Protecting Our Most Valuable Assets: A Proposal to Return to a Rehabilitative Approach to Juvenile Justice

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PROTECTING OUR MOST VALUABLE ASSETS:
A PROPOSAL TO RETURN TO A REHABILITATIVE APPROACH TO JUVENILE JUSTICE

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"The practice of transferring juveniles for trial and sentencing in adult criminal court has, however, produced the unintended effect of increasing recidivism, particularly in violent offenders, and thereby promoting life-course criminality."¹

Our children are our future. Yes, it is a common expression, but its familiarity makes it no less true. Knowing this, why are we so quick to give up on a child rather than investing in him/her to become an asset to society? This article will discuss the current situation that is the juvenile justice system, with specific emphasis on Minnesota’s system. It will briefly discuss the psychological aspects of juvenile crime to put juvenile justice into perspective. Next, it will examine programs around the country which are helping youth offenders thrive through rehabilitative measures. This article will also use recidivism rates as a general measure of what is working, but discuss other aspects of each system as well. Finally, this article will analyze the benefits of different approaches and ultimately, propose improvements to Minnesota’s juvenile justice system.

THE CURRENT STATE OF MINNESOTA’S JUVENILE JUSTICE SYSTEM

In order to determine the quality and effectiveness of Minnesota’s current juvenile justice system, one must first understand the legislative intent behind the provisions of the Juvenile Court Act.² The stated purpose of these laws is “to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful

* Juris Doctor, University of St. Thomas (2011). I would like to thank my parents for their constant love and support. I would also like to thank my husband for his endless encouragement and understanding. Finally, I would like to extend my heartfelt gratitude to Professor Henry Shea for providing guidance throughout the writing of this article.

2. MINN. STAT. § 260B.001 (2010).
behavior.” The foregoing purpose could be succinctly re-titled the “public safety” purpose. The legislature went on to explain that “[t]his purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth.” Thus, while public safety is the purpose behind the laws, it can only be met through measures which promote the well-being of the children involved. All laws relating to juvenile courts are to be liberally construed to carry out the aforementioned purpose. These legislatively-defined purposes will be the scope through which this article will discuss Minnesota’s juvenile justice system.

There are currently three potential routes when a juvenile enters the Minnesota justice system. These routes do not include the potential of a case or charge being completely dismissed. The three routes are: 1) to proceed in the juvenile court system; 2) to move to the adult criminal system upon certification by order of the juvenile court; or 3) to continue under Extended Jurisdiction Juvenile (EJJ) prosecution which allows for some aspects of both of the previous two to be used when the court is disposing of the case.

The traditional course through the juvenile justice system provides many benefits to the youth offender. It is focused on rehabilitative processes for the juvenile. This route most closely parallels the legislative purpose of the Juvenile Court Act because it addresses the public safety issues, but also accounts for the potential of the juvenile to become a contributing member of society in the future: “If the court finds that the child is delinquent, it shall enter an order” for one or more dispositions “which are deemed necessary to the rehabilitation of the child.” Thus, the system is not one of retributive justice. Rather, it is one of rehabilitative justice. Rehabilitative approaches expressly promote the original intent of the Juvenile Court Act. Any order for an authorized disposition under Minnesota Statutes section 260B.198 must be supported by written findings of fact which support the disposition. The written findings must also include “(i) why the best interests of the child are served by the disposition ordered; and (ii) what alternative dispositions were considered by the court and why such dispositions were not appropriate . . . .” As highlighted by

4. Id.
12. Id.
the aforementioned statutes, Minnesota’s juvenile justice system was originally intended to serve the best interests of the child through rehabilitative measures.

The second possible route is for a juvenile to be certified as an adult and moved to adult criminal court. Certification requires that the juvenile be at least fourteen years of age at the time of the offense, and must be alleged to have committed an offense which would be a felony if committed by an adult. While many believe violent offenses to be the trigger for a juvenile to be tried in adult criminal court, the Minnesota statutes do not require the juvenile to have committed a violent offense. Any felony can satisfy the requirement. Some nonviolent felonies under Minnesota law include check forgery, possession of a controlled substance other than marijuana, and certain instances of theft. Meeting the two aforementioned requirements does not immediately move a juvenile into the adult criminal court. There is a process by which a juvenile’s case can be certified for criminal court. Once the juvenile court certifies the youth’s case, the prosecutor continues according to criminal court procedure as if the case were never in juvenile court.

After certification, and upon a finding of guilt, the juvenile is treated as an adult offender (i.e., sent to an adult prison, supervised under adult probation rules, etc.). This has many collateral consequences. First, the juvenile has an adult felony conviction on his/her record. This can limit employment opportunities, future government benefits, and access to public housing, voting rights, and higher education options. Second, the juvenile may receive a prison sentence to be served with the adult prison population, which can have serious ramifications.

Youth are already nineteen times more likely to commit suicide when held in a juvenile detention facility as compared to youth in the general population. However, youth are thirty-six times more likely to commit suicide in an adult prison than in a juvenile detention facility. Youth are also at a much greater risk of being taken advantage of and becoming

21. Id.
victims of sexual and physical assault in adult facilities. "According to the U.S. Department of Justice Bureau of Justice Statistics, in 2005 and 2006, [twenty-one] percent and [thirteen] percent (respectively) of the victims of inmate-on-inmate sexual violence in jails were youth under [eighteen], despite the fact that only one percent of all jail inmates are juveniles." Juveniles leave adult facilities less prepared to contribute to society than before entering the facility. One possible reason for this is that while children have the right to a high school education, many adult facilities do not have the resources to provide such education. A recent survey of educational programs in adult jails "found that [forty] percent of jails provided no educational services at all," and only "eleven percent provided special education services."

Finally, if the juvenile is placed on probation, he/she is supervised by an adult corrections officer. Adult probation has different resources than juvenile probation and has a different approach to supervision. Adult probation officers seek to protect the community from the individual that is on probation while juvenile probation officers seek to mentor and rehabilitate the probationer. Offenders on adult probation are expected to be more proactive than those on juvenile probation. Case studies of three states, including Minnesota, have shown that supervision of juveniles under adult probation has "produced unanticipated burdens for adult probation departments . . . . In many cases, juveniles sentenced to criminal sanctions may not be old enough to drive, find suitable employment, sign a lease or make decisions independent of their families—making it very difficult to comply with typical conditions of adult probation . . . ." These studies also showed that juveniles were not accustomed "to the strict reporting requirements imposed by adult probation;" and that they "often violated terms of their probation and quickly found themselves in prison for their full terms." An adult corrections officer may require a juvenile probationer to obtain employment or to be enrolled full time in school. Much of this responsibility is left to the individual on probation. In this example, failure to obtain employment or to obtain full time enrollment in school could result in a probation violation even though the system may not

23. Id. (emphasis added).
24. Id.
25. Id.
26. Id.
27. LARRY K. GAINES & ROGER LEROY MILLER, CRIMINAL JUSTICE IN ACTION, 505 (5th ed. 2009).
29. Id.
have provided the required skills and resources to the child for him/her to accomplish these probation mandates. As a result, the violation could lead to revocation of the juvenile's probation and lead to time in prison.

The third and final route when a juvenile enters the justice system is Extended Jurisdiction Juvenile (EJJ) prosecution. In order for a case to be designated EJJ, it must meet one of three designation requirements. A finding of guilt in the EJJ system results in a blended sentence which includes: one or more juvenile dispositions under Minnesota Statute section 260B.198, and an adult criminal sentence "the execution of which [is] stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense." If the juvenile violates the conditions of his/her juvenile sentence and the court finds that reasons exist to revoke the stay of execution, the adult sentence will be imposed absent mitigating factors justifying a continuation of the stay. There is a presumption in favor of executing the adult sentence. The EJJ designation also allows for the juvenile courts to maintain jurisdiction until the minor reaches twenty-one years of age, rather than the traditional eighteen year cutoff. Thus, the youth may be given juvenile probation lasting beyond his/her eighteenth birthday for the first prong of the sentence. The authors of the EJJ legislation were targeting serious or repeat young offenders who may get on the right track if given "one last chance" before more severe sanctions will be imposed. In practice, there have been many instances where a first time offender is designated for extended jurisdiction juvenile prosecution, a clear conflict with the intended statutory purpose.

30. Id.
   (1) the child was 14 to 17 years old at the time of the alleged offense, a certification hearing was held, and the court designated the proceeding an extended jurisdiction juvenile prosecution;
   (2) the child was 16 or 17 years old at the time of the alleged offense; the child is alleged to have committed an offense for which the Sentencing Guidelines and applicable statutes presume a commitment to prison or to have committed any felony in which the child allegedly used a firearm; and the prosecutor designated in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution; or
   (3) the child was 14 to 17 years old at the time of the alleged offense, the prosecutor requested that the proceeding be designated an extended jurisdiction juvenile prosecution, a hearing was held on the issue of designation, and the court designated the proceeding an extended jurisdiction juvenile prosecution.
33. Minn. Stat. § 260B.130, subd. 5(c) (2010).
34. Id.
36. Id. at 36.
Minnesota courts disposed of 220 EJJ cases. Of those, forty-six percent of the designated youth “had no prior history of felony adjudications.”

As stated above, the original intent of the EJJ legislation was to give “one last chance” to serious and repeat juvenile offenders before the imposition of more severe sanctions. It is unclear whether the EJJ legislation was also intended to increase plea bargaining, but the legislation has had that effect. It has been a “common practice in serious cases for the prosecutors to motion for certification and then ‘bargain down’ to EJJ.” This could pose a problem because when faced with the possibility of prosecution in adult criminal court, a juvenile may believe that EJJ is a good option. However, in reality, the youth quite likely would not understand all of the consequences associated with an EJJ designation.

The availability of EJJ and certification processes allows courts to place juveniles in adult correctional facilities. Through the EJJ process, a juvenile has to have first violated his/her juvenile sentence, while a finding of guilt after certification to criminal court can result in the immediate imposition of an adult sentence. Keeping in mind that the Juvenile Court Act requires that the public safety purpose be met “through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth,” how can we reconcile the practice of putting juveniles in adult prisons?

The severe consequences, including the vast increases in suicide and offender-on-offender crime were discussed above as reasons to avoid putting juveniles in adult facilities. Likewise, the rate of recidivism among juveniles leaving adult prisons is further reason to refrain from this practice. The Bureau of Justice Statistics reported that of the 300,000 prisoners released in fifteen states (including Minnesota) in 1994, 67.5% were re-arrested within three years. Forty-nine percent of those released were reconvicted of a new crime. With recidivism rates so high, is putting juveniles in the adult prison system setting up juveniles for failure? It is certainly not a practice that gives children access to “opportunities for personal and social growth” required by Minnesota’s juvenile justice objectives. Are these practices truly in line with the purposes of the Juvenile

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37. Id. at 37.
38. Id.
39. Id. at 36.
40. THREE STATES THAT CHANGED THE RULES, supra note 35, at 36.
42. MINN. STAT. § 260B.001, subd. 2 (2010) (emphasis added).
44. Id.
THE PSYCHOLOGICAL LIMITATIONS OF ADOLESCENTS AND THEIR EFFECTS ON THE PROCESS

Under current law, children are treated differently than adults in nearly every aspect. They are not allowed many of the rights and privileges of adults. Children are distinguished from adults as being unable to care for themselves or make important life decisions on their own. The state even has an obligation to provide care, education, and support for children under the age of eighteen in the absence of appropriate care by parents. Thus, it is clear that our governmental system believes that it is necessary to do all that is possible to ensure that children have the opportunity to become healthy adults who are able to contribute to society. It is also clear that our government believes that youth are incapable of caring for themselves. So, why is it then acceptable to give up on children who temporarily lose their way?

In Roper v. Simmons, the United States Supreme Court declared that differences between juveniles and adults prohibit sentencing juveniles to death for homicide. The Court explained that there are three general differences between juveniles and adults which “demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders.” These differences are: 1) the scientific and sociological studies confirming that a “lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions;” 2) juveniles are “more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;” and 3) “the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.” Because of these qualities, the Supreme Court determined that youth who commit crimes while under the age of eighteen cannot be sentenced to death.

47. Id. at 569.
48. Id. (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)).
49. Id. (citing Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)).
50. Id. at 570.
51. Id. at 578.
Our justice system has historically sought to apply punishments in relation to the actual harm of an offense as well as the level of culpability of the offender. Thus, juveniles should be treated differently from adults because they are less cognitively developed and, as such, less culpable.

While *Roper v. Simmons* was undergoing litigation, a joint amicus brief was filed by eight medical and mental health organizations including the American Medical Association. The brief argued that “[c]apacities relevant to criminal responsibility are still developing when you’re [sixteen] or [seventeen] years old.”54 The largest part of the brain is the frontal lobe, and a small part of that section, located just behind the forehead, is called the pre-frontal cortex.55 The pre-frontal cortex is responsible for advanced cognition and is the portion of the brain that allows people to “prioritize thoughts, imagine, think in the abstract, anticipate consequences, plan, and control impulses.” Nearly all of these skills and abilities relate to criminal culpability. Research has shown that this portion of the brain “undergoes far more change during adolescence than at any other stage of life,” and that it is the last part of the brain to develop.58 As such, reasoning and planning capabilities are not present in adolescents as they are in adults.

So, while a child may know right from wrong, he may not fully understand the consequences associated with doing wrong; nor would he be able to control impulses the way adults are able. Neuroscientist Ruben Gur described the role of the frontal lobe in impulse control: “If you’ve been insulted, your emotional brain says, ‘Kill,’ but your frontal lobe says you’re in the middle of a cocktail party, ‘so let’s respond with a cutting remark.’” From this example, we can see the important role the frontal lobe plays in choices involving delinquent behavior. Jay Giedd, a researcher at the National Institute of Mental Health, explained that while it is “not that teens are stupid or incapable . . .,” it is still “unfair to expect them to have adult levels of organizational skills or decision-making before their brain is finished being built.”59 Much of the research and information on the development of the adolescent brain in relation to criminal culpability is recent. Now that we are aware of these scientific findings, our justice

54. Id.
56. Id.
57. Id.
58. Id. at 2.
system can react to better serve youth and the communities those youth live in. In short, adolescents do not have the same cognitive abilities as adults. Consequently, they should not be held as accountable as adults who commit similar wrongs.

Another important psychological aspect to consider is that youth, in general, are thrill seekers, who often grow out of delinquent behavior. As such, it is important to weigh the likelihood of a child growing out of the behavior against the consequences associated with incarcerating juveniles, particularly in adult facilities. The serious ramifications associated with incarcerating juveniles in adult facilities should be avoided whenever possible. In relation to adults, “adolescents, as a group exhibit a disproportionate amount of reckless behavior, sensation seeking and risk taking. . . .”61 However, “adolescent experimentation in risk taking is transient for most individuals. . . .”62 Without the added influence associated with interaction with the justice system and incarceration, many juveniles would likely just “grow out of” delinquent conduct.63

Many psychologists believe adolescence is a crucial stage of development “not only because it is a period in which decision-making capacities mature, but also because during adolescence individuals begin to learn many essential skills required for optimal functioning in adulthood.”64 During this process, individuals are much more likely to engage in criminal behavior. Psychologist Terrie Moffitt, who has received numerous awards for her research in adolescent behavioral development, explains that “[a]ctual rates of illegal behavior soar so high during adolescence that participation in delinquency appears to be a normal part of teen[age] life.”65 Considering the prevalence of delinquent behavior among youth, it is evident that most juveniles grow out of delinquent behavior.

Another important psychological aspect of severe sentences for juveniles is competence. Under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, an individual must be competent to stand trial. The test is whether a defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.”66

62. Id.
63. Id.
64. ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 15 (Harvard Univ. Press 2008).
In *In re Gault*, the Supreme Court extended the constitutional trial rights of adults to juveniles. However, Professors Elizabeth Scott & Thomas Grisso note that the Supreme Court has never considered whether due process requires that defendants in juvenile delinquency proceedings be competent to stand trial, many state courts have addressed this issue. Almost all have held that the requirements of due process and fair treatment can be satisfied in juvenile delinquency proceedings only if defendants are competent to stand trial.

Minnesota is one of the states that adopted a competence requirement for juvenile delinquency proceedings. The Minnesota Supreme Court explained that, "[a]lthough the general area of competency is usually discussed in connection with adult criminal proceedings, we regard the right not to be tried or convicted while incompetent to be a fundamental right, even in the context of a juvenile delinquency adjudicatory proceeding."

Adolescents are notoriously short-term thinkers. The developmental stage of adolescence is associated with instant gratification and acting before thinking. Most individuals would prefer not to be held responsible far into the future for acts committed during the teenage years. The "think before you act" skill seems to come in later years. Because our courts have determined that there is a fundamental right not to be adjudicated delinquent while incompetent, we must now look to see whether youth in general are competent to understand the consequences associated with EJJ proceedings as well as adult criminal court proceedings.

Increased plea bargaining has been one of the results of Minnesota's EJJ legislation. There has been a "common practice in serious cases for the prosecutors to motion for certification [to criminal court] and then 'bargain down' to EJJ." The willingness of a juvenile to plea bargain may be a result of the short-term understanding that accepting EJJ means avoiding adult criminal prosecution. Whether a juvenile is competent to understand the collateral consequences of EJJ proceedings should be decided on a case-by-case basis. As stated earlier, the test for competency is whether a defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against

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69. *In re S.W.T.*, 277 N.W.2d 507, 511 (Minn. 1979).
70. *Id.*
71. *Id.*
72. *Id.*
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him.\textsuperscript{73} Rationality of juveniles in general is questionable. When that is paired with the scientific research suggesting that the ability to anticipate consequences, plan, and control impulses is still forming throughout adolescence, it is clearly inappropriate to assume that juveniles understand the processes to which they agree. Therefore, whether youth offenders as a whole can have a “rational as well as factual” understanding of the intricacies of certification or EJJ proceedings is open to question.

A LOOK AT CURRENT ALTERNATIVES TO SECURE CONFINEMENT

Incarceration of juveniles does not work. Large juvenile detention facilities are not conducive to correcting delinquent behavior. Research on such facilities shows that “as many as [fifty to seventy] percent of previously confined youth are rearrested within [one] or [two] years after release.”\textsuperscript{74} One of the difficulties of combating recidivism rates is that incarceration completely separates juveniles from the support systems and communities to which they will inevitably return upon release. Community-based programs which allow for more thorough reintegration processes are “cost-effective solutions for a large number of delinquent youth.”\textsuperscript{75} The benefits of these types of programs include: reducing crowding in facilities, cutting the costs associated with the operation of juvenile detention facilities, helping more minor offenders avoid association with youth who have more serious delinquency problems, and maintaining positive ties between the juvenile and his/her community.\textsuperscript{76}

Approximately fifty-four percent of young males and seventy-three percent of young females who are arrested will never have further contact with the juvenile justice system.\textsuperscript{77} Therefore, one of the most beneficial tools for a juvenile justice system to have is a risk assessment instrument (RAI), a mechanism which helps predict future delinquent behavior. This will help separate those who are unlikely to reoffend from those who are in need of further intervention. This tool helps determine “an offender’s risk of reoffending, receiving technical violations, failing to appear before the court, or other negative outcomes.”\textsuperscript{78} There are a variety of RAIs available, and each jurisdiction can tailor its own if desired. To guarantee the effectiveness of the RAI, the instrument should employ an objective scoring process, use items that can be easily and reliably measured, and be

\begin{itemize}
\item \textsuperscript{73} Dusky, 362 U.S. at 402.
\item \textsuperscript{75} Id. at 3.
\item \textsuperscript{76} Id.
\item \textsuperscript{77} Id. at 5.
\item \textsuperscript{78} Id.
\end{itemize}
statistically associated with future criminal behavior.\textsuperscript{79} While this article is limited to discussion of post-conviction/adjudication options for juveniles, RAIs can be used to assess risk at all levels of the process (i.e., pretrial detention decisions, dispositional decisions, etc.).\textsuperscript{80} Once an effective RAI is developed, the need shifts from risk assessment to program initiatives.

Program initiatives advanced and funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) include: "victim and offender mediation and rehabilitation, workshops, peer courts, electronic monitoring, and home detention."\textsuperscript{81} Thus far, rigorous evaluation of OJJDP funded programs has not been done to measure effectiveness; but many other alternatives to secure confinement programs have undergone such evaluation and have proved to be effective.\textsuperscript{82} There are many alternatives to secure confinement which are used around the country. These programs are not only socially beneficial, but also economically beneficial alternatives to secure confinement. Alternatives to secure detention are more cost-effective than long-term incarceration, and, even if they yield the same results, they are an economically superior choice. The remainder of this section will highlight some alternatives to detention programs which have been implemented throughout the country.

An intensive supervision program called Tarrant County Advocate Program (TCAP) was started in 1994 in Tarrant County, Texas. This program uses advocates (paid, trained adults) who live in the same communities as the youth offenders to foster relationships with "the department’s most at-risk youth" and their families.\textsuperscript{83} The program generally lasts approximately six months; and "[a]dvocates spend between seven and a half-hours and [thirty] hours per week in contact with youths and families in a variety of activities designed to develop strengths, seek solutions, and increase positive encounters and support networks within the community."\textsuperscript{84} Program activities include an array of services ranging from counseling to vocational training and parent education classes.\textsuperscript{85} In 2002, "TCAP served 527 youth and their families; 385 families completed the program. Of these youth, [ninety-six] percent were successfully maintained in the community or were diverted from out-of-home placement or commitment to the Texas Youth Commission."\textsuperscript{86} A program like TCAP not

\textsuperscript{79} Id. at 6.
\textsuperscript{80} AUSTIN, supra note 74, at 7.
\textsuperscript{81} Id. at 12.
\textsuperscript{82} Id.
\textsuperscript{84} Id.
\textsuperscript{85} AUSTIN, supra note 74, at 19.
\textsuperscript{86} Id.
only saves money by not having to maintain youth in secure facilities, but it ultimately helps get to the root of the problem the juvenile is having. It provides family involvement in a unique way which the traditional juvenile justice system does not promote. This approach seems to eliminate some of the difficulties with reintegration into the community because youth are maintained in the community the whole time.

Another alternative is Multisystemic Therapy (MST) for juvenile offenders. This approach involves treatment in many areas at once. MST addresses the “multidimensional nature of behavioral problems in troubled youth.”\textsuperscript{87} It seeks to “decrease rates of antisocial behavior and other clinical problems, improve functioning . . . , and achieve these outcomes at a cost savings by reducing the use of out-of-home placements such as incarceration, residential treatment, and hospitalization.”\textsuperscript{88} Research has shown that MST significantly reduces recidivism as compared to individual therapy.\textsuperscript{89} One study, conducted four years after commencement of MST treatment, showed that the rate of criminal recidivism for those who completed MST was twenty-two percent. That figure was less than one-third the rate for those who completed individual therapy.\textsuperscript{90} MST has been used “in at least twenty-five locations in the United States and Canada.”\textsuperscript{91} Studies of violent and repeat juvenile offenders have found that MST programs decrease rates of re-arrest by between twenty-five and seventy percent.\textsuperscript{92}

Functional Family Therapy (FFT) is a form of treatment which is similar to MST, but for less serious offenders.\textsuperscript{93} This is a short-term, family-based intervention which focuses on family communication, parenting skills, and conflict management skills. The program uses family therapists who help the family work through four phases of therapy.\textsuperscript{94} FFT has proven to be very effective in lowering recidivism rates. Multiple studies have shown that recidivism is reduced between fifty and seventy-five percent for less serious offenders; and for severe offenders, recidivism has been reduced by thirty-five percent.\textsuperscript{95}

\textsuperscript{88} Id.
\textsuperscript{89} Id.
\textsuperscript{90} Id.
\textsuperscript{91} Id.
\textsuperscript{92} Id.
\textsuperscript{95} Id.
A Cook County, Illinois, "home confinement" program operates through the Cook County probation staff. This program uses two-member teams of probation officers with each officer responsible for twenty-five cases. The program is currently a pre-adjudication/conviction program, but could potentially serve as an alternative at other points in the criminal justice process in the future. The program requires at least three face-to-face meetings each week in the juvenile's home, as well as random telephone contacts. The youth are not allowed out of the house other than to attend school and church unless an activity is approved by the probation staff. The staff also ensures regular attendance at school; if necessary, the supervision can be enhanced by electronic monitoring. The program generally only lasts between thirty and forty-five days and the cost is around ten dollars per day. On average, the daily number of youth served is between 180 and 200, and ninety-one percent of participants "remain arrest-free and make their court hearings during their time in the program." While this program is a short term pre-adjudication program, it is easy to see the benefits associated with giving the child an opportunity to remain in the community. The children are able to maintain community ties and avoid the burdens that the reintegration process causes.

Another Cook County program is the Manuel Saura Center. It is operated by a non-profit, community-based agency which serves both pre- and post-dispositional youth awaiting placement in a treatment facility. The program involves twenty-four hour supervision and is located in a six-flat apartment building in Chicago. The program provides education, independent living skills, individual and group counseling, transportation to court, and probation outreach to arrange return to parental custody. The cost is about ninety dollars per day and the average length of stay is less than ten days for pre-adjudicated cases and up to thirty days for post-adjudicated cases where the youth is awaiting placement in a treatment facility. The program has a ninety-six percent success rate of ensuring that the youth do not commit any new offenses, and that they make all

97. Id. at 18.
98. Id.
99. Id.
100. Id.
101. Id.
102. DeMuro, supra note 96, at 18.
103. Id. at 23.
104. Id.
105. Id.
106. Id.
scheduled court appearances.\textsuperscript{107}

There are other programs similar to those discussed above which address more than just one aspect of juvenile delinquency. The success of these programs is further evidence that strict incarceration practices do not work as well as alternatives. Investing our youth in these types of programs is cost-efficient both economically and socially. House arrest with electronic home monitoring can cost as little as six dollars per day.\textsuperscript{108} Not accounting for the substantial costs associated with building larger detention facilities to house juvenile offenders, a well-maintained facility costs between 150 and 200 dollars per day to house one juvenile.\textsuperscript{109} Further, counseling our youth to become contributing members of society is much more beneficial than confinement. This approach does not show repercussions of lessened public safety, while it does show heightened development and personal growth.

**HOW TO IMPROVE MINNESOTA’S SYSTEM**

In the late 1980s and early 1990s, there was a nationwide push to get tough on juvenile crime.\textsuperscript{110} The push came from the belief that juvenile crime was growing and infringing on individual rights to safety. The twenty-four hour media availability helped contribute to this belief by sensationalizing stories and making violent juvenile criminals appear to be the norm. As a result, many states enacted laws which provided more severe sanctions for juvenile offenders. These legislative changes made it easier for youth to be transferred into the adult system. The adult system is not equipped to appropriately deal with juvenile offenders, which is why the juvenile justice system was established in the first place. Three steps should be implemented to improve the Minnesota juvenile justice system. First, transfers of juveniles to the adult system should become more difficult and reserved for extreme situations (i.e., those involving severe physical harm or death). Certification would be eliminated for non-violent offenses. Second, the EJJ process should be re-evaluated in terms of effectiveness and alignment with the purposes of the Juvenile Court Act. Finally, alternatives to secure confinement should be explored and grants from the OJJDP should be acquired to enact program initiatives.

Juvenile transfers into the adult system should be rare. The consequences of incarcerating juveniles with adults should not be taken lightly. Adolescents are more susceptible to peer pressure and placing them

\textsuperscript{107} Id.
\textsuperscript{108} DeMuro, supra note 96 at 24.
\textsuperscript{109} Id.
with adult criminals exacerbates that problem. Unless America is prepared to incarcerate juvenile offenders for life, they should not be moved to adult criminal court. The repercussions associated with a child going through adolescence while in prison with adults are extraordinary. Adolescence is a crucial developmental stage and, if at all possible, youth should go through that stage with positive influences surrounding them.

Extended Jurisdiction Juvenile practices should be reevaluated for effectiveness. Minnesota should perform research to determine whether EJJ is working the way in which it was intended. How many youth are being served, and are they the youth who were meant to be served? If EJJ was enacted to be a “last chance” for juvenile offenders before significantly more serious penalties are to be imposed, why are so many EJJ cases those of first time serious offenders? Finally, is the EJJ legislation in line with the Juvenile Court Act’s purpose? The Juvenile Court Act states that its “purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth.”¹¹¹ Does EJJ align with the requirement that the juvenile system be fair and just and give children access to opportunities for personal and social growth? If not, the legislation should be repealed.

Finally, Minnesota should further explore the alternatives to secure confinement of juveniles. Such alternatives are considerably beneficial to juvenile offenders, their families, and the communities in which they live. They have long term benefits which allow juvenile offenders to become productive members of society. Alternatives to secure confinement address the underlying problems juvenile offenders face, and seek to resolve those problems.

Ultimately, we must all remember that children differ from adults in almost every measurable way. They are treated as different in virtually every aspect of the law, and the criminal system should not be different. Juveniles are not at the same cognitive level as adults, nor are they able to adequately understand the severe consequences associated with their actions. At different ages, youth certainly know right from wrong, but they do not know the vast repercussions associated with doing wrong. They are less able to evaluate long term costs of their actions and they are certainly less culpable than adults who commit the same wrongs. As such, they should be treated differently in our correctional system. Juveniles should be treated as assets and helped to become contributing members of society. It is wise to invest in them. Our future is in their hands.

¹¹¹ MINN. STAT. § 260B.001, subd. 2 (2010).