I. INTRODUCTION

Washington's juvenile justice system abandoned the rehabilitation or "best interests" model of juvenile justice in 1977 in favor of an offense-based, "just deserts" model focusing on punishment and accountability. At the heart of this latter model is a determinate sentencing scheme that bases juvenile sentences on the offense committed rather than on the needs of the offender. However, the increase in the seriousness of juvenile crime, the cost of maintaining the current system, and the increasing population in juvenile corrections facilities all demonstrate that the system is failing.

Throughout history, juvenile justice philosophy has been a pendulum swinging from one extreme to the other. Originally, juveniles were treated as adults and incarcerated in adult jails. With the Progressive Movement\(^1\) came one swing of the pendulum, and the juvenile justice system fully embraced a rehabilitative ideal.

In Washington, the public ultimately grew disenchanted with trying to rehabilitate young offenders, and the pendulum swung the other way. The punitive model was embraced and rehabilitation was almost totally excluded. Now that Washington's strict punishment model has failed, policy makers and the public seek yet another change.

Thus, history appears to indicate that embracing either the punitive or the rehabilitative model to the exclusion of the other simply invites failure and a return to the other extreme, a return that only perpetuates the ultimate failure of the sys-

---

* B.A. 1979, University of Washington; J.D. Candidate 1993, University of Puget Sound School of Law. My thanks to Professors Pat Shelledy and Janet Ainsworth for their assistance and encouragement during the preparation of this Comment.

1. The Progressive Movement took place from approximately the last decade of the nineteenth century until the 1920's. For more, see generally Barry C. Feld, The Transformation of the Juvenile Court, 75 MINN. L. REV. 691 (1991); Charles M. McGee, Measured Steps Toward Clarity and Balance in the Juvenile Justice System, 40 JUV. & FAM. CT. J. 1 (1989).
tem as a whole. Some commentators suggest that the juvenile justice system is schizophrenic because it attempts to both punish and rehabilitate.\(^2\) Coupled with the failure to provide juveniles with either effective treatment services or all of the procedural safeguards enjoyed in the adult justice system, commentators conclude that juveniles receive the worst of both systems.\(^3\) Therefore, they recommend that the juvenile system should be scrapped.\(^4\)

This Comment argues that the juvenile justice system should be retained in theory, but that Washington's punitive approach has failed and should be restructured to embrace a system that focuses more on the needs of the offender than on the results of the offense. The punitive system must be replaced by laws that once again make rehabilitation a primary goal, but that also provide juveniles with the procedural safeguards necessary to ensure survival in the system. This Comment proposes a significant restructuring of the current system as a means of achieving that goal.

Section II reviews the general history of the juvenile court in America from its progressive reform to the mandate of procedural due process safeguards in the mid-1960's. Section III summarizes Washington's juvenile court history, identifies the reasons for the radical change from a rehabilitative to a punitive system in 1977, and examines the function of the current system. Examination of the juvenile system's statutory framework, decisions of the Washington Supreme Court characterizing the juvenile system, and empirical evidence of how the system functions, all demonstrate that Washington has embraced a strictly punitive system that has failed to achieve the deterrent goals envisioned by its creators.

Accordingly, Section IV explores options for reform by reviewing recommendations from professionals, underlying rationales for punishment or treatment of juveniles, and experiences of states that embrace a rehabilitation philosophy. After examining those recommendations and experiences in light of data that suggests a strong correlation between juvenile crime and the existence of socioeconomic factors in juveniles' lives, this Comment concludes that adoption of a more therapeutic model of juvenile justice involving smaller

---

2. See infra notes 179, 254-259 and accompanying text.
3. See infra note 35 and accompanying text.
4. See infra notes 380-81 and accompanying text.
facilities, greater judicial discretion, and a more indeterminate sentencing structure will be cost effective while continuing to protect the public. Finally, Section V makes specific recommendations for restructuring Washington's system to incorporate a rehabilitative justice model fairly and effectively.

Adopting a treatment-oriented approach is preferable to eliminating the juvenile justice system as a separate entity. However, in order for the changes recommended in this Comment to succeed, the state must provide sufficient funding for the juvenile system. Alternatively, if the state is unwilling to sufficiently fund adequate and effective treatment and aftercare services, the state should acknowledge that the juvenile system is essentially a mirror image of the punitive adult system, and the state should afford juveniles all procedural due process rights afforded to adults.

II. THE HISTORY OF THE JUVENILE JUSTICE SYSTEM

A. The Progressive Juvenile Court

To understand Washington's current juvenile justice system and the changes proposed in this Comment, the history of juvenile justice in the United States must be briefly examined. American society's early treatment of juveniles was marked by punishment and retribution. In the early 1800's, young criminals were treated similarly to adults, and they were subjected to adult punishments including banishment, whippings, and public humiliation. Some juveniles were incarcerated in adult jails or penitentiaries.

By the end of the nineteenth century, society experienced increased modernization, urbanization, and immigration. America had changed from an agrarian society to an urban, industrial society. With growth came many social problems. In reaction, a "Progressive" reform movement developed to search for solutions.

Child-centered themes were at the heart of many Progressive reforms. These reforms included child labor and welfare laws, compulsory school attendance, and the juvenile court. Of all the Progressive reforms, creation of a separate juvenile

---

6. Id.
7. Feld, supra note 1, at 693.
8. Id. at 694.
court system remains the most controversial.9

Changes in basic assumptions about both the causes of crime and the nature of childhood inspired Progressive criminal justice reforms. Children were no longer seen as miniature adults, but as dependent, innocent individuals who needed extended guidance and preparation for later life.10 Positivist criminology regarded crime as determined, rather than chosen, and focused on reforming offenders rather than punishing them for their offenses.11

The Progressive "child savers" saw juvenile courts as "benign, non-punitive, and therapeutic."12 The juvenile court's jurisdiction allowed judges to reinforce parental authority. Progressives felt that a juvenile court judge should be a "wise and merciful father" and discipline juveniles as he would his own children whose errors had not been discovered by authorities.13 Thus, the concept of parens patriae, the state as parent, became the basis for court intervention. The proper role of the court, according to early juvenile court proponents, was to go beyond simply asking whether a child had committed an offense. Instead, the court should ask what made the child who he or she was physically, mentally, and morally. If the judge learned what led to the criminal offense, the judge should take charge of the juvenile, not to punish, but to reform.14

The juvenile court under the Progressives was an entirely new way of responding to delinquents.15 The juvenile court's exercise of parens patriae power was designed to avoid "branding" a juvenile with the life-long stigma of criminality.16 The nature of juvenile proceedings was therapeutic and rehabilitation was the ultimate goal.

To achieve its rehabilitative goals, the court's focus was not on the offense, but on the juvenile's character and lifestyle,

---
10. Feld, supra note 1, at 694.
11. Id.
12. Id.
14. Id.
15. The first formal juvenile court opened in Chicago in 1899. Ten states had similar courts within five years, and, by 1920, all but three states provided a juvenile court. ROTHMAN, supra note 9, at 215.
psychological strengths and weaknesses, and the advantages or disadvantages of home life.\textsuperscript{17} The court's purpose was to look deep into a delinquent's soul rather than criminally prosecute him or her. Therefore, advocates of the juvenile court felt that non-adversarial proceedings were instrumental to its operation.\textsuperscript{18} Courts adopted informal procedures and rejected the traditional trappings of adult jurisprudence, such as juries and lawyers.\textsuperscript{19} Proceedings were considered civil in nature, not criminal.\textsuperscript{20}

The judicial role was seen uniquely in a juvenile court setting. As Cook County Juvenile Court Judge Julian Mack observed, a judge "must be able to understand the boys' point of view and ideas of justice; he must be willing and patient enough to search out the underlying causes of the trouble and to formulate the plan by which, through the cooperation, oftentimes, of many agencies, the cure may be effected."\textsuperscript{21}

Even the physical characteristics of the juvenile court varied from the adult system. Judges sat next to the juveniles, believing that physical intimacy would promote insightful and sympathetic treatment.\textsuperscript{22} The child was to be "made to know that he is face-to-face with the power of the State, but he should at the same time . . . be made to feel that he is the object of its care and solicitude."\textsuperscript{23}

A key component of the rehabilitative model was indeterminate dispositions. In theory, disposition of a juvenile delinquent was to be guided by what was in the juvenile's best interests. Because delinquent behavior was seen as a "symptom" of a child's real needs, "sentences were indeterminate, non-proportional, and potentially continued for the duration of minority."\textsuperscript{24} While probation was considered the most important component of the juvenile court program, reformers were prepared to incarcerate offenders.\textsuperscript{25} "Institutionalization was a fully legitimate response, an integral part of the rehabilitative program."\textsuperscript{26} The unanswered question in the early 1900's was

\begin{flushleft}
\textsuperscript{17} ROTHMAN, supra note 9, at 215.
\textsuperscript{18} Mack, supra note 13, at 120.
\textsuperscript{19} Feld, supra note 1, at 695.
\textsuperscript{20} Id.
\textsuperscript{21} Mack, supra note 13, at 119.
\textsuperscript{22} ROTHMAN, supra note 9, at 217.
\textsuperscript{23} Mack, supra note 13, at 120.
\textsuperscript{24} Feld, supra note 1, at 695.
\textsuperscript{25} ROTHMAN, supra note 9, at 218-19.
\textsuperscript{26} Id.
\end{flushleft}
where juveniles should be housed. It was not long before states began constructing large state schools to house delinquents away from adult offenders.

The Progressive reformers had fashioned a paternalistic system that appeared to please everyone, because the system was simultaneously benevolent and tough minded, helpful and rigorous, protective of the child, and mindful of the safety of the community. However, the new court was not without its detractors, and some lawyers and legal scholars objected to the court’s discretionary powers on the basis of civil libertarian reasons. Legal challenges to the constitutionality of the juvenile courts were largely rejected. It was not until the mid-1960's that those constitutional concerns triggered a fundamental change in juvenile courts.

B. The Impact of Gault

The legal system’s view of juveniles was forever changed by the United States Supreme Court’s decision in In re Gault and a handful of contemporary decisions. Because Washington’s sweeping change was initiated, in large part, by the rights bestowed on juveniles through these rulings, it is necessary to explore them in some detail.

Judicial dissatisfaction with the supposed benefits of the juvenile court system became evident in 1966 when the Supreme Court ruled in Kent v. United States that due process safeguards were required in the waiver of a juvenile to adult court. Justice Fortas noted increasing evidence that,
while laudable in its original goals, the paternalistic juvenile courts lacked personnel, facilities, and techniques to perform adequately as representatives of the state in a *paren's patriae* capacity.\(^{34}\) Consequently, Justice Fortas concluded that a juvenile experienced the worst of both worlds because he or she received neither the protections provided to adults, nor the care and treatment necessary for juveniles.\(^{35}\)

Following soon after *Kent* was *In re Gault*,\(^{36}\) which created a new concept of a juvenile court system that was far removed from the juvenile court envisioned by the Progressives. The case concerned fifteen-year-old Gerald Gault who allegedly phoned a neighbor and made lewd and indecent remarks.\(^{37}\) The police arrested Gerald but did not notify his parents.\(^{38}\) After a series of hearings during which no record was kept, no witnesses were sworn in to give testimony, and no lawyer was provided to Gerald or his family, the juvenile court committed him as a juvenile delinquent to the State Industrial School until age twenty-one or until discharged.\(^{39}\) Had Gault been an adult, the law that he allegedly violated would have resulted in a fine of five to fifty dollars or imprisonment of not more than two months.\(^{40}\)

The United States Supreme Court, in a critical review of juvenile court history, concluded that the results of the Progressive reform effort had "not been entirely satisfactory," and that "unbridled discretion, however benevolently motivated, was frequently a poor substitute for principle and procedure."\(^{41}\) The Court focused on the ultimate practical effect of a juvenile court disposition and stated that whether called a "receiving home" or an "industrial school," the end result was that a juvenile was deprived of liberty and housed in a world of guards, custodians, state employees, and other delinquents.\(^{42}\)

The Court reversed the decision from below and gave

\(^{34}\) *Id.* at 555.

\(^{35}\) *Id.* at 556.

\(^{36}\) 387 U.S. 1 (1967).

\(^{37}\) *Id.* at 4.

\(^{38}\) *Id.* at 5.

\(^{39}\) *Id.* at 7.

\(^{40}\) *Id.* at 8-9.

\(^{41}\) *In re Gault*, 387 U.S. at 18-20 (noting that due process was the indispensable foundation of individual freedom, Justice Fortas stated that the failure to observe due process resulted in unfairness to individuals and inadequate or inaccurate findings of fact).

\(^{42}\) *Id.* at 27.
juveniles a series of due process rights. It then declared that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." Finally, the Court stated that juveniles have the right to notice of the charges against them, to appointment of counsel, to confront and cross examine witnesses, and to be advised of the privilege against self-incrimination.

In addition to the mandatory procedural safeguards imposed in In re Gault, the Court's other contemporary decisions give juveniles additional rights. The Court requires that the state prove delinquency beyond a reasonable doubt, and that the Constitution's double jeopardy clause prohibits adult criminal reprosecution of a juvenile who was previously convicted on the same charges in juvenile court. However, while the Court took substantial strides to provide juveniles with fundamental procedural rights given adult criminal defendants, the Court stopped short of providing the full range of rights when it denied juveniles the right to a jury trial.

III. WASHINGTON'S JUVENILE JUSTICE HISTORY

A. From Benevolence to Retribution

Washington's early juvenile justice system and its current system represent distinct and contrasting approaches. This section reviews the origin of Washington's juvenile justice system and the developments on the national and the state levels that influenced state legislators to adopt the current punitive system. The operation of the current juvenile justice system is then examined in-depth.

43. Id. at 13.
44. Id. at 33.
45. In re Gault, 387 U.S. at 41. The Court required that both the child and parents be notified of the juvenile's right to be represented by counsel and that, if they could not afford a lawyer, counsel would be appointed. Id.
46. Id. at 57.
47. Id. at 55.
50. McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971). The Court felt that jury trials would disrupt the traditional juvenile court and its practices even though the Court had largely changed those practices in previous rulings. Id. at 547. While the Court acknowledged fault with the juvenile system, the Court contended that a jury trial would not correct those flaws but would, instead, make the process unduly formal and adversarial. Id. at 545. The Court noted that an ideal juvenile court system was one that provided an intimate, informal, protective proceeding, yet the Court also acknowledged that the ideal was seldom, if ever, realized. Id. at 545-47.
Washington adopted legislation in 1905 and 1909 that created a separate juvenile court.\textsuperscript{51} In 1913, the legislature enacted laws that remained largely unchanged until 1977.\textsuperscript{52} The 1913 Act followed the tradition of socialized justice for juveniles. The purpose of the 1913 Act was to provide care, custody, and discipline for a juvenile that approximated a level of care that should be given by the juvenile’s parents.\textsuperscript{53} Courts were given authority to intervene in the lives of juveniles, including status offenders who were found to be either delinquent or dependent.\textsuperscript{54}

In addition to the changes implemented as a result of the Supreme Court’s decisions, the impetus for change in the law came from several sources. At the federal level, Congress enacted the Juvenile Justice and Delinquency Prevention Act of 1974.\textsuperscript{55} The 1974 Act provided financial incentives to states to remove status offenders from the traditional juvenile court system into community-based, non-secure facilities.\textsuperscript{56}

The juvenile crime rate in Washington also began climbing in the 1960’s, and admissions to the state’s juvenile institutions nearly doubled from 1960-1967.\textsuperscript{57} In 1969, to encourage communities to keep juveniles out of the state system, the legislature began providing subsidies to counties for development of additional resources.\textsuperscript{58} Unfortunately, while institution populations dropped, the subsidy resulted primarily in an increase in probation officers and not the creation of community-based resources.\textsuperscript{59} The growing cost of the juvenile justice system added even more incentive for legislative reform to provide a

\begin{itemize}
    \item \textsuperscript{51} Act of Feb. 15, 1905, ch. 18, § 3, 1905 Wash. Laws 34 (repealed 1909); Act of Mar. 17, 1909, ch. 190, Wash. Laws 668 (repealed 1913).
    \item \textsuperscript{52} Act of Mar. 22, 1913, ch. 160, 1913 Wash. Laws 520 (substantially repealed 1977).
    \item \textsuperscript{53} Id.
    \item \textsuperscript{55} For an additional review of Washington juvenile court history prior to the 1977 changes, see Bobbe Jean Ellis, \textit{Juvenile Court: The Legal Process as a Rehabilitative Tool}, 51 WASH. L. REV. 697 (1976); Lawrence R. Schwerin, \textit{The Juvenile Court Revolution in Washington}, 44 WASH. L. REV. 421 (1969).
    \item \textsuperscript{57} Id. Admissions climbed from 873 in 1960 to 1,539 in 1967. \textit{Id}. This was attributed, in part, to the fact that while counties paid for court costs to handle juveniles, post-disposition costs were paid by the state. \textit{Id}. at 293-94. Thus, counties had an incentive to inject juveniles into the state system.
    \item \textsuperscript{58} Act of April 24, 1969, ch. 165, 1969 Wash. Laws 1165.
    \item \textsuperscript{59} Becker, \textit{supra} note 54, at 294.
\end{itemize}
predictable method of controlling access to state institutions.\textsuperscript{60}

Law enforcement officers and community groups also called for change because they were dissatisfied by what they viewed as insensitivity on the part of the juvenile courts toward public safety and protection.\textsuperscript{61} These groups felt that many juvenile dispositions were disproportionate to the crimes committed and did not serve the juvenile's best interests; some consequences were too severe for the offense, while others were too lenient.\textsuperscript{62}

As the legislature struggled to rewrite the juvenile laws, it faced three major criticisms of the juvenile justice system: (1) that the system was not accountable to citizens; (2) that the system did not hold youthful offenders accountable; and (3) that the system did not help offenders because the conflict between punishment and rehabilitative roles undermined probation workers' and institutional officers' ability to work with juveniles.\textsuperscript{63} The increase in juvenile crime was noted as evidence of the juvenile justice system's ineffectiveness.\textsuperscript{64}

While the legislature evaluated alternatives to Washington's system, the Institute of Judicial Administration (IJA), in conjunction with the American Bar Association (ABA), was completing a Juvenile Justice Standards Project.\textsuperscript{65} The Standards' authors believed that the traditional juvenile justice system was marred by confused concepts, grandiose goals, and unrealized dreams.\textsuperscript{66} They contended that juvenile corrections authorities and rehabilitation specialists did not demonstrate the ability to effectively deal with adolescent behavioral problems in coercive treatment programs.\textsuperscript{67}

The IJA-ABA Standards rejected the traditional benevolent attitude of courts toward juveniles.\textsuperscript{68} Rather than focusing on a juvenile's needs, the underlying principle became proportionality in sanctions based on the seriousness of the offense. Abolition of indeterminate sentencing was recommended in

---

\textsuperscript{60} Id.
\textsuperscript{61} Id.
\textsuperscript{62} Id.
\textsuperscript{63} Id.
\textsuperscript{64} Becker, supra note 54, at 299.
\textsuperscript{65} INSTITUTE OF JUDICIAL ADMINISTRATION, AMERICAN BAR ASSOCIATION, STANDARDS FOR JUVENILE JUSTICE: A SUMMARY AND ANALYSIS (1977) [hereinafter IJA-ABA STANDARDS].
\textsuperscript{66} Id. at 27.
\textsuperscript{67} Id. at 32.
\textsuperscript{68} Id. at 23.
favor of determinate sentences based on the fundamental premise that court-ordered treatment was not inherently beneficial to juveniles. The authors lauded their standards as bold and innovative.

The IJA-ABA Standards established a “matrix consisting of classes of offenses and the types of sanctions which a court could impose in delinquency cases.” Offenses were categorized into five classes based on the seriousness of the offense. Sanctions ranged from custodial confinement in secure or non-secure settings to conditional freedom, including probation and restitution, and to nominal sanctions, including reprimands and warnings. The most serious sanction that could be imposed for the most serious crime was twenty-four months of confinement or thirty-six months of conditional freedom.

The IJA-ABA Standards were particularly attractive to Washington legislators who sought a process that would make juveniles more accountable for their crimes, provide predictability in the disposition process, and respond to concerns about public safety. Legislative proponents for change embraced the philosophy of a determinate sentencing scheme.

The ultimate legislative proposal found bipartisan support. Law enforcement officials supported the proposal because it included tougher and more consistent determinate sentencing provisions, which would supposedly deter and incapacitate serious offenders. Public defenders and civil libertarians applauded the bill’s due process guarantees. Some juvenile court judges, directors, and probation workers opposed the bill. Ultimately, however, the Juvenile Justice Act of 1977 was passed and became effective January 1, 1978.

---

69. Id. at 22 (noting that indeterminate sentences allow wide disparity in punishment received for the same misconduct and create a potential for abuse that the public is helpless to prevent).
70. IJA-ABA STANDARDS, supra note 65, at 191.
71. Id.
72. Id. at 192-94.
73. Id.
74. Becker, supra note 54, at 301.
75. Id. at 305.
76. Id.
77. Id.
B. The "New" Washington Juvenile Justice System

This section examines key provisions of the current law including the legislative intent of the Juvenile Justice Act of 1977 and the procedural rights afforded to juveniles. This section urges that the sentencing provisions of the Juvenile Justice Act of 1977, which focus almost exclusively on making the punishment fit the crime rather than addressing the juvenile's individualized needs, clearly demonstrate that the system is punitive.

The Juvenile Justice Act of 1977 has been called many things from radical and comprehensive, to idealistic and exciting, to the "most substantial reform of a state juvenile code that has occurred anywhere in the United States." Under the Act, the juvenile court, in a move away from the parens patriae doctrine, views itself as an instrument of justice rather than as a provider of services. The legislative intent expressed in the Act states that juveniles should, first and foremost, be held accountable for their offenses. Prosecutors welcomed the new system because it was predictable and because it recognized that juvenile crime was a serious public safety problem.

Among the changes made by the Act was the provision of counsel for juveniles who faced danger of confinement. The Act rejects the concept that closed hearings are necessary for rehabilitation of juveniles, and the Act specifically allows the public and press to attend any hearing unless the court, for

79. Hereinafter the "Act".
81. WASHINGTON STATE JUVENILE DISPOSITION STANDARDS COMMISSION, WASHINGTON STATE JUVENILE DISPOSITION STANDARDS PHILOSOPHY AND GUIDE 23 (Revised June 1988) [hereinafter DISPOSITION STANDARDS GUIDE].
83. Becker, supra note 54, at 308.
86. WASH. REV. CODE ANN. § 13.40.140(2) (West 1992). Unless waived, counsel must be provided to juveniles who are financially unable to pay, and a juvenile may not be deprived of counsel because a parent or guardian refuses to pay for legal assistance. A juvenile also has a right to appointment of necessary experts. Id. § 13.40.140(3).
good cause, orders a hearing to be closed.\textsuperscript{87} Similarly, the legal files of juveniles are open for public inspection.\textsuperscript{88} A juvenile has the same right against self-incrimination as an adult, and illegally seized evidence is inadmissible to prove guilt if such evidence could not be admitted in an adult proceeding.\textsuperscript{89}

When a juvenile is initially taken into custody, the court must provide a detention hearing within seventy-two hours to determine whether continued detention is necessary.\textsuperscript{90} A juvenile may not be housed in an adult correctional facility except in extraordinary circumstances.\textsuperscript{91} Another mandatory hearing, in cases where serious crimes are alleged, is a declination hearing where the court must determine whether the juvenile should be prosecuted as an adult.\textsuperscript{92}

Complaints to the juvenile court that allege the commission of an offense must be referred directly to the prosecutor.\textsuperscript{93} If the alleged facts bring the case within jurisdiction of the juvenile court, and if, on the basis of available evidence, probable cause exists to believe the juvenile committed the alleged offense, the prosecutor must file an information in juvenile court or divert the case.\textsuperscript{94} The filing of an information is

\textsuperscript{87} Id. § 13.40.140(6).

\textsuperscript{88} Id. § 13.50.050(2).

\textsuperscript{89} Id. § 13.40.140(8). The law also requires waiver of any rights to be express waivers intelligently made by a juvenile after being fully informed of legal rights. Id. § 13.40.140(9).

\textsuperscript{90} WASH. REV. CODE ANN. § 13.40.050(1)(b) (West 1992).

\textsuperscript{91} Id. § 13.04.116. A juvenile may be housed in an adult facility for up to twenty-four hours where the purpose for detention is an initial court appearance and where there is no juvenile detention facility available in the county.

\textsuperscript{92} Id. § 13.40.110. Though hearings may be requested under any circumstances, hearings are required where the accused is fifteen years of age or older and is alleged to have committed a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony or where the accused is seventeen years old and the alleged offense is serious. Id. After a hearing, the court may order the case transferred to adult court if it finds it would be in the best interest of the juvenile or public. Id. § 13.40.110(2). The factors to be considered in a declination hearing are those outlined by the United States Supreme Court in Kent v. United States, 383 U.S. 541 (1966), and factual determinations need be made only by a preponderance of the evidence. State v. Toomey, 38 Wash. App. 831, 690 P.2d 1175 (1984), cert. denied, 471 U.S. 1067 (1985). If declined, the juvenile remains under adult criminal jurisdiction for all future offenses. WASH. REV. CODE ANN. § 13.40.020(10) (West 1992). For a comparison of other aspects of the current law and prior law, see Richard G. Patrick & Timothy T.A. Jensen, Changes in Rights and Proceedings in Juvenile Offense Proceedings, 14 GONZ. L. REV. 313 (1979).


\textsuperscript{94} Id. § 13.40.070(3). When a case is "diverted," the juvenile enters into a diversionary agreement to fulfill certain conditions in lieu of being prosecuted. Id. § 13.40.080(1). Diversion agreements are limited to community service, restitution,
required if the alleged offender is accused of a class A or B felony, other serious offenses, or if the offender has a serious criminal history.\textsuperscript{95}

If the case is adjudicated, allegations must be proved beyond a reasonable doubt.\textsuperscript{96} A juvenile is not entitled to a jury trial.\textsuperscript{97} Following a delinquency finding,\textsuperscript{98} the court may make a disposition immediately, or the court may order preparation of a pre-disposition report if the court determines that a report would be helpful in the court's evaluation of the case.\textsuperscript{99}

The disposition hearing has several procedural safeguards. A juvenile and his or her counsel are allowed to examine and controvert written reports and to cross-examine individuals who wrote the reports.\textsuperscript{100} The prosecutor and counsel for the youth may submit recommendations.\textsuperscript{101} At the hearing, the court must consider predisposition reports and arguments by counsel, must allow statements by the juvenile and victim, must determine whether the juvenile is a minor, middle, or serious offender, and must consider mitigating and aggravating factors.\textsuperscript{102} The punitive nature of the Act is shown, in part, by the Act's prohibition on consideration of a juvenile's gender, ethnic background, and social and economic background in determining an appropriate disposition.\textsuperscript{103} Further, only some dispositions may be appealed.\textsuperscript{104}

To guide dispositions, the legislature adopted the general matrix sentencing concept of the IJA-ABA Standards. "The presumptive sentencing scheme is intended to hold juveniles accountable for crimes by dealing with them according to the nature and frequency of criminal acts rather than on the basis

\textsuperscript{95} WASH. REV. CODE ANN. § 13.40.080(11).
\textsuperscript{96} Id. § 13.40.080(6).
\textsuperscript{97} Id. § 13.04.021(2).
\textsuperscript{98} Id. § 13.40.070(5) (West 1992). The act for which the juvenile was diverted remains a part of the juvenile's criminal history. Id. § 13.40.080(4).
\textsuperscript{99} Id. § 13.40.130.
\textsuperscript{100} WASH. REV. CODE ANN. § 13.40.150(1) (West 1992).
\textsuperscript{101} Id.
\textsuperscript{102} Id. § 13.40.150(3).
\textsuperscript{103} Id. § 13.40.150(4).
\textsuperscript{104} Id. § 13.04.33. See also id. §§ 13.40.160, 13.40.230.
of a juvenile’s social background or need for treatment. 105 The legislative policy behind the 1977 Act is that serious offenders are to be incarcerated as a matter of public safety. 106

A Juvenile Disposition Standards Commission must periodically evaluate the effectiveness of existing disposition standards. 107 The Commission, by November 1 of each year, must recommend to the legislature disposition standards for all offenses. 108 The standards establish ranges for confinement and/or community supervision on the basis of a youth’s age, instant offense, and history and seriousness of previous offenses. In no case is the period of confinement or supervision to exceed that to which an adult may be subjected to for the same offense. 109 In recommending standards, the Commission may only consider the length of confinement and not the nature of security. The Commission may, however, consider the impact that its proposed standards may have on the capacity of state juvenile institutions. 110 The legislature has also imposed restrictions on the minimum term of confinement. 111

The complicated process of determining a juvenile disposition begins with assessing the seriousness of the offense. Offenses are divided into ten levels of seriousness and are then designated a certain number of points. 112 As the age of the juvenile declines, the number of points for the offense decreases. 113 The juvenile’s age at the time of the offense is used in this calculation. 114 If there is a prior criminal history, the current offense point total is then increased with the greatest increase resulting from prior offenses that are either more serious or more recent. 115

105. Becker, supra note 54, at 308.
106. Id.
108. DIVISION OF JUVENILE REHABILITATION, STATE OF WASHINGTON JUVENILE DISPOSITION SENTENCING STANDARDS (effective July 1, 1989).
110. Id. § 13.40.030(1)(a).
111. Id. § 13.40.030(2).
112. Id. § 13.40.0354.
113. For example, second degree malicious mischief is a class C offense. When committed by a thirteen-year-old, it would result in forty points; however, when committed by a seventeen-year-old it would carry fifty points. Id. § 13.40.0357.
115. Id. § 13.40.0354(2). Prior offense increase factors are determined by using the time span and the offense category of the prior offenses. The “total” increase factor is determined by totalling the increase factors of each prior offense and then adding a constant 1.0. Id.

Continuing the example in supra note 113, if the juvenile had committed a B level
Once a point total is determined based on the current offense, age of the juvenile, and history of prior offenses, the nature of the sentence and the sentencing range is chosen based on whether the offender is classified as a serious offender,\textsuperscript{116} a middle offender,\textsuperscript{117} or a minor/first offender.\textsuperscript{118}

If the court determines that a juvenile is a first offender, the court may impose only up to one year of community supervision,\textsuperscript{119} and/or up to one hundred fifty hours of community service,\textsuperscript{120} and/or a fine up to one hundred dollars. Confinement\textsuperscript{121} is not allowed.\textsuperscript{122}

If the court finds that the juvenile is a middle offender, it has two options. Under option A, for an offense of up to one hundred nine points, the court may impose up to twelve months community supervision, and/or up to seventy-two hours of community service, and/or up to a one hundred dollar fine, and/or up to thirty days confinement.\textsuperscript{123} Under option A, for offenses more than one hundred nine points, only confinement is allowed.\textsuperscript{124} Under option B, however, the court has the discretion to impose up to one hundred fifty hours of community service in lieu of any confinement.\textsuperscript{125}

---

\textsuperscript{117} Id. § 13.40.020(13) (defining a “middle offender”).
\textsuperscript{118} Id. § 13.30.020(14) (defining a “minor or first offender”).
\textsuperscript{119} Id. § 13.40.020(3) (defining “community supervision”).
\textsuperscript{120} Id. § 13.40.020(2) (defining “community service”).
\textsuperscript{121} WASH. REV. CODE § 13.40.020(4) (defining “confinement”).
\textsuperscript{122} Id. § 13.40.0357.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
\textsuperscript{125} Once again returning to the example in supra notes 113 and 115, the thirteen-year-old, due to age and prior history, would probably be classified as a minor offender. With seventy-six points, disposition would be limited to six to nine months community supervision, and/or forty to fifty-six hours of community service, and/or a fine of up to fifty dollars. The seventeen-year-old would be classified a middle offender for the same offense history, and with ninety-five points, he or she could be sentenced to nine to twelve months community supervision, and/or fifty-six to seventy-two hours community service, and/or a fine up to one hundred dollars. Additionally, the seventeen-year old could be confined for fifteen to thirty days.
If the court finds that the juvenile is a serious offender, it must sentence the juvenile to a term of confinement ranging from eight to two hundred twenty-four weeks.\textsuperscript{126} In any disposition involving confinement, due process and equal protection guarantees require that a juvenile's detention time prior to disposition be credited against the maximum term of confinement imposed under standard range guidelines.\textsuperscript{127}

Confinement and community supervision are not in any way related to the time it may require a juvenile to successfully participate in a rehabilitation program. The sentence given by the court is simply punishment based on the juvenile's age and offense history.

The judge has discretion in all dispositions to go outside the sentencing guidelines only if the judge determines that the terms of the disposition would create "manifest injustice" in that the disposition would either impose an excessive penalty on the juvenile or the disposition would impose a serious and clear danger to society.\textsuperscript{128} However, a juvenile's race, sex, or social needs are not legitimate factors in determining if there is manifest injustice.\textsuperscript{129}

Where a disposition is imposed on a youth for two or more offenses, the Act requires that the terms run consecutively within specific limits;\textsuperscript{130} another example of how the system favors imposition of sentences based on the length of sentence rather than the juvenile's treatment needs. A juvenile must be confined in state institutions for juvenile offenders except under limited exceptions that allow the transfer of juveniles to adult correction facilities.\textsuperscript{131} A transfer may occur only if continued placement in a juvenile institution presents a continuing and serious threat to safety of others within the institution.\textsuperscript{132}

\begin{footnotesize}
\begin{enumerate}
\item 129. Disposition Standards Guide, supra note 81, at 14.
\item 130. Wash. Rev. Code Ann. § 13.40.180 (West 1992). The total term may not exceed three hundred percent of the term imposed for the most serious offense. Id. § 13.40.180(2). Community service may not exceed two years in length, and fines assessed may not total more than $200 for all offenses. Id. § 13.40.180(3).
\item 131. Id. § 13.40.280(1).
\item 132. Wash. Rev. Code Ann. § 13.40.280(2) (West 1992). Assaults against juvenile institution staff result in a mandatory hearing to consider transfer. Id. § 13.40.280(3). If transferred to an adult institution, the juvenile can remain no longer than the term imposed by the juvenile court. Id. § 13.40.280(5).
\end{enumerate}
\end{footnotesize}
Once a juvenile has been confined, a release date is set within the prescribed range.133 After completing the disposition and parole requirements, the juvenile is discharged from state supervision. The state may retain control over a juvenile who has been adjudicated under the juvenile court system beyond the juvenile's eighteenth birthday in only limited circumstances.134 In no event may the juvenile be committed to the state system past his or her twenty-first birthday.135

In 1977, legislators adopted the system just described primarily to hold juveniles accountable to the public for their crimes. However, legislators, while giving juveniles some important procedural rights, failed to give juveniles all the rights inherent in the adult judicial system, most notably the right to trial by jury. Legislators maintained that because the juvenile system was civil in nature and designed to "treat" rather than punish juveniles, it was not necessary to give juveniles the full panoply of rights given to adults. However, going beyond the plain language of the law to examine the law's functional interpretation and enactment shows that little difference remains between the adult and juvenile correctional systems.

C. The Punitive Nature of Washington's Juvenile Justice Act

To fashion a new system of juvenile justice on the assumption that the current system has failed, one must understand the true nature of the current system and exactly how it has failed. The primary goal of the Act is to hold a juvenile accountable for his or her delinquent acts. However, is the Act holding juveniles accountable to punish them or to rehabilitate them? This Comment argues that the Act was implemented solely to punish even though the courts and legislators continue to believe that the system provides both punishment and treatment.

133. Id. § 13.40.210(1). The release date must be set before sixty percent of the juvenile's minimum confinement term has elapsed. Id.
134. WASH. REV. CODE ANN. § 13.40.300(1) (West 1992). Juvenile court jurisdiction beyond a juvenile's eighteenth birthday may occur only if, prior to the birthday, any of the following conditions are met: (a) juvenile court proceedings are pending and the court, in writing, extends jurisdiction over the youth beyond age eighteen; (b) the juvenile was previously found guilty and an automatic extension is necessary to allow for disposition; or (c) a disposition hearing was held and an automatic extension is needed to allow for enforcement of the disposition order. Id.
135. Id.
The plain language of the statutory framework just reviewed is a starting point for understanding the true nature of the current system. The views of the legislative authors, the Washington Supreme Court, and the Commission charged with establishing juvenile dispositions, further demonstrate that punishment is the chief goal of the current system. In addition, the day-to-day operations of the current system convincingly demonstrate that it penalizes juveniles, makes virtually no effort to rectify the causes of delinquency, and, ultimately, increases a juvenile's delinquent behavior.

1. The View of Legislative Authors

The legislature clearly intended in 1977 that juvenile justice in this state would take a radical turn from the direction it previously followed and that it would embrace a punitive system. One of the Act's prime sponsors noted that the law's explicit language reflected a "movement away from a benevolent treatment model in that it makes clear that youngsters who were being sentenced—i.e., deprived of liberty—are being punished rather than treated."136 As an example, the word "delinquent" was replaced by "offender."

Legislative sponsors noted that courts retained some, albeit minimal, latitude to pursue rehabilitative goals under provisions that allowed for counseling and other services as part of the disposition of middle range offenders.137

2. The View of the Washington Supreme Court

This section examines the Washington Supreme Court's interpretation of the Act and how the court continues to view the juvenile justice system as having dual goals of punishment and rehabilitation.

The Washington Supreme Court views the Act as abandoning the doctrine of parens patriae as the guiding principle and replacing it with the twin principles of rehabilitation and punishment.138 In the court's view, there are two policies underlying the Act. The first goal is to establish a system

---


137. Becker, supra note 54, at 308.

capable of having primary responsibility for, and responding to the needs of, youthful offenders. 139 The second goal is to hold juveniles accountable for their offenses and to ensure that communities and juvenile courts carry out their functions consistent with this intent. 140

In a number of challenges, the court has continued to interpret the Act as providing for both punishment and rehabilitation. 141 To demonstrate the rehabilitative nature of the system, the court relies on the assumption that juveniles are committed to institutions that are designed to best serve the welfare of the child and society. 142 Thus, in the court's view, while the legislators changed the philosophy of addressing juvenile offenders, they did not convert the procedure into a criminal offense atmosphere completely comparable to an adult criminal offense scenario. 143

In comparing the adult criminal system to the juvenile justice system, the court has noted a "critical distinction" in that the statutory framework of the adult system does not recognize the express policy of "responding to the needs of offenders," a directive that is expressly recognized in the juvenile system and one that the court says is of considerable significance. 144 Based on this distinction, the court has held that the Act did not abandon the rehabilitative ideal. 145 Rather, it has stated as follows: "It does not embrace a purely punitive or retributive philosophy. Instead, it attempts to tread an equatorial line somewhere midway between the poles of rehabilitation and retribution." 146

Ten years after passage of the Act, the court denied a juvenile the right to a jury trial, and the court continues to believe that Washington's juvenile justice system retains a "unique,

---

139. Tommy P. v. Board of Commissioners, 97 Wash. 2d 385, 397-98, 645 P.2d 697, 703-04 (1982).
140. Id.
141. State v. Lawley, 91 Wash. 2d 654, 591 P.2d 772 (1979)(finding that the Act's rehabilitation function was evidenced by provisions for treatment, counseling, and community supervision).
142. Id. at 658, 591 P.2d at 773.
143. Id. at 659, 591 P.2d at 774. See also State v. Rice, 98 Wash. 2d 384, 391, 655 P.2d 1145, 1150 (1982) ("it would be a mistake to assume that the new legislation has turned completely from the ideal of rehabilitating juvenile offenders").
144. Rice, 98 Wash. 2d at 392-93, 655 P. 2d at 1150 (stating that this directive "clearly indicates that the juvenile system is to some extent geared to respond to the needs of the child").
145. Id. at 393, 655 P.2d at 1150-51.
146. Id.
rehabilitative nature." While the Washington Supreme Court views the juvenile justice system as balanced between rehabilitative and accountability goals, this view has not been unanimous. In *State v. Lawley*, dissenting Justice Rosellini summarized his view of the law as follows:

In these provisions the legislature has made it clear that it is no longer the primary aim of the juvenile justice system to attend to the welfare of the offending child, but rather to render him accountable for his acts, to punish him, and to serve society's demand for retribution.

Justice Rosellini emphasized that juveniles face a loss of liberty and exposure of their records to the public. He found that provisions for community service and consecutive sentences related to punishment, and that punishment was no longer geared to fit the needs of the child but, rather, was related to the seriousness of the offense. The system, he declared, had been converted from one designed to protect and rehabilitate the child to one designed to protect societal purposes generally served by adult criminal law.

In 1987, Justice Goodloe wrote that:

> [a]n open-minded comparison indicates that juvenile proceedings have become akin to adult criminal proceedings; the Legislature and the courts of this State have so far departed from a "rehabilitative" model of juvenile justice as to render any differences from adult criminal justice too minor to justify the withholding of the right to jury trial.

The reality of the law, he said, was that rehabilitation no longer remained a substantial goal of the juvenile criminal justice system. The primary goal of Washington's system was condemnation, punishment, and deterrence.

---

149. Id. at 662, 591 P.2d at 775 (Rosellini, J., dissenting). See also Justice Dore's dissent in *Rice*, 98 Wash. 2d at 494, 665 P.2d at 1155 (stating that the Juvenile Justice Act shifts policy considerations from emphasis on rehabilitation to emphasis on accountability, punishment, and the protection of society).
150. *Lawley*, 91 Wash. 2d at 659, 591 P.2d at 775 (Rosellini, J., dissenting).
151. Id.
152. *Schaff*, 109 Wash. 2d at 23, 743 P.2d at 250-51 (Goodloe, J., dissenting).
153. Id. at 27-28, 743 P.2d at 253.
3. The View of the Washington State Juvenile Disposition Standards Commission

The punitive nature of the system is also demonstrated by the philosophy adopted by the Washington State Juvenile Disposition Standards Commission, a ten member panel appointed by the Governor, charged with establishing and periodically reviewing juvenile sentencing guidelines. This section explores (1) the general philosophy of the Commission toward setting sentencing standards, (2) the model the Commission has embraced to guide its recommended sentence decisions, and (3) the conflict the Commission has created between punishing and treating juvenile offenders by adopting this model.

First, in its latest philosophy statement, the Commission listed the sentencing standards goals to include the prescription of sentences that are fair, proportional, and predictable for juveniles; provide public safety; promote individual youth development; and require youth behavior accountability. In addition, the sentencing standards should ensure that the victims’ rights are protected.

Although the Commission recognized that judicial discretion in dispositions should be allowed, it decided that discretion should be limited such that it fell within consistent and predictable limits and would be clearly documented for meaningful review.

The Commission’s values include the belief that detention and institutional commitment should be reserved for more serious offenders, juveniles who are the greatest threat to public safety, and repeat offenders. In addition, the Commission believes that as juveniles are processed through the juvenile justice system, they should be treated as valued members of the community.

The Commission also noted in its philosophy statement that juvenile sentencing standards should consider a youth’s development and potential for change. However, the Commission prohibits basing sanctions on the youth’s race, sex, economic status, or treatment needs.

155. Id.
156. Id.
157. Id. at 8.
158. Id.
Finally, as to the imposed sanction, the Commission stated that "[t]he first priority is to make the type and level of sanction ordered proportional to the youth's current and past offense behavior." The proportionality epitomizes the punitive nature of the system because the sentence must first and foremost punish the offense, not treat the offender.

Second, the Commission adopted a "Youth Justice Model" comprised of three components to describe its goals and philosophy. The first, and most important, component focuses on accountability. According to the Commission, accountability is expected of juveniles and justice is provided by the fair and prompt imposition of sanctions upon youthful offenders. The purpose of sanctions is to teach a lesson from which the juvenile develops skills to prevent future offenses and the community obtains a long-term benefit. Furthermore, the juvenile justice system should be responsible for "the use of sanctions and treatment which research has shown to be effective."

Another component focuses on community safety. The Commission's philosophy is that the severity, recency, and number of past offenses are the best predictors of future offenses. As a result, sentences should be more severe where there is a prior offense history. The offender's past acts are equally, if not more, important than the offender's recent acts or the offender's special needs and circumstances.

A further component of the Commission's model focuses on youth development and treatment, and it makes the offender's age a key factor in disposition. In the Commission's view, "the older the offender, the more accountable that offender should be for the offensive behavior." "Sentencing strategies and treatment services should consider that juveniles can improve their behavior more easily than adults." Toward the goal of improved behavior, offense-related treatment is believed to be an effective tool to reduce

160. Id. at 12.
161. Id. at 10.
162. Id.
163. Id. at 11.
164. DISPOSITION STANDARDS GUIDE, supra note 81, at 12-13.
165. Id. at 13.
166. Id. at 15-16. Thus, the Commission reasons that there should be an increase in sanctions with the juvenile's age even if the offense is identical. For example, see supra notes 113, 115 and accompanying text.
167. DISPOSITION STANDARDS GUIDE, supra note 81, at 15.
recidivism.\textsuperscript{168} Although the Commission encourages such treatment, it only does so within limits of the sanctions.\textsuperscript{169}

The Youth Justice Model typifies the punitive nature of the system. Accountability, not rehabilitation, is the priority. Prior offenses outweigh present needs. Age is the only personal characteristic considered in sentencing, and it is only considered to the extent that the older a juvenile, the harsher the sentence. All key components are aimed at enhancing punishment, not at treating juveniles.

Third, and as a result of the Commission’s goals and philosophy, it has created a conflict between treating and punishing offenders. While the Commission appears to support treatment on one hand, it limits it with the other by declaring that a sentence geared to the offender’s treatment needs undercuts the significance of the crime committed. It is the Commission’s philosophy that the need for treatment should not influence the severity of sanctions, and that “educational and treatment services should be considered only after sanctions have been developed.”\textsuperscript{170}

A focus on the punitive rather than the rehabilitative nature of the system is further demonstrated by the Commission’s directive that if at the end of a sentence continued treatment is necessary, the sentence should not be extended. Rather, the juvenile should simply be encouraged to continue participation in a treatment program after his or her release.\textsuperscript{171} Thus, a juvenile is released regardless of whether rehabilitation has been achieved by some measurable means. One commentator has stated that “Washington’s juvenile code, more than any justice code in the nation, distinctly separates the provision of social services for troubled youth from the consequences due when a juvenile breaks the law.”\textsuperscript{172}

In summary, the Washington State Disposition Standards Commission recommends sentence ranges without considering

\textsuperscript{168} Id. at 16. According to the Commission, juveniles should learn why consequences occur and how to prevent the recurrence of offensive behavior. “The Commission wishes to avoid a situation where sanctions are imposed without the provision of effective services which focus upon preventing offense behavior . . . .” Id. at 17.

\textsuperscript{169} Id.

\textsuperscript{170} Id.

\textsuperscript{171} DISPOSITION STANDARDS GUIDE, supra note 81, at 20.

Juvenile Justice in Washington

special factors that may have influenced a juvenile's behavior. In effect, the Commission's attitude is one of, "You do the crime, you do the time." The obvious conclusion is that the Commission's philosophy is punitive.

4. The View of the System as Shown By Its Operations

If the explicit words of the Act's statutory framework and the philosophy of the Commission leave any doubt as to the almost entirely punitive nature of the system, the day-to-day operation of juvenile facilities demonstrates the simple reality that Washington's system has virtually no intent, desire, or hope to rehabilitate. This section reviews the traditional notion of what constitutes a proper juvenile facility and then compares that idea to how Washington's juvenile facilities are organized. Specific attention is given to the living conditions in these facilities with a focus on lawsuits filed against the King County Detention Facility and the Echo Glen Institution.

The traditional view of a rehabilitative juvenile institution was one of a school as opposed to a prison. Judge Julian Mack wrote that, regardless of the length of institutional life, a state should be required to furnish proper care:

This cannot be done in one great building, with a single dormitory for all of the two or three or four hundred or more children, in which there will be no possibility of classification along the lines of age or degrees of delinquency, in which there will be no individualized attention . . . . Locks and bars and other indicia of prisons must be avoided; human love supplemented by human interest and vigilance must replace them.

Judge Mack envisioned a system where juveniles would be housed in a family atmosphere, where caretakers would be more like benevolent parents, and where juveniles would be grouped according to similarities in age, type of offense committed, and treatment needs.

Washington's juvenile justice facilities have not been faithful to Judge Mack's vision. Washington has eighteen county-operated detention centers, eleven are located in western Washington. The State Division of Juvenile Rehabilitation operates five juvenile correctional institutions all of which are

173. Mack, supra note 13, at 114.
174. Id.
located in western Washington. Currently, no statewide detention standards exist, a problem annually highlighted by the Governor's Juvenile Justice Advisory Committee.

Conditions in Washington's juvenile institutions have been a source of public and legal controversy. A 1987 report of conditions at the King County Detention Facility concluded that the conflicting goals of punishing juveniles while trying to rehabilitate them resulted in an environment that was "inconsistent, at times inhumane, and certainly one that undermines staff and youth morale." Detention staff relied too heavily on isolation and lock down as behavior management techniques, and education programs were found inadequate.

In August 1990, a class-action lawsuit was filed claiming that the King County Detention Center was unsafe, overcrowded, and unsanitary. The lawsuit alleged that overcrowding and meager staffing subjected juveniles at the center to violence and psychological harm. The lawsuit requested the hiring of more staff and prohibiting the sharing of single

176. Id. The Division of Juvenile Rehabilitation operates three medium to maximum security institutions (Green Hill, Maple Lane, and Echo Glen) and two medium security forestry camps (Mission Creek and Naselle). The Division also administers five minimum security group homes.

177. An American Civil Liberties Union director for a local chapter notes that "detention centers are not required to be inspected by a state fire marshal and that sanitation and hygiene standards are nearly non-existent." Moreover, "counties have resisted standards such as those set by national associations, in part, because they could not afford the costs." Mary Rothschild, Locking Up the Young Is Opposed, Seattle Post-Intelligencer, Apr. 19, 1990, at A1.

178. 1991 REPORT, supra note 136, at 23.

179. PAUL DEMURO ET AL., A REPORT TO THE KING COUNTY DEPARTMENT OF YOUTH SERVICES CONCERNING THE KING COUNTY DETENTION FACILITY 1 (1987). The authors noted that deficiencies included the following: a lack of outdoor recreation time, a lack of integration between probation and detention services, a view of inmates as "objects," an inability of facility staff to perceive basic human needs of inmates as important, and a lack of special educational, counseling, medical, or remedial services in the Special Program Unit. Id. at 2-4, 7.

180. Id. at 19-20.

181. T.I. v. Delia, No. 90-2-16125-1 (King County Super. Ct. filed Aug. 10, 1990). Among the unhealthy conditions alleged in the lawsuit were the following: mice infestation, poor ventilation, lack of access to private toilets, poor educational opportunities, and inadequate exercise.

182. Id. The ACLU publicly supported the suit by objecting to the use of holding cells behind the King Country Courtroom alleging that, while designed to hold juveniles a few hours while waiting for trial, the cells were being used to house juveniles overnight. American Civil Liberties Union of Wash., Press Release, May 29, 1990 [hereinafter ACLU Press Release]. The ACLU complained that juveniles were forced to urinate on the cell floor because staff either refused to let them out or were not available to escort them to the bathroom. Id.
The suit also asked that the number of juveniles at the facility be limited to seventy-one, the number for which it was built. The facility's administrator admitted a preference to house no more than ninety juveniles because the ability to control the population diminished when the number of residents approached one hundred twenty.

Government reaction to the lawsuit demonstrated questionable dedication to the alleged rehabilitation goals of the system. County officials vowed to fight the lawsuit that they called an outrage and an insult to jail staff. Ultimately, a judge prohibited the housing of more than two juveniles per jail cell. While acknowledging a two person limit might create logistical problems, the judge said that the "need for detention does not override the rights of children to be safe and secure."

Serious problems in living conditions are not unique to the facilities located in King County. A 1987 study of thirteen of the state's eighteen detention facilities revealed that staff training was below nationally recognized standards, and that the physical plants of many facilities constituted hazards to the life, safety, and health of staff and inmates. Due to a lack of programs and services, the study concluded that the detention

---

186. Richard Seven, Hill Vows to Fight Juvenile Safety Suit, SEATTLE TIMES, May 24, 1991, at C1. King County Executive Tim Hill alleged that the suit would force the County to release dangerous juveniles into the community. Id. The ACLU countered by stating that Hill's charges were designed to divert attention from the real issue of juveniles being assaulted while in care of the County. ACLU Press Release, supra note 182.
188. Bob Lane & Richard Seven, Judge Sets Limit at Two Youths Per Cell, SEATTLE TIMES, Aug. 16, 1991, at E1. No limit was placed on the institution's capacity. While the center had 143 beds, the order made only 112 usable. At the time of the ruling, the center had 113 residents, but the population had peaked at 140 a few weeks earlier. Don Carter, County Ordered to Cut Crowding at Youth Center, SEATTLE POST-INTELLIGENCER, Aug. 17, 1991, at A1.
189. CHARLES J. KEOHE & JOSEPH R. ROWAN, JUVENILE DETENTION IN WASHINGTON STATE: STATE OF THE STATE REPORT 2-3 (Aug. 1987). Investigators also found state officials reluctant to recommend physical plant standards. The report noted an absence of any structured programming in many facilities and the lack of funding for education programs as serious problems. Health care practices and sanitation were found inadequate. Id. at 3-4.
facilities were unable to provide any services beyond custodial care.\textsuperscript{190}

These problems are not unique to county detention facilities; rather, they plague state-operated juvenile institutions as well.\textsuperscript{191} Overcrowding is a problem at all of the state's juvenile institutions.\textsuperscript{192} This problem has been most visible at the Echo Glen near Issaquah, Washington, where overcrowding has been an issue for at least fifteen years. Although Echo Glen has permanent beds for 176 inmates, in July 1991, the facility held 218 residents.\textsuperscript{193} In 1976, a complaint filed by state employees charged that crowding at the facility "had reached such serious proportions that the safety and welfare of both the staff and inmates were in danger," and the state was ordered to reduce inmate population in 1982.\textsuperscript{194}

With crowding again on the rise, staff more recently claimed that the number of treatment and rehabilitation programs have been cut and that those provided are failing.\textsuperscript{195} In August 1991, the state was again ordered to reduce overcrowding at the Echo Glen facility.\textsuperscript{196}

Suicides and attempted suicides are also grim proof of the detrimental effects of incarceration in Washington's juvenile system. In January 1992, a thirteen-year-old hung himself while detained at Echo Glen.\textsuperscript{197} Two months later, a fifteen-year-old boy attempted to hang himself at the Spokane County Juvenile Detention Center, the second suicide attempt at that center during the month.\textsuperscript{198} Such self-destructive behavior

\textsuperscript{190} Id. at 4.

\textsuperscript{191} County-operated detention centers usually house juveniles who await court hearings. In some instances, where sentences are short, detention centers may house juveniles during their sentences. The state-operated institutions, however, are specifically used to house juveniles who have been sentenced and who have usually been given substantial confinement terms. These institutions are medium to maximum security. 1991 REPORT, supra note 136, at 37.

\textsuperscript{192} Louis T. Corsaletti, Overcrowding at Echo Glen: New Urgency to Old Lawsuit, SEATTLE TIMES, July 16, 1991, at C1.

\textsuperscript{193} Id.

\textsuperscript{194} State Told It Must Have Plan to Cut Overcrowding at Echo Glen, SEATTLE TIMES, Aug. 17, 1991, at A9.

\textsuperscript{195} Corsaletti, supra note 192, at C1.

\textsuperscript{196} State Told It Must Have Plan to Cut Overcrowding at Echo Glen, SEATTLE TIMES, Aug. 17, 1991, at A9.

\textsuperscript{197} Youth 13, Dies After Hanging With Cord, SEATTLE TIMES, Jan. 11, 1992, at A7.

\textsuperscript{198} Boy in Detention Tries to Hang Himself, SEATTLE TIMES, Mar. 23, 1992, at B5. In addition, a sixteen-year-old at the center tried to hang himself earlier that month. Id.
raises serious questions both as to the effect of detention on these juveniles and to the ability of staff to monitor inmate activities.

Overcrowding, inmate assaults, violence, suicide, and the lack of education, recreation, or counseling programs, all demonstrate that Washington's juvenile justice system has abandoned any meaningful or effective concept of rehabilitation. In an effort, perhaps, to enhance the alleged rehabilitative prong of the Act's twin principles, the law was amended in 1989. The amendments created a structured residential program that would both benefit the community and juvenile offenders by promoting "the offenders' personal development and self-discipline, thereby making offenders more effective participants in society." In 1992, the legislature also adopted language stating that the purposes of the Juvenile Justice Act are to be considered equal. However, the legislature made virtually no substantive changes to the law, nor did it provide funding to improve the system's operation.

Both the day-to-day operation of the juvenile justice system and the legislature's lack of action to change or improve the system, unfortunately, exemplify the punitive nature of the system. It is a system that offers juveniles minimal education and little or no counseling or training. It is a system that exposes juveniles to violence and to others who, in many cases, have committed substantially more serious offenses. It is a system that warehouses juveniles, a system that simply exists to punish.

D. The Failure of Washington's Punitive Justice System

The previous sections demonstrate that Washington's juvenile justice system is almost exclusively a punitive system. This section argues that Washington's punitive system has failed to remedy the problems inherent in the former system. Legislators abandoned the traditional rehabilitation model of juvenile justice in favor of the punitive model in the belief such a change would accomplish specific objectives including

199. Task Force Study-Treatment is Lacking in State Juvenile System, SEATTLE TIMES, July 3, 1991, at A6 (noting that for much of 1990 and 1991 there was only one psychologist to serve the entire population of institutionalized youth).


(1) reducing the increasing cost of the juvenile justice system; (2) reducing the rate of juvenile crime; (3) eliminating rehabilitation programs that were viewed as having failed to correct delinquent behavior; and (4) eliminating the disproportionate commitment of offenders where some serious offenders served shorter periods than some minor offenders.

Fifteen years of experience with the punitive system demonstrates that this system and its philosophy has not worked any better than its predecessor, and, in fact, may be accomplishing the exact opposite of its creators’ objectives. The failure of punitive juvenile justice will be shown by demonstrating the following: (1) that juvenile arrest rates continue to climb; (2) that the number of juveniles referred to and detained in juvenile facilities continues to rise; (3) that the juvenile detention rate in Washington is one of the nation’s highest; (4) that funding envisioned by the system’s creators has not been provided; (5) that juvenile crimes are becoming more violent; and (6) that juvenile recidivism rates have not improved.

First, the rate and number of juvenile arrests for serious and violent crimes have continued to increase. Arrests for violent crimes rose from 3.5 per 1,000 in 1985 to 5.1 per 1,000 in 1990. Since 1981, the rate and number of juvenile arrests for serious and violent crimes has more than tripled. The overall juvenile arrest rate in 1990 was significantly higher than in 1981. Juveniles accounted for about forty percent of all violent crime arrests. The fifteen- to seventeen-year-old age group accounts for more property crime arrests than any other age group, and the arrest rate of this age group for violent crimes is more than double that of any other age group.

Second, the number of juveniles referred to and detained in juvenile facilities continues to rise. In 1990, juvenile court offense referrals totalled 72,517, a three percent increase over 1989 and an eight percent increase over 1988. Of that total,

203. 1991 REPORT, supra note 136, at 95.
204. Id.
205. Id. In 1981, there were 40,578 juvenile arrests at a rate of 74.9 per 1,000. In 1990, there were 45,535 juvenile arrests, the highest number recorded in ten years at a rate of 87.1 per 1,000. The total number of arrests has ranged from about 39,000 to 45,500 between 1981 and 1990. Id.
207. GOVERNOR’S JUVENILE JUSTICE ADVISORY COMMITTEE, JUVENILE JUSTICE REPORT 87 (1990) [hereinafter 1990 REPORT].
208. 1991 REPORT, supra note 136, at 106-108. The majority of referrals,
39,407 juvenile offenses were referred to prosecutors, a five percent increase over 1989. Of that number, forty-eight percent were referred for diversion, thirty-one percent resulted in filing of charges, and twenty-one percent saw no action.

Third, Washington detains juveniles at a higher rate than the national average. Prior to the 1977 Act, Washington ranked seventh in the nation in detention rates. Two years after its enactment, Washington climbed to fourth, and by 1982, Washington's detention rate was the third highest in the country.

One reason given for the high rate is the use of detention facilities for sentenced juveniles, whereas, normally, detention centers house juveniles who are awaiting hearings or sentencing. While the number of juveniles in detention facilities dropped slightly from 1986 to 1988, the number of juveniles detained has risen about ten percent annually since 1988.

Increasing populations are not only evident in the state's detention facilities, but in its residential programs as well. Of the 876 juveniles in residential placements, on average, 656 were in state institutions, the highest average number since 1985, and 220 were in community residential placements such as group and foster homes. Both placement types increased from prior years, although institutional placement has grown at a far faster rate than residential placement. Among the

approximately sixty-three percent in 1990, were for class D and E offenses, the least serious while one percent of the referrals were for the most serious, class offenses. Id. at 107.

209. Id. at 113.

210. Id. The rate of referrals for whom charges were filed increased by about eight percent in 1990, while the rate of referrals of juveniles referred to diversion increased four percent. Id.


212. Id. In 1974, the detention incarceration rate was 54 per 100,000 age-eligible youth. In 1979, the rate was 59 per 100,000. In 1982, the rate climbed to 94 per 100,000. Id.

213. Krisberg et al., supra note 211, at 24.

214. 1991 REPORT, supra note 136, at 130. The number of juveniles held in detention rose from 17,406 in 1986 to 18,662 in 1990. Id.

215. Id. at 135 (noting that the average daily population in residential programs was 827 in 1990).

216. Id.

217. 1991 REPORT, supra note 136, at 135-39. The average daily population (ADP) in state institutions was 543 in 1988 and 620 in 1990. ADP in community residential placements was 196 in 1988 and 206 in 1990. While the number of youth in state institutions has continued to rise since 1988, the number of youth in community
major concerns over substantial use of detention and institutionalization is the resulting disproportionate rate of minority youth who are detained and placed in residential programs.\textsuperscript{218}

Higher placement rates may have resulted, in part, from a reduced use of parole as a disposition alternative. The average daily juvenile population on parole experienced a steady decline from 1986 to 1989, but it then increased slightly in 1990 and 1991.\textsuperscript{219}

Fourth, the adoption of a punitive system has not solved the funding issues that helped motivate the system's adoption. It has been estimated the state pays about forty-nine thousand dollars per year for each institutionalized youth, and that the remodeling of Green Hill School in Chehalis, one of the state's juvenile institutions, would require sixty to ninety million dollars.\textsuperscript{220} The State Director of Juvenile Rehabilitation notes that budget allocations are preventing the hiring of any more staff, and that where vacancies have occurred they have been left vacant due to lack of money.\textsuperscript{221} The punitive system has not made juvenile justice cost-efficient.

Fifth, officials who run juvenile facilities note that the nature of juvenile crime is far more violent than in the past.\textsuperscript{222}

\textsuperscript{218} While the cause of racial disproportionality in the juvenile justice system is beyond the scope of this Comment, a few notes are in order. In 1990, minorities made up 14.2 percent of the juvenile at-large population, but they represented 26.4 percent of juveniles held in detention facilities. \textit{Id.} at 29, 128. In residential facilities for the first five months of 1991, 37 percent of the population was made up of African-American, Native American, and Hispanic juveniles. \textit{Id.} at 135. When compared to the ethnic distribution within the state population, African-American youth were held in detention at a rate six times their proportion of the population. \textit{1990 REPORT, supra} note 207, at 121. Native American and Hispanic youth were held in detention at a rate two times their proportion of the population. \textit{Id.}

\textsuperscript{219} \textit{1991 REPORT, supra} note 136, at 140.

\textsuperscript{220} \textit{Juvenile Justice Not Working Here, SEATTLE POST-INTELLIGENCER, Apr. 26, 1990}, at A10.

\textsuperscript{221} Patti Epler, \textit{Growing Up Violent, MORNING NEWS TRIBUNE} (Tacoma, WA), Sept. 15, 1991, at A1 (stating that the current juvenile code was never adequately funded) [hereinafter Epler, \textit{Growing Up Violent}].

\textsuperscript{222} Seven, \textit{supra} note 186, at C1. \textit{See also} Clements, \textit{supra} note 186, at A4 (noting that youth facility manager acknowledges the number of rapists, robbers and murders in facility is rising); Louis T. Corsaletti, \textit{Youth Center's Staff Swamped, SEATTLE TIMES}, Aug. 2, 1990, at D3 (stating that Echo Glen, originally built to treat
For example, in 1990, a fourteen-year-old boy was sentenced to more than three years in juvenile detention after being found guilty of shooting a man because the man looked at the boy "the wrong way."  

Sixth, recidivism of juvenile offenders remains high. Harold Delia, Director of King County's Department of Youth Services, says the high rate of recidivism demonstrates that simply being institutionalized for some period is not making an impact.

The failure of the current system to cost-effectively reduce the severity and amount of juvenile crime prompted legislative action. In 1991, state legislators appointed a twenty-nine-member task force to review the juvenile justice system. The task force presented recommendations to the legislature in January 1992. Of the many recommendations, legislators proposed only those that would not incur significant costs. The original legislation called for spending $55 million, but the legislature allowed only $1.2 million for juvenile justice reform. Of the few proposals made, most were vetoed because of a lack of funding. Legislators also restructured and extended a committee on juvenile issues, which is to report to the legislature by December 15, 1992, on further reforms to theJuvenile Justice Act.

The legislature realizes that the juvenile justice system in Washington is failing as demonstrated by the problems detailed above. However, the legislature has failed to make substantive proposals to change or fund a new and different

---


228. Letter from Gov. Booth Gardner to the House of Representatives, State of Washington (Apr. 2, 1992) (vetoing portions of H.B. 2466) [hereinafter Veto Letter]. In his veto message, Governor Booth Gardner stated that many of the legislative provisions were left unfunded with the burden of making tough choices left to the next legislature. Governor Gardner stated, "I cannot mislead the citizens of the state into believing HB 2466 [Juvenile Justice Act of 1977, ch. 205, 1992 Wash. Laws 886] will make important and needed changes in the lives of youth." *Id.*

system. This failure may be a result of the task force's recommendation that the current punitive system be funded at a higher level.

Because Washington faces a budget deficit, legislators are understandably reluctant to pour additional funding dollars into a system that is failing to reduce juvenile crime. Continued or additional funding of the current system is not the answer. The answer is reform and the creation of a new system.

IV. THE OPTIONS FOR REFORM

Washington's "radical, innovative, and exciting" juvenile justice system has failed to achieve the goals of its creators. The question now is where to go from here. There is no lack of suggested direction. Some favor retaining a punitive system, while others call for a return to a treatment model. This section concludes that a treatment-oriented model of juvenile justice should be adopted. In arriving at that conclusion this section examines the following information: (1) the preferences of those who work with the current system; (2) the differences between punishment and treatment approaches; (3) the experience of states that embrace a treatment model; and (4) the detailed arguments in favor of adopting a treatment-oriented model.

Those who work with the current system have strong views about what works best. Those views were made known to the 1991 Task Force on Juvenile Issues via nearly a dozen public hearings statewide. The Task Force found that judges and juvenile court administrators generally favor retaining the presumptive sentencing guidelines that are at the heart of the Washington system.

Judges, however, desire four changes. First, judges believe that the guidelines should provide wider sentencing ranges. Second, judges want to be able to suspend or defer sentences in order to provide greater latitude in dealing with individual cases. Third, judges seek sentencing alternatives such as

---


231. REPORT OF THE FAMILY AND JUVENILE LAW COMMITTEE TO THE SUPER. COURT JUDGES' ASSOCIATION, JUVENILE LAW IN WASHINGTON 2 (Apr. 1991) [hereinafter JUVENILE LAW REPORT].

232. Id.
group homes and substance abuse treatment facilities.\textsuperscript{233} Judges believe that a court appearance to approve diversion agreements would help to reinforce the message that the community will not tolerate criminal behavior, although judges remain supportive of diversion for first-time offenders.\textsuperscript{234}

Court administrators agree that judges should have greater sentencing alternatives.\textsuperscript{235} They also point out that greater efforts should be concentrated earlier before a youth becomes a multiple offender.\textsuperscript{236} Administrators recommend that sentencing options include suspended and deferred sentences and community-based placement, that dispositions be guided according to what the best course of action would be for the offender, and that sentencing models other than the current point system be considered.\textsuperscript{237}

The King County Department of Youth Services favors retention of both the diversion program and the presumptive sentencing guidelines, but agrees that sentencing ranges need to be broadened to provide more flexibility.\textsuperscript{238} In addition, a revised juvenile justice system should both hold youth accountable and respond to treatment needs.\textsuperscript{239}

Commentators on juvenile justice say that "it is an institution at a philosophical crossroads that cannot be resolved by reference to simplistic treatment versus punishment formulation."\textsuperscript{240} The adoption of one philosophy to the exclusion of the other has not proved satisfactory in the past. There is no reason to believe either extreme will solve juvenile crime problems in the future. The first question that legislators must address is whether the system should focus primarily on punishing or treating juveniles.

\textsuperscript{233} Id. at 3.

\textsuperscript{234} Id.

\textsuperscript{235} WASHINGTON ASSOCIATION OF JUVENILE COURT ADMINISTRATORS, REPORT ON JUVENILE ISSUES 4 (June 1991).

\textsuperscript{236} Id. at 2.

\textsuperscript{237} Id. at 4-5.

\textsuperscript{238} KING COUNTY DEPARTMENT OF YOUTH SERVICES LEGISLATIVE COMMITTEE, RECOMMENDED CHANGES TO JUVENILE JUSTICE ACT OF 1977 1-2 (July 1991). The committee supports use of suspended and deferred sentences and expansion of the definition of "confinement" to include placement in programs and facilities contracted with by the county or state. Id. at 2.

\textsuperscript{239} Id. at 3.

A. To Punish or Rehabilitate?

In order to understand how punishment and treatment models might be synthesized, this section outlines the basic characteristics of the punitive and rehabilitative models. Although the punitive juvenile justice system has grown in popularity, it will be shown that punitive systems elsewhere suffer from the same problems inherent in the Washington system. Further, it will be shown that some of the reasons given for abandoning the rehabilitative model were insufficient because little effort was made to rehabilitate juveniles.

Generally, punishment focuses on imposing sanctions in order to retribute and deter, while treatment focuses on the mental health, status, and welfare of an individual.241 Under the punishment model, as adopted in Washington, sentences are based on the characteristics of the offense and are determinate and proportional. In contrast, under the treatment model, sentences are based on characteristics of the offender and are open-ended, non-proportional, and indeterminate.

Proponents of the punishment or “just deserts” model make several arguments in favor of a punitive system. They argue that an indeterminate sentencing scheme gives “experts” too much say, that experts are unable to justify treating similar offenders differently based on objective indicators, and that individualized sentences create inequalities and disparities in sentencing.242 In addition, proponents of punitive juvenile justice contend that nothing else seems to work,243 that punishment is useful in preventing youthful crime, and that only punitive justice can hold young offenders accountable.244

The treatment model, by contrast, focuses on determining what caused criminal behavior and treating the symptoms. The judicial inquiry is not on the juvenile’s past behavior, but on what future steps can be taken to alleviate the conditions that led to the delinquent behavior. The treatment model advocates indeterminate sentencing because the underlying causes of delinquency are many and the length of required

241. Id. at 833.
242. Id. at 835-36.
"rehabilitative" therapy cannot be predicted. States embracing the treatment model typically give juvenile court judges broad discretion to impose dispositions including dismissal, probation, out-of-home placement, or institutional confinement. Often, laws require judges to select the least restrictive alternative available. The majority of indeterminate juvenile sentencing statutes allow a sentence to run through the age of minority. A minority of indeterminate states adopt a statutory maximum sentencing period, typically two years, during which the court may assert its jurisdiction. In indeterminate sentencing schemes, a decision to release a juvenile is based, in part, on behavior during confinement and how much progress a juvenile makes toward specific, individualized goals.

States have gone back and forth in use of the treatment and punishment models, but the punitive model of juvenile justice has grown in popularity. Professor Barry Feld recently compared juvenile justice systems in the fifty states. He found that ten states had redefined the purpose of their juvenile justice system within the past decade, and that the role of rehabilitation had been downplayed in favor of acknowledging the importance of public safety, punishment, and individual accountability. Determinate sentencing schemes, like Washington's, are now used in about one-third of the states.

The adoption of punitive systems in other states, however, has brought some of the same problems that now plague Washington institutions. Feld noted that juveniles sentenced to long terms under "get tough" laws tended to be the most serious and chronic offenders. In addition, facilities for these offenders typically suffered from inadequate program resources, resulting in no more than a virtual warehousing of juveniles in facilities with all the worst characteristics of adult

246. Id.
249. Id. at 850-51.
250. Id.
251. Id. at 842.
252. Id. at 851.
penal incarceration.\textsuperscript{254}

As in Washington, other states have cited the alleged failure of rehabilitative programs as a major reason for abandoning the individualized and indeterminate treatment model.\textsuperscript{255} However, research indicates that the failure of treatment-model systems may have resulted from several causes. Those causes include the following: (1) improper design of juvenile facilities; (2) lack of adequate funding; (3) low community support; and (4) inadequate research about programs.\textsuperscript{256}

To a large degree, juvenile facilities have always been designed, first and foremost, to confine juveniles. Rehabilitative efforts have always been a secondary consideration.\textsuperscript{257} One commentator argues that the failure of the \textit{parens patriae} court occurred because states never provided adequate support for either community or institutional treatment programs.\textsuperscript{258} The result was a lack of coordination and money to create effective programs. Other commentators place failure of reform programs on a lack of solid research as to what is truly effective in correcting delinquent behavior.\textsuperscript{259}

Programs may have failed to rehabilitate because they were either ill-conceived or inadequately funded. Rather than improve the rehabilitative system, critics jumped on the bandwagon to scrap it.\textsuperscript{260} The experience of states that still embrace some form of rehabilitative ideal calls into question the wisdom of assuming that “nothing works” and shows that critics were premature in their condemnation of treatment.

\textbf{B. The Experience of States That Treat Delinquency}

The success of states that have retained a rehabilitative treatment-oriented system demonstrates its advantages: lower costs, lower recidivism rates, and decreased threats to public safety. This subsection examines the juvenile justice system of Alaska and Massachusetts as working examples of the treat-

\textsuperscript{254} Id.
\textsuperscript{255} Id. at 842-45.
\textsuperscript{256} Ferdinand, supra note 243, at 214-15.
\textsuperscript{257} Id. at 214-16. Professor Ferdinand contends that while state programs focused on confinement, non-state programs were uncertain as to both funding and continued existence. Because no state agency had the responsibility for treating delinquents, no one developed administrative skill to create such programs. The end result was that states became effective at confining but not at rehabilitating. Id.
\textsuperscript{258} Id. at 214.
\textsuperscript{259} Krisberg et al., supra note 211, at 30.
\textsuperscript{260} See generally id. at 28-30.
ment model. The approaches to treatment taken in Utah, Pennsylvania, and Maryland will add further evidence to the success of treating rather than punishing juveniles.

Alaska remains one of the traditional "rehabilitative states" with indeterminate sentencing. Delinquency dispositions are guided by considering the "best interests of the child" and are indeterminate.261 Upon a delinquency finding, a juvenile may be committed to the Department of Health and Social Services for up to two years.262 In selecting a disposition, the court is guided by a requirement that the disposition alternative be the least restrictive available.263

Currently, judges in Alaska can choose from three disposition alternatives. The least restrictive alternative is "supervisory probation" where a juvenile is released to a parent or guardian and supervised by a probation officer.264 Under supervisory probation, legal custody remains with the parent, but probation conditions include curfews, school attendance, and participation in counseling.265 The middle alternative is "custodial probation" where the juvenile is committed to the Department of Health and Social Services (DHSS).266 The juvenile may still be released to a parent, but the Department retains authority to place the juvenile in a more restrictive "nondetention setting" such as a foster home or group home.267 This placement decision is given to DHSS rather than to the court. The most restrictive alternative is an institutional order where the juvenile is placed in a correctional facility or detention center.268 With the exception of a two year limit, there is no mandatory review of institutional placements.

While dispositions are to use the least restrictive alternative, Alaska ranks near the top of the list of states that institutionalize juvenile offenders.269 This problem, however, can be corrected as is demonstrated in Section IV.

Other states, such as Massachusetts, Maryland and Penn-

261. ALASKA STAT. § 47.10.082 (1990).
262. Id. § 47.10.080(b)(1).
263. ALASKA DEL. R. 11(e).
264. ALASKA STAT. § 47.10.080(b)(2) (1990).
265. Id.
266. Id. § 47.10.080(b)(3).
267. Id.
268. Id. § 47.10.080(b)(1).
sylvania, maintain a rehabilitative system with far greater success. Massachusetts is frequently referred to as the model for a more humane system that does not compromise public safety. Between 1970 and 1972, Massachusetts closed its training schools and immediately moved to create community-based alternatives. Although this resulted in a somewhat chaotic period, the community-based system remains in place today. Of the 1,700 juveniles committed to the Division of Youth Services in 1987-88, only ten percent were housed in locked facilities.

Massachusetts' community-based programs characteristically have a juvenile population of six to twenty, group and individual counseling, and a high staff to resident ratio. Programs tend to last from four months to two years and transitions back to the community are planned. Caseworkers continue to track former residents to ensure that they meet school and work obligations.

Massachusetts' success is strong proof that Washington legislators should abandon the failing punitive system and adopt a community-based treatment model. A 1989 study that tracked eight hundred Massachusetts juveniles admitted and released from the state's Division of Youth Services in 1984-85 concluded that those who continued to offend did so less frequently and the offenses were less serious. The study also found that Massachusetts had a significantly lower recidivism rate than other jurisdictions nationwide. In addition, the number of juvenile offenders who later found themselves in the adult criminal system dropped from thirty-five percent to fifteen percent between 1972 and 1985. Finally, the juvenile re-arrest rate was lower than the national average.

At the same time, there does not appear to be any objective study showing that public safety has been compromised. In fact, compared to the "get tough" states like Washington, the juvenile crime rate has dropped more substantially in Mass-

271. Id. at 27.
272. Id. at 27-32.
273. Id. at 27.
274. LERNER, supra note 270, at 38.
275. Id.
276. Id.
277. Id.
sachusetts. Since 1975, Massachusetts' juvenile crime rate has declined as much as, if not more than, the national average. There has been no serious crime wave as the result of almost two decades of employing the treatment model.

The Massachusetts experience directly contradicts the belief of the Washington Juvenile Justice Act authors that treatment fails. Further, the Massachusetts treatment model met the goals that Washington hoped to achieve but did not reach when Washington changed to a punitive system.

Pennsylvania, Utah, and Maryland have followed Massachusetts' model and have moved most of their juvenile delinquents into community-based facilities. These states provide traditional rehabilitative programs. In these states, as in Massachusetts, it is typical for a detailed treatment plan to be developed based on the youth's background and for a social and psychological evaluation to be conducted when a juvenile is admitted to a community facility. Specific goals are established and juveniles are not released until the goals are met. In many programs, the average stay runs eight months to a year. In addition, small populations and high staff to resident ratios exist. In these states, as in Massachusetts, recidivism rates are equal to or better than confinement programs.

States, such as these, that have moved away from incarcerc-

279. Id.
281. Lerner, supra note 270, at 41, 76-77, 96-98.
282. Id. at 44.
283. Id.
284. Id. at 85. Maryland's Thomas O'Farrell Youth Center is a typical example of a program that lasts for six to nine months. Id. at 84-85.
285. Lerner, supra note 270, at 100-01. Utah's Deck Lake program is a typical example in which a living unit consists of ten residents which allows for substantial individual attention. Id.
286. A 1986 study in Utah found that 73 percent of juveniles placed in community programs remained free of criminal convictions for twelve months following release while 76 percent of those confined in secure facilities reoffended within a year of release. Ferdinand, supra note 243, at 217.
ating juveniles, share some common assumptions. Chief among them is that large institutions are difficult to manage, too violent, and produce high recidivism rates.\textsuperscript{287} These states have developed juvenile justice systems that work to rehabilitate juveniles, produce lower recidivism rates, and result in commission of less serious offenses if the juvenile does reoffend.\textsuperscript{288} Correctional officials in these states also note that there is no evidence the public is in any greater danger from juveniles who participate in community-based programs.\textsuperscript{289}

Massachusetts, Alaska, Pennsylvania, Utah, and Maryland have achieved what Washington hoped to achieve in 1977 with passage of the Juvenile Justice Act, and they succeeded with a philosophy that Washington legislators abandoned as ineffective. These states prove that rehabilitation works and that properly structured programs can protect public safety and reduce juvenile crime at a cost far less than punitive justice.

\textbf{C. The Choice of Treatment as a Preferred Option}

Rehabilitation requires treatment of juveniles rather than punishment. While some past studies have shown many rehabilitation programs to be ineffective, other studies have concluded that many juveniles benefit from treatment programs, especially when assignment to a specific program is based on a juvenile’s identified needs.\textsuperscript{290} Researchers have more recently answered the question of whether anything works with a “qualified yes,” noting that a treatment model consisting of counseling, therapy, and behavioral techniques has shown positive results.\textsuperscript{291}

Treatment should be preferred over punishment for the following reasons: (1) it places emphasis on the socioeconomic factors that impact a juvenile’s life; (2) it focuses on instilling positive values in youth; (3) it provides an incentive to invest in programs; and (4) it is at least as successful as a punitive system in deterring future crime.

\textsuperscript{287} LERNER, supra note 270, at 13.
\textsuperscript{288} Id. at 15.
\textsuperscript{290} Ferdinand, supra note 243, at 213.
First, the proven success of community-based programs indicates that a humane and effective juvenile justice system must focus, to a substantial degree, on the socioeconomic background of a youth. The experience of King County, which continually has a juvenile arrest rate for violent crimes two to four times higher than most counties, suggests more attention should be paid to the nature of the offense and the juvenile's background. In King County, the school dropout rate is 22.3 percent, and of the ten Washington high schools with the highest dropout rate, five are in Seattle. About 52,000 of King County households (8.6%) have incomes below the poverty level, 30,000 children live in families supported by public assistance, and 10,000-20,000 people are homeless. Family violence is increasing. About 5,000 juveniles in King County are reported annually as runaways. In 1988, it was estimated that between 45,000 and 65,000 children suffered from emotional disturbance. Yet, in 1990, King County could only accommodate 1,500 in its mental health programs.

The sale or use of drugs and alcohol stimulates an increasing number of gang-related crimes. In 1990, of the 3,348 preadjudicated youth admitted to the King County Detention Center, forty-five percent were African-American and seventy-two percent had been in detention before.

In its 1991 report, the King County Children and Families Task Force stated:

[T]he biggest underlying problem the County faces in helping its children and families is poverty. Increasing rates of poverty are affecting more families, a problem that has a ripple effect. The deterioration of basic supports for children and families contributes to the decline of mental and physical health for young people. The risks increase for youth

292. 1991 REPORT, supra note 136, at 96.
293. KING COUNTY CHILDREN AND FAMILIES TASK FORCE, PARTNERSHIPS FOR THE FUTURE—A VISION FOR KING COUNTY’S CHILDREN AND FAMILIES 26 (1991) [hereinafter KING COUNTY TASK FORCE].
294. Id. at 9.
295. Id. at 30.
296. Id. at 17.
297. Id. at 11.
298. KING COUNTY TASK FORCE, supra note 293, at 15. Chemical dependency is diagnosed in 67 percent of youth in the Department of Juvenile Rehabilitation. Fifty percent of violent juvenile offenders report substance abuse to be a contributing factor for their crimes Id.
299. Id.
involvement in crime, drugs, alcohol, gangs, pregnancy, and sexually transmitted diseases.

If children and adolescents do not get the help they need, these cycles continue.300

These grim facts and figures demonstrate that the social and economic background of juveniles play a major role in juvenile development and criminal behavior. Yet, the current law in Washington forbids consideration of that background when determining the fate of a juvenile offender.301

King County's Prosecutor states that a "severe lack of sentencing options for less serious offenders represents a failure to address the underlying reasons for youthful crime which include poverty, sexual abuse, illiteracy, disintegrating families, drugs, gangs, and mental illness."302 For example, in King County it is estimated that approximately seventy-two percent of juveniles detained have drug or alcohol addictions while more than sixty percent have mental health problems.303 Fourteen of fifteen juveniles who committed murder in 1990 were either substance abusers or children of drug addicts and alcoholics.304

Shirley Hufstedler, former Secretary of Education, has said, "It is futile to deny, and potentially dangerous, to fail to acknowledge the connections between poverty, unemployment, racism, and juvenile crime."305 Further, she contends that abandoning a rehabilitative model results in judges, social workers, probation officers, and parents thinking so poorly of themselves and the job they are trying to do that "almost any hope for success is lost."306

Only a rehabilitative model that takes social and economic factors into consideration and fashions a program to address unmet needs can hope to break the cycle of poverty, lack of education, and drug and alcohol abuse that leads to crime.

300. Id. at 44.
301. See supra notes 103, 129 and accompanying text.
303. Id.
305. Shirley Hufstedler, Should We Give Up Reform?, 30 CRIME & DELINQ. 415, 417 (1984). See also LERNER, supra note 270, at 19 (asserting that those who attempt to rehabilitate delinquents must inevitably confront a spectrum of social ills that contribute to delinquency including poverty, the breakdown of the family, poor quality schools, and the widespread use of drugs).
306. Hufstedler, supra note 305, at 420.
Second, rehabilitative treatment instills positive values into juveniles rather than reinforcing negative values. The simple warehousing of youth not only fails to provide services to break the cycle of crime, but also reinforces delinquent values and anti-social lifestyles. Exposing a juvenile to other delinquent juveniles magnifies personality defects and teaches the juvenile more serious criminal behavior.\textsuperscript{307} If a juvenile learns by example, does it make any sense to confine a juvenile arrested for shoplifting in a facility with burglars, rapists, and muggers? The juvenile will only learn how to be more delinquent. The existence of rehabilitative treatment programs can counteract such negative impacts.

Third, rehabilitative programs require juveniles to invest their time and energy toward a program's treatment objectives. Whether a program will be effective in any system depends upon the juvenile's incentive to participate in those programs. Some juvenile court judges contend that juveniles have no incentive to participate in programs when determinate sentences are handed down.\textsuperscript{308} Participation in rehabilitative programs requires effort. In a determinate system, a juvenile will simply "do his or her time" and not participate in rehabilitative programs because the juvenile's release date is certain. However, indeterminate sentences measure a juvenile's success in treatment programs and provide incentive for juveniles to become involved and to participate in such programs.\textsuperscript{309}

Fourth, a rehabilitative model reduces juvenile crime as well as, if not better than, a punitive system.\textsuperscript{310} Although states that adopt a get-tough system do so, in part, to crack down on crime, there appears to be no evidence in those states that recidivism rates have declined.\textsuperscript{311} Fulton County Juvenile Court Judge Romae Powell notes that "advocates of determinate sentences have not proved that determinate sentences are

\textsuperscript{307} Forst & Blomquist, supra note 244, at 362.
\textsuperscript{309} Id.
\textsuperscript{310} LERNER, supra note 270, at 15.
\textsuperscript{311} Forst & Blomquist, supra note 244, at 359. Only one good study has been undertaken and it focused on recidivism rates in Washington before and after the 1977 reform. The study concluded the change to a "just deserts" model of justice had not impacted recidivism rates. Id. at 359. Despite implementation of longer incarceration rates in California's system, recidivism rates increased. Id. See also Krisberg et al., supra note 211, at 32 (finding no solid evidence that policies of increased juvenile incapacitation positively affect public safety).
more effective or have a more deterrent effect on an offender as opposed to indeterminate sentences.\textsuperscript{312}

A recent Washington study has suggested that this state's system of determinate sentences may have a deterrent effect.\textsuperscript{313} The study analyzed the criminal careers of 926 male juvenile offenders who were released from the Division of Juvenile Rehabilitation in 1982. The study concluded that confinement has a significant effect because juveniles averaged 4.4 offenses per year before confinement and 0.6 offenses while confined.\textsuperscript{314} The result is not surprising because most inmates have limited freedom in confinement settings. The comparison is not useful.

The study also alleged that confinement does rehabilitate. This result is based on both post-release offenders that averaged 1.1 crime per year during the six and a half years after release, and on the fact that forty percent of offenders committed Class B+ or higher offenses prior to confinement whereas only twenty-three percent committed these offenses after release.\textsuperscript{315} This alleged success must be tempered because eighty percent of the offenders committed some offense within six and a half years after release; two thirds were convicted of felonies, and forty percent were returned to confinement during the followup period.\textsuperscript{316} More than fifty percent were convicted of a new offense within a year of release, and more than two thirds were reconvicted within two years.\textsuperscript{317}

The study suffered from two other significant weaknesses in trying to demonstrate that confinement positively impacts juveniles. First, the study did not include either post-release criminal convictions outside of Washington State or post-release offenses that did not result in arrest and conviction. Therefore, there is an incomplete picture of how many new offenses were actually committed by released offenders. Second, these juveniles were confined in Division facilities in 1982. In the decade since 1982, the condition of facilities in Washington-

\textsuperscript{312} Romae T. Powell, \textit{Disposition Concepts}, 34 JUV. & FAM. CT. J. 1, 4 (1983).
\textsuperscript{314} Id. at 22.
\textsuperscript{315} Id. at 9.
\textsuperscript{316} Id.
\textsuperscript{317} Id.
ton has deteriorated, and incarcerated juveniles are more dangerous and violent. Therefore, it is difficult to compare the rehabilitative effect of 1982 confinement with 1992 confinement. The average age at release was sixteen, and given the accepted notion that delinquent acts often decrease with age, the alleged decline in the number of offenses of confined youth may be attributable to maturation rather than confinement.

The apparent intent of this state study was to show that Washington’s punitive system compares favorably to the experience of states like Massachusetts. However, even those who contend that community treatment programs are not more effective than incarceration admit that such programs are at least as effective in combatting juvenile crime and considerably less costly.

The debate between punishment and rehabilitation often focuses on extremes. Traditionally, the two concepts have been mutually exclusive. Rather than adopt either extreme, a better approach is to incorporate the punishment of juveniles with substantially more rehabilitation so that an offender can be returned to the community to live in a productive manner. In the long run, rehabilitation must be the goal. Judge Wright stated in U.S. v. Bland:

[T]here is no denying the fact that we cannot write these children off forever. Some day they will grow up and at some point they will have to be freed from incarceration . . . .

[T]he kind of society we have in years to come will in no small measure depend on our treatment of them now.

The choice is whether we want juvenile delinquents returned to the community in the same, or worse, condition as when they were found delinquent or whether we want to rehabilitate juveniles with skills that they may use to obtain a job and to live without resorting to crime.

Finally, rehabilitation should not be abandoned in favor of punishment because of the longstanding legal tradition and social recognition that juveniles are different than adults. The Supreme Court stated the following in Thompson v.

321. Id. at 1349 (Wright, J., dissenting).
Oklahoma.\textsuperscript{322}

Inexperience, less education, and less intelligence make a 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 responsible as that of an adult.\textsuperscript{323}

We must continue, as a society, to be optimistic that today's youth will grow into tomorrow's responsible adult citizen. Society must assist to provide the experience and the education that juveniles require so that they can ultimately make mature, responsible decisions as adults. Punishment fails to fulfill that duty. A punitive juvenile justice system merely warehouses youth without providing necessary social skills. By structuring programs that address each individual juvenile's social needs and instill positive social values, and by encouraging juveniles to invest in such programs through disposition incentives such as early release, juvenile crime can be effectively reduced at a lower cost.

V. TOWARD A REHABILITATED JUVENILE JUSTICE SYSTEM

The failure of Washington's punitive juvenile justice system, in contrast with the success of rehabilitative community-based programs in other states, demands that legislators abandon much of the system enacted in 1977 and implement a new system that emphasizes rehabilitative principles. The following recommendations would serve to implement that goal.

A. Rewrite Provisions of the Juvenile Justice Act to Ensure that the Ideal of Rehabilitation is at Least Equal If Not Paramount to the Ideal of Holding Juveniles Accountable in Disposition Proceedings\textsuperscript{324}

Professionals who deal with the current system acknowledge that the state went too far by treating juveniles the same

\textsuperscript{322} 487 U.S. 815 (1988).

\textsuperscript{323} Id. at 835.

\textsuperscript{324} The 1992 legislature inserted intent language to the purposes section of the law, WASH. REV. CODE ANN. § 13.40.010 (West 1992), stating that all stated purposes of the Act were equally important, but the legislature failed to address any substantive provisions that would demonstrate that intent in the working of the law.
as adults, and that in either system, determinate or indeterminate, a juvenile's social and economic background must be considered in fashioning a disposition that will minimize future criminal behavior.\textsuperscript{325} As noted previously, those dealing with juvenile offenders recognize that repeat juvenile offenders often have a history of family problems, and that a punitive system does not guarantee community protection.\textsuperscript{326}

Rewriting the law to specifically require dispositions to consider a juvenile's social and economic background is essential to transform our punitive system into one that focuses on rehabilitation. Among the provisions that should be rewritten are those that define the purposes of the juvenile justice system,\textsuperscript{327} that prohibit the court from considering gender, ethnic, social and economic factors,\textsuperscript{328} and that provide sentences outside established ranges.\textsuperscript{329}

\textbf{B. Formalize and Limit Diversion Proceedings}

While initially this proposal may seem more punitive than rehabilitative, in actual practice the result will be to provide treatment services for a juvenile at an earlier stage in his or her potential criminal career, and, thus, will avoid the harsh consequences of confinement.

When juveniles are brought before a judge at the initial referral, future outcomes are more positive.\textsuperscript{330} Judges who face juvenile offenders believe that even brief appearances reinforce the message that the community will not tolerate juvenile crime.\textsuperscript{331} Yet, the current law allows juveniles to avoid formal adjudication numerous times through informal diversion.\textsuperscript{332} Some judges assert that overworked prosecutors may informally divert a juvenile as many as eight times, thereby depriving youthful offenders from any sense of


\textsuperscript{326} JUVENILE LAW REPORT, supra note 231, at 3. See also Hufstedler, supra note 305, at 420; Rothschild, supra note 177, at A1.

\textsuperscript{327} WASH. REV. CODE ANN. § 13.40.010 (West 1992).

\textsuperscript{328} Id. § 13.40.150(4).

\textsuperscript{329} See supra notes 128-29 and accompanying text.


\textsuperscript{331} JUVENILE LAW REPORT, supra note 231, at 3.

\textsuperscript{332} See supra note 94 and accompanying text.
accountability. A court appearance should be required whenever possible to approve a diversion agreement for first-time offenders.

The present use of diversion is one area of the current law where more punitive justice is warranted. Diversion should be limited in order to prevent offenders from getting off too easily or from getting off without sufficient corrective treatment. Diversion agreements should not be allowed for most felony offenders and should be restricted to no more than two per youth.

Under amendments enacted in 1992, diversion agreements are limited to ten hours of counseling and twenty hours of information sessions at community agencies. Because many criminal acts may result from long-term family and personal issues, the law should not assume that these problems can be reduced by minimal counseling. Counseling requirements should be significantly increased. In the alternative, judges should be given greater discretion to provide for a juvenile's rehabilitative needs through diversion.

The use of diversion was the one area in which the 1992 legislature made the substantive changes recommended by the Juvenile Issues Task Force and was not vetoed. Under the new law, diversion is not allowed for class C felonies that are considered crimes against the person or for alleged offenders who have been previously committed to the Department of Social and Health Services. However, despite these changes, diversion requires additional reform in order to ensure effective intervention before the number and severity of a juvenile's crimes escalates.

C. Replace the Formalistic Sentencing Point Structure With an Indeterminate Sentencing System

Under the current system, many juveniles take the risk inherent in criminal activity because they are aware that they will either be diverted or that they will face relatively short confinement terms during which nothing will be expected of

335. Id. § 13.40.080(2)(c) (West 1992). Prior law limited counseling to two hours and educational sessions to ten hours.
them. 337 Some recommend that widening sentencing ranges will resolve the problem. 338 In fact, the 1992 legislature attempted to widen sentencing ranges, but the effort was vetoed. 339 However, the proposed solution of widening sentencing ranges presupposes that the current, formalistic disposition scheme, which bases "sentences" solely on a juvenile's age and offense history, is compatible with operation of a treatment model of justice. They are, to a large degree, not compatible. Making a punitive system that has failed to reduce juvenile crime even more punitive is not an appropriate solution.

Determinate sentencing of juveniles should be replaced by a primarily indeterminate scheme for three reasons. First, merely increasing the punitive nature of the current system will not result in greater crime reduction. Second, age alone is an insufficient basis on which to base a disposition. Third, the current system allows too many offenses to accumulate before any significant intervention takes place.

In regard to crime reduction, one of the drawbacks of increasing the potential length of punishment is that punishment, by itself, does not necessarily rehabilitate or deter. Rather, the deterrent effect of punishment results from certainty that sanctions will be imposed and not from the potential severity of the sanctions. 340

In regard to the use of age as a factor in establishing a sentence, the existing sentencing scheme is fundamentally flawed because it relies on age as a primary factor that increases sanctions. Many believe that delinquency is a symptom of adolescence and a symptom that is generally outgrown. 341 The justification in Washington law for punishing older juveniles more severely is that they are more culpable and should be

338. Id.
339. Veto Letter, supra note 228. The legislature proposed increasing the length of community supervision for all first/minor and middle offenders to twelve months and increasing possible confinement terms for low-range middle offenders. In his letter, Governor Gardner vetoed the proposals because he believed that they would result in significant caseload increases for detention facilities. He noted the fiscal impact of community service increases alone was eleven million dollars with similar increases for added confinement. Governor Gardner also said that local governments lack physical space to house offenders for longer terms and a critical overcrowding crisis already exists. Approval of this section of the bill would only have added to the crisis according to the Governor. Id.
340. Gardner, supra note 244, at 143.
341. Id.
held more accountable than younger offenders.\textsuperscript{342} Under the formalistic grid, where a thirteen-year-old and a seventeen-year-old have the same criminal history, the older offender, who is more likely to terminate delinquent behavior sooner, will be subjected to longer terms of confinement, community service, and supervision than a younger offender who is theoretically more likely to commit additional offenses. The system appears backward because it places more emphasis and resources on those who are less likely to reoffend. This seemingly backward result epitomizes the punitive nature of Washington's system. Further, the current system does little to either hold like offenders similarly accountable, or to address the needs of those in need of rehabilitation, or to protect the community because the person most likely to reoffend gets the most lenient treatment.

Additionally, as mentioned in the context of diversion, the current system allows a juvenile to accumulate too many serious offenses before significant intervention begins. Not only is significant criminal activity required before the state will even consider confinement, community supervision for minor and middle offenders is limited to one year. Only the most serious offenders in those categories face the maximum penalty.\textsuperscript{343} Juvenile court judges are also extremely limited in the requirements that they can impose as part of supervision.\textsuperscript{344}

Moreover, the lack of significant early intervention leads to more serious crime as exemplified by one recent crime in Washington. A sixteen-year-old currently charged with committing a vicious murder in Washington had a prior arrest record for burglary, shoplifting, assault, malicious mischief, and criminal trespassing, yet was never formally charged for any of these crimes.\textsuperscript{345} The accumulation of numerous escalating charges suggests a serious predisposition to criminal activity that deserves investigation. Had the state become actively involved anywhere during the accumulation of the charges, it is likely that the reasons for this youth's escalating criminal behavior could have been identified and positively addressed. With proper treatment of the individual or adequate provision

\textsuperscript{342} \textit{Disposition Standards Guide}, \textit{supra} note 81, at 15-16.
\textsuperscript{343} See \textit{supra} notes 119-26 and accompanying text.
\textsuperscript{344} See \textit{supra} note 119.
of services to address that person's needs, the ultimate act of murder might have been avoided.

Of the fifteen juvenile murderers charged in 1990, twelve had prior criminal records and fourteen had significant school problems. The fact that fifteen- to seventeen-year-olds account for more property and violent crimes than any other juvenile age group, and that juveniles now in confinement have histories of multiple offenses, indicate that these juveniles are not being adequately rehabilitated.

Dispositions must be based on more than the age and offense history of a juvenile. Juvenile and family court judges across the country recognize that while current and prior criminal history are important considerations in fashioning a disposition, the needs, circumstances, and problems of individual offenders vary and require judicial flexibility. The question then becomes how much flexibility is desired. Alaska's concept of three basic alternatives is a good model and should be followed as a starting point to define an alternative structure for Washington State. With a mandate that the least restrictive alternative available be utilized, judges should have the following disposition options: (1) a broad supervision order; (2) a community placement order; and (3) a commitment order.

Under the first option, a "supervision order," a judge would place a youth on probation for supervision by the Division of Juvenile Rehabilitation (the "Division") for up to one year. The juvenile's family would retain custody of the juvenile during supervision. The order would impose requirements such as a curfew, counseling, restitution, community service, school


347. See supra note 207 and accompanying text.

348. For stories of juveniles who committed numerous offenses before the system caught up with them, see Rick Anderson, Juvenile Court: Where the Numbers Don't Always Add Up, SEATTLE TIMES, Mar. 22, 1991, at E1; Epler, Breaking the Cycle, supra note 346, at A1; Kate Shatzkin, Taking the Wrong Road, SEATTLE TIMES, Apr. 12, 1992, at A1.

349. The Juvenile Court and Serious Offenders: 38 Recommendations, JUV. & FAM. CT. J. 9 (Summer 1984) [hereinafter Serious Offenders]. In a series of recommendations adopted in July 1984, the National Council of Juvenile and Family Court Judges endorsed individualized treatment of offenders and the goal of rehabilitation as the primary focus of the juvenile court. Id.

350. In fact, the King County Department of Youth Services has proposed a plan similar to that of Alaska. See supra note 238.

351. This three-tiered proposal is modeled after Alaska's system explained supra notes 261-68 and accompanying text.
attendance, employment, and other services designed to meet a juvenile's specific needs. The Division could terminate the supervision order at any time. If the juvenile violates the conditions of the order, the Division could petition the court for more severe sanctions, such as the placement in a state or county-operated facility.

The second option, a "placement order," would function similarly to Alaska's "custodial probation." A placement order would commit a juvenile to the Division for an indeterminate period between six months and one year. The juvenile could still reside with the family, but, as a provision of the court's disposition order, the Division would have authority to place the juvenile in a non-detention residential setting without an additional hearing if it became necessary to achieve compliance with probation requirements.

The third alternative of the court, a "commitment order," would only be used when required for community protection and when less restrictive alternatives would fail to rehabilitate. Commitment orders would be for a minimum of nine months and a maximum of eighteen months. To maintain a measure of accountability on the juvenile, judges should have the ability to set longer determinate sentences based on aggravating factors such as a history of offending, extreme seriousness or viciousness of crimes involving persons, or use of a weapon. Nevertheless, to ensure fair treatment, the juvenile should have a mechanism to seek earlier release if he or she can show that he or she is sufficiently rehabilitated to warrant release to a less restrictive alternative.

As part of the third alternative, judges should also be given the option to provide a deferred imposition of sentence that would allow a judge to order confinement only if a juvenile fails to comply with custodial probation requirements. In effect, a judge would commit a youth to confinement, but the youth would be allowed to participate in a non-detention residential setting. If the juvenile failed to fulfill court mandated placement requirements, the Division could immediately confine the juvenile for the duration of the sentence and petition the court for a formal modification of the placement order.

This three-tiered system includes several layers of rehabilitative settings with various degrees of restrictiveness. Alaska has maintained a high rate of confinement under its three-tiered system. The high confinement rate is likely due in large
part to a lack of less restrictive alternatives. To realize the 
benefits of Alaska's system, while avoiding the pitfalls, suffi-
cient alternatives must be created. Additionally, while Alaska 
allows commitment in increments of two year periods, it is rec-
ommended that for placement orders, Washington adopt a one 
year maximum term that may be extended on petition of the 
court. Further, for any juvenile in placement, a court review 
should be held every six months to determine if ongoing place-
ment is required. Juveniles who are under commitment orders 
should also be afforded either a periodic, mandatory court 
review or a parole board hearing. As an option, the law might 
allow for a juvenile, parent, or guardian to petition the court 
for a limited periodic review of commitment.

Periodic review requirements are intended to help ensure 
that a juvenile does not become lost in the system or that a 
juvenile is not removed from his or her family any longer than 
necessary. While the plan suggested by this Comment is some-
what similar to the paternalistic juvenile courts created by the 
Progressive movement, these reviews will provide a check and 
balance to the unbridled discretion that marked the function-
ing of the Progressive courts. By providing shorter commit-
ment terms than Alaska, and by requiring periodic reviews, it 
is hoped that the drawback of Alaska's system, too many 
juveniles being retained in the system for too long, can be 
avoided.

The six- and nine-month time frames for minimum initial 
placement or commitment are recommended because the expe-
rience of states that utilize rehabilitative programs consistently 
indicates that six to twelve months are required to produce 
positive effects. 352 Under Washington's current juvenile justice 
philosophy, this type of disposition plan would not be compati-
ble or effective because a juvenile's average length of stay in 
detention is less than nine days 353 and because a juvenile's 
detention time prior to adjudication is subtracted from disposi-
tion time. 354 Because rehabilitation is unlikely in pre-adjudica-
tion detention, and because post-adjudication confinement or 
community supervision in many cases is significantly less than 
a year, Washington's current sentencing scheme reduces the

353. Rothschild, supra note 177, at A1. As many as 60 percent of youth detained 
are held no more than 72 hours. Id.
amount of time in which any corrective efforts may be employed, further weakening the system’s potential rehabilitative effect.

In summary, while professionals recognize that Washington’s current juvenile justice system needs to emphasize rehabilitation, maintaining the current disposition scheme is incompatible with the goal of rehabilitation. In light of the serious lack of adequate resources, the existing system’s reliance on age as a sentencing factor, large institutions, and the complicated point system, a juvenile is only assured to receive a few ineffective programs in settings that are not conducive to rehabilitation and for periods that are too short to achieve lasting results.

A system that provides judges greater flexibility will allow judges to address a juvenile’s specific needs in the least restrictive manner. Indeterminate sentences keep juveniles guessing as to how long they may be incarcerated. Indeterminacy provides less incentive for juveniles to engage in crime because they know that they could be retained in a correctional facility longer than the current sentencing guidelines permit. Indeterminacy will also provide a greater incentive for youth to engage in rehabilitative programs because positive performance may result in early release.

D. Provide Judges With Disposition Alternatives Other Than Confinement, Including Expanded Use of Community Supervision

In crafting dispositions, the Juvenile Disposition Standards Commission is concerned only with the term of confinement to be imposed and not with the nature of security imposed. Yet, professionals who work with juvenile offenders believe that many juvenile offenders do not need incarceration as much as they need to be removed from their environment. Removing a juvenile from his or her environment under the existing law means confinement in detention facilities that have been shown to be detrimental to juveniles.

The current law should be amended to redefine the definitions and requirements for confinement, community supervision, and probation. Because the Commission does not

355. See supra notes 231-39 and accompanying text.
357. Rothschild, supra note 177, at A1.
consider the nature of security, more discretion must be given to the court or to the Division.

Under the current law, the definition of "confinement" is narrow and the definition limits placement to detention centers and institutions.\textsuperscript{358} The definition of confinement should be expanded to include placement in residential facilities and also to include other alternatives, such as electronic home confinement. This change is necessary to provide the variety of less restrictive placement options urged as part of an indeterminate disposition approach.\textsuperscript{359}

If some version of the current point system is retained, community supervision terms should be lengthened for all minor and middle offenders in order to provide for up to one year of supervision for any offense. This allows a necessary and sufficient period of time for the Division to assess whether rehabilitative efforts are having a positive effect. The definition of community supervision should also be expanded to allow referral to community counseling programs so that a juvenile receives sufficient and appropriate counseling to address the reasons for criminal behavior.\textsuperscript{360}

Following confinement, the current law requires that a youth be placed on probation for up to eighteen months.\textsuperscript{361} The law should be amended to include a minimum term of at least one year and also to allow for probation until age twenty-one, even if more than eighteen months are required. Extended probation would ensure that juveniles complete any long-term community-based treatment programs required as a part of probation. At the same time, the state should develop a thorough program of aftercare services to monitor a juvenile's activity in the community. Juvenile court judges note that returning juveniles to the community "cold turkey" without reintegration support often causes those juveniles who have made gains in residential placement to "wash out" upon return


\textsuperscript{359} The legislature attempted these changes but the effort was vetoed. H.B. 2466, 52d Leg., Reg. Sess., 1992 Wash Laws 886. \textit{See also Veto Letter, supra} note 229.

\textsuperscript{360} This effort was also made by the 1992 legislature and vetoed. Governor Gardner stated that the expanded definition of "community-based rehabilitation could result in placing youths in residential or substance abuse programs as a condition of their sentence thus limiting a juvenile's liberty without adequate due process as required by involuntary civil commitment statutes." \textit{Veto Letter, supra} note 228.

to the community.\textsuperscript{362} The states that are the most successful with community-based services and the prevention of recidivism have intensive aftercare programs.\textsuperscript{363}

\textbf{E. Begin to Immediately Replace the Institutional System With Smaller, Community-Based Facilities}

The success of rehabilitative juvenile justice in Massachusetts, Pennsylvania, Utah, and Maryland demonstrates that a rehabilitative system would benefit the State of Washington. When properly staffed and adequately funded, community-based programs that "rehabilitate" juvenile delinquents are less expensive, more humane, more protective of public safety, and at least as effective as a punitive system, if not better, in reducing recidivism. Community-based systems keep juveniles closer to their families, and increased contact between youth and family enhances the chances for reintegrating the youth into the family.\textsuperscript{364}

Community-based detention is the stated and ultimate goal of the Division of Juvenile Rehabilitation.\textsuperscript{365} However, previous efforts to establish community group homes met with neighborhood reaction so hostile that King County officials have given up on the concept.\textsuperscript{366} As a compromise, the Division's seven year plan now calls for both maintaining and upgrading existing institutions while moving toward placement in smaller community settings.\textsuperscript{367} The compromise should be re-examined. In a dual goal system, scarce financial resources that could go toward creating a more cost effective community system will end up being directed toward existing institutions because that is where the juveniles are now. The idea of a community-based system will die before it is ever given life.

The need to shift to community-based settings was recognized by the 1991 Juvenile Issues Task Force, which recommended that the state be instructed to plan to reduce reliance

\textsuperscript{362} Serious Offenders, supra note 349, at 17.

\textsuperscript{363} Lerner, supra note 270, at 14.


\textsuperscript{365} Constantine Angelos, Council Pushes Change for Juvenile Centers, SEATTLE TIMES, Feb. 21, 1990, at B3.

\textsuperscript{366} Rothschild, supra note 177, at A1.

\textsuperscript{367} Angelos, supra note 365, at B3.
of large institutional facilities.\textsuperscript{368} The Task Force stated that the state should expedite implementation of a switch to smaller community facilities and programs by incorporating the concept into the planning for the fiscal year 1993-95 budget.\textsuperscript{369} The task force recommendation was incorporated into but later stripped from legislation passed by the 1992 legislature.\textsuperscript{370}

The Division should direct greater effort toward creating a rehabilitative community-based system that advocates contend will improve the juveniles' lives, reduce the cost of maintaining large institutions, and avoid potential court intervention against the existing state system.\textsuperscript{371} Of all the placement options available for youth, placement in secure facilities should be limited to fifteen percent of the total number of juveniles adjudicated delinquent, a ratio that other states have found satisfactory to deal with those juveniles who cannot be placed in the community.\textsuperscript{372}

For fundamental change to occur in both the sentencing of juveniles and the delivery of rehabilitative services, the public must be closely involved. The Division should begin to involve the public in planning a "rehabilitative" community-based juvenile system and to educate the public about the financial and social benefits of such a system.

\textbf{F. The State Must Make an Adequate Financial Commitment If a Truly Rehabilitative Ideal is Ever to Be Achieved}

In Massachusetts, Pennsylvania, and Maryland, where the success of a community-based model has been achieved, a key factor has been financial resources.\textsuperscript{373} Funding once directed to institutions was directed to the community to provide youth services and protection.\textsuperscript{374}

The result in Massachusetts has been cost effective. The

\textsuperscript{368} 1992 Legislative Package 7 (as voted upon at the Dec. 16, 1991, Juvenile Issues Task Force Meeting).
\textsuperscript{369} Id.
\textsuperscript{371} Id. \textit{See also King County Task Force}, supra note 293, at 19.
\textsuperscript{372} See Lerner, supra note 270.
\textsuperscript{373} Id.
annual cost per child in the Massachusetts Department of Youth Services averages $23,000 compared to $35,000-$40,000 reported in many other states. In Utah, the community-based system initially required a budget $250,000 less than the old custodial-based system. A 1987 study indicated that Utah's system saved taxpayers $30 million in capital costs and $10 million in annual operating costs.

The recommendations of this Comment to reform the juvenile justice system in Washington are predicated on the assumption that adequate funding will be available, an assumption that may be too much to expect. The 1990 budget shortfall of $750 million was the state's worst fiscal crisis in a decade. While legislators survived that crisis, a budget deficit of $500 million is predicted for 1993.

Considering the budget crisis Washington faces, it may be unrealistic to presume that a rehabilitative juvenile justice system, as urged both in this Comment and by many who have testified to the Juvenile Issues Task Force, is capable of being effectively inaugurated. The other options are to leave the system as it is, an option that has significant problems, or to abolish the juvenile court system as we know it, an option many commentators have recommended. Those who advocate abolition argue that the current system, whether determinate or indeterminate, fails to provide adequate procedural due process while also subjecting juveniles to the loss of liberty with no correlative rehabilitative effect.

If Washington legislators are unwilling to provide funding necessary to provide adequate and effective educational, counseling, and vocational services that will truly rehabilitate, then

375. Ferdinand, supra note 243, at 216.
376. Id.
377. Schwartz et al., supra note 289, at 392.
379. The 1992 legislation almost failed to pass because critics argued that the legislature was setting new policies without any money to back them up. Senator Cliff Bailey, one of five senators filing protest votes against the bill said, "It's an empty promise . . . . If we feel strongly enough about these juvenile justice programs . . . then we ought to provide funding." Serrano, supra note 370, at B1. Ultimately, many portions of the bill were vetoed because they lacked funding. See supra note 228 and accompanying text.
380. See Ainsworth, supra note 82; Feld, Principle of Offense, supra note 240.
381. See Ainsworth, supra note 82, at 1119-21; Feld, Principle of Offense, supra note 241; but see Forst & Blomquist, supra note 244; H. Ted Rubin, Retain the Juvenile Court?, 25 CRIME & DELINQ. 281 (1979).
the system argued for in this Comment should also be discarded in favor of a typical criminal court in which juveniles are afforded all the procedural due process provided in adult criminal courts.

The preferable option, though, is to employ a rehabilitative juvenile justice system because the number of juveniles who will be entering the "at-risk" years for committing offenses will increase during this decade. The many reasons for a rehabilitative system can be summed up by quoting from a recent editorial: "If we fail to do a better job of preventing youngsters from falling into the abyss of abuse, neglect, crime and substance abuse and of rescuing those already there, society will pay a frightful price."  

VI. CONCLUSION

Washington's 1977 Juvenile Justice Act was hailed by some political leaders as a "model for the rest of the nation in its approach to juvenile crime." Soon after its implementation, one of the bill's prime sponsors conceded that the potential accomplishments of the law would take time to measure, and that, in the meantime, researchers would analyze the system until the time comes when "our thinking about crime and children and families undergoes another revolution." That time is now.

When Washington "revolutionized" its juvenile justice system in 1977, proponents warned that it would be too much to expect that the legislation would dramatically reduce juvenile crime or provide instant solutions to family crises. Legislators did hope that the 1977 Act might make the system more rational and fair, and that it would reduce expensive and inappropriate incarceration of children.

After fourteen years of experience it is evident that the Juvenile Justice Act of 1977, enacted to hold youth accountable, to reduce a growing juvenile crime rate, and to get a handle on the cost of dealing with juvenile offenders, has failed to

382. 1991 REPORT, supra note 136, at 45. The number of youth between the ages of ten to seventeen is predicted to increase by approximately 82,000 from 1990 to 2000.
385. Id. at 311.
386. Id. at 312.
387. Id.
achieve those goals. Violent juvenile crime continues to escalate.\textsuperscript{388} Washington remains near the top of the list of states in its rate of juvenile incarceration.\textsuperscript{389} Juvenile detention facilities are plagued by overcrowding, lack of treatment services, and violence. Juveniles with extensive criminal records or substantial emotional problems are diverted from formal sanctions. A system built largely on the premise and the promise of accountability has neither made many juveniles accountable for their crimes nor held juveniles accountable to a public that remains unprotected from crime.

The solution is the infusion into our punitive system of rehabilitative ideals that were first espoused when the juvenile justice system was created. The success of other states that have moved away from secure confinement of juveniles in large institutions to small community-based, non-secure programs demonstrates there is a better way to treat juveniles; a way that will be more cost effective, humane, and protective of society and that will also be fair and hold juveniles accountable for their acts. With many procedural safeguards now in place and the existence of effective treatment programs, a juvenile no longer must be condemned to suffer the worst of both worlds as Gerald Gault nearly experienced.\textsuperscript{390}

It may appear that the system advocated in this Comment rejects punitive juvenile justice in favor of a full-fledged return to rehabilitation. However, for the true believers of the “just deserts” model of justice, the punitive nature remains in the potential imposition of fines, restitution, and confinement, as well as restrictions on liberty that may be imposed. Waiver to adult court, a highly punitive sanction, would still loom for the most heinous of juvenile offenders under the proposed system.

To enact an improved juvenile justice system in Washington will require a financial commitment. No amount of statutory amendment and no amount of judicial rhetoric will turn a punitive system into a rehabilitative one. The services and programs must accompany the desire to improve juvenile justice. It is a financial commitment we can choose to make now or it is one we will likely be forced to make in the future.

While pushing for a punitive juvenile justice system in Washington, State Representative Mary Kay Becker noted that

\textsuperscript{388} See supra notes 203-07 and accompanying text.
\textsuperscript{389} See supra notes 211-12 and accompanying text.
\textsuperscript{390} See supra part II.B.
the ultimate answer to juvenile crime did not lie with any law, and that it was for parents, schools, churches, employers, and the rest of the community to set higher standards and to create an environment to challenge juveniles to give their best.\textsuperscript{391} The adoption of the system advocated in this Comment will help set those standards and provide that environment.

In planning for the future, we have only the lessons of the past from which to learn. In shaping the future of the juvenile justice system in Washington, the words written more than eighty years ago by Professor Julian Mack are still admirable and express the goal that we, as a society, must continue to strive to achieve, for it is our very future that is at stake:

\begin{quote}
[T]he work of the juvenile court is, at the best, palliative, curative. The more important, indeed the vital thing, is to prevent the children from reaching that condition in which they have to be dealt with in any court, and we are not doing our duty to the children of to-day [sic], the men and women of to-morrow [sic], when we neglect to destroy the evils that are leading them into careers of delinquency, when we fail not merely to uproot the wrong, but to implant in place of it the positive good. The work demands the united and aroused efforts of the whole community, bent on keeping children from becoming criminals, determined that those who are treading the downward path shall be halted and led back.\textsuperscript{392}
\end{quote}

\textsuperscript{391} Becker, supra note 54, at 312.  
\textsuperscript{392} Mack, supra note 13, at 122.