Left, Left, Left, Right, Left: The Search for Rights and Remedies in Juvenile Boot Camps

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I. INTRODUCTION

Many people in Gina Score's community were surprised to learn that she had been sent to a juvenile boot camp. Sure she had stolen a few things — $2.99 fake fingernails, $60 from a friend's house, candles from her church — but she was just a petty shoplifter, only fourteen years old, and her severe obesity prevented her from exercising strenuously. What business did she have at a boot camp? Yet, after counseling and other more traditional forms of programs and punishments failed to rehabilitate Gina, one judge decided that Gina needed some tough love. He placed Gina in state custody and sentenced her to military training at the State Training School. Gina was only there five days when she and the other girls began a 2.6 mile jog. Due to her weight and her lack of previous exercise, Gina quickly fell behind the group. Despite her complaints, camp officials linked arms with Gina and forced her to keep running. She collapsed 500 feet from the finish line. Three hours later, when officials finally realized she wasn't "faking," Gina was taken to the local hospital. However, she died enroute from what one emergency room doctor described as the worst case of heatstroke he'd ever seen.1

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1. This vignette is based on an article by Bruce Selcraig. Bruce Selcraig, Camp Fear, MOTHER JONES, (Dec. 2000) at 64, available at http://www.motherjones.com/mother
As more and more private and state-run "alternative rehabilitation facilities" emerge, more and more stories like Gina's surface. Legislators, judges, and even parents simply do not know how to reverse recent increases in juvenile crime rates and many believe that boot camps and wilderness programs offer a viable solution. Both state and private agencies have responded by developing rehabilitative facilities that emphasize military-styled structure, discipline, and physical exertion. Further, since the programs began springing up in the 1990s, judges have increasingly sent the juveniles appearing before them to these rehabilitative centers.

Unfortunately, the line separating rehabilitation from abuse at many military-styled boot camps is blurred at best. The highly physical and confrontational nature of these programs creates an environment ripe for abuse and juvenile offenders easily become young victims of physical, psychological, or emotional injury. Further, experience suggests that juveniles who exhibit physical and emotional fragility are more at risk for injuries from boot camps than are their stronger counterparts. Federal § 1983 actions may be able to reduce the frequency of such injuries by limiting the juveniles eligible for boot camp programs.

Under 42 U.S.C. § 5667f States are eligible to receive federal monies to fund juvenile boot camps if they meet several requirements. First, § 5677f requires that States seeking federal funds for juvenile boot camps must provide mental and physical evaluations of adjudicated juveniles before placing them in such

2. See, e.g., Curtis Krueger & Jounice Nealy, Official Denies Boy Wrongly Sent to Camp, ST. PETERSBURG TIMES, Feb. 25, 2000, at 5B (reporting the asphyxiation death of a twelve-year-old, mentally ill, sixty-five pound boy at a wilderness camp caused by a three hundred pound counselor restraining him); Adam Cohen, Is this Camp or Jail?, TIME, Jan 26, 1998, at 56 (detailing the deaths of adolescent wilderness camp participants: Michelle Sutton from dehydration, Kristen Chase from heatstroke and Aaron Bacon from acute peritonitis).


5. See, e.g., id.

6. See infra Part II.B.

facilities. These evaluations are meant to insure that a juvenile is physically and mentally capable of meeting the stresses of the demanding regime. Second, state officials must provide educational, counseling, medical, and rehabilitative services to the juveniles they sentence to boot camps. Potentially, when § 5667f is used in tandem with § 1983, juveniles who are most likely to be injured or harmed in the boot camp environment will not be placed in those facilities, and juveniles who are place in boot camps will receive counseling and treatment, which will reduce the number of physical and emotional injuries that currently occur in these facilities.

This Note examines the recent rise in the number of boot camps and similar alternative facilities and the potential effectiveness of § 1983 actions to enforce the adolescent participants' statutory rights. Part II examines boot camps, their increased popularity, and some of the advantages and disadvantages of this alternative form of rehabilitation. Part III argues that § 5667f of the Juvenile Justice and Delinquency Prevention Act ("JJDPA"), which provides funding for state-operated juvenile boot camp facilities, creates a federally protected right that may be enforced through private rights of action under § 1983. Part IV highlights the value of enforcing § 5667f through § 1983 actions.

II. JJDPA AND THE RISE OF JUVENILE BOOT CAMPS

Enacted in 1974, the Juvenile Justice and Delinquency Prevention Act may be appropriately described as an on-going experiment in juvenile justice and crime prevention. Originally, the Act was a response to increases in the number of crimes committed by juveniles, and was designed "to improve the
quality of juvenile justice and to provide a comprehensive, coordinated approach to the problems of juvenile delinquency..."12 The Act’s framers believed they could curb growing crime rates through prevention rather than punishment,13 a goal that is reflected in the four core mandates to which States were required to adhere:

First, status offenders, youths who commit offenses that would not be crimes if committed by an adult, are not to be securely detained. Second, States are not to detain juveniles arrested for nonstatus offenses in adult lockup.... Third, States are to separate juvenile offenders from incarcerated adults.... Fourth, States are to address efforts to reduce the [disproportionate number of minorities] detained or confined in secure detention facilities....14

As suggested by these four mandates, many federal lawmakers initially believed that kids should be treated as kids—they should only be incarcerated in limited circumstances and then only with other juveniles.

Despite both federal and state efforts to curb growing juvenile crime rates through educational and other community-based programs, both the frequency and the level of violence in juvenile crime continued to increase.15 In 1992, lawmakers attempted to remedy this frustrating situation by adding new provisions to the JJDPA, including 42 U.S.C. § 5667f, which provides funding for state-operated juvenile boot camp facilities that meet the stan-
 standards outlined in the statute.  

Many lawmakers believed boot camps could help reverse the growing number of crimes committed by juveniles. Since § 5567f was added, the number of juvenile boot camp and wilderness facilities has increased exponentially.  

A. THE PUSH FOR BOOT CAMPS

Since the early 1990's the penal system has increasingly turned to boot camps as an alternative to traditional rehabilitation. Georgia and Oklahoma opened the first adult boot camps in 1983. Since then, several States, backed by the federal government, have devised similar facilities for non-violent juvenile offenders. In 1992, the Office of Juvenile Justice and Delinquency Prevention [hereinafter OJJDP] funded three pilot programs specifically geared towards adolescent offenders in Ohio, Colorado, and Alabama. As of 1998, ten States operated juvenile boot camps.

In general, both adult and juvenile boot camps are modeled after military training programs and provide participants with highly structured schedules. While individual programs vary in the degree of emphasis placed upon education and counseling, all boot camp and wilderness programs share military-styled regimes and short, intense programs.

20. Id.
21. Id.
22. Peters et al., supra note 3, at 1.
23. Id. at 5. The emergence of public juvenile boot camp facilities has been accompanied by an even sharper rise in the number of private alternative facilities. See infra note 110.
27. Zaehringer, supra note 19, at 4 (finding that a juvenile's stay at a boot camp facility averages around 90 days, in comparison to a 220-day stint at a traditional facility).
Boot camps have emerged for two primary reasons: increased juvenile crime rates and increased costs as more and more teens enter the justice system. In 2001, Congress concluded that understaffed, overcrowded correctional facilities had failed to provide the “effective help” necessary to curb “the high incidence of delinquency in the United States.”

Perhaps most alarming to lawmakers was the sharp rise in the number of violent crimes committed by juveniles. In 1996 the Senate Committee on the Judiciary reported that:

 uninsured the mid-1980’s, the murder rate of juveniles was the same as for adults over 25, and less than half the rate of persons 18–24. Today, it is four times higher than that of adults, and two-thirds the rate of young adults. These increases reflect increased violence by all segments of youth.

Boot camp advocates argue that the programs reduce the number of violent crimes committed by youth, alleviate overcrowded adolescent facilities, and cut the excessive costs associated with the current juvenile correctional system in two ways. First, boot camps, like any rehabilitative mechanism, are intended to reduce criminal behavior by giving the juvenile offender a more optimistic, community-oriented outlook, thereby decreasing recidivism rates and, more specifically, preventing the non-violent offender from becoming a violent offender. Second, juvenile offenders spend significantly less time in boot camp facilities than in traditional residential facilities, so boot camps should reduce cost and over-crowding problems by creating additional room in traditional facilities for violent offenders and enabling administrators to house non-violent offenders at less cost.

Studies also show that boot camps can directly benefit their participants. OJDDP’s 1992 pilot, which funded three boot camps for adolescent offenders, recorded significant improve-

28. Id. at 3.
32. Zaehringer, supra note 19, at 3.
33. Peters et al., supra note 3, at 5; Zaehringer, supra note 19, at 4 (reporting that the average daily cost to house a juvenile at a boot camp is less than the average daily cost to house the same juvenile at a traditional facility).
ments in participants' academic skills. Further, juveniles in boot camps often respond more favorably to their environments than do youths in traditional facilities.

B. THE PUSH AGAINST BOOT CAMPS

Despite these apparent indications of boot camps' superiority over traditional rehabilitative facilities, the greater weight of evidence shows that many of these claimed advantages have not yet materialized, and probably never will. First, many advocates base their arguments on evidence compiled from adult facilities. But, the numbers from adult facilities should not simply be transplanted to studies on juvenile boot camps. For instance, the cost saving achieved by adult boot camps will not necessarily be replicated in the juvenile context. Juvenile facilities produce fewer expenses to begin with because juveniles are traditionally sentenced to shorter terms than their adult counterparts. Therefore, while juvenile boot camps will save some money, they will not realize the same cost savings as adult boot camps there is only so much fat to trim. Even more problematic, juvenile boot camps will not achieve any savings should judges become overzealous advocates for the systems.

Dr. David Altschuler, a specialist in juvenile crime who has investigated and studied juvenile boot camps intensively over the past ten years, warns that most juvenile boot camps are being used as an alternative to probation. Because judges now confine youths who they would not confine were boot camps not available, judges may effectively negate any cost savings. Finally, as al-

34. Peters et al., supra note 3, at 19–20 (finding improvements in participants' reading, math, spelling, and language standardized test scores). It should be noted that these effects were all recorded while juvenile offenders were in the boot camp programs. There is no data that participants continued to perform well once released.

35. See MacKenzie, supra note 18 ("Juveniles in boot camps reported more frequently that their environments prepared them for release, provided therapeutic programming, had structure and control, and kept them active. On average, juveniles in boot camps reported less environmental danger, less danger from other residents, and fewer environmental risks than juveniles in comparison facilities.").

36. See id. at 1 (explaining that the boot camp era did not take off until the 1990's).

37. Peters et al., supra note 3, at 5.

38. Id.

39. Id.

40. Id. at 6.

41. Id.

42. Id. Recent evidence from Georgia demonstrates that Dr. Altschuler's concerns
ready noted, the purpose of boot camps is to quickly reform the offender by providing him with the structure, discipline and role-models necessary to become a law-abiding citizen, thereby reducing the chances that he will commit a crime in the future. Yet, boot camps are not shown to reduce recidivism any more than traditional facilities. The benefits claimed by boot camp advocates, reduced crime and cost, remain unproven and several factors indicate that these advantages will remain unrealized. In the end, boot camps will do very little to advance these state goals.

Moreover, the tactics of boot camps officials present an even more serious problem. Though boot camp procedures vary, there is a "commonality in the use of strict discipline, physical training, drill and ceremony, military bearing and courtesy, physical labor, and summary punishment for minor misconduct." Summary punishments, which have been widely reported, include "inmates being forced to carry logs on their backs, having to participate in excessive exercises in foul weather, and being made to carry items for the intent of humiliation." Addition-

are not merely theoretical — when judges sentence juveniles who they would have previously placed on probation they not only negate cost-savings, they overload an already strapped system. See Bill Rankin, Young Offenders Packing Boot Camps Prescribed Punishment: Georgia's Juvenile Judges Continue to Send Delinquents to Military Styled Centers at a Rate that is Stressing the State's Resources, although Federal Officials Call the Camps Harmful, ATLANTA J. & CONST., May 31, 1998, at C3. Georgia newspapers report that "[i]n fiscal year, 1997, almost 5,600 youths received [a boot camp] sentence, about double the total in 1995. The skyrocketing use of the programs has inundated an already overcrowded juvenile detention system." Id. In the same article, one juvenile judge explained that boot camps are an attractive, though not ideal alternative, to sending kids home:

The 90-day programs are useful to judges who don't want to send problem youths into a juvenile prison and who don't want to send them home either. . . . "I know there are problems . . . [and] there are some kids that I send to a boot camp, if I had a community program available I'd send them there instead."

Id. This is precisely the problem of which Altchuler warned. See Peters et al., supra note 3, at 6.

43. Peters et al., supra note 3 at 4.
44. Zaehringer, supra note 19, at 1.

46. Faith E. Lutze & David C. Brody, Mental Abuse as Cruel and Unusual Punishment: Do Boot Camp Prisons Violate the Eighth Amendment?, 45 CRIME & DELINQUENCY, 242, 244 (1999). Though these abuses occurred in adult correctional boot camps, juvenile boot camps rely on similar disciplinary tactics. See C. James, Comment on Polsky and
ally, “sergeants” often call participants derogatory names in an attempt to “break them down.”

In theory, these tactics are employed to teach adolescent participants the structure and discipline necessary to become productive citizens. Yet, recent media coverage demonstrates that such strategies have actually resulted in a number of significant physical injuries. For example, boot camp officials literally ran Gina Score, the girl discussed in the introductory vignette, to her death. In another boot camp facility, staff mercilessly teased an incontinent boy and accused him of faking when he collapsed during strenuous physical training. He died that same evening from a massive undiagnosed infection. While these deaths exemplify the problems created by placing children who are physically unable to meet boot camps’ rigorous demands into such programs, reports of fatalities and injuries among even healthy participants demonstrate the need for some sort of monitoring system.

Further, these injuries are not just physical — boot camps have also resulted in severe emotional and mental problems among some participants. Following an abusive stay at one boot camp, one adolescent suffered mood swings, depression, and constant fear of being locked up again. He eventually killed himself. Faith Lutze and David Brody, experts in the criminal justice field, warn that “verbal confrontation, the use of summary discipline, and calling on correctional officers to serve both as a role model/counselor and strict disciplinarian may replicate negative dynamics of abusive relationships and may be harmful to those offenders who have experienced abuse or who are cur-

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Fast: Humane and Effective—Do Boot Camps Meet the Test?, CHILD AND YOUTH CARE FORUM (1993); see, e.g., Lemoine, 990 F. Supp. 498.

47. Lutze & Brody, supra note 46, at 244 (citing Dale Sechrest, Prison Boot Camps Do Not Measure Up, 53 FEDERAL PROBATION, 15, 16 (1989)).


49. Selcraig, supra note 1.

50. Id.

51. Id.

52. See, e.g., Cohen, supra note 2 (describing the deaths of adolescent camp participants Michelle Sutton from dehydration, Kristen Chase from heatstroke, and Aaron Bacon from acute peritonitis).


54. Id.
rently in abusive relationships."55 Under their theory, the boot camp format is likely to be particularly traumatic for participants who have been former victims of abuse. Further, a recent study comparing the reactions of juveniles in boot camps with those in traditional facilities found that boot camp participants were more likely to report that they felt they were "in danger from their staff."56 This finding supports Lutze and Brody's theory that, indeed, boot camps do recreate the "negative dynamics of abusive relationships."57

Mentally ill children may be especially vulnerable to physical injuries.58 The death of a twelve-year-old, mentally ill boy after a counselor improperly restrained him and the death of another mentally ill twelve-year-old, Andrew Lemoine, are only two of the many cases that substantiate these assertions.59 Such instances of death and abuse, as well as the comments of many critics, suggest that mentally ill children are particularly ill-suited for the boot camp environment because they are unable to handle boot camps' confrontational and physically demanding methods, and are more likely to suffer physical or emotional harm as a result of their experiences.60

For these reasons, administrators and judges must take proactive measures to reduce the number of physical and emotional injuries occurring at boot camps. JJDPA's current guidelines limit boot camp participants to non-violent offenders;61 however, selection criteria must be far more strenuous if incidences of physical and emotional injuries are to be effectively reduced. Juveniles whose unique physical and emotional characteristics render them particularly vulnerable to physical or emotional injuries should be excluded from the programs.62 Put simply, boot

55. Lutze & Brody, supra note 46, at 245 (citations omitted).
56. MacKenzie et al., supra note 18 at 3.
57. Lutze & Brody, supra note 46, at 245.
58. See Rankin, supra note 42 (reporting that Bill Lann Lee, then acting assistant attorney general for civil rights, warned that combining aggressive untrained staff and mentally ill adolescents will inevitably lead to abuse and injury).
59. See id. ("Boot camp guards routinely used extreme forms of corporal punishment . . . resulting in serious injuries to youths who were often 'very young and sometimes mentally ill'.")
60. See id. (reporting on federal investigators' conclusion that placing some categories of offenders "created a powder keg of tension and hostility that inevitably led to confrontation and abuse . . .").
61. Peters et al., supra note 3, at 17.
62. Preventing injuries is clearly in boot camps' own interests because much of the
Juvenile Boot Camps

Juvenile Boot Camps are not for all juvenile offenders and their use should be limited accordingly. The question now becomes how to appropriately circumscribe the use of boot camps to reduce the likelihood of harm.

III. PRIVATE § 1983 ACTIONS AND THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

Juveniles who are mentally or physically ill-suited for boot camps need a meaningful way to force state officials to listen to them when they say, "Do not send me to boot camp because I don't belong there," or "Yes, I am in boot camp but this program is not meeting my physical, mental, and/or rehabilitative needs." 42 U.S.C. § 5667f, the section of the JJDPA that establishes funding for state boot camps, may provide adjudicated teens with just such a means. Section 5667f requires that States receiving federal funds provide "regular, remedial, special and vocational education [and] counseling and treatment for substance abuse and other health and mental health problems" to juvenile boot camp participants.64 Equally important, § 5667f-2(b) of the Act mandates:

Prior to being placed in a boot camp, an assessment of a juvenile shall be performed to determine that —

(1) the boot camp is the least restrictive environment that is appropriate for the juvenile considering the seriousness of the juvenile's delinquent behavior and the juvenile's treatment need; and

(2) the juvenile is physically and emotionally capable of participating in the boot camp regimen.65

These statutory rights have the potential to act as buffers in several ways. First, the right to an assessment insures that boot camps do not become warehouses for all non-violent youths re-

63. See Rankin, supra note 42 ("Mentally ill and disabled youths received inadequate care and services. Inadequate screening allowed youths with injured legs and feet or with serious medical conditions such as anemia and diabetes to be admitted into the program.").
64. 42 U.S.C. § 5667f(c) (2000).
Regardless of their criminal, mental, and physical histories. Second, the right to counseling and treatment for health and mental health problems increases the likelihood that inappropriate placements that were missed in the initial assessment will eventually be noticed. Finally, counselors can detect abuses by drill instructors. These rights can be invaluable in preventing, or at least reducing, some of the harms outlined in Part II of this Note. This part makes two related arguments: first, that § 5667f gives juveniles federal rights enforceable under § 1983; second, federal courts are the most appropriate forums in which juveniles should enforce these rights.

A. THE § 1983 REMEDY

Section 1983 is intended to provide United States citizens with a remedy for the deprivation of their federal rights by state officials. 42 U.S.C.A § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

Following the passage of § 1983, courts debated whether it applied to all statutory rights, to some statutory rights or, only to constitutional rights. The Supreme Court resolved this question in Maine v. Thiboutot, the case that provides much of the basis for modern § 1983 doctrine, when it held that the phrase “and laws,” as found in 42 U.S.C. § 1983, creates a private remedy for “claims based on purely statutory violations of federal law . . . ” rather than only claims based upon constitutional violations. Quoting Monell v. City Department of Social Services,

68. Thiboutot, 448 U.S. at 3 (finding that § 1983 is an available remedy where state officials deprived plaintiffs of the welfare benefits due to them under a Social Security Statute despite petitioners' arguments that a § 1983 remedy should only be available
the Thiboutot court made the sweeping statement that "there can be no doubt that § 1 of the Civil Rights Act [of 1871, later recodified as § 1893] was intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected rights."  

On its surface, Maine v. Thiboutot seems to suggest that when a state official violates a federal statute, § 1893 provides the injured citizen with a federal remedy. Yet, the court in Thiboutot actually stated that there is a § 1893 remedy "against all forms of official violation of federally protected rights." Relying on this language, subsequent Supreme Court decisions have severely curtailed the availability of § 1893 remedies by limiting the circumstances under which a statute gives rise to a federally protected right. Therefore, it is not enough that the defendant merely violated a federal statute; rather, a defendant must "deprive" plaintiff of a right created by the statute in question in order for a § 1893 claim to be viable. The Court in Wilder v. Virginia Hospital Association established a three-part test to determine whether a statute creates a federal right that is enforceable under § 1893: (1) "the provision in question was intended to benefit the putative plaintiff"; (2) the provision creates "a binding obligation on the governmental unit"; and (3) "the interest the plaintiff asserts is [not] 'too vague and amorphous' such that it is 'beyond the competence of the judiciary to enforce.'" If § 5667f is to give rise to a federal right enforceable under § 1893, it must meet these three requirements.

B. SECTION 5667 OF THE JJDPA CREATES A FEDERALLY PROTECTED RIGHT

The Juvenile Justice and Delinquency Prevention Act meets with regards to equal protection or civil rights statutes).

69. Id. at 3 (quoting Monell v. New York City Dep't. of Soc. Servs., 436 U.S. 658, 700–01 (1978)).
70. Id. (emphasis added).
72. See Thiboutot, 448 U.S. at 3.
74. Id. (quoting Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 19 (1981)).
75. Id. (quoting Wright v. Roanoke Redevelopment & Hous. Auth., 479 U.S. 418, 423 (1987)).
the standards set by Wilder. The boot camp provision of the JJDP A creates several specific “rights” within the meaning of § 1983 — the right to an assessment to determine whether a juvenile is mentally and physically capable of participating in a strenuous, confrontational boot camp regime, and the right to educational, treatment, and therapeutic services while in the boot camp.

1. *Juveniles are intended beneficiaries of the statute*

The JJDP A has been written and rewritten over a period of twenty-five years, and although its tone and language have changed, an examination of § 5667’s text suggests that juveniles are indeed intended beneficiaries of § 5667f. In Blessing v. Freestone, the most recent supreme court case analyzing a § 1983 statutory claim, the Supreme Court suggests that a statute must “create an individual entitlement to services” to satisfy the first prong of Wilder. Section 5667 does just that. In Blessing, the court reasoned that, “even when a State is in ‘substantial compliance with Title IV-D, [which provides federal funds to States that certify they will operate child enforcement programs in conformity with federal requirements], any individual plaintiff might still be among the 10 or 25 percent of persons whose needs ultimately go unmet.” Unlike the statute in Blessing, which speaks in terms of group figures, § 5667f-2(b) refers to individual adjudicated juveniles: “[p]rior to being placed in a boot camp, an assessment of a juvenile shall be performed . . . .” This is not a group-based right, like the rights challenged in Suter and Blessing, but an individual-based right, a factor that weighs in favor of finding that juveniles are indeed its intended benefici-

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76. In its original form the JJDP A was intended to protect teenagers from incarceration, to limit the number of teens the state locked up, and to insure that juveniles were separated from adult inmates when they were incarcerated. See supra Part II. Accordingly, several district courts have held that juveniles were intended beneficiaries of § 5633 of the JJDP A for § 1983 purposes. See, e.g., Hendrickson v. Griggs, 672 F. Supp. 1126 (N.D. Iowa 1987) (finding that § 5663 of the Juvenile Justice and Delinquency Prevention Act created an enforceable right).

77. See Blessing v. Freestone, 520 U.S. 329, 343 (1997) (“[T]he Secretary must look to the aggregate services provided by the State, not to whether the needs of any particular person have been satisfied. [For example, s]ates must aim to establish paternity in 90 percent of all eligible cases.”).

78. 42 U.S.C. § 5667f-2(b) (emphasis added).
The language of § 5667f(c) also suggests that juvenile participants are the beneficiaries of the mandated services. Section 5667f(c) mandates that state-run boot camps provide "(1) a highly regimented schedule of discipline, physical training, work drill and ceremony characteristics of military basic training; (2) regular remedial, special, and vocational education; and (3) counseling and treatment for substance abuse and other health and mental health problems." The statute does not explicitly state to whom these services are to be provided, yet given the nature of the services as well as subsequent sections of the statute that deal with camps' capacity and participant's post-release supervision, it is clear that boot camp participants are the unnamed beneficiaries of these services.

The legislative history of § 5667f further bolsters the argument that the legislature intended adjudicated juveniles to be the beneficiaries of this act. Following a discussion of juvenile boot camps, one Congressional committee concluded:

[t]he Committee finds that the juvenile justice system today fails to impose punishment in a definite and systematic way on too many offenders, with the result that too many offenders who might be able to be turned around before becoming violent criminals are left to continue on their criminal path.

Other legislators' statements indicate that § 5667's "tough love" approach was intended to benefit juvenile offenders who were denied the opportunity to "turn around" under the previous less stringent system. Thus, § 5667f should easily satisfy the "in-
2. *Section 5667f creates binding obligation on States*

Section 5667f also creates binding obligations on States, satisfying the second prong of the *Wilder* test. Under § 5667f, States receiving federal funding for their boot camp programs must perform mental and physical assessments of the juvenile before placing her in a boot camp, and then must provide specific services during her residency in the program. This statute is nothing like the statute in *Suter*, which the Court held did not create binding obligations on the state. That statute, the Adoption Assistance and Child Welfare Act, only required the States to “have a plan which provides that, in each case, reasonable efforts will be made . . . to prevent or eliminate the need for removal of the child from his home . . . .” Appropriately, the Court concluded that the Adoption and Child Welfare Act only obligated States in receipt of federal funds to “have a plan approved by the Secretary which contains the 16 listed features.” In contrast, § 5667f’s statutory language clearly mandates that States actually provide certain services and assessments, rather than simply submit a plan, to receive federal grants for juvenile boot camps. Accordingly, the services and assessments that §

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[S]ome offenders learn too well that the system can be tough. Lacking any real alternative, the judge sentences these kids to prison, even though they pose no threat to the community and, with some work, may be salvageable from a life of crime. . . . There are a few areas in the country where experiments with alternative sentencing has worked well, toughening up the system and taking youths who might go one way or the other and making them into productive citizens, not criminals. . . .

139 CONG. REC. H10191-02 (1993). This is not to suggest that Congress did not intend § 5567f simultaneously to benefit other entities — § 5667f is meant to serve a number of different interests. First, it is likely to satiate the public concern regarding increased violence among teens. See Lutze & Brody, supra note 46, at 242. Second, it benefits States, which now have greater latitude in incarcerating and rehabilitating juveniles. However, the fact that § 5667 was intended to benefit state or federal officials in addition to juvenile offenders interests does not mean that the statute fails to create a federally protected right. See Golden State Transit Corp. v. City of Los Angeles, 493 U.S. 103 (1980). In Golden State Transit Corp. v. City of Los Angeles, the Supreme Court held that the plaintiff did not have to be the sole or even primary beneficiary of the statute, the plaintiff simply had to be one of the beneficiaries of the act in question. *Id.*

86. 42 U.S.C. § 5667f-2(b).
87. 42 U.S.C. § 5667f(c).
89. *Id.* (internal quotations omitted).
90. *Id.*
5667 mandates meet the "binding obligation" requirement set out in *Wilder* — States receiving federal funds for boot camps must provide juveniles with an assessment prior to placement, and with educational, health, mental, and therapeutic services during their stay.92

3. *The judiciary is competent to enforce these requirements*

Finally, a juvenile's interest in being placed in an appropriate facility is not "too vague and amorphous such that it is beyond the competence of the judiciary to enforce."93 Essentially, courts will simply be asked to ascertain whether the State failed to assess juveniles' physical and emotional capabilities or to provide educational and mental services.94 Courts have proven that they are capable of undertaking far more complicated inquiries.95 Whether States meet the mandates of § 5667f will be a simple

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92. *Wilder*, 496 U.S. at 512 ("Boren Amendment imposes a binding obligation on States participating in the medicaid program to adopt reasonable and adequate rates ... ."); see also *Suter*, 503 U.S. at 370 (holding that the Adoption Assistance and Child Welfare Act, which required that States have an approved plan, did not create binding obligations on the state to maintain a child in her home). The Court explained the different outcomes in *Wilder* and *Suter* as follows:

In *Wilder*, the underlying Medicaid legislation similarly required participating States to submit to the Secretary of Health and Human Services a plan for medical assistance describing the State's Medicaid program. But in that case we held that the Boren Amendment actually required the States to adopt reasonable and adequate rates, and that this obligation was enforceable by the providers. We relied in part on the fact that the statute and regulations set forth in some detail the factors to be considered in determining the methods for calculating rates. In the present case, however, the term "reasonable efforts" to maintain an abused or neglected child in his home, or return the child to his home from foster care, appears in quite a different context. No further statutory guidance is found as to how "reasonable efforts" are to be measured.

*Suter* 503 U.S. at 359–60. Interestingly, § 5667f is distinguishable from both *Wilder* and *Suter* because the relevant provisions of § 5667f are not premised on the States' submission of a plan. See 42 U.S.C. § 5667f. This suggests that the provisions do not have to be as detailed as those at question in *Wilder*. However, § 5667f should meet even this higher "binding obligations" standard because, as the court noted in *Suter*, judges may look beyond the statute to regulations to determine whether the statute creates binding obligations upon the States. See *Suter*, 503 U.S. at 360 (recognizing that, in *Wilder*, the court relied on both the statute and accompanying regulations). Here, judges can rely on OJJDPA's goals, statements, and guidelines, which clarify both the type of assessments that are to be performed and specify the types of services that are to be provided to juvenile participants. See, infra note 103.


95. See, e.g., *Wilder*, 496 U.S. at 520 (requiring Court to determine whether States have adopted reasonable rates for the reimbursement of health care providers).
inquiry when States forgo the requirements altogether. For example, when States do not provide any sort of remedial or vocational programs to boot camp participants it will be clear to any judge that they have not met their obligations. Though variations among different States' programs will complicate this inquiry, it will still be within the competency of the judiciary to determine whether States have fulfilled their obligations under the statute. As the Supreme Court underscored in Wilder, a court's unfamiliarity with the subject matter or potential variations among programs does not render it incompetent to enforce a statute.

Further, should courts find themselves in need of guidance, they can turn to the OJJDP's 1990 Program Announcement as a resource. The agency explains that the selection process requires that “[t]hose [adjudicated juvenile offenders] referred to the program will be screened to the program by the appropriate youth service agency. They will be screened, interviewed, selected and processed by program staff.” More specifically, juvenile offenders must “[h]ave no history of mental illness; not be considered violent or have a history of involvement in violent crimes; [n]ot be an escape risk; and, [d]emonstrate motivation to participate in the program.” The OJJDP also specifies the types of programs that boot camps should provide. By com-

96. For example, some States may argue that the juvenile judge, who is probably already familiar with “the seriousness of the juvenile delinquent's behavior” and the juvenile's emotional and physical capabilities, fulfilled the assessment requirement during the juvenile's adjudicatory proceedings. See 42 U.S.C. § 5667f-2(b)(1) (requiring an assessment that considers the seriousness of the juvenile's crime). Similarly, States might attempt to minimize the number of services they provide to boot camp participants by arguing that untrained boot camp officials provide the required classes and counseling.

97. See Wilder, 496 U.S. at 519-20 (acknowledging the potential range of programs but finding that a court could still determine when the state failed to meet its statutory obligations).

98. Id.

99. See Boot Camps for Juvenile Offenders: Constructive Intervention and Early Support, 55 Fed. Reg. 28718, 28718 (July 12, 1990) (providing guidelines for the establishment of boot camp programs); see, e.g., Wilder, 496 U.S. at 519 (examining both the statute and the accompanying regulations).


101. Id. at 28719.

102. Id. at 28719. According to OJJDP's guidelines, boot camp programs should provide the following:

- Diagnostic Assessment (drug testing, medical, educational, social, psychological, employment)
bining their own interpretative abilities and OJDPP's detailed requirements, courts should be able to determine whether States have fulfilled their obligations or have wrongfully siphoned money from the federal government.

4. **Congress has not foreclosed a § 1983 remedy**

   Even if a juvenile plaintiff meets all the elements of Wilder's three-part test, thereby proving that the boot camp provision creates a federal right, the § 1983 remedy may still not be available if Congress "specifically foreclosed a remedy under § 1983."103 Congress may foreclose a § 1983 remedy "expressly, by forbidding recourse to § 1983 in the statute itself, or impliedly, by creating a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983."104 Congress does not explicitly foreclose a § 1983 remedy in § 5667f.105 Therefore, any possible foreclosure of such rights must be implied.

   The Supreme Court has made it clear that courts should ""not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy' for the deprivation of a federally secured right."106 Courts should only find an implied preclusion of the right where ""allowing a plaintiff to bring a § 1983 claim 'would be inconsistent with Congress' carefully tailored scheme.""107 Plaintiff's private § 1983 claims are clearly consistent with congressional concerns.108 Further, the Supreme Court has never

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103. *See Blessing*, 520 U.S. at 341 (citing Smith v. Robinson, 468 U.S. 992, 1005 n.9 (1984)).
104. *Id.* (citing Livadas v. Bradshaw, 512 U.S. 107, 133 (1994)).
107. *Id.* (quoting *Smith*, 468 U.S. at 1012).
108. *See infra* Part III.C (explaining that private plaintiffs can monitor the States to insure that they comply with their federal obligations and are not misusing federal funds).
held that § 1983 claims are inconsistent with Congress' scheme where, like here, the statute does not provide an alternative means of private enforcement. Therefore, courts should find that § 5667f creates a federal right enforceable through § 1983 because the Wilder/Blessing three-part test is met and Congress had not foreclosed the § 1983 remedy.

C. WHY § 1983?

Section 1983 may be able to limit the harms inflicted upon juveniles wrongly sent to boot camps by either (1) insuring that young people who are the most vulnerable to physical or mental injury are not placed in such facilities, or (2) guaranteeing participants' access to services which have been proven to limit the frequency and magnitude of harms. However, this is simply one option available to potential litigants. In the alternative, juveniles could bring tort claims against state and/or boot camp officials for the harms they suffer. This portion of the Note argues that § 1983 claims are preferable to tort claims because they offer juvenile litigants and the federal government a number of protections and advantages.

Litigation is an invaluable tool to juvenile boot camp participants because it is often one of the only ways juveniles can available redress the harms committed against them by boot camp officials. Once confined, juveniles are essentially at the mercy of the prison system — they depend on it to meet their most basic needs. Yet, even though juveniles depend heavily on the

109. See Wilder, 496 U.S. at 521 (noting that the Supreme Court has only twice found a remedial scheme sufficient to displace the remedy provide in § 1983, both of which provided provisions for private enforcement).

110. The author would like to take this time to remind readers that this Note is only intended to address boot camp participants’ statutory rights. Therefore, private facilities and possible constitutional violations are beyond the scope of this Note. Unfortunately, § 5667, which funds the States, will not apply to private facilities. As the number of private facilities increases, this is becoming a bigger dilemma. See OJJDP, Juveniles in Private Facilities 1991-1995 (1997), at www.ncjrs.org.txtfiles (finding that private facilities are playing a larger role in juvenile detention — in February of 1995 almost 40,000 juveniles were held in private facilities, a ten percent increase since 1991). Juveniles sent to private boot camps are not completely without federal recourse; they may still be able to bring § 1983 for constitutional violations. However, plaintiffs will be required to prove that the action is "fairly attributable" to the state.

111. See Estelle v. Gamble, 429 U.S. 97 (1976). "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met... 'It is but just that the public be required to care for the prison, who cannot by reason of his deprivation of liberty, care for himself.'" Id. at 103-04 (quoting Spicer v.
prison system, they cannot change the system as a free adult might, such as by lobbying legislators or expressing their desires through the ballot box. Denied access to legislative forums, courts are one of the only places juvenile offenders can enforce their rights and seek remedies for the wrongs committed against them.

Further federal § 1983 actions provide juvenile litigants the greatest likelihood of success within the court system. Unlike a state tort claim that may not meet diversity jurisdiction requirements, a § 1983 action, which necessarily involves a federal question, ensures that litigants will get into federal courts, which offers plaintiffs several advantages. First, a federal claim increases the chance that a juvenile will secure legal representation. Juveniles are in a somewhat unique position because they rarely have the financial resources to hire counsel on their own. However, under 42 U.S.C. § 1988, federal judges can award attorney's fees to successful plaintiffs' attorneys so that expenditures will be reimbursed by the losing defendant. For this reason, a federal claim increases the chances that a juvenile will secure legal representation even though she might not be able to compensate the attorney himself. Second, juveniles are likely

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Williamson, 191 N.C. 487, 490 (1926)).

112. Jodi Siegel, Symposium: Reforming Florida's Juvenile Justice System: A Case Example of Bobby M. v. Chiles, 19 FIA. ST. U. L. REV. 693, 694 (1992). Siegel, an expert in the field of juvenile justice explains, "[i]t is a truism that juveniles adjudicated delinquent are often illiterate and unsophisticated in accessing the political process. As a group, they evoke little sympathy. They do not comprise a constituency capable of hiring a powerful lobbying machine." Id.

113. U.S. CONST. amend. XXVI (requiring that citizens be at least 18 years old to vote).


115. 42 U.S.C. § 1988 (2000) ("In any action or proceeding to enforce a provision of section[ ] . . . 1983 . . . , the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs . . . ."). However, courts are currently split on whether 42 U.S.C. § 1997e(d), which limits the attorney fees available to prisoners, applies to teenagers held in juvenile detention facilities. See, e.g., Christina A. ex rel. Jennifer A. v. Bloomberg, 167 F. Supp.2d 1094, 1099 (D.S.D. 2001) (holding that PLRA's attorney's fees limitations do not apply to juveniles); Alexander S. v. Boyd, 113 F.3d 1373, 1385 (4th Cir. 1997) (holding that 42 U.S.C. 1997e(d) does limit the attorney fees available to juvenile prisoners).

116. See Michael J. Dale, The Role of Litigation in Correcting Conditions in Juvenile Detention Centers, 32 U.S.F.L. Rev. 675, 714 (1998) (noting that most States operate under the "American Rule" — each party pays its own attorney's fees). Given the dearth of attorneys who are willing and able to take cases involving practices at juvenile deten-
to find a more receptive audience in federal courts than they are in state courts. Federal judges are "more attuned to civil rights" and "federal courts have historically been responsive to class action conditions cases and have been innovative and creative in drafting remedies." Further, county and municipal attorneys do not have a home court advantage in federal court, as they might in state court. Finally, juveniles are more likely to encounter sympathetic jury panels in a federal forum.

In addition to aiding juveniles, private enforcement of their statutory rights through litigation also directly benefits the federal government. The federal government's inability to monitor and enforce provisions was one of the primary problems with the JJDPA of 1974. Lawmakers explained: "OJJDP has not adequately performed its function of, not been adequately funded to undertake, research, evaluation, and dissemination of information concerning successful youth crime prevention programs." Though Congress did not explicitly create a private right of action under § 5667f, it is crucial that one is inferred from it because "administrative agencies simply can not enforce the full breadth of federally funded mandates." Private actions can help ensure that scarce federal resources are not wasted on state programs that do not meet their statutory obligations. This is an advantage that Congress should not ignore, especially given

118. See Dale, supra note 116, at 712.
120. Id. Plaintiffs may also get into federal court by bringing an implied right of action. However, "the burden on the plaintiff traditionally [is] much higher when the plaintiff argue[s] that the statute itself implied a cause of action . . . [b]ecause of the fragmented, often self-contradictory nature of legislative history" required to prove this. Michael G. Dupee, Federalism or Futility? Suter v. Artist M. and its effects on § 1983 Actions to Enforce Spending Clause Statutes, 16 HAMLIN J. PUB. L. & POLY 135, 146–50 (1994).
121. See S. REP. NO. 104-369, at 1.
122. Id.
123. Leo Smith, Reducing Accountability to the Federal Government: the Suter v. Artist M. Decision to Dismiss Section 1983 Claims for Violating Federal Fund Mandates, 1992 WIS. L. REV. 1287, 1290 (explaining that federal agencies do not have the capacity or political force necessary to enforce most federal mandates).
124. See id.
its recently expressed concerns that OJJDP dispersed "tens of millions of dollars of discretionary grants without any assurance that those funds will reduce youth violence... [and used] too much of OJJDP's discretionary grants... for programs that are not known to be effective, and that may even be detrimental."125 Section 1983 claims help guard against such wastes because they can reveal non-compliant and even harmful practices that currently occur in boot camps; they can easily work in tandem with federal monitoring efforts to fulfill JJDPA's statutory purpose, "to improve the quality of juvenile justice and to provide a comprehensive, coordinated approach to the problems of juvenile delinquency..."126 For all of these reasons, juveniles who are injured, as well as the federal government, stand to gain from federal § 1983 actions enforcing § 5667f rights. Therefore, § 1983 litigation is an avenue that should be openly available to young people harmed in boot camp facilities.

IV. CONCLUSION

Many legislators supported § 5667f because they saw it as a solution to a number of problems: juveniles were committing more crimes and correctional facilities were unable to deal with the influx of juvenile prisoners. Federal legislators, however, were clear that boot camps were not for all juveniles entering the system — § 5667f requires that participants are physically and emotionally capable of participating in the program. In the past ten years, however, state officials have sent physically and emotionally fragile children into these facilities, resulting in numerous injuries and deaths. Since States are carelessly putting juveniles in harm's way, juveniles, especially those most vulnerable to injury, need a way to protect themselves. Section 5667f, which helps insure that juveniles most likely to suffer injuries in boot camps are not in these programs, is one such mechanism. Further, juveniles can advance legislators' objectives by enforcing § 5667. Boot camps are meant to save money — these § 1983 actions insure that States are not misusing federal funds. Boot camps are intended to reduce recidivism rates — the assessments required under § 5667 insure that juveniles are placed in

a suitable environment, which, in turn, insures they receive the help necessary for reform. Boot camps are meant to teach juveniles character and responsibility — these § 1983 actions actually allow juveniles to take some responsibility for and play a role in their own rehabilitation. Therefore, as long as state officials are sending juvenile delinquents to boot camp programs, the juvenile justice system has little to lose and much to gain from juveniles enforcing their § 5667 rights through § 1983.