



1-1-2013

Specialty Juvenile Courts in Texas: Using the Rehabilitative Juvenile Justice Approach to Reform Texas's Youngest Gang Members.

Drew Darnell

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Recommended Citation

Drew Darnell, *Specialty Juvenile Courts in Texas: Using the Rehabilitative Juvenile Justice Approach to Reform Texas's Youngest Gang Members.*, 44 ST. MARY'S L.J. (2013).

Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol44/iss3/4>

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COMMENT

SPECIALTY JUVENILE COURTS IN TEXAS: USING THE REHABILITATIVE JUVENILE JUSTICE APPROACH TO REFORM TEXAS'S YOUNGEST GANG MEMBERS

DREW DARNELL*

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*First and foremost, I would like to give thanks to my mom. I would not be writing this but for your love and support. I am additionally grateful for the help of Harold Delia, the coordinator of the Yakima County Gang Court, for educating me on the framework necessary to establish a gang court. Finally, I would like to thank my mentor, Deborah Selden, for introducing me to the concept of specialty courts and encouraging me to believe in the ability of people to change, and my best friend, Thomas “Trey” Cammack III, for encouraging me in my writing endeavors and furnishing me with a couch to sleep on and a table to write on while I was developing this Comment. I could not have done this without each and every one of you.

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I. INTRODUCTION

The juvenile justice system in Texas has come full circle in the past thirty years—from its foundational focus on rehabilitation, to a get-tough approach,¹ and right back again to a focus on rehabilitation.² There are many indications of this shift in juvenile justice throughout the Texas juvenile court system,³ the jail system,⁴ and the resources utilized by local

1. See Ed Kinkeade, *Appellate Juvenile Justice in Texas It's a Crime! Or Should Be*, 51 BAYLOR L. REV. 17, 22 (1999) (“Beginning in the 1960s, a national trend emerged with state legislatures,” which included Texas in “passing laws designed more to punish, rather than rehabilitate juveniles.”).

2. See Michael J. Brown, *Texas Closes First Prison Thanks to Falling Crime Rate, Rise in Rehabilitation*, TEX. CRIM. LAW. BLOG (Aug. 4, 2011), <http://www.texascriminallawyerblog.com/2011/08/texas-closes-first-prison-than.html> (recognizing that “[i]n 2005, Texas began to make changes to its sentencing procedures, shifting money from the tough on crime approach to rehabilitation and prevention programs”).

3. See *JDAI National Initiative*, HARRIS CNTY. JUV. DET. ALTS. INITIATIVE NEWSL. (Annie E. Casey Found. Texas), June 2009, at 1 (noting that Harris and Dallas Counties are the only two Texas counties that participate in the Juvenile Detention Alternatives Initiative (JDAI) program program working to “[e]liminate inappropriate or unnecessary use of secure detention” and to “[r]edirect public finances to successful reform strategies”).

governments.⁵ However, no other fact illustrates this shift more radiantly than the signing of the Texas Youth Commission (TYC) reform bill in 2011, which closed the sterile reforms and abusive practices embodying the TYC, and created the new Juvenile Justice Department.⁶ The closing of these facilities, according to the chair of the Texas Youth Commission, will allow the state to utilize its resources towards a state plan that will “focus mostly on community-based rehabilitation and treatment programs.”⁷

This change in Texas juvenile law is consistent with the state’s recent implementation of various specialty courts, sometimes called problem-solving or therapeutic courts.⁸ The legislature designed these courts to

4. Since the implementation of the JDAI program in Harris County, reform efforts have led to “the development of a risk assessment instrument to better determine which youths can safely be released to community-based programs; the creation of treatment and rehabilitation options for juveniles with mental health problems; the diversion from court of youths charged with minor offenses; and the creation of an evening reporting center to provide neighborhood-based services for kids who otherwise would be detained.” Bart Lubow, *Report Shows Weaknesses, Gains in Juvenile Justice*, HOUS. CHRON. (Feb. 13, 2010, 6:30 AM), <http://www.chron.com/opinion/outlook/article/Report-shows-weaknesses-gains-in-juvenile-justice-1715694.php>; see Bob Banta & Mike Ward, *Lawmakers Eyeing Travis’ Plan for Juveniles*, AUSTIN AM.-STATESMAN (Mar. 12, 2009), <http://www.statesman.com/news/content/region/legislature/stories/03/12/0312tyc.html> (noting that Travis, Dallas, and twenty-two other southeast Texas counties have made proposals that include, for example, only sending juveniles who have been convicted of serious crimes to the Texas Youth Commission); see also TEX. FAM. CODE ANN. § 53.01 (West 2008) (authorizing the Harris County Juvenile Board to approve certain guidelines that law enforcement agencies would be required to follow when implementing administrative procedures); TEX. ADMIN. CODE ANN. §§ 341.2, 341.4 (West 2011) (establishing the Code of Ethics for the Harris County Juvenile Probation Department).

5. See Editorial, *Texas’s Progress on Juvenile Justice*, N.Y. TIMES, July 9, 2011, <http://www.nytimes.com/2011/07/10/opinion/sunday/10sun3.html> (stating that the reform bill passed in 2007 “pumped about \$100 million over four years into community-based programs, which typically serve children while they live at home”).

6. See TEX. HUM. RES. CODE ANN. §§ 201.001–203.015 (establishing the Texas Juvenile Justice Board and the Texas Juvenile Justice Department); TEX. JUV. JUST. DEP’T, <http://www.tjjd.texas.gov/> (last visited May 25, 2013) (describing the history of the formation of the Texas Juvenile Justice Department); see also Henry Joel Simmons, *Texas Juvenile Agencies Merge Into a Single Juvenile Justice Commission*, RIGHT ON CRIME (May 24, 2011), <http://www.rightoncrime.com/2011/05/texas-juvenile-agencies-merge-into-a-single-juvenile-justice-commission/> (stating the “legislation will reorganize several commissions into a single Texas Juvenile Justice Commission, shift available funds to rehabilitation programs, and close 30% of the state’s youth prisons”).

7. Mike Ward, *Texas Closing Prison as Part of Cutbacks*, BEAUMONT ENTERPRISE (Aug. 3, 2011, 10:10 AM), <http://www.beaumontenterprise.com/news/article/Texas-closing-prison-as-part-of-cutbacks-1707575.php>.

8. Three prime examples of therapeutic courts are: (1) drug courts—courts working to “resolve underlying substance-abuse problems rather than simply punishing those who violate the drug laws”; (2) veterans’ courts—courts hearing misdemeanors and felony cases where the defendant has a “brain injury, mental disorder, or mental illness from military service in a combat zone”; and (3) prostitution courts—a program that “moves women from intensive residential counseling and

focus on rehabilitation rather than punishment, with the goal of addressing the underlying problem that led a defendant to commit an offense.⁹ In the context of juveniles, it was not until 2000 when a therapeutic court, specifically aimed at addressing the problems faced by juveniles addicted to drugs, was evaluated by scholars.¹⁰ The evaluation concluded, “[T]he drug court model shows promise for youthful drug offenders.”¹¹

One might assume that there are specialty courts to address the unique problems faced by juvenile offenders, especially considering juvenile courts were actually the “first American courts explicitly built on a therapeutic ideology.”¹² However, there is a surprising void in this realm of justice. Though counties in Texas have implemented drug courts and other therapeutic courts to address the needs of juveniles, there have been no therapeutic courts implemented to address the needs of teen gang members, a population that represents a substantial portion of the juvenile justice system.¹³

treatment to outpatient treatment to independence with assistance in the areas of counseling [and] education.” Patrick J. McLain, *Texas Experiments with Specialty Courts*, 24-7 PRESS RELEASE (Oct. 4, 2010), <http://www.24-7pressrelease.com/press-release/texas-experiments-with-specialty-courts-173642.php>. *But cf. Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use*, DRUG POLICY ALLIANCE (Mar. 22, 2011), <http://www.drugpolicy.org/drugcourts> (arguing that in lieu of drug courts, courts nationwide should expand “demonstrated health approaches, including harm reduction and drug treatment, and by working toward the removal of criminal penalties for drug use”). See generally Candace McCoy, *The Politics of Problem-Solving: An Overview of the Origins and Development of Therapeutic Courts*, 40 AM. CRIM. L. REV. 1513 (2003) (providing a historical overview of the development of therapeutic courts).

9. See Candace McCoy, *The Politics of Problem-Solving: An Overview of the Origins and Development of Therapeutic Courts*, 40 AM. CRIM. L. REV. 1513, 1517 n.10 (2003) (defining a therapeutic court as “a court that handles cases which traditionally would have been adjudicated in criminal court, but in which ‘helping’ rather than punitive outcomes are contemplated”); see also Patrick J. McLain, *Texas Experiments with Specialty Courts*, 24-7 PRESS RELEASE (Oct. 4, 2010), <http://www.24-7pressrelease.com/press-release/texas-experiments-with-specialty-courts-173642.php> (stating that specialty courts “are designed to address particular crimes and serve particular populations, in the hopes that they can be more effective than traditional courts”).

10. See Brandon K. Applegate & Shannon Santana, *Intervening with Youthful Substance Abusers: A Preliminary Analysis of a Juvenile Drug Court*, 21 JUST. SYS. J. 281, 281 (2000) (explaining that although “several evaluations have shown promising results for adult drug courts, the evidence of the effects of drug courts for juvenile defendants is scarce”).

11. *Id.* at 297. The results of the study “reveal that client retention was comparable to that for adult drug courts, that the drug court was able to improve the participants’ overall level of social and psychological functioning, and that recidivism was significantly reduced and delayed for the program graduates compared to the youths who failed to complete the program.” *Id.* at 281.

12. Candace McCoy, *The Politics of Problem-Solving: An Overview of the Origins and Development of Therapeutic Courts*, 40 AM. CRIM. L. REV. 1513, 1515 (2003).

13. See *Gang Violence*, TEXANS FOR PEACE, <http://www.texansforpeace.org/IssuesGangs.htm> (last visited May 25, 2013) (“According to the Texas Youth Commission, 46[%] of incarcerated TYC youth admitted to gang membership in 2000.”).

To adapt properly to the new rehabilitative approach to juvenile justice in Texas, it would make sense to offer rehabilitative services to this population of juveniles comprising such a substantial portion of the juvenile justice system.¹⁴ Therefore, this Comment advocates for the implementation of juvenile gang courts in Texas counties facing problems with gang violence in order to address the prevalence of gang members within the juvenile justice system. Texas needs this specialty court due to the rise of drug-related gang violence on the Texas-Mexico border,¹⁵ which will inevitably cause the problems faced by juvenile gang members to grow. First, this Comment provides insight into the benefits juvenile gang courts provide by analyzing the success of other juvenile specialty courts in Texas. Furthermore, this Comment evaluates the changing nature of juvenile judicial philosophy in Texas, which is underscored by the recent closing of the Texas Youth Commission. Next, this Comment advocates for a gang court by supplying the statistics of increased gang violence in Texas and how such a court could help in alleviating recidivism rates of repeat gang offenders. Finally, this Comment provides a framework for such a court by evaluating the recent implementation of the juvenile gang court in Yakima County, Washington—the first, and until recently the only, juvenile gang court in the nation.

II. BACKGROUND

A. *The History of Juvenile Law in the United States and Texas*

Whether it is reformation, punishment, or prevention, the goals of the criminal justice system have come to embody a distinct task when dealing with juvenile offenders.¹⁶ Originally proposed were juvenile courts in the

14. See *Manduley v. Superior Court*, 41 P.3d 3, 29 (Cal. 2002) (stating that “it would be difficult to attempt to combat the problem of juvenile crime without also considering gang-related crime; conversely, measures to address gang-related crime without dealing with juveniles involved in criminal activity could prove inadequate”).

15. See Alex Newman, *Violence Spills Across U.S.-Mexico Border*, THE NEW AMERICAN (Mar. 3, 2009, 9:48 AM), <http://www.thenewamerican.com/usnews/crime/item/5803-violence-spills-across-us-mexico-border> (opining that the “increasing violence that the drug cartels have been inflicting on Mexico is now making its way across the Rio Grande into the United States” and the Senate would “hold hearings to determine whether American law enforcement [had] the ability to deal with the rise in crime [within the United States]”).

16. See *In re Gault*, 387 U.S. 1, 45–46 (recognizing that a juvenile is an “easy victim of the law” and he or she “cannot be judged by the more exacting standards of maturity” comparable to adults (quoting *Haley v. State of Ohio*, 332 U.S. 596, 599–600 (1948))); see also *Lanes v. State*, 767 S.W.2d 789, 791 n.5 (Tex. Crim. App. 1989) (noting that the Texas Legislature has given juveniles greater protection by enacting the Texas Family Code).

late nineteenth century in response to legal progressivists' reformulation of ideas on the most effective methods of social control and a reformulation of the cultural conception of children.¹⁷ The new method of social control envisioned the state as a parent, intervening when parents were not able to discipline or care for the child.¹⁸ The new conception of childhood realized that children "have different, less competent levels of understanding and collateral mental functioning than adults."¹⁹ Indeed, there are profound differences between adult criminals and juvenile delinquents.²⁰ The reformers of the nineteenth century concluded incarcerating juveniles with adults posed major problems for the young offenders.²¹ Such recognition spawned the inception of a separate justice system that could address the problems faced by young offenders: the juvenile justice system.

The creators of the juvenile justice system established it based on the notion that judicial resources should be utilized in order to accomplish more than punitive, retributive objectives.²² The system began with the

17. See Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 970 (1995) (providing the first juvenile courts combined a new imagery of childhood "with approaches to social control in a specialized agency designed to accommodate the child offender").

18. See *In re Gault*, 387 U.S. at 25–26 ("The early conception of the Juvenile Court proceeding was one in which a fatherly judge touched the heart and conscience of the erring youth by talking over his problems, by paternal advice and admonition, and in which, in extreme situations, benevolent and wise institutions of the State provided guidance and help 'to save him from a downward career.'" (quoting Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 120 (1909))); see also Ira M. Schwartz, Neil Alan Weiner & Guy Enosh, *Nine Lives and Then Some: Why the Juvenile Court Does Not Roll Over and Die*, 33 WAKE FOREST L. REV. 533, 535 (1998) (describing that the juvenile court, at its conception, was "expected to fulfill the complicated dual roles of the societal disciplinarian who can punish children and of the parental substitute who can supervise, treat and rehabilitate and, if necessary, care for the children").

19. Ira M. Schwartz, Neil Alan Weiner & Guy Enosh, *Nine Lives and Then Some: Why the Juvenile Court Does Not Roll Over and Die*, 33 WAKE FOREST L. REV. 533, 535 (1998).

20. See *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) ("Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult."); see also Tracy Rightmer, *Arrested Development: Juveniles' Immature Brains Make Them Less Culpable Than Adults*, 9 QUINNIPIAC HEALTH L.J. 1, 26 (2005) (asserting that current research reveals "juveniles are not as culpable as adults; therefore, the harsher punishment of the adult system is inappropriate").

21. There were two major problems the reformers saw with incarcerating youth among adult offenders: (1) "incarcerat[ing] juveniles with adults only further educated the youth in the ways of crime"; and (2) "because of the harshness of the adult penalties, many juries were reluctant to convict a juvenile." Kelly Keimig Elsea, Comment, *The Juvenile Crime Debate: Rehabilitation, Punishment, or Prevention*, 5 KAN J.L. & PUB. POL'Y 135, 137 (1995).

22. See Kristin Henning, *What's Wrong with Victims' Rights in Juvenile Court?: Retributive Versus Rehabilitative Systems of Justice*, 97 CAL. L. REV. 1107, 1112 (2009) ("Juvenile courts were established

concept of *parens patriae*,²³ the rationale that when a parent is no longer fit to provide for the welfare of a child, the state must step in and embody that role and provide protection for the wayward or troubled child.²⁴ Thus, from the beginning of the development of this system of justice, the law's aim was to "determin[e] the needs of the child and of society rather than adjudicating criminal conduct."²⁵ However, because the "best interests of the child" were to be determined by the courts, originally, courts did not provide juveniles with the procedural safeguards provided to adult offenders, including jury trials and the right to assistance of counsel.²⁶

The procedural safeguards afforded to juveniles increased dramatically after the Supreme Court's decision in *In re Gault*.²⁷ In that decision, the Court concluded that the denial of procedural rights for juveniles resulted in arbitrary outcomes rather than "compassionate, individualized treatment."²⁸ The Court mandated that procedural safeguards be implemented in juvenile court proceedings, including "the right to advance notice of charges, a fair and impartial hearing, the right to the assistance of counsel with the opportunities to confront and cross-examine witnesses, and the protections of the privilege against self-incrimination."²⁹ After

and continue to operate on the principle that rehabilitation is a better response to delinquency than the punishment and stigma that generally accompany an adult conviction.”).

23. BLACK'S LAW DICTIONARY 1221 (9th ed. 2009) (defining *parens patriae* as “[t]he state regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves”); see also Kristina H. Chung, Note, *Kids Behind Bars: The Legality of Incarcerating Juveniles in Adult Jails*, 66 IND. L.J. 999, 1008–09 (1991) (finding that the doctrine of *parens patriae* in the juvenile justice system was generally understood to grant the state the power “to assume responsibility over neglected and abandoned children”).

24. See *Bostelman v. People*, 162 P.3d 686, 691 (Colo. 2007) (en banc) (portraying that the juvenile justice system is “designed to provide guidance, rehabilitation, and restoration for the juvenile and the protection of society, rather than adjudicating criminal conduct and sanctioning criminal responsibility, guilt, and punishment” (citing *Kent v. United States*, 383 U.S. 541, 554–55 (1966))).

25. *Kent*, 383 U.S. at 554.

26. See Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 971 (1995) (analyzing “[b]y separating children from adults and providing a rehabilitative alternative to punishment, juvenile courts rejected both the criminal law’s jurisprudence and its procedural safeguards such as juries and lawyers”).

27. *In re Gault*, 387 U.S. 1 (1967).

28. *Id.* at 30 (reiterating that juvenile hearings “measure up to the essentials of due process” as a requirement of the Due Process Clause of the Fourteenth Amendment (quoting *Kent*, 383 U.S. at 556))).

29. Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 972 (1995) (citing *In re Gault*, 387 U.S. at 31–57). However, there is still one right afforded to adult criminal defendants that a juvenile is not entitled—a jury trial. See *McKeiver v.*

extending such procedural rights to juveniles, the Court dramatically reduced the traditional notion of the best interest of the child standard for juveniles and began a process of merging concepts applied in adult criminal courts with concepts applied in juvenile courts.³⁰ Following the *Gault* decision, juvenile courts began to resemble criminal courts, with the procedural safeguards of the *Gault* decision diminishing the dispositional discretion previously exercised by the presiding juvenile court judge.³¹

Juvenile law represents a unique legal concept and a notoriously paradoxical entity of the criminal justice system.³² Although many of the procedures in adult and juvenile courts overlap, the goals of the two systems of justice diverge significantly.³³ The primary difference between an adult and a child in a court proceeding is a significant factor in the function of the United States criminal justice system—the difference between protecting society from future crimes perpetrated by the adult criminals versus protecting the welfare of the child from the influences of his or her community.³⁴ The disparity in objectives, apparent from the divergent goals of the two justice systems, should provide insight into the fact that incarceration for punitive purposes does not serve the objectives upon which the juvenile justice system was founded.³⁵ Principally, the

Pennsylvania, 403 U.S. 528, 545–50 (1971) (concluding that juveniles in the adjudicative stage do not have a constitutional right to a jury trial and providing reasons for the conclusion).

30. See *In re Winship*, 397 U.S. 358, 368 (1970) (requiring that proof of delinquency be established beyond a reasonable doubt in addition to the other constitutional safeguards required by *Gault*).

31. Daniel M. Filler & Austin E. Smith, *The New Rehabilitation*, 91 IOWA L. REV. 951, 968–69 (2006) (recognizing that subsequent to *Gault*, juvenile courts “became adversarial, with a more clearly defined role for the defense attorney, and the judge became more of a fact-finder and sentencer than a parent”).

32. See Kelly Keimig Elsea, Comment, *The Juvenile Crime Debate: Rehabilitation, Punishment, or Prevention*, 5 KAN. J.L. & PUB. POLY 135, 137 (1995) (“Society has come full circle from trying juveniles as adults in adult courts to creating separate courts for juveniles to the current system of mandating that juveniles be tried in adult courts under certain circumstances.”).

33. While the original purpose of the juvenile court was rehabilitation, the purpose of adult criminal courts is retribution. Robert Anthonson, Note, *Furthering the Goal of Juvenile Rehabilitation*, 13 J. GENDER RACE & JUST. 729, 732 (2010). Retribution looks at the past with a focus on punishing the offender for the crimes, but rehabilitation is forward looking, attempting to reform “criminals into productive, law-abiding citizens by providing them with the necessary tools to succeed.” *Id.*

34. See *Bostelman v. People*, 162 P.3d 686, 691 (Colo. 2007) (en banc) (“In contrast to the juvenile justice system’s primary goal of guidance, rehabilitation, and restoration enabling a youthful offender to become a productive member of society, the adult justice system focuses on punishment, deterrence, and retribution as explicit goals.”).

35. See Kristina H. Chung, Note, *Kids Behind Bars: The Legality of Incarcerating Juveniles in Adult Jails*, 66 IND. L.J. 999, 1007 (1991) (“As high rates of recidivism belie the belief that incarceration has a deterrent effect on future delinquency, the notion that a child can be ‘scared straight’ by detaining him for any length of time is a dangerous misconception and an unrealistic proposition.”).

objective is *not* to produce a hardened, recidivist, adult criminal who is no longer responsive to the rehabilitative approach to punishment applicable to impressionable youth.³⁶

Juveniles, by their very nature, are not as capable of resisting the negative influences of their community as compared to adults.³⁷ This characteristic is in part because juveniles do not have the control over their environment that adults have.³⁸ Notably, this fact takes on a new significance when the environment in which the juvenile is raised is the proximate cause of his or her criminal actions.³⁹

B. *The Nature of Juvenile Gang Members and the Possibility of Reform*

When evaluating the cause of juvenile gang membership, the juvenile's family support system, the susceptibility of a juvenile to peer influences, and the juvenile's position in the legal system are all extremely important factors.⁴⁰ Street gangs⁴¹ most often prey on adolescents living in

36. See *id.* at 1008 (arguing that juveniles in incarceration may “learn to view the outside world with cynicism, distrust[,] and cautious apprehension, an attitude which is reinforced by the criminal stigma that society attaches to him and which interferes with family and community relationships and precludes him from emerging as a ‘law-abiding productive adult’”).

37. See *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) (opining that youth “is a time and condition of life when a person may be most susceptible to influence and psychological damage”); see also Mary Berkheiser, *Capitalizing Adolescence: Juvenile Offenders on Death Row*, 59 U. MIAMI L. REV. 135, 146 (2005) (arguing that the “intensity with which adolescents feel pressure to conform with their peers exacerbates well-documented features of youth such as poor decision-making and impulsivity, and often leads adolescents to engage in behaviors they can resist when alone and will normally desist from as they reach adulthood”).

38. See Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003) (explaining that “as legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting”).

39. See *Eddings*, 455 U.S. at 115 n.11 (granting that juvenile crime “is not exclusively the offender’s fault; offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America’s youth” (quoting FRANKLIN E. ZIMRING, *CONFRONTING YOUTH CRIME: REPORT OF THE TWENTIETH CENTURY FUND TASK FORCE ON SENTENCING POLICY TOWARD YOUNG OFFENDERS* 7 (1978))).

40. See Mary Berkheiser, *Capitalizing Adolescence: Juvenile Offenders on Death Row*, 59 U. MIAMI L. REV. 135, 146 (2005) (discussing the intensity and pressure exerted by an adolescent’s peers and how this influence is often exacerbated); Kristina H. Chung, Note, *Kids Behind Bars: The Legality of Incarcerating Juveniles in Adult Jails*, 66 IND. L.J. 999, 1004–05 (1991) (citation omitted) (noting that gangs are “attracting a larger number of children who are joining at younger ages, thus increasing the possibility that they will commit delinquent acts before reaching adulthood”); David R. Truman, Note, *The Jets and Sharks are Dead: State Statutory Responses to Criminal Street Gangs*, 73 WASH. U. L.Q. 683, 704–05, 705 n.107 (1995) (describing the allure of gang membership to those with weak family units).

41. Scholars have defined “street gang” as “a group of people that form an allegiance based on various social needs and engage in acts injurious to public health and public morals.” Jeffrey J.

working-class homes, as well as homes that provide a weak support system.⁴² Poverty frequently leads children to develop a sense of personal failure and too often pushes them “toward adult status and roles and, because interpersonal resources within the family must be devoted more to survival than to childrearing, younger children tend to grow up ‘undersocialized.’”⁴³ Due to this lack of authority and familial involvement, youth often turn to gangs, because “[t]hese are things other institutions, including schools and families, often fail to provide.”⁴⁴ Thus, the juvenile’s home environment, as well as the community environment, is a key factor in a youth’s decision to join a gang.⁴⁵

Peer pressure from fellow teenagers, particularly in high-crime areas, is another factor that contributes to the high number of youths who join street gangs. Though youths in high-crime areas are just as likely as youths in low-crime areas to perceive gangs as destructive and violent,⁴⁶ those in high-crime areas “are much more likely to believe that a majority of their peers admire gang members.”⁴⁷ These perceptions are the driving force behind the motivation to join a gang.⁴⁸ Only by dispelling these notions

Mayer, Commentary, *Individual Moral Responsibility and the Criminalization of Youth Gangs*, 28 WAKE FOREST L. REV. 943, 979 (1993) (citing Irving A. Spergel et al., U.S. Dep’t of Just., *National Youth Gang Suppression and Intervention Program*, JUVENILE JUST. BULL. at 3). In Texas, the Penal Code defines a criminal street gang as “three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.” TEX. PEN. CODE ANN. § 71.01(d) (West 2011).

42. See David R. Truman, Note, *The Jets and Sharks are Dead: State Statutory Responses to Criminal Street Gangs*, 73 WASH. U. L.Q. 683, 704–05 (1995) (noting that the “gang often acts as a surrogate family for its members, many of whom grew up without a strong family unit”).

43. Craig Haney, Symposium, *The Social Context of Capital Murder: Social Histories and the Logic of Mitigation*, 35 SANTA CLARA L. REV. 547, 564–65 (1995).

44. Luis J. Rodriguez, *Throwaway Kids: Turning Youth Gangs Around*, 259 THE NATION, Nov. 21, 1994, at 605.

45. See Craig Haney, *The Social Context of Capital Murder: Social Histories and the Logic of Mitigation*, 35 SANTA CLARA L. REV. 547, 567–68 (1995) (explaining that the African proverb “it takes an entire village to raise a child,” underscores the fact that children are dependent on the broader social context in which they are raised; or, in other words, “children must be seen in relation to their family, and families must be seen in relation to their community” (quoting Richard M. Lerner & Marvin H. McKinney, *It Takes an Entire Village to Raise a Child*, 38 CONTEMP. PSYCHOL. 783, 783 (1993))).

46. Dan M. Kahan, *Privatizing Criminal Law: Strategies for Private Norm Enforcement in the Inner City*, 46 UCLA L. REV. 1859, 1866 (1999) (contending “the norms that motivate delinquency are in fact widely resented by juveniles themselves”).

47. See *id.* (explaining that while only 19% of youth in gang-free communities hold the belief that their peers admire teens gang members, 66% of youth in gang-ridden areas believe so).

48. “In low-crime neighborhoods, the belief that others disvalue gang membership strengthens the aversion that individual juveniles have towards joining gangs. However, in high-crime neighborhoods, the belief that their peers admire gang members can make joining seem worthwhile even to juveniles who are otherwise only weakly committed or even opposed to gangs.” *Id.*

can the justice system seek to diminish the desirability of gang involvement.

The number of youths who join gangs is also attributable to juveniles' position in the legal community. Gangs often recruit young people simply for having members who can take responsibility for a crime due to the idea that the youth will receive a less harsh punishment.⁴⁹ Additionally, by having the juvenile conduct the illegal activities for the gang members, the juvenile insulates from arrest higher-ranking members.⁵⁰ Many states have responded to these strategies by enacting laws increasing sanctions for certain crimes committed by juveniles at schools.⁵¹ However, this type of elusive, strategic maneuvering by the senior gang members can be tough to combat by any one sanction or penalty embodied in a statute.⁵²

Many lawmakers view juvenile gang members as those youths who deserve a harsh punishment due to the violent nature of their crimes.⁵³ However, these youths may be victims of their environment⁵⁴ and of their community.⁵⁵ Lawmakers' attempts to enhance punishments for juvenile, gang-affiliated crimes are "not acceptable in a juvenile system which

49. See Kelly Keimig Elsea, Comment, *The Juvenile Crime Debate: Rehabilitation, Punishment, or Prevention*, 5 KAN. J.L. & PUB. POL'Y 135, 136 (1995) ("Many gang members simply recruit younger members to transport guns and drugs[] and to commit drive-by shootings because of the almost absolute certainty that the younger child will not be seriously prosecuted."); see also Julius Menacker, Commentary, *Getting Tough on School-Connected Crime in Illinois*, 51 ED. LAW. REP. 347, 347 (1989) (arguing that once youth "have been involved [i]n the juvenile justice system, they soon recognize that there is absolutely nothing to be concerned about, that there are very few sanctions available in juvenile justice").

50. Julius Menacker, Commentary, *Getting Tough on School-Connected Crime in Illinois*, 51 ED. LAW. REP. 347, 347 (1989).

51. See, e.g., *id.* at 348 (providing for automatic transfer of a juvenile's case from the juvenile court to the criminal court if the juvenile, above the age of fourteen, was found to be in illegal possession of, or in use of, a weapon at school or on school property (citing ILL. REV. STAT., ch. 37, par. 702-06 (1985))).

52. See Sean E. Boyd, Note, *Implementing the Missing Peace: Reconsidering Prison Gang Management*, 28 QUINNIPIAC L. REV. 969, 981 (2010) (noting that statutes enacted to "punish actions undertaken or performed in furtherance of the street gang's activities . . . have proven largely ineffective, especially in major cities, in accomplishing their intended goal of deterring street gang membership").

53. See Kristina H. Chung, Note, *Kids Behind Bars: The Legality of Incarcerating Juveniles in Adult Jails*, 66 IND. L.J. 999, 1005 (1991) (arguing that "legislative and judicial bodies are reluctant to prescribe rehabilitative and treatment-oriented measures for these youths for fear they will appear too lenient on juvenile crime").

54. See *In re Seven Minors*, 664 P.2d 947, 950 (Nev. 1983) (explaining that the juvenile court at its founding stages was an institution which recognized that youth law violators are not criminally or morally responsible for their behavior, "but, rather, are victims of their environment").

55. See Juan J. Fogelbach, *Gangs, Violence, and Victims in El Salvador, Guatemala, and Honduras*, 12 SAN DIEGO INT'L L.J. 417, 432 (2011) (noting "it is believed that gangs may coerce, intimidate, or force children to deliver messages; stand as lookouts; and distribute drugs, weapons, and liquor").

emphasizes individualized treatment of the offender.”⁵⁶ There must be a system in place that can identify the root causes that lead juveniles to join gangs. Further, the system must identify solutions to the problem of gang membership before the juvenile reaches the adult criminal justice system⁵⁷ and is removed to a prison where gang affiliation is sometimes necessary for survival.⁵⁸

In order to respond to the problems faced by these youths, there must be a system that focuses on “the best interests of the child,” which is the principal standard for juvenile justice.⁵⁹ In order to accomplish this goal, a therapeutic approach is needed, an approach which, as previously mentioned, served as the basis for the initial formation of the juvenile justice system.⁶⁰ Therapeutic specialty courts address the particularities of the problems faced by juvenile gang members. If Texas can utilize such an approach, Texas can be at the forefront of rehabilitating the country’s youngest gang members.

Texas is a state that is notorious for its imposition of draconian punishments.⁶¹ Texas is home to Harris County, a county so known for its consistently harsh punishments that it has earned the notorious title of

56. *Symposium on Racial Bias in the Judicial System: Minnesota Supreme Court Task Force on Racial Bias in the Judicial System*, 16 HAMLINE L. REV. 624, 662 (1993).

57. *See id.* (“The necessity for identifying and dealing with ‘gang behavior’ requires an in-depth analysis which will not only distinguish the root causes, but provide solutions that can be implemented at a state before the juvenile becomes involved with the [adult] criminal justice system.” (emphasis omitted)); *see also* Craig Haney, *Psychology and the Limits to Prison Pain: Confronting the Coming Crisis in Eighth Amendment Law*, 3 PSYCHOL. PUB. POLY & L. 499, 551 (1997) (declaring that “draconian measures that have been introduced in response to the gang threat have only served to increase their power and . . . the problem will not abate until prison conditions themselves are improved”).

58. *See* Sean E. Boyd, Note, *Implementing the Missing Peace: Reconsidering Prison Gang Management*, 28 QUINNIPIAC L. REV. 969, 985 (2010) (illustrating “inmates who have no previous gang affiliation, street or prison, may choose to join a prison gang to secure protection”); *see also* Craig Haney, *Psychology and the Limits to Prison Pain: Confronting the Coming Crisis in Eighth Amendment Law*, 3 PSYCHOL. PUB. POLY & L. 499, 551 (1997) (arguing that many prisoners initially join a gang “to survive the dangers and deprivations that surrounded them in prison”).

59. *Symposium on Racial Bias in the Judicial System: Minnesota Supreme Court Task Force on Racial Bias in the Judicial System*, 16 HAMLINE L. REV. 624, 662 (1993).

60. *See* Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 970–71 (1995) (describing the approach that juvenile courts initially took as one that was a “scientific and preventative alternative to the more punitive approach of the criminal law”).

61. *See* Ed Kinkeade, *Appellate Juvenile Justice in Texas: It’s a Crime! Or Should Be*, 51 BAYLOR L. REV. 17, 17–21 (1999) (detailing several examples of Texas’s “get-tough” approach towards juveniles, punishing them similarly to adults without providing them the same rights afforded to adult criminal offenders).

the “death penalty capital of the world.”⁶² However, befitting of the slew of contradictions that are rife in Texas juvenile law, the state known for being tough on crime may be at the forefront of a drastic change. Although complex, juvenile law is undoubtedly an area of the law where the scales can tip on the side of positive change—a change that will affect the future of the society lawyers strive to protect.

III. THE ORIGIN OF THE TOUGH ON CRIME ERA OF TEXAS JUVENILE LAW AND ITS INFLUENCE ON A REHABILITATIVE, SOLUTION-BASED ALTERNATIVE

As noted, historically other states have viewed Texas as a state that is tough on crime.⁶³ However, initially, Texas was not “tough” on juveniles found to be delinquent.⁶⁴ Subsequent to the implementation of juvenile courts throughout the country, juveniles found to be delinquent were, to use a guardian-role-model characterization, treated by the courts as if the judge was a parent seeking to rehabilitate the criminal actions and behavior of the child.⁶⁵ During this era of juvenile law development, juveniles were viewed as inherently less culpable than adults were and, hence, deserved a chance to reform.⁶⁶ In other words, juvenile law at its nascent development focused on rehabilitation rather than retribution.⁶⁷

62. See Jessica Willey, *Local Judge Rules Death Penalty Unconstitutional*, KTRK-TV (Mar. 5, 2010), <http://abclocal.go.com/ktrk/story?section=news/local&id=7313041> (stating “Harris County is infamous for being the death penalty capital of the world”).

63. See Michael C. Campbell, *Politics, Prisons, and Law Enforcement: An Examination of the Emergence of “Law and Order” Politics in Texas*, 45 LAW & SOC’Y REV. 631, 632 (2011) (reiterating that Texas has a historical tradition of imposing harsh punishments on criminal defendants).

64. See Ed Kinkeade, *Appellate Juvenile Justice in TexasIt’s a Crime! Or Should Be*, 51 BAYLOR L. REV. 17, 23–24 (1999) (describing the state of the juvenile adjudicatory system and its historically “hybrid” approach to juvenile delinquency prior to 1995).

65. See Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1084 (1991) (describing the juvenile judge’s role as “paternalistic” toward juvenile offenders); Ed Kinkeade, *Appellate Juvenile Justice in TexasIt’s a Crime! Or Should Be*, 51 BAYLOR L. REV. 17, 23–24 (1999) (explaining that the “state operated as a parent and was present to rehabilitate rather than punish”).

66. See Kelly Keimig Elsea, Comment, *The Juvenile Crime Debate: Rehabilitation, Punishment, or Prevention*, 5 KAN. J.L. & PUB. POL’Y 135, 137 (1995) (stating that because many juveniles “had not received adequate parental guidance, they were not seen as solely responsible for their conduct”).

67. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 544–45 n.5 (1971) (holding that the juvenile court is a system that is fundamentally rehabilitative and is not punitive to the extent that the juveniles coming before these courts be entitled to the same legal rights guaranteed for adult criminal defendants); see also Julianne P. Sheffer, Note, *Serious and Habitual Juvenile Offender Statutes: Reconciling Punishment and Rehabilitation Within the Juvenile Justice System*, 48 VAND. L. REV. 479, 482 (1995) (“Rehabilitation has been a stated goal of juvenile justice systems from their inception.”). *But see*

However, in the mid-1990s, courts and law enforcement agencies construed a rise in serious crimes committed by juveniles as an indication that the standards of the juvenile justice system may not warrant such a discrepancy in punishment and sentencing procedures between adults and children.⁶⁸ Consequently, public attitude towards police regulation of violent crimes committed by juveniles led states, Texas being at the forefront, to respond to the public's criticism by enacting legislation that created an accountability-based approach to the punishment and treatment of juvenile offenders.⁶⁹

Solomon J. Greene, Note, *Vicious Streets: The Crisis of the Industrial City and the Invention of Juvenile Justice*, 154 YALE J.L. & HUMAN. 135, 139 (2003) (arguing that the rehabilitative goals of the original juvenile courts "merely provided a cover for the state to expand its jurisdiction over poor families, demonstrating how the 'rule of law' can function in unspoken ways to patrol the existing social order at the expense of equality, due process[,] and privacy rights"); Adam D. Kamenstein, Note, *The Inner-Morality of Juvenile Justice: The Case for Consistency and Legality*, 18 CARDOZO L. REV. 2105, 2107 (1997) (stating that the rehabilitative rhetoric of the juvenile justice system is hollow and misleading because it is, in fact, "a system whereby juveniles often find themselves placed into institutions that are, in fact, strikingly similar to penal institutions and broadly deficient in such areas as supervision, security, living space, and health care").

68. See Kristin Henning, *What's Wrong with Victims' Rights in Juvenile Court?: Retributive Versus Rehabilitative Systems of Justice*, 97 CAL. L. REV. 1107, 1113 (2009) ("National perceptions of high and rising crime generated pressure on state legislators to toughen laws that addressed juvenile delinquency."); see also Julianne P. Sheffer, Note, *Serious and Habitual Juvenile Offender Statutes: Reconciling Punishment and Rehabilitation Within the Juvenile Justice System*, 48 VAND. L. REV. 479, 485–86 (1995) (explaining that rising juvenile crime rates and a belief that juvenile courts were being too lenient on offenders sparked a change in the traditional philosophy of juvenile law, a change that rejected a purely rehabilitative approach and instead combined the goals of rehabilitation and punishment).

69. See Clifford MacKenzie, Comment, *"Tough on Crime" or "Soft on Justice": An Argument for the Mandatory Application of the Texas Juvenile Justice Code's Progressive Sanctions Guidelines*, 10 TEX. WESLEYAN L. REV. 501, 504–05 (2004) (arguing that states have "enacted legislation seeking to satisfy the public's desire for a more punishment-based approach"); see also Jennifer M. O'Connor & Lucinda K. Treat, *Getting Smart About Getting Tough: Juvenile Justice and the Possibility of Progressive Reform*, 33 AM. CRIM. L. REV. 1299, 1305 (1996) (stating that, as a response to rehabilitation's decreased significance in the public's debate over the proper response to rising juvenile crime, "state legislatures have passed a variety of measures mandating harsher sentences for violent juveniles, easing restrictions on transferring juvenile cases to adult court, and facilitating public access to juvenile court records"). However, in a study conducted in 2009, it was found that more people "are willing to pay for additional rehabilitation than for additional punishment":

[T]he average amount in additional annual taxes that respondents are willing to pay for rehabilitation is almost 20% greater than it is for incarceration (\$98.49 versus \$84.52). Conversely, significantly more respondents are unwilling to pay for additional incarceration (39[%]) than are unwilling to pay for added rehabilitation (29[%]). It is quite clear that the public supports rehabilitation and is willing to pay for it.

Alex Piquero & Laurence Steinberg, *Models for Change, Rehabilitation Versus Incarceration of Juvenile Offenders: Public Preferences in Four Models for Change States*, MODELS FOR CHANGE, available at http://www.macfound.org/media/article_pdfs/WILLINGNESSTOPAYFINAL.PDF. But see Erin R. Yoshino, Note, *California's Criminal Gang Enhancements: Lessons from Interviews with Practitioners*, 18 S.

The “get-tough” juvenile reform efforts in Texas resulted in a new title to the Texas Family Code that governs the procedural aspects concerning the adjudication of juvenile offenders.⁷⁰ The Texas Juvenile Justice Code is a hybrid code that balances the law governing criminal legal proceedings with the rules for civil and domestic state law cases.⁷¹

Texas enacted the Juvenile Justice Code at a time when the zeitgeist of the legal community reflected, “the legislature’s move from rehabilitation for serious juvenile offenders to making the punishment fit the crime.”⁷² The methodology employed to implement this change in legal philosophy was based on a doctrine, which reconciled two distinct methods of punishing criminals: reconciling the charge-offense system, imposed on adults, with the real-offense system, more commonly applied to juvenile offenders.⁷³

CAL. REV. L. & SOC. JUST. 117, 150 (2008) (“Americans don’t seem to want rehabilitation, or at least don’t seem to be prepared to pay the price that rehabilitation costs.”).

70. See Clifford MacKenzie, Comment, “Tough on Crime” or “Soft on Justice”: *An Argument for the Mandatory Application of the Texas Juvenile Justice Code’s Progressive Sanctions Guidelines*, 10 TEX. WESLEYAN L. REV. 501, 505 (2004) (stressing that alterations to the Texas Family Code were made in response to critical problems that developed within the state’s juvenile justice system).

71. See *id.* at 505–06 (explaining that, in response to the public’s demand for a more punishment-based juvenile system, “the Texas Legislature enacted Title 3 of the Texas Family Code, more commonly referred to as ‘the Texas Juvenile Justice Code’”). Among the changes made to juvenile law during this period was a change in sentencing procedures by implementing a new procedure, which blended sentencing for juveniles. Under this procedure, “a criminal sentence is blended with a juvenile court disposition so that it is possible for an offender to begin his or her sentence in the juvenile justice system and end the sentence in the adult correctional system.” Elizabeth Upchurch, Note, *Putting Focus Back on the Family: Using Multisystemic Therapy and Regionalized Incarceration As Alternatives to the Texas Youth Commission*, 15 TEX. WESLEYAN L. REV. 161, 166 (2008).

72. Clifford MacKenzie, Comment, “Tough on Crime” or “Soft on Justice”: *An Argument for the Mandatory Application of the Texas Juvenile Justice Code’s Progressive Sanctions Guidelines*, 10 TEX. WESLEYAN L. REV. 501, 505 (2004); see also Kelly Keimig Elsea, Comment, *The Juvenile Crime Debate: Rehabilitation, Punishment, or Prevention*, 5 KAN. J.L. & PUB. POLY 135, 139 (1995) (distinguishing that since the Supreme Court’s decision in *In re Gault*, more than a quarter of state legislatures have adopted legislative statements of purpose to “de-emphasize rehabilitation and the child’s ‘best interests’ and emphasize 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” (quoting Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691, 709 (1991))).

73. See *United States v. Ritsema*, 31 F.3d 559, 564–65 (7th Cir. 1994) (granting that a real offense-sentencing system allows a court to include any relevant conduct in sentencing, as opposed to a charge-offense system, which strictly limits the conduct included in sentencing to “the charge the prosecutor names in the indictment”). In charge-offense sentencing, a sentence is imposed based on the statutory offense, disregarding any harm or other mitigating factors not included in the elements of the statute that was violated. John A. Henderson, Note, *A Square Meaning for a Round Phrase: Applying the Career Offender Provision’s “Crime of Violence” to the Diminished Capacity Provision of the Federal Sentencing Guidelines*, 79 MINN. L. REV. 1475, 1481–82 (1995). By contrast, the real offense system imposes sentences based on the behavior of the offender, considering “any behavior that increases or

The reconciliation between the charge and the surrounding circumstances, between incarceration and treatment, and between retribution and rehabilitation, is at the core of the complexity of juvenile proceedings created by a court system that imposes incarceration on individuals, yet operates in a quasi-civil nature.⁷⁴ Yet this is the essence, and the intriguing legal quandary, of the spirited debates over juvenile law reform. The legal community must acknowledge these tilting scales, and struck must be a balance that recognizes two fundamental principles of our legal system: that courts must punish criminals for their crimes and that the legal system must provide a forum to rehabilitate a juvenile who still has a chance to avoid the adult legal system.⁷⁵

IV. SPECIALTY JUVENILE COURTS IN TEXAS

A. *The Origin of Specialty Courts*

Juvenile offenders represent a unique segment of the criminal population. Youthful offenders face “many issues that are not salient for adult offenders.”⁷⁶ This is underscored by the fact that there are separate courts where juveniles must appear to face delinquency charges.⁷⁷ In the

reduces the likelihood of future criminal behavior.” *Id.* at 1482; *see also* Adam D. Kamenstein, Note, *The Inner-Morality of Juvenile Justice: The Case for Consistency and Legality*, 18 CARDOZO L. REV. 2105, 2114 (1997) (suggesting that early in juvenile law the crime the child was found to have committed provided little relevance in determining the appropriate disposition because the child’s environment was believed to be a primary determinant of his or her disposition).

74. *See* Adam D. Kamenstein, Note, *The Inner-Morality of Juvenile Justice: The Case for Consistency and Legality*, 18 CARDOZO L. REV. 2105, 2112 n.41 (1997) (outlining the notion of *parens patriae* and the historical treatment of juvenile offenders under judicial proceedings with more civil elements than the criminal proceedings typically instituted against adult offenders).

75. *See* Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference It Makes*, 68 B.U. L. REV. 821, 833 (1988) (arguing that the two justifications for intervention, punishment, and treatment are “mutually exclusive penal goals”).

76. Brandon K. Applegate & Shannon Santana, *Intervening with Youthful Substance Abusers: A Preliminary Analysis of a Juvenile Drug Court*, 21 JUST. SYS. J. 281, 281 (2000); *see* Leonardo P. Caselli, Case Note, *Criminal Law—One Small Step for Juveniles, One Giant Leap for Juvenile Justice*; *Graham v. Florida*, 130 S. Ct. 2011 (2010), 11 WYO. L. REV. 269, 283 (2011) (“juvenile offenders face a heightened risk of sentencing error because of difficulties in obtaining effective assistance of counsel.”); *see also* Robert Anthonsen, Note, *Furthering the Goal of Juvenile Rehabilitation*, 13 J. GENDER RACE & JUST. 729, 745 (2010) (explaining that incarcerated juveniles “often lack the physical and mental coping mechanisms that older prisoners use to maintain their mental health and self-respect” (quoting AMNESTY INT’L & HUMAN RIGHTS WATCH, *THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES* 52 (2005), available at <http://www.hrw.org/sites/default/files/reports/TheRestofrheirLives.pdf>)).

77. *See* Ira M. Schwartz, Neil Alan Weiner & Guy Enosh, *Nine Lives and then Some: Why the Juvenile Court Does Not Roll Over and Die*, 33 WAKE FOREST L. REV. 533, 535 (1998) (recognizing that

early 1990s, courts began to recognize courts were placing certain juveniles on probation without consideration of certain circumstances, such as drug abuse, which may have led them to commit the crime.⁷⁸ This recognition led to the implementation of specialty courts to address these particular circumstances. Though specialty courts initially were implemented in adult criminal courts, their application in the context of juvenile courts began to gain recognition with the implementation of the first juvenile drug court.⁷⁹

Judiciaries founded specialty courts in an attempt to address the failures that increased administrative law enforcement measures had in alleviating specific areas of crime.⁸⁰ In the 1980s, the Eleventh Judicial Circuit of Florida created the first specialty court: drug court.⁸¹ Drug courts aimed

since its inception, “the juvenile court has spawned reproductions and lookalikes in every other state in the nation and in many countries throughout the world”).

78. See Robert Anthonson, Note, *Furthering the Goal of Juvenile Rehabilitation*, 13 J. GENDER RACE & JUST. 729, 731–32 (2010) (explaining that the juvenile justice system is “intended to address each juvenile’s need for treatment rather than the severity of the criminal offense”). When subject to the supervision of a juvenile court, a juvenile has a legal right to treatment. Brent Pattison, *Minority Youth in Juvenile Correctional Facilities: Cultural Differences and the Right to Treatment*, 16 LAW & INEQ. 573, 588 (1998). “While the right to treatment is grounded in the historical development of the juvenile court, it only developed recently into a legal right for challenging the conditions of juvenile facilities.” *Id.*

79. See Daniel M. Filler & Austin E. Smith, *The New Rehabilitation*, 91 IOWA L. REV. 951, 968–69 (2006) (explaining that although “it is hard to tell who actually created the first juvenile specialty court, Circuit Judge John Parnham in Escambia County (Pensacola), Florida has been credited with creating the first juvenile drug court in 1995”). See generally Brandon K. Applegate & Shannon Santana, *Intervening with Youthful Substance Abusers: A Preliminary Analysis of a Juvenile Drug Court*, 21 JUST. SYS. J. 281, 295–97 (2000) (analyzing the experiences of the juvenile drug court in Orange County, Florida, throughout the Orlando court’s first fourteen months in operation).

80. The drug court movement of the 1980s began as a response to the public’s conclusion that the war on drugs had not been effective in reducing the country’s demand for, and the available supply of, illicit drugs. Brandon K. Applegate & Shannon Santana, *Intervening with Youthful Substance Abusers: A Preliminary Analysis of a Juvenile Drug Court*, 21 JUST. SYS. J. 281, 282 (2000). Rather than alleviate crime, the war on drugs resulted in prison overcrowding and overloaded judicial dockets. *Id.* Many researchers saw drug courts as a means of easing the stress put on courts because of the overload of drug cases appearing on their dockets. *Id.* Because of the legislative tendency to treat drug abuse as a crime, and not a disease, the judiciary rather than the legislature has been the driving force behind drug courts’ remarkable expansion. Jennifer Broxmeyer, *Prisoners of Their Own War: Can Policymakers Look Beyond the “War on Drugs” to Drug Treatment Courts?*, 118 YALE L.J. POCKET PART 17, 17 (2008), available at <http://yalelawjournal.org/images/pdfs/683.pdf>.

81. The Chief Judge of the Eleventh Judicial Circuit of Florida, in 1989, created the first drug court when the Chief delivered an administrative order mandating the creation of the court. Daniel M. Filler & Austin E. Smith, *The New Rehabilitation*, 91 IOWA L. REV. 951, 966 (2006). The Dade County court took a rehabilitative, rather than retributive goal, to drug crime. *Id.* Those who the state would have prosecuted in a state criminal court were diverted to the drug court to receive treatment for their addiction. *Id.*; see also Candace McCoy, *The Politics of Problem-Solving: An Overview of the Origins and Development of Therapeutic Courts*, 40 AM. CRIM. L. REV. 1513, 1517 (2003) (stating, “drug courts have the longest pedigree in the contemporary problem-solving court movement”). Most drug courts admit drug-addicted, non-violent offenders into their programs, hoping to rehabilitate

to address the specific problems faced by drug offenders.⁸² The “war on drugs,” launched in the 1980s in response to the emergence of the crack epidemic, proved to be problematic for criminal courts.⁸³ The crackdown on drug offenders led to prison overcrowding and case-processing difficulties, and it resulted in no reduction in the number of drug offenders.⁸⁴ Drug courts, however, proved to be an effective means of providing treatment to drug offenders and reducing recidivism.⁸⁵

the participants by relieving drug dependence and reducing related criminal conduct. Jennifer Broxmeyer, *Prisoners of Their Own War: Can Policymakers Look Beyond the “War on Drugs” to Drug Treatment Courts?*, 118 YALE L.J. POCKET PART 17, 18 (2008), available at <http://yalelawjournal.org/images/pdfs/683.pdf>. This is most often achieved through rehabilitative programs, systematic meetings with the court, periodic drug testing, education, counseling, and job training. *Id.* Typically, these courts have a non-adversarial environment; the defense counsel, prosecutor, judge, treatment professionals, and corrections officers collaborate and share information related to the participant’s progress. *Id.*

82. See Anthony C. Thompson, *Courting Disorder: Some Thoughts on Community Courts*, 10 WASH. U. J.L. & POLY 63, 70 (2002) (advancing that the new court created an “entirely separate court structure that allowed the judiciary to approach the criminal conduct as a symptom of the root problem: substance abuse”). This structure is akin to the traditional model of the juvenile courts. The progressive reformers of the late nineteenth century, who advocated for the implementation of therapeutic courts, believed that a specialty juvenile court would be a quasi-medical tool with the possibility of diverting delinquents from criminal paths:

The progressives believed that by conducting individualized inquiries into the lives of troubled youth, the antecedent causes of their misbehavior could be identified. Once these antecedent causes were identified, an individual treatment plan could be implemented that would overcome these antecedent causes, thereby correcting the youth’s subsequent behavior. This was the goal and promise of scientific social casework.

Candace McCoy, *The Politics of Problem-Solving: An Overview of the Origins and Development of Therapeutic Courts*, 40 AM. CRIM. L. REV. 1513, 1515 (2003) (quoting THOMAS G. BLOMBERG & KAROL LUCKEN, *AMERICAN PENOLOGY: A HISTORY OF CONTROL* 85 (2000)).

83. See Jennifer Broxmeyer, *Prisoners of Their Own War: Can Policymakers Look Beyond the “War on Drugs” to Drug Treatment Courts?*, 118 YALE L.J. POCKET PART 17, 19 (2008), available at <http://yalelawjournal.org/images/pdfs/683.pdf> (stating that the war on drugs led to courts having an “unsustainable caseload and growing number of prisoners”).

84. See *id.* at 18 (“As the decade progressed, there was a growing recognition that mandatory sentences were overburdening court dockets and prisons and did little to curb drug abuse.”).

85. See *id.* at 19 (noting that various “studies have demonstrated that drug treatment courts lower recidivism rates and cost less than incarceration”). But see Robert Martinson, *What Works?—Questions and Answers About Prison Reform*, 35 PUB. INT. 22, 25 (1974) (reporting that the rehabilitative efforts have not had an appreciable effect on recidivism).

B. *The Rise of Specialty Juvenile Courts in Texas and Their Success in Reducing Recidivism*

Jurisdictions utilizing specialty courts⁸⁶ recognize that in some contexts a rehabilitative approach to punishment may be more effective in reducing crime than simply locking up an offender in a detention center.⁸⁷ Because, as previously stated, Texas has historically been tough on crime; scholars view Texas as a state that does not embrace a rehabilitative approach to punishment.⁸⁸ However, this view has changed in recent years due to the implementation of various specialty courts throughout the state,⁸⁹ the prime example being the drug court.

Because the majority of youths in Texas juvenile courts suffer from some type of substance abuse problem,⁹⁰ Texas has an interest in

86. The most common variation of a juvenile specialty court is the juvenile drug court. Daniel M. Filler & Austin E. Smith, *The New Rehabilitation*, 91 IOWA L. REV. 951, 976 (2006). "As of January 2005, there were 334 different juvenile drug court programs across the country, including at least one in every state, as well as another 162 in the planning stage." *Id.*

87. Tamar M. Meekins, *You Can Teach Old Defenders New Tricks*, 21-SUM CRIM. JUST. 28, 29 (2006) ("These courts seek to change the traditional adjudicative process to allow for a combination of treatment, conditions, sanctions and rewards, or other measures, all in an effort to modify behavior, punish the alleged offender, or address a community problem."). Because juvenile courts were originally designed to provide individualized treatment and rehabilitative justice for juveniles, specialty courts, which are designed to provide the same individualized approach, may seem anachronistic. Daniel M. Filler & Austin E. Smith, *The New Rehabilitation*, 91 IOWA L. REV. 951, 973 (2006). However, because legislatures have made diligent efforts to undermine rehabilitative juvenile courts, it is difficult in traditional juvenile court structures to deliver rehabilitative services. *Id.*

88. See Ed Kinkeade, *Appellate Juvenile Justice in Texas—It's a Crime! Or Should Be*, 51 BAYLOR L. REV. 17, 19 (1999) (describing the "get-tough" approach to punishment in Texas as a system "which punishes juvenile offenders similarly to adult criminals, but fails to afford those juveniles the same rights as adult offenders").

89. Specialty courts arose as a response to recidivists straining the justice system, many believe, because the state was not addressing the unique issues faced by these offenders. *Id.* As one Texas criminal defense attorney has noted:

Over the past few years, Texas has been attempting to fix this problem through the use of specialty courts. These courts are designed to address particular crimes and serve particular populations, in the hopes that they can be more effective than traditional courts. Rather than focusing on punishment, these courts focus on rehabilitation.

See id. (claiming that Dallas County, Texas, has been the leader in specialty courts throughout the state and describing three Dallas County specialty courts: the drug court, the veterans court and a prostitution court). Because the procedural safeguards mandated in *In re Gault*, 387 U.S. 1 (1967), made the juvenile court more adversarial in nature, specialty courts have, while remaining consistent with those procedural safeguards, "all but abandoned conventional adversarial roles in the interest of providing a more therapeutic and less contentious environment for the resolution of issues." Anthony C. Thompson, *Courting Disorder: Some Thoughts on Community Courts*, 10 WASH. U. J.L. & POLY 63, 64 (2002).

90. Scott Henson, *How Effective Are Juvenile Drug Courts?*, GRITS FOR BREAKFAST (Mar. 20, 2010, 9:14 PM), <http://gritsforbreakfast.blogspot.com/2010/03/how-effective-are-juvenile-drug->

implementing programs designed to provide treatment and reduce the number of juvenile offenders who end up in the justice system because of their drug addiction. Currently, fourteen juvenile drug courts are in operation in Texas.⁹¹ Travis County created the first of these courts in 2001.⁹² This court, along with others implemented throughout the state, has proved to be highly effective in reducing the amount of drug users who reoffended following discharge from the program.⁹³ On a local, state, and national level, statistics indicate specialty courts are effective in alleviating recidivism.⁹⁴ Stark reductions in recidivism rates proved to be an impetus for the implementation of even more rehabilitative programs throughout the state.⁹⁵

In 2005, Texas began to make changes to its sentencing procedures, shifting money away from its tough-on-crime approach and toward rehabilitation and prevention programs,⁹⁶ leading to an increase in the

courts.html (publishing that “78.4[%] of youths in the [Texas] justice system are connected to substance abuse, either because of testing positive for drugs, admitting to use, being under the influence at the time of the offense, or committing an offense involving alcohol or drugs”).

91. *See id.* (setting forth the number of juvenile drug courts operating in Texas).

92. *See id.* (relaying the details of Texas's first operating juvenile drug court).

93. Studies have found that after one year of treatment, there is a 50% reduction in substance abuse and a 64% reduction in arrests. *Id.* For example, in Travis County (Austin), Texas, in 2008, 84% of the graduates of the program had not reoffended within one year; additionally, 78.7% of the participants had reportedly refrained from using alcohol or drugs within six months of discharge. *Id.* Another example is Tarrant County's drug court program, which has lowered recidivism rates to less than 10% upon two years following graduation. *Id.*

94. “Nationwide, 75% of [d]rug [c]ourt graduates remain arrest-free at least two years after leaving the program.” *Drug Courts Work*, NAT'L ASS'N OF DRUG CT. PROF'LS, <http://www.nadcp.org/learn/facts-and-figures> (last visited May 25, 2013). “Rigorous studies examining long-term outcomes of individual [d]rug [c]ourts have found that reductions in crime last at least [three] years and can endure for over [fourteen] years.” *Id.* Scientific analysis state “drug courts significantly reduce crime as much as 45[%] more than other sentencing options.” *Id.* *But see* Anthony C. Thompson, *Courting Disorder: Some Thoughts on Community Courts*, 10 WASH. U. J.L. & POL'Y 63, 76 (2002) (arguing the drug court approach “smacks of misdirected, soft-on-crime treatment that failed in other settings” and that the proponents of the drug court model “forget or purposefully overlook the disappointing lessons, abuses, and poor track record of rehabilitation policies that preceded the U.S. criminal justice system's shift toward the more punitive orientation in recent decades”).

95. *See, e.g.*, Patrick J. McLain, *Texas Experiments with Specialty Courts*, 24-7 PRESS RELEASE (Oct. 4, 2010), <http://www.24-7pressrelease.com/press-release/texas-experiments-with-specialty-courts-173642.php> (reporting that the success of the Dallas County drug court resulted in the county launching its veterans' court and prostitution court).

96. The state and federal sentencing guidelines, advocated by the tough-on-crime proponents, “often served young people poorly, ignoring constitutional protections and punishing them harshly for minor crimes.” Michael J. Brown, *Texas Closes First Prison Thanks to Falling Crime Rate, Rise in Rehabilitation*, TEX. CRIM. LAW. BLOG (Aug. 4, 2011), <http://www.texascriminallawyerblog.com/2011/08/texas-closes-first-prison-than.html>. “Furthermore, prison time is hardly the deterrent that many tough-on-crime advocates believe it to be.” *Id.* Conditions in prison are difficult, especially for

number of specialty courts. These include veterans' courts,⁹⁷ mental health courts,⁹⁸ DWI courts,⁹⁹ teen girls' courts addressing teen prostitution,¹⁰⁰ and juvenile drug courts. In 2011, the trend toward taking a more rehabilitative approach to reforming offenders was underscored by a drastic change in the punishment of juvenile offenders—the closing of the Texas Youth Commission.¹⁰¹

V. AN END TO AN ERA OF ABUSE, CORRUPTION, AND DISGRACE: THE CLOSING OF THE TEXAS YOUTH COMMISSION

The year 2011 marked “the beginning of a new era for juvenile justice in Texas.”¹⁰² The 82nd Texas Legislature successfully pushed through a bill that abolished the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission and merged them into the Texas Juvenile Justice Department—a department charged with prioritizing community-based programs over incarceration.¹⁰³

juveniles, and can be dehumanizing; these conditions harden those people in the prison and increase the probability that inmates will return to crime upon release. *Id.*

97. *Cf.* Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 357, 363 (2009) (promoting courts for veterans that deliver “care for psychological health, including prevention, early intervention and treatment [and that] require[] providers who are knowledgeable about and able to empathize with the military experience”).

98. *Cf.* Patrick Geary, Note, *Juvenile Mental Health Courts and Therapeutic Jurisprudence: Facing the Challenges Posed by Youth with Mental Disabilities in the Juvenile Justice System*, 5 YALE J. HEALTH POL'Y L. & ETHICS 671, 672 (2005) (arguing for the establishment of courts providing mental health services to youthful offenders).

99. *Cf.* John A. Bozza, *Benevolent Behavior Modification: Understanding the Nature and Limitations of Problem-Solving Courts*, 17 WIDENER L.J. 97, 103 (2007) (noting national agency support for courts providing education on some specific consequences of driving under the influence of alcohol and providing treatment for alcoholism).

100. *Cf.* Tamar R. Birkhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1073 (2011) (outlining courts created in Massachusetts and California that provide housing and education, as well as mental and physical health needs, for teens found delinquent for prostitution).

101. *See* Michael J. Brown, *Texas Closes First Prison Thanks to Falling Crime Rate, Rise in Rehabilitation*, TEX. CRIM. LAW. BLOG (Aug. 4, 2011), <http://www.texascriminallawyerblog.com/2011/08/texas-closes-first-prison-than.html> (opining that by closing the juvenile detention centers, “Texas has become part of a national trend of prison closure”).

102. Jeanette Moll, *New Era for Texas Juvenile Justice*, HOUS. CHRON. (Nov. 30, 2011, 8:21 PM), <http://www.chron.com/opinion/outlook/article/New-era-for-Texas-juvenile-justice-2336105.php>.

103. *See* Tex. S.B. 653, 82nd Leg., R.S. (2011) (“[A]bolishing the Texas Youth Commission and the Juvenile Probation Commission and transferring the powers and duties of those agencies to the newly created Texas Juvenile Justice Department.”); TEX. HUM. RES. CODE ANN. §§ 201.001–203.015 (West 2011) (providing regulations for the Texas Juvenile Justice Department); *see also* Jeanette Moll, *New Era for Texas Juvenile Justice*, HOUS. CHRON. (Nov. 30, 2011, 8:21 PM), <http://www.chron.com/opinion/outlook/article/New-era-for-Texas-juvenile-justice-2336105.php>

A. *The Abuse Scandals and Corruption That Plagued the TYC Since Its Inception*

The Texas Youth Commission was a collection of detention units throughout Texas where juveniles served sentences for serious offenses.¹⁰⁴ The centers consisted of institutional facilities and halfway houses that, according to the TYC Mission Statement, sought to promote public safety by partnering “with youth, families, and communities [in order] to provide a safe and secure environment where youth” could receive “individualized education, treatment, and life skills and employment training.”¹⁰⁵ The centers, however, provided neither the “safe and secure environment” nor the individualized treatment that is conducive to the reformation of juvenile offenders and consistent with the institution’s Mission Statement and Guiding Principles.¹⁰⁶ The prisons

(“The last four years in Texas have produced substantial changes in the juvenile justice system, and this new department will expand on those changes.”).

104. See Elizabeth Upchurch, Note, *Putting Focus Back on the Family: Using Multisystematic Therapy and Regionalized Incarceration As Alternatives to the Texas Youth Commission*, 15 TEX. WESLEYAN L. REV. 161, 162 (2008) (“The Texas Youth Commission (TYC) is the state juvenile corrections agency responsible for the custody, care, and rehabilitation of juvenile offenders in the State of Texas.”).

105. *Id.* at 164 (quoting TEX. YOUTH COMM’N, *Mission Statement & Guiding Principles*, <http://www.tyc.state.tx.us/about/mission.html> (last visited Sept. 21, 2008)). The TYC Mission Statement provides:

The Texas Youth Commission, the state’s juvenile corrections agency, promotes public safety by operating juvenile correctional facilities and by partnering with youth, families, and communities to provide a safe and secure environment where youth in the agency’s care and custody receive individualized education, treatment, life skills and employment training and positive role models to facilitate successful community reintegration.

Texas Youth Commission, *State Volunteer Resource Council for Texas Youth*, COUNCIL OPERATIONS MANUAL, VOL. 3 (Oct. 2008), available at http://www.tjjd.texas.gov/programs/council_memberhandbook.pdf.

106. In 2008, the Department of Justice filed, in the United States District Court for the Southern District of Texas, a complaint seeking to enjoin TYC from depriving those youth confined in the Evins Regional Juvenile Center in Edinburg, Texas “of rights, privileges[,] or immunities secured or protected by the Constitution and laws of the United States.” Charlyn Bohland, Comment, *No Longer a Child: Juvenile Incarceration in America*, 39 CAP. U. L. REV. 193, 214 (2011) (citing Complaint at 2, 4, *United States v. Texas*, No. 7:08-CV-00038 (S.D. Tex. agreed May 5, 2008)). In the complaint, which was based on the Department’s own investigation, the Department alleged that the facility failed to adequately protect the youth from assault by other youth and by staff, the staff failed to provide the juveniles housed there with adequate due process, and the facility failed to ensure the youth “receive[d] adequate rehabilitative treatment.” *Id.* After the Department of Justice issued the complaint, the Department of Justice and TYC filed an agreed order in the District Court for the Southern District of Texas. *Id.* In the order, the TYC conceded they needed to address conditions at the Evins facility and agreed to take action to improve the living environment for juveniles at the facility. *Id.*; see Elizabeth Upchurch, Note, *Putting Focus Back on the Family: Using Multisystemic Therapy and Regionalized Incarceration As Alternatives to the Texas Youth Commission*, 15 TEX. WESLEYAN L. REV. 161, 170 (2008) (noting that as of 2008, although numerous reform efforts had been implemented, “these changes have not adequately addressed the effectiveness of the TYC’s rehabilitation programs

were the subject of numerous administrative investigations, which revealed physical and sexual abuse committed by the officers against many inmates.¹⁰⁷

The landmark case of *Morales v. Turman*¹⁰⁸ was a class action lawsuit brought against the TYC by several children challenging the procedural aspects of Texas's juvenile justice system and the poor conditions at TYC facilities.¹⁰⁹ The defendants appealed due to procedural matters, but after thirteen years, a settlement agreement was reached between the parties.¹¹⁰ However, the court found early on in the process of negotiations, discovery, and court proceedings that there was widespread brutality at the TYC facilities so severe that it degraded the human dignity of juveniles in their custody.¹¹¹ Specifically, the court found a "widespread practice of beating, slapping, kicking, and otherwise physically abusing juveniles in the absence of any exigent circumstances" and "[c]onfinement under circumstances giving rise to a high probability of physical injury to inmates."¹¹²

B. *Senate Bill 653: The End of the Texas Youth Commission*

The scandals surrounding the *Morales* case and subsequent investigations led to calls for reform from lawmakers.¹¹³ Though there were several

nor the changes needed to implement programs that address fundamental behavioral modification of delinquent children").

107. See Danny Guerra, *Report: Texas Youth Justice Better, but Can Improve*, TEX. TRIBUNE (Oct. 4, 2011), <http://www.texastribune.org/texas-state-agencies/texas-youth-commission/report-juvenile-justice-reflects-texas-reforms> ("From 2000 to 2007, more than 750 complaints of sexual abuse were filed by youths in Texas Youth Commission facilities. Federal investigators also documented 1,025 youth-on-youth assaults in 2005 at the Evins Regional Juvenile Detention Center and 568 in the first half of 2006.").

108. *Morales v. Turman*, 569 F. Supp. 332 (E.D. Tex. 1983).

109. See Elizabeth Upchurch, Note, *Putting Focus Back on the Family: Using Multisystematic Therapy and Regionalized Incarceration As Alternatives to the Texas Youth Commission*, 15 TEX. WESLEYAN L. REV. 161, 165 (2008) (stating that *Morales* was the first significant overhaul of the juvenile justice system in Texas and the rest of the country).

110. See *id.* (describing the history of the *Morales* case).

111. *Morales v. Turman*, 383 F. Supp. 53, 77 (E.D. Tex. 1974), *rev'd*, 535 F.2d 864 (5th Cir. 1976), *rev'd*, 430 U.S. 322 (1977).

112. *Id.*

113. The *Morales* case led to an in-depth analysis of the TYC by lawmakers and caused several major changes, including: (1) establishment of "a preferred staff-to-youth ratio of 1:8;" (2) prohibition of "corporal punishment and all forms of inhumane treatment;" and (3) a requirement that all juveniles be "afforded due process rights in all court hearings and TYC administrative hearings." Elizabeth Upchurch, Note, *Putting Focus Back on the Family: Using Multisystematic Therapy and Regionalized Incarceration As Alternatives to the Texas Youth Commission*, 15 TEX. WESLEYAN L. REV. 161, 165-66 (2008).

reform proposals throughout the 1980s and the 1990s, significant reform efforts started in 2007 when the legislature passed Senate Bill 103,¹¹⁴ which was passed “in response to the 2007 sex abuse scandal” at the Evins TYC facility¹¹⁵ and encompassed “a large number of reforms for the Texas Youth Commission.”¹¹⁶ The reform provisions in this bill proved effective in lowering the number of youths housed in TYC facilities, with the number of incarcerated youths falling “from 2,327 in 2007 to 1,143 in 2010.”¹¹⁷

Reform efforts following the sex abuse scandals at the facilities continued into 2011, when the Texas Legislature passed Senate Bill 653, which approved the merger of the Texas Youth Commission and the Texas Juvenile Probation Commission, creating an entirely new state agency.¹¹⁸ Senate Bill 653 expanded “community-based programs as an alternative to large, state-run facilities for youth offenders and closed three TYC facilities.”¹¹⁹ The Bill implemented changes in order to provide more resources for programs that would focus on mental health and trauma services for youth.¹²⁰ According to the executive director of the Texas Criminal Justice Coalition, “[k]ids will do better in real rehabilitative

114. Senate Bill 103, which was passed in 2007 during the Regular Session of Texas's 80th Legislature, “lower[ed] the age limit [for TYC] from twenty-one to nineteen and prohibit[ed] youth who commit[ed] misdemeanors from being held at TYC facilities.” Emily Ray, Comment, *Waiver, Certification, and Transfer of Juveniles to Adult Court: Limiting Juvenile Transfers in Texas*, 13 SCHOLAR 317, 319 n.8 (2010). Additionally, the bill disallowed “the practice of placing children younger than fifteen in the same dormitory as youths seventeen years old or older, unless the agency determines that doing so is essential to ensure a child's safety.” *Id.* at 356 n.253.

115. *Id.* at 355.

116. *Id.* at 355 n.248.

117. Danny Guerra, *Report: Texas Youth Justice Better, but Can Improve*, TEX. TRIBUNE (Oct. 4, 2011), <http://www.texastribune.org/texas-state-agencies/texas-youth-commission/report-juvenile-justice-reflects-texas-reforms>. *But see* Emily Ray, Comment, *Waiver, Certification, and Transfer of Juveniles to Adult Court: Limiting Juvenile Transfers in Texas*, 13 SCHOLAR 317, 355, 355 n.249 (2010) (explaining that while the number of youth committed to the TYC has reduced dramatically, the number of juveniles being transferred to adult criminal courts rose by 22% from 2007 to 2009 (citing Lisa Sandberg, *More Juvenile Offenders Landing in Actual Prison*, SAN ANTONIO EXPRESS-NEWS, FEB. 23, 2009, at 13A)).

118. *See* Tex. S.B. 653, 82nd Leg., R.S. (2011) (stating the bill's purpose as “abolishing the Texas Youth Commission and the Texas Juvenile Probation Commission and transferring the powers and duties of those agencies to the newly created Texas Juvenile Justice Department”).

119. Danny Guerra, *Report: Texas Youth Justice Better, but Can Improve*, TEX. TRIBUNE (Oct. 4, 2011), <http://www.texastribune.org/texas-state-agencies/texas-youth-commission/report-juvenile-justice-reflects-texas-reforms>.

120. *See id.* (showing that most juvenile facilities do not have the resources to address the needs of the incarcerated youth and that, according to Executive Director of the Texas Criminal Justice Coalition, “Texas must continue to invest in mental health and trauma services for youths”).

settings where they will get all the resources that they need.”¹²¹

The reduction in crime among youth in Texas and the shift to a more rehabilitative approach are indicative of tools that can be utilized to successfully reform juvenile offenders. However, though Texas has addressed teen drug addiction, teen prostitution, and teen truancy, Texas has not established a specialty court to address the specific problems faced by teen gang members.¹²² The remainder of this Comment will evaluate why such a court is needed and how the creation of this court would address the problems faced by teen gang members on a daily basis.

VI. GANG VIOLENCE IN TEXAS: THE NECESSITY AND EFFICIENCY OF ESTABLISHING A JUVENILE GANG COURT IN TEXAS COUNTIES FACING PROBLEMS WITH GANG VIOLENCE

“Over the past forty years, the prevalence of street gangs in the United States has increased drastically.”¹²³ In Texas, gang membership is prevalent and poses a significant threat to the progress of society. Further, in 2003, Texas had a higher number of gangs than any other state except California.¹²⁴ In the juvenile context, as of 2006, 34% of youths committed to the TYC were known gang members.¹²⁵ Gangs in Texas are reportedly less organized and more prone to violence than gangs in other states.¹²⁶ When society fails to implement effective strategies to curb gang development, this violence often occurs at schools and

121. *Id.*

122. See David Mance, *Gang Court Gaining Nationwide Interest*, KVEW TV (July 20, 2011), <http://www.kvew.com/article/2011/jul/20/gang-court-gaining-nationwide-interest> (declaring that the new anti-gang program for juveniles in Yakima County, Washington, implemented in June of 2011, is “the first of its kind in the nation”).

123. See Sean E. Boyd, Note, *Implementing the Missing Peace: Reconsidering Prison Gang Management*, 28 QUINNIPIAC L. REV. 969, 978 (2010) (explaining that the number of street gangs has begun to rise since 2002, with “nearly 3[,]550 jurisdictions throughout the United States” reporting they have experienced problems with street gangs to a certain degree, with officials estimating that “nearly 788,000 street gang members are active among 27,000 street gangs”).

124. James Leito, Comment, *Taking the Fight on Crime from the Streets to the Courts: Texas's Use of Civil Injunctions to Curb Gang Activity*, 40 TEX. TECH L. REV. 1039, 1043 (2008).

125. Elizabeth Upchurch, Note, *Putting Focus Back on the Family: Using Multisystematic Therapy and Regionalized Incarceration As Alternatives to the Texas Youth Commission*, 15 TEX. WESLEYAN L. REV. 161, 164–65 (2008).

126. See Placido G. Gomez, *It Is Not So Simply Because an Expert Says It Is So: The Reliability of Gang Expert Testimony Regarding Membership in Criminal Street Gangs: Pushing the Limits of Texas Rule of Evidence 702*, 34 ST. MARY'S L.J. 581, 588–89 (2003) (explaining that Texas gangs, particularly those gangs based in San Antonio, have a reputation for being unorganized and more violent than gangs in other states).

dominates local neighborhoods.¹²⁷ With society's best interest in mind, these alarming statistics indicate the importance of developing ways to curb gang crime and rising gang membership.

Gang violence is particularly prevalent in cities located on the border between Texas and Mexico.¹²⁸ Indeed, in El Paso, there are over 500 active gangs, and it is likely that gang activity will only increase in coming years.¹²⁹ The violence that plagues border cities is a result of rival gangs and drug cartels competing for prime trade routes for firearms, drugs, and humans between the United States and Mexico.¹³⁰ Although the United States and Mexico have proposed initiatives and there is heightened cooperation between the two countries, the Mexican drug cartels' boldness and greed, along with the United States' high demand for drugs, have thwarted these initiatives.¹³¹

Another concern about rising gang membership and violence is that gang activity is no longer confined to gang-related crimes.¹³² In *Canava v. State*,¹³³ a gang expert testified that "gangs often engage in random acts of violence[] and that drive-by shootings are consistent with gang

127. See James Leito, Comment, *Taking the Fight on Crime from the Streets to the Courts: Texas's Use of Civil Injunctions to Curb Gang Activity*, 40 TEX. TECH L. REV. 1039, 1044 (2008) (pointing out gang members often have a disproportionate impact upon neighborhoods and schools when insufficient action is taken to curb their influence).

128. The drug flow from Mexico presents an additional problem when law enforcement agents attempt to fight gangs. *Id.* at 1044 n.49. Because of the power that Texas gangs exercise, they are a logical agent for the drug cartels of Mexico. See *id.*; see also Daniel Borunda, *Gang Violence Increase Feared*, EL PASO TIMES (Aug. 24, 2009, 12:00 AM), http://www.elpasotimes.com/ci_13191033 (publishing that El Paso is "one of the busiest narco-trafficking corridors in the nation").

129. See Daniel Borunda, *Gang Violence Increase Feared*, EL PASO TIMES (Aug. 24, 2009), http://www.elpasotimes.com/ci_13191033 (stating that, according to the director of the youth intervention program Operation No Gangs, if the population of El Paso continues to increase at its current rate, gang membership, inter-gang violence, and the number of gangs will continue to increase).

130. See Benjamin Kai Miller, Comment, *Fueling Violence Along the Southwest Border: What More Can Be Done to Protect the Citizens of the United States and Mexico from Firearms Trafficking*, 32 HOUS. J. INT'L L. 163, 164 (2009) (describing the elevated violence along the border of the United States and Mexico is caused by "high levels of firearms trafficking" and trade conflicts between rival drug cartels and gangs).

131. See *id.* at 178 ("Law enforcement officials on both sides of the border have proven to be inadequate in combating the traffickers due to the volume of trade occurring on a daily basis.").

132. For example, in Austin, Texas, police say there are increased concerns about random acts of gang violence. *Austin Police: Random Gang Violence Rising*, KTRK-TV (Mar. 5, 2010), <http://abclocal.go.com/ktrk/story?section=news/state&id=7313691>. The concern grew after a 75-year old woman was beaten to death during a purse snatching. *Id.* A series of drive by shootings only increased these concerns. *Id.*

133. *Canava v. State*, No. 08-01-00163-CR, 2003 WL 21689900 (Tex. App.—El Paso July 18, 2003) (mem. op.) (not designated for publication).

activity.”¹³⁴ These random acts of violence are particularly prevalent among youth gangs. Because youth gangs are loosely organized and highly visible, police find it difficult to predict their criminal activity.¹³⁵

The rise in gang violence at the border, the random locales where gang violence is occurring, and the varied persons that become the victims of such violence necessitate a new approach to combating increased gang membership. Law enforcement agencies and communities have attempted several strategies to reduce gang activity.¹³⁶ However, increased police involvement has not curbed gang violence in areas with high gang activity.¹³⁷ Another avenue of combating street gang violence is the use of civil injunctions.¹³⁸ However, the effectiveness of this remedy is questionable, and the remedy itself raises constitutional issues, as some of these injunctions turn activities that would otherwise be lawful into criminal acts.¹³⁹ More needs to be done, without jeopardizing individuals’ constitutional rights, particularly in the juvenile context, due to the

134. *Id.* at *5.

135. D. Cameron Beck, Jr., Note, *The Balance Between Fighting Street Gangs and Adhering to the Constitution in Southern California*, 1 RACE & ETHNIC ANC. L. DIG. 30, 30 (1995). “Street gangs pose a unique challenge to police.” *Id.* Because gangs often make themselves visible by wearing identifying colors and congregating in parks and on street corners, hinders are law enforcement efforts by the time spent surveying a gang’s public, noncriminal activities. *Id.* Additionally, because of the loose organization of youth gangs, law enforcement officials “often find themselves responding to random and unexplained acts of gang violence.” *Id.*

136. James Leito, Comment, *Taking the Fight on Crime from the Streets to the Courts: Texas’s Use of Civil Injunctions to Curb Gang Activity*, 40 TEX. TECH L. REV. 1039, 1044 (2008). Local task forces have been implemented in many cities throughout the state. *Id.* at 1045. For example, in Houston, the County charges the Anti-Gang Office with developing tracking methods to identify areas of gang activity, and to initiate programs whereby probation officers require gang members under their supervision to help clean graffiti throughout the city. *Id.* Gang intelligence databases, which are a compilation of information on local gang members, supplement the Anti-Gang Office and are used by agencies statewide. *See id.* (discussing the history behind the statewide database, now overseen by the Texas Department of Public Safety). Additionally, many school districts have imposed a duty on school officials to report all criminal activity occurring on school property, and many require their students to wear uniforms with gang neutral colors. *Id.* at 1046.

137. *See* Matthew Mickle Werdegar, Note, *Enjoining the Constitution: The Use of Public Nuisance Abatement Injunctions Against Urban Street Gangs*, 51 STAN. L. REV. 409, 410 (1999) (noting, “gangs and gang-related crime have proven highly resistant to traditional crime fighting methods”).

138. *See, e.g., id.* at 411 (describing California’s use of civil injunctions to remedy problems associated with gangs).

139. *See id.* at 417 (explaining that when injunctions restrict activities that would otherwise be lawful, constitutional concerns come into play). The typical provision of this type restricts gang members from associating publically with one another and seeks to prevent them from “annoying or harassing third parties.” *Id.* *But see* *People ex rel. Gallo v. Acuna*, 929 P.2d 596 (Cal. 1997), *cert. denied*, 521 U.S. 1121 (1997) (denying certiorari to review the constitutionality of California’s civil gang injunction, which included provisions restricting public association and prohibiting interactions with third parties).

susceptibility of the young gang members that are recruited.

Because minors are particularly attracted to the gang life,¹⁴⁰ a gang member's initial encounter with law enforcement will most likely occur when that individual is a juvenile.¹⁴¹ This is a particular problem due to, as previously noted, the susceptibility of teenagers. Many teens are attracted to the gang life because of problems at home and the hope that a gang will serve as a substitute family.¹⁴² Once they become a part of this family, it is almost impossible to break the bond.¹⁴³

Juvenile gang members face specific, identifiable problems. For example, when a gang recruits a juvenile, the gang often brands the juvenile for life with the identification of the gang by way of tattoos.¹⁴⁴ If the juvenile ever wishes to leave the gang life, that member must pay for his "retirement," or else be killed.¹⁴⁵ These problems often leave gang

140. *Symposium on Racial Bias in the Judicial System: Minnesota Supreme Court Task Force on Racial Bias in the Judicial System*, 16 HAMLIN L. REV. 624, 661 (1993). Because public schools have, in certain areas, become dominated by gangs, they have "created a continuous supply of children with increased potential and incentive to join gangs." David S. Rutkowski, Note, *A Coercion Defense for the Street Gang Criminal: Plugging the Moral Gap in Existing Law*, 10 NOTRE DAME J.L. ETHICS & PUB. POL'Y 137, 158 (1996). "The social factors attributed by current studies to gang formation—power, status, protection, substitute for family, friendship—provide a powerful attraction to juveniles at an impressionable age, generally around 12 or 13 years." *Symposium on Racial Bias in the Judicial System: Minnesota Supreme Court Task Force on Racial Bias in the Judicial System*, 16 HAMLIN L. REV. 624, 661 (1993); see David M. Kennedy, *Pulling Levers: Chronic Offenders, High-Crime Settings, and a Theory of Prevention*, 31 VAL. U. L. REV. 449, 453 (1997) (stating that concentrations of criminals are generally found "in a small portion of the general youth population").

141. See David M. Kennedy, *Pulling Levers: Chronic Offenders, High-Crime Settings, and a Theory of Prevention*, 31 VAL. U. L. REV. 449, 454 (1997) ("Since high-rate offending in general is concentrated at fairly young ages, young gang offenders are thus among the most active of all offenders."); see also Abner J. Mikva, *Fifty-Eighth Cleveland-Marshall Fund Lecture: "The Treadmill of Criminal Justice Reform"*, 43 CLEV. ST. L. REV. 5, 9 (1995) (noting that in order to actually reform our criminal justice system, "we have to start at the very first intersection that it has with a rule-breaker[] . . . [u]sually, that is in the juvenile delinquency system").

142. See Videtta A. Brown, *Gang Member Perpetrated Domestic Violence: A New Conversation*, 7 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 395, 407 (2007) (citation omitted) ("When one joins a gang, the gang becomes that member's 'real family' and takes on the respect and responsibility of the biological family.').

143. See, e.g., David S. Rutkowski, Note, *A Coercion Defense for the Street Gang Criminal: Plugging the Moral Gap in Existing Law*, 10 NOTRE DAME J.L. ETHICS & PUB. POL'Y 137, 163–64 (1996) (explaining that because rival gang members will not know whether individuals have left their gang, and they certainly will not take that individual's word for it, "gang affiliation is usually for life").

144. See Michele A. Voss, Note, *Young and Marked for Death: Expanding the Definition of "Particular Social Group" in Asylum Law to Include Youth Victims of Gang Persecution*, 37 RUTGERS L.J. 235, 235 (2005) (showing that when a gang member is branded with a tattoo identifying him to a particular gang, he or she is "mark[ed] . . . as one of their own").

145. The experience of one boy, a member of Mara Salvatrucha (MS), provides a salient picture of just how dangerous it is to leave a gang. At age fourteen, Edgar Chocoy decided to leave the gang he joined when he was only twelve years old. *Id.* (citing Gregory Campbell, *Death by Deportation: A*

members with no other options than to retain their status in the gang and thus preserve the status quo. Juvenile gang courts are designed to, and have been shown to, provide options for juveniles seeking to leave the gang life behind.

If there were a program that dealt proactively with gang members by removing tattoos, offering guidance for excommunication and possible asylum, and providing family-awareness classes, then curbed could be gang retention. One county in Washington state recognized the possible benefits from such a court and recently implemented the first juvenile gang court in the nation.¹⁴⁶ That court will provide a framework for the remainder of this Comment's proposal for implementing gang courts in Texas counties with gang violence problems.

VII. THE YAKIMA COUNTY GANG COURT—THE FIRST OF ITS KIND IN THE NATION

In June of 2011, Yakima County, Washington established the first Juvenile Gang Court in the United States. Yakima Valley officials established this court after years of seeking solutions to a growing gang problem in the region.¹⁴⁷ In the end, prosecutors from Yakima Valley conceded, “efforts need to be made on a community level, and gang

Denver Judge Denied a 16-Year-Old's Political Asylum Application—and Sentenced Him to Death, BOULDER WKLY. (May 27, 2004), <http://archive.boulderweekly.com/052704/coverstory.html>). Subsequently, “MS members demanded that he pay \$375 for his ‘retirement.’” *Id.* If he did not pay, the gang promised to kill him; unfortunately, Edgar was unable to pay, so he went into hiding. *Id.* Within two months, MS members murdered the boy. *Id.* at 236.

146. See Ross Courtney, *Gang Court Uses Individual Attention to Reduce Recidivism*, YAKIMA HERALD-REPUBLIC (June 17, 2011, 10:54 PM), <http://www.yakima-herald.com/stories/2011/06/17/gang-court-uses-individual-attention-to-reduce-recidivism> (writing officials from Yakima County “turned to the relatively untested approach in an effort to try new techniques to stem a rising gang problem”); see also Heather Walker, *New Weapon Against Yakima Gangs*, KIMATV (June 16, 2011, 6:53 PM), <http://www.kimatv.com/news/local/124045224.html> (reiterating a gang court “has never been tried anywhere before, a court with a new way to attack the gang problem starting with the youngest members”).

147. In October of 2009, lawmakers, law enforcement officials, Yakima County commissioners, city officials, and the public participated in a town hall meeting to discuss possible solutions to the county's growing gang problem. Phil Ferolito, *Wanted: Solutions to Gang Problems in the Yakima Valley*, YAKIMA HERALD-REPUBLIC (Oct. 20, 2009, 11:17 PM), <http://www.yakima-herald.com/stories/2009/10/20/wanted-solutions-to-gang-problems-in-the-yakima-valley>.

“Solutions ranged from devising community programs to steer youth away from gangs and reaching people in their homes to stiffening laws over juvenile[, gang-related] crime.” *Id.* However, one former gang member who was present at the town hall meeting argued that locking the kids up was not a solution; the best way to reach the young gang members is to have former gang members, those who have left the gang life, serve as mentors. *Id.*

awareness and intervention need to be brought into homes.”¹⁴⁸ One solution initially proposed by the county was an anti-gang injunction; however, the legislative bill did not pass because both the American Civil Liberties Union and former gang members opposed the bill.¹⁴⁹ In place of the injunction and enhanced gang-related crime penalties, the county formed a gang commission charged with coordinating anti-gang initiatives in the county and surrounding cities that also faced an escalation in gang violence.¹⁵⁰ Ultimately, the juvenile courts, with recommendations from the commission, came up with a possible solution—the formation of a juvenile gang court.

The Yakima County Juvenile Gang Court develops an individualized treatment plan for each participant by utilizing a risk assessment tool to determine the particular needs of each juvenile.¹⁵¹ This tool was “developed by the Washington State Juvenile Court Administrators and measure[s] increases and decreases in risk factors and positive factors every three months.”¹⁵² When there is an increase in a risk factor, such as family dysfunction, the program seeks to balance it with a positive factor, such as a therapy program that involves the entire family.¹⁵³ Thus far, the program has seen a decrease in the number of negative factors and an increase in positive factors that have been introduced in the participants’ lives.¹⁵⁴ However, the court’s proactive involvement with the juveniles is arguably the most important positive factor contributing to the participants’ success.

The Gang Court brings juveniles before a judge for regular

148. *Id.* Yakima County Prosecutor Jim Hagarty admitted that the Yakima Valley “per capita probably has the largest gang problem in [Washington].” *Id.*

149. The ACLU submitted a statement arguing that injunctions are as bad, or even worse, than enhanced criminal sanctions. Casey McNerthney, *McKenna: Gang Problem is Public Safety Emergency*, SEATTLE POST-INTELLIGENCER (Mar. 23, 2011, 10:00 PM), <http://www.seattlepi.com/local/%20article/McKenna-Gang-problem-is-public-safety-emergency-1306648.php>. Injunctions, according to the ACLU, allow innocent persons to be prosecuted for public interactions and disproportionately affect minorities, due to many youth of color dress in a way that fits gang stereotypes. *Id.*

150. See Mark Morey, *Formation of Gang Commission a Big First Step*, YAKIMA HERALD-REPUBLIC (May 18, 2010, 11:16 PM), <http://www.yakima-herald.com/stories/2010/05/18/formation-of-gang-commission-a-big-first-step> (“The commission which will include representatives from the county commission, the county’s 14 cities, the sheriff’s office, the prosecutor’s office[,] and county court will act as a clearinghouse for independent efforts by each of the [county’s] jurisdictions.”).

151. E-mail from Harold Delia, Ct. Coordinator, Yakima Cnty. Gang Ct., to author (Oct. 26, 2011, 04:51 CST) (on file with author).

152. *Id.*

153. *Id.*

154. *Id.*

accountability hearings. At these hearings, the juveniles may interact with “probation officers, school counselors, attorneys, mental health and substance abuse treatment counselors[,] and community members from the faith community.”¹⁵⁵ A county probation counselor, specializing in gangs, stated that his goal was to reduce recidivism by at least twenty percent and for participants to “improve their school attendance and participation in sports or artistic activities.”¹⁵⁶ The program connects the youth with “projects like [H]abitat for [H]umanity and other community service projects as part of their giving back to the community.”¹⁵⁷ Additionally, the program has sought out “former gang members [to serve] as mentors and [to] purchase tattoo removal equipment.”¹⁵⁸

Though initially strapped for funds to provide for many of its proposed services, a recent grant from the Bill & Melinda Gates Foundation provided the program with \$270,000 to fund the hiring of former gang members to serve as mentors to the program participants.¹⁵⁹ The novel nature of this program undoubtedly factored into the receipt of the grant; yet, this grant suggests that community members with considerable financial resources are eager to support measures designed to reduce gang violence. Additionally, the approach taken by Yakima County recently sparked the interests of officials from Harris County, Texas, which is the third most populated county in the country.¹⁶⁰

In September of 2011, officials from Harris County, Texas, visited the Yakima County Gang Court to assess the program and to consider implementing a similar program in Houston, Texas.¹⁶¹ Judge Glenn

155. Ross Courtney, *Gang Court Uses Individual Attention to Reduce Recidivism*, YAKIMA HERALD-REPUBLIC (June 17, 2011, 10:54 PM), <http://www.yakima-herald.com/stories/2011/06/17/gang-court-uses-individual-attention-to-reduce-recidivism>.

156. *Id.*

157. E-mail from Harold Delia, Ct. Coordinator, Yakima Cnty. Gang Ct., to author (Oct. 26, 2011, 04:51 CST) (on file with author).

158. Ross Courtney, *Gang Court Uses Individual Attention to Reduce Recidivism*, YAKIMA HERALD-REPUBLIC (June 17, 2011, 10:54 PM), <http://www.yakima-herald.com/stories/2011/06/17/gang-court-uses-individual-attention-to-reduce-recidivism>.

159. Ross Courtney, *Yakima County Gang Court Gets \$270,000 Gates Grant*, YAKIMA HERALD-REPUBLIC (June 22, 2011, 12:04 AM), <http://www.yakima-herald.com/stories/2011/06/22/yakima-county-gang-court-gets-270-000-gates-grant>. Yakima County Gang Court Coordinator Harold Delia commented the “grant will allow the court to expand the program to accommodate 90 youth[s].” *Id.* Additionally, he stated that the Gang Commission was applying to the United States Department of Justice for a grant “to hire even more former gang members and another grant to purchase tattoo removal equipment.” *Id.*

160. Ross Courtney, *Yakima County Gang Court Piques Interest of Houston Officials*, YAKIMA HERALD-REPUBLIC (Sept. 20, 2011, 10:54 PM), <http://www.yakima-herald.com/stories/2011/09/20/yakima-county-gang-court-piques-interest-of-houston-officials>.

161. *Id.*

Devlin of the 313th District Court in Harris County noted, "The laws in Washington are different than the laws in Texas criminally[,] but I can use a lot of the model that you have here to establish our model in Texas."¹⁶² Judge Devlin stated that he planned to have a similar program implemented in his county by October of 2011.¹⁶³

Texas could implement a gang court model by not only utilizing the strategies employed by Yakima County, but also by structuring the program on the model of drug courts.¹⁶⁴ Indeed, a majority of the specialty courts throughout the country were formed based on the drug court model.¹⁶⁵ By utilizing such resources, Texas could be at the forefront of the nation in curbing gang violence.

162. David Mance, *Houston Courts Look at Yakima County's Gang Court*, KAPPTV (Sept. 22, 2011), <http://www.kapptv.com/article/2011/sep/22/houston-courts-look-yakima-countys-gang-court>. Judge Devlin noted in Harris County, "there's a big need for this type of court." Aaron Hilf, *Legal Team from Texas Visits Yakima County Gang Court*, KNDO (Sept. 22, 2011, 7:49 PM), <http://www.kndo.com/story/15528963/team-from-texas-visits-yakima-county-gang-court>.

163. David Mance, *Houston Courts Look at Yakima County's Gang Court*, KAPPTV (Sept. 22, 2011), <http://www.kapptv.com/article/2011/sep/22/houston-courts-look-yakima-countys-gang-court>.

164. There are ten key components of all drug courts:

1. Integration of treatment services for alcohol and other drugs during the process of the participant's case;
2. Use of a non-adversarial approach to ensure public safety and protection of participants' rights;
3. Prompt identification and placement of eligible participants;
4. Ensuring access to available treatment and rehabilitative programs;
5. Frequent alcohol and drug testing to ensure compliance;
6. Established plans and strategies to address relapse or non-compliance;
7. Continuing interaction between participants and the court;
8. Established methods of evaluation to track efficacy, participant success, and attainability of program goals;
9. Continuing training and education for all drug court staff; and
10. Developing partnerships among agencies and organizations to ensure a supportive network of resources.

DRUG CT. STANDARDS COMM., NAT'L ASS'N OF DRUG CT. PROF., *DEFINING DRUG COURTS: THE KEY COMPONENTS* iii (1997); see Ross Courtney, *Yakima County Gang Court Piques Interest of Houston Officials*, YAKIMA HERALD-REPUBLIC (Sept. 20, 2011, 10:54 PM), <http://www.yakima-herald.com/stories/2011/09/20/yakima-county-gang-court-piques-interest-of-houston-officials> (suggesting that a gang court "is an experimental way of holding juveniles who commit gang-related crimes accountable with extra appearances before a judge").

165. Anthony C. Thompson, *Courting Disorder: Some Thoughts on Community Courts*, 10 WASH. U. J.L. & POL'Y 63, 87 (2002) (stating, "community courts [have] adopted many of the processes" used in drug courts and have attempted to follow the drug court movement).

VIII. PRACTICAL CONSIDERATIONS FOR IMPLEMENTING JUVENILE GANG COURTS IN TEXAS

A. *Initial Implementation—Budgeting Concerns*

Specialty courts are typically created as a result of judges' efforts to address case management issues or seek better outcomes in particular types of cases.¹⁶⁶ Federal, state, and county grants primarily fund these courts; however, contributions from community, faith-based organizations, and private donations are often needed when grant money runs out.¹⁶⁷

All levels of government—county, state, and federal—provide specialty court grants. These grants focus on certain types of issues, such as reducing drug offender recidivism,¹⁶⁸ and are typically only granted for the planning and implementation stages of the program.¹⁶⁹ Additionally, state legislatures often find excess money to allocate to specialty courts, and county government's often appropriate money directly to such courts.¹⁷⁰

When implementing a specialty gang court, the initial grant needs to cover the administrative costs of running the court and provide salaries for the probation officers and counselors assigned to the court. However, because money is scarce and does not typically cover the costs of a specialty court's continued operation, community and faith-based

166. Daniel M. Filler & Austin E. Smith, *The New Rehabilitation*, 91 IOWA L. REV. 951, 970 (2006). Though the state legislature grants a court its general jurisdictional powers, specialty courts are typically implemented at the local level, with “[l]ocal courts carv[ing] out specialty dockets from their general court business.” *Id.* The impetus for forming specialty courts typically comes from “a judge who reaches out to primary stakeholders in the judicial system, including prosecutors, probation officers, and defense attorneys.” *Id.*

167. See James W. Douglas & Roger E. Hartley, Management Note, *Sustaining Drug Courts in Arizona and South Carolina: An Experience in Hodgepodge Budgeting*, 25 JUST. SYS. J. 75, 78 (2004) (explaining that most of the funding comes “from start-up grants from either the Department of Justice (DOJ) or the state governments,” but that when the funding runs out, the “courts are expected to find alternative sources of funding”).

168. For example, Title V of the Violent Crime Control and Law Enforcement Act of 1994 provides federal funds for drug courts, taking “the form of Juvenile Accountability Incentive Block Grants; the Department of Justice identified the establishment of juvenile drug court programs and juvenile gun court programs as among its twelve purpose areas.” Daniel M. Filler & Austin E. Smith, *The New Rehabilitation*, 91 IOWA L. REV. 951, 973 (2006).

169. However, for some courts, particularly family courts and juvenile drug courts, the Department of Justice provides funding for continuation and enhancements. James W. Douglas & Roger E. Hartley, Management Note, *Sustaining Drug Courts in Arizona and South Carolina: An Experience in Hodgepodge Budgeting*, 25 JUST. SYS. J. 75, 80 (2004).

170. See *id.* (illustrating that federal, state, and county funds are three of the six primary sources of drug court start-up grants).

organization often donate additional resources,¹⁷¹ such as the grant provided to the Yakima County Gang Court from the Bill & Melinda Gates Foundation.

Though it is often necessary for specialty courts to operate hodgepodge budgets, by utilizing federal and state grants, obtaining in-kind contributions from county agencies, seeking donations from individuals and community organizations, and charging participants a flat probation fee for the services provided, a specialty gang court can garner the funds necessary to operate effectively.¹⁷²

B. *Necessary Services*

Besides the initial funding concerns for a gang court, there are four practical services that are necessary to enable the juvenile to leave his or her gang: (1) family awareness and intervention classes; (2) mentors who were successful in leaving the gang life; (3) tattoo-removal equipment; and (4) asylum for those juveniles facing threats of retaliation for leaving the gang.

1. Family-Awareness and Intervention Classes

Certain family characteristics are more often associated with juvenile crime. Juvenile offenders often grow up in homes where their parents are inattentive, abusive, or do not discipline the children appropriately.¹⁷³ One solution is utilizing a family intervention program to address the issues that juvenile offenders experience at home and to train families to effectively handle difficult situations. Such programs are highly effective in reducing recidivism rates among young offenders.¹⁷⁴ Because many young people join gangs due to a lack of attention at home, it would seem

171. *See id.* at 78 (explaining specialty courts that receive start-up grants “are expected to find alternative sources of funding for their operations by the time their grants run out”).

172. *See id.* at 76 (explaining that drug courts obtain funding from a variety of sources, including “federal and state grants, state and local appropriations, state agency funds, court fines and fees, participant fees, Medicaid, third-party insurance, and private donations”).

173. *See* Sanjeev S. Anand, *Preventing Youth Crime: What Works, What Doesn't, and What it All Means for Canadian Juvenile Justice Policy*, 25 QUEEN'S L.J. 177, 216 (1999) (“Young offenders tend [to] live in families with anti-social parents, abusive parents, parents in conflict, parents imposing inconsistent punishment[,] and parents who supervise their children loosely.”).

174. For example, Salt Lake City utilizes a program known as Functional Family Therapy (FFT), which “is a short, family-focused intervention that provides concrete techniques for family members dealing with juvenile offenders.” Jeffrey A. Kidder, Note, *Gang Deterrence and the Community Protection Act of 2005: Why the Federal Response to MS-13 Is Flawed and How It Will Have an Adverse Impact on Your State*, 33 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 639, 662 (2007). The city found that families who participated in FFT had a reduction in recidivism. *Id.* at 662 n.228.

necessary for a gang court to have a program that would encourage families to become more proactive in the child's life.¹⁷⁵

2. Former Gang Members Acting as Mentors

Another necessary element of a gang court is to hire former gang members to serve as mentors.¹⁷⁶ One of the common themes of prevention voiced by those urging preventative measures for juveniles is that the youth have mentors and positive role models.¹⁷⁷ By having a role model who had, at one point in his or her life, been consumed by the gang lifestyle, the juvenile is more likely to understand that the gang life is not necessarily permanent or inescapable. These mentors can provide guidance, seek to find the reason why the youth joined the gang in the first place, and invite the youth to start a new, gang-free life.¹⁷⁸ This element of the court is essential to effective rehabilitation.¹⁷⁹

175. See David S. Rutkowski, Note, *A Coercion Defense for the Street Gang Criminal: Plugging the Moral Gap in Existing Law*, 10 NOTRE DAME J.L. ETHICS & PUB. POL'Y 137, 225 (1996) ("Although in the infancy of evaluation, there are numerous programs focusing on communities, schools, job training and placement, and families that have achieved considerable success.").

176. See Sanjeev S. Anand, *Preventing Youth Crime: What Works, What Doesn't, and What it All Means for Canadian Juvenile Justice Policy*, 25 QUEEN'S L. J. 177, 215 (1999) (explaining prevention and intervention programs must address the existence and availability of mentors in the community to serve as role models, but that use of mentoring programs have unknown results).

177. See Miriam Aroni Krinsky, *Disrupting the Pathway from Foster Care to the Justice System—A Former Prosecutor's Perspectives on Reform*, 48 FAM. CT. REV. 322, 331 (2010) (noting that a safe and supportive environment, promotion of job skills, community engagement, and mentorships are "common themes thread[ing] through the growing chorus of voices urging enhanced attention to prevention").

178. The utilization of mentors is an effective alternative to incarcerating gang members. Casey Kovacic, *Creating a Monster: MS-13 and How United States Immigration Policy Produced "The World's Most Dangerous Criminal Gang"*, 12 GONZ. J. INT'L L. 2 (2009), http://www.gonzagajil.org/index.php?option=com_content&view=article&id=183:creating-a-monster-ms-13-and-how-united-states-immigration-policy-produced-the-worlds-most&catid=73:volume-12-issue-1-2008-2009&Itemid=26. These mentors attempt to understand what the gang members are facing and discuss alternatives to gang membership. *Id.* Incarceration, on the other hand, leaves the gang member "with few choices but to depend on their gang allegiances for survival." *Id.*

179. At the town hall meeting held in Yakima County to address the prevalence of gang violence, a former gang member attended and claimed "former gang members who have changed their lives stand the best chance of reaching youth." Phil Ferolito, *Wanted: Solutions to Gang Problems in the Yakima Valley*, YAKIMA HERALD-REPUBLIC (Oct. 20, 2009, 11:17 PM), <http://www.yakima-herald.com/stories/2009/10/20/wanted-solutions-to-gang-problems-in-the-yakima-valley>.

3. Tattoo Removal

Aside from the possibility of a former gang member from the juvenile's former gang identifying the juvenile,¹⁸⁰ tattoo removal is important for former gang members to successfully transition into functioning members of society.¹⁸¹ By having that brand removed, the youth is not hindered from employment opportunities and does not have the general stigma placed on him by society.¹⁸² Additionally, by giving the juvenile a chance at a fresh start without the brand of his or her former gang,¹⁸³ he or she will be able to realize there are alternatives to criminal gang activity.

Tattoo removal cannot, however, be a requirement of the gang court program, because it interferes with an individual's personal bodily appearance and with constitutionally protected civil liberties.¹⁸⁴ However, by having the program available for those members who do want the tattoos removed, gang court participants will be encouraged to shed those identifying marks and thereby have a better chance to obtain employment and become contributing members of society.

4. Asylum

Juvenile law is an anomaly. While the juvenile justice system seeks to protect society from the dangers that violent youths pose, it also seeks to protect the juveniles from the violence and influences imposed upon them by their communities.¹⁸⁵ In the context of juvenile gang members, protecting them from society is particularly relevant considering that the

180. After an individual leaves a gang, the gang-affiliated tattoos become a type of "[s]carlett letter." Sean E. Boyd, Note, *Implementing the Missing Peace: Reconsidering Prison Gang Management*, 28 QUINNIPIAC L. REV. 969, 1011 (2010). "[B]ecause prison gangs generally consider renunciation punishable by death, the tattoo then becomes a target for other members and a constant reminder of the member's abandonment." *Id.*

181. See Sara Lynn Van Hofwegen, Note, *Unjust and Ineffective: A Critical Look at California's Step Act*, 18 S. CAL. INTERDISC. L.J. 679, 698–99 (2009) (explaining that having gang-related tattoos removed "is an important step in helping former gang members find employment").

182. See Sean E. Boyd, Note, *Implementing the Missing Peace: Reconsidering Prison Gang Management*, 28 QUINNIPIAC L. REV. 969, 1011 (2010) (noting that gang tattoos "make it increasingly difficult for the former gang member to obtain a job").

183. See *id.* (stating that gang tattoos "embody the sign 'of permanent belonging to the gang'").

184. See *In re M.P.*, 697 N.E.2d 1153, 1160 (Ill. App. Ct. 1998) (holding that imposing tattoo removal as a condition of probation was unreasonable as it "directly interferes with personal bodily appearance").

185. See Robert M. Donley, Recent Decision, *Criminal Law—Juvenile Justice Goals in Conflict with Protection of Society—United States v. Smith*, 851 F.2d 706 (4th Cir. 1988), 62 TEMP. L. REV. 1341, 1344–45 (1989) ("Although the rehabilitative goal of juvenile justice is a pervasive consideration in the construction of juvenile delinquency law, this goal conflicts with the equally important goal of the criminal justice system to protect society from dangerous individuals.").

communities they grew up in were a contributing factor to their gang membership.¹⁸⁶ This must be taken into account when developing a juvenile's individualized treatment plan in gang court. If it seems impractical for a juvenile to shed his or her gang membership without the gang killing them or placing his or her family in danger, asylum may be the answer.

The term "asylum" in the context of gang membership usually applies to gang members who fled to the United States to escape persecution by a gang in their home country.¹⁸⁷ However, it seems logical to provide the same type of services on a local level to juveniles who face persecution from persons in their communities. A solution is to have a mentor who, "[i]n addition to serving as a friend, advisor, and confidant while the juvenile is detained, . . . would connect the juvenile with appropriate support systems, employment, school, and housing."¹⁸⁸ Some of these juveniles may have family members living in a different neighborhood. The mentor can attempt to coordinate with these family members and determine whether they are willing to take custody of the child until his probation term in gang court is satisfied. However, if this avenue is not available, placement in a group home may be necessary. Residential community-based facilities provide education, counseling, "and specialized programs addressing such issues as substance abuse, violent behavior, sex offenses, parenting, *gang activity*, and anger management."¹⁸⁹ Whatever the avenue may be, having a gang court that specifically addresses the environmental factors that contribute to a juvenile's gang involvement and fashions solutions to those negative factors is the best manner in which to proactively deal with a juvenile's residential needs.

186. The social influence conception of deterrence determines the role that environmental factors play in determining whether a young person will turn to gang membership. Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 374 (1997). The level of gang membership in a particular neighborhood depends on whether juveniles view society as valuing and expecting gang membership. *Id.* In high-crime neighborhoods, young people develop the perception that gang membership is something worthwhile. *Id.* This "system of shared misunderstanding" leads many young people in high-crime areas to join gangs. *Id.*

187. Michele A. Voss, *Young and Marked for Death: Expanding the Definition of "Particular Social Group" in Asylum Law to Include Youth Victims of Gang Persecution*, 37 RUTGERS L.J. 235, 236 (2005) (describing that gang asylum claims are brought by immigrants "from one of two distinct groups: former gang members who will be subjected to retaliation for leaving the gang, or youth who were recruited or otherwise targeted for persecution by gangs").

188. Ellie D. Shefi, Note, *Waiving Goodbye: Incarcerating Waived Juveniles in Adult Correctional Facilities Will Not Reduce Crime*, 36 U. MICH. J.L. REFORM 653, 676-77 (2003).

189. *Id.* at 683 (emphasis added).

IX. CONCLUSION

The original purpose of the juvenile justice system was to “care for and rehabilitate young offenders.”¹⁹⁰ Indeed, the original goal was to rehabilitate juveniles in a way that protected their unique legal status.¹⁹¹ Recidivism is likely if a court releases a juvenile from confinement on probation that does not account for the problems in the juvenile’s community that may lead him or her to reoffend.¹⁹² Further, if a court adjudicates the juvenile as delinquent and commits the juvenile to an institution, problems are still present, because the juvenile will most likely need to identify himself or herself with a gang in order to receive protection from other residents. Grouping like-minded offenders together in an environment is not a solution, where the problems that led to their incarceration are either hailed or exacerbated in order to survive. For instance, placing a cocaine addict in a crack house for an extended period would not be conducive to that person’s rehabilitation. Likewise, putting a gang member in detention, an environment where gang affiliation is often necessary for survival, is not conducive to that individual shedding the gang lifestyle. Thus, what Texas needs is a proactive, intervening, preventative approach to curb gang violence.

Texas counties plagued by gang violence should implement gang courts to address explicitly the root problems that lead juveniles to join gangs in the first place. These gang courts will help juveniles break the cycle of gang violence. Texas can be a pioneer in the realm of gang courts and lead the way in reestablishing the juvenile justice system’s goal of rehabilitation.

190. Craig Hemmens, Eric J. Fritsch & Tory J. Caeti, *The Rhetoric of Juvenile Justice Reform*, 18 QUINNIPIAC L. REV. 661, 661 (1999).

191. See Robert Anthonson, Note, *Furthering the Goal of Juvenile Rehabilitation*, 13 J. GENDER RACE & JUST. 729, 731–32 (2010) (noting that the juvenile justice system was meant to address each juvenile’s specific treatment needs).

192. See Anna L. Benvenue, Comment, *Turning Troubled Teens into Career Criminals: Can California Reform the System to Rehabilitate Its Youth Offenders?*, 38 GOLDEN GATE U. L. REV. 33, 33 (2007) (explaining that with the decline of rehabilitative approaches to juvenile justice, juvenile recidivism has increased).