35</sup> Despite impressive economic progress in the past decade and the enactment of earlier juvenile justice reforms, Turkey's youth still face poverty, homelessness, and social

<sup>30</sup> *Id.* at 5.

<sup>31</sup> In 2005 the government also introduced special provisions to the Law on the Enforcement of Penalties and Security Measures. *Id.* at 7.

<sup>32</sup> *Infra* in Turkey: Progress for Children 2006, Unicef (last visited Apr. 20, 2011), available at [http://www.unicef.org/turkey/ut/ut3\\_2010.html](http://www.unicef.org/turkey/ut/ut3_2010.html) [hereinafter "Progress for Children"].

<sup>33</sup> See Interview with Zeynep Esmez, *supra* note 15 (noting that the progressive language of the Juvenile Protection Law had contributed to more appropriate juvenile proceedings. In addition to incorporating the notion of juveniles "pushed to crime" into the language of the law, the Juvenile Protection Law also makes the first real distinction between juveniles that are accused from juveniles that are convicted).

<sup>34</sup> Juvenile Protection Law, art. 1/1 (Law Number 5395, Adopted 3/7/2005), available at [http://www.law.yale.edu/RCW/rcw/jurisdictions/asw/turkey/Turkey\\_juv\\_prot\\_law\\_Eng.pdf](http://www.law.yale.edu/RCW/rcw/jurisdictions/asw/turkey/Turkey_juv_prot_law_Eng.pdf).

<sup>35</sup> Unite for Children Programmes 2006-2010, UNICEF (last visited Apr. 29, 2012) [hereinafter "Unite for Children"], available at [http://www.unicef.org/turkey/hm/hm3\\_2010.html](http://www.unicef.org/turkey/hm/hm3_2010.html).

exclusion at staggering rates.<sup>36</sup> Further, almost 18,000 children live in institutions; half of whom are “economic orphans,” meaning their parents are alive but cannot financially support them.<sup>37</sup> The Juvenile Protection Law was progressive in that it more appropriately addressed the realities of *these* children and of youth involved in the criminal system, many of whom come from poor or excluded urban communities, including migrant communities.<sup>38</sup>

In addition to socioeconomic circumstances, the concept that children are “pushed to crime” reflects the highly researched idea that juveniles’ brains are less developed than the brains of adults, leading children to experience higher instances of poor decision-making, peer pressure, misdirected aggression, irresponsibility, and insufficient impulse control.<sup>39</sup> These salient characteristics mean that it is difficult, even for expert psychologists, to differentiate between juvenile delinquency resulting from transient immaturity and crimes reflecting “irreparable corruption.”<sup>40</sup> Thus, juveniles are additionally pushed to crime by the impulsive nature of their age as opposed to underlying elements of their personal character.

Since the implementation of the Juvenile Protection Law, Turkey’s juvenile justice system has rapidly expanded and improved. While only one juvenile court existed in the country in 1989, the government established 83 courts in 25 different provinces by 2009.<sup>41</sup> Additionally, Turkey continued to further display its commitment and development to juvenile justice through its various United Nations-sponsored reforms, including the Country Program Action Plan (“CPAP”).<sup>42</sup> CPAP involves UNICEF and the Turkish government partnering to promote child welfare through various education, healthcare, and juvenile justice reforms.<sup>43</sup> Example

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<sup>36</sup> As a result of these socioeconomic realities, juveniles often suffer illness at a higher rate than children in other countries. Progress for Children, *supra* note 32.

<sup>37</sup> *Id.*

<sup>38</sup> See, e.g., Gülümser Gültekin Akduman, Barış Akduman, & Gürol Cantürk, *Investigation of Some Personal and Familial Characteristics of Juvenile Delinquency*, TURKISH ARCHIVES OF PEDIATRICS 42 (2007); Unite for Children, Justice for Children, Unicef (last visited May 1, 2012) [hereinafter “Justice for Children”], available at <http://www.unicef.org.tr/en/content/detail/71/justice-for-children-2.html>.

<sup>39</sup> Malcolm Ritter, *Experts Link Teen Brains’ Immaturity, Juvenile Crime*, ABC NEWS (Dec. 2, 2007).

<sup>40</sup> *Graham v. Florida*, 130 S.Ct. 2011, 2026 (2010) (quoting *Roper*, 543 U.S. 551, 573 (2005)).

<sup>41</sup> Turkey has 81 provinces in total. UNICEF 08, *supra* note 25, at 5.

<sup>42</sup> While beyond the scope of this Article, it should be mentioned that while recent efforts on behalf of the Turkish state to improve the system have been encouraged by response to Turkey’s collaboration with UNICEF, they have additionally been motivated by efforts to qualify for entry into the European Union. Interview with Zeynep Esmez, *supra* note 15.

<sup>43</sup> See Country Programme Action Plan (CPAP), Unicef (last visited Apr. 26, 2012), available at <http://www.unicef.org/turkey/gl/gll.html#cpc>; (“The CPAP runs in five-year cycles and have so far included the Good Governance, Protection and Justice for Children in Turkey (2005), Children First (2008), and Justice For Children (2013). The latter is a project currently implemented by Council of Europe in cooperation with the Ministry of Justice, as a follow up to two previous assessments and with the financial support of EU. Furthermore, in order to ensure more effective implementation of these plans, a series of workshops and trainings were conducted with child court judges, prosecutors and social workers between 2005-2008.”).

initiatives include enhanced training for child court prosecutors and judges in addition to active promotion of inter-agency coordination within the juvenile justice system.<sup>44</sup>

#### D. *The Turkish Juvenile Justice System Today*

##### 1. *Jurisdiction and Pre-Adjudication*

In Turkey, juveniles between the ages of 12 and 18 are subject to adjudication<sup>45</sup> in the juvenile justice system.<sup>46</sup> Children under the age of 12 are not subject to penal proceedings.<sup>47</sup> Instead, these children are accommodated by the social service system or placed in youth homes.<sup>48</sup> In the case of children between the ages of 12 and 15, the first step in the adjudication process is to transfer the youth's case to a forensic specialist to determine whether the child understood the criminal nature of his or her activity and its consequences.<sup>49</sup> If the specialist answers in the affirmative, determining that the juvenile is "capable of understanding the integral meaning of

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<sup>44</sup> A coordination strategy has been developed within the framework of the "Children First: Modeling Child Protection Mechanisms at Provincial Level" Project. See Justice for Children, Project Fiche 1, available at <http://www.justice.gov.tr/projects/94.pdf> (explaining the goals of current "Justice for Children" project, including a focus on the existing situation of juvenile justice system in Turkey. Furthermore, techniques of awareness are described in the following sections: 2.1.1: An international symposium on juvenile justice is conducted; 2.1.2: Printed and visual materials are developed to share the results of the symposium and raise awareness on juvenile justice system; Activity 2.2: A special juvenile justice training unit is established in the Justice Academy; 2.2.1: The existing juvenile justice training program is revised and adapted as per specific needs of concerned professional groups; and 2.2.2: Trainer teams with necessary knowledge, skills and attitudes for all concerned professional groups and training institutes are established), 2.2.3: Trainings are provided to 850 professionals working in the juvenile justice system. 2.2.4: A monitoring and evaluation system, including a regular quality updating mechanism, for the juvenile justice training program is developed).

<sup>45</sup> The term "adjudicated" juvenile is correspondent to the phrase "sentenced" adult. See BLACK'S LAW DICTIONARY, *supra* note 13, at 16.

<sup>46</sup> It is notable, however, that the minimum age for prosecution in the juvenile system was 11 prior to the Juvenile Protection Law. UNICEF 08, *supra* note 25, at 8. For a comparative look at jurisdiction laws, see, e.g., LINDSAY BOSTWICK, POLICIES AND PROCEDURES OF THE ILLINOIS JUVENILE JUSTICE SYSTEM 3, 7 (2010), available at [http://icjia.org/public/pdf/ResearchReports/IL\\_Juvenile\\_Justice\\_System\\_Walk-through\\_0810.pdf](http://icjia.org/public/pdf/ResearchReports/IL_Juvenile_Justice_System_Walk-through_0810.pdf) (stating Illinois' jurisdiction laws are as follows: juveniles between the ages of 0-13 are subject to juvenile court jurisdiction exclusively, juveniles between the ages of 13-18 can enter into the juvenile justice system but can be automatically transferred to the adult court system based on various factors, including the seriousness of the crime).

<sup>47</sup> See UNICEF 08, *supra* note 25, at 8 (stating that the CRC encourages a minimum age to be set for criminal responsibility. Below such age, it is presumed that a child does not have the capacity to infringe the penal law. While other countries in Europe have older ages, children in Scotland, for example, can be held criminally responsible at the age of eight. The minimum age for the prosecution of juveniles (age of criminal liability) was raised from 11 to 12, and the age at which offenders may be prosecuted as adults was raised from 15 to 18, in 2005).

<sup>48</sup> See BLACK'S LAW DICTIONARY, *supra* note 13, at 191 (defining a delinquent person as one who fails to perform an obligation, a person who is guilty of serious antisocial or criminal conduct).

<sup>49</sup> Juvenile Protection Law, *supra* note 34, at art. 31.242, 5 (stating that children over the age of 12 and less than 15 years of age have criminal responsibility provided that they have the ability to make fair judgments, but punishments shall be reduced proportionally between 15 and 18 years of age); See also Bailleau & de Frane, *infra* note 50.

[his or her] act,” the government will then prosecute the child.<sup>50</sup> If the youth is not prosecuted, the government will generally place the child within the social service system.<sup>51</sup>

Finally, juveniles between the ages of 15 and 18 are held criminally accountable for their acts.<sup>52</sup> Unlike in the United States, however,<sup>53</sup> juveniles are rarely transferred to adult court for trial and sentencing.<sup>54</sup> Youth are instead adjudicated in the juvenile system and receive a reduced sentence compared to what adults would receive for a similar crime.<sup>55</sup> One exception to this framework, however, is if a child is charged with the crime of terrorism.<sup>56</sup> In such a case, he or she will be tried in the adult criminal justice system and receive an adult sentence if convicted.<sup>57</sup> Additionally, youth who commit crimes jointly with adults are held jointly and severally liable under the regular penal code.<sup>58</sup>

#### *a. Apprehension and Investigation*

In Turkey, public prosecutors, not the police, carry out all investigations related to alleged youth offending.<sup>59</sup> When a police officer arrests a child, the officer

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<sup>50</sup> Unlike in countries such as Israel, Haiti, and Kenya, which have a unified juvenile justice system, Turkey has two types of children’s courts: those that hear minor violations and civil offenses, and those that hear “grievous misdemeanors” committed by youth. Both courts that fall under the heading of the specialized juvenile court have jurisdiction over youth crime; however, they are addressed interchangeably as juvenile courts in this Article. “Children Across Borders: Sharing Legal Advocacy and Strategies,” Meeting at Legal Assistance Foundation, Chicago, IL (Apr. 12, 2012); Francis Bailleau & Dominique de Fraene, *The Criminalization of Minors and its Evolution: The Interplay of Sanctions (Spain, Turkey, Portugal, England/Wales)*, CRIMPREV (May 1, 2009). It is also notable that in practice, the vast majority of adolescents between the ages of 12 and 15 are “judgeable,” so some scholars critique this practice, thinking that it unnecessarily delays and lengthens the judgment process. *Id.*

<sup>51</sup> Interview with Zeynep Emez, *supra* note 15.

<sup>52</sup> *Id.*; Geerdink, *supra* note 15.

<sup>53</sup> See Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, U.S. DEP’T OF JUST., JUV. JUST. BULL. (Jun. 2010), available at <https://www.ncjrs.gov/pdffiles1/ojdp/220595.pdf> (explaining that in the 1980’s, many states enacted various transfer mechanisms that would transfer juveniles to adult court jurisdiction. These policies came about as a result of a “tough on crime” mentality that swept the nation in the 1980s. These reforms “lowered the minimum age for transfer, increased the number of transfer-eligible offenses, or expanded prosecutorial discretion and reduced judicial discretion in transfer decision-making.” Many states still require juveniles to transfer to the adult criminal justice system based on the aforementioned factors).

<sup>54</sup> Interview with Zeynep Emez, *supra* note 15.

<sup>55</sup> *Id.* See *infra* notes 97-101 and accompanying text (describing juvenile sentencing procedures).

<sup>56</sup> See Ayse Karabat, *Experts Call on Gov’t to Fix Juvenile Justice System*, TODAY’S ZAMAN, Feb. 3, 2010 (“In 2006 amendments to Article 9 of the Anti-Terror Law allowed minors between the ages of 16 and 18 to be tried as adults in high criminal courts. Another amendment to Article 13 of the Anti-Terror Law made it impossible for these children’s sentences to be postponed or commuted to another form of punishment). See *infra* notes 352-356 and accompanying text (describing the ongoing evolution of Turkey’s anti-terror laws in relation to its effect on juveniles).

<sup>57</sup> Some juveniles face up to 25 years in an adult prison for seemingly minor infractions, such as stone-throwing. See Karabat, *supra* note 56.

<sup>58</sup> See Juvenile Protection Law, *supra* note 34, at art.17 (stating that in the case of juveniles who commit crimes with adults, “the investigation and prosecution shall be carried out separately” and “the joint cases shall be administered in general courts.”).

<sup>59</sup> UNICEF 08, *supra* note 25, at 8. *But see* FERIDUN YENISEY, AGE OF CRIMINAL RESPONSIBILITY IN TERMS

must immediately inform the Office of the Prosecutor as to the offender's identity and the crime in order to enable the court to make a decision for temporary injunction.<sup>60</sup> Thus, police may establish the identity of a child, but they hold no authority to take evidence from them.<sup>61</sup> The Chief Prosecutor or an assigned public prosecutor will conduct an investigation and can issue orders for the police to assist in the process.<sup>62</sup> Because Turkish law mandates that the government may only question a child under oath if an attorney is present, it is at this stage that the court also appoints a public attorney for each juvenile suspect who has not retained private counsel, even if the child does not request one.<sup>63</sup> Additionally, parents or guardians may be present during the initial examination.<sup>64</sup>

Juveniles who have been apprehended and are awaiting their sentence will often face detention in a pretrial detention facility.<sup>65</sup> The occurrence of pretrial juvenile detention in Turkey is significantly greater than that of post-adjudicative incarceration.<sup>66</sup> In January 2011, 2,168 delinquent juveniles throughout Turkey experienced a deprivation of liberty in a corrections setting, 90 percent of whom were in pretrial detention centers.<sup>67</sup> There are three detention facilities in Turkey dedicated entirely to housing accused but not-yet-convicted juveniles.<sup>68</sup> Additionally, children can be held in pretrial detention in a separate wing of an adult detention center.<sup>69</sup> Pretrial detention centers also house juveniles that escaped from a post-trial prison facility, although for a limited period of time only.<sup>70</sup>

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OF COMPARATIVE LAW AND ALTERNATIVE SANCTIONS FOR CHILDREN UNDER THE AGE OF CRIMINAL RESPONSIBILITY 12-13 (2007), available at <http://www.ceecis.org/juvenilejustice/dox/SitAn/Turkey/Tur-MACR.pdf> [hereinafter "AGE OF CRIMINAL RESPONSIBILITY"] (stating that police often start investigations independently of the prosecutor's direction due to the high number of juvenile crimes in the country).

<sup>60</sup> Interview with Zeynep Emez, *supra* note 15. This can only occur once the police officer determines that the juvenile falls within the 12-18 age range of culpability. *Id.*

<sup>61</sup> Police are also required to notify the child's parents or guardian, the Social Services and Child Protection Agency (SHÇEK), and the local bar association when they begin to investigate a case. Justice for Children, *supra* note 38.

<sup>62</sup> Juvenile Protection Law, *supra* note 34, at art. 15 ("Investigations related to juveniles pushed to crime shall be carried out personally by the Public prosecutor assigned at the juvenile bureau."); AGE OF CRIMINAL RESPONSIBILITY, *supra* note 59, at 12-13.

<sup>63</sup> Justice for Children, *supra* note 38.

<sup>64</sup> Juvenile Protection Law, *supra* note 34, at art. 22. This law notes that in addition to the presence of the family, the court will allow an assigned social worker to remain present for the duration of the juvenile's preliminary examination or hearing. *Id.*

<sup>65</sup> UNICEF '08, *supra* note 25, at 5.

<sup>66</sup> Justice for Children, *supra* note 38.

<sup>67</sup> *Id.* Furthermore, juveniles face pre-trial detention for "unnecessarily" long lengths of time. See *id.* (stating the average duration of pre-trial detention was 414 days, but this was limited to three years in total).

<sup>68</sup> *Id.*

<sup>69</sup> See UNICEF '08, *supra* note 25, at 5. It is notable that the practice of accommodating juveniles with adult detainees counters the recommendations of the CRC, which state that juveniles must be housed independently of adults. Justice for Children, *supra* note 38. Generally, in these adult institutions where many children face detention, "there is a high rotation of personnel and the personnel are not specifically dedicated to working solely for the care and protection of children." *Id.*

<sup>70</sup> *Id.* The maximum holding time in a detention facility before returning the juvenile to the open model prison is six months. Interview with Zeynep Emez, *supra* note 15.

## 2. The Adjudication Process

The juvenile justice adjudication process in Turkey has evolved in the past decade into a system that respects and reflects the attitude that juveniles are different than their adult counterparts and that they require specialized criminal proceedings.<sup>71</sup> Although many Turkish scholars contend that flaws still exist in this adjudication process,<sup>72</sup> the overall structure accounts for age-specific differences and demands competency in juvenile development.<sup>73</sup>

One example of these specific practices can be found in the juvenile specialized training court where prosecutors and judges are required to receive highly specialized instruction on topics relating to adolescent development and mental health<sup>74</sup> while judges also undergo highly specialized instruction.<sup>75</sup> These juvenile court judges also enter an early judicial professional track after completing their law degree and specialize in juvenile law specifically.<sup>76</sup> Juvenile judges generally serve in the juvenile court system for the duration of their tenure.<sup>77</sup>

In addition to being staffed with specialized prosecutors and judges, the court must assign a social worker to each child entering the juvenile justice system.<sup>78</sup> In fact, the Juvenile Protection Law allows social workers to assess mental health capacities and possibly redirect the child to social services if they deem the child unfit to stand trial.<sup>79</sup> Moreover, a social worker can recommend various forms of diversion as alternatives to detention, including requesting court-mandated treatment programs.<sup>80</sup>

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*; Interview with Professor Yüksel Baykara Acar, Kocaeli University School of Health, in Kocaeli, Turkey (Mar. 9, 2012).

<sup>73</sup> Interview with Zeynep Esmez, *supra* note 15.

<sup>74</sup> See Juvenile Protection Law, *supra* note 34, at art. 32 (“Judges and Public prosecutors to be assigned at the courts, and the social workers and probation officers appointed at probation and assistance centre directorates shall be provided with training on subjects such as juvenile law, social service, child development and psychology in line with the principles set forth by the Ministry of Justice during candidateship periods.”); See also AGE OF CRIMINAL RESPONSIBILITY, *supra* note 75, at 30-31 (stating that during the prosecutorial investigation of the juvenile, the social examination must account for information surrounding the child’s social, spiritual, and mental development, and the child’s education or training level must be noted).

<sup>75</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72.

<sup>76</sup> Metin Uracin, Istanbul Barosu, Informal Meeting with the Istanbul Bar Association and German Law Students regarding the Turkish Legal Profession, in Istanbul, Turkey (Mar. 8, 2010).

<sup>77</sup> *Id.*

<sup>78</sup> See Juvenile Protection Law, *supra* note 34, at art. 15 (“During interrogation and other procedures related to the juvenile, the juvenile may be accompanied by a social worker.”). The Juvenile Protection Law defines the term “social” worker as such: members of the profession graduated from institutions that provide education in the fields of psychological consulting and guidance, psychology, and social services. *Id.* at 3(e).

<sup>79</sup> *Id.*; Interview with Professor Yüksel Baykara Acar, *supra* note 72.

<sup>80</sup> See Juvenile Protection Law, *supra* note 34, at art. 34 (detailing the duties of court-appointed social workers to also include: a) carry[ing] out enquiries, immediately, about the juvenile with which they are assigned, and to submit the reports they prepare to the assignor authorities, b) be[ing] present next to the juvenile during interrogation or cross-examination, and c) carry[ing] out the other duties assigned by the courts and juvenile judges under this Law).

The Juvenile Protection Law guides juvenile sentencing guidelines in Turkey.<sup>81</sup> The judge bases his or her sentence on the corresponding adult sentence for a particular crime, then reduces the sentence for juveniles by one third if the offender is between 15 and 18, and by one half if the offender is between the ages of 12 and 15.<sup>82</sup> Further, for juveniles aged 15 to 18 years, the maximum sentence is no more than 18 to 24 years of imprisonment.<sup>83</sup> For those aged 12 to 15 years, the maximum sentence is 12 to 15 years.<sup>84</sup>

### 3. Post-Adjudication

The incidence of incarceration in juvenile proceedings is not nearly as high as that in many other countries. The number of juveniles sentenced to juvenile facilities reached 706 in 1998 and dropped to only 78 in 2006.<sup>85</sup> By contrast, the United States incarcerated nearly 100,000 youth in 2008.<sup>86</sup> In 2011, Turkey maintained a juvenile incarceration rate of 11 prisoners per 100,000 juveniles, which is significantly less than the rate of juvenile incarceration in many other countries.<sup>87</sup> Despite an increase in juvenile crime rates in Turkey over the past decade, the decline in the number of

<sup>81</sup> *Id.*

<sup>82</sup> UNICEF 08, *supra* note 25, at 21-22.

<sup>83</sup> *Id.*; AGE OF CRIMINAL RESPONSIBILITY, *supra* note 59, at 30-31.

<sup>84</sup> *Id.* When a youth is sentenced for more than one offense, sentences are always consecutive. UNICEF 08, *supra* note 25, at 21-22. While this can lead to life imprisonment for juveniles who are found guilty of multiple offenses—which some call a “de facto” life sentence—it is notable that Turkey does prohibit the death penalty for children. In fact, the country completely banned capital punishment for all of its citizens in 2002. *Turkey Abolishes Death Penalty*, CNN WORLD (Aug. 3, 2002), [http://articles.cnn.com/2002-08-03/world/turkey.death.pen\\_1\\_abdullah-ocalan-reform-package-kurdish-rights?\\_s=PM:WORLD](http://articles.cnn.com/2002-08-03/world/turkey.death.pen_1_abdullah-ocalan-reform-package-kurdish-rights?_s=PM:WORLD).

<sup>85</sup> The drop in sentenced juveniles reflects new sentencing guidelines from the Juvenile Protection Law, including legislation that can delay juvenile trials. *Id.*

<sup>86</sup> WILLIAM SABOL, HEATHER WEST & MATTHEW COOPER, BUREAU OF JUSTICE STATISTICS: PRISONERS IN 2008, 8 (2008, updated 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf> (listing the total number of incarcerated youth as 92,845 in 2008).

Although the United States populates three times as many juveniles as does Turkey, the limited number of juvenile incarcerations in the United States is staggering compared to the number of juvenile incarcerations in Turkey. *Compare Turkey Demographics Profile 2012*, INDEX MUNDI, available at [http://www.indexmundi.com/turkey/demographics\\_profile.html](http://www.indexmundi.com/turkey/demographics_profile.html) with *United States Demographic Profile 2012*, INDEX MUNDI, available at [http://www.indexmundi.com/united\\_states/demographics\\_profile.html](http://www.indexmundi.com/united_states/demographics_profile.html).

<sup>87</sup> This number was calculated based on statistics provided by the International Centre for Prison Studies. In 2011, the total number of prisoners (adult and juvenile) was 132,369. *World Prison Brief: Turkey*, INTERNATIONAL CENTRE FOR PRISON STUDIES, [http://www.prisonstudies.org/info/worldbrief/wpb\\_country.php?country=119](http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=119) (last visited May 4, 2012). This number was then multiplied by the percentage of juveniles under the age of 18 in this prison population, which was 1.2%. *Id.* The calculation was then divided by the rounded number of 20,000,000 youth living in Turkey, and then divided by 100,000 for purposes of the calculation. This rate came to roughly 11%. By contrast, See RICHARD A. MENDEL, THE CASE FOR REDUCING JUVENILE INCARCERATION: NO PLACE FOR KIDS (2011), available at [http://www.aecf.org/Our-Work/JuvenileJustice/~/\\_media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ\\_NoPlaceForKids\\_Full.pdf](http://www.aecf.org/Our-Work/JuvenileJustice/~/_media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ_NoPlaceForKids_Full.pdf) (noting that the incarceration rate per 100,000 children was: 336% in the United States, 69% in South Africa, 68% in New Zealand, 51.3% in the Netherlands, 46.8% in England and Wales, 33% in Scotland, 24.9% in Australia, 21.3% in Germany, and 18.6% in France).

incarcerated children is largely attributed to government efforts to divert juveniles from prison.<sup>88</sup>

In fact, the three juvenile prisons in Turkey—located in Ankara, Izmir and Elazig<sup>89</sup>—rarely reach capacity.<sup>90</sup> All three juvenile-specific facilities are “open model” facilities<sup>91</sup> and can house up 400 juveniles in total.<sup>92</sup> Youth can be detained until the age of 21.<sup>93</sup> Those who reach this age without completing his or her sentence will be transferred to an adult prison to serve the remainder of the sentence.<sup>94</sup>

### III. OPEN MODEL PRISONS

It is important to recognize that not all adjudicated youth in Turkey are incarcerated.<sup>95</sup> They often receive less severe sanctions, including restitution to the victim, community service, or probation.<sup>96</sup> Those children who commit more serious offenses, on the other hand, are generally sentenced to a term of confinement in an open model facility, which varies from traditional penal institutions in several ways.<sup>97</sup> This Part will discuss the intricacies of the “open” prison model and demonstrates that the use of these facilities embodies a best practice related to juvenile incarceration. Additionally, this Part also notes challenges to the use of open model incarceration, including the fact that Kurdish children are generally not welcomed into the open model prison system and instead serve long sentences in closed adult institutions.<sup>98</sup>

#### A. Description of Open Model Prisons

In contrast to the more “typical” juvenile correctional facilities found across the globe,<sup>99</sup> there are no wire fences surrounding Turkey’s open model prisons.<sup>100</sup>

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<sup>88</sup> UNICEF 08, *supra* note 25, at 4.

<sup>89</sup> See *infra* III.A (describing these open model facilities in greater detail).

<sup>90</sup> Bailleau & de Frane, *supra* note 50; Interview with Zeynep Esmesz, *supra* note 15.

<sup>91</sup> See *infra* III.A (describing these open model facilities in greater detail).

<sup>92</sup> UNICEF 08, *supra* note 25, at 21.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 25

<sup>95</sup> See *infra* Part III.B (discussing Turkey’s decreased reliance on incarceration as a tool to punish juveniles).

<sup>96</sup> See *infra* Part III.B (discussing these methods of post-sentencing diversion).

<sup>97</sup> UNICEF 08, *supra* note 25, at 30. This report also notes that the use of open model prisons is in harmony with the United Nations Rules on the Protection of Children Deprived of their Liberty. *Id.*

<sup>98</sup> See *infra* notes 352-356 and accompanying text (describing Turkey’s anti-terror laws that have contributed to ongoing legal discrimination against Kurdish youth).

<sup>99</sup> See, e.g., Todd Richmond, *States Closing Youth Prisons*, BURNS INST. (Jun. 6, 2010), <http://www.burnsinstitute.org/article.php?id=227> (noting that juveniles in the United States are often “treated” in “razor-wire ringed” institutions); Kids Behind Bars, *supra* note 111 available at <http://documentaryheaven.com/kids-behind-bars/> (explaining that youth in Georgia can face incarceration in a remote and isolated “prison school” that is protected by a chain-link fence).

<sup>100</sup> See, e.g., Kids Behind Bars, *infra* note 111 (stating in a visit to Turkey’s juvenile prison that it lacks bars, fences or locks and explaining that this is one of the most liberal prisons in the world with lowest recidivism rates in the world.)

There is no barrier of any type surrounding the perimeters of these facilities.<sup>101</sup> In fact, the juveniles held at these facilities could technically—albeit unlawfully—enter and exit open model prisons as they please.<sup>102</sup> Yet these “inmates” very rarely “go on the run” or leave without permission.<sup>103</sup>

### 1. *Life in an Open Model Prison*

During the day, juveniles in open model prisons attend school, training sessions, or jobs within the community.<sup>104</sup> Children who exit the prison grounds during the day must return to their rooms, which generally resemble a dormitory, and they report to administrative staff upon their return.<sup>105</sup> If a juvenile does not check in by the evening or if officials discover him or her running away, the child is sentenced to six months in one of Turkey’s pretrial closed detention centers.<sup>106</sup> After completing this punishment, the juvenile will resume carrying out his or her original sentence in the open model prison.<sup>107</sup> In addition to being able to work or go to school within the host community, children sentenced to open model prisons are also granted the opportunity to return home to visit their families for an afternoon or weekend during their sentenced time with written permission from the prison.<sup>108</sup>

The daily routine of a youth at an open model prison resembles that which one might find at a typical boarding school in the United States far more than it would resemble a prison. As stated above, open model prisons require incarcerated youth to be actively involved in their own development by way of attending school, training programs, or working within the community five full days each week.<sup>109</sup> The educational institutions at each prison employ extensive faculty, often recruiting instructors from Turkey’s Public Education Centers and the Ministry of Health.<sup>110</sup>

There are a broad array of classroom and training opportunities available to youth at open model prisons.<sup>111</sup> Available educational programs include first and second grade literacy courses, supportive courses for elementary education, high school education, computer operation courses, garden design courses, and business courses.<sup>112</sup> The training courses offered at these institutions are also diverse in scope

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> The narrator of *Kids Behind Bars* notes that many children do not escape these open model facilities in Turkey because the conditions of these facilities are often better than the conditions the children face at their homes. *Id.*

<sup>104</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72.

<sup>105</sup> *Id.*

<sup>106</sup> Justice for Children, *supra* note 50 .

<sup>107</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72.

<sup>108</sup> Interview with Zeynep Esmesz, *supra* note 15.

<sup>109</sup> *Id.*

<sup>110</sup> Soner Mehmet Ozdemir, *An Examination of the Educational Programs Held for Juvenile Delinquents in Turkey*, BUS. LIBRARY (Spring 2010), available at [http://findarticles.com/p/articles/mi\\_qa3673/is\\_3\\_130/ai\\_n52943089/pg\\_2/?tag=content;coll](http://findarticles.com/p/articles/mi_qa3673/is_3_130/ai_n52943089/pg_2/?tag=content;coll)

<sup>111</sup> Interview with Zeynep Esmesz, *supra* note 15.

<sup>112</sup> Ozdemir, *supra* note 110, at 2.

and include programs on barbering, ceramics, copper design, and tourism.<sup>113</sup> Further, students who have completed high school may—with permission from prison administrators—work within the community.<sup>114</sup> As juveniles prepare to complete their sentences, prison administrators help them find permanent job placements near the facility or the youths' hometowns.<sup>115</sup> These administrators can also offer juveniles university exam preparation.<sup>116</sup>

In addition to receiving classroom, training, and work experience, Turkey's open model prisons allow and encourage them to participate in extracurricular activities.<sup>117</sup> According to the Youth Re-Autonomy Foundation of Turkey ("TCYOV"), juvenile prison administrators encourage youths to leave their living quarters after they complete school for the day to participate in the variety of social opportunities available on the prison "campus."<sup>118</sup> These activities range from sports leagues and art classes to literature clubs, chess groups, and cinema projects.<sup>119</sup> Furthermore, these extracurricular opportunities capitalize on instruction of real-world skills, including health and hygiene workshops as well as HIV/AIDS information sessions.<sup>120</sup>

### B. *An Assessment of Open Model Prisons*

The open model prison structure has been called the best model of juvenile incarceration in the world, and rightfully so.<sup>121</sup> The set-up of these prisons allows for juveniles to experience more successful rehabilitation than they might otherwise

<sup>113</sup> *Id.*

<sup>114</sup> NISRINE ABIAD & FARKHANDA ZIA MANSOOR, CRIMINAL LAW AND THE RIGHTS OF THE CHILD IN MUSLIM STATES: A COMPARATIVE AND ANALYTICAL PERSPECTIVE 1, 291 (2010) ("According to new regulations, children older than 15 years of age for whom it is impossible to attend formal education are guided towards an appropriate occupation taking into consideration their wishes, abilities as well as the availability of vocational training centres and employment opportunities in their future place of residence.")

Furthermore, the availability of post-educational programs, such as employment opportunities, to incarcerated juveniles has been commended by other nations. *See, e.g.*, U.S. STATE DEP'T, 2007 REPORT ON HUMAN RIGHTS PRACTICES (Mar. 11, 2008), available at <http://www.state.gov/j/drl/rls/hrrpt/2007/100589.htm> (explaining alternative educational solutions like training systems that provide work for young boys. Participants of these programs are placed in enterprises such as auto repair shops, where they can earn wages and gain practical experience and training. This program also introduces these youth to opportunities for future employment in the fields within which they are placed and provides for them a network of role models. The authors of this report advocate for such educational solutions).

<sup>115</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72.

<sup>116</sup> Interview with Zeynep Esmez, *supra* note 15.

<sup>117</sup> *See, e.g.*, UNITED NATIONS DEVELOPMENT PROGRAM, BEST PRACTICES IN YOUTH WORK 13 (2008), available at [http://www.undp.org/tr/publicationsDocuments/brosur\\_en.pdf](http://www.undp.org/tr/publicationsDocuments/brosur_en.pdf) [hereinafter BEST PRACTICES] (explaining that the "Educational, Social, Artistic, and Sportive Activities Project" helped carry out the implementation of various extra-curricular activities in the juvenile correctional center located in Ankara); *see also* Hurriyet Staff, *Young Istanbul Inmates Get a Chance for Reform*, HURRIYET DAILY NEWS (Jul. 26, 2009), available at <http://www.hurriyetdailynews.com/young-istanbul-inmates-get-a-chance-for-reform.aspx?pageID=438&n=the-ones-entering-into-this-prison-are-rescued-2010-07-26>.

<sup>118</sup> Interview with Zeynep Esmez, *supra* note 15.

<sup>119</sup> BEST PRACTICES, *supra* note 117, at 13; Ozdemir, *supra* note 110, at 2.

<sup>120</sup> Ozdemir, *supra* note 110, at 2.

<sup>121</sup> Kids Behind Bars, *supra* note 111.

receive in closed facilities.<sup>122</sup> Accordingly, statistics indicate that children encountering these Turkish open model institutions recidivate less than their foreign counterparts.<sup>123</sup> For instance, in Illinois, a U.S. state that primarily employs a closed-model approach to juvenile correctional facilities, the recidivism rate was as high as 50 percent in 2009.<sup>124</sup> By contrast, the recidivism rate for youth in Turkey was only 35 percent that same year.<sup>125</sup>

This Article posits that the reasons for the open model prison system's ability to effectively rehabilitate youth are tri-fold, in that this system of incarceration leads to: 1) better educated juveniles, 2) more socialized juveniles, and 3) the facilitation of familial or community relationships. These factors are examined more closely in the paragraphs below.

### 1. *Quality Education*

One element of open model prisons that leads to successful rehabilitation of juveniles is a commitment to providing a quality education through a rigorous, boarding school-like education regime. Open model prisons not only offer students quality, daily educational opportunities within the prison and host communities, but also address the particularized needs of youth by providing extensive training and professional opportunities.<sup>126</sup> By contrast, there are significant limitations to the successful education of youth in closed prisons.<sup>127</sup> Closed facilities cannot as wholly

<sup>122</sup> See *infra* notes 141-181 and accompanying text (explaining that open model prisons lead to better educated and more socialized children, and allow juveniles to remain in better contact with their families, all of which leads to better rehabilitated youth); see also U N GENERAL ASSEMBLY, UNITED NATIONS RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY: RESOLUTION / ADOPTED BY THE GENERAL ASSEMBLY (Dec. 14, 1990), available at <http://www.unhcr.org/refworld/docid/3b00f18628.html> [hereinafter GA Resolution] (advocating for the establishment of open model prisons).

<sup>123</sup> Legal scholars have long recognized the positive correlation between youth incarceration and recidivism rates. See, e.g., Sanford H. Kadish, *Methodology and Criteria in Due Process Adjudication-A Survey and Criticism*, 66 YALE L.J. 319, 350 (1957); Michael Vitiello, *Reconsidering Rehabilitation*, 65 TUL. L. REV. 1011, 1036 (1991); James Q. Wilson, "What works?" revisited: new findings on criminal rehabilitation, 61 NAT'L AFFAIRS 3, 10-14 (1980) (reviewing C. Murray and L. Cox, *Beyond Probation: Juvenile Corrections and the Chronic Delinquent* (1979)); Wallace J. Mlyniec, *The Special Issues of Juvenile Justice: An Introduction*, 15 CRIM. JUST. 4, 4 (2000); Hillary Blalock, *The Purpose of the Youth Court: Exploring the Recent Trend Away from Juvenile Delinquent Rehabilitation in Mississippi, the Resulting Consequences, and the Possible Solutions*, 30 MISS. C. L. REV. 543, 544 (2012); see also Joseph I. Goldstein-Breyer, *Calling Strikes before He Stepped to the Plate: Why Juvenile Adjudications Should Not Be Used to Enhance Subsequent Adult Sentences*, 15 BERKELEY J. CRIM. L. 65, 71 (2010) (arguing that in addition to recidivism concerns, increasing youth sentences is inconsistent with the long-standing purposes of the juvenile system).

<sup>124</sup> AFSCME COUNCIL 31, ROAD TO REFORM: REBUILDING JUVENILE JUSTICE IN ILLINOIS 6 (Jul. 2010), available at <http://www.afscme31.org/tools/assets/files/RoadtoReform.pdf>.

<sup>125</sup> See TURKSTAT, *supra* note 9; *Id.*

<sup>126</sup> See *infra* notes 124-131 and accompanying text (describing the vast array of educational, training, and work programs offered to juveniles in open model prisons).

<sup>127</sup> See, e.g., Katherine Twomney, *The Right to Education in Juvenile Detention Under State Constitutions*, 94 VA. L. REV. 765, 767 (2008) (noting that inadequate resources often exacerbates the ability of governments to effectively provide education in prison); Florencio Ramirez, *Juvenile Delinquency: Current Issues, Best Practices, and Promising Approaches*, A.B.A. (May 2008), available at [http://www.americanbar.org/newsletter/publications/gp\\_solo\\_magazine\\_home/gp\\_solo\\_magazine\\_index/](http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/)

draw on the resources of the community and often do not structure daily routines around school.<sup>128</sup> In some countries, closed prisons consistently fail to provide basic education services and sufficient instructional time.<sup>129</sup>

In adopting open model incarceration, Turkey drew upon the importance of education in its Juvenile Protection Law, which mandates that *all* juveniles receive a quality education.<sup>130</sup> In fact, this law highlights the importance of educating juveniles over ten times throughout its text.<sup>131</sup> Notably, one of the core principles of the Juvenile Protection Law is to “support[] the juvenile in developing his/her personality, social responsibility, and education as appropriate for his/her age and development . . .”.<sup>132</sup> Turkey supports this vision by structuring its prisons in such a way as to ensure the education of all committed youth.<sup>133</sup>

Evidencing the success of his model, experts throughout the country have affirmed the quality of education in Turkey’s open model prisons. In addition to positive descriptions of juvenile prison education by TCYOV<sup>134</sup> and Dr. Hakan Acar, Department Head of Social Services at Koaceli University,<sup>135</sup> two Turkish authors published an extensive report commending the instruction provided by these facilities.<sup>136</sup> These authors distributed questionnaires and interviewed young men living at the open model prison in Ankara.<sup>137</sup> They found that the vast majority of youth attending elementary education and high school supplementary courses rated their education as “highly satisfactory” and maintained extremely positive attitudes toward the sufficiency of their training courses.<sup>138</sup>

The authors of this report emphasized that through education, juveniles “are given a chance for resocialization, are trained for solving . . . problems without violence, and are [aided] . . . with find[ing] a job after being released from such facilities.”<sup>139</sup> The authors of this study concluded that considering the rehabilitative goals of correctional centers, education in Turkey’s open model prison succeeds in

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juveniledelinquency.html (noting that many juvenile correctional facilities in the U.S. do not routinely provide education to adjudicated juveniles).

<sup>128</sup> Twomney, *supra* note 127, at 767.

<sup>129</sup> *Id.*

<sup>130</sup> Juvenile Protection Law, *supra* note 34, at art. 45-a.

<sup>131</sup> *Id.* at arts. 4-h, 5-a, 5-b, 6, 7, 23-d, 30, 38-a, 38-b, 38-d, 45-a, 45-b, 45-d.

<sup>132</sup> *Id.* at art. 4-h.

<sup>133</sup> See *supra* notes 124-131 and accompanying text (illustrating the extensive and particularized educational and training programs offered in Turkey’s open model prisons).

<sup>134</sup> Interview with Zeynep Esmey, *supra* note 15.

<sup>135</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72.

<sup>136</sup> Ozdemir, *supra* note 110.

<sup>137</sup> *Id.* at 3.

<sup>138</sup> *Id.* Specifically, one juvenile stated “I was illiterate before, because I stopped going to school. But I could learn how to read and write thanks to the literacy courses run in the prison. Now I can read newspapers and write letters to my friends and family. Moreover, I suppose that I will be able to manage myself better thanks to the anger management courses.” *Id.* at 4.

<sup>139</sup> *Id.* at 5. It is notable, however, that despite the author’s discovery of data proving that education provided in this open model prison increases post-release career prospects, juveniles living in the facility did not think that their education would help them find a job after their release.

maintaining the “physical and psychological well-being of the prisoners” and “are quite important for [committed] individuals.”<sup>140</sup>

A quality education is significant because additional studies show a direct correlation between the education and the rehabilitation of juveniles.<sup>141</sup> One theory behind this phenomenon is that education imparts juveniles with a stronger sense of accountability and awareness, thus contributing to behavioral reform.<sup>142</sup> According to one theorist, education “nurtures pro-social norms and supports rule-abiding behavior.”<sup>143</sup> Thus, this author posits that education within prison has a “normalizing” effect on the child in the sense of positively recalibrating his or her standard of behavior, thus reducing that child’s likelihood of recidivism.<sup>144</sup> Further, students attending school or training programs in a correctional setting have an increased likelihood of continuing their education or finding a training position upon release.<sup>145</sup> In turn, educated juveniles face a likelier possibility of exiting the cycle of poverty and insufficient education, which are two contributors to criminal behavior.<sup>146</sup>

## 2. Social Opportunities through Healthy Mediums

In closed prisons, juveniles remain in their cells—or worse, end up in solitary confinement—for a majority of the day.<sup>147</sup> By contrast, open model prisons allow juveniles to positively interact with other adjudicated youth on a daily basis. In addition to attending school with peers, juveniles in Turkey’s open model prisons also have the opportunity to form relationships with each other through extracurricular programs.<sup>148</sup> These activities enforce teamwork, socialization, and creativity, all of which are valuable with regard to behavioral development and future career-related

<sup>140</sup> *Id.*

<sup>141</sup> See Twomney, *supra* note 127, at 796 (arguing that education is one of the most important factors in the rehabilitation of juvenile prisoners).

<sup>142</sup> MILES D. HARER, FEDERAL BUREAU OF PRISONS, OFFICE OF RESEARCH AND EVALUATION, PRISON EDUCATION PROGRAM PARTICIPATION AND RECIDIVISM: A TEST OF THE NORMALIZATION PROCESS 16 (May 1995), available at [http://www.bop.gov/news/research\\_projects/published\\_reports/recidivism/orepredprg.pdf](http://www.bop.gov/news/research_projects/published_reports/recidivism/orepredprg.pdf)

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> There is extensive evidence linking poverty to crime. See, e.g., Muslu Koteli, Poverty, Inequality & Terrorism Relationships in Turkey (unpublished Ph.D. dissertation, Virginia Commonwealth University), available at <https://digarchive.library.vcu.edu/bitstream/handle/10156/1633/koselim.phd.pdf?sequence=1> (affirming this phenomenon); Ching-Chi Hsieh & M.D. Pugh, *Poverty, Income Inequality, and Violent Crime: A Meta-Analysis of Recent Aggregate Data Studies*, 18 CRIM. JUST. REV. 182, 182 (1993) (presenting empirical data to prove the connection between poverty and increased crime).

<sup>146</sup> James H. Keeley, *Will Adjudicated Youth Return to School After Residential Placement? The Results of a Predictive Variable Study*, 57 J. CORRECTIONAL EDUC. 65, 67 (2006).

<sup>147</sup> See, e.g., JOHN HOWARD ASSOCIATION OF ILLINOIS, EXECUTIVE SUMMARY: MONITORING VISIT TO IY-C-HARRISBURG 3/23/11, 1 (Mar. 2011), available at <http://www.thejha.org/sites/default/files/IYC.Harrisburg.pdf> (indicating that in total, youth spend a total of nearly half the day locked in their cells due to a lack of activity programming). Furthermore, many juveniles in the IYC-Harrisburg facility spent time—the average staying being a day and a half—in solitary confinement, which consequently left them devoid of any social interaction. *Id.*

<sup>148</sup> See *infra* notes 132-135 and accompanying text (describing extracurricular activities offered in Turkey’s open model juvenile prisons).

success.<sup>149</sup> Notably, incarcerated youth interviewed at Ankara's open model juvenile facility expressed the belief that these social opportunities will ultimately improve their lives, help them develop personally and socially, and contribute to success in future employment.<sup>150</sup>

Through these recreational opportunities, open model prisons encourage children to build healthy relationships, which can reinforce good behavior and allow them to better appreciate social responsibilities.<sup>151</sup> Many juveniles that enter into the criminal system often lack meaningful or healthy relationships in their lives.<sup>152</sup> By forming bonds with other children, juveniles learn the elements of working companionships, and these lessons allow incarcerated youth to more efficiently reform behavioral and social deficiencies.<sup>153</sup> Accordingly, many professionals involved in the juvenile justice system advocate for sport and recreation opportunities in tandem with treatment programs as part of a structured rehabilitation regime.<sup>154</sup>

### 3. Family Ties

Many leading experts in the field of juvenile justice posit that the maintenance of family ties throughout the adjudication and post-adjudication process is critical to the rehabilitation of juveniles.<sup>155</sup> By allowing committed youth to return to their homes with written permission once a month, open model prisons in Turkey allow incarcerated children to continue familial contact.<sup>156</sup> These children can return home for an evening or weekend pending good behavior while at the facility.<sup>157</sup> The importance of continued familial contact is inherent in the Juvenile Protection Law,

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<sup>149</sup> See OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, GANG SUPPRESSION AND INTERVENTION: COMMUNITY MODELS 22 (Oct. 1994), available at <https://www.ncjrs.gov/pdffiles/gangcorr.pdf> ("Team sports and social activities may be important especially . . . when they facilitate relationships . . .").

<sup>150</sup> Ozdemir, *supra* note 110, at 5.

<sup>151</sup> See Positive Behavior Support Youth At-Risk and Involved in Juvenile Corrections, POSITIVE BEHAV. INTERVENTIONS AND SUPPORTS (last visited Apr. 21, 2012), available at [http://www.pbis.org/community/juvenile\\_justice/default.aspx](http://www.pbis.org/community/juvenile_justice/default.aspx) [hereinafter Positive Behavior Support] (stating that exposing at-risk individuals to "exclusionary discipline practices" can lead to academic and social failure, anti-social behavior, negative peer associations, and criminal tendencies).

<sup>152</sup> See Wang Ning Bao et al., *Life Strain, Negative Emotions, and Delinquency: An Empirical Test of General Strain Theory in the People's Republic of China*, 48 INT'L J. OF OFFENDER THERAPY & COMP. CRIM. 281, 282-284 (explaining that the majority of youth who exhibit criminal tendencies do not have positive relationships in their lives including relationships with their families, teachers and peers).

<sup>153</sup> Positive Behavior Support, *supra* note 151.

<sup>154</sup> D.J. Williams, W.B. Strean & E.G. Bengoechea, *Understanding Recreation and Sport as a Rehabilitative Tool Within in the Juvenile Justice Programs*, 53 JUV. and FAM. CT. J. 31, 31 (Apr. 2002) (this article argues that offering team sports in juvenile correctional facilities can lead to rehabilitation).

<sup>155</sup> See, e.g., Janet Gilbert et al., *Applying Therapeutic Principles to a Family-Focused Juvenile Justice Model*, 52 ALA. L. REV. 1153 (2000) (noting the importance of familial involvement in the juvenile justice process).

<sup>156</sup> Interview with Zeynep Esmey, *supra* note 15.

<sup>157</sup> *Id.*

which stresses “the participation of the juvenile’s family [throughout] the [justice] process.”<sup>158</sup> Additionally, the CRC states that family life is “fundamental.”<sup>159</sup>

Allowing children to nurture meaningful relationships with their families is invaluable both for the juvenile and his or her family.<sup>160</sup> In regard to the juvenile, relying on the support of loved ones can contribute to feelings of support, security, and guidance.<sup>161</sup> For families, the maintenance of ongoing relationships allows parents to understand the evolving needs of the juvenile and create sustainable connections with their children.<sup>162</sup> Further, the benefits of continued familial contact are cyclical.<sup>163</sup> When families experience positive involvement and systemic transparency, they have the ability to better communicate with the juvenile justice system.<sup>164</sup> Considering that families are often the most reliable source information for articulating their children’s strengths and needs, they may assist prison administrators with tailoring effective and individualized treatment and rehabilitation programs for their children.<sup>165</sup> Thus, it is not surprising that those children who regularly maintain healthy relationships with their families often recidivate less than those who do not.<sup>166</sup>

By separating external factors in juveniles’ lives that increase their likelihood of committing crime and replacing them with positive forces—including education and healthcare-related services—the Juvenile Protection Law promotes prevention tactics that keep children out of the criminal justice system.

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<sup>158</sup> Juvenile Protection Law, *supra* note 34, at art. 4. The Juvenile Protection Law stresses the importance of keeping families informed throughout the adjudication process. *Id.* at art. 4-d.

<sup>159</sup> Convention on the Rights of the Child, *supra* note 7, at prmb1. (“Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community”).

<sup>160</sup> Lili Gafinkel, *Improving Family Involvement for Juvenile Offenders with Emotional/Behavioral Disorders and Related Disabilities*, 36 BEHAV. DISORDERS 52, 52 (Nov. 2010), available at <http://www.ccbid.net/sites/default/files/bedi-36-01-52.pdf> (“The importance of family involvement cannot be underestimated in addressing the needs of youth with emotional and behavioral disorders who are referred to juvenile courts, adjudicated, or incarcerated . . . [r]esearch in best practices in the areas of prevention, intervention, and aftercare in juvenile justice identifies the need for parent participation, education, and supports to ensure that families remain engaged in the process.”). Comparatively, closed correctional facilities often allow visitation within the correctional facility for a limited time each week and families involved in this process often report instances of isolation and confusion. *See, e.g.*, MODELS FOR CHANGE, FAMILY INVOLVEMENT IN PENNSYLVANIA’S JUVENILE JUSTICE SYSTEM 10 (2009), available at <http://www.pachiefprobationofficers.org/docs/Family%20Involvement%20Monograph.pdf> [hereinafter MODELS FOR CHANGE] (stating that honest and transparent communication, or their perceived absence, was the predominant issue raised by families and juvenile justice administrators in a focus group regarding familial involvement in the juvenile justice system).

<sup>161</sup> *Id.*

<sup>162</sup> NAT’L EVALUATION AND TECHNICAL ASSISTANCE CENTER FOR THE EDUC. OF CHILDREN AND YOUTH WHO ARE NEGLECTED, DELINQUENT AND AT-RISK, WORKING WITH FAMILIES OF CHILDREN IN THE JUVENILE JUSTICE AND CORRECTIONS SYSTEM: A GUIDE FOR EDUCATION PROGRAM LEADERS, PRINCIPALS, AND BUILDING ADMINISTRATORS 5.6, (2006), available at [http://www.neglected-delinquent.org/nd/docs/Family%20Involvement%20Guide\\_FINAL.pdf](http://www.neglected-delinquent.org/nd/docs/Family%20Involvement%20Guide_FINAL.pdf) [hereinafter NATIONAL EVALUATION].

<sup>163</sup> MODELS FOR CHANGE, *supra* note 160, at 10.

<sup>164</sup> *Id.*

<sup>165</sup> Gafinkel, *supra* note 175, at 52.

<sup>166</sup> *Id.* at 52.

### C. Challenges to the Open Model Prison Scheme

Although the structure of open model prisons allows for the successful rehabilitation of juveniles placed in them, nations adopting this system of juvenile incarceration should be aware of challenges inherent in this model. First, juveniles in Turkey enter one of only three open model prisons primarily based on geographical convenience.<sup>167</sup> Since youth are not separated based on the varying degree of their crime, it is possible that open model facilities, which are designed to encourage socialization amongst youth, will ineffectively protect low-level offenders from the influence of juveniles displaying more blatant criminal predispositions.<sup>168</sup> There is therefore a general concern surrounding the possibility that prison administrators will not effectively segregate juveniles based on the seriousness of the offense and their potential to negatively influence other young individuals.<sup>169</sup>

Some experts describe the aforementioned notion as the “criminogenic effect” of prison, which draws on the fact that exposure to negative interpersonal influences in prison can actually reinforce criminal tendencies.<sup>170</sup> Compounding this phenomenon in juvenile prisons is the fact that youth lack complete brain maturity and have an underdeveloped sense of responsibility.<sup>171</sup> Youth are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.<sup>172</sup> As a result, encouraging juveniles to participate in daily educational and extracurricular activities with other children—particularly those that display more apparent criminal tendencies—can lead to negative socialization and enforced criminal behavior.<sup>173</sup>

A further criticism of open model prisons is based on the premise that the maintenance of familial ties is not a “cure” for future criminal behavior. First, not all children entering the juvenile justice system in Turkey or other countries have the ability to maintain any relationship with their families. Some juveniles do not have relatives that are willing or able to maintain communication.<sup>174</sup> A common example

<sup>167</sup> Interview with Zeynep Esmey, *supra* note 15.

<sup>168</sup> UNICEF 08, *supra* note 25, at 25.

<sup>169</sup> *Id.* at 25 (noting that the Director of the open model facility in Ankara stated that this was a particularly important problem).

<sup>170</sup> See Scott D. Camp & Gerald G. Gaes, *Unintended Consequences: Experimental Evidence for the Criminogenic Effect of Prison Security Level Placement on Post-Release Recidivism*, J. EXP. CRIMINOL. 139, 140 (2009) (defining “criminogenic effect” as the notion “that prisons may make individuals more criminal upon release.”).

<sup>171</sup> See Ritter, *supra* note 39 (detailing the immature nature of juveniles’ brains).

<sup>172</sup> *Id.*

<sup>173</sup> See Camp & Gaes, *supra* note 170, at 147-48 (noting that although there is not strong empirical evidence pointing to negative socialization leading to increased criminal tendencies, there is evidence that would support that conclusion).

<sup>174</sup> It is notable that many juveniles do not have familial support and would not benefit from the fact that open model prisons support family relationships. See, e.g., Steve Mills, *Freed from Prison, Some Juveniles Have no Place to Go*, CHI. TRIB. (Mar. 31, 2010) (noting that in Illinois, nearly 10% of juvenile prisoners who completed their sentence remain behind bars because they do not have anywhere to go. This can be due to lack of family, a home deemed unsuitable because of the family’s legal problems or an inability to accommodate the juvenile).

demonstrating this situation stems from the large population of institutionalized “economic orphans” in Turkey.<sup>175</sup>

Even more concerning, however, is the fact that consistent and ongoing exposure to one’s family can effectively aggravate criminal tendencies in some youth by way of parental or familial abuse, neglect, or exposure to criminal activity.<sup>176</sup> In fact, studies have linked 30-50 percent of early criminal tendencies to unstable or ineffective parenting.<sup>177</sup> Although the definitions of “bad parenting” can vary by culture, it is clear that a juvenile’s familial relationships affect the outcome of his or her behavior, at least to some degree. Therefore, it is a possibility that encouraging ongoing contact amongst certain families, which is a prominent feature in Turkey’s open model prisons, can exacerbate criminal tendencies. With these challenges in mind, Part IV of this Article recommends tactics by which nations can overcome potential troubles and successfully implement open model prisons.

#### IV. DIVERSION

In addition to the maintenance of an open model prison system, Turkey has made a concentrated effort in the last decade to more fully direct youth away from the formal criminal justice system—and into community-based and restorative processes—before they even get involved.<sup>178</sup> The formal term for this process is “diversion” and the Juvenile Protection Law first formally introduced it into Turkey’s juvenile justice system.<sup>179</sup> This Law established effective diversionary tactics that include a formal probation system and increased remission of sentences for children.<sup>180</sup>

<sup>175</sup> *Supra* note 49 and accompanying text.

<sup>176</sup> See Richard Dembo et al., *The Role of Family Factors, Physical Abuse, and Sexual Victimization Experiences in High-Risk Youths’ Alcohol and Other Drug Use and Delinquency: A Longitudinal Model*, 7 VIOLENCE & VICTIMS 245 (1992) (noting that abuse and exposure to illegal acts in one’s home can contribute to youths’ criminal behavior).

<sup>177</sup> James D. Unnever et al., *Why is “Bad” Parenting Criminogenic? Implications From Rival Theories*, 4 YOUTH VIOLENCE & JUV. JUST. 3, 20 (2006).

<sup>178</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72 (describing research and a recent UNICEF-funded research on street Children); see also S. Sevdâ Uluğtekin & Yüksel Baykara Acar, *Juvenile Courts and Probation Officers as Change Agents in Turkey*, 1 INT’L J. HUMAN. & SOC. SCI. 199 (2011), available at [http://www.ijhssnet.com/journals/Vol.\\_1\\_No.\\_3;\\_March\\_2011/28.pdf](http://www.ijhssnet.com/journals/Vol._1_No._3;_March_2011/28.pdf) [hereinafter Turkish Probation Service].

<sup>179</sup> See generally Part II.A. *supra* at 3. It should be noted that diversion is a contemporary phenomenon in criminal justice systems around the world. Several terms are often used interchangeably to describe criminal diversion programs. See, e.g., BLACK’S LAW DICTIONARY, *supra* note 13, at 213-14 (defining “diversion program” as a “program that refers certain criminal defendants before trial to community programs on job training, education, and the like, which if successfully completed may lead to the dismissal of the charges [or, in matters of juvenile delinquency, may refer to] a community-based program or set of services designed to prevent the need for court intervention in matters of child neglect, minor juvenile delinquency, truancy, or incorrigibility.”); See Asan Kasingye, *The Role of the Police Under Diversion: An Assessment of Successes and Failures*, UNICEF (Oct. 17, 2011), available at <http://www.unicef.org/tdad/ugandapoliceroleindiversion.pdf>.

<sup>180</sup> As mentioned in Part II, the government also introduced special provisions to the Juvenile Protection Law, Criminal Procedures Law, and Law on the Enforcement of Penalties and Security Measures in 2005; see also Progress for Children 2006, *supra* note 32.

The benefits of diversion lie in its ability to shield youth from the otherwise harmful effects of involvement in the criminal justice system and while replacing those negative effects with constructive services and interventions that promote healthy and positive outcomes for juveniles.<sup>181</sup> Diversion also reduces the risk of potential intra-prison abuse, lessens the stigmatization of juveniles with a criminal record, and promotes judicial economy.

Turkey has adopted three model approaches to diversion of justice-involved youth: 1) preventative techniques that aim to divert children away from crime *before* it happens, including the use of a Children's Police Unit within the crime prevention and protection framework, 2) diversion from formal proceedings, including mediation and the suspension of prosecution, and 3) alternative sentencing, including the practice of diverting juveniles that commit less serious offenses from jail or prison *after* adjudication.<sup>182</sup>

#### A. Preventative Diversion Techniques

Perhaps the most important stage of diversion in the juvenile justice system is the one that precludes any interaction with the formal justice system at all. In Turkey, prevention is most often accomplished by placing members of the Children's Police Unit in high-crime and at risk neighborhoods,<sup>183</sup> promoting and investing in education for all youth, and continually implementing programs that allow street children to invest their time in positive outlets that promote growth and limit factors in their lives that can lead to crime.

##### 1. The Children's Police Unit

Arguably the most central and significant source for prevention of juvenile criminal behavior in Turkey is the Children's Police Unit.<sup>184</sup> The Children's Po-

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<sup>181</sup> UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States, *Assessment of Juvenile Justice Reform Achievements in Turkey*, UNICEF (July 2009), available at <http://panel.unicef.org.tr/vera/app/var/files/a/n/annex-2-unicef-jjturkey08-review-by-dan-odonnell.pdf>, see also Justice for Children, *supra* note 38 (explaining that diversion is the process of diverting children alleged as, accused of, or recognized as having infringed the penal law away from formal adjudication or introducing measures to discipline and rehabilitate them without resorting to judicial proceedings); see also H.J. Steadman & M. Naples, *Assessing the Effectiveness of Jail Diversion Programs for Persons with Serious Mental Illness and Co-Occurring Substance Use Disorders*, 23 BEHAV. SCI. & THE LAW 163, 165 (2005) (describing various diversion programs and explaining that the most common terms used for diversion in the United States are "pre-booking" and "post-booking"); see also UK BORDER AGENCY, COUNTRY OF ORIGIN INFORMATION REPORT: TURKEY, 2009, available at <http://www.unhcr.org/refworld/pdfid/49c366252.pdf>, see also Interview with Professor Yüksel Baykara Acar, *supra* note 72 (explaining that arrest is not an uncommon experience among certain segments of Turkish youth, especially street children and youth in poverty-stricken urban areas and explaining that while youth in every culture engage in risky behaviors, act thoughtlessly, and make regrettable decisions at some point, these populations are at greater risk for confrontation with the law in Turkey).

<sup>182</sup> *Id.* "Adjudication" is a term commonly used in place of the word "sentencing" for juvenile proceedings; the meaning is the same.

<sup>183</sup> Interview with Zeynep Emez, *supra* note 15.

<sup>184</sup> *Id.* Also known as the "Juvenile Police Directorate."

lice Unit is a specialized and separate section under the General Directorate unit of the police force.<sup>185</sup> Established in 2001, the Children's Police have offices in every province in Turkey<sup>186</sup> and exclusively handle law enforcement duties related to children.<sup>187</sup> The first ranks of the Children's Police Unit were anti-terrorist officers from within the broader Turkish police force.<sup>188</sup> Today, however, the Children's Police Unit recruits new officers from child-related fields, such as education and social work.<sup>189</sup>

To uphold an approachable or less intimidating presence, Children's Police Unit personnel wear civil or "plain-clothed" attire both on patrol and in all procedures involving children.<sup>190</sup> Further, officers often serve as a personal resource for youth in difficult circumstances.<sup>191</sup> The Children's Police Unit requires officers to complete a minimum number of hours of specialized training<sup>192</sup> to ensure that they understand and adhere to age-appropriate tactics when interacting with youth.<sup>193</sup> As a result of this training and background experience, Children's Police Unit officers are well versed on the criminal procedure relating to juveniles, including the rules and regulations specific to child apprehension.<sup>194</sup> While some countries, such as New Zealand, have juvenile police units, the model largely remains unique to Turkey.<sup>195</sup>

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<sup>185</sup> *Id.* Children between the ages of 12 and 18.

<sup>186</sup> There are now approximately 35,000 Children's Police Unit officers throughout the country. *See, e.g.*, UNICEF 08, *supra* note 25.

<sup>187</sup> *Id.*

<sup>188</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72. This unit is also known as the "Gendarmerie."

<sup>189</sup> *See* Abiad, *supra* note 114, at 293. Training involves a minimum of 60 hours of elementary training and 90 hours of expert training. Classes cover subjects such as child trafficking, child abuse and juvenile justice.

<sup>190</sup> Abiad, *supra* note 114.

<sup>191</sup> *Id.* at 129 (describing the foster family program and other supports built into the juvenile police system structure).

<sup>192</sup> *See, e.g.*, Juvenile Protection Law arts. 28, 31 and 32 (providing generally that all juvenile justice professionals are required to receive training on topics such as juvenile law, prevention of juvenile delinquency, child development and psychology, and social services).

<sup>193</sup> *See* Abiad, *supra* note 114.

<sup>194</sup> *See, e.g.*, Art. 19 of the *Regulation on Apprehension, Arrest, and Examination* ("Authorization of apprehension and examination under oath are limited so that those who have not reached their twelfth birthday on the time of the act, and the deaf and mutes who have not reached their fifteenth birthday; 1) Cannot be apprehended under an accusation of a crime and cannot be used for the ascertainment of any crime; 2) Can be apprehended for determination of identification and crime.") Under Art. 19 of the Juvenile Protection Law, juveniles cannot be handcuffed and only prosecutors may interrogate juvenile offenders. Juvenile suspects are also entitled to the services of a lawyer as soon as an investigation begins, without having to request one. In addition, children under 12, and deaf or mute children under 15, must be released right after the determination of their identity, regardless of the accusation.

<sup>195</sup> The United States does not employ such a model at the federal level, but similar programs can be found in several states. They are generally run at the county-level and within the broader police system. Examples of groups include: Crime Against Children units, Child Abuse Investigation units, Child At Risk Response teams, child homicide task forces, and Endangered or Exploited Child Alert systems. *See, e.g.*, B. Malcolm & B. Parsons, *The Administration of Police Juvenile Services in the Metropolitan Regions of the United States*, 54 J. Crim. L. 1, 114-17 (1963).

The Children's Police Unit places a strong emphasis on the specific needs of diverse communities by stationing higher numbers of officers in at risk and urban areas.<sup>196</sup> These officers also facilitate programs aimed at encouraging parental collaboration<sup>197</sup> and partner with non-profit organizations.<sup>198</sup> For example, Children's Police officers in Istanbul often refer juveniles from lower income areas of the city to TCYOV,<sup>199</sup> where youth can participate in a number of activities that build their character and "keep them out of trouble."<sup>200</sup> Activities available to these youth include painting, cooking, computer classes, and art classes.<sup>201</sup>

Additionally, to ensure that the juvenile justice system functions appropriately, even in the event that a "regular" police officer apprehends a child,<sup>202</sup> the government created a series of informational pamphlets for police to distribute to youth.<sup>203</sup> These circulars explain best practices and legal requirements for situations involving children who become involved in the criminal justice system.<sup>204</sup> There are four brochures in the current series, entitled: "The Use of Handcuffs," "Protection of Minors," "Protection of the Family," and "The Juvenile Police."<sup>205</sup>

## 2. Prevention Under the Juvenile Protection Law

The Turkish government also supports prevention through a series of measures detailed in the 2005 Juvenile Protection Law,<sup>206</sup> including healthcare<sup>207</sup> and education measures.<sup>208</sup> For example, the Juvenile Protection Law requires children to attend school as a means by which to avoid involvement in transgressions and delinquency.<sup>209</sup> It requires children to attend educational institutions or vocational

<sup>196</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72. This includes areas that are poverty-stricken and where there are a large number of street children.

<sup>197</sup> See, e.g., Ertan Kilic, *You've Got Mail from Turkey's Juvenile Police*, HURRIYET DAILY NEWS, Mar. 24, 2010, available at <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=you-have-got-mail-from-the-juvenile-police-2010-03-24>.

<sup>198</sup> Interview with Selmin Cansu Demir, Attorney, TCYOV, in Istanbul, Turkey (Mar. 6, 2012).

<sup>199</sup> "türkiye çocuklara yeniden özgürlük vakfı," a Turkish non-profit organization working to promote the rehabilitation of juvenile offenders and with whom the government has established a formal partnership; see, e.g., Interview with Selmin Cansu Demir, *supra* note 198; see also Interview with Zeynep Emez, *supra* note 15.

<sup>200</sup> Interview with Zeynep Emez, *supra* note 15.

<sup>201</sup> During a visit to the education center, we learned that IBM had donated a small computer lab to the center, enabling further implementation of computer courses. TCYOV staff considers these programs to be successful and have kept in contact with some participants for many years. See, e.g., Interview with Selmin Cansu Demir, *supra* note 198 (describing manifestations of the education measures and significance of this language in the law).

<sup>202</sup> While Turkish law demands that all matters involving children be handled by the Children's Police Unit, it remains possible that a "regular" police officer could apprehend a child. See, e.g., Interview with Zeynep Emez, *supra* note 15.

<sup>203</sup> *Id.*; see also Abiad, *supra* note 114, at 294.

<sup>204</sup> Interview with Zeynep Emez, *supra* note 15.

<sup>205</sup> *Id.* The Children's Police Unit distributes these circulars. Titles are translated from Turkish.

<sup>206</sup> *Id.*

<sup>207</sup> Juvenile Protection Law art. 5/1-d.

<sup>208</sup> *Id.* at art. 5/1-b.

<sup>209</sup> *Id.*

courses as either a day or boarding student, or to attend artistic courses that focus on teaching practical skills within a trade or vocation.<sup>210</sup> Additionally, because research indicates that a high number of youth involved with crime may suffer from mental health issues or may require medical attention, the healthcare measures also address the implications of mental health on juvenile crime.<sup>211</sup>

By separating external factors in juveniles' lives that increase their likelihood of committing crime and replacing them with positive forces—including education and healthcare-related services—the Juvenile Protection Law promotes prevention tactics that keep children out of the criminal justice system.

### B. *Description of Diversion from Formal Proceedings*

In Turkey, responsibility for formal diversion lies primarily with the prosecutor.<sup>212</sup> Under the Juvenile Protection Law, each prosecutor's office must have a specialized juvenile bureau.<sup>213</sup> The duties of this bureau include: 1) managing investigations of juvenile offenders when the police first receives them, 2) ensuring that courts take necessary measures without delay whenever juveniles are involved, 3) coordinating and cooperating with relevant public institutions, organizations, and non-governmental organizations for the purpose of providing the necessary support services to youth in need of assistance, and 4) referring juvenile cases to the authorized institutions and organizations who may provide alternative services.<sup>214</sup> These notice or referral procedures might involve agreement by the child to participate in a program to prevent re-offending, to make certain changes to their lifestyle, or to engage in community programs.<sup>215</sup>

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<sup>210</sup> *Id.*; See, e.g., Şahika Temür, *Rehabilitated Youth Take First Step into Qualified Business*, HURRIYET DAILY NEWS, Jan. 21, 2010, available at <http://www.hurriyetdailynews.com/rehabilitated-youth-take-first-step-into-qualified-business.aspx?pageID=438&n=rehabilitated-children--took-first-step-into-qualified-business-2010-01-20> (providing example of rehabilitated youth receiving vocational training in manufacturing and assembly lines as part of this movement).

<sup>211</sup> See Interview with Zeynep Esmey, *supra* note 20. To offer an example of this phenomenon, one study by the Justice Policy Institute, a Washington, D.C.-based group that studies adult and juvenile justice policies found that over two-thirds of incarcerated youth in the United States meet the criteria for mental disorders, which is more than double the national average for children in the United States. Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Annie E. Casey Foundation (2006), available at [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf).

<sup>212</sup> The law requires that each child who comes into contact with the system meet with a social worker. This social worker can further recommend to the prosecutor or judge that the child participate in diversionary tactics, such as court-mandated treatment programs, rather than traditional punishment. See Juvenile Protection Law art. 30/1-2.

<sup>213</sup> *Id.*; see also Abiad, *supra* note 129.

<sup>214</sup> *Id.*

<sup>215</sup> Since forgoing adjudication means renunciation of the legal rights of accused persons, diversion must be accepted voluntarily. See Convention on the Rights of the Child, *supra* note 33, at art. 40.3(b); Beijing Rule 11.3; see also Interview with Professor Yuksel Baykara Acar, *supra* note 88 (explaining that can mean the child must attend school or obtain employment).

Mediation is another method through which the juvenile justice system affords youth the opportunity to avoid formal adjudication or sentencing.<sup>216</sup> Mediation is an informal process wherein a third party helps disputants find common ground.<sup>217</sup> The goal is for each party to recognize the other side's position and work towards reconciliation without the imposition of a formal judicial solution.<sup>218</sup> So far, the mediation scheme has been successful in Turkey.<sup>219</sup> In 2006 alone, 3,689 juvenile cases were dismissed through a process of mediation or reconciliation between the victim and accused, as compared to 10,862 cases that ended in a verdict of conviction or acquittal.<sup>220</sup>

In the Turkish juvenile justice system, mediation is available if the offense of the accused would be punishable by a sentence of two years or less.<sup>221</sup> This threshold increases to a sentence of three years or less if the offender is under the age of 15.<sup>222</sup> Once a case has been referred to mediation, parties have three days to decide whether to mediate before they must consider other options.<sup>223</sup>

Turkish law requires that all third-party mediators be either a prosecutor or an attorney.<sup>224</sup> Because juvenile prosecutors and judges receive training on child development, they are expected to be familiar with issues specific to juvenile cases and should be able to answer questions about the process.<sup>225</sup> Thus, juvenile court-referred mediation mirrors the practices and principles found in many successful victim-offender juvenile mediation programs around the world, including that: the mediator is trained, sensitive and neutral, the parties can adequately prepare for the dialogue before it occurs, proceedings maintain confidentiality,<sup>226</sup> and the mediation is conducted in a safe and comparatively informal environment.<sup>227</sup>

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<sup>216</sup> Turkey has made positive strides in ensuring effective use of State resources. Interviews are generally conducted from a panel staffed by court personnel. Experts point to this success as a sign of progress and improvement of the juvenile justice system. *Id.*

<sup>217</sup> Feridun Yenisey, *Juvenile Justice in Turkey in RESTORATIVE JUSTICE ON TRIAL: PITFALLS AND POTENTIALS OF VICTIM-OFFENDER MEDIATION: INTERNATIONAL RESEARCH PERSPECTIVES* 409, 411 (Heinz Messmer & Hans-Uwe Otto eds., 1991).

<sup>218</sup> *Id.*

<sup>219</sup> Janine Geske, *Victim/Offender Mediation in Turkey*, Marquette Law School Blog (April 3, 2012) (last visited May 5, 2012), available at <http://law.marquette.edu/facultyblog/2012/04/03/victimoffender-mediation-in-turkey/>.

<sup>220</sup> UNICEF 08, *supra* note 32 at 40. See also See UNICEF REGIONAL AND INTERNATIONAL INDICATORS ON JUVENILE JUSTICE: THEIR APPLICABILITY AND RELEVANCE IN SELECTED COUNTRIES OF EASTERN EUROPE AND CENTRAL ASIA, UNITED NATIONS CHILDREN'S FUND 5 (Jul. 2009), available at [http://www.essex.ac.uk/armedcon/story\\_id/UNICEF\\_JJIndicators08.pdf](http://www.essex.ac.uk/armedcon/story_id/UNICEF_JJIndicators08.pdf) (explaining data published on the website of the Ministry of Justice indicate the number of cases dismissed by reason of mediation or reconciliation) [hereinafter "UNICEF REPORT"].

<sup>221</sup> See Janine Gaskin, *Victim/Offender Mediation in Turkey*, Marquette University Law School Faculty Blog (Apr. 3, 2012) (describing a recent research trip to Istanbul, Turkey to investigate alternative sentencing options through mediation in Turkey's juvenile justice system and the author, a law professor's, observations from the experience).

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*; See Juvenile Protection Law art. 30/1-2.

<sup>224</sup> Interview with Professor Yuksel Baykara Acar, *supra* note 72.

<sup>225</sup> Janine Gaskin, *supra* note 221.

<sup>226</sup> There is no criminal or published record as a result of resolution by mediation. *Id.*

<sup>227</sup> See Professor Feridun Yenisey, *supra* at 75.

Once a youth enters the juvenile justice system, courts have additional options to help the juvenile avoid lengthy proceedings or detention while a trial is pending.<sup>228</sup> Court social workers tasked with assessing the youth's mental health capacities have authority to redirect a child to social services if they deem them unfit to stand trial.<sup>229</sup> In addition, the Juvenile Protection Law allows prosecutors discretion in delaying a juvenile's trial for up to five years.<sup>230</sup> If the offender commits no other crimes during this period, the court will generally drop the case.<sup>231</sup> The prosecutor may also choose not to press charges at all if the accused is a first time offender and the crime is not excessively violent.<sup>232</sup> Judges may also choose to suspend formal proceedings for up to three years for first-time juvenile offenders.<sup>233</sup>

### C. Description of Diversion from Incarceration

Finally, if preventative and court-related diversionary efforts are unsuccessful, there are options for juvenile offenders to serve their sentences within the community rather than in prison.<sup>234</sup> Most significantly, if a court sentences a juvenile to a term of imprisonment of less than one year, the court may impose an alternative sentence, including mandatory enrollment in an educational institution, restrictions on activities, and community service.<sup>235</sup> Probation officers often oversee and supervise these alternatives.<sup>236</sup> With probation, the adjudicated youth can serve all or part of the sentence at liberty as long as there is a minimal level of supervision by the sentencing court.<sup>237</sup>

The Juvenile Protection Law established the Turkish Probation Service,<sup>238</sup> which was modeled after the National Probation Service for England and Wales.<sup>239</sup> Probation centers are located in every province of Turkey, and each center employs both psychologists and social workers.<sup>240</sup> As of May 2011, the most recent data available, there were 7,179 children benefiting from the 133 probation centers across Turkey.<sup>241</sup> Further, since 2005, the identification of more specific fields of probation has also led the Ministry of Justice to provide specialized training to new probation

<sup>228</sup> See Justice for Children, *supra* note 50.

<sup>229</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 88.

<sup>230</sup> *Id.*

<sup>231</sup> Juvenile Protection Law art 19.

<sup>232</sup> Consequently, much diversion happens between preliminary hearings and trial. See Interview with Zeynep Esmez, *supra* note 20 (defining "serious" as homicide, burglary, and battery).

<sup>233</sup> *Id.*

<sup>234</sup> Turkish Probation Service, *supra* note 9.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> Turkish Probation Service, *supra* note 9.

<sup>238</sup> Francis Bailleau & Dominique de Fraene, *supra* note 12 (presenting an overview of research by experts in the Crimprev network shared at a 2008 conference on topics such as imprisonment, alternative measures and the extension of the judicial logic).

<sup>239</sup> Turkish Probation Service, *supra* note 9 (explaining that the aim of this program is to develop European standards and international practice in terms of the protection of the community and prevention of crime).

<sup>240</sup> See Justice for Children, *supra* note 38.

<sup>241</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72.

staff in addition to launching a European Union “twinning project” to develop best practices for probation and diversion in Turkey.<sup>242</sup>

#### D. *The Benefits of Diversion*

##### 1. *Avoiding the Unnecessary and Improving Self-Image*

Philosophically and functionally, pretrial diversion gives juvenile justice officials an opportunity to intervene before youth encounter the negative effects that can result from criminal justice system involvement.<sup>243</sup> Specifically, diversion diminishes stigmatization, reduces recidivism, and provides youth with services and social support that they might not otherwise receive, including the opportunity for mentorship and personal growth.<sup>244</sup> While experts describe a more “tolerant attitude” towards youth delinquency in Turkey than in other countries,<sup>245</sup> involvement in the juvenile justice system can still have long-term and stigmatizing effects on Turkish youth.<sup>246</sup> For example, a criminal record can hinder future professional, social or educational opportunities, including the ability to find employment.<sup>247</sup>

In addition, “label theory” plays a large role in promulgating the potentially negative effects experienced by juveniles who enter the juvenile justice system.<sup>248</sup> Research shows that labeling a youth as “deviant,” “delinquent” or as a “juvenile offender” can affect the way in which youth define themselves.<sup>249</sup> In line with social stigmatization, the negative psychological effects that “labeling” can have on a juvenile influences future behavior and dictates the social roles youth assume.<sup>250</sup> By contrast, diversion is confidential and does not produce a public record, so outside parties will not become aware of a juvenile defender’s delinquency history once the child successfully completes the program.<sup>251</sup>

In line with the aforementioned effects of diversion, community-centered programs also provide participating youth with the opportunity to learn more about their social world, to meet and form relationships with potential mentors and role models,

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<sup>242</sup> Turkish Probation Service, *supra* note 9. “Twinning” is a common term used for initiatives of the European Commission that involve comparing two states. Twinning projects typically set out to deliver specific, guaranteed results. *See, e.g.* E.U. Twinning Project (last visited on May 7, 2012), *available at* <http://www.twinning-project.org/> (offering examples of twinning projects).

<sup>243</sup> *Id.*

<sup>244</sup> *See* U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention, *Diversion* (last visited May 7, 2012), *available at* <http://www.ojjdp.gov/mpg/progTypes/Diversion.aspx>.

<sup>245</sup> According to Professor Feridun Yenisey, while the most common forms of juvenile delinquency among Turkish youth are and have long been theft and similar “antisocial” crimes, public opinion in Turkey does not view these and most of the crimes committed by youth as “major” crime. *See* Feridun Yenisey, *supra* note 59 at 412.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72.

<sup>249</sup> Dick, et. al., The Need for Theory in Assessing Peer Courts, 47 *AMERICAN BEHAVIORAL SCIENTIST* 47:1448, 1451 (2004).

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

and to build on their social intelligence in a way that would not be possible in a traditional prison setting.<sup>252</sup> According to the U.S. Office of Juvenile Justice and Delinquency Prevention (“OJJDP”), youth involved in mentoring programs are also less likely to experiment with drugs, be physically aggressive, and skip school than those not involved in such programs.<sup>253</sup> This information is significant in view of the fact that overwhelming empirical evidence reveals that *detained* youth are more likely to drop out of school and consequently experience social exclusion.<sup>254</sup> By contrast, former youthful offenders who were diverted to community involvement alongside TCYOV in Istanbul often return to the program as volunteers or mentors.<sup>255</sup> When asked to reflect on the impetus for success of these programs, TCYOV staff expressed that these juveniles return and do well generally as a result of their positive experience with diversion.<sup>256</sup>

Additionally, research shows that children in any place of detention, short term or long term, are at heightened risk for physical and mental abuse from both prison officials and other prisoners.<sup>257</sup> Diversion helps avoid this risk, as well as the potential long-term mental, emotional, and physical effects of abuse, which some studies suggest can actually reverse the rehabilitative process.<sup>258</sup> Avoiding these risks entirely is also in line with CRC guidelines, which state that children deprived of liberty should be treated with humanity and respect for the inherent dignity of the human person.<sup>259</sup>

## 2. *Improving Treatment Options for Youth*

The recent global recession had a particularly severe impact on poor communities across the world.<sup>260</sup> As a result, children of low economic social status, such

<sup>252</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72; *see also* Interview with Zeynep Esmez, *supra* note 15 (describing individual cases that Children’s Police Unit officers sometimes have positive and personal relationships with the youth they interact with, serving as local role models for these juveniles).

<sup>253</sup> Jean B. Grossman & Eileen M. Garry, *Mentoring: A Proven Delinquency Prevention Strategy*, U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention (April 1997), available at <https://www.ncjrs.gov/html/youthbulletin/9907-4/mentor-8.html>.

<sup>254</sup> *Supra* Part III.A.3.

<sup>255</sup> Interview with Zeynep Esmez, *supra* note 15.

<sup>256</sup> *Id.*

<sup>257</sup> Despite numerous efforts taken to protect children from abuse, the Turkish justice system was rocked by scandal in early 2012 with the discovery that over 200 juvenile prisoners, mostly Kurdish children, were abused by prison officials and other prisoners at one detention facility in southern Turkey. Jenna Krajeski, *The Story of the Kurdish Stone-Throwing Kids* (Apr. 18, 2012), available at <http://pulis-center.org/jenna-krajeski-turkey-kurdish-stone-throwing-kids-reporting>.

<sup>258</sup> *See* Barry Holman & Jason Ziedenberg, *supra* note 231.

<sup>259</sup> Under Article 37 of the CRC, which addresses juvenile detention and punishment, “no one is allowed to punish children in a cruel or harmful way. Children who break the law should not be treated cruelly. They should not be put in prison with adults, should be able to keep in contact with their families, and should not be sentenced to death or life imprisonment without possibility of release. Article 37(b) of the CRC asks the State parties to ensure that the arrest, detention or imprisonment of a child is in conformity with the law and used only as a measure of *last resort* and for the shortest period of time. *See* Convention on the Rights of the Child, *supra* note 13, at art. 37(c).

<sup>260</sup> Save the Children, *Policy Brief on the Financial Transactions Tax 1*, 1 (2010) (last visited May 7, 2012), available at <http://cfsc.trunkny.net/download.asp?doc=Publications&id=428>; *see also* UNICEF

as street children, were pushed to “antisocial” crime by way of their social situation and environment.<sup>261</sup> As one expert put it, “desperate situations lead to desperate actions,” meaning that more children may be driven to commit petty theft for food or engage in other crimes necessary to defend themselves from violence and aggression on the streets.<sup>262</sup> Prevention is, therefore, especially crucial now to address the socio-economic and psychosocial problems that often induce juveniles into coming into conflict with the law.<sup>263</sup>

As touched upon earlier, in addition to socio-economic patterns, there also exists an extremely high percentage and disproportionate level of mental illness in juvenile justice systems across the globe.<sup>264</sup> Studies show that abnormally high percentages of detained youth suffer from mental illnesses.<sup>265</sup> Additionally, the expansion of mental health diversion programs in the United States and other Western countries reflect an increasingly popular view that there is a causal relationship between youth mental disorders and crime.<sup>266</sup> The diversion system affords children the opportunity to participate in confidential and often much-needed treatment services by obtaining referrals and government-subsidization from organizations aimed at providing preventative services.<sup>267</sup> These treatment programs are significant because juveniles predisposed to mental illness might otherwise fail to receive support due to the high cost of treatment or perhaps because the social stigma accompanying mental health services.<sup>268</sup>

Preventative diversionary services give children the opportunity to participate in health and counseling services in order to address the effects that accompany their socioeconomic or psychosocial situations.<sup>269</sup> Further, diversionary techniques aimed

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TURKEY, *An Analysis on the UN Convention on the Rights of the Child & The Turkish Law 1*, 55 (2011), available at <http://www.unicef.org.tr/en/knowledge/detail/880/an-analysis-of-the-un-convention-on-the-rights-of-the-child-the-turkish-law-executive-summary>.

<sup>261</sup> *Id.*; Interview with Professor Yüksel Baykara Acar, *supra* note 88.

<sup>262</sup> Discussion with German and Turkish Law Scholars at Istanbul Bar Association lecture, in Istanbul, Turkey (March 8, 2012).

<sup>263</sup> Diversion helps youth avoid the negative effects and byproducts of system involvement, which include a lower self-esteem, psychological trauma, alienation, and an increased potential to commit more serious offenses in the future. If we did not have diversion programs, youth would face greater struggles as they are confronted with natural consequences that follow adjudication, such as the time and money spent on adjudicative proceedings, a potential permanent criminal record, or exposure to the possibly criminogenic nature of prisons. See Mary D. Fan, *Beyond the Budget-Cut Criminal Justice: The Future of Penal Law*, 90 N.C. L. REV. 1, 10 (noting that processes can aggravate criminal tendencies in some by facilitating a criminal network, brutalizing the individual further, and “consolidating a criminal identity”), available at <http://yvj.sagepub.com/content/9/3/207.abstract>; see also Interview with Professor Yüksel Baykara Acar, *supra* note 88.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> Alison Evans Cuellar, et. al, *A Cure for Crime: Can Mental Health Treatment Diversion Reduce Crime Among Youth?*, 25(1) JOURNAL OF POLICY ANALYSIS AND MANAGEMENT 197, 197 (2006).

<sup>267</sup> The interviews we conducted with juvenile justice experts in Turkey suggested that a lack of effective mental health treatment programming is a major setback in the Turkish juvenile justice system today.

<sup>268</sup> *Id.*

<sup>269</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 88.

at treatment, including court-mandated therapy,<sup>270</sup> may provide procedures and programs that juveniles can benefit from while expediting their time in the juvenile justice system.<sup>271</sup> Even the harshest critics of the diversion process cannot deny many of the benefits of diversion from incarceration, particularly in situations where youth cannot receive proper rehabilitation in detention.<sup>272</sup> Finally, when prevention fails and youth commit crime, alternatives to incarceration provide opportunities for communities to treat, rather than punish, juveniles, which results in more positive long-term effects.<sup>273</sup>

### 3. Improving Judicial Economy

Globally, it is not uncommon for governments to neglect diversion efforts at the expense of short-term, more politically viable and punitive approaches to “get tough on crime.”<sup>274</sup> In the process, prisons can become a “dumping ground” for troubled youth.<sup>275</sup> Yet research evidences the high cost of this flawed strategy.<sup>276</sup> Accordingly, this section examines two economic-based aspects of the so-called “tough on crime” phenomenon and demonstrates how diversion leads to greater savings and more positive outcomes for nations that employ such practices.<sup>277</sup>

Detention is a scarce resource and jails, prisons, and reformatories are expensive to operate. A 2007 Turkish parliamentary inquiry into young people and violence estimated the cost per juvenile detainee at 960 liras per month.<sup>278</sup> This is around \$600,<sup>279</sup> which might not seem like a significant amount upon first inspection. However, when one considers that this is more than one-third of the average *annual* salary in Turkey, the figure demonstrates a strong financial incentive to promote alternative sentencing rather than detaining youth.<sup>280</sup> Diversion programs are

<sup>270</sup> As described above and in the Recommendations section, *infra*, treatment programs might include counseling, medicine, or integrative and low cost options such as Functional Family Therapy, Family Integrated Transitions, and Multisystemic Therapy.

<sup>271</sup> Interview with Robyn Offenbach, Social Worker at Youth Service Project, Chicago, IL (Apr. 2, 2012).

<sup>272</sup> Benedikt Fisher, et. al., *The Socio-Legal Dynamics and Implications of Diversion*, 2(4) *CRIMINOLOGY AND CRIMINAL JUSTICE* 385, 390 (2002).

<sup>273</sup> *Id.*

<sup>274</sup> See Barry Feld, *Juvenile Justice Administration* 1, 587 (3d ed. 2009) [hereinafter “Feld Textbook”].

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> Diversionary techniques in other countries support the premise that an improved judicial economy lends to greater accountability for the appropriate release of children in contact with the system. The juvenile justice system in Germany, for example, applies the principle of proportionality to the arrest of children. A judge who issues an arrest warrant for a juvenile is required to explain in the grounds of the decision, “why methods for measures which limit rights less, such as temporary accommodation in the dormitory of the Juvenile Protection Organization or the like, were not applied” and “why the warrant is accepted as proportional in this particular incident.” See Professor Feridun Yenisey, *supra* note 59.

<sup>278</sup> See Justice for Children, *supra* note 50.

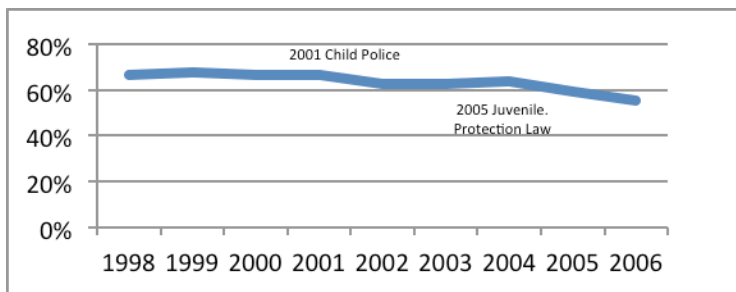
<sup>279</sup> This is about \$600 with current exchange rates. See XE Universal Currency Converter (last visited on May 9, 2012), available at <http://www.xe.com>.

<sup>280</sup> In 2011, the average annual income in Turkey was estimated to be \$14,600. See CIA, *The World Factbook: Turkey* (retrieved on May 7, 2012), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>.

cost effective and can significantly reduce a nation's overall corrections budget.<sup>281</sup> Consequently, governments could reinvest funds spent on detention beds and new detention centers into community interventions empirically proven to reduce recidivism.<sup>282</sup> While one pushback to this strategy lies in a concern for the safety of the community, research confirms that detaining juvenile offenders generally does not make communities any safer.<sup>283</sup>

It is clear that Turkey's diversionary practices are successful in preventing detained youth from engaging in formal judicial proceedings or entering prison. Since 2001, the rate of juveniles charged with crimes declined, first with the introduction of the Children's Police Unit in 2001 and again after the Juvenile Protection Law introduced further diversionary tactics (*see* Figure 1). Experts affirm this causal connection between diversion and a reduction in systemic involvement for youth involved with crime.<sup>284</sup>

**FIGURE 1: The Rate of 'Detained' Juveniles in Turkey that Received a Charge, 1997-2006**



Data retrieved from the Turkish Statistical Agency (TURKSTAT); original analysis by the authors.

Analysis based on the figures in TABLE 1.<sup>285</sup>

<sup>281</sup> See Lauren Salins & Shepard Simpson, *Release or Reform: An Assessment of California's Efforts to Fix its Broken Prison System in the Wake of Brown v. Plata*, 44 Loy. U. Chi \_\_ (forthcoming 2012) ("By some estimates, states could reduce their corrections spending by \$684 million a year if they reduced prison populations through proactive reform mechanisms, such as early release programs and diversionary tactics.").

<sup>282</sup> The Trauma Foundation, *Young People: Incarceration and Death at Home in the U.S.* (retrieved May 1, 2012), available at <http://www.traumaf.org/featured/5-21-04youthincarceration.html>.

<sup>283</sup> See generally Barry Holman & Jason Ziedenberg, *supra* note 211 (describing an interview with Bart Lubow, who is the head the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative); Examples of the monetary incentive to reduce prison costs come from Cook County (Chicago) in Illinois, which plans to save approximately \$240 million over 20 years by avoiding construction of a detention center. Multnomah County (Portland) in Oregon will re-deploy more than \$12 million over a six-year period by doing the same); See also The Justice Policy Institute, *Incarcerating Youth can Aggravate Crime and Frustrate Education, Employment and Health for Young People*, JUSTICE POLICY INSTITUTE (Nov. 28, 2006), available at <http://www.justicepolicy.org/news/1977>.

<sup>284</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72.

<sup>285</sup> See TURKSTAT, *supra* note 9.

**TABLE 1: Number of Youth Detained in Turkey (27 provinces) by Year, 1997-2006**

Year	Juveniles Received into Security unit	Juveniles Charged	% Detained that are Charged
1997	39838	22305	56%
1998	39838	26467	66%
1999	36618	24799	68%
2000	37685	25194	67%
2001	39447	26182	66%
2002	52064	32616	63%
2003	60579	38101	63%
2004	70920	45325	64%
2005	75334	44499	59%
2006	84110	46791	56%

*Data retrieved from the Turkish Statistical Agency (TURKSTAT); table designed by the authors.*

### E. Challenges Surrounding the Implementation of Diversionary Techniques

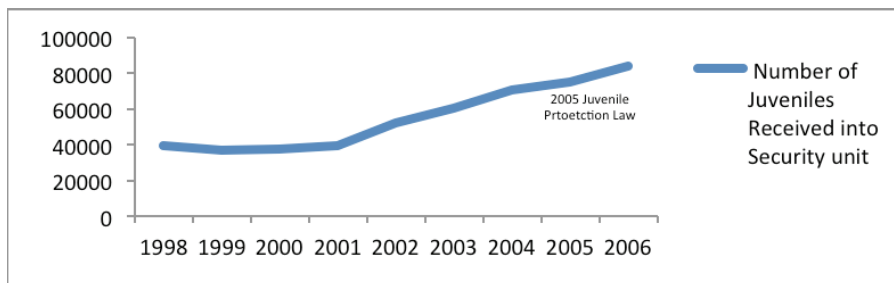
While diversion often contributes to reduced likelihoods of juvenile abuse and promotes judicial economy, nations that wish to implement these practices should account for certain challenges inherent in this model. First, critics argue that preventative diversion extends judicial participation to youth who would have ordinarily been free of this involvement.<sup>286</sup> These challengers argue that this “net-widening effect” leads to the informal treatment of youth by a juvenile justice system that the child would not have otherwise encountered.<sup>287</sup>

These critics additionally note that although the percentage of juveniles charged with crimes has decreased (*see* Figure 1), the total number of young people in custody has increased over the past ten years. Figure 2 shows this increase in the number of youth received into custody, which supports the theory that prevention and intervention can actually expand the number of youth in the juvenile justice system. Critics argue that this sheer increase in numbers alone means that more justice-related social issues will require attention, translating to additional stresses on already limited financial resources.<sup>288</sup>

<sup>286</sup> Charles E. Frazier & John K. Cochran, *Official Intervention, Diversion from the Juvenile Justice System, and the Dynamics of Human Services Work: Effects of a Reform Goal based on Labeling Theory*, 32 CRIME AND DELINQ. 157, 172-73 (1986).

<sup>287</sup> See Feld Textbook, *supra* note 274.

<sup>288</sup> *Id.*

**FIGURE 2: Juv. Received by a Security Unit and Juv. Charged with Crime in Turkey, 1997-2006**

Data retrieved from the Turkish Statistical Agency (TURKSTAT); original analysis by the authors.

Analysis based on the figures in TABLE 1.<sup>289</sup>

Other concerns raised about diversion programs include those related to prejudice and discrimination in preventative techniques, noting that the process to select youth eligibility for diversion may be arbitrary.<sup>290</sup> Critics question whether there are sufficient efforts made to distinguish between children who are victims of abuse, neglect, and exploitation and those who are at risk of offending.<sup>291</sup> An additional concern is that intervention, whether received in a traditional juvenile justice setting or in an alternative preventative program, will actually increase levels of perceived labeling and self-reported delinquency among youth.<sup>292</sup>

Moreover, concerns exist surrounding the Children's Police Unit. Despite the presence of the Children's Police Unit, it is theoretically possible and potentially not uncommon for "regular" police to apprehend children that come into conflict with the law before officers from the Children's Police Unit can become involved.<sup>293</sup> This issue is significant because studies suggest that traditional police officers may be "authoritative agents of social control . . . and use their authority more often than they provide support [to juveniles]."<sup>294</sup> Further, without formal training, the pattern of non-Children's Police Unit response to juveniles might be influenced by preconceived biases toward delinquent children instead of accounting for social and mental issues pertaining specifically to this population.<sup>295</sup>

Additionally, without proper response training, research also suggests that the protections required and promulgated by the Juvenile Protection Law are not always

<sup>289</sup> See TURKSTAT, *supra* note 9.

<sup>290</sup> See Feridun Yenisey, *supra* note 217, at 283.

<sup>291</sup> UNICEF Regional Office for CEE/CIS, *Juvenile Justice System Reform - Assessment Guidelines* (2008), available at <http://www.unicef.org/tdad/unicefceejassessmentguidelines08.pdf> (providing a framework and a checklist of issues to be addressed in juvenile justice assessments planned to be undertaken by UNICEF in several countries, with reference to diversion and alternatives).

<sup>292</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72; See U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention, *supra* note 244.

<sup>293</sup> See Justice for Children, *supra* note 38.

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

known or respected by non-Children's Police Unit law enforcement in their dealings with Turkish youth.<sup>296</sup> Police could bring children to stations when their identity is not known or because they appear to be in a situation of risk. Data indicates that only 64 percent of juveniles<sup>297</sup> brought to police stations by "regular" police were suspected of an offense.<sup>298</sup> Of the remaining individuals, 22 percent were victims of violence or abuse and the other 14 percent included children who were "lost, abandoned, foundlings, runaways, and children begging or working on the street."<sup>299</sup> While Turkey has made significant progress in developing a positive Children's Police Unit model that supports diversion of youth, these efforts are useless if implementation does not translate from paper to practice.

Finally, as with many other international juvenile justice programs, the availability of resources allocated to diversionary tactics are also of concern.<sup>300</sup> Part of the success of diversion in Turkey has been due to the financial resources made available to the country by the European Commission and European Union.<sup>301</sup> The funds allocated to supporting diversionary measures in Turkey come largely from this foreign support. Consequently, no certainty exists surrounding fund renewal beyond the completion of certain European Union-sponsored projects, such as the current Justice for Children project.<sup>302</sup> While the Turkish government has made substantial investments in the improvement of the juvenile justice system, including investing resources in diversion, the extent of commitment they are prepared to make is unclear should the European support cease.<sup>303</sup> The next Section delineates remedies to many of the aforementioned challenges to the successful implementation of diversion practices.

## V. RECOMMENDATIONS

The Turkish juvenile justice system has significantly improved its approach toward children throughout the past decade and continues to adopt practices that may serve as examples for other countries. Nonetheless, many challenges still exist in the effective implementation of these models and in the functioning of the Turkish juvenile justice system as a whole. This section provides recommendations for ways to mitigate challenges inherent in open model prisons and diversion, in addition to issuing recommendations on ways to diminish the most pressing problems of the Turkish juvenile justice system today.

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<sup>296</sup> *Id.*

<sup>297</sup> Children (under 12) and adolescents (under 18). Interview with Zeynep Esmesz, *supra* note 15.

<sup>298</sup> *Id.*

<sup>299</sup> See TURKSTAT; UNICEF REPORT, *supra* note 220, at 8.

<sup>300</sup> *Id.* at 9.

<sup>301</sup> The European Union and European Commission are funding 80% of the current project platform. Justice for Children, *supra* note 38.

<sup>302</sup> *Id.*

<sup>303</sup> Interview with Professor Yüksel Baykara Acar, *supra* note 72.

### A. Recommendations for Challenges in Open Model Prisons

Challenges inherent in open model prisons include the possibility of exposing children to crime-inducing influences within prisons and exposing children to negative familial influences outside of prisons. Regarding the first concern, a possible remedy is to expand the number of open model prisons in Turkey—or any nation wishing to adopt this model—which would in turn allow for the possibility of classifying incoming juveniles based on threat level instead of geographic convenience. This expansion would help children avoid the possibility of socialization into future criminal activity from higher-risk juveniles. Since this option might accordingly encourage the government to incarcerate more youth to fill an increased number of beds, governments should urge facilities to downsize before multiplying.

In regard to the concern of children experiencing negative influences from continued contact with their families, one recommendation is for prison officials to moderate these interactions in some capacity. In other words, if the prison official, perhaps a social worker, made an ultimate determination that familial communication would create exceedingly negative stress on the child, he or she could offer facilitated interactions between the child and family. If this moderation was not possible and constant familial communication still seemed unfit for the juvenile, the social worker could locate community members or a volunteer mentor to allow the child to reap similar benefits.

Finally, all nations employing open model prisons should capitalize on the ability of juveniles to maintain contact with their families by employing effective treatment models for juveniles that require continued familial contact.<sup>304</sup> These treatment programs include Functional Family Therapy, Family Integrated Transitions, and Multisystemic Therapy.<sup>305</sup> These programs all involve ongoing interactions with families and are cost-effective and widely accepted models of juvenile rehabilitation. Thus, nations that do implement open model prisons can provide juveniles the benefit of maintaining relationships with their families while improving the youths' structured rehabilitative programming during their period of incarceration.

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<sup>304</sup> *Id.* (noting that treatment programs such as Functional Family Therapy, Family Integrated Transitions, and Multisystemic Therapy all involve ongoing work with families and can lead to successful rehabilitation at low costs).

<sup>305</sup> See The Clinical Model, *Family Functional Therapy*, available at [http://www.fftinc.com/about\\_model.html](http://www.fftinc.com/about_model.html) (describing this method of therapy as “a strength-based model. At its core is a focus and assessment of those risk and protective factors that impact the adolescent and his or her environment, with specific attention paid both intrafamilial and extrafamilial factors, and how they present within and influence the therapeutic process.”); *Family Integrated Transitions Interview*, U. Wash. Dep’t of Psychiatry and Behavioral Serv. (describing this method of therapy as “begin[ing] 2 months prior to release to ensure engagement and strengthen community supports” and noting that the first and most important task of this form of therapy is to involve family in treatment); *What is Multisystemic Therapy*, MST available at <http://mstservices.com/> (stating that this form of therapy “is an intensive family- and community-based treatment program that focuses on the entire world of chronic and violent juvenile offenders — their homes and families, schools and teachers, neighborhoods and friends”).

### B. *Recommendations for Challenges Inherent in Diversionary Practices*

Nations looking for more appropriate ways to work with juveniles involved with crime increasingly embrace diversion and restorative, rehabilitative practices.<sup>306</sup> Major challenges and concerns, however, stem from the practical implementation of this system, including avoiding unnecessary system involvement, avoiding discriminatory police practice, improving treatment options, sustaining funding, and ensuring consensus and accountability among all stakeholders, including the Children's Police Unit officers who often serve as a first line of defense.

With respect to nations implementing Turkey's preventative diversionary technique of instituting a separate Children's Police Unit, we recommend a two-part strategy to overcome challenges inherent in this practice. First, *all* police officers should receive training on the basics of juvenile justice theory, allowing "regular" police who apprehend children to better account for variances in youths' behavioral, social, and mental development. Second, countries can overcome repetitive instances of "regular" police apprehension by establishing a "child line," or a national toll-free number designated to reach the Children's Police Unit or provide tips. Volunteers rotating between police stations could staff the "child-line" and help direct the Children's Police Unit to situations pertaining to juvenile criminal activity.<sup>307</sup>

To combat issues surrounding a lack of mental health treatment programming during the adjudication process, Turkey should increase its commitment to screening and assessment programs for juveniles prior to their entrance into formal proceedings. This increased screening would allow children to receive mental health treatment throughout the course of adjudication, as opposed to merely after receiving a conviction. Consequently, juvenile justice systems should increase the number of mental health professionals available throughout the adjudication process and provide children not only with social workers, but psychiatric professionals as well. Furthermore, as mentioned earlier, juveniles should remain in communication with their families when necessary and appropriate throughout their court proceedings. Family members can often effectively communicate the ongoing needs of juveniles better than any other actors in the juvenile justice system.

### C. *Response to Concerns Surrounding Data*

Critics of diversion argue that the number of juveniles received into police custody increased after the implementation of the Children's Police Unit, effectively lending to their "net-widening" theory. While it is true that the number of arrests in Turkey has steadily increased, with peaks in 2001 and in 2005 (*see* Figure 2), it is foreseeable that the number of youth interacting with police officers would increase with the establishment of a new police force. Additionally, while the government provides data on juvenile justice statistics going as far back as 1996, it is unclear whether the government closely monitored juvenile arrests prior to the establishment of the Children's Police Unit. Furthermore, system involvement is not negative in

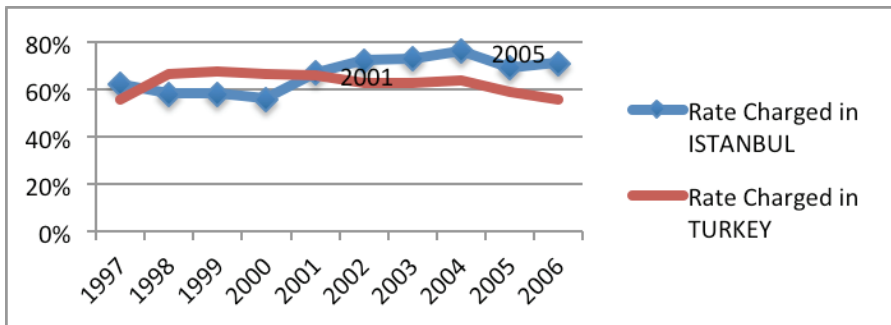
<sup>306</sup> Interview with Zeynep Esmey, *supra* note 15.

<sup>307</sup> A similar model in India has been very successful, with over 70,000 calls being received over the last three years. *See* Childline India Foundation, *available at* [www.childlineindia.org.in/](http://www.childlineindia.org.in/).

all cases. It is possible that diversion programs facilitated by the Children's Police could have had positive socialization effects on at-risk youth.

Finally, while data indicates that the number of arrested juveniles increased over the past decade, this information primarily pertains to urban communities. Figure 3 shows the *rate* that youth were charged in Turkey (dotted) and in Istanbul (solid). Interestingly, the rate was almost inverted up until the point at which Turkey introduced the Children's Police Unit. This incongruity may be due to the higher number of street children living in urban areas or the large numbers of Kurdish youth that were not accounted for outside of Istanbul and Ankara.

**FIGURE 3: Rate of 'Detained' Youth that were Charged in Turkey and Istanbul, 1997-2006**



Data retrieved from the Turkish Statistical Agency (TURKSTAT); <sup>308</sup> original analysis by the authors.

**TABLE 2: Number of Youth Detained in Istanbul by Year, 1997-2006**

	Juveniles Received into Security unit	Juveniles Charged	% Detained that are Charged
1997	6692	4171	62%
1998	7614	4446	58%
1999	7078	4129	58%
2000	7010	3953	56%
2001	6749	4504	67%
2002	10275	7362	72%
2003	12701	9288	73%
2004	13564	10264	76%
2005	13714	9482	69%
2006	12243	8708	71%

Data retrieved from the Turkish Statistical Agency (TURKSTAT); table designed by the authors.

<sup>308</sup> See TURKSTAT, *supra* note 8.

#### D. *Recommendations for the Turkish Juvenile Justice System Generally*

An ongoing and serious concern with Turkey's juvenile justice system is its policies toward Kurdish individuals.<sup>309</sup> Infractions by many Kurdish children are handled as terrorist threats rather than falling under the jurisdiction of the juvenile court. This phenomenon is troublesome since Turkey's anti-terror law provides that juveniles charged with terrorism must be tried in the adult criminal justice system.<sup>310</sup> In the past, this law covered minor or perceived "terror-related" infractions, such as stone throwing. Following a strong outcry against the anti-terror law, the Turkish government amended the law to exclude petty crimes. However, according to many journalists and Turkish human rights organizations, Kurdish youth still face discrimination and often face arrest for minor offenses.<sup>311</sup>

Although Turkey has taken steps to revise its anti-terror laws, the country needs to improve its uniform application of the Juvenile Protection law to all Turkish children. Police and prosecutors should not be permitted to racially or ethnically profile children under the guise of claiming that certain minor crimes are linked to terrorism. According to experts, "[Turkish] children can be tried in juvenile courts, but [advances in the juvenile justice system are] useless unless [all children] are totally excluded from the scope of the anti-terror law. They should not be deemed as terrorists and they should be judged only for their actions of throwing stones."<sup>312</sup> Thus, we recommend that Turkey entirely eliminate Article 9 of its anti-terror law pertaining to juveniles to ensure that all children in Turkey receive legal dignity.<sup>313</sup>

With regard to Turkey's juvenile justice system, another general concern exists pertaining to effective coordination among government institutions. Experts complain of a lack of effective implementation, calling the issue a "crucial problem."<sup>314</sup> One way to improve this element of the juvenile justice system is through the use of increased interdepartmental overlap and planned, systemic communication about the

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<sup>309</sup> Izgi Gungor, *Turkey Fails to Protect its Youth Say Experts*, Hurriyet Daily News (Mar. 21, 2010), available at <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=turkey-fails-to-protect-its-chil'dren-says-experts-2010-03-21>.

<sup>310</sup> A 2006 amendment to the Anti-Terrorism Law, by Law 5532 (Art. 9) stipulates that charges for offenses under the scope of the Anti-Terrorism Law will be heard by the high criminal courts stated in CPP 250/1. Charges filed against children over age 15 are also heard in these courts. See Human Rights Foundation, *Submission of the Human Rights Foundation of Turkey to the UN Committee Against Torture for its Consideration for the 3<sup>rd</sup> Periodic Report of Turkey 1*, 5 (Oct 15, 2010), available at [http://www2.ohchr.org/english/bodies/cat/docs/ngos/HRFT\\_Turkey45.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/HRFT_Turkey45.pdf).

<sup>311</sup> See Jenna Krajeski, *supra* note 257.

<sup>312</sup> Izgi Gungor, *supra* note 309.

<sup>313</sup> While not addressed directly, we also recommend that Article 17 of the 2005 Juvenile Protection Law, which addresses that children be tried in adult courts for crimes that they commit in tandem with adults, also be amended. In addition, Article 141 of Turkey's Constitution, which oversees provisions for the trials of minors, should also be amended to stress equal rights for all Turkish children who are pushed to crime.

<sup>314</sup> See Izgi Gungor, *supra* note 309 (describing comments by Türkay Asma, a lawyer from the Association for the Prevention of Child Abuse and Neglect), *European Commission's Seminar on the Juvenile Justice Systems and Protection Mechanisms for Minors* (Apr. 13-14, 2010) available at [www.abgs.gov.tr/files/TAIEX/seminerler/taix\\_agenda.pdf](http://www.abgs.gov.tr/files/TAIEX/seminerler/taix_agenda.pdf).

state of the system. Currently, local Bar Associations have committees—larger committees generally include Child, Youth and Family, Police, Ministry of Justice personnel and the Principal Youth Court Judge<sup>315</sup>—but reports suggest that these groups do not regularly meet in many provinces.<sup>316</sup> This practice is positive, but only if the government properly implements them and if all stakeholders make a real commitment. We recommend that the Turkish Government should require these juvenile justice-focused groups to submit reports to a centralized consortium, which would then be published, or—alternatively—contribute to a national newsletter. These reports would not only promote accountability, but they would foster intra-province and national communication, education, and awareness of best practices. Further, the Turkish government could appoint a watchdog group that would monitor groups and information regularly pertaining to juvenile justice.

## VI. CONCLUSION

Recent changes to Turkey's juvenile justice system have moved Turkey closer to a system of juvenile justice envisioned by the Convention on the Rights of the Child and illustrate Turkey's commitment to the well being of youth. Turkey's widespread use of diversion and its development of open model prisons are approaches that should be considered for adoption in other parts of the world. Although neither these approaches nor Turkey's juvenile justice system as a whole fully conform to international juvenile justice standards, they do make a positive contribution to community safety and the promotion of human rights for all children.

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<sup>315</sup> Interview with Ece Basmacı Karalar, foreign affairs specialist with the Istanbul Bar Association, in Istanbul, Turkey (March 6, 2012).

<sup>316</sup> Interview with Zeynep Esmesz, *supra* note 15.

