

March 2019

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## Recommended Citation

Leete, Hon. John B. (1996) "Treatment and Rehabilitation or Hard Time: Is the Focus of Juvenile Justice Changing?," *Akron Law Review*: Vol. 29 : Iss. 3 , Article 6.

Available at: <https://ideaexchange.uakron.edu/akronlawreview/vol29/iss3/6>

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## TREATMENT AND REHABILITATION OR HARD TIME: IS THE FOCUS OF JUVENILE JUSTICE CHANGING?

by

HON. JOHN B. LEETE<sup>1</sup>

Over the past few years, it has been hard to read an urban newspaper without finding a headline about a juvenile committing a violent crime.<sup>2</sup> Across the country and across Pennsylvania, a debate has raged over the viability of the juvenile justice system. The basic juvenile justice goals of treatment and rehabilitation are under attack, and the notion that juvenile court procedures and dispositions have failed to keep up with the times has become pervasive.<sup>3</sup> The venerable and benevolent underpinnings of the juvenile justice movement are now being openly criticized.

In Pennsylvania, the basic provisions of law governing juvenile justice date from 1972. These provisions were built on an old foundation: Pennsylvania's juvenile justice system dates from 1903.<sup>4</sup> The Juvenile Act, until very recently, was premised on the concepts of prevention, treatment, and rehabilitation.<sup>5</sup> This was in keeping with the philosophy of the juvenile

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2. See, e.g., Adam Weintraub, *Crime Rate Falling But Growing Wave of Violent Teens May Reverse Trend In Next Generation*, CIN. ENQUIRER, Nov. 19, 1995, at A1; Scott Maier et al., *Charges of Murder Cut Short Their Childhoods, Early Warnings Resulted in Limited Remedies*, SEATTLE POST-INTELLIGENCER, Dec. 1, 1994, at A1; Dean E. Murphy, *Children Are Killing More Than Ever*, S.F. CHRON., Aug. 30, 1992, at 2; Kristen Metzler, *Two Charged In Girl's Rape—All Age 11*, WASH. TIMES, at A9, Mar. 21, 1992.

3. Francis Barry McCarthy, *The Serious Offender and Juvenile Court Reform: The Case for Prosecutorial Waiver of Juvenile Court Jurisdiction*, 38 ST. LOUIS U. L.J. 629, 641 (1994). Professor McCarthy recently observed that for many, faith in the juvenile court system's ability to rehabilitate youthful offenders has been lost. *Id.* at 642. Professor McCarthy also points out that this "loss of faith" extends to and is reflected in the United States Congress' "rejection of the rehabilitative model of sentencing under the Federal Sentencing Guidelines." *Id.* at 642 n. 64.

4. Act of April 23, 1903, No. 205, 1903 Pa. Laws 274 (1903) [hereinafter Act No. 205]. Pennsylvania enacted its first Juvenile Act in 1901. Act of May 21, 1901, No. 185, 1901 Pa. Laws 279 (1901). However, this was struck down as violative of the Pennsylvania Constitution in 1903. *Mansfield's Case*, 22 Pa. Super. 224, 234 (1903) (holding the 1901 Juvenile Act unconstitutional because it violated the ban on special laws "regulating practice and jurisdiction in judicial proceedings" contained in Article 3, § 7, of the Pennsylvania Constitution). Less than three months later, the Pennsylvania Legislature passed Act No. 205, which is the foundation of Pennsylvania's modern juvenile justice system. See *Commonwealth v. Fisher*, 62 A. 198 (Pa. 1905) (upholding the constitutionality of Act No. 205).

5. McCarthy, *supra* note 3, at 641.

justice movement that children who broke the law were not responsible for their criminal conduct and therefore should be shielded from punishments normally reserved for adults.<sup>6</sup> Striving to implement this goal of rehabilitation, the Juvenile Act of 1972 set forth the following as one of its purposes:

consistent with the protection of the public interest, to remove from children committing delinquent acts the consequences of criminal behavior, and to substitute therefore a program of supervision, care, and rehabilitation.<sup>7</sup>

Caselaw has expanded and explained this purpose. Discussing the differences between juvenile proceedings and adult criminal proceedings, the Pennsylvania Superior Court stated that the purpose of juvenile proceedings was “. . . to seek treatment, reformation, and rehabilitation, and not to punish.”<sup>8</sup> The essential character of juvenile proceedings was generally recognized by the United States Supreme Court in *Kent v. United States*,<sup>9</sup> when Justice Fortas described the juvenile justice system as:

[E]ngaged 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.<sup>10</sup>

The Court relayed similar sentiments nine years later in *Breed v. Jones*,<sup>11</sup> when Chief Justice Burger described the juvenile justice system as a “distinctive procedure and setting to deal with the problems of youth,” as opposed to the criminal process.<sup>12</sup>

This Article will address recent trends in Pennsylvania legislation on juvenile law, and consider the politicization of juvenile crime. I will also examine how well the juvenile justice system has historically performed, and look at the likely results of recent changes. Finally, I will conclude with a discussion of some innovative alternatives to criminal punishment that have worked well in rural Potter County, Pennsylvania.

6. *Id.*

7. 42 PA. CONS. STAT. ANN. § 6301(b)(2) (1995) (Juvenile Act).

8. *In re Leonardo*, 436 A.2d 685, 687 (Pa. Super. 1981) (citing *In re Tasseing H.*, 422 A.2d 530 (Pa. Super. 1980)). See also *In re G.T.*, 597 A.2d 638, 642 (Pa. Super. 1991) (recognizing the juvenile justice system was designed to “protect children from the harsh punishments of the adult criminal system”).

9. 383 U.S. 541 (1966).

10. *Id.* at 554-55 (1966).

11. 421 U.S. 519 (1975).

12. *Id.* at 528.

## I: THE POLITICS

In 1994, the perception that juvenile violent crime was out of control became a political issue in Pennsylvania. Then gubernatorial candidate Tom Ridge formulated a comprehensive plan to fight violent crime. Specifically, he endorsed a plan entitled "Fighting Back With Real Solutions."<sup>13</sup>

In his position paper on fighting crime, Ridge pointed out that juvenile violent crime is "sky rocketing in Pennsylvania."<sup>14</sup> The juvenile arrest rate for aggravated assault rose 85% from 1984 to 1989.<sup>15</sup> In addition, the juvenile murder rate tripled during the same period.<sup>16</sup> Ridge's report also reported that drug offenses committed by juveniles increased 96% from 1987 to 1993.<sup>17</sup> Moreover, in a harsh criticism of Pennsylvania's juvenile justice system, candidate Ridge described the present system as one "where juveniles are free to commit the most serious of crimes with the knowledge that in many instances, there will be very minor consequences."<sup>18</sup>

Within days of his election, Governor Ridge convened a Special Session of the Pennsylvania Legislature on crime. In a January 23, 1995, proclamation convening the Special Session, Governor Ridge directed the Legislature to consider ways to achieve a reduction of juvenile crime by reforming the system and laws relating to crimes committed by juveniles.<sup>19</sup> On May 1, 1995, the Governor launched a second group of crime bills to be considered by the Legislature. During this process, Ridge reiterated his view that "if you commit an adult crime in Pennsylvania, you will do adult time."<sup>20</sup> As the Special Session ended on October 31, 1995, the Governor stated his belief that the juvenile justice system had in fact been reformed. Specifically, he stated that "violent, youthful offenders will [now] be held accountable."<sup>21</sup>

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13. Governor Tom Ridge, *Fighting Back With Real Solutions*, THE RIDGE PLANS TO FIGHT VIOLENT CRIME (Office of Governor, Harrisburg, PA), Sept. 1, 1994, at 7.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* See also Sherri Kimmel, *The Contest for Casey's Chair*, 16 PA. LAW. 12 (Sept. 1994) (quoting then-candidate Ridge proclaiming, "Young people in Pennsylvania need to know that youth is not an excuse . . . If they commit adult crime, they're gonna do adult time.").

19. Governor Tom Ridge, Convening a Special Session of the Pennsylvania Legislature on Crime (Jan. 23, 1995).

20. Governor Tom Ridge, News Release (Office of the Governor, Harrisburg, PA.), May 1, 1995.

21. Governor Tom Ridge, Address to the Pennsylvania Legislature at the Closing of the Special Session of Crime (Oct. 31, 1995).

## II: THE PROPOSED SOLUTION

In fulfillment of campaign pledges and with extensive bi-partisan support from Pennsylvania legislators, many changes were made in the Pennsylvania juvenile justice system during that Special Session in 1995. At least fifteen separate pieces of legislation relating in some manner to juvenile justice were passed over a ten-month period. The new acts were diverse, both in terms of the subjects addressed, and their intended impact on a system believed by many to be in need of major changes. While it is impossible to discuss in detail all the changes here, some of the legislation will be described to give a flavor for what has occurred. From this scrutiny, we will see if "reform" really occurred, and if so, at what price.

Many of the new laws dramatically changed procedural and processing matters for juvenile offenders. Act 6, for example, gave law enforcement organizations the authority to fingerprint or photograph any child alleged to have committed not only felonies, but also misdemeanors.<sup>22</sup> These records are subject to immediate dissemination to other agencies.<sup>23</sup> To coordinate this data, the Pennsylvania State Police must maintain a statewide registry of basic information on alleged juvenile offenders.<sup>24</sup>

These new reforms also changed the reporting requirements of the Juvenile Court.<sup>25</sup> Juvenile courts are now required to promptly report juvenile dispositions to police agencies.<sup>26</sup> Juvenile courts must likewise report adjudications of delinquency to a mandated State Police central record repository.<sup>27</sup> This information must also be provided to school building principals, and teachers.<sup>28</sup>

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22. 42 PA. CONS. STAT. ANN. § 6308(c)(1) (1996). Under the former statute, police only had authority to fingerprint children alleged to have committed a delinquent act that but for their juvenile status would constitute a felony. 42 PA. CONS. STAT. ANN. § 6308(c)(1) (Supp. 1995) (amended by Act No. 6, 179th Pennsylvania General Assembly, 1st Spec. Sess. (1995) codified at 42 PA. CONS. STAT. ANN. § 6308(c)(1) (1996)).

23. 42 PA. CONS. STAT. ANN. § 6308(c)(2) (1996).

24. 42 PA. CONS. STAT. ANN. § 6309(b) (1996).

25. Like the 1972 Act, the modern amendments do not provide for separate juvenile courts. As a result, the courts of common pleas have original jurisdiction over juvenile matters pursuant to PA. CONST. Art. V, § 5. Therefore, while I will refer to the "juvenile court" throughout this Article, the reader should recognize the phrase "juvenile court" does not apply to a special court, but rather to the court of common pleas when hearing a juvenile matter pursuant to the Juvenile Act. See Leonard Packel, *A Guide to Pennsylvania Delinquency Law*, 21 VILL. L. REV. 1, 11 (1975).

26. 42 PA. CONS. STAT. ANN. § 6309(d) (1996).

27. *Id.*

28. 42 PA. CONS. STAT. ANN. § 6341(b.1)(1)-(5) (1996) (effective Feb. 15, 1996).

Taking advantage of developments in forensic technology, Act 14 of the first special session subjects juveniles who are found to have committed serious sex offenses to mandatory DNA sampling.<sup>29</sup> The results of this DNA sampling will be included in a Pennsylvania State Police DNA data base, for use in subsequent criminal investigations.<sup>30</sup>

An effort was also made to remove some of the secrecy from juvenile proceedings, which was one of Governor Ridge's main concerns. Since June 5, 1995, juvenile proceedings have been open to the public if the alleged delinquent was 14 years of age or more, and the charged conduct was a felony.<sup>31</sup> The age for open hearings drops to 12 if the juvenile is charged with murder, robbery, rape, involuntary deviate sexual intercourse or other violent offenses.<sup>32</sup> This new "reform" directly contravenes the long standing juvenile court practice of keeping juvenile proceedings closed to the public, thereby protecting the juvenile from the unfair stigmatization long believed to result from subjecting the juvenile to public display.<sup>33</sup>

Some of the changes allow broader use of juvenile records in criminal court proceedings after the offender has reached the age of majority. Act 1, for instance, allows a former juvenile offender's record to be considered in setting bail.<sup>34</sup> Moreover, Act 13 provides that unpaid restitution owed by a juvenile now is collectable after age 21 through a judgment enforcement procedure applicable to adults.<sup>35</sup>

In addition to the direct effects of this legislation on juveniles, one provision has important collateral consequences. Under the new law, certain juvenile adjudications can now prevent a person from owning firearms if that person was declared delinquent on the basis of conduct constituting a serious offense.<sup>36</sup> This prohibition may last until age 30, or for 15 years after the delinquent act, whichever is less.<sup>37</sup> Previously, this disability was imposed only on adult convicts.

29. PA. STAT. ANN. tit. 35, § 7651.306(a) (1996) (Act 14) (effective July 27, 1995).

30. *Id.*

31. 42 PA. CONS. STAT. ANN. § 6336(e)(1) (1996) (effective June 5, 1995). Pennsylvania is not the only state to have open juvenile hearings. *See, e.g.,* COLO. STAT. ANN. § 19-2-401 (West 1996) (stating that the public *not* excluded from juvenile hearings unless the juvenile court determines it is in the juvenile's best interest to do so).

32. 42 PA. CONS. STAT. ANN. § 6336(e)(2) (1996) (Act 11) (effective June 5, 1995).

33. *See Commonwealth v. Hodovanich*, 251 A.2d 708, 709 (Pa. Super. Ct. 1969) (*per curiam*); Juvenile Court Law § 3, Act No. 311, 1933 Pa. Laws 1433 (1933).

34. 42 PA. CONS. STAT. ANN. § 6307 (1996) (Act 1) (effective Feb. 22, 1995).

35. 42 PA. CONS. STAT. ANN. § 6352(a)(5) (1996) (Act 13) (effective Mar. 16, 1996); 42 PA. CONS. STAT. ANN. § 7728 (1996) (referring to judgment enforcement procedures).

36. 18 PA. CONS. STAT. ANN. § 6105(c)(7) (1996) (effective Oct. 11, 1995).

37. 18 PA. CONS. STAT. ANN. § 6105(c)(8) (1996) (Act 17) (effective Oct. 11, 1995).

While the new legislation restricts the juvenile court's power over delinquency proceedings, a large part broadens the power of the juvenile courts over status offenders. Act 29, which became effective in January, 1996, greatly expanded the authority of juvenile courts to deal with truancy issues. Under the new provisions, children, as well as their parents, can be fined pursuant to a newly created summary offense.<sup>38</sup> In an effort to bring consequences directly to juvenile offenders, children determined to be truant will lose their driving privileges.<sup>39</sup> The arrest powers of various law enforcement agencies were also broadened to implement the Act.<sup>40</sup>

Juvenile Courts were also given much broader power over the parents. They may be directed to participate in a juvenile's treatment, and be subject to contempt if they refuse to comply.<sup>41</sup> Parents may also be ordered to be present for court proceedings.<sup>42</sup>

Perhaps the greatest change, however, came in an amendment to the purposes of the Juvenile Act:

Consistent with the protection of the public interest to provide for children committing delinquent acts, programs of supervision, care and rehabilitation which provide *balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.*<sup>43</sup>

This amendment, in essence, added a balancing test that weighs the traditional goals of prevention, treatment, and rehabilitation against community security and protection, and directed that programs ordered by juvenile courts try to do both. This same amendment also seems to require affirmative life skills development for delinquent youth.

In these few words, the basic underpinnings of Pennsylvania juvenile justice may well have changed. Words such as "accountability for offenses" indicate a genuine shift in emphasis from one of traditional rehabilitation and individualized justice to the modern punishment.<sup>44</sup> While the amended pur-

38. PA. STAT. ANN. tit. 24, § 13-1333(a)(1) (1996) (Act 29) (providing for a fine not to exceed \$300 plus court costs for the first offense).

39. PA. STAT. ANN. tit. 24, § 13-1338.1(a) (1996) (Act 29) (effective Mar. 16, 1996) (providing for a ninety day license suspension for the first offense).

40. PA. STAT. ANN. tit. 24, § 13-1333 (1996) (Act 29).

41. 42 PA. CONS. STAT. ANN. § 6310 (1996) (Act 28) (effective Feb. 15, 1996) (emphasis added).

42. *Id.*

43. 42 PA. CONS. STAT. ANN. § 6301(b)(2) (1996) (Act 33) (effective Mar. 16, 1996).

44. This shift becomes readily apparent when one compares the present purpose with the purpose of the original Juvenile Act. In the Juvenile Act of 1903, the preamble to that act

pose does not expressly address confinement and removal of delinquent juveniles from our communities, that indication is clearly present. Are all these changes a response to the violence, or the result of political rhetoric, or both?

### III: THE REAL PROBLEM

How severe, in fact, were the problems that brought about these changes? To determine whether these reforms were motivated purely by politics, or by a genuine concern for reducing violent juvenile crime, we must look realistically at the problem confronting the leadership of Pennsylvania and then analyze their proposed solution. To that end, we must also carefully examine the full implications of Act 33, which is the centerpiece of Pennsylvania's recently enacted juvenile reforms.

Statistically, Pennsylvania's juvenile population fell 21% from 1975 to 1985.<sup>45</sup> Perhaps partly as a result, the incidence of some violent juvenile offenses declined dramatically during that same time period. For example, instances of murder and manslaughter dropped from 146 individuals charged in 1975 to 48 individuals charged in 1987.<sup>46</sup> However, of grave concern was the increase in juveniles charged with homicide offenses from 1987 through 1994, when there were 93 homicide cases. Significantly, Pennsylvania experienced a 94% *increase* in juvenile arrests for murder and manslaughter from 1987 through 1994.<sup>47</sup> Rape arrests of juveniles from 1987 through 1994 increased only about 9% to 309 offenses in 1994, whereas robberies increased

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states, in part:

[I]t is important that the powers of the courts, in respect to the care, treatment and control over dependent, neglected, delinquent and incorrigible children, should be clearly distinguished from the powers exercised in the administration of the criminal law.

Act of April 23, No. 205, 1903 Pa. Laws 274 (1903). Reading the modern act's purpose in light of the 1903 act, it seems the legislature has become less concerned with distinguishing juvenile and criminal law, and more concerned with administering them similarly. Moreover, Pennsylvania is not the only state to indicate a greater reliance on accountability and public safety—the hallmark of the punishment oriented adult system—in the administration of juvenile justice, which is indicative of a national shift in emphasis. *See generally* ALA. STAT. ANN. § 12-15-1.1 (West 1996) (acknowledging the juvenile court's responsibility . . . to preserve the public peace and security"); IDAHO STAT. ANN. § 20-501 (1995) ("It is the policy of the state of Idaho that [t]he [juvenile] court shall impose a sentence that will protect the community [and] hold the juvenile accountable for his actions. . ."); MINN. STAT. ANN. § 260.011(2)(c) (West 1992) (stating the purpose of the juvenile acts is "to promote public safety and reduce juvenile delinquency"). *But see* FLA. STAT. ANN. § 39.025(2) (West 1996) (finding the public cannot be "protected from juvenile crime merely by incarcerating juvenile delinquents").

45. PENNSYLVANIA STATE DATA CENTER, POPULATION ESTIMATES BY SEX, AGE AND RACE FOR VARIOUS DATES, 1975-85 (Copy of Statistics on file with author).

46. PENNSYLVANIA STATE POLICE, CRIME IN PENNSYLVANIA: UNIFORM CRIME REPORT FOR YEARS 1987-1994 (Data on file with author).

47. *Id.*



about 22% to 2415, in 1994.<sup>48</sup> According to the Joint State Government Commission Report of October 1995, juvenile arrest rates for the most serious violent crimes have increased over all about 10% per year annually, particularly in the categories of murder and aggravated assault.<sup>49</sup> Taking juvenile crime as a percentage of all crime, the percentage of juvenile arrests for violent crimes has increased from 17% of all arrests in 1989 to about 24% in 1994.<sup>50</sup> Thus, there can be no real dispute that juveniles are committing more and more violent crimes.

What does the short term future portend? Will violent juvenile crime keep on increasing? The authors of juvenile reform legislation and the public in fact have strong reason for concern. According to data compiled by the U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, the juvenile arrest rate for violent crimes is expected to double by the year 2010, if the juvenile population grows as projected, and the increases seen in recent years in juvenile arrests for violent crimes continue to grow at the same rate.<sup>51</sup>

If these national statistical trends are correct, the number of juveniles arrested for murder could increase 145% over the 1992 level by 2010. Using the same assumptions for forcible rape and robbery, projected increases during the same time frame are 66% and 58%, respectively.<sup>52</sup> Indeed, F.B.I. Director Louis Freeh recently noted "the ominous increase in juvenile crime coupled with population trends portend future crime and violence at nearly unprecedented levels."<sup>53</sup>

#### IV: MURDER, A MISLEADING STATISTIC

While our discussion thus far has touched frequently on juvenile murder, it is important to note that under the Juvenile Act, both before and after the

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48. *Id.*

49. JOINT STATE GOV'T COMM'N, THE FEASIBILITY OF PUBLICLY FUNDED RESIDENTIAL EDUCATION IN PENNSYLVANIA, STAFF ANALYSIS PURSUANT TO HOUSE RESOLUTION 43 OF 1995 17 (Oct. 1995) (The Comm'n, Harrisburg, PA. 1995).

50. *Id.* Pennsylvania statistics are essentially comparable to trends in national statistics. According to the National Institute of Justice, the homicide rate for 18-year olds doubled between 1985 and 1992. NAT'L INST. OF JUSTICE RESEARCH PREVIEW, U.S. DEP'T OF JUSTICE, YOUTH VIOLENCE, GUNS AND ILLICIT DRUG MKTS. (Dec. 1995).

51. HOWARD N. SNYDER & MELISSA SICKMUND, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: A FOCUS ON VIOLENCE (May, 1995).

52. *Id.*

53. 26 CRIM. JUST. NEWSL. 5 (Dec. 1, 1995). The significant increases in juvenile crime run directly contrary to slight declines in the nation's overall violent crime rate, according to data compiled from the F.B.I.'s Uniform Crime Reporting (UCR) program. Specifically, violent crime dropped more than 4% last year, reaching the lowest level since 1990.

latest amendments, murder was exempt.<sup>54</sup> For over twenty years, the term "delinquent act," as defined by the Juvenile Act has not included murder.<sup>55</sup> As a result, juvenile murder cases are heard first in criminal court. Only if there has been a transfer back by the criminal court will the juvenile court have jurisdiction over the accused juvenile, and such transfers are not granted as a matter of course.<sup>56</sup> This critical fact is generally ignored in media coverage and public debates over juvenile crime issues.

The laws on transfers from criminal court to juvenile court have also been recently amended as part of the reformation effort.<sup>57</sup> Under the latest revision, the burden is on the child to demonstrate, by a preponderance of the evidence, that the transfer to juvenile court is consistent with the public interest.<sup>58</sup> The recent enactment merely codified existing caselaw, because the burden was already on the juvenile to show amenability to juvenile treatment.<sup>59</sup> In other words, any juvenile charged with murder had his or her case

54. *Commonwealth v. Pyle*, 342 A.2d 101, 106 (Pa. 1979). Professor Sanford J. Fox, tracing the history of juvenile courts in America, observed that from the beginning "major offenders" have been exempt from treatment in the juvenile court system. Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1191 (1970).

55. *Compare* Act of June 2, 1933, No. 311, § 14, 1933 Pa. Laws 1433 (1933) (requiring the mandatory transfer of all juveniles under age sixteen from criminal court to juvenile court for all charges *except* murder) with 42 PA. CONS. STAT. ANN. § 6302 (1996) (defining "delinquent act" to exclude murder) and 42 PA. CONS. STAT. ANN. § 6322(a) (requiring mandatory transfer of all children charged with criminal offenses *other than* murder and those other offenses excluded by paragraph (2)(ii) or (iii) of section 6302 defining "delinquent act" to juvenile court).

56. *See generally* *Commonwealth v. Potts*, Nos. 01890, 02749, 1996 WL 129731, at \*2 (Pa. Super. Ct., Mar. 25, 1996) (holding it is not an abuse of discretion to refuse to transfer juvenile charged with murder to juvenile court where expert witness testified only that juvenile might be amendable to rehabilitation); *Commonwealth v. Austin*, 664 A.2d 597, 599-600 (Pa. Super. Ct. 1995) (upholding a refusal to transfer juvenile charged with second degree murder to juvenile court upheld notwithstanding expert testimony showing strong likelihood of amenability to rehabilitation, and lack of prior criminal record); *Commonwealth v. Reed*, 645 A.2d 872, 878 (Pa. Super. Ct. 1994) (holding it is not an abuse of discretion to refuse to transfer juvenile charged with murder where evidence showed juvenile could not be rehabilitated before his twenty-first birthday), *alloc. denied*, 658 A.2d 794 (Pa. 1994); *Commonwealth v. Morningwake*, 595 A.2d 158, 160, 164 (Pa. Super. Ct. 1991) (upholding denial of a petition to transfer a fifteen year old accused of stabbing to death his youth counselor where evidence showed past efforts at rehabilitation had failed, the petitioner was aware of the criminality of his conduct, and the unlikelihood of successful rehabilitation before petitioner's twenty-first birthday), *alloc. denied*, 600 A.2d 535 (Pa. 1991); *Commonwealth v. Poole*, 19 Pa. D. & C. 4th 416, 420-423 (1993) (denying petition to transfer to juvenile court a sixteen year old charged with murder where petitioner's "lifestyle had assumed features of adulthood," and the petitioner confessed to shooting the victim with a .357 Magnum, even though the petitioner had no prior delinquent history).

57. 42 PA. CONS. STAT. ANN. § 6322(a) (1996) (Act 33) (effective Mar. 16, 1996).

58. *Id.*

59. *Commonwealth v. Pettus*, 424 A.2d 1332, 1334-35 (Pa. 1981); *Commonwealth v. Pyle*, 342 A.2d 101, 106 (Pa. 1975).

proceed directly to criminal court unless the criminal court determined in a decertification proceeding that the matter was more properly heard by a juvenile court. Moreover, if the petition to transfer is denied, the juvenile will be tried as an adult, and if convicted, punished accordingly.<sup>60</sup>

Much of the rhetoric, therefore, about teenage murders is misplaced, as these cases have started out in criminal court and remained there. Sadly, the number of teenage murders have risen in recent years, and they have been the source of many headlines and legitimate public concerns. In terms of juvenile law reform, however, these murders have not really been the central problem in view of their general exclusion from the juvenile justice system.

### V: THE CRIMINAL COURT SOLUTION

Other violent crimes have been more frustrating to law enforcement personnel, particularly the offenses of rape, robbery and aggravated assault. These serious offenses and others were the real moving forces behind the passage of Act 33 in the first special session of 1995.

Act 33 will set the tone of juvenile justice in Pennsylvania for the future. It contains the amendment of purpose of the Juvenile Act previously noted. The Act also provides a mechanism for removal of young violent offenders from the juvenile justice system as part of the trend to make that system more accountable. This legislation targets a relatively small group of violent offenders by excluding from the definition of "delinquent act" certain violent felonies involving the use of a deadly weapon when committed by a juvenile 15 years of age or older at the time of the alleged conduct.<sup>61</sup> The felonies which are automatically excluded are rape, involuntary deviate sexual intercourse, aggravated assault, robbery, kidnapping, voluntary manslaughter, among others, as well as attempts, conspiracy or solicitations to commit these offenses if a deadly weapon was used during the commission of the offense.<sup>62</sup> Another category of offenses excluded from the definition of "delinquent act" if com-

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60. See generally *Commonwealth v. Williams*, 522 A.2d 1058, 1059 (Pa. 1987) (imposition of death sentence imposed on juvenile convicted as an adult of first degree murder reversed and remanded for imposition of life sentence); *Commonwealth v. Reed*, 645 A.2d 872, 874, 882 (Pa. Super. Ct. 1994) (affirming sentence of life imprisonment imposed on juvenile tried as an adult for first degree murder), *alloc. denied*, 658 A.2d 794 (Pa. 1994); *Commonwealth v. Zoller*, 498 A.2d 436 (Pa. Super. Ct. 1985) (affirming sentence of 10-20 years imposed on juvenile who pleaded guilty to third degree murder); *Commonwealth v. Waters*, 483 A.2d 855, 857, 862 (Pa. Super. Ct. 1984) (affirming sentences of life imprisonment for first degree murder and 4-10 years for involuntary deviate sexual intercourse imposed on a sixteen year old convicted as an adult), *cert. denied*, 471 U.S. 1137 (1985).

61. 42 PA. CONS. STAT. ANN. § 6302(2)(ii) (1996).

62. 42 PA. CONS. STAT. ANN. § 6302(2)(ii)(A)-(I) (1996).

mitted by offenders 15-years old or more include those where the juvenile is alleged to have committed a violent offense and has previously been adjudicated delinquent for committing any of a list of designated violent offenses, or attempts, conspiracy or solicitations to commit these offenses.<sup>63</sup> These offenses also include, among others, rape, involuntary deviate sexual intercourse, and robbery, but not felony aggravated assault.<sup>64</sup>

Act 33 does have a safety valve which makes it a more balanced piece of legislation than it might first appear. Otherwise excludable cases can be transferred back to juvenile court if the juvenile establishes by a preponderance of the evidence in criminal court that the transfer will serve the public interest.<sup>65</sup> The public interest has been broadly defined to include consideration of the impact of the offense on the victim as well as the community, the threat to the safety of the public posed by the juvenile, as well as the nature and circumstances of the offense.<sup>66</sup> In all other transfer cases, where the Commonwealth seeks to authorize a transfer to criminal court, the Commonwealth must establish by a preponderance of the evidence that the public interest is served by the transfer and that the child is not amenable to rehabilitation as a juvenile.<sup>67</sup>

Behind this Act is the assertion by the Governor of Pennsylvania, as quoted above, that juveniles will do time if they commit adult crimes. This is part of the "get tough" stance on violent juvenile crime. Obviously the authors of this legislation and perhaps the public feel that significantly more juveniles can and should be tried and ultimately punished in adult criminal court.<sup>68</sup>

In order to test the theory of "do an adult crime, do adult time," one must look at what has happened to the juveniles who have been transferred in the past. Historically, transfers to adult criminal court have been relatively rare. The Juvenile Court Judges Commission of Pennsylvania commissioned a

63. 42 PA. CONS. STAT. ANN. § 6302(2)(iii) (1996).

64. 42 PA. CONS. STAT. ANN. § 6302(2)(iii)(A)-(H) (1996).

65. 42 PA. CONS. STAT. ANN. § 6322(a) (1996).

66. 42 PA. CONS. STAT. ANN. § 6322(a) (1996); 42 PA. CONS. STAT. ANN. § 6355(a)(4)(iii) (1996). The court is also required to consider the culpability of the juvenile, and the adequacy and duration of dispositional alternatives, obviously including placement. 42 PA. CONS. STAT. ANN. § 6355(a)(4)(iii)(E)-(G) (1996). There also must be a determination as to whether the child is amenable to treatment as a juvenile. 42 PA. CONS. STAT. ANN. § 6322(a) (1996).

67. 42 PA. CONS. STAT. ANN. § 6355 (1996).

68. This legislative direction will soon be taking physical shape in Pennsylvania. At the present time, the Bureau of Corrections is actively seeking a site for a special 500 bed prison designed to hold juveniles sentenced by the Commonwealth's criminal courts. Some \$52 million were appropriated for this purpose under Act 19. Act 19, § 5.101, 179th Pennsylvania General Assembly, 1st Spec. Sess. (1995).

detailed study of Pennsylvania juveniles transferred to criminal court in 1986. The study was completed in 1991 by Lemmon, Sontheimer & Saylor, and found that in 1986, a total of 245 cases were transferred with Philadelphia contributing 108.<sup>69</sup> More recently, in 1994, 453 cases out of 35,531 dispositions, or about 1.27%, were transferred to criminal court.<sup>70</sup> Nationally, the statistic is about 1.6% for 1992.<sup>71</sup>

Those who were transferred were eligible for bail. While statistics are not available for how many persons were bailed, obviously some were. Other data, limited to Philadelphia County, suggests some trends. From 1991 to 1993, about 48% of transferred juveniles signed themselves out of jail without cost. Another 21% posted cash bail. Overall, in Philadelphia, almost two thirds of offenders of all ages released from pretrial custody do not appear for trial. About 20% of all bailed defendants are arrested on new charges within the first three months after pretrial release.<sup>72</sup> Clearly these trends would apply, at least in part, to juveniles awaiting criminal court action. Thus, some juveniles charged with serious crimes as adults are promptly back on the street instead of remaining in secure juvenile detention. Undoubtedly, some do not appear for trial at all.

These cases took on the average 8.5 months from time of transfer to criminal court until sentencing.<sup>73</sup> In contrast, a typical juvenile case takes about two months from referral to disposition.

What kind of offenses were transferred? Theft, receiving stolen property and burglary comprise about 32% of the cases from the Lemmon study.<sup>74</sup> Only about 22% of the offenses related to felony crimes against persons. In 1986, about 5.7% of the transferred offenses related to felony drug law violations. By 1993, the felony drug transfer category increased to 23% of the total according to data from the Pennsylvania Juvenile Court Judges Commission.<sup>75</sup>

National statistics generally support the proposition that most offenses transferred to criminal court are in fact property as opposed to personal

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69. JOHN H. LEMMON ET AL., PENNSYLVANIA JUVENILE COURT JUDGES COMM'N, A STUDY OF PENNSYLVANIA JUVENILES TRANSFERRED TO CRIMINAL COURT IN 1986 (The Comm'n, Harrisburg, Pa. April, 1991). The Lemmon study tracked 218 separate juveniles comprising most of these cases through the criminal courts of Pennsylvania.

70. PENNSYLVANIA JUVENILE COURT JUDGES COMM'N, MANUAL SUMMARY FOR VARIOUS YEARS (1996) (statistical data on file with author).

71. SNYDER & SICKMUND, *supra* note 51, at 27.

72. See PENNSYLVANIA JUVENILE COURT JUDGES COMM'N, *supra* note 70.

73. LEMMON ET AL., *supra* note 69, at 63.

74. *Id.* at 34.

75. See PENNSYLVANIA JUVENILE COURT JUDGES COMM'N, *supra* note 70.

crimes. These same national statistics mirror Pennsylvania in that serious drug law violations have accounted for much of the increase in transfer rates.<sup>76</sup>

In terms of criminal court adjudications, some cases never get to trial. Charges were dismissed or not processed in almost 7% of the cases.<sup>77</sup> Guilty pleas were entered in about 63% of the cases whereas 20% resulted in convictions at trial. About 3% were acquitted. What happened at sentencing? Were the offenders taken off the streets, as they likely would have been if treated as juveniles?

## VI: JAIL OR JUVENILE JUSTICE?

About 89% of juveniles who pled or were convicted were incarcerated. Of 185 who were convicted, 29.73% went to state prison whereas 59.46% were sentenced to county jail time. The mean age of the juveniles subject to transfer proceedings was 17.36 years at the time of the transfer hearing.<sup>78</sup> Criminal courts chose to substantially incapacitate this group of certified juveniles by removing them from the streets. The average sentence imposed on Pennsylvania juveniles certified to criminal court and subject to conviction or plea was a mean minimum sentence of 19.8 months and a maximum of just under 4 years.<sup>79</sup> Long sentences in fact were unusual for the sample group. Only 20 of the 185 offenders who were sentenced received minimum sentences longer than 3 years. Minimum terms of 6 to 12 months seemed to be the most common.<sup>80</sup>

As the vast majority of offenders of all ages are paroled somewhere near the completion of their minimum terms, there is a close relationship between the minimum sentence imposed and the actual time served. What this means is that most juveniles certified to criminal court and sentenced were out of jail well before their 21st birthdays.<sup>81</sup>

It is apparent that removal from the juvenile justice system resulted in the imposition of serious sanctions for the subject juveniles. Even with the plea bargaining that was involved in most cases, most of the juveniles ultimately were incarcerated. Many other states have already changed their waiver laws or transfer requirements, with some transfers mandatory and some not. The question must be asked, will incarcerating more youths for longer periods of time benefit society, so that the authors of Act 33 can ful-

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76. SNYDER & SICKMUND, *supra* note 51, at 27.

77. See LEMMON ET AL., *supra* note 69, at 57.

78. *Id.* at 60.

79. *Id.* at 65.

80. *Id.* at 69.

81. *Id.* at 70.

fill their promises to the people of Pennsylvania?

It is important to remember that high risk juvenile offenders do not necessarily remain high risk. Studies show that involvement in serious crimes of violence peaks between ages 16 and 17, and drops off sharply after age 20.<sup>82</sup> Because juvenile courts have jurisdiction to age 21, it is appropriate to ask which system, criminal or juvenile, disables young criminals better. A typical 17-year old whose case is transferred will receive a sentence of incarceration the maximum of which is under 4 years. If we allow an additional year for processing the transfer and resolving the criminal cases, the offender would be leaving all supervision by age 22, and incarceration at a much younger age.

It is likely, therefore, that juveniles did not fare much worse (or better) in criminal court, in terms of confinement and supervision, than they would have in juvenile court. This does not take into account what happened to bail jumpers and those who committed additional offenses while on the street.

It is easy, and perhaps appealing, to argue that these violent youth are getting what they deserve. Jail is certainly an appropriate sanction in some cases. But were all dangerous young offenders taken off the streets? The reality is that some of the transferred youth, about 20%, receive no sanction at all, or the minimal sanctions of ARD<sup>83</sup> or probation. As the foregoing demonstrates, transfer to adult criminal court is not a guarantee of public safety, even in the short term.

Jail may assuage some public and political concerns, but does it make a real difference? For those juveniles who go to state prison, they are entering a stressed and overcrowded system. Pennsylvania's prison population has more than doubled during the past ten years. A further indication of what is happening in terms of state prisons is the fact that the Department of Corrections' budget has grown 263% from 1982 to 1992. In contrast, the Pennsylvania Department of Education budget grew only 56% during the same period.<sup>84</sup>

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82. MICHAEL JONES & BARRY KRISBERG, NAT'L COMM'N ON CRIME AND DELINQUENCY, IMAGES AND REALITY: JUVENILE CRIME, YOUTH VIOLENCE AND PUBLIC POLICY 35 (June, 1994).

83. ARD, or Accelerated Rehabilitative Disposition, is a form of pretrial diversion used in Pennsylvania, as an alternative to trial, conviction, and sentencing. *See generally* PA. R. CRIM. P. Ch. 100, Committee Introduction, and PA. R. CRIM. P. 160-162 (1996). Usually, those eligible for participation in ARD are first offenders who demonstrate amenability to rehabilitation and treatment where the crime charged is minor and not involving a serious breach of the public trust. *Id.* Those "sentenced" to ARD undergo specialized rehabilitation and treatment tailored to the charged crime and upon successful completion, the record of the criminal charge is erased. *Id.* Both juveniles and adults are eligible to participate in ARD. *Id.*

84. BUREAU OF STATISTICS AND POLICY RESEARCH, PENNSYLVANIA COMM'N ON CRIME

The Department of Corrections capacity increased to 22,312 in 1994, in the midst of a two billion dollar building program, while the adult population grew to 28,302. Given increases in the number of sentenced persons and the policies of the Pennsylvania Board of Pardons and Parole, the current population is estimated to be over 32,000.<sup>85</sup>

How well does our costly prison system perform? The number of parole violators in the system has increased substantially, with the result that violators comprised 48% of the total Department of Corrections population.<sup>86</sup> About 36% of paroled offenders supervised by the Board of Parole are recommitted to prison within three years of release. Most commitments result from new offenses committed while on parole rather than from technical violations.<sup>87</sup> There is no reason to think that juvenile prisoners will fare better in this system than their adult counterparts.

## VII: CONCLUSION

With and without the recent changes, can the juvenile justice system meet the needs of the present time? Despite the violence, 94% of young people arrested in the United States are arrested for property crimes and minor offenses.<sup>88</sup> Most of the nation's juvenile offenders who commit serious offenses are dealt with sternly. A ten-state study published in 1994 stated that 87% of robberies, 81% of violent sex offender cases, as well as 69% of aggravated assault cases are formally adjudicated. In essence, a conviction results. In contrast, only about 13% of adults arrested for felony aggravated assault and battery are convicted.<sup>89</sup>

In analyzing the efficacy of Pennsylvania's juvenile justice reforms, one must look at both past and future trends. Juvenile Part 1 (serious offenses, including offenses against people) offenses were at the highest number ever, 6,270 in 1994. In 1975, the same Part 1 offenses numbered 5,924. The long term historical increase is only 6%.<sup>90</sup> Juvenile murder arrests have actually declined substantially from 1975, despite recent increases.

Beneath all the statistics are some real increases in violent juvenile crime. While some of the new legislation will remove more young offenders

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AND DELINQUENCY, TRENDS AND ISSUES FOR PENNSYLVANIA'S CRIMINAL JUSTICE SYSTEM, 51 (Harrisburg, Pa 1995).

85. 19 PA. LAW WEEKLY 3 (Feb. 5, 1996).

86. BUREAU OF STATISTICS AND POLICY RESEARCH, *supra* note 84, at 49.

87. *Id.* at 24.

88. *See* JONES & KRISBERG, *supra* note 82, at 2.

89. *Id.* at 24.

90. *See* PENNSYLVANIA STATE POLICE, *supra* note 46.



from the juvenile justice system, there are real doubts as to whether this will solve the ultimate problem of violent street crime. It is impossible to say how many more transfers to criminal court there will be under Act 33. Assuming a 100% increase, we are still only dealing with about 2.5 % of adjudicated juvenile offenders. If the offenders are ultimately sentenced to prison, they will be likely to join their adult counterparts as recidivists and parole violators. Indeed, 13% of juveniles transferred in 1986 had already been transferred once before.<sup>91</sup> This small group was obviously not impacted by their criminal court experience. Pennsylvania will soon have its high security, 500 bed juvenile prison, but it is unlikely that such a facility will change recidivist rates or much else.

In the words of the Pennsylvania Commission on Crime and Delinquency, "while incarceration may serve legitimate sentencing goals of punishment and retribution, its net effect does not include significant crime reduction."<sup>92</sup> The veracity of this statement cannot be in doubt, especially when we consider that the incarceration rates nearly doubled from 32% in 1980 to 61% in 1992 of convicted cases.<sup>93</sup> This increase, coupled with the doubling of transferred juveniles to the state's criminal courts, has not brought about a major reduction in crime.

On the other hand, the 1995 juvenile reform acts, in their final form, are generally reasonable alternatives, despite the harsh rhetoric of both opponents and proponents. The legislative process has tempered some of the more radical rhetoric, such as proposals to give the Pennsylvania District Attorneys Association the right to try as an adult any 13-year old charged with serious felonies. The juvenile system is now more open, and juveniles will be more easily tracked through police data banks.

This writer had serious concerns over some of the changes, such as opening juvenile courts to the public. These fears were misplaced as there has been no noticeable negative impact to date. The juvenile justice system has been quite successful overall in Pennsylvania. This state recorded 35,531 delinquency dispositions in 1994, with approximately 15,000 from Philadelphia County and Allegheny County, which contains the City of Pittsburgh. About 17% of dispositions have involved various types of placements.<sup>94</sup> This is hardly the "minor consequence" referred to by state officials.

There is recent data which identifies disappointing success rates with many juvenile placements. This is a serious defect which needs statewide

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91. See LEMMON ET AL., *supra* note 69, at 32.

92. *Id.*

93. See BUREAU OF STATISTICS AND POLICY RESEARCH, *supra* note 84, at 33.

94. *Id.* at 3.

attention. But that system is still strong. In fact, most juveniles see the juvenile court system only once, and recidivism is actually low.<sup>95</sup> In fact, it appears that a small percentage of juveniles account for a large percentage of juvenile violent crime. Both Philadelphia and national studies indicate about 5% of youth commit about 83% of serious crimes.<sup>96</sup> As noted in the Lemmon study, "the strength of the system is its ability to meet the identified needs of the juveniles coming before the court."<sup>97</sup> The system is based on the individual attention given to each youth, and hopefully that will not change.

Before and after "reform," the system served its young people and its communities well. Changing times and trends have challenged the juvenile justice system. If we as a society accept the reality that we cannot lock up all of our problem citizens, juvenile or otherwise, the system will continue to be viable. We can seriously question what impact the two billion dollar crash prison building program has had in Pennsylvania. As yet, there is no significant impact on crime. Neither will incarcerating large numbers of juveniles really impact crime on a long term basis. Incarceration will generate only headlines, not results.

The true solutions to violent juvenile crime sadly are not in the reforms, but rather in our communities, our lifestyles and moral choices, our economy, and ultimately in our families. At least from a rural prospective, community resources remain viable and perhaps critical. The times and circumstances call for innovative, somewhat localized, approaches to the problem of expanding numbers of delinquent teens.

Programs such as mentoring can make a positive impact. Mentoring is an approach where a delinquent youth is paired with a responsible adult citizen. Under this program, the citizen spends time with the youth, and works to earn the youth's trust and respect. This adult outlet for communications can provide positive guidance as well as a meaningful role model. The mentor compliments, but does not replace, probation and other rehabilitative services.

Community resources need not be expensive. For several years, my home country has operated an award winning summer youth program known as Trailblazers. Using tools, equipment and environmental support from the Pennsylvania Bureau of Forestry, delinquent youth build and maintain hiking and ski trails as well as municipal parks. They receive minimum wages for their work, which is frequently physically strenuous. The youth work with college student crew leaders who provide good role models, discipline, posi-

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95. See LEMMON ET AL., *supra* note 69, at 79.

96. HOWARD N. SNYDER & MELISSA SICKMUND, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: A NATIONAL REPORT 49, 158 (August, 1995).

97. *Id.* at 50.

tive feedback and informal counseling. Trailblazers activities are featured in area media, and participants receive recognition for their accomplishments. Overall supervision and organization are provided by the Juvenile Probation staff. Most participants are successful Trailblazer graduates in that they do not typically commit more juvenile offences. A very high percentage of participants have remained in high school after a summer in the program.

Trailblazers, and similar programs, are very cost effective relative to other options. The prevention of a single juvenile residential placement for one year saves more tax monies than the entire annual cost of the Trailblazer program.

Other initiatives such as school based probation and day treatment programs have been successful in reducing juvenile crime by adjudicated offenders. The school based probation program places probation staff right in the school attended by the offenders, with a resulting high degree of accountability and supervision. This program is particularly useful in more urban areas where there may be a significant density of young offenders in a given school. This program, if properly organized and staffed, has the potential to reduce the high school dropout rate, disciplinary problems, and ultimately juvenile crime.

These examples are but a few of the resources available in our communities. If we really care, and use the best our communities have to offer, we can influence juvenile crime. By keeping our programs small, lean, and accountable, we can offer individualized, cost effective, and meaningful rehabilitation to delinquent youth, including many violent youths.