Serving No "Purpose:" The Double-Edged Sword of New York's Juvenile Offender Law

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NOTES

SERVING NO "PURPOSE": THE DOUBLE-EDGED SWORD OF NEW YORK'S JUVENILE OFFENDER LAW

Perceived fears of uncontrollable criminal activity across the nation have caused people to further lose confidence in what is already viewed as a failing criminal justice system. These feelings manifest themselves in communities' demands for more aggressive state intervention. In particular, escalation in the

1 See Jory Farr, Fear Reigns While Crime Tales Plunge, PRESS ENTERPRISE, Feb. 25, 1997, at A4 (noting that although FBI figures report national homicide rate decreasing for fourth consecutive year, public fear of crime remains high); see also Attorney General Janet Reno, Fighting Youth Violence: The Future Is Now, 11 Sum. CRIM. JUST. 30, 30 (1996) (recognizing drop in nationwide crime rates partly due to increases in police force); cf. David Jackson, Organizations Work Toward a More Civic Society, DALLAS MORNING NEWS, Jan. 12, 1997, at 1J (discussing National Commission on Civic Renewal's survey of public disillusionment finding that 67% of Americans feel "U.S. is in a long-term moral decline"). But see Fox Butterfield, Rape at Lowest Level in a Decade, Report Says, N.Y. TIMES, Feb. 3, 1997, at A1 (noting nationwide police report that rapes reported in 1995 have dropped to 97,000 which was lowest since 1989 according to Justice Department).

number of serious juvenile crimes\(^3\) has sparked a re-evaluation of the purpose behind a separate juvenile system.\(^4\)

Historically, the fundamental notion that youths are unable to fully comprehend the consequences of their actions served as the basis for the adoption of a separate juvenile justice system.\(^5\)

handling juvenile delinquency was rehabilitation and supervision); Robert E. Shepherd, Jr., What Does the Public Really Want?, 11 Spring-CRIM. JUST. 51, 52 (1996) (presenting results of survey indicating that public preference is toward rehabilitation model in juvenile justice as opposed to punitive measures).

\(^3\) See Ralph A. Rossum, Reforming Juvenile Justice and Improving Juvenile Character: The Case for the Justice Model, 23 PEPP. L. REV. 823, 823-24 (1996) (reporting FBI juvenile crime statistics: Serious crime increased by 4.5% from 1994 and 13.8% from 1990; violent crime increased by 5.7% from 1994 and 29.9% from 1990; juveniles commit 16% of all murders and non-negligent manslaughter, 15.6% of all aggravated assaults, 16.3% of all forcible rapes, 32.0% of all robberies, 33.4% of all larcenies, 36.2% of all burglaries, and 55.3% of all arsons); Shepard, supra note 2, at 51 (noting results of random survey of adults across United States concerning their perceptions of juvenile crime indicated perception of increase in juvenile crime). But see Kevin Heubusch, Teens on the Trigger, AMER. DEMOGRAPHICS, Feb. 1, 1997, at 24 (questioning accuracy of 1995 FBI teen crime report which he claims is misleading since numbers vary yearly depending on which local agencies voluntarily file reports); Mike Hudson, Experts Say Some Crime Statistics Used to Further Certain Causes, ROANOKE TIMES & WORLD NEWS, Feb. 23, 1997, at 1 (discussing local politicians abusing Virginia's increase, as opposed to national decrease, in juvenile arrests, which does not indicate increase in juvenile crime, to justify more punitive approach to crime); Bruce Shapiro, Behind the Bell Curve, Decline in Juvenile Crime, NATION, Jan. 6, 1997, at 5 (reporting latest Justice Department figures for juvenile crime); Lisa Stansky, Age of Innocence: More and More States are Telling Teens: If You do an Adult Crime, You Serve the Adult Time, 82 Nov. A.B.A. J. 60, 62 (1996) (according to 1996 Update to Violence from Office of Juvenile Justice and Delinquency Prevention at U.S. Justice Department, six percent of all ten to seventeen year olds were arrested in 1994, but only one-half of one percent of juveniles were arrested for violent crimes).

\(^4\) See Korine L. Larsen, With Liberty and Juvenile Justice For All: Extending the Right to a Jury Trial to the Juvenile Courts, 20 WM. MITCHELL L. REV. 835, 846 (1994) (indicating fact that severe repeat juvenile offenders, comprising twenty percent of all delinquents yet committing about two thirds of all offenses, shows that juvenile courts fail in their role as rehabilitator); see also Janet E. Ainsworth, Youth Justice in a Unified Court: Response to Critics of Juvenile Court Abolition, 36 B.C. L. REV. 927, 931-33 (1995) [hereinafter Response to Critics] (chronicling development of split system of criminal justice beginning with nineteenth century Progressive movement); Holly Beatty, Is the Trend to Expand Juvenile Transfer Statute Just an Easy Answer to Complex Problem?, 26 U. TOL. L. REV. 979, 992-93 (1995) (discussing differences between punishment, depriving offender of liberty through confinement, and treatment, focusing on individual's future return to society).

\(^5\) See Janet E. Ainsworth, Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court, 69 N.C. L. REV. 1083, 1120 (1991) [hereinafter Reimaging Childhood] (noting that court professionals assume juveniles are incapable of exercising sound judgment); Beatty, supra note 4, at 979 (discussing Progressive belief that juvenile crime resulted from external forces of society rather than internal will of child, and therefore focused on treatment rather than punishment); Donald J. Harris, Due Process v. Helping Kids in Trouble: Implementing the Right to Appeal from Adjudication to Delinquency in Pennsylvania, 98 DICK. L. REV. 209, 226 (1993) (noting general consensus of lawyers is that adolescents do not have ability to exercise sound discretion). See generally Melissa M. Weldon, Fiscal Restraints Trump Due Process: Children's Diminishing Right to Counsel in Minnesota, 14 LAW & INEQ. J. 647, 650-56 (1996) (discussing evolution of segregated system and recent challenges to its effec-
Prosecuting children as adults failed to address the child's lack of mental culpability. Thus, a separate juvenile court system was implemented with the intention of filling the justicial void left by the adult criminal justice system. From its inception, the ideal goal of the juvenile justice system was to rehabilitate rather than punish the child offender—a marked departure (tiveness).

6 See Barry C. Feld, Juvenile Court Legislation Reformed and the Serious Young Offender: Dismantling the "Rehabilitative Ideal", 65 MINN. L. REV 167, 170 (1981) [hereinafter Dismantling the Rehabilitative Ideal] (noting those who believed juveniles did not possess requisite maturity and culpability associated with adult crimes should be deemed less blameworthy as well as more susceptible to treatment and rehabilitation); Lourdes M. Rosado, Minors and the Fourth Amendment: How Juvenile Status Should Invoke Different Standards for Searches and Seizures on the Street, 71 N.Y.U. L. REV. 762, 778 (1996) (addressing Supreme Court recognition that minors are generally less mature than adults and therefore more vulnerable to coercive interrogation tactics); see also Eric J. Fritsch & Craig Hemmens, An Assessment of Legislative Approaches to the Problem of Serious Juvenile Crime: A Case Study of Texas 1973-1995, 23 AM. J. CRIM. L. 563, 565-66 (1996) (referring to "child saving" movement supported by proponent's desire to treat juvenile criminals in less blameworthy fashion); Ellen R. Fulmer, Novak v. Commonwealth: Are Virginia Courts Avoiding Special Protection to Virginia's Juvenile Defendants?, 30 U. RICH. L. REV. 935, 935 (1996) (citing Haley v. Ohio, 332 U.S. 596, 599 (1948)) (reasoning that child of fifteen years "cannot be judged by the more exacting standards of maturity... [t]hat which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens").

7 The juvenile court was founded upon the doctrine of parens patriae to protect the particular needs of the child. See BLACK'S LAW DICTIONARY 1114 (6th ed. 1990). Literally "parent of the country," the term parens patriae refers to the role of the state as guardian of persons under "legal disability," including, but not limited to, juveniles and the insane, as well as in issues of child custody. Id.; see also Kent v. United States, 383 U.S. 541, 554-555 (1966). The Supreme Court, however, has limited the use of a state's power as parens patriae to deprive a person of his liberty. Id. This doctrine serves to put the State in the position of acting in the child's best interest as opposed to the adversarial position of prosecutor and judge. Id. Parens patriae gives the states the power to care for those who are not able to care for themselves. Id. The motivation that created this court was a desire to protect and reform juvenile offenders. Id.; West Virginia v. Chas. Pfizer & Co., 440 F.2d 1079, 1088 (2d Cir. 1971). The doctrine has also been applied by the states in order to recover damages for "quasi-sovereign interests" without bearing on individuals residing within the state, such as the general health and welfare of the people, interstate rights, and the economic interests of the state. Id.

8 See Beatty, supra note 4, at 979 (discussing ongoing debate concerning primary goal of juvenile court system as one of rehabilitation as opposed to punishment); Jan C. Costello & Nancy L. Worthington, Incarcerating Statue Offenders: Attempts to Circumvent the Juvenile Justice and Delinquency Act, 16 HARV. C.R.-C.L. L. REV. 41, 81 n.4 (1981) (noting developers of nineteenth century philosophy of rehabilitation rejected adult criminal court perception of punishment/deterrence as method of rehabilitation, opting instead for "treatment" of juvenile offenders); Barry C. Feld, The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference it Makes, 68 B.U. L. REV. 821, 824 (1988) [hereinafter Principle of Offense] (discussing origins of juvenile treatment in terms of medical concepts borrowed by criminology); Martin L. Forst & Martha-Elm Blomquist, Cracking Down on Juveniles: The Changing Ideology of Youth Connections, 5 NOTRE DAME J. L. ETHICS & PUB. POLY 323, 324-25 (1991) (presenting late nineteenth century philosophy of rehabilitative treatment model, in which state's responsibility was to act in best interests of child regardless of whether child was considered dependent or delinquent).
from the adult system.⁹

Although notable in its purpose, juvenile justice systems have recently been criticized.¹⁰ In response to such criticism, nationwide crime control agendas were created to appease the public outcry to "get tough"¹¹ on juvenile criminals.¹² The public is demanding that juveniles be treated similarly to their adult counterparts.¹³ This Note contends, however, that these legislative initiatives do not comport with the rehabilitative goal of juvenile

⁹ See In re Holmes, 109 A.2d 523, 524 (Pa. 1954) (stating concept of juvenile courts is to inquire as to appropriate treatment and methods of rehabilitation for minors); Principle of Offense, supra note 8, at 848 (noting juvenile judicial inquiry focuses on preventing further delinquency not on youth's prior conduct); Marcia Johnson, Juvenile Justice, 17 WHITTIER L. REV. 713, 846 (1996) (presenting benefits of juvenile system as the non-criminal dispositional nature of the proceedings, anonymity, a greater focus on rehabilitation, and more humane institutions); Julian Mack, The Juvenile Court, 23 HARV. L. REV. 104, 119-20 (1909) (noting judges emphasize therapeutic nature of juvenile court intervention).

¹⁰ See Forst & Blomquist, supra note 8, at 327-28 (noting criticisms leveled at all aspects of juvenile court system); see also Reno, supra note 1, at 32 (recognizing that increase in serious youth crime can only be combated by revamping existing systems and implementing new system similar to specialized drug courts); Anna L. Simpson, Rehabilitation as the Justification of a Separate Juvenile Justice System, 64 CAL. L. REV. 984, 1003-17 (1976) (criticizing rehabilitative purpose of juvenile justice systems, further proposing that juvenile systems should mirror adult criminal justice system).

¹¹ See Julianne P. Scheffer, Serious and Habitual Juvenile Offender Statutes: Reconciling Punishment and Rehabilitation Within the Juvenile Justice System, 48 VAND. L. REV. 479, 491 (1995) (discussing "get tough" statutory reform as way to achieve punitive goals).

¹² See Rossum, supra note 3, at 838. The author's proposed initial step in the reforming juvenile justice system is the creation of a "justice model", which achieves dual goals of holding both juveniles and the public responsible for their respective committed crimes and imposed punishments. Id. See, e.g., Barbara Walsh, Cottage 9: Last Chance for Sex Offender's, Boys in Youth Center's Cottage 9 Work at Self-control, PORTLAND PRESS HERALD, March 9, 1997, at 1A. As a last chance for disturbed young murderers and rapists to redeem themselves, Maine has implemented a militant treatment program. Id.

¹³ See Forst & Blomquist, supra note 8, at 333-34 (noting some legislators believed inadequacies in juvenile justice system could be curtailed by either removing some classes of youthful offenders from juvenile justice system or making juvenile system itself more punitive by changing its underlying philosophies and goals); Linda F. Giardino, Statutory Rhetoric: The Reality Behind Juvenile Justice Policies in America, 5 J.L. & POLY 223, 259 (1996) (suggesting juvenile courts exercise choice between juvenile rehabilitation and punitive nature of adult system when relinquishing jurisdiction); Marcy Rasmussen Podkopacz & Barry C. Feld, Judicial Waiver Policy and Practice: Persistence, Seriousness and Race, 14 LAW & INEQ. J. 73, 82-83 (1995) (transferring selected youthful offenders to adult criminal courts serves as "safety valve" to shield juvenile justice system from its critics); see also Michael Kennedy Burke, This Old Court: Abolitionists Once Again Line Up the Wrecking Ball on the Juvenile Court When All it Needs Is a Few Minor Alterations, 26 U. TOL. L. REV. 1027, 1051-52 (1995) (advocating that Ohio system for judicial waiver into adult criminal court should be limited to first and second degree felonies); Douglas A. Hager, Does the Texas Juvenile Waiver Statute Comport With the Requirements of Due Process?, 26 TEX. TECH L. REV. 813, 830-31 (1995) (noting waiver decision is choice between adult's punitive criminal forum and juvenile's rehabilitative setting). See generally COLO. REV. STAT. § 19-2-803(1) (1990) (defining "violent offender" as one who has committed violent specified crime).
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courts. 14

Legislative adjustments to the juvenile justice system have attempted to satisfy the public demand for a "law and order" approach to juvenile crime. 15 The twin aims of rehabilitation and prevention, thus, have been replaced by those of control and punishment. 16 The New York electorate has not been immune to this growing sentiment. 17 The State's Juvenile Offender Law of 1978, 18 ("JOL") is considered one of the most punitive and re-

14 See Giardino, supra note 13, at 230 (stating "unfortunately the shift toward the punishment of the child, as opposed to rehabilitation, hinders the juvenile justice system from providing effective treatment to serious juvenile offenders").

15 See Sheffer, supra note 11, at 486-87 (presenting current legislative trend of moving to punishment/"just deserts" model, using California Code as example); Weldon, supra note 5, at 674-75 (theorizing that juvenile courts are no longer solely concerned with best interests of child but also consider public needs); see also Principle of Offense, supra note 8, at 909-14 (analyzing move toward philosophy of punishment in juvenile court system). See generally Nev. Rev. Stat. Ann. § 62.211(2)(b) (Michie Supp. 1993) (allowing juvenile court to impose on serious youth offenders "any other punitive measure the court determines to be in the best interest of the public"); N.J. Stat. Ann. § 2A:4A-20 (West 1987) (stating "this bill recognizes that the public welfare... can be served most effectively through an approach which provides for harsher penalties for juveniles who commit serious acts or who are repetitive offenders"); Wash. Rev. Code § 13.40.010(2) (1988) (describing purpose of juvenile court as giving "punishment commensurate with the age, crime, and criminal history of the juvenile offender").


17 See Bruce Shapiro, Behind the Bell Curve, Decline in Juvenile Crime, Nation, Jan. 6, 1997, at 5. New York State Assembly Speaker Sheldon Silver's speech to Citizens Crime Commission of New York City reflected Diluio's "superpredator" thesis and predicted an insurmountable wave of juvenile crime. Id. In response to the anticipated increase in juvenile crime, Sheldon Silver proposed that children convicted of any crime get "a taste of punishment" rather than probation. Id.

18 See N.Y. Penal Law § 30.00(2) (McKinney 1987). The statute states:

A person thirteen, fourteen or fifteen years of age is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of § 125.25 and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; and a person fourteen or fifteen years of age is criminally responsible for acts constituting the crimes defined in § 135.25 (kidnapping in the first degree); 150.20 (manslaughter in the first degree); subdivisions one and two of § 130.50 (sodomy in the first degree); subdivisions one and two of § 130.70 (aggravated sexual abuse); 140.30 (burglary in the first degree); subdivision one and two of § 130.50 (sodomy in the first degree); 130.70 (aggravated sexual abuse); 140.30 (burglary in the first degree); subdivision one of § 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree) or subdivision two of § 160.10 (robbery in the second degree) of this chapter; or defined in this chapter as an attempt to commit mur-
gressive juvenile laws in the country, making New York a leader in punitive reform of the juvenile system. 19

This Note provides a brief history of the juvenile justice system in the United States and the philosophies underlying its development. Part II discusses the trend of transforming juvenile courts from a rehabilitative system into an increasingly retributive system. Part III examines New York's response to this trend through legislative enactment, which truncates the juvenile courts' intended mission as rehabilitative institutions. It is submitted that New York's JOL frustrates the rehabilitative mission of juvenile courts by abandoning the best interests of the child standard, thereby favoring community protection. It is also submitted that the dual goals of serving the best interests of the juvenile offender and promoting public safety may be consistent in that rehabilitation assures a safe community. It is further submitted that the New York system, which voids the original jurisdiction and judicial discretion of the Family Court when dealing with serious youth offenders, should be revamped. This Note contends that a system, which empowers the Family Court with authority over all juvenile offense cases, will better serve to rehabilitate the juvenile offender as well as to protect the community at large.

I. SERIOUS YOUTH OFFENDERS - YESTERDAY: THE RISE OF THE JUVENILE JUSTICE SYSTEM

A. Underlying Philosophies of the Traditional Juvenile Court

Prior to the eighteenth century, the law did not treat juvenile offenders differently than adult criminals. 20 This classic view

19 See John N. Kane, Jr., Note, Dipositional Authority and Decision Making in New York's Juvenile Justice System: Discretion at Risk, 45 SYRACUSE L. REV. 925, 927 (1994) (recognizing New York's Juvenile Offender Law to be one of most punitive and regressive in America); see also Stacey Sabo, Rights of Passage: An Analysis of Waiver of Juvenile Court Jurisdiction, 64 FORDHAM L. REV. 2425, 2434-36 (1996) (discussing criticisms of New York's juvenile court's effectiveness and resulting changes in legislation occurring in 1970's as result of skyrocketing juvenile crime rates).

20 See Kane, supra note 19, at 929-30 (treating children in same manner as adult criminals followed English colonists to America in seventeenth century); see also TORJANOWICZ AND MORASH, JUVENILE DELINQUENCY: CONCEPTS AND CONTROL 181 (3d ed. 1983) (during end of 19th century, England embraced concept of parens patriae, "role
treated children and adults alike, thus a child convicted of political treason could be executed. The Positivist's theory replaced the classic view, recognizing different reasons for juvenile criminal behavior. This new philosophy was instrumental in establishing New York's House of Refuge in 1824. This institution, along with similar counterparts established in other states, sought to decrease the harsh effect of placing novice offenders with seasoned criminals.

The House of Refuge and organizations like it, however, failed to achieve their rehabilitative goals. In 1889, the Progressive Reform movement effectively eliminated the difficulties that these institutions were facing. The proponents of this doctrine of the King acting as parent when no parents existed to protect the rights of the child" to address concerns for destitute and delinquent youths).

21 See Clifford E. Simonsen, Juvenile Justice in America 51 (3d ed. 1991) (discussing prior to eighteenth century children were drowned, hung, and burned alive for political treason).

22 See Barry C. Feld, The Transformation of the Juvenile Court, 75 MINN. L. REV. 691, 693 (1991) [hereinafter Transformation] (suggesting that due to developments in science and industrialization, society took notice of need to treat children differently due to lack of comprehension and experience); Deborah L. Mills, United States v. Johnson: Acknowledging the Shift in the Juvenile Court System From Rehabilitation to Punishment, 45 DEPAUL L. REV. 903, 906-09 (1996) (suggesting that move from rural, agricultural society to modern, urban-industrial society contributed to need to separate adult and juvenile criminal justice systems, as did developing views towards family structure).

See generally Barry C. Feld, Criminalizing Juvenile Justice: Rules of Procedure for the Criminal Court, 69 MINN. L. REV. 141, 143 (1984) [hereinafter Criminalizing Juvenile Justice] (noting social problems which accompanied modernization of society); Principle of Offense, supra note 8, at 473-74 (discussing radical changes United States was experiencing during end of nineteenth century to beginning of twentieth century as result of railroads, influx of immigrants, and urbanization which caused shift in causes of crime).

23 See Mills, supra note 22, at 908-909 (according to Positivists "biological, psychological, sociological, cultural and physical" forces in environment caused criminal behavior).

24 See Principle of Offense, supra note 8, at 821 (describing classic view holding everyone accountable for all actions since people have free will); Mills, supra note 22, at 907-08 (reflecting classical view as giving "willed" criminals harsh sentences to "unwill" their criminal tendencies).

25 See Mills, supra note 22, at 906-07 (noting changes in American lifestyle at turn of century motivated movement to rectify accompanying problems).

26 See Cecil P. Remich, The House of Refuge 168 (1975); see also Kane, supra note 19, at 934.

27 See Kane, supra note 19, at 930 (describing purpose of House, deriving its power from parens patriae, was to rehabilitate children under sixteen and provide individualized treatment).

28 See id. at 931 (setting forth criticism of New York's House of Refuge as not being effective, refocusing on punishment rather than rehabilitation, and abhorrent conditions).

29 See generally Gary A. Debele & Wright S. Walling, Private Chips Petitions in Min-
initiated the first separate juvenile court system in Illinois.30 The Progressives envisioned a model juvenile court as a benevolent treatment agency31 making dispositions in the “best interest of the child.”32

B. Ideologies of theTraditional Juvenile Court

The retributive agenda of adult courts traditionally precluded any rehabilitation for the “hardened adult criminal mind.”33 This lack of rehabilitation prompted legislators to set up a separate system for juveniles distinguished by its rehabilitative goal.34


31 See Transformation, supra note 22, at 693-95 (explaining underlying theory behind Progressive movement toward separate juvenile system as their belief "that benevolent state action guided by experts could alleviate social ills . . .").

32 See Jeffrey Fagan and Elizabeth Piper Deschenes, Determinants of Judicial Waiver for Violent Juvenile Offenders, 81 J. CRIM. L. & CRIMINOLOGY 314, 318 (1990) (noting that in deciding what was "in the best interest of the child" juvenile courts were to investigate youths background to determine if they could be rehabilitated); cf. Lisa A. Cintron, Rehabilitating the Juvenile Court System: Limiting Juvenile Transfers to Adult Criminal Court, 90 NW. U. L. REV. 1254, 1258 (1996) (promoting position that children are not fully responsible for their actions and therefore should not be punished for them); see also Mills, supra note 22, at 910 (noting juvenile reform movement raised age of criminal responsibility from seven to eighteen in thirty eight states and District of Columbia).

33 See Cintron, supra note 32, at 1260 (focusing on deprivation of liberty and punishment as repayment for crime committed, adult system does not serve to rehabilitate to degree necessary for juvenile offenders); Hager, supra note 13, at 824 (choosing adult system or juvenile system when making waiver decisions demands consideration of consequences of retributive agenda of adult justice system); Scott Harshbarger & Carolyn Keshian, The Attorney General of Massachusetts' Bill Relative to the Trial and Sentencing of Serious Juvenile Offenders, 5 B.U. PUB. INT. L.J. 135, 136 (1996) (noting adult system's attention to nature of offense and need for public safety contrasts with juvenile's need for emphasis on both circumstances of offense and offender themselves).

34 See Ex Parte Daedler, 228 P. 467, 471 (Cal. 1924) (holding rationale of Juvenile Court Act is to benefit both offender and society by showing juvenile how to be productive member of society as opposed to solely punishing child); Sherri Jackson, Too Young to Die—Juveniles and the Death Penalty—A Better Alternative to Killing Our Children: Youth Empowerment, 22 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 391, 395 (1996) (mentioning juvenile offenders tried in their own system are adjudicated “delinquent” as
This emerging model drew from the premise that since a child is not mentally mature enough to comprehend his or her own actions, he or she needs the state's protection, not its punishment. The juvenile system served to shield children from the stigma that attaches to criminals within the adult criminal system. Unlike the adult system, the inherent privacy of the juvenile system prevented the public from readily formulating a negative opinion about the youthful offender. The different philosophies are further evinced in the statutory language utilized by the separate systems. The standard crime and punishment language was replaced by the rehabilitative terminology of opposed to being found "guilty" of crime, and are then placed in state agencies where treatment is provided until juvenile is deemed ready to return to society; Roger J.R. Levesque, Future Visions of Juvenile Justice: Lessons from International and Comparative Law, 29 CREIGHTON L. REV. 1563, 1585 n.61 (1996) (describing origins of current juvenile court system as derived from ideas of social control and "cultural conceptions of childhood"); Sabo, supra note 19, at 2429-31 (contending that premise behind juvenile justice system was to protect children who needed help by focusing on individualized treatment for rehabilitative purposes as opposed to penalization). But see Tomkins, supra note 30, at 1622 (stating that early juvenile justice system failed to achieve goal of individualized treatment of juvenile offenders, instead operating similarly to adult criminal system). 35 See supra note 6 and accompanying text. 36 See Kent v. United States, 383 U.S. 541, 556 (1966) (noting juvenile justice provisions have sought to shield youth from negative publicity); Irene Merker Rosenberg, Leaving Bad Enough Alone: A Response to the Juvenile Court Abolitionists, 1993 WIS. L. REV. 163, 184-85 (mentioning juvenile courts' many positive aspects as "institutionalized diversionary system [offering] anonymity, diminished stigma, shorter sentences, and recognition of rehabilitation as a viable goal"); Podkopacz & Feld, supra note 13, at 178 n.27 (using rehabilitative theory and establishing its own system, juvenile courts rebuffed pitfalls of criminal proceedings thus avoiding stigma of criminal prosecution); see also T. Markus Funk, A Mere Youthful Indiscretion? Reexamining the Policy of Expunging Juvenile Delinquency Records, 29 U. MICH. J. L. REF. 805, 891 (1996) (asserting stigma of label of juvenile delinquent may lead to incorrect characterization of reformed individual, when it may be system which failed to rehabilitate him); Sabo, supra note 19, at 2430 (explaining goal of juvenile court judge was to rehabilitate youthful offenders through "individualized justice" and focus on welfare of child). 37 See Davis v. Alaska, 415 U.S. 308, 320 (1974) (noting confidentiality of juvenile offender's record is constitutional right); Barry C. Feld, Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform, 79 MINN. L. REV. 965, 1012 (1995) [hereinafter Violent Youth] (accessing juvenile portion of adult offender's criminal past is impossible due to confidentiality afforded these records). 38 See Rossum, supra note 3, at 912 (explaining specialized vocabulary established by juvenile courts wherein "petitions of delinquency replaced criminal complaints, hearings replaced trials, adjudication of delinquency replaced judgments of guilt, and dispositions replaced sentences"); Tompkins, supra note 30, at 1623 (illustrating vocabulary differences in juvenile justice system: "social service personnel, probation officers, and clinicians" rather than "lawyers, prosecutors, and prison guards" of criminal system); see also In re J.S., 438 A.2d 1125, 1125 (1981) (holding that publication of youth's name could impair rehabilitative goals of juvenile justice system); Robert B. Acton, Gubernatorial Initiatives and Rhetoric of Juvenile Justice Reform, 5 J.L. & POLY 277, 338 n.84 (1996) (stating "cloak of confidentiality" surrounding juvenile court proceedings functions to prevent legal and social stigma from following child into adulthood).
diagnosis and treatment, respectively.  

C. Current National Trend is Abandoning the Rehabilitative Purpose of the Juvenile System

The problem with the modern juvenile process may be deeper than retracting from a rehabilitative goal. The trend of "criminalizing" the juvenile justice system ultimately results in reverting to the classical view of juvenile justice, resulting in a blurring of boundaries between juvenile and adult criminal courts. Despite the change in terminology and altruistic ideals, current juvenile courts across the nation do not reflect the rehabilitative intentions of the original system’s proponents.

39 See Cintron, supra note 32, at 1259 (citations omitted). Juvenile court hearings are civil proceedings which keep with the rehabilitative and treatment philosophies due, in part, to (1) juvenile offenders are not deemed "guilty," but "in need of court's help," (2) offenders are considered "delinquent" as opposed to "criminal," (3) hearings in juvenile court are not conducted openly, as adult criminal hearings, and (4) proceedings in criminal court are not adversarial. Id.; Hager, supra note 13, at 822-23. Referring to proceedings against child in juvenile system as "petition in the welfare of the child" rather than "criminal complaint" in adult system; adults are "arrested" while juveniles are "taken into custody"; adults have "trials" while juveniles have "adjudication hearings." Id.

40 See Kent, 383 U.S. at 555-56 (criticizing inadequate facilities available in juvenile justice system along with apathy towards reality that these children fail to receive benefits of either system); Fritsch & Hemens, supra note 6, at 568 (illustrating that liberal criticism of juvenile justice system is derived from abuse of discretion available in rehabilitative model); Levesque, supra note 34, at 1573 (determining that merger of retributive and rehabilitative goals result in reduction of legal remedies and dilution of rehabilitative services).

41 See Transformation, supra note 22, at 691-92 (supporting theory that juvenile and adult courts have converged both procedurally and substantively); Mills, supra note 22, at 935 (noting only substantial difference between current juvenile and adult systems of justice is right to jury trial); see also Joseph B. Sanborn, Jr., The Right to a Public Jury Trial: A Need for Today's Juvenile Court, 76 JUDICATURE 230, 234 (1993) (discussing criminalization of adjudicatory hearing process along with difficulty distinguishing modern juvenile system from adult criminal system); David Yellen, What Juvenile Court Abolitionists Can Learn from the Failures of Sentencing Reform, 1996 WIS. L. REV. 577, 591 (asserting that convergence of juvenile and adult criminal systems resulted from Supreme Court's criminalization of juvenile processes and trend "towards diminishing juvenile courts' authority over 'status offenders'"). See generally Leta R. Holden, Juvenile Law, 73 DENV. U. L. REV. 843, 843 (1996) (attributing ambiguity in juvenile rights arena to Tenth Circuit's regression in failing to award minors procedural due process protection).

42 See Giardino, supra note 13, at 224 (stating that common design of juvenile justice system to rehabilitate no longer exists throughout America’s juvenile systems); Sheffer, supra note 11, at 479 (noting juvenile justice system has become more punitive and less rehabilitative); Abbe Smith, They Dream of Growing Older: On Kids and Crime, 36 B.C. L. REV. 953, 956-61 (1995) (explaining nature of crime and punishment in juvenile context; noting that images of juvenile crime spread fear and drive social policy to punish "bad seed"). But see Wendy Anton Fitzgerald, Stories of Child Outlaws: On Child Hedonism and Adult Power in Juvenile Justice, 1996 WIS. L. REV. 495, 495 (noting modern reformers value public safety over rehabilitation). See generally Socrates Peter Manoukian, Distinguishing Starfish from Cobras: The Importance of Discretion for the Juvenile Judge
Some states, however, have maintained the rehabilitative framework, while others have integrated punishment and rehabilitation. There are other states which have completely abandoned rehabilitation in favor of a purely punitive position. This disparate treatment reinforces the need for comparable procedural safeguards and implicates constitutional due process in Fitness Hearings, 23 PEPP. L. REV. 805, 808-10 (1996) (discussing purpose of juvenile courts as one of protection of both juvenile involved and public at large); Steve Turst, Proposition 102: The Real Focus, 33 ARIZ. ATTY 43, 43 (1996) (discussing Arizona’s failed juvenile justice system).


See Joseph F. Yeckel, Violent Juvenile Offenders: Rethinking Federal Intervention in Juvenile Justice, 51 WASH. U. J. URB. & CONTEMP. L. 331, 341, 346-49 (1997) (reporting increases in violent juvenile crime rate has been impetus for more transfers to criminal court); see also Fox Butterfeld, Indiana Transfers Teen Girl from Adult Prison, PORTLAND OREGONIAN, July 10, 1997, at A15 (noting considerations by Congress to provide grants for states which would increase ability to adjudicate more juveniles in adult system); Bradette Jespsen, This New Breed of Juvenile Offenders, CORRECTIONS TODAY, July 1, 1997, at 68 (stating between 1992 and 1995, 48 states have passed legislation enabling them to prosecute more juveniles in adult criminal court, resulting in increase in number of juveniles incarcerated in adult prisons).

See Kent v. United States, 383 U.S. 541, 561 (1966). In Kent, the Supreme Court held that a juvenile being transferred to adult criminal court is entitled to a hearing prior to the entry of an order of waiver. Failure to provide such a hearing, the Court continued, is tantamount to denial of effective counsel. Id. Such hearing, though not required to meet the rigid formalities of a trial or administrative hearing, must meet the “essentials of due process and fair treatment.” Id. at 562 (quoting Pee v. United States, 274 F.2d 556, 559 (1959)); Rosenberg, supra note 36, at 163. Juvenile courts fail to give minor offenders constitutional and procedural rights guaranteed to adults. Id. at 165-66; see also Michelle I. Baird & Mina B. Samuels, Justice for Youth: The Betrayal of Childhood in the United States, 5 J.L. & POL’Y 177, 189-91 (1996). This article notes that prior to the Supreme Court’s landmark decisions of In re Gault and Kent v. United States, children were “neither considered ‘citizens’ nor entitled to all the rights contained in the
considerations that were prevalent during the 1960's and the ensuing decades.47

II. SERIOUS YOUTH OFFENDERS—TODAY: THE DEVELOPMENT OF THE JUVENILE JUSTICE SYSTEM'S GOALS FOR DEALING WITH SERIOUS YOUTH OFFENDERS

A. The Impact of Public Perceptions on Juvenile Justice Legislation

The shocking nature of violent crimes committed by youths today48 significantly departs from the severity of youth crimes in the past.49 Furthermore, sensationalized media coverage of teenage crimes affects public perceptions50 and political re-

U.S. Constitution." Id.; William T. Stetzer, The Worst of Both Worlds: How the Kansas Sentencing Guidelines Have Abandoned Juveniles in the Name of "Justice", 35 WASHBURN L.J. 308, 309-10 (1996). Until the late 1960's, juveniles were not afforded the same constitutional protections as adult defendants, including: the right to counsel, the right against self-incrimination, and the right to appeal. *Id.* The result of this arbitrary approach was "unfettered discretion." *Id.* at 310.

47 See *Kent*, 383 U.S. at 543. This case marked the courts initial recognition of due process violations with respect to juveniles and subjected the system to its first positive transition. *Id.* The Supreme Court held that juveniles were entitled to a hearing prior to being transferred to adult systems. *Id.* This hearing was to "measure up to the essentials of due process and fair treatment." *Id.* at 556. Such measures required a recorded hearing with the presence and participation of counsel. *Id.* at 561; *see also In re Bault*, 387 U.S. 1, 27-29 (1967). The rights announced in *Kent* were expanded when the court afforded the following constitutional rights to these juvenile offenders: the right to counsel, the right to receive notice of charges, the right against self-incrimination, the right to appellate review, the right to transcripts of proceedings, the right of confrontation, and the right to cross-examination of witnesses. *Id.* at 27-60. Initially the juvenile court employed the lower standard of proof used in civil trials, however, the Court in *In re Winship*, 397 U.S. 358 (1970), increased the burden of proof for delinquents to "beyond a reasonable doubt". *Id.* at 360-61. The alteration of form and function was further enhanced by the holding in *Breed v. Jones*, 421 U.S. 519 (1975), which extended the Fifth Amendment right of Double Jeopardy to prevent the adult re-prosecution of a juvenile previously convicted of the same charges in juvenile court. *Id.* at 529-31.


49 See Yeckel, *supra* note 45, at 332-33 (commenting on less severe nature of juvenile crimes in nineteenth century as opposed to numerous weapons involved and shocking nature of crimes committed by today's youth).

50 See Martin v. Strassburg, *Justice for Juveniles? The Second Circuit Declares Juvenile Preventive Detention Statute Unconstitutional*, 50 BROOK. L. REV. 517, 519 (1984). Public fear of uncontrolled criminal activity has let out a pervasive cry for state action and punitive sentencing. *Id.* High profile cases have fueled public outrage and spurred
The public is inundated with official reports depicting senseless youth crimes.  Violent crimes by teenagers have recently included parental murders, school yard killings, and gang rapes. Increasing public fear of victimization in light of debate on juvenile justice.  Id.; see also Patricia Edmonds and Sam V. Meddis, Crime and Punishment: Is the Juvenile Justice System 'Creating Monsters?', USA TODAY, Sept. 28, 1994, at 1A. There is little disagreement that the American public’s concern with crime and personal safety has driven political discourse most recently manifesting itself in the Clinton Administration Crime Bill.  Id.; Arlene Levinson, Public Perception of Soaring Crime Skewed, L.A. TIMES, May 29, 1994, at A9. The public’s perception and fear of growing violence gives legislative proposals such as “three strikes you’re out” much velocity.  Id.; Laura Mansnerus, Treating Teenagers as Adults: A Trend Born of Revulsion, N.Y. TIMES, Dec. 3, 1993, at B7. In direct response to public concerns with brutal juvenile crimes, in 1993 nine states enacted legislation that increased the likelihood that youths would be prosecuted in criminals courts.  Id. But see Murders Across Nation Rise by Three Percent, But Overall Violent Crime is Down, N.Y. TIMES, May 2, 1994, at A13. The FBI’s Uniform Crime Report found that although the statistics reflect an increase in the murder rate, the number of violent crimes has decreased.  Id.

51 See generally Beaty, supra note 4, at 979 (critiquing legislative reactions as response to public outrage at juvenile crime); Kane, supra note 19, at 927 (recognizing violent crime epidemic as prevalent factor in public policy debate).

52 See Federal Bureau of Investigation, Uniform Crime Reports for the United States: 1991 (1992) [hereinafter 1991 Uniform Crime Reports]. In 1990, the nation experienced its highest juvenile violent crime arrest rate, 430 per 100,000 juveniles.  Id. at 1. The 1990 rate was 27% higher than the 1980 rate.  Id. Between 1988 and 1992, the number of violent Crime Index Arrest of juveniles increased by 47%—more than twice the increase for persons 18 years of age or older.  Id. Most alarmingly, juvenile arrests for murder increased by 51%, compared to the percentage for adults.  Id. In 1980, juveniles accounted for just 10% of all arrests for homicide.  Id. By 1990, juveniles accounted for 13.6% of all homicide arrests.  Id. Between 1984 and 1992, the number of juveniles arrested for homicide, who were under the age of fifteen, increased by 50%.  Id. Local law enforcement agencies transmit data to state agencies and the FBI based on reports from victims of crimes or investigations.  Id. at 1-3. The FBI’s Serious Crime Index includes both violent and property crimes providing the most widely cited measure of trends in offenses.  Id. at 1. The Crime Index records four violent crimes: burglary, larceny-theft, motor vehicle theft, and arson.  Id. Typically, both reported crimes and arrests are standardized as rates per 100,000 persons to control for changes in population composition.  Id. But see Franklin E. Zimring, Kids, Groups and Crime: Some Implications of a Well-Known Secret, 72 J. CRIM. L. & CRIMINOLOGY 867, 868-875 (1981). These arrest rates may somewhat overstate juveniles’ violent criminal involvement because youths, more than adults, tend to commit crimes in groups and one criminal event may produce several juvenile arrests.  Id.

53 See Andrew Buchanan, Teen to Be Tried as Adult in Shooting of Mom, CHI. TRIB., Jan. 28, 1997, at 1 (buying gun on street, fifteen year-old stepmother on Christmas night during family argument); Lawrence Hammack, Options Limited When Suspect is Eight, ROANOKE TIMES & WORLD NEWS, Jan. 16, 1997, at A1 (discussing possibility of eight year old being charged with murder of stepfather); David Somer, Teen Gets 17-Year Prison Term, TAMPA TRIB., Mar. 14, 1997, at 1 (reporting sixteen year old boy found guilty of second degree murder for stabbing his stepfather to death with steak knife); Teen Who Murdered Parents, Two Others, Given Life Term, VANCOUVER SUN, Jan. 21, 1997, at B3 (shooting his parents because they nagged him about using marijuana, sixteen year old boy pled guilty to murder).

54 See Kellie Patrick, Tired of Running, SUN-SENTINEL, Jan. 29, 1997, at 1A (charging fourteen year-old with murder after shooting classmate in schoolyard over wrist watch).

55 See David R. Anderson & Romel Hernandez, Four Teen Boys Face Charges of Raping Girl, 15, at Umatilla, PORTLAND OREGONIAN, Jan. 31, 1997, at E3 (reporting gang
such reported crimes is also prompted by expanding caseloads in juvenile courts and the inability of the juvenile justice system to respond adequately to this "new breed" of youthful offenders.56

As a result of these disturbing statistics,57 critics of the current juvenile system advocate the prosecution of more youths in the adult system in order to serve the interests of the community.58 Public concern over the inability of juvenile courts to effectuate the rehabilitation of chronic youthful offenders, combined with the goal of public safety, accompany the growing fear of youth crime.59 This fear has prompted legislators to craft statutes which serve both to protect the community and to rehabilitate the young offender.60 This Note suggests, however, that the practical effect of such legislation really favors the community's interest rather than those of the child.

B. The Paradox Between the Purpose Clause and the Statutory Scheme

Most states' juvenile court statutes contain a "purpose clause"61 or preamble, explaining the underlying rationale behind the legislation.62 Statutory purpose clauses regarding the rape of fifteen year old classmate in high school's baseball dugout); Jacquie Paul, Hearing to Decide Teen's Trial Status, PRESS ENTERPRISE, Mar. 1, 1997, at B1 (awaiting determination of whether sixteen year old involved in gang rape will be prosecuted as adult).


57 See supra note 52 and accompanying text.

58 See Strassburg, supra note 50, at 521 (explaining how public has demanded harsher, longer sentences for young offenders convicted of violent crimes).

59 See Ira M. Schwartz et al., Public Attitudes Toward Juvenile Crime and Juvenile Justice: Implications for Public Policy, 13 HAMLINE J. PUB. L. & POL'Y 241, 242-44 (1992). The author described national survey results concerning attitude towards juvenile crime. Id. The survey indicated that punitive attitudes towards juvenile offenders are significantly related to the fear of being victimized by a violent crime. Id. at 241.

60 See Kimberly A. Tolhurst, A Search for Solutions: Evaluating the Latest Anti-Stalking Developments and the National Institute of Justice Model Stalking Code, 1 WM. & MARY J. WOMEN & L. 269, 272 (1994) (growing public outcry and occurrences such as murder of actress Rebecca Schaffer caused California to enact first anti-stalking law).

61 See BLACK'S LAW DICTIONARY 1175 (6th ed. 1990). A purpose clause is useful in aiding courts interpret statutory ambiguities in line with legislative purpose. Id. A statutory preamble is an explanatory declaration made by the enacting body presenting the reasoning and objectives of a particular statute. Id.

62 See Giardino, supra note 13, at 227-30. Some jurisdictions have ceased including
The double-edged sword to guide courts and other intervening institutions dealing with young criminals. The main purpose for the creation of the juvenile court was to serve as a "Rehabilitative Ideal," promoting criminal deterrence rather than punishment. Therefore, when examining the purpose clause of the Family Court Act, rehabilitative goals should be enumerated within it and furthered by the statutory framework. Upon examining the applicable purpose clauses in tandem with New York's statutory scheme affecting serious youth offenders, the inconsistencies between the two are revealed.

Originally New York's Children's Court Act did not enumerate a purpose per se. The policy of differentiating children from purpose clauses in their juvenile justice laws. Id. For those that continue to use them, these statutory goals should be seen merely as guidelines as opposed to authoritative or binding directives. Id.

63 See Principle of Offense, supra note 8, at 847. Despite the statutory purpose clause, the true purpose of juvenile court statutes may be found within the sentencing framework of the statute itself. Id.

64 See FRANCIS A. ALLEN, THE BORDERLAND OF CRIMINAL JUSTICE 26 (1964) (presenting rehabilitative ideal as illusive of true definition); see also Francis A. Allen, The Decline of the Rehabilitative Ideal in American Criminal Justice, 27 CLEV. ST. L. REV. 147, 151-53 (1978) (noting rehabilitative ideal requires belief that humans possess possibility to change in direction that is morally agreeable to reasonable person); Cintron, supra note 32, at 1260 (noting rehabilitation focuses on present and future well-being of person while punishment looks to deter individual via deprivation of liberty); Violent Youth, supra note 37, at 971 (indicating juvenile court provided rehabilitative alternative to adult criminal system); Harshbarger & Keshian, supra note 33, at 136 (noting rehabilitative ideal focused on combination of policies of jurisprudence and social welfare); Marygold S. Melli, Juvenile Justice Reform in Context, 1996 WIS. L. REV. 375, 377 (transforming juveniles into law-abiding citizens through rehabilitation was process designed to begin in court and proceed through confinement).

65 See Cintron, supra note 32, at 1258 (contending criminal deterrence is achieved in juvenile courts by addressing family issues, thus preparing him to function in our structured society); see also Dr. Malcolm W. Klein, Framing the Juvenile Justice Problem: The Reality Behind the Problem, 23 PEPP. L. REV. 860, 866-67 (1996) (warning "deterrence theory" requires acknowledgment of "deterrence reality" wherein police, courts, probation and parole officers must be regarded as credible sanctioners). See generally Sheffer, supra note 11, at 482-90 (discussing dual goals of juvenile justice system of rehabilitation and punishment).

66 See Violent Youth, supra note 37, at 970 (allowing judges to exercise enormous discretion to implement scientific and preventative goals of juvenile system).

67 See N.Y. FAM. CT. ACT § 301.1 (Gould 1997). The purpose of juvenile proceedings in the New York Family Court is to "consider the needs and best interests of the [juvenile] as well as the need for protection of the community." Id.


69 See Transformation, supra note 22, at 715. Held while there was no specific purpose enumerated in the original court act, the juvenile court system was originally intended to be a social welfare system. Id. It was intended to identify needs and point the child or the family to the appropriate service. Id. The system was not designed to handle the serious criminal matters now coming before it. Id. See generally Merrill Sobie, Prac-
adults in specialized programs began as early as 1824 when New York established the Society for the Reformation of Juvenile Delinquents in the City of New York. The Society's charter permitted courts to place convicted children below the age of sixteen in state facilities such as the House of Refuge. The goal was to reform and care for these youths who otherwise would be helpless. Pursuant to the benevolent approach of the Society, additional specialized programs were developed to "help" delinquents in 1840. These new programs further extended the ability of the courts to place juveniles in prevention programs rather than incarceration.

In 1902, the "Children's Court" was established in Manhattan. The title, however, was a misnomer since jurisdiction

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tice Commentary, N.Y. Fam. Ct. Act § 301.1 (Gould 1997). This commentary sets forth a history of the purpose of the New York juvenile justice system. Id.

70 See Hower Folks, The Care of Destitute, Neglected, and Delinquent Children 172 (1900). Homer notes that other societies in New York State were founded at or around the same time: the Rochester Society for the Prevention of Cruelty to Children (SPCC) was founded in 1875; societies in Richmond County and Brooklyn were founded in 1880. Id.; Brooklyn Society for the Prevention of Cruelty to Children, Annual Report 49 (1897). The Brooklyn SPCC also operated in Queens and Long Island. Id.; Yonkers Society for the Prevention of Cruelty to Children, Annual Report 10 (1882). The Yonkers society was founded in 1882. Id. See generally Transformation, supra note 22, at 701. The traditional distinction between the juvenile justice system and the adult criminal justice system is that the former emphasizes the rehabilitation of offenders, whereas the latter emphasizes the deterrence, punishment and social control of offenders. Id.


72 See generally In re Maricopa County Juvenile Action No. JV-500210, 864 P.2d 560, 562 (Ariz. Ct. App. 1993) (stating "the purpose of sentencing schemes for juveniles is rehabilitation, whereas the purpose for adults is punishment"); State ex rel. Romley v. Superior Court, 823 P.2d 1347, 1351-52 (Ariz. Ct. App. 1991) (deferring to juvenile court's finding that it is in public's best interest that defendant be rehabilitated in juvenile justice system).


74 See, e.g., 1863 N.Y. Laws ch. 448 § 8.

75 See Kane, supra note 19, at 945 (noting NYJOL has removed from family court's original jurisdiction, children between ages of thirteen and fifteen who have been charged with designated felony).


77 See id. at 81 (noting original elements of juvenile court system in New York); see also Elijah Devoe, The Refuge System, or Prison Discipline Applied to Juvenile
over children remained with the criminal tribunal. In fact, the Act which created this "Children's Court" merely transferred delinquency cases and other matters involving children to a separate part within the adult criminal system. By 1910, most urban centers and counties in New York had sectioned off a part of their courts to handle juvenile delinquents.

New York did not complete the passage of a separate system to meet the needs of the child until 1922 when an independent children's court was created. Eventually, however, the New York City Children's Court was merged into the City Domestic Relations Court, with the former losing its distinct character.

The provisions of the 1922 Act did not enumerate the purpose for the creation of this separate court which resulted in further compression of the goals of both courts.

The 1962 Family Court Act stipulated that its purpose was "to provide due process of law . . . for considering juvenile delinquency . . . and devising an appropriate disposition for these youths." This legislation also failed to spell out a particular purpose, yet it implied that the welfare of the juvenile was a

DELINQUENTS 27-28 (1848) (noting original juvenile system was combination of elements of reform and retribution).

78 See Katz & Teitelbaum, PINS Jurisdiction, The Vagueness Doctrine, and the Rule of Law, in BEYOND CONTROL: STATUS OFFENDERS IN THE JUVENILE COURT 201 (L. Teitelbaum & A. Gough eds., 1977). The authors note that Juvenile Court jurisdiction typically reached both conduct that was wrongful for adults and behavior that was wrongful only for minors such as truancy and running away from home. Id. Moreover, most delinquency statutes included broad residual categories for children who had not committed a particular act of misconduct but nonetheless seemed to require judicial supervision. Id. On the breadth of juvenile court statutes and the reasons for it, the authors comment that the Juvenile Court shared in overlapping powers with its adult counterpart. Id.

79 See supra note 78 and accompanying text; see also Cadwallader D. Colden & Peter A. Jay, The Condition of Children in the Penitentiary and Bridewell, New York, 1819, in 10 MINUTES OF THE COMMON COUNCIL OF THE CITY OF NEW YORK, 1784-1831 467-68 (detailing legislatively implemented procedure to transfer youth offenders to adult criminal court).


81 See Kane, supra note 19, at 45 (detailing merger of Children Court and Domestic Relation Court); see also Sanford J. Fox, Juvenile Justice Reform: An Historical Perspective, 22 STAN. L. REV. 1187, 1189-90 (1990) (describing that complete evolution of separate system was not implemented in New York until 1922).

82 See Fox, supra note 82, at 1194; Transformation, supra note 22, at 724; see also CLARENCE DARROW, CRIME: ITS CAUSE & TREATMENT 47 (1922).

83 See Fox, supra note 82, at 1190-96. But see Merrill Sobie, Practice Commentary, N.Y. Family Court Act § 301.1 (1987) (noting that delinquency procedure and disposition provisions of Children Court Act were largely unamended).

84 See supra note 69 and accompanying text.

driving factor.86

Eventually, in 1976 the Juvenile Justice Reform Act set forth the following dual purpose: “In any juvenile delinquency proceeding under this article, the court shall consider the needs and best interests of the respondent as well as the need for protection of the community.”87 The first purpose reflected the historical emphasis on the best interests of the individual child as set up by New York’s juvenile system in 1824.88 In contrast, the latter clause represents the more modern concern over the community’s interests.89 Since juvenile justice systems across the nation address competing interests,90 a state may often forego one in order to achieve the other.91 In light of this, New York’s Juvenile Offender Law is capable of being read as protecting the community over the best interest of the child and furthers the purpose set forth in the Family Court Act.92

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86 Case law during this period reveals that the best interest of the delinquent was a priority for the judiciary. See In re Kevin G., 159 Misc. 2d 288, 295, 604 N.Y.S.2d 669, 673 (N.Y. Fam. Ct. 1993) (noting purpose of juvenile justice system is rehabilitative); In re Steven E.H., 124 Misc. 2d 385, 388, 477 N.Y.S.2d 563, 565 (N.Y. Fam. Ct. 1984) (stating essential purpose of family court was rehabilitative, even though court is mandated to consider both needs of juvenile and protection of community); In re Coleman, 117 Misc. 2d 1061, 1065, 459 N.Y.S.2d 711, 714 (N.Y. Fam. Ct. 1983) (noting that primary intent behind juvenile justice proceedings is rehabilitative); People v. Young, 99 Misc. 2d 328, 330, 416 N.Y.S.2d 171, 173 (N.Y. Fam. Ct. 1979) (noting rehabilitation of child is court’s first consideration).


88 See supra note 87 and accompanying text.

89 See Sobie, supra note 84, at 685.

90 See generally Sheffer, supra note 11, at 482-90 (discussing dual goals of juvenile justice system of rehabilitation and punishment as method of deterrence).

91 See Giardino, supra note 13, at 225 (stating “while every state may wish to ideally reconcile all competing interests, each is ultimately ‘forced to make choices regarding the emphasis and preference to attach to each value’ and arrive at a ‘balance that reflects [each] legislature’s sense of social priorities’”).

92 See People v. Mason, 416 N.Y.S.2d 981, 983 (N.Y. Sup. Ct. 1979) (finding legislation that essentially made 13, 14 and 15 year-olds criminally responsible for certain enumerated felonies non-violative of Equal Protection Clause because it was rationally related to legislative goal of promoting public safety); see also Matter of Elizabeth J., 413 N.Y.S.2d 867, 868 (N.Y. Fam. Ct. 1979) (holding purpose clause is new factor to be weighed at dispositional hearings which gives due consideration for protection of community). But see People v. Young, 416 N.Y.S.2d 171, 173 (N.Y. Fam. Ct. 1979) (noting purpose clause of Juvenile Justice Reform Act did not change rehabilitative goals of juvenile court but merely gave second factor to consider after “the needs and best interests of the respondent”).
III. NEW YORK'S PURPOSE CLAUSE IS NOT SERVED BY THE STATUTORY SCHEME REGARDING SERIOUS JUVENILE OFFENDERS

A. New York's Juvenile Offender Law and "Reverse Waiver" Process

Consistent with the current trend to keep serious juvenile offenders from hiding behind the protections of the juvenile court, New York adheres to a policy of trying these youths in adult criminal courts. The distinction between juvenile versus criminal adjudication is drawn on the basis of age and the severity of the crime, with the statute identifying these adolescents as "juvenile offenders." Under the New York JOL, juveniles ages thirteen through fifteen are eligible for criminal court adjudication.

93 See Mabel Artegea, Juvenile Justice with a Future for Juveniles, 2 CARDOZO WOMEN'S L.J. 215, 238 (1995) (noting juveniles eligible for criminal court adjudication include those aged thirteen to fifteen who have been charged with offenses for which they may be held criminally responsible); Reform Proposals to Arizona's Juvenile Justice System, 32 Feb. ARIZ. ATT'Y 35, 35 (1996) (proposing to overhaul Arizona's juvenile justice system by imposing "dual sentencing" procedure which would allow court to sentence juvenile offender as adult, as juvenile, or both); see also Susan K. Knipps, What Is a "Fair" Response to Juvenile Crime?, 20 FORDHAM URB. L.J. 455, 458 (1993) (noting Juvenile Offender Law of 1978 was response to public outcry over perceived increase in violent juvenile crime). But see Strasburg, supra note 50, at 563 (noting public outcry has forced state governments to refocus traditional juvenile justice goals of rehabilitation and prevention to favor those of crime control and punishment).

94 See N.Y. PENAL LAW § 30.00(2) (McKinney 1987) (stating person thirteen, fourteen, or fifteen years old is criminally responsible for acts constituting murder in second degree, person fourteen or fifteen is criminally responsible for kidnapping in first degree, arson in first degree, assault in first degree, manslaughter in first degree, rape in first degree, sodomy in first degree, aggravated sexual abuse, burglary in first degree, arson in second degree, robbery in first and second degree); see also Kane, supra note 19, at 927 (recognizing NYJOL to be "the most punitive and regressive in America"); John P. Woods, New York's Juvenile Offender Law: An Overview and Analysis, 9 FORDHAM URB. L.J. 1, 1-2 (1980) (noting that NYJOL indicates trend to abandon existing legal measures that protect juvenile offenders by observing that scheme is "one of the harshest juvenile justice [sentencing] systems in the country"); cf. Franciszka A. Monarski, Note, Rehabilitation vs. Punishment: A Comparative Analysis of the Juvenile Justice Systems in Massachusetts and New York, 21 SUFFOLK U. L. REV. 1091, 1093 (1987) (comparing Massachusetts's legislative approach to prosecuting juveniles as adults with New York's recently overhauled punitive system). See generally Knipps, supra note 94, at 455 (noting New York's approach to juvenile crime is too punitive because it is based upon adult criminal system).

95 See N.Y. PENAL LAW § 10.00(18) (McKinney 1987 & Supp. 1995) (providing definition of juvenile offender based on age and severity of offense). But see N.Y. PENAL LAW § 30.00 (1) (McKinney 1987) (providing that jurisdiction over youthful offenders rests with family court when age and severity of offense criteria have not been met).

96 See People v. Smith, 635 N.Y.S.2d 824, 829 (App. Div. 4th Dep't 1995) (denying removal of case involving thirteen year old murderer to Family Court due to severity of offense); People v. Mote, 432 N.Y.S.2d 1000, 1001-02 (N.Y. Fam. Ct. 1980) (denying authorization to remove fifteen year old charged with second degree burglary to juvenile
cation for serious crimes including murder, kidnapping, arson, and rape. Thus, the New York JOL enables criminal courts to exercise original jurisdiction over youths committing these acts. Prior to the enactment of the New York JOL, the Family Court generally handled all juveniles, regardless of the offense, from arrest through intake, adjudication, disposition, and aftercare.

The statutory scheme of the New York JOL was given effect through CPL § 725.00. This procedure created a "reverse waiver," permitting juvenile offenders proceedings to be removed to Family Court at the discretion of the prosecutor and criminal court. Invocation of reverse waiver specifically court); People v. Lugo, 414 N.Y.S.2d 243, 252 (N.Y. Crim. Ct. 1979) (excluding fifteen year old charged with robbery in second degree from juvenile court jurisdiction).

97 See Smith, 635 N.Y.S.2d at 829. The New York Appellate Division, denied removal of a thirteen-year old accused of murder because the offense was grave enough for the child to be punished under the penal law. Id. The minor subsequently was sentenced to the maximum term of nine years to life. Id.; see also Kane, supra note 19, at 936-41. The juvenile justice system in New York seems highly punitive because it allows children as young as thirteen years of age to be tried and sentenced as an adult for certain felonies. Id. But see N.Y. CODE CRIM. PROC. § 510.15 (Gould 1997). The statute requires that "no principal under the age of sixteen . . . shall be detained in any prison, jail, lockup . . . used for adults convicted of a crime . . . without the approval of the state division for youth." Id. New York attempts to mitigate the potential dangers associated with confining children in penitentiaries by separating them from adult offenders. Id.

98 See N.Y. PENAL LAW § 10.00(18) (McKinney 1991) (allowing for original jurisdiction over juveniles for certain offenses); see also Arteaga, supra note 94, at 239 (noting that being tried as a "juvenile offender" in criminal court means facing indeterminate sentence of incarceration if convicted); Kane, supra note 19, at 927-29 (stating that New York has most punitive juvenile law in country because it allows children as young as thirteen to be tried and sentenced as an adult for certain crimes). But see N.Y. CRIM. PROC. LAW § 10.15 (McKinney 1997) (stating that person under sixteen cannot be detained in any sort of prison used for adults without approval from state division of youth).

99 See JUVENILE JUSTICE REFORM ACT OF 1976, Chapter 878 of the Laws of 1976. Prior to the Juvenile Offender Law of 1978, the legislature passed the Juvenile Justice Reform Act of 1976, more commonly known as the Designated Felony Act. Id. Although adjudication was still handled in the Family Court, the law created a new category of designated felonies which carried stricter penalties for fourteen and fifteen year-olds adjudicated delinquent. Id.

100 See Mills, supra note 22, at 913 (summarizing standard procedure of juvenile proceedings in Family Court).

101 See N.Y. CRIM. PROC. LAW §§ 725.00-.20 (McKinney 1997) (allowing New York Supreme Court to institute removal proceeding pursuant to Article 3 of Family Court Act).

102 See N.Y. CRIM. PROC. LAW §§ 180.75(4), 210.43(1)(b) & 2(a)-(i) (McKinney 1997). The decision to remove the juvenile to Family Court involves the consideration of the following mitigating factors relating to the individual: The seriousness and circumstances of the offense, the extent of the harm caused, the amount of evidence establishing guilt (whether admissible or not), any mitigating circumstances, the defendant's role in the perpetration of the crime, and the possible deficiencies in proof of the crime. Id.

103 See N.Y. CRIM. PROC. LAW §§ 180.75(4), 210.43(1)(b) & 2(a)-(i) (McKinney 1997).
considers social policy factors, such as the impact removal would have on the welfare and safety of the community, its impact on public confidence in the criminal justice system, and any other factors indicating that a criminal conviction would serve no useful purpose. Unless these youths are removed to Family Court, they are tried in the adult court and face criminal sanctions paralleling those of their adult counterparts. New York provides, however, for the criminal court to alternatively grant "youthful offender" status within the adult system, allowing the court to impose decreased sanctions including probation or fines.

The Family Court Act gives the New York Supreme Court concurrent jurisdiction. As a practical matter, however, the Family Court is deemed to have original jurisdiction over all youthful offenders since the Supreme Court rarely accepts jurisdiction. The NYJOL effectively supplanted the discretion of juvenile

104 But see N.Y. CRIM. PROC. LAW §§ 180.75(4), 210.43(1)(b) & 2(a)-(i) (McKinney 1997). It should be noted, however, that the family court can never attain jurisdiction of a criminal offender over the age of sixteen. Id.; N.Y. CRIM. PROC. LAW §190.71(c)(1) (McKinney 1997). The statute notes that some acts performed by individuals over the age of sixteen are criminal acts. Id. but see also People v. Hana, 504 N.W.2d 166, 182 (Mich. 1993) (Cavanagh, C.J., dissenting). The Supreme Court characterized certification of juveniles to adult court as "the worst punishment the juvenile system is empowered to inflict." Id.; Sheffer, supra note 11, at 482. Sheffer explains that "pure" rehabilitation theorists hold that the proper response to juvenile crime is not punishment, but rather treatment services designed to help children learn to cope with negative external influences in non-delinquent ways. Id.

105 See People v. Mason, 416 N.Y.S.2d 981, 984 (N.Y. Sup. Ct. 1979) (holding that promoting public safety and deterring crime was legitimate legislative goal, thus any discrepancies in treatment of youthful offenders did not rise to level of equal protection violation).

106 See supra note 4 and accompanying text.

107 See Cintron, supra note 32, at 1255. Cintron indicates that the practice of sending juvenile offenders to adult criminal court often serves as cosmetic crime control. Id.

108 See Giardino, supra note 13, at 270-71 (reporting that referrals to family court are rare occurrences).

109 See N.Y. PENAL LAW § 60.10 (McKinney 1997) (outlining reference for imprisonment of juvenile offender); see also id. at § 70.05 (setting forth prison sentences for juvenile offenders). But see Arteaga, supra note 94, at 236 (discussing various options available to juvenile sex offenders including treatment, becoming ward of court and participation in juvenile sexual offender program). But see also Kane, supra note 19, at 927 (noting NYJOL established minimum sentences to secure confinement of juvenile offenders). See generally United States v. R.L.C., 503 U.S. 291, 295 (1992) (dealing with maximum sentence of juvenile delinquents for conviction as adult).

110 See N.Y. PENAL LAW § 60.10 (McKinney 1997).

111 See N.Y. PENAL LAW § 70.05 (McKinney 1997).

112 See Forst & Blomquist, supra note 8, at 345. The New York Juvenile Offender Law provided that the criminal court is to have original jurisdiction with regard to specified serious offenses. Id.
court judges by removing transfer decisions for serious juvenile offenders, thus eliminating the pragmatic control previously exercised by the Family Court. In fact, the NYJOL automatically excludes juvenile participants accused of serious crimes from Family Court jurisdiction and automatically places them in the adult system. This is done with no evaluation of whether young offenders would be amenable to treatment. The legislative scheme of New York presents a philosophical problem by blurring the boundaries of the juvenile justice court. In fact, the legislative scheme has completely ignored the underlying rationale that adolescents are mentally and emotionally inferior as compared to most adults, which would otherwise be the basis for the existence of a separate court. New York's reliance on the foregoing scheme implies that its juvenile system has failed and that the adult criminal courts, although prem-

113 See Forst & Blomquist, supra note 8, at 345-47. The legislation also established a presumptive length of stay in secure confinement, which in some cases differ from those authorized for adults convicted of similar offenses. Id.

114 See N.Y. PENAL LAW §§ 60.00(2), 60.10, 70.05 (McKinney 1997) (enumerating Family Court's limited power).

115 See Lisa Greer, Dealing With the Problem: Discretion Within the Court System, 23 PEPP. L. REV. 886, 888 (1996). Various questions need to be addressed before sending a child "up to" adult courts. Id.

116 P. PIERSMA ET AL., LAW AND TACTICS IN JUVENILE CASES 13 (1977). The current New York scheme presents a philosophical problem between the original doctrine of parens patriae and the current push for "just desserts" for youth. Id.; A. VON HIRSCH, DOING JUSTICE 62 (1976). Author notes that the practice of sentencing juveniles to long prison terms fails to conform to the parens patriae doctrine. Id.

117 See generally Sobie, supra note 84, at 4 (setting forth historical purpose of New York's juvenile justice system).


119 See In re Kevin G., 159 Misc. 2d 288, 294, 604 N.Y.S.2d 669, 673 (N.Y. Fam. Ct. 1993) (noting purpose of juvenile justice system is rehabilitative, taking into account child's interests); In re Steven E.H., 117 Misc. 2d 952, 954, 459 N.Y.S.2d 563, 565 (Civ. Ct. 1983) (stating essential purpose of Family Court is rehabilitative, even though court must consider needs of both juvenile and protection of community); In re Coleman, 117 Misc. 2d 1061, 459 N.Y.S.2d 711, 714 (N.Y. Fam. Ct. 1983) (noting primary goal of juvenile justice proceedings is rehabilitative); see also People v. Young, 99 Misc. 2d 1061, 1063 (N.Y. Fam. Ct. 1979) (noting what is best for child is still first primary consideration).

120 See MICHAEL A. JONES & BARRY KRISBERG, IMAGES AND REALITY: JUVENILE CRIME, YOUTH VIOLENCE AND PUBLIC POLICY 31-32 (1994). Most Americans believe that enrolling juvenile offenders in treatment programs is a better deterrent than sending them to adult prison. Id. at 35. In 1991, polls indicated that sending juvenile offenders to training school discourages other young people from committing crimes. Id.; Transformation, supra note 22, at 708. Feld notes that statutory schemes similar to New York's, which emphasizes retribution, remove judicial sentencing discretion. Id.
ised on a purely myopic punishment policy, are nevertheless better able to accommodate juvenile offenders.\textsuperscript{121}

B. Best Interests of the Child and Protection of the Community Are Not Mutually Exclusive Goals

As a matter of law, juvenile offenders who commit serious crimes in New York are sometimes denied the protection of the juvenile court.\textsuperscript{122} Juvenile court judges rarely scrutinize serious youth offenders to determine whether punitive, rather than rehabilitative, methods best serve the dual goals of the child and the community.\textsuperscript{123} The removal of this discretion results in a hierarchy where the interests of the youthful offender are inferior to those of society.\textsuperscript{124}

As one jurist has noted:

There is no denying the fact that we cannot write these children [i.e., serious youth offenders] off forever. Some day they will grow up and at some point they will have to be freed from incarceration... and the kind of society we have in the years to come will in no small measure depend upon our treatment of them now.\textsuperscript{125}


\textsuperscript{122} See Giardino, supra note 13, at 268 (detailing factors court should use in determining whether youth should be tried as adult or juvenile). See generally Violent Youth, supra note 37, at 1007 (stressing fundamental importance of determining if youth is "amenable to treat" or "dangerous" in deciding whether youth is adjudicated in adult or juvenile system).

\textsuperscript{123} See David C. Howard et al., Publicity and Juvenile Court Proceedings, 11 CLEARINGHOUSE REV. 203, 204 (1977) (discussing how "rehabilitative treatment of problem children contemplated by juvenile court acts is intended to serve the welfare of both the child and society").

\textsuperscript{124} See Kane, supra note 19, at 942. The author emphasizes the importance of broad judicial discretion in the dispositional decision making process. \textit{Id.} Kane states that this power is essential in order to put forth the rehabilitative and individualized treatment goals of the juvenile system. \textit{Id.} Kane further stresses that "only after considering the individual characteristics and history of the child, in addition to the nature of the offense committed, can a judge make an appropriate decision furthering the stated goals of treatment and rehabilitation. \textit{Id. But see} Catherine Erin Naughton, The Cry of a Child Left Unanswered: Pennsylvania's Treatment of Battered Children Who Kill Their Parents, 98 DICK. L. REV. 85, 90-92 (1993). The Pennsylvania legislature, in light of the brutality of some cases involving youths, have removed such cases from the original jurisdiction of juvenile courts. \textit{Id.} Public outcry resulting from such cases makes it unlikely that they will be transferred for juvenile adjudication notwithstanding the fact that the goal should be on rehabilitating the juvenile offender. \textit{Id.}

\textsuperscript{125} See United States v. Bland, 472 F.2d 1329, 1349 (D.C. Cir. 1972) (Wright, J., dissenting) (stating serious youth offenders today are packed off to adult prisons where they
Indeed, the possibility that juvenile offenders may be an increased risk to society upon their release as a result of their prison experiences and the nature of their confinement is often overlooked. It is submitted that placing these serious youth offenders into the adult court system without the preliminary determination of whether rehabilitation is feasible, serves to obliterate the twin goals of New York's modern juvenile system. The subjection of the youthful criminal to "just desserts" is merely a placebo for the public's fear. Sending a child through serve their time with hardened criminals forgoing any possibility of rehabilitation).

126 See Beatty, supra note 4, at 1012 (noting high recidivism rate for juveniles incarcerated in adult prisons); see also Giardino, supra note 13, at 273-74 (setting forth that sending juveniles to adult court does not respond to problem of serious juvenile crime effectively); cf. Kane, supra note 19, at 940 (noting that even if juvenile offender is waived back to family court, damage has already occurred because publicity and stigma from adult court has already attached).

127 See Laureen D'Ambra, A Legal Response to Juvenile Crime: Why Waiver of Juvenile Offenders is Not a Panacea, 2 ROGER WM. U. L. REV. 277, 298 (1997). Advocates of punitive juvenile systems fail to consider that numerous criminals in adult prisons are released back into society. Id. Therefore, those juveniles who are released from an adult system lacking the ability to rehabilitate, are more likely to commit additional crimes. Id.

128 See Kristina H. Chung, Kids Behind Bars: The Legality of Incarcerating Juveniles in Adult Jails, 66 IND. L.J. 999, 1006 (1991) (during short periods of incarceration children often are subjected to sexual assault, exploitation, and other physical injury by guards [and] adult prisoners); see also BARRY KRISBERG & JAMES F. AUSTIN, REINVENTING JUVENILE JUSTICE 173-77 (1993) (indicating that suicide rates among juveniles in adult prisons are significantly higher than in juvenile facilities due to prevalence of assaults against them).


130 See Schwartz, supra note 59, at 245. Commenting on the evaluation of data from a "public opinion poll on the relationship between 'liberalism, victimization ... fear of victimization and attitudes toward the purpose of incarceration [i.e., to teach and rehabilitate or punish], the authors note that the "[r]esults showed that both liberalism and fear of victimization were significantly related to punitiveness." Id. at 245. Moreover: Results showed that liberalism was 'inversely related to punitiveness' in that those who supported government spending for social programs were less punitive. Fear of being victimized by crime was positively related to punitiveness in that increased fear led to increased punitiveness. The survey also indicated that direct and vicarious victimization did not directly affect punitiveness. However, it appears that some indirect effects occurred through fear. ... [D]emographic characteristics are ambiguously related to punitiveness through a complex of other attitudinal associations—in this instance, fear and liberalism.' Id. On the other hand, the authors also quote a 1988 field survey of 1,109 California adults commissioned by the National Council and Delinquency which set forth the sentiment that a large portion of the community believe juvenile offenders should be rehabilitated instead of punished for their crimes. Id. As much as 84% of respondents felt that juveniles should not be placed in adult prisons. Id. at 242-43. In keeping with these sta-
the adult punitive system, however, actually precipitates grave underlying problems such as increased rates of recidivism.131 Different aims motivate legislators and advocates to justify punitive treatment of serious youth offenders.132 Increased punitive treatments merely serve as a superficial remedy and fail to address anyone's best interest.133 It appears that the purpose behind the retributive approach which favors stricter incarceration statistics, it has been forcefully argued that the punishment of a juvenile condemns him to, among other things, a future of poverty and crime. Id.; see also Punishment Alone Won't Stop Juvenile Crime, N.Y. TIMES, July 26, 1989, at 22. Subjecting a juvenile to "just deserts" was one of the ills sought to be averted through the establishment of the first U.S. juvenile court in Illinois in 1899. Id. Robert W. Sweet, Jr., Deinstitutionalization of Status Offenders: In Perspective, 18 PEPP. L. REV. 389, 389-93 (1991). As Judge Gordon A. Martin, Jr. has aptly pointed out, "Our society is hard put to contemplate rehabilitation (even for a juvenile) when the emotions ignited by a homicide have come into play." Id. See generally Martin, supra note 68, at 63. The author discusses the general societal conflicts of whether to rehabilitate or punish juvenile offenders. Id. 131 See Amy M. Campbell, Trying Minors as Adults in the United States and England: Balancing the Goal of Rehabilitation with the Need to Protect Society, 19 SUFFOLK TRANT'L L. REV. 345, 357 (1995) (comparing lower recidivism rates in England, that does not use punitive system to deter youth crime, as opposed to punitive systems in America); see also JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, Pub. L. No. 93-415, 1974 U.S.C.C.A.N. §§ 5283-84 (stating purpose was to improve quality of juvenile justice and provide alternatives to confinement); id. § 5285 (noting increase in crimes and high rate of recidivism among juveniles and suggesting that preventing juvenile delinquency should serve as means for preventing juvenile crime); id. § 5289 (underlying Act is implicit belief that incarceration in large statewide institutions is ineffective method of treatment for juvenile offenders); United States v. Bilbo, 19 F.3d 912, 915 (5th Cir. 1994) (recognizing that effect of Act is to remove child from criminal proceedings in order to avoid stigma of criminal conviction). But see Barbara J. Valliere, The Transfer of Juvenile Offenders to Adult Courts in Massachusetts: Rerevaluating the Rehabilitative Ideal, 20 SUFFOLK U. L. REV. 989, 992 (1986) (asserting that repeat juvenile offenders pose danger to juvenile system due to their unwillingness to rehabilitate, thus encouraging negative public response to system). 132 See Forst & Blomquist, supra note 8, at 335 (discussing that support for transferring youths to adult court from desire to avoid using limited funding of juvenile system for those children who are "lost causes"); see also Martin, supra note 68, at 83 (stating waiver process in theory provides safety valve for public hostility and frustration stemming from limits of juvenile justice system); Schwartz, supra note 59, at 241 (discussing public attitude toward juvenile crime advocates punitive stance toward juvenile offenders based on fear of being victimized); Elizabeth Neufer, Detention vs. Incarceration: Rise in Murders Renews Call to Classify Youths as Adults, BOSTON GLOBE, Nov. 23, 1990, at 1 (discussing public fear of increased juvenile crime and call for tougher legislative sanctions). But see Sandra E. Skovron et al., The Death Penalty for Juveniles: An Assessment of Public Support, 35 CRIME & DELINQ. 546, 550 (1989) (commenting on overwhelming opposition to imposition of death penalty for juveniles, derived, at least in part, from parens patriae rationale). 133 See Juvenile Waiver Statutes, supra note 130, at 519 (noting that "get tough legislation seldom addresses the consequences for youths of incarceration in adult correctional facilities, the quality of effectiveness of programs available to them or the comparative effects of juvenile versus adult dispositions on recidivism"); Sheffer, supra note 11, at 500 (noting juvenile violent arrest rate has significantly increased according to FBI data between 1988 and 1992). See generally U.S. DEPT OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: A NATIONAL REPORT 104-110 (1995) (listing statistical data involving juvenile crime).
tion for juveniles does not deter crime. Contrary to public beliefs that harsher systems yield harsher treatments, juveniles in adult court do not always receive longer and harsher sentences. The rationale underlying this result stems from the

134 See Stanford v. Kentucky, 492 U.S. 361, 404 (1989) (Brennan, J., dissenting) (noting that because it is unlikely that juvenile offenders engage in careful calculations prior to their actions, goal of deterrence will never be met with such children); Anna Richo, Mandatory Sentencing for Habitual Juvenile Youth Offenders: People v. J.A., 34 DEPAUL L. REV. 1089, 1104 n.132 (1995) (detailing research suggesting longer, harsher sentences inhibits rehabilitation); Sheffer, supra note 11, at 501 (calling into question view that "get tough" serious and habitual juvenile offender statutes, to the degree they focus on mandatory or extended sentences, successfully deter juvenile delinquency); see also Fighting Crime; Don't Hop on the Get-Tough Hog Pile [hereinafter "Get Tough Hog Pile"] STAR TRIB., MPLS-ST.PAUL, Feb. 6, 1994, at 26A ("[a]ccording to report of Campaign for an Effective Crime Policy in Washington, D.C. mandatory minimums do not deter because most criminals are 'poor, poorly educated, . . . and are not likely to apply cost-benefit analysis before engaging in criminal behavior.").

135 See CITIZENS' COMMITTEE FOR CHILDREN OF NEW YORK INC., THE EXPERIMENT THAT FAILED: THE NEW YORK STATE JUVENILE OFFENDER LAW 132-33 (1984). In the first five years of the NYJOL's operation, 6,951 New York City youths were arrested as alleged juvenile offenders. Id. The vast majority of those youths (4,770 of them) received no criminal sanction because the case was dismissed or removed to the Family Court. Id. 664 of those arrested received sentences of probation and remained in the community; 598 received sentences of incarceration equal to those which could have been imposed by the Family Court. Id. Fewer than 300 youths in the five year period—or only 4% of those arrested—received sentences that were longer than they might have received from the Family Court. Id.; PETER W. GREENWOOD ET AL., FACTORS AFFECTING SENTENCE SEVERITY FOR YOUNG ADULT OFFENDERS 12-14 (1984). As early as 1984, it was reported that in New York City youthful offenders faced a substantially lower chance of incarceration than did older offenders. Id. Moreover, youthful violent offenders received lighter sentences than older violent offenders, and that, for approximately two years after becoming adults, youths benefited from informal lenient sentencing policies in adult courts. Id.; Knipps, supra note 94, at 458-59. Knipps similarly notes that under NYJOL:

[A] youth arrested for a JO charge may be arraigned, tried, and sentenced in the adult criminal court. The law requires that an indeterminate sentence of incarceration be imposed upon conviction of a JO offense. The minimum and maximum periods of incarceration are generally not as long as those prescribed for adults, but longer than those that would be available in the Family Court. . . . The JO law, however, allows for some amelioration of these strict sanctions. The [adult] court—with some limitations—may grant the defendant "Youthful Offender" status . . . which provides for the substitution of a non-criminal adjudication for the criminal conviction.

Id. at 459; see also N.Y. PENAL LAW § 10.00(18) (McKinney 1997). Under the Juvenile Offender Law of 1978, individuals thirteen years of age and older charged with murder in the second degree, and those fourteen years and older charged with any one of fifteen offenses thereunder are subject to prosecution as adults. Id.

136 See Cintron, supra note 32, at 1273. Cintron states that a typical formulation for trying juveniles in the adult criminal court posits that youngsters will not be "mollycoddled" if prosecuted as adults, and that the harsh sanctions of the adult system will do a better job of deterring future crime. Id. Implicit in this argument are two factual assumptions: That the adult system imposes harsher sanctions and that the sanctions will have a deterrent effect upon juveniles. Id. Cintron observes:

While the consistent transfer of nonviolent juvenile offenders fosters a 'get tough' policy toward delinquency, the criminal penalties these juveniles receive in adult criminal court fall short of severe appearance. Adult criminal courts devote their limited resources and time to adult criminal offenders, who outnumber juveniles and typically are more serious criminals. For the nonviolent juvenile offender, the adult
fact that the focus in the adult system is on the severity of the crime committed, consequently it is not likely that this system will have an interest in a minor offense committed by juveniles.\(^\text{137}\) Youthful offenders in the adult system are often dis-
criminal court offers its leftover resources— little time and effort is devoted to re-
forming the child beyond imposing small penalties. Many juveniles transferred to
adult criminal court— mostly nonviolent offenders— are simply fined or placed on
probation.

\textit{Id.} at 1270-1273; \textit{see also} DEAN J. CHAMPION & G. LARRY MAYS, TRANSFERRING JU-
VENILES TO CRIMINAL COURTS: TRENDS AND IMPLICATIONS FOR CRIMINAL JUSTICE 59, 79-
80 (1991). In 1990, of all the juvenile offender cases transferred to and tried in criminal
courts, 50% resulted in probation. \textit{Id.} Moreover, the ever-increasing rate at which juve-
niles are transferred to adult criminal courts suggests that transfer "waivers appear to
be cosmetic, primarily public-placating 'escape valves' used to rid juvenile courts of
chronic recidivists, largely property offenders." \textit{Id.} at 80. On a related note, however,
California's strict enforcement of its "Three Strikes and You're Out" statute to juvenile
offenders, has yielded a decidedly controversial and unanticipated result:

Under both provisions [of the Three Strikes Law], a juvenile adjudication counts as a
prior felony conviction if the person committed a listed felony offense when he or she
was sixteen years of age or older, was found a 'fit and proper subject' for the juvenile
court, and was adjudged a ward of the juvenile court . . . Using a juvenile adjudica-
dation as a strike arguably violates a person's due process rights because in the juve-
nile court system a juvenile does not have a right to a jury trial.

\textit{Id.;} Lisa Forquer, \textit{California's Three Strikes Law— Should a Juvenile Adjudication Be a
Ball or a Strike?}, 32 SAN DIEGO L. REV. 1297, 1302 (1995) (citing CAL. PENAL CODE § 667
(West Supp. 1995)). The controversial California Proposition 184, passed in 1994, better
known as the "Three Strikes and You're Out" provision, has been summarized thus:

Both Three Strike provisions implemented the following mandatory sentencing
scheme. When a defendant who has a prior conviction for a 'serious' or 'violent' fel-
ony is subsequently convicted of another felony, he or she receives double the term of
punishment for the current felony conviction. If a defendant who is charged with any
felony has two or more prior 'serious' or 'violent' felony convictions, then the term of
punishment for the current felony conviction is increased to twenty-five years to life.
Both Three Strikes provisions also ensure that a convicted felon serves at least
eighty percent of his or her sentence by limiting the credits a convict can receive for
good behavior and participation to one-fifth of the total term of imprisonment.

\textit{Id.} at 1299-1301.

\(^{137}\) \textit{See Violent Youth, supra note 37, at 1010.} The author compares juvenile treat-
ment goals and adult punishment policy. \textit{Id.} The criminal system model, in dealing with
severe crime, is based on an "arbitrary legislative line." \textit{Id.} The juvenile court, on the
other hand, takes into account various social factors in addition to the severity of the
crime committed. \textit{Id.} Arguably, the different focal points lead to inconsistencies in sen-
tencing between juvenile and adult courts. \textit{Id.; see also} Fagan & Deschenes, \textit{supra note
32, at 314.} Since the 1899 inception of separate juvenile courts in the U.S., the two sys-
tems have had separate goals; while the juvenile courts were committed to rehabilitative
goals, the adult criminal courts served retributive ends. \textit{Id.} at 318. Further, where the
juvenile court focuses on the best interests of the child through treatment, typically adult
criminal courts emphasize the punishment of the offender based on the severity of the
crime committed. \textit{Id.;} Cintron, \textit{supra note 32, at 1257-58.} The philosophy underlying the
Illinois "legislature's creation of [the first U.S.] juvenile court was that the state has a
duty as \textit{parens patriae} to care for those who cannot take care of themselves." \textit{Id.} To this
end, the juvenile courts' philosophy, devoted to the "treatment and rehabilitation of ju-
veniles"—as opposed to the adult criminal courts' emphasis on the severity of crimes,
retribution, and incarceration—maintained that "the child who has begun to go wrong,
who is incorrigible, who has broken a law or an ordinance, is to be taken in hand by the
state, not as an enemy but as a protector, as the ultimate guardian." \textit{Id.;} Arteaga, \textit{supra
note 94, at 217-18.} Children were adjudged delinquent, or in need of help, in order to
counted, since they frequently fail to receive appropriate sanctions when mixed in with an overwhelming population of violent predicate adult offenders. Additionally, critics have urged that longer sentences serve no significant deterrent value as they result in higher recidivism rates.

shield them from the stigma associated with being termed criminal. Id. See generally MERRIL SOBIE, THE JUVENILE OFFENDER ACT: A STUDY OF THE ACT'S EFFECTIVENESS AND IMPACT ON THE NEW YORK JUSTICE SYSTEM 7 (1981) (discussing fact that NYJOL has failed to decrease juvenile crime); Lucua B. Whisenand & Edward J. McLaughlin, Completing the Cycle: Reality and the Juvenile Justice System in New York State, 47 ALB. L. REV. 1, 11-14 (1982) (explaining New York's system for adjudication of juveniles accused of unlawful acts has practically gone full circle in one hundred years: from prosecution of juveniles in adult criminal courts, to adjudication in separate non-criminal system, and then back to prosecution of some juveniles in the adult system). Id. Martin E. Kravarik, Swamped Courts Used as Hospitals for Society's Ills, BUFF. NEWS, Oct. 13, 1996, at H5, available in 1996 WL 5872792. Taking a "bench-eye's" view, one experienced judge has described the current situation with the court system thus:

More cases flow onto our dockets each year, and the cases are becoming more serious and complex. But sufficient resources . . . have not been allocated to get the job done. There was a time when our courts were relatively straightforward venues for dispute resolution. Now they are like hospitals whose mission is to cure all of society's ills. It has become all too obvious that our other institutions—the family, the educational system, the church, our social and civil groups—have broken down and that the public expects the courts to pick up the pieces.

Id.

138 See Singer & McDowall, supra note 122, at 536. Empirical analysis of juvenile arrest rates indicate that harsher sanctions authorized by the NYJOL had not been effective in reducing juvenile crime levels. Id.; see also Knipps, supra note 94, at 456 (quoting BRADFORD PIERCE, A HALF CENTURY WITH JUVENILE DELINQUENTS: THE NEW YORK HOUSE OF REFUGE AND ITS TIMES (Patterson Smith 1969)). A nineteenth century DA explained the problem of low conviction for juveniles thus:

' [A] lad of fourteen or fifteen years of age might have been arrested and tried four or five times for petty thefts, and it was hardly ever that a jury would convict. They would rather that the culprit, acknowledged to be guilty, should be discharged altogether, than be confined in the prisons of our State and county.'

Id. Knipps illustrates that in the case of two New York youths accused of attempting to stab to death their foster father and of plotting to murder their foster family, it was reported that despite the fact that the law allows them to be prosecuted as adults, the law does not allow adult-level punishment. Id.; John Caher, Prosecutor Plans to Try Foster Boys as Adults: Two Implicated in Failed Murder Plot, TIMES UNION (ALB.) March 27, 1996, at B1, available in 1996 WL 9536128. Effectively, youthful offenders also escape sanctions when processed through the juvenile system: "Of the 1,625 JO cases disposed of statewide in 1991, 67% were either dismissed or removed to the Family Court. Of the 546 youths who were convicted as JO's, 68% received YO status and 74% of these received sentences of probation." Id.

139 See Forst & Blomquist, supra note 8, at 362. The authors articulate reasons for eliminating lengthy sentencing. Id.; Kane, supra note 19, at 954-55. This author notes that the high rate of recidivism is attributable to the dehumanizing conditions that less serious juvenile offenders are subjected to when incarcerated in training schools. Id.; see also Baird & Samuels, supra note 46, at 180-81. By getting tough on youth crime, this country is moving away from the rehabilitation of these offenders. Id. As a result, more and more juveniles will be unable to reintegrate into society as productive citizens. Id.; Jeffrey Fagan, Social and Legal Policy Dimensions of Violent Juvenile Crime, 17 CRIM. JUST. & BEHAV. 93, 99-101 (1990). Several studies reveal that "institutionalization does not result in lower recidivism rates than nonincarcerative sanctions with close supervision . . ., but may actually worsen it." Id. at 101. Other studies, bespeaking the futility of
If the original philosophies of the juvenile system still hold their weight today, then children who are deemed unable to fully understand the effects of their actions will in turn also be unable to understand the effects of punishment. It seems that since only a small percentage of juvenile delinquents are "serious youth offenders," subjecting all juveniles to criminal court risks the fate of a few without gaining anything for the many. Furthermore, it is noted that over the past decade serious youth crimes in New York have increased dramatically, refuting the notion that tougher sanctions constitute greater deterrence.

New York's present juvenile justice system, suggest that juvenile recidivism is fast approaching 90% in New York State. Id.; c.f. Campbell, supra note 131, at 357. The author compared U.S. statistics with those of England to demonstrate that rehabilitation results in decreased recidivism, whereas punishment results in increased crime. Id.

See Scheffer, supra note 11, at 501 (noting researchers' question whether many serious youth offenders respond to punishment); Claudia Worrell, Pretrial Detention of Juveniles: Denial of Equal Protection Masked By the Prens Patrice Doctrine, 95 YALE L.J. 174, 193 n.70 (1985) (reasoning that although goal of juvenile courts is not punishment, if juvenile does not perceive punishment as just or deserved, there is no deterrent to criminal behavior); see also Von Hirsch, supra note 117, at 72 (pointing out that "[t]he severity of the penalty carries implications of degree of reprobation.... [i.e.,] sending someone away for several years connotes that he is more to be condemned than does jailing him for a few months or putting him on probation"); Scheffer, supra note 11, at 500 (noting that as between serious and habitual juvenile offender programs (SHJO) and "get tough" statutes, latter have proven ineffective).

See OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPT. OF JUSTICE, THE JUVENILE COURT'S RESPONSE TO VIOLENT JUVENILE OFFENDERS: 1985-89 (1993) (stating violent juvenile offenders amount to only seven percent of all delinquency cases); see also Forst & Blomquist, supra note 8, at 357 (noting serious youth offenders make up only fraction in American juvenile court).


[B]eginning in the late 1980's, after a decade of relative instability, the violent crime arrest rate for juveniles soared. . . . The advent of crack cocaine in the mid-1980's certainly played a role in these crime patterns. The addictiveness and profit potential of crack quickly established a market in which children could sell drugs to children. The money represented the only economic game in town. With funds to buy weapons and the incentive to use them to protect their markets and themselves, many urban areas became particularly dangerous places.

Id.

See Greer, supra note 116, at 889 (questioning connection between increasing rates of juvenile crime and conclusion that juvenile justice system is failing); cf. Knipps, supra note 94, at 457 (noting that motivations of juvenile justice system were to promote children's welfare by shielding them from harsh adult sanctions as well as providing services to hasten their reform).
Adult jails have inadequate educational programs and treatment to help juveniles cope with their violent behavior, thus providing less opportunities to successfully re-integrate juveniles back into society. The positive effects of rehabilitation on these impressionable youths are worthwhile not only for the individual’s sake, but for the community into which he or she will be released. Under the present system in New York, the serious youth offender, who had a possibility of avoiding a life of crime, is deprived of the chance for rehabilitation when forced to serve his sentence in an adult prison.

144 See Beatty, supra note 4, at 1014 (reporting studies finding adult facilities and their staff provide inadequate educational programs and opportunities to develop skills necessary to cope with their violent tendencies and assimilate them back into society).

145 See Forst & Blomquist, supra note 8, at 361. The authors describe the effectiveness of current imprisonment schemes. Id.; Lauren Tarshis, What Makes Teens Violent?, SCHOLASTIC UPDATE, Feb. 11, 1994, at 10. Juveniles jailed in adult courts must respond to the “culture of violence” that exists in these jails in order to survive their period of incarceration. Id. Teenagers carry these violent experiences, which are ingrained in their minds, into society when they are released. Id. Indeed, one probable result of this reality is that: “Confined youth are likely to find overcrowding and other dangerous conditions: about half of all confined juveniles are in facilities that exceed their design capacity, and many facilities have substantial deficiencies in the areas of security, education, management of suicidal behavior, and health care.” Id.; see also Hamric-Weis, supra note 143, at 572. Amidst this debate of the dubiousness of incarcerating juveniles in adult facilities, the Violent Crime Control and Law Enforcement Act of 1994 has been criticized as encouraging that “the rehabilitation of young offenders” take “a back seat to the punishment of violent offenders, and as such, is a serious mistake”. Id.; Patricia Puritz et al., Due Process Advocacy Project Report; Seeking Better Representation for Young Offenders, 10-Wtr CRIM. JUST. 14, 14 (1996). “Generally, juveniles sentenced to adult prisons are housed separately from adult prisoners but subject to policies and procedures similar to those applicable to adults, including the same health services, educational, vocational and work opportunities and recreational facilities.” Id.; see also Hamric-Weis, supra note 143, at 572. Confinement in adult prisons has caused severe damage and potential recidivism due to the physical and psychological abuse that so many of them endure. Id. at 741-42.

146 Hamric-Weis, supra note 143, at 572 (emphasizing importance of rehabilitation for youths).

147 See id. at 572 (noting positive responses to rehabilitative treatment at early stage); see also Beatty, supra note 4, at 1013 (stating it is only logical that individual who has received personal treatment with complete rehabilitation in mind while confined within juvenile system will be less threatening to society); Sheffer, supra note 11, at 482 (defining rehabilitation as that which serves to treat, not punish); Erica Goode, Battling Deviant Behavior, U.S. NEWS & WORLD REP., Sept. 19, 1994, at 74 (noting that understanding behavior behind commission of sex crimes is more cost efficient than incarcerating such offenders); c.f. Rothchild, supra note 146, at 721-22 (noting without rehabilitation juvenile child sex offenders will continue pattern of criminal behavior).

148 See Acton, supra note 38, at 292. Acton argues that: [T]he nation has a significant interest in rehabilitating children through the juvenile justice system, not only for the sake of the individual child, but also out of concern for the greater society. Before casually accepting gubernatorial initiatives that increase juvenile adjudication in adult courts, it would be wise for legislators to consider the possibility of promulgating a more rehabilitative model.
IV. RE-ADOPTING A DISCRETIONARY FRAMEWORK IN FAMILY COURT WILL SERVE TO ACHIEVE THE GOALS OF JUVENILE JUSTICE

Empowering Family Court judges with more discretion fosters the legislative goal of protecting society, as well as serving the best interest of the child.\textsuperscript{149} This Note asserts that a return to

\textit{Id.}; \textit{Violent Youth}, supra note 37, at 1011. The developmental continuum, which occurs in adolescents, does not allow them to change from irresponsible children to responsible adults immediately. \textit{Id.} There is a strong link between age and increase in development of criminal nature, with rates of criminality reaching a peak in mid to late adolescence. \textit{Id.}

The currently fashionable "Three Strikes and You're Out" sentencing policy is an example of... misguided emphasis [on punishment]. By the time typical adult [and juvenile] offenders accumulate the prior record necessary to qualify for such [sentencing] enhancements, they are often on the down-cycle of criminal activity. Non-discriminate incarceration of all such offenders likely will result in geriatric prisons housing older offenders with low probabilities of recidivism.\textit{Id.} at 1128 n.197; Larsen, \textit{supra} note 4, at 841-42. In reemphasizing the importance of a juvenile's "rehabilitation" as the primary role of juvenile and family courts, we are reminded that:

[Juvenile justice] reformers believed that children's' behavior was merely reflective of the environment, and that treatment, not punishment, was the appropriate solution. They wished to remove the juvenile offenders from a system of punishment to an atmosphere that was conducive to rehabilitation. The reformers presumed that these juveniles, once removed from the culpable environment, could be treated and returned to society. Reformers believed that this kind of nurturing could overcome most of nature's defects as well as the environment's negative influences.\textit{Id.}

\textsuperscript{149} See N.Y. \textit{FAM. CT. ACT} §§ 353.5(2)(a)-(e) (Gould 1996). In determining whether to invoke restrictive placement of an adjudicated juvenile offender, the Family Court is required to consider among other factors, the best interests of the child, any prior record, the child's background, the nature and circumstances of the offense, the need to protect the community and the age and physical condition of the victim of the crime. \textit{Id.}; Kane, \textit{supra} note 19, at 946-47. In thus referring to New York's Juvenile Justice Reform Act of 1976, 1976 N.Y. Laws ch. 878, the "Designated Felony Act", Kane observed that:

The 1976 Act has affected judicial discretion in another way; it has formally laid out what factors a judge must consider when determining whether a restrictive placement is required. Most notably, the judge must now weigh the need for protection of the community, as well as the best interests of the child. The judge must formally consider all factors before deciding which placement is appropriate.\textit{Id.}

\textit{Id.} It is the judge who has the responsibility of balancing the protection of society with serving the best interests of the child. \textit{Id.} The New York Designated Felony Act of 1976 was created in part to layout the factors a judge should consider when determining the fate of a juvenile offender. \textit{Id.;} Whisenand & McLaughlin, \textit{supra} note 138, at 12. In New York, the issue of balancing the legislative goals of protecting society while serving the best interests of the child was first addressed in 1824, when laws were first passed authorizing the establishment of criminal courts to place children below sixteen into New York's "House of Refuge." \textit{Id.} In taking deprived and otherwise at-risk children into the "House" where they were "treated," the belief was that rehabilitation was possible since they were young and "not yet set in their ways". \textit{Id.} at 5; see also Arteaga, supra note 94, at 237. In keeping with these purposes New York has implemented a variation on this theme via the Family Court Act. \textit{Id.} Children between the ages of seven and sixteen are subjected to an adjudicative proceeding to determine whether they actually committed the act accused of. \textit{Id.} Upon a finding of guilt, the judge is to impose the "least restrictive" judgment while keeping in mind the best interests of the child and the protection of the community. \textit{Id.}
the discretionary approach would balance the needs of the individual offender and of the public. Opponents of increased juvenile court discretion argue that introducing arbitrary decision making in the system would create rampant abuse and allow for discrimination in the juvenile process, thus compromising the integrity of the Family Court.\textsuperscript{150} The credibility of the Family Court is already compromised when the "harder cases" are automatically assigned to the criminal courts. This indicates that the juvenile system itself has failed, and that its officers and agents are incapable of handling the hard-line cases.\textsuperscript{151}

\textsuperscript{150} See Knipps, supra note 94, at 455.

In the continuing debate over appropriate responses to juvenile crime, some have advocated for a change in the current 'mix' of models, with greater reliance upon the adult system, if not complete abolition of the juvenile court. Interestingly enough, two completely opposite analyses have been advanced in support of this position. Some of the critics assert that the Family Court's role should be reduced because it is too lenient to deal effectively with today's young offenders. Others, however, urge a change because they believe the Family Court approach is—covertly—too punitive.

\textsuperscript{151} See Kurt Olsson, Juvenile Justice: Where Have We Been, Where Are We Going?
Judicial discretion was an essential mechanism in the traditional juvenile system. Critic purport that “judicial discretion is meaningless if there are no alternatives for the judge to choose from.” New York policy-makers must seek out these alterna-

(Teleconference with Juvenile Correction Officers; John Wilson; Linda Albrecht), CORRECTIONS TODAY, April 1, 1996 at 162 available in 1996 WL 13116204 (quoting statement of John Wilson). Scholars have noted that the reason the juvenile justice system is perceived to be ineffective is because it lacks the resources. This system has also seemingly failed due to the dramatic increase in abuse and neglect cases among children along with the reallocation of money from delinquency areas of the court. Id.; Simon Singer, Adult Courts Won’t Solve Our Problem with Kids Who Commit Violent Crimes, BUFF. NEWS, Sept. 29, 1996 at H2, available in 1996 WL 5369926. In response to the latest trend calling for juvenile justice system reform in New York in light of the courts’ perceived failure in curtailing the rise of juvenile crime, Singer posits:

Why not abolish the whole juvenile-justice system? The reasons for not rushing to make more juveniles criminally responsible go beyond the politics of the moment and relate to a long history of thinking about children and teenagers as separate from adults. ... The wait-and-see attitude in the Family Court has left many kids who need services without any services at all. Waiting for them to do something awful like rob or kill is not the way the juvenile justice system was intended to be. Replacing the Family Court system is not the answer either, for it assumes that the criminal justice system is willing and able to deal with juveniles as adult offenders when everyone knows that’s not what they are. ... The answer is that we must get beyond the rhetoric and look deep inside both our juvenile and criminal justice systems. We need to do something about juvenile justice so that it meets societal needs to see more than just a choice between treatment and punishment.

Id.; Sarah Metzgar, Youth Crime Pact Gives Pataki a Lift, TIMES UNION (ALB.) Feb. 5, 1997, at A1, available in 1997 WL 3481399. Notwithstanding the above plea, on February 4, 1997 Governor Pataki announced “a proposal to reform the state’s juvenile justice system, calling for tougher sentences and changes to the Family Court system.” Id. Metzgar points out that:

The bill calls for changes to the state’s youthful offender laws, so youths would lose the special ‘youthful offender’ status if they commit an additional violent felony within five years... Other provisions of the bill change Family Court procedures: Family Court judges would be allowed to issue search warrants. They would lose their discretion to dismiss cases if a defendant’s guilt is established. Victims would get the right to speak in court. Judges would be able to require a parent to participate in treatment. Family Court proceedings would be open to the public.

Id.; Assault Counts in Delinquency Bid Dismissed for Lack of Jurisdiction, N.Y.L.J. June 21, 1996 at p.25, col. 1. Perhaps inadvertently supporting the urgent need for juvenile justice system reform is the following account of justice gone amiss:

In a juvenile delinquency proceeding in Family Court, respondent teenager moved to dismiss counts of the petition alleging she was an adult. If found guilty, she would be deemed criminally responsible by statute. As the case was not first brought in New York City Criminal Court charging her as a juvenile offender and then removed, Family Court said it lacked jurisdiction. The counts were dismissed.

Id.

152 See DAVID J. ROTHMAN, CONSCIENCE AND CONVENIENCE: THE ASYLUM AND IT’S ALTERNATIVES IN PROGRESSIVE AMERICA 215-6 (1980) (discussing judge’s role in “treating” juvenile is to begin with consideration of child’s socioeconomic status, family situation and past record, focusing on child’s needs as opposed to guilt or innocence).

153 See Kane, supra note 19, at 954; Metzgar, supra note 153, at A1 (reporting on Pataki’s proposal to effectively broaden judicial discretion and alternatives currently available to Family Court judges); see also Piersma, supra note 117, at 13 (discussing determination of when children are treated as status offenders); cf. Von Hirsch, supra note 117, at 62 (noting “[s]everity of punishment should be commensurate with the serious-
tives in order to make New York's juvenile institutions more humane and effective. In light of the evidence supporting the proposition that more punishment does not necessarily yield a lower recidivism rate, legislators as well as the public should realize that institutionalism is not effective.

**CONCLUSION**

Ultimately, the question of how to respond to violent youth crime is one of the most important issues facing both society and the integrity of New York's juvenile justice system. Before implementing hasty and rash policies, the long term consequences concerning individual adolescents and society need to be assessed. To achieve these ends, allowing Family Court judges a wide discretionary berth in adjudicating juvenile matters would better serve the child's best interests and the promotion of long-term societal interests. Judge Julian Mack, an original proponent of the juvenile court, stated that it was a judge's obligation

ness of the wrong," and only "grave wrongs merit severe penalties; minor misdeeds deserve lenient punishments ").

154 See Fox Butterfield, *More States Try Juveniles as Adults*, *PITR. POST-GAZETTE* May 12, 1996, at A9, available in 1996 WL 7657414. Butterfield notes that: In the most drastic changes to the juvenile justice system since the founding of the first family court a century ago, almost all 50 states have overhauled their laws in the past two years, allowing more youths to be tried as adults and scrapping long-time protections like the confidentiality of juvenile court proceedings. ... Proponents of the changes say getting tough with teenagers is the only way to stop the epidemic of juvenile crime. ... [P]ublic safety and victim's rights issues [are] as important as protecting the child's interest.

Id.; *Assault Counts in Delinquency Bid Dismissed for Lack of Jurisdiction*, supra note 152, at 25. As the article shows, the current setup of New York's juvenile justice system sometimes leads to very "injudicious" results, bespeaking of the system's ineffectiveness and need for reform. Id.; see also Singer, supra note 152, at H2. In seeking to implement effective reform, the author aptly calls for the striking of a balance in such a way that juvenile justice meets societal needs and is not reduced merely to a simple choice between treatment and punishment. Id. In Knipps, supra note 94, at 455. The author outlines the debate of how to deal fairly and effectively with the problem of juvenile crime in New York in light of the competing emphases behind the Family Court Act and The Juvenile Offender Law, respectively. Id.

155 See *Punishment Alone Won't Stop Juvenile Crime*, supra note 130, at 22 (arguing that punishment of juveniles condemns them to, among other things, future of poverty and crime); *Juvenile Justice and Delinquency Prevention Act of 1974*, Pub. L. No. 93-415, 1974 U.S.C.C.A.N., at § 5285 (noting increase in crimes and high rate of recidivism among juveniles); Greenwood *et. al.*, supra note 135, at 12-14 (reporting youthful violent offenders received lighter sentences than older violent offenders and, after becoming adults, youths still benefited from lenient sentencing policies of adult courts); Kane, supra note 19, at 954-55 (noting that incarcerating less serious juvenile offenders with more hardened violent and serious juvenile offenders deprives former of any effective rehabilitation and in turn only breeds high degree of recidivism).
in assessing a juvenile offender
to find out what he is physically, mentally, and morally, and then, if . . . [the judge] learns [the juvenile] is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.\textsuperscript{156}

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\textsuperscript{156} See Julian Mack, \textit{The Juvenile Court as a Legal Institution}, 23 HARV. L. REV. 104, 115 (1909) (discussing principle that "courts should be agencies for the rescue as well as the punishment of children").