

# The World Moved on Without Me: Redefining Contraband in a Technology-Driven World for Youth Detained in Washington State

Stephanie A. Lowry\*

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\* Stephanie A. Lowry, J.D. Candidate Class of 2023, Seattle University School of Law. Special thanks to the youth of Washington State who provided the author of this Note with their perspectives and trust while incarcerated in these facilities. End Youth Prisons.

## INTRODUCTION

If you ask a teenager in the United States to show you one of their favorite memories, they will likely show you a picture or video on their cell phone. This is because Americans, especially teenagers, love cell phones. Ninety-seven percent of all Americans own a cell phone according to a continuously updated survey by the Pew Research Center.<sup>1</sup> For teenagers aged thirteen to seventeen, the number is roughly 95%.<sup>2</sup> For eighteen to twenty-nine-year-olds, the number grows to 100%.<sup>3</sup> On average, eight to twelve-year-olds use roughly five and a half hours of screen media per day, in comparison to thirteen to eighteen-year-olds, who use about eight and a half.<sup>4</sup> The primary ways teenagers use their phones are to pass the time, connect with other people, and learn new things.<sup>5</sup> With this data in mind, imagine an entire group of youth who are completely banned from using cell phones and spend large periods of their youth unable to permanently document some of their memories and connect with many of their peers. That is the experience of incarcerated and detained youth.

Contraband laws, which are laws prohibiting certain items inside correctional facilities,<sup>6</sup> often include cell phones. These laws significantly harm incarcerated and detained youth by limiting their ability to pass time in a healthy manner, stay connected to their loved ones, experience autonomy by learning things that interest them on their own time, and engage in healthy cell phone practice or digital literacy skill building. This Note specifically addresses ways to change this harmful prohibition. Part I defines contraband and the Washington laws affecting incarcerated and detained youth. Part II discusses Washington's youth confinement structure and data regarding disparities in incarceration. Part III proposes cell phones be removed from the definition of contraband in juvenile community facilities. Part IV addresses potential concerns with this

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1. *Mobile Fact Sheet*, PEW RSCH. CTR. (Apr. 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/mobile/> [perma.cc/QN2T-9BPE].

2. Katherine Schaeffer, *Most U.S. Teens Who Use Cellphones Do It to Pass Time, Connect with Others, Learn New Things*, PEW RSCH. CTR. (Aug. 23, 2019), <https://www.pewresearch.org/fact-tank/2019/08/23/most-u-s-teens-who-use-cellphones-do-it-to-pass-time-connect-with-others-learn-new-things/> [perma.cc/NH79-KLVX].

3. *Mobile Fact Sheet*, *supra* note 1.

4. COMMON SENSE MEDIA, *THE COMMON SENSE CENSUS: MEDIA USE BY TWEENS AND TEENS* 3 (2021), [https://www.commonsensemedia.org/sites/default/files/research/report/8-18-census-integrated-report-final-web\\_0.pdf](https://www.commonsensemedia.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf) [https://perma.cc/NTC8-DUCV].

5. Schaeffer, *supra* note 2.

6. *Contraband Detection and Control*, NAT'L INST. JUST., <https://nij.ojp.gov/topics/corrections/correctional-facilities/contraband-detection-control> [http://perma.cc/64RW-KFSG] ("Contraband in correctional facilities includes illegal items, such as drugs and weapons, or items prohibited in the area being monitored, such as cell phones.").

solution and suggestions to mitigate the risks associated with the proposed change. Finally, Part V includes the most updated information regarding a new cell phone policy being implemented in one juvenile community facility to provide cell phone access to youth.

#### I. WHAT EVEN IS CONTRABAND?

Contraband often has a wide variety of definitions. In Washington State, contraband is defined by statute under RCW 9.94.041 as:

Narcotic drugs, controlled substances, alcohol, cannabis, other intoxicant, cell phone, or other form of electronic telecommunications device—Possession, etc., by prisoners—Penalty

(1) Every person serving a sentence in any state correctional institution who . . . knowingly possesses or carries upon his or her person or has under his or her control any narcotic drug or controlled substance, as defined in chapter 69.50 RCW, alcohol, cannabis, or other intoxicant, *or a cell phone or other form of an electronic telecommunications device*, is guilty of a class C felony.

(2) Every person confined in a county or local correctional institution who . . . knowingly possesses or has under his or her control any narcotic drug or controlled substance, as defined in chapter 69.50 RCW, alcohol, cannabis, or other intoxicant, *or a cell phone or other form of an electronic telecommunications device*, is guilty of a class C felony.

(3) The sentence imposed under this section shall be in addition to any sentence being served.<sup>7</sup>

It is important to note that, while the original statute defining contraband in Washington State was enacted in 1979, the emphasized language above, “*or a cell phone or other form of an electronic telecommunications device*” was not added until 2016,<sup>8</sup> and only went into effect on June 9, 2016. This addition came almost six years after Congress passed the Cell Phone Contraband Act of 2010, which became law on August 10, 2010.<sup>9</sup> The Act prohibits the use of personal cell phones in federal prisons and jails, categorizing cell phones as contraband.<sup>10</sup>

Cell phones and cellular networks were just beginning to be considered in the United States in 1979,<sup>11</sup> and that year Nippon Telegraph

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7. WASH. REV. CODE § 9.94.041 (2022) (emphasis added).

8. Substitute H.B. 2900, 64th Leg., Reg. Sess. (Wash. 2016).

9. Cell Phone Contraband Act of 2010, 18 U.S.C. § 1791.

10. *Id.*

11. See Daniel Bliss, *The First Mobile Phone Call Was Made 75 Years Ago*, SMITHSONIAN MAG. (June 16, 2021), <https://www.smithsonianmag.com/innovation/first-mobile-phone-call-was-made-75-years-ago-180978003/> [perma.cc/5ZFD-5RNU].

and Telephone launched the world's first 1G<sup>12</sup> in Tokyo, Japan.<sup>13</sup> It would take four more years for Ameritech to introduce 1G to the United States in 1983.<sup>14</sup> In that same year, Motorola made the "DynaTAC," which was the first commercially available cell phone in the United States.<sup>15</sup>

Since 2016, when cell phones were added to Washington's definition of contraband, there have only been two recorded challenges to the enforcement of RCW 9.94.041. Neither case, however, addresses possession of a cell phone or other forms of electronic telecommunications devices and neither case was published.<sup>16</sup> The first case, *State v. Palmer*, sought to establish that the defendant was a "prisoner or jail inmate" at the time of his possession of marijuana.<sup>17</sup> The second case, *State v. Woodard*, focused on the statute's "knowledge" requirement and if that element was properly established regarding the defendant's possession of a controlled substance.<sup>18</sup>

In *State v. Palmer*, defendant Jeffrey Palmer (age unknown) was found to have been in possession of marijuana, a violation of RCW 9.94.041(2).<sup>19</sup> However, the facts did not support finding that Palmer was a prisoner or jail inmate at the time of possession because he had not been properly booked, so the court reversed on that issue.<sup>20</sup> Conversely, in *State v. Woodard*, Tessita Woodard (age unknown) appealed her conviction of knowing possession of a controlled substance, when she was found and subsequently charged with possession of lawfully prescribed oxycodone when she voluntarily committed to Cowlitz County Jail.<sup>21</sup> However, because Woodard raised the "knowledge" issue for the first time on appeal, the court declined to reach that issue.<sup>22</sup>

This lack of case law on possession of contraband in Washington is unsurprising. It is very common for state prisons and jails to have their own internal processes for identifying, investigating, and punishing the

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12. Adam Fendelman, *1G, 2G, 3G, 4G, & 5G Explained*, LIFEWIRE (Sept. 3, 2021), <https://www.lifewire.com/1g-vs-2g-vs-3g-vs-4g-vs-5g-578681> [perma.cc/VDZ2-U6RF] ("1G is the first generation of wireless cellular technology . . . [and] supports voice only calls.").

13. Richard Galazzo, *Timeline from 1G to 5G: A Brief History on Cell Phones*, CENGN (Jan. 19, 2022), <https://www.cengn.ca/information-centre/innovation/timeline-from-1g-to-5g-a-brief-history-on-cell-phones/> [perma.cc/F3EZ-WEGG].

14. *Id.*

15. *Id.*

16. *State v. Palmer*, No. 53376-6-II, 2021 WL 689747, at \*6 (Wash. Ct. App. Feb. 23, 2021); *State v. Woodard*, No. 53026-1-II, 2021 WL 1199199, at \*1 (Wash. Ct. App. Mar. 30, 2021).

17. *Palmer*, 2021 WL 689747, at \*1.

18. *Woodard*, 2021 WL 1199199, at \*1.

19. *Palmer*, 2021 WL 689747, at \*1.

20. *Id.*

21. *Woodard*, 2021 WL 1199199, at \*1.

22. *Id.*

use of contraband that does not rise to the level of prosecution from the state.<sup>23</sup>

While RCW 9.94.041 applies to any state correctional facility, there is also a juvenile specific state regulation under Title 110—Department of Children, Youth and Families—that implies the prohibition of cell phones in its language.<sup>24</sup> Washington Administrative Code 110-730-0070 establishes the Residential Disciplinary Standards for the placement of juvenile offenders committed to the Juvenile Rehabilitation Administration.<sup>25</sup> There is no explicit reference to contraband or cell phones in the residential disciplinary standards;<sup>26</sup> instead, it includes ambiguous language like possession of “tools intended to assist in escape” and “[o]ther behaviors which threaten the safety or security of the facility, its staff, or residents or the community.”<sup>27</sup>

## II. WASHINGTON’S YOUTH CONFINEMENT STRUCTURE AND DATA

Washington State has seen a reduction in the number of youth confined to either detention or a juvenile rehabilitation facility since its peak in 1997.<sup>28</sup> Washington State Department of Children, Youth and Families (DCYF) serves these incarcerated youth and young adults through its Juvenile Rehabilitation (JR) department.<sup>29</sup> JR exists under RCW Title 13—Juvenile Courts and Juvenile Offenders<sup>30</sup> and operates eleven facilities statewide to hold children and young adults committed to JR custody.<sup>31</sup> Three facilities are secure residential facilities, and eight are

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23. See WASH. REV. CODE § 72.01.090; see WASH. ADMIN. CODE § 137-28-140 (identifying the standardized system to determine whether misconduct by an offender has occurred); WASH. ADMIN. CODE § 137-28-220 (defining behaviors that constitute a general violation); see also WASH. ADMIN. CODE § 137-25-030 (Category A-882: “While in prison, introducing, possessing, or using a cell phone, electronic/wireless communication device, or related equipment without authorization.”).

24. *Washington Administrative Code*, WASH. STATE LEGISLATURE (Jan. 5, 2022), <https://app.leg.wa.gov/WAC/default.aspx> [perma.cc/472K-XX6K].

25. WASH. ADMIN. CODE § 110-730-0070. Recall that regulations in Washington are considered primary law. *Laws and Agency Rules*, WASH. STATE LEGISLATURE, <https://leg.wa.gov/LawsAndAgencyRules/Pages/default.aspx> [https://perma.cc/E2EE-9HPA].

26. WASH. ADMIN. CODE § 110-730-0070.

27. *Id.*

28. LAUREN KNOTH, ELIZABETH DRAKE, PAIGE WANNER & EVA WESTLEY, WASHINGTON STATE’S JUVENILE JUSTICE SYSTEM: EVOLUTION OF POLICIES, POPULATIONS, AND PRACTICAL RESEARCH 14 (2020), [http://www.wsipp.wa.gov/ReportFile/1719/Wsipp\\_Washington-State-s-Juvenile-Justice-System-Evolution-of-Policies-Populations-and-Practical-Research\\_Report.pdf](http://www.wsipp.wa.gov/ReportFile/1719/Wsipp_Washington-State-s-Juvenile-Justice-System-Evolution-of-Policies-Populations-and-Practical-Research_Report.pdf) [perma.cc/QX8K-XK3C].

29. *Juvenile Rehabilitation*, WASH. STATE DEP’T CHILD., YOUTH & FAMS., <https://www.dcyf.wa.gov/services/juvenile-rehabilitation> [perma.cc/QCS5-TP7U].

30. WASH. REV. CODE TIT. 13.

31. *Residential Facilities*, WASH. STATE DEP’T CHILD., YOUTH & FAMS., <https://www.dcyf.wa.gov/services/juvenile-rehabilitation/residential-facilities> [perma.cc/35HQ-HFMD] [hereinafter *Residential Facilities List*].

community facilities.<sup>32</sup> Youth committed to serve time in JR are referred to, by DSHS, as “deep end youth” who have committed serious crimes or have accrued an “extensive criminal history.”<sup>33</sup> The number of youth incarcerated in Washington State has reduced significantly since the beginning of COVID-19.<sup>34</sup> DCYF houses approximately 325 youth as of December 19, 2022.<sup>35</sup>

Those who are not determined to be “deep end youth” or youth awaiting sentencing, are housed in either one of twenty county detention facilities in the State of Washington, or in the private detention facility (Martin Hall), two out-of-state detention facilities, and two Secure Crisis Residential Centers, according to the 2020 Washington State Juvenile Detention Annual Report conducted by the Washington State Center for Court Research.<sup>36</sup> There were 5,384 admissions to juvenile detention facilities across the state in 2020.<sup>37</sup>

Youth are sentenced in Washington under a “determinate sentencing” structure, which means youth committed to JR custody serve time on a continuum, from a minimum sentence to a maximum sentence.<sup>38</sup> It is up to JR to establish the criteria and policy for releasing a youth from one of their facilities during some point between the minimum and maximum release date assigned to the youth at sentencing.<sup>39</sup> While JR can adjust the release date of a youth for things like being “off program,” such as fighting, not participating in school, or for having contraband, at no point can JR retain youth past their maximum release.<sup>40</sup> Youth confined to detention facilities, on average, typically serve a sentence of thirty days or

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32. *Id.* New language in a published Juvenile Rehabilitation Annual Report published in July 2022 refers to Green Hill School, Naselle Youth Camp, and Echo Glen as “institutions.” WASH. STATE DEP’T CHILD., YOUTH & FAMS., JUVENILE REHABILITATION ANNUAL REPORT 1 (2022), <https://www.dcyf.wa.gov/sites/default/files/pdf/reports/JRAnnualReport2022.pdf> [<https://perma.cc/BZ5B-UEA9>] [hereinafter JUVENILE REHABILITATION REPORT].

33. *Juvenile Rehabilitation*, *supra* note 29.

34. Emily McCarty, *Advocates Seek Early Release for Incarcerated Youth Amid COVID-19*, CROSSCUT (Apr. 23, 2020), <https://crosscut.com/2020/04/advocates-seek-early-release-incarcerated-youth-amid-covid-19> [perma.cc/SNF3-5L8K].

35. OFF. INNOVATION, ALIGNMENT, & ACCOUNTABILITY, WASH. STATE DEP’T CHILD., YOUTH & FAMS., JUVENILE REHABILITATION ANNUAL FACT SHEET 3 (2022), <https://www.dcyf.wa.gov/sites/default/files/pdf/OIAA-JR-AnnualFactSheet.pdf> [perma.cc/VSS2-6DUT].

36. AMANDA B. GILMAN & RACHAEL SANFORD, WASH. STATE CTR. FOR CT. RSCH., WASHINGTON STATE 2020 JUVENILE DETENTION ANNUAL REPORT 2 (2021), <http://www.courts.wa.gov/subsite/wscrr/docs/Detention%20Report%202020.pdf> [perma.cc/KE9Z-Y5PE].

37. *Id.* at 3.

38. *Juvenile Rehabilitation*, *supra* note 29.

39. *Id.*

40. *Id.*

less,<sup>41</sup> whereas youth confined to the JR facilities can serve up to five years in confinement.<sup>42</sup>

*A. Washington DCYF Juvenile Rehabilitation Public Facing Contraband Policies*<sup>43</sup>

Washington has two secure residential facilities operated by JR: Echo Glen Children's Center and Green Hill School.<sup>44</sup> Naselle Youth Camp,<sup>45</sup> a former secure residential facility, closed in late 2022. In addition, there are eight community facilities: Canyon View, Oakridge, Parke Creek, Ridgeview, Sunrise, Touchstone, Twin Rivers, and Woodinville.<sup>46</sup> There are an additional twenty county juvenile detention facilities.<sup>47</sup>

DCYF, which is the home of JR, runs three secure residential facilities and manages eight community facilities,<sup>48</sup> but does not define contraband. Instead, it appears to allow each facility to have its own definition of contraband, as long as it is consistent with WAC 110-730-0070.<sup>49</sup> In order to determine what is considered contraband in each facility and to determine the standards JR residents, one must look at the program handbook of each residential facility, both secure and

41. WASH. REV. CODE § 13.40.185 (with discretion).

42. WASH. REV. CODE § 13.40.0357.

43. A caveat to this Note's research is the following contraband information rests on public-facing policies because internal documents are hard to acquire and subject to constant change and interpretation.

44. *Residential Facilities List*, *supra* note 31.

45. At the time of this Note's creation, Naselle Youth Camp has been slotted for closure by the Washington State Legislature and by the signing of the 2022 Supplemental Budget by Governor Jay Inslee on March 31 without vetoing Subsection 228, Section 20. As a result, the camp will close no later than June 30, 2023. See Jeff Clemens, *NYC Set for 2023 Closure*, CHINOOK OBSERVER (Mar. 31, 2022), [https://www.chinookobserver.com/news/local/nyc-set-for-2023-closure/article\\_b3a748a8-b164-11ec-aa49-f7e2b5578107.html](https://www.chinookobserver.com/news/local/nyc-set-for-2023-closure/article_b3a748a8-b164-11ec-aa49-f7e2b5578107.html) [perma.cc/4ARE-L2D5] ("Closure is mainly due to the Washington Department of Children, Youth and Families—along with legislative leaders and the governor—continuing to expand options for youth offenders other than incarceration." Currently, the facility holds approximately thirty youth residents.).

46. *Residential Facilities List*, *supra* note 31.

47. GILMAN & SANFORD, *supra* note 36, at 4 (The complete list of Detention Facilities include twenty county juvenile detention facilities: Benton-Franklin Juvenile Detention, Chelan Juvenile Detention, Clallam Juvenile Detention, Clark Juvenile Detention, Cowlitz Juvenile Detention, Grays Harbor Juvenile Detention, Island Juvenile Detention, Kitsap Juvenile Detention, King Juvenile Detention, Lewis Juvenile Detention, Mason Juvenile Detention, Okanogan Juvenile Detention, Pierce Juvenile Detention, Skagit Juvenile Detention, Snohomish Juvenile Detention, Spokane Juvenile Detention, Thurston Juvenile Detention, Walla Walla Juvenile Detention, Whatcom Juvenile Detention, Yakima Juvenile Detention; two Secure Crisis Residential Centers: one in Chelan County and one in Clallam County; one private detention facility: Martin Hall; and two out-of-state detention facilities: Nez Perce (Idaho) Juvenile Detention and the Northern Oregon Regional Correctional Facilities or NORCOR (Oregon)).

48. *Residential Facilities List*, *supra* note 31.

49. See sources cited *supra* notes 47–48.

community, to find their definition of contraband. All policies created and utilized by JR facilities should align with DCYF's core mission, vision, and values, which they publicly allege were created "to set these young people up for success as they transition into their communities."<sup>50</sup>

In alphabetical order, broken into Residential Facilities and Community Facilities, the following gives an overview of eleven Washington State juvenile facilities and a discussion of their public-facing handbook policies' definition on contraband.

### 1. Secure Residential Facilities

There are two secure residential facilities currently open in Washington State, and one that was recently closed. First, Echo Glen Children's Center, located in Snoqualmie, Washington, is a medium-maximum security facility housing male, female, and non-binary youth.<sup>51</sup> Echo Glen's Program Handbook does not mention cell phones and defines contraband as "property that is illegal to possess."<sup>52</sup> Echo Glen's handbook also includes something called "restricted property," which is defined as "property that the facility has determined is not allowed because it is against campus policy."<sup>53</sup> Restricted property is often times a euphemism for contraband.

Second, Green Hill School, located in Chehalis, Washington, is a medium-maximum security facility housing older male youth,<sup>54</sup> including emerging adults<sup>55</sup>—juveniles up to the age of twenty-five in Washington State.<sup>56</sup> Green Hill School's Program Handbook does not mention cell phones.<sup>57</sup> While the handbook does not define contraband, it does reference it three times: the handbook says (1) contraband can get in the way of a resident meeting their goals;<sup>58</sup> (2) contraband or inappropriate

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50. *Juvenile Rehabilitation: Transition and Reentry*, WASH. STATE DEP'T CHILD., YOUTH & FAMS., <https://www.dcyf.wa.gov/services/juvenile-rehabilitation/reentry> [perma.cc/S2M3-2M5H].

51. *See generally* WASH. STATE DEP'T CHILD., YOUTH & FAMS., ECHO GLEN CHILDREN'S CENTER PROGRAM HANDBOOK (2020), <https://www.dcyf.wa.gov/sites/default/files/pdf/EchoGlenYouthHandbook.pdf> [perma.cc/69EY-X2JA].

52. *Id.* at 4.

53. *Id.*

54. *See generally* WASH. STATE DEP'T CHILD., YOUTH & FAMS., GREEN HILL SCHOOL PROGRAM HANDBOOK (2021), <https://www.dcyf.wa.gov/sites/default/files/pdf/GHSYouthHandbook.pdf> [perma.cc/KZ5E-3NGZ] [hereinafter GREEN HILL HANDBOOK].

55. *See* KAREN U. LINDELL & KATRINA L. GOODJOINT, JUV. L. CTR., RETHINKING JUSTICE FOR EMERGING ADULTS: SPOTLIGHT ON THE GREAT LAKES REGION (2020), <https://jlc.org/sites/default/files/attachments/2020-09/JLC-Emerging-Adults-9-2.pdf> [perma.cc/7WRJ-D3AK] for a detailed analysis on what "emerging adults" means in the juvenile rehabilitation context.

56. *See* H.B. 1646, 66th Leg., Reg. Sess. (Wash. 2019).

57. *See generally* GREEN HILL HANDBOOK, *supra* note 54.

58. *Id.* at 4.

content in a letter will be returned to the sender;<sup>59</sup> and (3) contraband will be taken and possibly destroyed.<sup>60</sup> In addition, like with Echo Glen, the handbook states that “restricted property” “will be taken and possibly destroyed.”<sup>61</sup>

Third, Naselle Youth Camp, the recently closed facility, was located in Naselle, Washington, and was a medium-security facility that currently houses male youth.<sup>62</sup> Naselle Youth Camp does not have a posted Program Handbook, but one was requested from the facility with no response.<sup>63</sup>

## 2. Community Facilities

There are eight community facilities. First, Canyon View Community Facility, located in East Wenatchee, Washington, primarily serves male youth.<sup>64</sup> Canyon View’s Program Handbook does not mention cell phones in any fashion.<sup>65</sup> The handbook only uses the term contraband in the context of inappropriate mail.<sup>66</sup>

Second, Oakridge Community Facility, located in Lakewood, Washington, primarily serves male youth engaging in the Aerospace Joint Apprenticeship Committee and Juvenile Rehabilitation Partnership.<sup>67</sup> Oakridge’s Program Handbook specifically states that “[c]ell phones are prohibited and considered contraband—they will be confiscated at owner’s expense.”<sup>68</sup> While Oakridge also speaks of contraband in the form of inappropriate mail, it uniquely has an entire section of its handbook focused on contraband, which addresses things like cell phones, drugs, pornography, weapons, and any item deemed by staff as a threat to safety.<sup>69</sup> Oakridge has one of the most restrictive policies. While

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59. *Id.* at 5.

60. *Id.* at 6.

61. *Id.*

62. Naselle Youth Camp does not have a Program Handbook listed on the Washington State Department of Children, Youth & Families website. A copy was requested. See *supra* text accompanying note 45, for additional information about Naselle Youth Camp.

63. The author of this Note called Naselle Youth Camp multiple times requesting the handbook information be forwarded to the author or posted on the DSHS website.

64. See generally WASH. STATE DEP’T CHILD., YOUTH & FAMS., CANYON VIEW COMMUNITY FACILITY PROGRAM HANDBOOK (2020), <https://www.dcyf.wa.gov/sites/default/files/pdf/CanyonViewHandbook.pdf> [perma.cc/SA5S-R8QK].

65. See generally *id.*

66. See *id.* at 9–10. Inappropriate mail is not universally defined by all Community Facilities in Washington State. Examples of inappropriate mail can include receiving lewd photos, graphics that include guns and drugs, and other content deemed not acceptable for a youth to have in their possession while in the transitional living environment. *Id.*

67. See generally WASH. STATE DEP’T CHILD., YOUTH & FAMS., OAKRIDGE COMMUNITY FACILITY PROGRAM HANDBOOK (2020), <https://www.dcyf.wa.gov/sites/default/files/pdf/OakridgeHandbook.pdf> [perma.cc/Q72K-QGDE].

68. *Id.* at 10.

69. *Id.* at 21.

Oakridge's resistance might not make this facility seem like an obvious choice to implement a contraband policy permitting cell phones, because of its stated rules, it has one of the most structured environments, which could serve as an example for cell phone integration that future facilities could follow.

Third, Parke Creek Community Facility, located in Ellensburg, Washington, primarily serves male youth from Echo Glen Children's Center.<sup>70</sup> Parke Creek's Program Handbook does not mention cell phones at all, and only uses the term contraband in the context of inappropriate mail.<sup>71</sup>

Fourth, Ridgeview Community Facility, located in Yakima, Washington, primarily serves female youth from Echo Glen Children's Center.<sup>72</sup> Ridgeview's Program Handbook does not mention cell phones at all and only uses the term contraband in the context of inappropriate mail<sup>73</sup> and abusive music.<sup>74</sup>

Fifth, Sunrise Community Facility, located in Ephrata, Washington, primarily serves male youth enrolled in the Job Corps Program or Open Doors Program at Big Bend Community College.<sup>75</sup> Sunrise's Program Handbook prohibits smart phones under the Music section of their Additional Procedures.<sup>76</sup> The Program Handbook only uses the term contraband in the context of inappropriate mail.<sup>77</sup> Sunrise Community Facility encourages its youth to engage in the Job Corps Program which could provide a safer environment for youth to practice reentry skills associated with cell phone use because Job Corps has its own guidance for safe cell phone use at its facilities.<sup>78</sup>

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70. *See Generally* WASH. STATE DEP'T CHILD., YOUTH & FAMS., PARKE CREEK COMMUNITY FACILITY PROGRAM HANDBOOK (2020), <https://www.dcyf.wa.gov/sites/default/files/pdf/ParkeCreekHandbook.pdf> [perma.cc/VZD3-WL3T].

71. *See id.* at 10.

72. WASH. STATE DEP'T CHILD., YOUTH & FAMS., RIDGEVIEW COMMUNITY FACILITY PROGRAM HANDBOOK 2, 10 (2020), <https://www.dcyf.wa.gov/sites/default/files/pdf/RidgeviewHandbook.pdf> [perma.cc/7SSA-LTST].

73. *See id.* at 17.

74. *Id.* at 22.

75. WASH. STATE DEP'T CHILD., YOUTH & FAMS., SUNRISE COMMUNITY FACILITY PROGRAM HANDBOOK 2 (2021), <https://www.dcyf.wa.gov/sites/default/files/pdf/SunriseYouthHandbook.pdf> [perma.cc/EJ6D-A59E].

76. *Id.* at 17 (the word "smart phone" is used in this section of the Handbook, which is a clear reference to a cell phone).

77. *See id.* at 16.

78. *See Questions: Frequently Asked Questions*, JOBCORPS (2017), <https://www.jobcorps.gov/questions> [perma.cc/3VS8-9RYJ] (under "Rules at the Center," Q: "Can I bring my cell phone with me?" A: "Every center has their own rules about what devices are and are not allowed, and most centers that allow cell phones restrict their use to designated areas.").

Sixth, Touchstone Community Facility, located in Olympia, Washington, primarily serves male youth.<sup>79</sup> Touchstone's Program Handbook states that, in addition to other conduct, residents will be placed on restriction for a minimum of three days for "[p]ossession of [a] cell phone" and for "[p]ossession of . . . other contraband items."<sup>80</sup> Under the Visiting Protocol section, the handbook states that "[y]outh caught with a cell phone or using a cell phone during [a] visit will have visitation privileges suspended for 30 days."<sup>81</sup> Under the Telephone Use section of the handbook, it also states, "[a]bsolutely no cell phones—no exceptions."<sup>82</sup> However, under the Additional Procedures and Property Restriction section, it states "[n]o cell phones with internet access."<sup>83</sup> The handbook uses the term contraband in the context of general prohibited items,<sup>84</sup> abusive music,<sup>85</sup> and inappropriate mail.<sup>86</sup> Touchstone has a complex and confusing cell phone policy; it is ripe for a restructured approach to cell phone use for youth housed at this facility.

Seventh, Twin Rivers Community Facility, located in Richland, Washington, primarily serves male youth.<sup>87</sup> Under the Visiting Procedures section of Twin Rivers' Program Handbook, it prohibits cell phones stating that "[p]ersonal property, including cell phones, are not allowed inside the facility."<sup>88</sup> Furthermore, the handbook states that a youth "[c]annot own, possess, or use cell phones at any time (cell phones and other seized contraband will be destroyed and **will not** be returned)."<sup>89</sup> The handbook does use the term contraband in the context of cell phones under the section of the handbook focused on student discipline, the "refocus status" section.<sup>90</sup>

Eighth, Woodinville Community Facility, located in Woodinville, Washington, primarily serves male youth.<sup>91</sup> Under the Visiting Protocol

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79. WASH. STATE DEP'T CHILD., YOUTH & FAMS., TOUCHSTONE COMMUNITY FACILITY HANDBOOK 2 (2020), <https://www.dcyf.wa.gov/sites/default/files/pdf/TouchstoneYouthHandbook.pdf> [perma.cc/X8EP-YZYU].

80. *Id.* at 18.

81. *Id.* at 9.

82. *Id.* at 10.

83. *Id.* at 20.

84. *See id.* at 18.

85. *See id.* at 25.

86. *See id.* at 11.

87. WASH. STATE DEP'T CHILD., YOUTH & FAMS., TWIN RIVERS COMMUNITY FACILITY HANDBOOK 2 (2022), <https://www.dcyf.wa.gov/sites/default/files/pdf/TwinRiversYouthHandbook.pdf> [perma.cc/NXW5-9EWW].

88. *Id.* at 8.

89. *Id.* at 18 (emphasis in original).

90. *Id.* at 19.

91. WASH. STATE DEP'T CHILD., YOUTH & FAMS., WOODINVILLE COMMUNITY FACILITY PROGRAM HANDBOOK 2 (2020), <https://www.dcyf.wa.gov/sites/default/files/pdf/WoodinvilleYouthHandbook.pdf> [perma.cc/H2SU-QP4P].

section of Woodinville's Program Handbook, it states that "[y]outh caught with a cell phone or using a cell phone during [a] visit will have visitation privileges suspended for 30 days."<sup>92</sup> In addition, under the Telephone Use section, the handbook states "[a]bsolutely no cell phones—no exceptions."<sup>93</sup> Unlike any other facility, Woodinville includes a section in their handbook called the "Resident's Contract of Agreements," which residents sign that they agree to refrain from "[u]sing or possessing a cell phone."<sup>94</sup> The handbook only uses the term contraband in the context of inappropriate mail.<sup>95</sup>

The definitions for contraband are wide ranging and only a few facilities directly prohibit cell phones in their handbook; however, facilities clearly have the autonomy and authority from the DCYF to do so. The variety of contraband definitions is fertile ground for new policies because there is no consistency across the spectrum of uses. Community facilities like Oakridge, Touchstone, and Woodinville are best suited for incorporating safe and monitored cell phone use in their policies moving forward as they represent youth most connected to their community through structured educational and vocational programming. Teaching youth how to incorporate cell phone use, safely, and smartly back into their lives, aligns with DCYF's mission and values. Therefore, community facilities should incorporate educational and hands-on practical digital literacy programming to support the youth's safe and smart use of cell phones.

### *B. Washington Juvenile Detention Contraband Policies*

Unlike DCYF, the county detention contraband policies are much harder to locate and less accessible by the public. The following includes two examples of public facing county detention contraband policies can be easily accessible on the internet.

First, Chelan County Juvenile Center: Chelan County has a "Parent Handout" on their website, which states that "Contraband includes, but is not limited to, food items, tobacco products, matches, weapons, and drugs."<sup>96</sup>

Second, Skagit County Juvenile Detention Youth Handbook: Skagit County defines contraband as "any drugs, alcohol, tobacco, food items, medication or any device that could be used as a weapon or tools of escape,

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92. *Id.* at 9.

93. *Id.* at 11.

94. *Id.* at 27.

95. *Id.* at 11, 22.

96. *Juvenile Justice Center*, CNTY. CHELAN (Jan. 5, 2022), <https://www.co.chelan.wa.us/juvenile/pages/juvenile-detention-facility> [perma.cc/B22U-ABW4].

or anything not issued or authorized by the Juvenile Administrator, Detention Manager or Detention Staff. Any issued items which have been altered is contraband.”<sup>97</sup>

While youth housed in Washington juvenile detention are often not provided the same access to programming as youth in the secure residential facilities, and allowing cell phones might not have the same positive impact as it would in a community facility, all youth incarcerated in Washington State should be provided access to learn about digital literacy and the benefits of safe cell phone practice.

### III. REMOVE CELL PHONES FROM THE DEFINITION OF CONTRABAND IN JUVENILE FACILITIES

#### A. Youth Are Different from Adults

The idea that youth<sup>98</sup> are different than adults is not a foreign or novel concept. In *Roper v. Simmons*, the United States Supreme Court, for the first time, substantially determined youth were different and should be treated differently than adults.<sup>99</sup> In *Roper*, the United States Supreme Court held that the imposition of the death penalty for crimes committed by juveniles violated the Eighth Amendment’s cruel and unusual punishment standard.<sup>100</sup> The Court—citing social and neuroscience studies—understood youth lacked the brain development necessary to make substantially logical decisions and as such, they are better fitted for rehabilitation.<sup>101</sup> In 2012, the Court extended that understanding to include life without the possibility of parole for homicide cases, requiring

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97. SKAGIT CNTY. JUV. DET. CTR., JUVENILE DETENTION YOUTH HANDBOOK 5, <https://www.skagitcounty.net/OfficeofJuvenileCourtDetention/Documents/DETENTION%20YOUTH%20HANDBOOK.pdf> [perma.cc/6RVH-JG9D].

98. Typically, “child,” “youth,” and “juvenile” are defined as any unemancipated individual under the age of 18 years old. WASH. REV. CODE § 13.32A.030 (2020). In this Note, the author adopts the definition of youth consistent with the age that youth are presumed capable of a crime, eight and above, under Revised Code of Washington Title 13. This Note author also supports ongoing advocacy to raise the age to thirteen years old. See S.B. 5122, 67th Leg., Reg. Sess. (Wash. 2021).

99. *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

100. *Id.* “[A] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” *Id.* (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

101. *Id.* The Court internally cites to two studies: Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339 (1992) (“[A]dolescents are overrepresented statistically in virtually every category of reckless behavior.”); Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCH. 1009, 1014 (2003) (“[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting.”).

mitigating factors to be considered before a juvenile could be sentenced to that length of time.<sup>102</sup>

Washington State also has its own special considerations for youth. In 2021, in a combined case decision—*Monschke* and *Bartholomew*<sup>103</sup>—Washington State Supreme Court reaffirmed its belief that “young people differ from adults in systematic ways directly relevant to their . . . potential for rehabilitation.”<sup>104</sup> Furthermore, the JR administration also believes that youth have the power and ability to change.<sup>105</sup> Because we know youth are different from adults and that any detention has a profoundly negative impact on a youth’s life,<sup>106</sup> youth should be held to different policies than incarcerated adults. Similarly, because we know youth report fewer negative emotions when they have the ability to check in with their peers, we should not continue to deprive them of that necessary connection.<sup>107</sup> Thus, juvenile facilities should deviate from RCW 9.94.041’s definition of contraband and amend their policies to allow youth monitored access to cell phones. Although integrating cell phones into the current system would take resources, time, and money, it would have a lasting impact on the rehabilitation and development of youth.

### *B. Benefits of Technology*

Technology has found a foothold in the rehabilitation conversation around the world with society’s rising dependence on smart technology.<sup>108</sup> Some critics view technology as one of the biggest concerns for correctional staff as it allows for too much uncertainty without the resources or high number of staff necessary to properly monitor the activity.<sup>109</sup> There are countless ways prisons and facilities are attempting

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102. See *Miller v. Alabama*, 567 U.S. 460, 489 (2012) (holding that post-trial sentencing requires the judge to take into consideration information about the youth such as age and background and the circumstances of the offense).

103. *In re Monschke*, 197 Wash. 2d 305, 482 P.3d 276 (Wash. 2021).

104. *Id.* at 323 (citing Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV. 89, 94 (2009)).

105. Washington State Department of Children, Youth, and Families, *Juvenile Rehabilitation (JR)—Creating Bright Futures*, 1:49–1:55, YOUTUBE (July 6, 2022), <https://www.youtube.com/watch?v=wtBFzS5RUS4>.

106. BARRY HOLMAN & JASON ZIEDENBERG, JUST. POL’Y INST., *THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES* 2–3 (2011), [https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/dangers\\_of\\_detention.pdf](https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/dangers_of_detention.pdf) [<https://perma.cc/6PPE-GSJJ>].

107. Bep Norma Uink, Kathryn Lynn Modecki & Bonnie L. Barber, *Disadvantaged Youth Report Less Negative Emotions to Minor Stressors When with Peers: An Experience Sampling Study*, 41 INT’L J. BEHAV. DEV. 41, 50 (2016).

108. *The Role of Technology in Offender Rehabilitation*, RUSSELL WEBSTER (June 18, 2018), <https://www.russellwebster.com/techrehab/> [[perma.cc/GS8H-EGCH](https://perma.cc/GS8H-EGCH)].

109. See NEAL PARSONS, KAREN LISSY, MEGHAN CAMELLO, MOLLY DIX, T. CRAIG, MICHAEL PLANTY & JERI D. ROPERO-MILLER, CRIM. JUST. TESTING & EVALUATION CONSORTIUM,

to manage contraband in prisons, including using anti-cell phone technology and cell phone jammers.<sup>110</sup> However, critics and proponents alike understand that adopting advanced technologies can assist youth in various ways, such as helping youth engage with a broad social media driven society and help youth as they process the large amount of changes that transpired in the world while they were confined.<sup>111</sup>

Technology and cell phones are integral to rehabilitation.<sup>112</sup> One formerly incarcerated woman, Chandra Bozelko, described the reality of needing to learn about proper cell phone use after leaving prison best by saying that people released from prison “find themselves suddenly expected to reintegrate using the very technology they had been isolated from.”<sup>113</sup> As an activist, Bozelko advocates for limited social media access in prisons, which is focused on healthy practices and social media training to aid in successful re-entry.<sup>114</sup> Washington State also believes in the benefit of technology in prisons, as video visits or video calling has become more prevalent, proving electronic access to those outside of the institution is both beneficial and manageable.<sup>115</sup> This advocacy would also benefit youth; youth need to have access to cell phones and social media while incarcerated to practice safe and smart internet usage in a controlled setting. Youth often struggle on the internet with cyberbullying, posting content which could have legal liability, and sharing and sending personal content which should be kept private.<sup>116</sup> Having a controlled environment dedicated to allowing youth to experiment and learn about best practices while incarcerated could significantly reduce the amount of social media related charges that youth are charged with upon release.

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DETECTING AND MANAGING CELL PHONE CONTRABAND 4 (2021), <https://cjtec.org/files/611bb63e0b1d9> [perma.cc/CZD7-29EM] [hereinafter DETECTING AND MANAGING CELL PHONE CONTRABAND].

110. *Technology in Corrections*, NAT’L INST. CORR., <https://nicic.gov/projects/technology-corrections> [perma.cc/DDE2-8MZZ].

111. MICHELLE TOLBERT, JORDAN HUDSON & HEATHER CLAUSSEN ERWIN, U.S. DEP’T EDUC., *EDUCATIONAL TECHNOLOGY IN CORRECTIONS 2* (2015), <https://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/policybriefedtech.pdf> [perma.cc/U4NP-D6AD].

112. Mia Armstrong, *How Prisons Can Use Tech to Slow Their Ever-Revolving Doors*, SLATE (June 26, 2018), <https://slate.com/technology/2018/06/how-prisons-can-use-tech-to-help-reduce-recidivism.html> [perma.cc/LY24-KXKB].

113. *Id.*

114. *Id.*

115. Steve Horn & Iris Wagner, *Washington State: Jail Phone Rates Increase as Video Replaces In-Person Visits*, PRISON PHONE JUST. (Oct. 12, 2018), <https://www.prisonphonejustice.org/news/2018/oct/12/washington-state-jail-phone-rates-increase-video-replaces-person-visits/> [perma.cc/RXH3-QGJZ].

116. Sedgrid Lewis, *Social Media: The New School-to-Prison Pipeline for Black Youth*, JUV. JUST. INFO. EXCH. (Oct. 25, 2017), <https://jjie.org/2017/10/25/social-media-the-new-school-to-prison-pipeline-for-black-youth/> [perma.cc/277S-NUA7].

### C. Technology Lowers Recidivism

Recidivism rates for youth could be lowered if Washington juvenile facilities developed the resources and policies necessary to create a healthy cell phone program for youth. Research shows digital literacy courses assist incarcerated people with necessary skills they must use when released from prison such as finding jobs, accessing housing resources, or enrolling in education programs.<sup>117</sup> A recognized security risk associated with the use of cell phones exists which must be controlled for through policies and procedures because the reward of lowered recidivism rates substantially outweighs the cost.<sup>118</sup> Due in part to COVID-19, a historic reduction in the number of youths incarcerated across the United States occurred, which presents an opportunity for Washington State to change the cell phone ban in its facilities.<sup>119</sup>

### D. Emerging Adults and Adult Incarceration

While it might seem like a stretch to start with youth aged thirteen to seventeen years old, it is necessary to build a foundation of digital literacy for their later years. As Washington legislators look to expand the age range of those considered “emerging adults,” security concerns will grow as well.<sup>120</sup> Security concerns for youth who are detained are often mirrored in the security concerns for emerging adults and the adult population. Beginning with youth facilities would allow best practices to emerge which manage security concerns and model successful procedures and problem solving for emerging adult and adult facilities to adopt in the future.

## IV. POTENTIAL CONCERNS FOR JUVENILE FACILITY STAFF

Cell phone contraband “is one of the fastest growing and most significant challenges” faced by correctional facilities according to the Criminal Justice Testing and Evaluation Consortium, a program of the

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117. Hillary Schaub & Darrell M. West, *Digital Literacy Will Reduce Recidivism in the Long Term*, BROOKINGS (Oct. 6, 2015), <https://www.brookings.edu/blog/techtank/2015/10/06/digital-literacy-will-reduce-recidivism-in-the-long-term/> [perma.cc/WN4D-HT4C].

118. See generally NINA CHAMPION & KIMMETT EDGAR, PRISON REFORM TR., THROUGH THE GATEWAY: HOW COMPUTERS CAN TRANSFORM REHABILITATION (2013), <https://prisonreformtrust.org.uk/wp-content/uploads/2013/11/through-the-gateway.pdf> [perma.cc/TP2J-JTSJ].

119. *Juvenile Justice Is Smaller, but More Unequal, After First Year of COVID-19*, ANNIE E. CASEY FOUND. (Mar. 9, 2021), <https://www.aecf.org/blog/juvenile-justice-is-smaller-but-more-unequal-after-first-year-of-covid-19> [perma.cc/X4DB-WXJK].

120. COLUM. JUST. LAB, EMERGING ADULT JUSTICE IN WASHINGTON STATE: PROGRESS AND PROMISES OF REFORM 2 (2021), <https://justicelab.columbia.edu/sites/default/files/content/EAJ%20in%20Washington%20State%20-%20January%202021.pdf> [perma.cc/G7AK-NGXW].

National Institute of Justice.<sup>121</sup> This section discusses four prominent potential concerns in the juvenile system: the possibility of a bribe, accountability, escape, and inequality and inequity.

#### *A. The Possibility of the Bribe*

If cell phones are allowed in spaces with incarcerated youth in Washington State, even if heavily monitored and restricted, a potential for the exploitation of other residents and staff still exists. In personal conversations the author of this Note had with incarcerated youth in Washington State, it was clear that youth want access to cell phones and unfortunately, go about obtaining access in unpermitted ways.<sup>122</sup> In July 2021, a Green Hill School staff member, Julio Hayes, “pleaded guilty [] in U.S. District Court in Tacoma to extortion under the color of official right, for taking bribes in exchange for delivering contraband,” including a cell phone, into Green Hill School.<sup>123</sup> In this case, two current Green Hill School residents extorted Hayes, a JR security officer, into exchanging money sent over a money transfer app by their friends outside of Green Hill School into drugs, vape pens, supplies for distribution inside the facility (like water balloons), and for at least one cell phone and SIM card.<sup>124</sup>

While removing restrictions on cell phones would completely eliminate the need to extort staff to bring in cell phones from the community, it could allow for youth to have more opportunity to engage in behavior likely to bring in other forms of contraband, like drugs and weapons. Cell phones would need to be monitored by facility staff to eliminate a youth’s ability to text their upcoming visitors and arrange for a “drop” during visitation hours.<sup>125</sup> Drops during visitation hours happen currently and are prohibited.<sup>126</sup> Allowing for cell phones would not add a new concern for the staff at these juvenile facilities; they are already aware

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121. DETECTING AND MANAGING CELL PHONE CONTRABAND, *supra* note 109, at 1.

122. The author of this Note worked for a nonprofit that served youth in various Washington State secure residential facilities and community facilities from 2017–2020. Any assertions about what Washington State youth want result from firsthand conversations the author had with incarcerated youth during that time period.

123. Press Release, U.S. Attorney’s Off., W.D. Wash., Former Juvenile Facility Guard Pleads Guilty in Scheme to Smuggle Contraband into Residence for Young Offenders (July 6, 2021), <https://www.justice.gov/usao-wdwa/pr/former-juvenile-facility-guard-pleads-guilty-scheme-smuggle-contraband-residence-young> [perma.cc/B7W2-KHQF].

124. Indictment at 3, United States v. Julio W. Hayes, No. CR21–5094 RJB (W.D. Wash. Mar. 3, 2021).

125. Natalie, *How Are Things Snuck Into Prison?*, PRISON INSIGHT (Oct. 1, 2019), <https://prisoninsight.com/how-are-things-snuck-into-prisons/#comments> [perma.cc/92WU-QJFA] (a “drop” is colloquial term used to refer to the passing of contraband from someone outside the prison (often a partner, parent, or sibling) to someone inside the facility during visitations).

126. *See supra* Section II.A.

of the possibility of drug contraband drops on visitation days and have processes for monitoring such conduct.<sup>127</sup>

### *B. Accountability*

Youth access to cell phones in a closed, heavily private facility raises the issue of accountability. While most juvenile facilities have security cameras installed in common spaces and communal areas like the school, the gym, and the cafeteria, there are things happening in these facilities outside the view of security cameras, such as fights, sexual misconduct, and bullying between youth, and occasionally, the exploitation and violation of a youth's rights by staff.<sup>128</sup> Allowing youth to have cell phones, which typically have photo and video functions, would lead to a higher level of documentation on the conduct of staff inside these private facilities. Having increased access to documenting an experience through photos and videos changes how marginalized communities interact in situations of extreme power imbalance.<sup>129</sup> In a 2014 article regarding the murder of Eric Garner by the hands of the police, a man named Luis Paulino—who was also beaten by the New York Police Department in 2012, which was captured on video—stated that without the video, “there wouldn’t have been anything but my word against [the] police officers.”<sup>130</sup> According to the Bureau of Justice Statistics regarding police use of force, a statistically significant increase has not occurred since 2002.<sup>131</sup> What has increased and has impacted our perception of police use of force is the sheer amount of cell phone videos of misconduct being shared in online spaces.

Incarcerated youth in Washington are not unfamiliar with similar feelings to those expressed in Luis Paulino’s statement that video evidence lends credibility to their individual word. In April of 2021, Columbia Legal Services represented three named youth in a class action against

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127. *Supra* Part I.

128. For example, the two-million-dollar settlement to ten plaintiffs who suffered sexual abuse while incarcerated at Green Hill School during various times between 1976 and 2008. Emily Fitzgerald, *Former Green Hill Inmates Reach \$2 Million Settlement with State Over Sexual Abuse Allegations*, CHRONICLE (Sept. 6, 2021), <https://www.chronline.com/stories/former-green-hill-inmates-reach-2-million-settlement-with-state-over-sexual-abuse-allegations,271955> [perma.cc/M7SH-SX6P].

129. Nicole Aschoff, *Smartphones Have Transformed the Fight Against Police Violence*, JACOBIN (June 15, 2020), <https://jacobinmag.com/2020/06/video-recording-police-brutality-george-floyd/> [perma.cc/NC6N-XPFW].

130. Laura Ly, *Can Cell Phones Stop Police Brutality?*, CNN (Nov. 19, 2014), <https://www.cnn.com/2014/11/18/us/police-cell-phone-videos/index.html> [perma.cc/G7PR-MAJ2].

131. *Id.*

DCYF and numerous other department heads.<sup>132</sup> The complaint alleged youth at Green Hill School were unlawfully handcuffed for hours in solitary confinement and, while DCYF had policies against this practice, DCYF defendants in supervisory or administrative roles did not train their staff on the policies to prevent this violation, enforce the policies, or discipline their staff who violated them.<sup>133</sup> While JR has made strides to lower the average ratio of direct care staff to youth,<sup>134</sup> partially in response to concerns about youth management, youth having the power to record the conduct of staff might have some positive impacts. Youth having access to cell phone in juvenile facilities like Green Hill School might not prevent this type of unlawful violation of a youth's right, but it might help hold staff accountable. Staff having knowledge they are under the watchful eye of youth, with the ability to record them, could motivate staff to alter their unlawful behavior in fear of repercussions or lawsuits.

### *C. Escape*

Youth in juvenile facilities are often incarcerated for committing a crime, of some degree, or engaging in activity that has been criminalized, though a small number of youths in juvenile detention are in these facilities for non-offender matters.<sup>135</sup> For those reasons, there is a heightened interest from the community, victims, and lawmakers that the youth in these facilities are monitored and secure.<sup>136</sup> Even now, escapes do happen from all juvenile facilities regardless of the security levels.<sup>137</sup> Escapes raise large concerns for security staff at facilities, as news of an escaped youth sparks interest at the facility among other youth which can increase security concerns across the campus for quite a few days.<sup>138</sup> Following an escape earlier last year from Echo Glen Children's Center, which included

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132. Class Action Complaint for Injunctive and Declaratory Relief at 1–3, *Rogers v. Dept. of Child., Youth & Fams.*, No. 3:21-cv-05248 (W.D. Wash. Apr. 6, 2021).

133. *Id.*

134. JUVENILE REHABILITATION REPORT, *supra* note 32, at 8.

135. GILMAN & SANFORD, *supra* note 36, at 18.

136. WASH. REV. CODE § 9A.76.110; *see also Victim/Witness Notification Program*, WASH. STATE DEP'T CHILD., YOUTH & FAMS., <https://www.dcyf.wa.gov/safety/victims-of-crime/victim-witness-notification> [perma.cc/GN9U-48GY].

137. Sharyn L. Decker, *Teen Escapee from Green Hill Found at Mall in Cowlitz County*, LEWIS CNTY. SIRENS (May 11, 2015), <https://lewiscountysirens.com/?p=31545> [perma.cc/A4P4-W5RF]; *Multiple Agencies Respond to Apprehend Escaped Inmate from Naselle Youth Camp*, KXXRO NEWS RADIO (Sept. 1, 2021), <https://www.kxro.com/multiple-agencies-respond-to-apprehend-escaped-inmate-from-naselle-youth-camp/> [perma.cc/V57H-HEQ6]; Andy Matarrese, *Neighbors, Officials Discuss Security at Parke Creek Juvenile Facility*, DAILY REC. (Dec. 19, 2013), [https://www.dailyrecordnews.com/members/neighbors-officials-discuss-security-at-parke-creek-juvenile-facility/article\\_e4fd50d6-68e4-11e3-8c8d-0019bb2963f4.html](https://www.dailyrecordnews.com/members/neighbors-officials-discuss-security-at-parke-creek-juvenile-facility/article_e4fd50d6-68e4-11e3-8c8d-0019bb2963f4.html) [perma.cc/HGD7-8YP4].

138. The author of this Note asked a former staff member at Echo Glen Children's Center what escapes meant to the other youth at the facilities. This was their answer.

youth overpowering two staff members and a nurse and driving the vehicle they stole through the previously broken front gate of the campus, a spokesperson for DCYF stated that DCYF was “assembling a critical incident team to address risk immediately and determine the root causes [of the escape].”<sup>139</sup> The report finalized by the Critical Incident Response Team showed that there was a variety of security features that could be implemented that would significantly improve their campus security to minimize escapes including: replacing vehicles with electric carts, having a single point of entry, and performing a deep-dive security audit.<sup>140</sup>

While cell phones could be used in escapes to coordinate rides from the facilities and strategically plan an escape, all facilities are already prepared to handle escapes should they happen. Introducing cell phones at the community facilities would need to be accompanied by policy and procedures that are clear to the youth and the security staff to ensure that escapes are not likely. Policies could include time limits for cell phone use, restrictions from using a cell phone after a certain time at night, and programming restrictions that require the youth to have demonstrated a necessary level of trust before beginning digital literacy programming.

#### *D. Inequality and Inequity*

Two large socioeconomic issues with this proposed policy change are inequality and inequity. Phones are expensive,<sup>141</sup> specifically cell phones which youth in the relevant age range typically desire.<sup>142</sup> Additionally, these prices do not even include the cost of paying a phone plan for the device. Implementing this policy in a community facility where only twelve youth are housed could run the facility approximately \$2,500 or more in upfront fees, should it provide a cell phone to all youth housed at the facility. Continuing to purchase cell phones for youth coming in and out of the community facility would increase the cost

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139. Sara Jean Green & Lewis Kamb, *5 Incarcerated Teens Attack Staff, Escape from Juvenile Facility Near Snoqualmie*, SEATTLE TIMES (Jan. 26, 2022), <https://www.seattletimes.com/seattle-news/law-justice/5-incarcerated-teens-attack-staff-escape-from-juvenile-facility-near-snoqualmie/> [https://perma.cc/Q58T-EP4U]. All five youth were retaken into custody without incident in the three months that followed. *Echo Glen Escape: 5th and Final Teen Captured, DCYF Says*, FOX 13 SEATTLE (Mar. 15, 2022), <https://www.q13fox.com/news/echo-glen-escape-5th-and-final-teen-captured-dcyf-says> [https://perma.cc/TSS2-48BY].

140. Press Release, Wash. State Dep’t Child., Youth & Fams., Update on Echo Glen Critical Incident Response (Feb. 3, 2022), <https://content.govdelivery.com/accounts/WADEL/bulletins/308f153> [https://perma.cc/6Q5K-E644].

141. Mickey Alam Khan, *Popularity of Smartphones Pushes Average Purchase Price*, MKTG. DIVE, <https://www.marketingdive.com/ex/mobilemarketer/cms/news/research/1085.html> [perma.cc/9MJ9-55H2] (“The current average reported purchase price for smartphone devices is \$208.”).

142. See Schaeffer, *supra* note 2.

should a youth lose their phone, damage it, or take it with them upon their exit. Community faculties, however, can reduce such cost by allowing youth at their facility who work in the community to purchase their own phones to their liking, permitting youth with no interest in having a cell phone the option to opt out completely.

#### V. CURRENT POLICY UPDATES

In the course of writing this Note, the Note author sought out information from DCYF leadership regarding any policy changes they were considering or had implemented. Recently, information was shared with the Note author from DCYF leaders that Oakridge Community Facility had piloted a policy to permit cell phone use on a case-by-case basis during reentry programming. While no specific policy language was shared, leaders confirmed that “access to using a cell phone is being piloted as a resource to support the [r]eentry process.”<sup>143</sup> Specifically, youth selected are permitted to purchase their own cell phone “about 45-30 days prior to release” and are instructed about online banking, the importance of a professional email, and keeping up to date with their contacts and connections.<sup>144</sup> Despite many of the challenges associated with cell phone access,<sup>145</sup> this Note author commends Juvenile Rehabilitation and the entire Programs, Transition and Youth Success team at DCYF for their progress in this area and hopes that they will continue to incorporate digital literacy and cell phone access for all youth in juvenile community facilities. Additionally, this Note author encourages Oakridge Community Facility to publicize their piloted cell phone policy to allow greater transparency across the facilities and to showcase the great strides being made in Washington in terms of progressive juvenile rehabilitation programming.

#### CONCLUSION

An ever-developing world requires attention to technological advances. Incarcerated youth deserve the opportunity to have the best shot at successful reentry and technology aids in that effort; thus, cell phones must be allowed in youth facilities. As a society, we know youth are different from adults,<sup>146</sup> so it follows that we must treat youth differently, regardless of the current position they find themselves in while being incarcerated. Certainly, there are some forms of contraband which should

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143. Email dated June 6, 2023, from Lisa McAllister, Office Chief of Reentry and Transition on file with Note author.

144. *Id.*

145. *Supra* Part IV.

146. See sources cited *supra* notes 77–78.

continue to be restricted in juvenile facilities, detention centers, and community facilities<sup>147</sup>—however, cell phones should not be on that list.

Cell phones provide youth the ability to pass time in a healthy manner, stay connect to their loved ones, adapt to changes in our society, and experience autonomy by learning things that interest them on their own time<sup>148</sup>—all skills that align with DCYF’s core mission and values and ones that must be implement for confined youth.<sup>149</sup>

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147. WASH. REV. CODE § 9.94.041 (2022).

148. Schaeffer, *supra* note 2.

149. *Juvenile Rehabilitation*, *supra* note 29.