When Children Act Out in Violence,
They are Still Children
An Evaluation and Proposed Reform of
Florida’s “Adult Crime, Adult Time” Brand of Justice

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I. Introduction

“I’m ashamed to admit this, but I’m afraid of [the day I walk out of this prison]. I grew up in here, and I don’t know anything about living.”[1]

These words were spoken by Tiffany Lindoo shortly before she turned 21 at the Hernando Correctional Institution in Brookline, Florida.[2] When she spoke these words, Tiffany had spent seven years in adult prisons in Florida and had seven more years still to serve before returning to life outside the prison walls. In 1994, Tiffany was convicted of felony murder and sentenced, in Palm Beach County, Florida, to fourteen years imprisonment under the state’s “waiver” policy that allowed juveniles to be tried and sentenced as adults.[3] Tiffany watched her older boyfriend and his friend as they fatally beat businessman Ed Strother with a baseball bat and the butt of a gun.[4] Tiffany is just one of thousands of young people in Florida and across the country who is incarcerated in an adult prison for a criminal act carried out while still a juvenile.

In the 1980s and early 1990s rates of juvenile violence increased across the country.[5] The daily news told stories of children killing and assaulting other children and adults. Many of the acts were cold-blooded, calculated, and heartless. The public was scared. They wanted to end this violence, hold children more accountable for their actions, and secure their safety and that of their families. Prosecutors and legislators across the country responded with a new expression of justice—“adult crime, adult time.” In other words, if children can commit crimes like adults, they can serve time like adults. This new brand of justice found its voice in state waiver policies, allowing juvenile offenders to be tried and sentenced as adults.

These waiver policies have resulted in the incarceration of thousands of juveniles with adult criminals across the country, most notably in Florida. While giving politicians a campaign platform, these policies have not been successful, either for the children sentenced under them or the society that demanded them. Instead of adequately serving any of the traditional goals of punishment—deterrence, incapacitation, retribution, or rehabilitation—this cry for “adult time, adult crime” has subjected young offenders to unnecessary violence, condemned them to more violent lives, and neglected their needs. This new application of “justice” is turning youthful offenders into hardened criminals and banishing any hope that they might be rehabilitated and returned to society as respectful, law-abiding citizens.

Certainly these offenders should not be allowed to cheat responsibility for their actions, but there are other options besides this failing “adult crime, adult time” theory of justice. This paper examines some of those options. After a brief look at how “adult crime, adult time” policies have taken over where juvenile justice used to champion, this paper evaluates this new justice, highlighting the problems it causes and its inability to satisfy deterrence, incapacitation,
retribution, or rehabilitation goals. Then, the paper explains the urgency for reform of “adult time, adult crime” policies, in the absence of a call to reform all prisons. Next, this paper turns to recent attempts to reform and offer alternatives to the “adult crime, adult time” brand of justice in Florida, evaluating their effectiveness. Upon concluding that these alternatives are also inadequate to meet the goals of punishment of juvenile offenders, the paper proposes its own alternative, modeled in part after Minnesota’s extended juvenile jurisdiction legislation. This option promises to give children the opportunity to grow up with appropriate attention to their special needs and to create possibilities for rehabilitation, restitution, deterrence, incapacitation, and even retribution.

II. Juvenile Justice Gives Rise to “Adult Time, Adult Crime” Justice

For more than one century, most children accused of crimes have received special treatment under the law. Rather than being tried and convicted in the criminal courts used for adults, children have typically been diverted to the juvenile justice system. This system has been described as a wall “to protect children from the retributive polices of the adult system” while at the same time serving as a means “to hold children in conflict with the law accountable” through rehabilitation that will help them become productive members of adult society. It “was invented to combat juvenile crime in a way that was more flexible and pro-active than the simple just-deserts approach of the adult court.”

[It] is rooted in social welfare philosophy rather than in the corpus juris. Its proceedings are designated as civil rather than criminal. The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment. The State is parens patriae rather than prosecuting attorney and judge.

While holding children accountable for their actions, the system aims to protect them from the “consequences of adult conviction.”

In the last few decades, confidence in this system has begun to wane, in large part because of dramatic increases in rates of juvenile delinquency, particularly serious violent juvenile crime. A report by the Institute on Crime, Justice and Corrections and the National Council on Crime and Delinquency announced that between 1984 and 1994, there was a 78 percent increase in arrests of juveniles for violent offenses. While juvenile arrest rates have decreased since 1994, they still remain high. The 1998 rate of juvenile arrests, for instance, was 19 percent less than in 1994, but still 15 percent more than in 1989. These staggering statistics have instilled fear and concern in the public. In responding to what has been called “the
greatest single crime problem that this nation faces,"[15] citizens have demanded more accountability and less special treatment for violent juvenile offenders. Prosecutors across the nation have responded with a new brand of justice—“adult time, adult crime”—by acting on statutes, old and new,[16] which allow them to transfer juveniles to criminal court for prosecution and sentencing.

Florida is the leader in trying and sentencing juveniles as adults. The state’s crusade against juvenile offenders is led by Palm Beach County Prosecutor Barry Krischer, whose reputation is built on his tough stance against juvenile crime.[17] Krischer prides himself on running the Florida office that tries more adults as children than any other in the state and on the fact that Florida leads the nation in trying children as adults.[18] Krischer has personally prosecuted many of Florida’s high profile juvenile offenders, including Natahniel Brazill, the 14-year old who was sentenced, this past summer, to 28 years imprisonment for shooting his middle school teacher[19] and Tronneal Mangum, the 14-year old who was sentenced, in 1998, to life imprisonment for shooting a schoolmate over a watch.”[20] On “adult time, adult crime” justice, Krischer says, “When . . . violent juveniles are convicted of first-degree murder . . . , then they are going to get life without parole because it’s the law. My job is to prosecute them. Beyond that, I cannot be concerned with what happens to them.”[21]

Florida law provides five methods by which juveniles can be tried in adult court, including voluntary transfer,[22] mandatory transfer,[23] involuntary waiver in the form of discretionary or mandatory waiver,[24] and direct file in criminal court.[25] Krischer and other Florida prosecutors have been very successful applying these methods in their pursuits of juvenile offenders. In 1977, Florida transferred 1,200 juveniles to criminal courts for prosecution.[26] These rates have more than doubled in slightly less than twenty years. In 1995, Florida transferred more than 10 percent of its juvenile offenders to criminal court, nearly 5,000 juveniles in more than 7,000 cases.[27] This number almost totaled the number of cases waived to criminal court by judges across the nation, 9,700.[28]

Juveniles transferred to criminal court are subject to the same sanctions as adult offenders. According to the Bureau of Justice Statistics, slightly more than half of all juveniles convicted of felonies in criminal courts are imprisoned nationwide, many in the same prisons as adult criminals.[29] Here again, Florida leads the nation. A system-level survey of state prison systems, the Federal Bureau of Prisons, and 19 jail systems conducted by researchers at the Institute on Crime, Justice and Corrections and the National Council on Crime and Delinquency revealed that, in 1998, nearly 12 percent of all juveniles housed in adult prisons throughout the nation were in Florida,[30] despite the fact that Florida has the greatest capacity and most resources of all the states for keeping incarcerated juveniles separate from adults.[31]

Florida law does provide certain guidelines for the sentencing of juveniles tried as adults. By statute, all children convicted of crimes punishable by death or life imprisonment must be sentenced as adults;[32] others may be sentenced as adults, juveniles, or youthful offenders.[33] In sentencing judges are instructed by statute to strive to achieve a sentence that is
appropriate with regard to the seriousness of the offense and the child’s need for rehabilitative services.\textsuperscript{[34]}

**III. Effects of “Adult Crime, Adult Time”**

Imprisonment of children, while quieting some of the public outcry in response to juvenile violence, has not resolved the problem. Instead, it has created other significant problems, including child abuse, molestation, and neglect in adult prisons. Further, imprisonment of children has failed to achieve most of the goals traditionally offered as bases for punishment.

**A. Child abuse, molestation, and neglect**

Juveniles incarcerated in adult prisons live in a world that would inspire sympathy, concern, and even legal action for child abuse, child molestation, and child neglect in the outside world. This occurs despite the fact that incarcerated children have no fewer rights to protection by the Fourteenth Amendment’s due process clause than do incarcerated adults. They, for instance, have a right to “be free from unreasonable threats to their physical safety” and to be protected “from the sexual aggressiveness” of other inmates.\textsuperscript{[35]} Further, all inmates are entitled to adequate medical and mental health care and regular exercise and fresh air.\textsuperscript{[36]} Incarcerated juveniles are also entitled to the benefit of special education laws and must be allowed to observe religious holidays and traditions.\textsuperscript{[37]} Prisons must provide a sanitary and humane environment and a balanced diet.\textsuperscript{[38]} Incarcerated juveniles enjoy the same rights as incarcerated adults to be protected from random, suspicionless, body searches, and to be free from violence.\textsuperscript{[39]} Unfortunately, just because these rights exist, they are not necessarily enforced. In fact, incarcerated children are often subjected to unacceptable conditions, including rape and violence.\textsuperscript{[40]}

In his dissenting opinion in *United States v. Bailey*, Justice Blackmun recognized the deplorable conditions that young prisoners are subject to:

The atrocities and inhuman conditions of prison life in America are almost unbelievable; surely they are nothing less than shocking. . . . A youthful inmate can expect to be subjected to homosexual gang rape his first night in jail, or, it has been said, even in the van on the way to jail. Weaker inmates become the property of stronger prisoners or gangs, who sell the sexual services of the victim. Prison officials either are disinterested in stopping abuse of prisoners by other prisoners or are incapable of doing so, given the limited resources society allocates to the prison system. Prison officials often are merely indifferent to serious health and safety needs of prisoners as well. . . . Even more appalling is the fact that guards frequently participate in the brutalization of inmates. The classic example is the beating or other punishment in retaliation for prisoner complaints or court actions.\textsuperscript{[41]}
The most apparent abuses that incarcerated children are subjected to include rape and other forms of violence. They are also at increased risks for suicide. These abuses are intensified in many instances because of the youth and inexperience of juvenile inmates. According to Patricia Dewberry, an officer at a correctional institute in Michigan that houses adult and juvenile female offenders, young prisoners are seen by adult prisoners as “fresh food for the sharks.”

1. Rape in Adult Prisons

Rape is an “entrenched tradition” in most prisons. Many prisoners view rape as a way to “prove their manhood,” to gain power, and to fulfill sexual drive. It is estimated that more sexual assaults occur behind prison walls each year than non-prison rapes of women across the nation, with an estimated 290,000 males sexually assaulted in prisons each year and an estimated 135,000 rapes of women annually. Prison rapists typically choose “the youngest, the smallest, the nonviolent, the first-timers and those charged with less serious crimes” as their victims. According to Vincent Schiraldi, director of the Justice Policy Institute in Washington, D.C., children incarcerated with adults are five times more likely to be sexually assaulted than their counterparts in juvenile facilities. The typical prison rape is a gang-rape. “Once victimized, a prisoner is marked as a continual target for sexual attack and is repeatedly subjected to gang rapes, or must trade submission to one or more men in exchange for protection from the rest.” Few rapes are reported to prison authorities because of a fear of retaliation.

The effects of prison rape are far reaching. Psychologists believe that pent-up fear and frustration about constant victimization may cause victims of prison rape and sexual assault to act out violently once they return to their communities. Not only does rape sometimes cause its victims to act out violently once in the outside world, sometimes they do this inside prison walls by killing their attackers or by taking their own lives. Prison rape can also result in the transmission of sexually transmitted diseases and Acquired Immune Deficiency Syndrome (AIDS). As well, it often causes psychoses and post-traumatic stress syndrome or rape trauma syndrome in its victims.

2. Other Violence in Prisons

Rape is not the only form of violence to which juvenile prisoners are subjected. Recent studies show that juveniles in adult prisons are twice as likely to report being beaten by staff than are juveniles in juvenile facilities and 50% more likely to be attacked with a weapon than juveniles in juvenile facilities. These rates may be even higher in Florida prisons. Recently, the Miami Herald conducted a study of Florida prisons. A portion of the study involved reviewing prison records for the years 1995 through 1999. The review revealed that juveniles in Florida’s prisons are four times more likely than adult inmates to report being assaulted and 21
times as likely to be assaulted or injured as their counterparts in juvenile facilities.\[^{56}\] The records revealed that the attackers were often other inmates or corrections officers.\[^{57}\] The Herald found a wide array of assaults, some involving weapons, others not. In one case a juvenile inmate lost an eye when he was attacked with a lock. In another, second-degree burns were inflicted on a juvenile inmate by other inmates using scalding water. Another case involved the death of a juvenile inmate who was choked by another inmate.\[^{58}\] There is also some indication that imprisoned juveniles may be at a greater risk of being beaten by guards and other staff than juveniles in juvenile facilities.\[^{59}\]

3. Juvenile Suicide in Prison

Juveniles incarcerated in adult prisons are not only at a higher risk of being victims of violent acts, they are also at an increased risk for committing suicide. Nancy Clore, whose 14 year old daughter, Danielle, was convicted of arson and sentenced to one year in a prison for adults in Michigan, spoke of her daughter, “I’m afraid she will commit suicide.”\[^{60}\] Her fears were certainly rational. Little more than a year ago, the Department of Justice reported that juveniles incarcerated in adult prisons are five times more likely than juveniles in the general population to commit suicide, and eight times more likely to commit suicide than juveniles in juvenile facilities.\[^{61}\] Many of these prison suicides are caused, at least in part, by prison rape.\[^{62}\]

B. Unfulfilled Goals

Clearly, incarceration in adult prisons does not secure the safety of juvenile offenders. If this “adult crime, adult time” justice, however, serves some larger social purpose, such as deterrence, incapacitation, retribution, or rehabilitation, its shortcomings might be outweighed by its benefits. These social purposes—deterrence, incapacitation, retribution, and rehabilitation—have traditionally been offered as the goals of punishment.\[^{62}\] Further, these aims are often expressed as the motives behind incarceration of juveniles. If, in fact, these aims are accomplished by “adult crime, adult time” justice, there may be reason to continue to exercise this new justice.

1. Deterrence

General and specific deterrence are both goals of punishment. “Adult crime, adult time” justice fails in both respects. First, “adult crime, adult time” justice is not a general
deterrent. There is no indication that juvenile transfer or incarceration reduces delinquency rates. Florida, the leader in sentencing juveniles as adults, for example, has a violent juvenile crime rate almost 1 ½ times the national average, and the effect is not confined to Florida. Other states granting prosecutorial discretion in waiver to criminal court, including Arkansas, Nebraska, Arizona, Virginia, and New Hampshire, have also reported increased rates of violent juvenile crime at times when other states reported decreases.

Second, on the issue of specific deterrence, or deterrence of the individual, the evidence is clear that recidivism rates are increased by incarceration of juveniles in adult prisons. Not only are juveniles incarcerated in adult prisons more likely to recidivate, they are more likely to commit serious subsequent offenses in less time than juveniles processed through the juvenile court system. This is explained, at least in part, by the sociological theory known as differential association, which tells that deviance is behavior learned “through association with others, especially in primary groups.” Prisons are full of opportunities for such association. Incarcerated youths grow up in an environment where they are surrounded by social deviants. One ex-prisoner appropriately described prison as “a breeding place for evil, an incubator for crime,” with especially detrimental effects on young people.

2. Incapacitation

Incapacitation is another important goal of punishment. With “adult crime, adult time” justice, the intent is to punish children more severely and keep them off the streets for longer periods of time than can be done through the juvenile justice system. This, however, is not what happens. Many juveniles tried as adults are not incapacitated at all, and most who are, are only incapacitated for short periods of time. One commentator described:

As with capital punishment, criminal court transfer offers a drastic and permanent solution for an offender thought to be beyond redemption. It is the court’s way of saying, ‘there are no more second chances for you.’ Permanent and drastic punishments are very appealing to a public confronted with high rates of violent crime. Unlike the death penalty, however, criminal court transfer is not permanent. It is merely a change of venue that exposes a young offender to [the possibility of] more severe court outcomes but does not guarantee any particular outcome.

In fact, a report released by the Urban Institute exposed that transfer increases certainty and severity of sentence in only 30 percent of cases. Further, about 50 percent of juveniles transferred to criminal court receive sentences comparable to what they would have received in juvenile court while nearly 20 percent are sentenced more leniently than their counterparts in juvenile court. Most juveniles incarcerated in adult prisons are released within three years. Thus, the goal of long-term (or even short-term, in many cases) incapacitation is not served by juvenile incarceration.

3. Retribution
Under a theory of retribution, punishment is the means of inflicting on the offender what he or she deserves for violating the law.\[74\] The punishment should be “proportionate to the offense.”\[75\] As discussed previously, prison often subjects juveniles to abuse, neglect, and rape. While these might be proper punishments in some cases if the “an eye for an eye” concept of retribution were interpreted literally (which it is not in modern sentencing), they are unnecessary and inappropriate. One Florida prosecutor explained, “People do not realize that what a life sentence in an adult prison does to a child in no way balances the scales of justice. A crime and a sentence have little to do with the day-to-day reality of what life is like for a child in prison.”\[76\] Further, the leniency in length of sentence often exercised in sentencing juveniles as adults\[77\] exemplifies just how incarceration may, in fact, accomplish less by way of inflicting what is deserved than juvenile sentencing does.

4. Rehabilitation

The fourth and final traditional goal of punishment is rehabilitation. Unlike the previous three goals, this goal is wholly neglected in juvenile incarceration, and is rarely, if ever, offered as a goal of juvenile or adult incarceration. Regardless, it should be an important goal, particularly in the sentencing of juveniles tried as adults because most will return to society at the close of their sentences. Even a sentence of sixty years without the possibility of parole leaves a great chance that the child will return to life outside of prison, and there is little evidence that adult prisons make any attempt to prepare for this either by providing medical care peculiar to the needs of youthful offenders, offering adequate middle or high school or vocational education, or customizing counseling programs to the specialized needs of youthful offenders.\[78\] In Florida, it has been said of adult prisons where juveniles are incarcerated:

Lack of adequate educational, recreational, and health programs make jail confinement inappropriate for children. While not all inmates confined to jail are hardened criminals, the presence of some experienced criminals is guaranteed; children in contact with these individuals are provided a free course in criminal techniques, making increased criminal activity more likely. The jails’ destructive potential is evidenced by reports of physical and sexual abuse of children by larger and stronger inmates, and the frequency with which juveniles find the only solution to their problems to be the taking of their own lives.\[79\]

Clearly these conditions cannot adequately protect society by rehabilitating the juvenile offenders who will most likely be released from prison when they have many years of life yet to live.

These failings of the “adult crime, adult time” policy are significant. A number of states, including Florida, recognize at least some of these failings and have taken steps to lessen the consequences. Before examining recent changes in Florida law aimed at alleviating some of these problems, there remains an important question that must be answered: Why bother trying to alleviate these problems for juvenile offenders when many of the same problems exist and go uncorrected with regard to adult inmates? The answer lies in the special nature of childhood, and
can best be explained by examining the physical, intellectual, and emotional underdevelopment of children and the ways that the law has dealt with this underdevelopment.

IV. Why Children Deserve Special Treatment

Children are not adults, neither physiologically nor psychologically. The American Board of Pediatrics explains, “Children differ from adults anatomically, physiologically, immunologically, psychologically, developmentally, and metabolically.” These developmental differences present unique opportunities and pose difficult challenges for coping with juvenile delinquency and violence. For instance, they make children susceptible and malleable to outside influences, both positive and negative. Thus, there arises both an opportunity and a challenge. The opportunity is one of reform and rehabilitation conditioned on the fact that children are “more amenable to intervention and treatment” than adults. The challenge is the problem of specific deterrence (recidivism) discussed above.

A. Influences of Nature and Nurture

There is evidence that children’s lack of cognitive, emotional, and social maturity creates challenges in legal procedures, i.e., in the preparation of the best possible defense to charges of criminal or delinquent behavior. Studies show that juveniles have less understanding of the legal system and are less prepared to assist in their defenses than adults. A study in which 400 delinquent youths and 200 criminal adults were given special tests designed to determine their level of understanding of Miranda Warnings, for example, revealed that juveniles between the ages of 14 and 16 were half as likely as adults to understand their Miranda rights. The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, a group of social scientists collected to undertake “a critical reexamination of the juvenile justice system” based on sound science and legal scholarship, has completed its juvenile competence study analyzing the competence of juveniles as criminal defendants in light of their developmental immaturity. The Foundation is expected to release its results this spring. Other research has already shown and the MacArthur Foundation study is expected to support the finding that a child’s lack of development may hinder his participation in his own defense.

General developmental concerns are not all that drive the need for reform of “adult time, adult crime” justice. Social scientists have linked delinquency to a number of factors, including poverty, familial setting, the environment, media influence, and declining social morality. Some specific risk factors for juvenile delinquency include family dysfunction, negative peer influences, parental neglect, low academic achievement, early onset of antisocial behavior, substance abuse, and exposure to violence. Children, unlike adults, have little, if any, power to control these factors in their environments.

A study conducted in 1969 by two University of Chicago sociologists, Clifford Shaw and Henry McKay, links several of these factors. The study involved an examination of delinquency rates in Chicago by geographical zones over a period of thirty years; the data was gathered
through juvenile court petitions, incarceration records, and police records.\[^{92}\] It revealed that delinquency is more a product of economics and locality-based traditions than of race and ethnicity.\[^{93}\] It also showed a correlation between rates of delinquency and other community problems, such as school truancy, young adult criminality, infant mortality, tuberculosis, and mental disorders.\[^{94}\] Delinquency also proved to be directly correlated to the percentage of families receiving financial relief and rates of financial dependency.\[^{95}\] Based on their research, Shaw and McKay concluded that these conditions of economic instability and social pathology led to “conflicting moral value systems for young children”\[^{96}\] and delinquent behavior.

There are often questions about whether child abuse and neglect lead to delinquency. Certainly there are studies that indicate that delinquency may be the result of child maltreatment.\[^{97}\] More reliable studies, however, decline to speculate on whether child abuse actually causes delinquency, claiming instead that the two are related in an indiscernible way. Phyllis T. Howing, John S. Wodarski, P. David Kurtz, James M. Gaudin, Jr., and Emily Neligan Herbst evaluated existing literature examining the link between child abuse and delinquency. They found that the literature established a link between the two, but was unable to establish causality. Thus, they concluded that the relationship between delinquency and child abuse is bi-directional.\[^{98}\] In other words, neither causes the other. Instead both are “products of the reciprocal interactions among the child’s emerging personality, parental inadequacies, and a broad range of setting events.”\[^{99}\]

What these and other studies reveal is that juvenile delinquents typically come from less than ideal home and social circumstances, where they are often victims of or witnesses to violent acts. According to some research, 75 percent of juvenile offenders have been seriously abused by a family member, 80 percent have witnessed some form of physical violence, and more than 25 percent come from families where one or more parents abuse drugs or alcohol.\[^{100}\] Further, delinquency studies have consistently revealed a direct correlation between rates of delinquency and residence in the inner city.\[^{101}\] Several sociological studies in the last twenty years have concluded that it is the youth’s “inability to escape” these less than ideal home and social circumstances that “leads to anger and frustration, which [can] then lead to delinquency.”\[^{102}\] In one of these studies, Robert Agnew tested his general strain theory, positing that delinquency is caused by any one of three strains—the discrepancy between societal means and goals, the loss of something positive in one’s life or the presence of negative events. The study involved self-reports distributed to a longitudinal sample of adolescent males and females in New Jersey and revealed that Agnew’s three strains, particularly the loss of positive factors and the presence of negative stimuli, can trigger delinquency.\[^{103}\]

Inadvertently furthering their unsettled home lives, many juvenile offenders drop out of school and/or are several grades behind other children their age.\[^{104}\] Also, many juvenile offenders suffer from developmental and learning disabilities.\[^{105}\] This often makes their progression to adulthood, adult understanding, even longer and presents more difficulties for them in presenting defenses and in surviving victimization in adult prisons. One study, for
example, showed that juvenile offenders between the ages of 15 and 17, who showed low IQ scores, possessed less understanding than average 12-year-olds on issues integral to their defenses.\textsuperscript{106}

\section*{B. Special Treatment Under the Law}

In large part because of these social and developmental differences between children and adults, the law has treated children differently than adults in many aspects, most notably through the juvenile justice system, which was built with the belief “that delinquency was closely related to poor parenting, neglect, poverty, and lack of moral values.”\textsuperscript{107} In the latter half of the nineteenth century, a group of Chicago women guided by Jane Addams and Lucy Flower, led the call for reform of the criminal justice system that allowed eight year old children to serve prison sentences alongside adult inmates.\textsuperscript{108} As a result, the Illinois legislature passed “an act to regulate the treatment and control of dependent, neglected and delinquent children,”\textsuperscript{109} and, in 1899, Cook County, Illinois became the home of the first juvenile court in this country.\textsuperscript{110} This separate system of justice for juvenile offenders resulted from the commonly held belief that children should be held less responsible for their actions than adults because they lack the full ability to reason and contemplate the consequences of their behavior.\textsuperscript{111} There was also a sense that all of society is responsible for its children.\textsuperscript{112} The Cook County court relied on the common-law doctrine of \textit{parens patriae} to provide extra protection to youths.\textsuperscript{113} It had jurisdiction over “dependent, neglected, and delinquent youth.”\textsuperscript{114}

The creation of a separate juvenile justice system also resulted in the development of separate, specialized centers and facilities designed to “provide a structured, rehabilitative environment in which the educational psychological, and vocational needs of youthful offenders could be addressed.”\textsuperscript{115} Within twenty-five years, all but two states had followed the Cook County model, creating their own juvenile courts and detention facilities.\textsuperscript{116} These systems of juvenile justice persist today. Modern juvenile courts have jurisdiction over a wide range of issues, including: child custody and visitation; child and spousal support; establishment of paternity; divorce; child abuse and neglect (both civil and criminal cases); foster care; termination of parental rights and adoption; truancy; runaway youth; children in need of services; youth with mental illness and other disabilities; crimes committed by family members and partners against one another; civil orders of protection for family members and youth; and crimes committed by and against youth.\textsuperscript{117} In some states, domestic relations courts or family courts or a combination of juvenile courts and domestic relations or family courts have jurisdiction over
some of these areas. These courts recognize a lower threshold of responsibility for criminal acts and a higher possibility for rehabilitation of juvenile offenders. States offer varying sanctions for delinquent behavior, including residential treatment, community service, detention, restorative justice committees, mandatory reparations, and boot camps.

The law treats children different than adults in many other ways as well. They are treated incompetent in many ways, including lack of capacity to enter into contracts and to serve as principals. Also, children are not allowed to vote, drink alcohol, drive, or purchase tobacco products. Children are subject in some jurisdictions to mandatory curfews, and in all jurisdictions, children can be held responsible for committing status offenses, such as truancy, which would not be considered criminal for adults. These legal differences in the treatment of children and adults relate in large part to the developmental differences discussed above.

V. Time For Change

Because incarceration of juveniles with adults fails to serve the goals of punishment and unnecessarily subjects youth to abuse and neglect, it is time for a change in the way the law sentences children who are tried as adults. Even the Florida legislature has recognized, by statute, that the state’s adult prisons are “inadequate” to meet the rehabilitative needs of juvenile offenders and that rates of recidivism among juveniles sentenced to imprisonment occurs at a rate exceeding that “tolerated by the Legislature and by the citizens [of Florida].” Thus, Florida legislators have made attempts to provide alternatives to incarceration of youths in adult prisons. Their first attempt was providing for the sentencing of juveniles tried as adults as youthful offenders, rather than as adults. Their most recent attempt is a newly enacted law requiring the separation of adult and juvenile offenders in adult prisons. While both are steps in the right direct, neither adequately addresses the problems caused by imprisoning delinquent youths.

A. Sentencing as Youthful Offenders

Florida’s Youthful Offenders Act provides that youths who are tried as adults can be sentenced differently from adults; they can be sentenced as youthful offenders. The purpose of the Youthful Offenders Act “is to improve the chances of correction and successful return to the community of youthful offenders sentenced to imprisonment by providing them with enhanced vocational, educational, counseling, or public service opportunities and by preventing their association with older and more experienced criminals during the terms of their confinement.” The Act provides that juveniles tried as adults may be sentenced as youthful offenders if they are convicted of a felony (except that juveniles who commit capital or life felonies are not eligible to be classified as youthful offenders) and if they have not been previously classified as a youthful offender. Youthful offenders can be sentenced to a split sentence, by which they serve a portion of their sentence, at least one year, but not more than
four years, in a state prison, and complete their sentence with a period of probation or community control. In the alternative, youthful offenders can be sentenced to up to six years in custody, during which time they can participate in the youthful offender basic training program. Successful completion of the program may allow the offender to gain a reduced probationary sentence or release from incarceration to probation or community control. The youthful offender basic training program is designed to overcome some of the shortcomings of incarceration in adult prisons. The program consists of regular exercise, leadership training, education courses, and drug counseling and other rehabilitation programs. In some counties, youthful offenders may also be sentenced to a boot camp for youthful offenders.

While the youthful offenders program provides more structure and fulfills more of the special needs of juveniles, it ignores a crucial goal of punishment of juvenile offenders. One of the primary reasons for punishment of juvenile offenders is to make the public feel safer by putting away violent offenders for extensive periods of time and ensuring that they are not released to perform more violent acts—incapacitation. Juvenile sanctions are not adequate to allay these fears. In Florida, the maximum sentence that can be imposed by a juvenile court is 18 months to 3 years in a maximum-risk juvenile correctional facility. The average length of stay in any of these facilities is two years, an insufficient amount of time to let the public feel protected. On the other hand, youths tried and sentenced as adults are frequently subject to mandatory sentences, which are often excessive and do nothing more than subject the juvenile to more abuse and neglect and turn him into a more deviant individual who will eventually complete his sentence and return to society. A 16 or 17 year old who uses a gun during the commission of a felony, for instance, is subject to a mandatory 10-20-Life sentence, but because of his youth, is still likely to complete his sentence and return to society. Thus, this method releases the un-rehabilitated juvenile and provides little protection to the public. The Youthful Offenders Act provides no resolution to this problem. The Act, while providing for the possibility of early release or parole, limits the maximum term of any sentence imposed to six years, an amount surely not enough to satisfy the public’s need to feel safe from repeat violence or to adequately protect the public from some offenders, who are dangerous and beyond the reach of rehabilitation, but who, nonetheless, deserve protection from the abuse and neglect of adult prisons.

B. New Florida Statute

Florida has made an even more recent attempt to resolve the problems associated with sentencing juveniles as adults. On June 13, 2001, Florida Governor Jeb Bush, recognizing that Florida’s prisons are not safe for its youth, signed into law a bill providing for the separation of youths and adults sentenced to incarceration. The bill amends a previous section of Florida law dealing with inmate classification, providing that offenders under the age of 18 who were not assigned to a youthful offenders facility must be assigned to specific correctional facilities, housed in dormitories, provided with food service, education, and recreation separate from
inmates 18 or older. The new law also provides that inmates less than 18 years of age, who were 15 or younger at the time the offense was committed must serve their sentences in youthful offenders’ facilities until the age of 18 or 21. The law provides an alternative by which offenders, whose behavior threatens other inmates or staff can be returned to the general adult inmate population.

While this law may present some initial appeal, it is not as well suited to solve the problems created by incarcerating juveniles in adult jails as it at first looks. One important factor the law does not take into account is the infeasibility and excessive economic costs of separation requirements. Mark Ezell, former Associate Director of the Florida Center for Children and Youth described the problem presented by current laws and attempts to reorganize through separation: “Current laws which allow juveniles to be placed in jail only maintain the flow of children into inadequate, overcrowded, adult facilities. The millions of dollars which would be necessary to separate juveniles from adult inmates would be a poor investment of county, city and state resources.”

Further, this law may appeal to those who have become aware of the abuse young people are subjected to in adult prisons, and may be a brilliant move for political leaders in Florida who are seeking support from these persons. What they’ve failed to recognize, however, is the existence of a similar law in Florida’s past. That law provided for separation of juveniles from adults in adult prisons and required constant supervision. The law was quite unsuccessful in protecting juveniles from abuse and mistreatment in adult prisons. The law’s shortcomings resulted primarily from the failure to properly inform and train jailers of the law’s requirements and the failure to provide adequate space in facilities for the separation to be feasible. A study of state’s having laws requiring the separation of adult and youthful inmates, conducted by the Children’s Defense Fund and reported by the National Coalition for Jail Reform in 1980, found that barely one third of the surveyed jails provided for substantial separation as required by the state statutes (similar to the Florida statute) and that more than one fifth of the jails provided no separation at all. Thus, the effect of this new law is likely to be unnoticeable.

VI. An Alternative to Incarceration

Juvenile incarceration is not the answer to the problem of juvenile violence. While attempting to answer the need to secure public security, it goes to the extreme of jeopardizing the health and safety of the children it victimizes. Certainly, these children are not innocents. Many have committed violent offenses in cold blood. They are not, however, deserving of the type of deadly punishment that results from incarceration with adult inmates. There is another, more efficient, more effective method of holding juveniles accountable for their delinquency, while at
the same time providing them with the opportunity to make reparations and the opportunity to rehabilitate. One state is already moving in this direction.

A. Minnesota’s Extended Juvenile Jurisdiction Legislation

In Minnesota, serious juvenile offenders are tried in criminal courts. For sentencing, however, the state applies a combination of juvenile and adult sentencing. This is known as extended juvenile jurisdiction. This allows the court to impose a juvenile sanction or to “impose an adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense.” If the second of these options is selected, an adult sentence is imposed and then suspended. During suspension of the adult sentence, the juvenile is turned over to the Minnesota juvenile corrections program. The juvenile participates in programs available in the juvenile corrections program. Successful completion of the juvenile corrections program allows the child to avoid imposition of the adult sentence. If a juvenile “violate[s] the conditions of the stayed sentence, or is alleged to have committed a new offense, the court may, . . . revoke the stay and probation and direct that the offender be taken into immediate custody” of the department of corrections. If nothing else juveniles sentenced under this extended juvenile jurisdiction are protected from the horrors of adult incarceration until they are at a level of development that will allow them to compete on equal footing with other adult criminals.

This program of extended juvenile jurisdiction comes closer to meeting the goals of punishment than any alternative offered so far. First, it offers the promise of specific deterrence by preventing most juvenile offenders from being incarcerated with hardened criminals from whom they might learn further delinquent behavior. Second, the program offers at least the potential for long-term incapacitation, although it is weakest in this goal because long-term incapacitation is contingent upon a second wrongdoing. Third, it promises retribution, in that juveniles who show through their post-conviction behavior, that they do, in fact, deserve long-term incarceration, will receive such a sentence. Fourth, it provides opportunity for rehabilitation through the juvenile justice system, where personnel are trained to tend to the
special educational, medical, and psychological needs of children. A similar program could be established in Florida, counteracting even for the weakness in accomplishing the goal of incapacitation.

B. Potential in Florida

Florida is relatively well-suited to pursue a program similar to Minnesota’s extended juvenile jurisdiction. Juvenile courts in the state are divided into 20 judicial circuits, as are criminal courts. In 1994, Florida Governor Lawton Chiles signed legislation that created a Department of Juvenile Justice. The mission of this department is “to protect the public by reducing juvenile crime and delinquency in Florida” by providing “strong prevention and early intervention services for at-risk youth and minor offenders” and by using a balanced approach that supplies “opportunities for rehabilitation for the more serious juvenile offender.” Since 1994, the department’s annual budget has increased from $272 million to $720 million. Since the department’s inception, juvenile crime in Florida has decreased despite an increase in the state’s juvenile population. Under the Department’s leadership, Florida has increased the number of beds available in long-term juvenile detention facilities from 4,500 in 1994 to 8,868 in 1998, and the 2000-2001 budget provides $82.4 million for construction of new facilities. The success of Florida’s Department of Juvenile Justice and its anticipated expansions set the stage for a program similar to Minnesota’s.

Because Florida law already allows juveniles tried as adults to be sentenced as juveniles or adults, the state need implement only one change allowing for blended sentencing, whereby an adult sentence is imposed but suspended while the child completes juvenile sanctions. In order to ensure public security, the program should require detention in juvenile facilities for juveniles whose adult sentences were suspended. Even in these facilities, juveniles would get the benefits of the juvenile justice system that are unavailable with adult incarceration. Juveniles would receive the individual attention they need. They would be permitted to participate in juvenile justice programs aimed at the special needs of juveniles and their potential for rehabilitation, despite being convicted as adults. The program would allow juvenile offenders greater opportunities to participate in educational and vocational programs. They might also be given opportunities to participate in restorative justice programs. Perhaps most importantly, juveniles would be separated from adult criminals. They would no longer be immersed in a deviant culture that has proven to produce more recidivism. Instead, juveniles would be treated by
juvenile corrections professionals trained to react to the special psychological and emotional needs of juveniles, many of whom have been neglected or abused for most of their lives. Similar to Minnesota’s extended juvenile jurisdiction, the program should also be designed so that those who endanger the success of juvenile programs through violence against others in the programs can be removed to the adult prison to serve their sentence.

An extended juvenile jurisdiction program in Florida should differ slightly from the Minnesota program to counteract the weakness in achieving incapacitation. Rather than making the imposition of the adult sentence contingent upon a successive wrongdoing, the program should make avoidance or early release from the adult sentence contingent upon progress in the juvenile program. The nature of the crimes that lend themselves to waiver are such that the public demands incapacitation, and it should be granted, except where exception is shown. Juveniles should be protected from the dangers of adult prisons until they are of sufficient maturity (i.e., legal adulthood) to avoid increased risks in prison because of their physical and emotional vulnerability. However, juveniles who commit violent crime should not be excused with just a slap on the hand, three years in juvenile detention, and a second chance—not unless they earn it. This program would give them the opportunity to make amends for their wrongs and the opportunity to earn back their lives.

This type of program could be funded in part by the Department of Juvenile Justice and in part by the Department of Corrections. A portion of the money saved by the Department of Corrections could be applied to caring for these offenders whose adult sentences were suspended temporarily. The Department of Juvenile Justice could provide the additional funding from its budget, as the purposes of the program clearly coincide with its goals of preventing juvenile violence and rehabilitating youthful offenders. With more beds for long term detention of juvenile offenders than any other state, and a budget designed to provide more, Florida is in no worse position to institute this program than the newly enacted separation law, and may even be in a better position to initiate this program.

VII. Conclusion
The Honorable Cindy S. Lederman, presiding judge of the Miami-Dade Juvenile Court, Florida, once wrote, “Adjudication culminating in individualized dispositions and based on the need for accountability and the best interest of youth and society should be the cornerstone of the juvenile court’s work.” Although she was referring specifically to the role of the juvenile court, Judge Lederman’s words are applicable even to the criminal justice system that allows juveniles to be tried and sentenced as adults. In this system of “adult crime, adult time,” the need for accountability and the best interest of youth and society should be the primary goals of disposition of cases and sentencing of offenders.

The “adult crime, adult time” policy neglects these goals. It does not hold juveniles accountable for their criminal acts. Instead, it victimizes them without teaching them the wrong of their ways. It subjects them to a world where all that they learn is more deviance. It preys on their developmental weaknesses in an effort to make the public feel safer, but fails even in this respect. “Adult crime, adult time” creates more “adult crime” by ensuring that when juveniles complete their sentences they are returned to society without having learned any valuable skills, other than advanced criminal behavior and violence.

Certainly juveniles should not be allowed to get away with criminal behavior, but they must not be institutionalized, raped, and transformed into violent creatures with no respect for the law and its authority. These consequences can be avoided by providing juveniles with the opportunity to redeem themselves through service and participation in the juvenile justice system. These offenders must be given the opportunity to rehabilitate and the tools to pursue a productive lifestyle once they are released into society, either after earning their early release or after completing their adult sentence. Only when these opportunities are provided and children are shown that they have promising futures, despite the negative influences of their past, can the problem of juvenile violence ever be overcome.

Id.  
Id.  
Id.  
See infra Part II.  
See infra Part IV.B.  


“The law as the sum or collection of laws.” BLACK’S LAW DICTIONARY (7th ed. 1999).

“The state regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves.” BLACK’S LAW DICTIONARY (7th ed. 1999).


Id. at 557.

JAMES AUSTIN, KELLY DEDEL JOHNSON, AND MARIA GREGORIOU, BUREAU OF JUSTICE ASSISTANCE, JUVENILES IN ADULT PRISONS AND JAILS 1, October 2000, http://www.ncjrs.org/pdffiles1/bja/182503.pdf. In 1991, juveniles committed 17 percent of all serious violent crimes and were involved in a total of 25 percent of all serious violent crimes. Id. Between 1989 and 1993, juvenile arrest rates for murder increased 45 percent while juvenile arrest rates for aggravated assault increased by 37 percent. Id.

Id.  

Statutes allowing transfer have been in effect in Arkansas, California, Colorado, Florida, Georgia, Kentucky, North Carolina, Ohio, Oregon, and Tennessee since the 1920s and in Delaware, Indiana, Maryland, Michigan, Nevada, New Hampshire, New Mexico, Rhode Island, South Carolina, and Utah since the 1940s. While other states were late in joining the transfer trend, all now have statutes allowing transfer. BUTTS & HARRELL, supra note 8.


Id.


Id.


FLA. STAT. § 985.226(2) (2000).


BUTTS & HARRELL, supra note 8.


See AUSTIN, JOHNSON & GREGORIOU, supra note 13, at 38 (In 1998, 572 juveniles were housed in adult prisons in Florida, while 4,775 juveniles were housed in adult prisons across the country).

Id. at 37.

Id. at 22-23 (1980), Blackmun, J. dissenting.


Id.

Id.

Id.

CTR. FOR STUDY & PREVENTION OF VIOLENCE, JUDICIAL WAIVERS: YOUTH IN ADULT COURTS, http://www.Colorado.edu/cspv/factsheets/JudicialWaivers.html (last modified Apr. 3, 2000) [hereinafter CSPV, JUDICIAL WAIVERS]. Some studies, however, indicate the opposite: that violence and rape are more prevalent in juvenile facilities. Regardless, the point is that many juveniles are subjected to violence and rape while in prison. The fact that they may also be subjected to similar acts in juvenile facilities does not alleviate the abuse. Further, juvenile facilities have access to the more personalized treatment and training to better prevent these acts.


Donaldson, The Rape Crisis Behind Bars, supra note 43.

Cahill, supra note 48. See also, DONALDSON, RAPE OF INCARCERATED AMERICANS, supra note 48.

Donaldson, The Rape Crisis Behind Bars, supra note 43.

Cahill, supra note 48.


See Richard E. Redding, Juveniles Transferred to Criminal Court: Legal Reform Proposals Based on Social Science Research, 1997 Utah L. Rev. 709, n. 280 (1997) (citing Marty Beyer et al., Experts for Juveniles at Risk of Adult Sentences, in ASS’N JUV. JUST. CTR., MORE THAN MEETS THE EYE: RETHINKING ASSESSMENT, COMPETENCY AND SENTENCING FOR A HARsher ERA OF JUVENILE JUSTICE 1, 18-19 (1997)) (“[J]uveniles in adult correctional facilities are . . . two hundred times more likely to be beaten by staff than are juveniles in juvenile facilities.”)

Audi, supra note 42.

AUSTIN, JOHNSON & GREGORIOU, supra note 13, at 7-8; SCHIRALDI, supra note 47.

Cahill, supra note 48.


SCHIRALDI & ZIEDENBERG, supra note 55.

Id.

CSPV, JUDICIAL WAIVERS, supra note 40.


BUTTS & HARRELL, supra note 8.

Id.; see also SCHIRALDI & ZIEDENBERG, supra note 55.

BUTTS & HARRELL, supra note 8.

SCHIRALDI & ZIEDENBERG, supra note 55.

LAFAVE, ISRAEL & KING, supra note 63, at 757.

Id. at 758.

Laughlin, Zero Tolerance, supra note 20.

See supra, Part III.B.2.

AUSTIN, JOHNSON & GREGORIOU, supra note 13, at xi.

Ezell, supra note 26, at 37.


“Every person or institution that touches a child’s life and interacts with his or her family can contribute positively to that child’s development.” Lederman, supra note 67.


See supra Part III.B.1.

Thomas Grisso, Juvenile Competency to Stand Trial: Questions in an Era of Punitive Reform, 12 CRIMINAL JUSTICE MAGAZINE (Fall 1997), http://www.abanet.org/crimjust/juvjus/12-3gris.html.


JUVENILE COMPETENCE STUDY, supra note 84.

Id. at 2.

Grisso, supra note 85.


Lederman, supra note 67.

DONALD J. SHOEMAKER, THEORIES OF DELINQUENCY: AN EXAMINATION OF EXPLANATIONS OF DELINQUENT BEHAVIOR 78-83 (3d Ed. 1996).

Clifford Shaw and Henry McKay, affiliated with University of Chicago and Illinois Institute for Social Research, Id. at 80.

Id. at 82.

Id.

Id.


Id.

Lederman, supra note 67 (citing Trask, G., Diffusing the Teenage Time Bomb, 31 The Prosecutor 29 (1997)).

See SHOEMAKER, supra note 92, at 80 regarding Shaw study cited above.

Studies conducted by sociologist Robert Agnew and then confirmed by the National youth Survey. Id.

Id.


Grisso, supra note 85.

Id. (regarding Miranda Warnings Study discussed above).

Lederman, supra note 67.

SHIRALDI, supra note 47.

An Evolving Juvenile Court, supra note 82.

ORLANDO, supra note 7.

SHOEMAKER, supra note 92, at 4.

An Evolving Juvenile Court, supra note 82.

DEP’T. OF JUST., CRIMINAL RESOURCE MANUAL, supra note 15, § 104.

An Evolving Juvenile Court, supra note 82.

AUSTIN, JOHNSON & GREGORIOU, supra note 13, at ix.

DEP’T. OF JUSTICE, CRIMINAL RESOURCE MANUAL, supra note 15, § 104.

An Evolving Juvenile Court, supra note 82.

Id.
See O’Connor, supra note 90. Atlanta and New Orleans have ordinances requiring children under the age of 17 to be off the streets by 11 pm. Id.

FLA. STAT. § 985.02(5) (2000).

FLA. STAT. § 985.02(5) (2000).

FLA. STAT. § 958.021-.12 (2000).

FLA. STAT. § 985.021 (2000).

FLA. STAT. § 958.04 (2000).

FLA. STAT. § 958.04(c)(2000).

FLA. STAT. § 958.04(d) (2000).

FLA. STAT. § 958.04(d) (2000).

FLA. STAT. § 958.045(1)(a) (2000).

FLA. STAT. § 958.046 (2000).


Id.

“Through the telephone interviews, 55 jails were identified as having housed juveniles who were pending trial. Of these, 23 did not provide physical separation between adults and juveniles during frequent activities. Very few facilities could comply with the requirement in Florida law regarding the supervision of juveniles in adult jails. Only two jails—Jacksonville Correctional Institute and Pinellas County Jail—had staff continually present in the juvenile section; and one jail—Dade County Jail Annex—monitored juveniles at least every ten minutes.” Id. at 40.

Id. at 42.


BUTTS & HARRELL, supra note 8.


MINN. STAT. § 260B.130(4)(1).

MINN. STAT. § 260B.130(4)(2).

BUTTS & HARRELL, supra note 8.

BUTTS & HARRELL, supra note 8.

Including, for example, restorative justice, vocational education, substance abuse treatment.

MINN. STAT. § 260B.130(5).


In 1994, the juvenile crime rate was approximately 7.76 percent. In 2000, it was 6.75 percent. During that period of time, the juvenile population in Florida grew 14 percent. *Id.* See also THE LAWTON CHILES FOUND., supra note 151.

THE LAWTON CHILES FOUND., supra note 151.

FLA. DEP’T. JUV. JUST., FAQ, supra note 130.

Lederman, supra note 67.