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# GUBERNATORIAL INITIATIVES AND RHETORIC OF JUVENILE JUSTICE REFORM

Robert B. Acton\*

## INTRODUCTION

In Leonard Bernstein's *West Side Story*,<sup>1</sup> the Jets, a gang of New York City youths, take a break from protecting their turf to spoof the way that they, as self-proclaimed juvenile delinquents, are treated by the adult world. Each Jet impersonates an expert in the juvenile justice system whom they have encountered. After hearing a long list of excuses from the Jet known as Action, "Officer Krupke" sends the boy to a judge.<sup>2</sup> The "judge" rules that Action "needs [an] analyst's care" finding him to be "psychologically disturbed," and orders him sent to the "headshrinker."<sup>3</sup>

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\* Brooklyn Law School Class of 1997. The author wishes to dedicate this Note to James Mahoney, Koronnis Davis and Deontae Pearce—three young people from Jackson, Michigan, who set an example of excellence for their peers. Through faith and self-determination, the juvenile justice system proved to be inconsequential to each of them. A heartfelt thank you to Ingrid Bagby, Peter Cicchino and Henry Towns for their invaluable assistance, and to my family for their unqualified love and support.

<sup>1</sup> ARTHUR LAURENTS ET AL., *WEST SIDE STORY* 206-09 (Dell Publishing 1965) (1956) (referring to the song, *Gee, Officer Krupke*).

<sup>2</sup> *Id.* at 206.

Dear kindly Sergeant Krupke, / You gotta understand / It's just our  
bringin' upke / That gets us out of hand. / Our mothers all are junkies,  
/ Our fathers all are drunks . . . Golly Moses—natcherly we're punks!  
/ Gee, Officer Krupke, we're very upset; / We never had the love that  
every child oughta get. / We ain't no delinquents, / We're misunder-  
stood. / Deep down inside us there is good!

*Id.*

<sup>3</sup> *Id.* at 207 ("Officer Krupke, you're really a square; / This boy don't need a judge, he needs a analyst's care! / It's just his neurosis that oughta be curbed—/ He's psychologically disturbed!").

The "headshrinker" pronounces that the delinquent has a "social disease" and really needs "a good honest job."<sup>4</sup> Transferred on to the "social worker," it is determined that "[d]eep down inside him, he's no good!"<sup>5</sup>

Although the composers stopped short of including a politician in this burlesque of "juvenile experts," there is little doubt what the caricature would have concluded if the musical had been written in contemporary society. The impersonated politician would likely have determined that Action was being pampered by the juvenile justice system and would have passionately urged that the boy be subjected to intense and serious treatment—the same treatment that would be levied against an adult.

Armed with uncompromising rhetoric,<sup>6</sup> governors across the nation are taking action against a recent surge in violent juvenile crime.<sup>7</sup> From 1985 to 1994, for example, the number of murders

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<sup>4</sup> *Id.* at 207-08 ("Officer Krupke, you're really a slob. / This boy don't need a doctor, just a good honest job. / Society's played him a terrible trick, / And sociologically he's sick! . . . In my opinion, this child don't need to have his head shrunk at all. Juvenile delinquency is purely a social disease . . . [s]o take him to a social worker!").

<sup>5</sup> *Id.* at 208 ("Officer Krupke, you've done it again. / This boy don't need a job, he needs a year in the pen. / It ain't just a question of misunderstood; / Deep down inside him, he's no good!").

<sup>6</sup> The gubernatorial "rhetoric" presented in this Note is "extravagant language" and "elegant expressions" used by the state executives in order to "persuade or influence others." THE NEW SHORTER OXFORD ENGLISH DICTIONARY 2586 (4th ed. 1993).

<sup>7</sup> While juvenile crime has decreased in the nonviolent areas of property crime and burglary, the arrest rate for violent crime since 1980 has soared. CRIMINAL JUSTICE RESEARCH CTR., COMMONWEALTH OF VA., TRENDS IN VIRGINIA AND UNITED STATES JUVENILE CRIME ARRESTS 4, 10, 12 (1995) [hereinafter CRIMINAL JUSTICE]. Aggregately, violent crimes—murder, non-negligent manslaughter, rape, robbery and aggravated assault—increased by 47% among juveniles between 1980 and 1993. *Id.* at 12. Particularly distressing is the murder and non-negligent manslaughter juvenile arrest rate which doubled over the 13-year period. *Id.* at 14. Other changes in the U.S. juvenile violent crime arrest rate between 1980 and 1993 include an 89% increase in aggravated assault, a 28% increase in rape and a 10% increase in robbery. *Id.* at 16, 18, 20.

There is, however, some cause for guarded optimism. For the first time in almost a decade, juvenile violent crime decreased in 1995, down by 2.9%. Fox Butterfield, *After a Decade, Juvenile Crime Begins to Drop*, N.Y. TIMES, Aug.

committed by juveniles between the ages of fourteen and seventeen nearly tripled, escalating 172%.<sup>8</sup> During that same period, murders by adults were “generally in decline.”<sup>9</sup> This increase in youthful violence has enraged the public and overwhelmed the juvenile justice system, leading state executives to devise, propose and adamantly advocate sweeping reform.<sup>10</sup> Governor John Engler (R-Mich.) insists that his “plan to combat the rising tide of juvenile violence . . . [sends] a clear and unmistakable message to teen criminals: You will be caught, you will be punished, swiftly and severely.”<sup>11</sup> Emphasizing the need for juvenile justice reform, Governor Jim Edgar (R-Ill.) explained, “[t]he people of Illinois have been sending a clear message for months. They want us to get even tougher on those who commit violence and to escalate our efforts to take back our streets and neighborhoods.”<sup>12</sup> At the

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9, 1996, at A1. Additionally, the juvenile homicide rate decreased for the second consecutive year, down by 15%. *Id.* Although this decrease in violent juvenile crime is encouraging, one expert notes that “because the juvenile homicide rate almost tripled in the past decade, ‘it was inevitable that at some point it would go down.’” *Id.* (quoting James Alan Fox, dean of the School of Criminal Justice at Northeastern University).

<sup>8</sup> Tim Golden, *Crime Rates May Be Down, But the Problem Stays Hot with Politicians, and Voters*, N.Y. TIMES, Sept. 22, 1996, at 26.

<sup>9</sup> *Id.*

<sup>10</sup> *Cf.* THE REAL WAR ON CRIME: THE REPORT OF THE NATIONAL CRIMINAL JUSTICE COMMISSION 132-33 (Steven R. Donziger ed., 1996) [hereinafter THE REAL WAR].

[B]ecause gang killings, drive-by shootings, and high school arms buildups have gained headlines nationwide, we have shaped our policies in response to them . . . . Increasingly, the juvenile justice system has focused on punishing all offenders—violent and nonviolent alike—with harsh sentences while paying lip service to rehabilitation. Our “get tough” policies are perhaps even more severe when we are dealing with children.

*Id.*

<sup>11</sup> Governor John Engler, Address at the Prosecuting Attorneys Association of Michigan/Mackinac Conference 6 (July 27, 1995) (transcript on file with *Journal of Law and Policy*) [hereinafter Engler Address].

<sup>12</sup> Press Release from Office of the Governor, State of Illinois 1 (Nov. 10, 1994) (on file with *Journal of Law and Policy*) [hereinafter Press Release, Illinois (Nov. 10, 1994)].

opening of a special Pennsylvania General Assembly session on crime, Governor Tom Ridge (R-Pa.) passionately declared:

Perhaps the most difficult challenge we face is juvenile crime . . . . Without regard for society or even self—without being held accountable—juveniles are committing adult acts of violence like never before. It's time they be held accountable. Youth will no longer be an excuse. I call upon you to begin the important process of juvenile justice reform . . . . [a]nd once and for all, we will treat the worst violent juvenile offenders like the criminals they are. It's as simple as that.<sup>13</sup>

Generally, attached to such gubernatorial rhetoric are specific proposals, often termed "reform" initiatives,<sup>14</sup> aimed at restructuring the juvenile justice system.<sup>15</sup>

The prominent "tough-talk"<sup>16</sup> of state executives and the

<sup>13</sup> Governor Tom Ridge, Address to the Joint Session of the Pennsylvania General Assembly 4 (Jan. 23, 1994) (transcript on file with *Journal of Law and Policy*) [hereinafter Ridge Address].

<sup>14</sup> It is important to note that use of the term "reform" by politicians may be self-serving. "Reform" is not a neutral, objective term. On the contrary, it implies "[t]he removal of faults or errors" or a "change for the better." THE NEW SHORTER OXFORD ENGLISH DICTIONARY, *supra* note 6, at 2522. Therefore, when a governor offers a proposal for juvenile justice "reform," a value judgment is made that the change is an improvement, although in many cases, due to the very nature of such proposals, the change is untested and void of serious analysis. See Fox Butterfield, *States Revamping Laws on Juveniles as Felonies Soar*, N.Y. TIMES, May 12, 1996, at 1 (explaining that the lack of adequate national data is due to the constant "changes in juvenile laws . . . with some states altering their statutes almost every year").

<sup>15</sup> See, e.g., Press Release from Office of the Governor, Commonwealth of Georgia (Jan. 23, 1994) (on file with *Journal of Law and Policy*); Press Release from Office of the Governor, State of Michigan, *Governor Engler Targets Juvenile Crime* 1 (July 27, 1995) (on file with *Journal of Law and Policy*) [hereinafter Press Release, Michigan (July 27, 1995)].

<sup>16</sup> Gubernatorial "tough-talk" is often designed to impart fear and outrage in the governor's constituency. For example, Governor George Allen (R-Va.) declared:

The crime that Virginians fear everyday is being committed in ever-increasing numbers by offenders who are under the age of 18 . . . .  
The juvenile criminal is no longer stealing hubcaps or spray-painting

accompanying punishment-driven initiatives are often criticized by juvenile experts. Dr. David Altschuler notes that this increasingly popular approach to juvenile crime has "drowned out" the juvenile justice system's long-standing emphasis on deterrence and rehabilitation.<sup>17</sup> Likewise, Isaac Fulwood, former District of Columbia chief of police, stresses that "the talk we hear from political leadership is merely talk, it does not address the problem of crime and violence in America."<sup>18</sup> Such criticism, however, does little to quell this expanding movement, led by the state executives, to make more punitive the juvenile justice system. Governor John Engler (R-Mich.) responds: "[T]o our critics, I simply say this—getting tough gets results."<sup>19</sup> Governor Zell Miller (D-Ga.) concurs: "Can we be too tough? Absolutely not. This is about justice, justice for the victims of violent crimes, and justice for our communities."<sup>20</sup>

This Note presents a survey of various initiatives proposed by the governors of twenty-two states.<sup>21</sup> Part I examines procedural

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graffiti—he is killing, robbing and maiming innocent, law-abiding men and women throughout Virginia.

Press Release from Office of the Governor, Commonwealth of Virginia 1 (Mar. 9, 1995) (on file with *Journal of Law and Policy*) [hereinafter Press Release, Virginia (Mar. 9, 1995)].

<sup>17</sup> David M. Altschuler, *Tough and Smart Juvenile Incarceration: Reintegrating Punishment, Deterrence and Rehabilitation*, 14 ST. LOUIS U. PUB. L. REV. 217, 236 (1994) (David M. Altschuler, Ph.D., is principal research scientist at Johns Hopkins Institute for Policy Studies).

<sup>18</sup> *This Week with David Brinkley* (ABC television broadcast, Sept. 19, 1993).

<sup>19</sup> Engler Address, *supra* note 11, at 5.

<sup>20</sup> Governor Zell Miller, Remarks at the Victim's Assistance Program (June 15, 1994) (transcript on file with *Journal of Law and Policy*) [hereinafter Miller Remarks].

<sup>21</sup> Although the governors' offices of all 50 states were contacted in September, 1995, this sampling of 22 states represents those governors who had recently considered juvenile justice reform initiatives and responded to the author's request for information. Consequently, this Note considers reform initiatives of the governors of the following states: Alaska, Arkansas, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Pennsylvania, Texas and Virginia.

reform initiatives proffered by the governors which would eliminate many of the unique types of protection historically afforded children during the investigation, adjudication and sentencing of juvenile crime. Part II focuses on gubernatorial proposals which address two specific categories of criminal activity. The first category of target-group reform initiatives aims at those juveniles who illegally provide other children with guns, as well as those juveniles who themselves are illegally in possession of guns. The second group of proposals addresses the important issue of violence in and near America's schools. Part III surveys prevention and intervention reform initiatives offered by governors which focus on parental responsibility laws and community-based programs. Part IV presents administrative reform initiatives which would explicitly make more punitive the mission of juvenile justice and would increase the availability of juvenile incarceration facilities.

In addition, this Note liberally presents the gubernatorial rhetoric attached to reform initiatives. Such rhetoric provides an insight into the various governors' personal values and criminological perspectives—or more cynically, into the approach to juvenile crime endorsed by their respective electorates, campaign contributors and political handlers.

This Note will demonstrate that, without regard for political party persuasion, there are clearly identifiable trends in the recent gubernatorial movement to reform the various state juvenile justice systems. Specifically, the governors' initiatives and rhetoric: (1) imperil the distinctive approach and protection historically afforded to youths in the juvenile justice system; (2) apply a fervent, punitive-based response to those charged with juvenile crime; and (3) represent a politically advantageous, cosmetic solution to juvenile crime that glosses over a much more menacing issue—the societal causes that lead to criminal behavior.<sup>22</sup>

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<sup>22</sup> As sociologist Elijah Anderson recently wrote, “[t]he inclination to violence springs from the circumstances of life among the ghetto poor—the lack of jobs that pay a living wage, the stigma of race, the fallout from rampant drug use and drug trafficking, and the resulting alienation and lack of hope for the future.” Elijah Anderson, *The Code of the Streets*, ATLANTIC MONTHLY, May 1994, at 81. Additionally, it is clear that child poverty is inextricably linked to juvenile crime. Presently, 6.3 million children, or 10% of America's children,

## I. PROCEDURAL REFORM INITIATIVES

The first category of proposed reforms is procedural in that gubernatorial initiatives and rhetoric address the investigation, adjudication and sentencing of juvenile crime. The end result of these procedural reforms proffered by the governors would eliminate many of the types of protection historically afforded youths in the juvenile justice system.<sup>23</sup> These proposed initiatives represent a strand of contemporary wisdom which holds that juvenile offenders no longer deserve special treatment by the criminal justice system.<sup>24</sup> Accordingly, such initiatives imply that today's youths are not capable nor worthy of being effectively rehabilitated and should, instead, be treated like adult criminals.

### A. *Adjudicating Juveniles as Adults in Criminal Court*

Seventy-three percent of the national population believe that juveniles who commit violent crime should be treated the same as adults, while only nineteen percent think that violent juveniles

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live in "extreme poverty." Elizabeth Gleick, *The Children's Crusade*, TIME, June 3, 1996, at 32. One in every five children in the United States is poor. *Id.* For a scholarly review of child poverty including its impact on juvenile crime, see Peter M. Cicchino, *The Problem Child: An Empirical Survey and Rhetorical Analysis of Child Poverty in the United States*, 5 J.L. & POL'Y 5 (1996).

<sup>23</sup> Specifically, gubernatorial initiatives challenge four primary types of protection historically afforded youths in the juvenile justice system. First, proposals to eliminate the procedural scheme which distinguishes a juvenile from an adult for purposes of adjudication are increasingly popular. *See infra* Part I.A. Second, gubernatorial proposals eradicate the protection of less stringent sentences for juveniles by proposing a wide array of new punitive-driven judicial options. *See infra* Part I.B. Third, the long-standing protection of juvenile confidentiality is under attack with proposals to open access to juvenile proceedings and court records. *See infra* Part I.C. Finally, the protection of restricted investigative techniques when juvenile suspects are involved would be significantly reduced. *See infra* Part I.D.

<sup>24</sup> *See* THE REAL WAR, *supra* note 10, at 130 (expressing that "[i]n recent years, as stories of teen violence have become regular features of our newspapers and television news programs, we have lost sight of the crucial distinction" in treatment of adult and juvenile offenders).



should be given more lenient treatment in juvenile court.<sup>25</sup> This overwhelming public endorsement for a more punitive approach to juvenile crime has led numerous state executives to propose sweeping reform which would result in increased adult adjudication of violent youths.<sup>26</sup>

Juveniles are tried and sentenced as adults in criminal court by way of a statutory waiver scheme.<sup>27</sup> Each state has a statutory age

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<sup>25</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS: 1993, at 197 tbl.2.50 (Kathleen Maguire & Ann L. Pastore eds., 1994) [hereinafter SOURCEBOOK]. The national Gallup Poll of adult participants asked the question: "In your view, should juveniles who commit violent crimes be treated the same as adults, or should they be given more lenient treatment in a juvenile court?" *Id.* It is interesting to note the punitive-oriented segments of the population: (1) males were more punitive than females; (2) 18- to 29-year-olds were more punitive than those over the age of 64; (3) the West was significantly more punitive than the Midwest, East or South; (4) Whites were more punitive than Blacks; and (5) Republicans were more punitive than Democrats. *Id.*

<sup>26</sup> In supporting his "adult crime, adult time" plan, Governor Miller (D-Ga.) remarked:

We see indescribable viciousness by young offenders, and that is why we are now treating these hoodlums as adult offenders, with adult time in separate youth facilities . . . I'm talking about hateful, spiteful middle-school students conspiring to hurt their teacher . . . armed teenagers shooting people and committing rapes . . . young hoods terrorizing neighborhoods, and showing not one ounce of remorse when they get caught. This law makes it clear . . . [that in] Georgia, if you commit an adult crime you will do adult time.

Miller Remarks, *supra* note 20. This reform to increasingly adjudicate juveniles as adults was recently endorsed by President Bill Clinton, a Democrat. In his 1996 State of the Union Address, the president explained: "I am directing the FBI and other investigative agencies to target gangs that involve juveniles in violent crime and to seek authority to prosecute—as adults—teenagers who maim and kill like adults." President Bill Clinton, 1996 State of the Union Address (Jan. 23, 1996) (transcript on file with *Journal of Law and Policy*).

<sup>27</sup> Statutory waiver schemes are legislative enactments which provide the framework for transferring juveniles to adult criminal court for adjudication. For a guide to the statutory waiver schemes of all 50 states and the District of Columbia, see SAMUEL M. DAVIS, RIGHTS OF JUVENILES app. b (2d ed. 1996). See also Barry C. Feld, *The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes*, 78 J. CRIM. L. & CRIMINOLOGY 471, 505-07 tbl.1, 512-13 tbl.2 (1987).

at which adult criminal responsibility automatically begins.<sup>28</sup> Individuals who have reached the statutory jurisdictional age are placed under the criminal court's jurisdiction while those who are younger fall under the juvenile court's jurisdiction.<sup>29</sup>

Most states have a subordinate threshold, however, which marks the age at which a juvenile may be tried as an adult for particularly serious enumerated crimes.<sup>30</sup> There are three basic methods for

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<sup>28</sup> In Georgia and Texas, for example, adult criminal responsibility automatically begins at the age of 17. GA. CODE ANN. §§ 15-11-2, -5 (1994); TEX. FAM. CODE ANN. §§ 51.02, .04 (West 1996). In Pennsylvania, on the other hand, adult criminal responsibility automatically begins at the age of 18. 42 PA. CONS. STAT. §§ 6302-6303 (1982 & Supp. 1996).

As of April, 1996, 38 states and the District of Columbia have established the jurisdictional age at 18-years-old; eight states established the threshold at 17-years-old; and four states—Connecticut, New York, North Carolina and Vermont—established the jurisdictional age at 16-years-old. DAVIS, *supra* note 27, at app. b.

<sup>29</sup> See THOMAS A. JOHNSON, INTRODUCTION TO THE JUVENILE JUSTICE SYSTEM 20 (1975); FRANK W. MILLER ET AL., THE JUVENILE JUSTICE PROCESS 1 (1976).

<sup>30</sup> Currently, the most common age for waiver is 14, which has been adopted in 20 states. DAVIS, *supra* note 27, at app. b. Among the remaining 30 states, nine permit transfer at age 16, five at age 15, six at age 13, one at age 12 and two at age 10. Seven states either have no system of waiver or have not explicitly enacted a minimum age provision. DAVIS, *supra* note 27, at app. b.

For statutes establishing the threshold age at 14, see, e.g., COLO. REV. STAT. ANN. § 19-2-806 (Supp. 1995); FLA. STAT. ANN. § 39.052(3) (West 1995); IDAHO CODE § 20-508 to 509 (Supp. 1996); IOWA CODE ANN. § 232.45 (West 1994); MINN. STAT. ANN. § 260.125(1) (West 1992 & Supp. 1996); N.J. STAT. ANN. § 2A:4A-26 (West 1987 & Supp. 1996). For statutes establishing a higher threshold age, see, e.g., HAW. REV. STAT. § 571-22 (1993) (16-years-old); MICH. COMP. LAWS ANN. § 712A.4 (West 1993) (15-years-old); OR. REV. STAT. § 419C.349 (1995) (15-years-old); TEX. FAM. CODE ANN. § 54.02 (West 1996) (15-years-old). A particularly young threshold is established in Vermont's waiver statute. The state provides that a child who has "attained the age of 10" may be subjected to a judicial waiver hearing. VT. STAT. ANN. tit. 33, § 5506 (1991).

Indiana's approach establishes different age thresholds based upon the degree or seriousness of the enumerated crime. IND. CODE ANN. § 31-6-2-4 (Burns 1987 & Supp. 1996). For example, an Indiana youth between the ages of 10 and 13 is subjected to a waiver hearing only when charged with the crime of murder. *Id.* § 31-6-2-4(d). An alleged offender between the ages of 14 and 15 is subjected to a waiver hearing only when the act is "heinous or aggravated" or

transferring a child to criminal court. The most common method, frequently referred to as "judicial" waiver, empowers the juvenile court judge to decide whether to transfer the youth to criminal court.<sup>31</sup> The second statutory scheme, which circumvents the juvenile court judge altogether, is termed "legislative" or "automatic" waiver.<sup>32</sup> Here, the state legislature enumerates specific offenses for which a youth of a specified age may not be adjudicated in juvenile court.<sup>33</sup> Instead, the child automatically faces

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"part of a repetitive pattern of delinquent acts." *Id.* § 31-6-2-4(b). An Indiana youth 16-years of age or older may be subject to a waiver hearing for any felony charge. *Id.* § 31-6-2-4(c). *See also* OFFICE OF THE GOVERNOR, STATE OF MICHIGAN, JUVENILE JUSTICE REFORM: GOVERNOR ENGLER'S ACTION PLAN FOR MICHIGAN 16 n.13 (1995) [hereinafter ENGLER'S ACTION PLAN] (summarizing the range of ages at which juveniles may be tried as adults in various state judicial waiver systems). Idaho's code provides a representative list of enumerated offenses. *See infra* note 33 (setting forth the Idaho statute).

<sup>31</sup> Martin L. Forst & Martha-Elin Blomquist, *Cracking Down on Juveniles*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 323, Part III.A.2 (1991). Judicial approval to proceed with adult criminal charges is granted only after a two-phase waiver hearing. The first phase requires a showing of "probable cause" that the youth committed the offense, while the second phase determines whether the particular youth *should* be tried as an adult based on the juvenile's history, rehabilitative potential and degree of danger to society. *See, e.g.*, COLO. REV. STAT. ANN. § 19-2-806; IOWA CODE ANN. § 232.45; MICH. COMP. LAWS ANN. § 712A.4; N.J. STAT. ANN. § 2A:4A-26; OR. REV. STAT. § 419C.349; IDAHO CODE §20-508; TEX. FAM. CODE ANN. § 54.02; VT. STAT. ANN. tit. 33, § 5506(c); WIS. STAT. ANN. § 48.18 (West 1987 & Supp. 1996).

The factors most commonly used to decide whether a juvenile should be tried as an adult in criminal court were enumerated by the Supreme Court in an appendix to *Kent v. United States*. 383 U.S. 541, 566-67 (1966) (establishing procedural requirements for judicial waiver hearings). For scholarly commentary on the criteria for judicial waiver, see Eric L. Jensen, *The Waiver of Juveniles to Criminal Court*, 31 IDAHO L. REV. 173 (1994); Sarah Freitas, Comment, *Extending the Privilege Against Self-Incrimination to the Juvenile Waiver Hearing*, 62 U. CHI. L. REV. 301 (1995); Catherine R. Guttman, Note, *Listen to the Children: The Decision to Transfer Juveniles to Adult Court*, 30 HARV. C.R.-C.L. L. REV. 507 (1995).

<sup>32</sup> Forst & Blomquist, *supra* note 31, at Part III.A.3.

<sup>33</sup> Forst & Blomquist, *supra* note 31, at Part III.A.3. "Enumerated offenses" vary from state to state. Compare Idaho's enumerated offenses that lead to automatic waiver with Florida's:

prosecution as an adult.<sup>34</sup> A third system of waiver, referred to as “prosecutorial” waiver,<sup>35</sup> also circumvents the juvenile court judge by granting the prosecuting attorney the discretion to file charges against the child in either juvenile court or adult criminal court.<sup>36</sup>

One gubernatorial approach toward increasing adult court adjudication of juveniles is to expand the list of enumerated crimes

- (1) Any juvenile, age fourteen (14) years to age eighteen (18) years, who is alleged to have committed any of the following crimes:
  - (a) Murder of any degree or attempted murder;
  - (b) Robbery;
  - (c) Rape, but excluding statutory rape;
  - (d) Forcible sexual penetration by the use of a foreign object;
  - (e) Infamous crime against nature, committed by force or violence;
  - (f) Mayhem;
  - (g) Assault on or battery with the intent to commit any of the above serious felonies . . .

*shall be charged, arrested and proceeded against . . . as an adult.*

IDAHO CODE § 20-509 (emphasis added).

A child of any age who is charged with *a violation of state law punishable by death or by life imprisonment* [provided that] an indictment on the charge is returned by the grand jury . . . *must be tried and handled in every respect as an adult . . .*

FLA. STAT. ANN. § 39.052(3)(4)(a) (emphasis added).

<sup>34</sup> Forst & Blomquist, *supra* note 31, at Part III.A.3.

<sup>35</sup> This system of waiver is also known as “concurrent jurisdiction” or “direct filing.” Forst & Blomquist, *supra* note 31, at Part III.A.4.

<sup>36</sup> Forst & Blomquist, *supra* note 31, at Part III.A.4. Statutory waiver schemes are generally much more complex than the cursory explanation presented above. For example, some states combine one or more schemes in creating a system of juvenile transfer to adult court. Forst & Blomquist, *supra* note 31, at Part III.A.4. Additionally, both legislative and prosecutorial waiver statutes commonly provide the criminal court with a “reverse waiver” which allows a judge to send a youth back to juvenile court on the basis of unfitness for the criminal justice system. Forst & Blomquist, *supra* note 31, at Part III.A.4. See Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691, 701-08 (1991) (describing judicial and legislative waiver); Feld, *supra* note 27, at 503-12 (describing judicial and legislative waiver); Douglas A. Hager, *Does the Texas Juvenile Waiver Statute Comport with the Requirements of Due Process?*, 26 TEX. TECH L. REV. 813, 830-34 (1995) (describing the various forms of waiver).

subject to waiver. In Missouri, these enumerated crimes are dubbed the "7-Deadly Sins,"<sup>37</sup> and include first and second degree murder, assault, robbery, forcible rape, forcible sodomy and distribution of drugs.<sup>38</sup> Former Governor Brereton Jones (D-Ky.) "proposed and fought for" adding all crimes committed while using a firearm to Kentucky's list of enumerated offenses.<sup>39</sup> Governor Jim Edgar (R-Ill.) broadened Illinois' list to encompass all cases where knives are used to commit felonies.<sup>40</sup> The crime of arson was added by Governor Phil Batt (R-Idaho),<sup>41</sup> while burglary of a habitation and aggravated kidnapping were included in Governor George W.

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<sup>37</sup> Press Release from Office of the Governor, State of Missouri 1 (June 12, 1995) (on file with *Journal of Law and Policy*) [hereinafter Press Release, Missouri (June 12, 1995)].

<sup>38</sup> MO. ANN. STAT. § 211.071 (Vernon 1996).

<sup>39</sup> Memorandum from Office of the Governor, State of Kentucky (1994) (on file with *Journal of Law and Policy*) (highlighting year-end accomplishments of the governor's administration). The enacted statute states:

[I]f a child charged with a felony in which a firearm was used in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be tried in the Circuit Court as an adult offender and shall be subject to the same penalties as an adult offender . . . .

KY. REV. STAT. ANN. § 635.020(4) (Michie 1990 & Supp. 1994).

<sup>40</sup> Press Release from Office of the Governor, State of Illinois (Sept. 11, 1994) (on file with *Journal of Law and Policy*) (unveiling his legislative package to "crack down on violent youths"). The statute as enacted does not specifically refer to knives, but instead uses the phrase "deadly weapon[s]." 705 ILL. COMP. STAT. 405/5-4 (Michie 1993 & Supp. 1996).

<sup>41</sup> Press Release from Office of the Governor, State of Idaho (Mar. 6, 1995) (on file with *Journal of Law and Policy*) [hereinafter Press Release, Idaho (Mar. 6, 1995)]. The enacted statute states:

- (1) Any juvenile, age fourteen (14) years to age eighteen (18) years, who is alleged to have committed any of the following crimes or any person under age fourteen (14) who is alleged to have committed any of the following crimes and . . . has been ordered by the court to be held for adult criminal proceedings:

. . . . .

- (i) Arson in the first degree and aggravated arson; shall be charged, arrested and proceeded against . . . as an adult.

IDAHO CODE § 20-509(1).

Bush's (R-Tex.) reform package.<sup>42</sup> Governor John Engler (R-Mich.) proposed legislation that would provide for a startling total of *sixteen* enumerated offenses, including solicitation and conspiracy to commit any of the enumerated crimes.<sup>43</sup>

Other variables which gubernatorial proposals address include the age at which a juvenile may be subject to waiver and the controlling type of waiver system. For example, Governor George Allen's (R-Va.) Commission on Juvenile Justice Reform proposes to revamp its system by manipulating these two variables. Juvenile offenders, ages fourteen or older, charged with an enumerated crime in Virginia would be subject to automatic waiver, requiring that they be "certified and tried as adults in the circuit court."<sup>44</sup> On the other hand, a juvenile offender *under* the age of fourteen charged with an enumerated crime would encounter a prosecutorial

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<sup>42</sup> Press Release from Office of the Governor, State of Texas 1 (May 31, 1995) (on file with *Journal of Law and Policy*) [hereinafter Press Release, Texas (May 31, 1995)] (announcing the governor's signing of a modification to the state's juvenile justice code). The enacted statute states that "[t]he juvenile court may . . . transfer a child to the appropriate . . . criminal district court for criminal proceedings if . . . the child was . . . 14 years of age or older at the time he is alleged to have committed . . . a felony of the first degree . . ." TEX. FAM. CODE ANN. § 54.02(a)(2)(A). Under the Texas Penal Code, both aggravated kidnapping and burglary of a habitation are felonies of the first degree. TEX. PENAL CODE ANN. §§ 20.04, 30.02 (West 1994 & Supp. 1996).

<sup>43</sup> Existing enumerated, automatically waivable offenses currently include: (1) assault with intent to murder; (2) assault with intent to rob; (3) attempted murder; (4) first degree murder; (5) second degree murder; (6) first degree criminal sexual conduct; (7) armed robbery; (8) carjacking; and (9) possession, manufacture, delivery or possession with intent to deliver cocaine. Memorandum from Office of the Governor, State of Michigan, Brief Description of the Current Process of Waiving Juveniles for Prosecution in the Adult Court in Michigan (not dated) (on file with *Journal of Law and Policy*). Governor Engler's (R-Mich.) proposed expansion of this list includes: (1) arson of a dwelling; (2) kidnapping; (3) bank robbery; (4) assault with intent to maim; (5) use of a firearm in commission of a specified crime; (6) conspiracy to commit any enumerated offense; and (7) solicitation to commit any enumerated offense. ENGLER'S ACTION PLAN, *supra* note 30, at 10.

<sup>44</sup> GOVERNOR'S COMM'N ON JUVENILE JUSTICE REFORM, SUBCOMMITTEE RECOMMENDATIONS TO THE FULL COMMISSION: A SUMMARY, at ¶ 2 of Subcommittee on Courts and Sentencing Recommendations (Aug. 23, 1995) (Commonwealth of Virginia) [hereinafter RECOMMENDATIONS].

waiver scheme, granting the prosecuting attorney the discretion to try the youth as an adult in criminal court.<sup>45</sup> Additionally, Governor Mel Carnahan (D-Mo.) signed into law a bill which provides for possible transfer to the adult criminal court of "a juvenile of *any* age" who commits one of Missouri's "7-Deadly Sins."<sup>46</sup> Under Missouri's judicial waiver scheme, the discretion to transfer the juvenile to adult criminal court rests with the juvenile court judge.<sup>47</sup> It is therefore feasible for a judge to order an eight-year-old, charged with an enumerated crime in Missouri, to be tried and sentenced as an adult in criminal court.

This wholesale movement toward trying juveniles as adults raises cause for societal concern. First, it represents a departure from established policies that have guided the development of the juvenile justice system.<sup>48</sup> These policies, grounded in the doctrine

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<sup>45</sup> *Id.* at ¶ 3 of Subcommittee on Courts and Sentencing Recommendations.

<sup>46</sup> Press Release, Missouri (June 12, 1995), *supra* note 37, at 1. See *supra* notes 37-38 and accompanying text for a list of the seven enumerated crimes known as the "7-Deadly Sins." Missouri's statutory codification of this reform is as follows: "[I]f a petition alleges that *any child* has committed [any of the seven enumerated offenses] . . . the [juvenile] court shall order a hearing, and may in its discretion, dismiss the petition and transfer the child to a court of general jurisdiction for prosecution under the general law." MO. ANN. STAT. § 211.071 (emphasis added).

<sup>47</sup> MO. ANN. STAT. § 211.071. For the relevant text of this statutory provision, see *supra* note 46.

<sup>48</sup> For an overview of controlling policies in the development of the juvenile justice system, see CLEMENS BARTOLLAS, JUVENILE DELINQUENCY 438-41 (1985). Summarizing these policies, Bartollas writes:

[T]he juvenile court was founded upon several admirable directives: that the court should function as a social clinic designed to serve the best interests of children in trouble; that children brought before the court should be given the same care, supervision, and discipline provided by a good parent; that the aim of the court is to help, to restore, to guide, and to forget; [and] that children should not be treated as criminals . . . .

*Id.* at 441. See also THOMAS J. BERNARD, THE CYCLE OF JUVENILE JUSTICE 83-107 (1992) (presenting the development of the first juvenile court and the policies guiding its origination); JOHNSON, *supra* note 29, at 11-19 (presenting the important elements in the philosophy and emergence of the juvenile court system); ALBERT R. ROBERTS, JUVENILE JUSTICE 56-66 (1989) (highlighting the developmental trends, problems and accomplishments of the juvenile court as

of *parens patriae*,<sup>49</sup> were intended to pursue the humane goals of care and rehabilitation for children, rather than focus on the imposition of punishment.<sup>50</sup> Second, criminal courts may not be equipped to meet the needs of juveniles who are unfit or unprepared for adult treatment.<sup>51</sup> Indeed, glaringly absent from these

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well as initial positive and negative reactions to the juvenile court innovation); Fox Butterfield, *Republicans Challenge Notion of Separate Jails for Juveniles*, N.Y. TIMES, June 24, 1996, at A1 (“[E]fforts in the 19th century to help wayward youths led to . . . the creation of separate family courts where young people were brought before judges who were to act more like kindly doctors than stern administrators of the adult criminal justice system.”); Butterfield, *supra* note 14, at 1 (reviewing the history of the 19th-century reformers who sought to “make the treatment of juveniles more humane” by establishing an independent juvenile system “designed to be a civil rather than a criminal court”).

<sup>49</sup> *Parens patriae* traditionally refers to the state’s protective role as “sovereign and guardian of persons under legal disability, such as juveniles . . . . It is the principle that the state must care for those who cannot take care of themselves . . . .” BLACK’S LAW DICTIONARY 1114 (6th ed. 1990).

<sup>50</sup> See THE REAL WAR, *supra* note 10, at 130.

If the criminal justice system has largely been driven by the need to protect society by punishing offenders, the hallmark of the juvenile justice system is the quite different presumption that young people who commit crimes can learn to do better if placed in the right setting and given the right care.

THE REAL WAR, *supra* note 10, at 130. See also MARY E. MURRELL & DAVID LESTER, INTRODUCTION TO JUVENILE DELINQUENCY 147 (1981). But see Butterfield, *supra* note 14, at 1 (quoting Patricia L. West, director of the Virginia Department of Juvenile Justice: “The thinking behind the juvenile court, that everything be done in the best interest of the child, is from a bygone era . . .”).

<sup>51</sup> See *Juvenile Crime and Delinquency: Do We Need Prevention?: Hearings Before the Subcomm. on Hum. Resources of the House Comm. on Educ. and Lab.*, 103d Cong., 2d Sess. (1994) (statement of Karabelle Pizzigati, director of public policy, Child Welfare League of America) [hereinafter Pizzigati testimony]. Pizzigati testifies:

Adult courts . . . are not generally equipped to meet the needs of young juveniles who have a seventh-grade education at best and may not be able to comprehend the significance of a criminal trial in adult court. To require transfer of all young teens accused of a serious crime to an adult court is wrong.

*Id.* See also ABC World News Tonight (ABC television broadcast, Feb. 22, 1995) [hereinafter ABC World News Tonight] (quoting Mark Soler of the Youth Law Center, San Francisco, California: “If we have a policy of wholesale waivers of



proposals to increase juvenile adjudication in criminal court is any consideration of whether juveniles are actually *fit* for adult adjudication, sentencing or incarceration.

Finally, the nation has a significant interest in rehabilitating children through the juvenile justice system, not only for the sake of the individual child, but also out of concern for the greater society. Before casually accepting gubernatorial initiatives that increase juvenile adjudication in adult courts, it would be wise for legislatures to consider Judge Skelly Wright's sagacious advice:

I do not think we can escape the fact that after our decision today there will be many impressionable [juveniles] who will be packed off to adult prisons where they will serve their time with hardened criminals. These children will be sentenced, moreover, without any meaningful inquiry into the possibility of rehabilitation through humane juvenile disposition . . . . Yet, there is no denying the fact that we cannot write these children off forever. Some day they will grow up and at some point they will have to be freed from incarceration. We will inevitably hear from [them] again, and the kind of society we have in the years to come will in no small measure depend upon our treatment of them now.<sup>52</sup>

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kids to the adult courts, which many of these statutes include, [we are] giving up on a whole class of kids in our society.”).

The particular judicial skills needed to effectively adjudicate children are distinctly different from those needed to adjudicate adults. See PAUL H. HAHN, *THE JUVENILE OFFENDER AND THE LAW* 331 (1978) (explaining that judges who adjudicate juveniles, in order to be properly qualified, require “training, consultation, guidance and professional assistance to adequately perform their tasks”); JOHNSON, *supra* note 29, at 46-47 (explaining that judges who adjudicate juveniles need a background and special training in the social and behavioral sciences, treatment and intervention strategies as well as administrative skills to manage the involvement of juvenile experts).

<sup>52</sup> *United States v. Bland*, 472 F.2d 1329, 1349 (D.C. Cir.) (Skelly Wright, J., dissenting) (holding that the legislative exclusion of juveniles charged with certain enumerated crimes from the jurisdiction of the juvenile courts is not unconstitutional), *cert. denied*, 412 U.S. 909 (1973).

### *B. Expanding and Strengthening Available Sentencing Options*

Governors contend that it is contemporary wisdom among teenagers that the current juvenile justice system poses no serious threat of punishment.<sup>53</sup> In response, the state executives are proposing stringent sentencing reforms to change this perception. By giving judges alternative sentencing options, increasing the duration of juvenile sentences and requiring significant monetary restitution, governors seek to strengthen the impact of the juvenile justice system.

Gubernatorial proposals seek to provide judges with alternatives to traditional juvenile incarceration.<sup>54</sup> For example, juvenile boot

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<sup>53</sup> A speech by Governor Engler (R-Mich.) to a group of state prosecutors expresses the contention that the juvenile justice system is weak. He states:

[O]ur system of juvenile justice is broken . . . . As Wayne County assistant prosecutor Andrea Solak said recently: 'These kids snatch a purse and nothing happens to them. Then they rob a gas station. Then they break into a house. Then they kill someone, and no one has held them accountable for their actions.' She's exactly right and that's exactly what's wrong with the current system . . . . Here in Michigan, the shocking fact is that the average teen murderer in the juvenile system is incarcerated for only three years. They are literally getting away with murder.

Engler Address, *supra* note 11, at 2. See Gary Rayno, *Merrill Targets Juvenile Crime*, LACONIA CITIZEN, Mar. 8, 1995, at 1 (quoting Governor Stephen Merrill (R-N.H.) who insists that the criminal justice system must "become as sophisticated and tough as [the] young people [who] are out on the street"). See also *supra* text accompanying note 13 (revealing Governor Tom Ridge's (R-Pa.) frustration with the present juvenile justice system).

An 18-year-old inmate confirms the governors' contention by agreeing that "[t]he normal juvenile system is weak. It ain't no jail, it's just like a place to go see everybody that's been in there." *ABC World News Tonight*, *supra* note 51.

<sup>54</sup> The traditional types of juvenile incarceration can be divided into two categories: short-term and long-term institutions. BARTOLLAS, *supra* note 48, at 500. Short-term facilities include detention homes, shelters, county jails and police lockups. BARTOLLAS, *supra* note 48, at 500. Long-term facilities, typically holding adjudicated offenders for periods ranging from a few weeks to a number of years, include diagnostic centers, ranches, forestry camps, farms and training schools. BARTOLLAS, *supra* note 48, at 500. For a detailed description of each

camps are particularly popular among reform initiatives.<sup>55</sup> Boot camps place offenders in a military-style program that seeks to instill "discipline, routine, and unquestioning obedience to orders."<sup>56</sup> Juvenile boot camps are controversial in that they show little evidence of reduced recidivism<sup>57</sup> while employing tactics of dominance, verbal aggression and the potential for physical abuse.<sup>58</sup> Nonetheless, they are widely endorsed by governors who

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of these traditional juvenile incarceration options, see BARTOLLAS, *supra* note 48, at 500-10. See also MURRELL & LESTER, *supra* note 50, at 207-17 (discussing the philosophy, organization, population, length, treatment techniques and future of juvenile institutionalization); ROBERTS, *supra* note 48, at 22-37 (tracing the history of institutional treatment for juveniles).

<sup>55</sup> See, e.g., ENGLER'S ACTION PLAN, *supra* note 30, at 10 (proposing the authorization of juvenile boot camps); GOVERNOR'S OFF. OF POL'Y RES., STATE OF NEB., THE GOVERNOR'S YOUTH CRIMINAL JUSTICE INITIATIVES (Jan. 1994) (on file with *Journal of Law and Policy*) [hereinafter NEBRASKA INITIATIVES] (proposing to create a juvenile boot camp confinement option); Press Release from Office of the Governor, State of North Carolina, *Gov. Hunt's Crime Fighting Plan* 8-9 (Jan. 13, 1994) (on file with *Journal of Law and Policy*) [hereinafter Press Release, North Carolina (Jan. 13, 1994)] (proposing to build new juvenile boot camps); Ridge Address, *supra* note 13, at 4 ("I will push for . . . boot camps for non-violent offenders.").

<sup>56</sup> LITTLE HOOVER COMM'N, STATE OF CAL., BOOT CAMPS: AN EVOLVING ALTERNATIVE TO TRADITIONAL PRISONS 9 (Jan. 1995) [hereinafter LITTLE HOOVER].

<sup>57</sup> One extensive study of eight boot camp programs resulted in the conclusion that "those who complete boot camp do not inevitably perform either better or worse than" those who complete a traditional term of incarceration. Doris Layton MacKenzie et al., *Boot Camp Prisons and Recidivism in Eight States*, 33 CRIMINOLOGY 327, 327 (1995). California's boot camp study commission concurs: "Initially, the proponents of boot camps anticipated a reduction in recidivism . . . [h]owever, nationally the data has not supported this hope. Many of the national evaluations to date . . . tend to show a rearrest rate about the same as traditional institutions." LITTLE HOOVER, *supra* note 56, at 18. Perhaps more cynically, Professor Dennis Palumbo says of boot camps, "It's good public relations, but there's no evidence whatsoever that these programs work." Ben Winton, *Last Chance: Boot Camps Force Youths to Toe the Line*, PHOENIX GAZETTE, Feb. 20, 1994, at G4.

<sup>58</sup> For a graphic illustration of the type of verbal abuse employed, consider the way juveniles were introduced to a boot camp in Georgia:

You are nothing and nobody, fools, maggots, dummies, motherf\_\_\_\_  
s\_\_\_\_, and you have just walked into the worst nightmare you ever

often transfer their own positive military experiences to these inherently different, punitive boot camps.<sup>59</sup> Although criticized by many juvenile experts,<sup>60</sup> Governor Zell Miller (D-Ga.) proudly proclaims, "[n]obody can tell me from some ivory tower that you take a kid, you kick him in the rear end, and it doesn't do any good. I don't give a damn what [the experts] say."<sup>61</sup>

Other proposed alternative sentencing options include revocation and suspension of a juvenile's driver's license,<sup>62</sup> community work

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dreamed. I don't like you. I have no use for you, and I don't give a f\_\_\_ who you are on the street. This is my acre, hell's half acre, and it matters not one damn to me whether you make it here or get tossed out into the general population, where, I promise you, you won't last three minutes before you're somebody's wife. Do you know what that means, tough guys?

Doris Layton MacKenzie & Claire Souryal, *A "Machiavellian" Perspective on the Development of Boot Camp Prisons: A Debate*, 2 U. CHI. L. SCH. ROUNDTABLE 435, 447-48 (1995). As for tactics of domination, boot camp proponents concede that the intentional purpose is to "show in clear and unmistakable terms that [the drill instructor has] complete physical and mental control over the probationer." Carol Ann Nix, *Boot Camp/Shock Incarceration*, PROSECUTOR, Mar.-Apr. 1994, at 15, 20. Such domination makes the potential for physical abuse a very real threat. In Houston, for example, five boot camp drill instructors were indicted on felony charges after they "allegedly choked and beat the inmates with their fists, feet and broomsticks—sometimes as they stood at attention . . . ." MacKenzie & Souryal, *supra*, at 450.

<sup>59</sup> See Wendy Kaminer, *Federal Offenses: Politics of Crime Control*, ATLANTIC, June 1994, at 102.

<sup>60</sup> See *supra* note 57 and accompanying text (discussing experts' criticism of juvenile boot camps).

<sup>61</sup> Kaminer, *supra* note 59, at 102.

<sup>62</sup> See, e.g., Memorandum from Office of the Governor, State of Colorado, A 14-Point Plan for a Colorado Partnership Against Violence 1, ¶ 9 (July 1993) (on file with *Journal of Law and Policy*) [hereinafter 14-Point Plan] (proposing a law that would revoke a juvenile's drivers license for committing certain offenses); Memorandum from Office of Governor, State of New Hampshire (not dated) (on file with *Journal of Law and Policy*) [hereinafter Memorandum, New Hampshire] (proposing legislation that would allow a non-hearing suspension of license for underage drivers who are stopped while drinking); Memorandum from Office of the Governor, State of North Dakota 7 (not dated) (on file with *Journal of Law and Policy*) [hereinafter Memorandum, North Dakota] (granting juvenile courts the authority to revoke a juvenile's drivers license as part of a criminal sentence); Press Release from Office of the Governor, State of Indiana, *Governor*

projects,<sup>63</sup> home detention with electronic surveillance<sup>64</sup> and admission into day treatment programs.<sup>65</sup> One proposed treatment

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*Bayh Signs Legislation to Crack Down on Juvenile Crime* (May 8, 1995) (on file with *Journal of Law and Policy*) [hereinafter Press Release, Indiana (May 8, 1995)] (establishing license revocation for juveniles who habitually skip school).

<sup>63</sup> See, e.g., PARRIS N. GLENDENING, GOVERNOR & KATHLEEN KENNEDY TOWNSEND, LT. GOVERNOR, MARYLAND FORWARD: SUMMARY OF LEGISLATION 11 (Jan. 26, 1995) (proposing the creation of a pilot civil citation program that would enable law enforcement to assign community service to juvenile offenders without requiring a court appearance).

<sup>64</sup> ENGLER'S ACTION PLAN, *supra* note 30, at 11. Home detention with electronic surveillance is a program in which offenders may be confined to their homes and monitored with electronic anklets or bracelets. Opinion, *What the Rape of a Boy Says About Detention*, RECORD, Feb. 3, 1995, at C6. In addition, field officers, frequent telephone calls or remote cameras may randomly check the detainee's whereabouts. Susan Headden, *Violent Crimes Force Closer Look Into Home Detention Programs*, INDIANAPOLIS STAR, May 3, 1992, at A1. The program is economical, costing about \$6.00 a day, compared with \$35.00 a day to incarcerate an offender. *Id.* However, studies have shown that, compared to adults, the program is less effective with juvenile offenders. *Id.* In one study, 11% of the test-group juveniles were rearrested on home detention, compared with five percent of convicted adults. *Id.*

<sup>65</sup> See, e.g., NEBRASKA INITIATIVES, *supra* note 55 (proposing drug, alcohol and mental health treatment programs for juvenile offenders); RECOMMENDATIONS, *supra* note 44, ¶ 5 of Subcommittee on Corrections Recommendations ("The number of sentencing options available for youths in, or close to, their own communities should be increased. Localities should be encouraged to offer more structured day and evening programs as sentencing options."). Day treatment programs are a sentencing alternative for low-level juvenile offenders. These programs allow juveniles to live at home rather than be sent to an incarceration facility. Roy Malone, *Day Treatment Center for Juveniles Opening in Arnold*, ST. LOUIS POST-DISPATCH, Oct. 11, 1993, at 6. The programs provide a wide range of services, including the opportunity to: (1) earn educational credits; (2) receive professional counseling; (3) engage family members in the juvenile's treatment plan; (4) receive health screening and referrals; (5) participate in social-skills training; and (6) take part in vocational training. *Id.*; Deborah Shanahan, *Special School Opens to Troubled Students*, OMAHA WORLD-HERALD, Sept. 7, 1994, at 1. At a cost of roughly \$100.00 per day, per youth, day treatment programs are considered more cost-efficient than residential programs. Lisa Daniels et al., *Brandon Savors Freedom*, PORTLAND OREGONIAN, Jan. 11, 1996, at C1; Malone, *supra*, at 6. There is also evidence that suggests day treatment programs are more successful than juvenile incarceration. See Malone, *supra*, at 6 (citing a study of two treatment centers which revealed that

program would provide before- and after-school supervision emphasizing discipline, respect and rigorous academic study.<sup>66</sup>

Governors are also setting forth reform initiatives aimed at increasing the duration of juvenile sentences. While Governor Batt (R-Idaho) signed legislation doubling the maximum felony sentence and tripling the maximum misdemeanor sentence which may be imposed on juveniles in Idaho,<sup>67</sup> the governors of Illinois and Texas focused, instead, on increasing minimum sentences. Governor Jim Edgar's (R-Ill.) crime bill proposed raising Illinois' mandated minimum sentence for first degree murder and for crimes committed by repeat violent offenders.<sup>68</sup> Governor George Bush (R-Tex.) increased minimum sentences for juvenile offenders who commit first, second and third degree felonies or capital murder.<sup>69</sup>

Another approach for increasing sentence duration is to mandate juvenile incarceration until a specified age with no possibility for early release.<sup>70</sup> Governor James Hunt's (D-N.C.) proposal would require that juveniles who commit violent felonies remain incarcerated until their eighteenth birthday.<sup>71</sup> Under Illinois law, a juvenile with two prior violent felony adjudications would be incarcerated

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95% of the youthful participants completed the program and "stay[ed] out of trouble"). See also Jacquin Sanders, *A Classroom Takes on Young, Hurt-Filled Lives*, ST. PETERSBURG TIMES, Jan. 7, 1996, at 1 (describing the daily routine of a day treatment program).

<sup>66</sup> RECOMMENDATIONS, *supra* note 44, ¶ 12 of Subcommittee on Education and School Recommendations.

<sup>67</sup> Press Release, Idaho (Mar. 6, 1995), *supra* note 41 (increasing the maximum sentence for juveniles from 30 to 90 days for a misdemeanor and from 90 to 180 days for a felony).

<sup>68</sup> Memorandum from Office of the Governor, State of Illinois, Edgar/Daley Crime Bill Highlights 1 (Apr. 6, 1994) (on file with *Journal of Law and Policy*) [hereinafter Memorandum, Illinois (Apr. 6, 1994)].

<sup>69</sup> Press Release, Texas (May 31, 1995), *supra* note 42, at 2 (establishing minimum sentences of one year for a third degree felony, two years for a second degree felony, three years for a first degree felony and 10 years for capital murder).

<sup>70</sup> Essentially, this eliminates the assignment of a mandated length of stay (two years, for example) and instead requires an offender to remain incarcerated until reaching the statutory age of release.

<sup>71</sup> Press Release, North Carolina (Jan. 13, 1994), *supra* note 55, at 11.

until his or her twenty-first birthday without the possibility for parole.<sup>72</sup>

Moreover, some governors are proposing reform initiatives that would extend juvenile sentences *beyond* an individual's minority years. The Governor's Commission in Virginia recommends extending periods of juvenile probation beyond the age of twenty-one.<sup>73</sup> Taking the next step, Governors Stephen Merrill (R-N.H.) and Tom Ridge (R-Pa.) propose that actual incarceration be extended beyond the ages of eighteen and twenty-one, respectively.<sup>74</sup> Inherent in such proposals, however, is a blurring of juvenile and adult court jurisdiction.<sup>75</sup>

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<sup>72</sup> Memorandum from Office of the Governor, State of Illinois, Violent Juvenile Offenders Act 3 ¶ 11 (not dated) (on file with *Journal of Law and Policy*) [hereinafter Violent Juvenile Offenders Act].

<sup>73</sup> RECOMMENDATIONS, *supra* note 44, ¶ 7 of Subcommittee on Courts and Sentencing Recommendations.

<sup>74</sup> See Memorandum, New Hampshire, *supra* note 62; Ridge Address, *supra* note 13, at 4 ("Fundamental reform is needed [to] empower judges to sentence dangerous juveniles beyond the age of 21 . . .").

<sup>75</sup> A question emerges which is beyond the scope of this Note: Should a juvenile court's sentence remain valid once an individual reaches the age of majority in light of the significant discrepancy between juvenile and adult court adjudication in purpose, investigation, procedure, judicial involvement and sentencing guidelines? For scholarly discussion on this issue, see Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1109 (1991) ("[T]he potential length of incarceration is limited by the juvenile court's inevitable loss of jurisdiction over offenders when they reach the age of majority . . . . [T]he trend towards a just desserts model of juvenile court has sharpened the perception that juvenile court sanctions are inappropriate for many youthful offenders."). In 1991, no state had adopted an "extended jurisdiction mechanism to allow unlimited continuation of juvenile sanctions." *Id.* at 1133 n.164. See also Barry C. Feld, *Violent Youth and Public Policy*, 79 MINN. L. REV. 965, 1025 (1995) (presenting a proposal that would extend juvenile court sentences into an offender's adult years); Tamara L. Reno, Comment, *The Rebuttable Presumption for Serious Juvenile Crimes*, 26 TEX. TECH L. REV. 1421 (1995) (advocating that violent juvenile offenders be subject to strict procedural mechanisms in order to "ensure that they are not released prematurely and that they receive just punishments for the crimes they commit[ ]").

A third area of sentencing reform concerns monetary restitution<sup>76</sup> for crimes committed by juveniles. The Juvenile Justice Task Force established by Governor Edward Schafer (R-N.D.) proposed and received legislative approval to hold juvenile offenders liable for up to \$5000.00 in damages for their crimes.<sup>77</sup> Governor Parris Glendening (D-Md.) proposed legislation that would double the state's maximum limit for victim restitution from \$5000.00 to \$10,000.00.<sup>78</sup> Governor Ridge (R-Pa.) proposed making victim restitution an automatic component of a juvenile's sentence, rather than a discretionary decision left to the judge.<sup>79</sup> To compensate for the likelihood that a youth will not be able to pay the restitution award, Governor Tony Knowles (D-Alaska) proposed a crime package which extends unsatisfied restitution court orders into the juvenile's adult years.<sup>80</sup>

A particularly unique approach to monetary restitution was established in Colorado under the leadership of Governor Roy Romer (D-Colo.). The state doubled all court fines levied against violent juveniles convicted as adults.<sup>81</sup> Rather than granting the money to the victim, however, the collected funds are deposited

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<sup>76</sup> "Restitution" refers to "the act of making good or giving equivalent for any loss, damage or injury" caused by an offender. BLACK'S LAW DICTIONARY, *supra* note 49, at 1313.

<sup>77</sup> Memorandum, North Dakota, *supra* note 62, at 7 (establishing that both juvenile offenders and their parents may be held liable for such restitution).

<sup>78</sup> GLENDENING, *supra* note 63, at 11.

<sup>79</sup> Ridge Address, *supra* note 13, at 3.

<sup>80</sup> Press Release from Office of the Governor, State of Alaska 2 (Feb. 26, 1995) (on file with *Journal of Law and Policy*) [hereinafter Press Release, Alaska (Feb. 26, 1995)]. For a discussion on the issue of juvenile restitution orders which are not satisfied due to an inability to pay, see Michael J. Dale, *Juvenile Law*, 14 NOVA L. REV. 859, 900 (1990); Michael J. Dale, *Juvenile Law: 1992 Survey of Florida Law*, 17 NOVA L. REV. 335, 385 (1992); Scott Peterson, *Court-Ordered Criminal Restitution in Washington*, 62 WASH. L. REV. 357, 369 (1987).

<sup>81</sup> COLO. REV. STAT. ANN. § 18-22-103(1) (Supp. 1995). The court fines are doubled by requiring the juvenile to pay a surcharge equal to, and in addition to, any fine imposed by the court. *Id.*; see Memorandum from the Legislative Council Staff, State of Colorado, Legislation Considered During the 1993 Special Session 3 (Sept. 21, 1993) (on file with *Journal of Law and Policy*) [hereinafter Legislative Council Staff, Colorado].



into the "youthful offender system surcharge fund."<sup>82</sup> Proceeds from this special endowment are used to pay for additional rehabilitation, education and treatment programs that would otherwise be unavailable to young people sentenced in the juvenile system.<sup>83</sup>

### C. *Open Proceedings and Open Records*

Postured as prey amidst the engulfing movement of gubernatorial reform is a special protection that, historically, has been a hallmark of the juvenile justice system: confidentiality.<sup>84</sup>

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<sup>82</sup> COLO. REV. STAT. ANN. § 18-22-103(3).

<sup>83</sup> *Id.* § 18-22-101 (Supp. 1995).

<sup>84</sup> During the formation of early juvenile justice systems, reformers established that the goals of these systems should focus on treatment and rehabilitation, rather than punishment, accomplished by assigning the court a parental role in determining the best interests of the child. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, JUVENILE RECORDS AND RECORDKEEPING SYSTEMS 2 (1988) [hereinafter JUVENILE RECORDS]. Accordingly, reformers draped a "cloak of confidentiality" around juvenile court proceedings in order to protect the child from legal and social stigma. *Id.* These forms of confidentiality protection were considered necessary in order to prevent juvenile records, and the stigma of criminality, from following the child into adulthood. *Id.* Today, all 50 states have adopted statutes dealing with the confidentiality of juvenile records. *Id.* Protected records include fingerprints, photographs, arrest records and investigative or incident reports. *Id.* at vi. The growing public criticism over such protection is pressuring policymakers to significantly reduce, and in some cases eliminate, historic juvenile confidentiality laws and policies. *Id.* at v, 4. See generally R. BELAIR, U.S. DEP'T OF JUSTICE, CRIMINAL JUSTICE INFORMATION POLICY: PRIVACY AND JUVENILE JUSTICE RECORDS (1982) (discussing the policy of juvenile record confidentiality); BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, STATE LAW AND THE CONFIDENTIALITY OF JUVENILE RECORDS (1982) (discussing the juvenile record confidentiality laws of various states); Douglas A. Bahr, *Associated Press v. Bradshaw: The Right of Press Access Extended to Juvenile Proceedings in South Dakota*, 34 S.D. L. REV. 738 (1988/1989) (supporting a decision by the South Dakota Supreme Court applying the free press right of access to juvenile proceedings); Hon. Gordon A. Martin Jr., *Open the Doors: A Judicial Call to End Confidentiality in Delinquency Proceedings*, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 393 (1995) (supporting reform initiatives that would open juvenile proceedings to the public); Joseph B. Sanborn Jr., *The Right to a Public Jury Trial: A Need for*

Supreme Court Justice William Rehnquist described the historic nature of the protection of confidentiality in *Smith v. Daily Mail Publishing Co.*:<sup>85</sup>

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*Today's Juvenile Court*, 76 JUDICATURE 230 (1993) (arguing that the present day juvenile court should grant a public jury trial to certain youthful defendants); Jan L. Trasen, Note, *Privacy v. Public Access to Juvenile Court Proceedings: Do Closed Hearings Protect the Child or the System?*, 15 B.C. THIRD WORLD L.J. 359 (1995) (arguing that "qualified access to juvenile proceedings would ultimately serve the best interests of both the system and the children within it"); *supra* notes 48-50 and accompanying text.

The Code of Virginia provides a statutory example of juvenile records confidentiality. VA. CODE ANN. § 16.1-305 (Michie 1996). In a section entitled, "[c]onfidentiality of court records," the code requires that juvenile case files be filed separately from adult case files. *Id.* § 16.1-305(A). Further, such records shall be "open for inspection only to" the judge, court officers, probation officers, agencies providing services to the child, an attorney for any party or "any other person, agency or institution, by order of the court . . . ." *Id.* As to juvenile proceedings, "[t]he general public shall be excluded from all juvenile court hearings . . . ." *Id.* § 16.1-302 (Michie 1996). Exceptions are made for any person whom the judge "shall deem proper . . . ." *Id.*

In contrast, consider New York's statutory protection of confidentiality for juveniles. N.Y. FAM. CT. ACT §§ 341.1, 375.1 (McKinney 1996). A distinction is drawn between juveniles who receive a disposition in their favor and those against whom a finding of delinquency results. For juveniles whose case is terminated in their favor, "the court shall enter an order which shall immediately [direct] that all official records and papers . . . relating to the arrest, the prosecution and the probation services proceedings . . . be sealed and not made available to any person or public or private agency." *Id.* § 375.1(1). Juveniles adjudicated delinquent, however, receive less protection. In this case, "the court may, in the interest of justice and upon motion of the [juvenile], order the sealing of appropriate records . . . ." *Id.* § 375.2(1) (emphasis added). Additionally, the court is required to "state on the record its reasons for granting or denying the motion." *Id.* § 375.2(3). New York is more restrictive in public access to juvenile proceedings than is Virginia. In Virginia, access may be granted to any person whom the judge "shall deem proper . . . ." VA. CODE ANN. § 16.1-302. New York, in contrast, establishes that "only such persons and the representatives of authorized agencies as have a *direct interest in the case* shall be admitted" to attend a juvenile's proceedings. N.Y. FAM. CT. ACT § 341.1 (emphasis added).

<sup>85</sup> 443 U.S. 97 (1979) (Rehnquist, J., concurring). In *Smith*, two Charleston, West Virginia newspapers published the name of a 14-year-old boy who allegedly shot and killed a classmate. *Id.* at 99-100. Both newspapers learned of the murder and the alleged juvenile offender's identity by monitoring a police band radio and interviewing eyewitnesses. *Id.* at 99. The newspapers were

[V]irtually from its inception at the end of the last century [the juvenile justice system's] proceedings have been conducted outside of the public's full gaze and the youths brought before our juvenile courts have been shielded from publicity. This insistence on confidentiality is born of a tender concern for the welfare of the child, to hide his youthful errors and "bury them in the graveyard of the forgotten past." The prohibition [of public exposure] is designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the State.<sup>86</sup>

Notwithstanding the historic nature of juvenile confidentiality protection, gubernatorial reform increasingly focuses on eroding or eradicating these safeguards. In the past two years, seventeen states have changed—or are currently debating—their laws granting such protection.<sup>87</sup> State executives propose that juvenile proceedings be made open to public observation. Additionally, gubernatorial initiatives would make investigation or trial records available to law enforcement agencies, prosecutors, school systems, and in some instances, the public-at-large.

The Governor's Commission in Virginia proposes that "juvenile criminal proceedings should *generally* be open to the public."<sup>88</sup> Here, a discretionary veto is provided for judges who wish to

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indicted for violating a West Virginia statute which provided: "[N]or shall the name of any child, in connection with any proceedings under this chapter, be published in any newspaper without a written order of the [juvenile] court . . . ." *Id.* at 100; see W. VA. CODE § 49-7-3 (1976). Finding the statute unconstitutional, the Court held that a state cannot, consistent with the First and Fourteenth Amendments, "punish the truthful publication of an alleged juvenile delinquent's name lawfully obtained by a newspaper." *Smith*, 443 U.S. at 105-06.

<sup>86</sup> *Id.* at 107 (citations omitted) (quoting *In re Gault*, 387 U.S. 1, 24-25 (1967)).

<sup>87</sup> Butterfield, *supra* note 14, at 1.

<sup>88</sup> RECOMMENDATIONS, *supra* note 44, ¶ 10 of Subcommittee on Courts and Sentencing Recommendations (emphasis added) (recommending an exception "in cases where the juvenile judge makes a motion to close a proceeding to protect the identity of a juvenile victim or witness").

protect the identity of a victim or witness.<sup>89</sup> Other governors would limit open proceedings to cases involving a serious crime. For example, Governors Tom Ridge (R-Pa.) and Evan Bayh (D-Ind.) would restrict open proceedings to cases involving youths charged with felonies.<sup>90</sup> In a more restrictive approach, Governor Carnahan (D-Mo.) would limit open proceedings to judicial waiver hearings at which the juvenile court judge considers whether to turn a youth over to the adult system or proceed in juvenile court.<sup>91</sup>

Arguing that "[a]s a matter of public safety, citizens have a right to know who is committing what crimes and where,"<sup>92</sup> Governor Stephen Merrill's (R-N.H.) reform package includes a proposal to open the records of serious juvenile offenders to public scrutiny.<sup>93</sup> Other governors present similar initiatives, generally limiting public disclosure to felony charges or convictions.<sup>94</sup>

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<sup>89</sup> RECOMMENDATIONS, *supra* note 44, ¶ 10 of Subcommittee on Courts and Sentencing Recommendations.

<sup>90</sup> Memorandum from Office of the Governor, Commonwealth of Pennsylvania, Special Session on Crime: Legislative Proposals (Jan. 23, 1994) (on file with *Journal of Law and Policy*) (limiting the proposal for open proceedings to juveniles who are 14 years of age or older); Press Release, Indiana (May 8, 1995), *supra* note 62 (codified at IND. CODE ANN. § 31-6-7-10(c) (Burns 1987 & Supp. 1996)).

<sup>91</sup> Press Release, Missouri (June 12, 1995), *supra* note 37, at 2. See Memorandum from the Executive Department, Commonwealth of Massachusetts, Summary of Violent Crime Control Act of 1995, ¶ 11 (not dated) (on file with *Journal of Law and Policy*) [hereinafter Memorandum, Massachusetts] ("As to offenses not automatically transferred [to the adult system], the Act would make another important change by requiring the hearings to be public."). For a description of judicial waiver hearings, see *supra* note 31 and accompanying text.

<sup>92</sup> Memorandum, New Hampshire, *supra* note 62.

<sup>93</sup> Memorandum, New Hampshire, *supra* note 62 (limiting record disclosure to cases involving juveniles charged with murder, sexual crimes, assault and "other serious crimes").

<sup>94</sup> See Legislative Council Staff, Colorado, *supra* note 81, at 4 (limiting open records to juveniles charged with a class 1, 2, 3 or 4 felony). See also Press Release, Indiana (May 8, 1995), *supra* note 62. But see RECOMMENDATIONS, *supra* note 44, ¶ 11 of Subcommittee on Courts and Sentencing Recommendations (proposing to open all records of juvenile criminal proceedings, not limited to felony cases, but reserving judicial discretion to close any records related to "social histories, psychological reports and other like reports").

Yet, not all governors advance the proposal to open juvenile records to the public; many would limit dissemination to particular agencies in order to accomplish specific objectives. A number of governors propose that law enforcement agencies<sup>95</sup> and prosecutors<sup>96</sup> should have access to juvenile records in order to maximize informed "arrest, charging, sentencing and correctional classification decisions based on criminal history."<sup>97</sup> Other governors

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Crimes are designated into one of two categories: misdemeanors and felonies. Felony crimes are "of a graver or more serious nature than those designated as misdemeanors" and "[u]nder many state statutes, [are] punishable by death or imprisonment for a term exceeding one year." BLACK'S LAW DICTIONARY, *supra* note 49, at 617. Misdemeanors, on the other hand, are generally "punishable by fine, penalty, forfeiture or imprisonment otherwise than in penitentiary." BLACK'S LAW DICTIONARY, *supra* note 49, at 999. For a treatise discussion on the distinction between a felony and misdemeanor, see WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., *SUBSTANTIVE CRIMINAL LAW* § 1.6(a) (1986).

<sup>95</sup> See RECOMMENDATIONS, *supra* note 44, ¶ 8 of Subcommittee on Police and General Laws Recommendations ("The General Assembly should be encouraged to repeal those portions of the Virginia Code which restrict the dissemination of juvenile data between law enforcement agencies and amend the juvenile code to expressly permit the dissemination."); Roger Myers, *Youth Authority Adopts a Mission Statement*, TOPEKA CAP. J., Aug. 26, 1995, at 8A (reporting that the Youth Authority, established by the Governor of Kansas, would mandate the sharing of "useful and accurate information on juvenile offenders" between agencies such as Social and Rehabilitation Services, schools and the police); Press Release, Texas (May 31, 1995), *supra* note 42, at 2 (establishing a state-wide database of juvenile records accessible to all law enforcement agencies across Texas).

<sup>96</sup> See RECOMMENDATIONS, *supra* note 44, ¶ 9 of Subcommittee on Police and General Laws Recommendations ("Commonwealth's Attorneys must be provided with access to juvenile criminal records since they are required to prepare sentencing guidelines worksheets."); Press Release, Missouri (June 12, 1995), *supra* note 37, at 2 ("The new juvenile crime law will give prosecutors access to juvenile records for the first time. 'Prosecutors can then use those records to keep dangerous criminals—whatever their age—behind bars,' the governor said."); Press Release, North Carolina (Jan. 13, 1994), *supra* note 55, at 10 ("I believe . . . prosecutors ought to have all the information at hand . . . especially regarding violent crime. I will recommend that we open court records for juveniles who commit violent felonies.").

<sup>97</sup> RECOMMENDATIONS, *supra* note 44, ¶ 3 of Subcommittee on Police and General Laws Recommendations.

submit that school systems and principals should have access to juvenile records to help "ensure student and teacher safety" and to enable "schools to place [student offenders] in appropriate school-based programming."<sup>98</sup> Still other gubernatorial initiatives award special juvenile record access to social service agencies,<sup>99</sup> the Department of Corrections<sup>100</sup> and, most notably, the victim of an offender's crime.<sup>101</sup> Although pragmatic justifications for abandoning juvenile confidentiality protection are an important consideration, the social stigma and criminal record which would attach to young offenders—placing them at a distinct disadvantage in making a "fresh start" of their lives—argues strongly against retreating from this century-old principle of the juvenile justice system.

#### *D. Removing Investigative Obstacles*

Another target of the gubernatorial reform movement is the various investigative protections and prohibitions historically extended to juveniles. Procedural obstacles that purportedly "block effective investigation of juvenile crime" are being challenged by gubernatorial reform initiatives which address the use of fingerprints, photographs, deoxyribonucleic acid ("DNA") profiling,<sup>102</sup>

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<sup>98</sup> Memorandum from Office of the Governor, State of Maryland, House Bill 407 and Senate Bill 343 Executive Summary 1 (Feb. 17, 1995) (on file with *Journal of Law and Policy*) [hereinafter Memorandum, Maryland] (proposing that law enforcement be required to provide school superintendents with juvenile arrest information within 24 hours after arrests for violent offenses or firearms violations); see Myers, *supra* note 95, at 8A; Press Release from Office of the Governor, State of Alaska 2 (May 19, 1995) (on file with *Journal of Law and Policy*) [hereinafter Press Release, Alaska (May 19, 1995)]; Press Release, Missouri (June 12, 1995), *supra* note 37, at 2.

<sup>99</sup> Myers, *supra* note 95, at 8A.

<sup>100</sup> RECOMMENDATIONS, *supra* note 44, ¶ 7 of Subcommittee on Police and General Laws Recommendations.

<sup>101</sup> Memorandum, North Dakota, *supra* note 62, at 7 (approving legislation that gives "victims of crimes by juveniles . . . better access to juvenile court records").

<sup>102</sup> Deoxyribonucleic acid ("DNA") is the biological matter "that stores a human being's genetic material, determining heredity and making each person unique." Alison Howard, *Judge Admits DNA Profiling as Evidence in D.C. Paternity Suit*, WASH. POST, Oct. 30, 1991, at B1; Doug McInnis, *Panel to Study*

interrogation and lineups<sup>103</sup> when juvenile offenders are involved.<sup>104</sup>

The most popular reform initiative would permit police officers to fingerprint and photograph juvenile suspects.<sup>105</sup> However, some

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*State Lab for DNA Testing in Criminal Cases*, COLUMBUS DISPATCH, Dec. 17, 1993, at 5D. An individual's DNA may be obtained from blood, semen, tissue, saliva and hair. *Id.*; Debbi Sykes, *NCSU Professor Backs Up DNA Tests*, NEWS & OBSERVER (Raleigh, N.C.), July 6, 1993, at B1.

"DNA profiling" is the process of comparing DNA taken from a criminal suspect with DNA linked to a particular crime. Martin Weil, *DNA Profiling Rejected in 15 D.C. Criminal Cases*, WASH. POST, Sept. 21, 1991, at B1. "If the DNA profiles do not match, a person can be eliminated as a suspect. If they do, a statistical calculation is made to determine the probability that another individual could be the source of the evidence." Gloria Sunderman, *Witness Links DNA Data to Suspect in Eight Rapes*, OMAHA WORLD-HERALD, Aug. 17, 1995, at 20.

<sup>103</sup> A "lineup" is a "police identification procedure by which the suspect in a crime is exhibited, along with others with similar physical characteristics, before the victim or witness to determine if he can be identified as having committed the offense." BLACK'S LAW DICTIONARY, *supra* note 49, at 929. *Cf.* David Kocieniewski, *Bratton Issues Apology Over Youths in Lineup*, N.Y. TIMES, Feb. 8, 1996, at B3 (reporting that the rules of New York City's police department restrict compelling a youth to participate in a lineup and require parental consent).

<sup>104</sup> Engler Address, *supra* note 11, at 5. Speaking to a group of prosecutors, Governor Engler (R-Mich.) further explained that "the current system treats law enforcement like the bad guy. It's time to turn the tables and give law enforcement the tools they need to arrest, prosecute and lock up violent juvenile offenders." Engler Address, *supra* note 11, at 5.

<sup>105</sup> In the past two years, nine states have changed—or are currently debating—their laws in order to allow juveniles to be fingerprinted. Butterfield, *supra* note 14, at 1. *See, e.g.,* RECOMMENDATIONS, *supra* note 44, ¶¶ 2-3 of Subcommittee on Police and General Laws Recommendations (proposing that the legislature require the collection and reporting of juvenile offender's fingerprints); Engler Address, *supra* note 11, at 5 (proposing that police be allowed to "fingerprint juvenile suspects at the police station" for all "reportable offenses"); Press Release, Idaho (Mar. 6, 1995), *supra* note 41 (establishing that juvenile offenders be photographed and fingerprinted); Press Release, Texas (May 31, 1995), *supra* note 42, at 1 (expanding the use of fingerprinting and photographing for juvenile criminals).

The police are frequently restricted by state law from using fingerprints and photographs of juveniles. These restrictions are "an extension of the efforts to protect the identities of juveniles and to make their contact with the police and

governors would restrict these investigative practices to juveniles who are arrested for particularly serious crimes.<sup>106</sup> Under gubernatorial proposals in Michigan and Virginia, DNA profiling would be required for serious juvenile offenders.<sup>107</sup> Governor Engler (R-Mich.) would further enhance investigative procedures by allowing juveniles to be questioned after being taken into custody<sup>108</sup> and granting police officers the authority to hold juvenile lineups.<sup>109</sup>

Collectively, these reform initiatives to remove forms of protection historically afforded to juvenile offenders aspire to create a very different juvenile justice system. Through these procedural

the court less like that experienced by adult offenders." MURRELL & LESTER, *supra* note 50, at 173-74. One justification for these restrictions is simply that "[f]ingerprinting of juveniles is considered one of the most intrusive procedures in the juvenile justice process." JUVENILE RECORDS, *supra* note 84, at v.

<sup>106</sup> See, e.g., Memorandum from Office of the Governor, State of Missouri, Highlights of House Bill 174 Juvenile Crime Bill (not dated) (on file with *Journal of Law and Policy*) [hereinafter Memorandum, Missouri] (establishing that fingerprints and photographs be required when juveniles are taken into custody for a felony offense); Violent Juvenile Offenders Act, *supra* note 72, at 3 ¶ 13 (requiring that fingerprints be taken for juveniles arrested or taken into custody on weapons offenses or other "forcible felonies").

<sup>107</sup> See ENGLER'S ACTION PLAN, *supra* note 30, at 14 (introducing legislation that "extends DNA profiling to juveniles convicted of criminal sexual conduct" in order to "eliminate hundreds of hours of traditional investigation by quickly identifying or eliminating suspects previously convicted of sexual assault"); RECOMMENDATIONS, *supra* note 44, ¶¶ 18-19 of Subcommittee on Police and General Laws Recommendations (proposing that any juvenile held in custody or convicted of the equivalent of an adult felony be subject to DNA profiling).

<sup>108</sup> ENGLER'S ACTION PLAN, *supra* note 30, at 13. The governor proposes to "[a]mend the law to facilitate . . . taking statements from juvenile offenders. Current law impedes the ability of police investigators to detain a juvenile at a police station, police car or other convenient place, even temporarily, for the purposes of obtaining a statement from the juvenile." ENGLER'S ACTION PLAN, *supra* note 30, at 13. Michigan's law currently provides that any law enforcement officer "may, without the order of the court, immediately take into custody any child who is found violating any law or ordinance . . ." but must "immediately attempt to notify the [child's] parent. . . ." MICH. COMP. LAWS ANN. § 712A.14 (emphasis added). Under the governor's proposal, "a reasonable attempt will be made to notify immediately the parents or guardian of a detained juvenile to inform them of the place of temporary detention." ENGLER'S ACTION PLAN, *supra* note 30, at 13 (emphasis added).

<sup>109</sup> ENGLER'S ACTION PLAN, *supra* note 30, at 15.



reforms, governors seek to increase the frequency of juvenile adjudication in adult courts, to enhance the punitive nature of sentencing requirements for crimes committed by children, to provide greater accessibility to sensitive juvenile court records and proceedings, and finally, to enhance and broaden the investigation of juveniles. It remains to be seen whether this revolutionary approach to juvenile justice will prove to be effective in creating a safer society. What is certain, however, is that these new systems of juvenile justice will be places where children encounter fewer procedural protections and more punitive-based dispositions than American society has traditionally imparted on its youngest citizens.

## II. TARGET-GROUP REFORM INITIATIVES

The second category of gubernatorial reform proposals seeks to target specific categories of criminal activity. The first group of initiatives focuses on juveniles and guns,<sup>110</sup> proposing to restrict gun possession by minors and prohibit the sale of such weapons to youths. The second group of gubernatorial initiatives targets violence in and near America's schools.<sup>111</sup> By increasing sanctions for crimes committed near school grounds, mandating procedures for the discovery of weapons and drugs on campus and establishing reporting procedures for school-based offenses, gubernatorial proposals reflect the increasing public concern for safety in American schools.

### A. *Juveniles and Guns*

Governors, ever-sensitive to public opinion,<sup>112</sup> have proposed

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<sup>110</sup> See *infra* Part II.A (discussing gubernatorial proposals to restrict the availability of guns to juveniles).

<sup>111</sup> See *infra* Part II.B (discussing gubernatorial proposals which address the issue of school safety).

<sup>112</sup> See Greg Sargent & Hugo Lindgren, *Gut Reaction: How Politicians Discover What Americans Want to Hear*, GEORGE, Oct.-Nov. 1995, at 120-22 (reporting that present-day politicians are "reluctant to utter a word" that hasn't first been tested against public opinion); Golden, *supra* note 8, at 26 (referring

numerous reform initiatives aimed at restricting the availability of guns to juveniles.<sup>113</sup> According to two 1993 national polls, an overwhelming majority of the populace favor prohibiting the sale of firearms to persons under the age of eighteen.<sup>114</sup> This prodigious consensus has fueled a gubernatorial move to "take guns out of the hands of our children."<sup>115</sup> The two primary approaches toward this end would restrict the sale of guns to minors and prohibit firearm possession by juveniles.

Proposals that restrict providing minors with firearms focus on the sanctions that may be imposed upon the provider.<sup>116</sup>

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to public opinion polls as "sheet music for politicians").

<sup>113</sup> In a speech to the Louisiana legislature, then-Governor Edwin Edwards (D-La.) declared that "the Second Amendment was never intended to give a 13-year-old the right to carry a pistol into a schoolyard or on his person as he patrols the streets of our cities." Governor Edwin Edwards, Address to Open the Special Legislative Session on Violent Crime 13 (June 6, 1994) (transcript on file with *Journal of Law and Policy*) [hereinafter Edwards Address].

The Second Amendment to the United States Constitution provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II.

<sup>114</sup> Eighty-five percent of the nation favor "[b]anning the sale of guns to people under the age of 18," while 88% of the nation favor prohibiting young people under the age of 18 from being able to purchase a gun. SOURCEBOOK, *supra* note 25, at 208 tbl.2.65, 209 tbl.2.66.

<sup>115</sup> Edwards Address, *supra* note 113, at 13.

<sup>116</sup> A new federal program will assist local law enforcement in tracking down those who illegally provide juveniles with firearms. Fox Butterfield, *Federal Program Will Track Sales of Guns to Youths*, N.Y. TIMES, July 8, 1996, at A1. Under the program, local police will provide the Federal Bureau of Alcohol, Tobacco and Firearms with information on every gun they seize from juveniles. *Id.* Through documents and serial numbers, a federal computer database traces guns to their original seller in order to determine who is illegally selling firearms to youths. *Id.* For example:

In one case, the Boston police, in collaboration with the firearms agency, found that all the handguns being bought by gang members in one neighborhood originated in Mississippi. They were being purchased by . . . a student from Boston attending Mississippi State University, who was bringing the guns home to sell on weekends.

*Id.* After the student's arrest, shootings in the neighborhood dropped by nearly 80% in just five months. *Id.*

The governors of Georgia, Illinois and Nebraska endorse making it a felony to illegally furnish a minor with a gun.<sup>117</sup> For example, an anti-crime package which incorporated Governor Jim Edgar's (R-Ill.) initiatives<sup>118</sup> increased the sanction from a misdemeanor to a felony and provided for a one to three year sentence of incarceration.<sup>119</sup> Governor Ben Nelson (D-Neb.) proposed that individuals who furnish minors with a gun be charged with a felony carrying a maximum of one year in prison with judicial discretion to attach a \$1000.00 fine.<sup>120</sup> Governor William Weld (R-Mass.) proposed to dramatically raise the maximum fine for illegal gun providers from \$1000.00 to \$50,000.00 with a mandated term of imprisonment from one to five years.<sup>121</sup>

A second approach targets the minor, rather than the gun provider, by imposing sanctions on any juvenile illegally in possession of a handgun. Some state executives would establish eighteen as the minimum age for legal possession of a handgun,<sup>122</sup> while Governor Weld's (R-Mass.) initiative would increase the minimum age from eighteen to twenty-one.<sup>123</sup>

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<sup>117</sup> See NEBRASKA INITIATIVES, *supra* note 55; Violent Juvenile Offenders Act, *supra* note 72, at 3 ¶ 10 (Illinois); Press Advisory from Office of the Governor, State of Georgia, *Governor Miller Hits Grand Slam in 1994 Session* 3 (Mar. 16, 1994) (on file with *Journal of Law and Policy*) [hereinafter Press Advisory, Georgia (Mar. 16, 1994)].

<sup>118</sup> See Press Release from Office of the Governor, State of Illinois, *Governor Commends Senate for Swift Approval of Anti-Crime Package 1-2* (May 20, 1994) (on file with *Journal of Law and Policy*).

<sup>119</sup> Violent Juvenile Offenders Act, *supra* note 72, at 3 ¶ 10.

<sup>120</sup> NEBRASKA INITIATIVES, *supra* note 55.

<sup>121</sup> Memorandum, Massachusetts, *supra* note 91, ¶ 5.

<sup>122</sup> See, e.g., NEBRASKA INITIATIVES, *supra* note 55 ("State laws should be changed [so that youths] under 18 possessing firearms, unless under adult supervision, would . . . be guilty of a felony—up to one year in a correctional facility and/or a \$1,000 fine."); Press Advisory, Georgia (Mar. 16, 1994), *supra* note 117, at 3 (proposing a bill that would prohibit the possession of a handgun by persons under the age of 18). See also COLO. REV. STAT. ANN. § 18-12-108.5(1)(a) (Supp. 1995) ("[I]t is unlawful for any person who has not attained the age of eighteen years knowingly to have any handgun in such person's possession."); Legislative Council Staff, Colorado, *supra* note 81, at 1 (reporting on a bill signed into law by Governor Romer (D-Colo.) on September 13, 1993).

<sup>123</sup> Memorandum, Massachusetts, *supra* note 91, ¶ 5.

Additionally, these proposals would increase the length of imprisonment and amerce more substantial fines on juveniles illegally in possession of a gun.<sup>124</sup>

Most notable in these initiatives are the exceptions that the governors propose to attach to juvenile anti-handgun laws, thereby allowing children to possess the weapons legally. Such exceptions generally fall into one of three categories: (1) use for target shooting and firearms instruction;<sup>125</sup> (2) use with parental or adult supervision;<sup>126</sup> and (3) use for hunting.<sup>127</sup>

Former Governor Edwin Edwards (D-La.) proposed two particularly unique exceptions. First, the governor recommended an exception for .22 caliber pistols so that "young people, especially in rural areas . . . [could shoot] snakes, bottles, and varmints."<sup>128</sup>

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<sup>124</sup> See, e.g., NEBRASKA INITIATIVES, *supra* note 55; Memorandum, Massachusetts, *supra* note 91, ¶ 5 (increasing the penalty for carrying a gun on school grounds from one year to a 10 year maximum and imposing a two to 25 year term of imprisonment for subsequent offenses); Legislative Council Staff, Colorado, *supra* note 81, at 1 (discussing legislation considered during the 1993 special legislative session).

<sup>125</sup> See, e.g., Legislative Council Staff, Colorado, *supra* note 81, at 1 (noting exception for firearms instruction); Press Advisory, Georgia (Mar. 16, 1994), *supra* note 117, at 3 (providing exception for target shooting at licensed ranges).

<sup>126</sup> See, e.g., NEBRASKA INITIATIVES, *supra* note 55 (providing exception for adult supervision); Press Advisory, Georgia (Mar. 16, 1995), *supra* note 117, at 3 (providing exception for parental supervision).

<sup>127</sup> See, e.g., Legislative Council Staff, Colorado, *supra* note 81, at 1 (allowing for "hunting . . . to be [an] exception[] to prosecution"); Memorandum from Office of the Governor, State of Georgia, Miller Administration 1994 Legislative Accomplishments (not dated) (on file with *Journal of Law and Policy*) (describing legislation that prohibited "[p]ersons under the age of 18 . . . from possessing a handgun, except in limited circumstances, such as hunting").

<sup>128</sup> Edwards Address, *supra* note 113, at 14. Such a proposal raises questions of equal protection. To allow a rural youth legally to carry a handgun while restricting an urban youth from doing the same appears discriminatory. For an analysis of the view that discrimination, oppression and arbitrary enforcement against minorities and the poor have dominated the policies of gun control, see Stefan B. Tahmassebi, *Gun Control and Racism*, 2 GEO. MASON U. CIV. RTS. L.J. 67 (1991). See also T. Markus Funk, Comment, *Gun Control and Economic Discrimination*, 85 J. CRIM. L. & CRIMINOLOGY 764 (1995) (arguing that gun control laws "bar those of lesser economic means from having a way to protect themselves against the criminals that prey on them, and such an outcome is

Second, an exception was proposed that would allow qualifying juveniles to carry a weapon for "self-protection."<sup>129</sup> Qualifying requirements included: (1) parental application; (2) no juvenile criminal record; (3) a showing of responsibility; and (4) a demonstrated ability to use and handle a gun.<sup>130</sup> Such a proposed exception would permit a minor of any age, upon satisfaction of the prerequisite requirements, to carry a handgun for the unabashed purpose of "self-protection."<sup>131</sup> For a governor who claimed that he was committed to "tak[ing] guns out of the hands of children," this proposal is startling indeed.<sup>132</sup>

Restricting children from possessing or being provided with guns must become a paramount gubernatorial reform objective. In 1984, homicides by persons under the age of eighteen were most often committed with weapons other than handguns.<sup>133</sup> Within ten years, however, murders committed by juveniles using handguns rose dramatically by 418%, nearly quadrupling the number of non-handgun murders committed by juveniles.<sup>134</sup> One clear answer to violent juvenile crime is to restrict gun possession by children. Governors must continue to wage this war, even though the task seems insurmountable in a nation that harbors

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neither fair, nor is it criminologically sound").

<sup>129</sup> Edwards Address, *supra* note 113, at 15.

<sup>130</sup> Edwards Address, *supra* note 113, at 15.

<sup>131</sup> Edwards Address, *supra* note 113, at 15.

<sup>132</sup> Edwards Address, *supra* note 113, at 13. In fact, the governor himself conceded, "I am aware of the controversy that this [proposed exception] will bring." Edwards Address, *supra* note 113, at 15.

Data compiled in 1990 and 1991 establish that Louisiana's firearm-related death rate is 25.4 per 100,000 persons, while Louisiana's firearm-related homicide rate stands at 13.9 per 100,000 persons. SOURCEBOOK, *supra* note 25, at 379 tbl.3.124. The national firearm-related death rate is 15.1 per 100,000 persons, and the national firearm-related homicide rate is 6.9 per 100,000 persons. SOURCEBOOK, *supra* note 25, at 379 tbl.3.124. Therefore, as Louisiana's firearm-related homicide and death rates are the highest among the 50 states, and twice that of the national average, it is difficult to make the case for permitting Louisiana children to "pack" lethal weapons for the purpose of self-protection. SOURCEBOOK, *supra* note 25, at 379 tbl.3.124.

<sup>133</sup> Butterfield, *supra* note 116, at A1.

<sup>134</sup> Butterfield, *supra* note 116, at A1.

220,000,000 firearms.<sup>135</sup> Moreover, governors must not be deterred by gun lobbyists such as the National Rifle Association which actively oppose any form of gun control.<sup>136</sup> Smart reform attacks juvenile crime at its roots and seeks to *prevent* criminal activity. No preventative measure could be more basic than the need to take youthful fingers off the triggers of deadly weapons.

### B. Schools

Education is at the heart of America's commitment to children.<sup>137</sup> Yet, the ever-growing epidemic of violence in American schools threatens to severely hinder the educational process, at great cost to society's future.<sup>138</sup> Twenty-two percent of American

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<sup>135</sup> Butterfield, *supra* note 116, at A1.

<sup>136</sup> Butterfield, *supra* note 116, at A1.

<sup>137</sup> See *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (articulating that "[t]he American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted").

<sup>138</sup> According to the National School Safety Center, 46 students were killed on campus grounds during the school day in the 1993-94 school year. Peter Applebome, *For the Ultimate Safe School, Eyes Turn to Dallas*, N.Y. TIMES, Sept. 20, 1995, at B11 [hereinafter *Dallas*]. The Center also found that approximately 5000 teachers are assaulted each month, while 1000 of these attacks are serious enough to require medical attention. *Id.*; see Peter Applebome, *For Youths, Fear of Crime is Pervasive and Powerful*, N.Y. TIMES, Jan. 12, 1996, at A1 (reporting on a study issued on January 11, 1996, that showed that fear of violence and crime is affecting the behavior and school performance of teenage students).

As to the fear of crime hindering the educational process, see BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SCHOOL CRIME, at iii (Lisa D. Bastian and Bruce M. Taylor, statisticians, 1991) ("The prevalence of crime in our Nation's schools concerns us all. In addition to the costs to the victims and their families, crimes at school disrupt education and may have longer lasting effects on society than crime committed elsewhere."). Additionally, "safety and security has gone from an ancillary issue to one that many experts see as the most critical key to maintaining or restoring confidence in the public schools." *Dallas, supra*, at B11. Justifying a \$41 million state-of-the-art security system in one schoolhouse, Dallas School District Superintendent Chad Woolery said, "We want to make sure that safety is not an issue so kids can concentrate on learning." *Dallas, supra*, at B11.

school children fear for their physical safety when in school.<sup>139</sup> Spotting a political gold mine, it is not surprising that gubernatorial rhetoric on this topic is particularly fervent.<sup>140</sup> Indeed, over half of the state executives examined in this study have proffered reform initiatives targeting the issue of school safety. These gubernatorial reform initiatives can be divided into two classifications: legislative statutory reforms and school policy reforms.

Legislative statutory reforms aspire to enforce stringent restrictions and accompanying penalties. One legislative reform suggested by Governor Nelson (D-Neb.) attempts to create "gun-free schools" by increasing the penalty for possessing a gun on school property.<sup>141</sup> Other proposals would enhance the sanctuary-nature of school grounds by establishing strict no-trespassing rules for expelled students,<sup>142</sup> creating an aggravating factor for

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<sup>139</sup> SOURCEBOOK, *supra* note 25, at 218 tbl.2.77. A study by the American Federation of Teachers reports that "160,000 students miss school every day because they are afraid." *Dallas*, *supra* note 138, at B11. Almost one-third of America's school children between the ages of 13 and 17 say that students bringing weapons to school is a "big" problem. SOURCEBOOK, *supra* note 25, at 218 tbl.2.78. When 13- to 17-year-olds were asked, "[h]ow big a problem . . . students bringing weapons such as guns or knives to school is in [their] school," 14% called it a "very big" problem while 15% called it a "fairly big" problem. SOURCEBOOK, *supra* note 25, at 218 tbl.2.78. For students attending school in urban areas, 19% called it a "very big" problem while 18% characterized it as a "fairly big" problem. SOURCEBOOK, *supra* note 25, at 218 tbl.2.78. Among Black respondents, a striking 32% called it a "very big" problem while eight percent called it a "fairly big" problem. SOURCEBOOK, *supra* note 25, at 218 tbl.2.78. *See Dallas*, *supra* note 138, at B11 (reporting that 135,000 juveniles carry guns to school every day).

<sup>140</sup> Governor Zell Miller (D-Ga.) declared: "School violence is not a city problem. It's not a rural problem. It's a Georgia problem. We can have the best teachers and educational equipment around, but no one can learn when they are nervously wondering whether the bully who threatened them in the hall packs a gun . . . ." Press Advisory, Georgia (Mar. 16, 1994), *supra* note 117, at 2. Governor Evan Bayh (D-Ind.) further insists that "all kids must be able to live and learn without fear of becoming a victim of a vicious crime in the classroom or [on the] playground." Press Release, Indiana (May 8, 1995), *supra* note 62.

<sup>141</sup> NEBRASKA INITIATIVES, *supra* note 55.

<sup>142</sup> ENGLER'S ACTION PLAN, *supra* note 30, at 15. This reform would "prohibit expelled students and other troublemakers from returning, or entering, school campuses" by "providing punishment" for trespassing offenders.

sentencing<sup>143</sup> when an offense is committed within 1000 feet of a school<sup>144</sup> and establishing a "safe schools fund" in which monetary fines for firearm offenses would be deposited.<sup>145</sup> Further, the Virginia Governor's Commission suggests establishing civil immunity for teachers engaged in maintaining discipline in the school.<sup>146</sup>

School policy reforms would mandate particular administrative procedures for local school systems to follow after each incident of

ENGLER'S ACTION PLAN, *supra* note 30, at 15, 19 n.31. The type or degree of punishment for such trespassers is not established in Governor Engler's (R-Mich.) proposal.

<sup>143</sup> "Aggravating factor" refers to "[a]ny circumstance attending the commission of a crime . . . which increases its guilt or enormity or adds to its injurious consequences, but which is above and beyond the essential constituents of the crime . . . itself." BLACK'S LAW DICTIONARY, *supra* note 49, at 65 (defining "aggravation").

<sup>144</sup> Memorandum, Illinois (Apr. 6, 1994), *supra* note 68, at 2.

<sup>145</sup> Press Release, Indiana (May 8, 1995), *supra* note 62. Indiana's statutory codification of this reform is as follows:

The Indiana safe schools fund is established to promote school safety through the purchase of equipment for the detection of firearms and other deadly weapons, use of dogs trained to detect firearms, and purchase of other equipment and materials used to enhance the safety of schools.

IND. CODE ANN. § 5-2-10.1-2 (Burns 1987 & Supp. 1996). The safe schools fund receives income from mandatory fees which attach to every conviction "in which the possession or use of a firearm was an element of the offense . . . ." *Id.* § 33-19-6-16.3(a) (Burns Supp. 1996). The fee must be between the range of \$200.00 and \$1000.00 and is determined by the court's assessment of the offender's ability to pay. *Id.* § 33-19-6-16.3(a), (b).

<sup>146</sup> RECOMMENDATIONS, *supra* note 44, ¶ 9 of Subcommittee on Education and School Recommendations (including discipline imparted at a school function in the proposal for civil immunity).

"Civil immunity" refers to "freedom or exemption from penalty, burden, or duty" of any remedy sought by an opposing party. BLACK'S LAW DICTIONARY, *supra* note 49, at 244, 751. For example, Michigan's statutory provision creating civil immunity for teachers engaged in discipline states that "[a] person employed by or engaged as a volunteer . . . by a [school board] who exercises necessary reasonable physical force upon a pupil, or upon another person of school age in a school-related setting . . . is not liable in a civil action for damages arising from the use of that physical force . . . ." MICH. COMP. LAWS ANN. § 380.1312(5) (West 1988 & Supp. 1996).



school violence or crime. Many governors suggest establishing uniform punishments and procedures for schools to adhere to when weapons and drugs are discovered inside the school building.<sup>147</sup> One popular gubernatorial initiative would require automatic reporting to local law enforcement authorities of all incidents involving school violence, drugs and weapons.<sup>148</sup> Another initiative would require that statistical incident reports of school-based weapon, drug and violence related crimes be made available to parents and community members.<sup>149</sup> Taking an affirmative approach, former Governor Edwin Edwards (D-La.) sought to place drug counselors in Louisiana schools charged with the responsibility of watching for drug use and the possession of illegal weapons.<sup>150</sup>

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<sup>147</sup> See, e.g., Memorandum, Massachusetts, *supra* note 91, ¶ 10 (requiring school principals to expel students for one year when they bring a gun to school); Press Release, Alaska (Feb. 26, 1995), *supra* note 80, at 2 (requiring school districts to expel students for one year when they bring a gun to school); Press Release, Indiana (May 8, 1995), *supra* note 62 (mandating expulsion for one year for possession of a firearm on school property); Press Release, Texas (May 31, 1995), *supra* note 42, at 2 (requiring that students who commit violent, drug or gun offenses on school grounds or during school events be expelled from school and placed in the juvenile justice alternative educational system).

<sup>148</sup> See, e.g., ENGLER'S ACTION PLAN, *supra* note 30, at 15 (requiring school officials to "promptly report to the police confiscation of drugs, weapons and incidents of violence on campus or at school functions"); Memorandum, Massachusetts, *supra* note 91, ¶ 10 (requiring principals to refer students who bring guns to school to the criminal justice system); Press Release, Texas (May 31, 1995), *supra* note 42, at 2 (requiring that "any child expelled from school be referred to the juvenile court").

<sup>149</sup> RECOMMENDATIONS, *supra* note 44, ¶ 7 of Subcommittee on Education and School Recommendations (recommending that local school districts be required to make available to parents the rate of crime and violent incidents in schools); ENGLER'S ACTION PLAN, *supra* note 30, at 15 (requiring school officials to maintain a file for "public inspection" on the number and nature of reported drug and weapon confiscations, as well as violent incidents).

<sup>150</sup> Edwards Address, *supra* note 113, at 8. In Irvine, California, the school district's drug counselor program was established with the goal of providing "early intervention" for students with substance-abuse problems. Shelby Grad, *Irvine Schools to Accept Anti-Drug Grant*, L.A. TIMES, Sept. 21, 1993, at 2. The drug counselor's duties include working with students who have substance-abuse problems, organizing student prevention programs, leading individual and small

It appears that the governors are committed to proposing diverse and creative solutions in an effort to create safer schools. Hopefully individual state programs will lead to an effective approach which can be reproduced nationwide. Although the proposed methods differ, the collective gubernatorial end is clear: "to better protect those students who understand that school is a place to prepare for the future, and not a place to [commit crime]."<sup>151</sup>

### III. PREVENTION AND INTERVENTION REFORM INITIATIVES

*Nature will not abide a vacuum, and because we have let the positive particulars go, they have been replaced with degeneracy, indifference, and vice. Our streets explode with cruelty and criminality, and our homes are rife with violence and abuse.*<sup>152</sup>

Maya Angelou's description of a moral vacuum, devoid of such things as virtue, purity, piety, temperance, goodness, worth and moderation,<sup>153</sup> is a metaphor for the lives of too many of America's children. When community, church, teacher and

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group discussions on "coping" and "communication" skills and providing students with information about local social service agencies. *Id.* There are, however, potential conflicts-of-interest with such programs. For example, Governor Edwards' (D-La.) proposed program would give drug counselors the full authority of police officers. Edwards Address, *supra* note 113, at 7. In this case, although labeled "counselors," the position seems to be aimed at law enforcement rather than the prevention and intervention of student drug use. Additionally, Fairfax County schools in Virginia encountered a conflict between school policy and federal law. Robert A. Watts, *Antidrug Plan Tested in 3 Schools*, WASH. POST, Jan. 29, 1987, at V1. In Fairfax County, district rules require teachers to inform the parents of students discovered to be using drugs or alcohol. *Id.* On the other hand, federal law requires strict confidentiality for youths who inform counselors about drug abuse. *Id.* To resolve the conflict, drug counselors work in the schools during after-school hours in order to satisfy both regulations. *Id.*

<sup>151</sup> Press Release, Missouri (June 12, 1995), *supra* note 37, at 2 (quoting Governor Mel Carnahan (D-Mo.)).

<sup>152</sup> MAYA ANGELOU, *WOULDN'T TAKE NOTHING FOR MY JOURNEY NOW* 70 (1993).

<sup>153</sup> *Id.* at 69-70.

neighbor fail to assist in "raising" a child,<sup>154</sup> that child encounters a vacuum of valuable guidance outside the home. When the child's own family fails to fill the vacuum with the "positive particulars,"<sup>155</sup> a young life is in jeopardy.

The third category of gubernatorial juvenile justice reform addresses this "vacuum" by creating incentives and opportunity for the family and community to be positively involved in a child's life. First, the governors' proposals would increase parental responsibility by applying sanctions to parents for the criminal acts of their children.<sup>156</sup> The goal of these proposals is to create an affirmative incentive for parents to oversee the activities of their children. Second, gubernatorial initiatives would increase community involvement in the lives of children by funding and promoting community-based, after-school and vocational programs aimed at diverting juveniles from criminal activity.<sup>157</sup>

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<sup>154</sup> "It takes a village to raise a child." African Proverb. For a poignant reflection on one instance of a community's failure to prevent a deadly act of juvenile crime, see Alex Kotlowitz, *It Takes a Village to Destroy a Child*, N.Y. TIMES, Feb. 8, 1996, at A25. Kotlowitz reports on the lives of two boys, ages 10 and 11, who "dangled and then dropped" a five-year-old child from the 14th floor of a Chicago public housing project. *Id.* Their "village" in inner-city Chicago offered the boys, among other things, a financially-strapped school and inadequate educational staff, the opportunity to witness gang-related murders without any follow-up counseling from an adult and an apathetic police department which violated their own guidelines by releasing "James," the 11-year-old, eight times in the six months prior to his deadly act. *Id.* Kotlowitz observes, "James and his 10-year-old partner were not headed for trouble, they were well into it. Yet, no adult intervened." *Id.*

<sup>155</sup> ANGELOU, *supra* note 152, at 69-70.

<sup>156</sup> See *infra* Part III.A (discussing gubernatorial proposals to require parental involvement). In the past two years, 15 states have changed—or are currently debating—their laws in order to "forc[e] parents to take responsibility for the crimes of their children. . . ." Butterfield, *supra* note 14, at 1.

<sup>157</sup> See *infra* Part III.B (discussing gubernatorial proposals for direct prevention and intervention).

### A. Parental Involvement

Consensus exists among juvenile experts,<sup>158</sup> lawmakers,<sup>159</sup> community activists<sup>160</sup> and the judiciary<sup>161</sup> that increasing the

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<sup>158</sup> See, e.g., Pizzigati testimony, *supra* note 51 ("Family preservation efforts provide a critical juvenile justice intervention approach. A recent study found that multisystemic family preservation intervention . . . was more effective at reducing long-term rates of criminal behavior and significantly less expensive than incarceration and usual service referrals."); Paul Cohan, *Exasperation with Juvenile Crime, Agencies*, STATELINE MIDWEST, Aug. 1995, at 7 (reporting that "our families are under tremendous stress. . . . If we do more to help families, . . . that's the answer" to juvenile violence).

<sup>159</sup> See, e.g., *This Week with David Brinkley*, *supra* note 18 (quoting Senator Bob Graham, former governor of Florida: "Government's role in this is limited. This is primarily . . . a family issue . . . . Government is not very good at becoming the parents of all young people."); Engler Address, *supra* note 11, at 5 ("Government cannot and should not be a parent. Parents must take control of their children. It is often said that a parent is a child's first teacher. The lessons parents teach are critical—tell the truth, obey the law, follow the rules, go to school.").

<sup>160</sup> Under the leadership of Jesse Jackson, the Citizenship Education Fund is leading a crusade to "reverse the rising tide of homicide and violence among today's youth[s]" by mobilizing parents to sign a "Parent Pledge Against Drugs, Guns and Violence." CITIZENSHIP EDUC. FUND, THE NATIONAL RECLAIM OUR YOUTH CRUSADE (not dated) (on file with *Journal of Law and Policy*); CITIZENSHIP EDUC. FUND, PARENT PLEDGE AGAINST DRUGS, GUNS AND VIOLENCE (not dated) (on file with *Journal of Law and Policy*). In this pledge, the parent agrees to "teach . . . values and ethics . . . the importance of self-respect" and respect for authority figures. *Id.* The parent pledges to be "a soldier in the war against drugs, guns, violence and greed" and accepts the "obligation to work as an advocate to rid [their] child's daily environment of weapons and drugs." *Id.*; see CITIZENSHIP EDUC. FUND, BACK TO SCHOOL PLEDGE CAMPAIGN (not dated) (on file with *Journal of Law and Policy*); *Parent Pledge*, NEWSWEEK, July 17, 1995, at 6.

<sup>161</sup> See Pizzigati testimony, *supra* note 51 ("Juvenile court judges know what works—the National Council of Juvenile and Family Court Judges has endorsed home-based early intervention programs to strengthen families and reduce juvenile delinquency."). A unique sanction was utilized by a South Carolina judge to endorse familial involvement. He "took off his belt and had the 18-year-old defendant's grandmother whip" the drug offender. *Judge Gets Grandma to Whip Offender*, N.Y. TIMES, Sept. 25, 1995, at A11. Judge Frank Eppes

role of the family in the lives of children is a vital step in preventing juvenile crime. The public is divided, however, as to whether parents should be directly sanctioned when their children commit serious crimes.<sup>162</sup> Yet, in spite of this split of opinion, state governors have proposed significant revisions to increase the responsibility of parents for crimes committed by their juvenile children.

There are a number of proposed approaches for holding parents liable for their children's crimes. One approach would simply require parents to appear with their children in court.<sup>163</sup> A second approach would require parents to actively participate in their children's treatment or probationary programs.<sup>164</sup>

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explained that the youth needed "discipline, in the home and in the school[.]" *Id.*

<sup>162</sup> In a national poll, 48% of the respondents agreed that the law should impose fines or prison sentences on the parents of juvenile offenders, while 48% opined that the law should not require such sanctions. SOURCEBOOK, *supra* 25, at 197 tbl.2.51.

<sup>163</sup> See Memorandum from Chris Lenning, Legislative Office, to Governor Romer, State of Colorado, ¶ 5 (Sept. 13, 1993) (on file with *Journal of Law and Policy*) (describing H.B. 1002, 59th General Assembly (Colo. 1993), signed by the governor on September 13, 1993, which requires parents to accompany their children to court, subject to a bench warrant for violation, absent "good reason"); Press Release, Alaska (Feb. 26, 1995), *supra* note 80, at 2 (recommending legislation that would reduce drunk driving and gang violence, as well as hold parents "accountable for the criminal acts of their children . . ."); Press Release, Michigan (July 27, 1995), *supra* note 15, at 3 (recommending the establishment of specific contempt proceedings against parents who do not accompany their children to court).

<sup>164</sup> See Memorandum, Missouri, *supra* note 106 (describing legislation that "[a]llows courts to order increased parental involvement" in their child's court case); Memorandum, North Dakota, *supra* note 62, at 7 (describing legislation that requires "[p]arents of convicted minors . . . to participate in the rehabilitation efforts of their children"); Press Release, Alaska (Feb. 26, 1995), *supra* note 80, at 2 (describing the governor's crime package which "authorizes courts to require that parents of juvenile offenders personally participate in treatment of their children"); Press Release, Michigan (July 27, 1995), *supra* note 15, at 3 (describing the governor's juvenile crime package which would allow "the juvenile court to require parents of juvenile offenders to participate in the probation plan for their children"). Governor Evan Bayh's (D-Ind.) proposal was passed and codified as law:

A third approach would require parents to pay monetary damages or fines as a result of their children's crimes. One such initiative would create or increase restitution amounts payable by parents for the criminal property damages caused by their children. Governor Schafer's (R-N.D.) Juvenile Justice Task Force proposed and received approval for a scheme that holds parents liable for up to \$5000.00 for such damages.<sup>165</sup> An initiative in Governor Knowles' (D-Alaska) crime package led to legislation increasing maximum parental liability from \$2000.00 to \$10,000.00.<sup>166</sup>

A fourth approach would take the focus off of repayment for property damages and would instead require civil liability for parents whose children participate in specific enumerated crimes.<sup>167</sup> Governor George Allen's (R-Va.) reform commission

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If the juvenile court determines that a parent, guardian, or custodian should participate in a program of care, treatment, or rehabilitation for the child, it may order the parent, guardian, or custodian to:

- (1) obtain assistance in fulfilling his obligations as a parent, guardian, or custodian;
- (2) provide specified care, treatment, or supervision for the child;
- (3) work with any person providing care, treatment, or rehabilitation for the child; and
- (4) participate in a program operated by or through the department of correction.

IND. CODE ANN. § 31-6-4-15.8 (Burns 1987 & Supp. 1996).

<sup>165</sup> Memorandum, North Dakota, *supra* note 62, at 7.

<sup>166</sup> See Press Release, Alaska (May 19, 1995), *supra* note 98, at 1 (describing the final bill signed into law); Press Release, Alaska (Feb. 26, 1995), *supra* note 80, at 2 (describing the governor's crime package which would hold parents "responsible for restitution for harm caused by their children"). The Alaska initiative was passed and codified as law:

A person [or organization] may recover damages in a civil action in an amount not to exceed \$10,000.00 . . . from either parent, both parents, or the legal guardian of an unemancipated minor under the age of 18 years who, as a result of a knowing or intentional act, destroys real or personal property belonging to the person [or organization].

ALASKA STAT. § 34.50.020(a) (1990 & Supp. 1995).

<sup>167</sup> Parental sanctions instilling civil liability, often termed "parental responsibility laws," are criticized by many scholars as ineffective. "The punishment, training, classes, fines, or jail sentences do nothing to improve the family and may worsen the situation . . . . Parental behavior, or lack of it, is

proposes limiting parental liability to "a minor's criminal acts at school" and acts "in a public place during the commission of a felony."<sup>168</sup> Governor Engler (R-Mich.) would establish juvenile curfew violations as a civil infraction for which parents would be held liable,<sup>169</sup> while Governor Carnahan (D-Mo.) would require parents to pay the cost of room and board for incarcerating their children.<sup>170</sup>

Parental liability and responsibility laws are not without criticism. Opponents argue that many of those affected by such laws are poor, single parents who often work multiple jobs.<sup>171</sup> They believe that punishing parents who already struggle to provide for their families will only worsen the problems in

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better left to other disciplines." Michelle L. Casgrain, *Parental Responsibility Laws: Cure for Crime or Exercise in Futility?*, 37 WAYNE L. REV. 161, 186 (1990). Casgrain argues that these sanctions are unnecessary because: (1) they target parental activity that is already punishable under other laws; (2) they are an inappropriate infringement upon the fundamental right to raise a child; (3) they punish parenting styles or skills more than specific acts or omissions; and (4) they send the wrong message to children by teaching them that they are not responsible for their own criminal acts, but instead, blame may appropriately rest with their "bad" parents. *Id.* at 186-87. See generally Michelle L. Maute, Note, *New Jersey Takes Aim at Gun Violence by Minors: Parental Criminal Liability*, 26 RUTGERS L.J. 431 (1995) (concluding that "the burden on parental rights and the probable ineffectiveness" of a proposed parental responsibility law militate against its acceptance by the New Jersey legislature); Toni Weinstein, Note, *Visiting the Sins of the Child on the Parent*, 64 S. CAL. L. REV. 859 (1991) (arguing that punishing passive parents is overly simplistic and contrary to common law and constitutional principles).

<sup>168</sup> RECOMMENDATIONS, *supra* note 44, ¶ 20 of Subcommittee on Police and General Laws Recommendations.

<sup>169</sup> ENGLER'S ACTION PLAN, *supra* note 30, at 15. The plan explains further that "[t]his proposal is designed to address the frustration of police who repeatedly pick up young children from the streets at night to turn them over to indifferent parents." ENGLER'S ACTION PLAN, *supra* note 30, at 19 n.32. Curfew refers to "[a] law (commonly an ordinance) which imposes on people (particularly children) the obligation to remove themselves from the streets on or before a certain time of night." BLACK'S LAW DICTIONARY, *supra* note 49, at 381.

<sup>170</sup> Memorandum, Missouri, *supra* note 106.

<sup>171</sup> Peter Applebome, *Parents Face Consequences as Children's Misdeeds Rise*, N.Y. TIMES, Apr. 10, 1996, at A1.

the household.<sup>172</sup> Even so, this holistic approach—requiring parents to accompany their children to court, to participate in treatment programs and to pay for their children's criminal acts—is a reasonable means to achieve a vital end: increased parental responsibility for the upbringing of the children with whom they are entrusted.<sup>173</sup>

### *B. Direct Prevention and Intervention Initiatives*

"Prevention is everything. By the time I was [twelve], it was too late," warns Stanley "Tookie" Williams, death row inmate and co-founder of the nation's largest street gang, the Crips.<sup>174</sup>

Making inroads into the crisis of juvenile crime will require states to focus not just on punishing teens, but also on preventing the development of criminal values and mind-sets.<sup>175</sup> In marked

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<sup>172</sup> *Id.*

<sup>173</sup> Parents have historically been held to a high standard of responsibility for the upbringing of their children. Upon presenting the Ten Commandments—prohibiting such things as murder, adultery, stealing and lying—Moses instructed the Nation of Israel: "Impress [these commandments] on your children. Talk about them when you sit at home and when you walk along the road, when you lie down and when you get up." *Deuteronomy* 5:17-19, 6:7 (New Int'l Version 1978).

<sup>174</sup> James Willwerth, *Lessons Learned on Death Row*, *TIME*, Sept. 23, 1996, at 58 (reporting that Williams is condemned to death for the murders of four unresisting victims).

<sup>175</sup> The former governor of Florida, Senator Bob Graham, articulates the need to increase prevention and intervention efforts: "One of the problems that we're facing all over the country is that we're chasing yesterday's crisis. We've got to begin to get ahead of the problem, not just look for the method of operation for yesterday's crime and try to build a fence around that." *This Week with David Brinkley*, *supra* note 18; see Pizzigati testimony, *supra* note 51 ("Community-based youth programs that prevent first-time and recidivist crime are far sounder investments [than huge expenditures for prison complexes] . . . . Juvenile and adult violent crime can be reduced by investing in strategies that successfully address the root causes of crime and provide opportunities for young people."); Editorial, *Wrong Approach to Teen-Age Crime*, *N.Y. TIMES*, June 30, 1996, at 14 ("[Y]outh development and crime prevention programs . . . do not



contrast to the prevalent "get-tough" rhetoric frequently invoked by state executives, references to the importance of prevention and intervention are rarely, but occasionally, offered.<sup>176</sup>

When prevention and intervention are addressed by gubernatorial initiatives, it is usually in the context of youth diversion programs.<sup>177</sup> Governor Roy Romer's (D-Colo.) "14-Point Plan for

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sound as catchy or bold as the get-tough-on-kids proposals circulating . . . in the states. But over time they may do a lot more to reduce crime—and rescue more than a few youngsters in the bargain."); *ABC World News Tonight*, *supra* note 51 (presenting an early warning system developed by California authorities to help the state focus on rehabilitation for juveniles who, statistically, are likely to become violent youth offenders); *This Week with David Brinkley*, *supra* note 18 ("It's a rehabilitation system that really is a misnomer. You can't rehabilitate people that have never been habilitated, who have wrong values, who kill without motive." (quoting Isaac Fulwood, former chief of police of the District of Columbia)).

Beyond saving lives, prevention efforts purportedly save money. According to Professor Mark A. Cohen, an economist at Vanderbilt University, preventing an "at-risk" youth from "turning into a juvenile delinquent and adult criminal" would save society up to \$2 million. Fox Butterfield, *Survey Finds That Crimes Cost \$450 Billion a Year*, N.Y. TIMES, Apr. 22, 1996, at A5.

<sup>176</sup> Addressing Arkansas lawmakers, former Governor Jim Guy Tucker (D-Ark.) stated that "prevention efforts . . . need the same rigorous reality check as do enforcement efforts." Press Release from Office of the Governor, State of Arkansas (Dec. 8, 1994) (on file with *Journal of Law and Policy*). Jim Guy Tucker resigned from office on July 15, 1996. Steve Barnes, *Arkansas Governor Resigns after Furor*, N.Y. TIMES, July 16, 1996, at A10.

<sup>177</sup> The goal of a youth diversion program is to deter juvenile crime by changing juvenile behavior and attitudes, as well as creating alternatives to life on the street. A leader in this field is the Young Men's Christian Association ("YMCA"), having developed programs nationally that divert young people from gangs and drugs. Editorial, *Saving Future Dollars*, FORT WORTH STAR-TELEGRAM, Jan. 26, 1996, at 32 [hereinafter *Saving Future Dollars*]. Such programs use a wide range of methods to divert juvenile criminal activity. Programmatic elements include counseling, literacy and job-training classes, anti-drug projects, music and dance classes, midnight basketball leagues and college-bound workshops. Editorial, *Back on the Street*, PRESS-ENTERPRISE, Jan. 27, 1995, at F8; Barry M. Horstman, *Local Elections Council Candidates Tell Visions for City*, L.A. TIMES, Oct. 31, 1987, at 1; Jim Specht, *With More Cuts, McCandless Could Vote for Crime Bill*, GANNETT NEWS SERVICE, Aug. 17, 1994, available in WESTLAW, 1994 WL 11256369. It is estimated that every dollar invested in youth diversion programs can save up to \$10.00 on police and

a Colorado Partnership Against Violence" proposed funding the creation of programs that provide services such as "mentoring, job skill development, substance abuse prevention, transition for juveniles back into the community, and early childhood development."<sup>178</sup> The proposal resulted in legislation appropriating \$1.2 million for community-based programs which provide "meaningful opportunities to juveniles who might otherwise become involved in the juvenile justice system."<sup>179</sup> Governor Nelson's (D-Neb.) youth crime initiatives included earmarking nearly \$2.8 million for prevention, intervention and treatment efforts for youth at risk.<sup>180</sup>

Rather than simply requesting money for youth diversion programs generally, Governor James Hunt (D-N.C.) was specific. Governor Hunt's "major new initiative aimed at juvenile crime," called "Save Our Students" ("SOS"), sets up special after-school programs in the state's middle schools.<sup>181</sup> Staffed by volunteers from the community, the program provides "challenging, enriching activities" such as tutoring, computer training, mentoring and athletic activities.<sup>182</sup> The governor's requested allocation to fund SOS programs in every middle and junior high school was set at \$20 million.<sup>183</sup> Although the legislature limited the first year allocation to \$4.65 million, fifty-two programs received three-year SOS grants to commence the after-school alternative.<sup>184</sup>

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prisons, as well as personal and property damage. *Saving Future Dollars, supra*, at 32.

<sup>178</sup> 14-Point Plan, *supra* note 62, at 2 ¶ 14.

<sup>179</sup> Legislative Council Staff, Colorado, *supra* note 81, at 4. The supplemental appropriation was passed and signed by the governor on September 13, 1993, to fund youth diversion programs. H.B. 1004, 59th General Assembly (Colo. 1993).

<sup>180</sup> NEBRASKA INITIATIVES, *supra* note 55 (earmarking for prevention and intervention efforts, \$448,000.00 by the state's Department of Corrections, \$500,000.00 for gang resistance efforts and \$1.8 million in federal funds).

<sup>181</sup> Governor Jim Hunt, Live Address 4-5 (Jan. 12, 1994) (transcript on file with *Journal of Law and Policy*).

<sup>182</sup> Press Release, North Carolina (Jan. 13, 1994), *supra* note 55, at 4-5.

<sup>183</sup> Memorandum from Office of the Governor, State of North Carolina, Gov. Hunt's Crime Fighting Plan 7-8 (not dated) (on file with *Journal of Law and Policy*) [hereinafter Memorandum, North Carolina].

<sup>184</sup> Press Release from North Carolina Department of Human Resources (Sept. 14, 1994) (on file with *Journal of Law and Policy*).

Another approach to deter juvenile crime would centralize descriptive information regarding all available prevention and intervention programs. Governor Roy Romer (D-Colo.) proposed the development of a system to "evaluate and coordinate current prevention and intervention programs, and to provide a clearinghouse of information on these programs."<sup>185</sup> Governor Hunt (D-N.C.) endorsed the concept of resource centers located near elementary schools which "would serve as 'one stop' clearinghouses to provide critical services for families" including daytime and after-school child care, health care, agency referrals and parental training.<sup>186</sup>

A third prevention-based initiative would seek to create a "skilled work force of at-risk youth[s]."<sup>187</sup> Governor Ben Nelson

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<sup>185</sup> 14-Point Plan, *supra* note 62, at 2 ¶ 13. One such system developed in Colorado is a crucial part of a new "juvenile assessment center." Ginny McKibben, *Center to Help Kids in Trouble*, DENVER POST, May 29, 1995, at B2. The center provides at-risk youths with "fast, personal attention long before they face serious criminal charges." *Id.* The purpose of the 24-hour assessment center is to serve as a clearinghouse which quickly connects troubled teens with available services that can address a juvenile's specific intervention needs. *Id.* After the child is taken to the center by police or referred by school administrators, the child is subjected to an intense evaluation by a team of 12 specialists. *Id.* Thereafter, the offender is transferred into a "tailor-made program" based on the youth's evaluation, lifestyle, school records, home life and mental health. *Id.* These programs may address chemical abuse, tutoring, parenting, suicide counseling or even recreational programming to reduce idle time. *Id.* One primary benefit of this clearinghouse approach to intervention services is that it maximizes the effective use of community resources. *Id.*; see Cindy Elmore, *Police Awaiting New Juvenile Center: Clearinghouse to Help Delinquents, Truants Quicker*, SUN-SENTINEL, May 22, 1995, at 1B (reporting on a new juvenile center clearinghouse through which every delinquent youth, after evaluation, may be assigned to one of dozens of programs and agencies designed specifically to address that youth's needs); David Glovin, *Losing the Battle at Both Ends*, RECORD, Mar. 13, 1994, at 1 (reporting that "New Jersey lacks a comprehensive strategy for attacking delinquency in its infancy").

<sup>186</sup> Memorandum, North Carolina, *supra* note 183, at 8.

<sup>187</sup> NEBRASKA INITIATIVES, *supra* note 55. "At-risk youths" describes a category of young people whose social background places them "at-risk" of serious educational, economic and social failure. See Donald Warshaw, *Panel Urges Fundamental Changes in Training "At-Risk" Youths for Work*, STAR-LEDGER, Sept. 17, 1992, available in 1992 WL 11082431. A number of social

(D-Neb.) suggests establishing vocational programs which would employ at-risk young people in constructing necessary modifications to government buildings in order to increase accessibility for disabled Nebraskans.<sup>188</sup>

Proposals for vocational programs are complicated, however, by a scarcity of youth employment opportunities.<sup>189</sup> Nationally, there are more than two eligible young people for every public-sector summer job.<sup>190</sup> In order to minimize this unavailability of youth employment, Governor Romer (D-Colo.) announced that he would

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factors are used to designate a young person as "at-risk." These factors include: (1) school dropouts or students with low academic achievement; (2) children from poor families; (3) children from single-parent families; (4) children from inner cities or neighborhoods with high crime rates; (5) teenage pregnancy; (6) victims of crime or sexual abuse; (7) children with mental health problems or learning disabilities; and (8) gang members. See Bob Baker, *L.A. OKs Youth-At-Risk Unit to Counter Gangs*, L.A. TIMES, Jan. 26, 1989, metro, at 2; Denise Barnes, *Program Bridges Youth to Business Lotion Sales to Build Self-Esteem*, WASH. TIMES, Feb. 15, 1994, at C6; Nancy Garland, *UM Conference Centers on "At-Risk" Population*, BANGOR DAILY NEWS, July 23, 1993, available in 1993 WL 6324591; Skip Maner, *"Green" Business in the Inner City*, BALTIMORE EVENING SUN, May 16, 1994, at 7A.

<sup>188</sup> NEBRASKA INITIATIVES, *supra* note 55; see Edwards Address, *supra* note 113, at 7 (proposing the development of "part-time opportunities for at-risk students in the inner cities").

<sup>189</sup> *Summer Job Programs Delayed by Budget Fight*, N.Y. TIMES, Apr. 14, 1996, at 31 [hereinafter *Summer Job Programs*] (quoting labor secretary Robert B. Reich, explaining that because of the dearth of public-sector employment, "it is even more critical that farsighted business leaders create private-sector summer jobs" for young people). This scarcity of jobs for young people is considered to be one of the central "challenges for the black community." Bob Herbert, *Men and Jobs*, N.Y. TIMES, Sept. 30, 1996, at A17. Geoffrey Canada, president of New York City's Rheedlen Centers for Children and Families, describes the deleterious effect upon youths who are unable to find employment:

[W]e have young people who start off really excited about work. They're 14, 15, 16 years old . . . out with their working papers knocking on doors, and they find that there are no jobs. They become 17, 18, 19—the same thing. No jobs. And after a while the resilient kind of behavior that [they] need to continue looking [for employment] can be lost.

*Id.*

<sup>190</sup> *Summer Job Programs*, *supra* note 189, at 31.

implore the private sector to provide jobs and vocational training for at-risk young adults.<sup>191</sup>

Investing in prevention and intervention is beneficial, not only to individual youths, but also to society. Research indicates that such programs are “particularly potent” in curbing violence among juveniles.<sup>192</sup> By intervening early, the tremendous costs of crime and incarceration are reduced while adding a productive taxpaying contributor to the economy.<sup>193</sup>

By attaching prevention and intervention initiatives to their juvenile crime packages, these governors implicitly communicate a belief that juvenile justice reform cannot be singularly concerned with punishment. Reform must also contemplate prevention-based solutions in order to make a long-term impact on juvenile crime. Such reform is laudable. These governors are willing to move beyond politically-advantageous, “get-tough” rhetoric by delving into policy considerations aimed at achieving long-term solutions.

#### IV. ADMINISTRATIVE REFORM INITIATIVES

By proposing prevention and intervention initiatives, state executives counter a political perception that the electorate is hungry for a punitive revamping of the criminal justice system.<sup>194</sup> In accord with this perception, however, many governors propose administrative initiatives which would make juvenile justice less intent on prevention and intervention, and more concerned with punishment. Proposals to make the mission of juvenile justice more

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<sup>191</sup> 14-Point Plan, *supra* note 62, at 2 ¶ 12.

<sup>192</sup> Ralph Blumenthal, *Arts Backed as Aid for Troubled Youths*, N.Y. TIMES, Apr. 26, 1996, at C5.

<sup>193</sup> Fox Butterfield, *Intervening Early Costs Less Than '3-Strikes' Laws, Study Says*, N.Y. TIMES, June 23, 1996, § 1, at 2 (reporting that intervention programs for young people “are far more cost-effective in preventing crime” than are “three strikes and you’re out” laws which attack crime by mandating lengthy prison sentences).

<sup>194</sup> See SOURCEBOOK, *supra* note 25, at 196 tbl.2.48. A 1994 public opinion poll found that 49% of respondents felt that the “government needs to make a greater effort . . . in trying to punish and put away” violent criminals, while only 32% felt that efforts should focus on rehabilitation. SOURCEBOOK, *supra* note 25, at 196 tbl.2.48.

punitive and to increase the availability of juvenile incarceration serve as further evidence of the gubernatorial move to intentionally retreat from America's commitment to invest in the lives of young offenders.

*A. Recreating the Mission and Administration of Juvenile Justice*

Along with reform initiatives that have a direct impact on juvenile offenders, governors across the country are proposing administrative improvements aimed at creating a more coherent juvenile justice system. Frequently this process begins by establishing a study commission which evaluates the present system and makes recommendations for change.<sup>195</sup> Gubernatorial proposals for systemic change can be classified into two categories of reform: mission-clarification and department-consolidation.

Mission-clarification centers on gubernatorial efforts to rename the state's oversight department and to amend the juvenile code in order to clarify the new or changing purpose of the state juvenile justice system. Many departments which oversee the administration of juvenile justice are named something analogous to the

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<sup>195</sup> Study commissions are generally instituted by the governor and assigned a date for reporting, at which time a commission's findings and proposals will be presented. Thereafter, it is within the governor's discretion which commission proposals will be included into the official gubernatorial legislative agenda. *See, e.g.,* Memorandum, Illinois (Apr. 6, 1994), *supra* note 68, at 1 (directing the Illinois Criminal Justice Information Authority to "draft legislation designed to improve the effectiveness and administration of the juvenile justice system"); Memorandum, North Dakota, *supra* note 62, at 7 (presenting the recommendations of the Governor's Juvenile Justice Task Force); Press Release from Office of the Governor, State of Arkansas, *Tucker Announces New Youth Commission and Families Partnership* (Mar. 17, 1995) (on file with *Journal of Law and Policy*) (announcing the formation of the Governor's Youth Commission to "aid, advise, and participate in the development of the state's juvenile crime prevention policy"); Press Release, Indiana (May 8, 1995), *supra* note 62 (reporting on the work of the Governor's Juvenile Code and Youth Gang Study Commission); Press Release, Virginia (Mar. 9, 1995), *supra* note 16, at 1 (announcing the creation of the Governor's Commission on Juvenile Justice Reform).

Department of Health and Rehabilitative Services<sup>196</sup> or the Department of Youth and Family Services.<sup>197</sup> Referring to Florida's Department of Health and Rehabilitative Services, conservative columnist George Will notes that "[t]he word crime doesn't appear in that [title]. It turns out to be a health problem. The word punishment doesn't appear."<sup>198</sup>

Inspired by similar concerns, a number of governors have proposed initiatives to rename the governmental department which oversees the state's juvenile justice system. For example, the Virginia Governor's Commission recommends that the Department of Youth and Family Services be changed to a name that "more accurately reflect[s] the mission of the department."<sup>199</sup> At the same time, the Commission recommends that the department return to its historic roots of highly structured correctional facilities emphasizing responsibility, work and a military school-style daily regimen.<sup>200</sup> In Maryland, by recommending the replacement of just one word in the agency's name, Governor Glendening (D-Md.) explicitly reveals his reform agenda. His proposal would change the Department of Juvenile *Services* to the Department of Juvenile *Justice*.<sup>201</sup>

Governors are also proposing mission-clarification to their state's juvenile code. Fulfilling "one of his four major legislative priorities,"<sup>202</sup> Governor Bush (R-Tex.) changed the name of the state's juvenile justice law from "Delinquent Children & Children in Need of Supervision" to the "Juvenile Justice Code."<sup>203</sup> Likewise, the Virginia Governor's Commission recommends a less than

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<sup>196</sup> *This Week with David Brinkley*, *supra* note 18 (referring to Florida's youth crime agency).

<sup>197</sup> RECOMMENDATIONS, *supra* note 44, at ¶¶ 2, 8 of Subcommittee on Corrections Recommendations (referring to Virginia's agency).

<sup>198</sup> *This Week with David Brinkley*, *supra* note 18.

<sup>199</sup> RECOMMENDATIONS, *supra* note 44, ¶ 8 of Subcommittee on Corrections Recommendations.

<sup>200</sup> RECOMMENDATIONS, *supra* note 44, ¶ 4 of Subcommittee on Corrections Recommendations.

<sup>201</sup> GLENDENING, *supra* note 63, at 11 (emphasis added).

<sup>202</sup> This legislative priority is characterized as "a tougher approach to juvenile crime." Press Release, Texas (May 31, 1995), *supra* note 42, at 1.

<sup>203</sup> Press Release, Texas (May 31, 1995), *supra* note 42, at 1.

subtle change to its state juvenile code. The first of fifty-seven specific reform recommendations states that “[t]he purposes of the juvenile justice system should be changed. Currently the juvenile code . . . lists the ‘*welfare of the child*’ as the top priority. The subcommittee recommends amending the code so that *public safety* is listed as the primary goal . . . .”<sup>204</sup> Additionally, a secondary goal “should be identified as holding the juvenile accountable for his or her actions . . . .”<sup>205</sup> Reversing the old adage, gubernatorial reform is clearly becoming more punitive, not just in deed but also in word.

Beyond the semantic revisions of departmental names and statutory codes, gubernatorial initiatives include proposals to consolidate all juvenile service agencies into a single oversight department.<sup>206</sup> Attached to these initiatives are recommendations that the consolidated juvenile agencies be removed from oversight departments such as the “Division of Children, Youth, and Families”<sup>207</sup> or the “Department of Health and Welfare,”<sup>208</sup> and instead, be established as autonomous agencies, independent from

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<sup>204</sup> RECOMMENDATIONS, *supra* note 44, ¶ 1 of Subcommittee on Courts and Sentencing Recommendations.

<sup>205</sup> RECOMMENDATIONS, *supra* note 44, ¶ 1 of Subcommittee on Courts and Sentencing Recommendations.

<sup>206</sup> *See, e.g.,* NEBRASKA INITIATIVES, *supra* note 55 (proposing that four state agencies presently involved in the oversight of juvenile justice be consolidated into one agency called the “Office of Juvenile Services”). *See also* Memorandum from the National League of Cities (not dated) (on file with *Journal of Law and Policy*) (recommending that the federal government house under one oversight office “all existing youth . . . programs that are currently scattered” between various departments).

An oversight department arises from an organizational structure which places particular governmental agencies under the auspices of another governmental agency. For example, New Hampshire’s Department of Health and Human Services is the oversight department for the Bureau of Children. N.H. REV. STAT. ANN. § 170-G:2 (1994 & Supp. 1996).

<sup>207</sup> Memorandum, New Hampshire, *supra* note 62 (referring to New Hampshire’s agency).

<sup>208</sup> Press Release, Idaho (Mar. 6, 1995), *supra* note 41 (referring to Idaho’s agency).



the auspices of other state departments.<sup>209</sup> Although these proposals are largely administrative, aimed at emphasizing the new punitive approach to juvenile crime, the impact will most certainly be significant on the way juvenile offenders are held responsible for their criminal actions.

### *B. Initiatives for Infrastructure Development*

Just as a chief executive officer proudly cuts the red ribbon of a new factory, or a minister glories in a new sanctuary, or a principle basks in the glow of a new school building, so too do governors treasure building new prisons.<sup>210</sup> A mammoth forty to fifty billion tax dollars are consumed annually by correctional facilities nationwide.<sup>211</sup> Even so, given the increasingly punitive

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<sup>209</sup> See, e.g., Cohan, *supra* note 158, at 1 ("Kansas ended 20 years of debate when lawmakers finally decided to strip the Department of Social and Rehabilitative Services of responsibility for juvenile justice . . . [creating] a new Youth Authority, which will have jurisdiction over juvenile justice . . ."); Memorandum, New Hampshire, *supra* note 62 ("The Youth Development Center was removed from the jurisdiction of the Division of Children, Youth, and Families within the state's Health and Human Services and [was] renamed the Department of Youth Development Services."); Press Release, Idaho (Mar. 6, 1995), *supra* note 41 (reporting that Governor Batt signed a bill which created a new Department of Juvenile Justice, "[r]emoving the current juvenile justice program from the Department of Health and Welfare").

<sup>210</sup> Governor Zell Miller (D-Ga.) has evidenced his tough record on crime by proudly declaring that he has incarcerated 10,000 more inmates and built 10 new prisons since taking office. Miller Remarks, *supra* note 20. Former Governor Edwin Edwards (D-La.) boasted that he "built 6,500 of the 16,000 prison cells in [his] state—more than any other governor." Edwards Address, *supra* note 113, at 8.

<sup>211</sup> Butterfield, *supra* note 193, § 1, at 2. Though this figure is staggering, Professor Steve Hanke, an economist at Johns Hopkins University, argues that even more money should be invested in building prisons. Steve H. Hanke, *Incarceration Is a Bargain*, WALL ST. J., Sept. 23, 1996, at A20. According to Hanke, "an increase in the prison population reduces all major categories of violent and nonviolent crime." *Id.* Citing Harvard University economist Steven D. Levitt, the argument is that empirical data show that "[f]or each 1,000-inmate increase in the prison population, the following annual reductions in crimes" will follow: four less murders, 53 less rapes, 700 less auto thefts, 1100 less robberies, 1200 less assaults, 2600 less burglaries and 9200 less larcenies. *Id.*

focus of juvenile justice reform, it is not surprising that numerous gubernatorial initiatives call for the construction of new juvenile prisons.

Governor Engler's (R-Mich.) proposal for constructing a Michigan juvenile prison is representative of this trend. His plan would create a youth prison for offenders between the ages of fourteen and nineteen who have been tried as adults.<sup>212</sup> The justifications proffered for this new prison are to add an additional sentencing option for judges, to enable segregation of juveniles from the adult prison population and to "send a strong message [to young people] about the consequences of violent activities."<sup>213</sup>

Gubernatorial proposals to build incarceration facilities take the form of requests for legislative funding<sup>214</sup> and are particularly aimed at the establishment of maximum security juvenile facilities.<sup>215</sup> In opening a new juvenile facility in Texas, Governor George W. Bush (R-Tex.) quintessentially defined the gubernatorial

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The economist further insists that building more prisons and incarcerating more prisoners makes economic sense, as well. Levitt estimates "the annual amount of damage the average criminal would do if on the loose" at \$53,900.00. *Id.* He then subtracts "the annual cost of incarceration," about \$30,000.00 per prisoner. *Id.* The result is "an average net benefit of [\$23,900.00] per year for each criminal behind bars." *Id.*

<sup>212</sup> ENGLER'S ACTION PLAN, *supra* note 30, at 9. For a discussion on juvenile offenders tried as adults, see *supra* Part I.A.

<sup>213</sup> ENGLER'S ACTION PLAN, *supra* note 30, at 9. See RECOMMENDATIONS, *supra* note 44, ¶ 1 of Subcommittee on Corrections Recommendations (recommending that the Department of Corrections build and operate "separate programs and accommodations" especially suited for "young or physically small juvenile offenders who are tried and sentenced as adults").

<sup>214</sup> See, e.g., Press Release, North Carolina (Jan. 13, 1994), *supra* note 55, at 10 (requesting approximately \$3.2 million in capital and \$7.2 million per year in operating expenses to expand juvenile incarceration facilities); Press Release, Texas (May 31, 1995), *supra* note 42, at 2 (approving \$37.5 million in construction bond funds to build additional juvenile detention beds and \$22.5 million for hiring and training local probation officers).

<sup>215</sup> See, e.g., NEBRASKA INITIATIVES, *supra* note 55 (announcing the construction of a "Secure Youth Confinement Facility" for the state's "most dangerous youth[s]"); Press Release, Illinois (Nov. 10, 1994), *supra* note 12, at 2 (calling for the "establishment of secure care facilities for dangerous juvenile delinquents"); Ridge Address, *supra* note 13, at 4 (calling for the state to "build maximum security prisons for youthful predators").

push to build new youth prisons: "By expanding the number of detention beds available for juvenile offenders, we are sending a strong message. Bad behavior will be punished and we now have the detention capacity to get young offenders off our streets."<sup>216</sup>

In the present movement to try juveniles as adults and sentence them to longer periods of incarceration, it is understandable that the nation's juvenile detention facilities are overcrowded. The state of Florida, for example, presently maintains some of its juvenile detention centers at 200% the capacity for which they were built.<sup>217</sup> These overcrowded conditions result in less availability to treatment programs which are, in theory, an essential component of juvenile incarceration.<sup>218</sup> Although preferable to locking children up with adult prisoners, building more juvenile detention facilities is not the best answer to juvenile crime.<sup>219</sup> Governors must resist the political pressure to invest scarce resources in prisons which serve only to separate children from their families, communities, schools, friends and neighbors.<sup>220</sup> By reinvesting directly in the offender's life, rather than in the detention facility,

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<sup>216</sup> Press Release from Office of the Governor, State of Texas 1 (June 29, 1995) (on file with *Journal of Law and Policy*).

<sup>217</sup> Butterfield, *supra* note 14, at 1.

<sup>218</sup> See Butterfield, *supra* note 14, at 1 (reporting that overcrowded juvenile detention facilities are "forced to let more young people out . . . with less treatment . . . than the law intended").

<sup>219</sup> In fact, at a cost of \$93.00 per day, it is cheaper to send a young person to Harvard University for a year than it is to incarcerate him or her for the same period of time. Butterfield, *supra* note 14, at 1.

<sup>220</sup> The decision of whether to invest scarce resources in prisons was recently confronted by the Los Angeles County Board of Supervisors. Carey Goldberg, *County Panel Makes a Hard Choice: Charity Over Prisons*, N.Y. TIMES, Sept. 13, 1996, at A14. The Board was faced with a particularly difficult political choice: Whether to take \$19 million out of "general relief, the last-resort aid for the indigent," in order to fund the necessary operational costs of a brand new, but dormant, \$373 million high-tech prison. *Id.* In a surprising victory for the poor, the proposal was removed from consideration, despite political pressure caused by the fact that Los Angeles County's jails are so overcrowded "that the average prisoner serves less than a quarter of his sentence before being released." *Id.*

society offers juveniles an opportunity to succeed.<sup>221</sup> Helping a young person to receive an education, overcome an addiction, develop job skills, receive psychological counseling, gain computer skills and learn from a mentor will give the juvenile offender a fresh start. This rehabilitative approach, when appropriate, will certainly be more beneficial than that which is gained from incarceration—a criminal record, animosity toward society and a wealth of knowledge learned at the feet of experienced, hardened criminals.

## CONCLUSION

It is not surprising that governors across the country are focusing significant attention on the matter of juvenile crime and juvenile justice reform. Nor is it surprising that such attention is marked by uncompromising rhetoric and “get-tough” reform initiatives. Experts on crime are presently, and publicly, predicting a wave of juvenile crime that is unprecedented in American history.<sup>222</sup> According to the United States Justice Department, if current trends continue, the number of juveniles arrested for violent crimes will double over the next fourteen years.<sup>223</sup>

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<sup>221</sup> One juvenile inmate described his experience at the New Jersey Training School for Boys: “We just laid around there . . . . There were a lot of fights. . . . It was a place where nobody cared about you, so you didn’t care about nobody.” Jennifer Preston, *After Youth Boot Camp Comes a Harder Discipline*, N.Y. TIMES, Sept. 3, 1996, at B1 (quoting 18-year-old Nelson Colon who was incarcerated for selling drugs).

<sup>222</sup> The prediction is based largely on demographic trends. By the year 2005, the number of 14- to 17-year-old males will increase by 23%. Fox Butterfield, *Experts on Crime Warn of a ‘Ticking Time Bomb,’* N.Y. TIMES, Jan. 6, 1996, at 6 (quoting Professor John J. DiIulio, Jr., of Princeton University as saying, “we are in the lull before the crime storm”). This significant population increase in male youths is threatening, according to experts, because the rate of violent crime among teenagers has “skyrocketed over the last decade.” *Id.*; see Richard Lacayo, *Law and Order*, TIME, Jan. 15, 1996, at 50. Additionally, this demographic trend occurs at a time when American youths are “being pushed toward adolescent criminality by neglect, abuse and just plain bad parenting.” Tom Morganthau, *The Lull Before the Storm?*, NEWSWEEK, Dec. 4, 1995, at 42.

<sup>223</sup> Fox Butterfield, *Grim Forecast Is Offered on Rising Juvenile Crime*, N.Y. TIMES, Sept. 8, 1995, at A5.

Yet, as the governors rush to propose sweeping changes, they face the risk of allowing "political gamesmanship" to "muddle and confuse" the national response to juvenile crime.<sup>224</sup> The philosophical ideal that children deserve our prevention and intervention efforts faces the risk of being replaced by a punitive-centered approach that finds solace in an "out of sight, out of mind" philosophy.<sup>225</sup> Political rhetoric that could encourage all of our nation's children to strive for excellence is squelched by "sound bites" that address the criminal behavior of only a small number of juvenile offenders, threatening such behavior with harsh "get-tough" responses. Public policy which could attack the plethora of inadequacies that American society offers to its youngest citizens faces the risk of resulting in cosmetic solutions that do not eradicate juvenile criminal behavior, but merely postpone it.<sup>226</sup>

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<sup>224</sup> Morgenthau, *supra* note 222, at 42. See THE REAL WAR, *supra* note 10, at 134-35 ("The temptation to punish all delinquent youth[s] with harsher penalties because of the violent activities of a few carries real political value.").

<sup>225</sup> Consider this observation of the National Criminal Justice Commission:

Some . . . wish to write off [juvenile offenders] as tragedies of a 'lost' generation who can never be brought into the mainstream of American life. We are almost relieved when more troubled youths are sent to jail, as if it erases the problem from our consciousness and confirms the expectation we had for them.

THE REAL WAR, *supra* note 10, at 134.

<sup>226</sup> Vivid examples of inadequate investment in our children's future is provided by two recent societal crises. First, consider the school overcrowding crisis in New York City. The 1996-97 school year commenced with 91,000 more students than the school system's facilities are designed to accommodate, almost 10% over capacity. Pam Belluck, *Classes Open in New York City, In Closets, Hallways, Cafeterias*, N.Y. TIMES, Sept. 5, 1996, at A1. As a result, learning environments for children include windowless closets, hollow locker rooms and noisy cafeterias. *Id.* Along with makeshift classrooms, school officials are coping with the crisis by running shorter school days, in violation of New York State requirements. *Id.* The Board of Education's current five-year spending plan earmarks funds to build space for only 30,000 students, even though they predict space for 300,000 students will be required by the year 2004. *Id.* Considering the situation, one prominent New York City politician succinctly concluded, "This is reckless endangerment of our children's future." Jacques Steinberg, *School Overcrowding to Last, New York City Officials Say*, N.Y. TIMES, Sept. 6, 1996, at A1 (quoting the Manhattan borough president, democrat Ruth W. Messinger).

In a recent work by social activist Jim Wallis, the present crisis of America's children is succinctly described:

When our children become our poorest citizens; our most at-risk population; the recipients of our worst values, drugs, sicknesses, and environmental practices; our most armed and dangerous criminals; the chief victims and perpetrators of escalating violence; an object of our fears more than our hopes, then their plight has become the sign of our [nation's] crisis.<sup>227</sup>

Wallis recommends a "new kind of politics" that transcends traditional notions of conservative and liberal.<sup>228</sup> In the present movement of juvenile justice reform, political leaders must emerge who are committed to making our society a safer place while still recognizing the dignity of every juvenile offender; who abandon party lines in the search for a balanced juvenile justice system that is marked by both effectiveness and compassion; who, rather than instinctively weighing public sentiment, are guided by personal principle in shaping the societal framework under which America's children will live.

Present-day reformers, like the "early reformers"<sup>229</sup> of the juvenile justice system nearly a century ago, face a competing duet of honorable principles. The original reformers acknowledged that the principle of justice demands that offenders, even juvenile

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A second example is President Clinton's failure to "use the powers of his office to lead the war on drugs." Daniel Klaidman, *The Politics of Drugs: Back to War*, NEWSWEEK, Aug. 26, 1996, at 57. According to a recent federal survey, "drug use by 12- to 17-year-olds has jumped . . . 80% since Clinton won the presidency in 1992." *Id.* While forcefully advocating for public policy which would require children charged with violent crimes to be adjudicated as adults, the president has essentially ignored America's soaring teenage drug use. See Klaidman, *supra*, at 57-58 (presenting Clinton's record on the so-called "war on drugs"); *supra* note 26 (presenting President Clinton's proposal to adjudicate juveniles as adults).

<sup>227</sup> JIM WALLIS, *THE SOUL OF POLITICS* 9-10 (1995).

<sup>228</sup> *Id.* at xiii-xv.

<sup>229</sup> *In re Gault*, 387 U.S. 1, 15 (1967) (labeling the founders of the juvenile court movement as "[t]he early reformers").

offenders, be held accountable for their unacceptable actions.<sup>230</sup> However, the reformers also understood that the principle of mercy demands that a child be granted special care, the opportunity to change and the chance to make a fresh start.<sup>231</sup> The cardinal challenge for present-day reformers is to once again acknowledge and carefully balance these two seminal juvenile justice principles: justice and mercy.<sup>232</sup>

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<sup>230</sup> *Id.* ("[The early reformers] were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone.").

<sup>231</sup> *Id.* at 15-18 (recognizing the early reformers insistence that the juvenile justice system be marked by "care and solicitude," treatment and rehabilitation).

<sup>232</sup> The careful balancing of the principles of justice and mercy is firmly established in world literature as a preeminently noble undertaking:

*He hath shown thee, O man, what is good;  
And what doth the Lord require of thee,  
But to do justly, and to love mercy,  
And to walk humbly with thy God?*

Micah 6:8.

*The quality of mercy is not strained,  
It droppeth as the gentle rain from heaven  
Upon the plain beneath:*

*And earthly power doth then show like God's  
When mercy seasons justice.*

WILLIAM SHAKESPEARE, THE MERCHANT OF VENICE act 4, sc. 1.