

Delinquency and Daycare

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INTRODUCTION

As the nation faces policy challenges over juvenile delinquency and subsequent crime,¹ one all-but-forgotten option remains as promising as ever despite its virtual absence in recent national discussions and debates: a comprehensive daycare and after-school care policy.² For decades, social scientists in this country have examined various designs of early educational and daycare programs, some promising tremendous alterations in the lives of participants and others offering far more modest achievements. Today, however, long term studies provide a much clearer picture of how early child care programs and after-school programs offer significant benefits for communities. Longitudinal evidence suggests that early childhood intervention programs, which buffer the effects of delinquency risk factors, help prevent chronic delinquency and later adult offending. After-school care programs also provide healthy alternatives to otherwise unsupervised adolescent behavior and hopefully spare children and their communities the expense, fear, and suffering which often accompanies delinquent misconduct and subsequent adult criminal misconduct. Overall, early intervention programs help reduce risk factors that contribute to delinquent behavior and later adult offending, while after-school programs create activities for juveniles during the time period when many delinquent acts occur.

Policy debates dating back to the 1970s have recognized the many benefits derived from subsidized universal child care programs. However, for decades the political climate has been less than receptive to policies that include any major federal provisions for universal access to child care.³ By the late 1980s, commentators remarked that the child care problem had

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¹ Delinquency is defined in each state's statutory scheme as conduct considered "criminal" when committed by an adult, but considered "delinquent" because of the age of the offender, a minor generally between ten and eighteen years old. The use of the term "crime" refers to and is included because of recent state statutory enactments that allow minors to be transferred to adult criminal courts for specified felony offenses, usually including homicide and other crimes of violence against persons. These legal definitions vary from jurisdiction to jurisdiction. See generally ANTHONY M. PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY* (expanded 40th anniversary ed. 2009); DAVID S. TANENHAUS, *JUVENILE JUSTICE IN THE MAKING* (2004).

² Throughout this article, "daycare" and "early intervention programs" generally refer to child care for children under school-age, and "after-school care" generally refers to services for children, particularly adolescents, available after school hours.

³ See Heather S. Dixon, *National Daycare: A Necessary Precursor to Gender Equality With Newfound Promise for Success*, 36 COLUM. HUM. RTS. L. REV. 561, 562 (2005).

“grown so pervasive that it [was] now called America’s child care crisis.”⁴ Yet Congress still made significant cuts in federal funding for child care for low income women, and comprehensive national legislation was a political impossibility.⁵ Then in 1990, the United States Congress considered over one hundred different child care bills.⁶ Although Congress eventually enacted the Child Care and Development Block Grant, it quickly became apparent it was ineffective.⁷ Since then, there have been no major policy revisions concerning daycare and after-school care despite the many recent findings by social scientists regarding the benefits of child care programs.

The intersection of child care and delinquency prevention should encourage policymakers to take advantage of today’s political climate to finally initiate comprehensive child care programs. Although not a panacea for these issues, quality daycare and after-school programs offer cost-effective methods of reducing the number of adolescents in juvenile court proceedings, and of lightening the burden on state and local governments for funding residential placements for adjudicated delinquents. Emerging long term studies provide data which was either incomplete or nonexistent during earlier national child care policy debates, revealing substantial cost-effective savings for communities that employ early child care programs.⁸ Armed with knowledge of these new benefits, policymakers should not balk at universal child care programs because of the initial expense they may entail.

This article first describes the private and problematic nature of child care in the United States as contrasted with publicly funded programs in many other developed nations. Part II then explains the intersection of delinquency and daycare. By addressing risk factors and providing nurturing environments, quality daycare and after-school programs could decrease juvenile delinquency and crime in a cost-effective manner. Finally, the article concludes with examples of successful child care programs in other nations as inspiration for possible components of a comprehensive U.S. child care policy.

⁴ Edward F. Zigler, *Addressing the Nation’s Child Care Crisis: The School of the Twenty-First Century*, 59 AM. J. ORTHOPSYCHIATRY 484, 484 (1989).

⁵ ALISON CLARKE-STEWART, DAYCARE 36–38 (rev. ed. 1993); Debbie Kaminer, *The Child Care Crisis and the Work-Family Conflict: A Policy Rationale for Federal Legislation*, 28 BERKELEY J. EMP. & LAB. L. 495, 505 (2007).

⁶ CLARKE-STEWART, *supra* note 5, at 38.

⁷ See Kaminer, *supra* note 5, at 506.

⁸ See Geoffrey A. Nagle, *The Economics of Infant Mental Health*, in HANDBOOK OF INFANT MENTAL HEALTH 580, 585 (Charles H. Zeanah, Jr. ed., 3d ed. 2009); Knudsen et al., *Economic, Neurobiological, and Behavioral Perspectives on Building America’s Future Workforce*, 103 PROC. NAT’L ACAD. SCI. 10155, 10155 (2006); Peter Pitegoff, *Child Care Enterprise, Community Development, and Work*, 81 GEO. L.J. 1897, 1913–15 (1993).

I. THE PRIVATE AND PROBLEMATIC NATURE OF DAYCARE
IN THE UNITED STATES

A. *The Private Nature of American Child Care as Compared
to European Public Child Care*

As many have recognized, the evolution of child care in the United States is closely connected with vast increases in women's participation in the workforce over the last sixty years. Since the end of World War II, the percentage of working women who have young children has increased more than fivefold.⁹ As of 2007, over seventy percent of women in the civilian labor force had children under eighteen.¹⁰

However, as Joan Lombardi, the first director of the federal Child Care Bureau, asserts, this social movement has not been accompanied by necessary reforms to the child care system. "A deep ambivalence characterized the entrance of women into the labor force, causing the country to close its eyes to the fact that more children, at increasingly younger ages, were spending many hours in settings outside their homes."¹¹ Thus, women have emerged from the private, domestic sphere, but U.S. child care policy has not. By the 1970s, attempts at a belated federal response to child care policy met strong opposition from the growing social conservative movement, which remains strong today.¹² Even as conservatives bemoaned the degradation of the American family, they opposed federal child care policy as undue state interference with private family matters.

In comparison, European public attitudes towards child care policy are fundamentally different. In many European Union countries and other civil law jurisdictions, the concept of parental authority and duties owed to children are codified in civil codes.¹³ This codification has contributed to a real prioritization of the wellbeing of children, which in turn has encouraged the creation of governmental policies designed to improve their welfare. Perhaps in contrast to the American experience, some researchers have suggested that "social roots for these systems can be found in the nineteenth century, when child care evolved in response to conditions associated with

⁹ JOAN LOMBARDI, *TIME TO CARE: REDESIGNING CHILD CARE TO PROMOTE EDUCATION, SUPPORT FAMILIES, AND BUILD COMMUNITIES* 2 (2003).

¹⁰ U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *WOMEN IN THE LABOR FORCE* 13 tbl.5 (2008), available at <http://www.bls.gov/cps/wlf-databook-2008.pdf>.

¹¹ LOMBARDI, *supra* note 9, at 2-3.

¹² KIMBERLY J. MORGAN, *WORKING MOTHERS AND THE WELFARE STATE* 181 (2006).

¹³ See Patricia Bégné, *Parental Authority and Child Custody in Mexico*, 39 *FAM. L.Q.* 527, 527-28 (2005); Dominique Goubau, *Joint Exercise of Parental Authority: The Quebec Civil Law Perspective*, 17 *CAN. J. FAM. L.* 333, 334-38 (2000); see also Xia Yinlan, *The Legal System of Guardianship Over Minors in the People's Republic of China*, 39 *FAM. L.Q.* 477, 477-78 (2005).

industrialization, including urbanization, the breakup of traditional family structures, and the entrance of mothers into the industrial workforce.”¹⁴

Demographic trends in Europe have also significantly contributed to greater acceptance of child care services provided and funded by the government. Reductions in the male workforce and declining birthrates have encouraged governments to provide child care services to ensure that able-bodied adults enter the workforce and to provide children with experiences that may be lacking in their family and local social networks.¹⁵ In general, ethnically and religiously homogenous countries that have lost population through out-migration or war have been particularly likely to provide public support for child rearing.¹⁶ In the United States, on the other hand, white apprehensions about the growth of African American and Hispanic populations have discouraged policies that would encourage increased childbirth rates, even as fertility rates are steadily declining.¹⁷

In response to these legal, social, and demographic movements, by the early 1990s, most European countries had achieved or were rapidly moving toward comprehensive early care and education for young children below compulsory school age.¹⁸ All of the member countries of the European Union (EU) now guarantee at least two or three years of pre-school.¹⁹ And EU leaders agree that by 2010, free or government subsidized full-day care for children should be available for at least one-third of all children under the age of three and for ninety percent of children aged three to six.²⁰

B. *The Problematic Consequences of Private Child Care*

Child care in the United States has never been viewed as a fundamental service deserving of government provision. Rather, it has been traditionally viewed as a private familial responsibility. This is not an insignificant burden for America’s families to bear. It is estimated that “[a]pproximately sixty-seven percent of American families need some kind of childcare assistance.”²¹ Without a comprehensive public policy to serve these families, for the most part, child care has been relegated to private providers in a competitive market system motivated by profit rather than true public need.²² The

¹⁴ Wolfgang Tietze & Debby Cryer, *Current Trends in European Early Child Care and Education*, 563 ANNALS AM. ACAD. POL. & SOC. SCI. 175, 176 (1999).

¹⁵ *Id.* at 177.

¹⁶ See MORGAN, *supra* note 12, at 180–81.

¹⁷ Paula England & Nancy Folbre, *Who Should Pay for the Kids?*, 563 ANNALS AM. ACAD. POL. & SOC. SCI. 194, 201.

¹⁸ Tietze & Cryer, *supra* note 14, at 180.

¹⁹ UNICEF INNOCENTI RESEARCH CTR., *THE CHILD CARE TRANSITION 4* (2008), available at http://www.unicef-irc.org/publications/pdf/rc8_eng.pdf.

²⁰ *Id.*

²¹ M. Isabel Medina, *In Search of Quality Childcare: Closing the Immigration Gate to Childcare Workers*, 8 GEO. IMMIGR. L.J. 161, 195 (1994).

²² See Jean Baker, *Child Care: Will Uncle Sam Provide a Comprehensive Solution for American Families?*, 6 J. CONTEMP. HEALTH L. & POL’Y 239, 240 (1990); LOMBARDI, *supra* note 9, at 7–8.

consequence has been the creation of a patchwork system of daycare and after-school care services plagued by high costs, inaccessibility, and unacceptably low quality.

1. *High Costs of Private Child Care*

The United States has more than 400,000 licensed and regulated child care centers and homes in operation, yet there remains a shortage of available child care, especially for low-income families.²³ With only 39% of the total national expenditure for child care coming from the government and 1% coming from the private sector, families must privately bear 60% of all costs.²⁴ Child care costs have risen exponentially in recent years, placing a significant strain on low-income families. In 2005, the U.S. Census Bureau found that families that are below the poverty level and that pay for child care spend 26.6% of their monthly income doing so, compared to only 7.7% for families over 200% of the poverty level.²⁵ Furthermore, child care is typically more expensive in urban areas where low-income families are more likely to live.²⁶

2. *Lack of Access to Private Child Care*

Prohibitively high costs are not the only obstacle for parents seeking suitable child care. Since child care is predominantly available through the competitive market, rural communities without great profit potential are often left underserved.²⁷ Even in rural communities that do offer child care facilities, parents may have to travel long distances in order to reach them. High fuel prices combined with a scarcity of public transportation options constitute considerable obstacles for low-income families in particular. In many instances, it is economically counterproductive for a parent to travel a long distance to place a child in a child care facility for a limited amount of time.

To overcome lack of access to child care, many parents must rely on the goodwill of neighbors or other family members.²⁸ However, assumptions that low-income families generally have extended family members available to provide competent child care may well be inaccurate. "One study found that more than 60 percent of welfare families had no friend or relative, inside or outside their immediate household, who could provide child care."²⁹ Fur-

²³ LOMBARDI, *supra* note 9, at 8.

²⁴ *Id.* at 9.

²⁵ U.S. Census Bureau, U.S. Dep't of Commerce, Who's Minding the Kids? Child Care Arrangements: Spring 2005, <http://www.census.gov/population/www/socdemo/child/ppl-2005.html> (scroll to PPL Table 6) (on file with the Harvard Law School Library).

²⁶ LOMBARDI, *supra* note 9, at 9.

²⁷ Kaminer, *supra* note 5, at 531-32.

²⁸ See Angela Hooton, *From Welfare Recipient to Childcare Worker: Balancing Work and Family Under TANF*, 12 TEX. J. WOMEN & L. 121, 136-38 (2002).

²⁹ LOMBARDI, *supra* note 9, at 8.

thermore, even when families do have access to informal child care, they often pay these relatives and friends for their services.³⁰

3. *Low Quality of Private Child Care*

When child care services are available, their quality is often unacceptably low. Part of the reason for pervasive low quality is the high cost of skilled labor.³¹ Even middle- and upper-income child care programs must frequently rely upon the services of minimum-wage-earning care providers. Child care providers typically earn annual salaries between \$15,000 and \$25,000 and receive few employment benefits.³² As a result of these low wages, child care jobs are not economically competitive, and thus undereducated or very young workers frequently fill these positions.³³ Since the most qualified workers can easily find more lucrative jobs, high turnover rates characterize the industry, causing service shortages, inconsistent care, and inadequate training.³⁴ In sum, “[w]hile some families can afford to pay child care’s true cost, a defining characteristic of the industry is that most families cannot, without support, finance the cost of high quality care, nor can they afford to pay child care workers decent wages.”³⁵ Paying a low wage may not itself guarantee that a child care program will be unable to provide quality care, but it makes it difficult to ensure a high qualitative standard of care across the child care industry.

Some studies suggest that the quality of child care is not associated with the provider’s age or experience, but rather is positively correlated with the training and education the provider has received.³⁶ Yet, state regulation of training has been notoriously poor with many states failing to mandate training for basic providers and even program directors.³⁷ Some estimates assert that between eight-two and ninety percent of all family child care homes in the United States are effectively unregulated by state agencies, either because no regulations are in effect or because the facilities have illegally avoided oversight.³⁸ The lack of regulation for so many child care providers detracts from the ability to provide children with appropriately nurturing environments during their formative childhood years. At a mini-

³⁰ *Id.* at 6.

³¹ See generally Pegg R. Smith, *Laboring for Child Care: A Consideration of New Approaches to Represent Low-Income Service Workers*, 8 U. PA. J. LAB. & EMP. L. 583 (2006) (arguing for increased unionization of child care employees to improve the quality of both working conditions and child care services).

³² TARYN W. MORRISSEY & PATTI BANGHART, FAMILY CHILD CARE IN THE UNITED STATES 2 (2007), available at http://www.nccp.org/publications/pub_720.html; David Crary, *A New Labor Battle: Child-Care Workers are Organizing, but Some States Resist*, PHILA. INQUIRER, Feb. 6, 2006, at C03.

³³ See Smith, *supra* note 31, at 583, 589.

³⁴ See Lombardi, *supra* note 9, at 13; Smith, *supra* note 31, at 588.

³⁵ Smith, *supra* note 31, at 590.

³⁶ MORRISSEY & BANGHART, *supra* note 32, at 2.

³⁷ See LOMBARDI, *supra* note 9, at 14.

³⁸ See *id.*

num, every state should require people who provide child care services outside of their own homes to undergo police record checks to exclude known pedophiles from operating child care centers. State agencies should also ensure that fundamental hygienic conditions are maintained at child care facilities. Yet, neither of these is necessarily required of commercially provided child care centers in the United States.³⁹

II. THE ADVANTAGES OF AFFORDABLE, HIGH-QUALITY CHILD CARE

A. *Community Benefits: Daycare and Delinquency*

The various benefits of quality child care services have been well documented.⁴⁰ Multiple studies show that quality child care can improve children's academic achievement, physical health, and psychological wellbeing. Yet little attention has been given to the broader connection between these positive effects and reduction of juvenile delinquency rates.⁴¹ Studies have revealed that poverty strongly correlates with delinquency,⁴² and quality child care has the potential to target these interconnected problems that today's low-income families face. Daycare programs for young children reduce high-risk factors, while after-school programs enhance protective factors.⁴³

1. *Early Intervention and Daycare Programs*

In the early 1990's, the United States Office of Juvenile Justice and Delinquency Prevention (OJJDP) developed a comprehensive strategy to respond to serious, violent, and chronic juvenile offenders, including early preventive intervention strategies.⁴⁴ The OJJDP reviewed the contemporary literature and concluded that clear evidence demonstrated that "[p]revention approaches applied from conception through age six that seek to reduce risk and enhance protection can be effective in preventing crime, violence, and substance abuse in adolescence and young adulthood."⁴⁵ The OJJDP cited "risk-focused" strategies that originated in the public health field as a possi-

³⁹ *See id.*

⁴⁰ *See, e.g.,* Nagle, *supra* note 8; Thomas G. O'Connor & David B. Parfitt, *Applying Research Findings on Early Experience to Infant Mental Health*, in *HANDBOOK OF INFANT MENTAL HEALTH*, *supra* note 8, at 120.

⁴¹ For one example of a longitudinal study examining early interventions and delinquent and criminal behavior, see Richard E. Tremblay & Wendy M. Craig, *Developmental Crime Prevention*, 19 *CRIME & JUST.* 151 (1995).

⁴² *See, e.g.,* ANTHONY BIGLAN ET AL., *HELPING ADOLESCENTS AT RISK* (2004).

⁴³ *See R. BARRI FLOWERS, KIDS WHO COMMIT ADULT CRIMES: SERIOUS CRIMINALITY BY JUVENILE OFFENDERS* 182-83 (2002).

⁴⁴ J. David Hawkins et al., *Preventing Serious, Violent, and Chronic Juvenile Offending*, in *SERIOUS, VIOLENT, & CHRONIC JUVENILE OFFENDERS* 47, 47 (James C. Howell et al. eds., 1995).

⁴⁵ *Id.* at 48.

ble model.⁴⁶ In the realm of juvenile delinquency, the OJJDP found through several longitudinal studies that structured educational daycare could be an effective way to reduce risk factors.⁴⁷

More specifically, children's academic attainment correlates with reduced delinquency. In particular, the OJJDP explained that "as a component of overall mental development, language functions as an indicator of later intelligence and is a critical factor in the relationship between intelligence and delinquency."⁴⁸ Good daycare programs contributed to language skills and thus decreased delinquency by improving children's readiness to enter school. For example, The Cost, Quality, and Child Outcomes in Child Care Centers Study concluded that children who had attended high quality daycare programs displayed better cognitive skills, including language, through age eight, allowing them to take greater advantage of the opportunities available at school.⁴⁹ Importantly, the study revealed that while these positive effects could be seen across all families, they were stronger for children at risk of not doing well in school—namely those with less-educated mothers. In other words, at-risk children "were more sensitive to the negative effects of poor quality child care and received more benefits from high quality child care."⁵⁰

Early educational intervention can have long-term positive effects for children from low-income families. The University of North Carolina in Chapel Hill's Abecedarian Project studied fifty-seven infants from low-income families randomly assigned to receive high quality daycare services, along with fifty-four infants in the control group who received no services.⁵¹ The participants enrolled as early as four weeks after birth, and remained in the program until kindergarten.⁵² When the individuals reached the age of twenty-one, they were surveyed and found to have had significantly higher scores on IQ and reading tests when compared with individuals in the control group.⁵³ Thus, early intervention daycare programs can improve academic outcomes and decrease delinquency well into a child's life.

Furthermore, quality child care can reduce incidence of mistreatment of children, further benefiting delinquency rates. Researchers have repeatedly

⁴⁶ *Id.*

⁴⁷ *Id.* at 55.

⁴⁸ Greg Parks, *High/Scope Perry Preschool Project*, JUV. JUST. BULL. (Office of Juvenile Justice & Delinquency Prevention, U.S. Dep't of Justice, Wash., D.C.), Oct. 2000, at 4, available at <http://www.ncjrs.gov/pdffiles1/ojjdp/181725.pdf>.

⁴⁹ See ELLEN S. PEISNER-FEINBERG ET AL., EXECUTIVE SUMMARY, THE CHILDREN OF THE COST, QUALITY, AND OUTCOMES STUDY GO TO SCHOOL 1-2 (1999), available at <http://www.fpg.unc.edu/ncedl/PDFs/CQO-es.pdf>.

⁵⁰ *Id.* at 2.

⁵¹ Craig Ramey, *Helping Children Get Started Right: The Benefits of Early Childhood Intervention*, in HELPING POOR KIDS SUCCEED: WELFARE, TAX, AND EARLY INTERVENTION POLICIES 21, 21 (Karen Bogenschneider & Jessica Mills eds., 2000), available at http://www.familyimpactseminars.org/s_wifis14report.pdf.

⁵² FRANK PORTER GRAHAM CHILD DEV. CTR., THE CAROLINA ABECEDARIAN PROJECT 4 (1974), available at http://www.fpg.unc.edu/~abc/assets/pdf/1974_abc_brochure.pdf.

⁵³ See Early Learning, Later Success: The Abecedarian Study (1999), available at <http://www.fpg.unc.edu/~abc/ells-04.pdf>; Ramey, *supra* note 51, at 21.

concluded that maltreatment during childhood is predictive of later offending during adolescence.⁵⁴ In particular, opportunities to detect neglect could have important effects on later delinquency. Research has shown neglect may be more harmful to emotional development even than abuse, and such emotional damage contributes to delinquency.⁵⁵ Well-trained child care providers can help detect cases of child abuse and neglect more readily, allowing for earlier and more effective intervention.

The High Scope/Perry Preschool Program, probably the most famous child care study, demonstrates the strong correlation between early child care services and reduced delinquency among children from low-income families.⁵⁶ The program focused on children with below average IQs from low-income African-American families from Ypsilanti, Michigan. From 1962 through 1967, 123 children in the school district assessed as high risk for school failure were divided into two groups: fifty-eight at ages three and four received high quality preschool education and daycare, and sixty-five in a second group received no services.⁵⁷ The educational program lasted two and a half hours, five days a week, for seven and a half months each year for preschool education, and it included teacher visitation with each mother and child at home for ninety minutes once per week during the school year over a period of two years.⁵⁸ Data was collected from both groups from ages three through eleven, and again at ages fourteen, fifteen, nineteen, twenty-seven, and forty.⁵⁹ The Perry Preschool Program remains exceptional among longitudinal studies of early intervention daycare and preschool projects because it continues to follow participants and the control group long after members completed high school, up to the age of forty for most participants.⁶⁰

Most importantly, the study showed strong evidence that the Perry Preschool Program significantly reduced criminal and delinquent behaviors in participants across their lifetimes.⁶¹ The Perry Preschool Program group had significantly fewer lifetime arrests than the control group.⁶² Program partici-

⁵⁴ See, e.g., Anna Stewart et al., *Transitions and Turning Points: Examining the Links Between Child Maltreatment and Juvenile Offending*, 32 CHILD ABUSE & NEGLECT 51, 61 (2008).

⁵⁵ Jane Watson, *Crime and Juvenile Delinquency Prevention Policy: Time for Early Childhood Intervention*, 2 GEO. J. ON FIGHTING POVERTY 245, 247 (1995).

⁵⁶ See generally LAWRENCE J. SCHWEINHART, THE HIGH/SCOPE PERRY PRESCHOOL STUDY THROUGH AGE (2005), available at http://www.highscope.org/file/Research/PerryProject/3_specialsummary%20col%2006%2007.pdf; Clive R. Belfield et al., *The High/Scope Perry Preschool Program: Cost-Benefit Analysis Using Data from the Age-40 Followup*, 41 J. OF HUM. RESOURCES 162 (2005).

⁵⁷ SCHWEINHART, *supra* note 56, at 1.

⁵⁸ Benfield et al., *supra* note 56, at 164.

⁵⁹ SCHWEINHART, *supra* note 56, at 1.

⁶⁰ See Frances A. Campbell et al., *The Development of Cognitive and Academic Abilities: Growth Curves From an Early Childhood Educational Experiment*, 37 DEV. PSYCHOL. 231, 232 (2001).

⁶¹ See SCHWEINHART, *supra* note 56, at 3.

⁶² *Id.* As of age forty, 36% of Program participants had been arrested five or more times, compared to 55% of control group members. In addition, 32% of Program participants had

pants who did become involved in criminal activity as adults were sentenced to significantly fewer months in prison or jail as of age forty.⁶³ As one reviewer explained, “[T]he program participants committed fewer delinquent or criminal acts, the acts they committed were less severe, and they were less likely to be chronic offenders than were control group members”⁶⁴ These findings were consistent up to the final evaluation when original participants reached age forty.⁶⁵

Similar decreases in juvenile delinquency were also documented among participants in the Syracuse University Family Development Research Program. The Syracuse Program “provided educational, nutrition, health and safety, and human service resources to 108 low-income, primarily African-American families beginning prenatally and continuing [through] elementary school age.”⁶⁶ The Program provided quality weekday child care and weekly home visits for participant families.⁶⁷ As in the High/Scope Perry Preschool Project, the Syracuse Program “decreased the total number, severity, and chronicity of later involvement with the juvenile justice system among participants.”⁶⁸ Only six percent of children in the Syracuse Program had juvenile records by the age of fifteen in comparison to twenty-two percent of those in the control group.⁶⁹ In addition, even those participants with juvenile records had committed less serious and fewer offenses than the juveniles in the control group.⁷⁰

These studies exemplify the strong longitudinal evidence showing that daycare programs permanently improve social behaviors, a benefit to both the participants and society.⁷¹ Daycare programs by themselves may not result in crime reduction, but well-crafted preschool and daycare programs that offer an intensive educational component, are staffed by well-trained professionals, and are funded to allow full participation by at-risk children appear to offer communities an affordable mechanism to significantly reduce overall delinquency and crime.⁷²

been arrested for a violent crime, compared to 48% of control group members. *Id.*; see also Benfield, *supra* note 56, at 169–70.

⁶³ SCHWEINHART, *supra* note 56, at 3. As of age forty, 28% of Program participants had ever been sentenced, compared to 52% of control group members. And only 7% of Program participants had ever been sentenced for felony offenses, compared to 25% of control group members. *Id.*; see also Benfield, *supra* note 56, at 169–70.

⁶⁴ Hirokazu Yoshikawa, *Long-Term Effects of Early Childhood Programs on Social Outcomes and Delinquency*, 5 FUTURE CHILDREN 51, 59 (1995), available at http://www.princeton.edu/futureofchildren/publications/docs/05_03_02.pdf.

⁶⁵ See SCHWEINHART, *supra* note 56, at 3; Benfield, *supra* note 56, at 169–70.

⁶⁶ Yoshikawa, *supra* note 64, at 59.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Hawkins et al., *supra* note 44, at 55–56.

⁷⁰ *Id.* at 56.

⁷¹ See JONATHAN CRANE & MALLORY BARG, COAL. FOR EVIDENCE-BASED POLICY, DO EARLY CHILDHOOD INTERVENTION PROGRAMS REALLY WORK? 9 (2003) (unpublished manuscript), available at <http://www.evidencebasedprograms.org/static/pdfs/Do%20Early%20Intervention%20Programs%20Really%20Work7.pdf>.

⁷² See Benfield, *supra* note 56, at 179.

2. *After-School Programs*

Many states have struggled to reduce juvenile delinquency. One meta-analysis examined the effect of a variety of juvenile justice system methods of addressing recidivism. It found that the cumulative effect of the interventions was only “equivalent to the difference between a forty-four percent recidivism rate for treated juveniles and a fifty percent rate for the untreated control group.”⁷³ In an attempt to improve these results, some cities have adopted curfew laws, believing that such tools would allow police to intervene, thus preventing or curtailing delinquent acts during evening hours. However, the curfew strategy has met much opposition. First, civil libertarians question the disparate impact of curfews on the rights of inner city children and adolescents.⁷⁴ Beyond these constitutional concerns, curfews are very expensive to enforce—a problem often underestimated or simply ignored by proponents. For example, following the enactment of a curfew in New Orleans, the city experienced substantial increased costs for additional policing of curfew violations and detention of offending juveniles.⁷⁵

Furthermore, studies of delinquent misconduct suggest curfews are not money well spent. Studies have shown that juvenile crime peaks between the after-school hours of 2 p.m. to 6 p.m., rather than later in the evening when curfews would be in effect.⁷⁶ As one critic argues, “Curfew laws are essentially cosmetic solutions to systemic problems. They require fewer resources than are necessary to reach the underlying social problems that contribute to juvenile crime. They are . . . desperate measures that allow cities to appear tough on crime.”⁷⁷

A common interpretation of the elevated crime rate during the afternoon hours is that adolescents are unsupervised during this time—between the end of the school day and when their parents come home from work.⁷⁸ With so many parents working outside the home, “[a]n estimated five to seven million, and up to as many as 15 million ‘latch-key children’ return to an empty home after school.”⁷⁹ These unsupervised children are at a greater risk for problem behaviors. Ground-breaking research conducted in the late

⁷³ BIGLAN ET AL., *supra* note 42, at 174 (quoting M.W. Lipsey & D.B. Wilson, *Effective Intervention for Serious Juvenile Offenders*, in SERIOUS AND VIOLENT JUVENILE OFFENDERS 313, 318 (R. Loeber & D.P. Farrington eds., 1998)).

⁷⁴ See Tona Trollinger, *The Juvenile Curfew: Unconstitutional Imprisonment*, 4 WM. & MARY BILL RTS. J. 949, 951, 953–54 (1996) (identifying substantive and procedural due process violations under Dallas, Texas curfew ordinance). *But see* Note, *Juvenile Curfews and the Major Confusion Over Minor Rights*, 118 HARV. L. REV. 2400, 2404–06 (2005) (challenging criticisms of juvenile curfews).

⁷⁵ See Brian Privor, *Dusk ‘Til Dawn: Children’s Rights and the Effectiveness of Juvenile Curfew Ordinances*, 79 B.U. L. REV. 415, 471 (1999).

⁷⁶ See Denise C. Gottfredson et al., *The Timing of Delinquent Behavior and Its Implications for After-School Programs*, 1 CRIMINOLOGY & PUB. POL’Y 61, 62 (2001).

⁷⁷ Trollinger, *supra* note 74, at 964.

⁷⁸ Gottfredson et al., *supra* note 76, at 63.

⁷⁹ AN-ME CHUNG, U.S. DEPT OF EDUC., *AFTER-SCHOOL PROGRAMS: KEEPING CHILDREN SAFE AND SMART 1* (2000), available at <http://www.ed.gov/pubs/afterschool/afterschool.pdf>.

1980s “showed that eighth-grade children who care for themselves for 11 or more hours per week without an adult present are twice as likely to use drugs as those who are always supervised.”⁸⁰ This remained true even when other variables, including socioeconomic status and number of parents in the household, were held constant.⁸¹

After-school programs target juvenile crime more effectively than curfews and also address underlying social problems that curfews ignore. As one researcher noted, “First and foremost, after-school programs keep children of all ages safe and out of trouble.”⁸² Providing adolescents with after-school alternative activities can decrease the chances they will engage in delinquent activities and, if well-designed, provide enriching experiences. Programs that promote exercise and physical activity could also help reduce the high rate of obesity among America’s children and improve their overall health.⁸³ In addition, research has shown that “[o]verall, children from low-income families spend less time in lessons, sports teams, and other extracurricular activities than do those from more affluent families.”⁸⁴ Thus, well-designed programs would directly reduce delinquency while compensating for this enrichment deficit and better integrating juveniles into the local community

In addition to providing constructive ways for adolescents to spend their time, after-school programs can help reduce delinquency by providing supervision and meaningful relationships with adults. One of the most successful after-school programs, Big Brothers/Big Sisters, shows how community-based mentorship programs can successfully reduce problem behaviors among adolescent participants.⁸⁵ Although all after-school programs may not be able to offer such intensive mentoring, more informal relationships with adults can still be productive. For example, caregivers can provide help with homework, strengthening attendees’ academic skills, which correlate with positive behavioral outcomes.⁸⁶ And children that develop relationships with adults through after-school programs are also less likely to abuse alcohol, another risk factor associated with delinquency.⁸⁷ Overall, after-school

⁸⁰ Gottfredson et al., *supra* note 76, at 63.

⁸¹ *Id.*

⁸² CHUNG, *supra* note 79, at 2.

⁸³ See KENNETH C. LAND, FOUND. FOR CHILD DEV., THE 2009 FOUNDATION FOR CHILD DEVELOPMENT CHILD AND YOUTH WELL-BEING INDEX (CWI) REPORT 4 (2009), available at http://www.fcd-us.org/usr_doc/Final-2009CWIRreport.pdf.

⁸⁴ David M. Casey et al., *Activity Participation and the Well-Being of Children and Adolescents in the Context of Welfare Reform*, in ORGANIZED ACTIVITIES AS CONTEXTS OF DEVELOPMENT: EXTRACURRICULAR ACTIVITIES, AFTER-SCHOOL AND COMMUNITY PROGRAMS 65, 80 (Joseph L. Mahoney et al. eds., 2005).

⁸⁵ See Bonnie Benard & Kathy Marshall, *Big Brothers/Big Sisters Mentoring: The Power of Developmental Relationships*, in THE RESILIENCE RESEARCH FOR PREVENTION PROGRAMS SERIES 2 (2001), available at <http://www.cce.umn.edu/pdfs/nrrc/mentoring.pdf>.

⁸⁶ See Casey et al., *supra* note 84, at 80.

⁸⁷ See Gottfredson et al., *supra* note 76, at 67.

programs can provide children with a “safe haven” and introduce them to positive role models that can help mitigate risk factors in their lives.⁸⁸

The Obama Administration budget currently appropriates \$1.1 billion for after-school programs under the No Child Left Behind Act. However, on the campaign trail, then-Senator Obama promised to double this funding.⁸⁹ A recent study by the nonprofit advocacy group Afterschool Alliance reports that parents of 18.5 million students would enroll their children in after-school programs if one were available.⁹⁰ This may represent the strongest showing of public support ever for the creation and expansion of funded after-school care programs. Armed with this data, the Obama Administration should renew its commitment to doubling funding for after-school programs.

B. *Economic Benefits*

Providing affordable, quality child care would afford economic benefits for children, their parents, and their communities.⁹¹ According to the Brookings Institution, a \$59 billion investment in high quality universal preschool could add \$2 trillion to annual U.S. gross domestic product by 2080.⁹² As the High Scope/Perry Preschool Program demonstrates, much of this return can be attributed to the maturation of children into more productive adults. At age forty, significantly more of the Program participant children were employed than were control group members.⁹³ Participants also enjoyed higher median annual earnings than the non-enrolled children and were more likely to own homes by age forty.⁹⁴ One researcher calculated that “the economic return to society of the Perry Preschool program was \$258,888 per participant on an investment of \$15,166 per participant—\$17.07 per dollar invested.”⁹⁵ This study confirmed that the beneficial impact of early childhood quality daycare services had lifetime effects with substantial financial returns for the public on its initial investment.⁹⁶

⁸⁸ *Id.* at 62.

⁸⁹ See Editorial, *Home Alone*, N.Y. TIMES, Oct. 19, 2009, at A30.

⁹⁰ AFTERSCHOOL ALLIANCE, AMERICA AFTER 3PM: KEY FINDINGS 1 (2009), available at http://www.afterschoolalliance.org/documents/AA3PM_Key_Findings_2009.pdf.

⁹¹ See generally SUZANNE W. HELBURN & BARBARA R. BERGMANN, AMERICA’S CHILD CARE PROBLEM: THE WAY OUT (2002) (examining the causes and potential cures of America’s child care problem from an economic perspective).

⁹² WILLIAM T. DICKENS ET AL., BROOKINGS INST., THE EFFECTS OF INVESTING IN EARLY EDUCATION ON ECONOMIC GROWTH 1 (2006), available at http://www.brookings.edu/~media/Files/rc/papers/2006/04education_dickens/pb153.pdf.

⁹³ SCHWEINHART, *supra* note 56, at 1. At age forty, 75% of participants were employed, compared to 62% of control group members. *Id.*

⁹⁴ *Id.* at 1–2. Participants’ median annual earnings was \$12,000 at age twenty-seven and \$20,800 at age forty, compared to \$10,000 and \$15,300, respectively, for control group members. Of program participants, 37% owned at home at age forty, compared to 28% of control group members. *Id.*

⁹⁵ *Id.* at 3. These calculations are in 2000 dollars, discounted at 3%. *Id.*

⁹⁶ See *id.* at 3–4.

Researchers and policymakers often focus on benefits for children, but parents also benefit from access to quality daycare.⁹⁷ First, parental employment is more difficult if children are too young to care for themselves and parents lack resources for child care.⁹⁸ Thus, access to child care could directly improve parents' employment opportunities. Child care would especially benefit low-income households with parents employed in entry-level wage jobs. Such jobs frequently impose inflexible work schedules not well-coordinated with school day schedules.⁹⁹ Thus parents' employment may be compromised without reliable child care. Child care can therefore provide economic benefits for parents, who are more likely to work and continue working, and for their employers, whose recruitment and training costs would decrease with improved employee retention and stability.

Quality child care is particularly essential for low-income parents in light of the federal transition from subsidized welfare to workfare.¹⁰⁰ Workfare programs encourage employment and provide supplemental benefits for families, but they alter family structures and parents' time at home.¹⁰¹ One study found that as of 2000, "nearly one million toddlers have been placed in daycare in the wake of welfare reform as single mothers move off welfare and into the workforce."¹⁰² If workfare programs are to succeed, they must be accompanied by a robust child care policy.

The impact of any change in child care policy will be felt disproportionately by working mothers. As discussed above, women have dramatically increased their participation in the workforce since the end of World War II and particularly since the 1970s. However, men have not proportionally increased their participation in domestic and child care responsibilities. "That many other traditional obstacles to gender inequality have been overturned means that parental responsibilities loom large as a current cause of lower earnings and restrictions on career advancement for women."¹⁰³ The U.S. General Accounting Office has estimated that by reducing the costs of child

⁹⁷ See Zigler, *supra* note 4, at 489.

⁹⁸ See Cheri L. Wood, Comment, *Childless Mothers?—The New Catch-22: You Can't Have Your Kids and Work for Them Too*, 29 LOY. L.A. L. REV. 383, 384–85 (1995).

⁹⁹ Michael Selmi & Naomi Cahn, *Women in the Workplace: Which Women, Which Agenda?*, 13 DUKE J. GENDER L. & POL'Y 7, 24 (2006).

¹⁰⁰ See generally Noah D. Zatz, *What Welfare Requires From Work*, 54 UCLA L. REV. 373 (2006); Noah D. Zatz, *Welfare to What?*, 57 HASTINGS L.J. 1131 (2006) (discussing the transition to work-based welfare under the reforms of the 1990s). U.S. work-based welfare reform includes the Temporary Assistance for Needy Families (TANF) program, codified at 42 U.S.C. § 601 (2006); the Earned Income Tax Credit (EITC), codified at 26 U.S.C. § 32 (2006); and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (1996 Welfare Reform Act), Pub. L. No. 104-193, 110 Stat. 2105 (1996).

¹⁰¹ Casey et al., *supra* note 84, at 80.

¹⁰² Amy L. Wax, *A Reciprocal Welfare Program*, 8 VA. J. SOC. POL'Y & L. 477, 503 (2001) (citing Tamar Lewin, *Study Finds Welfare Changes Lead a Million Into Child Care*, N.Y. TIMES, Feb. 4, 2000, at A17).

¹⁰³ England & Folbre, *supra* note 17, at 197.

care for families, the employment rate among low-income mothers would increase by as much as thirty-five percent.¹⁰⁴

Beyond these workplace benefits, investments in child care will also reduce U.S. spending on law enforcement and criminal justice. By preventing juvenile delinquency and crime, child care can decrease associated expenses, including police services, family courts, juvenile public defense services, and long term adult incarceration. Providing preventive services to juveniles rather than intervening once they have already become delinquent, neglected, or abused, can “alter the pathway to delinquent behaviors for these youth.”¹⁰⁵ As one researcher concluded, “Investing in disadvantaged young children is a rare public policy initiative that promotes fairness and social justice and at the same time promotes productivity in the economy and in society at large.”¹⁰⁶

III. A PROGRESSIVE VISION OF CHILD CARE

A. *Designing High Quality Child Care*

Child care programs must be well designed to achieve these positive individual and societal effects. The consistently low quality of current U.S. child care programs impairs realization of these benefits.¹⁰⁷ Longitudinal studies that have reported reductions in overall delinquency and subsequent criminal misconduct provide verified measures that could be adopted as components of any high quality daycare proposal. In addition, some independent research has helped to identify both the problematic aspects of many current daycare programs as well as the elements of the more successful high quality daycare offerings. One study of child care services identified the following characteristics of high quality early education programs:¹⁰⁸

- **Child care providers** must be well educated and adequately compensated. This reduces the turnover of the care providers, creates an environment in which children become familiar with their care providers, and enables providers to offer consistent social and emotional support.
- **Curricula** must be age-appropriate and delivered in appropriately sized groups and physical settings, with an emphasis on active engagement of children. This will reduce dependence on

¹⁰⁴ Marcia K. Meyers & Theresa Heintze, *The Performance of the Child-Care Subsidy System*, 73 SOC. SERV. REV. 37, 39 (1999).

¹⁰⁵ Andrew Grogan-Kaylor et al., *Behaviors of Youth Involved in the Child Welfare System*, 32 CHILD ABUSE & NEGLECT 35, 47 (2008).

¹⁰⁶ James J. Heckman, *Skill Formation and the Economics of Investing in Disadvantaged Children*, 312 SCIENCE 1900, 1902 (2006).

¹⁰⁷ Wax, *supra* note 102, at 503.

¹⁰⁸ LOU JEAN FLERON ET AL., CORNELL UNIV. ILR, BUFFALO CHILD CARE MEANS BUSINESS 1 (2006).

passive self-entertainment such as television and promote socialization skills.

- **Parents must be regularly informed** about their children's progress and development. Daycare programs should not be viewed as a substitution for parenting. Parental input regarding cultural values, religious values, and other aspects of the family lifestyle allow child care providers to better meet the needs of children.

Any daycare reform should address these fundamental components of quality child care.

After school programs also require a great deal of planning and coordination. Emulating popular mentorship programs like Big Brother/Big Sister can be extremely difficult, so such programs should be initiated only after adequate investigation. It has been estimated that two-thirds of mentorship pairs involving high-poverty children do not survive the introductory phase. "The adults and youths are typically from extremely different worlds. . . . Unfortunately, youth fare poorly when exposed to relationships that do not last long."¹⁰⁹ Some researchers have identified the amount of contact time between mentors and mentees in these programs to be particularly important.¹¹⁰ But the reality is that most mentorship programs were started in the late 1990s, and very few have undergone extensive, empirical follow-up studies.¹¹¹ While such programs have significant potential to benefit adolescents, funding should be restricted to those which have clearly stated objectives and detailed designs. Funding should also be dedicated to empirical studies of after-school programs so that successful programs can be emulated and funded in the future.

B. *A Comprehensive Public Policy*

The 1980s marked perhaps the most active efforts to establish a national daycare policy. Many early longitudinal studies on the benefits of child care received national attention, yet legislative efforts to garner Congressional support fell short. Since then, those early studies have been supplemented by more extended documentation of the significant positive impacts of child care for program participants. What was once speculated is now documented: high quality child care services significantly reduce delinquency and criminal misconduct.

To ensure that quality child care and its attendant benefits reach all children, the government must develop a comprehensive child care policy. As described above, leaving child care in the hands of the private market has left the United States lagging behind our European counterparts and simply will not produce the quality services needed to engender all the potential

¹⁰⁹ BARTON J. HIRSCH, *A PLACE TO CALL HOME: AFTER-SCHOOL PROGRAMS FOR URBAN YOUTH* 57 (2005).

¹¹⁰ *Id.* at 67.

¹¹¹ *See id.*

positive benefits child care has to offer. Although private companies can benefit from providing child care services for their employees, and many well-financed employers do offer programs such as flexible scheduling, on-location daycare, and parental leave,¹¹² many businesses simply lack the capital to provide comprehensive services for their employees. This is particularly true of small businesses and those that depend on low-wage earners most in need of such services. The following reform suggestions are designed to aid federal and state governments in developing a comprehensive child care policy.

1. *Infrastructure: Potential Federal and State Leaders*

In order to implement a comprehensive child care policy, the U.S. government must first establish a suitable oversight and infrastructure. It may be that a collaborative working arrangement between federal agencies would best support the creation of a national daycare and after-school care policy. Some European countries have taken this route, electing not to create a single governmental agency to oversee all aspects of child care policy. In Denmark, for example, fifteen different ministries work under a Governmental Child Committee to provide services to children and families.¹¹³ In the United States, similar cooperative efforts have recently emerged between the Departments of Education and Health and Human Services.¹¹⁴

In comparison to a multi-agency model, Peter W. Greenwood recently reviewed the various existing federal agencies—including the Departments of Justice, Education, and Health and Human Services—which could oversee implementation of a national policy for early delinquency prevention programs. He concluded that the Department of Health and Human Services should be responsible for early prevention programs while the Department of Justice should focus on the needs of high-risk and adjudicated juveniles.¹¹⁵ Alternatively, David P. Farrington and Brandon C. Welsh, two of the most recognized national experts on crime and delinquency policy, have also proposed the creation a new national council on early crime prevention.¹¹⁶ The proposed council would be similar in scope to Sweden's National Council

¹¹² Reagan Baughman et al., *Productivity and Wage Effects of "Family Friendly" Fringe Benefits*, 24 INT'L J. MANPOWER 247, 257–58 (2003).

¹¹³ JOHN BENNETT ET AL., OECD REVIEW TEAM, EARLY CHILDHOOD EDUCATION AND CARE POLICY IN DENMARK 7 (2001), available at <http://www.oecd.org/dataoecd/31/56/33685537.pdf>

¹¹⁴ See Posting of Lisa Guernsey to Early Ed Watch, http://earlyed.newamerica.net/blog/posts/2009/breaking_down_the_walls_between_hhs_and_the_dept_of_ed-24871 (Dec. 8, 2009) (on file with the Harvard Law School Library); Posting of Lisa Guernsey to Early Ed Watch, http://earlyed.newamerica.net/blogposts/2009/duncan_early_ed_can_get_schools_out_of_the_catch_up_business-18435 (Nov. 19, 2009) (on file with the Harvard Law School Library).

¹¹⁵ PETER W. GREENWOOD, CHANGING LIVES: DELINQUENCY PREVENTION AS CRIME-CONTROL POLICY 179 (2006). For an earlier, alternative proposal for a joint venture between the Head Start Bureau and OJJDP, see Watson, *supra* note 55, at 255.

¹¹⁶ DAVID P. FARRINGTON & BRANDON C. WELSH, SAVING CHILDREN FROM A LIFE OF CRIME: EARLY RISK FACTORS AND EFFECTIVE INTERVENTIONS 162–63 (2007).

for Crime Prevention (established in 1974) and Canada's National Crime Prevention Centre (established in 1994), which both develop evidence-based crime prevention proposals for their respective national governments.¹¹⁷

Regardless of which existing or new agency takes the lead, the federal government should focus primarily on the creation of a national policy for daycare and after-school programs. Policy considerations could include national guidelines for child care facilities seeking federal funding. Specific policies should include requiring child care centers to maintain criminal record checks of all child care providers, compliance with local and regional health codes, disclosing employee wage data, and undergoing periodic inspection to ensure compliance with national standards of care.

However, traditional notions of federalism may limit national coordination of these efforts. Traditionally, child care has fallen within the states' domains of education and family matters. For example, although the federal Head Start Reauthorization Act of 2007 required the creation of a coordinated system of early childhood education and care, a recent report on state compliance shows that only nineteen states have councils (called Early Childhood Advisory Councils, or ECACs), while thirteen states are in the process of developing such councils, and one state—South Dakota—has decided not to apply for any of the available federal funding.¹¹⁸ Thus any federal effort must be prepared for substantial cooperation—and delays—from states. To foster cooperation, state-run programs should also be evaluated as potential recipients of federal support once they demonstrate viability.

Successful state initiatives include Colorado's Nurse Home Visitor Program, an evidence-based delinquency prevention strategy designed to reduce and eliminate child maltreatment by first-time mothers with incomes below the federal poverty level.¹¹⁹ Similarly, Louisiana has also launched a grassroots effort called Children's Initiatives, which focuses on developing parenting skills, training, and building character, in addition to providing child care services. The Children's Initiatives programs display many of the characteristics of successful programs noted above, such as well-trained care providers, standardized curricula, and close communications with parents.¹²⁰ New Jersey has also gained national attention for its provision of high quality pre-kindergarten programs to all three- and four-year-old children in thirty-one of the state's highest poverty districts. The state is currently expanding the program to the other 560 educational districts.¹²¹ These pro-

¹¹⁷ *Id.*

¹¹⁸ CHRISTINA SATKOWSKI, NEW AM. FOUND., THE NEXT STEP IN SYSTEMS-BUILDING: EARLY CHILDHOOD ADVISORY COUNCILS AND FEDERAL EFFORTS TO PROMOTE POLICY ALIGNMENT IN EARLY CHILDHOOD 2 (2009), available at http://newamerica.net/sites/newamerica.net/files/policydocs/Early_Childhood_Advisory_Councils_Nov_09_0.pdf.

¹¹⁹ See Ned Calgone, *Community Interventions to Prevent Violence: Translation Into Public Health Practice*, 28 AM. J. OF PREVENTIVE MED. 4, 5 (2005).

¹²⁰ See Anne Hasselbrack, *Watching Grassroots Grow in Louisiana: The Children's Initiatives*, in JUVENILE JUSTICE TODAY 61, 61 (American Corr. Ass'n ed., 2002).

¹²¹ See SARA MEAD, NEW AM. FOUND., EDUCATION REFORM STARTS EARLY: LESSONS FROM NEW JERSEY'S PREK-3RD REFORM EFFORTS 1 (2009), available at <http://www.new>

grams are particularly useful models as they use quantifiable results, making it possible to assess the efficacy of programs. A national strategy for daycare and after-school care should consider funding similar projects in other jurisdictions or providing funding to continue such state programs.

2. *Funding: Directly Funded Programs and Vouchers*

Perhaps the most dramatic possible reform would be to mandate compulsory preschool and lengthen the school day or school year for older children. These measures would significantly decrease the amount of time all children are in need of child care or other supervision. Models from other countries exist for these large-scale reforms. In Sweden, for example, municipalities must provide pre-school classes for all six-year-olds.¹²² Participation is voluntary, but ninety-one percent of all Swedish six-year-olds attend these pre-school classes.¹²³ Germany is considering extending the length of the average school day for public schools.¹²⁴ Such an extension of the school day would likely be met with great resistance from school boards and teacher unions in the United States. But exploring such alternatives to current practices might lead to greater reductions in juvenile delinquency, higher academic achievement by U.S. students, and minimize the massive numbers of latch-key children who continue to be unsupervised by adults while they wait for their parents to return home from the workplace.

The U.S. government also could provide more extensive child care services without intruding upon the realm of state-run education systems by providing a variety of daycare and after-school care services. European practices provide viable models, as those governments have had national child care policies in place for decades.¹²⁵ European nations have adopted various combinations of tax credits, paid family leave provisions, public daycare centers, and subsidies to and regulation of private daycare providers.

The much-acclaimed services provided by the French government offer one such model.¹²⁶ Following World War II, France quickly increased the

america.net/sites/newamerica.net/files/policydocs/Education%20Reform%20Starts%20Early_0.pdf.

¹²² LARS GUNNARSSON ET AL., OECD REVIEW TEAM, EARLY CHILDHOOD EDUCATION AND CARE POLICY IN SWEDEN 30 (1999), available at <http://www.oecd.org/dataoecd/48/17/2479039.pdf>.

¹²³ *Id.*

¹²⁴ *Falling Behind: Working Women in Germany Grapple With Limited Child-Care Options*, KNOWLEDGE@WHARTON, Mar. 28, 2007, <http://knowledge.wharton.upenn.edu/create/pdf.cfm?articleid=1694> (on file with the Harvard Law School Library).

¹²⁵ See, e.g., MORGAN, *supra* note 12, at 3.

¹²⁶ For several perspectives on French child care, see Jane Jenson & Mariette Sineau, *France: Reconciling Republican Equality With 'Freedom of Choice'*, in WHO CARES? WOMEN'S WORK, CHILDCARE, AND WELFARE STATE REDESIGN 88 (Jane Jenson & Mariette Sineau eds., 2003); Claude Martin & Blanche Le Bihan, *Public Child Care and Preschools in France*, in CHILD CARE AND PRESCHOOL DEVELOPMENT IN EUROPE 57 (Kirsten Scheiwe & Harry Willekens eds., 2009); Kimberly Morgan, *Does Anyone Have a "Libre Choix"? Subversive Liberalism and the Politics of French Child Care Policy*, in CHILD CARE POLICY AT THE CROSSROADS 143 (Sonya Michel & Rianne Mahon eds., 2002).

number of daycare services. By the 1970s, these schools were universally available, and France was recognized as one of the leading providers of early childhood education in the world.¹²⁷ Three types of services are currently available for young children: community day nurseries, organized family care, and parent cooperatives.¹²⁸ In addition, French services provide part-time or drop-in care for children who need only occasional care.¹²⁹ With proper funding, the United States could emulate this model for daycare as well as after-school services.

Aside from direct funding of comprehensive programs, vouchers may offer an alternative method of government supported child care. Europeans have had limited experiments with the use of government funded vouchers, which provided families a number of options for child care provision. In 1996–97, the United Kingdom created a regional voucher system in England and Wales, but it ended soon after when the Labour Party won a national election.¹³⁰ In Hamburg, Germany, a more successful voucher program has been in place since the passage of the 2003 Hamburg Act on Aid for Children in Child Care and Day-Care Institutions. After some initial difficulties, the program now successfully serves eligible families in need of child care, and some politicians have called for expansion of the program.¹³¹

In the United States vouchers have attracted the attention of advocates for child care providers as since the 1970s.¹³² Such a funding scheme appeals to conservatives who generally oppose federal provision of child care but who might be receptive to child care centers run by religious groups. Vouchers have been a cornerstone in previous attempts at creating federally-funded early child care such as the failed 1987 Act for Better Child Care (ABC) bill, which proposed mandated federal child care standards and offered a combination of grants, contracts, loans, and vouchers.¹³³ Vouchers could also be employed in a composite system. For example, Professor Debbie Kaminer's proposal for national child care policy suggests the adoption of a voucher system supplemented by contracted care in communities where there is a shortage of child care providers.¹³⁴

No one will deny that public child care, whether implemented with direct funding or vouchers, will be very expensive. Again, we should learn

¹²⁷ See Jenson & Sineau, *supra* note 126, at 90–94; Martin & Le Bihan, *supra* note 126, at 59–61; Morgan, *supra* note 126, at 143–49.

¹²⁸ Jane Jenson & Mariette Sineau, *Comparing Childcare Programs: Commonalities and Variety, in WHO CARES?*, *supra* note 126, at 214, 222.

¹²⁹ *Id.*

¹³⁰ Margarete Schuler-Harms, *Money Matters—Experiments in Financing Public Child Care, in CHILD CARE AND PRESCHOOL DEVELOPMENT IN EUROPE*, *supra* note 126, at 222, 226.

¹³¹ *Id.* at 226–27.

¹³² See Michael D. Parker, *Vouchers for Day Care of Children: Evaluating a Model Program*, 68 *CHILD WELFARE* 633, 634 (1989).

¹³³ See SALLY S. COHEN, *CHAMPIONING CHILD CARE* 93–96 (2001); see also Ron Haskins & Hank Brown, *The Day-Care Reform Juggernaut*, *NAT'L REV.*, Mar. 10, 1989, at 40, 40–41.

¹³⁴ See Kaminer, *supra* note 5, at 534. Kaminer also credits Helburn and Bergmann with an early proposal for a mix of vouchers and contracted spaces. See Kaminer, *supra* note 5, at 534 (citing HELBURN & BERGMANN, *supra* note 91, at 48).

from our European counterparts, which have faced serious financial challenges in running their child care programs in recent years. For example, due to shortages of publicly funded child care services in both France and Belgium, policymakers today encourage parents to select a stay-at-home caretaker, hire a nanny, or solicit the services of other relatives.¹³⁵ If the experience of these European countries is predictive, genuine child care reform might require a substantial tax increase, at least until the various benefits of the reform—such as reduced numbers of incarcerated individuals and more a more productive adult population—are realized.

Of course, reformers must be prepared for strong opposition to tax increases to pay for child care services. Some economists warn that affluent families in particular would oppose increases since they can already purchase high-quality private services on their own and therefore would object to subsidizing government-provided services for lower-income families.¹³⁶ To earn widespread support, the government must convince parents that its services are actually superior to any that could be purchased on the private market. Since the government would be able to respond to the real needs of children and families, rather than only those needs that are profitable to meet, superior government services are far from impossible. In fact, in several European countries including France and Sweden, “it is the wealthier families who tend to use the publicly funded daycare services more often.”¹³⁷ This finding suggests that wealthy families, too, could benefit from publicly funded services and thus could be convinced to support tax increases to support them. In the end, the greatest resistance to tax increases can be expected to come from Americans opposed to subsidizing other people’s children when their own children have already been raised on private dollars.¹³⁸ Reformers must convince these and other opponents that children’s wellbeing and development ultimately is a public obligation.¹³⁹

3. Tax Code Reforms

Other than directly funded child care programs, the most common form of government subsidy for child care is likely to be found in the tax code. In the United States, there are currently two types of tax breaks for child care costs: the universally available child and dependent care credit, and pre-tax dependent care accounts available only through employers.¹⁴⁰ Tax subsidies and credits could comprise valuable components of a national policy to promote effective child care. However, these tax solutions are subject to many limitations. Generally, such proposals benefit the middle- and upper-classes

¹³⁵ Jenson & Sineau, *supra* note 128, at 215; Morgan, *supra* note 126, at 143.

¹³⁶ England & Folbre, *supra* note 17, at 201.

¹³⁷ Dixon, *supra* note 3, at 583; *see also* Jenson & Sineau, *supra* note 128, at 225.

¹³⁸ *See* England & Folbre, *supra* note 17, at 201.

¹³⁹ *See id.* at 200.

¹⁴⁰ Ashlea Ebeling, *The ABCs of Child Care Breaks*, FORBES.COM, Mar. 18, 2009, <http://www.forbes.com/2009/03/18/nanny-tax-credit-personal-finance-taxes-child-care.html> (on file with the Harvard Law School Library).

most, as many families in need of daycare and after school care will have incomes so low that they will have very little tax liability to begin with. For these low-income families, tax credits will do very little to increase access to child care services.

The various tax breaks and subsidies are also subject to a number of more specific limitations. First, standard tax return credits only apply to children under the age of thirteen and require that neither parent can be available to watch the child full time.¹⁴¹ In addition, *Smith v. Commissioner* established that child care expenses were personal expenses and, therefore, were not deductible as ordinary business expenses.¹⁴² This decision remains valid today and it “precludes the deduction of child care expenses that would not otherwise fall under [Internal Revenue Code] Sections 21 or 129.”¹⁴³ But these two sections of the tax code do not provide a refund for low-income taxpayers with low taxability.¹⁴⁴ Moreover, low-income parents cannot afford to pay market price for the child care services the credits were originally designed to promote.¹⁴⁵

The tax code also encourages employers to provide worker benefits through provisions that allow the employer to deduct the cost of the premiums as a business expense, and also exclude the employer contributions from payroll taxes such as social security.¹⁴⁶ The Internal Revenue Code also includes provisions excluding money spent on employer-sponsored flexible spending accounts to pay for dependent care from gross income.¹⁴⁷ Yet, as one critic of this benefit explains, “The rub is that administering the program requires fairly involved record-keeping and accounting procedures that are unattractive to most employers, so there are relatively few participants, as evidenced by low revenue losses incurred by the government in offering the deduction.”¹⁴⁸

In the late 1990s several proposals emerged calling for revisions in tax policy to better facilitate child care.¹⁴⁹ The most promising of these recommendations called for some tax credits to be untethered from income to provide “a more reliable and appropriate method of adjusting the level of benefit for both family size and income level.”¹⁵⁰ Other countries’ practices may provide a model. Some European countries currently offer subsidies that are restricted to low-income families.¹⁵¹ And in general, European

¹⁴¹ *Id.*

¹⁴² 40 B.T.A. 1038 (1939), *aff’d*, 113 F.2d 114 (2d Cir. 1940).

¹⁴³ Nancy E. Shurtz, *Gender Equity and Tax Policy: The Theory of “Taxing Men”*, 6 S. CAL. REV. L. & WOMEN’S STUD. 485, 519 (1997).

¹⁴⁴ *Id.* at 519–20.

¹⁴⁵ *Id.* at 520.

¹⁴⁶ Katherine Elizabeth Ulrich, *Insuring Family Risks: Suggestions for a National Family Policy and Wage Replacement*, 14 YALE J.L. & FEMINISM 1, 58 (2002).

¹⁴⁷ *Id.* at 58–59.

¹⁴⁸ Shurtz, *supra* note 143, at 521.

¹⁴⁹ *Id.* at 522–23.

¹⁵⁰ *Id.* at 523. For the plan discussed, see Allan J. Samansky, *Tax Policy and the Obligation to Support Children*, 57 OHIO ST. L.J. 329, 375–77 (1996).

¹⁵¹ Tietze & Cryer, *supra* note 14, at 183.

countries seem to have found success in using their tax codes to help families afford quality private child care. The French government, for example, provides subsidies for parents who use family child care and special tax breaks for parents who hire nannies.¹⁵² Although these tax breaks do not address the shortcomings of private child care described above, they at least allow families to afford some child care, helping jumpstart the economic benefits also described above.

4. *New Leave Policies*

Perhaps the only major policy change in the United States concerning child care since the mid-1970s has been the creation of federally required family and medical leave, along with the adoption of similar provisions by state governments.¹⁵³ American employers of more than fifty workers are required by the Family and Medical Leave Act (FMLA) of 1993 to provide twelve weeks of unpaid family leave.¹⁵⁴ But these leaves of absence from work remain unpaid, so the parent taking the leave is dependent upon the employer's goodwill for any compensation.¹⁵⁵ Today, the United States remains "one of the few advanced, industrialized countries in which parents have no entitlement to a paid parental leave."¹⁵⁶ In comparison, in European countries, mothers are typically paid seventy-five percent or more of their earnings while on maternity leave, and many countries also provide paid paternity and other family leave.¹⁵⁷

The United States could improve its leave policies by mandating paid leave, especially for new parents. Of course, expanded leave provisions would increase care for infants only, but improved care during this crucial time of child and family development could yield exponentially greater benefits in the long term. It would also preserve parents' funds for child care services when the leave term concludes, while simultaneously ensuring that parents do not lose their jobs when new children are born. Thus, although expanded family leave would not address all of the deeper issues discussed herein, it should be part of any comprehensive child care policy.

¹⁵² Shurtz, *supra* note 143, at 146.

¹⁵³ See Morgan, *supra* note 12, at 135.

¹⁵⁴ 29 U.S.C. §§ 2601–2654 (2006).

¹⁵⁵ Morgan, *supra* note 12, at 135.

¹⁵⁶ *Id.* at 151. In April 2008, California Congressman Pete Stark introduced unsuccessfully a family leave insurance bill in the House of Representatives, the Family Leave Insurance Act of 2008, noting that the United States was one of only four countries in the world that did not guarantee some form of paid family leave; the other three countries were Liberia, Papua New Guinea, and Swaziland. See Theresa Bresnahan-Coleman, Note, *The Tension Between Short-Term Benefits for Caregivers and Long-term Effects of Gender Discrimination in the United States, Canada, and France*, 15 *NEW ENG. J. INT'L & COMP. L.* 151, 161 (2009).

¹⁵⁷ Tietze & Cryer, *supra* note 14, at 184.

CONCLUSION

A profound conceptual shift is needed in American child care policy debates. Child care must be recognized as an investment, not as consumption.¹⁵⁸ While funding a comprehensive child care program presents major challenges, “[f]raming high quality child care and early childhood education in terms of economic development is a crucial component to economic growth and competitiveness at the national, state and local level.”¹⁵⁹ Emerging longitudinal studies and well-established examples from our European counterparts call for serious consideration and investment by U.S. policy-makers. As these models show, a national child care policy offers the Obama Administration a unique opportunity to stabilize childhood experiences for millions of American children, increase productivity of American families, and finally reduce juvenile delinquency and subsequent criminal misconduct that has long plagued our communities.

¹⁵⁸ England & Folbre, *supra* note 17, at 203.

¹⁵⁹ FLERON ET AL., *supra* note 108, at 2.