Not Kids Anymore: A Need for Punishment and Deterrence in the Juvenile Justice System

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NOT KIDS ANYMORE: A NEED FOR PUNISHMENT AND DETERRENCE IN THE JUVENILE JUSTICE SYSTEM

Abstract: This Note surveys the history of the juvenile justice system, including the philosophy behind its formation and its similarities and differences with the adult criminal system. Recently, many states have implemented changes to their juvenile justice systems. This Note advocates a system like that of Massachusetts, where certain juvenile defendants are automatically transferred to adult court, and where other juvenile defendants, who remain in juvenile court but meet certain requirements, may receive a blended juvenile and adult sentence. This system retains the goal of rehabilitation of juvenile delinquents while also focusing on punishment and deterrence.

INTRODUCTION

On November 17, 1999, a Michigan Circuit Court jury found thirteen-year-old Nathaniel Abraham guilty of second-degree murder. Abraham was convicted of killing Ronnie Greene Jr.—a crime he committed when he was only eleven years old. Although tried in an adult court, Abraham was sentenced by Judge Eugene Moore to juvenile detention until the age of twenty-one, at which point he automatically will be released.

Abraham’s case illustrates the current controversy over the most effective way to deal with juvenile offenders. The arrest rate for vio-

2 See Claiborne, 13-Year-Old, supra note 1, at A3.
4 See Bradsher, Michigan Boy, supra note 1, at A1; Claiborne, 13-Year-Old, supra note 1, at A3. Statutes in each state determine, usually according to age, which youth fall under the original jurisdiction of the juvenile court. See Juveniles in Court, Office of Juvenile Justice and Delinquency Prevention, at http://ojdp.ncjrs.org/ojstatbb/CourtStatutes.html (last visited Feb. 12, 2001). Most states define a “juvenile” as a youth under the age of eighteen at the time of the alleged offense or arrest. See id.
violent crime among juveniles has risen 62% between 1988 and 1994. Although arrests of juveniles fell 9% between 1995 and 1999, 17% of all arrests in 1999 involved a juvenile. In addition, the recent crimes committed by juveniles are “altogether more vicious” than those the juvenile court system was originally designed to face. The media’s involvement in publicizing many of the violent crimes committed by juveniles has sparked public demand for stricter penalties. In response, some politicians have promoted measures to “get tough” on juvenile crime. Indeed, United States Representative Bill McCollum went so far as to say that “[i]n America today, no population poses a greater threat to public safety than juvenile criminals.” Many state legislatures have therefore enacted laws making it easier to try juveniles as adults. For example, in Michigan, jurisdiction over Abraham was transferred from a juvenile court to an adult court under a 1997 statute allowing prosecutors to request that a juvenile be tried as an adult for certain offenses, regardless of his or her age. Before that statute was enacted, a juvenile had to be at least fourteen years old to be tried—at the judge’s discretion—as an adult.

On the other side of the debate over juvenile justice, some feel that juvenile offenders still can be rehabilitated if treated as juveniles

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6 See id. at 116.
7 See John Cloud et al., For They Know Not What They Do? When and How Do Children Know Right from Wrong? And How Can We Devise a Punishment to Fit Their Crime?, Time, Aug. 24, 1998, at 64. When the first juvenile court was founded in Chicago in 1899, the crimes juveniles were accused of committing were, for the most part, petty theft and truancy. See id. A hundred years later, the “juvenile court system ... must cope with atrocities altogether more vicious.” See id. For example, in 1994, in Chicago, a ten-year-old boy and his eleven-year-old friend tossed a five-year-old out a window. See id. Additionally, in 1998, two Chicago juveniles (one only nine years old) beat a five-year-old to death. See id.
9 See id.
11 See McLatchey, supra note 8, at 407.
12 See Bradsher, Michigan Boy, supra note 1, at A1. Michigan law, however, still requires that a juvenile be at least seven years old in order to be prosecuted for a felony. See Richard Willing, When Children Kill, Who Takes the Blame? Experts Examine Youths' Actions in Serious Crimes, USA Today, Mar. 2, 2000, at 3A. According to the well-established common law, children under the age of seven are presumed to be incapable of committing crimes because they do not understand the consequences of their actions. See id.
13 See Bradsher, Michigan Boy, supra note 1, at A1.
rather than as adults and that "getting tough" on juvenile crime does not provide the answer. For example, although Abraham was tried in an adult court, Judge Moore believed that Abraham should be sentenced as a juvenile. Affirming his faith in the ability of the juvenile justice system to reform delinquents, Judge Moore called the Michigan law authorizing transfer of juveniles to adult court "fundamentally flawed." Similarly, Reverend Al Sharpton and Martin Luther King III argued that it is unjust to sentence children as adults and organized a protest outside the Michigan courthouse where Abraham was being tried. Additionally, Amnesty International USA featured Abraham on the cover of its recent report on the juvenile justice system and maintained that trying him as an adult violated "international human rights standards for the protection of children." The current controversy over juvenile justice results in part from the fact that many states have shifted the focus of the juvenile justice system from rehabilitation to punishment and deterrence. This Note maintains that in order to help reduce violent juvenile crime, states should continue to expand the focus of the juvenile justice system to include punishment and deterrence in addition to the original goal of rehabilitation. Thus, under certain circumstances, juvenile defendants should be treated more like adults.

Part I of this Note describes the history of the juvenile justice system, including the philosophy behind its formation and its similarities and differences with the adult criminal system. Part I also examines the general types of changes that many states have recently implemented to the juvenile justice system. Part II explores some alternatives for addressing the juvenile justice controversy. Part III advocates a system like that of Massachusetts, where certain juvenile


15 See Bradsher, Boy Who Killed, supra note 3, at A1.

16 See id. Judge Moore not only expressed confidence in the ability of the juvenile justice system to rehabilitate Abraham, but also stressed that "sentencing Abraham as an adult would destroy any hope for rehabilitation of the youth." See Claiborne, Young Killer, supra note 3, at A9.

17 See Brand-Williams & Esparza, supra note 14, at C1.

18 See Claiborne, 13-Year-Old, supra note 1, at A3.


20 See infra notes 25-70 and accompanying text.

21 See infra notes 71-133 and accompanying text.

22 See infra notes 134-180 and accompanying text.
defendants are automatically transferred to adult court, and where other juvenile defendants, who remain in juvenile court but meet certain requirements, may receive a blended juvenile and adult sentence. The Massachusetts system retains the goal of rehabilitation of juvenile delinquents while also focusing on punishment and deterrence.

I. DEVELOPMENT OF THE JUVENILE JUSTICE SYSTEM

A. Foundation of Juvenile Justice

Although the current juvenile justice system in many states now closely resembles the adult criminal justice system, they remain two separate systems of justice, founded on different philosophies. Generally speaking, while the adult criminal justice system emphasizes the punishment of criminals, the juvenile justice system is based on the rehabilitation of juvenile offenders. In the early twentieth century, the Progressives began to perceive children in a new manner. Industrialization and modernization led to the view that children were "corruptible innocents whose upbringing . . . required greater structure than had previously been regarded as prerequisite to adulthood." Social scientists reported that because children are not fully developed, either mentally or physically, they are not accountable for their actions in the same way as adults are accountable. Criminal behavior by children, it was believed, resulted from external forces such as impoverished living conditions or parental neglect. Juvenile criminality was seen as a kind of youthful illness, which possibly could be cured by relocating the juvenile to a better family life in a rural

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23 See infra notes 181–247 and accompanying text.
24 See infra notes 181–247 and accompanying text.
25 See JUVENILE OFFENDERS, supra note 5, at 85.
27 See Feld, supra note 19, at 822.
28 See id. at 823. Industrialization changed the labor force in a way that left fewer employment opportunities for juveniles. See Ainsworth, supra note 26, at 931. Jobs required the skill and strength of older workers, and immigrants arrived to compete for these jobs. See id. at 932. Thus, one consequence of the Progressive movement was the "postponement of [young people's] attainment of full personhood within society." See id.
setting. Thus, a separate justice system was established for juveniles in order to protect them and to provide them with treatment to enable their return to society as productive citizens.

Illinois established the first juvenile court in the United States in 1899. By 1925, all but two states had established juvenile courts, and the laws establishing these courts emphasized rehabilitation of juvenile offenders. Judge R.S. Tuthill, the first juvenile court judge of Cook County, Illinois, prioritized the court’s responsibilities as first to the welfare of the child and then to the welfare of the community. Consistent with this view, the early juvenile court thus focused on the individual offender, not on the offense, and acted like a parent in its treatment of juveniles. Its main goal was “not to ascertain whether the child was ‘guilty’ or ‘innocent,’ but ‘what is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.’”

For the first half of the twentieth century, most states structured juvenile courts to support the goal of rehabilitation through individualized treatment. First, the juvenile court retained exclusive jurisdiction over all juveniles under the age of eighteen, and a juvenile court could waive its jurisdiction and transfer a juvenile to an adult court only upon determining that waiver was in the “best interests of the child and public.” Second, juvenile court proceedings were often confidential, and the public were excluded from attendance. Confidentiality, it was believed, helped prevent children from being stigmatized as criminals, which could minimize future educational and employment opportunities. Third, juvenile court proceedings were more informal than adult court proceedings. Because the

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31 See Feld, supra note 19, at 824; Zierdt, supra note 30, at 406; Oddo, supra note 29, at 107.

32 See Juvenile Offenders, supra note 5, at 86.

33 See Zierdt, supra note 30, at 406.

34 See Juvenile Offenders, supra note 5, at 86.

35 See Zierdt, supra note 30, at 407-08.

36 See id. at 408. The rationale for the court acting like a parent was the British doctrine of parens patriae, the State as parent. See Juvenile Offenders, supra note 5, at 86. According to this doctrine, the State was responsible for protecting children whose parents did not provide necessary care. See id.

37 Oddo, supra note 29, at 107.

38 See Ainsworth, supra note 26, at 927; Feld, supra note 19, at 821.

39 See Juvenile Offenders, supra note 5, at 86.

40 See Feld, supra note 19, at 825.

41 See id.; Oddo, supra note 29, at 107.

42 See Juvenile Offenders, supra note 5, at 87.
court itself aimed to protect the child, states considered many adult due process protections, such as the right to an attorney, unnecessary.\textsuperscript{43} Finally, in sentencing juvenile delinquents, juvenile court judges had broad discretion to tailor the treatment to the individual child.\textsuperscript{44} Thus, "sentences" were indeterminate and lasted only until the child was rehabilitated or, at the latest, until the age of twenty-one.\textsuperscript{45}

Beginning in the 1960s, however, concern surfaced that the juvenile justice system was not achieving its goal of rehabilitating juvenile delinquents.\textsuperscript{46} Some of the concern related to the fact that indeterminate sentences led to a "growing number of juveniles institutionalized indefinitely in the name of treatment."\textsuperscript{47} Additionally, concerns that rehabilitation efforts were failing were bolstered by recidivism rates of juveniles who most likely were released from juvenile detention based on the conclusion that they were "cured."\textsuperscript{48} Thus, while continuing to support rehabilitation as the ultimate goal, many concluded that the lack of effective rehabilitation was due to the informal nature of the juvenile justice system and the wide discretion given to juvenile court judges.\textsuperscript{49} As a result of these concerns, the United States Supreme Court heard several cases regarding the nature of juvenile court proceedings and instituted many of the due process protections required in the adult system.\textsuperscript{50}

In 1966, in \textit{Kent v. United States}, the Supreme Court held that in order to transfer a juvenile defendant to adult court, a judge must provide the opportunity for a hearing and must accompany a waiver of jurisdiction order with a statement listing the reasons for transfer.\textsuperscript{51} The Court then listed eight factors a juvenile court judge must con-

\textsuperscript{43} See id.; Zierdt, supra note 30, at 408.
\textsuperscript{44} See Juvenile Offenders, supra note 5, at 87. Sentences ranged from a warning to probation supervision to training-school confinement. See id. Traditionally, in the juvenile justice system, defendants are not "found guilty" but rather are "adjudicated delinquent." See Ainsworth, supra note 26, at 934.
\textsuperscript{45} See Juvenile Offenders, supra note 5, at 87.
\textsuperscript{46} See id.; Feld, supra note 19, at 826; Zierdt, supra note 30, at 409.
\textsuperscript{47} See Juvenile Offenders, supra note 5, at 87.
\textsuperscript{48} See In re Gault, 387 U.S. 1, 22 (1967). A study by the Stanford Research Institute for the President's Commission on Crime in the District of Columbia found that in 1965, 61% of juvenile defendants had been previously referred at least once and 42% had been previously referred at least twice. See id.
\textsuperscript{49} See McClatchey, supra note 8, at 403.
\textsuperscript{50} See Juvenile Offenders, supra note 5, at 87, 90; Oddo, supra note 29, at 109-10.
\textsuperscript{51} See Kent v. United States, 383 U.S. 541, 561 (1966).
Consider in deciding whether to transfer a juvenile to adult court. These factors included the seriousness of the offense, the maturity of the juvenile, the previous record, if any, of the juvenile and the likelihood that the juvenile would be rehabilitated under the juvenile system. In deciding to require these elements of due process, the Court reasoned that juvenile court judges are not licensed to act with "procedural arbitrariness." Fearing the knee-jerk transfer of juveniles who might otherwise be rehabilitated in the juvenile justice system, the Court found that when such a "critically important" decision was at stake, transfer hearings and statements of the reasons for transfer were necessary. The Court emphasized the serious consequences of transferring a juvenile to adult court, which in Kent could have exposed the defendant to the possibility of the death sentence rather than a juvenile sentence of up to five years of rehabilitative treatment. The Court concluded that "society's special concern for children" does not permit juvenile defendants to be transferred to adult court without these due process protections.

In 1967, in In re Gault, the Supreme Court held that at juvenile delinquency proceedings, a juvenile has a right to counsel, a right to cross-examine witnesses, a right against self-incrimination and a right to be notified, along with his or her parents, of the pending charges. Noting the lack of these protections in juvenile proceedings, the Court quoted the Chairman of the Pennsylvania Council of Juvenile Court Judges: "Unfortunately, loose procedures, high-handed methods and crowded court calendars ... all too often, have resulted in depriving some juveniles of fundamental rights that have resulted in a denial of due process." The Court then connected the lack of due process protections in the juvenile justice system with the failure of rehabilitation as evidenced by the recent high rates of recidivism.

52 See id. at 566-67.
53 See id. The other four factors were: whether the alleged offense was committed in a violent manner; whether the alleged offense was committed against persons or against property; whether there was evidence upon which a Grand Jury could return an indictment; and whether it would be desirable to try the entire offense in one court when the juvenile's associates in the alleged offense were adults who would be charged in adult court. See id. at 567.
54 See id. at 554-55.
55 See id. at 553.
56 See Kent, 383 U.S. at 553-54.
57 See id. at 554.
58 See Gault, 387 U.S. at 33, 41, 55, 56-57.
59 See id. at 19.
among juveniles. The Court explained that resistance to the rehabilitative treatment provided by the juvenile justice system might stem from perceptions of unfair treatment in courts where procedures were informal but sentences severe. By instituting these due process protections, the Court aimed to restore juveniles' faith in the system and thereby enable the system to more effectively attain its goal of rehabilitating juvenile offenders.

Despite the similarities now shared by the juvenile and adult courts, the juvenile justice system retains several unique features reflecting its initial goals of individualized treatment and rehabilitation. For example, although the Supreme Court added many due process protections to the juvenile justice system, the Court refused to require structural changes it believed would destroy the unique benefits of the juvenile justice system. As a result, juveniles are not afforded a right to a jury trial in all states, unlike adults who have a constitutional right to a trial by jury. The Court found that juries "could be disruptive to the informal atmosphere of the juvenile court, tending to make it more adversarial." In addition, the Supreme Court held that juveniles may be detained without bail pending adjudication because preventive detention protects the juvenile and society and is not intended to punish the juvenile. Adult defendants, however, have a right to apply for bond or bail release. Finally, the Supreme Court decisions did not address the disposition phase of juvenile court proceedings, and consequently, juvenile court judges retain a broad range of sentencing authority, as distinct from adult court judges. The sanctions that juvenile court judges impose may be indeterminate and based on both legal and non-legal factors, un-

60 See id. at 22, 26.
61 See id. at 26. The Court quoted the National Crime Commission Report: "[T]he informal procedures ... may themselves constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority by judges .... " See id. at 26 n.37.
62 See id. at 22, 26.
63 See JUVENILE OFFENDERS, supra note 5, at 92.
64 See Gault, 387 U.S. at 22.
65 See JUVENILE OFFENDERS, supra note 5, at 92.
66 Gault, 387 U.S. at 22.
67 See id.
68 See JUVENILE OFFENDERS, supra note 5, at 95.
69 See id. at 96; Zierdt, supra note 90, at 409.
like adult sentences, which are usually determinate and based on the severity of the current offense and the criminal's prior history.\textsuperscript{70}

**B. Recent Changes in Juvenile Justice**

In the 1990s, many states, responding to public concern over incidents of violent crime committed by juveniles, moved beyond the Supreme Court's changes to the structure of the juvenile justice system by amending their juvenile justice laws to reflect a greater emphasis on punishment and deterrence and less of a focus on the rehabilitation of the individual juvenile.\textsuperscript{71} States' recent revisions to juvenile justice laws have taken several different forms.\textsuperscript{72} Many state laws now provide for an increase in transfers of jurisdiction over juvenile defendants from juvenile court to adult court, an expansion of the types of sentences juvenile defendants may receive, and a reduction in the level of confidentiality of juvenile court proceedings.\textsuperscript{73}

One major change to the juvenile justice system has been the increase in transfers of jurisdiction from juvenile court to adult court, where punishments often are more severe and less individualized.\textsuperscript{74} Between 1992 and 1997, forty-four states and the District of Columbia enacted legislation expanding the transfer of jurisdiction over juveniles.\textsuperscript{75} Several states did so by lowering the minimum age at which a juvenile court may waive jurisdiction.\textsuperscript{76} In Missouri, for example, in 1996, the legislature lowered the minimum age for transfer from fourteen to twelve.\textsuperscript{77} In 1997, Indiana lowered the minimum age for transfer from sixteen to ten.\textsuperscript{78} As of 1997, twenty-two states and the District of Columbia no longer impose any minimum age requirement for at least one method of transferring jurisdiction to adult court.\textsuperscript{79}

\textsuperscript{70} See Juvenile Offenders, supra note 5, at 96.

\textsuperscript{71} See id. at 89; Feld, supra note 19, at 822; Zierdt, supra note 30, at 415. These changes illustrate a desire to hold juveniles accountable for their actions. See Zierdt, supra note 30, at 415.

\textsuperscript{72} See Juvenile Offenders, supra note 5, at 89.

\textsuperscript{73} See id.; Zierdt, supra note 30, at 414, 420.

\textsuperscript{74} See Juvenile Offenders, supra note 5, at 103; McLatchey, supra note 8, at 407.

\textsuperscript{75} See Juveniles in Court, supra note 4.

\textsuperscript{76} See Zierdt, supra note 30, at 419.

\textsuperscript{77} See id.

\textsuperscript{78} See Ind. Code Ann. § 31-30-3-4 (Michie 1997). The minimum age of ten for transfers of juveniles to adult court applies only to juveniles charged with acts that would be considered murder if committed by an adult. See id.

\textsuperscript{79} See Juvenile Offenders, supra note 5, at 106.
In addition to lowering the age at which jurisdiction over a juvenile may be transferred to adult court, state legislatures also have expanded the types of transfer mechanisms available to juvenile courts. Recently, states have included not only traditional judicial waivers of jurisdiction, where the juvenile court judge may transfer the juvenile at the judge's discretion, but also, under certain circumstances, waiver at the discretion of the prosecutor or, alternatively, mandatory waiver required by specific legislation. These prosecutorial and legislative waivers of jurisdiction to adult court, moreover, are largely a result of legislators' tough-crime measures and illustrate the trend of imposing more punishment on juveniles in an effort to deter juveniles from committing violent crime.

Under judicial waiver—the most traditional and still most common method of transfer used by states—the juvenile court judge retains the authority to waive jurisdiction over the juvenile and transfer him or her to adult court. Most statutes defining judicial waiver limit the judge's decision to juveniles of a minimum age who have been charged with specific offenses. For example, New Jersey allows judicial waiver of juveniles at least fourteen years old who have been charged with murder or certain person, property, drug or weapon offenses. Most statutes also enumerate several factors that the juvenile judge must consider in making the decision to transfer a juvenile. Some states leave the final waiver decision entirely to the discretion of the judge and provide factors for the judge to consider. Others, such as California and Minnesota, create a presumption of transfer for certain crimes, with the juvenile bearing the burden of rebutting that presumption.

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80 See Zierdt, supra note 30, at 415-18.
81 See Juvenile Offenders, supra note 5, at 102.
82 See Zierdt, supra note 30, at 415-16; McLatchey, supra note 8, at 406-07.
83 See Juvenile Offenders, supra note 5, at 102-03. Judicial waiver is available in the District of Columbia and all states except Massachusetts, Nebraska, New Mexico and New York. See id. at 102.
84 See id. at 103.
85 See id. at 104.
86 See id. at 103. Judicial waiver statutes usually require the judge to consider the seriousness of the offense, the age of the offender, the juvenile's previous record and the amenability of the juvenile to rehabilitative treatment. See Zierdt, supra note 30, at 418.
87 See Juvenile Offenders, supra note 5, at 103; Zierdt, supra note 30, at 418-19. In California, a presumption of transfer exists for twenty-eight offenses, including murder, robbery with a dangerous weapon, sexual crimes and kidnapping. See Zierdt, supra note 30, at 418. In Minnesota, a presumption of transfer exists for a juvenile who is at least sixteen years old and is charged with "any felony offense while using . . . a fire-arm." See id. at 419.
Another method of transferring jurisdiction over juveniles to adult court relies upon the initiative of the prosecutor. Under these statutes, jurisdiction rests concurrently with the juvenile and adult criminal courts, and the prosecutor, with little statutory guidance, may decide where to pursue the case. Most statutes authorizing prosecutorial waiver limit it to serious offenses. For example, Florida prosecutors may file directly in adult court for cases involving juveniles who are at least sixteen years old and are charged with a misdemeanor (if they have a prior adjudication) or a felony. Florida prosecutors also may file directly in adult court for cases involving juveniles who are at least fourteen years old and who are charged with murder or certain person, property or weapon offenses. Although only a few states authorize prosecutorial waiver, prosecutors in those states transfer many juveniles to adult court.

A third mechanism for transferring jurisdiction over juveniles to criminal court is legislative waiver, under which state statutes exclude certain juveniles from the jurisdiction of the juvenile court altogether. Although this type of waiver is not as common among states as judicial waiver, it accounts for the largest number of juveniles tried as adults. Legislative waiver statutes usually require automatic transfer if the defendant has attained a specific age and is accused of a crime specified in the statute. For example, in Massachusetts, jurisdiction over juveniles between the ages of fourteen and seventeen accused of committing murder in the first or second degree exists only in adult criminal court.

States not only are expanding ways to transfer jurisdiction, but also are broadening the types of sentences juvenile offenders may re-

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88 See Juveniles in Court, supra note 4. As of 1997, this method of transferring juveniles to adult court is allowed in fourteen states and the District of Columbia. See id.
89 See Juvenile Offenders, supra note 5, at 105; Juveniles in Court, supra note 4.
90 See Juvenile Offenders, supra note 5, at 105.
91 See id.
92 See id.
93 See id. In Florida, for example, approximately 5000 juveniles are transferred to adult court each year by prosecutorial waiver. See Juvenile Offenders, supra note 5, at 105.
94 See Juvenile Offenders, supra note 5, at 102.
95 See id. at 103, 106. As of 1997, legislative waiver existed in only twenty-eight states, in contrast to judicial waiver, which existed in all but four states. See id. at 104, 106.
96 See Zierdt, supra note 30, at 415.
ceive, whether tried in a juvenile or adult court. By imposing more severe sanctions on juveniles for certain crimes, states have made punishment and deterrence the focus of their juvenile justice systems. States have expanded the types of dispositions and sentences imposed on juvenile offenders in four ways. First, many states permit the extension of juvenile court dispositions until the juvenile is twenty-one years old. Traditionally, the jurisdiction of the juvenile court lasted only until the juvenile turned eighteen. In Arkansas, for example, the prosecutor may request extended jurisdiction in the sentencing of juveniles who were thirteen years old or younger at the time of the offense and who are charged with capital murder or murder in the first degree. Arkansas prosecutors may also request extended jurisdiction in the sentencing of juveniles who were fourteen or fifteen years old at the time of the offense and who are charged with certain enumerated crimes.

Second, juvenile courts in many states now issue more determinate dispositions based upon the nature of the offense, as specified by statute. Traditionally, because juvenile court dispositions focused primarily on rehabilitation and the individual needs of the juvenile, dispositions varied in both severity and duration. The trend of being “tough on crime,” however, has led to more uniform, statutorily-defined sentences for juveniles that are based primarily on the type of offense committed, in an effort to punish the juvenile and to deter future juvenile offenders. For example, from 1992 through 1997, sixteen states added or strengthened statutes requiring juvenile courts to impose mandatory minimum confinement for juvenile defendants adjudicated delinquent of certain violent crimes. Similarly, in Texas,


99 See supra note 5, at 96.

100 See infra notes 101–122 and accompanying text. “Sentences” imposed on juveniles adjudicated delinquent are referred to as “dispositions.” See supra note 5, at 96.

101 See supra note 5, at 108.

102 See id. at 86. Between 1992 and 1997, seventeen states extended the possible duration of juvenile court dispositions to age twenty-one. See id. at 108.


104 See id.

105 See supra note 30, at 420; Hunt, supra note 98, at 640–41.

106 See supra note 30, at 420.

107 See id.; see also supra note 5, at 108.

108 See supra note 5, at 108.
if a court adjudicates a juvenile delinquent of at least one of fourteen statutorily-defined felonies, the court may commit the juvenile to the Texas Youth Commission with a possible transfer to adult prison. The adult prison sentence may consist of up to ten, twenty or forty years depending on the offense.

Third, many states allow juvenile offenders to receive adult punishment. Naturally, if jurisdiction over a juvenile is transferred to adult court and the juvenile is found guilty of the offense, the court may impose upon the juvenile the adult sanction appropriate for the offense. In addition, in New Mexico, even if jurisdiction over a juvenile has not been transferred, a juvenile court judge may invoke an adult sentence on a juvenile delinquent. New Mexico provides the juvenile court discretion to impose either an adult sentence or juvenile sanctions on a youthful offender. To impose an adult sentence, the court must find that the juvenile is not amenable to treatment or rehabilitation in the juvenile facilities.

Fourth, many states permit courts to impose blended sentences on juvenile offenders. Through blended sentencing, an adult or juvenile court with jurisdiction over a juvenile offender may impose a sentence consisting of both juvenile and adult sanctions. For instance, in Michigan, an adult court judge may impose either a juvenile disposition, an adult criminal sentence (if it would best serve the interests of the public), or a blended sentence combining juvenile and adult sanctions—such as juvenile detention with a suspended adult sentence. The suspended adult sentence, however, may only be imposed if the juvenile has not been reformed by the juvenile system by

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110 See id. § 54.04. The adult prison sentence may not be more than ten years for a felony of the third degree, not more than twenty years for a felony of the second degree and not more than forty years for a felony in the first degree, a capital felony or an aggravated controlled substance felony. See id.
111 See Juvenile Offenders, supra note 5, at 108.
112 See Hunt, supra note 98, at 639.
113 See Juvenile Offenders, supra note 5, at 108.
115 See id. In order to make these findings, the judge must consider eight factors listed in the statute. See id.
116 See Juvenile Offenders, supra note 5, at 108.
117 See Hunt, supra note 98, at 639; see also Juvenile Offenders, supra note 5, at 108.
the time that he or she is twenty-one years old. Juvenile court judges may also issue blended sentences. For example, in Kansas, if an extended jurisdiction juvenile is adjudicated delinquent, a juvenile court must impose a sentence of juvenile detention coupled with a suspended adult sentence. The juvenile will only serve the suspended sentence if he or she violates conditions of the juvenile detention or re-offends.

In addition to expanding the types of sanctions imposed on juvenile offenders, many states have reduced the level of confidentiality involved in juvenile court proceedings. Traditionally, juvenile court proceedings and records remained closed to the public in an effort to keep the identity of juveniles confidential and to protect them from being labeled as criminals. Anonymity, however, increased the public's perception that the juvenile court system was too lenient in its sentencing. State legislatures responded by requiring that juvenile records and proceedings be more open, thereby providing less protection to juveniles and creating a more punitive juvenile justice system. Statutes in forty-seven states and the District of Columbia now allow information in juvenile court records to be released to at least one of several sources: prosecutors, law enforcement agencies, social services agencies, schools, victims or the general public. Although access still may be restricted to certain parts of the record or made available only by a court order, state legislation has significantly eroded the confidentiality of juvenile proceedings.

There are several ways in which statutes have mandated that juvenile proceedings be more open to members of the public, but "in general, the more serious the crime, the less protection is afforded to

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119 See § 712A.18. An adult sentence provides additional punishment for the juvenile delinquent; even a suspended adult sentence, it is argued, helps deter other juveniles from committing crimes. See Hunt, supra note 98, at 633, 634, 670, 673.

120 See JUVENILE OFFENDERS, supra note 5, at 108.

121 See Kan. Stat. Ann. § 38-16,126 (Supp. 1999). An extended jurisdiction juvenile is a juvenile who was age fourteen, fifteen, sixteen or seventeen at the time of the offense and who meets one of the following two conditions: The juvenile must be charged with either an offense that would be considered a felony if committed by an adult or an offense committed while in possession of a firearm; or the juvenile must be charged with a felony after being adjudicated delinquent in a prior juvenile proceeding. See id.

122 See id.

123 See id.

124 See Hunt, supra note 98.

125 See Zierdt, supra note 30, at 420.

126 See id. at 420–21.

127 See id. at 421; Oddo, supra note 29, at 119.

128 See JUVENILE OFFENDERS, supra note 5, at 101.
II. ALTERNATIVES FOR ADDRESSING THE JUVENILE JUSTICE CONTROVERSY

Many scholars agree that the juvenile justice system is not dealing effectively with juvenile crime.\textsuperscript{134} Scholars disagree, however, about the effectiveness of the state reforms initiated as part of the recent national trend to shift the focus of the juvenile justice system from rehabilitation to punishment and deterrence.\textsuperscript{135} The general debate on how to reform the treatment of juvenile offenders has produced three main alternatives.\textsuperscript{136}

One proposed alternative is to abolish the juvenile justice system, thereby ending the separation between the juvenile and criminal justice systems.\textsuperscript{137} Abolitionists maintain that the current juvenile justice system contains serious shortcomings.\textsuperscript{138} They claim that the procedural protections afforded by the juvenile court are inferior to those provided in adult criminal court.\textsuperscript{139} Indeed, according to abolitionists, juveniles commonly are represented by lawyers with little experience and, in many states, are not entitled to jury trials.\textsuperscript{140} Abolitionists also

\textsuperscript{129} See Oddo, supra note 29, at 115.
\textsuperscript{130} See id.
\textsuperscript{131} See id.
\textsuperscript{132} See id. at 116.
\textsuperscript{133} See Juvenile Offenders, supra note 5, at 101.
\textsuperscript{134} See Ainsworth, supra note 26, at 927; Zierdt, supra note 30, at 427, 434.
\textsuperscript{135} See Ainsworth, supra note 26, at 936; Feld, supra note 19, at 822; Zierdt, supra note 30, at 402; Hunt, supra note 98, at 668.
\textsuperscript{136} See infra notes 137-180 and accompanying text.
\textsuperscript{137} See Ainsworth, supra note 26, at 929; Feld, supra note 19, at 822.
\textsuperscript{138} See Ainsworth, supra note 26, at 927.
\textsuperscript{139} See id. at 928. One scholar has gone so far as to say that "the juvenile court is now a deficient criminal court." See Barry C. Feld, Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy, 88 J. CRIM. L. & CRIMINOLOGY 68, 69 (1997).
\textsuperscript{140} See Ainsworth, supra note 26, at 928.
claim that juvenile offenders do not receive individualized dispositions because the juvenile justice system does not have the resources to provide specialized treatment.\textsuperscript{141} Further, abolitionists argue that incarceration of juveniles is viewed as punishment, even if imposed in the name of treatment.\textsuperscript{142} Finally, supporters of this alternative believe that the current two-tiered justice system, where cases are allocated merely on the basis of an "age of majority," cannot be effective because all children do not mature at the same age.\textsuperscript{143}

In addition to arguing that the shortcomings of the current juvenile justice system have prevented it from achieving its original goals, abolitionists also point out that the recent reforms have brought the juvenile justice system closer in resemblance to the adult system.\textsuperscript{144} The due process protections required by the Supreme Court have added formality to a juvenile justice process envisioned by the Progressives as individualized and procedurally informal.\textsuperscript{145} In addition, the shift in focus from rehabilitation to punishment of juvenile delinquents illustrates the inadequacy of the due process protections in place and raises the need to provide juveniles with the same procedural protections adults receive.\textsuperscript{146}

Thus, abolitionists argue that because the current juvenile justice system is not achieving its original goals and the recent reforms have made it resemble the adult system, the juvenile system should be abolished in favor of one unified system.\textsuperscript{147} Although abolitionists propose one justice system applicable to all defendants, they also recognize that the present adult criminal system has its own shortcomings.\textsuperscript{148} Thus, abolitionists favor creation of a new system altogether, under which each defendant would be evaluated individually, with age as one of the factors influencing sentencing.\textsuperscript{149}

Supporters of a second alternative for dealing with young offenders also express concern over the recent reforms to the juvenile

\textsuperscript{141} See id. at 928–29.
\textsuperscript{142} See id. at 928.
\textsuperscript{143} See id. at 948.
\textsuperscript{144} See Feld, supra note 19, at 821.
\textsuperscript{145} See id.
\textsuperscript{146} See id. at 822.
\textsuperscript{147} See Ainsworth, supra note 26, at 927–31; Feld, supra note 19, at 821–22.
\textsuperscript{148} See Ainsworth, supra note 26, at 931; McLatchey, supra note 8, at 417. The adult criminal justice system is overcrowded and "justice is dispensed through waivers and pleas negotiated by defense attorneys who are often less than zealous ... advocates." See McLatchey, supra note 8, at 418 n.190.
\textsuperscript{149} See Ainsworth, supra note 26, at 991; McLatchey, supra note 8, at 417.
justice system and focus on community-based treatment programs in an effort to prevent juveniles from committing crimes.\textsuperscript{150} One scholar maintains that recent violent crimes committed by juveniles have been dramatized by the media and that making the juvenile court more like an adult court in response to these few crimes will prevent society from deterring juvenile crime.\textsuperscript{151} Supporters of community-based treatment programs argue that changing the focus of the juvenile justice system to punishment and imprisonment is a reactive response, rather than a preventive response, to juvenile crime.\textsuperscript{152} They maintain that imprisonment will not deter delinquents from reoffending or prevent others from committing crimes, because it does not take into account the troubling backgrounds of many of these juveniles.\textsuperscript{153} Supporters of this approach argue that in order to reduce crimes committed by juveniles, the juvenile justice system should include community-based treatment programs that take into account the causes of delinquency.\textsuperscript{154}

Advocates of this alternative point out that some of the primary causes of delinquency have been identified.\textsuperscript{155} Juveniles often commit crimes as a reaction to their environment, which most likely includes impoverishment, substandard housing and health care, inadequate education, and domestic problems.\textsuperscript{156} According to statistics on incarcerated juveniles, the majority of violent juvenile offenders have witnessed physical violence and have themselves been victims of abuse.\textsuperscript{157} To deter juveniles from reoffending and to prevent other juveniles from committing crimes, supporters argue, the juvenile justice system should include treatment programs that focus on the individual child in his or her community.\textsuperscript{158} These programs will rehabilitate juvenile delinquents more effectively and protect society from juvenile crime.\textsuperscript{159} Supporters point out that this approach remains consistent

\textsuperscript{150} See Zierdt, supra note 30, at 434.
\textsuperscript{151} See id. at 402, 434.
\textsuperscript{153} See Smith, supra note 152, at 1009-10.
\textsuperscript{154} See Zierdt, supra note 30, at 426, 427.
\textsuperscript{155} See id. at 427.
\textsuperscript{156} See id. at 426-27.
\textsuperscript{157} See id. at 427. In fact, in 1997, "75 percent of violent juvenile offenders suffered serious abuse by a family member, 80 percent witnessed physical violence from beatings and killings, 50 percent came from homes with one parent families, [and] over 25 percent had a parent who abused drugs or alcohol." See id.
\textsuperscript{158} See id. at 427, 434.
\textsuperscript{159} See Zierdt, supra note 30, at 434.
with the mission of the juvenile justice system, which was founded on the idea that a juvenile can be rehabilitated most effectively within the community. 160

According to its supporters, a community-based treatment program would maintain the traditional two-tiered structure of the justice system (adult and juvenile) but would replace incarceration of juveniles with a community model in an effort to rehabilitate juveniles. 161 The community model would be organized similarly to intensive probation and would thus provide for the close monitoring of the juvenile through "continuous case management; emphasis on reintegration and reentry services; opportunities for youth achievement and involvement in program decision making; clear and consistent consequences for misconduct; enriched educational and vocational programming; and a variety of forms of individual, group, and family counseling matched to youth’s needs." 162 Although these programs are expensive, research shows that they could be less expensive than incarceration. 163

A third alternative for addressing the juvenile justice controversy consists of implementing a blended sentencing option in the juvenile courts of those states lacking this option. 164 Supporters of this approach maintain that states that treat juveniles completely as adults, either through legislative transfers of juveniles to adult court or through entirely adult sanctions imposed by juvenile or adult courts, have gone too far. 165 These reforms, it is argued, place too much emphasis on punishment whereas blended sentencing provides a way to keep the focus on the rehabilitation of juveniles and make the rehabilitation process more effective. 166

Like those advocating abolition of the juvenile justice system, supporters of blended sentencing believe that the current two-tiered justice system has not reduced juvenile crime or fostered the rehabilitation of juvenile offenders. 167 In addition, both abolitionists and supporters of blended sentencing agree that a main problem is that an "age of majority" division between juvenile and adult court jurisdic-

160 See id. at 433.
161 See id.
162 See id. at 429, 433.
163 See id. at 428.
164 See Hunt, supra note 98, at 668. As of 1997, blended sentencing options were available in twenty-two states. See Juvenile Offenders, supra note 5, at 108.
165 See Hunt, supra note 98, at 668, 670-71, 680.
166 See id. at 668, 670.
167 See Ainsworth, supra note 26, at 948; Hunt, supra note 98, at 668, 670-71.
tion does not focus adequately on the individual situations of juvenile delinquents.\textsuperscript{168} Supporters of blended sentencing, however, reject the abolitionists' unified system and instead propose a three-tiered system, with one tier as a "transitional component between the juvenile and adult systems."\textsuperscript{169} This transitional "third tier" would identify certain juveniles eligible to receive blended sentences and thus would only apply at the sentencing phase.\textsuperscript{170} According to the supporters of blended sentencing, juveniles between the ages of fourteen and seventeen who are charged with a felony and who were previously adjudicated delinquent of a felony offense would be eligible to receive blended sentencing.\textsuperscript{171} Under this approach, then, juvenile court judges may impose a sentence consisting of detention at a state youth facility until the juvenile reaches age twenty-one, combined with a suspended adult prison sentence to be served if the juvenile re-offends, has not been rehabilitated, or does not comply with the conditions of the juvenile sentence.\textsuperscript{172}

Supporters of the blended sentencing approach maintain that unlike legislative transfer and wholly adult sentences, blended sentencing does not over-punish because it bases the need to implement an adult sentence on the juvenile's individual rehabilitation progress, not entirely on the nature of the offense.\textsuperscript{173} Proponents of blended sentencing believe this approach will rehabilitate juvenile offenders more effectively.\textsuperscript{174} Because it applies to repeat juvenile offenders, it offers them one more chance to reform within the juvenile system.\textsuperscript{175} The suspended adult sentence, moreover, provides added incentive for the juvenile to rehabilitate and to abide by the terms of the juvenile sentence—thereby avoiding the adult sentence altogether.\textsuperscript{176} Additionally, blended sentencing broadens the jurisdiction of the juvenile court so that a juvenile offender has until age twenty-one, instead of eighteen, to rehabilitate.\textsuperscript{177} Supporters also argue that this transitional sentence will separate those who committed a crime because of

\textsuperscript{168} See Hunt, \textit{supra} note 98, at 671.
\textsuperscript{169} See Ainsworth, \textit{supra} note 26, at 948–49; see also Hunt, \textit{supra} note 98, at 668, 671; McLatchey, \textit{supra} note 8, at 420.
\textsuperscript{170} See Hunt, \textit{supra} note 98, at 671.
\textsuperscript{171} See id. at 669.
\textsuperscript{172} See id. at 669–70.
\textsuperscript{173} See id. at 668, 670–71.
\textsuperscript{174} See id. at 668, 673.
\textsuperscript{175} See McLatchey, \textit{supra} note 8, at 420.
\textsuperscript{176} See Hunt, \textit{supra} note 98, at 673.
\textsuperscript{177} See id.
immaturity or peer pressure and are therefore more likely to reform from those who "are prone to being criminals" and are therefore less likely to reform. This approach, it is further argued, will more adequately protect the public because, insofar as rehabilitation will be more effective, those detained will be less likely to re-offend. Furthermore, those who cannot be rehabilitated—even after two chances to reform—will then be incarcerated so that they are not back out on the streets.

III. IN SUPPORT OF TREATING JUVENILES AS ADULTS

In the wake of recent incidents of juvenile violence—such as the shootings by juveniles in Littleton, Colorado, where fifteen were killed and twenty-three injured, and Jonesboro, Arkansas, where five were killed and ten wounded—the public is justifiably concerned about its safety. Indeed, Andrew Golden and Mitchell Johnson were only eleven and thirteen, respectively, on March 24, 1998, when they pulled a fire alarm at their Arkansas middle school and hid in the woods near the school, dressed in camouflage. As students and teachers exited the school, the two boys opened fire, killing five people and wounding ten more. Because they were under age fourteen at the time of the shooting, Arkansas law prevented jurisdiction over Golden and Johnson from being transferred to adult court. The juveniles were adjudicated delinquent in juvenile court, where they received a disposition consisting only of detention in a juvenile facility until age twenty-one.

In order to significantly reduce juvenile crime, the juvenile justice system must continue to expand its focus to include not only its original goal of rehabilitation but also punishment and deterrence. Abolishing the juvenile justice system, implementing community-based treatment programs and allowing for blended sentencing are

178 See McLauchey, supra note 8, at 421.
179 See Hunt, supra note 98, at 673.
180 See id. at 673–74.
183 See Bragg, supra note 182, at 4A.
184 See id.
185 See Ark. Buys Former County Prison, supra note 181, at 4A.
not, by themselves, the most effective means of reform.\textsuperscript{186} Massachusetts' juvenile justice system, however, which combines the transfer of jurisdiction over certain juveniles to adult court with blended sentencing for other juveniles, provides an example of a system that best protects society from violent crimes committed by juveniles by balancing the goals of punishment, deterrence and rehabilitation.\textsuperscript{187}

A. Rejecting the Unified and Community-Based Theories

Abolishing the separate juvenile and adult justice systems and creating a new unified system does not provide a practical or effective solution to the problem of juvenile crime.\textsuperscript{188} A unified justice system, under which each defendant would be evaluated individually, would remove elements of punishment and deterrence from the justice system and individualization would make the determination of sentences less swift and less predictable.\textsuperscript{189} Additionally, providing this individualized treatment for adult and juvenile defendants, and making age just one of the factors influencing sentencing, would be costly, time-consuming and inefficient.\textsuperscript{190} Finally, if one reason for abolishing the juvenile justice system is its lack of requisite resources to rehabilitate juveniles effectively, how would juveniles benefit by broadening the group of offenders eligible to receive individualized treatment?\textsuperscript{191} Indeed, juveniles could “fall through the cracks” more easily in a unified system.\textsuperscript{192} Thus, a unified system would not further punishment, deterrence or rehabilitation of juvenile offenders.\textsuperscript{193}

Similarly, community-based treatment programs would not be the most effective method for dealing with juvenile offenders. Although the juvenile justice system was founded on the principle that juvenile offenders should be treated differently because they cannot reason right from wrong, the type of violence that juveniles commit has changed radically from 1899, and community-based treatment programs practically eliminate the punishment and deterrence that is

\textsuperscript{186} See infra notes 188–206 and accompanying text.
\textsuperscript{188} See McLatchey, supra note 8, at 420–21.
\textsuperscript{189} See Ainsworth, supra note 26, at 949.
\textsuperscript{190} See McLatchey, supra note 8, at 420.
\textsuperscript{191} See id. (arguing that in a unified system, court dockets would be overcrowded and courts would lack sufficient resources).
\textsuperscript{192} See id.
\textsuperscript{193} See id. at 421.
necessary to stop violent crime committed by juveniles. In fact, instead of focusing on the offense of the individual juvenile and on imposing a suitable punishment, this approach considers juvenile crime a social problem that can be remedied only by treating the child within his or her community. A two-tiered system thus would not provide enough punishment, especially where the system would provide no transition between the community-based treatment programs offered to juveniles under the age of eighteen and adult penalties offered to juveniles age eighteen or older.

One of the problems with the current two-tiered justice system is that the penalties imposed on juveniles and adults can be drastically different, and community-based juvenile treatments would sharpen this contrast by imposing very different penalties under the community-based and adult tiers. For example, on November 10, 1990, in Virginia, Douglas Thomas murdered James and Kathy Wiseman, the parents of his girlfriend. Thomas killed the couple according to a plan constructed by his girlfriend, Jessica. Because Thomas was seventeen at the time of the murder, he was eligible for transfer to adult court, where he was tried and sentenced to receive the death penalty. Jessica Wiseman, on the other hand, who masterminded the murder of her parents when she was only fourteen, was tried as a juvenile because of her age and was sentenced to juvenile detention. Whereas Douglas Thomas was executed on January 10, 2000, Jessica Wiseman was released in 1997. The community-based approach not only would preserve, but also would widen the gap in such cases by giving the juvenile a mere “slap on the wrist” through alternative community programs, as opposed to the actual detention imposed on Jessica Wiseman.

Community-based treatment of juvenile offenders not only would fail to provide enough punishment for offenders, but also would fail to prevent juvenile crime from occurring in the first place. One likely

194 See Cloud et al., supra note 7, at 64.
195 See Smith, supra note 152, at 965; Zierdt, supra note 30, at 427.
197 See Bill Baskervill, Man Executed for '90 Killings; Supreme Court, Gilmore Reject Last-Minute Bids for Stay, WASH. POST, Jan. 11, 2000, at B2.
199 See Thomas, 419 S.E.2d at 608-09; Baskervill, supra note 197, at B2.
200 See Baskervill, supra note 197, at B2.
201 See Baskervill, supra note 197, at B2; Va. Man Executed in Double Murder, CHARLESTON GAZETTE, Jan. 11, 2000, at 2C.
reason why community-based programs do not effectively prevent juveniles from committing crimes is that these programs are targeted specifically at repeat offenders or youth in certain impoverished areas.\textsuperscript{202} Many of the recent violent juvenile crimes, however, were committed by juveniles from middle-class, suburban backgrounds.\textsuperscript{203} For example, thirteen-year-old Seth Trickey—who was accused of firing at least fifteen rounds from a semiautomatic weapon at a Fort Gibson, Oklahoma middle school on December 6, 1999—was an honor student, active in his church group, quiet and well-liked.\textsuperscript{204} He was part of a close, middle-class family living in a town of 4000, and he had not had any previous contact with law enforcement.\textsuperscript{205} The type of violent acts committed by juveniles today, as demonstrated by Seth Trickey’s alleged shooting spree, is too severe and too capable of mass harm to be ignored by community-based prevention efforts—yet, this is exactly what is happening.\textsuperscript{206} Providing community-based treatment for all crimes committed by all juveniles, however, would be too costly and difficult to administer. Thus, the community-based approach fails as a preventive approach.

\textbf{B. Massachusetts as a Model of Juvenile Justice Reform}

To prevent juveniles from committing crimes, the juvenile justice system should focus more on punishment and deterrence in addition to rehabilitation. While blended sentencing should be part of the reform, it should be coupled—in certain cases—with an automatic transfer of jurisdiction to adult court. Massachusetts’ laws governing juvenile justice provide a workable model of transfer of juvenile court jurisdiction through legislative waiver, in combination with blended sentencing for “youthful offenders,” and thus effectively promote the goals of punishment, deterrence and rehabilitation.\textsuperscript{207}

First, Massachusetts’ legislative waiver and youthful offender statutes help focus Massachusetts’ juvenile justice system, in specific cir-

\textsuperscript{202} See Zierdt, supra note 30, at 426–27.

\textsuperscript{203} See Graham & Sector, supra note 181, at 1; Rod Walton, \textit{Boy Enters Innocent Plea}, \textit{TULSA WORLD}, Dec. 15, 1999, at 1. A series of school shootings occurred in Pearl, Mississippi; West Paducah, Kentucky; Springfield, Oregon; and Jonesboro, Arkansas. See Bragg, supra note 182, at A1.


\textsuperscript{205} See id.; Walton, supra note 203, at 1.

\textsuperscript{206} See Zierdt, supra note 30, at 426–27.

\textsuperscript{207} See \textit{MASS. GEN. LAWS} ch. 119, §§ 58, 74 (1998).
cumstances, on punishment of the offender.\textsuperscript{208} Legislative waiver in Massachusetts mandates that any juvenile between the ages of fourteen and seventeen accused of murder in the first or second degree automatically be tried in adult court, subject to adult penalties.\textsuperscript{209} Juvenile court does not retain any jurisdiction over these offenders.\textsuperscript{210} Transfer of jurisdiction to adult court provides the opportunity to punish juvenile offenders more strongly because the adult court can impose an adult sentence.\textsuperscript{211} In addition to the punishment imposed by an adult sentence, the transfer of jurisdiction to adult court itself provides punishment because it carries with it a stigma of serious wrongdoing. Also, adult court proceedings are completely open to the general public, unlike juvenile court proceedings, which remain confidential to a certain degree.\textsuperscript{212}

While helping to expand the focus of the juvenile justice system to include punishment, Massachusetts' legislative waiver statute also reasonably limits that expansion to older juveniles charged with the serious crime of murder.\textsuperscript{213} To allow a juvenile between the ages of fourteen and seventeen who is found guilty of murder to receive a juvenile sentence or even a blended sentence poses too great a risk to the public's safety. A juvenile disposition could mean less than two years in juvenile detention and then automatic release, and a blended sentence could mean less than five years in juvenile detention with a suspended adult sentence.\textsuperscript{214} Neither sentence imposes enough punishment for the adult crime of murder.

The need for more serious punishment for juveniles who commit very serious crimes was expressed by Massachusetts state legislators, district attorneys, the Attorney General, and the Governor, following the initial decision of Judge Paul Heffernan to try fifteen-year-old Edward O'Brien as a juvenile for the gruesome murder of his neighbor.\textsuperscript{215} On July 23, 1995, O'Brien stabbed Janet Downing ninety-seven

\textsuperscript{208} See id.
\textsuperscript{209} See id. § 74.
\textsuperscript{210} See id.
\textsuperscript{211} See id. § 72B. Thus, if the juvenile offender tried in adult court in Massachusetts were found guilty of murder in the first degree, the sentence would be life in prison without parole. See id. ch. 265, § 2.
\textsuperscript{212} See Mass. Gen. Laws ch. 119, § 60A; Juvenile Offenders, supra note 5, at 94.
\textsuperscript{213} See ch. 119, § 74.
\textsuperscript{214} See id. § 58.
\textsuperscript{215} See Oddo, supra note 29, at 125-26; Ellen O'Brien, A Death Next Door, Boston Globe, Aug. 31, 1997, at 12.
times just a few hours after he helped her carry in her groceries. 216 The judge’s decision not to transfer jurisdiction over O’Brien to adult court sparked public outrage and provided some impetus for Massachusetts’ 1996 legislative waiver statute, which was offered by State Representative Paul Haley. 217 Supporters of the legislative waiver statute, including republican Governor William Weld, maintained that “society has an obligation to exact retribution . . . [and that] only by facilitating the transfer of violent offenders to the adult system . . . would retribution be properly attained.” 218

In addition to imposing punishment through legislative waiver, Massachusetts law also effectuates punishment through its creation of the category of “youthful offender.” 219 Juveniles who were between the ages of fourteen and seventeen at the time of the alleged offense and who are accused of committing particular offenses may be treated as youthful offenders for sentencing purposes. 220 Specifically, a youthful offender must be accused of committing an offense that could be punishable by imprisonment if committed by an adult. 221 In addition, a youthful offender must have a prior commitment to the Department of Youth Services (DYS) or be accused of committing either specific firearm offenses or an offense involving the infliction or threat of serious bodily harm. 222 Jurisdiction over a youthful offender remains in juvenile court and the youthful offender may receive one of three punishments: an entirely juvenile disposition consisting of commitment to DYS until age twenty-one; an entirely adult sentence; or a blended sentence consisting of commitment to DYS until age twenty-one with a suspended adult sentence. 223 The fact that a juvenile court may extend juvenile court jurisdiction until age twenty-one, impose an adult sentence, or impose a blended sentence on a youthful offender provides additional punishment in the juvenile justice system. 224 Notwithstanding the variety of harsh punishments that may be imposed against youthful offenders, the statute limits the impositions of this sentencing authority to only the most dangerous youthful offenders, by requiring a juvenile court judge to make a written finding.

216 See O’Brien, supra note 215, at 12.
218 See id. at 124–25.
220 See id.
221 See id.
222 See id. ch. 269, §10.
223 See id. ch. 119, § 58.
that the punishment is necessary to ensure present and future public safety.\textsuperscript{225}

Second, in addition to providing more focus on punishment, Massachusetts' legislative waiver and youthful offender statutes also expand the focus of the juvenile justice system to provide greater deterrence.\textsuperscript{226} The increased focus on punishment through legislative waiver also provides deterrence because of the possibility that a juvenile will receive an adult sentence of life in prison for the crime of murder. Additionally, the possible blended juvenile and adult sentences or extended juvenile sentence should deter older juveniles from committing crimes that would qualify them as youthful offenders.

In addition to the deterrence provided by greater punishment of certain juveniles, Massachusetts' legislative waiver statute also provides deterrence because it automatically waives jurisdiction for certain juveniles, thereby thrusting them into the center of a full-scale adult criminal prosecution.\textsuperscript{227} Legislative waiver sends a clear message that any juvenile between the ages of fourteen and seventeen who is accused of committing murder will be tried as an adult.\textsuperscript{228} In addition, the statute's deterrent effect is heightened by the swiftness with which legislative waiver is imposed. Contrary to judicial waiver, legislative waiver is automatic.\textsuperscript{229} Waiver of juvenile court jurisdiction requires a transfer hearing that can take up to a year to complete, during which time witnesses may relocate and evidence may be compromised, making it extremely difficult to prosecute the case.\textsuperscript{230} In addition to providing faster transfers to adult court, legislative waiver also deters by providing clear standards for transfer as opposed to prosecutorial waiver, which gives prosecutors complete discretion to proceed in juvenile or adult court.\textsuperscript{231} Prosecutorial waiver thus "invites arbitrary,

\textsuperscript{225} See id. In fact, in determining the sentence of a youthful offender, the judge must hold a sentencing recommendation hearing at which he or she must, by statute, consider certain factors such as the nature of the offense, the youthful offender's delinquency history (if any), the nature of services available through the juvenile system, the age and maturity of the juvenile and the likelihood that he or she will avoid future criminal conduct. See id.

\textsuperscript{226} See id. §§ 58, 74.

\textsuperscript{227} See id. § 74.

\textsuperscript{228} See id.

\textsuperscript{229} See Zierdt, supra note 30, at 416.


\textsuperscript{231} See McLatchey, supra note 8, at 410.
capricious transfer decisions on the part of the prosecutor"—whereas legislative waivers are applied systematically and predictably.\(^{232}\)

Although more severe punishments and swifter, automatic transfer to adult court under certain circumstances would seem to provide deterrence, some have argued that juvenile offenders cannot be deterred because they do not conduct a cost-benefit analysis before committing a crime, but rather, act based on emotion and/or peer pressure.\(^{233}\) This argument fails, however, because in many cases, juveniles know that the crime they have committed is wrongful and are thus presumably capable of being deterred.\(^{234}\) For example, in 1989, nine-year-old Cameron Kocher used a rifle to shoot and kill seven-year-old Jessica Carr.\(^{235}\) Even at age nine, however, Cameron knew that his actions were wrong because he tried to hide the spent cartridge.\(^{236}\) If juveniles who commit murder when they are as young as nine years old try to conceal their actions, juveniles between the ages of fourteen and seventeen are likely to be aware of the seriousness of the crimes they commit and are capable of being deterred.

Nevertheless, part of the reason juveniles are not deterred by punishments for juvenile crime might be that juvenile proceedings are still fairly confidential in many states.\(^{237}\) Transferring jurisdiction to adult court, however, would allow these proceedings to be more open to the public, increasing awareness among juveniles of the possibility of trial in adult court.\(^{238}\) Thus, insofar as Massachusetts' youthful offender statute allows youthful offender trials to be open to the public as if they were adult trials, the imposition of an adult or blended sentence on a youthful offender may be publicized so that more juveniles become aware that severe penalties can be imposed on youthful offenders.\(^{239}\) This greater awareness should deter more juveniles from committing crimes.

Finally, Massachusetts' legislative waiver and youthful offender statutes not only focus more on punishment and deterrence but also more effectively retain the original goal of the juvenile justice sys-

\(^{232}\) See id. at 410 n.94, 412.

\(^{233}\) See Zierdt, supra note 30, at 423; Hunt, supra note 98, at 656; McLatchey, supra note 8, at 421.

\(^{234}\) See Cloud et al., supra note 7, at 64.

\(^{235}\) See id.

\(^{236}\) See id.

\(^{237}\) See JUVENILE OFFENDERS, supra note 5, at 101.

\(^{238}\) See id. at 95 (stating that proceedings in all adult courts are open to the public).

\(^{239}\) See MASS. GEN. LAWS ch. 119, § 60A (1998).
Admittedly, legislative transfer of juveniles to adult court does not permit those juveniles to be rehabilitated within the juvenile system. The legislative waiver provision, however, is limited to older juveniles charged with murder who are not as amenable to rehabilitation and who deplete the juvenile justice system's scarce resources that could be used more effectively to rehabilitate amenable youthful offenders or juvenile delinquents. Allowing the juvenile justice system to focus on the most amenable juveniles should hopefully prevent additional adult criminal activity in the long run.

In addition, the blended sentences that youthful offenders may receive help rehabilitate juvenile offenders in several ways. First, a youthful offender who receives a blended sentence remains committed to DYS until age twenty-one before the suspended adult sentence can begin. Juvenile detention usually is limited to age eighteen, so blended sentencing provides for a longer time period in which the juvenile can reform within the juvenile system. Second, the suspended adult sentence provides added incentive for the juvenile to reform. Third, because youthful offenders include some juveniles who are repeat offenders, blended sentencing gives them another chance to rehabilitate within the juvenile system. Finally, Massachusetts' youthful offender sentencing guidelines allow youthful offenders to receive traditional juvenile "sentences," which make up part of the individualized treatment upon which the juvenile justice system was founded.

**CONCLUSION**

According to prosecutors, Nathaniel Abraham told classmates that he planned to shoot someone and practiced shooting at targets before he shot and killed a complete stranger. After the shooting, Abraham went home, watched television and bragged to a classmate. The fact that Abraham was only eleven years old when he committed this murder is reason enough for the public to be horrified. The fact that Abraham already had more than ten run-ins with the police prior

240 See infra notes 241-247 and accompanying text.
241 See ch. 119, § 74.
242 See infra notes 243-247 and accompanying text.
243 See id. § 72; Hunt, supra note 98, at 673.
244 See id. § 72; Hunt, supra note 98, at 673.
245 See MASS. GEN. LAWS ch. 119, § 58; Hunt, supra note 98, at 673.
246 See ch. 119, §§ 52, 58; Hunt, supra note 98, at 673.
247 See ch. 119, § 58; JUVENILE OFFENDERS, supra note 5, at 86.
to his eleventh birthday is equally frightening. Perhaps most disconcerting of all, however, is the fact that after committing murder, Abraham will be held in juvenile detention until age twenty-one—perhaps not even that long—and then will be released back on to the street. Sentences such as this have been regarded by the public as too lenient in a society where incidents of violent crime appear to be escalating. State legislatures have responded to the public’s concern by reforming the juvenile justice system. These reforms have expanded the focus of juvenile justice from its original goal of rehabilitation to include punishment and deterrence.

A national debate has arisen over the types of changes that states have made, which include transferring jurisdiction over juveniles from juvenile court to adult court, imposing stronger sentences on juvenile delinquents, and lessening the confidential nature of juvenile proceedings. The debate includes proposals ranging from the abolition of the juvenile justice system altogether to the creation of community-based treatment as an alternative to punishment in prison. The most effective way to reform the juvenile justice system, however, consists of a combination of juvenile and adult treatment of juvenile offenders that properly balances all three goals of punishment, deterrence and rehabilitation.

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