
1999

A Current Look at Ohio's Juvenile Justice System on the 100th Anniversary of the Juvenile Court

Scott C. Zarzycki

Follow this and additional works at: <https://engagedscholarship.csuohio.edu/clevstlrev>



Part of the [Criminal Law Commons](#), and the [Juvenile Law Commons](#)

[How does access to this work benefit you? Let us know!](#)

Recommended Citation

Note, Current Look at Ohio's Juvenile Justice System on the 100th Anniversary of the Juvenile Court, 47 Clev. St. L. Rev. 627 (1999)

This Note is brought to you for free and open access by the Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

A CURRENT LOOK AT OHIO'S JUVENILE JUSTICE SYSTEM
ON THE 100TH ANNIVERSARY OF THE JUVENILE COURT

I. INTRODUCTION	627
II. THE ORIGINS OF JUVENILE COURT.....	630
A. <i>The Traditional Approach</i>	630
B. <i>The Cyclical Approach</i>	634
C. <i>The Real Reformers</i>	635
III. JUVENILE CRIME TODAY	637
A. <i>Statistical Analysis</i>	638
B. <i>The Perception of Rising Juvenile Crime</i>	640
IV. THE DIFFERENCE BETWEEN JUVENILES AND ADULTS	643
V. METHODS OF TRANSFER	645
A. <i>Waiver</i>	646
1. Discretionary	646
2. Mandatory.....	647
3. Presumptive	647
B. <i>Direct File and Statutory Exclusion</i>	647
C. <i>“Once an Adult/Always an Adult”</i>	649
VI. OHIO'S TRANSFER STATUTES	649
VII. ANALYSIS AND PROPOSALS	651
A. <i>Analysis of Ohio's Changes</i>	651
B. <i>New Idea</i>	653
C. <i>Recommendations</i>	654
VIII. CONCLUSION.....	655

I. INTRODUCTION

Public sentiment regarding the violent nature of America's adolescents has reached a boiling point.¹ Critics contend that the youth of today are not just committing more crimes, but that their very nature has somehow changed in the past twenty to thirty years from mischievous, young troublemakers to violent hardened criminals.² As a result of such hasty categorizations, our vocabulary includes all new phrases such as “superpredators,”³ “youth violence epidemic,”⁴ and “violent new breed.”⁵

¹Timothy W. Maier & Michael Rust, *A Decline in Crime?*, INSIGHT MAG., Apr. 27, 1998, available in 1998 WL 9105395.

²143 CONG. REC. S145 (daily ed. Jan. 21, 1997) (statement of Sen. Ashcroft).

³Bernadine Dohrn & Steven Drizin, *A Second Chance: Juvenile Delinquents Who Transformed Themselves and History*, CHI. TRIB., Mar. 4, 1999, available in 1999 WL 2849407.

State policy-makers have responded to such public opinions by enacting legislation that makes it easier to try juveniles as adults.⁶ These statutes were intended to make sentences longer and more harsh, insuring deterrence and retribution for young offenders, and increased safety for society.⁷ Since 1992, forty-seven states have adjusted their laws, in one way or another, to deal with the threat of juvenile crime.⁸ Of these states, forty have specifically lowered the requirements to transfer a juvenile to adult court.⁹

Ohio's new juvenile transfer statute became effective in 1996.¹⁰ This enactment lowered the age at which the state may transfer a juvenile to adult court from fifteen to fourteen-years-old, and broadened the situations in which transfer is mandatory.¹¹

The Federal government responded similarly by changing its laws in 1994, making it possible to transfer a thirteen-year-old to adult court.¹² Additionally, legislation has been recently proposed that would make states eligible for federal funding based upon enactment of laws mandating transfer of fifteen-year-olds to adult courts for certain offenses.¹³ Other federal legislative proposals suggest that there be fewer restrictions on incarcerating juveniles with adults.¹⁴

The response of the states and the Federal Government in enacting tougher juvenile laws was inappropriate for a number of reasons. First, evidence indicates that the rate of juvenile crime has been decreasing dramatically for the last several

⁴DeWayne Wickham, *To Save Country, Save Kids from Violence, AIDS*, USA TODAY, May 26, 1998, available in 1998 WL 5725647.

⁵Fox Butterfield, *Guns Are Blamed for '80s Rise in Teen Homicides "The Kids' DNA Has Not Changed,"* NEW ORLEANS TIMES-PICAYUNE, Dec. 10, 1998, available in 1998 WL 16080581.

⁶Ron Martz, *Juvenile Crime Wave May Be Just a Ripple*, NEW ORLEANS TIMES-PICAYUNE, Dec. 10, 1998, available in 1998 WL 16080580.

⁷Eric K. Klein, Note, *Dennis the Menace or Billy the Kid: An Analysis of the Role of Transfer to Criminal Court in Juvenile Justice*, 35 AM. CRIM. L. REV. 371, 374 (1998).

⁸Steven J. Morse, *Immaturity and Irresponsibility*, 88 J. CRIM. L. & CRIMINOLOGY 15, 16 (1997).

⁹PATRICK GRIFFIN ET AL., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, TRYING JUVENILES AS ADULTS IN CRIMINAL COURT: AN ANALYSIS OF STATE TRANSFER PROVISIONS iii (1998).

¹⁰OHIO REV. CODE ANN. § 2151.26 (West 1998).

¹¹*Id.*

¹²Holly Beatty, Comment, *Is the Trend to Expand Juvenile Transfer Statutes Just an Easy Answer to a Complex Problem?*, 26 U. TOL. L. REV. 979, 1007 (1995).

¹³William Raspberry, *GOP Cynicism on Juvenile Crime*, NEW ORLEANS TIMES-PICAYUNE, Sept. 29, 1998, available in 1998 WL 16066142.

¹⁴James S. Russell, AIA, *Detention Facilities: Locking Them Up Is Getting Tough the Best Way to Approach Prison Design? Or Should Facilities Respond to the Needs of the Populations Being Detained?*, ARCHITECTURAL REC., Dec. 1, 1998, available in 1998 WL 9811247.

years,¹⁵ thereby eliminating the justifications for harsher penalties. Second, treating juveniles as adults ignores the cognitive, emotional, and developmental differences between these two age groups,¹⁶ resulting in laws that do not protect society nor deter or rehabilitate our young offenders. Finally, strict provisions that completely remove judicial discretion and mandate transfer by statute may result in an unreasonably harsh sentence for an undeserving offender.

This Note takes a closer look at the problems associated with transferring juveniles to adult court by focusing on Ohio's juvenile transfer statute.¹⁷ Part II begins with an analysis of the history of the juvenile court, including its establishment and evolution throughout time.¹⁸ It also includes an analysis of how the common interpretation of the original approach to juvenile crime has created an overly narrow view of how to deal with the problem today.¹⁹ Part III examines the latest crime statistics that reveal a significant drop in juvenile crime.²⁰ This section also explores various alternative explanations for the apparent rise in juvenile crime during certain periods in the last twenty years.²¹ Part IV summarizes the cognitive, emotional, and developmental differences between juveniles and adults that justify a separate system for our young offenders.²² Part V analyzes the different methods used to transfer juveniles to adult courts, including waiver, direct file, statutory exclusion, and "once an adult, always an adult" provisions.²³ Part VI outlines the 1996 changes made to Ohio's transfer statute for both discretionary and mandatory transfer.²⁴ Part VII points out the problems associated with Ohio's transfer statute and brings to light inadequacies common to most state statutes that make juvenile transfer easier.²⁵ It also explores possible alternatives to transfer, including a proposal by the Ohio Criminal Sentencing Commission that suggests eliminating transfer and giving the juvenile court judge the ability to impose adult sentences.²⁶

Altogether, the most important message is that policy must be the product of well informed decision-making rather than merely a response to public outrage at

¹⁵David Westphal, *Murder Takes a Holiday: Violent Crime Rate Falls Again in U.S.*, ANCHORAGE DAILY NEWS, Nov. 23, 1998, available in 1998 WL 22726204.

¹⁶Elizabeth S. Scott, et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 222 (1995).

¹⁷See discussion *infra* Parts VI, VII.

¹⁸See discussion *infra* Part II.

¹⁹See discussion *infra* Part II.

²⁰See discussion *infra* Part III.

²¹See discussion *infra* Part III.

²²See discussion *infra* Part IV.

²³See discussion *infra* Part V.

²⁴See discussion *infra* Part VI.

²⁵See discussion *infra* Part VII.

²⁶Mark Tatge, *Convicted 10-Year-Olds Could Face Prison Terms*, PLAIN DEALER (Cleveland), Dec. 24, 1998, at 1A.

statistics that are largely blown out of proportion.²⁷ Adolescents are different than adults, and laws must reflect consideration of what makes them different if any goals of punishment are to be achieved.²⁸

II. THE ORIGINS OF JUVENILE COURT

There are great differences of opinion regarding the proper goals of a juvenile court system and the most effective ways to accomplish them. The following sections describe how this country has, at different stages of our history, experimented with different policies and procedures with respect to juveniles. Each section will explore different explanations for what may have been the driving force behind reform and how the juvenile justice system developed through time evolving into the system we have today.

A. *The Traditional Approach*

A history of the American Juvenile Justice System can be summarized in two phases. During the first phase, the “Progressives” formed the original juvenile court 100 years ago, founded upon the goals of treatment and rehabilitation.²⁹ This was accomplished through informal procedures where the juvenile court judge had abundant discretion regarding what was best for the child.³⁰ The second phase occurred in the 1960s, when the Supreme Court changed the whole nature of the system by granting juveniles procedural due process rights.³¹ The result was a more punitive system that totally resembled the adult criminal court.³²

At common law, children over seven years old were treated as adults.³³ The child was subjected to “arrest, trial, and in theory, to punishment like adult offenders” because the state was not thought to have the authority to grant juveniles different procedural protections.³⁴

A new movement, begun by the Progressives in the late 1800s, sought to treat juveniles differently than adults.³⁵ Their philosophy was that delinquency was more the result of social ills, such as poverty, rather than the child’s moral depravity.³⁶ Treatment and rehabilitation became the strategy in dealing with this group of individuals.³⁷ Punishment was reserved only for those who were old enough to be

²⁷See discussion *infra* Part III.

²⁸See discussion *infra* Part IV.

²⁹Beatty, *supra* note 12, at 981.

³⁰Beatty, *supra* note 12, at 983.

³¹Beatty, *supra* note 12, at 986.

³²Beatty, *supra* note 12, at 984-85.

³³*In re Gault*, 387 U.S. 1, 16 (1967).

³⁴*Id.*

³⁵Beatty, *supra* note 12, at 981.

³⁶Beatty, *supra* note 12, at 981.

³⁷Beatty, *supra* note 12, at 981.

held fully responsible for their wrongs.³⁸ This movement led to the establishment of the first juvenile court in Illinois one hundred years ago.³⁹

In juvenile court, when a child was suspected of committing a crime, the juvenile court would determine whether he or she was delinquent instead of guilty.⁴⁰ This was a civil proceeding without the "rigidity of the adult criminal system."⁴¹ The state, acting within its *parens patriae* capacity, was seeking to treat and not to punish the young offender; consequently, there was no need for procedural protections.⁴² Additionally, there were no lawyers present,⁴³ and the judge, instead of being trained in the law,⁴⁴ was to be versed in the subject of child welfare.⁴⁵

An intended benefit of juvenile court proceedings was less formality.⁴⁶ This afforded the judge flexibility to take into consideration the individual differences in each case and evaluate the needs of each young offender in accordance with the judge's own discretion.⁴⁷ An unintended effect of the juvenile court system was that over the years following its inception, the original goal of treatment slowly gave way to punishment.⁴⁸ By the 1960s, the purpose of the juvenile court seemed to mirror that of the adult criminal court; however, procedural protections remained nonexistent.⁴⁹ What had formed was a "gap between the originally benign conception of the system and its realities."⁵⁰

The Supreme Court, confronted with the unfairness of a juvenile system aimed at punishment without providing procedural protections, began affording some safeguards in *Kent v. United States* in 1966.⁵¹ However, with these procedural

³⁸Beatty, *supra* note 12, at 981.

³⁹Martin L. Forst & Martha-Elin Blomquist, *Cracking Down on Juveniles: The Changing Ideology of Youth Corrections*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 323, 324 (1991).

⁴⁰RALPH REISNER & CHRISTOPHER SLOBOGIN, *LAW AND THE MENTAL HEALTH SYSTEM: CIVIL AND CRIMINAL ASPECTS* 692 (2d ed. 1990).

⁴¹*Id.* at 693.

⁴²*In re Gault*, 387 U.S. 1, 15-16 (1967).

⁴³REISNER & SLOBOGIN, *supra* note 40, at 692.

⁴⁴REISNER & SLOBOGIN, *supra* note 40, at 692.

⁴⁵Klein, *supra* note 7, at 377.

⁴⁶Beatty, *supra* note 12, at 983.

⁴⁷Susan R. Bell, Comment & Casenote, *Ohio Gets Tough on Juvenile Crime: An Analysis of Ohio's 1996 Amendments Concerning the Bindover of Violent Juvenile Offenders to the Adult System and Related Legislation*, 66 U. CIN. L. REV. 207, 209 (1997).

⁴⁸Beatty, *supra* note 12, at 983.

⁴⁹Beatty, *supra* note 12, at 983.

⁵⁰*Breed v. Jones*, 421 U.S. 519, 528 (1975).

⁵¹*Kent v. United States*, 383 U.S. 541 (1966). *See also* *Kent v. United States*, 383 U.S. 541, 555 (1966).

While there can be no doubt of the original laudable purpose of the juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the

safeguards came a shift in focus from the individual offender to the underlying offense that was committed.⁵² The obvious result was even less focus on treatment and rehabilitation.

At the age of 16 and while still on probation, Morris Kent was apprehended by the police for housebreaking, robbery, and rape.⁵³ After two days and more than twelve hours of interrogation, he admitted to the alleged crimes as well as other similar offenses.⁵⁴ His mother was informed of his arrest the day after Kent was apprehended.⁵⁵ Her lawyer promptly objected to him being tried in adult court.⁵⁶

For one week after Kent's initial arrest, there was no arraignment or determination of probable cause.⁵⁷ Kent's attorney made several motions, including one for access to his social service file, all of which were never ruled on by the court.⁵⁸ The judge transferred the case to U.S. District Court after conducting a purported "full investigation."⁵⁹ The sentence Kent received was thirty to ninety years in prison.⁶⁰ The U.S. Supreme Court, stating that "the admonition to function in a parental relationship is not an invitation to procedural arbitrariness," held that a hearing is necessary before juvenile court jurisdiction may be waived.⁶¹ The Court also held that counsel is entitled access to records, and the juvenile court judge must state the reasons underlying the transfer to adult court.⁶² Finally, in the appendix to the opinion, the Court listed a number of factors a judge should consider before transferring a case to adult court.⁶³ Such factors include the nature of the offense (seriousness, violent), type of offense (against person or property), prosecutive merit, maturity of the offender, previous record, and amenability to rehabilitation.⁶⁴

A more profound procedural change in the juvenile system occurred one year later in *In re Gault*.⁶⁵ Unbeknownst to his mother, Gerald Francis Gault was taken into custody for making phone calls to a neighbor, Mrs. Cook, of the "irritatingly

immunity of the process from the reach of constitutional guarantees applicable to adults. *Id.*

⁵²Beatty, *supra* note 12, at 985.

⁵³*Kent*, 383 U.S. at 543.

⁵⁴*Id.* at 544.

⁵⁵*Id.*

⁵⁶*Id.*

⁵⁷*Id.*

⁵⁸*Kent*, 383 U.S. at 546.

⁵⁹*Id.*

⁶⁰*Id.* at 550.

⁶¹*Id.* at 555.

⁶²*Id.* at 555-57.

⁶³*Kent*, 383 U.S. at 566-67.

⁶⁴*Id.*

⁶⁵387 U.S. 1 (1967).

offensive, adolescent, sex variety.”⁶⁶ At an informal hearing, no one was sworn in, there was no sign of Mrs. Cook, no counsel, and no transcript;⁶⁷ furthermore, the Gaults did not receive notice of his hearing until two months later.⁶⁸ After Gerald was questioned, the judge said he would think about the situation, and then proceeded to send him back to a detention facility for four more days.⁶⁹ At the next hearing, at which Mrs. Cook was also not present, Gerald was sentenced to six years at a state industrial school.⁷⁰

In response to this “unbridled discretion,” the Supreme Court awarded substantive due process rights to Gerald and future offenders involved in juvenile proceedings.⁷¹ These protections include the right to notice of charges, counsel, confrontation, privilege against self-incrimination, cross-examination, appellate review, and a transcript of the proceedings.⁷²

This case marked a dramatic shift in juvenile law because the proceedings came to resemble a regular criminal trial.⁷³ They had become formal criminal proceedings, with a focus on the offense and punishment, instead of informal, civil proceedings focused on the individual offender and the treatment best suited for his or her particular needs.⁷⁴

The trend to grant procedural protections continued in *In re Winship*.⁷⁵ This case involved a juvenile who was convicted and sentenced to eighteen months in a training school, subject to six years of annual extensions, for stealing \$112 from a woman’s locker.⁷⁶ His guilt was determined only by a preponderance of evidence.⁷⁷ Consequently, the Supreme Court held that when a juvenile is on trial for a criminal charge, guilt must be proven beyond a reasonable doubt.⁷⁸

The Supreme Court made one final step in its move to make the juvenile court identical to the adult court in 1975.⁷⁹ In *Breed v. Jones*, the juvenile was apprehended for armed robbery.⁸⁰ While he was detained, the juvenile court held

⁶⁶*Id.* at 4.

⁶⁷*Id.* at 5.

⁶⁸*Id.*

⁶⁹*Id.* at 6.

⁷⁰*Gault*, 387 U.S. at 7.

⁷¹*Id.* at 17.

⁷²*Id.* at 31-59.

⁷³Beatty, *supra* note 12, at 983.

⁷⁴Beatty, *supra* note 12, at 983.

⁷⁵*In re Winship*, 397 U.S. 358 (1970).

⁷⁶*Id.* at 360.

⁷⁷*Id.*

⁷⁸*Id.* at 365.

⁷⁹*Breed v. Jones*, 421 U.S. 519 (1975).

⁸⁰*Id.* at 521.

several hearings.⁸¹ At the dispositional hearing, Breed was found unfit for treatment as a juvenile and transferred to adult court where he was tried again.⁸² Despite the fact that he was never truly sentenced in juvenile court, the U.S. Supreme Court held that the juvenile was twice put in jeopardy when he was sent to the adult court to be tried again.⁸³ The Court stated that “the purpose of the Double Jeopardy clause is to require that he be subject to the experience only once for the same offence.”⁸⁴

In an opinion reflecting a desire to maintain at least one aspect of the informal juvenile proceeding, the Supreme Court, in *McKeiver v. Pennsylvania*, refused to extend the right to trial by jury in juvenile proceedings.⁸⁵ The Court felt it would become too adversarial and would completely cripple the judge’s flexibility in determining the proper punishment for individual offenders.⁸⁶

In sum, history shows that the lofty goals of the original juvenile advocates were forever changed when the Supreme Court decided to grant procedural protections to juveniles; however, this interpretation raises questions as to how procedural safeguards (even if identical to those of the adult criminal court) changed the whole philosophy from treatment to punishment. Conversely, history demonstrates that the focus underlying the juvenile court may actually have changed before the Supreme Court decided to grant juveniles such protections. It remains unclear, however, as to why society turned away from reforming its wayward youths. The following two sections will point to other forces that may have pushed this change in philosophy and explore the possibility that procedural informality was not necessary to maintain the identity of the juvenile court.⁸⁷

B. *The Cyclical Approach*

Authors Jeffrey M. Jenson and Matthew O. Howard maintain that the juvenile justice policy has repeatedly gone in cycles from the goal of rehabilitation to punishment, starting in 1825 with the New York House of Refuge.⁸⁸ This institution was created upon the belief that juveniles should be treated differently than adult criminals and separated from them in their own system of rehabilitation.⁸⁹ As society began to feel that this approach was too lenient, institutions like the House of Refuge evolved into places resembling adult prisons with little emphasis on rehabilitation.⁹⁰

⁸¹*Id.* at 521-25.

⁸²*Id.* at 524.

⁸³*Id.* at 541.

⁸⁴*Breed*, 421 U.S. at 530.

⁸⁵*McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

⁸⁶REISNER & SLOBOGIN, *supra* note 40, at 694.

⁸⁷*See* discussion *infra* Parts B, C.

⁸⁸*See* Jeffrey M. Jenson & Matthew O. Howard, *Youth Crime, Public Policy, and Practice in the Juvenile Justice System: Recent Trends and Needed Reforms*, SOC. WORK, July 1, 1998, available in 1998 WL 15542036.

⁸⁹*Id.*

⁹⁰*Id.*

According to Jenson and Howard, another movement emerged in the late 1800s resulting in the establishment of the first juvenile court in Illinois in 1899.⁹¹ Its goals of reform were similar to those that led to the creation of the House of Refuge.⁹² Over a period of sixty years, society began to feel that this system was “ineffective in reducing crime” and unfair in that it did not afford juveniles the same legal rights as adult criminals.⁹³

In 1966, the Supreme Court began a third reform movement, based upon the belief that “the child receives the worst of both worlds. . . neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”⁹⁴ Beginning with *Kent v. United States*, the Court decided a series of cases granting procedural due process rights to juveniles.⁹⁵ At the same time, smaller, less restrictive, community-based institutions became the alternative to the large, overcrowded, and ineffective custodial institutions.⁹⁶ Underlying this reform were the goals of treatment, rehabilitation, and decriminalization of delinquency.⁹⁷

As a result of an increase in violent juvenile crime in the mid-1980s and early 1990s, and a perception that this country is too easy on its juveniles, the focus has again changed back to punitive sanctions in the form of harsher sentences and easier transfers to adult courts.⁹⁸ Jenson and Howard argue that history shows that proper policy should have a balanced focus between “prevention, rehabilitation, and punishment.”⁹⁹ A focus on only one of these goals has repeatedly led to unimpressive results.¹⁰⁰

C. *The Real Reformers*

The foregoing sections of this Note have expounded on the position that the early reform movements that brought about the New York House of Refuge and the first juvenile court were periods of benevolent social change with regard to juvenile justice.¹⁰¹ Numerous scholarly commentaries support this position.¹⁰² Author

⁹¹*Id.*

⁹²*Id.*

⁹³See Jenson & Howard, *supra* note 88.

⁹⁴*Kent v. United States*, 383 U.S. 541, 556 (1966).

⁹⁵See Jenson & Howard, *supra* note 88.

⁹⁶Jenson & Howard, *supra* note 88.

⁹⁷Jenson & Howard, *supra* note 88.

⁹⁸Jenson & Howard, *supra* note 88.

⁹⁹Jenson & Howard, *supra* note 88.

¹⁰⁰Jenson & Howard, *supra* note 88.

¹⁰¹See discussion *supra* Parts II A, B.

¹⁰²*In re Gault*, 387 U.S. 1, 15 (1967). “The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jail with hardened criminals.” *Id.* See also Beatty, *supra* note 12, at 985; Florst & Blomquist, *supra* note 39, at 325; Klein, *supra* note 7, at 376; Bell, *supra* note 47, at 209; Eric J. Fritsch & Craig Hemmens, *An Assessment of Legislative Approaches to the Problem of Serious Juvenile Crime: A Case study of Texas 1973-1995*, 230 AM. J. CRIM. L. 563, 564

Sanford J. Fox takes the opposite view, arguing that the original reformers, beginning with those that founded the House of Refuge in 1825, may not have been the “child savers”¹⁰³ as they are remembered today.¹⁰⁴

The New York House of Refuge, initially a homeless shelter for poor children, developed into an institution designed to intervene in the lives of young offenders and to isolate those convicted of minor offenses from the corrupting influences of adult offenders.¹⁰⁵ The main focus in 1825 was on those charged with minor offenses who could still be saved.¹⁰⁶ Those convicted of more serious offenses were treated as adults.¹⁰⁷

There were some negative sides to this institution as well. Because of the conditions that existed on the inside, juries often would rather let a child go free than send him away to the House of Refuge.¹⁰⁸ Further, severe corporal punishments and little or no religious expression for non-Protestants were common.¹⁰⁹

Fox demonstrates that the goals the reformers so outwardly promoted were neither unique to the juvenile justice system, nor were they always realized in practice.¹¹⁰ Thirty years before the House of Refuge was established, retribution was replaced by the goals of deterrence and reformation in all areas of criminal justice.¹¹¹ As an alternative to corporal punishment, the homeless and criminals were locked up for their own well being.¹¹² Prisons soon became overcrowded and rioting occasionally resulted.¹¹³ The House of Refuge was part of a larger response to society’s displeasure for the entire system, and its feelings that it actually promoted crime.¹¹⁴ The solution was to create institutions where life was uncomfortable and treatment was severe in hopes that it would further deter criminal acts and “possibly motivate the poor out of their poverty.”¹¹⁵ Courts ignored the real nature of these institutions so long as the “declared purposes were morally and socially acceptable.”¹¹⁶

(Special Issue: Juvenile Justice and the Criminal Law 1996); Jacqueline Cuncannan, Note, *Only When They're Bad: The Rights and Responsibilities of Our Children*, 51 WASH. U. J. URB. & CONTEMP. L. 273, 278 (1997).

¹⁰³Bell, *supra* note 47, at 208.

¹⁰⁴See generally Fox, *supra* note 5.

¹⁰⁵Fox, *supra* note 5, at 1189.

¹⁰⁶Fox, *supra* note 5, at 1189.

¹⁰⁷Fox, *supra* note 5, at 1189.

¹⁰⁸Fox, *supra* note 5, at 1194.

¹⁰⁹Fox, *supra* note 5, at 1196.

¹¹⁰Fox, *supra* note 5, at 1196.

¹¹¹Fox, *supra* note 5, at 1196.

¹¹²Fox, *supra* note 5, at 1196.

¹¹³Fox, *supra* note 5, at 1197.

¹¹⁴Fox, *supra* note 5, at 1197.

¹¹⁵Fox, *supra* note 5, at 1200.

¹¹⁶Fox, *supra* note 5, at 1206.

Fox also contends that there are myths concerning the real purpose behind the creation of the first juvenile court.¹¹⁷ The 1899 Juvenile Court Act contained a provision that referred to “care, custody and discipline.”¹¹⁸ The traditional approach to history interprets this as proof of this court’s non-punitive, protectionist philosophy.¹¹⁹ In fact, that philosophy was never expressly stated, and the words “care, custody and discipline” merely referred to placing deviant children in foster homes rather than larger institutions.¹²⁰

Finally, Fox contends that the creation of the first juvenile court was not a push to change juvenile court procedures.¹²¹ Before 1899, juveniles were tried in inferior courts with the same type of informality and lack of procedural protections that are so often accredited to the first juvenile court.¹²² In fact, courts were finding that children were being sent to reform schools based on broad statutes and too much discretion that infringed on the constitutional rights of the child.¹²³

The theory underlying the traditional approach is the idea that procedural informality is essential to maintaining the goal of rehabilitation in the juvenile system. This narrow view of the function of the juvenile court has resulted in a lack of experimentation with juvenile court procedures. Consequently, transfer to adult court, where all protections were available, was perceived as the only way to make serious offenders truly accountable for their actions. A closer look at the history of the juvenile court reveals that procedural informality may not have been intended or even necessary to achieving a rehabilitative goal. With this in mind, policy makers are free to explore the possibility of combining procedural fairness with rehabilitation.

To develop sound policy, a close, realistic look at the problem is absolutely necessary. This requires an examination of the state of juvenile crime today, specifically, a look at whether juvenile crime really is worse than it was twenty years ago.

III. JUVENILE CRIME TODAY

The murders, robbers, rapists, and drug dealers of yesteryear were typically adults. Now they are typically juveniles. As the age of *these criminal predators* becomes younger with each passing year, so does the age of their victims The rate at which juveniles 14 to 17 years old were arrested for murder grew by twenty two percent from 1990 to 1994 and the problem is *going to get worse, much worse*. . . . We now have a new category of offenders that requires a different, *tougher approach*. In short, we have criminals in our midst-young criminals-not juvenile

¹¹⁷Fox, *supra* note 5, at 1211.

¹¹⁸Fox, *supra* note 5, at 1211.

¹¹⁹Fox, *supra* note 5, at 1212.

¹²⁰Fox, *supra* note 5, at 1212.

¹²¹Fox, *supra* note 5, at 1221.

¹²²Fox, *supra* note 5, at 1221.

¹²³Fox, *supra* note 5, at 1218-19.

pranksters and truants. . . . The legislation introduced today takes a common sense approach in dealing with the current *epidemic* of juvenile violence. It would help the states make urban, suburban, and rural communities safe once again.¹²⁴

Sensational speakers, like Senator Ashcroft above, and isolated instances, such as the murder of fellow students and teacher by eleven and thirteen-year-old boys¹²⁵ lend to the current paranoia regarding the level of juvenile crime today.¹²⁶ The typical reaction of harsher penalties and adult trials seems to be consistent among policy makers.¹²⁷ This section examines the facts of juvenile crime in the last twenty years. It explores the increase in juvenile crime during the late 1980s and early 1990s and its subsequent decrease since that period. It will also show the causes of the misperceived rate of juvenile crime today and some alternative explanations for the apparent jump in juvenile crime during the late 1980s and early 1990s. This analysis will demonstrate that despite instances like the school shooting in Columbine High School, the crime problem among this group of offenders may not be as severe as it seems.

A. Statistical Analysis

The FBI Uniform Crime Reports, Crime Victimization Survey, and Bureau of Justice statistics indicate a jump in violent juvenile crime between the early 1970s and early 1990s.¹²⁸ During this period, non-homicide offenses significantly increased.¹²⁹ The rate of robbery increased sixty-four percent for young offenders aged sixteen to nineteen.¹³⁰ For that same age group, there was thirty-two percent increase in aggravated assault as well as a rise in simple assault.¹³¹ The amount of rape offenses committed by offender's aged thirteen to seventeen increased by thirty-two percent from 1980 to 1992.¹³²

When non-homicide offenses such as rape, robbery, and aggravated assault are combined with homicide, a broader picture of the overall juvenile crime problem is presented. The National Criminal Victimization Survey, produced by the United States Department of Justice, shows that the number of offenders ages twelve to

¹²⁴Violent and Repeat Juvenile Offender Act, 143 CONG. REC. S145 (daily ed. Jan. 21, 1997) (statement of Sen. Ashcroft) (emph. added).

¹²⁵David Brauer & John McCormick, *The Boys Behind the Ambush*, NEWSWEEK, Apr. 6, 1998, at 20.

¹²⁶Martz, *supra* note 6.

¹²⁷GRIFFIN, *supra* note 9, at iii.

¹²⁸LAURA RACHUBA ET AL., *Violent Crime in the United States: An Epidemiologic Profile*, ARCHIVES OF PEDIATRICS AND ADOLESCENT MED., Sept. 1, 1995, available in 1995 WL 12079193.

¹²⁹*Id.*

¹³⁰*Id.*

¹³¹*Id.*

¹³²FRANKLIN E. ZIMRING, AMERICAN YOUTH VIOLENCE 33 (1998).

seventeen was 921,000 in 1973 dropping to all time low of 618,000 in 1986.¹³³ The rate then increased dramatically in 1993 to 1,108,000 offenders.¹³⁴ The number of offenders ages eighteen and over increased as well over this twenty-year period,¹³⁵ revealing that crime for all ages was on the rise.

The statistics that require the most attention are the homicide rates. They have shown the most dramatic variations over the last twenty years and are the most accurately measured criminal offense.¹³⁶ For offenders age fifteen through nineteen, the homicide rate rose two hundred twenty percent between 1970 through 1991.¹³⁷ From 1986, the year of the least amount of violent crime, through 1993, the year with the worst showing, the rate of juvenile homicide tripled.¹³⁸ The Bureau of Justice statistics maps out juvenile homicide offending rates per 100,000 starting in 1976.¹³⁹ For offenders aged fourteen to seventeen, the homicide offending rate increased from 10.2 to 30.2 in 1993.¹⁴⁰

All of these statistics show that what Senator Ashcroft and other sensationalists said about a surge in violent crime were partially correct. What seriously undermines the Senator's speech to the President in 1997 is the fact that there was an eighteen percent drop in overall juvenile crime between 1994 and 1996.¹⁴¹ For crimes of rape, robbery, aggravated assault, and homicide combined, the number of offenders also dropped drastically in 1994.¹⁴² This trend continued into 1997 when, aside from the five year span in the late 1980s, the number of offenders fell to the lowest level since 1973.¹⁴³

The declining rate of homicides since 1994 is even more impressive. For offenders under fourteen years of age, the homicide offending rate is the same as it was twenty years ago, with very little, if any variation over the years.¹⁴⁴ For offenders aged fourteen to seventeen, however, the offending rate has varied substantially in twenty years.¹⁴⁵ In 1976, the rate of juveniles aged fourteen to

¹³³U.S. DEP'T OF JUSTICE, NATIONAL CRIMINAL VICTIMIZATION SURVEY (1997) (visited Dec. 28, 1998) <<http://www.ojp.usdoj.gov/bjs/glance/offage.txt>>.

¹³⁴*Id.*

¹³⁵*Id.*

¹³⁶U.S. DEP'T OF JUSTICE, HOMICIDE TRENDS IN THE UNITED STATES (1997) (visited Dec. 28, 1998) <<http://www.ojp.usdoj.gov/bjs/homicide/oage.txt>>.

¹³⁷RACHUBA, *supra* note 128, at 953.

¹³⁸Fox Butterfield, *Guns Are Blamed for "80s Rise in Teen Homicides 'The Kids' DNA Has Not Changed,"* NEW ORLEANS TIMES-PICAYUNE, Dec. 10, 1998, available in 1998 WL 16080581.

¹³⁹U.S. DEP'T OF JUSTICE, *supra* note 136.

¹⁴⁰*Id.*

¹⁴¹*See* Maier & Rust, *supra* note 1.

¹⁴²U.S. DEP'T OF JUSTICE, *supra* note 133.

¹⁴³U.S. DEP'T OF JUSTICE, *supra* note 133.

¹⁴⁴U.S. DEP'T OF JUSTICE, *supra* note 136.

¹⁴⁵U.S. DEP'T OF JUSTICE, *supra* note 136.

seventeen who committed homicide was 10.6 per 100,000 juveniles. This rose to 12.9 in 1980, dropped to an all time low of 8.5 in 1984, and increased dramatically every year until the number was 30.2 in 1993.¹⁴⁶ Many policy-makers focus on the period between 1984 and 1993 when pushing for tougher laws.¹⁴⁷ The problem is that homicide rates may be misinterpreted if the only comparison is between the year with the highest rate of homicides and the year with the lowest.¹⁴⁸ A look at a larger span of time will reveal the fact that crime goes in cycles¹⁴⁹ and that the number of homicide offenders in 1997 was almost half the number in 1993.¹⁵⁰

The perception of increased juvenile violence has persisted despite the fact that statistics tell us differently.¹⁵¹ An explanation for this may be that society is simply more privy to information concerning tragic events across the country. Intense media coverage of horrible, but isolated instances is presented with gory detail in newspapers, magazines, and news television programs almost immediately after they occur.¹⁵² As a result of this coverage, the public believes that the real world reflects what the media presents.¹⁵³ The President spoke of these events in his State of the Union address: "Last year we were horrified and heartbroken by the tragic killings in Jonesboro, Paducah, Pearl, Edinboro, [and] Springfield."¹⁵⁴

B. *The Perception of Rising Juvenile Crime*

The statistics previously discussed demonstrate that crime goes in cycles and that focusing on one particular period of time will produce an inaccurate picture of the real state of the problem. However, the reason behind increased crime rates during certain periods, particularly the late 1980s and early 1990s has yet to be explored. The following are alternative explanations for the seemingly uncontested rise in juvenile crime during that period. The following arguments will address the role of firearms, police practices, and drugs on the overall juvenile crime rate.

¹⁴⁶U.S. DEP'T OF JUSTICE, *supra* note 136.

¹⁴⁷ZIMRING, *supra* note 132, at 34.

¹⁴⁸ZIMRING, *supra* note 132, at 34.

¹⁴⁹ZIMRING, *supra* note 132, at 34.

¹⁵⁰U.S. DEP'T OF JUSTICE, *supra* note 136.

¹⁵¹See RACHUBA, *supra* note 128.

¹⁵²Adam Rogers, *Anatomy of a Massacre*, NEWSWEEK, May 3, 1999, at 25. This article takes you step by step through the murders at Columbine High School, including the last words of the dying, as well as pictures and stories of each student killed. It also includes a diagram of the school and pictures and descriptions of the weapons used. John Leland, *The Secret Life of Teens*, NEWSWEEK, May 10, 1999, at 44. This article was published the following week and was also the cover story. Sue Anne Pressley, *Student, 15, Wounds 6 at Georgia High School*, PLAIN DEALER (Cleveland), May 21, 1999, at 1A. The words "Oh, my God, I'm so scared" were printed in large bolded type and underlined just above the title of the article on the front page.

¹⁵³See Butterfield, *supra* note 138.

¹⁵⁴STATE OF THE UNION: *Clinton's Speech Looks Ahead to New Millennium*, LOS ANGELES TIMES, Jan. 20, 1999, available in 1999 WL 2122331.

Of the four violent crimes, homicide, aggravated assault, rape, and robbery, only the first two have really shown to have increased during the period from the mid-1980s to the early 1990s, according to Franklin E. Zimring, author of *American Youth Violence*.¹⁵⁵ Rape and robbery committed by juveniles, on the other hand, have consistently fluctuated up and down in small variations over many years.¹⁵⁶

The rise in homicide rates from 1976 to 1996 present a different problem. "The most important reason for the sharp escalation in homicide was an escalating volume of fatal attacks with firearms. . . ."¹⁵⁷ During the same period of time, the amount of murders committed without a firearm remained stable,¹⁵⁸ therefore, the rise in total homicides is directly related to the rise in murders committed with a gun.¹⁵⁹

This does not, however, signify a more violent type of offender.¹⁶⁰ Nor does it show that the amount of attacks have significantly increased, or that the intentions of the perpetrator have become more evil.¹⁶¹ Actually, a very small portion of juvenile offenders began to use guns during that time.¹⁶² As a result of the increase in the likelihood of death when a gun is used, a very small number of offenders raised the total number of homicides.¹⁶³ The steady rate of knife related homicides further supports the claim that juveniles are not more violent today.¹⁶⁴

Finally, aggravated assaults have increased dramatically along with the number of homicides.¹⁶⁵ At first this does not seem to go well with the argument that a small group of juveniles have simply changed their weapon of choice. But, as Zimring suggests, "the increasing arrest rates in the younger age bracket for assault was not a change in the behavior of young offenders but a change in the classification of attacks that are close to the line that separates simple from aggravated assaults."¹⁶⁶ The change in the way police officers looked at aggravated assault resulted in higher offending rates for those over twenty-five as well.¹⁶⁷ All of this suggests that juveniles are simply not committing more violent acts than before, rather, changes

¹⁵⁵ZIMRING, *supra* note 132, at 32.

¹⁵⁶ZIMRING, *supra* note 132, at 33.

¹⁵⁷ZIMRING, *supra* note 132, at 35.

¹⁵⁸ZIMRING, *supra* note 132, at 35.

¹⁵⁹ZIMRING, *supra* note 132, at 35.

¹⁶⁰ZIMRING, *supra* note 132, at 37.

¹⁶¹ZIMRING, *supra* note 132, at 37.

¹⁶²ZIMRING, *supra* note 132, at 35-37.

¹⁶³ZIMRING, *supra* note 132, at 35-37. Franklin E. Zimring uses a ratio of fatal wounds to nonfatal wounds to show the difference between guns and knives. For guns the ratio is one fatal wound for every seven nonfatal wounds inflicted. For knives the ratio is one to thirty-five. ZIMRING, *supra* note 132, at 35.

¹⁶⁴ZIMRING, *supra* note 132, at 38.

¹⁶⁵ZIMRING, *supra* note 132, at 38.

¹⁶⁶ZIMRING, *supra* note 132, at 40.

¹⁶⁷ZIMRING, *supra* note 132, at 40.

that affect a small number of juveniles can have a significant impact on the overall rate of crime.

Instead of arguing that juveniles are more violent today, Henry H. Brownstein blames the rise in violent crime between 1985 and 1994 on the rise of the crack cocaine market.¹⁶⁸ The increased production of cocaine during the mid-1980s resulted in greater availability, lower cost, and higher purity.¹⁶⁹ With the increase in supply, there was a need for a larger market.¹⁷⁰ By transforming a small amount of regular, expensive, cocaine into a large amount of cheaper crack cocaine, the market was extended to those who could not afford it before.¹⁷¹

At first, the crack market was anything but “organized” crime.¹⁷² Since little money was needed to begin dealing, and users commonly made many stops to their own personal suppliers (small amounts sold and short lasting effects), a very competitive atmosphere with many different sellers was created.¹⁷³ “The earliest crack markets were dominated by young, inexperienced individuals. . . .”¹⁷⁴ In addition to this competitive and volatile market was the increased availability of automatic weapons.¹⁷⁵ This lethal mixture resulted in an increase in homicide rates.¹⁷⁶ After a few years, as the crack market became more organized, the rate of juvenile homicides substantially decreased.¹⁷⁷

It makes sense that the public may have some misconceptions about the real state of juvenile crime as it exists today, especially in light of the fact that there seemed to be an increase in violent juvenile crime between 1986 and 1994. However, it does not require a great deal of effort to realize that the figures may be misleading and that there are other factors that contribute to the problem. It is the responsibility of policy-makers to base their decisions upon sound judgment and analysis of the actual problem rather than to play on the sentiments of those that elect them. Speeches like Senator Ashcroft’s, cited at the beginning of this section, perpetuate the myth that juveniles are different or more violent than they were twenty years ago. Since juvenile crime has recently decreased overall, we owe it to ourselves to at explore the reasons why.

¹⁶⁸See generally HENRY H BROWNSTEIN, *THE RISE AND FALL OF A VIOLENT CRIME WAVE: CRACK COCAINE AND THE SOCIAL CONSTRUCTION OF A CRIME PROBLEM* (1996).

¹⁶⁹*Id.* at 33. During the 1980s, the United States experienced: (1) a two-thirds increase in coca leaf production; (2) a drop in the price of a kilo of cocaine from \$47,000.00-\$70,000.00 to \$11,000.00-\$34,000.00; and (3) an increase in purity from 20% to 70%. *Id.*

¹⁷⁰*Id.*

¹⁷¹*Id.* at 35.

¹⁷²*Id.* at 38.

¹⁷³BROWNSTEIN, *supra* note 125, at 38.

¹⁷⁴BROWNSTEIN, *supra* note 125, at 38.

¹⁷⁵BROWNSTEIN, *supra* note 125, at 38.

¹⁷⁶BROWNSTEIN, *supra* note 125, at 39.

¹⁷⁷BROWNSTEIN, *supra* note 125, at 39.

IV. THE DIFFERENCE BETWEEN JUVENILES AND ADULTS

Adolescents are not permitted to drink, smoke, gamble, or drive until they reach certain ages. They may not even be permitted to walk the streets at certain times. Throughout history, juveniles have been treated differently under the law in terms of their freedoms, responsibilities, and culpability. The Supreme Court sets out the justification for this treatment in *Thompson v. Oklahoma*, when it decided that executing a person under 16 years of age was "cruel and unusual punishment."¹⁷⁸

The Court has already endorsed the proposition that less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult. The basis for this conclusion is too obvious to require extended explanation. Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult. The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult.¹⁷⁹

The following section will explain the cognitive, developmental, and emotional differences between adults and juveniles that justify a separate system of justice. This section will help clarify why treating juveniles as adults will only hinder the achievement of any goal of punishment.

It has been argued that by the age of fourteen, the highest level of cognitive ability has been achieved.¹⁸⁰ At this age, the young person can for the first time think in abstract ways.¹⁸¹ This is measured by the person's ability to understand different alternatives and their consequences.¹⁸² Measuring only cognitive development is usually undertaken in structured settings with few, if any, variables and is thus not a good indicator of real life capabilities.¹⁸³

In the real world, this new way of thinking can actually have negative effects on one who is just learning to master it.¹⁸⁴ The fact that the adolescent mind has physically developed to that of an adult does not mean their skills are equal.¹⁸⁵ Adolescents gain the ability to hold many alternatives in mind, but have little experience in making decisions and a lack of understanding of their own feelings; therefore, making decisions can be a truly stressful experience.¹⁸⁶

¹⁷⁸*Thompson v. Oklahoma*, 487 U.S. 815 (1988).

¹⁷⁹*Id.* at 816.

¹⁸⁰Barry C. Feld, *Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy*, 88 J. CRIM. L. & CRIMINOLOGY 68, 104 (1997).

¹⁸¹DAVID ELKIND, *ALL GROWN UP & NO PLACE TO GO: TEENAGERS IN CRISIS* 25 (1984).

¹⁸²Feld, *supra* note 179, at 104.

¹⁸³*See* Scott, *supra* note 16, at 225.

¹⁸⁴ELKIND, *supra* note 180, at 23.

¹⁸⁵ELKIND, *supra* note 180, at 38-40.

¹⁸⁶ELKIND, *supra* note 181, at 38-40.

In addition to cognitive development, other factors such as the influence of parents and peers, tendency to disregard risk, and limited perspective of the future, can affect the way adolescents make decisions.¹⁸⁷ All of these elements should be taken into account when determining how to appropriately address the underlying causes of juvenile delinquency.

The second ten years of life is a time of intense identity development.¹⁸⁸ Adolescents tend to compare themselves to others and measure their own actions against those around them, namely their peers.¹⁸⁹ As a result, factors like the need for acceptance or peer pressure may affect how decisions are made.¹⁹⁰ The effects of these forces seem to be the strongest at age fourteen and slowly diminish until the completion of adolescence.¹⁹¹

Another typical result of this insecurity in adolescents is the formation of what one author has termed the “patchwork self.”¹⁹² This occurs when a young person, in order to adapt to situations which may be unfamiliar or uncomfortable, creates a personality that is a conglomeration of other people’s “feelings thoughts and beliefs” in order to blend in.¹⁹³ This type of person is more susceptible to the influence of others, and has more difficulty learning from experiences and developing a solid identity.¹⁹⁴

Many young people also lack the ability to fully appreciate the negative impact their actions may have on their futures.¹⁹⁵ This may explain why a young person may take the immediate gain of committing a criminal act or quitting school while ignoring the possibility of many years in prison or an undesirable job. Other disadvantages of youth are inexperience and lack of knowledge.¹⁹⁶ A young person may not realize the true nature of the consequences of his or her actions (horrible conditions of prison life), even if perfectly aware that crime could result in being sent to prison. The ability to take future repercussions into account develops throughout the teenage years and continues “at least into the early twenties.”¹⁹⁷

Adolescents may also evaluate risks and benefits of certain behavior with a completely different system of values than adults.¹⁹⁸ This is demonstrated by risky

¹⁸⁷Scott, *supra* note 16, at 229.

¹⁸⁸Laurence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making*, 20 LAW & HUM. BEHAV. 249, 254 (1996).

¹⁸⁹Scott, *supra* note 16, at 230.

¹⁹⁰Scott, *supra* note 16, at 230.

¹⁹¹Steinberg & Cauffman, *supra* note 188, at 253.

¹⁹²ELKIND, *supra* note 181, at 17.

¹⁹³ELKIND, *supra* note 181, at 17.

¹⁹⁴ELKIND, *supra* note 181, at 17.

¹⁹⁵Scott, *supra* note 16, at 231.

¹⁹⁶Scott, *supra* note 16, at 231.

¹⁹⁷Scott, *supra* note 16, at 231.

¹⁹⁸Scott, *supra* note 16, at 230.

behavior that may threaten their well being.¹⁹⁹ Because of a strong desire for acceptance at this stage of life, the negative consequences of not following the crowd may outweigh the negative effects of drugs.²⁰⁰ Further, inexperience or lack of knowledge may result in simply not realizing negative consequences at all.²⁰¹

Certain groups of adolescents may be further affected when lack of economic resources or racism is combined with the characteristics of adolescents just described.²⁰² Because it is a stage of life where one is struggling to form strong sense of self worth, having less material wealth or a different cultural background than others may make this process even more difficult.²⁰³ Further, poverty may inhibit access to proper education or may make the future appear even less important.²⁰⁴

When creating policy that is designed to address the problem of juvenile crime, the common characteristics of adolescents must be taken into consideration. A combination of learning to think in a whole new way,²⁰⁵ developing an identity, experiencing new things, and all of the confusion that goes with it are processes that differentiate adolescents from adults.²⁰⁶ These are the reasons why adolescents are less culpable for their decisions and why we treat them differently under the law.²⁰⁷ In addition to being less culpable, most juveniles grow out of the immaturity unique to this stage of their lives.²⁰⁸ If that is the case, it makes more sense to form juvenile justice policy aimed at preventing them from making mistakes while young and irresponsible, so they can develop into productive adults. As the next section will demonstrate, the trend of the vast majority of states has been to do the exact opposite.

V. METHODS OF TRANSFER

Forty States have adjusted their transfer statutes, making it easier to try juveniles in adult court.²⁰⁹ The intended result is to insure harsh penalties, thereby satisfying society's need for retribution and public safety.²¹⁰ As will be discussed in later portions of this note, the downside of this approach is a complete abandonment of other goals such as rehabilitation. This section will describe a variety of ways in which juveniles are transferred to the adult system.

¹⁹⁹Scott, *supra* note 16, at 230.

²⁰⁰Scott, *supra* note 16, at 231.

²⁰¹Scott, *supra* note 16, at 231.

²⁰²RACHUBA, *supra* note 128.

²⁰³RACHUBA, *supra* note 128.

²⁰⁴Scott, *supra* note 16, at 232.

²⁰⁵ELKIND, *supra* note 180, at 23.

²⁰⁶Scott, *supra* note 16.

²⁰⁷Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 174 (1997).

²⁰⁸Scott & Grisso, *supra* note 207, at 172.

²⁰⁹GRIFFIN, *supra* note 9, at iii.

²¹⁰GRIFFIN, *supra* note 9, at iii.

A. Waiver

Though infrequently used until the 1960s, this method of transfer has been available for a number of years.²¹¹ The three types of waiver are discretionary, mandatory, and presumptive.²¹² In all three situations, a hearing must be conducted before the decision to transfer is made.²¹³

1. Discretionary

Discretionary waiver puts the ultimate decision to transfer in the hands of the juvenile court judge.²¹⁴ Generally, the State must first show by a preponderance of the evidence that the juvenile has met certain criteria.²¹⁵ Other states may require a higher standard of proof.²¹⁶ Whether the young offender was amenable to rehabilitation has historically been the central focus; however, the decision to transfer now involves a number of determinations.²¹⁷ The statutes defining these criteria are usually a paraphrased version of the factors set out in the appendix to *Kent v. United States*.²¹⁸ Some focus on the nature of the offense (seriousness, premeditation, violence, whether against persons or property), other factors focus on the offender (sophistication, maturity, prior record, amenability to rehabilitation), while others focus on the protection of the community.²¹⁹ States may decide to add or delete any of these factors.²²⁰ These broad criteria allow flexibility and room for individual consideration while at the same time give the juvenile court judge some guidance in deciding on the issue of transfer.²²¹ If the state shows that all of the criteria set forth in the statute have been met, the judge may still decide that the situation does not warrant a transfer.²²²

Most states set the age for discretionary waiver at fourteen to sixteen years old.²²³ Seventeen states will allow a transfer for specific age groups (if the child is at least

²¹¹Fritsch & Hemmens, *supra* note 102, at 570. Other names for waiver include: “transfer,” “determination of fitness,” “certification,” “reference,” “decline,” or “remand.” Fritsch & Hemmens, *supra* note 102, at 570. Ohio uses the term “bind-over” instead of transfer. Bell, *supra* note 47, at 213. Throughout this Note, the more general term, transfer, is used.

²¹²GRIFFIN, *supra* note 9, at 1.

²¹³*Kent v. United States*, 383 U.S. 541, 557 (1966).

²¹⁴Beatty, *supra* note 12, at 998.

²¹⁵GRIFFIN, *supra* note 9, at 3.

²¹⁶GRIFFIN, *supra* note 9, at 3.

²¹⁷ZIMRING, *supra* note 132, at 109.

²¹⁸GRIFFIN, *supra* note 9, at 4; *Kent*, 383 U.S. at 566-67 (1966).

²¹⁹*Kent*, 383 U.S. at 566-67.

²²⁰GRIFFIN, *supra* note 9, at 4.

²²¹Beatty, *supra* note 12, at 998.

²²²Beatty, *supra* note 12, at 998.

²²³GRIFFIN, *supra* note 9, at 5.

sixteen for example) regardless of the crime that was committed.²²⁴ Vermont holds the record, setting the lowest age at which a juvenile may be sent to adult court under a discretionary waiver at ten years old.²²⁵

2. Mandatory

Like discretionary waiver, mandatory waivers are commenced in the juvenile justice system, where the juvenile court judge must find that there was probable cause to believe that certain statutory criteria have been met.²²⁶ The difference from discretionary waiver is that the guidelines are much more specific, focusing on the age, particular type of crime, certain number of prior offenses as well as other factors.²²⁷ Once the prosecution has met its burden, the judge has no choice but to transfer.²²⁸ Again, the juvenile court judge still has the role of deciding whether the juvenile meets the criteria for mandatory transfer.²²⁹ Fourteen states use this method of transfer, four allow its use for property offenses, and one state, if certain conditions are met, requires transfer for any criminal offense.²³⁰

3. Presumptive

In a presumptive waiver situation, if the juvenile falls into a certain category of criteria similar to that in a mandatory waiver situation, there is a rebuttable presumption that waiver is the appropriate course of action.²³¹ The judge must transfer if the offender argues unsuccessfully that he or she is rehabilitatable.²³² As with the previous transfer methods, it is still the juvenile court judge that makes the final determination.²³³ Fifteen states have employed this type of transfer for juveniles age fourteen to sixteen.²³⁴ Alaska however, attaches a presumption to children under fourteen for certain violent felonies such as manslaughter and assault in the first degree.²³⁵

B. *Direct File and Statutory Exclusion*

These types of transfer may be grouped together because they are almost identical. In both situations, the decision as to the forum in which the juvenile will

²²⁴GRIFFIN, *supra* note 9, at 5.

²²⁵GRIFFIN, *supra* note 9, at 5.

²²⁶GRIFFIN, *supra* note 9, at 4.

²²⁷GRIFFIN, *supra* note 9, at 4.

²²⁸GRIFFIN, *supra* note 9, at 4.

²²⁹GRIFFIN, *supra* note 9, at 4.

²³⁰GRIFFIN, *supra* note 9, at 6.

²³¹GRIFFIN, *supra* note 9, at 6.

²³²Klein, *supra* note 7, at 387.

²³³GRIFFIN, *supra* note 9, at 7.

²³⁴GRIFFIN, *supra* note 9, at 7.

²³⁵GRIFFIN, *supra* note 9, at 7; ALASKA STAT. § 11.41.120 (Michie 1998); ALASKA STAT. § 11.41.200 (Michie 1998).

be tried rests in the hands of the prosecutor instead of the judge.²³⁶ There is no hearing on the issue of transfer in these instances because the offender is essentially going directly to criminal court by virtue of a statute.²³⁷ This technique is possible because a juvenile is not entitled to be tried in juvenile court.²³⁸ In a Direct File situation, the prosecutor has the option to file in criminal or juvenile court based on factors such as offense, age, and prior history.²³⁹ Either court has jurisdiction.²⁴⁰

In states with statutory exclusion, depending on similar factors, only criminal court may have jurisdiction to hear the case.²⁴¹ It may seem that in the latter situation, the prosecutor has no discretion. However, since many offenses can fall under a number of classifications in terms of severity, the choice is still in the hands of the prosecutor.²⁴² If a juvenile is arrested for a homicide, the prosecutor may, depending on the circumstances, file charges under differing degrees of murder thereby making the choice of forum.²⁴³

The Direct File method of transfer exists in fifteen states.²⁴⁴ Statutes that automatically exclude juveniles from the jurisdiction of juvenile court exist in twenty-eight states.²⁴⁵ Idaho, New York, and Vermont automatically exclude a fourteen-year-old from the jurisdiction of juvenile court for property offenses.²⁴⁶ Wisconsin will automatically try a ten-year-old in criminal court for murder.²⁴⁷

²³⁶ZIMRING, *supra* note 132, at 119-21.

²³⁷ZIMRING, *supra* note 132, at 119-21.

²³⁸Klein, *supra* note 7, at 390.

²³⁹GRIFFIN, *supra* note 9, at 7.

²⁴⁰GRIFFIN, *supra* note 9, at 7.

²⁴¹GRIFFIN, *supra* note 9, at 8.

²⁴²GRIFFIN, *supra* note 9, at 8.

²⁴³ZIMRING, *supra* note 132, at 120.

²⁴⁴ZIMRING, *supra* note 132, at 120. The question of who is the appropriate decision-maker on the question of transfer is a much-debated issue. ZIMRING, *supra* note 132, at 166. The prosecutor is elected by the community and may more accurately respond to its wishes. ZIMRING, *supra* note 132, at 166. The prosecutor also has the responsibility to go after the perpetrators of crimes and insure they are punished to the highest degree the law will permit. ZIMRING, *supra* note 132, at 166. The judge on the other hand is more of a neutral actor, who is more apt to take into account individual characteristics of the offender in an unbiased light, neither as a defense attorney nor a prosecutor. ZIMRING, *supra* note 132, at 166. In light of the way history has shown the effect public sentiment (usually based upon uninformed consideration or fear) on policy in this area, it seems that one the person detached from such emotion is the only one that will make a decision that really addresses the underlying problem.

²⁴⁵GRIFFIN, *supra* note 9, at 7.

²⁴⁶GRIFFIN, *supra* note 9, at 8.

²⁴⁷GRIFFIN, *supra* note 9, at 8.

C. "Once an Adult/Always an Adult"²⁴⁸

This type of transfer requires a separate category because it is the only method that eliminates all discretion from both the juvenile court judge and the prosecutor.²⁴⁹ If the offender has been adjudicated in a criminal court on a prior occasion, he or she will automatically be tried in criminal court for any subsequent offense, regardless of how minor it may be.²⁵⁰ Thirty-one states have this provision written into their transfer statutes.²⁵¹

Altogether, the homicide rate, while dropping rapidly in the last five years, increased during the period between the mid 1980s and early 1990s.²⁵² This is often cited as the justification for the new transfer statutes that were enacted.²⁵³ However, many states (twenty-one), have statutes that transfer juveniles for non-violent property offenses.²⁵⁴ In fact, "most children sent to adult court are property offenders".²⁵⁵ There are also many statutes that allow for transfer for any crime once the offender has reached a certain age.²⁵⁶ Some even transfer for misdemeanors.²⁵⁷ Therefore, even if we are in the midst of an era of violent juveniles, it appears that many types of transfer statutes fail to properly address the problem.

VI. OHIO'S TRANSFER STATUTES

Although "care, protection, and mental and physical development of children" has remained the purpose of Ohio's juvenile system over the last thirty years, the laws themselves have changed.²⁵⁸ Ohio has addressed the problem of juvenile crime in a similar fashion as the forty other states, which have drafted statutes making it easier to try juveniles in the adult criminal system.²⁵⁹ Ohio has not, however, adopted any other form other than the waiver.²⁶⁰ On January 1, 1996, Ohio's new juvenile crime law went into effect, changing the age and conditions under which a juvenile could be transferred to adult court.²⁶¹

²⁴⁸ GRIFFIN, *supra* note 9, at 10.

²⁴⁹ GRIFFIN, *supra* note 9, at 10.

²⁵⁰ GRIFFIN, *supra* note 9, at 10.

²⁵¹ GRIFFIN, *supra* note 9, at 10.

²⁵² U.S. DEP'T OF JUSTICE, *supra* note 136.

²⁵³ Bell, *supra* note 47, at 219-22.

²⁵⁴ GRIFFIN, *supra* note 9, at 13.

²⁵⁵ Gerald F. Glenn, *Arkansas' Missed Opportunity for Rehabilitation: Sending Children to Adult Courts*, 20 U. ARK. LITTLE ROCK L.J. 77, 89 (1997).

²⁵⁶ GRIFFIN, *supra* note 9, at 13.

²⁵⁷ GRIFFIN, *supra* note 9, at 13.

²⁵⁸ OHIO REV. CODE ANN. § 2151.01 (West 1998).

²⁵⁹ See OHIO REV. CODE ANN. § 2151.26 (West 1998).

²⁶⁰ GRIFFIN, *supra* note 9, at 1.

²⁶¹ § 2151.26(B)-(C).

Under the previous law, both discretionary and mandatory transfer provisions existed.²⁶² The discretionary transfer provision stated that if a juvenile allegedly committed a crime that would be classed as a felony if committed by an adult, the child could be transferred to criminal court if three elements were satisfied.²⁶³ First, the child had to be at least fifteen.²⁶⁴ Second, there had to be probable cause to believe the child committed the act.²⁶⁵ Finally, the case could be transferred if there were reasonable grounds to believe the child was not amenable to treatment and that the safety of society required it.²⁶⁶ Once these three elements were demonstrated, the decision to transfer was still up to the discretion of the juvenile court judge.²⁶⁷

The second part of the old statute provided some additional factors for the judge to consider, such as whether the victim was over sixty-five or physically disabled or subject to a crime of violence.²⁶⁸ The Rules of Juvenile Procedure listed factors to provide the judge some guidance in determining whether it was reasonable to believe that the child was not amenable to treatment.²⁶⁹ Some of these factors include: age, mental conditions, prior record, family environment, and school record.²⁷⁰ Many of the factors resemble those listed in *Kent v. United States*.²⁷¹ It was only mandatory for the judge to transfer if there was probable cause to believe that a juvenile, who had previously been adjudicated a delinquent child for murder, had again committed murder.²⁷²

The new statute lowered the age for both mandatory and discretionary transfer and expanded the circumstances under which a judge has no choice but to transfer.²⁷³ The discretionary section of the new statute is similar to the old. The three requirements are identical except for the age, which was lowered from fifteen to fourteen.²⁷⁴ Additional factors for the judge to consider have been added, such as whether the victim was five years old or younger, whether a gun was used, or whether any physical harm resulted.²⁷⁵ Finally, the list of substantive factors

²⁶²OHIO REV. CODE ANN. § 2151.26(A)(1)-(2) (West 1995), amended by OHIO REV. CODE ANN. § 2151.26 (B)-(C) (West 1996).

²⁶³§ 2151.26(A)(1).

²⁶⁴§ 2151.26 (A)(1)(a).

²⁶⁵§ 2151.26 (A)(1)(b).

²⁶⁶§ 2151.26 (A)(1)(c).

²⁶⁷§ 2151.26 (A).

²⁶⁸§ 2151.26 (B)(1).

²⁶⁹OHIO JUV. R. 30 (1996), amended by JUV. R. 30 (1997).

²⁷⁰OHIO JUV. R. 30(F) (1996), amended by JUV. R. 30 (1997).

²⁷¹*Kent v. United States*, 383 U.S. 541, 566-67 (1966).

²⁷²OHIO REV. CODE ANN. § 2151.26(A)(2) (West 1995).

²⁷³See OHIO REV. CODE ANN. § 2151.26 (West 1998).

²⁷⁴§ 2151.26(B), (C)(1)(a).

²⁷⁵§ 2151.26(C)(2)(a)-(e).

(mentioned previously) relating to amenability to rehabilitation was eliminated from the juvenile rules of criminal procedure, leaving only procedural requirements.²⁷⁶

The largest change occurred with the mandatory transfer sections. If there is probable cause to believe a 14-year-old child committed *any* criminal act, the juvenile court judge must transfer if the child was previously found guilty of a felony in adult court.²⁷⁷ Ohio is the only state with such a provision.²⁷⁸ If there is probable cause to believe a child (fourteen years or older) committed aggravated murder or murder, he or she must be transferred if previously found guilty of murder or other enumerated felonies and committed to the Department of Youth Services.²⁷⁹

If the juvenile has reached sixteen years of age, transfer becomes even easier.²⁸⁰ If there is probable cause to believe that the juvenile committed aggravated murder or murder, the judge must transfer.²⁸¹ Transfer is also mandatory if there is probable cause to believe the juvenile committed felonies such as aggravated robbery, aggravated burglary, or kidnapping with the use of a firearm.²⁸² Finally, if the charge is as serious as murder or aggravated murder, the child must be transferred if previously committed to the Department of Youth Services for either a murder or a felony.²⁸³

VII. ANALYSIS AND PROPOSALS

This section will begin with an analysis of whether Ohio's current transfer statute reflects a sound understanding of lessons learned from history, the real state of juvenile crime, and the cognitive, developmental, and emotional characteristics of adolescents. It will also provide an explanation of the Ohio Criminal Sentencing Commission's alternative to transfer. Finally, this note will conclude with some further recommendations for change.

A. Analysis of Ohio's Changes

The past shows that there are costs and benefits to different approaches to juvenile crime.²⁸⁴ One interpretation of history supports the view that the juvenile courts of today have drifted away from the judicial discretion and procedural informality that made rehabilitation and treatment a reality.²⁸⁵ Another interpretation supports the idea that overly broad and unguided judicial discretion resulted in

²⁷⁶See OHIO JUV. R. 30 (1997) (commentary).

²⁷⁷§ 2151.26(B)(1).

²⁷⁸GRIFFIN, *supra* note 9, at 6.

²⁷⁹§ 2151.26(B)(3)(b).

²⁸⁰§ 2151.26(B)(3)(a).

²⁸¹§ 2151.26(B)(3)(a).

²⁸²§ 2151.26(B)(4)(b).

²⁸³§ 2151.26(B)(4)(a).

²⁸⁴See discussion *supra* Part II.

²⁸⁵See discussion *supra* Part II A.

arbitrariness, while informal proceedings were neither beneficial, nor an intentional alternative to achieving the goal of rehabilitation.²⁸⁶

Ohio's statute combines the worst of both worlds. First, by expanding the reach of its mandatory transfer,²⁸⁷ this State has moved further away from taking into consideration the different characteristics of each juvenile and their varying degrees of culpability. Conversely, by eliminating some of the guidelines in the Juvenile Rules of Criminal Procedure for discretionary transfer,²⁸⁸ the juvenile court judge has fewer factors under which to guide a decision, thus broadening the discretion of each individual judge.

Similar to many state juvenile transfer statutes written during the same period, the new Ohio transfer statute was the result of exaggerated juvenile crime statistics.²⁸⁹ If juvenile crime has indeed reached astronomical levels, the need to protect society may outweigh the possible benefits of rehabilitation;²⁹⁰ however, the fact that this statute went into effect three years after juvenile crime began to drop²⁹¹ shows that Ohio has incorrectly balanced these interests. To properly address the actual state of juvenile crime, rehabilitation should have been given greater emphasis.

The Ohio statute, with deterrence as one of its underlying justifications for harsher punishment,²⁹² disregards the true nature of adolescents, namely, their inability to fully appreciate future consequences.²⁹³ Consequently, the threat of being tried in an adult court will not have the impact upon juvenile decision-making as may be expected. The Supreme Court discussed deterrent value of the most serious punishment imaginable, the sentence of death, upon a fifteen-year-old boy in *Thompson v. Oklahoma*.²⁹⁴ The Court noted "the likelihood that the teenage offender has made the kind of cold-blooded, cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent. . . ."²⁹⁵ It would logically follow then that if death will unlikely deter this group of offenders, neither would the threat of adult punishment.

Finally, the statute, with its mandatory transfer provisions, rather than solving the juvenile crime problem, may end up making it worse.²⁹⁶ If a juvenile, who is amenable to rehabilitation, is transferred and sentenced in an adult prison to mix with adult criminals, there may be negative ramifications for the future of the child, safety

²⁸⁶See discussion *supra* Part II C.

²⁸⁷See OHIO REV. CODE ANN. § 2151.26(B).

²⁸⁸OHIO JUV. R. 30(F) (1996), amended by JUV. R. 30 (1997).

²⁸⁹Compare Bell, *supra* note 47, at 221 with discussion *supra* Part III.

²⁹⁰Scott & Grisso, *supra* note 207, at 178.

²⁹¹Maier & Rust, *supra* note 1.

²⁹²Bell, *supra* note 47, at 227.

²⁹³Scott, *supra* note 16, at 231.

²⁹⁴*Thompson v. Oklahoma*, 487 U.S. 815 (1988).

²⁹⁵*Id.* at 816.

²⁹⁶Scott & Grisso, *supra* note 207, at 180-81.

of society, and the community's resources.²⁹⁷ Young offenders sent to adult institutions are exposed to the mistreatment and negative influence of older offenders.²⁹⁸ The likely, but unfortunate result is not the reformation of the prisoner, but a transformation into a hardened criminal.²⁹⁹ Additionally, unless the offender has committed first degree murder, he or she will eventually be set free to once again pose a threat to community safety. Community resources will be spent on further efforts in apprehending and once again incarcerating the recidivist offender.³⁰⁰

B. A New Idea

The Ohio Criminal Sentencing Commission has come up with a new approach to dealing with serious juvenile offenders. It proposes that Ohio give the juvenile court judge the power to impose adult sentences as an alternative to transferring the offender to adult court.³⁰¹ This plan also expands the age boundaries of those subject to the juvenile system in both directions.³⁰² The maximum age for juvenile court jurisdiction would be extended from twenty-one to twenty-five, while the minimum age would drop from twelve to ten years old.³⁰³ Another part to this plan proposes suspending an adult prison sentence while the offender serves in the juvenile system.³⁰⁴ The adult sentence would be invoked if the offender does not reform.³⁰⁵ This plan presents a unique approach to juvenile crime that may improve the system that exists today; however, it is not without faults. There are negative aspects that need to be resolved before the proposal could ever be put into effect.

A possible advantage of this plan is that it would replace the practice of mandatory waiver.³⁰⁶ Accordingly, the juvenile court judge would always be the one to determine the course of action most appropriate for each individual. This will prevent minor offenders who may be amenable to treatment from being automatically sent to criminal court.

This plan would also solve the problems associated with punishing the most serious young offenders under the current system. For example, if an extremely violent juvenile is sent to the Department of Youth Services, first, he will have little or no incentive to improve, knowing that release is imminent on his twenty-first birthday. Second, society's need for retribution will not be satisfied by what appears to be a light sentence imposed for a serious offense. On the other hand, if the harsh

²⁹⁷Scott & Grisso, *supra* note 207, at 180-81.

²⁹⁸Beatty, *supra* note 12, at 1013.

²⁹⁹Scott & Grisso, *supra* note 207, at 179.

³⁰⁰Scott & Grisso, *supra* note 207, at 181.

³⁰¹Tatge, *supra* note 26, at 1A.

³⁰²Tatge, *supra* note 26, at 7A.

³⁰³Tatge, *supra* note 26, at 7A.

³⁰⁴Tatge, *supra* note 26, at 7A.

³⁰⁵Tatge, *supra* note 26, at 7A.

³⁰⁶Tatge, *supra* note 26, at 1A.

sentence is imposed and the juvenile is sent to criminal court, all possibility for rehabilitation is lost and he emerges from incarceration as a career criminal.

The proposal establishes a middle ground solution. The juvenile, knowing he will be sent to adult prison for a long period of time if he does not change his ways, will have some incentive to improve. Further, society will be more satisfied with a mandatory stay until his twenty-fifth birthday and the possible imposition of an adult sentence if rehabilitation fails.

The downside of this proposal is the immense amount of unguided discretion in the juvenile court judge. Arbitrariness may result if the judge has no guidance regarding the factors to consider (age, background, etc...) when imposing a sentence. There also needs to be limits upon the sentence he or she may impose. Further, if the judge has the ability to hand down adult sentences, all of the procedural protections of the adult criminal court must be made available in the juvenile system as well, including the right to a trial by jury. The consequence could be an adversarial juvenile system, identical to the adult court, focusing on punishment instead of rehabilitation.

C. Recommendations

The following recommendations for adjusting the juvenile justice system incorporate lessons learned from history, a realistic view of the crime problem, and the developmental characteristics of juveniles. These considerations are essential elements in formulating sound juvenile justice policy. The recommendations also incorporate the idea that it is possible to have a system that combines the procedural fairness of an adult court proceeding, guided judicial discretion, and the rehabilitative goals of the juvenile system.

As proposed by the Sentencing Commission, it is necessary that the juvenile courts broaden the age of those subject to their jurisdiction. A longer period of time spent in the juvenile justice system may provide more of an opportunity for intervention while satisfying society's need for retribution and avoiding the disadvantages of adult prisons. A broader range of juvenile court jurisdiction to younger ages will also enable the system to intervene at an earlier point in the child's life when rehabilitation may be most effective.

When it comes to the guilt or innocence determination, the juvenile court should be procedurally identical to the adult criminal court. As discussed previously in this Note, it is unclear whether procedural informality was a necessary or even an intended means to achieve the goal of rehabilitation. There is no reason to believe that the focus on rehabilitation will be lost by the addition of fair proceedings. How a court goes about determining guilt should have no bearing upon what is best for that child once that determination has been made. Flexibility may be a factor in the sentencing or treatment decision.

Procedural protections will also make possible the suggestion by the Sentencing Commission that Ohio abandon transfer altogether. Once a juvenile has been found guilty of a particular offense, the juvenile court judge is in the best position to decide what is the most appropriate course of action because, unlike a statute, he or she can take into account the individual characteristics of each juvenile. This discretion should be guided by factors such as age, prior history, background, and family environment. There should also be limitations on the length and conditions of certain punishments, especially for particularly young offenders.

Again, it is not the procedures that differentiate these two systems, it is the underlying goals.³⁰⁷ The criminal system has for the most part given-up on rehabilitation and focused entirely on retribution and incapacitation.³⁰⁸ As long as the juvenile court system keeps rehabilitation as its objective, it will maintain its identity.³⁰⁹

VIII. CONCLUSION

One does not need to look very long before finding newspaper articles expounding upon all of the new and horrible crimes committed by juveniles. It is also not difficult to find a politician clamoring about how much worse young people are today while using these stories as justification for a harsh juvenile policy that has not been thoroughly evaluated. In the wake of misconceived public sentiment about the state of juvenile crime today, states have been adjusting their statutes to punish more juveniles as adults. Because of the nature of juveniles, this approach does little to advance any goal of the criminal system aside from punishment and retribution. The juvenile court is, and should remain, the proper forum for young offenders, no matter how serious the crime. Until it is accepted that procedural due process may coexist with the goal of rehabilitation in the juvenile justice system, alternatives to transfer will never be a possibility.

SCOTT C. ZARZYCKI³¹⁰

³⁰⁷Thomas F. Geraghty & Will Rhee, *Learning from Tragedy: Representing Children in Discretionary Transfer Hearings*, 33 WAKE FOREST L. REV. 595, 609 (1998).

³⁰⁸*Id.*

³⁰⁹*Id.*

³¹⁰The author wishes to thank the following: My parents for their encouragement and patience; Professor Phyllis Crocker for her exceptional guidance and insight; and, Jennifer Sardina, whose subciting and editorial expertise and moral support I could not have done without.