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Ellie D. Shefi

University of Michigan Law School

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WAIVING GOODBYE: INCARCERATING WAIVED JUVENILES IN ADULT CORRECTIONAL FACILITIES WILL NOT REDUCE CRIME

Ellie D. Shefi*

Incarcerating waived juveniles in adult correctional facilities does not reduce crime or result in increased public safety; incarcerating juveniles with adults is deleterious to both the individual offender and society. This Note argues for a renewed focus on rehabilitative rather than retributive justice, and in so doing, proposes the implementation of a comprehensive continuum of graduated sanctions that includes networks of small, secure, highly structured maximum-security juvenile facilities, wilderness camps, residential and non-residential community-based programs, restitution, and fines. This Note further advocates for the incorporation of extensive education, vocational training and placement, counseling, treatment, supervision, mentoring, transitional, aftercare, and support services. By providing the appropriate services in the appropriate setting, youthful offenders can be rehabilitated while simultaneously being held accountable for their actions; recidivism will be reduced and both society and the youth will be better served.

I. INTRODUCTION

Fueled by media reports of violent juvenile offenders, Americans call for increasingly harsh penal sanctions for juveniles. Legislators have responded to the public's cries for vengeance and protection by passing an abundance of "get tough" legislation permitting waiver, the transfer of juveniles to adult criminal court for prosecution, and the imposition of adult sanctions. Although young offenders should be held accountable for their actions and transfer to criminal court may be appropriate under egregious circumstances, placement in brutal adult institutions where they are routinely victimized and denied access to necessary educational, vocational, and counseling services is not the answer.

This Note illustrates why incarcerating juveniles in adult institutions is undesirable given the core policies behind the

* J.D. 2002, University of Michigan Law School; B.A. 1997, University of Texas, San Antonio. Member of the California Bar. Judicial law clerk for The Honorable E. Clifton Knowles, in the U.S. District Court for the Middle District of Tennessee. I would like to thank my family and friends, especially Ron and Debra, for their encouragement and support. I would also like to extend my appreciation to Professor William Cooper for his invaluable insight and guidance throughout this process.

procedure and the available alternatives. Part II of this Note provides an overview of the four philosophies underlying juvenile justice policy in the United States. Part III explains the development of the American juvenile court. Part IV discusses the harmful effects of incarcerating waived juveniles in adult correctional facilities, and Part V suggests alternative facilities and programs for sanctioning waived juveniles.

Incarcerating waived juveniles in adult correctional institutions is both unnecessary and detrimental to society. This Note instead proposes the implementation of a comprehensive continuum of graduated sanctions that would include networks of small, secure, highly structured maximum-security juvenile facilities, as well as a wide spectrum of residential and non-residential community-based programs encompassing intensive counseling, treatment, supervision, and mentoring.

II. PHILOSOPHIES OF JUVENILE JUSTICE

Four basic philosophical goals have developed and individually formed the basis for juvenile justice policy in the United States: rehabilitation, incapacitation, deterrence, and retribution (or “just desserts”).¹ The initial foundation of the United States juvenile justice system, rehabilitation, emphasizes treatment rather than punishment, by seeking to transform the offender’s behavior.² Rehabilitative treatment focuses on the individual’s mental health and personal characteristics, as opposed to the punishment of prohibited acts.³

Rehabilitation is a planned intervention that aims to reduce recidivism by modifying the thought processes, ideals, and values of young offenders.⁴ To accomplish this goal, rehabilitative treatment assists juveniles in obtaining valuable life skills by providing them with specialized programs, counseling, education, and vocational training, and by offering alternative opportunities for success.⁵

Beginning in the 1960s, increasing criticism that rehabilitation was too lenient and ineffective caused a shift in juvenile justice

1. Jennifer M. O’Connor & Lucinda K. Treat, *Getting Smart About Getting Tough: Juvenile Justice and the Possibility of Progressive Reform*, 33 AM. CRIM. L. REV. 1299, 1306 (Summer 1996).

2. *Id.* at 1306.

3. Kelly Keimig Elsea, *The Juvenile Crime Debate: Rehabilitation, Punishment, or Prevention*, 5 KAN. J.L. & PUB. POL’Y 135, 138 (Fall 1995).

4. O’Connor & Treat, *supra* note 1, at 1307.

5. *Id.*

policy, from rehabilitation toward incapacitation and deterrence. Over the past two decades, more than 25% of states have explicitly redefined the purpose of their juvenile courts to “de-emphasize rehabilitation and the child’s ‘best interests’ and emphasize the importance of protecting public safety, enforcing children’s obligations to society, applying sanctions consistent with the seriousness of the offense, and rendering appropriate punishment to offenders.”⁶

The goal of incapacitation is to prevent the commission of crimes by removing the offender from the street.⁷ Although it is admittedly only a short-term “solution,” many politicians favor incapacitation as a means of satisfying the public’s voracious appetite for “justice.”⁸ They argue that incapacitation serves as a primary tool for both specific and general deterrence. Specific deterrence aims to dissuade the individual juvenile offender from re-offending via the imposition of sanctions, often in the form of incarceration.⁹ General deterrence seeks to make an example of the offending youth and dissuade other youth from committing similar crimes for fear of receiving similar punishment.¹⁰

6. Elsea, *supra* note 3, at 139 (quoting Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691, 709 (1991)).

7. O’Connor & Treat, *supra* note 1, at 1307–08.

8. Elsea, *supra* note 3, at 136 (noting that “a recent poll revealed that approximately 73% of Americans believe that juveniles who commit violent crimes should be punished as adults”); see also BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1990 157 (Kathleen Maguire and Timothy J. Flanagan eds.) (1990); RICHARD A. MENDEL, AMERICAN YOUTH POLICY FORUM, LESS HYPE, MORE HELP: REDUCING JUVENILE CRIME, WHAT WORKS—AND WHAT DOESN’T 38 (2000) [hereinafter MENDEL, REDUCING JUVENILE CRIME]; Ira M. Schwartz et al., *Public Attitudes Toward Juvenile Crime & Juvenile Justice: Implications for Public Policy*, 13 HAMLINE J. PUB. L. & POL’Y 241, 250 (1992) [hereinafter Schwartz et al., *Public Attitudes*]; IRA M. SCHWARTZ ET AL., THE PERCEPTION AND REALITY OF JUVENILE CRIME IN MICHIGAN 1, 3 (1990); DAVID STEINHART, CALIFORNIA OPINION POLL: PUBLIC ATTITUDES ON YOUTH CRIME, NAT’L COUNCIL ON CRIME & DELINQ. FOCUS 1 (Dec. 1988); Megan Twohey, *The Wrong Answer to Littleton: A Few Teen Criminals Belong in Prison, But Most Do Not*, WASH. MONTHLY, June 1999, at 17.

9. O’Connor & Treat, *supra* note 1.

10. *Id.* In order for either form of deterrence to be successful, however, three factors must be present. First, the juvenile must utilize a rational thought process when deciding whether to commit a crime. Research indicates that few juvenile offenders calculate the consequences of their criminal behavior when committing criminal acts. See Lauren D’Ambra, *A Legal Response to Juvenile Crime: Why Waiver of Juvenile Offenders Is Not a Panacea*, 2 ROGER WILLIAMS U. L. REV. 277, 297–98 (Spring 1997). Second, the justice system must provide a quick, predictable, and certain sanction in response to the commission of a particular crime. O’Connor & Treat, *supra* note 1, at 1307 n.59 (noting that research indicates that sanctions must immediately follow crimes in order for youth to associate the causal relationship of their behavior with their punishment and subsequently be deterred from repeating their behavior). Third, the punishment must be appropriate for the crime committed. Elsea, *supra* note 3, at 140.

By the 1990s, the public's cries for retributive, "get tough" policies were deafening.¹¹ State legislative bodies responded, shifting juvenile justice policy firmly towards a retributive, "just desserts" philosophy.¹² "Just desserts" policy is premised upon the theory that criminals should be punished harshly and, because they committed a crime, they deserve the punishment they receive.¹³ Retributive policy does not attempt to modify the offender's behavior; rather, it simply seeks to punish the offender for his or her past actions.¹⁴ Through this philosophy, politicians are able to satisfy the public's expectation of accountability and "just desserts" punishment, as well as their cries for enhanced public safety.

III. DEVELOPMENT OF JUVENILE JUSTICE IN THE UNITED STATES

Prior to the establishment of the first juvenile court in the United States in 1899, formal distinction between children and adults was absent in the American criminal justice system.¹⁵ Children were incarcerated in the same prisons as adults¹⁶ and were subject to the death penalty.¹⁷

11. See *supra* note 8 and accompanying text.

12. Between 1992 and 1997, Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming adopted or modified laws making it easier to prosecute juveniles in adult criminal court. By 1999, this number grew to forty-six states and the District of Columbia. OFFICE OF JUV. JUSTICE AND DELINQ. PREVENTION, U.S. DEP'T OF JUSTICE, OJJDP STATISTICAL BRIEFING BOOK, JUVENILES IN COURT, at <http://www.ojjdp.ncjrs.org/ojstatbb/html/qa086.html> [hereinafter OJJDP STATISTICAL BRIEFING BOOK]. Moreover, virtually every state has lowered the age and expanded the number of offenses for which juveniles can be transferred to criminal court. PATRICK GRIFFIN, U.S. DEP'T OF JUSTICE, NATIONAL OVERVIEWS, STATE JUVENILE JUSTICE PROFILES (2000), at <http://www.ncjj.org/stateprofiles/>. These changes in juvenile penal policies reflect an increased desire for incapacitation and deterrence.

13. Elsea, *supra* note 3.

14. O'Connor & Treat, *supra* note 1, at 1308.

15. Janet Gilbert, Richard Grimm, & John Parnham, *Applying Therapeutic Principles to a Family-Focused Juvenile Justice Model (Delinquency)*, 52 ALA. L. REV. 1153, 1156 (Summer 2001).

16. *Id.*

17. *Id.* In fact, between 1642 and 1899, ninety-five children, ages ten through seventeen, were executed in the United States. Between 1900 and 1991, an additional 196 juveniles were executed. In 1991, there were thirty-six juveniles on death row across the country awaiting execution. JUV. JUSTICE STUDY COMM., LEAGUE OF WOMEN VOTERS OF CAL. EDUC. FUND, JUVENILE JUSTICE IN CALIFORNIA: FACTS & ISSUES (1996), at <http://www.ca.lwv.org/jj/change.htm>.

Appalled by the notion that children as young as eight years of age were confined alongside adult offenders in prisons with deplorable conditions,¹⁸ groups began pressing for reform in the early 1800s.¹⁹ The Society for the Prevention of Pauperism (later known as the Society for the Reformation of Juvenile Delinquents) objected to the practice of incarcerating juveniles with adults and to the punitive nature of the sentences imposed upon children.²⁰ In its 1822 "Report on the Penitentiary System in the United States," the organization called for separate prisons for juvenile offenders and argued that these institutions should be schools for instruction, rather than places of punishment.²¹ The Report recommended that "[t]he youth confined there should be placed under a course of discipline, severe and unchanging, but alike calculated to subdue and conciliate. A system should be adopted that would provide a mental and moral regimen."²²

The first "Houses of Refuge" emerged in response to these calls for reform.²³ Houses of Refuge were privately operated institutions to which delinquent, dependent, neglected, and ungovernable²⁴ children were sent via court order.²⁵ Houses of Refuge were the first facilities established exclusively for juveniles, and were intended to remove children from adult prisons with the idea that children require different treatment than adults.²⁶ By the middle of the nineteenth century, Houses of Refuge had evolved to provide education, physical exercise, military drills, work, and extensive supervision.²⁷ They taught "sobriety, thrift, industry, prudence, and

18. JUVENILE JUSTICE POLICY INSTITUTE & CHILDREN AND FAMILY JUSTICE CTR., *SECOND CHANCES: 100 YEARS OF THE CHILDREN'S COURT: GIVING KIDS A CHANCE TO MAKE A BETTER CHOICE 4* (July 1999), at <http://www.cjg.org/index.php> [hereinafter *SECOND CHANCES*].

19. Gilbert, Grimm, & Parnham, *supra* note 15, at 1157.

20. *Id.*

21. *Id.*

22. ROBERT M. MENNEL, *THORNS AND THISTLES* 11 (1973).

23. Gilbert, Grimm, & Parnham, *supra* note 15, at 1156.

24. I.e., children who would be defined today as "status offenders." In contrast to the dependent, neglected, or abused child, the status offender comes within the jurisdiction of the juvenile court because of his or her age and behavior, rather than on a finding of improper parental care or guidance. And, unlike children charged with delinquency, alleged or adjudicated status offenders have not committed acts which would be considered criminal if done by an adult. Accordingly, when status offenders are incarcerated, it is not for any violation of the penal code, but for behavior which is considered unacceptable solely because of their age.

Andrea Renee St. Julian, *Juvenile Courts and Delinquent and Dependent Children*, 47 AM. JUR. 2D JUV. CTS.; DELINQUENT/DEPENDENT CHILDREN § 14.

25. *Id.* at 1157.

26. Elsea, *supra* note 3, at 137.

27. Gilbert, Grimm, & Parnham, *supra* note 15, at 1157.

other principles of living,” as well as “industrial and agricultural education and religion.”²⁸ Houses of Refuge are regarded as the American criminal justice system’s first attempts at institutions for rehabilitating delinquent youth.²⁹ Because the purpose of the Houses of Refuge was to reform, not punish, and because the Houses segregated children from the “corrupting influence of adults” (done “for the good of the children”), due process rights were viewed as unnecessary.³⁰

Because of reports of abuse, cruelty, and injustice within these privately operated juvenile facilities, reformers began insisting that states take over the operation of these institutions.³¹ Reform groups such as Child Savers teamed with the Chicago Women’s Club and the Chicago Bar Association to advocate for the creation of a state system of juvenile justice.³² Through their combined efforts, the first juvenile court in the United States was established by passage of the Illinois Juvenile Court Act of 1899.³³

Hailed as the most important law of the nineteenth century pertaining to juveniles, the Illinois Juvenile Court Act is recognized as the end of a penal approach to juvenile delinquency and the beginning of “a preventative approach based on scientific thought.”³⁴ Defining a “delinquent child” as a child under the age of sixteen who violates any law, whether state or local,³⁵ the Illinois Juvenile Court Act gave courts broad powers to deal with delinquent and dependent children.³⁶ Using the notion of *parens patriae*,³⁷ the state, through its courts, had the inherent power and duty to provide protection to children³⁸ by focusing on the child’s welfare.³⁹ Treatment, rather than punishment, was the goal.⁴⁰

By 1925, every state had established juvenile courts.⁴¹ The purpose of these courts was to rehabilitate the juvenile delinquent,⁴²

28. *Id.* at 1158.

29. *Id.*

30. *Id.*

31. *Id.* at 1159.

32. *Id.*; see also ANTHONY M. PLATT, *THE CHILD SAVERS* 101–34 (1969).

33. See *supra* note 32 and accompanying text.

34. Gilbert, Grimm, & Parnham, *supra* note 15, at 1159–60.

35. *Id.* at 1160. Thus, the juvenile court had jurisdiction over any youth who committed an act that would be a crime if committed by an adult.

36. *Id.*

37. This philosophy requires the state to act as the guardian of its neglected, abused, and delinquent children.

38. Gilbert, Grimm, & Parnham, *supra* note 15, at 1160.

39. *Id.*

40. Christina Dejong & Eve Schwitzer Merrill, *Getting “Tough on Crime”: Juvenile Waiver and the Criminal Court*, 27 OHIO N.U. L. REV. 175, 176–77 (2001).

41. Gilbert, Grimm, & Parnham, *supra* note 15, at 1161.

42. *Id.*

and the process was an informal "information-gathering and problem-solving session to serve the best interests of the child."⁴³ In order to determine how to most effectively rehabilitate delinquent juveniles, the Juvenile Protective League supported and funded studies on conditions leading to delinquency.⁴⁴ Because the studies revealed no "unique mental or physical traits to distinguish delinquent from non-delinquent children,"⁴⁵ a firm belief in individualized assessment developed,⁴⁶ providing legitimacy and support to the flexibility and discretionary power of the courts. When sentencing juveniles, courts examined the youth's characteristics to prescribe the appropriate treatment for the particular offender rather than imposing a sentence based strictly on the crime itself.⁴⁷

The 1960s saw the "introduction of community-based correctional facilities, such as group homes, pretrial release programs, and halfway houses."⁴⁸ Proponents cited sociological studies supporting the argument that "correctional costs could be reduced and rehabilitation results improved in a community context."⁴⁹ Despite these studies, however, many juvenile court judges, correctional administrators, and police officers remained skeptical about the effectiveness and safety of community-based treatment.⁵⁰ Community-based treatment met intense public criticism, and community-based facilities were slow to emerge.⁵¹

Criticism of the juvenile justice system grew intensely during the late 1960s. In response, President Lyndon B. Johnson's Commission on Law Enforcement and the Administration of Justice issued "Juvenile Delinquency and Youth Crime,"⁵² a 1967 report that raised questions regarding the purposes of the juvenile justice system and its effectiveness, as well as concerns regarding the lack of procedural safeguards within that system.⁵³ Echoing these concerns, the United States Supreme Court decided several cases that made the juvenile adjudication process almost

43. *Id.*

44. *Id.*; see, e.g., WILLIAM A. HEALY, *THE INDIVIDUAL DELINQUENT: A TEXTBOOK OF DIAGNOSIS AND PROGNOSIS FOR ALL CONCERNED IN UNDERSTANDING OFFENDERS* 4-5 (1915) [hereinafter HEALY, *THE INDIVIDUAL DELINQUENT*]; WILLIAM A. HEALY, *MENTAL CONFLICTS AND MISCONDUCT* (1917).

45. HEALY, *THE INDIVIDUAL DELINQUENT*, *supra* note 44, at 4-5.

46. See *id.*; see also MENNEL, *supra* note 22, at 165.

47. Dejong & Merrill, *supra* note 40, at 179.

48. Gilbert, Grimm, & Parnham, *supra* note 15, at 1163.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

indistinguishable from that used for adult offenders.⁵⁴ In doing so, the Court cast a shadow over the therapeutic, rehabilitative, and paternalistic philosophy that had formed the core of the development of the American juvenile courts.

The trend to equate juveniles with adults in the criminal justice system continued, and a shift emphasizing deterrence and punishment, and deemphasizing rehabilitation, took hold during the conservative reform movement of the late 1970s and early 1980s.⁵⁵ Believing that juvenile courts were too lenient, the conservative reform movement called for the vigorous prosecution of serious and violent youth offenders.⁵⁶ In response, many states made it easier to transfer juvenile offenders to adult court, while other states created mandatory minimum sentencing guidelines and increased penalties.⁵⁷ These changes facilitated the increased imposition of adult sanctions on juvenile offenders. As a result, the number of juveniles in adult prisons increased by 50% between 1979 and 1984.⁵⁸

In 1984, the National Advisory Committee for Juvenile Justice and Delinquency Prevention argued for a renewed focus on serious juvenile offenders, with an emphasis on deterrence, fixed sentencing, and the incarceration of youth.⁵⁹ State legislatures responded by passing an abundance of “get tough” legislation.⁶⁰ Moreover, in 1984, the Supreme Court contributed to this “get tough” phenomenon by holding that the preventative detention of juveniles before trial was a legitimate state action to prevent

54. *Breed v. Jones*, 421 U.S. 519 (1975) (extending double jeopardy protection to juveniles waived to adult court); *In re Winship*, 397 U.S. 358 (1970) (holding that the requisite standard of proof for juveniles to be adjudicated delinquent is proof beyond a reasonable doubt); *In re Gault*, 387 U.S. 1 (1967) (expanding *Kent* and extending Fourteenth Amendment due process rights to juveniles subject to the deprivation of their liberty upon an adjudication of delinquency); *Kent v. United States*, 383 U.S. 541 (1966) (holding that full investigations are required for judicial waiver, and that juveniles are entitled to a hearing, access to counsel, and a statement of the court's reasons for waiving jurisdiction; also articulating the determinative factors in a waiver decision). The Supreme Court's extension of equal due process rights and procedural protections to juveniles formalized juvenile proceedings and shifted the focus toward crime and punishment, and away from treatment and rehabilitation. Accordingly, juvenile proceedings have become more closely aligned with those of adults.

55. Gilbert, Grimm, & Parnham, *supra* note 15, at 1165.

56. *Id.*

57. *Id.*

58. *Id.* at 1166.

59. Hon. W. Don Reader, *The Laws of Unintended Results*, 29 AKRON L. REV. 477, 484 (Spring 1996).

60. *See id.* at 484 n.43 (providing examples of “get tough” legislation).

pre-trial crimes.⁶¹ Between 1984 and 1990, the number of juveniles admitted annually to adult prisons increased by 30%.⁶²

The 1990s brought an intense and unprecedented punitive shift⁶³ as state legislatures nationwide continued to institute “get tough” policies, resulting in increasingly easier means of transferring juveniles to adult court, expanded sentencing options, minimized confidentiality requirements, and a renewed focus on offender accountability and community protection.⁶⁴ To illustrate the unprecedented nature of this penal shift, between 1985 and 1997, the number of juveniles in adult prisons more than doubled.⁶⁵

This punitive and retributive “get tough” attitude continues to prevail today.⁶⁶ Every state has enacted waiver provisions that permit the imposition of adult sanctions on juvenile offenders.⁶⁷ Fueled by

61. Schall v. Martin, 467 U.S. 253, 274 (1984).

62. OFFICE OF JUV. JUSTICE AND DELINQ. PREVENTION, U.S. DEP'T OF JUSTICE, COMPREHENSIVE STRATEGY FOR SERIOUS, VIOLENT, AND CHRONIC JUVENILE OFFENDERS, PROGRAM SUMMARY 4 (Dec. 1993). Also, between 1994 and 1997, the number of juveniles confined to adult prisons rose 37%, increasing from 5,100 to 7,000. MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 41.

63. This punitive shift is likely due to increased media attention on violent juvenile crime, particularly gang violence, which leads to greater community outrage and fear, and increased political pressure on community representatives.

64. Gilbert, Grimm, & Parnham, *supra* note 15, at 1166. By 1999, forty-six states and the District of Columbia had enacted or modified laws making it easier to prosecute juveniles in adult criminal court and virtually every state had lowered the age and expanded the number of offenses for which juveniles could be transferred to criminal court. OJJDP STATISTICAL BRIEFING BOOK, *supra* note 12; *see also* Griffin, *supra* note 12; MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 38; HOWARD N. SNYDER & MELISSA SICKMUND, U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 86, 89 (1999), at <http://www.ncjrs.org/html/ojjdp/nationalreport99/toc.html> [hereinafter SNYDER & SICKMUND, JUVENILE OFFENDERS]. Additionally, some states changed their laws to include juvenile adjudications as “strikes” in their adult “three strikes” laws, thereby subjecting adults to increased sentences for crimes they committed while juveniles. *See, e.g.*, Cal. Penal Code § 667(d)(3) (West 2002); Cal. Penal Code § 1170.12(b)(3) (West 2002). Also, other states, such as Florida, created juvenile “three strikes laws” whereby juveniles with three previous adjudications of delinquency are automatically waived to adult criminal court. D'Ambra, *supra* note 10, at 284–85.

65. This number increased from 3,400 to 7,400. Erin M. Samolis, *Divergent Clockwork Oranges: The Juvenile Justice Systems of the United States and Great Britain*, 8 U. CHI. L. SCH. ROUNDTABLE 189, 197 (2001).

66. *See* SNYDER & SICKMUND, JUVENILE OFFENDERS, *supra* note 64, at 106 (Over 200,000 juveniles are tried as adults in the United States each year.).

67. O'Connor & Treat, *supra* note 1, at 1312; *see also* OJJDP STATISTICAL BRIEFING BOOK, *supra* note 12. It should be noted that, although rarely utilized until recently, the United States juvenile justice system has, from its very inception, permitted waiver to criminal court in cases where violent crimes “provoked strong societal indignation and fear for public safety.” Beth Wilbourn, Note, *Waiver of Juvenile Court Jurisdiction: National Trends and the Inadequacy of the Texas Response*, 23 AM. J. CRIM. L. 633, 638 (Spring 1996) (quoting Donna M. Bishop & Charles E. Frazier, *The Transfer of Juveniles to Criminal Court: A Case Study*

images of violent youth in the media and an erroneous perception of escalating levels of juvenile delinquency,⁶⁸ many people argue that the juvenile justice system is too soft on crime and some call for its abolition.⁶⁹ Additionally, based upon the idea that it is the “only” appropriate response for juveniles who “cannot be rehabilitated,” the vast majority of Americans support the use of waiver⁷⁰ and the imposition of adult sanctions on juvenile offenders.⁷¹ Although waiver is commonly believed to be reserved for youth charged with the most serious offenses, the reality is that the majority of juveniles transferred to adult courts are minority youth⁷² ages thirteen to eighteen who are accused of non-violent drug and property crimes.⁷³ Sensationalized crime and false

and Analysis of Prosecutorial Waiver, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 281, 282 (1991)).

68. See SNYDER & SICKMUND, JUVENILE OFFENDERS, *supra* note 64, at 120 (Juvenile crime has steadily decreased every year since 1994.). Additionally, 54% of males and 73% of females who enter the juvenile justice system for the first time never return on a new referral. This suggests that the majority of youth are not recidivists. *Id.* at 80. Furthermore, just 6% to 8% of offenders are responsible for committing the majority of serious and violent juvenile crimes. MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 12–13.

69. See David Yellen, *What Juvenile Court Abolitionists Can Learn from the Failures of Sentencing Reform*, 1996 WIS. L. REV. 577, 591–93 (1996) (criticizing the juvenile justice system).

70. There are three forms of waiver: (1) judicial waiver, which grants the juvenile court judge discretion to waive jurisdiction over a juvenile after a hearing, and usually occurs upon the request of the prosecutor in light of statutory criteria that frequently parallel the criteria delineated in *Kent v. United States*, 383 U.S. 541 (1966); (2) prosecutorial waiver (also known as concurrent jurisdiction), which grants the prosecutor discretion in deciding, based upon age and offense criteria, whether to file charges in juvenile or criminal court, which is not subject to judicial review, and which allows the prosecutor to avoid a waiver hearing; and (3) legislative waiver (also referred to as statutory exclusion), which automatically excludes certain offenses from juvenile court jurisdiction by statute based upon age, type of offense, and/or prior record. D'Ambra, *supra* note 10, at 284.

71. See O'Connor & Treat, *supra* note 1, at 1313; Schwartz et al., *Public Attitudes*, *supra* note 8, at 250.

72. Over 75% of all juveniles confined in adult prisons are minority youth. Eileen Poe-Yamagata & Michael A. Jones, *Building Blocks for Youth*, in AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF MINORITY YOUTH IN THE JUSTICE SYSTEM 3 (2000), at <http://www.buildingblocksforyouth.org/justiceforsome/>. Moreover, 95% of juveniles sentenced to adult prison for drug offenses are minorities. MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 42 (citing THE SENTENCING PROJECT, PROSECUTING JUVENILES IN ADULT COURT: AN ASSESSMENT OF TRENDS AND CONSEQUENCES (n.d.), at <http://www.sentencingproject.org/brief/juveniles.html> (last visited May 2000)). Although African-American youth represented only 26% of youth arrested in 1997, they accounted for 46% of youth judicially waived to criminal court and 58% of youth sent to state prisons. Poe-Yamagata & Jones, *supra*, at 28. Minority youth are significantly more likely to be waived to criminal court and incarcerated in adult jails and prisons than their comparable white counterparts.

73. Lisette Blumhardt, Comment, *In the Best Interests of the Child: Juvenile Justice or Adult Retribution?*, 23 U. HAW. L. REV. 341, 349 (2000) (citing Elizabeth Cauffman et al., *Justice for Juveniles: New Perspectives on Adolescents' Competence and Culpability*, 18 QUINNIPIAC L. REV. 403, 404 (1999)).

perceptions⁷⁴ are therefore driving the reformation of the juvenile justice system and are responsible for the present abundance of “get tough” legislation, the increasing use of waiver, and the increasing levels of juvenile incarceration in adult facilities.⁷⁵

IV. HARMS OF INCARCERATING WAIVED JUVENILES IN ADULT CORRECTIONAL FACILITIES

When waived juveniles convicted in criminal court are incarcerated in adult correctional facilities, the harmful effects of that incarceration far outweigh any rehabilitative effects.⁷⁶ Juveniles require special treatment in order to facilitate their rehabilitation⁷⁷ because they are developmentally different from adults.⁷⁸ When compared to adults, juveniles are more vulnerable, more impulsive, have less capacity for self-control, lack experience, and are more inclined to focus on the immediate rather than long-term consequences of their choices.⁷⁹ Additionally, adolescents exhibit a tendency toward experimentation, which often leads to risky and antisocial behavior.⁸⁰ Thus, “[i]nexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult.”⁸¹

74. See, e.g., MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 29–37.

75. See Gilbert, Grimm, & Parnham, *supra* note 15, at 1166; see also SECOND CHANCES, *supra* note 18, at 6. There are 7,000 to 8,000 juveniles jailed with adults on any given day in the United States. *Id.* at 7.

76. O'Connor & Treat, *supra* note 1, at 1315.

77. Dejong & Merrill, *supra* note 40, at 177.

78. See, e.g., CRIM. JUSTICE SECTION, AM. BAR ASSOC., YOUTH IN THE CRIMINAL JUSTICE SYSTEM 7, App. B (2001), at <http://www.abanet.org/crimjust/pubs/reports/index.html>; MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 44–45.

79. Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 147 (Fall 1997); see also Elizabeth S. Scott, *Criminal Responsibility in Adolescence: Lessons From Developmental Psychology*, in YOUTH ON TRIAL 291–92 (Thomas Grisso & Robert G. Schwartz eds., 2000); Eddings v. Oklahoma, 455 U.S. 104 (1982).

80. YOUTH IN THE CRIMINAL JUSTICE SYSTEM, *supra* note 78, at 43, App. B.

81. Thompson v. Oklahoma, 487 U.S. 815, 835 (1988); see also Christine Chamberlin, Note, *Not Kids Anymore: A Need For Punishment And Deterrence In The Juvenile Justice System*, 42 B.C. L. REV. 391, 409–10 (2001); Cathi J. Hunt, Note, *Juvenile Sentencing: Effects of Recent Punitive Sentencing Legislation on Juvenile Offenders and a Proposal for Sentencing in the Juvenile Court*, 19 B.C. THIRD WORLD L.J. 621, 656 (1999); Candice Zierdt, *The Little Engine That Arrived At The Wrong Station: How To Get Juvenile Justice Back On The Right Track*, 33 U.S.F. L. REV. 401, 423 (1999).

Because adult facilities emphasize retribution and control rather than rehabilitation, adult prisons have fewer treatment and counseling services available for juveniles⁸² and lack the educational and professional resources necessary for their rehabilitation.⁸³ As adult corrections staff are not trained to effectively interact with, and understand, troubled teenagers,⁸⁴ juveniles in adult facilities are less likely to receive proper case management and support services.⁸⁵ Adult correctional facilities simply are not equipped to deal with the special needs of young offenders.⁸⁶

The vast majority of youthful offenders will one day reenter society; thus, providing the educational, vocational, counseling, and support services necessary for these youths' rehabilitation is in society's best interest.⁸⁷ Prisons are "schools for crime," where inmates teach each other new crime techniques and methods of evading authorities.⁸⁸ This "curriculum" further highlights the detrimental effect of the absence of proper education and support services for youth offenders and exacerbates recidivism.⁸⁹

Moreover, incarceration with adult offenders exposes youth to a higher risk of victimization, as sexual and physical assaults against juveniles are far more frequent in adult facilities than in juvenile facilities.⁹⁰ Additionally, juveniles housed in adult jails and prisons are nearly eight times more likely to commit suicide than their adult counterparts.⁹¹ Exposing juveniles to increased victimization and abhorrent conditions results in depressed, suicidal, hardened, or embittered youth and leads to increased recidivism.⁹² As the rate of waived juvenile incarceration in adult facilities has increased, so

82. D'Ambra, *supra* note 10, at 296.

83. *Id.*

84. See YOUTH IN THE CRIMINAL JUSTICE SYSTEM, *supra* note 78, at 21.

85. O'Connor & Treat, *supra* note 1, at 1316.

86. D'Ambra, *supra* note 10, at 294.

87. Allowing *one* youth to leave high school for a life of crime and drug abuse costs society \$1.7–\$2.3 million. SNYDER & SICKMUND, JUVENILE OFFENDERS, *supra* note 64, at 82.

88. Dejong & Merrill, *supra* note 40, at 176–77.

89. *Id.*

90. O'Connor & Treat, *supra* note 1, at 1315; see also Lisa S. Beresford, *Is Lowering the Age at Which Juveniles Can Be Transferred to Adult Criminal Court the Answer to Juvenile Crime? A State-by-State Assessment*, 37 SAN DIEGO L. REV. 783, 821–22 (2000).

91. See, e.g., MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 3.

92. O'Connor & Treat, *supra* note 1, at 1315 (noting that even where juveniles are not directly victimized, exposure to institutional violence in adult correctional facilities provides juveniles with an education in being a more effective criminal; additionally noting that studies demonstrate a causal link between previous incarceration and increased recidivism rates; and finally noting that juveniles who leave adult institutions commit more new crimes earlier than youth leaving juvenile facilities).

has the percentage of juveniles rearrested for crimes after their release.⁹³

While incarcerating waived juveniles in adult facilities quenches the public's thirst for "justice" and provides the community with a sense of security, incarcerating juveniles with adults does not, in fact, increase public safety.⁹⁴ Overwhelming evidence indicates that incarcerating juveniles with adults produces no superior deterrent or incapacitative effects, and instead results in increased recidivism.⁹⁵ Additionally, the adult prison system is intensely overcrowded.⁹⁶ The increasing numbers of waived youth incarcerated in adult jails and prisons compounds facility overcrowding,⁹⁷ and, in an effort to alleviate this overcrowding, juveniles are often released first, because, due to their age, they are viewed as less dangerous than their adult counterparts.⁹⁸ Incarcerating juveniles

93. *Id.*

94. See, e.g., D'Ambra, *supra* note 10, at 297.

95. See, e.g., Donna M. Bishop et al., *The Transfer of Juveniles to Criminal Court: Does it Make a Difference?*, 42 CRIME & DELINQ. 171, 183 (1996); M.A. Bortner, *Traditional Rhetoric, Organizational Realities: Remand of Juveniles to Adult Court*, 32 CRIME & DELINQ. 53, 62 (1986); D'Ambra, *supra* note 10, at 297; Dejong & Merrill, *supra* note 40, at 176, 188; Sarah Glazer, *Juvenile Justice: Should Violent Youth Get Tougher Punishments?*, CQ RESEARCHER, Feb. 25, 1994, at 176; Eric L. Jensen & Linda K. Metsger, *A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime*, 40 CRIME & DELINQ. 96, 100-02 (1994); Reader, *supra* note 59, at 489; SIMON I. SINGER, RECRIMINALIZING DELINQUENCY: VIOLENT JUVENILE CRIME AND JUVENILE JUSTICE REFORM 162 (1996); Simon I. Singer & David McDowall, *Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law*, 22 LAW & SOC'Y REV. 521, 522 (1988); MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 38; HOWARD N. SNYDER & MELISSA SICKMUND, U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS & VICTIMS: A FOCUS ON VIOLENCE 4 (May 1995) [hereinafter SNYDER & SICKMUND, A FOCUS ON VIOLENCE].

96. D'Ambra, *supra* note 10, at 298; see also Dean J. Champion, *Teenage Felons and Waiver Hearings: Some Recent Trends, 1980-1988*, 35 CRIME & DELINQ. 577, 584 (1989) (explaining that juveniles receive lighter sentences even when waived to adult court because they "become part of a large adult aggregate that is often extended probation as a means of alleviating jail overcrowding and allocating scarce prison space for more dangerous offenders.").

97. Zierdt, *supra* note 81, at 423. Over 200,000 juveniles are tried as adults in the United States each year. See SNYDER & SICKMUND, JUVENILE OFFENDERS, *supra* note 64, at 106. In fact, one California study indicates a 318% increase in waiver hearings and a 234% increase in actual transfers to adult court within one year of legislative waiver's implementation. Wilbourn, *supra* note 67, at 641. Even if the majority of these youth are not convicted and incarcerated in adult prisons, many are housed in adult jails while they are awaiting trial, thus compounding jail overcrowding. Additionally, the number of prison inmates under eighteen years of age more than doubled between 1985 and 1997, with children as young as eleven years of age being tried in adult criminal court. See Anjetta McQueen, *Youth Incarcerations Double*, THE ASSOCIATED PRESS, Feb. 28, 2000, at <http://abcnews.go.com/sections/us/DailyNews/incarcerations000228.html>.

98. See, e.g., R. BARRI FLOWERS, THE ADOLESCENT CRIMINAL 169 (1990); Lindsay G. Arthur & Lori J. Schwartz, *Certification—An Overview*, 44 JUV. & FAM. CT. J. 61, 62 (1993); Champion, *supra* note 96, at 584; D'Ambra, *supra* note 10, at 295; Elsea, *supra* note 3, at 719; O'Connor & Treat, *supra* note 1, at 1314.

in adult facilities, therefore, does not result in more severe sanctions, longer confinement, or increased punishment.

Although young offenders certainly need to be held accountable for their actions, this accountability should not be accomplished by placing them in brutal, dehumanizing institutions where they are routinely victimized, learn to survive by intimidating other people, and lose respect for authority.⁹⁹ As has been discussed, juveniles incarcerated in adult jails and prisons emerge from these institutions in worse condition than when they entered because they emerge embittered, hardened,¹⁰⁰ and more likely to engage in similar or worse criminal activity.¹⁰¹

Nonetheless, the number of juveniles waived to adult court and incarcerated in adult jails and prisons continues to rise.¹⁰² As has been noted, there is virtually no evidence that this practice reduces recidivism,¹⁰³ lowers the juvenile crime rate,¹⁰⁴ or decreases violent crime.¹⁰⁵ In fact, as has been demonstrated, there is significant evidence to the contrary. Waiver resulting in adult incarceration is harmful for juvenile offenders¹⁰⁶ and increases the crime rate, as juvenile offenders emerge from adult facilities with new criminal skills and angry attitudes.¹⁰⁷ Children transferred to adult criminal court on average tend to recidivate more quickly and more

99. Elsea, *supra* note 3, at 141 (quoting David Lambert, an attorney for the Youth Law Center).

100. See, e.g., Bishop et al., *supra* note 95, at 184–85; Dejong & Merrill, *supra* note 40, at 190; Elsea, *supra* note 3, at 141.

101. See, e.g., Bishop et al., *supra* note 95, at 184–85; Dejong & Merrill, *supra* note 40, at 190; Elsea, *supra* note 3, at 141.

102. Currently, over 200,000 youth are prosecuted annually as adults in the United States. See AMNESTY INTERNATIONAL, BETRAYING THE YOUNG: HUMAN RIGHTS VIOLATIONS AGAINST CHILDREN IN THE U.S. JUSTICE SYSTEM (1998); see also SNYDER & SICKMUND, JUVENILE OFFENDERS, *supra* note 64, at 106.

103. Dejong & Merrill, *supra* note 40, at 176, 188; see also Bishop et al., *supra* note 95, at 183; Bortner, *supra* note 95, at 62; D'Ambra, *supra* note 10, at 297; Glazer, *supra* note 95, at 176; Jensen & Metsger, *supra* note 95, at 100–02; Singer, *supra* note 95, at 162; Singer & McDowall, *supra* note 95, at 522.

104. Dejong & Merrill, *supra* note 40, at 176, 188; see also D'Ambra, *supra* note 10, at 297.

105. Reader, *supra* note 59, at 489; see also SNYDER & SICKMUND, A FOCUS ON VIOLENCE, *supra* note 95, at 4.

106. Bishop et al., *supra* note 95, at 184–85; Dejong & Merrill, *supra* note 40, at 190.

107. Dejong & Merrill, *supra* note 40, at 190; see also Bishop et al., *supra* note 95, at 184–85. Additionally, the criminal record that attaches to a waived juvenile when that juvenile is convicted in adult court severely impedes the youth's chances of later obtaining a higher education (because the offender can no longer qualify for government loans) and of obtaining gainful employment (because many employers are reluctant to hire someone with a criminal record). See Building Blocks for Youth, Transfer to Adult Court/Trying Kids as Adults, at <http://www.buildingblocksfor youth.org/issues/transfer/>.

frequently than children retained in the juvenile system.¹⁰⁸ Of the youth retained in the juvenile system, 54% of males and 73% of females never return on a new referral.¹⁰⁹ When juveniles incarcerated in adult facilities become recidivists at a higher rate than those confined to juvenile facilities, the temporary “gains” achieved by their incarceration are quickly offset by the increase in crime.¹¹⁰ Incarcerating waived juveniles in adult facilities is “at best ineffective and at worst counterproductive.”¹¹¹ Incarcerating waived juveniles with adults is therefore deleterious to both society and the offender.¹¹²

Society, in its attempt to achieve greater public safety, must balance its “need” for retribution and punishment with the benefits of prevention, early intervention, and rehabilitation. Preventing juvenile delinquency is an ideal means of enhancing public safety. Admittedly, though, complete and total juvenile crime prevention is unrealistic.

When waiver is deemed appropriate and a youth is adjudged guilty, the sentence should not be carried out in an adult correctional institution; rather, even though the youth has been waived to adult court, the juvenile justice system should retain the flexibility to assign the offender to the place along the spectrum of sanctions that best balances society’s goals. While highly discretionary, individualized justice allows for consideration of the totality of the

108. Gilbert, Grimm, & Parnham, *supra* note 15, at 1166; *see also* Bishop et al., *supra* note 95, at 183; D’Ambra, *supra* note 10, at 297; Dejong & Merrill, *supra* note 40, at 190.

109. SNYDER & SICKMUND, JUVENILE OFFENDERS, *supra* note 64, at 80.

110. Dejong & Merrill, *supra* note 40, at 190.

111. O’Connor & Treat, *supra* note 1, at 1314.

112. D’Ambra, *supra* note 10, at 294; *see also* Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment and the Difference It Makes*, 68 B.U. L. REV. 821, 911 (1988); Martin L. Forst & Martha-Elin Blomquist, *Cracking Down on Juveniles: The Changing Ideology of Youth Corrections*, 5 NOTRE DAME J.L. ETHICS & PUB. POL’Y 323, 374 (1991); Franklin E. Zimring, *The Treatment of Hard Cases in American Juvenile Justice: In Defense of Discretionary Waiver*, 5 NOTRE DAME J.L. ETHICS & PUB. POL’Y 267, 270 (1991). As Marc Schindler of the Youth Law Center ponders,

What kind of life are these kids imprisoned for nonviolent offenses going to have once they get out of the adult system? They’re not going to have any skills, they can’t vote. Kids lose the right to vote before they’ve even had it. . . . Their record has made them ineligible for government jobs and others will be reluctant to hire them because of their criminal record. They can’t qualify for a state job. Their record has made them ineligible for federal loans so they can’t get an education. So what are they to do?

youth's circumstances, thereby facilitating the creation of a proportionate penalty for the offense. In order to minimize the potential for abuse of discretion, a team of behavioral and developmental experts¹¹³ can evaluate the youth, identify available resources, and submit an assessment that would assist the judge in imposing appropriate penalties.¹¹⁴

V. ALTERNATIVES TO INCARCERATING WAIVED JUVENILES IN ADULT FACILITIES

Although prevention, early intervention, rehabilitation, and aftercare programs are less costly and more effective than incarceration,¹¹⁵ the number of juveniles incarcerated in adult facilities continues to rise. Incarcerating juveniles in adult correctional facilities is unnecessary because a multitude of cost-effective and beneficial alternatives exist whose scope should be expanded. Effectively satisfying the goals of rehabilitation, punishment, and increased public safety, the alternatives existing and proposed herein are suitable for a wide range of offenses and offenders, and can be utilized singularly or in combination with other programs or sanctions.

Because the causes of juvenile delinquency are varied and complex, the punitive responses must be multifaceted. Juvenile justice officials should create a comprehensive continuum of graduated sanctions. The most severe sanction on the proposed continuum would be imprisonment in a small, very structured maximum-security juvenile facility that provides comprehensive treatment, and educational, vocational, transitional, and aftercare services to its residents. Sanctions along the spectrum would gradually decrease to participation in wilderness camps, residential and non-residential community programs, intensive supervision and monitoring, as well as the imposition of restitution and fines. Rather than being waived to criminal court and incarcerated in adult jails or prisons, a juvenile offender, upon being adjudged guilty, should be placed in the program that is most appropriate for the individual and the offense committed. Society, as well as many of the youth currently waived to criminal court and confined

113. I.e., child psychologists, educators, social workers, and juvenile justice officials.

114. The report prepared by these experts would be an assessment of the youth that identifies available resources and recommends the appropriate placement for the youth along the spectrum.

115. See, e.g., D'Ambra, *supra* note 10, at 295-96.

to adult correctional facilities, would be better served by such an approach.¹¹⁶ From the time waived juveniles are adjudged guilty, the focus should be on each youth's rehabilitation and eventual reintegration into the community. When a youth enters the criminal justice system, a team of behavioral and developmental experts should evaluate the youth and identify the youth's risk factors¹¹⁷, assess the youth's strengths and interests, and identify resources and programs that build on the youth's strengths and address the youth's mental, physical, educational, spiritual, and social needs. This evaluation should be used to place the offender in the program that best meets the offender's individual needs. By providing youthful offenders with the necessary programs and services, rehabilitation and community reintegration can be achieved.

As each youth progresses through his program of rehabilitation, he should earn the right to "step down" the continuum, each "step" according more freedom (both in terms of variety of activity and relaxed structure) than the previous, and eventually leading to the youth being reintegrated into society. Once the youth reenters society, he should continue to "step down" the continuum of residential and non-residential community-based sanctions. When the youth has completed his sentence, he should be provided transitional and aftercare services and support.

The comprehensive maximum-security juvenile treatment facilities for waived youth proposed herein should be small, or at a minimum, contain small, self-contained units.¹¹⁸ Offenders should be separated in units or facilities based upon age, offense, or required treatment services. In order to maximize efficiency, facility administrators should establish interactive networks with local businesses, schools, and agencies to provide unified assessment, education, treatment, planning coordination, services, monitoring, and individualized evaluation.¹¹⁹ Additionally, corrections staff

116. This is especially true for those who have been waived for non-violent drug and property offenses.

117. "Risk factors" are those identified as precursors of juvenile delinquency and violence, such as family conflict, a lack of commitment to school, associating with delinquent peer groups, and the availability of drugs or firearms in the community. OFFICE OF JUV. JUSTICE AND DELINQ. PREVENTION, U.S. DEP'T OF JUSTICE, OJJDP RESEARCH: MAKING A DIFFERENCE FOR JUVENILES 3 (Aug. 1999), at <http://www.ncjrs.org/pdffiles1/177602.pdf>.

118. Research indicates that small, secure facilities can decrease recidivism by up to 70%. O'Connor & Treat, *supra* note 1, at 1325-26; see also IJA-ABA JOINT COMMISSION ON JUV. JUSTICE STANDARDS, JUVENILE JUSTICE STANDARDS 5.3, 6.3 (1980) (recommending that facilities be limited to twenty youth).

119. For example, Massachusetts saves over \$11 million annually by utilizing small facility networks instead of large congregate institutions. O'Connor & Treat, *supra* note 1, at

should be trained in appropriate means of interacting with, and understanding, troubled youth. Programs in these facilities should be structured and intensely supervised, but there should also be a foundation of respect.¹²⁰

Structured daily routines should include academic education, vocational training and/or work, outdoor activity and/or physical exercise, instruction on basic living skills, and individual and group counseling and/or treatment services. Counseling and treatment services should include, but not be limited to, counseling for anger and behavior management, substance abuse, and self-esteem, as well as courses on parenting, communication, and conflict resolution. Participation in these programs should be voluntary, but strong incentives should be in place to make participation desirable. For example, while California does not mandate that its juvenile delinquents obtain an education during their confinement, it has instituted a “no diploma, no parole” policy where, in order to be recommended for parole, the youth must have obtained his high school diploma or GED equivalent.¹²¹ Thus, although obtaining an education is voluntary, the possibility of early release under parole serves as a strong incentive to obtain a high school diploma or GED.

A rarity in its operations, the Riverbend secure juvenile correctional facility in St. Joseph, Missouri, illustrates the effectiveness of a small and secure, but not oppressive, institution where interaction between inmates and staff is built upon a foundation of mutual respect and where strong incentives are in place to encourage program participation and compliant behavior. Housing thirty-three felony offenders, Riverbend is far smaller than the vast majority of the Nation’s secure juvenile facilities.¹²² Instead of confining the

1324. Also, Missouri replaced its training schools with thirty small regional correctional centers that have proven to be effective both in terms of cost and reducing recidivism. See *infra* pp. 670–72 (discussing the Riverbend secure juvenile correctional facility); MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 52.

120. The success of Riverbend indicates that these are not mutually exclusive; youth can be intensely supervised and subject to strict structure, yet respect and interact jovially with their guards, teachers, and counselors.

121. See http://www.cya.ca.gov/media/news_archive.html.

122. Nationally, only 12% of youth confined in public correctional agencies are housed in facilities with thirty or fewer residents, while 62% are confined in facilities with more than 110 residents. SNYDER & SICKMUND, JUVENILE OFFENDERS, *supra* note 64, at 206. Typical juvenile correctional facilities (often referred to as training camps or training schools) are described as prisons for juveniles, see O’Connor & Treat, *supra* note 1, at 1318, and usually house between 100 and 500 juvenile offenders, RICHARD A. MENDEL, AMERICAN YOUTH POLICY FORUM, LESS COST, MORE SAFETY: GUIDING LIGHTS FOR REFORM IN JUVENILE JUSTICE 8 (2001) [hereinafter MENDEL, GUIDING LIGHTS]. Many of these traditional large juvenile correctional facilities are oppressive, punitive, and known for physical and sexual violence instead of education and treatment services. O’Connor & Treat, *supra* note 1, at

youth to traditional one or two-person cells, the thirty-three residents of Riverbend sleep in three open dormitories.¹²³ Each dormitory forms a treatment group of ten to twelve youth who share the dormitory, attend academic classes, and participate in group therapy sessions.¹²⁴

All of Riverbend's residents attend six, fifty-minute periods of academic instruction, Monday through Friday, year-round.¹²⁵ During these periods, the youth break into small groups for GED instruction or work toward obtaining their high school diplomas.¹²⁶ They also work together on special projects and have individual lessons in the computer lab.¹²⁷

Riverbend places a heavy emphasis on treatment.¹²⁸ In fact, Missouri's approach centers upon the belief that "treatment occurs 24-hours-per-day."¹²⁹ Riverbend residents attend ninety-minute group therapy sessions, five days per week, led by highly trained, college-educated youth specialists and group leaders.¹³⁰ In order to maintain a high quality staff, the State requires that all youth specialists and direct care workers be college graduates and complete a minimum of 120 hours of in-service training during

1318. To illustrate, a 1994 report issued by the Department of Justice found that almost 75% of incarcerated juveniles are sent to training schools where living space, health care, security, suicide prevention, and community access are substandard. O'Connor & Treat, *supra* note 1, at 1319; see also MENDEL, GUIDING LIGHTS, *supra* at 8, 39. Additionally, the report found that less than half of these facilities provided adequate food, clothing, hygiene, living accommodations, community areas, education programs, or limits on staff discretion. O'Connor & Treat, *supra* note 1, at 1319. The abhorrent conditions and mass-institutionalization result in embittered youth and lead to high recidivism rates. *Id.* (citing BARBARA ALLEN-HAGAN, U.S. DEP'T OF JUSTICE, PUBLIC JUVENILE FACILITIES: CHILDREN IN CUSTODY 9 (1991)). "[V]irtually every study examining recidivism among youth sentenced to juvenile training schools in the past three decades has found that at least 50-70% of offenders are arrested within one or two years after release." MENDEL, GUIDING LIGHTS, *supra*, at 8-9 (also noting recidivism rates of 91% within five years of release in Minnesota, 82% within two and one-half years in Maryland, and 68% within two years in Washington). It should also be noted that tax dollars fund these facilities; and these facilities are expensive, ranging in cost from \$17,600 per resident, per year, in South Dakota to \$78,800 per resident, per year, in Rhode Island. O'Connor & Treat, *supra* note 1, at 1319 (citing BARBARA ALLEN-HAGAN, U.S. DEP'T OF JUSTICE, PUBLIC JUVENILE FACILITIES: CHILDREN IN CUSTODY 9 (1991)). While large juvenile correctional facilities may further the goal of punishing the youthful offender, they clearly do not advance the goals of rehabilitation or enhanced public safety, nor are they cost-effective. Traditional large juvenile correctional facilities are not the answer.

123. MENDEL, GUIDING LIGHTS, *supra* note 122, at 9.

124. *Id.* at 10.

125. *Id.* at 11.

126. *Id.*

127. *Id.*

128. *Id.* at 14.

129. *Id.* at 13.

130. *Id.* at 11.

their first two years of employment.¹³¹ Activities and therapy sessions reinforce the messages of individual responsibility and discipline, and help the youth explore their identities, reflect on their family histories, learn to understand their emotions, and build skills that enable them to recognize and reverse their destructive behavioral patterns.¹³² The Department of Youth Services (“DYS”) encourages parents or guardians to participate in family therapy sessions, even going so far as facilitating their participation by transporting family members to and from their homes and the facilities.¹³³

Although a secure facility, Riverbend’s atmosphere is decidedly positive.¹³⁴ The furnishings are “new and cheerful,” and the grounds are “immaculate.”¹³⁵ Colorful bulletin boards featuring the youths’ work decorate the walls.¹³⁶ Each treatment group has its own pets, which are cared for by the group’s youth. Riverbend does not normally utilize handcuffs or restraints,¹³⁷ and the residents joke easily with the staff, interacting primarily on a first-name basis.¹³⁸

Missouri’s approach is effective, both in terms of cost and in terms of reducing recidivism. In 1999 and 2000, only 11% of juveniles who were released from DYS custody or transferred from a secure residential facility to a non-secure community program were either rearrested or returned to juvenile custody within one year.¹³⁹ Additionally, a 1993 DYS study found that only 28% of the youth released from residential care violated parole or were recommitted to DYS within three years of their release.¹⁴⁰ Moreover, only 8% of DYS commitments in 1991 were recidivists.¹⁴¹ Finally, a DYS study of five thousand youth discharged from DYS in the 1980s found that only 15% were arrested as adults.¹⁴² Riverbend, therefore, serves as an example of a successful alternative to juvenile incarceration in adult facilities.

131. *Id.*

132. *Id.* at 11, 13.

133. *Id.* at 11.

134. *Id.* at 10.

135. *Id.*

136. *Id.*

137. *Id.* at 13.

138. *Id.* at 10.

139. *Id.* at 12. This is compared to the 50–70% of juveniles in traditional large facilities. See *id.* at 9.

140. *Id.* at 12.

141. *Id.* at 13.

142. *Id.*

Another successful residential correctional facility for serious juvenile offenders, Texas' Gulf Coast Trades Center ("Gulf Coast") makes education and career preparation the cornerstone of its treatment and rehabilitation philosophy.¹⁴³ Gulf Coast provides academic education, counseling, practical, hands-on vocational training and work experience, and aftercare services to serious juvenile offenders.¹⁴⁴ Like Riverbend, Gulf Coast does not use locked cells or physical restraints;¹⁴⁵ it houses its 144 youth in six open dormitories.¹⁴⁶ As one means of behavior management, Gulf Coast uses a "level" system to rate each offender weekly on the offender's behavior and cooperation.¹⁴⁷ Youth ranked at levels three or four (the maximum level) earn privileges such as recreational time, use of the game room, and the ability to participate in off-site outings.¹⁴⁸ Offenders may be dropped a level for misconduct, and it takes two weeks of good behavior to restore the offender to his prior level.¹⁴⁹ Youth with high rankings may also volunteer to participate in a Youth Leadership program, wherein the youth may go on special outings,¹⁵⁰ meet quarterly with the facility's board to voice their opinions regarding facility policies, serve on an appeals board to hear other youth's grievances, and qualify for participation in the YouthBuild program.¹⁵¹

At Gulf Coast, offenders spend two hours per day on academics.¹⁵² Rather than undergoing traditional classroom education, the youth, who receive individual tutoring from academic instructors, work at their own pace, using individualized plans developed and maintained by staff based on extensive pretesting and ongoing assessments.¹⁵³

143. *Id.* at 47.

144. *Id.*

145. *Id.* at 48.

146. *Id.*

147. *Id.* at 51.

148. *Id.*

149. *Id.*

150. *Id.*

151. "YouthBuild" is a program funded by the U.S. Department of Housing and Urban Development and the State's "Youthworks" Program that is restricted to thirty-five youth at a time. *Id.* at 50. The participants divide their time between academics and on-the-job construction training. *Id.* The youth in this program build new homes, which are then sold to low and moderate-income families at extremely low prices (as low as \$50,000 for a new three-bedroom home). *Id.*

152. *Id.* at 48.

153. *Id.*

In addition to academic instruction, every Gulf Coast participant enrolls in one of nine vocational programs.¹⁵⁴ Each vocational track has a customized workshop, a specialized instructor, and a 915-hour vocational curriculum.¹⁵⁵ The curricula combine classroom lectures with hands-on learning and job readiness training.¹⁵⁶ In order to obtain a "vocational certificate" which enables the youth to participate in work experience activities, the youth must "demonstrate a mastery of several dozen competencies."¹⁵⁷ Once eligible to participate in work experience activities, the youth are given work assignments within the facility itself, with local government agencies, or with nonprofit corporations.¹⁵⁸ Gulf Coast staff transport the offenders to and from their work assignments.¹⁵⁹ Written agreements with the employers, as well as frequent phone calls and site visits, comprise the monitoring of the youth's on-the-job performance.¹⁶⁰

Gulf Coast's work assignments are funded through the federal Workforce Investment Act, and participants are paid minimum wage for all hours worked.¹⁶¹ A portion of the youth's earnings is deducted for victim restitution, and the remainder is placed in a savings account to be used for expenses related to the youth's finding employment upon his community reintegration.¹⁶² When the offender begins working in an unsubsidized job in his home community, the balance of his savings account is released.¹⁶³

Gulf Coast also provides extensive aftercare support, including job search and job placement assistance, and mentoring. Once youth return to the community, Gulf Coast mentors visit the youth in their homes at least three times per week, providing them necessary support.¹⁶⁴

Over 60% of Gulf Coast participants complete their GEDs,¹⁶⁵ and over 60% find employment in their chosen occupational field at an

154. *Id.* at 49. The nine vocational programs are construction/carpentry, painting and decorating, bricklaying/stone masonry, culinary arts, horticulture-related occupations, building trades (i.e., plumbing, electrical, etc.), automotive technology and repair, mill and cabinetmaking, and office support systems/office technology. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.* at 49-50.

159. *Id.* at 50.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* at 51.

average starting wage of \$7.50 per hour.¹⁶⁶ Additionally, according to the Texas Youth Commission, less than 16% of youth who graduated from Gulf Coast from 1995 through 1999, were incarcerated within one year of release.¹⁶⁷ Gulf Coast's approach is effective.

Comprehensive, small, secure juvenile facilities that utilize numerous treatment components can simultaneously satiate the public's voracious appetite for "just deserts" punishment and retribution, while protecting the public by removing serious offenders from the streets, and rehabilitating juveniles by teaching them valuable life skills which will assist their reintegration into society and reduce recidivism.¹⁶⁸

Jurisdiction over waived youth can be extended to age twenty-one,¹⁶⁹ and the imposition of "blended sentencing"¹⁷⁰ can, if necessary, extend punishment beyond the youth's twenty-first birthday.¹⁷¹ Throughout the duration of the youth's sentence, facility panels can conduct regularly scheduled hearings to evaluate the youth's progress and determine if the youth has made sufficient efforts towards rehabilitation so as to be able to "step down" the continuum and avoid being transferred to an adult facility upon his twenty-first birthday. If the youth is determined to have made significant strides in his rehabilitation, the youth can "step down"

166. *Id.*

167. *Id.* This is compared to nearly 38% of Texas youth released from comparable residential facilities during the same period. *Id.*

168. For example, after implementing small facility networks, Massachusetts has attained the lowest juvenile incarceration rate in the United States, and has a recidivism rate of only 23%. Gary Enos, *Troubled Youths*, CITY & STATE, Apr. 26, 1993, at 9.

169. See SNYDER & SICKMUND, *JUVENILE OFFENDERS*, *supra* note 64, at 108. Many states have extended the age of juvenile court jurisdiction. As of 1999, Mississippi and North Dakota had extended juvenile court jurisdiction to age nineteen, while Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming had extended juvenile court jurisdiction to age twenty. OFFICE OF JUV. JUSTICE AND DELINQ. PREVENTION, *OJJDP STATISTICAL BRIEFING BOOK*, *supra* note 12. Additionally, Kansas had extended juvenile court jurisdiction to age twenty-two, and California, Montana, Oregon, and Wisconsin had extended juvenile court jurisdiction to age twenty-four. Finally, Colorado, Hawaii, and New Jersey had extended juvenile court jurisdiction until the completion of the full term of the disposition order. *Id.*

170. Through "blended sentencing," an adult or juvenile court with jurisdiction over a youthful offender may impose a sentence consisting of both juvenile and adult sanctions. Under a blended sentence, the youth will only serve the adult sentence if he violates the conditions of the juvenile sentence, has not been rehabilitated, or re-offends. See SNYDER & SICKMUND, *JUVENILE OFFENDERS*, *supra* note 64, at 108.

171. Extended jurisdiction and blended sentencing can apply to all waived juveniles, regardless of where they are initially placed along the continuum.

the continuum, be paroled, or be placed on probation.¹⁷² If, however, the youth has had disciplinary problems, or has chosen not to participate in education, work, or treatment programs, the youth would remain at his current “step” and, upon his twenty-first birthday, participate in a formal hearing conducted by a judge to determine whether the youth should be transferred to an adult facility to serve the remainder of his blended sentence.¹⁷³ The ability to avoid adult sanctions provides yet another strong incentive for active program participation and rehabilitation.

Furthermore, from the time of a youth’s initial intake,¹⁷⁴ the juvenile should be provided a mentor with whom he can identify and in whom he can confide.¹⁷⁵ In addition to serving as a friend, advisor, and confidant while the juvenile is detained, the mentor would arrange transitional and aftercare services so as to facilitate the juvenile’s reintegration into society.¹⁷⁶ Acting as a liaison, the mentor

172. Minnesota’s “Challenge Incarceration Program” is an example of one sanction that is, in and of itself, graduated. The “Challenge Incarceration Program” has three phases. In phase one, participants spend a minimum of six months in an institution with a rigorous daily schedule where work, specialized training, chemical dependency programming, education, and physical activity are scheduled from 5:30 A.M. until lights out at 9:30 P.M. Additionally, participants undergo approximately seventy hours of formal classroom training preparing them for community integration. The classroom training includes topics such as obtaining and maintaining employment, enrolling in education, money management, health, stress management, interpersonal relationships, self-esteem, and values. Following the completion of phase one, offenders participate in a hearing conducted by the Hearings and Release Unit. Upon the approval of the Hearings and Release Unit and the development of an appropriate release plan, participants may proceed to phase two. In phase two, the offender is released into the community under intensive supervision. Participants must report daily to day-reporting centers, and must submit to random drug and/or alcohol tests, maintain full-time employment, attend biweekly group sessions, and abide by curfews imposed by the program officials. Participants also receive random, unannounced visits from program officials, and may be subject to electronic monitoring. Participants remain in phase two for a minimum of six months. Finally, phase three is a less intensely supervised community release phase. Offenders remain in phase three for the duration of their sentence. *See* Adult Facilities Division, Minnesota Department of Corrections, Challenge Incarceration Program, at <http://www.doc.state.mn.us/organization/adultservices/adult/facilities/cip.htm>.

173. Whenever possible, these hearings should be conducted before the same judge who has presided over each stage of the juvenile’s previous court proceedings. This continuity allows the judge to develop a familiarity with the juvenile, providing for more individualized justice, and encouraging the development of a positive rapport. In addition to reports provided by other agencies, the judge would receive copies of the transcripts and reports of the hearings the youth received while in confinement.

174. Mentors should be provided from the time the youth enters the system, irrespective of the youth’s placement along the continuum.

175. These mentors can range from professionals, to university students, to former juvenile delinquents who have turned their lives around. Ideally, mentors would be carefully screened volunteers from the community who have completed a “mentor training” program, which would be designed and administered by the appropriate agency. Alternatively, mentors could also be professional staff members from the facility, agency, or program.

176. *See, e.g.*, MENDEL, GUIDING LIGHTS, *supra* note 122, at 9–10 (describing Missouri’s Department of Youth Services’ “trackers” and case managers). Additionally, mentors who

would connect the juvenile with appropriate support systems, employment, school, and housing.¹⁷⁷ The mentors could utilize a portion of the funds held in trust from the youth's work while he was incarcerated¹⁷⁸ to defray the costs of registering the juvenile in school and establishing appropriate housing. Mentors should continue to meet with the youth after the youth's reentry into the community.¹⁷⁹

Another sanction along the continuum, comprehensive residential wilderness programs¹⁸⁰ would divide youth into small groups based upon their strengths and treatment needs, and would establish a series of increasingly difficult outdoor challenges that would emphasize and promote self-reliance, community participation, teamwork, and individual accomplishment.¹⁸¹ These programs would also provide participants with educational services, counseling, and a variety of vocational training, work experience, and

work with Youth Advocate Programs, Inc., an operation based in Harrisburg, Pennsylvania that has provided intensive support and supervision to more than 50,000 delinquent and troubled youth over the past twenty-five years in seven states and the District of Columbia, facilitate a "child/family team" which consists of the youth and his parents/guardians, relatives, neighbors, church members, friends, volunteers, child welfare workers/clinical social workers, mental health professionals, probation officers, and other professionals. *Id.* at 17, 36. This "team" provides the youth with extra supervision and support. It appears to be successful. *Id.* at 17 (noting a 91% success rate in 1999 and a 78% success rate in 2000).

177. *Id.* at 10. Additionally, a community reentry agency could be created to facilitate and promote a broad base of partnerships with community organizations, schools, businesses, support services, and neighborhood groups to provide such things as medical care, chemical dependency treatment, education, employment training, and family services to offenders placed in the community. *See* Challenge Incarceration Program, *supra* note 172. Whenever possible, the offender's family should be involved in the development and implementation of the offender's reentry case plan.

178. When an inmate works while incarcerated, part of his wages should be given to a victim's restitution fund (or to the victim or victim's family), part should be paid to the state to defray the costs of the inmate's room, board, and services, and the remainder should be held in trust for the inmate to use upon his release.

179. Initially, the youth may be required to report regularly to probation officers or counselors, but as the offender works his way down the continuum and is no longer required to "check in," mentors can continue their relationship with the youth, helping the youth remain out of trouble.

180. Residential wilderness programs differ from "boot camps." Although often set outdoors and consisting of physical challenges, boot camps generally utilize aggressive and confrontational discipline, intensive supervision, and the rigid structure of the military. *See* O'Connor & Treat, *supra* note 1, at 1319-20; JUVENILE JUSTICE IN CALIFORNIA: FACTS & ISSUES, *supra* note 17. The typical boot camp provides military training and discipline but does not provide the educational, vocational, and treatment services that are so critical to a youth's rehabilitation, nor does it provide crucial transitional or aftercare services. *See, e.g.,* VisionQuest Hat Corps, at http://www.vq.com/services_residential_hatcorps.htm; Margaret Beyer, *Juvenile Boot Camps Don't Make Sense*, 10 CRIM. JUST. 20, 20-21 (1996). As a result, traditional boot camps have recidivism rates of 64% to 75% nationwide. *See* Beyer, *supra* at 20-21; *see also* MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 59.

181. *See* O'Connor & Treat, *supra* note 1, at 1320.

recreational programs,¹⁸² as well as provide transitional and after-care services to assist in community reintegration.

Located in the Florida Everglades, the Florida Environmental Institute's "Last Chance Ranch" ("Ranch") offers waived juveniles an opportunity to voluntarily participate in the program, rather than be incarcerated in an adult facility.¹⁸³ Like Riverbend and Gulf Coast Trades Center, the Ranch does not use iron bars, handcuffs, or locked restraints, but rather houses its twenty-two male participants in two dormitories.¹⁸⁴ In addition to its dormitories, the Ranch has educational and vocational classrooms, and is a working ranch, whereon residents raise cattle and pigs, tend horses, and grow crops.¹⁸⁵

The Ranch program is divided into several phases. When a youth arrives, he is taken to "O Camp," a three to five day orientation camp where he learns the program's rules, philosophies, and expectations, and where he begins working.¹⁸⁶ Upon the completion of "O Camp," the offender is taken to the main camp and begins the first of three stages in the Ranch's rehabilitation process.¹⁸⁷ Lasting a minimum of six months, youth in phase one participate in individualized academic education, and tend to the animals, crops, land, and ranch facilities.¹⁸⁸ Youth strive to earn sufficient "points" so as to progress through the program and return to their communities.¹⁸⁹ To that end, participants are ranked five times per day on seven behavioral areas: punctuality, appearance, attitude, leadership, participation, enthusiasm, and manners.¹⁹⁰ When a youth progresses to phase two, which also lasts a minimum of six months, he moves into the second dormitory and continues his academic and ranch work.¹⁹¹ In addition, youth in phase two participate in community service and environmental projects.¹⁹² As

182. JUVENILE JUSTICE IN CALIFORNIA: FACTS & ISSUES, *supra* note 17.

183. MENDEL, GUIDING LIGHTS, *supra* note 122, at 41.

184. The first dormitory houses youth in phase one of their treatment and is fairly sparse and bereft of luxuries such as air-conditioning and television. The second dormitory houses youth who have progressed to phase two of their treatment; this dormitory is air-conditioned, has a television, and provides each youth with some private space. *Id.* at 42.

185. *Id.* at 41.

186. *Id.* at 42.

187. *Id.*

188. *Id.*

189. Each participant earns between one-half of one point and one and one-half points per week; it takes twelve points to complete each of the Ranch's six levels. Although the youth must spend a minimum of six months in each of the program's three phases, there is no fixed program duration; the youth's behavior and attitude ultimately determine the length of his program. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

the youth nears completion of phase two, he returns to his community with the accompaniment of a program staff member and begins finding employment, registering in school, rebuilding family relationships, and securing housing.¹⁹³

After the youth has completed phases one and two, he enters the six-month transitional and aftercare phase of the program.¹⁹⁴ Once home, the youth receives five visits per week from a community coordinator who closely monitors his progress, actively advocates on his behalf, and assists him in securing and maintaining employment, gaining admission to school, and obtaining necessary services and benefits.¹⁹⁵ Additionally, the youth receives frequent telephone calls from his program case manager.¹⁹⁶ If a participant fails to conform to the program rules during any phase of the program, he may lose points, be returned to the camp, or be returned to the adult criminal corrections system to serve the remainder of his sentence.¹⁹⁷

Although the Ranch is not inexpensive,¹⁹⁸ it is highly effective.¹⁹⁹ From 1997 through 2000, Ranch graduates had a one-year recidivism rate of less than 16%.²⁰⁰ In fact, in 2000, only one Ranch graduate out of twenty-one was convicted of a new offense.²⁰¹

Another effective example, VisionQuest, a private national youth services organization, operates comprehensive wilderness programs in Pennsylvania, Arizona, New Jersey, Florida, and Oklahoma, and treats an average of 1,500 youth per month.²⁰² VisionQuest programs include education, community service, individual and group counseling, therapeutic experiences working with animals, vocational assessment and planning, and physical challenges that provide youth with the opportunity to experience success and teamwork. VisionQuest also provides workshops on anger management, victim

193. *Id.* at 42-43.

194. *Id.* at 43-44.

195. *Id.*

196. *Id.* at 43.

197. *Id.* at 42-43.

198. The average cost for one youth to complete the program is \$75,000. *Id.* at 44.

199. A September 2000 analysis published by the Florida Department of Juvenile Justice calculated that each time one juvenile offender re-offends following release from a commitment program, it costs the State of Florida an additional \$165,571 in criminal justice and victim costs. Thus, the reduced recidivism rates of Ranch graduates saved Florida victims and taxpayers over \$3 million. *Id.*

200. See, e.g., *id.* at 44; MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 22. This is far below the national average. See ASSOC. MARINE INSTITUTES, AMI 1999 RECIDIVISM STUDY (1999).

201. MENDEL, GUIDING LIGHTS, *supra* note 122, at 44.

202. See VisionQuest, Overview, at http://www.vq.com/overview_home.htm.

awareness, conflict resolution, drugs and alcohol, cultural diversity, family relationships, social skills, personal boundaries, grief and loss, making decisions, intimacy, being survivors of abuse, being children of substance abusers, and being “kids with kids.”²⁰³ In addition, VisionQuest programs use Native American customs and ceremonies to reinforce community connections and to acknowledge each youth’s progress, as well as cultural competency activities to enhance the youths’ understanding of their own cultures and those of others.²⁰⁴ VisionQuest program participants are generally serious, long-term youth offenders who are referred to VisionQuest by county or state government staff in corrections, probation, mental health, and child welfare.²⁰⁵ Despite being serious, long-term offenders, VisionQuest graduates have very low recidivism rates; in fact, 69–86% of program participants are not subsequently reincarcerated.²⁰⁶

Upon each youth’s arrival in a VisionQuest program, he is assigned a Treatment Family Advocate who serves as the primary case manager.²⁰⁷ The Treatment Family Advocate works with the youth, his family, staff from the placing governmental agency, and VisionQuest psychologists, as well as medical, vocational, and educational professionals to identify the youth’s physical, intellectual, emotional, and spiritual needs, and to develop a treatment plan.²⁰⁸

Throughout all of its programs, VisionQuest emphasizes education, which results in success for most participants in school.²⁰⁹ Over 90% of VisionQuest students pass all of their classes, and more than 50% earn a place on the honor roll.²¹⁰ Students who experience difficulty in a course receive assistance from administrative staff to help the youth succeed.²¹¹ Students have the opportunity to

203. VisionQuest, Philosophy, at http://www.vq.com/overview_philosophy.htm (discussing the treatment philosophy of the program); VisionQuest, Treatment, at http://www.vq.com/services_treatment.htm.

204. VisionQuest, Philosophy, *supra* note 203.

205. VisionQuest, Overview, *supra* note 202.

206. VisionQuest, Outcomes, at <http://www.vq.com/outcomes.htm>; *see also* VisionQuest, Program Evaluations, at http://www.vq.com/outcomes_programevaluations.htm (discussing the individual results of research studies conducted by the University of Pennsylvania Center for the Study of Youth Policy, the Rand Corporation, the State of Oklahoma, and the Program Development and Evaluation System (operated by the Crime and Justice Research Institute in Philadelphia)).

207. VisionQuest, Treatment, *supra* note 203.

208. *Id.*

209. VisionQuest, Education Outcomes, at http://www.vq.com/outcomes_education_outcomes.htm.

210. *Id.*

211. *Id.*

complete their high school diplomas or earn their GEDs, and can apply to college.²¹²

Exemplifying one of its many successful comprehensive wilderness programs, VisionQuest's "Full Circle Camp" is a four-phase program where groups of fifteen to seventeen youth live and work together as a "tipi family."²¹³ The first phase is "Orientation," wherein VisionQuest psychologists, medical, vocational, and educational professionals assess the youth and a Treatment Family Advocate develops the youth's Individual Service Plan.²¹⁴ Once the youth has been evaluated, he begins receiving treatment and attending classes; the youth then progresses to phase two, "Quest Preparation."²¹⁵ In phase two, each youth prepares to participate in their "quest experience."²¹⁶ As part of their preparation, youth participate in physical challenges and train using the President's Physical Fitness Standards.²¹⁷ The challenges are graduated competitions designed to provide a forward-moving continuum of success, achievement, and positive reinforcement.²¹⁸ Additionally, youth participate in "Tipi Pride Challenges," which use intramural and experiential educational activities to foster pride in the youths' "tipi families," and to promote teamwork and cooperation.²¹⁹ Finally, youth in phase two participate in a variety of Native American ceremonies and challenges that promote introspection, sharing, and relationship building.²²⁰

Once a Full Circle Camp participant has passed all the necessary tests and challenges of phases one and two, and has made sufficient progress towards achieving his treatment goals, he enters phase three and undertakes a "quest."²²¹ Depending upon the youth's problems, needs, and treatment goals, the youth will participate in either a "Wilderness Quest," the "Buffalo Soldiers Quest," or the "Wagon Train Quest."²²² "Wilderness Quests" include

212. *Id.*

213. VisionQuest, Residential, at http://www.vq.com/services_residential_impactcamp.htm (discussing Full Circle Camp).

214. *Id.*

215. *Id.*

216. *Id.* "Quest Experiences" are phase three of the program, and will be described *infra* pp. 681-82.

217. VisionQuest, Residential, *supra* note 213.

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

a hiking quest,²²³ a biking quest,²²⁴ and a three-day, three-night “rock climbing/solo/running quest.”²²⁵ In each Wilderness Quest, participants develop the route, establish a camp, and care for the equipment.²²⁶ The “Buffalo Soldiers Quest” is a historical reenactment program where participants learn the history of the Buffalo Soldiers,²²⁷ learn precision foot and equestrian drills, perform at local community schools, and educate the community about the contributions of the Buffalo Soldiers.²²⁸ Finally, participants in the “Wagon Train Quest” undertake a journey traveling by horse and covered wagon.²²⁹ Each wagon train consists of eight to ten covered wagons that travel approximately fifteen miles per day, four to five days per week.²³⁰ Participants eat, sleep, attend classes, and continue to work on their treatment plan within the confines of the wagon train camp.²³¹

Once a youth has successfully completed his quest, he may progress to phase four, “Community Re-Entry.”²³² The final phase of each youth’s VisionQuest program prepares the youth for community reentry through teaching independent living and job skills, economic survival skills, and basic living skills.²³³ The Treatment

223. The “Hiking Quest” is “designed to deal with issues of abandonment” and to force the youth to continually “reexamine [his] commitment to self and others.” VisionQuest, Quests, at http://www.vq.com/services_residential_quests_specialized.htm.

224. “The Biking Quest” is “designed to promote feelings of competency, success, and group cooperation.” *Id.* The group must stay together and the slowest participant establishes the pace for the group. *Id.* Additionally, this quest addresses the issue of boundaries because the youth must adhere to strict safety procedures; deviation is not permitted. *Id.*

225. The three-day, three-night “Rock Climbing/Solo/Running Quest” focuses on developing a sense of self and personal competency, as well as on learning to rely upon and trust others. *See id.* Participants in this quest first engage in rock climbing expeditions, then undertake a multi-day solo experience to facilitate solitude and introspection, and finally conclude with a seven mile run. *Id.*

226. VisionQuest, Residential, *supra* note 213.

227. Buffalo Soldiers were the segregated minority troops of the 9th and 10th Calvary Regiments and the 24th and 25th Infantry Regiments of the United States Army. VisionQuest, Buffalo Soldiers, at http://www.vq.com/services_residential_buffalosoldiers.htm.

228. This quest instills cultural pride. In addition, participants learn teamwork as they must perform their precision foot and equestrian drills in unison. Youth also learn responsibility because they must care for their horses and tack. *Id.*

229. VisionQuestion, Wagon Train, at http://www.vq.com/services_residential_wagontrain.htm. This quest is designed to develop a strong work ethic, self-discipline, and sense of responsibility. *Id.* Additionally, this quest is intended to promote cooperation, unity, and a sense of family, as well as a sense of tradition and involvement. *Id.*

230. The youth rest the remaining two to three days. *Id.*

231. The youth undergo a full twenty-six hours per week of classroom education while on their journey. They must also set up and take down the camp each night as they progress along their route. “The camp” includes Tipis, classroom tents, facilities for cooking and refrigeration, toilets, water storage, and offices. Additionally, participants must care for the animals and tack. *Id.*

232. VisionQuest, Residential, *supra* note 213.

233. *Id.*

Family Advocate then finalizes the youth's discharge plan and prepares to begin home visits.²³⁴

By placing youth in a "healthy, family-style situation surrounded by positive role models, common sense, and discipline," and by focusing on "education and counseling, complemented with an emphasis on nature, physical fitness, and history," VisionQuest has developed an innovative, cost-effective²³⁵ approach that is successful.²³⁶

The proposed continuum of sanctions would continue with residential community-based facilities and programs, and then would be followed by non-residential community-based facilities and programs. Both residential and non-residential community-based facilities and programs, designed for a multitude of offenses and offenders, exist and are widely acknowledged to be effective.²³⁷ Residential community-based facilities include group homes, half-way houses, and inpatient facilities.²³⁸ Non-residential community-based facilities include community centers, day and evening reporting centers, and day treatment centers.²³⁹ Whether residential or non-residential, community programs include treatment, education, vocational training and placement, counseling, and specialized programs addressing such issues as substance abuse, violent behavior, sex offenses, parenting, gang activity, and anger management.²⁴⁰ Additionally, either singularly or as part of a comprehensive community-based treatment program, many juveniles perform community service and/or complete work projects.²⁴¹ Such

234. *Id.*

235. VisionQuest programs range in cost from \$46 per youth, per day, to \$250 per youth, per day, depending on the program, with the average program duration being four to six months. Mingo Stroeber, Director, Court Services, VisionQuest. To illustrate VisionQuest's cost effectiveness, Oklahoma calculated that each youth sent to VisionQuest saved the State an average of \$65,434. VisionQuest, Program Evaluations, *supra* note 206.

236. VisionQuest has been cited as an effective program in OFFICE OF JUV. JUSTICE AND DELINQ. PREVENTION, U.S. DEP'T OF JUSTICE, GUIDE FOR IMPLEMENTING THE COMPREHENSIVE STRATEGY FOR SERIOUS, VIOLENT, AND CHRONIC JUVENILE OFFENDERS (James C. Howell ed.) and in OFFICE OF JUV. JUSTICE AND DELINQ. PREVENTION, U.S. DEP'T OF JUSTICE, WHAT WORKS: PROMISING INTERVENTIONS IN JUVENILE JUSTICE, PROGRAM REPORT (1994). See VisionQuest, Outcomes, *supra* note 206; *see also* VisionQuest, Program Evaluations, *supra* note 206.

237. *See, e.g.*, MENDEL, GUIDING LIGHTS, *supra* note 122.

238. *See, e.g.*, JUVENILE JUSTICE IN CALIFORNIA: FACTS AND ISSUES, *supra* note 17.

239. These centers offer a combination of supervision, treatment, recreation, academic tutoring, and life skills instruction to thousands of children at a cost of less than one-third that of detention. *See* MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 53.

240. *See, e.g.*, JUVENILE JUSTICE IN CALIFORNIA: FACTS AND ISSUES, *supra* note 17.

241. *Id.*

projects include working in supervised cleanup crews, graffiti removal, and school landscaping.²⁴²

One example of a successful comprehensive residential community facility, VisionQuest operates small residential community-based “Independent Living Group Homes” for six to ten youth each.²⁴³ All youth living in the homes must regularly and consistently attend school and/or work, and must participate in household activities and chores.²⁴⁴ In addition, youth work towards achieving the goals outlined in their treatment plan, are taught basic life skills, and learn to live cooperatively with housemates and staff.²⁴⁵ Youth may also participate in structured, constructive recreation and leisure activities.²⁴⁶ Staff, who remain on the premises at all times, supervise and guide the youth.²⁴⁷ Although initially under constant supervision, residents earn increasing independence and more relaxed staff supervision as they progress through their treatment programs.²⁴⁸ As a youth’s independence increases and supervision decreases, program staff conduct random checks in order to ensure continued compliance.²⁴⁹

The Star Program in Gladstone, Missouri, illustrates a successful comprehensive non-residential community-based program.²⁵⁰ In the Star Program, youth spend from 8:00 A.M. until 3:00 P.M., Monday through Friday, engaging in a combination of academic education and counseling.²⁵¹ After 3:00 P.M., the juveniles participate in community-service, academic tutoring, and additional individual and/or family counseling.²⁵² In order to maintain supervision and provide offenders with extra support, the Missouri Department of Youth Services assigns a “tracker” to each youth participating in the program.²⁵³ In addition, the case manager who has overseen the

242. *Id.*

243. VisionQuest, Group Homes, at http://www.vq.com/services_residential_grouphomes.htm.

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. California’s “Comprehensive Strategy” program in San Diego County is another example of a successful comprehensive non-residential community-based program. For information on this program, contact The Children’s Initiative, 4438 Ingraham Street, San Diego, California 92109; (858) 581-5880.

251. MENDEL, GUIDING LIGHTS, *supra* note 122, at 9.

252. *Id.*

253. *Id.* at 10. These “trackers” are usually college students pursuing a degree in social work or a related discipline. They maintain close contact with the delinquent youth and their families, and offer support, mentoring, and other assistance to both the youth and their families. *Id.*

youth's case throughout his involvement with the Department of Youth Services continues to supervise and support the offender in a comprehensive aftercare program.²⁵⁴

Further exemplifying effective non-residential community-based programs, Multidimensional Treatment Foster Care²⁵⁵ and Multisystemic Therapy²⁵⁶ emphasize counseling for the offender and his family.²⁵⁷ Multidimensional Treatment Foster Care ("MTFC") is a cost-effective alternative to group or residential treatment, incarceration, and hospitalization for juveniles with histories of chronic and severe criminal behavior and delinquency.²⁵⁸ MTFC recruits, trains, and closely supervises "community families" to provide juveniles with treatment and intensive supervision at home, in school, and in the community.²⁵⁹ MTFC provides the youth with a structured and therapeutic living environment.²⁶⁰ MTFC parents complete intensive pre-service training, attend weekly group meetings run by a program case manager who provides extensive supervision of the youth and the family, and engage in daily telephone calls with the case manager.²⁶¹ The case manager conducts frequent home visits and maintains regular contact between the youth's probation/parole officer, teachers, work supervisors, and other involved adults.²⁶²

Through a positive relationship with a mentoring adult and separation from delinquent peers, MTFC establishes clear and consistent limits with follow-through on consequences and positive reinforcement for appropriate behavior.²⁶³ MTFC costs approximately \$2,700 per youth, per month, with the average program duration being seven months.²⁶⁴ When compared to a control group, MTFC participants had a significantly lower rearrest rate and, at a one year follow-up, had spent 60% fewer days

254. *Id.*

255. Blueprints for Violence Prevention, Model Programs (Multidimensional Treatment Foster Care), at <http://www.colorado.edu/cspv/blueprints/model/programs/MST.html>.

256. Blueprints for Violence Prevention, Model Programs (Multisystemic Therapy), at <http://www.colorado.edu/cspv/blueprints/model/programs/MST.html>.

257. *See id.*; MENDEL, GUIDING LIGHTS, *supra*, note 122, at 9; *see also* MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 22-27.

258. Blueprints for Violence Prevention, Model Programs (Multidimensional Treatment Foster Care), *supra* note 255.

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

incarcerated.²⁶⁵ In 1999, MTFC saved taxpayers \$14.07 for each dollar spent.²⁶⁶

Multisystemic Therapy (“MST”) is an intensive home-based treatment program that promotes behavioral changes in chronic, violent, or substance abusing juveniles ages twelve to seventeen.²⁶⁷ The primary goals of MST are to empower parents with the skills and resources needed to independently address teenage difficulties and to assist youth in coping with family, peer, school, and neighborhood problems.²⁶⁸ In order to overcome barriers to service access and to increase family participation and retention in treatment, MST provides individual and family therapy, behavioral training, and cognitive behavioral therapy in the juvenile’s home.²⁶⁹ MST costs approximately \$4,500 per youth.²⁷⁰ Treatment generally lasts approximately sixty hours over a four-month period; however, the frequency and duration of the sessions are determined by family need.²⁷¹ Highly regimented, MST requires its therapists to review each of their cases three times per week; once with their supervisor, once with the supervisor along with other therapists on their treatment team, and once with a senior MST clinical consultant.²⁷² MST has generated a 25–70% reduction in long term rearrest rates,²⁷³ a 47–64% reduction in out-of-home placements,²⁷⁴ extensive improvements in family functioning,²⁷⁵ and decreased mental health problems for serious juvenile offenders.²⁷⁶ Saving taxpayers \$8.38 for every dollar spent in 1999,²⁷⁷ MST is regarded as one of “the most cost-effective of a wide range of intervention programs aimed at serious juvenile offenders.”²⁷⁸

265. *Id.*

266. MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 12.

267. Blueprints for Violence Prevention, Model Programs (Multisystemic Therapy), *supra* note 256.

268. *Id.*

269. *Id.*

270. *Id.*

271. *Id.*

272. MENDEL, GUIDING LIGHTS, *supra* note 122, at 26.

273. Blueprints for Violence Prevention, Model Programs (Multisystemic Therapy), *supra* note 256.

274. *Id.*

275. *Id.*

276. *Id.*

277. MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 12.

278. Blueprints for Violence Prevention, Model Programs (Multisystemic Therapy), *supra* note 256. Despite successes spanning over fourteen years and despite costing only \$4,500 per youth (less than one-sixth the cost of detention), MST served just 5000 juveniles in 2000. MENDEL, REDUCING JUVENILE CRIME, *supra* note 8, at 57.

When youth participate in community-based programs,²⁷⁹ they should be subject to various forms of intensive supervision. Intensive supervision could require electronic monitoring, daily reporting, random visits, drug testing, curfews, prohibitions on associations and/or activities, class attendance, and individual, group, or family counseling.²⁸⁰ The extent of an offender's supervision should vary depending upon the juvenile's circumstances and the offense committed.²⁸¹ The supervision's intensity should be gradually reduced as the youth demonstrates compliance with his programs and successfully reintegrates into the community. Depending on the level required, supervision could be formal, via probation officers and case managers, informal, via mentors, or, like "backers"²⁸² and "child/family teams,"²⁸³ a combination of the two.

In addition to being incorporated as an element of community sanctions, intensive supervision could, in and of itself, be imposed as an appropriate sanction for nonviolent offenders. Although the cost varies depending upon the level and elements of the supervision, intensive supervision remains fiscally sound.²⁸⁴ To illustrate, the Intensive Supervision Unit in Lucas County, Ohio, found that intensive supervision cost approximately \$6,000 per year, in comparison to the over \$32,000 per year for incarceration.²⁸⁵ Moreover, approximately one-third of the cost of incarceration, the Wayne County Intensive Probation Program in Detroit saved Michigan almost nine million dollars over three years.²⁸⁶

279. This includes both residential and non-residential community-based programs.

280. See JUVENILE JUSTICE IN CALIFORNIA: FACTS AND ISSUES, *supra* note 17.

281. The costs of supervision vary with the extent.

282. "Backers" are VisionQuest's youth care professionals who maintain frequent face-to-face contact with program participants as they reenter the community, and act as liaisons between the youth, his family, courts, schools, and the community. In addition to formally monitoring school attendance, curfew, and program compliance, as well as requiring the youth to frequently call and "check-in," "backers" informally go the extra mile to ensure the youth's success. To illustrate, if a youth is having difficulty being punctual for class, work, or program appointments, "backers" will support the youth by transporting him to school, work, counseling, activities, etc., while encouraging the youth to wake up on time and catch the bus. "Backers" further support the youth by being available twenty-four hours per day to assist with crisis situations, such as family disputes, the loss of a job, difficulty in school, and confrontations with authority. VisionQuest, Nonresidential, at http://www.vq.com/services_nonresidential_homequest.htm.

283. See MENDEL, GUIDING LIGHTS, *supra* note 122, at 41.

284. Zierdt, *supra* note 81, at 428.

285. See Barry Krisberg, Elliot Currie, & David Onek, *What Works with Juvenile Offenders? A Review of "Graduated Sanction" Programs*, 10 CRIM. JUST. 20, 24 (Summer 1995) (noting 1993 cost figures).

286. See *id.*

Restitution should be ordered as part of any sanction, as it mandates that juveniles compensate their victims for any damage that the offender has caused.²⁸⁷ Restitution, therefore, punishes the offender while creating a restorative justice system that mitigates the victim's loss and diminishes the societal costs of juvenile crime.²⁸⁸ Finally, fines could be imposed as punishment, alone or in conjunction with other sanctions.²⁸⁹

Although effective programs exist at each stage of the proposed comprehensive continuum of sanctions, these programs are scarce. Consequently, the vast majority of youthful offenders who should participate in these programs are never given the opportunity to do so. Instead of deleteriously incarcerating juveniles in adult jails and prisons, programs such as those described above need to be widely developed, implemented, and utilized. Every effort should be made to assess a youthful offender's individual needs, place the juvenile appropriately along the continuum of sanctions, and provide the facilities, treatment, and services necessary to achieve the stated goals. Society, as well as the individual offender, will be better served.

VI. CONCLUSION

The reduction of youth crime and violence will not be accomplished by punitive and politically popular but ineffective policies that permit the incarceration of juveniles with adults. There is no reliable evidence that incarcerating juveniles in adult jails and prisons deters crime, reduces recidivism, or has incapacitative effects superior to those of juvenile court disposition. In fact, juveniles sent to adult jails and prisons are subject to increased brutality, depression, and suicide rates, are afforded few educational, vocational, and treatment programs, learn new criminal behavior, and are likely to emerge as potential career criminals. This is both morally and fiscally costly to society. In addition, the influx of juveniles transferred to adult facilities compounds the problem of facility overcrowding, thus leading to the early release of many criminals and further endangering the public. Prevention, early intervention, community-based alternatives, rehabilitation,

287. O'Connor & Treat, *supra* note 1, at 1320.

288. *Id.*

289. *Id.*

and aftercare programs are far less costly and more effective than incarceration in adult facilities, and should be widely utilized.

As effective alternatives exist to incarcerating waived youth in adult correctional facilities, this practice should cease. Utilizing a comprehensive continuum of graduated sanctions and expanding programs such as those discussed and proposed throughout this Note better promote public safety. In looking toward the future, our society should look to the past, and refocus on a rehabilitative philosophy of juvenile justice.

