BEYOND CONTEMPT — RETHINKING THE PROBLEM OF JUVENILE CRIME

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Florida's juvenile justice system, and particularly its courts, daily face the awesome and heartrending task of deciding what to do with Florida's troubled children. After a troubled child is adjudicated dependent or delinquent, that child's future will largely depend on the resources the citizens of Florida have put at the disposal of the juvenile court judge. From the resources the State earmarks for troubled children, the juvenile judge must attempt to craft a solution for aberrant and self-destructive behavior that is too often generated by tragic histories of family dysfunction, violence, substance abuse, and neglect. The task is daunting.

Eleven years on the county and circuit bench in Fort Myers has provided me a unique vantage point from which to observe the effectiveness of the resources we use to combat juvenile crime. One resource, secure detention,[1] has been the focus of considerable debate

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1. "Secure detention" means a "physically restricting facility for the temporary care of children, pending adjudication, disposition, or placement." FLA. STAT. § 39.01(61) (1995). My personal observation is that secure detention is the juvenile equivalent of county jail.

in legislative and judicial circles over the last decade. Part of this debate, the narrow issue of whether a juvenile judge may use secure detention to punish dependent children held in indirect contempt of court,[2] has exposed a wide range of concerns underlying Florida's approach to its most troubled and vulnerable citizens.

My purpose is to use the debate over sentencing juvenile contemnors as an analytical framework to highlight these concerns. I will first describe the evolution of Florida's exemplary law[3] on juvenile contempt. The evolutionary process is noteworthy, inasmuch as it exposes a reluctant but growing acceptance by lawmakers and judges of the notion that the state must take seriously the desperate needs of Florida's increasingly dangerous population[4] of at-risk children. I will next examine Florida's general approach to combatting juvenile crime in light of both my personal experiences on the bench, and of novel approaches adopted in other jurisdictions. Finally, I will suggest that Floridians continue breaking new ground in the area of juvenile justice and, as we move into the next century, dedicate ourselves to doing what must be done to prevent juvenile crime.

JUVENILE CONTEMPT AND SECURE DETENTION

In 1994, the legislature amended the Florida Juvenile Justice Act[5] (the Act) to provide for sentencing of juveniles held in contempt of court.[6] In so doing, it struck a well-crafted balance between the interests of Florida's juvenile courts in the orderly administration of justice, and the unique needs of Florida's population of delinquent juveniles and children in need of services (CHINS).

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2. Indirect contempt is an act committed out of the presence of the court in violation of a court order. *See* Pugliese v. Pugliese, 387 So. 2d 422, 425 (Fla. 1977). For example, a dependant child commits indirect contempt when he runs away from a foster home after the court has ordered him to reside in the foster home pursuant to a dependency action.

3. *See* FLA. STAT. § 39.0145 (1995).

4. Arrests of juveniles for violent crimes increased by 57% from 1983 to 1992, with juvenile arrests for murder increasing 128% in the same time period. *See* Joanne C. Lin et al., *Youth Violence: Redefining the Problem, Rethinking the Solutions*, 28 CLEARINGHOUSE REV. 357, 358 (1994) [hereinafter *Youth Violence*].

5. *See* 1994 Fla. Laws ch. 94-209, The Florida Juvenile Justice Act, as amended, encompasses Florida Statutes §§ 39.001–39.515 (1995) [hereinafter the Act].

6. Contempt of court is defined as "[a]ny act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity." BLACK'S LAW DICTIONARY 221 (6th ed. 1990).

Specifically, the statute acknowledges the court's contempt power,[7] distinguishes direct from indirect contempt,[8] and realistically limits a juvenile court's repertoire of responses to juvenile acts of contempt.[9] These statutory mandates are consistent with a clear statement of legislative intent that the courts limit their contempt powers with respect to commitment of children to secure facilities.[10] The law distinguishes delinquent[11] from dependent[12] juve

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7. "The court may punish any child for contempt for interfering with the court or with court administration, or for violating any provision of this chapter or order of the court relative thereto." FLA. STAT. § 39.0145(1) (1995).

8. *See* FLA. STAT. § 39.0145(2)(a)(b) & (4)(a)(b) (1995). "Direct contempts are those committed in the immediate view and presence of the court (such as insulting language or acts of violence)." BLACK'S LAW DICTIONARY 221 (6th ed. 1990). Indirect contempts "are those which arise from matters not occurring in or near the presence of the court, but which tend to obstruct or defeat the administration of justice . . . [such as] failure or refusal of a party to obey a lawful [court] order." *Id.*

9. The statute provides the following directives to the court:

> (2) PLACEMENT IN A SECURE FACILITY. — A child may be placed in a secure facility for purposes of punishment for contempt of court if alternative sanctions are unavailable or inappropriate, or if the child has already been ordered to serve an alternative sanction but failed to comply with the sanction.
>
> (a) A delinquent child who has been held in direct or indirect contempt may be placed in a secure detention facility for 5 days for a first offense or 15 days for a second or subsequent offense, or in a secure residential commitment facility.
>
> (b) A child in need of services who has been held in direct contempt or indirect contempt may be placed, for 5 days for a first offense or 15 days for a second or subsequent offense, in a staff-secure shelter or a staff-secure residential facility solely for children in need of services if such placement is available, or, if such placement is not available, the child may be placed in an appropriate mental health facility or substance abuse facility for assessment.

FLA. STAT. § 39.0145(2) (1995).

10. "It is the intent of the Legislature that the court restrict and limit the use of contempt powers with respect to commitment of a child to a secure facility." FLA. STAT. § 39.0145(1) (1995).

11. The Act defines a delinquent child as:

> [A] child who, pursuant to the provisions of this chapter, is found by a court to have committed a violation of law or to be in direct or indirect contempt of court, except that his definition shall not include an act constituting contempt of court arising out of a dependency proceeding.

FLA. STAT. § 39.01(13) (1995).

12. The Act defines a "child in need of services" as:

> [A] child for whom there is no pending investigation into allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent . . . and must also . . . be found by the court:
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> (a) To have persistently run away from the child's parents or legal custodians . . . or
>
> (b) To be habitually truant from school . . . or

niles and mandates that "a child alleged to be dependent . . . may not, under any circumstances, be placed into secure detention care."[13] Secure detention is to be the exclusive province of delinquent juveniles.

The law did not always expressly proscribe the use of secure detention to punish dependent juvenile contemnors. Before 1988, Florida law appeared to authorize secure detention to punish dependent children as delinquents by defining a "delinquent" as a child found to have committed a "felony, a misdemeanor, contempt of court" or certain unlawful acts.[14] However, in *J.M.J. v. State*,[15] the First District Court of Appeal interpreted this language in light of the statute's purpose[16] and held that a court could not treat acts of dependency[17] that violated a court order as delinquent acts under the Act.[18]

J.M.J. v. State did not completely foreclose, however, the possibility of a juvenile court imposing a sentence of secure detention upon CHINS held in contempt of court for an act of dependency. The

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> (c) To have persistently disobeyed the reasonable and lawful demands of the child's parents.

FLA. STAT. § 39.01(12) (1995).

13. FLA. STAT. § 39.043 (1995).

14. FLA. STAT. § 39.01(8) (1978). The statute defining delinquency provided that:

> "Child who has committed a delinquent act" means a child who, pursuant to the provisions of this chapter, is found by a court to have committed a felony, a misdemeanor, contempt of court, or a violation of a local penal ordinance, other than a juvenile traffic offense, and whose case has not been prosecuted as an adult case.

Id.

15. 389 So. 2d 1208 (Fla. 1st Dist. Ct. App. 1980).

16. The court observed that one purpose of § 39.001(2)(b) was to assure to all children brought to the attention of the courts because of neglect or mistreatment, the care that would best serve the moral, emotional, mental, and physical welfare of the child. *See id.* at 1209. An adjudication of "delinquency" has important consequences for a child, such as stigmatization and confinement in secure detention with children charged with criminal offenses. *See id.* The court declined to allow a juvenile judge to subject a dependant child to these consequences absent criminal behavior. *See id.*

17. *See* FLA. STAT. § 39.01(9) (1978) (describing running away from home and habitual truancy as acts of dependency).

18. The practice of designating a dependent child to delinquency for the same noncriminal misbehavior that brought the child before the court in the first place is called "bootstrapping," and has been labeled a "vicious" practice that violates the policy behind the federal Juvenile Justice Prevention Act of 1974. *See* Harry J. Rothgerber, Jr., *The Bootstrapping of Status Offenders: A Vicious Practice*, 1 KY. CHILDREN'S RTS. J. 1, 2 (1991) (quoting *In re* Ronald S., 138 Cal. Rptr. 387, 391 (Cal. Ct. App. 1977)).

Florida Supreme Court carved out an exception in *A.O. v. State*,[19] allowing juvenile judges to use the court's inherent contempt power[20] to sentence status offenders to secure detention. Thus, as long as a juvenile court did not invoke the Act, a child adjudicated dependent for running away could subsequently be sentenced to secure detention for a later episode of running away regardless of the absence of an adjudication of delinquency.[21]

In 1988, the legislature amended the Act to prohibit using secure detention to punish, rehabilitate, treat, or facilitate the interrogation of a delinquent child.[22] Thereafter, the Second District Court of Appeal held that it was improper to use secure detention to punish a delinquent juvenile for an act of direct contempt of court.[23] The legislature revisited the issue in 1990, this time to extend the

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19. 456 So. 2d 1173 (1984). In *A.O. v. State,* a juvenile court adjudicated A.O. dependent and ordered him to "obey his mother, keep a curfew, and attend school." *Id.* at 1173. A.O. subsequently violated the court order, resulting in the court adjudicating him "delinquent" for his contempt of court under Chapter 39. *See id.* The Florida Supreme Court reversed the delinquency adjudication using the court's rationale in J.M.J. v. State, 389 So. 2d 1208 (Fla. 1st Dist. Ct. App. 1980). *See* 456 So. 2d at 1174. However, the supreme court further held that the trial court "still retains its inherent authority to punish for contempt, including, if necessary, placing the child in a secure detention facility for a reasonable period of time." *Id.* at 1175.

20. While a court's powers to punish for contempt are inherent to the court and exist independent of statute, a court's powers to sentence for such contempt are subject to statutory limitations. *See* Aaron v. State, 284 So. 2d 673 (Fla. 1973).

21. *See* A.O. v. State, 456 So. 2d at 1175 (stating that the trial court "still retains its inherent authority to punish for contempt, including, if necessary, placing the child in a secured detention facility for a reasonable period of time"); *see also* R.M.P. v. Jones, 419 So. 2d 618 (Fla. 1982) (distinguishing contempt of court under the Act from contempt under the court's inherent power and allowing that a child may be placed in secure detention for contempt under the court's inherent power).

22. *See* 1988 Fla. Laws ch. 88-381 § 12-14. The amendment reads:

> PROHIBITED USE OF SECURE DETENTION. — A child alleged to have committed a delinquent act shall not be placed in secure detention for the following reasons:
>
> (1) To punish, treat or rehabilitate the child.
>
> (2) To allow a parent to avoid his or her legal responsibility.
>
> (3) To permit more convenient administrative access to the juvenile.
>
> (4) To facilitate further interrogation or investigation.
>
> (5) Due to lack of more appropriate facilities.

FLA. STAT. § 39.0321 (Supp. 1988).

23. *See* T.D.L. v. Chinault, 570 So. 2d 1335 (Fla. 2d Dist. Ct. App. 1990). In *T.D.L.*, the court held that the 1988 amendments to the Act required that juveniles be punished for contempt in accordance with statutory proscriptions. *See id*. However, the court further held that the Act did not extinguish the court's inherent power to use adult sanctions to punish for contempt as long as procedural safeguards were employed. *See id.* at 1337.

proscription of secure detention to dependent as well as delinquent children.[24] Neither amendment, however, completely resolved the issue, and juvenile courts continued to use secure detention to punish juvenile contemnors.[25]

The Florida Supreme Court resolved any remaining confusion in *A.A. v. Rolle*.[26] In *Rolle*, the court considered the consolidated appeals of six juveniles who each had been sentenced to secure detention facilities for contempt of court.[27] Four cases involved CHINS held in contempt for repeated acts of dependency, and two cases involved delinquents held in direct contempt.[28] The court unequivocally held that the Act prohibited the use of secure detention to punish juvenile contemnors regardless of whether the court was exercising its inherent authority or proceeding under the statute.[29]

The majority decried as "inconceivable" the practice of incarcerating neglected and abused children for behaviors incident to their neglect or abuse.[30] The Court chided the legislature for its deplorable funding of juvenile justice programs and for failing to make adequate placement alternatives available for children, in spite of "recognizing the critical need to provide appropriate placements or services for such children."[31] Importantly, the court acknowledged that research[32] demonstrated that secure detention damaged a child's self-image, increased family stress, did not deter delinquency,

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24. *See* 1990 Fla. Laws ch. 90-208 § 5. Section 39.0321 was renumbered and altered to read: "A child alleged to be dependent or in need of services shall not, under any circumstances, be placed into secure detention care." FLA. STAT. § 39.043(2) (Supp. 1990).

25. *See* A.A. v. Rolle, 604 So. 2d 813, 818 n.9 (Fla. 1992) (noting that in fiscal year 1990–1991, 351 dependent children in Florida were placed in secure detention for contempt of court).

26. 604 So. 2d 813 (Fla. 1992).

27. *See id.* at 814.

28. *See id*.

29. *See id.* at 818–19.

30. *See id.* at 819. Interestingly, the court commented upon the causes of juvenile delinquency, stating that "we are not unmindful of the frustration of judges confronted with children who have been taken away from their parents because of abuse or neglect, as well as children whose abuse or neglect may have caused them to become delinquent." *Id.*

31. *Id.*

32. The court cited the quarterly report of the Annie E. Casey Foundation as reported in *Voiceless Children: Juvenile Detention in the U.S.*, FOCUS, Fall 1991, at 2–5; JUVENILE JUSTICE SYSTEM REVIEW TASK FORCE, FINAL REPORT OF FINDINGS AND RECOMMENDATIONS 15 (Mar. 20, 1990). *See Rolle*, 604 So. 2d at 818–19 & n.9 (Fla. 1992).

and could contribute to delinquency by commingling youth accused of serious crimes with minor offenders.[33]

Justice Overton's dissent[34] presaged the concern following *Rolle* that the Florida Supreme Court had undermined the authority of frustrated juvenile judges to protect their courts from juveniles who would disregard the courts' authority.[35] However, Justice Harding penetrated the heart of the problem when he observed that "[t]he legislature has deprived the courts of the option of detention in juvenile contempt proceedings, and has provided no effective alternative to meet the needs of children who are in contempt of court."[36]

Section 39.0445 of the Florida Statutes[37] addresses issues enunciated by both the majority and concurring opinions in *Rolle*. By limiting the role of secure detention in Florida's juvenile justice system, the legislature has demonstrated that it is sensitive to the plight of the children caught in the system and amenable to altering its approach to juvenile crime to comport with what research shows to be effective. To this end, the Legislature has provided the juvenile courts with the services of "alternative sanctions coordinators" whose job is to coordinate and maintain a spectrum of contempt sanction alternatives.[38]

ALTERNATIVE SANCTIONS

Consistent with its approach to the problem of sentencing juvenile contemnors, the legislature also restricts courts' discretion to sentence juveniles to detention for delinquent acts regardless of

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33. *See id.*

34. *See id.* at 820 (Overton, J., dissenting).

35. *See* Maggie L. Hughey, Note, *Holding a Child in Contempt*, 46 DUKE L.J. 353, 383 (1996) (observing that *Rolle* received negative publicity for having allegedly compromised the authority of juvenile court judges). I personally recall debate among the members of the juvenile bench about the vacuum of authority that existed to enforce court orders in the wake of *Rolle*.

36. *See id.* at 819 (Harding, J., concurring).

37. FLA. STAT. § 39.0445 (1995).

38. Section 39.0145 provides:

> Alternative contempt sanctions may be provided by local industry or by any nonprofit organization or any public or private business or service entity that has entered into a contract with the Department of Juvenile Justice to act as an agent of the state to provide voluntary supervision of children on behalf of the state in exchange for the manual labor of children and limited immunity.

FLA. STAT § 39.0145(3) (1995).

whether contempt of court is involved.[39] The court's decision must rest on the recommendations of an intake counselor or case manager who completes a risk assessment instrument (RAI) developed by the Department of Juvenile Justice.[40] The court may not impose a more restrictive sentence than the RAI indicates unless the court states, in writing, clear and convincing reasons for the placement.[41]

At first blush, the legislature's apparent concern over the effects of detention on Florida's juvenile offenders would indicate that the State rejects a punitive approach to the problem of juvenile crime in favor of the rehabilitative goals that have been the hallmark of a separate juvenile justice system.[42] However, the 1990 Juvenile Justice Reform Act[43] created many avenues[44] by which juveniles bypass the juvenile courts and are tried as adults. These means of circumventing the juvenile courts are so effective that Florida tries more juveniles as adults than all other states combined.[45]

This trend toward transferring children as young as fourteen to criminal court shows societal despair of rehabilitating young offenders. Public despair is understandable in the wake of media attention triggered by the crimes of a handful of serious[46] youthful of

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39. *See* FLA. STAT. §§ 39.042, 39.043 (1995).

40. *See* FLA. STAT. § 39.044 (1995).

41. *See id*.

42. *See Report of Task Force of Boston Bar Association on Juvenile Justice, Symposium: Juvenile Justice in Massachusetts, The Massachusetts Juvenile Justice System of the 1990s: Re-Thinking a National Model*, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 339 (1995) [hereinafter *Task Force*]. The report recounted three factors underlying the creation of a separate system of juvenile justice:

> 1) a recognition that children's behavior is very strongly influenced by their social and familial environments; (2) a concern that the limited autonomy of their behavior makes punishment unfair; and (3) a belief that, because of their vulnerability to being influenced by their environments, it is possible to modify their behavior and prevent adult criminality.

See id. at 341.

43. *See generally* 1993 Fla. Laws ch. 90-208.

44. Judicial waiver of a juvenile into adult court is the foremost method of transfer. Section 39.052(2)(c) sets forth the factors a court must consider in determining whether to transfer a child to criminal court. The principal factors are the seriousness of the offense, whether the offense was violent and resulted in injury to another, the maturity of the child and his previous record, and the prospects of rehabilitation. *See* FLA. STAT. § 39.052(2)(C) (1995).

45. *See* Ellen B. Gwynn, *No Matter How Loud I Shout: A Year in Life of Juvenile Court,* FLA. B.J., Oct. 1996, at 90 (book review).

46. Serious offenders are generally thought to be those who engage in repeated crimes against the person and very serious property crimes. *See* Anne Rankin Mahoney,

fenders.[47] However understandable, public despair is unwarranted[48] and tragic[49] because it prevents the kind of serious commitment to rehabilitation that has proven effective in saving young lives and tax dollars in other states. Floridians must face the unpleasant reality that their recent embrace of adult sentencing for juveniles is no panacea[50] in light of overwhelming evidence that shows incarcerating any juvenile other than the most incorrigible serious offender will hasten and harden that juvenile's commitment to crime and will end up costing taxpayers a small fortune.[51]

"Man, I'm Already Dead": Serious Juvenile Offenders in Context, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 443, 448–49 (1990).

47. A fraction (between 2 and 15%) of male juvenile offenders commit between 50 and 75% of all violent crimes committed by juveniles. *See Youth Violence*, *supra* note 4, at 358. And while the media promotes the notion that gangs are responsible for large amounts of random violence, less than 4% of all murders in 1992 were committed by juvenile gang members. *See id.* Actually, a person not a member of a gang has only about one chance in four million of becoming a victim of gang violence. *See id*.

48. *See* Eric R. Lotke, *Youth Homicide: Keeping Perspective on How Many Children Kill*, 31 VAL. U. L. REV. 395 (1997). Surprisingly, the percentage of serious crimes such as murder, robbery, and rape committed by juveniles decreased from 27.3% to 22.1% between 1972 and 1995. *See id*. at 398. The media and public reaction has doubtless been triggered by the astronomical increase in young people arrested for homicide. *See id*. at 399. Between 1987 and 1991, the arrest rate for white youth homicide increased by 79%, and the rate for African-American youth increased by 121%. *See id*. Yet, these rapid increases are site-specific and present little actual threat to public safety. *See id*. Fully 82% of American counties had no youth homicides in 1994, and 92% had zero or one. *See id*. at 401. Chicago, Los Angeles, New York, and Detroit are the sites of nearly one-third of such arrests but contain only one-twentieth of the juvenile population. *See id*.

49. "[Juveniles] sentenced to adult prisons reverted to a life of crime more quickly after they were released, and committed more crimes and more serious crimes, than those in juvenile situations." Fox Butterfield, *States Revamping Youth Crime Laws,* N.Y. TIMES, May 12, 1996, at A12.

50. The observations of Nevada Supreme Court Justice Charles E. Springer illustrate the problem:

> What happens to these transferees is that, although sometimes juveniles are sent to a prison where they become integral members of our adult criminal society, more frequently they receive probation and no appreciable sanction at all because of judges' understandable unwillingness to send these youngsters to adult prison.

Charles E. Springer, *Rehabilitating the Juvenile Court*, 5 NOTRE DAME J. L. ETHICS & PUB. POL'Y 397, 417 (1990).

51. Over one million youths would need to be incarcerated to incapacitate all of the serious youthful offenders in the United States. *See* Anne Rankin Mahoney, *supra* note 44, at 448 (citing DONNA M. HAMPARIAN ET AL., THE VIOLENT FEW: A STUDY OF DANGEROUS JUVENILE OFFENDERS 133 (1978)). It cost Maryland taxpayers $42,500 per year to incarcerate one youthful offender at the Montrose School. *See id*. The recidivism rate at Montrose was 85%. *See id*.

The better approach in terms of both cost effectiveness and basic morality is to finally develop and commit[52] to a statewide system dedicated to rehabilitating youthful offenders.[53] To develop a rehabilitation system for Florida's troubled youth, the legislature should look to those programs that work — and don't work — in Florida and other states. Particularly, the legislature should examine the efficacy of its use of different levels of congregate institutionalized treatment[54] in light of the promising results of long-range experiments with community-based treatment in Massachusetts.[55]

By 1980, the Massachusetts Department of Youth Services (DYS) had closed its training schools[56] in favor small, community-based programs operated by private non-profit organizations.[57] These offer a continuum of treatment environments ranging from small secure facilities to community/home tracking.[58] Under the Massachusetts system, youths adjudicated delinquent may be placed on probation and remain under court supervision, or committed to

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52. In 1990, Florida's legislature approved fifty-one million dollars to finance long-term rehabilitation projects such as residential treatment, halfway houses and wilderness camps of varied security levels tailored to address the needs of Florida's troubled children. *See* 1990 Fla. Laws ch. 90-208.

53. Unfortunately, in the wake of recessionary budget shortfalls, these programs were never funded. *See* Marty Rosen, *Juvenile Services May Fall to State Cuts*, ST. PETERSBURG TIMES, Sept. 29, 1991, at 1.

54. *See* Cynthia R. Noon, *"Waiving" Goodbye to Juvenile Defendants, Getting Smart vs. Getting Tough*, 49 U. MIAMI L. REV. 431, 469–67 (1994). Noon describes placement alternatives for juvenile offenders in Dade County, ranging from the least-secure "Level Two" facilities to most-secure "Level Eight" institutions. *See id*. at 465. Level Two facilities are nonresidential and feature education and intense family and individual counseling. *See id*. at 465–66. Level Eight facilities exist in a variety of configurations, from training schools to boot camps, but all are secure and house the most serious offenders. *See id*. at 466–67. In between are community-based, residential facilities, and more secure halfway-house style institutions. *See id*. at 466.

55. The juvenile justice programs of Utah and Missouri are also instructive for their innovative, community-based approaches to juvenile justice. *See generally Youth Violence, supra* note 4, at 367 (citing MICHAEL JONES & BARRY KRISBERG, IMAGES AND REALITY: JUVENILE CRIME, YOUTH VIOLENCE, AND PUBLIC POLICY 39 (1994)).

56. Massachusetts' large custodial training schools were the subject of widespread criticism in the 1960s for their brutality and use of extreme corporal punishment. *See Task Force*, *supra* note 42, at 345. In 1969, Massachusetts reorganized its juvenile correctional system into the DYS and hired Dr. Jerome G. Miller to create a more therapeutic and humane system. *See id*. Within 10 years, Dr. Miller had closed all of the State's training schools. *See id*.

57. *See Task Force*, *supra* note 42, at 346.

58. *See id*. at 346–49.

DYS.[59] If the youth is under court supervision, the judge may impose conditions of probation that include weekly counseling visits, community services, restitution programs, after-school recreational programs, and violence prevention group programs.[60]

If the court commits the delinquent juvenile to DYS, then DYS determines the nature of the treatment the youth receives.[61] DYS bases its treatment decisions on evaluations prepared by the staff at detention/assessment facilities.[62] For less serious offenders, treatment may include placement in a wilderness training camp, foster home, or a nonresidential program under intensive DYS supervision.[63] Serious and chronic offenders are automatically committed to DYS custody and thereafter referred to a DYS panel for classification.[64] The three appointed members of each DYS panel conduct a hearing at which the juvenile's caseworkers present their evaluations.[65] After balancing the risk the youth presents to the community against his or her ability to control aberrant behavior, the panel makes a commitment decision.[66] Serious and chronic offenders committed to secure facilities perceive the commitment as punitive.[67]

The Massachusetts experiment completely overhauled the State's juvenile justice system based on a an unequivocal commitment to rehabilitation.[68] The system has achieved national recognition[69] because it demonstrated that rehabilitation works both to reduce recidivism and to save tax dollars.[70] While the system is not

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59. *See Task Force, supra* note 42, at 349.

60. Whether the child will receive the benefit of these programs depends in large part on the availability of the program in the community and whether funding is available, either through insurance or community support. *See Task Force, supra* note 42, at 348.

61. *See Task Force, supra* note 42, at 348.

62. *See id.*

63. *See id.*

64. *See id*.

65. *See id*.

66. *See id.*

67. *See Task Force, supra* note 42, at 350 (observing that detainees regard as punitive the loss of liberty, and the regimentation and rules of secure detention).

68. *See id*. at 339–48.

69. The Massachusetts juvenile corrections system was cited by the National Council on Crime and Delinquency as a national model that appropriately balanced public safety considerations and rehabilitation in 1991. *See Task Force, supra* note 42, at 341.

70. In a 10-year follow-up study comparing the effectiveness of the Massachusetts program to California's juvenile corrections system, the National Council on Crime and Delinquency found that youths who spent five months in a Massachusetts program had a

perfect,[71] it can serve as a model for other states interested in a total commitment to rehabilitation.

States unwilling to completely overhaul their approaches to juvenile crime can nevertheless borrow specific programs that have proven successful in Massachusetts and other states. For example, a controlled study of Massachusetts' Youth Wilderness Program[72] revealed a benefit to cost ratio of 125-to-1 and a recidivism reduction rate of 2-to-1.[73] Even more impressive were the results of a study of Missouri's Family Treatment Program, which used a therapist to meet with troubled and dysfunctional families of delinquent youths to help them cope with their lives.[74] The Family Treatment Program produced a benefit to cost ratio of 270-to-1 and reduced recidivism by two-thirds.[75] Researchers are beginning to study a whole array of juvenile treatment options,[76] and their results clearly show that

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re-arrest rate of 51% compared to a re-arrest rate of 70% for youths who spent 14 months in a California facility. The re-incarceration rate for the Massachusetts youths was 23% compared to 62% in California. *See Youth Violence, supra* note 4, at 367 (citing BARRY KRISBERG ET AL., UNLOCKING JUVENILE CORRECTIONS: EVALUATING THE MASSACHUSETTS DEPARTMENT OF YOUTH SERVICES (NATIONAL COUNCIL ON CRIME AND DELINQUENCY 1989)).

71. Recommendations for improving the Massachusetts model have focused on the need to intervene in the lives of at-risk juveniles before they are adjudicated delinquent, and for more collaboration among the services and agencies in the juvenile justice network. For an excellent discussion of advanced methods to improve the system, see Dr. Charles Billikas, *The Ideal Juvenile Rehabilitation Program: An Integrated System,* NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 411 (1995).

Public outrage over recent murders committed by serious, violent, and habitual juvenile offenders has prompted a call for automatic transfer to adult criminal court for certain offenders. *See* Scott Harshbarger & Carolyn Keshian, *The Attorney General of Massachusetts' Bill Relative to the Trial and Sentencing of Serious Juvenile Offenders*, 5 B.U. PUB. INT. L.J. 135 (1996).

72. Also known as "Homeward Bound," the State operates this program by placing juveniles into eight-member brigades. Each brigade gets a challenging opportunity to exercise self-discipline, overcome obstacles through individual and group effort, and develop self respect through hiking, rock climbing, canoeing, camping, cross-country skiing, and even a trip along the Appalachian trail in four-foot deep snow. *See* Albert R. Roberts & Michael J. Camasso, *Juvenile Offender Treatment Programs and Cost Benefit Analysis,* JUV. & FAM. CT. J. 37, 41 (1991).

73. *See id.* at 44. These results suggest that Florida may do well to expand its own wilderness programs.

74. This program is also known as the "Family Resource Unit" and is available to both delinquent and dependant juveniles and their families. The therapist and families initially agree to meet for eight visits, but may increase the number of visits when necessary. *See* Roberts & Camasso, *supra* note 72, at 41.

75. *See id.* at 44.

76. For an excellent discussion of a variety of programs that work and don't work,

rehabilitative programs can be very effective at reducing both delinquency rates and money spent combatting juvenile crime.[77]

Before Floridians despair over solving the juvenile crime problem, the legislature should first fund more meaningful, community-based alternatives to overcrowded detention facilities for the majority of dependant and delinquent juveniles who are neither chronic nor serious offenders. However, it is also imperative that the public understand that the court's role in solving juvenile crime is extremely limited — both by the number of children it can reach, and the resources the state provides to address the problems. While the current "get tough" approach is likely an appropriate response to serious youthful offenders, we must be wary of using the approach as a blanket response to all juvenile offenders.[78] When I consider the tough circumstances in which I ask the majority of juveniles who appear before me to function, I cannot help but think that these tough, alienated and hopeless children are symptoms of serious social ills that getting tough alone can never address.

Think about it. It is no secret that poverty is a stable occupant of any list of risk factors for future criminal behavior in a child.[79]

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see Barry Krisberg, *What Works with Juvenile Offenders?*, 10 CRIM. JUST. 20 (1995).

77. For example, analyzing 46 juvenile offender treatment programs resulted in the inescapable conclusion that family counseling is effective in reducing recidivism among delinquent children. *See* Albert R. Roberts & Michael J. Camasso, *The Effect of Juvenile Offender Treatment Programs on Recidivism: A Meta-Analysis of 46 Studies*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 421, 437–38 (1990). The success of family counseling suggests a strategy for Florida courts to make better use of home detention. This underused resource presents opportunities for family intervention at minimal cost. Under the close supervision of a caseworker, children in home detention are taught strategies for functioning in their home environments that can have lasting remedial effects. Additionally, home detention protects CHINS from the criminal influences at secure detention facilities while keeping them off the streets and available for court dates.

78. Of juveniles sentenced as adults, nearly 40 percent were charged with property offenses and only about one-third were charged with violent offenses. *See* Paul Marcotte, *Criminal Kids*, 76 A.B.A. J. 61, 62 (1990).

79. Researchers have isolated factors such as those on the following list that contribute to placing a child at risk for later delinquency:

1. conviction for crime prior to age thirteen;
2. low family income;
3. troublesome rating by teachers and peers at ages eight to ten;
4. poor public school performance by age ten;
5. psychomotor clumsiness;
6. low nonverbal IQ;
7. having a brother or sister convicted of a crime.

Mahoney, *supra* note 44, at 445 (citing Alfred Blumstein et al., *Delinquency Careers: Innocents, Desisters, and Persisters*, 6 CRIME AND JUSTICE: AN ANNUAL REVIEW OF RE-

Yet, twenty-five percent of all children, and fully half of African-American children live below the poverty line.[80] We know that poverty breeds child abuse and that abused children are arrested twice as often as other children.[81] Neglected children fare worse.[82] Yet, each year, close to three million children are abused and neglected by the very people to whom they look for love and care.[83]

Teenage motherhood, closely related to poverty, is another risk factor for later delinquency. According to one researcher, "teenage mothers often have little sense of their babies as human beings and often don't have any idea about their children's needs as infants or about how or in what direction to shape their lives."[84] For children born in such circumstances, the only sense of belonging or purpose may come from a membership in a gang.

Unless we are content to pay the economic and moral costs associated with mass incarceration, Florida must begin immediately to address the circumstances in which tomorrow's juvenile offenders live today. This means that we must look beyond the juvenile courts and adopt policies designed to help parents meet some of the emotional and physical needs of at-risk children.[85] Research shows that if we intervene early enough in an at-risk child's life to meet some basic needs, the child is less likely to engage in delinquent behavior later.[86] We must identify at-risk children and supplement their up-

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SEARCH 187–220 (Michael H. Tonry & Norville Morris, eds. 1985)).

80. *See* Mahoney, *supra* note 44, at 451 (citing J. JULIAN & W. KORNBLUM, SOCIAL PROBLEMS 211 (5th ed. 1986)).

81. *See Youth Violence, supra* note 4, at 359.

82. Researchers believe that parental neglect may have an even stronger effect than physical abuse on later violence because neglect appears to be more damaging to the subsequent course of child development. *See Youth Violence, supra* note 4, at 359 (citing CATHY WIDOM, THE CYCLE OF VIOLENCE (NATIONAL INSTITUTE OF JUSTICE 1992)).

83. *See id*. at 357 (citing statistics from DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM, WORKING PAPER 1, 1990 SUMMARY DATA COMPONENT (1992)).

84. Mahoney, *supra* note 44, at 450; RITA KRAMER, AT A TENDER AGE 201 (1988); George Will, *Mothers Who Don't Know How*, NEWSWEEK, Apr. 23, 1990, at 80.

85. Researchers studying delinquency have stated their conclusion:

> Until the United States develops a comprehensive policy for children and families that gives high priority to the full range of children's needs from before birth through adolescence, the nation is unlikely to find satisfactory long-term solutions to its delinquency problems.

Mahoney, *supra* note 44, at 462.

86. *See* Pamela S. Howitt & Judge Eugene Arthur Moore, *The Efficacy of Intensive Early Intervention: An Evaluation of the Oakland County Probate Court Early Offender Program*, JUV. & FAM. CT. J. 25 (1991) (reporting that an intensive treatment program

bringing before they are psychologically crippled by frustration over the emptiness, chaos, and dysfunction that defines their lives.

I know that I am not breaking new ground here. I simply wish to add my voice to the chorus of jurists and advocates who are not willing to abandon Florida's children. Florida needs to provide its courts with resources proven to work to reduce delinquent recidivism today. But Florida must also commit to the future by intervening in the lives of its at-risk children before these children put us all at risk. Fundamental morality — and basic economics — demand that we do no less.

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involving very young first-time offenders dramatically reduced recidivism and improved the participants' school performance, conduct, and family lives).