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STATUTORY RHETORIC: THE REALITY BEHIND JUVENILE JUSTICE POLICIES IN AMERICA

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INTRODUCTION

Despite the rehabilitative purpose that the juvenile justice system was originally created to achieve,¹ there no longer exists a

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¹ "Juvenile justice system" is defined as an "amalgamation of . . . institutions and activities which are used by our society to cope with the child who is at risk or who poses a risk." Don McCorkell, Jr., *The Politics of Juvenile Justice in America*, in FROM CHILDREN TO CITIZENS 22 (Francis X. Hartmann ed., 1987). "The American juvenile justice system exists within all states by statute. Each jurisdiction has a juvenile code and a special court structure to deal with children in trouble." LARRY J. SIEGEL & JOSEPH J. SENNA, *JUVENILE DELINQUENCY: THEORY, PRACTICE, AND LAW* 275 (1981). The juvenile justice system in the United States embodies "between 10,000 and 20,000 public and private agencies, with a total budget amounting to hundreds of millions of dollars." *Id.*

The term "system," when referring to the juvenile justice system, does not contemplate a unified coalition of child advocates with a "formal structure and clearly stated goals." *Id.* The various elements of the juvenile justice system are "not so coordinated that they operate in unison;" rather, they bear little more than a marginally influential relationship to each other. *Id.*

In fact, many juvenile justice agencies compete for budgetary support, espouse different philosophies, and have personnel standards that differ significantly. It would be useful for all the agencies concerned with juvenile justice to be an integrated system. . . . However, most program decisions are made without proper planning information or objective data, and effective evaluation is a rarity in the juvenile justice field. Consequently, the vast majority of states operate fragmented and

common design in America's juvenile justice system. Different philosophies on how the juvenile justice system should handle serious juvenile offenders appear throughout the United States.² The statutory language of each state's juvenile justice code basically represents a "piecemeal approximation of a legislature's intent."³ The competing interests of enforcing the rehabilitative ideal upon which the juvenile justice system was created, and of administering punishment to protect society from delinquent children, present a nationwide dilemma.⁴

generally uncoordinated juvenile justice systems.

Id. at 275-76.

The founders of the juvenile court system sought to further the rehabilitation of youthful offenders. Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM. L. REV. 281 (1967), reprinted in JUVENILE JUSTICE PHILOSOPHY 256 (Frederic J. Fraust & Paul J. Brantingham eds., 1974). "The juvenile court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation . . . not to fix criminal responsibility, guilt and punishment." *Id.* at 256 n.4 (quoting *Kent v. United States*, 383 U.S. 541, 554 (1966)).

² Jeffrey L. Bleich, *Legislative Trends*, in FROM CHILDREN TO CITIZENS, *supra* note 1, at 31, 31.

³ *Id.*

⁴ Today, the juvenile court system throughout the United States is experiencing an "identity crisis." Mark Curriden, *Juvenile Justice: Hard Times for Bad Kids*, 81 A.B.A. J. 66, 67 (1995) (quoting Barry Feld, professor of law, University of Minnesota). Responding to the perceived increase in serious crime, Professor Feld, an advocate of abolishing the juvenile court system, noted:

[The juvenile court system] was originally intended to be a social welfare system. It was supposed to identify needs and point the child or the family to the appropriate service. Today, it is little more than a scaled-down, second-class criminal court. . . . The system was never designed to handle the serious criminal matters coming before it now.

Id.; see Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691, 715 (1991) (advocating the abolishment of the juvenile court system).

However, statistics show that when the "get-tough era" began in the 1970s, youth crime remained relatively stable—it was not on the rise as most of society believed it to be. Curriden, *supra*, at 67; see *infra* note 23 (defining "get-tough era"). The decade spanning the late 1970s to the late 1980s saw the incarceration rate of juveniles increase approximately 50% in response to the growing get-tough era, while the crime rate of youths 18-years-old and younger actually

The fact that the juvenile justice system addresses various competing interests⁵ tends to explain the ambiguity and confusion apparent within most juvenile justice legislation. Generally, a state may have to forego one interest in order to obtain another. 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."⁶ As a result, the resoundingly similar juvenile justice codes throughout the United States have translated into profoundly different juvenile justice practices.⁷

Inferences may be drawn according to how each state ranks the competing objectives of its juvenile justice agenda.⁸ The "due

decreased approximately 20%. Curriden, *supra*, at 67. Such statistics thereby suggest that most of the stringent reforms beginning in the 1970s and continuing through today were not necessary, and may have even exacerbated the juvenile crime problem.

⁵ The competing interests which the juvenile justice system must acknowledge are: (1) children are not as fully developed as adults, both physically and mentally, and they require "guidance and protection to aid in their proper development;" (2) society deserves protection from criminal activity, even if committed by a juvenile; and (3) the "integrity of the family." Bleich, *supra* note 2, at 32.

⁶ Bleich, *supra* note 2, at 32. The values held by society represent a recurring theme that plays a major role in determining public policy in the area of juvenile justice. McCorkell, *supra* note 1, at 23. Courts and policymakers must create a supervisory system that assures society that the services and state programs allegedly created to rehabilitate delinquent children are not simply "new versions of control without adequate due process protections for the rights of the [child]." McCorkell, *supra* note 1, at 26. At a minimum, states that articulate the importance of family preservation as a fundamental principle through statutory language have created a foundation that protects families from the excessive use of state intervention and the punitive removal of children from their homes. McCorkell, *supra* note 1, at 26; *see, e.g.*, 42 PA. CONS. STAT. ANN. § 6301(b)(1) (1982) (providing for the preservation and unity of the family whenever possible as one of the primary goals of its Juvenile Act).

⁷ Bleich, *supra* note 2, at 32.

⁸ Bleich, *supra* note 2, at 32. Absent an in-depth examination of state legislative debates and reports, deriving legislative intent through statutory inferences may seem rudimentary. However, "legislatures have clearly expressed their intent by consciously altering" the rank they attribute to their competing

process revolution,"⁹ however, has spurred several jurisdictions to "abandon specific references to statutory goals or objectives" by focusing primarily on the procedural requirements of their juvenile justice laws.¹⁰ While a few states include a comprehensive list of statutory objectives within the preambles to their juvenile laws,¹¹ it is important to discern that statutory goals are generally paradigmatic guidelines, not substantive directives that juvenile courts are bound to utilize.

juvenile justice objectives. Bleich, *supra* note 2, at 32; see Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference it Makes*, 68 B.U. L. REV. 821, 841 (1988) (acknowledging that analysis of the purpose clause of a state's juvenile justice laws sheds light on the direction that state's juvenile court intends to follow with respect to juvenile offenders). For examples of ways different states have ranked the competing objectives of their juvenile justice systems, see *infra* Part I and accompanying notes.

⁹ See generally Bleich, *supra* note 2, at 37. The "due process revolution" has been characterized by landmark judicial decisions holding that juveniles are entitled to a wide range of procedural safeguards that were previously denied to them. See *In re Winship*, 397 U.S. 358, 366 (1970) (holding that proof beyond a reasonable doubt applies to juveniles charged with violation of criminal law because it is necessary to protect the innocent-until-proven-guilty juvenile); *In re Gault*, 387 U.S. 1, 55-56 (1967) (recognizing that because adolescents in juvenile court are faced with prospects of harsh punishment, they are entitled to the same due process protections afforded adults including the right to be represented by counsel, the right to confront and cross-examine witnesses, the right to adequate notice of charges, the right to invoke privilege against self-incrimination and the right to appeal); *Kent v. United States*, 383 U.S. 541, 553-54 (1966) (holding that juveniles have a right to a hearing before being transferred or waived to the adult criminal court system and to a statement of reasons by the court supporting such a decision to waive jurisdiction to the adult court).

¹⁰ Bleich, *supra* note 2, at 37. See, e.g., ALASKA STAT. §§ 47.10.010-.142 (1995); ARIZ. REV. STAT. ANN. §§ 8-201 to -251 (1989 & Supp. 1995); CONN. GEN. STAT. ANN. §§ 17a-1 to -74 (West 1992 & Supp. 1996); DEL. CODE ANN. tit. 10, §§ 1001-1011 (Supp. 1994); D.C. CODE ANN. §§ 16-2301 to -2339 (1989 & Supp. 1996); WYO. STAT. §§ 14-6-201 to -308 (1994 & Supp. 1995).

¹¹ See, e.g., ALA. CODE § 12-15-1.1 (1995) (setting forth a list of eight goals); IND. CODE ANN. § 31-6-1-1.1 (Burns 1987 & Supp. 1996) (setting forth a list of 11 goals). Unfortunately, such an all-inclusive approach, while commendable, is highly contradictory and serves to provide little more than lip service to certain objectives.

Part I of this Note will examine the recurring and primary statutory purposes of the states' juvenile justice systems. Section A will discuss and set forth examples of the brusque legislative measures states have taken with regard to the statutory preamble of their juvenile justice system. Section B will discuss and propound examples of those jurisdictions that intend to satisfy the competing statutory goals of serving both the best interests of the child and the protection of the public. Section B will also briefly review those states that have adhered, at least by virtue of statute, to the traditional notions of the rehabilitation of child offenders, as well as those states that have succumbed to the recent punitive charge on juvenile offenders. Section C will examine alternative statutory goals that primarily serve to rehabilitate the child while recognizing a limited form of discipline commensurate with the unique circumstances of the individual child.

Part II of this Note will evaluate the reality of the various juvenile justice statutory goals in view of the judicial treatment and interpretation given to such laws. Part II will also address the intent of the juvenile justice system, as derived from case law, of states that do not set forth express statutory preambles to their juvenile laws. Part III will further evaluate the substance of such statutory goals vis-a-vis subsequent statutory provisions that facilitate the transfer of certain serious juvenile offenders for adjudication to the punitive adult criminal justice system. This Note concludes that the majority of states are torn between the desire to rehabilitate wayward children and the perceived notion that society desires juvenile offenders to be tried as adults. As a result, the enumerated statutory goals of a particular state's juvenile justice system are not wholly determinative of the type of disposition a juvenile offender will receive. Despite the recent punitive trend within the juvenile justice system, this Note advocates that states are capable of creating an effective rehabilitative juvenile justice system that uniformly reflects both statute and case law.

I. STATUTORY PREAMBLES

A. Changing Priorities

America fears its youth¹²—but its fear is not wholly justified.¹³ Societal fear is a misconception that needs correction so that the rehabilitative approach to juvenile justice may once again gain public support and practice.¹⁴ Evidence suggests that children

¹² See generally 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 (1992) (analyzing findings from a national survey on public attitudes toward juvenile crime). "One of the most interesting findings is that punitive attitudes towards juvenile offenders are significantly related to the fear of being victimized by a violent crime." *Id.* at 241.

¹³ See generally Roger J.R. Levesque & Alan J. Tomkins, *Revisioning Juvenile Justice: Implications of the New Child Protection Movement*, 48 WASH. U. J. URB. & CONTEMP. L. 87, 87 & nn.1-5 (1995) (revealing that "mounting evidence . . . disputes the premise that juvenile crime is proliferating").

The best evidence contradicts a popular belief that juvenile crime is exploding. Not only has juvenile crime not risen for the past two decades, but several indicators suggest that the rate of juvenile crime has actually declined. Over the past decade, the total percentage of juvenile arrests has dropped, including arrests for serious crimes.

Id. at 87 & n.7 (noting that serious crimes committed by juveniles have declined at a rate of two percent between 1982 and 1992).

¹⁴ See Fox Butterfield, *After a Decade, Juvenile Crime Begins to Drop*, N.Y. TIMES, Aug. 9, 1996, at A1 (according to Attorney General Janet Reno, "the nationwide rate of juvenile violent crime fell slightly last year for the first time in almost a decade, and the rate of homicide by juveniles decreased for the second year in a row, down by 15.2 percent"). The source of justification behind the tougher treatment of serious juvenile offenders is the public perception that violent crime by such young offenders is on the rise and propounds a great threat to public safety. Leslie Fraust & Phil Sudo, *What Kind of Justice? Should Violent Young Offenders Be Getting Stiffer Punishment?*, SCHOLASTIC UPDATE, Apr. 5, 1991, at 10; see Levesque & Tomkins, *supra* note 13, at 87 (contradicting the belief that juvenile crime is on the rise). Vindications of the recent get-tough premise argue that "the rehabilitative approach allows violent young offenders to slip through the system with little more than a slap on the wrist." *Id.* However, the public fear of juvenile offenders that sparked the get-tough era can partly be attributed to the ultra-sensationalized reports of critics of the

rehabilitative ideal. See generally Randall Shelden, *Save the Children*, POL'Y REV., Spring 1986, at 93 (providing an example of a juvenile justice critic who "resorted to a gross exaggeration of juvenile crime statistics" to inflame the public). Politicians and anti-crime advocates are not the only source of the public's confusion and lack of understanding in this area; the public is also sometimes misled by the media. RICHARD J. LUNDMAN, PREVENTION AND CONTROL OF JUVENILE DELINQUENCY 4-5 (2d ed. 1993); IRA M. SCHWARTZ, (IN)JUSTICE FOR JUVENILES: RETHINKING THE BEST INTERESTS OF THE CHILD 65-84 (1989). See generally Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice*, 79 MINN. L. REV. 965, 984-85 (1995) (stating that "the intensity and tenor of youth crime [media] coverage inevitably colors both people's perceptions of reality and politicians' reactions"); Gary Enos, *Troubled Youths; States Throw Away the Key on Most Kids*, CITY & STATE, Apr. 26-May 9, 1993, at 9 (noting that publicity surrounding juvenile crimes exacerbates the crime and leads the public to believe that violent youth crime is out of control); George Pettinico, *Crime and Punishment: America Changes Its Mind*, PUB. PERSP., Sept.-Oct. 1994, at 29 (according to a poll taken in 1993 published by the Roper Center for public opinion research, 65% of Americans base their conclusion that crime is on the rise on what they hear and read in the media, as opposed to real life experiences); Rorie Sherman, *Juvenile Justice: A System at Odds Over Punishment*, NAT'L L.J., Mar. 25, 1991, at 1 (noting there is "increased publicity" given to juveniles who commit violent crimes).

For example, Paul J. McNulty, the president of a Washington-based anti-crime advocate group known as the First Freedom Coalition, professed that "the greatest danger lies ahead . . . America faces the most violent juvenile crime surge in history." Paul J. McNulty, *Natural Born Killers?*, POL'Y REV., Winter 1995, at 84. McNulty further declared that "[t]he warnings of this coming storm are unmistakable. . . . and we are in for a catastrophe in the early 21st century." *Id.* It is inflammatory rhetoric such as this that prompts the public to lobby for the incarceration of juvenile offenders rather than rehabilitation. Unfortunately, incarceration is a short-term response to a long-term problem.

Incarceration of juveniles for the purpose of punishment does not effectively deter juvenile crime. For example, California's get-tough tactics have had "virtually no effect on deterring juvenile crime," despite the magnitude of incarcerated juvenile offenders in that state. Fraust & Sudo, *supra*, at 10. According to a 1989 study by the National Council on Crime and Delinquency, with respect to California, 70% of the juveniles who spent over a year in a state institution were again arrested after their release, and 62% of those juveniles were reincarcerated. Fraust & Sudo, *supra*, at 10. Approximately 83% of serious crimes in the United States are committed by only five percent of the nation's youth. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPARTMENT OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: A NATIONAL REPORT 50 (1995) [hereinafter OJJDP REPORT]; see Donna M. Hamparian et al.,

who both discover crime at a young age and who commit progressively serious crimes are more predisposed to engage in criminal activity as adults.¹⁵ "The probability that an individual who was never arrested as a juvenile will become a chronic offender as an adult is extremely remote."¹⁶ It is therefore imperative that serious juvenile offenders receive effective rehabilitative treatment in order

The Young Criminal Years of the Violent Few, in YOUNG BLOOD 105, 108-09 (Shirley Dicks ed., 1995) (finding through the results of a cohort study of violent juvenile offenders that "[a] relatively small number of violent juvenile offenders were responsible for most of the arrests"). Authorities on juvenile justice have reported that a "stint in jail tends to make [teenagers] more violent." Lauren Tarshis, *What Makes Teens Violent?*, SCHOLASTIC UPDATE, Feb. 11, 1994, at 10. Jailed children must respond to the "culture of violence" existing in prisons in order to survive their period of incarceration. *Id.* As a result, many teenagers carry this learned violent prison culture into society when they are released. *Id.*

Violent juvenile offenders who receive intensive rehabilitative treatment from a trained staff at an early stage tend to evince positive responses to such treatment. *Id.* Therefore, rehabilitation efforts that focus on this small group of chronic offenders will serve to maximize crime reduction rates. See Shelden, *supra*, at 93 (stating that "[c]oncentrating our efforts at the small number of 'chronic' delinquents is certainly a worthwhile goal"). Although appealing on the surface, it will be difficult to implement such a program because it is not easy to identify which juvenile offender will ultimately become a chronic offender. For "we must never forget that even the most hardened juvenile delinquents were at one time mere toddlers. Somewhere, someone, or some institution has failed." Shelden, *supra*, at 93. Therefore, relegating serious juvenile offenders to jail will certainly prevent them from committing crimes while incarcerated, but it will not effectively deter them from committing more serious crimes in the future when they are once again released into society. Shelden, *supra*, at 93.

¹⁵ See generally Peter W. Greenwood, *Care and Discipline: Their Contribution to Delinquency and Regulation by the Juvenile Court*, in FROM CHILDREN TO CITIZENS, *supra* note 1, at 80, 81 (noting that studies have revealed a "strong correlation between juvenile and adult arrests"); see also OJJDP REPORT, *supra* note 14, at 50-51 (finding that the earlier a youth commits a serious crime, the more likely the youth is to continue this behavior as an adult). The National Youth Survey found that 45% of the juveniles initiating serious violent offending before age 11 continued to commit violent acts into their twenties, as compared to 25% of those who committed their first serious offense at age 12, and the even lower percentage of those who started in their teens. OJJDP REPORT, *supra* note 14, at 50-51.

¹⁶ Greenwood, *supra* note 15, at 86.

to decrease their odds of becoming adult offenders.¹⁷ 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.

As exemplified by the developments patterned by the Illinois legislature, the harbinger of the juvenile justice system,¹⁸ over the

¹⁷ Juvenile offenders must receive effective rehabilitative treatment. However, given the breadth of governmental entities sharing the responsibility for juvenile justice in America, "it is difficult to discuss the politics of juvenile justice without tending towards oversimplification." McCorkell, *supra* note 1, at 22. State legislatures are faced with cumbersome timetables and financial problems thereby making it formidable to get juvenile justice issues "high enough on the agenda" for serious debate. McCorkell, *supra* note 1, at 23.

¹⁸ The passage of the Illinois Juvenile Court Act of 1899 both established the nation's first juvenile court and launched the "contemporary American system of dealing with children in trouble." SIEGEL & SENNA, *supra* note 1, at 273; see OJJDP REPORT, *supra* note 14, at 70 (describing the history and emergence of the first juvenile courts in the United States). The moral principles that prompted the Illinois reformers at the turn of the century to create a separate juvenile justice system were:

- (1) Children, because of their minority status, should not be held as accountable as adult transgressors;
- (2) The objective of juvenile justice is to help the youngster, to treat and rehabilitate rather than punish;
- (3) Disposition should be predicated on analysis of the youth's special circumstances and needs; [and]
- (4) The [juvenile justice] system should avoid the punitive, adversary and formalized trappings of the adult criminal process

SIEGEL & SENNA, *supra* note 1, at 274.

The British doctrine of *parens patriae* (the State as parent) was the rationale for the right of the State to intervene in the lives of children in a manner different from the way it intervenes in the lives of adults. The doctrine was interpreted as the inherent power and responsibility of the State to provide protection for children whose natural parents were not providing appropriate care and supervision because children were not of full legal capacity.

OJJDP REPORT, *supra* note 14, at 70. The movement to help children in trouble defined the differences between the juvenile justice system and the adult criminal justice system. OJJDP REPORT, *supra* note 14, at 70.

The Illinois notion of creating a separate juvenile court system "spread rapidly across the country" in the early twentieth century. SIEGEL & SENNA,

course of the twentieth century, the direction a state intends to follow with regard to its juveniles is first and foremost reflected within the amendments that state has adopted to the statutory purpose of its juvenile justice laws.¹⁹ The original Illinois Juvenile

supra note 1, at 274. Until the recent onset of the get-tough era, "[s]tatutes similar to the Illinois Juvenile Court Act [of 1899] were enacted in almost every state." SIEGEL & SENNA, *supra* note 1, at 274; see Bleich, *supra* note 2, at 31 (finding a "striking similarity" among the states' juvenile justice statutes, which for the most part, were modeled after the language of the original Illinois statute). The Illinois Juvenile Court Act of 1899 provided: "This act shall be liberally construed, to the end that its purpose may be carried out, to-wit: [t]hat the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents" Juvenile Court Act § 21, 1899 Ill. Laws 131, 137 (current version at ILL. REV. STAT. ch. 705, para. 405/1-2 (1993 & Supp. 1996)).

¹⁹ Bleich, *supra* note 3, at 32. The Illinois legislature has found that a "substantial and disproportionate amount of serious crime is committed by a relatively small number of juvenile offenders, otherwise known as serious habitual offenders." ILL. REV. STAT. ch. 705, para. 405/1-8.1 (1993 & Supp. 1996). As of 1992, the Illinois legislature intended to support the efforts of the juvenile justice system in the treatment of such habitual juvenile offenders. *Id.* In order to enhance its rehabilitative efforts, Illinois established the Serious Habitual Offender Comprehensive Action Program ("SHOCAP"). See *id.* ch. 705, para. 405/1-8.2 (Supp. 1996). SHOCAP is a "multi-disciplinary interagency case management and information sharing system that enables the juvenile justice system, schools, and social service agencies to make more informed decisions regarding a small number of juveniles who repeatedly commit serious delinquent acts." *Id.* ch. 705, para. 405/1-8.2(a).

Recent developments, however, have marked the demise of Illinois as the forerunner of the rehabilitative ideal. On October 13, 1994, two youths, ages 10 and 11, dangled and dropped five-year-old Eric Morse to his death from a 14th-floor window of an abandoned Chicago apartment building because Eric refused to steal candy. Gary Marx, *2 Guilty in Dropping Boy Out Window*, CHI. TRIB., Oct. 19, 1995, at 1; Flynn McRoberts & Andrew Gottesman, *State May Get Tougher on Young*, CHI. TRIB., Oct. 18, 1994, at 1. The two youths were found guilty of killing Eric Morse and were placed in the custody of the Illinois Department of Corrections; thereby making them the nation's youngest juvenile offenders ever to be sentenced to a high-security prison. *Boy, 12, to Be Nation's Youngest Prison Inmate*, N.Y. TIMES, Jan. 30, 1996, at A10. Ironically, Illinois, the icon of the *parens patriae* doctrine, will be credited as the state with the nation's youngest prison inmates.

Court Act of 1899²⁰ focused on the same type of care that would be given by the child's parents as its primary statutory goal. The current purpose and policy of the Illinois Juvenile Court Act is to secure for each child such care and guidance that will best serve the "welfare of the minor *and the best interests of the community*."²¹ By including the best interests of the community as part of its primary statutory purpose, Illinois subtly shifts the focus of its juvenile justice system from the rehabilitation of children to the protection of society and victims.²²

One of the most brazenly amended statutes, reflective of the get-tough era,²³ is that of Texas. Prior to 1995, the primary

²⁰ Juvenile Court Act § 21, 1899 Ill. Laws 131, 137 (current version at ILL. REV. STAT. ch. 705, para. 405/1-2); *see supra* note 18 (setting forth the statutory language of the original Illinois Juvenile Court Act).

²¹ ILL. REV. STAT. ch. 705, para. 405/1-2(1) (emphasis added).

²² *See generally* McRoberts & Gottesman, *supra* note 19, at 1 (describing the murder of young Eric Morse that hardened the attitude of Illinois legislators with regard to juvenile offenders).

²³ The "get-tough era" refers to the period beginning in the mid 1970s, and extending to the present day, when "the public perceived that serious juvenile crime was increasing and that the [juvenile justice] system was 'soft' on offenders." OJJDP REPORT, *supra* note 14, at 72; Ron Harris, *A Nation's Children in Lockup; Political and Social Pressures Have Shifted the Focus of Juvenile Justice from Rehabilitation to Punishment*, L.A. TIMES, Aug. 22, 1993, at A1 (noting that America started to get-tough with juvenile criminals in the mid-1970s). Many states responded to this misperception about juvenile crime and the juvenile justice system by enacting a variety of "get-tough" legislation. *See* OJJDP REPORT, *supra* note 14, at 72.

[Generally,] get-tough policy reforms include measures, such as 1) increasing the use of juvenile incarceration, 2) mandating longer determinant periods of confinement, 3) transferring more juveniles into the adult criminal courts, 4) lowering the age at which particular juvenile offenders come under criminal court jurisdiction The general intent of all these get-tough reform measures is to handle juvenile offenders in such a manner that sufficiently harsh punishment is meted out, individual accountability established, and public safety enhanced. . . . Get-tough proposals are invariably a response to the perception that the heart of the juvenile crime problem is the inadequacy or bankruptcy of the juvenile justice system. The juvenile justice system is frequently criticized for being too lenient, too forgiving, too short-term, too rehabilitation and treatment-oriented, not sufficiently

statutory purpose of the Juvenile Justice Code in Texas was "to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions."²⁴ However, the Texas legislature amended the primary objectives of its Juvenile Justice Code in 1995 "to provide for the protection of the public and public safety,"²⁵ and "consistent with the protection of the public and public safety . . . to promote the concept of *punishment* for criminal acts."²⁶ Although the Texas statute did not entirely delete its original statutory purpose providing for the care and protection of the child,²⁷ the legislature did accord this provision less weight by preempting it with the aforementioned retributive provisions.

Similarly, Minnesota has forsaken the traditional belief that all children are capable of being rehabilitated and that "no juveniles should be imprisoned."²⁸ In 1980, the "exclusively benevolent and rehabilitative objectives"²⁹ of the purpose clause of Minnesota's Juvenile Court Act³⁰ were modified when the legislature supplemented them with the competing goals of "maintaining the integrity of the substantive criminal law and developing individual responsibility."³¹ The amendment to the purpose clause "signalled a fundamental philosophical departure from the previous emphasis on rehabilitation, and recognized that juvenile courts also punish and exercise penal social control."³² As a result, this shift toward a

punitive, and as a consequence of all these factors, ineffective. . . . [I]t is frequently the case with juvenile offenders, much like adult[s], that incarceration or imprisonment is proposed as the ultimate get-tough answer.

David M. Altschuler, *Tough and Smart Juvenile Incarceration: Reintegrating Punishment, Deterrence and Rehabilitation*, 14 ST. LOUIS U. PUB. L. REV. 217, 217-18 (1994).

²⁴ TEX. FAM. CODE ANN. § 51.01(1) (prior to 1995 amendment).

²⁵ *Id.* § 51.01(1) (West 1996) (current version).

²⁶ *Id.* § 51.01(2)(A) (emphasis added).

²⁷ *See id.* § 51.01(3).

²⁸ Curriden, *supra* note 4, at 69.

²⁹ Feld, *supra* note 14, at 1017.

³⁰ MINN. STAT. ANN. §§ 260.011-.301 (West 1992 & Supp. 1996).

³¹ Feld, *supra* note 14, at 1017; *see* MINN. STAT. ANN. § 260.011(c).

³² Feld, *supra* note 14, at 1017.

more punitive philosophy in dealing with delinquent children serves to justify subsequent provisions that allow children to be tried as adults and face the jail time connected with adult crime.³³

Similar to Texas and Minnesota, the Idaho legislature has also succumbed to the pressures of the "get-tough" era by amending and redesignating its former Youth Rehabilitation Act³⁴ into its current Juvenile Corrections Act.³⁵ Prior to 1996, the purpose of the Idaho juvenile justice system was to handle juvenile cases "through a coordinated program of rehabilitation" that considered "the needs and best interests of the child as well as the need for protection of the community. . . ."³⁶ Today, however, the purpose of the juvenile justice system has shifted away from its former commendable rehabilitative focus to one concerned primarily with the following principles: "accountability; community protection; and competency development."³⁷ Similar to the Minnesota framework, statutory amendments that entirely delete or repress rehabilitative goals serve as justification for subsequent retributive statutes, such as automatic transfer provisions.³⁸

³³ See, e.g., MINN. STAT. ANN. § 260.125 (West 1992 & Supp. 1996). According to 1995 amendments, children involved in first-time or minor offenses shall be subject to the traditional juvenile court jurisdiction. *Id.* However, persons 14-years-old or older who commit more serious felony offenses or who are repeat offenders may be certified to the adult criminal court and accorded the same consequences as adult defendants. *Id.*

³⁴ IDAHO CODE § 16-1801 (1979) (current version at IDAHO CODE § 20-501 (Supp. 1996)).

³⁵ *Id.* §§ 20-501 to -547 (Supp. 1996).

³⁶ *Id.* § 16-1801 (not effective after Oct. 1, 1995).

³⁷ *Id.* § 20-501. The Idaho Juvenile Corrections Act states, in relevant part:

It is the policy of the state of Idaho that the juvenile corrections system will be based on the following principles: accountability; community protection; and competency development. Where a juvenile has been found to be within the purview of the juvenile corrections act, the court shall impose a sentence that will protect the community, hold the juvenile accountable for his [or her] actions, and assist the juvenile in developing skills to become a contributing member of a diverse community. . . .

Id.

³⁸ See, e.g., *id.* §§ 20-506 to -509 (Supp. 1996). See also *infra* note 119 (setting forth a general explanation of transfer provisions).

Supporters and legislators of amendments that make the juvenile justice system increasingly retributive claim that such amendments reflect public demand to "crack down" on serious juvenile offenders.³⁹ To an extent, the public does support trying juveniles who commit serious crimes in adult courts. However, the public does not particularly favor sentencing juveniles to adult prisons or giving juveniles the same sentences as adults.⁴⁰ Although the public wants to hold juveniles who commit serious crimes accountable for their actions, they also want such juveniles to be treated and rehabilitated.⁴¹ Contrary to the opinion of most legislators and politicians,⁴² the public does not appear to be as punitive and

³⁹ Ira M. Schwartz, *Juvenile Crime-Fighting Policies: What the Public Really Wants*, in JUVENILE JUSTICE AND PUBLIC POLICY 214 (Ira M. Schwartz ed., 1992).

Citizens and politicians perceive a significant and frightening increase in youth crime and violence. Concerns about the inability of juvenile courts to rehabilitate chronic and violent young offenders, while simultaneously protecting public safety, accompany the growing fear of youth crime. A desire to "get-tough," fueled in part by frustration with the intractability of crime, provides political impetus to transfer some young offenders to criminal courts for prosecution as adults and to strengthen the sanctioning powers of juvenile courts.

Feld, *supra* note 14, at 966.

⁴⁰ Schwartz, *supra* note 39, at 216. According to a "national public opinion survey of attitudes towards juvenile crime" conducted in 1991 by the University of Michigan's Institute for Social Research: (1) 62% of the respondents did not feel that juveniles should receive the same sentence as adults; (2) 63% did not want juveniles sent to adult prisons for serious property offenses; (3) 68% did not want juveniles imprisoned with adults for selling drugs; and (4) 55% did not feel that juveniles should be sent to prison for serious violent crimes. Schwartz, *supra* note 39, at 214-16.

⁴¹ Schwartz, *supra* note 39, at 216. "Depending upon the type of crime, between 88-95[%] of the respondents want juveniles who commit serious property, drug-related, and violent crimes treated and rehabilitated if at all possible." Schwartz, *supra* note 39, at 216.

⁴² For example, U.S. Senator Carol Moseley-Braun of Illinois proposed an amendment to the federal crime bill that would facilitate the transfer of juveniles as young as 13-years-old who commit certain violent crimes to the adult criminal court system. See generally Laura Murphy Lee, *Should 13-Year-Olds Who Commit Crimes with Firearms Be Tried as Adults?*, 80 A.B.A. J. 47, 47 (1994) (arguing that Sen. Moseley-Braun's proposed amendment would be ineffective

demanding of retribution toward juvenile offenders as lobbyists of retribution would like to believe.⁴³

B. Welfare of the Child Versus Best Interests of the State

State statutory preambles that contain phrases similar to "welfare of the minor" and "best interest of the state" imply that the well-being of the child must be balanced against the safety of the public in determining the disposition of the juvenile in question.⁴⁴ Not surprisingly, many states utilize such middle-of-the-road and arbitrary statutory language as a catch-all justification for choices made within their juvenile justice system.⁴⁵

in deterring juvenile crime); Avis LaVelle, *Should Children Be Tried As Adults?*, ESSENCE, Sept. 1994, at 85 (setting forth the opposing attitudes toward juvenile crime—punitive versus rehabilitative—adopted by various specified politicians, juvenile justice advocates, scholars and a retired judge). Furthermore, it is argued that "[h]ardened public attitudes" have prompted politicians to adopt harsher stances toward juvenile crime as a re-election tool. Penelope Lemov, *The Assault on Juvenile Justice*, GOVERNING MAG., Dec. 1994, at 26. To the extent, however, that the adjudication of juvenile offenders as adults may translate into "good politics," it does not necessarily translate into "good social policy." *Id.* (questioning whether treating juvenile offenders like adult offenders is "good social policy").

⁴³ "The public does not support the current movement to abandon the historical mission and purpose of the juvenile court. By an overwhelming majority, the [public] wants the juvenile court to retain its emphasis on treatment and rehabilitation, an emphasis contrary to current public policy in a growing number of states." Schwartz, *supra* note 39, at 222-23; see Schwartz et al., *supra* note 12, at 257 (finding that there exists widespread public support for the rehabilitation of juveniles within the juvenile court system). For statistics supporting the proposition that the majority of the public favors the rehabilitation of juvenile offenders, see *supra* notes 40-41 and accompanying text.

⁴⁴ See generally Bleich, *supra* note 2, at 34-35 (providing examples of states that have modified the language of the preamble to their juvenile laws).

⁴⁵ For example, 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." N.Y. FAM. CT. ACT § 301.1 (Consol. 1987); see, e.g., ALA. CODE § 12-15-1.1; ARK. CODE ANN. § 9-27-302 (Michie 1993 & Supp. 1995); CAL. WELF. & INST. CODE § 202 (West 1984 & Supp. 1996); COLO. REV. STAT. ANN. § 19-1-102 (West 1986 & Supp. 1995); GA. CODE ANN. § 15-11-1 (1994); HAW. REV. STAT. § 571-1 (1993); ILL. REV.

The Arkansas Juvenile Code's primary purpose is "to assure that all juveniles brought to the attention of the courts receive the guidance, care, and control . . . which will best serve the emotional, mental, and physical *welfare of the juvenile and the best interests of the state*."⁴⁶ However, subsequent language within the statute, stressing the protection of society and recognizing that sanctions commensurate "with the seriousness of the offense [are] appropriate in all cases," provides evidence that the Arkansas legislature is not adverse to the use of retributive measures with respect to its youngest offenders.⁴⁷

Similarly, the Maine Juvenile Code primarily seeks to procure for each juvenile "such care and guidance" that will "best serve" both the welfare of the child and the interests of society.⁴⁸ However, as part of its statutory purpose, the Maine Juvenile Code also seeks to remove juveniles from their family environment "where necessary to *punish*" such juveniles.⁴⁹ Like the Arkansas statute, subsequent language infers that the Maine legislature has not foregone the notion of punishment of its juvenile offenders.

STAT. ch. 705, para. 405/1-2 (1993 & Supp. 1996); IND. CODE ANN. § 31-6-1-1.1; IOWA CODE ANN. § 232.1 (West 1994 & Supp. 1996); KAN. STAT. ANN. § 38-1601 (1993 & Supp. 1995); LA. CODE JUV. PROC. ANN. art. 801 (West 1995) (children's code); ME. REV. STAT. ANN. tit. 15, § 3002 (West 1980 & Supp. 1995); MD. CODE ANN., CTS. & JUD. PROC. § 3-802 (1995 & Supp. 1996); MICH. COMP. LAWS ANN. § 712A.1 (West 1993 & Supp. 1996); MISS. CODE ANN. § 43-21-103 (1993 & Supp. 1996); MO. ANN. STAT. § 211.011 (Vernon 1996); MONT. CODE ANN. § 41-5-102 (1995); NEB. REV. STAT. § 43-246 (1993); NEV. REV. STAT. ANN. § 62.031 (Michie 1996); N.H. REV. STAT. ANN. § 169-B:1 (1994 & Supp. 1995); N.J. STAT. ANN. § 2A:4A-21 (West 1987 & Supp. 1996); N.D. CENT. CODE § 27-20-01 (1991 & Supp. 1995); OHIO REV. CODE ANN. § 2151.01 (Anderson 1994); OR. REV. STAT. § 419A.002 (1995); 42 PA. CONS. STAT. ANN. § 6301; R.I. GEN. LAWS § 14-1-2 (1994); S.C. CODE ANN. § 20-7-20 (Law. Co-op. 1985 & Supp. 1995); S.D. CODIFIED LAWS ANN. § 26-7A-6 (1992 & Supp. 1996); VT. STAT. ANN. tit. 33, § 5501 (1991 & Supp. 1996); VA. CODE ANN. § 16.1-227 (Michie 1996); W. VA. CODE § 49-1-1 (1995 & Supp. 1996).

⁴⁶ ARK. CODE ANN. § 9-27-302(1) (emphasis added).

⁴⁷ *Id.* § 9-27-302(3).

⁴⁸ ME. REV. STAT. ANN. tit. 15, § 3002(1)(A).

⁴⁹ *Id.* § 3002(1)(C) (emphasis added).

In addition to the Arkansas and Maine statutes, the primary statutory purpose of the Maryland juvenile justice system is "to provide for the care, protection, and wholesome mental and physical development of children . . . and to provide for a program of treatment, training, and rehabilitation consistent with the *child's best interests and the protection of the public interest*."⁵⁰ However, unlike the Arkansas and Maine statutes, the ensuing provisions of the Maryland purpose statute do not stress the protection of the public and punishment of the child over the best interests of the child. Rather, the Maryland purpose clause strikes a feasible balance among its competing statutory goals.⁵¹ The purpose clause of the Maryland Juvenile Code thereby serves as an example that it is viable for state legislatures to enumerate complementary policies for their juvenile justice system that incorporate both the notions of rehabilitation and discipline.

1. *Protection of the Public and Punishment of the Child*

Certain states have responded to contemporary societal reform by bolstering their commitment to community protection and punishment of juvenile offenders.⁵² Such states have consciously

⁵⁰ MD. CODE ANN., CTS. & JUD. PROC. § 3-802(a)(1) (emphasis added).

⁵¹ The subsequent provisions of the Maryland purpose statute, that promote both the best interests of the child and the best interests of the public, provide in pertinent part:

- (2) To remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior;
- (3) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or the interest of public safety . . .
- (5) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents

Id. § 3-802(a)(1)-(5); *see* COLO. REV. STAT. ANN. § 19-1-102(1)(a)-(d) (striking a functional balance between its primary statutory goals of best serving the welfare of the child and the interests of society).

⁵² Bleich, *supra* note 2, at 35. For example, the primary purpose of the Utah

chosen to "downplay the role of rehabilitation" within the preambles of their juvenile justice statutes in order to spotlight their recently embraced retributive stance.⁵³ For instance, the intent of the Washington state legislature is to create a juvenile justice system where juvenile offenders are held accountable for their criminal behavior.⁵⁴ To effectuate this policy, the preamble to the Juvenile Justice Act in Washington explicitly provides for the punishment of juvenile offenders.⁵⁵ Similarly, the preamble to the Texas Juvenile Justice Code first and foremost provides for the

juvenile courts is to "promote public safety and individual accountability by the imposition of appropriate sanctions on persons who have committed acts in violation of the law." UTAH CODE ANN. § 78-3a-102(5)(a) (Supp. 1996); *see, e.g.*, HAW. REV. STAT. § 571-1; IDAHO CODE § 20-501; NEB. REV. STAT. § 43-246; N.C. GEN. STAT. § 7A-516 (1995); OKLA. STAT. ANN. tit. 10, § 7301-1.2 (West 1987 & Supp. 1996); TEX. FAM. CODE ANN. § 51.01; WASH. REV. CODE ANN. § 13.40.010 (West 1993 & Supp. 1996).

Punishment or retribution refers to "the application of some pain or loss to a wrongdoer by someone in a position of authority." Richard Barnum, *The Development of Responsibility: Implications for Juvenile Justice*, in FROM CHILDREN TO CITIZENS, *supra* note 1, at 67, 74. Discipline administered by the parents of young children is the "most widely accepted use [of punishment]" in America. *Id.* When administered in the juvenile or criminal justice system, however, the effects of punishment upon a child is uncertain. *Id.* at 74-75. If exercised cautiously, punishment can be a useful means of fostering a sense of responsibility in children. *Id.* at 75. Punishment of juvenile offenders, if and when applied, should not be so oppressive as to displace otherwise normal child development. *Id.* Rather, punishment of juvenile offenders should take the form of "fines, restrictions, restitution, and victim confrontation," as opposed to unprolific incarceration. *Id.* Regardless of how effective punishment might be in deterring criminal behavior, the juvenile offender would still lack the qualities that "motivate non-offensive choices," and the social skills to effectively carry out such choices, without the proper treatment. *Id.* *See generally* Greenwood, *supra* note 15, at 92 (finding that social competence is an aspect of child development that can improve with treatment).

⁵³ Feld, *supra* note 8, at 842.

⁵⁴ WASH. REV. CODE ANN. § 13.40.010(2).

⁵⁵ The statutory purpose of the Washington Juvenile Justice Act provides "for *punishment* commensurate with the age, crime, and criminal history of the juvenile offender." *Id.* § 13.40.010(2)(d) (emphasis added).

protection of the public and promotes the concept of punishment for criminal acts.⁵⁶

The primary statutory goal of the Oklahoma Juvenile Code is to promote public safety.⁵⁷ However, unlike the Washington and Texas statutes, subsequent statutory language of the Oklahoma purpose statute espouses not only the best interests of the public,⁵⁸ but also the best interests and the rehabilitation of the juvenile offender.⁵⁹ The Oklahoma legislature does not seek to achieve its primary goal of public safety at the expense of the child. Rather, the legislature intends to reform juvenile offenders into productive members of society through a system of rehabilitation that reintegrates juvenile offenders into society as responsible individuals.⁶⁰ The framework of the Oklahoma statute, which initially appears to forego the future of the individual child for the safety of society, actually serves as an example of a statutory framework that appeases both society, by providing for the protection of the public; and the advocates of child welfare, by providing for a system of rehabilitation that fosters individual responsibility.⁶¹ However, despite the secondary placement of rehabilitation within its statutory purpose clause, there exists a commendable overall tenet within the

⁵⁶ TEX. FAM. CODE ANN. § 51.01; *see supra* notes 25-27 and accompanying text (setting forth the language of the preamble to the Texas Juvenile Justice Code).

⁵⁷ OKLA. STAT. ANN. tit. 10, § 7301-1.2.

⁵⁸ *Id.* § 7301-1.2(3). The Oklahoma Juvenile Court supports its primary goal of protecting the best interests of the public through means that "maintain the integrity of substantive law prohibiting certain behavior and developing individual responsibility for lawful behavior." *Id.*

⁵⁹ *Id.* § 7301-1.2(4). The Oklahoma Juvenile Code ranks its goal for the "rehabilitation and reintegration of juvenile delinquents into society" secondary to its goal of public safety. *Id.*

⁶⁰ *Id.* § 7301-1.2(4), (7).

⁶¹ Similar to the Oklahoma statute, the recently amended Idaho Juvenile Corrections Act includes subsequent statutory language which implicates that the state has not completely foregone the welfare of the child through its punitive amendments. *See* IDAHO CODE § 20-501 (mandating that the court adjudicate juvenile offenders in a manner that will not only protect society, but will also "assist the juvenile in developing skills to become a contributing member of a diverse community").

Oklahoma statute evinced by its intention to strive toward reforming wayward children into productive members of society.

2. *Protection and Rehabilitation of the Child*

The states that have chosen not to allow public demands for harsher treatment of juvenile offenders to affect their statutory framework provide an optimistic example of the rehabilitative ideal.⁶² Such states have chosen to reduce their "coercive community protection powers" by crafting standards with a primary emphasis on the "best interests of the child,"⁶³ the "protection of the child," the "welfare of the child" and the "rehabilitation of delinquent children."⁶⁴ For example, the intent of the New

⁶² For example, Massachusetts states as the primary purpose of its juvenile justice system: "It is hereby declared to be the policy of the commonwealth to direct its efforts, *first*, to the strengthening and encouragement of family life for the protection and care of children" MASS. GEN. LAWS ANN. ch. 119, § 1 (West 1994 & Supp. 1996) (emphasis added); *see, e.g.*, FLA. STAT. chs. 39.001-.002 (1988 & Supp. 1996); GA. CODE ANN. § 15-11-1; KY. REV. STAT. ANN. § 600.010 (Michie/Bobbs-Merrill 1990); MINN. STAT. ANN. § 260.011; MONT. CODE ANN. § 41-5-102; N.H. REV. STAT. ANN. § 169-B:1; N.J. STAT. ANN. § 2A:4A-21; N.D. CENT. CODE § 27-20-01; OHIO REV. CODE ANN. § 2151.01; 42 PA. CONS. STAT. ANN. § 6301; S.C. CODE ANN. § 20-7-20; S.D. CODIFIED LAWS ANN. § 26-7A-5 (1992 & Supp. 1996); TENN. CODE ANN. § 37-1-101 (1996); VT. STAT. ANN. tit. 33, § 5501; W. VA. CODE § 49-1-1; WIS. STAT. ANN. § 48.01 (West 1987 & Supp. 1996).

⁶³ The "best interests of the child" standard developed via the doctrine of *parens patriae*, and although beyond precise definition, basically holds the child's best interest "paramount" over other considerations, such as the protection of the public. Suzanne D. Strater, *The Juvenile Death Penalty: In the Best Interests of the Child?*, 22 HUM. RTS. 10, 12 (1995). The Supreme Court stated, "our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the state is entitled to adjust its legal system to account for children's vulnerability and their needs for 'concern, . . . sympathy, and . . . paternal attention.'" *Bellotti v. Baird*, 443 U.S. 622, 635 (1979). Furthermore, the Supreme Court's landmark decision, *In re Gault*, described the juvenile justice system as a process "where the child was to be treated and rehabilitated and the procedures from apprehension through institutionalization were to be clinical rather than punitive." 387 U.S. 1, 14-15 (1967).

⁶⁴ Bleich, *supra* note 2, at 37.

Hampshire legislature is "[t]o encourage the wholesome moral, mental, emotional, and physical development of each minor . . . by providing the protection, care, treatment, counseling, supervision, and rehabilitative resources which such minor needs."⁶⁵

⁶⁵ N.H. REV. STAT. ANN. § 169-B:1(I). In addition, the aim of the West Virginia child welfare system is to rehabilitate and protect, rather than punish, children. *See* W. VA. CODE § 49-1-1. According to the West Virginia Child Welfare Code:

The purpose of this chapter is to provide a comprehensive system of child welfare throughout the State which will assure to each child such care and guidance . . . and will serve the spiritual, emotional, mental and physical welfare of the child; preserve and strengthen the child's family ties whenever possible with recognition of the fundamental rights of parenthood and with recognition of the State's responsibility to assist the family in providing necessary education and training to reduce the rate of juvenile delinquency and to provide a system for the rehabilitation or detention of juvenile delinquents and the protection of the welfare of the general public. In pursuit of these goals it is the intention of the legislature to provide for removing the child from the custody of the parents only when the child's welfare or the safety and protection of the public cannot be adequately safeguarded without removal; and, when the child has to be removed from his or her family, to secure for the child custody, care and discipline consistent with the child's best interests

Id.

West Virginia established the Juvenile Offender Rehabilitation Act as a means of supporting and effectuating its rehabilitative goal. The Juvenile Offender Rehabilitation Act provides for the creation of "all reasonable means and methods that can be established by a humane and enlightened state, solicitous of the welfare of its children, for the prevention of delinquency and for the care and rehabilitation of delinquent children." *Id.* § 49-5B-2 (1995 & Supp. 1996). Furthermore, the Juvenile Offender Rehabilitation Act promises to "continuously refine and develop a balanced and comprehensive state program for children who are potentially delinquent or are delinquent" *Id.*

Despite the commendable rehabilitative statutory rhetoric posed by the West Virginia legislature, 1995 amendments to the West Virginia Child Welfare Code lowered the age of accountability for crime from 16- to 14-years of age, thus requiring the adult criminal justice system to deal with more juveniles. *See id.* § 49-5-10 (1995); Virginia Jackson Hopkins, *In Juvenile Crimes the More Things Change the More They Stay the Same*, W. VA. LAW., Nov. 1995, at 16. Although not required, the juvenile court may even transfer a child younger than 14-years-old to the adult criminal justice system if there is probable cause to believe that

According to the Florida legislature, the main purpose of its juvenile justice agenda is to provide general protection for children including "effective treatment to address [the] physical, social, and emotional needs" of children.⁶⁶ However, subsequent language of the Florida statute suggests that the above quoted mandate does not apply equally to juvenile offenders. The Florida statute gives preference to the protection of the public over the rehabilitation of the child.⁶⁷ Although the Florida statute retains a rehabilitative ideal within its preamble, the legislature assigns rehabilitation of juvenile offenders the lowest rank among its list of objectives for delinquency protection.⁶⁸

the child has committed an offense of violence which would be a felony if the child were an adult. *See* W. VA. CODE § 49-5-10(e)-(f) (1995 & Supp. 1996).

However, the success of a state's rehabilitative policy depends upon the rehabilitative programs it adopts and the impact such programs have on the criminal behavior of youths. Greenwood, *supra* note 15, at 92. Society has a tendency to prematurely conclude that rehabilitation programs do not work if, after treatment, the juvenile continues to commit crimes. Greenwood, *supra* note 15, at 92. However, concern for the future of society warrants efforts for pursuing more effective rehabilitative techniques because youths that are most at risk of becoming chronic offenders should not be "consigned to careers of repeated incarceration" merely because their families and communities have failed them. Greenwood, *supra* note 15, at 93. The juvenile justice system owes to wayward children the promise that it will make as great an effort as possible to reform them. *See generally* Greenwood, *supra* note 15, at 93 (promulgating an idealistic approach to the juvenile justice system).

⁶⁶ FLA. STAT. ch. 39.002(1)(e).

⁶⁷ The Florida statute states in relevant part that "[i]t is the policy of the state with respect to juvenile justice and delinquency prevention to *first* protect the public from acts of delinquency" *Id.* ch. 39.002(3) (emphasis added).

⁶⁸ *See id.* ch. 39.002(3)(d). In addition to "first protect[ing] the public from acts of delinquency," it is also the policy of Florida to:

- (a) Develop and implement effective methods of preventing and reducing acts of delinquency, with a focus on maintaining and strengthening the family as a whole so that children may remain in their homes or communities.
- (b) Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization and deep-end commitment.

Similarly, the Minnesota legislature explicitly states in its Juvenile Court Act that "the paramount consideration in all proceedings concerning a child alleged or found to be in need of protective services is the best interests of the child."⁶⁹ Like the Florida statute, however, subsequent language gives preference to the protection of the public over the rehabilitation of the child.⁷⁰ The Florida and Minnesota statutes, unlike the New Hampshire juvenile justice statutory preamble, exemplify the contradictions inherent within such statutes that *prima facie* promote the competing interests of punishment and rehabilitation.⁷¹

As the foregoing analysis demonstrates, there has been a movement away from placing the primary focus of the juvenile justice system on treatment. Several jurisdictions have included public safety, accountability and punishment as the primary

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- (c) Provide well-trained personnel, high-quality services, and cost-effective programs within the juvenile justice system.
 - (d) Increase the capacity of local governments and public and private agencies to conduct *rehabilitative treatment* programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention.

Id. ch. 39.002(3)(a)-(d) (emphasis added).

⁶⁹ MINN. STAT. ANN. § 260.011(a).

⁷⁰ The Minnesota statute states that "[t]he purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior." *Id.* § 260.011(c). The legislature, however, ameliorated its harsher statutory stance towards juvenile delinquents by further stating that the purpose of promoting public safety and respect for the law over rehabilitation "should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth." *Id.*

⁷¹ For a further example of the contradictions inherent in the Florida's juvenile justice system, contrast FLA. STAT. ch. 39.052(3) (1988 & Supp. 1996) (providing for the transfer of a child for prosecution as an adult) with *id.* ch. 39.002(5) (recognizing that Florida prisons are inadequate to meet the rehabilitative needs of children who have been adjudicated in adult criminal court). See HAW. REV. STAT. § 571-1 (stating that the policy and purpose of the family court system in Hawaii is to both "foster the rehabilitation of juveniles in difficulty" and to "render appropriate punishment to offenders").

purposes of their juvenile laws.⁷² These examples illustrate that certain jurisdictions have taken steps to reconstruct their laws in light of modern developments. Despite recent retributive rhetoric, it is conceivable for a state to retain the traditional rehabilitative paragon as the overriding statutory juvenile justice policy within that state.⁷³

C. Novel Statutory Goals

Statutory preambles that set forth unconventional goals for a state's juvenile justice agenda may serve as alternative models to the traditional rehabilitative means of dealing with the realities of youth crime in America. The Delinquency Act of New Mexico's Children's Code exemplifies such a novel approach.⁷⁴ The primary purpose of the New Mexico Delinquency Act is

⁷² See *supra* note 52 and accompanying text (setting forth those states that stress the protection of the public and the punishment of the child as the primary goal of their juvenile justice systems).

⁷³ For example, Massachusetts has not substantively changed its rehabilitative purpose clause since 1906. The first purpose clause Massachusetts enacted provided:

This act shall be liberally construed to the end that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance. Proceedings against children under this act shall not be deemed to be criminal proceedings.

1906 Mass. Acts 413, § 2. The current statute is substantially similar to the statute enacted in 1906, and it provides in pertinent part:

It is hereby declared to be the policy of this commonwealth to direct its efforts, first, to the strengthening and encouragement of family life for the protection and care of children; to assist and encourage the use by any family of all available resources to this end; and to provide substitute care of children only when the family itself or the resources available to the family are unable to provide the necessary care and protection to insure the rights of any child to sound health and normal physical, mental, spiritual and moral development.

MASS. GEN. LAWS ANN. ch. 119, § 1.

⁷⁴ N.M. STAT. ANN. § 32A-2-2 (Michie 1995).

to remove from children committing delinquent acts the adult consequences of criminal behavior, but to still hold children committing delinquent acts accountable for their actions to the extent of the child's age, education, mental and physical condition, background and all other relevant factors, and to provide a program of supervision, care and rehabilitation including rehabilitative restitution by the child to the victims of the child's delinquent act to the extent that the child is reasonably able to do so⁷⁵

Not only does the New Mexico statute make it a definitive goal to avoid transferring a juvenile offender to the jurisdiction of the adult criminal justice system, it also provides a statutory exigency to regard a youth as a child in determining how to hold the child "accountable" for his or her actions.⁷⁶ Consistent with its statutory purpose to rehabilitate delinquent children while instilling discipline commensurate with the circumstances unique to each child, the New Mexico legislature has found that "the availability of treatment alternatives is likely to decrease repeated criminal activity."⁷⁷

⁷⁵ *Id.* § 32A-2-2(A). The statute goes further to provide an emphasis on "community-based alternatives" as a deterrent to acts of juvenile delinquency. *Id.* § 32A-2-2(B).

⁷⁶ *Id.* § 32A-2-2(A).

⁷⁷ *Id.* § 32A-13-1 (Michie 1995). The "treatment alternatives" which the legislature was referring to are the "forensic evaluation program" and the "wilderness experience program." *See id.* §§ 32A-13-1 to -3 (Michie 1995). The forensic evaluation program provides evaluations of juvenile offenders in order to recommend referral of the individual child to the appropriate state agency or program for the proper treatment. *Id.* § 32A-13-2. One of the programs that a child might be referred to, based on the results of such child's forensic evaluation, is the wilderness experience program. *Id.* § 32A-13-3. The wilderness experience program provides an alternative to traditional rehabilitation for juveniles referred from criminal justice agencies who are diagnosed as in need of such intensive treatment. *Id.*

A boot camp [or wilderness program] is a constructive approach to offender rehabilitation. A boot camp program is modeled after military basic training. The program is designed for young . . . offenders who have been convicted of a felony and who would probably be sent to prison for the first time but for the boot camp option. The program lasts from three to six months, depending on the state. Brief confinement in a boot camp is intended to "shock" participants into realizing

In addition to the New Mexico approach, California has also adopted an atypical statutory premise in its Juvenile Court Law.⁷⁸ The California code expressly mandates that the guidance and treatment provided to children "may include *punishment* that is consistent with the rehabilitative objectives of this chapter."⁷⁹ However, the California legislature explicitly excludes from the term "punishment" notions of retribution.⁸⁰ Furthermore, it assigns to the term "punishment" a narrow and enumerated definition.⁸¹ A 1984 amendment of the purpose of the Juvenile Court Law that placed an emphasis on "punishment" did not alter the overall rehabilitative aspect of the California juvenile justice system.⁸²

the harsh reality of prison life without subjecting them to long prison sentences and direct contact with hardened criminals. (The boot camp population is not mixed with regular prison inmates). The program gives the young offender who has never been in prison one last chance to change his [or her] criminal way of life. It is designed to put the offender in a state of mind and body where he [or she] can make a commitment to change and personal growth. The objectives are to instill in the offender self-discipline, self-responsibility, self-respect, self-esteem, self-motivation, and a solid work ethic.

Carol Ann Nix, *Boot Camp/Shock Incarceration—An Alternative to Prison for Young, Non-Violent Offenders in the United States*, PROSECUTOR, Mar./Apr. 1994, at 16.

⁷⁸ See CAL. WELF. & INST. CODE § 202.

⁷⁹ *Id.* § 202(b) (emphasis added).

⁸⁰ See *id.* § 202(e) (stating that "[p]unishment," for the purpose of this chapter, does not include retribution").

⁸¹ "Punishment"—as used in the purpose clause of the California Juvenile Court Law—includes the following:

- (1) Payment of a fine by the minor.
- (2) Rendering of compulsory service without compensation performed for the benefit of the community by the minor.
- (3) Limitations on the minor's liberty imposed as a condition of probation or parole.
- (4) Commitment of the minor to a local detention or treatment facility
- (5) Commitment of the minor to the Department of the Youth Authority.

Id. § 202(e)(1)-(5).

⁸² See *In re Ronnie P.*, 12 Cal. Rptr. 2d 875, 881 (Ct. App. 1992) (noting that "[e]ach time a ward comes before the court . . . the goal of any resulting

Similar to New Mexico, California seeks to separate juvenile offenders as much as possible from the retributive reality of adult adjudication in honor of the rehabilitative mandates of the original juvenile court system. At the same time, California acknowledges the modern trend that juveniles, although in need of rehabilitation, are not free from qualified forms of retribution.⁸³

II. DRAWING PURPOSES FROM CASE LAW

Whether the statutory rhetoric of a state vies to protect the interests of the community, the interests of the child, or both, is not wholly determinative of the juvenile justice policy practiced within that state.⁸⁴ It is necessary to look beyond the explicit statutory objectives of a particular state's juvenile justice laws and examine how the courts of that state interpret such laws. In addition, the historical and legislative objectives behind the juvenile justice system of states that do not embody express statutory preambles

dispositional order is to rehabilitate the minor'" (quoting *In re Scott K.*, 203 Cal. Rptr. 268, 272 (Ct. App. 1984)); *In re Charles C.*, 284 Cal. Rptr. 4, 8-9 (Ct. App. 1991) (reasoning that the underlying purpose of the juvenile justice system remains rehabilitative, despite the use of the term "punishment" in the statute, to support the confinement at the California Youth Authority rehabilitative program for juvenile offenses).

⁸³ California's "punishment" of minors is a rehabilitative tool distinguishable from the criminal justice system for adults which has a purely punitive purpose. *Charles C.*, 284 Cal. Rptr. at 9. Thus, even though punishment is now an express purpose of the Juvenile Court Law in California, the underlying purpose of the juvenile system remains sufficiently distinct from the adult criminal system to support confinement in juvenile facilities coupled with rehabilitative programs. *Id.*

⁸⁴ "Juvenile justice policy is usually made in an emotionally charged atmosphere. Debates are often devoid of data and hard facts needed for making sound decisions. Decisions are usually made by elected public officials and juvenile justice professionals who are out of touch with public opinion." Schwartz, *supra* note 39, at 224. Contrary to the opinion of most elected officials, the public is neither as punitive nor as exacting of retribution toward juvenile offenders as promoters of retribution like to assume. See *supra* notes 40-41 and accompanying text (setting forth the results of a public opinion survey of attitudes towards juvenile crime).

defining their juvenile justice goals can also be drawn from case law.⁸⁵

By way of illustration, the Arizona Juvenile Court laws set forth the process by which a juvenile offender is adjudicated without enumerating the purpose of its juvenile court system into express statutory form.⁸⁶ Recent judicial opinions reveal that the underlying theme within the Arizona juvenile court system is the rehabilitation of the child, which is expected to satisfy both the best interests of the child and of society.⁸⁷ The Court of Appeals of Arizona actively supports having its juvenile offenders—even its violent juvenile offenders—remain within the jurisdiction of the juvenile court, as opposed to facilitating transfer to the jurisdiction of the adult criminal courts.⁸⁸ The court advocates this view

⁸⁵ See *supra* note 10 (setting forth those states that do not provide preambles to their juvenile justice laws).

⁸⁶ See ARIZ. REV. STAT. ANN. §§ 8-201 to -251.

⁸⁷ See, e.g., *In re Maricopa County Juvenile Action No. JV-500210*, 864 P.2d 560, 562 (Ariz. Ct. App. 1993) (stating that “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 the public’s best interest that defendant be rehabilitated in the juvenile justice system).

⁸⁸ Where the juvenile court ordered intensive rehabilitative treatment for a juvenile adjudicated delinquent for assault despite the juvenile’s voluntary request for punitive incarceration over rehabilitation, the Court of Appeals of Arizona affirmed the rehabilitative order of the lower court on the grounds that “[j]uveniles are less likely than adults to have the knowledge, experience and maturity to determine what is in their own best interest.” *Juvenile Action No. JV-500210*, 864 P.2d at 561-62. Therefore, unlike adults, juveniles do not have the right to reject rehabilitative orders from the juvenile court that are deemed to be in the best interest of the child. *Id.* The purpose of adjudication as a juvenile is rehabilitation, whereas the purpose for adults is punishment. *Id.* Given these considerations, the court’s choice of treatment for the juvenile should be given the opportunity to reach fruition. *Id.*

Similarly, the Court of Appeals of Arizona held that the juvenile court is not bound to transfer a juvenile for adjudication as an adult even though the state and juvenile have stipulated, as part of a plea agreement, that such transfer should occur. *Romley*, 823 P.2d at 1350. In deciding to retain juvenile court jurisdiction over the juvenile, the court stated that “[i]t is in the public’s safety and interest that this person be rehabilitated so that this type of offense is not

because the probability that the juvenile will become a productive member of society is greater where the juvenile is placed in an environment conducive to rehabilitation.⁸⁹

Similarly, Alaska does not statutorily enunciate the goals of its juvenile justice system. However, a judicial opinion of its supreme court reveals that "rehabilitation [of the child] rather than punishment is the express purpose of juvenile jurisdiction."⁹⁰ The rubric behind the juvenile court is that individuals under the age of eighteen⁹¹ do not possess "mature judgment and may not fully realize the consequences of [their] acts, and that therefore [such individuals] should not generally have to bear the stigma of a criminal conviction for the rest of [their lives]."⁹² Sample case law consequently reveals that both Arizona and Alaska tend to embrace the traditional rehabilitative approach towards juvenile justice.

likely to occur again." *Id.* at 1351.

⁸⁹ As further support of its decision to retain juvenile court jurisdiction over a juvenile offender, the Arizona Court of Appeals stated:

This Court believes from the evidence presented that this rehabilitation is more likely to take place in the juvenile system than in the adult system. If the Court were to transfer the juvenile to the adult court and he were convicted of Second Degree Murder, the juvenile would have to serve between 10 to 20 years in prison. This Court does not believe that lengthy incarceration without psychological treatment will do anything for this young man or for society, other than turn him into someone who truly has the potential of intentionally causing harm to others.

Id.; see *supra* note 14 and accompanying text (finding that a rehabilitative atmosphere is more conducive to the reformation of wayward children than is a punitive atmosphere).

⁹⁰ See, e.g., *Rust v. State*, 582 P.2d 134, 140 n.21 (Alaska 1978). In keeping with its rehabilitative stance, the *Rust* court maintained that "[m]ere confinement without treatment does not contribute to the goal of rehabilitation" *Id.* Furthermore, the court concluded that a "limited right to treatment stems from . . . notions of rehabilitation and the desire to render inmates useful and productive citizens upon their release." *Id.* at 142 (citations omitted).

⁹¹ See ALASKA STAT. § 47.10.010(a)(1995) (stating that proceedings relating to a minor under the age of 18 are governed by the juvenile court jurisdiction).

⁹² *In re P.H.*, 504 P.2d 837, 841 (Alaska 1972). In holding that a child under the age of 18 is "exempt" from prosecution as an adult until the juvenile court determines otherwise, the Supreme Court of Alaska implicated the "principal precept" of its juvenile court system as protector of recalcitrant children. *Id.*

Judicial decisions pertaining to juvenile offenders also edify the true juvenile justice policy behind those states that enumerate sweeping yet competing interests within their statutory preambles.⁹³ For example, in *dicta*, the Supreme Court of Alabama agreed with the general notion that the state's Juvenile Justice Act aims to rehabilitate,⁹⁴ but the court justified its punitive holding by assigning substantial weight to the part of the Juvenile Justice Act which mandates the "protection and discipline of children."⁹⁵

⁹³ The statutory purpose of the Alabama Juvenile Justice Act is "to facilitate the care, protection and discipline of the children who come within the jurisdiction of the juvenile court, while acknowledging the responsibility of the juvenile court to preserve the public peace and security." ALA. CODE § 12-15-1.1. In furtherance of this purpose, the Alabama legislature established the following comprehensive, yet paradoxical, list of goals for its juvenile court:

- (1) To preserve and strengthen the child's family whenever possible . . .
- (2) To remove the child from the custody of his or her parents only when it is judicially determined to be in his or her best interest or for the safety and protection of the public . . .
- (4) To secure for any child removed from parental custody the necessary treatment, care, guidance and discipline to assist him or her in becoming a responsible productive member of society;
- (5) To promote a continuum of services for children and their families from prevention to aftercare, considering wherever possible, prevention, diversion, and early intervention;
- (6) To promote the use of community based alternatives as deterrents to acts of juvenile delinquency and as least restrictive dispositional alternatives;
- (7) To hold a child found to be delinquent accountable for his or her actions to the extent of the child's age, education, mental and physical condition, background and all other relevant factors and to provide a program of supervision, care and rehabilitation, including rehabilitative restitution by the child to the victim of his [or her] delinquent acts to the extent that the child is reasonably able to do so;
- (8) To achieve the foregoing goals in the least restrictive setting necessary, with a preference at all times for the preservation of the family

Id. § 12-15-1.1(1)-(8); *see* IND. CODE ANN. § 31-6-1-1.1 (including as part of the statutory goal of its juvenile law the importance of the family, rehabilitation, public safety, diversionary programs, accountability for one's actions, appropriate sanctions and fair judicial proceedings).

⁹⁴ *Ex Parte R.E.C.*, No. 1930922, 1995 WL 560029, at *3 (Ala. Sept. 22, 1995).

⁹⁵ *Id.* (quoting ALA. CODE § 12-15-1.1). The court in *R.E.C.* provided further support for its choice to interpret the Alabama Juvenile Justice Act as

The court concluded that "the legislature did not intend to restrict the juvenile court exclusively to courses of action devoid of an arguably punitive flavor."⁹⁶ Thus, as exemplified, the comprehensive and conflicting statutory purpose of the Alabama Juvenile Justice Act is of limited utility, if any, in shaping the direction of the juvenile justice system in Alabama because it neither emphasizes preferred goals nor excludes undesirable goals.

Similar to the competing statutory goals within the Alabama Juvenile Justice Act, the purpose clause of the New York Family Court Act⁹⁷ also contains competing statutory goals. However, unlike the comprehensive Alabama statute, the New York statute simply contains two distinct yet vital purposes. The purpose clause of the New York Family Court Act states that "[i]n any proceeding under this article, the court shall consider the needs and best interests of the [juvenile] as well as the need for protection of the community."⁹⁸ The section of the purpose clause concerning the

punitive in this instance by referring to the definition of the term "discipline" provided in Webster's New International Dictionary. *Id.* "Discipline' (as a noun) signifies 'punishment; . . . retribution for an offense, especially in a subordinate; . . . control gained by enforcing obedience or order.' As a verb, it means 'to chastise, to impose a penalty upon.'" *Id.* (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d ed. 1994)).

⁹⁶ *Id.*

⁹⁷ N.Y. FAM. CT. ACT §§ 301-385 (Consol. 1987).

⁹⁸ *Id.* § 301.1. Similarly, according to the Michigan Probate Court and Juvenile Court, the state shall ensure that each minor coming within the jurisdiction of the court "shall receive the care, guidance, and control . . . as will be conducive to the child's welfare and the best interest of the state." MICH. COMP. LAWS ANN. § 712A.1(2); see MICH. CT. R. 5.902(B)(1) (1991) (setting forth a dual statutory purpose for the probate court). Consistent with its statutory purpose, the Supreme Court of Michigan has interpreted the purpose behind its juvenile court rules as favoring "individualized tailoring of a juvenile's sentence with emphasis on both the child's and society's welfare." *People v. Hana*, 504 N.W.2d 166, 178 (Mich. 1993), *cert. denied*, 510 U.S. 1120 (1994). The court in *Hana* derived support for the statutory purpose behind the state's juvenile court from one of the factors in its waiver statute which requires that the court consider "whether the best interest of the public welfare and the protection of the public security require that the juvenile stand trial as an adult offender." MICH. CT. R. 5.950(B)(2)(c)(vi) (1991); see MICH. COMP. LAWS ANN. § 712A.4(4) (West 1993 & Supp. 1996) (setting forth waiver criteria, all of which must be considered in deciding whether to grant waiver, "giving greater weight to the

needs and best interests of the child represents a codification of the historical purpose of the juvenile justice system in New York.⁹⁹ However, the section of the purpose clause pertaining to the protection of the community directly conflicts with the statute's benevolent historical purpose.¹⁰⁰ Despite the competing statutory purposes of the New York juvenile justice system, the courts have generally adhered to the notion that the best interest of the child is the significant, if not primary, purpose of the family court. Nonetheless, it is not the only consideration because the family court must also consider the protection of the community.¹⁰¹

South Dakota also codifies conflicting statutory purposes for its juvenile justice system. However, unlike New York, where the conflicting statutory purposes are located within the same statute, the South Dakota legislature has drafted two separate and entirely contradictory purpose statutes. In one statute, it is briefly and concisely mandated that all juvenile proceedings "shall be in the best interests of the child."¹⁰² However, according to the statute immediately following, the same juvenile proceedings "shall be liberally construed in favor of the child, the child's parents *and the state* for the purposes of . . . affording guidance, control and rehabilitation of any child in need of supervision or any delinquent child."¹⁰³

seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria").

⁹⁹ See generally Merrill Sobie, Practice Commentary, N.Y. FAM. CT. ACT § 301.1 (setting forth a history of the purpose of the New York juvenile justice system).

¹⁰⁰ *Id.*

¹⁰¹ See, e.g., *In re Kevin G.*, 159 Misc. 2d 288, 295, 604 N.Y.S.2d 669, 673 (Fam. Ct. 1993) (noting that the purpose of the juvenile justice system is rehabilitative, in part); *In re Steven E.H.*, 124 Misc. 2d 385, 388, 477 N.Y.S.2d 563, 565 (Fam. Ct. 1984) (stating that the essential purpose of the family court is rehabilitative, even though the court is mandated to consider both the needs of the juvenile and the protection of the community); *In re Coleman*, 117 Misc. 2d 1061, 1065, 459 N.Y.S.2d 711, 714 (Fam. Ct. 1983) (noting that the primary intent behind juvenile justice proceedings is rehabilitative, not punitive); *People v. Young*, 99 Misc. 2d 328, 330, 416 N.Y.S.2d 171, 173 (Fam. Ct. 1979) (noting that rehabilitation of the child is the court's first consideration).

¹⁰² S.D. CODIFIED LAWS ANN. § 26-7A-5.

¹⁰³ *Id.* § 26-7A-6 (emphasis added).

The Supreme Court of South Dakota rectified the apparent statutory conflict by declaring "[w]here conflicting statutes appear, it is the responsibility of the court to give reasonable construction to both, and to give effect, if possible, to all provisions under consideration, construing them together to make them harmonious and workable."¹⁰⁴ The court refused to consider in isolation the statute requiring the state to look only to the best interests of the child because "juvenile proceedings have never been conducted in a vacuum, free from the interests of the state."¹⁰⁵ The court further stated that "[i]t cannot be imagined that the legislature, in rewriting the juvenile laws in 1991, intended that the interests of the child only would be considered."¹⁰⁶ Therefore, the intent of the South Dakota juvenile justice system can safely be characterized by the dual purpose set forth in the latter statute.

Even where a state expounds rehabilitation as its primary goal for its juvenile justice system, case law within that state may speak to the contrary. For example, the primary purpose of the Ohio Juvenile Court is "[t]o provide for the care, protection, and mental and physical development of children . . . [and] [t]o protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute therefor a program of supervision, care, and rehabilitation."¹⁰⁷ Despite the rehabilitative goal the legislature sought to achieve, the court of common pleas transferred a juvenile, deemed amenable to rehabilitation in the juvenile justice system, for adjudication as an adult based on the nature of the offense and a desire to protect the public.¹⁰⁸ The court noted that "[t]he

¹⁰⁴ *State v. Harris*, 494 N.W.2d 619, 622 (S.D. 1993) (citing *Meyerink v. Northwestern Pub. Serv. Co.*, 391 N.W.2d 180, 183-84 (S.D. 1986)).

¹⁰⁵ *Id.* at 623. The *Harris* court held that the lower court did not err when it considered the interests of the state in conducting the transfer hearing. *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ OHIO REV. CODE ANN. § 2151.01(A)-(B).

¹⁰⁸ *In re Snitzky*, 657 N.E.2d 1379, 1385-86 (Ohio Ct. C.P. 1995). The court found that Wayne, the defendant, has achieved superior grades throughout his educational career, has worked to contribute to his educational expenses, did not have a criminal record prior to the occasion at bar, hails from a supportive and stable family, and thus, is a proper candidate for rehabilitation in the juvenile court system. *Id.* at 1380 & n.1. Unfortunately, the court accorded more weight

eventual solution to juvenile crime will only be forged in a continuing dialogue between the court, the legislature, and the people of Ohio."¹⁰⁹ Unfortunately, the court did not heed its own advice and acted contrary to the applicable statute.¹¹⁰ The difference in opinion between the state court and the state legislature as to the goals of the juvenile justice system in Ohio provides support for the general premise of this Note that juvenile justice preambles are fundamentally comprised of statutory rhetoric.

The divergence between statutory goals and case law on juvenile justice is rectified, at times, by amendments to the statutory preamble. For example, the former statutory goal of the Idaho legislature was to promote the rehabilitation of children in conflict with the law.¹¹¹ The present, and less rehabilitative, statutory goal of the Idaho juvenile justice system proves to be more consistent with case law.¹¹² Approximately one month after the effective dates of the Youth Rehabilitation Act expired,¹¹³ the Idaho Court of Appeals immediately deferred to the state's newly amended stance as protector of society by affirming the twenty-five years to life sentence, as an adult, of a fourteen-year-old juvenile

to the seriousness of the offense allegedly committed, murder, and transferred Wayne for prosecution as an adult based on notions of public safety. *Id.* at 1386.

¹⁰⁹ *Id.* at 1380.

¹¹⁰ Contrary to his order transferring the alleged juvenile offender for prosecution as an adult in *Snitzky*, Judge Kenneth A. Rocco stated:

Ultimately, the question of how to respond to violent juvenile crime is one of the most important issues facing our society. It is not just the youth who benefits from remaining in juvenile court. The juvenile offender who is committed to an adult penal institution is likely to emerge with few skills and little education, and no experience in living a responsible, law-abiding life. Indeed, such a youth is likely to return to society a more proficient criminal.

Id. at 1381-82.

¹¹¹ See IDAHO CODE § 16-1801 (prior to 1996 amendment, redesignated as IDAHO CODE § 20-501).

¹¹² See IDAHO CODE § 20-501; see also *supra* notes 34-38 and accompanying text (discussing the shift away from rehabilitation exemplified by the Idaho Juvenile Corrections Act).

¹¹³ IDAHO CODE § 16-1801 (effective until Oct. 1, 1995).

for murder.¹¹⁴ The court acknowledged that "the best interests of the child is not one of the goals of sentencing to be considered when a juvenile is sentenced as an adult. . . ."¹¹⁵ Consistent with its newly amended statutory purpose, and in direct abrogation of its former legislative intent, the court found that the goals of deterrence and punishment trumped any attempts at rehabilitating this child.¹¹⁶ The Idaho legislature and the Idaho courts, therefore, appear to be working in conjunction to avoid espousing statutory rhetoric.

III. DRAWING PURPOSES FROM JUDICIAL WAIVER AND TRANSFER STATUTES

Public astonishment over the "tender age" of violent juvenile offenders and over the "brutality of their offenses" fuels demands by lobbyists that the punitive adult criminal justice system try more

¹¹⁴ *State v. Moore*, 906 P.2d 150, 152 (Idaho Ct. App. 1995). On the night of January 20, 1994, 14-year-old Bobby Moore and two friends stole a car and drove to New Plymouth, Idaho to see a girlfriend. *Id.* The three boys parked the car in front of the girlfriend's high school and decided to wait until morning to talk to her when she arrived at school. *Id.* A police officer noticed the car parked on school grounds, approached the car and asked Bobby Moore for the vehicle license and registration. *Id.* After the police officer radioed a dispatcher and discovered that the car was stolen, Bobby Moore shot the police officer because he feared that he would be arrested. *Id.* The police officer died, and subsequently, Bobby Moore was convicted as an adult of first-degree murder and sentenced to 25 years to life in prison. *Id.*

¹¹⁵ *Id.* at 155.

¹¹⁶ *Id.* The court further sought to justify its punitive approach to juvenile crime by stating:

The fashioning of sentences for offenders who are as young as Bobby Moore, but who have committed grievous crimes, is among the most difficult tasks facing any court. For a judge charged with this responsibility, there arises a natural and humane concern to attempt to salvage the life of one so young. Competing with this concern, however, is the obligation to protect society from dangerous criminals, to assure that heinous crimes are adequately punished, and to deter such conduct.

Id.

juvenile cases.¹¹⁷ In response to perceived public outrage, politicians have implemented major punitive reforms.¹¹⁸ In addition to the judicial treatment of each state's juvenile justice laws, analysis of other statutory provisions, such as judicial waiver and transfer

¹¹⁷ LaVelle, *supra* note 42, at 85. Get-tough advocates are pushing the nation's criminal justice system to lock up more juveniles and to try more of them as adults as a response to public fears created by the increased publicity of violent juvenile crimes. Sherman, *supra* note 14, at 1.

When Illinois created the first juvenile justice system at the turn of the century, the notion of transferring a juvenile offender to the adult court system was contrary to the entire concept of a separate juvenile court system. Legislators, therefore, did not draft such a transfer provision. *See* Juvenile Court Act § 21, 1899 Ill. Laws 131, 137 (current version at ILL. REV. STAT. ch. 705, para. 405/1-2). As a result, the juvenile court was given broad discretion to deal with problem children. Such discretion was based on the belief that juveniles are less culpable for their actions than adults and that child offenders are more amenable to treatment than adult offenders. Donna Hamparian, *Violent Juvenile Offenders, in FROM CHILDREN TO CITIZENS*, *supra* note 1, at 128, 128. According to the Supreme Court, "[o]ur society recognizes that juveniles in general are in the earlier stages of their emotional growth . . . and that their value systems have not yet been clearly identified or firmly adopted." *Schall v. Martin*, 467 U.S. 253, 265-66 (1984) (quoting *People v. Schupf*, 39 N.Y.2d 682, 687 (1976)). Therefore, choosing to rehabilitate juvenile offenders may be a wise decision as a matter of public policy. *See Morales v. Turman*, 562 F.2d 993, 998 (5th Cir. 1977). Thus, the juvenile court was less concerned with proving guilt than it was with providing treatment to address the needs of the juveniles. *See Kent v. United States*, 383 U.S. 541, 554-55 (1966). Unlike today, the process of administering treatment was not determinate upon the seriousness of the offense committed. Hamparian, *supra*, at 128.

¹¹⁸ For example, several states have lowered the age at which children can be tried as adults. *See, e.g.*, NEV. REV. STAT. § 62.020 (1996) (age of transfer reduced from 16 to 14); N.C. GEN. STAT. § 7A-608 (1995) (age of transfer reduced from 14 to 13); TEX. FAM. CODE ANN. § 54.02 (West 1996) (age of transfer reduced from 15 to 14); W. VA. CODE § 49-5-10 (Supp. 1996) (age of transfer reduced from 16 to 14). In response to the states' shift towards punishment of juvenile offenders in the adult penal system, Barry Krisberg, president of the National Council on Crime and Delinquency in San Francisco, California, stated that "the public is trying to lower the age of adulthood, rather than see what is happening as a failure of society." Fox Butterfield, *States Revamping Laws on Juveniles as Felonies Soar*, N.Y. TIMES, May 12, 1996, at A1.

provisions,¹¹⁹ also illuminate the states' actual statutory goals.¹²⁰ Relinquishing juvenile court jurisdiction symbolizes a choice between sentencing the child in a nominal rehabilitative juvenile court system or in a punitive adult criminal court system.¹²¹

¹¹⁹ Judicial waiver and transfer provisions allow for the transfer of certain juvenile offenders, usually those who commit serious and violent crimes, to the adult criminal court system for adjudication as an adult. SIEGEL & SENNA, *supra* note 1, at 383. Forty-eight states and the District of Columbia already have judicial waiver processes that allow juvenile court judges to transfer juveniles to the adult criminal court based upon a judicial determination that the child is not amenable to rehabilitation. *See* OJJDP REPORT, *supra* note 14, at 86; *see also* Butterfield, *supra* note 118, at A1 (noting that "almost all 50 states have overhauled their laws in the past two years, allowing more youths to be tried as adults"). Twenty-six states have enacted legislation that excludes certain juveniles from the jurisdiction of the juvenile court and originates jurisdiction in the adult criminal justice system based on the offense committed. *See* OJJDP REPORT, *supra* note 14, at 89; *see, e.g.*, LA. REV. STAT. ANN. § 305(A)(1) (West 1995) (vesting jurisdiction in the adult criminal court where a child is at least 15-years-old and is indicted for murder, aggravated rape or kidnapping); MISS. CODE ANN. §§ 43-21-151(1)(a)-(b) (Supp. 1994) (originating jurisdiction in the adult criminal court for capital crimes and felonies committed with a firearm); 42 PA. CONS. STAT. ANN. § 6355(e) (1982) (requiring transfer for charges of murder). Not surprisingly, there is much variation from state to state on the percentage of juveniles arrested for violent crimes that are handled by the adult court as opposed to the juvenile court. Hamparian, *supra* note 117, at 133.

¹²⁰ *See, e.g.*, KAN. STAT. ANN. § 21-4701 to -4728 (1995) (Kansas Sentencing Guidelines Act). The statutory goal of the Kansas Juvenile Offenders Code is to provide each juvenile with the "care, custody guidance, control and discipline, preferably in the juvenile's own home, as will best serve the juvenile's *rehabilitation and the protection of society*." *Id.* § 38-1601 (emphasis added). However, despite its enumerated dual statutory goal, the Kansas legislature has spoken as to its true policy towards juvenile justice in the enactment of the Kansas Sentencing Guidelines Act ("KSGA"). *Id.* §§ 21-4701 to -4728. In part, the KSGA serves to punish juvenile offenders like adult offenders. *See id.* § 21-4710. Thus, subsequent statutory provisions reveal that the protection of society, through the punishment of children, is the dominant juvenile justice goal in Kansas; relegating its goal of rehabilitation of juvenile offenders to little more than mere statutory rhetoric. *See generally* William T. Stetzer, Note, *The Worst of Both Worlds: How the Kansas Sentencing Guidelines Have Abandoned Juveniles in the Name of "Justice,"* 35 WASHBURN L.J. 308 (1996).

¹²¹ *See generally* Feld, *supra* note 4, at 701. The classical 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

Despite differences in form, all provisions that compel a juvenile to the jurisdiction of the adult criminal justice system are, to a degree, punitive.

Legislation allowing a juvenile court to waive jurisdiction or transfer a child to the adult criminal justice system based on a judicial determination of whether the child is "amenable to treatment" or whether the child is a threat to public safety "implies some of the most fundamental and difficult issues of penal policy and juvenile jurisprudence."¹²² Such legislation

assumes that effective treatment programs exist for serious or chronic young offenders, that classification systems exist to differentiate some youths' treatment potentials or dangerousness, and that . . . juvenile court judges possess valid and reliable diagnostic tools with which to determine the appropriate disposition for a particular youth. . . . Couching judicial waiver decisions in terms of amenability to treatment or dangerousness effectively grants juvenile court judges broad, standardless discretion. . . . The addition of long lists of substantive factors . . . does not provide objective guidance to structure discretion. . . . Indeed, lists of amorphous and contradictory factors reinforce juvenile court judges' discretion and allow them selectively to emphasize one element or another to justify any decision.¹²³

deterrence, punishment and social control of offenders. SIEGEL & SENNA, *supra* note 1, at 383. Therefore, allies of the transfer process assert that children who commit serious offenses cannot be rehabilitated and should consequently be disposed of by the adult criminal court system. SIEGEL & SENNA, *supra* note 1, at 383.

¹²² Feld, *supra* note 14, at 1007.

¹²³ Feld, *supra* note 14, at 1007-08. In *Kent v. United States*, the Supreme Court listed factors a juvenile court should consider in determining whether to waive jurisdiction or transfer a juvenile to the adult criminal justice system. 383 U.S. 541, 565 (1966).

The determinative factors which will be considered by the Judge in deciding whether the Juvenile Court's jurisdiction over such offenses will be waived are the following:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.

Accordingly, the vague and contradictory factors enumerated in most judicial transfer statutes are congruous to the preambles of the juvenile justice laws that contain competing statutory interests. In addition, these competing interests merely serve as an exhaustive justification for judicial and legislative choices as to the type of dispositional forum a juvenile offender will confront: punitive or rehabilitative.

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2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
 3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
 4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment
 5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the [adult court].
 6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
 7. The record and previous history of the juvenile, including previous contacts with . . . law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.
 8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

It will be the responsibility of any officer of the Court's staff assigned to make the investigation of any complaint in which waiver of jurisdiction is being considered to develop fully all available information which may bear upon the criteria and factors set forth above. Although not all such factors will be involved in an individual case, the Judge will consider the relevant factors in a specific case before reaching a conclusion to waive juvenile jurisdiction and transfer the case . . . for trial under the adult procedures

Id. at 566-68.

One of the factors Michigan courts must consider in determining whether to waive a juvenile for adjudication as an adult is "whether the juvenile is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures."¹²⁴ This statement assumes that a child can be rehabilitated in the adult penal system.¹²⁵ To the contrary, the decision to waive a juvenile to the adult criminal justice system cannot be justified as being consistent with the rehabilitative philosophy underlying the juvenile justice system as a whole because "[i]n reality, the decision to waive juvenile court jurisdiction is not a decision to rehabilitate, but, rather, a decision to punish the juvenile upon conviction."¹²⁶

¹²⁴ MICH. CT. R. 5.950(B)(2)(c)(v); see MICH. COMP. LAWS § 712A.4(4)(e).

¹²⁵ According to the Supreme Court of Michigan, "a clear purpose of the [waiver statute] is to determine whether a juvenile is amenable to treatment in the juvenile justice system." *People v. Hana*, 504 N.W.2d 166, 177 n.64 (Mich. 1993), *cert. denied*, 510 U.S. 1120 (1994). The court further elaborates that if the child is found not amenable to treatment in the juvenile justice system, then "it is determined that the adult system is better equipped to rehabilitate; the determination is not to inflict a more severe punishment." *Id.*

¹²⁶ *Id.* at 178-79 (Cavanagh, C.J., dissenting). Certification of a juvenile offender to an adult court has been characterized by the Supreme Court of California as "'the worst punishment the juvenile system is empowered to inflict.'" *Ramona R. v. Superior Court*, 693 P.2d 789, 795 (Cal. 1985) (citation omitted). The outcome of a waiver or transfer proceeding usually means the difference between a limited period of confinement in a treatment setting and a lengthy term of incarceration in a punitive setting. *Commonwealth v. Wayne*, 606 N.E.2d 1323, 1330 (Mass. 1993).

Supporting the contention that waiver of a juvenile to the adult criminal justice system is not consistent with the rehabilitative ideal, Chief Justice Michael F. Cavanagh of the Supreme Court of Michigan argued in his dissenting opinion:

To those committed to rehabilitation as a goal of the juvenile justice system, waiver of juvenile court jurisdiction over any offender seems nonsensical. As a matter of logic, waiver could only be appropriate when a better means of rehabilitation—that is, a better process for removing the juvenile's desire to misbehave—exists in the [adult] criminal court. As a practical matter, the criminal courts will never provide a better rehabilitative process than the juvenile court. If nothing else, the conditions of criminal incarceration guarantee that. So a waiver theory based on the concept of rehabilitation has but one premise—there should be no waiver.

The Massachusetts legislature allowed public pressure to adversely impact its benevolent justice policy when it amended its transfer statute to advance the adjudication of serious juvenile offenders as adults.¹²⁷ The legislature enhanced the likelihood of transfer hearings by requiring that transfer hearings be held "whenever the commonwealth so requests."¹²⁸ In addition, the

Hana, 504 N.W.2d at 178 (quoting Whitebread & Batey, *The Role of Waiver in the Juvenile Court: Questions of Philosophy and Function*, printed in READINGS IN PUBLIC POLICY 207, 218 (1981)).

¹²⁷ Hon. Gordon A. Martin, Jr., *The Delinquent and the Juvenile Court: Is There Still a Place for Rehabilitation?*, 25 CONN. L. REV. 57, 70 (1992); see Task Force on Juvenile Justice, *The Massachusetts Juvenile Justice System of the 1990's: Re-Thinking a National Model*, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 339, 339 (1995) [hereinafter Task Force] (noting that "escalating levels of juvenile violence" have forced Massachusetts to compromise its "laudable focus" of rehabilitation of juvenile offenders by amending its transfer process). Prior to the retributive shift in the Massachusetts transfer statute, the 1989 version of the transfer statute required that various prerequisites be satisfied before a juvenile offender may even be subjected to a transfer hearing. See MASS. GEN. LAWS ANN. ch 119, § 61 (West 1969 & Supp. 1989) (prior to 1991 version). The 1989 version of the transfer statute provided:

If it is alleged in a complaint . . . that a child (a) who had previously been committed to the department of youth services as a delinquent child has committed an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison; or (b) has committed an offense involving the infliction or threat of serious bodily harm, and in either case if such alleged offense was committed while the child was between his fourteenth and seventeenth birthdays, and if the court enters a written finding based upon clear and convincing evidence that the child presents a significant danger to the public as demonstrated by the nature of the offense charged and the child's past record of delinquent behavior, if any, and is not amenable to rehabilitation as a juvenile, the court may, after a transfer hearing held in accordance with such rules of court as shall be adopted for such purpose, dismiss the complaint.

Id.

¹²⁸ Martin, *supra* note 127, at 71; see MASS. GEN. LAWS ANN. ch. 119, § 61 (Supp. 1991) (prior to 1992 version); see generally Task Force, *supra* note 127, at 350-54 (setting forth the history and evolution of the Massachusetts juvenile transfer statute). The Task Force, assembled by the Boston Bar Association to study the current Massachusetts juvenile justice system, concluded that the state has not achieved its retributive purpose through the revisions made to its transfer

legislature also reduced the court's and the prosecutor's discretion in determining whether or not a transfer hearing should be held by requiring a transfer hearing in "every case" of certain enumerated alleged offenses.¹²⁹ The Massachusetts legislature further revealed its proclivity to transfer a serious juvenile offender to the criminal justice system for adjudication as an adult by creating a "rebuttable presumption that the child presents a significant danger to the public and that such child is not amenable to rehabilitation within the juvenile justice system" where the child committed specifically enumerated offenses.¹³⁰ The juvenile charged with a serious offense such as murder therefore assumes the initial burden of producing evidence on issues of dangerousness and amenability to rehabilitation.¹³¹ The punitive amendments also grant jurisdiction

statute. Task Force, *supra* note 127, at 356-57.

The 1991 revised version of the Massachusetts juvenile transfer statute provides in pertinent part:

The commonwealth may request a transfer hearing whenever it is alleged in a complaint that a child, who is fourteen years old or older, has committed an offense against a law of the commonwealth, which, if he were an adult, would be punishable by imprisonment in the state prison, and that the offense has allegedly been committed by a child who had previously been committed to the department of youth services, or involves the threat or infliction of serious bodily harm. The court shall hold a transfer hearing whenever the commonwealth so requests. The court shall order a transfer hearing, in every case in which the offense alleged is murder in the first or second degree, manslaughter, rape, kidnapping, or armed robbery that has resulted in serious bodily injury.

MASS. GEN. LAWS ANN. ch. 119, § 61 (Supp. 1991).

¹²⁹ Martin, *supra* note 127, at 71.

¹³⁰ MASS. GEN. LAWS ANN. ch. 119, § 61 (West 1994 & Supp. 1996) (current version).

¹³¹ Commonwealth v. Wayne W., 606 N.E.2d 1323, 1331 (Mass. 1993). Additionally, for juveniles alleged to have committed the most serious offenses, the standard of proof has been lowered from "clear and convincing evidence" to a "preponderance of the evidence." *Id.* at 1327.

According to Judge Gordon A. Martin, Jr., the rebuttable presumption serves as a form of justification for the finder of fact to infer from the offense charged that the juvenile is not amenable to treatment. Martin, *supra* note 127, at 79. Critics, however, believe the amenability to treatment standard is "too vague" and "too nebulous." Martin, *supra* note 127, at 84. Judge Martin goes on to

to the juvenile court to sentence juveniles as young as fourteen who commit murder to state prison.¹³²

Not surprisingly, the harsher changes made in the Massachusetts transfer statute are contradictory to the benevolent statutory purpose behind its juvenile justice system. Massachusetts declares that its policy is "to provide the necessary care and protection to insure the rights of any child to sound health and normal physical, mental, spiritual and moral development."¹³³ Therefore, the Massachusetts

suggest that there is no "rational connection" between the alleged offense and the conclusion that the child is not amenable to treatment within the juvenile justice system. See Martin, *supra* note 127, at 79 (questioning the rebuttable presumption framework).

For example, Tony, a 14-year-old was found unfit for trial as a juvenile where he was charged with killing a pizza delivery man. Hicks v. Superior Court, 43 Cal. Rptr. 2d 269 (Ct. App. 1995), *cert. denied*, 116 S. Ct. 1051 (1996). In attempting to argue that the presumption is irrational, Tony's attorney used two hypotheticals. *Id.* at 275 n.15. In the first hypothetical, a minor less than 16-years-old tortures, rapes and shoots an elderly woman, but the woman does not die. *Id.* Charged with attempted murder, torture and rape, the minor in this hypothetical is not subject to the presumption of unfitness because the elderly woman did not die. *Id.* In the second hypothetical, a 14-year-old minor witnesses her alcoholic father beating her mother and she shoots and kills her father. *Id.* The minor in this second hypothetical is charged with murder and is subject to the presumption of unfitness for juvenile court because her father did die. *Id.* In response to these hypotheticals, the court noted that "the presumption is founded on the notion that the more serious the crime (the taking of a life is at the top of the list), the more severe the consequences." *Id.* No longer will the court view the individual circumstances of the child in its determination to transfer the child where the child committed certain serious and enumerated offenses.

¹³² Where a child has attained the age of 14 and if the adjudication is for murder in the first degree,

such child shall be committed to a maximum confinement of twenty years. Such confinement shall be to the custody of the department of youth services in a secure facility until a maximum age of twenty-one years and thereafter shall be to the custody of the department of corrections for the remaining portion of that commitment but in no case shall the confinement be for less than fifteen years and said child shall not be eligible for parole . . . until said child has served fifteen years of said confinement.

MASS. GEN. LAWS ANN. ch. 119, § 72 (West 1994 & Supp. 1996).

¹³³ MASS GEN. LAWS ANN. ch. 119 § 1.

transfer statute cannot be justified in light of its statutory policy to protect children. Massachusetts exemplifies a state with promising rehabilitative juvenile justice intentions that fall prey to public pressure and misconceptions about juvenile crime. Unfortunately, it is the child who must suffer the consequences of this shift away from rehabilitation to punishment.

Similar to Massachusetts, in California, a juvenile at least sixteen-years-old charged with an enumerated crime¹³⁴ is "presumed to be not a fit and proper subject to be dealt with under the juvenile court law"¹³⁵ and the juvenile has the burden to rebut this presumption at a "fitness hearing."¹³⁶ The California statute,

¹³⁴ California's enumerated crimes which give rise to the presumption that a 16-year-old juvenile is unfit or not amenable to treatment under the juvenile laws are murder, arson, robbery with a firearm, forcible rape, forcible sodomy, lewd or lascivious conduct, forcible oral copulation, kidnapping for ransom, kidnapping for robbery, attempted murder, assault with a firearm, forcible assault, discharge of a firearm in an occupied building, manufacturing or selling controlled substances, any violent felony, forcible escape, torture, aggravated mayhem, carjacking with a firearm and other specified crimes. CAL. WELF. & INST. CODE § 707(b) (West 1984 & Supp. 1996).

¹³⁵ *Id.* § 707(c).

¹³⁶ *Id.* The purpose of the "fitness hearing" is to determine whether "the minor is not a fit and proper subject to be dealt with under the juvenile court law." *Id.* § 707(a).

Effective January 1, 1995, the California statute was amended to allow minors 14- or 15-years-old at the time of allegedly committing a crime, to be tried as adults if they too are found not amenable to treatment where the petition alleges any of the following offenses: murder, robbery with personal use of firearm, forcible rape, forcible sodomy, forcible oral copulation, forcible foreign object penetration, kidnapping for ransom, kidnapping for robbery, kidnapping with bodily harm, kidnapping to commit specified sex offenses, willful discharge of a firearm from a motor vehicle, personally discharging a firearm into an inhabited building, specified controlled substances offenses, forcible escape from a juvenile facility, torture, aggravated mayhem, assault with a firearm, attempted murder, rape with a firearm, burglary with a firearm, kidnapping with a firearm, exploding or attempting to explode a destructive device with the intent to commit murder, kidnapping during carjacking and carjacking with a firearm. *Id.* § 707(d).

There is also a presumption of unfitness applicable to younger minors. A minor who is 14- or 15-years-old at the time of allegedly committing a crime "shall be presumed" unfit for trial as a juvenile when the petition alleges murder.

however, is less arbitrary than the Massachusetts transfer statute because the "California statute gives clear guidance as to when the presumption arises and what is needed to overcome it."¹³⁷ For the juvenile court to find a minor who has committed one of the enumerated offenses under the California law fit for juvenile law treatment, the court must recite its findings and its rationale supported by evidence as to each and every one of the enumerated amenability criteria.¹³⁸ In contrast, the Massachusetts transfer statute merely sets forth suggested amenability criteria without requiring the level of adherence to its criteria that California requires.¹³⁹

Id. § 707(e). The minor bears the burden of proof in rebutting the presumption by showing he or she is amenable to juvenile court treatment based on the five statutory criteria. *Id.*; see *infra* note 138 (listing amenability criteria).

¹³⁷ Martin, *supra* note 127, at 78.

¹³⁸ See, e.g., *People v. Superior Court (Zaharias M.)*, 25 Cal. Rptr. 2d 838 (Ct. App. 1993). In making a fitness determination that a child is "not a fit and proper subject to be dealt with under juvenile court law," the court *may* consider "anyone or a combination" of the following factors:

- (1) The degree of criminal sophistication exhibited by the minor.
- (2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.
- (3) The minor's previous delinquent history.
- (4) Success of previous attempts by the juvenile court to rehabilitate the minor.
- (5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

CAL. WELF. & INST. CODE § 707(a) (emphasis added).

A determination [however] that the minor *is* a fit and proper subject to be dealt with under the juvenile court law *shall* be based on a finding of amenability after consideration of the criteria set forth above, and findings thereof recited in the order as to *each* of the above criteria that the minor is fit and proper under each and every one of the above criteria.

Id. § 707(c) (emphasis added).

¹³⁹ Martin, *supra* note 127, at 78. Pursuant to the Massachusetts transfer statute that allows for the trial of certain juveniles as adults,

the court shall . . . determine whether the child represents a danger to the public, and whether the child is amenable to rehabilitation within the juvenile justice system. In making such determination the court *shall consider, but shall not be limited to*, evidence of the nature,

In terms of consistency, the California judicial transfer statute is more harmonious with the purpose statute of its juvenile court law than is Massachusetts. The purpose of the California juvenile court system supports instances of judicial waiver to the extent that its statutory purpose explicitly provides for the "protection and safety of the public" as one of its primary objectives.¹⁴⁰ However, despite the fact that the California statute seeks to hold its juvenile offenders accountable for their behavior through punishment, the "punishment" must be consistent with the rehabilitative goals of the juvenile court.¹⁴¹ Furthermore, the California legislature removed any traditional notions of retribution from the term "punishment" as used within its juvenile court laws.¹⁴² That California established a means by which a child may be tried as an adult is neither wholly consistent with, nor is it wholly contrary to, its statutory preamble. The deliberate legislative process behind the California juvenile justice system, thus, avoids rhetorical reference.

Even more discretionary than the Massachusetts transfer statute is the New Jersey waiver statute.¹⁴³ The New Jersey legislature created a rebuttable presumption that a juvenile fourteen years of age or older will be transferred to adult court if probable cause exists that the juvenile committed either criminal homicide, robbery in the first degree, sexual assault, kidnapping, arson, possession of a deadly weapon, drug distribution in a school zone or auto theft.¹⁴⁴ The statute does not set forth a list of criteria for the

circumstances, and seriousness of the alleged offense; the child's court and delinquency record; the child's age and maturity; the family, school and social history of the child; the success or lack of success of any past treatment efforts of the child; the nature of services available through the juvenile justice system; the adequate protection of the public; and the likelihood of rehabilitation of the child.

MASS. GEN. LAWS ANN. ch. 119, § 61 (emphasis added).

¹⁴⁰ CAL. WELF. & INST. CODE § 202(a).

¹⁴¹ *Id.* § 202(b).

¹⁴² *Id.* § 202(e).

¹⁴³ N.J. STAT. ANN. § 2A:4A-26 (West 1987).

¹⁴⁴ *Id.* § 2A:4A-26(a). The New Jersey Code of Juvenile Justice states: "[I]f in any case the juvenile can show that the probability of his rehabilitation by the use of procedures, services and facilities available to the court prior to the juvenile reaching the age of 19 substantially outweighs the reasons for waiver,

judge to consider in making the crucial amenability determination. Rather, the statute simply mandates that the judge consider "the nature and circumstances of the charge or the prior record of the juvenile" and the "interests of the public."¹⁴⁵ Despite the rehabilitative statutory purposes mandated by the New Jersey Code of Juvenile Justice,¹⁴⁶ the superior court acknowledged the state's subtle shift towards a more punitive philosophy by affirming the waiver of an intoxicated fifteen-year-old who inflicted a knife injury on a fellow camper to the adult criminal court.¹⁴⁷ In attempting to justify such a waiver, notwithstanding the existence of mitigating circumstances, the court noted that "[d]uring the past twenty years, a dramatic national increase in juvenile crime has led to a trend departing from the rehabilitation model . . . in favor of mechanisms which embody 'just desserts' punishment oriented policies, and which facilitate the transfer of juvenile offenders who commit serious crimes."¹⁴⁸ Therefore, in light of the statute's arbitrary transfer provisions, as well as the gradually developing punitive approach to juvenile justice as evidenced by case law, the

waiver shall not be granted." *Id.* § 2A:4A-26(a)(3).

¹⁴⁵ *Id.* According to Supreme Court Justice Abe Fortas, "[j]uvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure. . . . Departure from established due process has frequently resulted not in enlightened procedure but in arbitrariness." *In re Gault*, 387 U.S. 1, 17 (1967). Consequently, a Michigan statute was held unconstitutional because the legislature supplied no criteria for the transfer of a child to the adult court. *See People v. Fields*, 199 N.W.2d 217 (Mich. 1972).

¹⁴⁶ The New Jersey Code of Juvenile Justice states:

This act shall be construed so as to effectuate the following purposes:

- a. [T]o provide for the care, protection, and wholesome mental and physical development of juveniles
- b. Consistent with the protection of the public interest, to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation

N.J. STAT. ANN. § 2A:4A-21.

¹⁴⁷ *In re A.L.*, 638 A.2d 814, 816 (N.J. Super. Ct. App. Div. 1994).

¹⁴⁸ *Id.* at 818.

rehabilitative goals of the New Jersey statute are reduced to commendable discourse.¹⁴⁹

Within the bounds of this limited analogy, the California transfer statute fares better than either the Massachusetts or the New Jersey statute in terms of consistency of purpose. California appears to create more realistic and consistent statutory goals for its juvenile justice system than does its sister states.¹⁵⁰ In addition,

¹⁴⁹ According to recent amendments to its statutory preamble, New Jersey confirmed its shift towards a more punitive stance on juvenile justice by adding the following italicized language:

This act shall be construed so as to effectuate the following purposes:

- b. Consistent with the protection of the public interest, to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation, *and a range of sanctions designed to promote accountability and protect the public.* . . .

N.J. STAT. ANN. § 2A:4A-21(b) (emphasis added).

¹⁵⁰ Texas serves as a leading example of a state that pervades its entire juvenile justice system with unwavering notions of retribution. Consistent with and in support of its newly amended retributive philosophy, Texas has lowered the age in which a juvenile offender may be transferred to adult criminal court from 15- to 14-years-old. TEX. FAM. CODE ANN. § 54.02(2)(A). As further support of its retributive approach, once a juvenile offender has been properly transferred to criminal court jurisdiction, the criminal court "may not remand the child to the jurisdiction of the juvenile court." *Id.* § 54.02(h)(i). A 14-year-old in Texas found to have engaged in delinquent conduct may be incarcerated in the Texas Department of Criminal Justice, the adult penitentiary, for a period "not more than 40 years" if the delinquent conduct constitutes a capital felony, a felony of the first degree or an aggravated controlled substance felony. *Id.* § 54.04(d)(3) (commonly referred to as a determinate sentence statute); *see id.* § 51.03(a)(1) (West 1996) (stating that delinquent conduct includes conduct that violates a state law punishable by confinement).

Abiding by its new punitive philosophy, the Texas Court of Appeals affirmed the transfer to the Texas Department of Criminal Justice for adult offenders, and the 35-year sentence, of a 16-year-old who engaged in delinquent conduct by committing capital murder. *In re J.G.*, 905 S.W.2d 676, 682-83 (Tex. Ct. App. 1995). The court justified its decision to essentially discard this juvenile from ever becoming a productive member of society by stating that "the legislature enacted the determinate sentence statutes to strike a balance between the goals of providing for the well-being of the child and protecting the society from the youthful violent offender." *Id.* at 680. Unfortunately, the incarceration

the alternative California approach¹⁵¹ should find proportionately fewer juveniles subject to the adult penal system based on the more structured and objective requirements of its transfer statute.

California defends its rebuttable presumption that an alleged juvenile offender is not amenable to treatment, and therefore not a proper candidate for the juvenile justice system, by noting that it has rejected the harsher approach of other states which require the automatic transfer of certain juveniles to the adult system.¹⁵² As an example, "juvenile offenders"¹⁵³ who commit the most serious crimes of violence in New York are not afforded the initial protection of the juvenile court and are subject to the original jurisdiction of the adult criminal justice system.¹⁵⁴ The fact that such serious juvenile offender cases are initially excluded from the juvenile justice system does not preclude a referral down to the

of a child for 35 years in the name of punishment does not realistically take into consideration the well-being of that child. The Texas approach to juvenile justice may be consistent; unfortunately, it is not the type of consistency that will benefit its juvenile justice system in the future.

¹⁵¹ See *supra* notes 78-83 and accompanying text (analyzing the alternative goals prescribed for the juvenile justice system in California).

¹⁵² See, e.g., *Hicks v. Superior Court*, 43 Cal. Rptr. 2d 269, 274-75 (Ct. App. 1995) (citing *Senate Comm. on Judiciary, Analysis of Assembly Bill No. 560*, 1993-1994 Reg. Sess. (as amended Apr. 21, 1994)). The bill was a reaction to public anxiety about juvenile crime and violence. *Id.* The proponents of the bill and the get-tough era successfully argued that certain juveniles do not belong in the juvenile court system and need to be dealt with as adults. *Id.* Therefore, lowering the age at which a serious juvenile offender may be tried as an adult, pending the results of a judicial transfer hearing, is a rational response to "the legitimate public desire to address what is a serious problem." *Id.*

¹⁵³ The New York legislature defines "juvenile offender" in its penal law as a person 13-years-old who is criminally responsible for acts constituting the following offenses: murder, and a person 14- or 15-years-old who is criminally responsible for acts constituting murder, attempted murder, kidnapping, arson, manslaughter, assault, rape, sodomy, burglary, robbery and aggravated sexual abuse. N.Y. PENAL LAW § 10.00(18) (McKinney 1987). However, in reference to less serious offenses, "a person less than sixteen years old is not criminally responsible for conduct" and is subject to the jurisdiction of the family court. *Id.* § 30.00(1).

¹⁵⁴ See generally RITA KRAMER, *AT A TENDER AGE* 10-11 (1988).

family court.¹⁵⁵ Referrals to the family court, however, are rare occurrences.¹⁵⁶

Contrary to public opinion, a significant number of juveniles transferred to adult court, or initially tried there, are being tried for

¹⁵⁵ After a motion by a juvenile offender, the supreme court may order the removal of the action to the family court if the court determines that to do so would be in the interests of justice or if the court finds one or more of the following factors: (i) mitigating circumstances that affect the manner in which the crime was committed; (ii) the extent of the defendant's role in the crime; or (iii) possible deficiencies in proof of the crime. N.Y. CODE CRIM. PROC. §§ 210.43(1)(a)-(b) (McKinney 1993).

In making its decision to remove the juvenile offender to family court, the court shall consider the following: (a) the seriousness and circumstances of the offense; (b) the extent of harm caused by the offense; (c) the evidence of guilt, regardless of admissibility at trial; (d) the history, character and condition of the defendant; (e) the purpose and effect of imposing upon the defendant a sentence authorized for the offense; (f) the impact of removal to family court on the welfare of the community; (g) the impact of removal to the family court on the confidence of the public in the criminal justice system; (h) the attitude of the defendant or victim with respect to the motion; and (i) any other relevant fact indicating that a conviction in the adult penal system would serve no useful purpose. *Id.* § 210.43(2). It is important to note that the family court can never attain jurisdiction of a criminal offender 16-years-old or older. *See id.* § 190.71(c)(1) (McKinney 1993) (stating that acts performed by individuals over the age of 16 are criminal acts).

¹⁵⁶ The New York Appellate Division, Fourth Department, denied the removal of a 13-year-old accused of murder holding "this was not one of the 'rare' cases in which removal was warranted" based on the gravity of the offense, the evidence of guilt, the need for such an act to be punished under the penal law, and the need for public examination of the proceeding. *People v. Smith*, 217 A.D.2d 221, 230-31, 635 N.Y.S.2d 824, 829 (4th Dep't 1995). The defendant subsequently was sentenced to the maximum term of nine years to life. *Id.* The juvenile justice system in New York seems highly punitive because it allows children as young as 13 years of age to be tried and sentenced as an adult for certain felonies. However, New York attempts to mitigate the potential dangers associated with confining children in adult penitentiaries by separating any alleged juvenile offender under the age of 16 who is detained pending adjudication as an adult from the adult offenders. *See generally* N.Y. CODE CRIM. PROC. § 510.15 (McKinney 1995) (requiring that "no principal under the age of sixteen . . . shall be detained in any prison, jail, lockup or other place used for adults convicted of a crime . . . without the approval of the state division for youth").

property offenses rather than for offenses against persons.¹⁵⁷ These children are not necessarily the dangerous threats to personal safety who sparked public outcry for harsher treatment of juvenile offenders.¹⁵⁸ The solution to the problem of how to respond to the violent juvenile offender is not likely to rest in the adult criminal justice system.¹⁵⁹ If the notion that juveniles are more "amenable" to treatment than adult offenders is generally accepted, then the likelihood that violent offenders will receive appropriate services is greater in the juvenile justice system than in the adult criminal justice system because the resources available to the juvenile justice system are much greater than those available in its adult counterpart.¹⁶⁰ Additionally, juveniles singled out for adult

¹⁵⁷ Robert E. Shepherd, Jr., *America's Children at Risk*, 8 CRIM. JUST. 35, 36 (1995).

¹⁵⁸ *Id.*

¹⁵⁹ See generally Hamparian, *supra* note 117, at 138 (noting that we have no valid reason to believe that trying juveniles as adults is likely to prevent future criminal careers, or that it increases public safety in the long-term).

¹⁶⁰ See generally Hamparian, *supra* note 117, at 138. The likelihood that juveniles will receive medical, mental health, educational, work training and reintegration services is much greater in the juvenile justice system. Hamparian, *supra* note 117, at 138. Also, there is a greater range of dispositional options available in the juvenile justice system. Hamparian, *supra* note 117, at 138.

On the other hand, the conditions of the juvenile justice system must be monitored as assurance that children are not being mistreated under the guise of rehabilitation. For example, it was the appalling conditions of confinement that motivated the Supreme Court in *Gault* to order minimal procedural safeguards for juveniles. *In re Gault*, 387 U.S. 1, 27 (1967). Since their onset, the punitive reality of juvenile treatment facilities has contradicted the juvenile courts' "rhetorical commitment to rehabilitation." Feld, *supra* note 4, at 715. Historical studies of progressive juvenile correctional programs provide dismal accounts of training schools and institutions that were scarcely distinguishable from their adult penal counterparts. Feld, *supra* note 4, at 715. The reality for juveniles confined in many alleged treatment facilities is one of staff and inmate violence, physical abuse, predatory behavior, degrading work and punitive incarceration. Feld, *supra* note 4, at 716 & nn.136-37. Federal courts have discovered that staff members have beaten juveniles, injected them with drugs or gas for control purposes, deprived them of minimally adequate care or individualized treatment, sexually assaulted them and subjected them to extended solitary confinement. Some courts have suggested that confinement of juveniles without treatment may constitute "cruel and unusual" punishment in violation of the Eighth Amendment.

correctional facilities are not likely to succeed upon return to the community.¹⁶¹

See, e.g., Morales v. Turman, 535 F.2d 864, 867-69 (5th Cir. 1976); Nelson v. Heyne, 491 F.2d 352, 354-60 (5th Cir. 1974); Morgan v. Sprout, 432 F. Supp. 1130, 1136 (S.D. Miss. 1977); Martarella v. Kelley, 349 F. Supp. 575, 585 (S.D.N.Y. 1972). The Supreme Court has never spoken on the issue. Nonetheless, a persuasive argument can be made that the conditions of some juvenile confinement should be scrutinized under Eighth Amendment standards. *See generally* Andrew D. Roth, *An Examination of Whether Incarcerated Juveniles are Entitled by the Constitution to Rehabilitative Treatment*, 84 MICH. L. REV. 286, 304-05 (1985).

Juvenile institutions' staff may be in need of strict monitoring and intense training, nevertheless, such facilities are not as harmful to children as adult prisons. *See generally* SCHWARTZ, *supra* note 14, at 65-84 (discussing and disapproving of the placement of juvenile offenders in adult prisons where the prevalence of physical and sexual abuse by adult inmates is prevalent); Feld, *supra* note 4, at 717 (noting that the prevalence of violence, aggression and homosexual rape present in juvenile facilities is minimal compared to that of adult penal institutions). Adult jails have been the least progressive of all correctional institutions in America. SIEGEL & SENNA, *supra* note 1, at 371. Many adult jails are in poor physical condition, are overcrowded, have no rehabilitation programs, provide little or no medical attention to inmates, are unsanitary. SIEGEL & SENNA, *supra* note 1, at 371 (noting also that conditions in adult prisons make incarceration there cruel and unusual punishment for juveniles).

This Note advocates adjudicating juveniles in the juvenile court system in order to guarantee that a child will receive, at least, some level of rehabilitative treatment during the period of confinement in a juvenile facility. Not only will the juvenile receive treatment, society would also be protected in the short-term while the juvenile is confined in the juvenile facility. In addition, society would be protected in the long-term because the treatment the child receives may reduce chances of recidivism upon release into society as an adult.

¹⁶¹ Juveniles who are held in adult facilities are often sexually and physically abused by adult inmates and staff. *See generally* BARRY KRISBERG & JAMES F. AUSTIN, *REINVENTING JUVENILE JUSTICE* 176-77 (1993); Hamparian, *supra* note 117, at 138. Suicide rates among adolescents in adult prisons are several times higher than for youths held in juvenile facilities. KRISBERG & AUSTIN, *supra*, at 177. *See* SCHWARTZ, *supra* note 14, at 82-84 (discussing problems related to jailing children).

CONCLUSION

Modern day juvenile justice reformers are ever challenged to build influential and powerful support for progressive child welfare policies.¹⁶² Despite the statistics to the contrary, children are under attack from all sides because those in charge of the juvenile justice system remain captive to public misconceptions about violent youth.¹⁶³ Remiss by shocking cases of violent crimes at the hands of juveniles, state lawmakers are focusing on crime and violence in search of a solution, rather than focusing on the unique circumstances that motivate individual juvenile offenders to engage in certain anti-social behavior. As a result, several jurisdictions have explicitly shifted away from juvenile justice systems based on rehabilitation and moved toward more punitive policies. For other jurisdictions, the shift away from rehabilitation cannot be masked by drafting benevolent, yet rhetorical, statutory purposes. However consummate such draftsmanship may appear, it does not evince the true policy behind a state's juvenile justice system. Rather, the actual purpose behind a state's juvenile justice system is evinced by analysis of both the judicial treatment of its laws and its subsequent legislative provisions.

Nonetheless, considerations of the best interests of the child still permeate most areas of the law that affect children, including areas beyond the scope of this analysis. Throughout virtually all areas of juvenile law, the welfare and interests of the child have been balanced against the interests and desire for protection of the public. It is this contradiction, the state serving as both protector

¹⁶² Contrary to the thesis of this Note, some cynical reformers have proposed a "write-off" of the current generation of serious juvenile offenders in order to focus more resources on prevention of juvenile delinquency in the future generations. KRISBERG & AUSTIN, *supra* note 161, at 187. However, such an option is equivalent to advocating a form of modern day "genocide." KRISBERG & AUSTIN, *supra* note 161, at 187. Saving today's children from a criminal future is a more realistic and noble goal than forfeiting the future of an entire segment of the population.

¹⁶³ See *supra* Part I.A (describing the public misconception about juvenile violence).

and prosecutor of the child, that makes the emerging trends in the juvenile justice system inconsistent and questionable. Contrasting statutory goals serve as a means to justify any dispositional decision a state chooses to apply to its juvenile offenders, whether it be the rehabilitation or the punishment of such children.

Winning renewed support for the rehabilitative ideal poses a difficult challenge in the wake of ultra-sensationalized public frustration and anger over juvenile violence. However, patience and commitment to children are required to overcome unproductive, punitive and drove approaches to serious juvenile delinquency. Unfortunately, there is no single model juvenile justice system for states to duplicate.¹⁶⁴ The invariably changing juvenile justice system is largely experimental.¹⁶⁵ Fortunately for wayward children, and despite the trend the juvenile courts have taken towards punishment of such children, rehabilitation and treatment continue to be at least part of the tangible goals of the varying juvenile justice systems across America.

¹⁶⁴ Curriden, *supra* note 4, at 67.

¹⁶⁵ Curriden, *supra* note 4, at 67.