Sentence Blending and the Promise of Rehabilitation: Bringing the Juvenile Justice System Full Circle

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NOTE

SENTENCE BLENDING AND THE PROMISE OF REHABILITATION: BRINGING THE JUVENILE JUSTICE SYSTEM FULL CIRCLE

CONTENTS

I. INTRODUCTION .................................................................................. 260

II. THE HISTORY AND PURPOSE OF THE JUVENILE JUSTICE SYSTEM ........................................................................ 264
    A. The Juvenile Justice System as a Treatment-Oriented, Rehabilitative Model—The Progressive Ideal .................. 264
    B. A Shift Towards Retribution—Constitutional Protections Broadened to Cover Juveniles .................................. 266
    C. Juvenile Crime Rates in the United States and Legislative Responses to These Trends .................................. 270

III. SENTENCE BLENDING—A STATUTORY RESPONSE TO JUVENILE DELINQUENCY .......................................................... 275
    A. A Functional Approach to the Basic Meaning and Structure of Sentence Blending ........................................ 275
    B. Statutory Models of Sentence Blending ....................................................................................................... 277
       1. The Minnesota Prototype ......................................................................................................................... 277
       2. Five Emerging Models of Sentence Blending Provisions ........................................................................ 279
          a. The Juvenile-Exclusive Blend Model .................................................. 280
          b. The Juvenile-Inclusive Blend Model .................................................. 280
          c. The Juvenile-Contiguous Blend Model ......................................... 281
          d. The Criminal-Exclusive Blend Model ......................................... 281
          e. The Criminal-Inclusive Blend Model ......................................... 282
IV. A RETURN TO PROGRESSIVE IDEALS?—SENTENCE BLENDING AS A CREATIVE AND VIABLE METHOD OF REFORM

A. The Juvenile- and Criminal-Inclusive Sentence Blends as the Most Promising Rehabilitative Models

B. The Juvenile- and Criminal-Inclusive Sentence Blends as a Promising Means of Rehabilitation and Crime Reduction

V. CONCLUSION

I. INTRODUCTION

In Pennsylvania, a fourteen-year-old hammers nails into the heels of a young boy; a thirteen-year-old in North Carolina beats and rapes a neighbor; in Washington, two twelve-year-olds shoot and kill a migrant worker; a nine-year-old in Pennsylvania shoots and kills a playmate; in Ohio, a six- and ten-year-old kill a two-year-old girl. Of the 641,250 individuals arrested for perpetrating violent crimes in the United States in 1992, 112,409 of those individuals were juveniles. Throughout the last decade alone, “the number of juveniles committing murder, rape, robbery and assault has increased by a whopping 93 percent.”

With these staggering statistics in mind, the juvenile justice system, as it now exists, has come under fierce attack for being too lenient towards our country’s most dangerous juvenile predators. “Today, faith

1. See Richard E. Redding, Juveniles Transferred to Criminal Court: Legal Reform Proposals Based on Social Science Research, 1997 UTAH L. REV. 709, 710.
3. Id.
4. See Jennifer M. O’Connor & Lucinda K. Treat, Note, Getting Smart About Getting Tough: Juvenile Justice and the Possibility of Progressive Reform, 33 AM. CRIM. L. REV. 1299, 1305 (1996). O’Connor and Treat emphasize that the sharp increase in juvenile crime throughout the last two decades has “deepened punitive sentiment,” pushing the public towards a “get tough” mentality on juvenile crime. See id.; see also, Robert E. Shepherd, Jr., How the Media Misrepresents Juvenile Policies, 12 CRIM. JUST. 37, 37 (1998) (asserting that the major impetus for the public’s “get tough” mentality “is generally attributed to [the] dramatic recent increase in juvenile delinquency and violent crime,” resulting in a demand to narrow the gap between the juvenile process and the adult criminal system). Thus, the United States’ populace has drawn the conclusion that the widespread increase in juvenile crime is directly related to the failure of the juvenile justice system. See Marygold S. Melli, Juvenile Justice Reform in Context, 1996 WIS. L. REV. 375, 390-91. “In general, the [juvenile] court has come to be perceived as ineffectual because of either an inability or an unwillingness to deal with a new breed of aggressive young offender[s].” 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, 630 (1994).
in the system’s capacity for rehabilitation has been largely lost.\textsuperscript{5} The question thus remains: How should the criminal and juvenile justice systems in the United States deal with the youth of our country who commit heinous acts of violence against their peers and their elders? Should the entire juvenile justice system be abandoned in favor of one unified system, which would treat and sentence juveniles as adults for all crimes they commit? The pervasive problems these questions seek to address can only be reasonably solved through change. The juvenile justice system was predicated upon rehabilitating the youth of the United States, in whose hands society has placed the future of our country. We, as United States citizens, must therefore cling to this rehabilitative ideal, and repair the flaws of our juvenile justice system to protect the “investment society has made in its youth,” the leaders of tomorrow.\textsuperscript{6} “With kids as young as thirteen and eleven, it’s foolish to abandon all hope of rehabilitation.”\textsuperscript{7}

Since the inception of the juvenile justice system as a separate and distinct mechanism for dealing with juvenile criminals, society has striven to rehabilitate young criminal offenders.\textsuperscript{8} The juvenile justice system was founded upon this progressive ideal.\textsuperscript{9} Since their inauguration, juvenile courts “have been monuments to American optimism. . . . [T]he courts represent expressions of faith in judges’ capacity to change behavior and thereby turn wayward children into law abiding citizens.”\textsuperscript{10} The goal of the juvenile justice system, rooted in notions of rehabilitation, represents a departure from the goals of the adult criminal justice system, namely accountability and punishment.\textsuperscript{11} However, the original goals the juvenile justice system once sought to attain have sadly failed to materialize.\textsuperscript{12} As such, the juvenile justice system has

\begin{itemize}
\item \textsuperscript{5} McCarthy, supra note 4, at 641-42.
\item \textsuperscript{6} Laureen D’Ambra, A Legal Response to Juvenile Crime: Why Waiver of Juvenile Offenders Is Not a Panacea, 2 ROGER WILLIAMS L. REV. 277, 303 (1997).
\item \textsuperscript{7} Adult Time for Adult Crime? ‘Blending’ Is a Better Way, USA TODAY, Mar. 30, 1998, at 14A.
\item \textsuperscript{8} See Eric K. Klein, Note, Dennis the Menace or Billy the Kid: An Analysis of the Role of Transfer to Criminal Court in Juvenile Justice, 35 AM. CRIM. L. REV. 371, 373 (1998). As Klein asserts, United States citizens at one time viewed juvenile criminal offenders as less culpable than adult criminal offenders. See id. As such, the juvenile justice system has focused on “the care and rehabilitation of the child rather than on punishment and incapacitation.” Id.
\item \textsuperscript{9} See O’Connor & Treat, supra note 4, at 1306.
\item \textsuperscript{10} Paul J. McNulty, Natural Born Killers? Preventing the Coming Explosion of Teenage Crime, POL’Y REVIEW, Winter 1995, at 84, 86. “Judge Ben Lindsay, founder of the Denver Juvenile Court, has described his role within the court as ‘part educator, part artist, and part physician . . . [where a] child’s case is not a legal case.”’ Id.
\item \textsuperscript{11} See id.
\item \textsuperscript{12} See Melli, supra note 4, at 383. As the system of juvenile courts matured and developed
\end{itemize}
taken a retributivist turn, while "[t]he legal emphasis has shifted from protecting and reforming children to 'protecting' society from [the] young people . . . deemed incapable of rehabilitation." With the public demanding a "get tough" approach to the widespread increase in juvenile crime, politicians and legislatures across the country are attempting to respond to public sentiment and address the juvenile crime problem.

Among the various proposed reforms filtering across the nation, an innovative legislative action called "sentence blending" has been introduced as a means of striking a balance between the levying of harsh adult criminal sentences on juvenile offenders, and the imposition of less strict and restrictive juvenile placements. Under the Minnesota prototype, blended sentencing gives certain juvenile criminal offenders, usually those who commit violent crimes, both a juvenile sentence and an adult one. If the offender complies "with the terms of the juvenile sentence, which includes longer and more intensive supervision than a typical juvenile sanction, they will eventually be released without the stain of an adult criminal record. However, if the offender violates the "juvenile sentence in any way, he can be sent immediately into the adult system."

across the country,

it became increasingly clear that for many cases before the juvenile court rehabilitation was not a feasible objective. In many cases, the facilities and personnel of the court were inadequate; in other cases society lacked the knowledge of how to rehabilitate adolescents who have been alienated from the legitimate institutions of society. In these cases, the primary focus was on protection of the public, a focus that began to raise questions about the court's informal rehabilitation procedures.

Id. As Joseph F. Yeckel has stated, the increasingly violent nature of juvenile criminal offenses over the last several decades has "thwarted the realization" of rehabilitation as a feasible goal. See Joseph F. Yeckel, Note, Violent Juvenile Offenders: Rethinking Federal Intervention in Juvenile Justice, 51 WASH. U. J. URB. & CONTEMP. L. 331, 336 (1997).


14. See Redding, supra note 1, at 711-14. With the failure of traditional juvenile justice systems to adequately rehabilitate juvenile offenders, a number of states have been prompted to "modify their juvenile codes to remove . . . juveniles from the protective jurisdiction of the juvenile courts." Yeckel, supra note 12, at 336. Los Angeles County District Attorney Gil Garcetti maintains that "[w]e need to throw out our entire juvenile justice system." Redding, supra note 1, at 712. Accordingly, juvenile justice reform represented a prominent issue in the 1994 gubernatorial elections in Florida and Texas. See id. at 714. Myriad state legislatures have also enacted or revised various statutes to address the juvenile crime problem. See id.

15. See Pam Belluck, Fighting Youth Crime, Some States Blend Adult and Juvenile Justice, N.Y. TIMES, Feb. 11, 1998, at A1. In an attempt to deal with youths who commit brutal attacks and vicious crimes, Minnesota fashioned a different approach to sentencing which has caught on in a number of other states. See id.

16. See id.

17. Id.

18. Id.
SENTENCE BLENDING

The bedrock principle underlying sentence blending is one of compromise. "The idea is to give a young offender some rope, enough to yank himself out of a life of crime, or to hang himself and wind up in prison."\textsuperscript{19} Although in its early stages, this statutory reform presents a viable and innovative opportunity to restructure the presently plagued juvenile justice system, as opposed to the broad, sweeping changes the majority of United States citizens have proposed in eliminating the ailing system already in place.\textsuperscript{20}

Part II of this Note discusses the history and purpose of the juvenile justice system. Specifically, Section A provides an in-depth look at the original purpose of the juvenile justice system as a treatment-oriented, rehabilitative scheme of combating juvenile delinquency. Section B reflects the shift towards punitive retribution as the focal point of the juvenile justice system, beginning with the broadening of constitutional protections afforded to juveniles, which mirror that of the adult criminal justice system. Part II concludes with a discussion in Section C of juvenile crime rates in the United States and legislative responses to these trends.

Part III discusses the issue of sentence blending as a statutory response to juvenile delinquency. Section A delineates the basic meaning and structure of this reform, with particular attention given to generalized sentence blending guidelines by various state legislatures. Section B sets forth the varying models of sentence blending provisions, including the Minnesota prototype.

Part IV presents a look towards the future, and argues for the implementation of sentence blending as a creative and viable method of reform. In particular, Section A espouses the most promising model of sentence blending, and critiques the shortcomings of the differing provisions. Section B subsequently traces the impact that the most promising form of sentence blending has had on the juvenile justice system, and the viability of such reform. Moreover, Section B argues that the use of sentence blending is an effective tool for rehabilitating juvenile delinquents, despite attacks from critics, in that it gives these youths a second chance to become productive members of society. In conclusion, Section B asserts that sentence blending may effectively reduce crime rates by rehabilitating juvenile offenders, and levying adult sentences on those who fail to successfully fulfill their juvenile sentence.

\textsuperscript{19} Id.

\textsuperscript{20} See e.g. McCarthy, supra note 4, at 629-30 (discussing the sentiment of some United States citizens who are calling for drastic changes in the juvenile justice system, including the entire abolition of the juvenile court).
II. THE HISTORY AND PURPOSE OF THE JUVENILE JUSTICE SYSTEM

A. The Juvenile Justice System as a Treatment-Oriented, Rehabilitative Model—The Progressive Ideal

“Ideological changes in cultural conceptions of children and in strategies of social control during the nineteenth century led to the creation of the juvenile court in 1899.” The emergence of a separate and distinct juvenile justice system in the United States coincided with the increase in urbanization and industrialization in the late nineteenth century.22 As part of the Progressive Era reform, individuals became more concerned with protecting youths than with punishing them for their wrongdoing, believing that a child’s poor living environment, rather than his willful behavior, caused juvenile delinquency.23 As such, an increased push developed for rehabilitating youths, rather than punishing them as adults.24 In the Progressive view, juveniles are malleable, and, therefore, most receptive to rehabilitation.25 Rehabilitation, moreover, was the only viable means of combating juvenile delinquency as per the Progressive strand of thought;26 a child criminal “was a criminal only because he lacked the necessary moral and educational structure and instruction that a healthy non-criminal child received. Thus, if such a delinquent child could be ‘treated,’ he could in essence be cured of the ‘ill’ of criminality cast upon him by circumstance.”27

22. See O’Connor & Treat, supra note 4, at 1302-03.
23. See id. at 1303.
24. See id. The Progressive reformers of the late nineteenth century strove to move away from punitive treatment of juveniles, to a more rehabilitative system with respect to the “correction of delinquent children.” See Klein, supra note 8, at 376. A sect of the Progressive reformers, deemed the “child savers,” devoted their attention to “discovering and remedying the causes of juvenile delinquent behavior.” Id. Moreover, the “child savers” viewed juvenile criminal offenders “as a group in need of care and guidance, not punishment.” Id. Justice Abe Fortas characterized the “child savers” as believing “that society’s role was not to ascertain whether the child was ‘guilty’ or ‘innocent,’ but ‘What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.’” In re Gault, 387 U.S. 1, 15 (1967); see also, Klein, supra note 8, at 376 (noting the Progressive’s sought to move away from a punitive model and toward a rehabilitative model).
27. Id. at 2111.
Molded in the Progressive reformers’ views, the original juvenile court was established in Cook County, Illinois in 1899.\(^{28}\) By 1923, Wyoming and Connecticut were the only states not to follow Illinois’ lead, and by the early 1940s, independent juvenile court systems had been created in every state in the country.\(^{29}\) The structure of the juvenile court system was distinctively different from other criminal courts throughout the nation;\(^{30}\) the juvenile court system was “more like a social agency than a court.”\(^{31}\) Based on a non-adversarial, therapeutic model, the juvenile court system’s primary function was “to determine what course of treatment was necessary [and most viable] to rehabilitate the juvenile” offender.\(^{32}\) Thus, the focus of the juvenile court was clinical, rather than punitive.\(^{33}\)

As the Progressive reformers envisioned, the juvenile court system was predicated upon the informality of the proceedings.\(^{34}\) The structure of juvenile court proceedings was intended to give an impression of concern. Instead of a judge sitting behind a judicial bench, the father-judge, the friend-probation officer, and the juvenile and his or her parents sat around a conference table or around the judge’s desk in chambers to consider what would be in the best interest of the child.\(^{35}\)

28. See D’Ambra, supra note 6, at 280. “In 1882, national legislation gave ‘criminal courts discretion either to sentence juveniles to reform school or to impose “such punishment as is otherwise provided by the law,”’” Id. In essence, a child adjudicated by the criminal court was treated and sentenced in the same manner as an adult. See Kamenstein, supra note 26, at 2109. In the late nineteenth century, prior to the establishment of a separate criminal justice system devoted solely to juvenile crimes, nationwide legislative reforms were passed in an effort to treat juveniles in a more humane manner. See D’Ambra, supra note 6, at 26. Such reform consisted of erecting houses of refuge for youths, separate from those that housed adult prisoners. See id. Following in propinquity of such reform, a separate juvenile court was founded. See id.

Despite the Progressives’ altruistic approach to rehabilitating juvenile offenders, Revisionists rejected the Progressives’ purported humanistic motives and argued that the major impetus for the creation of the juvenile court was a “class bias intent upon culturally assimilating the children of urban, lower-class, and often immigrant families.” Wendy Anton Fitzgerald, Maturity, Difference, and Mystery: Children’s Perspectives and the Law, 36 ARIZ. L. REV. 11, 90 n.514 (1994). In essence, the Revisionists believed the Progressives erected the juvenile court as a means to control lower class children and to replace “less desirable [lower class] environments with healthier ones.” Kristina H. Chung, Note, Kids Behind Bars: The Legality of Incarcerating Juveniles in Adult Jails, 66 IND. L.J. 999, 1009 n.58 (1991).

29. See Kamenstein, supra note 26, at 2109.
30. See Melli, supra note 4, at 378.
31. Id.
32. Id.
33. See id.
34. See Yeckel, supra note 12, at 335.
35. Melli, supra note 4, at 379.
Moreover, the juvenile court was not focused on obtaining convictions, but instead sought the best result for the child. Any form of institutionalization upon a finding of delinquency was not punitive in nature, but rather was for corrective and rehabilitative purposes. With this in mind, "the juvenile was to be released as soon as he . . . was rehabilitated, or, conversely, to be kept in custody or under supervision until the age of majority. The treatment had no relationship to the crime involved and there was great flexibility . . . in the type of treatment allowed."  

B. A Shift Towards Retribution— Constitutional Protections Broadened to Cover Juveniles

By the 1960s, it had become clear to many United States citizens that the separate criminal justice system established solely for the adjudication of juveniles had fallen short of its goals. As the Progressive reformers had envisioned, the juvenile justice system was founded on the notion of individualized treatment, which assessed what was in the best interest of each particular juvenile criminal offender. However, "the system soon moved toward aggregate treatment as it became overburdened by growing numbers of juvenile offenders." As such, individualized treatment was no longer a feasible objective and did not represent an accurate depiction of reality. Instead, juvenile offenders were often given either a slap on the wrist, or were sent to large congregate institutions, which could not possibly treat each juvenile on an individualized basis. As such, the dispositions of juvenile delinquent cases began to resemble that of adult sentences meted out by adult criminal

36. See id.
37. See id. at 380.
38. Id.
39. See O'Connor & Treat, supra note 4, at 1303.
40. See id.
41. Id. Far from the principles the Progressive reformers founded it upon, the juvenile justice system took on a more factory-like approach to the disposition of juvenile criminal offenders' cases. See id.
42. See id. "[Y]ouths would pass through the system numerous times . . . [while the] juvenile justice systems lacked resources to implement effective, individualized treatment programs. Instead, offenders were placed in large congregate institutions that provided little treatment, if any." Id.; see also, Melli, supra note 4, at 383 (explaining that the facilities and personnel of the court were often inadequate).
43. See O'Connor & Treat, supra note 4, at 1303-04. Juvenile offenders were placed in these factory-like facilities for periods of time ranging from weeks to years. See id. at 1303. The treatment each juvenile was to receive at these institutions in no way reflected their individual need, nor was such treatment tailored to the severity of the juvenile's crime. See id. at 1303-04. "Moreover, these facilities provided no follow-up treatment to prevent recidivism, and instead released offenders into the community without guidance." Id. at 1304.
While this reality was materializing, however, the juvenile justice system was not equipped to afford children adjudicated before juvenile courts the same due process safeguards found in their adult counterparts. Thus, while the goal of the juvenile justice system was to adjudicate in the best interest of the child to protect him, the lack of procedural protections resulted in many children being unjustly and arbitrarily punished.

"By the 1960s, the discrepancy between the rehabilitative rhetoric and the mass-production reality of these systems had become obvious." The Supreme Court responded to this discrepancy in a litany of cases, beginning in 1966 with *Kent v. United States.* Thus, a new juvenile court began to emerge. In *Kent,* the District of Columbia Juvenile Court waived jurisdiction over the child who stood accused, and sent him to be tried as an adult in criminal court. The Supreme Court held, however, that a juvenile who may potentially be waived into adult criminal court is "entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court’s decision." Moreover, the Court asserted its view that the

44. See Yeckel, *supra* note 12, at 341.
45. See Klein, *supra* note 8, at 377. While the Progressive "child savers" had the best of intentions when they created the juvenile court system, one of their policies included not extending due process protections to children accused of crimes. See id.
46. See id.
47. O’Connor & Treat, *supra* note 4, at 1304.
48. 383 U.S. 541 (1966); see also O’Connor & Treat, *supra* note 4, at 1304 (explaining that the Supreme Court recognized and reacted to obvious discrepancies between rehabilitation and mass-production).
49. See *Kent,* 383 U.S. at 546.
50. Id. at 557. As an appendix to its decision, the Supreme Court set out the following criteria to be considered when a juvenile court is determining whether to waive jurisdiction over the child, or to transfer him to criminal court:
1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment.
5. The desirability of trial and disposition of the entire offense in one court when the juvenile’s associates in the alleged offense are adults who will be charged [with the same offense in the adult criminal court].
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile.
original purpose of the juvenile justice system, grounded on rehabilitation and treatment of juvenile criminal offenders, was not truly being achieved;\textsuperscript{51} to the Court, a child adjudicated in the juvenile court system "receive[d] the worst of both worlds . . . he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."\textsuperscript{52}

A year after the \textit{Kent} decision, the Supreme Court ruled on the case \textit{In re Gault}.\textsuperscript{53} Gerald Gault was arrested for making an indecent phone call to a neighbor.\textsuperscript{54} Incident to this arrest, a petition was filed which made no reference to any factual basis for the initiated judicial action, and several informal hearings were held at which no records or transcripts were kept, the alleged victim was never present, and Gault was not afforded the right to counsel.\textsuperscript{55} In a stern criticism of the juvenile justice system, the Supreme Court stated that the history of the juvenile court has shown that "unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."\textsuperscript{56} In the absence of such procedural safeguards and substantive standards, the Court further maintained that juveniles would be the victims of dispositional arbitrariness.\textsuperscript{57} In essence, the juvenile court's failure "to observe the fundamental requirements of due process ha[d] resulted in instances . . . of unfairness . . . and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy."\textsuperscript{58} As such, the Court broadened the Constitutional protections of due process to safeguard children adjudicated in juvenile courts by extending juveniles the right to elementary procedural safeguards, including the right to advance notice of charges,\textsuperscript{59} the right to counsel,\textsuperscript{60} the privilege against self-incrimination,\textsuperscript{61} and the right to confront and cross-examine witnesses.\textsuperscript{62}

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense).

\textit{Id.} at 566-67.

51. See \textit{id.} at 556.

52. \textit{Id.} (citations omitted).


55. See \textit{id.} at 4-7.

56. \textit{Id.} at 18.

57. See \textit{id.} at 18-19.

58. \textit{Id.} at 19-20.

59. See \textit{id.} at 33-34.

60. See \textit{id.} at 36-37.

61. See \textit{id.} at 55.

62. See \textit{id.} at 56.
While the Court did not set out to alter the rehabilitative model of the juvenile court system, in the aftermath of its decisions, "judicial, legislative, and administrative changes have fostered a procedural and substantive convergence with adult criminal courts." The Supreme Court, in effect, criminalized the juvenile justice system by requiring adherence to criminal procedures, which made the juvenile system more adversarial in nature, much like its adult criminal counterpart. Thus, Kent and Gault transformed the juvenile justice system from the social welfare agency the Progressive reformers intended, to a "wholly-owned subsidiary of the criminal justice system." The post-Gault era witnessed "a fundamental change in the jurisprudence of sentencing," as courts now focused on considerations of the offense as a means of retribution, rather than on considerations of the offender to foster rehabilitation. This push towards criminalizing the juvenile justice system, however, was also due in part to public outcry against such a "therapeutic" system. The United States populace was becoming increasingly infuriated with a juvenile justice system they perceived as being too lenient on society's most dangerous juvenile offenders. As Illinois Representative Thomas Cross stated, "'[t]he idea before was, '[k]ids make mistakes—let's not tarnish them for life,' . . . But now we're seeing cases where kids are committing major offenses. The current system isn't working in those cases.'"

In 1978, the Willie Bosket case only deepened this public sentiment and set off a national movement for establishing more severe treatment of juvenile criminal offenders. When Willie Bosket was only

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63. See Feld, supra note 21, at 72-73.
64. Id. at 73.
65. See Melli, supra note 4, at 390.
66. Feld, supra note 21, at 73. According to Feld, the requirement of due process protections in the juvenile courts shifted the system's focus from assessing the needs of the child and what treatment was in their best interest, to static criminal procedure and establishing proof of criminal activity. See id.
68. See id. at 700-01.
69. See O'Connor & Treat, supra note 4, at 1305. With steady increases in juvenile crime rates over the last two decades, United States citizens have developed a deep punitive sentiment with respect to the juvenile justice system. See id. "Rehabilitation lost its importance in the public debate over how to process juvenile offenders . . . [and] the public pushed to 'get tough' on juvenile crime." Id.
70. See Klein, supra note 8, at 383.
72. See Klein, supra note 8, at 383.
fifteen-years-old, he shot and killed two New York City subway passengers whom he was robbing. This grave offense occurred merely six months after Bosket had been released from a maximum-security youth facility where he had served time for a prior criminal offense. Despite the severity of this crime, Bosket was subject exclusively to juvenile court jurisdiction, and, as such, faced a maximum placement of five and a half years. Incensed by this heinous crime, and by the leniency they felt the juvenile court afforded Bosket, the citizens of New York demanded legislative action establishing tougher treatment of juveniles accused of criminal activity. "Until recently, the juvenile court’s central thrust, indeed its entire reason for being, has been an attempt to reform or rehabilitate children and to prevent them from entering a lifetime of crime.... Today, faith in the system’s capacity for rehabilitation has been largely lost."

C. Juvenile Crime Rates in the United States and Legislative Responses to These Trends

Between 1965 and 1990, juvenile crime arrests quadrupled, with a large bulk of the increase occurring in the last decade alone. Even more alarming, the arrest rate for juveniles for the commission of violent crimes (murder, forcible rape, robbery, and aggravated assault) grew twice as fast between 1987 and 1991 as arrest rates for adults for

73. See id. Bosket, who claims to have committed 2,000 crimes by the age of 15, provides ample justification for those individuals who maintain rehabilitation is not a panacea for juvenile crime. See Richard Behar, "I Won’t Kill, I’ll Just Maim," TIME, May 29, 1989, at 30. During his criminal career, Bosket shot to death two New York City subway passengers, attempted to rob and knife a 72-year-old half-blind man, "stabbed a prison guard, smashed a lead pipe into another guard's skull, set his cell on fire seven times, choked a secretary, battered a reformatory teacher with a nail-studded club, tried to blow up a truck, sodomized inmates, [and] beat up a psychiatrist." Id.

74. See Klein, supra note 8, at 383.

75. See id. Under New York law, a juvenile could only be placed in a “treatment” facility until his 21st birthday. See id.

76. See id.

77. McCarthy, supra note 4, at 641-42.

78. A valuable resource for individuals interested in legislative developments in the juvenile justice system is the Office of Juvenile Justice and Delinquency Prevention’s report entitled: “State Responses to Serious and Violent Juvenile Crime.” See Patricia Torbet et al., State Responses to Serious and Violent Juvenile Crime, Washington D.C.: Office of Juvenile Justice and Delinquency Prevention (1996). In particular, Chapter Seven of the report sets forth a number of case studies analyzing recent legislative reforms that states have enacted in an effort to either attack specific problems within, or to, in effect, retool their current juvenile justice systems, as a means of alleviating public fear of serious juvenile crime. See id.

79. See Redding, supra note 1, at 762.
commission of identical offenses.\textsuperscript{59} With respect to violent crimes committed in the United States today, teenage offenders account for the largest portion of such committed offenses.\textsuperscript{60} Criminal offenders under the age of twenty-one "commit more than one-fourth of all violent crime . . . [m]ore murder and robbery is committed by eighteen-year-old males than any other group, and more than one-third of all murders are committed by offenders under the age of twenty-one."\textsuperscript{61} Simply stated, younger children are increasingly involved in the commission of deadlier, life-threatening crimes.\textsuperscript{62} As Washington, D.C. Superior Court Judge Susan R. Winfield stated, "[t]here is far more gratuitous violence and far more anger, more shooting" among today's youths.\textsuperscript{63} A number of statisticians believe, however, the greatest danger with respect to the commission of violent crime lies ahead.\textsuperscript{64} In the waning years of this decade and throughout the next, it is argued that "America will experience an 'echo boom'—a population surge made up of the teenage children of today's aging baby boomers. As today's five-year-old children become tomorrow's teenagers, the United States faces the most violent juvenile crime surge in its history."\textsuperscript{65} If trends in juvenile crime continue along the course they have charted thus far, "the number of juvenile arrests for violent crime will double by the year 2010."\textsuperscript{66}

With such dramatic increases in juvenile crime rates across the nation, and with the grim prospect of even further escalation, United States citizens have demanded swift and severe action.\textsuperscript{67} While many of

\textsuperscript{59} See Hunter Hurst, \textit{III, Crime Scene: Treating Juveniles as Adults}, TRIAL, July 1997, at 34-35. Juvenile arrest rates for violent offenses, including murder, forcible rape, robbery, and aggravated assault, grew 50% between 1987 and 1991. \textit{See id.} In comparison, the arrest rates for adults for the commission of the same crimes rose only 25% during that period of time. \textit{See id.} A more startling snapshot of violent juvenile crime is embodied by the overwhelming rise in homicides committed by boys 15 to 19 years of age, jumping an alarming 154% between 1985 and 1991. \textit{See McNulty, supra note 10, at 84.}

\textsuperscript{60} \textit{See McNulty, supra note 10, at 84.}

\textsuperscript{61} \textit{Id.} While more violent crime in the United States is committed by teenagers as opposed to any other age group, it is interesting to note that "[t]eenagers from fatherless homes commit more crime than teenagers from intact families," a sobering statistic given the reality of the makeup of present day families. \textit{Id.}

\textsuperscript{62} \textit{Id.} While more violent crime in the United States is committed by teenagers as opposed to any other age group, it is interesting to note that "[t]eenagers from fatherless homes commit more crime than teenagers from intact families," a sobering statistic given the reality of the makeup of present day families. \textit{Id.}

\textsuperscript{63} \textit{See Richard Lacayo, When Kids Go Bad, TIME, Sept. 19, 1994, at 60.}

\textsuperscript{64} \textit{Id.} at 61.

\textsuperscript{65} \textit{See McNulty, supra note 10, at 84.}

\textsuperscript{66} \textit{Id.} The U.S. Census Bureau reported in 1980 a population of 10.7 million males in the 15- to 19-year-old age group. \textit{See id.} Despite a 15% decline throughout the early 1990s, the population of this age group will have rebounded to 10 million by the turn of the century, and will continue to skyrocket to 11.5 million by 2010. \textit{See id.} With this dramatic change in demographics, United States citizens may begin to see the perpetration of even more youth violence. \textit{See id.}

\textsuperscript{67} \textit{Torbet, supra note 78, at 1 (citation omitted).}

\textsuperscript{68} \textit{See McCarthy, supra note 4, at 629.} In a 1993 poll conducted by USA To-
this country's criminal offenders represent wayward children who can be rehabilitated and transformed into law-abiding citizens, countless individuals maintain communities have the right to be protected from such pervasive crime. Moreover, it is asserted that punishments levied against juvenile criminal offenders "must have sufficient 'teeth' to be meaningful punishments for juveniles whose impoverished life circumstances may already have hardened them against the negative consequences of their actions." Legislatures across the country have sought to respond to this public demand, in an effort to give juvenile sanctions the "teeth" society most desperately wants and believes it needs. "Nearly every State has taken legislative or executive action in response to escalating juvenile arrests for violent crime and public perceptions of a violent juvenile crime epidemic." Generally speaking, the various statutory reforms that have been enacted seek to treat juvenile offenders more like their adult counterparts. In particular, various state proposals have called for the lowering of the maximum age for juvenile court jurisdiction, the raising of the maximum age for which a juvenile may be kept at juvenile placement institutions, the use of adult correctional facilities in sentencing, and the imposition of identical sentences for adults and ju-

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89. See McNulty, supra note 10, at 84.
90. See Redding, supra note 1, at 761.
91. Id. As Attorney General Janet Reno has stated, "It's imperative for serious juvenile offenders to know they will face a sanction. . . . Too many of them don't understand what punishment means." Id.
92. See O'Connor & Treat, supra note 4, at 1305. Over the last number of years, state legislatures across the country have adopted various measures establishing harsher juvenile sentences and relaxing restrictions on transferring juveniles to adult criminal courts. See id.
93. Torbet, supra note 78, at xi. According to a report from the Office of Juvenile Justice and Delinquency Prevention, the trend toward treating juvenile offenders as adults within the criminal justice system is based on a number of factors and considerations, including the type of offense, the age of the offender, the offense history, and the offender's receptiveness to rehabilitation. See Prosecute Certain Serious, Violent, and Chronic Juvenile Offenders in Criminal Court, (visited Dec. 4, 1998) <http://www.ncjrs.org/ojdp/action/sec2.html>. In particular, such responses on the part of the states can be attributed to the "increasing incidence and seriousness of juvenile violence and an overcrowded and overburdened juvenile justice system . . . and concern that the juvenile justice system does not dispense sufficiently tough sanctions to provide accountability to victims and society." Id.
veniles charged with the same type of offense. These recent "alterations" within the juvenile justice system have, in effect, de-emphasized the Progressives' notions of rehabilitation and the "best interests" of the child offender, and have instead emphasized the "importance of protecting public safety, enforcing children's obligations to society, applying sanctions consistent with the seriousness of the offense, and rendering appropriate punishment to offenders." The states' efforts to "crack down" on juvenile crime thus reflect a shift toward more retributive sentencing policies.

The most common and popular legislative proposal is the loosening of restrictions governing the transfer of juveniles to adult criminal courts. Over the past twenty years, a significant number of states have expanded legislative provisions allowing for the prosecution of juveniles in adult criminal court. "Today, all fifty States and the District of Columbia allow for juvenile prosecution in [adult] criminal court" through various transfer mechanisms. Proponents of transferring juveniles to adult criminal court believe such a practice effectively confines violent offenders for longer, more severe terms, and is therefore the most appropriate sanction for those offenders who are beyond the scope of rehabilitation. Reflecting this "optimistic" view, the percentage of juvenile cases transferred to adult criminal court increased by seventy-one percent between 1985 and 1994. The primary reason

95. See id.
96. See Feld, supra note 67, at 709.
97. Id.
98. See Feld, supra note 21, at 80.
99. See Aron & Hurley, supra note 2, at 12.
101. Id. "During the past 4 years, 24 States added crimes for which juveniles can be criminally prosecuted, and 6 States lowered the minimum age for transfer to 14." Id.; see also BUREAU OF JUST. ASSISTANCE, U.S. DEP'T OF JUST. 1996 NATIONAL SURVEY OF STATE SENTENCING STRUCTURES 21 (1998). Out of these thirty states, four have both "lower[ed] ... age limit[s] and added crimes." Id. In a small number of states, mandatory transfer provisions apply to certain offenders as young as 10-years-old. See Juvenile Justice Reform Initiatives in the States: 1994-1996, supra note 100. In New York, a broad legislation scheme has been enacted, providing for the transfer of juveniles to adult criminal court. In that State, juveniles may be prosecuted in adult criminal court ... [as young as age] 13 ... when charged with a violent felony. Juveniles with a specific prior record of offenses are prosecuted in adult criminal court at age 14 and older when charged with robbery, burglary, or assault and at any age when charged with a felony. Moreover, ... all 16- and 17-year-olds are prosecuted in [adult] criminal court.

Id.
102. See O'Connor & Treat, supra note 4, at 1313.
103. See JEFFREY A. BUTTS, OFF. OF JUV. JUST. AND DELINQ. PREVENTION, U.S. DEP'T OF
many individuals clamor for the transfer of juvenile offenders to adult
criminal court is that “the [juvenile] court is not given the authority to
impose services and rehabilitative confinement of sufficient intensity
and duration to have any hope of reforming these offenders or of provid-
ing adequate protection to the community.”

Despite the proclaimed panacea such legislative enactments pro-
vide for the ills of juvenile criminal conduct, the critics of juvenile
transfer provisions espouse the conviction that such a method does not
meet society’s “need” for protection from the vilest of juvenile crime,
and is counterproductive to the goals of the juvenile justice system.

Current data available to the Office of Juvenile Justice and Delinquency
Prevention indicates the expanded transfer and waiver provisions en-
acted by the states over the past twenty years have not deterred juvenile
crime. It is unclear whether juvenile criminal offenders receive
harsher or longer sentences in adult criminal court than they would have
received in juvenile court. Moreover, juvenile offenders adjudicated in

JUSTICE, DELINQ. CASES WAIVED TO CRIMINAL COURT, 1985-1994 (1997). In 1994, the cases
most likely waived to adult criminal court involved offenses to the person. See id. Prior to 1994,
drug offense cases were more likely to be transferred than offenses to the person. See id. Throughout
the period from 1985 to 1994, criminal cases involving black youths were more likely to be
waived than cases involving other youths. See id. Waiver of black juveniles charged with drug
offenses increased substantially between 1985 and 1991. See id. However, between 1992 and 1994
waivers of drug cases declined among black youths and person offenses became the cases most
likely to be waived to adult criminal court. See id. Between 1985 and 1994, cases involving white
youths were more likely to be waived if the most serious charge asserted in the petition was a per-
son offense. See id.

104. Stephen Wizner, On Youth Crime and the Juvenile Court, 36 B.C. L. REV. 1025, 1026

105. See O'Connor & Treat, supra note 4, at 1314. Studies have shown that adult criminal
courts are actually more likely to release juveniles convicted of serious crimes. See id. Opponents
to juvenile transfer also argue that a child’s confinement to an adult correctional facility has per-
vasive harmful effects which,

outweigh any possible rehabilitative effect on the juvenile. Sexual and physical assaults
against juveniles are more frequent in adult facilities than they are in juvenile facilities

.... Thus, .... sentencing juveniles to adult .... corrections facilities tends to be coun-
terproductive because exposure to violence in such facilities will likely cause subse-
quent violent crime.

Id. at 1315-16.

“Separate studies [conducted] in Florida and Minnesota confirm that juveniles transferred to adult
criminal court have higher recidivism rates than juvenile offenders retained in juvenile court.” Id.
In Florida, in particular, juveniles who were “prosecuted as adults were more likely to commit
additional crimes and more serious offenses upon release than their counterparts adjudicated in
juvenile court.” Id.

107. See id. More often than not, juveniles who are adjudicated before adult criminal courts
receive significantly shorter sentences than those juveniles processed through the juvenile court
system. See O’Connor & Treat, supra note 4, at 1314. “A thirteen-year-old juvenile convicted of
the adult criminal system are more likely to re-enter society as potential career criminals rather than rehabilitated members of the community.\textsuperscript{108} Skeptical of the reality of transfer provisions as a solution to the faltering juvenile justice system, opponents of such measures stress the tremendous impact transfer provisions have on a young individual's life.\textsuperscript{109} Juveniles transferred to adult criminal court may “face a life or death sentence, incarceration in State prison, and a permanent criminal record . . . [while children] adjudicated in juvenile proceedings . . . must be released at age twenty-one, receive rehabilitative treatment in a juvenile facility, and may be permitted to have their juvenile records expunged.”\textsuperscript{110}

Adjudication of a child in either juvenile court or adult criminal court has significant negative effects for both society at large and the child in question. However, is there a better solution to minimize these negative effects for both the juvenile and the populace, in an effort to rehabilitate the United States’ youth while protecting our communities? In essence, how can our justice system strike a balance between the “best interests” of the juvenile and the desires of the public for safety and accountability?

III. SENTENCE BLENDING—A STATUTORY RESPONSE TO JUVENILE DELINQUENCY

A. A Functional Approach to the Basic Meaning and Structure of Sentence Blending

In an effort to bridge the gap between the principles of rehabilitation that the juvenile justice system was founded upon, and current sentiments of retribution which echo throughout the halls of juvenile justice, many state legislatures across the country are experimenting with new options for sentencing juvenile criminal offenders.\textsuperscript{111} As stated in Parts II.B and II.C of this Note, many states in recent years have broken

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{108} See D'Ambr, supra note 6, at 295.
\item \textsuperscript{109} See Juvenile Justice Reform Initiatives in the States 1994-1996, supra note 100.
\item \textsuperscript{110} Id.
\item \textsuperscript{111} See Torbet, supra note 78, at 11.
\end{enumerate}
\end{footnotesize}
with the traditional emphasis on individualized sentences for juvenile offenders focusing on the needs of the juvenile. Instead, states have re-defined the juvenile court’s purpose by “diminishing the role of rehabilitation and acknowledging the importance of public safety, punishment, and accountability in the juvenile justice system.” In essence, the focus of juvenile sentences or dispositions has shifted to punishment as a goal of adjudication, instead of rehabilitation of the offender.

However, in an effort to return somewhat to the basic Progressive ideals of rehabilitation, state legislatures have proposed an innovative response to combat juvenile crime known as “sentence blending.” “Blended sentencing statutes represent a dramatic change in dispositional/sentencing options available to judges.” In their most popular form, typical blended sentencing provisions enable a juvenile court judge to impose both a juvenile disposition and a stayed adult criminal sentence when a juvenile offender is found guilty of a crime. If the juvenile offender fails to conform to the requirements of the juvenile disposition, the stay of the adult criminal sentence may be revoked and the juvenile transferred to an adult correctional facility.

The design, in essence, is to “serve as a wake-up call . . . [to give the juvenile] one last chance to change [his] criminal behavior.” The present choice available to juvenile court judges adjudicating offenders presents an all-or-nothing decision: either keeping the individual in the juvenile system, or placing him in the adult criminal system. Sentence blending can be viewed, however, as one effort to combine rehabilita-

112. Id. (citation omitted).
113. See id.
114. See id.
115. Id.
116. See Prosecute Certain Serious, Violent, and Chronic Juvenile Offenders in Criminal Court, supra note 93.
117. See id. In many instances, juveniles who receive blended sentences are evaluated to “determine whether they will be released after their juvenile sentence or whether they should serve out an adult sentence,” dependent upon their responsiveness to the rehabilitative programming within the juvenile justice system. Thomas F. Geraghty, Justice for Children: How Do We Get There?, 88 J. CRIM. L. & CRIMINOLOGY 190, 227 (1997). With this in mind, an informed decision is made as to the juvenile’s prognosis for rehabilitative treatment and to the protection of the public, rather than the ill-informed decision, which lacks such considerations, made to transfer the juvenile to adult criminal court. See id.
118. David Holmstrom, Punishment Alone Fails to Contain Juvenile Crime, CHRISTIAN SCI. MONITOR, Apr. 9, 1998, at 13. Director of juvenile research and planning for the Minnesota Department of Corrections, Ann Jaede, maintains that blended sentences constitute “one last bite of the apple . . . You’re still holding the kid accountable, and you have this string over his head saying ‘You mess up kid, that’s it.’” Belluck, supra note 15, at A1.
119. See Duren Cheek, Youths May Face a Mix of Sentences: Juvenile Term Would Turn into Adult Penalty if Offenders Misbehave, TENNESSEAN, Feb. 16, 1998, at 1A.
tion with accountability,\textsuperscript{120} and to "carve some gray area into a criminal justice system many believe has become too black and white."\textsuperscript{121} Blended sentencing provisions, therefore, simply provide juvenile court judges with a wider array of penalty options, while still clinging to notions of rehabilitation, for an alarmingly growing number of serious and violent juvenile offenders whose penchant for criminal activity has not been quashed by the traditional juvenile court approach.\textsuperscript{122}

B. Statutory Models of Sentence Blending

1. The Minnesota Prototype

"As part of the 1992 Omnibus Crime Control Act, the 1992 Minnesota Legislature directed the Minnesota Supreme Court to create an Advisory Task Force on the Juvenile Justice System."\textsuperscript{123} Once created, the Task Force's primary purpose was to examine the structure of Minnesota's current juvenile justice system and to recommend policies regarding a variety of issues, including juvenile courts' sentencing practices.\textsuperscript{124}

\begin{itemize}
  \item \textsuperscript{120} See Belluck, supra note 15, at A1.
  \item \textsuperscript{121} Id. Chief Juvenile Court Judge, John M. Stanoch, views blended sentences as a compromise in the hotly contested debate over how to treat juvenile offenders. See id. Judge Stanoch thus maintains that:
    \begin{quote}
      [t]here's this tug of war going on between those who believe we've been too soft on juveniles—you do an adult crime, you do adult time—and those that feel we treat juveniles differently because we believe they can be reformed and rehabilitated . . . . So it's really a marriage of convenience between those that want to punish more and those that want to give kids one more chance.
    \end{quote}
  \item \textsuperscript{122} In many states, such a middle ground approach has gained broad political support. See Belluck, supra note 15, at A1. District Attorneys believe the use of blended sentencing "allow[s] room for being tough on juvenile offenders and protecting [the] public safety," while public defenders maintain that such provisions keep some youths, who are amenable to rehabilitation, out of prison and guarantees juveniles adult rights. Id. Judges also appreciate the greater flexibility they have with respect to meting out sentences to juvenile offenders. See id.
  \item \textsuperscript{123} See Regina Akers, Kansas Considers Tougher Sentences for Young Inmates, KAN. CITY STAR, Jan. 25, 1996, at C2. Minnesota Judge Phillip Bush, who assisted in drafting the state’s blended sentencing provision, maintains that in crafting such a provision, "[w]e wanted to cling to the rehabilitation arm of the juvenile justice system and not give up and send kids to prison." Id.
  \item \textsuperscript{124} Barry C. Feld, Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform, 79 MINN. L. REV. 965, 986 (1995). Although the Juvenile Justice Task Force was not the first to examine issues within Minnesota’s juvenile justice system, it was the only group whose recommendations were legislatively enacted. See id. at 987.
  \item \textsuperscript{125} See id. at 1003. The Task Force was also charged with recommending policies regarding "waiver of juveniles to criminal courts, . . . the use of juvenile records to sentence young adult criminal offenders, the need for secure facilities, and procedural safeguards in juvenile courts." Id. The Task Force presented its final report to the Minnesota legislature in January of 1994. See id. at
At the conclusion of its investigation and research into the juvenile court's sentencing practices, the Task Force recommended "a more graduated juvenile justice system that establishes[d] a new transitional component between the juvenile and adult systems," in an effort to strengthen the rehabilitative scheme the Progressives envisioned. In essence, the Task Force proposed the creation of a new "Serious Youthful Offender" category, thereby enhancing juvenile court judges' dispositional options when presented with juveniles who have committed serious or repeat offenses. The Minnesota prototype, indeed the pioneer of blended sentencing statutes, purports to try youths in juvenile court, while affording them all of the procedural safeguards defendants receive in adult criminal court. Upon conviction, the judge would then impose on the juvenile both a juvenile court disposition and a stayed adult criminal sentence. If the juvenile showed signs of rehabilitation upon completion of his juvenile sentence, the judge could grant the juvenile probation after his twenty-first birthday. If, however, the juvenile violated the conditions set forth in the juvenile sentence, or

987. The final piece of legislation unanimously passed both houses in April 1994 and was signed into law by Minnesota Governor Arne Carlson in May of that same year. See id. The Task Force's recommendations with respect to the Minnesota juvenile court's sentencing practices were considered "the most significant substantive legislative changes" proposed. Id. at 1005.

125. Id. at 1038 (emphasis omitted).

126. See id.

127. See id. The blended sentencing provisions enacted by the Minnesota legislature can be implemented in a variety of cases, including murder and armed robbery. See Akers, supra note 122, at C2. While blended sentences or extended jurisdiction juvenile prosecutions are not employed in every instance, such provisions are utilized on a case-by-case basis, depending on the age and criminal history of the juvenile offender. See id.

128. See Feld, supra note 123, at 1038. The Minnesota statute governing blending sentences (extended jurisdiction juvenile prosecutions) states: "A child who is the subject of an extended jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel." Minn. Stat. Ann. § 260.126 Subd. 3 (West 1998).

129. See Feld, supra note 123, at 1038. As per the Minnesota statute:

If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, then the court shall: (1) impose one or more juvenile dispositions . . . and (2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense.

Minn. Stat. Ann. § 260.126 Subd. 4(a)(1)-(2) (West 1998). Legal experts have maintained that under Minnesota's previous sentencing structure, "a fourteen-year-old murderer [for example] would be set free at age nineteen unless he or she had been transferred to adult court." Akers, supra note 122, at C2. Minnesota Judge Philip Bush once stated that "[k]ids before [in similar situations] would say, 'There's nothing a judge can do to me. . . . If they blow it now [under the new sentencing provisions], they could wind up in state prison.'" Id.

committed a new offense before completion of the juvenile sentence, the stayed adult criminal sanction could then be executed.\textsuperscript{131} In essence, the Task Force maintained the new sentencing provisions would give juvenile offenders “one last chance at success in the juvenile system, with the threat of adult sanctions as an incentive not to re-offend.”\textsuperscript{132}

2. Five Emerging Models of Sentence Blending Provisions\textsuperscript{133}

With the emanation of Minnesota’s sentence blending provisions, a number of states have followed suit and have begun the process of fashioning similar statutory schemes.\textsuperscript{134} With this in mind, five basic models of sentence blending have emerged in recent legislation.\textsuperscript{135} Each model applies to a “subset of alleged juvenile offenders specified by State statute, usually defined by age and offense.”\textsuperscript{136}

\begin{itemize}
  \item \textsuperscript{131} See Feld, supra note 123, at 1042. As per the Minnesota statute, “[w]hen it appears that a person convicted as an extended jurisdiction juvenile has violated the conditions of the stayed sentence, or is alleged to have committed a new offense, the court may, without notice, revoke the stay and probation and direct that the offender be taken into immediate custody.” Minn. Stat. Ann. § 260.126 Subd. 5 (West 1998).
  \item \textsuperscript{132} Feld, supra note 123, at 1038 (emphasis omitted). While many members of the Task Force viewed the sentencing provision as one last chance for juvenile rehabilitation, others described it as “enhancing juvenile court sanctioning powers, a juvenile court ‘on steroids,’ or one with ‘a longer handle and a stronger leash.’” Id. at 1041. To prevent one last chance from becoming two, three, four, or more chances, the Task Force recommended that probation violations, as well as the commission of new offenses, should result in automatic execution of the juvenile’s stayed adult criminal sentence. See id. at 1047. Many individuals feared, however, that automatic executions and mandatory revocations for “technical violations or trivial offenses could be excessively rigid. Unable to fashion specific criteria to trigger an automatic revocation [or execution], the Task Force ultimately recommended that courts treat . . . probation violations in the same manner as they would treat subsequent offenses or probation violations by adults.” Id. at 1047-48.
  \item \textsuperscript{133} While Part III.B.2 of this Note sets forth the states that have adopted various blended sentencing provisions, 1996 represents the latest available year for such comprehensive listings. Since that date, a number of states have begun the process of crafting their own sentencing provisions. However, such recent data is not yet available. See Prosecute Certain Serious, Violent, and Chronic Juvenile Offenders in Criminal Court, supra note 93. With this in mind, it is important to note that Part III.B.2’s listing of states incorporating blended sentencing provisions into their legislation is not exhaustive. It is interesting to note, however, that as of 1998, neither New York nor New Jersey have enacted blended sentencing statutes. See Belluck, supra note 15, at A1.
  \item \textsuperscript{134} See Prosecute Certain Serious, Violent, and Chronic Juvenile Offenders in Criminal Court, supra note 93; see also Mary E. Spring, Comment, Extended Jurisdiction Juvenile Prosecution: A New Approach to the Problem of Juvenile Delinquency in Illinois, 31 J. Marshall L. Rev. 1351 (1998) (analyzing current and proposed sentence blending initiatives in Illinois).
  \item \textsuperscript{135} See Torbet, supra note 78, at 11.
  \item \textsuperscript{136} Id.
\end{itemize}
a. The Juvenile-Exclusive Blend Model

The juvenile-exclusive blend model, in its most basic form, directs the juvenile court to impose on the juvenile offender a disposition involving either the juvenile correctional system or the adult correctional system.\textsuperscript{137} New Mexico’s blended sentencing statutory provision is the singular example, thus far, of such a sentencing option.\textsuperscript{138} In particular, the New Mexico legislature created, much like Minnesota, a “‘youthful offender’” category, including juvenile offenders “age fifteen charged with first-degree murder; fifteen- to seventeen-year-olds charged with a felony in addition to having three prior separate felony adjudications in a two-year period; and fifteen- to seventeen-year-olds charged with a variety of serious offenses.”\textsuperscript{139} The juvenile court retains original jurisdiction, and upon a finding of guilt, the juvenile court judge has discretion to impose either a juvenile or an adult sentence.\textsuperscript{140} Judges who elect to dispense an adult sanction may impose upon the juvenile a sentence up to the adult mandatory term.\textsuperscript{141} If, however, the judge chooses to impose a juvenile sanction, the juvenile offender may be sentenced “either to two years or until he reaches the age of eighteen, whichever is longer.”\textsuperscript{142}

b. The Juvenile-Inclusive Blend Model

The juvenile-inclusive blend model of sentencing is fashioned after Minnesota’s blended sentencing statute, and has subsequently been adopted in Connecticut and Montana.\textsuperscript{143} As discussed earlier, the juvenile court, utilizing the juvenile-inclusive blend model, has the authority to dispense a sanction involving both the juvenile and the adult correctional systems.\textsuperscript{144} “In most instances, the adult sanction is suspended unless there is a violation, at which point it is invoked.”\textsuperscript{145} It is important to note that in states adopting the juvenile-inclusive blend model of

\textsuperscript{137}. See id. at 12.
\textsuperscript{138}. See id.
\textsuperscript{139}. Id. As in Minnesota, juveniles adjudicated under the juvenile-exclusive blend in New Mexico retain all rights and procedural safeguards guaranteed adults in the criminal justice system. See id.
\textsuperscript{140}. See id.
\textsuperscript{141}. See id.
\textsuperscript{142}. Id.
\textsuperscript{143}. See id.
\textsuperscript{144}. See id.
\textsuperscript{145}. Id. at 13.
sentencing, the juvenile court extends jurisdiction over juvenile offenders until the age of twenty-one.146

c. The Juvenile-Contiguous Blend Model

Simply stated, the juvenile-contiguous blend model enables the juvenile court, which retains original jurisdiction and responsibility for adjudication of the case,147 "to impose a sanction that would be in force beyond the age of [the court’s] extended jurisdiction."148 The juvenile court is then charged with the duty of later determining if the remainder of the sanction should be completed in the adult correctional system.149 A number of states embrace the juvenile-contiguous model, including Massachusetts, Rhode Island, South Carolina, and Texas.150 Texas, in particular, allows a juvenile court judge to impose a sentence anywhere from one to forty years in duration for the commission of any one of twelve violent felony offenses.151 The juvenile offender begins his sentence in the juvenile correctional system until the age of eighteen,152 "at which time transfer to an adult facility following a court review is authorized [if deemed necessary]. Such transfer is automatic at age twenty-one."153

d. The Criminal-Exclusive Blend Model

Differing from the aforementioned models, the criminal-exclusive blend model vests jurisdiction over the juvenile in the adult criminal court.154 The criminal court is thereby given the authority to impose a sanction on the juvenile offender in either the juvenile or adult correc-

146. See id. at 12.
147. See id. at 13.
148. Id.
149. See id.
150. See id.
151. See Prosecute Certain Serious, Violent, and Chronic Juvenile Offenders in Criminal Court, supra note 93. Procedurally, Texas protects the rights of juveniles amenable to such harsh sentences by requiring "(1) a grand jury to consider and approve the petition charging one or more of the eligible offenses and (2) a 12-person jury at adjudication and disposition phases of juvenile court proceedings." Torbet, supra note 78, at 14.
152. See Prosecute Certain Serious, Violent, and Chronic Juvenile Offenders in Criminal Court, supra note 93.
153. Id. Associate Judge Veronica Morgan-Price, who presides over a Houston Juvenile District Court, maintained that Texas' juvenile sentencing provision is "an effective tool...in place to deter these younger, violent juveniles...If [a juvenile offender] goes to adult court he could get probation. If he stays [in juvenile court] and gets [sentenced according to the juvenile provision], he could get 40 years." McWhirter, supra note 130, at A01.
154. See Torbet, supra note 78, at 13.
tional systems. States enacting the criminal-exclusive blend model of sentencing include California, Idaho, Michigan, Virginia, and Florida. In Florida, for example, the legislature provided adult criminal courts the latitude to dispense either juvenile or adult sentences to offenders. Prior to sentencing, the Florida Department of Corrections and the Department of Juvenile Justice submit to the court their recommendations as to the “suitability of the offender for disposition in their respective systems.” The criminal court judge considers the correctional recommendations in conjunction with statutorily defined criteria, and subsequently imposes either juvenile or adult sanctions on the offender.

e. The Criminal-Inclusive Blend Model

Mirroring the juvenile-inclusive blend of sentencing, the criminal inclusive blend model purports to impose upon the juvenile offender sanctions involving both the juvenile and the adult correctional systems; the only apparent difference between the two sentencing schemes is the retention of jurisdiction by the adult criminal court, instead of the ju-

155. See id.

156. On November 16, 1999, a Michigan jury found 13-year-old Nathaniel Abraham guilty of second degree murder for the slaying of 18-year-old Ronnie Greene. See Keith Bradsher, Michigan Boy Who Killed at 11 is Convicted of Murder as Adult, N.Y. TIMES, Nov. 17, 1999, at A1. Abraham was merely 11-years-old when he shot Greene, a stranger, outside a convenience store, “killing him with a single bullet in the head.” Id. Under a three-year-old Michigan law that allows children of any age to be prosecuted as adults in certain serious felony cases, Abraham became the “youngest American ever charged and convicted of murder as an adult, in a case that has highlighted a national trend toward putting children on trial as adults.” Id. As this Note was being published, the Michigan court had yet to convene a sentencing hearing, slated for December 14, 1999, to determine Abraham’s fate. See id. While the court has the option of imposing either a juvenile sentence requiring mandatory release of Abraham at the age of 21, or an adult sentence carrying a prison term of 20 years to life, Oakland County prosecutors intend to recommend a blended sentence, incarcerating Abraham “initially in a juvenile detention center and [reassessing him] at 19 and 21 to determine whether he [has] been rehabilitated enough for release or should be sent to a prison for adults.” Id. See also Judge Burton S. Katz, Troubling Trial of 13-Year-Old Boy: Poster Child for Predatory Juveniles or of a Broken system? (visited Nov. 19, 1999) <http://www.msnbc.com/news/331878.asp. (analyzing the differing sentencing options available to the court in the Abraham case). In the eyes of the Oakland County Prosecutors Office, a blended sentence would enable Abraham to receive the intensive supervision he needs to foster rehabilitation, while providing a sense of justice for the family of Ronnie Greene. See Jim Irwin, Boy, 13, Guilty of 2nd-Degree Murder, USA TODAY, Nov. 17, 1999, at 4A.

157. See Torbet, supra note 78, at 14.

158. See id.

159. Id.

160. See id. Upon sentencing, transfer of the juvenile is then made to the appropriate correctional facility for fulfillment of his entire sentence. See id.
sentencing provision only takes effect when a juvenile has been transferred to adult criminal court, and applies only to juveniles between the ages of twelve and seventeen who are charged with any felony,66 or “any juvenile charged with one of seven violent offenses or who committed two or more prior unrelated felonies.”66

IV. A RETURN TO PROGRESSIVE IDEALS?—SENTENCE BLENDING AS A CREATIVE AND VIABLE METHOD OF REFORM

A. The Juvenile- and Criminal-Inclusive Sentence Blends as the Most Promising Rehabilitative Models

The basic premise of sentence blending statutes, as stated in Part III of this Note, is to provide children with a second chance to change their lives for the better through rehabilitation.64 While fostering rehabilitation is one of the goals of sentence blending,64 each of the five models does not, on its face, appear to have such an objective in mind. Highlighting this concern, the juvenile- and criminal-exclusive blend models appear counterproductive to the aims of blended sentencing provisions. In particular, both the juvenile- and criminal-exclusive blend models vest in the adjudicating judge the power to levy sanctions involving either the juvenile or adult correctional systems.67 In essence, such provisions are merely akin to transfer provisions allowing juveniles to be sentenced as adults without consideration of rehabilitation.66

While blended sentencing statutes have been enacted to create a middle-ground option for sentencing juvenile offenders in an effort to

161. See id. at 13.
162. See id. at 14. In practice, Arkansas has rarely utilized its blended sentencing statutory provision. See id. However, in the wake of the recent Jonesboro slayings, in which Mitchell Johnson and Andrew Golden opened fire on their classmates and teachers, killing five, and wounding countless others, Arkansas Governor Mike Huckabee proposed applying some form of blended sentencing to the situation. See Arkansas Seeking New Ways to Handle Young Criminals, DALLAS MORNING NEWS, Apr. 30, 1998, at 27A.
163. See Torbet, supra note 78, at 14.
164. Id.
165. See Akers, supra note 122, at C2.
166. See id.
167. See Torbet, supra note 78, at 12-14.
168. The only apparent difference between the juvenile- and criminal-exclusive blends, and transfer provisions is that the latter is devoid of any possibility for an offender to exclusively receive a juvenile sanction.
rehabilitate them, a collateral aim of these statutes is to provide an incentive for wayward children to leave their lives of crime by offering them a second chance. This incentive is grounded in the threat of adult criminal sanctions if the juvenile offender does not abide by the strictures of his juvenile sentence. However, the juvenile- and criminal-exclusive blends do not provide the juvenile this incentive; there does not exist "a promise of rapid transfer to an adult prison, [which] hangs like a hammer over the heads of these juveniles." Indeed, the apparent promise of a second chance the juvenile- and criminal-exclusive blend models purport to give offenders is in reality a vacuous promise.

An "either/or" sentencing option cannot encourage a juvenile to reform his criminal ways any more than transfer to adult criminal court. If, for example, an offender is sentenced as per either the juvenile- or criminal-exclusive sentence blends, and receives a juvenile disposition, that offender does not carry with him the severe threat of being immediately transferred to adult state prison if he "messes up" in his juvenile placement. It is the existence of such a threat that may make all of the difference in successfully rehabilitating juvenile criminal offenders. With this in mind, the juvenile- and criminal-inclusive blend models, such as Minnesota's statutory scheme, appear to be the most promising and viable method for rehabilitation. Through these models, the juvenile is given the incentive to steer his life away from criminal activity, and to reform his dysfunctional behavior, by virtue of the suspended adult sentence waiting in the wings.

B. The Juvenile- and Criminal-Inclusive Sentence Blends as a Promising Means of Rehabilitation and Crime Reduction

The use of blended sentencing provisions, couched in terms of juvenile- and criminal-inclusive blend models, can be viewed as an effective tool for rehabilitating juvenile offenders, in that such sentencing options provide youths a second chance at becoming productive members of society. Despite the relative newness of blended sentencing

169. See Belluck, supra note 15, at A1; see also Prosecute Certain Serious, Violent, and Chronic Juvenile Offenders in Criminal Court, supra note 93 (highlighting the fact that sentence blending "heighten[s] the motivation of the offender, who is accountable to the criminal court").
170. See McWhirter, supra note 130, at A01.
171. Id.
172. See Feld, supra note 123, at 1038-43.
173. See supra Parts III.B.1, III.B.2.b, and III.B.2.e and accompanying footnotes.
provisions, recent research has yielded extremely promising and im-
pressive results.\textsuperscript{174} As of 1998, only forty-two of the 339 teen-agers
sentenced in the Minnesota program's first twenty months had violated
their juvenile sentence and been sent to adult state prisons.\textsuperscript{175} In many
instances, those juvenile offenders who have had their adult dispositions
invoked "have been tripped up on small probation violations," as op-
posed to having committed serious criminal offenses.\textsuperscript{176}

Additionally, since the enactment of Minnesota's blended sentenc-
ing provisions, "several youths have shown apparent improvement in
the juvenile phase"\textsuperscript{177} of their dispositions, a promising sign for the suc-
cess of such legislation. Duane Nelson, an example of the rehabilitative
success of Minnesota's blended sentencing, received a blended sentence
and,

after nineteen months in a detention center, where he learned the re-
wards of good behavior and to control his anger ... began working for
Commissioner Penny Steele ... typing memos and filing papers, and
will go to college in March. 'I got a nice job. I'm in college. I got
people depending on me,' he said, 'and I don't want to let them
down.'\textsuperscript{178}

Without the use of blended sentencing provisions, however, juveniles
like Duane Nelson would have been transferred to and adjudicated in
adult criminal court,\textsuperscript{179} where such rehabilitative programs are non-
existent.\textsuperscript{180} In the opinion of Fred Bryan, one of the supervisors of Min-
nesota's extended juvenile jurisdiction program, many of these juveniles

\textsuperscript{175} See Belluck, supra note 15, at A1.
\textsuperscript{176} \textit{Id.}
\textsuperscript{177} \textit{Id.}
\textsuperscript{178} \textit{Id.} The following passage represents yet another juvenile, like Duane Nelson, upon whom Minnesota's blended sentencing has had a positive impact:

Jason Bergstrom received a blended sentence at 16, when, just hours after he was re-
leased from a juvenile home, he pointed a gun at a man, threatened to blow his head
off, and then ran from the police ... [he] had spent his early teen-age years stealing
cars and guns, using and selling marijuana and other drugs.

Now he is an 18-year-old senior at a St. Paul high school, having completed 18
months of detention. He attends a weekly probation meeting, counsels youths at a ju-
venile home, and expects to graduate in June.

\textit{Id.}
\textsuperscript{179} See McWhirter, supra note 130, at A01.
\textsuperscript{180} See Parsons, supra note 71, at 1.
would have received probation instead of the extra supervision and rehabilitation they so desperately needed.\textsuperscript{181}

Despite the encouraging results blended sentencing provisions appear to produce, critics have attacked the scheme on a limited number of fronts.\textsuperscript{182} In particular, public defender Elizabeth Clarke maintains such legislative changes to the juvenile justice system could result in an increasing amount of juvenile offenders being incarcerated.\textsuperscript{183} Additionally, Clarke asserts that through blended sentencing statutes, juveniles will enter the criminal justice system and will wind up with a criminal record at an earlier age.\textsuperscript{184}

Clarke's argument against sentence blending, however, is misplaced. What Clarke describes as the negative effects of blended sentencing in effect mirrors the critique of waiver provisions transferring juvenile offenders to adult criminal court.\textsuperscript{185} "Compared to automatic transfer of juveniles to adult court and incarceration in state prison, the blended-sentence approach ... appears to result in lower rates of recidivism and subsequent acts of violence."\textsuperscript{186} Despite Clarke's contentions, state transfer provisions, not blended sentencing statutes, allow for an increase in juvenile prosecutions in the criminal justice system at increasingly younger ages.\textsuperscript{187}

Blended sentences, on the other hand, provide "young offenders with opportunities to redirect their lives [in a manner] preferable to simple custodial confinement .... [T]he prospect of presumptive commitment to [adult] prison may provide the motivation to reform" and rehabilitate, instead of increasing the number of juveniles incarcerated.\textsuperscript{188} Blended sentences thus promise to be an effective panacea for rising juvenile crime rates, by both rehabilitating juvenile offenders, and

\begin{itemize}
\item[181.] See McWhirter, supra note 130, at A01.
\item[182.] A minor critique of blended sentencing involves the fear that such provisions create "confusing options for all system actors, including offenders, judges, prosecutors, and corrections administrators." Torbet, supra note 78, at 15. Throughout the United States, juvenile and criminal justice personnel have observed that "confusion exists about [blended sentencing] statutes and the rules and regulations governing them." Id. To allay these concerns however, judges, prosecutors, corrections administrators, and defense attorneys need to be given a comprehensive introduction and education to the intricacies and requirements of sentence blending provisions.
\item[183.] See Margaret Schroeder, Bill Gives Judges More Latitude with Juveniles, CHICAGO DAILY L. BULL., May 19, 1998, at 1.
\item[184.] See id.
\item[185.] For a discussion of State transfer provisions, including the increasing frequency with which they are employed and the continuous lowering of age requirements, see Part II.C and accompanying footnotes.
\item[186.] 'Blended Sentences' for Youths, L.A. TIMES, July 1, 1996, at B4.
\item[187.] See Schroeder, supra note 182.
\item[188.] Feld, supra note 123, at 1123.
\end{itemize}
invoking suspended adult sanctions on those who fail to successfully complete their juvenile placements. Juveniles sentenced according to blended sentencing provisions will be less likely to participate in future criminal acts, knowing such action will result in immediate placement in an adult correctional facility. In essence, juvenile crime rates will likely decrease due to the effective rehabilitation of children who succeed within the system, and the continued incarceration of those who pose a detriment to public safety.

The question remains, however, as to whether new blended sentencing legislation "ultimately provides serious young offenders with one last chance at rehabilitation, or whether it consigns less serious youths to the adult corrections system." The central thrust of blended sentencing provisions is to afford judges an alternative to transferring juvenile offenders to the adult criminal justice system. Critics have argued, though, the availability of such a sentencing alternative may result in a possible net-widening effect. In essence, "net-widening is said to occur when the creation of [alternative sentencing] programs results in more control over juveniles who might otherwise be handled less intrusively."

Thus, there lies a concern that if judges implement blended sentencing provisions more extensively for juvenile offenders who would not qualify for transfer to adult criminal court, and these youths subsequently violate their juvenile sentences, such alternative sentencing may have a net-widening effect, thereby increasing the number of youths consigned to adult facilities. Imposing blended sentences, intended for serious juvenile delinquents, on less serious juvenile offenders, would therefore appear to frustrate the purpose of blended sentencing provisions. Opposing this view, one can argue "the opportunity to help [all] troubled children by granting [them] access to [rehabilitative] programs and services that can provide needed treatment would seem to legitimate [the] increased use" of sentence blending provisions, and would maximize the rehabilitation of all wayward youths. Thus, instead of frustrating the purpose of blended sentencing statutes, extensive use of such provisions may aid in attaining the intended goal of rehabilitation.

189. Id. at 1124.
190. See id.
191. See id.
193. See Feld, supra note 123, at 1124.
by treating large numbers of juvenile offenders who would normally be "sent back to their original environments without receiving any care."196

The immediate effects of sentence blending have fostered optimism, despite limited criticism, regarding the renewed effectiveness of the juvenile justice system in rehabilitating juvenile offenders. However, it is still too soon to make definitive conclusions as to the sentencing scheme's widespread success.197 Recent encouraging statistics, though, justify the belief that sentence blending presents a creative and viable alternative to previous juvenile justice policies, namely transfer provisions, while preserving the rehabilitative arm of the juvenile justice system the Progressives established.

V. CONCLUSION

The juvenile justice system, as a separate and distinct mechanism for rehabilitating juvenile offenders, has prided itself on the belief that if juveniles had "proper intervention ... you could save many ... from a life of delinquency."198 Throughout the latter part of this century, however, our children have not had the proper intervention to save them from a life of crime. Rapidly escalating juvenile crime rates signaled a need for change,199 as the juvenile justice system in its current form was deemed incapable of meeting the needs of both juvenile offenders and society at large.200 To meet this need for change, legislatures throughout the country have sought to strike a balance between the all-or-nothing option of adjudicating children within either the current juvenile justice system, which many view as too lenient on juvenile crime, or within the adult criminal justice system, which many characterize as too harsh on youthful offenders.201

As an alternative to the limited dispositional options a juvenile court judge has before him, Minnesota pioneered an innovative statutory

196. Id. at 1022.
197. See McWhirter, supra note 130, at A01. Minnesota correctional officials maintain that despite the blended sentencing program's impressive start, a degree of caution must be exercised, as the program is still relatively new. See id.
198. Schroeder, supra note 183, at 1.
199. See Redding, supra note 1, at 762.
200. See Melli, supra note 4, at 383; see also Wizner, supra note 104, at 1026 (asserting that juvenile courts do not have the authority to impose sufficiently severe punishment which would serve to rehabilitate offenders).
201. See Torbet, supra note 78, at 11; see also Cheek, supra note 119, at 1A (discussing the establishment of a special commission appointed by Tennessee Governor Don Sundquist to study the blended sentence approach); Belluck, supra note 15, at A1 (explaining the rationale behind Minnesota's implementation of sentence blending).
response to juvenile delinquency in the form of sentence blending.\textsuperscript{202} Combining a juvenile sanction with a stayed adult sanction (revocable upon violation of the juvenile disposition), blended sentencing promises to give juvenile offenders a second chance at rehabilitation.\textsuperscript{203} With increased sentencing flexibility afforded to judges, blended sentences constitute a "last chance" option for . . . [juvenile] offenders, while also enhancing the supervision of the court and heightening the motivation of the offender, who is accountable to the criminal court and faces a potential prison sentence upon violation of sentencing conditions.\textsuperscript{204}

In essence, blended sentencing provisions can be seen as a compromise protecting the safety of society and the needs of youthful offenders, by ensuring accountability and providing rehabilitation. Until the creation of sentence blending, the juvenile justice system could not adequately meet the needs of both wayward children and the communities those children preyed upon.\textsuperscript{205} Today, however, there is a rising optimism that by providing juvenile offenders with "one more last chance before . . . [they] go to the big house,"\textsuperscript{206} sentence blending will bring the juvenile justice system full circle to its original purpose envisioned in 1899—the rehabilitation of our nation's youth, the future of our country.\textsuperscript{207}

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