Notes

MEETING THE SPECIAL EDUCATIONAL NEEDS OF LEARNING DISABLED JUVENILE DELINQUENTS

Virginia C. Kelly

INTRODUCTION

A separate system of justice was established nearly a century ago to address the special needs of juvenile delinquents.[1] Nonetheless, the problem of learning disabilities has plagued the juvenile justice system since its inception. Although as many as 50% of juvenile delinquents may be affected by learning disabilities,[2] until recently, little was known about this condition. Researchers currently possess a far greater understanding of the needs of learning disabled juveniles.[3] The legal system's efforts to remediate the disabilities, however, remain random at best.[4] The special educational needs of the learning disabled juvenile delinquent must be met before the cycle of criminal activity can be broken. The problem of how to meet these needs is one of frustration, perhaps even ignorance, on the part of many who deal with learning disabled delinquents.

The juvenile justice system began at the end of the Nineteenth Century with the philosophy that society had a duty to the child to provide the care and direction which would save him from criminality.[5] Juvenile proceedings were regarded as civil rather than criminal, and the rules of criminal procedure were deemed inapplicable.[6] In a landmark decision, *In re Gault*,[7] the

1. Illinois adopted a juvenile court statute in 1899. Other states and the District of Columbia subsequently established their own juvenile court systems. *In re* Gault, 387 U.S. 1, 14 (1966).

2. Estimates of the prevalence of learning disabilities among juvenile delinquents vary widely, but research suggests that over 50% of juvenile delinquents are learning disabled. A series of studies in the 1970's produced estimates of 26, 32, 49, 50, or 73%, while in 1983, one expert reported a 75% incidence. Zimmerman, Rich, Keilitz & Broder, *Some Observations on the Link Between Learning Disabilities and Juvenile Delinquency*, 9 J. CRIM. JUST. 1, 3 (1981) [hereinafter Zimmerman]; Winter, *Learning Disability: The Young Offender's Curse*, 69 A.B.A. J. 427 (1983).

3. *See infra* notes 74-77 and accompanying text.

4. While a few courts have access to model programs that screen incoming youths for learning disabilities and provide remedial education, the vast majority of courts, perhaps 98-99%, have no such programs. *Judges Becoming Aware of Link Between Delinquency, Disability*, 19 CRIM. JUST. NEWSL. 1, 2 (June 1, 1988) [hereinafter *Judges Becoming Aware*]. *See infra* notes 78-85.

5. *See* T. JOHNSON, INTRODUCTION TO THE JUVENILE JUSTICE SYSTEM 12 (1975); *In re* Gault, 387 U.S. at 14-15.

6. *In re* Gault, 387 U.S. at 15.

United States Supreme Court held that juveniles are entitled to certain due process requirements applicable in the criminal area.[8] Nevertheless, juvenile proceedings continue to be considered civil in nature or, at most, quasi-criminal since the state acts in the role of parens patriae, seeking to provide the child with the protection, care and guidance he needs.[9] In order to accomplish this goal, the National Council on Crime and Delinquency recommends that the juvenile court's purpose should be therapeutic and preventive, with measures taken to deter deviant behavior, promote rehabilitation, and alleviate dependency and neglect.[10]

Since the rationale for the state's parens patriae role is to ensure adequate treatment and rehabilitation for the child, treatment for the learning disabled child should include remediation. Unfortunately, that is not the case. Courts either overlook the problem, or fail to diagnose and order treatment of the learning disabled youths who come before them.[11] The result is that the majority of these children enter the system undiagnosed and leave it undiagnosed, often feeling hostile and frustrated.[12]

This Note analyzes the legal rights of learning disabled juvenile delinquents to appropriate education while incarcerated in correctional institutions and detention facilities. The initial focus is on defining learning disabilities and their correlation to juvenile delinquency. Because of this correlation, remediation of learning disabilities can reduce juvenile recidivism. Apart from the benefit of reduced recidivism, there is a statutory requirement for special education for incarcerated juvenile delinquents in state correctional facilities and detention centers.[13] Finally, the constitutionality of preventive detention may require the provision of special education services as part of the treatment for learning disabled juveniles.

DEFINING LEARNING DISABILITIES WITHIN THE CONTEXT OF THE JUVENILE JUSTICE SYSTEM

The term "learning disabilities" came into use in 1963 when a group of parents and professionals organized the Association for Children with Learning Disabilities.[14] While educators, parents, and pediatricians first rec-

7. 387 U.S. 1 (1966).

8. These requirements include adequate notice of charges, the right to be represented by counsel, the opportunity to confront and cross-examine witnesses against him, and the privilege against self-incrimination. T. JOHNSON, *supra* note 5, at 18. *See also In re* Gault, 387 U.S. 1.

9. T. JOHNSON, *supra* note 5, at 12.

10. *Id.* at 13.

11. As one commentator observes, the courts have been accused of starving a fever instead of feeding a cold. Post, *The Link Between Learning Disabilities and Juvenile Delinquency: Cause, Effect, and "Present Solutions"*, JUV. & FAM. CT. J., Feb.-Mar. 1981, at 58, 62.

12. *See* Gallet & Gilligan, *Special Youths Need Special Treatment*, 9 NAT'L L.J., Feb. 16, 1987, at 30, col. 4; *Judges Becoming Aware*, *supra* note 4, at 1.

13. 20 U.S.C. § 1401 (1975); *see infra* notes 104-10 and accompanying text.

14. The bench book for juvenile and family court judges explains that the term "learning disabilities" (LD) came into use in 1963 when groups of parents and professionals began to share their concerns about the care and education of children who were labeled as dyslexic, aphasic, minimally brain damaged, or perceptually handicapped. The Association for Children with Learning Disabilities was formed and began to sponsor state and local organizations of concerned parents to lobby for educational, legislative, and judicial relief for their handicapped children. J. SIKORSKI & T. MCGEE, LEARNING DISABILITIES AND THE JUVENILE JUSTICE SYSTEM 3 (1986).

ognized the problem, courts now realize that learning disabled (LD) juvenile delinquents have special needs. Despite this increased awareness, the educational and juvenile justice systems frequently fail to detect disabilities.[15] Consequently, many LD youths repeatedly return to juvenile court with the source of their problems unremediated.[16]

In order to understand what LD is, common misconceptions first must be eliminated. LD is not a form of mental retardation.[17] The IQ range of LD children compares favorably with that of their peers[18] and many are highly intelligent or gifted.[19] The term does not apply to children with learning problems caused by visual, hearing, or motor handicaps.[20] Moreover, the term LD does not include emotional disturbances, or environmental, cultural, or economic disadvantages[21] although many of these factors may contribute to LD. The exact nature of LD is elusive, and there are many definitions of the term.[22]

Educators and mental health professionals diagnose LD when a child's expected achievement, based on intelligence testing, is much higher than actual achievement.[23] This discrepancy results from difficulties in receiving information, using it cognitively, or communicating the result.[24] The underlying basis for LD is a neurological problem resulting in a short circuit be-

15. In recent years, juvenile court judges have become much more knowledgeable about learning disabilities, how they lead to delinquency, and how remedial education can reduce recidivism. *Judges Becoming Aware, supra* note 4, at 1. While one might expect juvenile courts to be equipped to provide diagnosis and treatment, this is not the case. One commentator describes six factors which prevent the courts from doing so: 1) failure of schools to diagnose a learning disability; 2) inadequate training for juvenile officers in distinguishing between learning disabilities and acting-out behavior; 3) the child's defensive, sometimes aggressive, behavior prevents recognition of his learning disability; 4) lack of clinical services; 5) lack of treatment services; and 6) lack of an effective approach to deal with the learning disabled child (since neither of the usual approaches, psychotherapy and punishment, are successful with the learning disabled child). Bernstein & Rulo, *Learning Disabilities and Learning Problems: Their Implications for the Juvenile Justice System*, JUV. JUST., Nov. 1976, at 43, 45.

16. When a court gives an LD child an inappropriate disposition, the child continues to misbehave, and eventually the child may be placed in an institution. While institutionalized, the inappropriate approaches of custody and treatment or psychodynamic therapy continue, and the child receives little or no help with the root of his problem. The child frequently leaves in a worse condition than when he entered and is likely to become involved in the adult criminal justice system. Bernstein & Rulo, *supra* note 15, at 46.

17. *Judges Becoming Aware, supra* note 4, at 2.

18. Although many persons with LD have average or above average intelligence, their performance level is lower than that of their peers with comparable IQs. *See, e.g., Judges Becoming Aware, supra* note 4, at 2; Bernstein & Rulo, *supra* note 15, at 43.

19. Frequently cited examples of highly intelligent learning disabled individuals are Winston Churchill, Thomas A. Edison, Albert Einstein, George S. Patton, and Hans Christian Anderson. Gallet & Gilligan, *supra* note 12, at 30, col. 3.

20. Education for All Handicapped Children Act, 20 U.S.C. § 1401(15) (1975).

21. *Id.*

22. Some practitioners, for example, distinguish between LD and minimal brain dysfunction (MBD). They define the latter as a deviant functioning of the central nervous system in children of average intelligence or better, resulting in behavioral and learning problems. Rosenberg & Rosenberg, *Truancy, School Phobia and Minimal Brain Dysfunction*, 61 MINN. L. REV. 543, 560 (1977). Other practioners use the terms interchangeably. *Id.* at 560 n.67. Whatever their differences may be, efforts to distinguish between the two disabilities are of little value in remediation since individualized instruction is required regardless of the cause of the disability.

23. Zimmerman, *supra* note 2, at 3.

24. *Id.*

tween the brain and the eyes, ears, hands, or legs.[25] Any one or a combination of these connections may be dysfunctional. The result of the short circuit is a wide range of academic and behavioral problems which may include perceptual difficulties,[26] hyperactivity, impulsivity, short attention span, and difficulty learning to read, write, spell or calculate mathematics.[27] In addition, an LD child frequently transposes letters or numbers, and has difficulty distinguishing left from right.[28] The overwhelming majority of LD youth, more than 80%, are boys.[29]

The effects of LD reach far beyond the classroom and academic difficulties. For example, LD children often suffer psychological consequences as a result of their disabilities. Poor self-esteem, immaturity and depression can arise from the educational and social difficulties the LD child faces.[30] The LD child experiences a barrage of stimuli in the classroom, leading to distraction and making it impossible to concentrate on a particular task.[31] When the LD child is also hyperactive, as many are, it is extremely difficult to sit still and perform the assigned task.[32] Like any child who does poorly in school and is unable to understand much of what occurs there,[33] the LD child does not find school to be a rewarding experience. Poor self-esteem is a natural result of academic failure.

The consequences of LD also adversely affect the child's social adjustment. Because of their disabilities, some children are unable to perceive that certain behavior is unacceptable to others.[34] Concepts which are obvious to the non-LD youth, such as taking turns in conversation, may be unfamiliar to the LD child, creating social difficulties. In addition, the LD child often has poor impulse control and poor frustration tolerance which can result in inappropriate aggression.[35] Thus, the consequences of LD produce a chain reaction: school failure leads to poor self-esteem and frustration, and poor self-esteem results in emotional disturbance. The result is that many of these children enter the juvenile justice system.[36]

---

25. Gallet & Gilligan, *supra* note 12, at 11, col. 2.

26. *E.g.*, *Social Skills*, News Digest: Information from the National Information Center for Handicapped Children and Youth, no. 6, at 1 (1987). Children who have visual perception problems may not be able to distinguish different facial expressions and may miss important social cues; children with auditory perception problems may mis-hear information and respond inappropriately.

27. Gallet & Gilligan, *supra* note 12, at 11, col. 1,2 (explaining how school failure can lead to truancy, petty crime and drug problems).

28. *Judges Becoming Aware*, *supra* note 4, at 2 (describing how undiagnosed LD usually causes academic underachievement and frustration, thus increasing the likelihood of dropping out of school).

29. Winter, *supra* note 2.

30. J. SIKORSKI & T. MCGEE, *supra* note 14, at 9.

31. Rosenberg & Rosenberg, *supra* note 22, at 561 (enumerating general characteristics of MBD children and emphasizing that an MBD child may have only one or a few such traits).

32. *Id.*

33. *Id.* at 559.

34. *Social Skills*, *supra* note 26, at 1 (stating that disabled children require special attention and encouragement in developing positive social relationships and appropriate behavior).

35. J. SIKORSKI & T. MCGEE, *supra* note 14, at 9. Inappropriate aggression is the child's way of calling attention to the frustration he feels when his needs are unmet.

36. *Id.*

THE CORRELATION BETWEEN LEARNING DISABILITIES AND JUVENILE DELINQUENCY

The correlation between LD and juvenile delinquency, dubbed the LD/JD link, has attracted the attention of lawyers and judges who regularly deal with juvenile delinquents.[37] Although a study made through the Office of Juvenile Justice and Delinquency Prevention in the 1970's identified the connection between undetected LD and juvenile delinquency,[38] little was done until 1983, when the American Bar Association passed a resolution recognizing the LD/JD link.[39] Funded by a grant from the Foundation for Children with Learning Disabilities in New York, the ABA's Child Advocacy and Protection Center began a national movement to train attorneys about LD.[40] Two products of the movement were a manual for attorneys who represent LD children[41] and a bench book on LD for juvenile and family court judges.[42]

The summary of the project completed in the early 1970's highlights the research which prompted these efforts to educate attorneys and judges about the LD/JD link.[43] The research reveals a strong relationship between LD and adjudicated delinquency: the LD youth is 220% more likely to be adjudicated delinquent than his non-LD peers.[44] Among those youth who were adjudicated delinquent, 32% were LD,[45] in comparison to the general population of school children where the incidence of LD ranges from 10 to 20%.[46] Researchers working under a grant from the Office of Juvenile Justice and Delinquency Prevention conducted a similar study finding that, among 12-15 year old males, there was a 16% incidence of LD in public

37. *See infra* notes 38-39, 41-42 and accompanying text; *See also The Delinquency Link*, 10 NAT'L L.J., October 12, 1987, at 12, col. 1.

38. Zimmerman, *supra* note 2, at 1.

39. A voice vote approved the resolution as a part of the Consent Calendar:

> *Be It Resolved*, That the American Bar Association, recognizing that there is a correlation between children who suffer from the handicap of a learning disability and children who are involved in the juvenile justice and child welfare systems, encourages individual attorneys, judges, and state and local bar associations to work more actively within the juvenile and family court system, as well as their communities, to improve the handling of cases involving children with learning disabilities. Specifically, individuals and bar associations should be involved in legal and judicial education programs related to this topic, further research, improvements in legislation, and procedural guidelines for courts and agencies serving these children. In conjunction with such efforts, attorneys should participate in multidisciplinary programs and other interactive community and academic activities, along with school boards, courts, civic organizations, and other concerned professional groups, to help increase the availability of special remediation and rehabilitation services for learning disabled children.

Annual Meeting: House of Delegates Proceedings, 108 REP. A.B.A. at 801-02 (1983).

40. Gallet & Gilligan, *supra* note 12, at 11.

41. M. BOGIN AND B. GOODMAN, REPRESENTING LEARNING DISABLED CHILDREN—A MANUAL FOR ATTORNEYS (1985).

42. J. SIKORSKI & T. MCGEE, *supra* note 14.

43. D. Crawford, A Study Investigating the Link Between Learning Disabilities and Juvenile Delinquency (Association for Children with Learning Disabilities Project Summary, grants 76-JN-99-0021 & 78-JN-AX-0022).

44. *Id.* at 3.

45. *Id.* In a subsequent article, Crawford reported that the incidence of LD in the adjudicated delinquent group was 36%. *See* Crawford, *The Link Between Delinquency and Learning Disabilities*, 24 JUDGES' J., Fall 1985, at 23 (1985).

46. Winter, *supra* note 2.

school youth compared to a 32% incidence of LD in youths adjudicated delinquent.[47]

The bench book on learning disabilities cites further evidence of the LD/JD link. Among adjudicated juvenile delinquents in residential or treatment facilities, from 40 to 70% showed significant language, cognitive, perceptual and motor abnormalities.[48] The result was typical of LD youth, revealing significant learning problems and academic underachievement.[49]

Several different theories attempt to explain the LD/JD link. Generally, they fall into three categories: the school failure rationale, the susceptibility rationale, and the different treatment rationale.[50] All seek to interpret the statistically significant higher incidence of learning disabilities in the adjudicated delinquent population.[51]

The school failure hypothesis suggests that academic failure leads to negative labeling of the child and negative attitudes by the child toward school.[52] In contrast, the susceptibility theory points to the socially troublesome personality characteristics that accompany certain learning disabilities.[53] Both hypotheses rely on the likelihood that the LD child possesses a poor self-image.[54] The negative reactions of others to the immature social skills[55] of the LD child lead to poor self-image, and frequently to association with children who already exhibit delinquent behavior. This association enhances the possibility that the LD child will behave delinquently with his new peer group.[56]

The third hypothesis, an alternative to the school failure and susceptibility hypotheses, suggests that the juvenile justice system treats the LD child differently.[57] If this hypothesis means harsher or inappropriate treatment for the LD child, it presents a troubling issue for the courts.[58] The bench book describes three potential types of treatment.[59] The first, differential arrest, refers to the likelihood that one individual will be arrested more often than another in comparable circumstances. The LD youth has a higher probability of arrest than a non-LD youth,[60] most likely because of

47. Zimmerman, *supra* note 2, at 3.

48. J. SIKORSKI & T. MCGEE, *supra* note 14, at 11.

49. These children were over three years behind in math, and over four behind in reading. *Id.*

50. *E.g.*, J. SIKORSKI & T. MCGEE, *supra* note 14, at 13 (citing studies revealing that the LD child has a significantly increased risk of developing behavior which eventually leads to an adjudication of delinquency); Post, *supra* note 11, at 60-61 (discussing the causal nexus between LD and juvenile delinquency in terms of the susceptibility and school failure hypotheses); Zimmerman, *supra* note 2, at 10-12 (arguing that research data does not support the susceptibility or school failure hypotheses but does support the different treatment rationale).

51. J. SIKORSKI & T. MCGEE, *supra* note 14, at 13.

52. *See* Post, *supra* note 11, at 61.

53. *Id.* at 60.

54. Zimmerman, *supra* note 2, at 2.

55. *Id.*

56. The LD child's behavior is viewed as non-conformist which is often a prerequisite to inclusion in the delinquent group. Once included, the LD child may be willing to participate in delinquent acts to maintain the new friendships. Post, *supra* note 11, at 61.

57. Zimmerman, *supra* note 2, at 10.

58. *See infra* note 135.

59. J. SIKORSKI & T. MCGEE, *supra* note 14, at 13.

60. Dunivant, *Learning Disabilities and Juvenile Delinquency: A Summary Report*, 6 ST. CT. J. 12, 13 (1982).

cognitive and personality characteristics related to poor social skills.[61]

Differential adjudication refers to the possibility that one person will be found guilty of a delinquent act for essentially the same behavior that results in dismissal of charges against another. The LD youth has a higher likelihood of adjudication than the non-LD youth,[62] probably due to the same poor cognitive and communications skills[63] that contribute to differential arrest.

Finally, differential disposition[64] refers to the likelihood that, once adjudicated delinquent, the LD youth will receive harsher treatment than a non-LD youth for similar behavior.[65] The same study which found that LD youths had a higher probability of arrest and adjudication than non-LD youths, however, did not find that LD youths received different dispositions from the court.[66] These results, though, may be due to judicial consideration of the presence of LD at the time of disposition.[67] Unfortunately, the similarity in dispositional treatment may mean only that the LD child's special dispositional needs are going unmet. Accordingly, the child's need for remediation and other services should be determined at the time of disposition and specifically ordered and monitored.[68]

Several factors explain why an LD child is more likely than a non-LD child to be arrested and adjudicated delinquent for similar behavior. School performance is one element considered in the adjudication of a juvenile. When the child has a record of school problems and low grades, that record may work to his disadvantage.[69] In addition, the personality characteristics which are a direct result of LD also may work against the child. Because the LD child usually has communication problems, and often is clumsy, he or she may appear different from other children. Police, prosecutors, and judges are likely to react negatively to an LD child's mannerisms in making decisions about him.[70] Consequently, the LD child is not only more susceptible to arrest, but is also less able to extricate himself once the legal process begins.[71]

Studies prove that the correlation between LD and juvenile delinquency is high.[72] LD children are more likely to be arrested and adjudicated delin-

61. J. SIKORSKI & T. MCGEE, *supra* note 14, at 13.

62. Dunivant, *supra* note 60, at 13.

63. J. SIKORSKI & T. MCGEE, *supra* note 14, at 13.

64. In juvenile proceedings, disposition refers to the treatment the court chooses for the child. Juveniles are not convicted of crimes in juvenile proceedings. In Arizona, for example, "an order of the juvenile court . . . shall not be deemed a conviction of crime." ARIZ. REV. STAT. ANN. § 8-207(A) (1983).

65. The bench book cites a combination of poor cognitive and communication skills and personality characteristics as reasons for possible differences in disposition. J. SIKORSKI & T. MCGEE, *supra* note 14, at 13.

66. Dunivant, *supra* note 60, at 13.

67. J. SIKORSKI & T. MCGEE, *supra* note 14, at 15.

68. *Id.*

69. Zimmerman, *supra* note 2, at 12.

70. *Id.*

71. J. SIKORSKI & T. MCGEE, *supra* note 14, at 15.

72. Congress recognized this correlation in findings of fact for recently introduced legislation. On June 4, 1987, Senator Daniel Moynihan (NY) introduced the Learning Disabled Youthful Offender Act of 1987. If passed, funds will become available for identification, evaluation, and treat-

quent than their non-disabled peers. Appropriate dispositions are essential, both from the standpoint of rehabilitating the child and of reducing juvenile recidivism.[73]

BENEFITS OF LD REMEDIATION FOR THE JUVENILE JUSTICE SYSTEM

Efforts to provide special educational programs for LD delinquents resulted from studies funded by grants from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.[74] Researchers found that remediation of LD youths produced significant reductions in self-reported[75] delinquent behavior and in adjudicated delinquency for LD delinquents.[76] They also noted significant improvement in intellectual growth after 55-65 hours of remedial instruction in one school year and a dramatic increase in the prevention and control of future delinquency after at least 40-50 hours of remedial instruction.[77] As a result of these studies, pilot programs which seek to remediate the LD child have emerged in some jurisdictions including Brooklyn, New York,[78] the Bronx,[79] Jefferson Parish,

---

ment of learning disabled young offenders. Among the findings of fact relevant to the LD/JD connection are:

> (1) A significant correlation exists between learning disabled individuals and incidences of criminal behavior. Although only 15 percent of the United States population is considered to be learning disabled, 36 percent of juvenile delinquency cases involve individuals with learning disabilities.
>
> (2) It is estimated that within a typical jail population, at least 40 percent of the inmates suffer from learning disabilities.
>
> (3) Learning disabled individuals are more prone to a life of delinquency than non-learning disabled individuals. . . .
>
> . . . .
>
> (6) Research has found that the neurological deficiencies resulting in problems of self-image, self-control and interpersonal activities contribute to academic failure of learning disabled individuals and are key elements in related criminal tendencies.
>
> . . . .

S. 1332, 100th Cong., 1st Sess., 133 CONG. REC. 90 (1987).

73. The congressional findings also are relevant to the recidivism issue:

> (5) As long as the learning disability of an individual remains unaddressed, the delinquent behavior of the individual will continue upon release from imprisonment as evidenced by the high rates of recidivism among such individuals. . . .
>
> . . . .
>
> (7) Studies have found that diagnostically-based treatment programs for learning-disabled individuals can reduce recidivism and delinquent behavior among juveniles.

Id.

74. The purpose of the studies was to investigate the relationship between LD and juvenile delinquency. The Association for Children with Learning Disabilities received a grant to develop and conduct a program of remedial instruction for adjudicated delinquent LD teenagers. The National Center for State Courts also received a grant to undertake two extensive studies of the LD/JD link and to evaluate the program of remedial instruction. Dunivant, *supra* note 60, at 12.

75. Social scientists believe that delinquent behavior occurs much more frequently than reported in official records. A confidential self-report measure is more likely to reflect the higher incidence of delinquent behavior than official reports. McCullough, Zaremba & Rich, *The Role of the Juvenile Justice System in the Link Between Learning Disabilities and Delinquency*, 3 ST. CT. J. 24, 25-26 (1979).

76. Dunivant, *supra* note 60, at 15.

77. D. Crawford, *supra* note 43, at 4.

78. Brooklyn Family Court received a $25,000 grant for a project to test youth for LD and provide remedial help through agencies for those at risk. Chase Manhattan Bank funded the grant through the Foundation for Children with Learning Disabilities. *See Family Court Alternatives for LD Youth at Risk*, THEIR WORLD, 104-05 (1988).

79. The Bronx education outreach project screens juveniles charged with certain offenses (such

Louisiana,[80] Russellville, Alabama,[81] Toledo, Ohio,[82] St. Louis, Missouri,[83] Newport News, Virginia,[84] and certain counties in Kentucky.[85]

One commonly cited barrier to remediation programs is expense, but that argument overlooks the long-term cost benefit of remediation—reduced recidivism. In most jurisdictions, the cost of processing a child through the juvenile justice system from arrest to disposition exceeds $10,000.[86] Accordingly, the expense excuse is shortsighted. It makes economic and social sense to reallocate some of the funds used for arrest, prosecution and post-conviction care of juveniles, and use the money for testing and remediation,[87] thereby reducing the long-term costs.

The LD/JD link is a problem which all the nation's courts should address. Since studies on the subject indicate that remediation of LD youths significantly reduces their delinquent activities and recidivism, remediation is necessary. Moreover, the legal system must use its resources to ensure that services are provided. Various tools are available to child advocate lawyers and juvenile judges, including both federal and state statutes and the constitutional requirement of due process.

STATUTORY REQUIREMENTS FOR SPECIAL EDUCATION

Advocates for incarcerated LD youths may take advantage of federal and state statutes to obtain special educational services for their clients. The claim brought may depend on whether the particular institution is a long-term or short-term facility. The usual long-term care facility is the state correctional institution. Judges commit delinquents to these residential training schools for the purpose of rehabilitation and treatment after adjudication.[88] The short-term facility is the juvenile detention center, used pri-

---

as car theft or selling drugs) for learning disabilities, and offers carefully chosen educational programs to those first time offenders with LD. *See Judges Becoming Aware*, *supra* note 4, at 2.

80. Jefferson Parish passed a tax and bond issue which provided funds for renovation of an abandoned school as a facility to provide remedial education for juvenile delinquents with LD and certain other problems. They also initiated a program to identify habitually truant children. *See* J. SIKORSKI & T. MCGEE, *supra* note 14, at 69-72.

81. A juvenile judge in Russellville started a court school where "foster grandparents" tutor juveniles. *See* Gallet & Gilligan, *supra* note 12, at 30, col. 3.

82. A Toledo juvenile judge began a statewide effort to have all teachers in correctional institutions trained in special education. *Id.*

83. A St. Louis judge provides a court paid program to divert LD youth from the judicial system to LD classes. Clinical psychologists assist the judge by identifying LD children and making referrals to the classes. *Id.*

84. The Newport News Court Services Literacy Program offers one-to-one literacy tutoring for LD children and those reading below sixth grade level. A grant from the Foundation for Children with Learning Disabilities provides funding. *See* Newport News Court Service Unit Literacy Program (description available from Commonwealth of Virginia Department of Corrections).

85. Many Kentucky counties use the "Sentenced to Read" disposition, a program designed to help 14-21 year old youths to read better and to improve language and math skills. The program includes diagnosis of learning deficiencies, one-on-one instruction in basic skills, employability skills, and trial employment. The Job Training Partnership Act Private Industry Councils, under the Exemplary Youth Section for targeted populations, provides funding. *See* Bailey, *Court Room Walls Now Echo . . . "Sentenced to Read"*, THEIR WORLD, 106 (1988).

86. Post disposition costs for placement may exceed $25,000 per year. Gallet & Gilligan, *supra* note 12, at 30, col. 4.

87. *Id.*

88. R. HOROWITZ & H. DAVIDSON, LEGAL RIGHTS OF CHILDREN 425-26 (1984).

marily for children who require secure, temporary confinement prior to adjudication.[89] Detention centers also house post-adjudicated children awaiting long-term placement and those juveniles awaiting trial in adult court.[90] While the usual stay in the detention center is thirty days or less, some youths may be incarcerated there for six to nine months or more under certain circumstances.[91]

Education for All Handicapped Act

The primary tool of the advocate for LD youth is the Education for All Handicapped Children Act of 1975 (EHA).[92] Congress passed the EHA after a series of court decisions supported the rights of handicapped persons to a public education[93] and as a solution to the states' lack of financial resources to implement these decisions.[94] The purpose of the EHA was to provide funding whereby states could furnish the educational services to which the handicapped were entitled. Congress was concerned that without proper education, handicapped individuals would require the expenditure of billions of dollars by public agencies and taxpayers to maintain even a minimally acceptable lifestyle.[95] Congress recognized that the provision of educational services would ensure that persons would not be needlessly forced into institutions, and would also increase their independence.[96] The EHA represented an effort by Congress to take a more active role on behalf of handicapped children's parents, recognizing that parents should not have to continue to resort to the courts to obtain a remedy.[97]

While earlier enactments by Congress attempted to address the problem of education for the handicapped, progress was slow.[98] For example, court decisions in more than thirty-six states recognized the rights of handicapped children to an appropriate education.[99] States made efforts to comply, but

89. *Id.* at 425.

90. *Id.*

91. For example, when a juvenile is awaiting a transfer hearing to determine whether he should stand trial as an adult, various continuances can result in extended detention.

92. 20 U.S.C. § 1401 (1975).

93. The forerunner of these decisions was Brown v. Board of Educ., 347 U.S. 483 (1954), which held that all children are guaranteed equal educational opportunities. The Court explained that to do otherwise would deny them a reasonable chance for success. Courts extended *Brown* to disabled children in Pennsylvania Ass'n for Retarded Children v. Commonwealth, 334 F. Supp. 1257 (E.D. Pa. 1971) (guaranteeing the right to a free public education for mentally retarded children) and Mills v. Board of Educ. of the Dist. of Columbia, 348 F. Supp. 866 (D.D.C. 1972) (extending the same right to all handicapped children).

94. *See, e.g.*, R. HOROWITZ & H. DAVIDSON, *supra* note 88, at 575-76.

95. S. REP. NO. 168, 94th Cong., 1st Sess. 9 (1975), *reprinted in* 1975 U.S. CODE CONG. & ADMIN. NEWS 1425, 1433.

96. *Id.*

97. *Id.*

98. Justice Rehnquist summarized Congress' attempts in Board of Educ. of the Hendrick Hudson Central School Dist. v. Rowley, 458 U.S. 176, 179-80 (1982). Legislation in 1966 and 1970 was aimed at stimulating the states to develop educational resources and to train personnel for educating the handicapped. States, however, made little progress. In 1974, following two district court decisions holding that handicapped children should be given access to a public education, Congress dramatically increased funding for education of the handicapped and directed states to adopt the goal of providing full educational opportunities to handicapped children. After another year of studying the problem, Congress passed the EHA.

99. S. REP. NO. 94-168, *supra* note 95, at 1431.

lack of financial resources prevented the implementation of the various decisions rendered by the courts.[100] Although courts directed the states not to use lack of funding as an excuse for their failure to furnish education for handicapped children, statistics painted a dismal picture of the educational services actually provided to handicapped children by the states.[101] The legislative history includes 1974-75 statistics which estimate that of some eight million children under age twenty-one with handicaps requiring special education, only 3.9 million—less than half—actually received an appropriate education.[102] Congress' intent in passing the EHA was to ensure that children with handicapping conditions were not denied equal educational opportunity as guaranteed by the Constitution of the United States.[103]

The essence of the EHA is that states may receive federal financial assistance if they adopt a policy that assures all handicapped children the right to a free, appropriate education.[104] States must have a specific plan which includes a timetable for meeting the goal of providing full educational opportunity to all handicapped children.[105] Further, the free, appropriate education must address the handicapped child's unique needs by means of an individualized educational program (IEP).[106] Therefore, while the states are responsible for both identifying the handicapped children and providing appropriate educational programs for them, Congress mandates compliance by withholding federal funds if states fail to do so.[107]

The EHA requires a free, appropriate public education for handicapped children, and it specifically includes LD within the meaning of handicapping conditions.[108] Further, the provisions for compliance are applicable to all political subdivisions of the state involved in the education of handicapped children, including state correctional facilities.[109] Given the inclusion of LD as a handicapping condition, and the requirement that state correctional fa-

---

100. *Id.*

101. *Id.* at 1432.

102. *Id.*

103. The Senate Report explains the need to help handicapped children:

> This Nation has long embraced a philosophy that the right to a free appropriate public education is basic to equal opportunity and is vital to secure the future and prosperity of our people. It is contradictory to that philosophy when that right is not assured equally to all groups of people within the Nation. Certainly the failure to provide a right to education to handicapped children cannot be allowed to continue.

Id. at 1433. The statute itself states that:

> It is the purpose of this Act to assure that all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.

20 U.S.C. § 1401(3)(c) (1975).

104. 20 U.S.C. § 1412(1) (1975).

105. *Id.* at § 1412(2).

106. *Id.* at § 1412(4).

107. *Id.* at § 1412.

108. The definition of handicapped children means "mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children, or children with *specific learning disabilities*, who by reason thereof require special education and related services." *Id.* § 1401(1) (1975) (emphasis added).

109. 34 C.F.R. § 300.2(b)(4) (1988).

cilities comply with the provisions of the EHA, it is clear that the LD child incarcerated in a state correctional facility is entitled under the EHA to a free, appropriate public education.[110]

This right was at issue in *Green v. Johnson*[111] where an inmate at a Massachusetts county house of corrections sought special educational services on behalf of himself and other similarly situated inmates.[112] This class of plaintiffs consisted of present and future inmates under age twenty-two who had not received a high school diploma and who were eligible for a free and appropriate special education.[113] The *Green* court issued a preliminary injunction to enjoin the state from failing to provide the special educational services the inmates were entitled to under federal and state laws. The court explained that the nature of the plaintiffs' injuries accrued with the passage of time and could not be remedied through damages.[114] Observing that the incarcerated status of the inmates might require modification of special education programs available to students who are not incarcerated, the court ruled that the inmates' imprisonment did not "eviscerate" their entitlement under federal and state law.[115]

While the advocate for the LD delinquent incarcerated in a state correctional institution may bring suit under the EHA to obtain special educational services, securing the same services for delinquents in juvenile detention centers presents a greater challenge. Success may depend on whether the relevant court interprets the EHA to include handicapped youths in juvenile detention centers. The EHA's regulations specifically refer to state correctional facilities,[116] but the list therein does not purport to be all-inclusive, nor is there any language in the regulations which expressly excludes juvenile detention centers.

The United States Supreme Court recently shed light on this issue in *Honig v. Doe*.[117] In that case, plaintiffs sought an exception under the EHA which would allow the exclusion of emotionally disturbed children from the classroom for dangerous or disruptive activities relating to their disabilities.[118] Declining to do so, the Court stated that it was "not at liberty to engraft onto the statute an exception Congress chose not to create."[119]

This same rationale may be applied to the question of whether youth in juvenile detention facilities are among the EHA's intended beneficiaries. The statute provides for a free, appropriate education for all handicapped children, without regard to the location of the children. There is no "juvenile detention center" exception to this broad mandate. Moreover, in inter-

110. The United States Supreme Court addressed the meaning of a free, appropriate education in *Rowley*, 458 U.S. 176. The court held that a free, appropriate education meant that "the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Id.* at 201.

111. 513 F. Supp. 965 (D. Mass. 1981).

112. *Id.* at 967.

113. *Id.*

114. *Id.* at 976.

115. *Id.*

116. *See supra* note 109 and accompanying text.

117. 108 S. Ct. 592 (1988).

118. *Id.* at 604.

119. *Id.* at 605.

preting the EHA's drafters' intent, courts routinely hold that the Act should be broadly applied and liberally construed.[120] An expansive interpretation of the EHA would thus include handicapped children in juvenile detention centers among its intended beneficiaries.[121]

Compulsory Education Statutes

Another approach to obtaining special education services for LD youth in detention centers focuses on state compulsory education laws. In *Tommy P. v. Board of Commissioners of Spokane County*,[122] the Washington Supreme Court held that compulsory education laws gave all children the right to education while detained in juvenile detention centers, both before and after adjudication and disposition.[123] Spokane County expressed willingness to provide education to post-adjudicatory detainees, but not to pre-adjudicatory detainees.[124] The trial court, however, found that there was no meaningful distinction between pre-adjudicated and post-adjudicated children in their need for education.[125] The Washington Supreme Court agreed, finding that an education program could provide significant benefits for detainees within a few days of their detention.[126]

The court also found the effect of the state's Juvenile Justice Act on the length of detention of pre-disposition detainees persuasive.[127] By requiring more formal procedures prior to and during adjudicatory and dispositional hearings, the statute caused substantial increases in the time spent by juveniles in detention prior to disposition.[128] The extended period of detention resulted in a large number of juveniles who were not attending the regular school system for a significant period of time.[129] Therefore, the juveniles were neither benefitting from the regular education system nor from education programs available in state correctional facilities. While the focus of the *Tommy P.* decision was education in general rather than special education, the advocate for the LD child in a juvenile detention center may employ the

120. *See, e.g.*, S-1 v. Turlington, 635 F.2d 342, 347 (5th Cir.), *cert. denied*, 454 U.S. 1030 (1981). The issue before the court was whether an expulsion was a change in educational placement, thereby invoking procedural protections under the EHA and section 504 of the Rehabilitation Act. The court held that, since both statutes are remedial, they should be broadly applied and liberally construed in favor of providing a free and appropriate education to handicapped students.

121. *See* Note, *Right to Public Education for Handicapped Children: Primer for the New Advocate*, 1976 U. ILL. L.F. 1016, 1074:

> Because every participating state must assure a free education to all handicapped youngsters . . ., every handicapped child unquestionably is an intended beneficiary of the legislation. Consequently, the statute grants a protected property interest in full public education to all handicapped children. A state cannot deprive a child of this interest without due process of law.

Id.

122. 97 Wash. 2d 385, 645 P.2d 697 (1982).

123. *Id.* at 386, 645 P.2d at 698.

124. *Id.* at 389, 645 P.2d at 699.

125. *Id.*

126. *Id.* at 395, 645 P.2d at 702.

127. *Id.*

128. Prior to the Juvenile Justice Act, pre-disposition detention averaged 4.71 days; afterwards it averaged 18 days. More than 70% of detainees were being held 10 days or longer, with some held up to 90 days prior to disposition. *Id.*

129. *Id.*

same arguments. Compulsory education laws apply to LD juveniles in the same manner as they do to non-disabled minors. Where the needs of the juvenile justice system result in longer periods of pre-adjudicatory detention for LD detainees, an equal right to education exists during this time. Since the EHA articulates the requirement for a free, appropriate education tailored to the unique needs of the handicapped child, an evaluation may be requested, and an IEP developed for that child.

There are two potential disadvantages to relying exclusively on compulsory education laws. In many states, the maximum age for compulsory attendance[130] is at least three or four years below the age of adulthood,[131] which means that a large group of youths in juvenile detention centers would be beyond the age of compulsory education. Arguably, since the EHA specifically applies to handicapped children between the ages of three and twenty-one,[132] the need for special educational services may extend well beyond the age of compulsory education.

The other drawback focuses on attorneys' fees,[133] an important factor because LD youth in juvenile detention centers usually lack the resources to pursue their statutory right to educational services. For example, the court in *Tommy P.* denied attorneys' fees because relief was granted under the compulsory education statute which made no provision for fees.[134] Where an award of attorneys' fees is essential, the claim should be carefully framed, possibly precluding reliance on a compulsory education statute and focusing instead on the constitutional issue of due process.[135]

---

130. The maximum age of compelled school attendance varies by state. Age 16 is the most common, but a few states use ages 15, 17, or 18. *See* L. KOTIN & W. AIKMAN, LEGAL FOUNDATIONS OF COMPULSORY SCHOOL ATTENDANCE 335-43 (1980).

131. Each state determines the boundary between childhood and adulthood for juvenile court jurisdiction purposes. While age 17 is commonly used, many states have numerous boundaries depending on the type of delinquent activity involved. For example, a state with a cut-off at age 17 might use age 14 for those accused of serious offenses such as rape and murder. *See* R. HOROWITZ & H. DAVIDSON, *supra* note 88, at 465.

132. 34 C.F.R. § 300.122 (1988).

133. During the first decade following the enactment of the EHA, there was considerable confusion about how to obtain attorneys' fees. While the EHA made no provision for attorneys' fees, some courts have held that § 505 of the Rehabilitation Act of 1973, 29 U.S.C. § 794a(b) (1982), authorizes the right to fees in any litigation concerning the provision of an appropriate education. Another avenue for fees is the Civil Rights Attorney's Fees Act of 1976, 42 U.S.C. § 1988 (1982). *See* R. HOROWITZ & H. DAVIDSON, *supra* note 88, at 591. A recent amendment to the EHA, signed into law on August 5, 1986, provides for the award of fees and other costs to parents who win either due process hearings or court cases. 20 U.S.C. § 1415 (1982 & Supp. V 1987).

134. *Tommy P.*, 97 Wash. 2d at 401, 645 P.2d at 705.

135. This Note focuses on the constitutional guarantee of due process rather than equal protection of the laws. The EHA, on its face, is non-discriminatory as to children with specific learning disabilities because all are brought under its protection. In its application, the state may be drawing a line between incarcerated and all other LD children by denying special education to incarcerated juveniles. If so, the state needs only a rational basis for denial of appropriate education. If children handicapped by LD are a suspect class, however, the state bears the burden of justifying its denial of appropriate educational services. It must demonstrate a compelling state interest to uphold its different treatment of incarcerated LD juveniles. While the suspect class status of LD children is unresolved, the United States Supreme Court did consider whether the mentally retarded were a suspect class. The Court refused to treat mental retardation as even a quasi-suspect class in City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985). Therefore, if the mentally retarded are not a quasi-suspect class, it is unlikely that suspect class status would be extended to children with specific learning disabilities. Moreover, in San Antonio Ind. School Dist. v. Rodriguez, 411 U.S. 1 (1973), the Supreme Court held that the right to education was not fundamental for equal protection

CONSTITUTIONAL REQUIREMENTS FOR A FREE, APPROPRIATE EDUCATION

The due process clause of the fourteenth amendment of the United States Constitution[136] may require the provision of appropriate educational services to LD detainees. The basis for this requirement emerges from an analysis of the United States Supreme Court's decision in *Schall v. Martin*.[137] In *Schall*, the plaintiffs were juveniles detained under a New York statute authorizing pretrial detention when there was serious risk of repeated crime before trial.[138] A New York district court struck down the statute and the Second Circuit affirmed, holding that the state used the statute to impose punishment for unadjudicated criminal acts rather than for prevention,[139] and it was therefore invalid under the due process clause.[140] The Supreme Court reversed, ruling that the statute was not invalid under the due process clause of the fourteenth amendment.[141] The *Schall* Court reasoned that preventive detention serves a legitimate state objective, to protect the child and society from the consequences of the child's criminal acts.[142] Moreover, it found that the statute afforded sufficient procedural protections to pretrial detainees to satisfy the due process requirements of the Constitution.[143] The *Schall* Court's analysis of the legitimacy of the state objective in pre-adjudicatory or preventive detention is relevant to the rehabilitative needs of the LD detainee.

Citing *In re Gault*,[144] the *Schall* Court explained that the due process clause is applicable to juvenile proceedings.[145] The Constitution, however, does not mandate identical treatment for adults and juveniles because the juvenile has the benefit of the parens patriae role of the state.[146] In this role, the state has a legitimate interest in preserving and promoting the welfare of the child[147] because children, by definition, are deemed incapable of caring for themselves.[148] They are assumed to be subject to the control of their parents, and when parental control fails, the state must act as parens patriae.[149] The state's role is to protect the child and society from the consequences of the child's criminal acts. The child loses his liberty, but in return gains the protection, care and guidance of the state. This is consistent with

---

purposes. In the absence of a suspect class or fundamental right, the states are likely to meet the rational basis threshold in justifying their failure to provide special education to juveniles in preventive detention.

136. "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1.

137. 467 U.S. 253 (1984).

138. Martin v. Strasburg, 689 F.2d 365, 366 n.1 (2d Cir. 1982).

139. *Id.* at 366. The Second Circuit found that the vast majority of juveniles detained under the statute either had their cases dismissed before adjudication, or were released afterwards. *Id.* at 369.

140. 467 U.S. at 253.

141. *Id.* at 281.

142. *Id.* at 256-57.

143. *Id.* at 266.

144. 387 U.S. 1 (1966).

145. 467 U.S. at 263.

146. *Id.*

147. *Id.*

148. *Id.* at 265.

149. *Id.*

the juvenile justice system's goal of providing treatment and rehabilitation. The ultimate objective is "correction of a condition" not conviction and punishment."[150]

Nevertheless, the *Schall* Court noted that even a legitimate purpose for preventive detention would not justify certain restrictions and conditions of confinement amounting to punishment.[151] Accordingly, the Court reviewed the conditions of confinement in New York, noting the grouping of children similar in age, size and behavior, the type of clothing provided, and the existence of educational, recreational and training programs.[152] Since children were placed appropriately, wore street clothes, and participated in existing programs, the Court concluded that the pre-trial detention was not imposed for the purpose of punishment but rather to accomplish a legitimate state purpose.[153]

The next question, then, is whether the denial of special educational services to LD detainees constitutes punishment. If the LD child is harmed by not receiving an appropriate education, as the *Green* court found,[154] then the incarceration becomes punitive. That punishment is inconsistent with the rationale for preventive detention. Since the detainees have not been adjudicated guilty, due process prohibits their punishment.[155]

Failure to provide appropriate educational treatment does result in harm to the LD child. For example, in *Tommy P.* the evidence revealed that education programs in detention improved the academic achievement of detainees.[156] They also alleviated discipline and security problems in the facility, and reduced the number of suicide attempts.[157] Similarly, in *Green* the court found that incarceration for an extended period of time can cause harm or loss of opportunity to children when appropriate educational programs are unavailable.[158] Even if *some* educational program is made available to LD inmates, it is likely to be of little use to them because of their special needs.[159] The result is unproductive time, loss of previous academic progress, reinforcement of low self-esteem and an increase in frustration.[160] When the failure to provide appropriate education harms the LD juvenile,

150. *In re* Gault, 387 U.S. at 79 (Stewart, J., dissenting).

151. *Schall*, 467 U.S. at 269.

152. *Id.* at 271.

153. *Id.*

154. *See supra* notes 111-15 and accompanying text; *see infra* notes 158-60 and accompanying text.

155. *See* Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979), where the Court explained that "the Court of Appeals properly relied on the Due Process Clause rather than the Eighth Amendment, in considering the claims of pretrial detainees. Due Process requires that a pretrial detainee not be punished."

156. The trial court made an unchallenged finding that teachers in the Spokane County Juvenile Detention Facility were able to teach basic educational skills to detainees. Achievement levels increased approximately three years in reading, one year in spelling, and one year in math. *Tommy P.*, 97 Wash. 2d at 396, 645 P.2d at 703.

157. During trial, plaintiffs introduced evidence that education programs in detention centers produced these benefits by occupying and stimulating detainees. *Id.* at 388, 645 P.2d at 699.

158. Those inmates who were previously receiving special education may experience a marked deterioration of skills, and may be unprepared for job training once they are released. *Green*, 513 F. Supp. at 970.

159. *Id.* at 971.

160. *Id.*

his incarceration is punitive and violates the due process requirement that a pretrial detainee not be punished.[161]

At least one commentator has criticized *Schall*, arguing that the Court failed to focus on rehabilitation, the child's most important interest.[162] Under New York's pretrial detention statute, the court must consider both the child's best interests and the need to protect the community from the child in determining whether detention was appropriate.[163] The *Schall* Court stated that the statute's specific purpose was to protect the child and society from the child's future criminal acts.[164] The protection of the child, in furtherance of his best interests, focused on his freedom from "institutional restraints" and his protection from the potential "downward spiral" of criminal activity.[165] Thus, the *Schall* majority did not address whether detention would foster rehabilitation of the child.

The *Schall* decision, however, may invite consideration of rehabilitation through review of the conditions of preventive detention. By explaining that even a legitimate state purpose would not justify conditions of confinement amounting to punishment, the Court acknowledged the importance of appropriate educational, recreational and training programs in juvenile detention centers. When certain conditions amount to punishment, even if it is punishment for only a portion of the detained juvenile population, the due process rights of those juveniles are violated. Even a legitimate state purpose does not justify pretrial detention which constitutes punishment. Advocates for LD children, recognizing the importance of remediation for their clients, should question the legitimacy of pre-adjudicatory detention whenever appropriate educational services are not provided.

CONCLUSION

Now that the link between LD and juvenile delinquency is established, the juvenile justice system is in a position to benefit from this research. The problem is that although courts have known about the link for more than a decade, few jurisdictions have appropriate programs available.

By providing special education services to LD delinquents, juvenile recidivism can be reduced—a result consistent with the rehabilitative purpose of the juvenile justice system. States have a statutory and parens patriae obligation to furnish needed treatment and rehabilitation to LD juveniles. To ensure that the obligation is met, the EHA provides funding for the education of all handicapped children within the participating states. In addition, all states have compulsory education statutes which apply to many incarcerated youths. Finally, the Constitution extends due process protection to incarcerated juveniles.

Special education for incarcerated LD juveniles is an essential component of their rehabilitation. Advocates for disabled children must seize the

161. *Bell*, 441 U.S. at 535 n.16.
162. Note, *Where Have All the Children Gone? The Supreme Court Finds Pretrial Detention of Minors Constitutional: Schall v. Martin*, 34 DEPAUL L. REV. 733, 747 (1985).
163. *Id.*
164. *Id.*
165. *Id.*

tools provided by statute and by the United States Constitution to ensure that states meet their clients' rehabilitative needs.