

APPLYING THERAPEUTIC PRINCIPLES TO A FAMILY-FOCUSED JUVENILE JUSTICE MODEL (DELINQUENCY)

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INTRODUCTION

After more than a century, juvenile courts are still struggling to balance the public's expectation of accountability and enhanced public safety with the historical focus on rehabilitation. As most juvenile justice practitioners know only too well, the population and caseloads of juvenile and family court dockets have changed dramatically during the past decade. "The nature of both the delinquent acts and the dependency matters being handled has become far more complex, entailing much more serious and violent criminal activity and an escalating degree of substance abuse."¹

Over the past decade, juvenile violence has spread like an epidemic. "By the early 1990's, rates of criminal violence, including youth violence, reached unparalleled levels in American society. Com-

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1. OFFICE OF JUSTICE PROGRAMS, DRUG COURT CLEARINGHOUSE AND TECHNICAL ASSISTANCE PROJECT, JUVENILE DRUG COURTS: PRELIMINARY ASSESSMENT OF ACTIVITIES UNDERWAY AND IMPLEMENTATION ISSUES BEING ADDRESSED, (visited Mar. 11, 2001) <<http://www.american.edu/justice/juvoverview.htm>>.

pared to adolescents in other countries, American teenagers exhibit alarmingly high rates of violence. For example, an American seven-year-old is ten times more likely to commit murder than his or her Canadian counterpart."²

Many believe the juvenile court experiment has failed, and some skeptics call for complete abolishment.³ Some argue that the juvenile system has completely failed to reduce juvenile crime.⁴ They believe that the juvenile system is just too soft on crime⁵ and that the adult criminal justice system will be more effective because it can impose more severe sentences.⁶ Others suggest, that given the system's failure to rehabilitate, juveniles are better off in the adult system where they are afforded the full canopy of due process protections, such as the right to trial by jury.⁷

This Article is presented by three practitioners who experience the frustrations of youth, family, and system failure. It offers an alternative to abolishment, one which addresses the rehabilitative and accountability needs of the youth and family and at the same time achieves the public safety goals of criminal justice. This effort is a systems approach which integrates the court's role of accountability and public safety with the rehabilitation aspects of a juvenile court. The merger produces a compelling rehabilitative force by targeting both the family and the youth.

2. Barbara T. Kelley et al., *Epidemiology of Serious Violence*, in JUV. JUST. BULL., June 1997, at 1 (U.S. Dep't of Justice, Wash., D.C.) (citing R.A. SILVERMAN & L. KELLY, DEADLY DEEDS: MURDER IN CANADA (1993); A. BLUMSTEIN, YOUTH VIOLENCE, GUNS, AND THE ILLICIT DRUG INDUSTRY (Working Paper Series: H. John Heinz, III, School of Public Policy Management, 1994)).

3. See David Yellen, *What Juvenile Court Abolitionists Can Learn from the Failures of Sentencing Reform*, 1996 WIS. L. REV. 577, 591-93 (citing criticisms of the juvenile justice system).

4. Yellen, *supra* note 3, at 591-93.

5. *Id.*; see also Ira M. Schwartz et al., *Nine Lives and Then Some: Why the Juvenile Court Does Not Roll Over and Die*, 33 WAKE FOREST L. REV. 533, 541 (1998) (noting that there are critics who argue that juvenile courts are too harsh and that rehabilitative options are the same as imprisonment).

6. See Marygold S. Melli, *Juvenile Justice Reform in Context*, 1996 WIS. L. REV. 375, 392. The process of reshaping the juvenile court on the model of the criminal justice system was reinforced by a prestigious project sponsored by the American Bar Association and the Institute of Judicial Administration to set juvenile justice standards. Francis B. McCarthy, *The Confused Constitutional Status and Meaning of Parental Rights*, 22 GA. L. REV. 975, 1020 (1988). In developing the criteria for those standards, the joint commission that supervised the study relied heavily on the principles of the criminal justice system. The Juvenile Justice Standards Project was begun in 1971 under the auspices of the Institute of Judicial Administration, located at New York University, to examine the juvenile justice system and its relationship to the rights and responsibilities of juveniles. In the course of about a dozen years, twenty-three volumes of recommendations were published and approved by the ABA. Ralph A. Rossum, *Holding Juveniles Accountable: Reforming America's "Juvenile Injustice System"*, 22 PEPP. L. REV. 907, 919 n.78 (1995) (citing BARBARA D. FLICKER, Inst. of Judicial Admin. & Am. Bar Ass'n, STRUGGLE FOR JUSTICE 15 (1979)).

7. Yellen, *supra* note 3, at 592-93.

This systems approach is based upon two theories: 1) the family is in the best posture to rehabilitate its children but it often lacks the requisite skills or resources, and 2) applying therapeutic principles will greatly improve the family's chances at rehabilitation and thereby reduce delinquent behavior and enhance public safety. It is essential that the juvenile system provide support to strengthen families and empower them to influence the lives of their children and control their behavior. "[S]trengthening and empowering [the] famil[y] may prove to be the most effective strategy for the juvenile court system, regardless of the type of case before it."⁸

Never before has there existed a resource so well equipped to address both legal and rehabilitative requirements while providing an intensive experience of accountability and support. The outcome is positive for the youth, the family, and the community, in that the prognosis for long-term behavior change is greatly increased as a result of the system-wide therapeutic focus.

This innovative approach removes the concerns voiced by public safety critics, rehabilitation advocates, and due process theorists by forging a constitutional balance between rehabilitation and accountability. It requires individual, family, and system accountability which changes criminal behavior by eliminating many of its causal influences. The result is a juvenile justice system that addresses the obvious needs of the court for a more productive manner in which to deal with delinquent youth, but more importantly, it provides a meaningful approach to public safety. Our goal is to encourage other juvenile justice professionals, judges, and legislators to reassess current trends by providing the conceptual framework for this concept; identifying its key components; and discussing the over-arching legal issues.

Part I of this Article covers the history of juvenile justice and discusses the changes in juvenile court proceedings and treatment of delinquent youth over the past century. Several Supreme Court rulings subsequent to the establishment of the first juvenile court in 1899 have had the cumulative effect of transforming benevolent, rehabilitation-oriented juvenile courts into junior criminal courts. Part I details the treatment of juvenile delinquency as it has continuously evolved as a result of scientific knowledge, emerging professional fields, philanthropists, and reform groups of the past century. A review of history and an examination of the effects of prior practices highlights the need for a new focus by the courts and the agencies serving children and families in the delinquency system.

8. Judge Leonard P. Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 JUV. & FAM. CT. J. 1, 40 (No. 2 1992).

Part II of this Article gives the reader a brief introduction to family-focused treatment. We will relate a short history of family therapy, some weaknesses in the traditional family therapy approaches, and modifications to family therapy practice that make it a more successful approach to the problems of delinquency and antisocial behavior in adolescents. This portion of the Article examines the impact of risk and protective factors that predispose a child to delinquency and other antisocial behaviors. It posits the proposition that because these problems are multidimensional, the treatment approach must be multidimensional. We will use this discussion of risk and protective factors to examine some typical interventions being used in family-focused treatment settings, and to briefly describe two successful treatment models that incorporate a family-focused, risk approach to treatment. We give a few important caveats and precautions that must be considered when implementing family-focused treatment interventions within a therapeutic jurisprudence setting. These caveats and precautions involve the matrix of roles within the therapeutic setting, especially as they relate to empowering parents to regain authority and control over their children. Finally, we end with an overview of the various statutory schemes that authorize the court to require family participation.

Part III reviews the history of therapeutic jurisprudence from its beginnings in mental health law to its applications in other areas of law. We enumerate some of its fundamental principles and discuss its use in the family-focused juvenile justice model. We also briefly discuss the role the juvenile judge plays in the implementation and operation of a family-focused juvenile justice system and the constitutional issues that must be considered.

I. A HISTORY OF THE JUVENILE JUSTICE SYSTEM IN THE UNITED STATES

Up until the early nineteenth century in the United States, there was little effort made to differentiate between children and adults in the criminal justice system. The same criminal laws, trial process, and penalties applied to children and adults alike. Children were sentenced to the same prisons where adults were incarcerated.⁹ Furthermore, children were not immune from the death penalty.¹⁰ Records indicate

9. BARRY KRISBERG & JAMES F. AUSTIN, *REINVENTING JUVENILE JUSTICE* 17 (1993).

10. Earl E. Appleby, Jr., *An Evolving Juvenile Court: On the Front Lines with Judge J. Dean Lewis*, 6 J. OFF. JUV. JUST. & DELINQ. PREVENTION 3, 4-5 (1999). The Honorable J. Dean Lewis serves as judge of the Juvenile and Domestic Relations Court for the 15th Judicial District of the State of Virginia and is a past president of the National Council of Juvenile and Family Court Judges. In 1997, Judge Lewis received the National Court Appointed Special Advocate's Association Judge's Award.

that prior to 1900, at least ten children under the age of fourteen were executed, while many other children languished and died in prison.¹¹

Advocates for reform of the criminal justice system as it related to children became active in the early nineteenth century.¹² Their efforts coincided with a greater number of juries returning not guilty verdicts in cases that could only be characterized as jury nullifications. The centers for reform were the houses of refuge in New York, Boston, and Philadelphia, which were founded during the 1820s.¹³ "Houses of refuge for children were sealed-off institutions; the motivation for their founding was social awareness and concern that family discipline was no longer sufficient to control the neglected and abandoned children living in the larger seacoast cities."¹⁴

The Society for the Prevention of Pauperism, which later became the Society for the Reformation of Juvenile Delinquents, founded the first house of refuge in New York in 1825.¹⁵ The group voiced concerns with the prevailing practice of placing children in adult jails and workhouses and objected to the punitive nature of the sentences meted out to children.¹⁶ The Society for the Prevention of Pauperism issued its *Report on the Penitentiary System in the United States* in 1822, calling for separate prisons for juvenile offenders.¹⁷ It noted that:

These prisons should be rather [sic] schools for instruction, than places of punishment, like our present State Prisons where the young and the old are confined indiscriminately. The youth confined there should be placed under a course of discipline, severe and unchanging, but alike calculated to subdue and conciliate. A system should be adopted that would [provide] a mental and moral regimen.¹⁸

Houses of refuge were for those who "live an idle or dissolute life, whose parents are dead or if living, from drunkenness, or other vices, neglect to provide any suitable employment, or exercise any salutary control over said children."¹⁹ Delinquent, dependent, neglected, and

11. Robert E. Shepard, Jr., *The Juvenile Court at 100 Years: A Look Back*, 6 J. OFF. JUV. JUST. & DELINQ. PREVENTION 13, 13 (1999).

12. KRISBERG & AUSTIN, *supra* note 9, at 16.

13. *Id.*

14. ROBERT M. MENNEL, THORNS AND THISTLES: JUVENILE DELINQUENCY IN THE UNITED STATES 1825-1940, 3 (1973).

15. KRISBERG & AUSTIN, *supra* note 9, at 17.

16. *Id.*

17. *Id.*

18. MENNEL, *supra* note 14, at 11.

19. ROBERT H. BREMNER, CHILDREN AND YOUTH IN AMERICA: A DOCUMENTARY HISTORY 681 (1970).

ungovernable children were sent to the houses of refuge.²⁰

By the middle of the nineteenth century, these houses of refuge evolved into more punitive reformatories.²¹ Unlike adult correctional institutions, however, the reformatories were to provide education, physical exercise, and supervision.²² They were supposed to teach sobriety, thrift, industry, prudence, and other principles for living.²³ Reformatories were meant to segregate children from the corrupting influence of adults, and the removal of children to reformatories was done for the good of the children.²⁴

Legal rights such as due process were not seen as necessary since the purpose of reformatories was to reform, not to punish, the child.²⁵ Indeterminate sentences were thought appropriate because the children were encouraged to participate in their own reform, and recalcitrant juveniles would not be able to resume their criminal careers.²⁶ Military drills, physical exercise, and constant supervision would aid in the reform of the juveniles in the reformatories along with work, industrial and agricultural education, and religion.²⁷

The houses of refuge and reformatories were hailed as the first attempts toward rehabilitating delinquent youth in the United States. When the courts sentenced youth to these reform schools, they were reintroducing the *parens patriae* concept to govern cases involving juvenile offenders.²⁸ The term *parens patriae* means "father of the country" and refers to the doctrine used by English equity courts to provide judicial protection for orphans, widows, and minors in society—those who could not legally take care of themselves.²⁹

The concept of *parens patriae* was the basis for the holding in the Pennsylvania Supreme Court case *Ex parte Crouse*, decided in 1838.³⁰ On the complaint of her mother, Mary Ann Crouse was brought into

20. KRISBERG & AUSTIN, *supra* note 9, at 17. Delinquent children were those in violation of criminal codes, statutes, and ordinances; dependent children were those who had no parental care or had unfit homes due to neglect or cruelty; and ungovernables were generally children with behavioral problems (*e.g.*, truants, incorrigibles, vagrants, and runaways). *Id.* It would be more than a century (1970s) before ungovernables became a separate jurisdictional category from delinquents to be called "status offenders." *Id.* at 64-67. Many of the children in the houses of refuge were thought to be modern day "status offenders."

21. ANTHONY M. PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY* 54-55 (2d ed. 1977).

22. *Id.* at 54.

23. *Id.* at 55.

24. *Id.* at 54-55.

25. *Id.* at 54.

26. PLATT, *supra* note 21, at 54.

27. *Id.* at 54-55.

28. See KRISBERG & AUSTIN, *supra* note 9, at 18.

29. Appleby, *supra* note 10, at 14.

30. *Ex parte Crouse*, 4 Whart. 9 (Pa. 1839) (holding that the right of parental control is a natural but not inalienable right).

court and committed to a house of refuge.³¹ Her father filed a writ of habeas corpus raising the issue of whether punishment by the court was appropriate where no crime had been committed.³² The court denied the father's motion and held that sending Mary Ann to a house of refuge was legal.³³ Using the concept of *parens patriae*, the court determined that Mary Ann was being helped and not punished even though her freedom was denied to her.³⁴ The court went on to hold that Mary Ann was not entitled to due process like that given to defendants in criminal trials.³⁵ The ruling of the Pennsylvania high court was an expansion of the legal powers of courts over children, and it provided a legal foundation for juvenile courts, the first one of which was established at the end of the nineteenth century.

The privately operated houses of refuge received inmates by court order. However, the houses of refuge became the focus of criticism for various abuses.³⁶ Elijah Devoe, a house of refuge assistant superintendent, wrote a moving article in 1848 about the cruelties and injustices in the houses of refuge.³⁷ States began to supplant the houses of refuge by taking responsibility for operating juvenile facilities.³⁸

Although states continued to institutionalize children, a group of reformers called the Child Savers emerged in Illinois in the late 1800s with the goal of providing the state with a system of handling its delinquent juveniles.³⁹ The Chicago Women's Club mobilized philanthropic groups and united with the Chicago Bar Association to create a powerful political alliance.⁴⁰ Their reform efforts eventually led to the passing of the Illinois Juvenile Court Act on July 1, 1899, which established the first juvenile court.⁴¹ The *parens patriae* concept that was the legal basis for institutionalizing delinquent children was now extended to justify a juvenile court system.⁴²

The Illinois Juvenile Court Act has been recognized as the most important law pertaining to juvenile delinquents in the nineteenth century because it marked the end of a penal approach to juvenile delinquency and the beginning of what was perceived as a preventative ap-

31. *Crouse*, 4 Whart at 9-10.

32. *Id.*

33. *Id.* at 11.

34. *See id.*

35. *See id.* at 10-11.

36. *See* KRISBERG & AUSTIN, *supra* note 9, at 18-20.

37. *Id.* at 20. Devoe's pamphlet, *The Refuge System or Prison Discipline Applied to Delinquency*, was published in the Sprague Pamphlet Collection at Harvard Divinity School in 1848.

38. KRISBERG & AUSTIN, *supra* note 9, at 23.

39. *Id.* at 21.

40. JOSEPH M. HAWES, *CHILDREN IN URBAN SOCIETY: JUVENILE DELINQUENCY IN NINETEENTH-CENTURY AMERICA* 166-68 (1971).

41. PLATT, *supra* note 21, at 103-36.

42. *Id.* at 137.

proach based on scientific thought.⁴³ In this vein, the Act started with a definition of "delinquent child" as a child under the age of sixteen who violated any law, whether state or local.⁴⁴

The Act gave courts broad powers to deal with delinquent and dependent children.⁴⁵ The juvenile court system, as a separate system within the criminal courts, altered the basic philosophy related to the role of courts. Since children did not have legal capacity, the state, through its courts, had the inherent power and obligation to provide protection for children whose parents were not providing appropriate care and supervision.⁴⁶ The focus was on the welfare of the child who was in need of the court's benevolent intervention.⁴⁷

One of the first judges to preside over the Illinois juvenile court system described the goals of juvenile courts as follows:

The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the court-room are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.⁴⁸

New terminology developed from the court system. Juvenile defendants facing trial and sentencing "were 'delinquents' facing 'adjudication' and 'disposition.'"⁴⁹ These terms continue to be used today. The use of new terms was meant to remove labels that stigmatized children and, along with hearings closed to the public, was intended to protect children. As noted in the landmark 1967 United States Supreme Court case *In re Gault*,⁵⁰ however, the lack of scrutiny left the juvenile court sys-

43. HAWES, *supra* note 40, at 168.

44. *Id.* This definition of "delinquent child" means that the juvenile court had jurisdiction over any youth who committed an act that would be a crime if committed by an adult. This phrase remains in the language of the court today.

45. *Id.* at 169.

46. PLATT, *supra* note 21, at 138-39.

47. Howard N. Snyder & Melissa Sickmund, *Juvenile Offenders and Victims: 1999 National Report*, J. OFF. JUV. JUST. & DELINQ. PREVENTION 86 (visited May 29, 2001) <<http://ncjrs.org/html/ojjdp/nationalreport99/toc.html>>.

48. Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 120 (1909).

49. Edward Humes, *A Brief History of Juvenile Court* (visited Apr. 21, 2001) <<http://www.edwardhumes.com/juvhist.htm>>.

50. 387 U.S. 1 (1967).

tem open to abuse.⁵¹

Juvenile courts spread rapidly across the country and, by 1925, all but two states had established juvenile courts.⁵² The mission of the juvenile courts was to rehabilitate delinquents and to make them productive citizens.⁵³ The process was more of an information-gathering and problem-solving session to serve the best interests of the child than the adversarial-type hearing of the criminal court.⁵⁴ Due process rights, including attorney representation, were not thought to be necessary—a belief that still exists in some juvenile courts today.⁵⁵

The philosophy and theory of juvenile courts were championed in the emerging fields of psychiatry, psychology, criminology, and social work. The Juvenile Protective League, founded by some of the same women active in establishing juvenile courts in Chicago, supported and funded the study of conditions leading to delinquency.⁵⁶

William A. Healy proposed a long-term study comparing juvenile court clients with patients in private practice, incorporating factors such as heredity, environment, and antenatal and postnatal history.⁵⁷ Healy and his associates subsequently published *The Individual Delinquent: A Textbook of Diagnosis and Prognosis for All Concerned in Understanding Offenders* in 1915.⁵⁸ He firmly believed that each and every case needed individual study.⁵⁹ Additionally, Healy and his associates never found unique mental or physical traits to delineate delinquents from non-delinquent children even after much research.⁶⁰

In 1917, Healy expanded on his work and published *Mental Conflicts and Misconduct*.⁶¹ The influence of Adolf Meyer was evident in this work. Healy agreed with Meyer that the family was a crucial factor in delinquency.⁶² The emphasis on family was well received by many who had viewed the family as God's reformatory.⁶³

51. See *Gault*, 387 U.S. at 17-20; see also Humes, *supra* note 49.

52. Snyder & Sickmund, *supra* note 47, at 86.

53. *Id.* at 86-87.

54. *Id.*

55. *Id.*

56. MENNEL, *supra* note 14, at 161.

57. See generally WILLIAM HEALY, *THE INDIVIDUAL DELINQUENT: A TEXTBOOK OF DIAGNOSIS AND PROGNOSIS FOR ALL CONCERNED IN UNDERSTANDING OFFENDERS* (1915). Healy held an M.D. degree and served as a physician at the Wisconsin State Hospital. His textbook, which he intended to be a practical handbook, was based on a study of cases of repeat juvenile offenders. See KRISBERG & AUSTIN, *supra* note 9, at 33.

58. HEALY, *supra* note 57.

59. *Id.* at 5; see also MENNEL, *supra* note 14, at 165.

60. HEALY, *supra* note 57, at 4-5; see also KRISBERG & AUSTIN, *supra* note 9, at 33.

61. WILLIAM HEALY, *MENTAL CONFLICTS AND MISCONDUCT* (1969).

62. See *id.* at 9-10, 71-73, 75-77.

63. See HAWES, *supra* note 40, at 255. Many of the child savers and other philanthropic and reform groups supported the traditional family government of early colonial days. Houses of Refuge had been attempts to provide the teachings and skills that parents were not providing to

According to Krisberg and Austin, "[t]he significance of Healy's work cannot be overemphasized, as it provided ideological rationale to defend the juvenile court."⁶⁴ They believed that Healy's work gave legitimacy to the flexibility of the courts and promoted discretionary power of the courts for the best interests of the child. Healy's work also gave support to the concept of professionalism in the delinquency system, especially as it related to prevention.⁶⁵ Professional staff replaced the volunteers and probation staff who had traditionally worked with juveniles.

Social structure and environmental factors began to be considered in the early 1930s due to a large-scale study called "The Chicago Area Project," conducted by University of Chicago sociologist Clifford Shaw.⁶⁶ Shaw is considered the progenitor of utilizing large-scale, planned, community-based efforts with delinquent youth. His sociological research was in opposition to the prevailing approach that relied on institutional care and psychological explanations for delinquent behavior. His research appears in three case studies: *The Jack Roller: A Delinquent Boy's Own Story*,⁶⁷ *Brothers in Crime*,⁶⁸ and *Juvenile Delinquency and Urban Areas*.⁶⁹ Krisberg and Austin noted that Shaw viewed delinquency as a problem of the modern city, which was characterized by the breakdown of spontaneous or natural forces of social control.⁷⁰

By the 1950s and 1960s much research was being done on the individual and social causes of criminal behavior, and psychological treatment approaches were used in institutions for the first time.⁷¹ Although some of these approaches were studied, there is no evidence of their success in treating delinquent behavior. Moreover, some of the experimental drug therapies and behavior modification techniques re-

their children. *See id.* at 258-62.

64. KRISBERG & AUSTIN, *supra* note 9, at 34.

65. *See* HEALY, *supra* note 61.

66. *See infra* text accompanying notes 67-69.

67. CLIFFORD R. SHAW, *THE JACK-ROLLER, A DELINQUENT BOY'S OWN STORY* (1930). This was the first volume in a series of detailed case studies of young male delinquents. Its research, conducted for the Institute for Juvenile Research and Behavior Research Fund, is based on the telling story of Stanley (fictitious name). *See id.*

68. CLIFFORD R. SHAW ET AL., *BROTHERS IN CRIME* (1938). This book is about the study of the lives of five brothers who were all delinquents. It attempts to reveal "the marked limitation of individualistic methods of treatment as applied to cases of delinquency in which the behavior problem is a function of social processes which are community-wide in their scope and influence." *Id.* at 3.

69. CLIFFORD R. SHAW & HENRY D. MCKAY, *JUVENILE DELINQUENCY AND URBAN AREAS* (2d ed. 1969) This work establishes findings that juvenile delinquents follow a pattern of the physical structure and of the social organization within a city. *See generally id.*

70. *See* KRISBERG & AUSTIN, *supra* note 9, at 35-36.

71. *See id.* at 47.

ceived intense criticism.⁷²

A major innovation of the 1960s was the introduction of community-based correctional facilities, such as group homes, pretrial release programs, and halfway houses.⁷³ Using sociological studies, proponents of community-based correctional facilities argued that "correctional costs could be reduced and rehabilitation results improved in a community context."⁷⁴ The ultimate community-based corrections model was demonstrated in Massachusetts where the Department of Youth Services closed all its training schools for delinquents.⁷⁵ Juveniles were transferred to group-home facilities, and services were offered to individual children on a community basis.⁷⁶ But the Massachusetts strategy "met intense public criticism by juvenile court judges, correctional administrators, and police officials."⁷⁷ [M]ost states [were] not firmly committed to community-based treatment" and continued to rely on institutional placement reminiscent of the houses of refuge.⁷⁸

By the late 1960s there was a growing awareness of the limitations of the juvenile justice system. In 1967, social scientists and practitioners developed theories of delinquency prevention for President Lyndon B. Johnson's crime commission. The President's Commission on Law Enforcement and Administration of Justice issued a report entitled *Juvenile Delinquency and Youth Crime*.⁷⁹ The report raised serious questions about fundamental premises of the juvenile justice system and its effectiveness.⁸⁰ It also raised concerns over the lack of procedural safeguards in the juvenile court system.⁸¹

Several rulings by the United States Supreme Court, starting with *Kent v. United States*⁸² in 1966, related to juvenile matters and dramatically changed the character of the juvenile courts. In *Kent*, the Court held that Morris Kent, a minor, was denied his due process rights when the trial judge failed to hold a hearing prior to transferring him to adult court for trial.⁸³ Kent's lawyer was not given the social information relied on by the court in its decision to transfer.⁸⁴ The

72. *Id.*

73. *Id.*

74. *Id.* at 48.

75. See YITZHAK BAKAL & HOWARD POLSKY, REFORMING CORRECTIONS FOR JUVENILE OFFENDERS: ALTERNATIVES AND STRATEGIES 33-34 (1979).

76. *See id.* at 59-63.

77. KRISBERG & AUSTIN, *supra* note 9, at 48.

78. *Id.* at 49.

79. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 55 (1967).

80. *See id.* at 55-88.

81. *See id.*

82. 383 U.S. 541 (1966).

83. *Kent*, 383 U.S. at 557.

84. *Id.* at 546.

Court warned the states not to view the *parens patriae* concept of the juvenile courts as "an invitation to procedural arbitrariness."⁸⁵

The Court also expressed its concerns when it stated:

There is much evidence that some juvenile courts, including that of the District of Columbia, lack the personnel, facilities and techniques to perform adequately as representatives of the State in a *parens patriae* capacity, at least with respect to children charged with law violation. There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.⁸⁶

In re Gault,⁸⁷ decided by the Supreme Court in 1967, further recognized the rights of juveniles in matters that included the right to notification of the charge, the right to representation by counsel, the right to confront and cross-examine witnesses, and protection against self-incrimination.⁸⁸ The Court questioned the wisdom of *parens patriae* and tailored a careful holding that extended many rights of adult criminal defendants under the Due Process Clause of the Fourteenth Amendment to juveniles subject to deprivation of liberty upon adjudication of delinquency.⁸⁹ The Court went on to say that "it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.' Under our Constitution, the condition of being a boy does not justify a kangaroo court."⁹⁰

These decisions on due process were not welcomed by court personnel who favored the more informal, treatment-oriented juvenile court process.⁹¹ Some were concerned that the juvenile court would become a junior criminal court and lose sight of its intended mission.⁹² Further, many shared the view that the problems with the juvenile courts were due to the lack of available treatment resources for youths, not a lack of procedural formalities.⁹³

By 1970, the United States Supreme Court had reviewed, in the

85. *Id.* at 555.

86. *Id.* at 555-56.

87. 387 U.S. 1 (1967).

88. *See Gault*, 387 U.S. at 31-59.

89. *See id.* at 30-59; *see also* THE OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES 326 (Kermit L. Hall et al. eds., 1992).

90. *Gault*, 387 U.S. at 27-28.

91. *See* KRISBERG & AUSTIN, *supra* note 9, at 49.

92. *See id.*

93. *Id.*

case of *In re Winship*,⁹⁴ another issue that related to the standard of proof required to commit a boy to a training school.⁹⁵ Although the ruling changed the standard of proof for juveniles to be detained from a preponderance of the evidence to proof beyond a reasonable doubt, Chief Justice Warren Burger wrote in his dissenting opinion:

What the juvenile court system needs is not more but less of the trappings of legal procedure and judicial formalism; the juvenile court system requires breathing room and flexibility in order to survive, if it can survive the repeated assaults from this Court.

Much of the judicial attitude manifested by the Court's opinion today and earlier holdings in this field is really a protest against inadequate juvenile court staffs and facilities; we 'burn down the stable to get rid of the mice.' . . .

My hope is that today's decision will not spell the end of a generously conceived program of compassionate treatment intended to mitigate the rigors and trauma of exposing youthful offenders to a traditional criminal court; each step we take turns the clock back to the pre-juvenile-court era. I cannot regard it as a manifestation of progress to transform juvenile courts into criminal courts, which is what we are well on the way to accomplishing. We can only hope the legislative response will not reflect our own by having these courts abolished.⁹⁶

A major conservative reform movement emphasizing deterrence and punishment began in the late 1970s, continuing into the early 1980s.⁹⁷ Conservatives called for the vigorous prosecution of serious and violent offenders, believing that juvenile courts were too lenient with criminals.⁹⁸ Many states made it easier to transfer juveniles to adult courts,⁹⁹ while other states stiffened penalties and imposed mandatory minimum sentencing guidelines.¹⁰⁰ One result of this movement was

94. 397 U.S. 358 (1970).

95. See *Winship*, 397 U.S. at 359. During an adjudicatory hearing, a New York Family Court judge found that the appellant, a 12-year-old boy, had stolen \$112 from a woman's pocketbook he had found in a locker. *Id.* at 360. The judge ordered the boy to be placed in a training school for an initial period of eighteen months, subject to annual extensions until his eighteenth birthday. *Id.* at 360. The Appellate Court affirmed the judge's order, but the Supreme Court, however, held that proof "beyond a reasonable doubt," which is required by the Due Process Clause in criminal trials, is among the "essentials of due process and fair treatment" required during the adjudicatory stage when a juvenile is charged with an act that would constitute a crime if committed by an adult. *Id.* at 359-68 (citation omitted).

96. *Id.* at 376 (Burger, C.J., dissenting).

97. See Snyder & Sickmund, *supra* note 47, at 83.

98. *Id.*

99. *Id.* at 88.

100. *Id.*

that the number of juveniles in adult prisons in the United States increased by 50% between 1979 and 1984.¹⁰¹

Furthermore, adversarial proceedings replaced informal conferences in which judges attempted to do what is in the best interests of the juvenile. It is ironic that at a time when there is more research on the diagnosis, treatment, and rehabilitation of delinquents, the court system designed to support such efforts has reverted back to a punitive court and abandoned its rehabilitative mission.

Changes in juvenile law were unprecedented in the 1990s as state legislators cracked down on juvenile crime.¹⁰² Changes have made it easier to transfer children to criminal court, expanded sentencing options, minimized confidentiality requirements, and refocused on accountability and community protection, resulting in a more punitive juvenile justice system.¹⁰³ The number of adjudicated cases that resulted in residential placements of youth grew by 51% between 1987 and 1996.¹⁰⁴ Moreover, the number of delinquency cases judicially waived to criminal courts grew by 73% between 1988 and 1994,¹⁰⁵ despite the fact that studies indicated that children transferred to criminal court tend to recidivate more quickly and frequently on average than those kept in the juvenile system.¹⁰⁶

101. KRISBERG & AUSTIN, *supra* note 9, at 164.

102. Snyder & Sickmund, *supra* note 47, at 89. The decisions of the Supreme Court in *In re Gault* and its progeny emphasized constitutional rights for juveniles that were applicable in the adult criminal justice system. See *supra* text accompanying notes 87-96. The focus on due process rights replaced the therapeutic, paternalistic philosophy that had prevailed in juvenile courts until the latter part of the twentieth century. Traditional dispositions in the juvenile court were based on the child's individual needs with the goal of rehabilitation; these were often indeterminate in length. As the states shifted focus to punishment, accountability, and public safety, however, dispositions were based more on the offense than the offender. Offense-based dispositions tend to be specific and proportional to the offense—retribution being the primary goal.

103. Snyder & Sickmund, *supra* note 47, at 89. This reference shows a chart of laws, enacted in forty-seven states between 1992 and 1997, that were more punitive toward juveniles.

104. Lynn Ryan MacKenzie, *Residential Placement of Adjudicated Youth 1987-1996*, in OFF. OF JUV. JUST. & DELINQ. PREVENTION FACT SHEET (1999).

105. OFF. OF JUV. JUST. & DELINQ. PREVENTION STATISTICAL BRIEFING BOOK (visited May 30, 2001) <<http://www.ojjdp.ncjrs.org/ojstatbb/qa191.html>>.

106. Snyder & Sickmund, *supra* note 47, at 182.

II. THE FAMILY-FOCUSED JUVENILE JUSTICE SYSTEM MODEL¹⁰⁷

A. Introduction

As we pointed out in Part I, the populations and caseloads of the juvenile court have changed dramatically during the past decade. Not only have the caseloads risen, but also the offenses are more violent. There is a growing body of knowledge about the causes and correlates of juvenile crime. For example, the results of the Office of Juvenile Justice and Delinquency Prevention's ("OJJDP") Program of Research on the Causes and Correlates of Delinquency support the strong relationship between drug use and serious delinquent behavior that has been established by researchers over the past twenty-five years.¹⁰⁸ Likewise, research has also demonstrated a relationship between poor academic performance, truancy, and dropping out and delinquency.¹⁰⁹

These associated problems must be addressed if the escalating pattern of youth crime and family dysfunction is to be arrested.¹¹⁰ "Increasingly, . . . the problems [that bring] the juvenile under the court's jurisdiction are interrelated with those of his or her family, and the court can no longer attempt to carry out its rehabilitative mission for the child, without also actively addressing the problems of the child's family."¹¹¹ Most juvenile judges are well aware that there is little the court can do to positively affect the rehabilitation of juvenile delinquents unless the court also addresses the family and environment in which the child resides.¹¹²

One need not wonder why many judges dread a juvenile assignment.

In most jurisdictions it is an exasperating experience, [with] many internal frustrations with little or no personal satisfaction.

107. Many of the authors' assertions throughout the remainder of this Article are supported solely by their own research and experiences. The co-authors have worked together in Pensacola, Florida, to create a unique courtroom environment incorporating the ideals of therapeutic jurisprudence. Throughout this portion of the Article, in particular, if an assertion is unsupported, the reader may refer to Richard Grimm, *Family-Focused Justice/MST Program Description* (1997) (unpublished manuscript, on file with the *Alabama Law Review*). See also *infra* note 116.

108. David Huizinga et al., *Co-occurrence of Delinquency and Other Problem Behaviors*, JUV. JUST. BULL., Nov. 2000, at 1 (OJJDP, Wash., DC).

109. *Id.* at 3-4.

110. *Juvenile Drug Courts*, *supra* note 1, at 1.

111. *Id.*

112. See Charles M. McGee et al., *Applying Drug Court Concepts in the Juvenile and Family Court Environments: A Primer for Judges* 20, available at OFF. OF JUST. PROGRAMS DRUG COURT CLEARINGHOUSE AND TECHNICAL ASSISTANCE PROJECT (visited May 29, 2001) <<http://www.american.edu/justice/publications/primer2000.html>>.

[J]uvenile cases are a mixture of complex social issues and criminal behavior which are presented to the juvenile court to be dealt with in a strictly legal forum. Limited resources coupled with lack of accountability and infrequent court contact, produces [sic] a steady stream of failed efforts and new problems.¹¹³

Many judges are placed in situations where, notwithstanding their best efforts, nothing seems to work.¹¹⁴

“Although the juvenile court has traditionally been considered an institution specifically established to holistically address the child’s needs,”¹¹⁵ many have found the conventional approach, in practice, to be lacking in effectiveness, especially when dealing with serious anti-social behavior. Because of the frustration of dealing with substance abusing offenders, a number of jurisdictions have looked to the experiences of adult drug courts to determine how these specialty¹¹⁶ courts might be adapted by juvenile courts. It soon became apparent that the development of juvenile drug courts (and other specialty courts) presented challenges not encountered in the adult drug court environment. Those challenges included counteracting the negative influences of peers, gangs, and other community or family members with whom the child must relate on a regular basis, and addressing family problems that impact adversely on the child’s capacity to abstain from drug usage and to succeed in school and other personal endeavors.¹¹⁷

B. Risk and Protective Factors

Factors for juvenile criminal and delinquent behaviors do not emerge randomly. We have learned over the past few decades that a number of factors—individual, family, peer, and community—affect whether a child will engage in delinquent or criminal activities.¹¹⁸ During the past thirty years, research has identified precursors of juvenile delinquency and violence, called risk factors,¹¹⁹ as well as protective

113. *Id.*

114. *Id.*

115. *Juvenile Drug Courts*, *supra* note 1.

116. Over the past five years, the concept of therapeutic jurisprudence has been expanded to service other targeted populations. For example, in Pensacola, Florida, in addition to an adult drug court, we also have a juvenile drug court, a specialty court serving only girls, and a specialty court serving youths adjudicated for crimes of domestic violence or other violent behavior.

117. Humes, *supra* note 49, at 2.

118. Shay Bilchik, *OJJDP Research: Making A Difference for Juveniles*, in OFF. OF JUV. JUST. AND DELINQ. PREVENTION REPORT, Aug. 1999, at iii (OJJDP, Wash., D.C.).

119. “Risk factors increase the chances that a juvenile will engage in behavior that can lead to delinquency. Risk factors include availability of drugs or firearms in the community, family

factors¹²⁰ that buffer the effects of exposure to risks and inhibit the development of behavior problems even in the face of risk.

1. Risk Factors

The OJJDP's Study Group on Serious and Violent Juvenile Offenders devoted two years to analyzing the research on risk and protective options for serious and violent juvenile offenders. The study group brought twenty-two researchers together to review data from long-term studies that have identified predictors of youth violence. Their thesis was simple: "If risk factors can be decreased and protective factors enhanced by preventive action, then the likelihood of violence should be reduced."¹²¹ Their findings provide strong and consistent evidence that many factors are linked with and predict the development of serious antisocial behavior in youths. "Empirical research shows that serious antisocial behavior is multidetermined by the reciprocal interplay of characteristics of the individual youth and the key social systems in which youths are embedded (i.e., family, peer, school, neighborhood, and community)."¹²²

Figure 1 shows risk factors identified in longitudinal studies as predictors of behavior problems. The specific problems predicted by each risk factor are marked in the figure. As these data show, the factors linked with antisocial behavior are relatively consistent, whether the behavior is substance abuse, delinquency, school dropout, or violence and aggression. Quite clearly, if the primary goal of treatment is to reduce the rates of antisocial behavior, then treatment approaches must be able to address the known determinants of antisocial behavior. "[E]ffective treatment must have the capacity to intervene comprehensively at individual, family, peer, school, and possibly even neighborhood levels."¹²³

conflict, a lack of commitment to school, and friends who engage in problem behavior, etc." *Id.*

120. "Protective factors either reduce the risks or change who a juvenile responds to these risks by enhancing positive behavior, health, and well-being. Protective factors include positive individual characteristics (e.g., having a resilient temperament); close relationships with family, teachers, and other supportive adults and peers; and beliefs and standards that promote school success and rejection of drugs and crime." *Id.*

121. J. David Hawkins et al., *Predictors of Youth Violence*, in OFF. OF JUV. JUST. DELINQ. PREVENTION BULL., Apr. 2000, at 1 (OJJDP, Wash., D.C.).

122. SCOTT W. HENGGELER ET AL., MULTISYSTEMIC TREATMENT OF ANTISOCIAL BEHAVIOR IN CHILDREN AND ADOLESCENTS 6-7 (1998).

123. *Id.* at 8.

Figure 1

Risk Factors for Behavior Problems¹²⁴				
Risk Factor	Substance Abuse	Delinquency	School Dropout	Violence
Community				
Availability of Drugs	X			
Availability of Firearms		X		X
Community Laws and Norms Favorable Toward Drug Use, Firearms, and Crime	X	X		X
Media Portrayals of Violence				X
Transitions and Mobility	X	X	X	
Low Neighborhood Attachment and Community	X	X		X
Organization Extreme Economic Deprivation	X	X	X	X
Family				
Family History of Problem Behavior	X	X	X	
Family Management Problems	X	X	X	X
Family Conflict	X	X	X	X
Favorable Parental Attitudes	X	X		X

124. James C. Howell, ed., *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*, (visited Mar. 11, 2001) <<http://www.ojjdp.ncjrs.org/pubs/violvict.html#guide>>. A description of each of these factors is found in the Guide. *Id.*

and Involvement in the Problem Behavior				
School				
Early and Per- sistent Antiso- cial Behavior	X	X	X	X
Academic Fail- ure Beginning in Elementary School	X	X	X	X
Lack of Com- mitment to School	X	X	X	
Individual/Peer				
Rebelliousness	X	X	X	
Friends Who Engage in Prob- lem Behavior	X	X	X	X
Favorable Atti- tudes Toward the Problem Behavior	X	X	X	
Early Initiation of the Problem Behavior	X	X	X	X
Constitutional Factors	X	X		X

2. Protective Factors

Awareness of the risk factors helps identify what to focus on to prevent adolescent problem behaviors. However, knowledge of the risk factors does not indicate how to reduce risk. Understanding protective factors provides the key to effective risk reduction.¹²⁵ "Research has identified protective factors that appear to insulate [some] children against the effects of risk exposure."¹²⁶ According to Howell, these protective factors can be grouped into three classes:

125. *Id.*

126. *Id.* at 22.

a. *Factors Inherent in the Individual.*

“[These factors] include female gender, high intelligence, a positive social orientation, and a resilient temperament that helps a child bounce back in adverse circumstances.”¹²⁷

b. *Factors Related to Social Bonding*

Research indicates that one of the most effective ways to protect young people from risk exposure is to strengthen their bonds with positive, prosocial family members, adults outside the family (including teachers, coaches, youth leaders), and friends. Young people with strong, supportive relationships with families, friends, school, and community are invested in or committed to achieving the goals held by these groups.¹²⁸

Furthermore, these young people are less likely to threaten that bond by using drugs, becoming violent, or committing crimes.

c. *Healthy Beliefs and Clear Standards for Behavior*

When families, schools, and communities have clearly stated policies and expectations for young people’s behavior, children are less likely to become involved in crime and delinquency. Healthy beliefs and clear standards, communicated consistently by the significant individuals and social groups to whom the child is bonded, build a web of protection for young people exposed to risk.¹²⁹

C. *The Family-Focused Approach*

The Family-Focused Juvenile Justice System model has two primary family-related objectives relating to achieving family involvement in the juvenile’s treatment and need for family intervention: (1) to motivate, with a positive approach, the family’s participation in the treatment of the child, and (2) to provide family intervention in a positive and supportive approach without alienating the parent or custodian.¹³⁰

By comparison, the goals of the Family-Focused Juvenile Justice System model are to:

Keep families together by preventing the unnecessary place-

127. *Id.*

128. *Id.*

129. Howell, *supra* note 124, at 22-23.

130. *Id.* at 20-21.

ment of a youth in an out-of-home residential placement facility within the juvenile justice system;
Assist in diffusing crises, evaluating the nature of dysfunction, and providing the necessary interventions to reduce the likelihood of a recurrence;
Assist the identified youth's family to develop appropriate parenting skills and resources which will increase their ability to successfully cope with the challenges, stresses, and problems involved in the growth and rearing of their child(ren), to strengthen, preserve and enhance the family unit, and to promote family stability and self-sufficiency;
Help the youth learn to appropriately interact within the context and demands of his/her home environment;
Integrate the youth and his/her family with naturally occurring community networks that support positive adaptation and facilitate the youth's positive adjustment with extra-familial social systems.¹³¹

The purpose of the Family-Focused Juvenile Justice System model is to achieve a fundamental change in the lifestyle of the youths and families that will, at a minimum, substantially reduce the likelihood of their further involvement with the justice system, increase public safety, and significantly enhance the likelihood that the youths and their families will function as productive community members.¹³² This purpose can be achieved by (1) improving family relationships that are known to be directly related to youth behavior problems, and (2) improving the relationships between the family and other important systems that influence the youth (e.g., school, peers).¹³³

1. *Why a Family-Focused Approach?*

The delinquency and violence that plague society have roots in a host of interrelated social problems—a rising tide of substance abuse, child abuse and neglect, family violence, transience (absence of community ties), gun availability, gangs, uneducated and undereducated children and youth, teen parents, latchkey children, poor parenting—and a corresponding decline in resources, opportunities, and support. Many of these social problems are intimately connected to the weakening of the family's care for children. . . . The family has the primary responsibility to instill moral values and provide guidance and support for children. When the family does not fulfill this re-

131. Grimm, *supra* note 107, at 1-2.

132. McGee et al., *supra* note 112, at 4.

133. Michael S. Robbins & José Szapocznik, *Brief Strategic Family Therapy*, JUV. JUST. BULL., Apr. 2000, at 3 (OJJDP, Wash., D.C.).

sponsibility, communities must take responsibility for ensuring that the family is supported in ways that improve its care of children.¹³⁴

As can be seen from the research on the causes and correlates of antisocial behavior, adolescents often develop behavioral problems because of difficulties within either the immediate family or the broader social environment.¹³⁵

[Therefore,] [t]he goal of family-focused prevention programs should be not only to decrease risk factors, but also to increase ongoing family protective mechanisms. According to Bry and colleagues (in press) and many other researchers, the five major types of family protective factors are:

- [1.] Supportive parent-child relationships.
- [2.] Positive discipline methods.
- [3.] Monitoring and supervision.
- [4.] Families who advocate for their children.
- [5.] Parents who seek information and support.¹³⁶

The longitudinal studies of urban delinquents funded through OJJDP's Program of Research on the Causes and Correlates of Delinquency "found that parental supervision, attachment to parents, and consistency of discipline are the most important family protective factors in promoting resilience to delinquency in high-risk youth."¹³⁷

A basic assumption of a family-focused approach to treatment is that once family and environmental problems have been addressed, behavioral problems will diminish. This assumption is supported in OJJDP's *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*.¹³⁸ The first of its five general principles reads: "We must strengthen the family in its primary responsibility to instill moral values and provide guidance and support to children. Where there is no functional family unit, we must establish a family surrogate and assist that entity to guide and nurture the child."¹³⁹

In accordance with this guiding principle, we must "[s]trengthen families in their role of providing guidance and discipline and instilling

134. Karol L. Kumpfer & Rose Alvarado, *Effective Family Strengthening Interventions*, JUV. JUST. BULL., Nov. 1998, at 2 (OJJDP, Wash., D.C.) (citation omitted).

135. *Id.*

136. Kumpfer & Alvarado, *supra* note 134, at 3 (citations omitted).

137. *Id.* (citation omitted).

138. Howell, *supra* note 124.

139. *Id.* at 7.

sound values as their children's first and primary teachers."¹⁴⁰ Why? Children reared in families experiencing multiple risk factors (inadequate or erratic parental supervision and discipline, substance and alcohol abuse, substandard living conditions, unemployment, marital discord, domestic violence, criminal activity, etc.) have a greater risk of subsequent delinquency.¹⁴¹ This highlights the importance of fostering protective influences to shield children from the negative risk effects of such risk factors.

III. FAMILY-FOCUSED JUVENILE JUSTICE SYSTEM MODEL TREATMENT PROCESSES

A. Family-Focused Assessment

Assessment is a critical element of the Family-Focused Juvenile Justice System's service delivery model. The function of assessment is to identify and define the ways in which behavior problems and delinquency acts "make sense" in light of the youth's environment.¹⁴² This is called a "fit analysis."¹⁴³ To understand this fit, the therapist skillfully evaluates characteristics of the youth (e.g., value system, social skills, attitudinal system, and health/biological issues), the family, the peer group, and the neighborhood. Initial therapy sessions identify the

140. John J. Wilson & James C. Howell, *Serious, Violent, and Chronic Juvenile Offenders: A Comprehensive Strategy*, OFF. OF JUV. JUST. & DELINQ. PREVENTION FACT SHEET #4 (1993) (OJJDP, Wash., D.C.) available at <<http://www.ncjrs.org/txtfiles/fs-9304.txt>>.

141. See generally Kumpfer & Alvarado, *supra* note 134, at 2.

142. HENGELER ET AL., *supra* note 122, at 24.

143. *Id.* Henggeler and his co-authors further explain:

For the purposes of MST treatment planning and delivery and as described extensively in Chapter 2, the practitioner should recognize that diagnostic labeling, whether psychiatric (e.g., conduct disorder and oppositional disorder) or referencing juvenile justice involvement (e.g., violent offender and status offender), usually has little bearing on clinical decision making. As discussed throughout this volume, MST is an individualized treatment model in which families set treatment goals and collaborate with practitioners in designing and implementing interventions to meet these goals. Because treatment goals and strategies to meet these goals are well defined, whether or not the constellation of identified problems meets diagnostic criteria is largely irrelevant. What matters is that a specific behavior is identified as problematic (e.g., stealing from neighbors and staying out all night) because of its consequences for others or the youth, and that this and other possible behaviors resulted in a significant response from the mental health or juvenile justice system. The therapist's task, then, is to collaborate with the family to determine the factors in the youth's social ecology that are contributing to the identified problems as well as those factors that reflect systemic strengths that might be used to attenuate these problems. In conducting such an analysis, the therapist must possess a great deal of knowledge about the parameters of complex social relations within the family and between the family and extrafamilial systems. Citing formal diagnostic criteria, however, is rarely necessary"

Id. at 5-6.

strengths and weaknesses of the adolescent, the family, and their transactions with extra-familial systems (e.g., peers, friends, school, parental workplace).

During the initial meeting(s) with the family, the family intervention specialist does a complete psychosocial assessment of the family, detailing strengths and other factors that could facilitate growth. This assessment entails the itemizing of strengths/facilitating factors in the individual family members, in the family system, in the school setting, and in the community. Efforts are made to identify support systems for the parents and the child.¹⁴⁴

The synthesis of this assessment information leads directly to the design of the therapeutic interventions. The multiple systems are evaluated through various methods, and multiple perspectives are assessed. Importantly, the assessments are developed through face-to-face interviews with the youth, the siblings, the parents, and the teachers.

Because the Family-Focused Juvenile Justice System is premised upon extensive collaboration between treatment providers, the juvenile justice agency, the school system, other social services agencies, and the court, juveniles can be quickly identified, referred, and assessed for participation in the program.¹⁴⁵

Assessment is an ongoing process in the Family-Focused Juvenile Justice System model. Each day the accuracy of the family intervention specialist's data synthesis is tested by the success of the interventions. "The targets of interventions are then derived from the hypotheses formulated from the assessment data. These hypotheses are subsequently confirmed or refuted through the outcomes of interventions."¹⁴⁶

The accuracy of hypotheses concerning "fit," the efforts of family members, and the viability of interventions are evaluated based on progress toward desired outcomes. . . . When interventions are producing desired results, the therapist can reasonably assume that hypotheses are accurate, family members are working, and the interventions are appropriate. On the other hand, when interventions are not producing desired results, the therapist must critically examine each of the three factors (two of which depend on the therapist's skills) and take

144. Grimm, *supra* note 107, at 4.

145. KRISBERG & AUSTIN, *supra* note 9, at 20.

146. SCOTT HENGGELER, BLUEPRINTS FOR VIOLENCE PREVENTION, BOOK SIX: MULTISYSTEMIC THERAPY 18 (Delbert S. Elliott, ed., Blueprints for Violence Prevention Series Book Six, 1998).

corrective actions.¹⁴⁷

“When hypotheses are refuted by the ineffectiveness of an intervention, the therapist seeks new information or incorporates lessons learned from the failed intervention to formulate new hypotheses and corresponding interventions. Thus, MST assessment is a reiterative process that proceeds until treatment goals are met.”¹⁴⁸ The other members of the Family-Focused Juvenile Justice System team ensure that these priorities are observed.¹⁴⁹

Family assessments and personal histories need to be comprehensive to disclose such matters as abuse of children, substance abuse, domestic violence, truancy, and lack of basic educational and other skills. Identifying these issues are of great significance to a successful family-focused court.¹⁵⁰ Timely and extensive assessment of the child and family and their situational context is critical to the effectiveness of the Family-Focused Juvenile Justice System model.

B. Family-Focused Treatment Planning

An individualized Family Services Plan is developed for the youth and his or her family that outlines specific goals and objectives to be addressed and the target dates for completion of each objective.¹⁵¹ The objectives are performance-based and the actions required by each party (e.g., each family member, family intervention specialist, etc.) are specified.

The Family Services Plan is developed mutually with the youth, his or her family, and the family intervention specialist through an assessment of the youth and family's strengths and needs. The Family Services Plan addresses the following:

1. Specific problems or behaviors requiring Family-Focused Juvenile Justice System services.
2. Treatment goals (long and short term). The goals are realistic, individualized, and relate to assessed problems and needs of the youth and his/her family.
3. Methods and frequencies of intervention. This includes the responsibilities of the family intervention specialist, the youth, and family members, time frames for goal achievement, along with the frequency of services to be delivered.¹⁵²

147. *Id.*

148. *Id.* at 18.

149. *Id.*

150. KRISBERG & AUSTIN, *supra* note 9, at 33.

151. Grimm, *supra* note 107, at 4-5.

152. *Id.* at 5.

Interventions are developed to activate the family and their social ecology to make multiple, positive, observable changes.

[S]wift and consistent action is required to enable the family and key players in the social ecology to meet their treatment goals. If (1) the [family intervention specialist's] analysis of fit is correct, (2) the [family intervention specialist] and family agree on appropriate goals and methods to achieve those goals, and (3) the family is working hard on reaching the goals, outcomes should emerge.¹⁵³

The details of the treatment plan specifically cite family members with particular roles to play in a supportive capacity based on what has been identified as their individual strengths. Thus, the family members are requested to help by doing more of the things they already do well.¹⁵⁴ The family intervention specialist is also responsible for closely monitoring the efficacy of all interventions.¹⁵⁵ (In cases where specialized interventions are indicated, such as special educational placement and referral to other providers, the family intervention specialist is also responsible for monitoring the appropriateness of these interventions.)

Interventions are designed that require daily and weekly effort on the part of the child and his or her family members. Requiring such intensive effort has several advantages.

1. Identified problems can be resolved more quickly if everyone involved is working on them.
2. Backsliding and nonadherence to treatment protocols become readily apparent. Consequently, therapists can respond immediately to identify and address barriers to change.
3. Treatment outcomes can be assessed continually, which provides many opportunities for corrective actions.
4. Because intervention tasks occur daily, family members have frequent opportunity to receive positive feedback in moving toward goals, praise from therapist and others in the ecology, and satisfaction inherent in completing tasks. Such reinforcers promote family motivation and maintenance of change.
5. Family empowerment is supported as families learn that they are primarily responsible for and capable of progressing toward treatment goals.¹⁵⁶

153. HENGGELER ET AL., *supra* note 122, at 35.

154. Grimm, *supra* note 107, at 4.

155. *See id.* at 5.

156. HENGGELER ET AL., *supra* note 122, at 39.

C. Family-Focused Service Content

In the Family-Focused Juvenile Justice System model, services are provided to the youth and his or her family based on assessed needs. The purpose of these services is to reinforce and enhance the youth's ability to function within his or her home environment and to enhance the family's level of functioning. The aim of services is: to identify and assist the youth and his or her family in resolving conflicts; coordinate efforts between the family intervention specialist, the child and family, and the court in order to maintain the youth in the home; strengthen the family unit; communicate and demonstrate methods of appropriate parenting skills and/or behavior management techniques in order to help family members more effectively manage certain behaviors; or supporting and strengthening the youth's home environment. In addition, these services should promote the family's relations with a social network that supports positive and pro-social behavior. Likewise, difficulties in the youth's peer relations and school performance will be identified, and the family encouraged to promote the youth's positive social relations and academic performance in these contexts.

These services may include the following components:

1. Assessment

An assessment performed by the family intervention specialist is critical in determining the youth's and his or her family's strengths, problem areas, and needs, along with the modalities and frequencies for required services. Assessments may include the review of the identified youth's history and background information, interviews with the juvenile justice and court personnel, family members and the child, the school and other neighborhood agencies, as well as the family intervention specialist's interpretation of the youth/family situation.

2. Behavior Management

Behavior management techniques can be used to extend the family's influence to control behavior in a number of different situations. They can be employed as a tactic in every instance in which efforts are made to strengthen the place of the identified youth in his or her home environment. Behavior management techniques can also be used to monitor the youth's family's status and to support the scheduling of exchange of positive reinforcement.

3. *Care Coordination*

Services may also include the coordination of needed community services and resources. Care coordination may involve accessing needed medical, psychiatric, social, educational and other support services essential to meeting the identified youth's and/or his or her family's needs. Coordination of care also enables the youth and his or her family the opportunity to develop community supports and prevent isolation. Care coordination provided by the family intervention specialist should not duplicate or necessarily replace the efforts of any other agency involved with the youth and his or her family.

4. *Consultation*

Consultation can be used to confer with other professionals in the discussion of treatment issues regarding the identified youth and/or his or her family members. Consultation with the juvenile justice agency, the court system, community providers, and other treatment teams are often necessary to facilitate appropriate sharing of clinical information and to enhance the coordination of services.

5. *Counseling and/or Therapy*

Counseling and/or therapy is a face-to-face goal-oriented intervention between the family intervention specialist and the youth and/or his or her family members. This systematic intervention may be required to: stabilize the youth or family situation; provide a therapeutic and supportive process to verbalize thoughts, feelings, and ideas in a supportive environment; solve identified problems; decrease the level of anxiety, hostility, and/or depression; or develop feelings of self-esteem and self-worth. The family intervention specialist may render the counseling or therapy services either in individual, group or family sessions.

6. *Crisis Management*

Crisis management is an intense component provided immediately to the youth and his or her family following abrupt or substantial changes in the youth's or family's functioning. Crisis management can be employed to reduce the immediate personal distress; to assess the precipitant(s) behavior that results in the crisis; or to reduce the chance of future crisis situations through the implementation of preventive strategies.

7. *Skill Development*

The Family-Focused Juvenile Justice System should help the youth and his or her family to acquire knowledge and skills in such areas as parenting, family interaction, problem solving, household management, and identification and utilization of community supports. This may involve skill-building in areas such as communicating, appropriate disciplining, budgeting, and other specialized services which may be required. Specialized parent training is often an essential component which increases the parent's understanding of the youth's behavior, assists in developing a systematic approach to child rearing and behavior management, develops coping skills and increases problem solving. Through successful skill development the family will be able to act independently and handle future crises, develop self-sufficiency skills and resources in order to successfully care for and support their child(ren).

D. Typical Family-Focused Treatment Interventions

In operational terms, the overarching goals of the Family-Focused Juvenile Justice System model are to help parents and youth behave more responsibly. Parental responsibilities include providing structure and discipline, expressing love and nurturance, and meeting basic physical needs. For youth, responsible behavior includes extending effort in school, not harming others, and helping around the home. Such pragmatic descriptions of overriding treatment goals can be accepted and understood by the youth and his or her family members—"which help to demystify and concretize the treatment process."¹⁵⁷

The bottom line from the research (on the causes and correlates of delinquency and other antisocial behavior) is that there is no single cause and, therefore, no "magic bullet" to cure it. However, there is consensus that research on how delinquency develops can be used to identify several elements of effective programs.

A meta-analysis of mostly community-based private provider programs found that effective programs: (1) concentrate on changing behavior and improving prosocial skills, (2) focus on problem solving with both juveniles and their families, (3) have multiple modes of intervention, and (4) are highly structured and intensive. Such programs are likely to be ten to twenty percent more effective in reducing subsequent delinquency than less structured programs that emphasize individual counseling

157. HENGELER, *supra* note 146, at 19.

or general education. . . .

. . . .

In particular, interventions should:

[1.] Concentrate on changing negative behaviors by requiring juveniles to recognize and understand thought processes that rationalize negative behaviors.

[2.] Promote healthy bonds with, and respect for, prosocial members within the juvenile's family, peer, school, and community network.

. . . .

[3.] Have consistent, clear, and graduated consequences for misbehavior and recognition for positive behavior.

. . . .

[4.] Facilitate discussions that promote family problem solving.

[5.] Integrate delinquent and at-risk youth into generally prosocial groups to prevent the development of delinquent peer groups. Bringing together only at-risk or delinquent youth to engage in school or community activities is likely to be counterproductive.¹⁵⁸

In Pensacola, Florida, the Family-Focused Justice System has adopted the multisystemic therapy ("MST") model of treatment. "MST interventions are directed towards individuals, family relations, peer relations, school performance, and other social systems that are involved in the identified problems. The design and implementation of MST interventions are based on nine core principles."¹⁵⁹ These princi-

158. Megan Kurlychek et al., *Focus on Accountability: Best Practices for Juvenile Court and Probation*, (visited Mar. 8, 2000) <<http://ojjdp.ncjrs.org/pubs/jaibgbulletin/keyel.html>> (citations omitted).

159. HENGGELER, *supra* note 146, at 16. The nine MST treatment principles are:

1. The primary purpose of assessment is to understand the fit between the identified problems and their broader systemic context;
2. Therapeutic contacts emphasize the positive and use systemic strengths as levers for change;
3. Interventions are designed to promote responsible behavior and decrease irresponsible behavior among family members;
4. Interventions are present-focused and action-oriented, targeting specific and well-defined problems;
5. Interventions target sequences of behavior within and between multiple systems that maintain identified problems;
6. Interventions are developmentally appropriate and fit the developmental needs of the youth;
7. Interventions are designed to require daily or weekly effort by family members;
8. Intervention effectiveness is evaluated continuously from multiple perspectives, with providers assuming accountability for overcoming barriers to successful outcomes; and
9. Interventions are designed to promote treatment generalization and long-term maintenance or therapeutic change by empowering caregivers to address family members' needs across multiple systemic contexts.

ples serve to provide guidance and direction to the family intervention specialists as they implement the Family-Focused Justice System program. A central feature of MST is its integration of "pragmatic, problem-focused treatment [interventions] that [has] empirical support." These include strategic family therapy,¹⁶⁰ structural family therapy,¹⁶¹ behavioral parent training, and cognitive behavioral therapies^{162, 163}.

MST services are typically provided in the home, school, and other community locations by master's level counselors with low caseloads and twenty-four hours/day, seven days/week availability.¹⁶⁴ The average duration of treatment is about four months, which includes approximately fifty hours of face-to-face therapist-family contact.¹⁶⁵ MST has been demonstrated as an effective treatment for decreasing the anti-social behavior of violent and chronic juvenile offenders at a cost savings—that is reducing long-term rates of rearrest and out-of-home placement. Moreover, families receiving MST services have shown

Id. at 17.

160. See generally JAY HALEY, *PROBLEM SOLVING THERAPY* (1976). Henggeler describes strategic family therapy thusly:

Strategic formulations also inform the MST clinician's assessment of family functioning. To design interventions that effectively address interactions within and between systems (Principle 5), the MST practitioner undertakes assessment of the "recursive sequences of behavior" associated with an identified problem. The strategic family therapy tenet that emotional and behavioral problems are intimately linked with recurrent sequences of family interactions is consistent with research on the etiology of childhood aggression and conduct disorder. This research identifies predictable and repetitive cycles of aversive interaction between parents and children and among siblings as contributing factors in the development of antisocial behavior.

HENGGELER ET AL., *supra* note 122, at 63 (citations omitted).

161. See generally SALVADOR MINUCHIN, *FAMILIES AND FAMILY THERAPY* (1974). Henggeler provides this short description of structural family therapy:

The structural model conceptualizes the family in terms of marital, parental, and sibling subsystems that are constructed along generational and role lines. Each subsystem has boundaries such that all family members do not have equal access to the subsystem. Boundaries should be flexible, however, to facilitate the capacity of the family system to respond to the needs of individual family members or to environmental demands. The structural model views child emotional and behavioral problems as signs that subsystem boundaries are too weak or too strong. Terms such as enmeshment and disengagement describe family interaction patterns in which boundaries are excessively porous or rigid. Porous boundaries, for example, can fail to promote the emancipation and independent achievements of children; rigid boundaries can limit the family's capacity to respond to environmental stress and meet the affective needs of family members. Constructs such as triangulation and parent-child coalition describe transactional patterns that confuse parent-child and spousal boundaries, often in ways that involve the child in the negotiation of adult subsystem conflict. Treatment-related changes in these patterns are associated with improvements in the antisocial behavior of adolescents.

HENGGELER ET AL., *supra* note 122, at 62-63 (citation omitted).

162. See generally J.S. BECK, *COGNITIVE THERAPY: BASICS AND BEYOND* (1995).

163. HENGGELER, *supra* note 146, at 15.

164. HENGGELER ET AL.; *supra* note 122, at 27-28.

165. *Id.* at 28.

extensive improvement in family functioning.¹⁶⁶

In accordance with the underlying treatment theory of MST which views the individual as being nested within a complex of interconnected systems that encompass the individual, family, and extrafamilial (peer, school, neighborhood) factors, and which views that behavior problems can be maintained by problematic transactions within or between any one of a combination of these systems, the Family-Focused Juvenile Justice System targets the specific risk factors in each youth's and family's ecology (family, peer, school, neighborhood, support network) that are contributing to antisocial behavior.¹⁶⁷ Typical interventions in the Family-Focused Juvenile Justice System model include the following:

1. At the Family Level

A frequent goal of treatment is to "provide the parent(s) with the resources needed for effective parenting and for developing increased family structure and cohesion."¹⁶⁸ "At the family level, parents and adolescents frequently display high rates of conflict and low levels of affection. . . . [P]arents . . . frequently disagree regarding discipline strategies, and their own personal problems (e.g., substance abuse, depression) often interfere with their ability to provide necessary par-

166. See HENGGELE, *supra* note 146.

In 1996, the Center for the Study and Prevention of Violence at the University of Colorado at Boulder, working with William Woodward, Director of the Colorado Division of Criminal Justice (CDCJ), who played the primary role in securing funding from the Colorado Division of Criminal Justice, the Centers for Disease Control and Prevention, and the Pennsylvania Commission on Crime and Delinquency, initiated a project to identify ten violence prevention programs that met a very high scientific standard of program effectiveness—programs that could provide an initial nucleus for a national violence prevention initiative. [Their] objective was to identify truly outstanding programs, and to describe these interventions in a series of "Blueprints." Each Blueprint describes the theoretical rationale for the intervention, the core components of the program as implemented, the evaluation designs and findings, and the practical experiences the program staff encountered while implementing the program at multiple sites. . . . In consultation with a distinguished Advisory Board, [they] established the following set of evaluation standards for the selection of Blueprint programs: (1) an experimental design, (2) evidence of a statistically significant deterrent (or marginal deterrent) effect, (3) replication at multiple sites with demonstrated effects, and (4) evidence that the deterrent effect was sustained for at least one year post-treatment. This set of selection criteria establishe[d] a very high standard, one that proved difficult to meet. But it reflects the level of confidence necessary if [they] were going to recommend that communities replicate these programs with reasonable assurances that they will prevent violence.

Id. at xiv-xv (italics omitted).

167. See *id.* at 14.

168. *Id.* at 16.

enting.”¹⁶⁹ Family interventions “might include introducing systematic monitoring, reward, and discipline systems; prompting parents to communicate effectively with each other about adolescent problems; problem solving day-to-day conflicts; and developing indigenous social support networks with friends, extended family, church members, [etc.].”¹⁷⁰

2. *At the Peer Level*

“[A] frequent goal of treatment is to decrease the youth’s involvement with delinquent and drug using peers and to increase his or her association with prosocial peers”¹⁷¹ In the Family-Focused Justice System model, the youth’s parents, with the guidance of the family intervention specialist, optimally conduct interventions for this purpose.¹⁷² Under the guidance of the family intervention specialist, the parents might actively support and encourage associations with non-problem peers by providing transportation to and increasing privileges for prosocial activities, while applying significant sanctions to discourage association with deviant peers.¹⁷³

3. *At the School Level*

Typical goals of treatment include “developing a collaborative relationship between the parents and school personnel” and promoting academic efforts.¹⁷⁴ To accomplish these goals, the parents, with the guidance of the family intervention specialist, might develop strategies “to monitor and promote the youth’s school performance and/or vocational functioning.”¹⁷⁵ Also, the parents might implement “strategies for opening and maintaining positive communication lines with teachers and for restructuring afterschool hours to promote academic efforts.”¹⁷⁶ Specifically, for example, the family intervention specialists can encourage parents to:

- [1.] Inquire about what the child learned in school that day.
- [2.] Ask to see the child’s classwork.
- [3.] Inquire about test results and impending exams.
- [4.] Have frequent contact with the child’s teacher.

169. *Id.* at 15.

170. *Id.* at 15-16.

171. HENGGELER, *supra* note 146, at 16.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. HENGGELER, *supra* note 146, at 16.

- [5.] Sit near the child while he or she is doing homework.
- [6.] Express joy in the child's efforts and achievements.
- [7.] Establish a study hour during which all outside distractions (e.g., music, telephone, and television) are eliminated.
- [8.] Buy inexpensive used magazines and books for the children to read.¹⁷⁷

Although the emphasis of treatment is on systemic change, there are also situations in which individual interventions can facilitate behavioral change in the adolescent or parents. Interventions in these situations generally focus on using cognitive behavior therapy to modify the individual's social perspective-taking skills, belief system, or motivational system, and encouraging the youth to deal assertively with negative peer pressures.¹⁷⁸

E. Use of Community Agencies

As mentioned previously, the court alone cannot implement the Family-Focused Juvenile Justice System model. It is a collaborative effort. The entire community must actively support the court's efforts, as well as the efforts of the individual. Partnerships are developed between the court and the treatment provider(s), the court and educational systems, the court and the community, the court and churches, and the court and other public and private agencies.

The Family-Focused Juvenile Justice System must encourage families to use outside resources appropriately. When a teenager's self-destructive behavior persists or intensifies, parents often seek help outside the family to restore their authority and help the teenager. These outside forces can include the police, the court system, a mental hospital, medication, and/or a psychiatrist or other counselor.

Unfortunately, there are several problems with this approach. The main one is that using outside forces disempowers the parents to an even greater degree. Initially, the threat of resorting to these forces may have some effect, but this can quickly diminish. When this happens, the adolescent views the parents as powerless.¹⁷⁹

Instead, the Family-Focused Juvenile Justice System approach must maximize the capacity of family members to affect changes in their own lives. To this end, family intervention specialists "must be creative in finding indigenous resources for families to use in gaining control over their lives."¹⁸⁰ In accordance with the principles of multisys-

177. HENGGELER ET AL., *supra* note 122, at 164-65.

178. HENGGELER, *supra* note 146, at 16.

179. SCOTT P. SELLS, *TREATING THE TOUGH ADOLESCENT* 10-11 (1998).

180. HENGGELER ET AL., *supra* note 122, at 41-42.

temic therapy, "priority is clearly given to the development of natural resources (i.e., friends, neighbors, and extended family) versus agency resources (i.e., case managers). These resources must be in place by the time [the youth and his or her family are] terminated [from the Family-Focused Juvenile Justice System program.]"¹⁸¹

[I]t is critical for the [family intervention specialist] to understand the [extrafamilial] environment's impact on the immediate family and on the adolescent. The counselor must be able to mediate a better fit between the family and the environment (e.g., getting the school and parents to collaborate) while simultaneously neutralizing any outside influences that might interfere with parental effectiveness (e.g., negative peer influences, unsupportive [agency workers])¹⁸²

The counselor must be able to teach parents to work effectively and collaboratively with outside systems.¹⁸³

F. Family Participation

Any endeavor to involve the family in a rehabilitative effort in the delinquency system will raise jurisdictional questions about the authority of the court to compel the family participation in treatment. As mentioned, one of the goals of juvenile courts in delinquency cases (as expressed in legislative enactments) is the preservation of the family and the integration of parental accountability and participation in treatment and counseling programs. The laws nationwide are becoming more and more reflective of the theory that intervention strategies of treatment must be provided to not only the juvenile at risk but also the juvenile's family.¹⁸⁴ The incorporation of appropriate rehabilitative services and treatment for juveniles and their families can become a potential means of not only deterring future delinquent or criminal behaviors but also of assisting the parents and other family members in developing positive parenting skills and understanding their role in their child's behavior.

Any analysis of trends in this country towards a holistic therapeutic

181. *See id.* at 42.

182. SELLS, *supra* note 179, at 194.

183. *Id.*

184. ALA. CODE § 12-15-1.1(5) to (8) (1995); ARIZ. REV. STAT. ANN. §§ 8-321, 8-234 (West 1995); ARK. CODE ANN. §§ 9-27-303(9), 9-27-303(21)(A), 9-28-203(a)(b) (Michie 1998); CAL. WELF. & INST. CODE §§ 601.5, 748, 1401, 729.11(2) (West 1999); COLO. REV. STAT. §§ 19-1-103, 16-8-203 (1998 & 1999); D.C. CODE ANN. § 16-2320(c) (1996); IDAHO CODE § 20-501 (1997); 705 ILL. COMP. STAT. ANN. 405/5-310 (West 1999); N.J. STAT. ANN. § 2A:4A-43 (West 1987); N.C. GEN. STAT. § 7B-1500(2)(b) (1999); OKLA. STAT. ANN. tit. 10, §§ 7302-7.2(3), 7303-5.2(A) (West 1998).

approach to delinquency issues must necessarily acknowledge that, although a strong philosophical preference for such intervention is evolving nationwide, there, nonetheless, exists no comprehensive or collaborative approach in the various statutory enactments which create family intervention.

In the evolution of this approach, many jurisdictions are in their infancy while others have reached a fairly impressive level of sophistication. It is therefore difficult to summarize with any common denominator the various statutory schemes; however, there are a number of approaches which seem to be emerging relating to the manner by which parents and/or other family members are receiving services and treatment along with their related child, and whereby the court ultimately acquires jurisdiction over parents and other family members. These approaches are:

Diversionsary and/or community-based programs which address the needs of the juvenile and his family in lieu of the filing of a formal petition of delinquency. Administration or oversight of such programs might be managed by law enforcement, juvenile probation, the prosecutorial arm of the court, or other related juvenile justice or community based agencies. In those situations, the court has not usually acquired jurisdiction over the child and certainly not over the parent.

Diversionsary and/or community-based programs administered by related juvenile justice agencies and/or the court wherein the court acquires jurisdiction in approving the family plan and enforcing the plan requirements by any number of methods, including: the use of the court's contempt power; the filing of a formal petition of delinquency; or, possibly, the estreatment of a bond that was formally posted by a parent or legal guardian.

Post-adjudication intervention plans administered by a juvenile justice agency wherein the court either approves or participates in the structure of the family plan and enforces its requirements by the use of its contempt power.

Statutory powers of disposition wherein the court (without any formalized family plan) is given jurisdiction over parents and possibly other family members where there exists a causal connection between the failure to exercise parental responsibility and the event or circumstance giving rise to the court's jurisdiction over the child.

Statutory powers of disposition wherein the court (without any formalized family plan) is given jurisdiction over parents and possibly other family members even without the necessity of a causal connection between the failure to exercise parental

responsibility and the delinquent act.¹⁸⁵

A popular concept in the delivery of early intervention, treatment, and services to juveniles and their families as embodied in the statutory language of a number of states is the trend towards community support systems and the concept of "community based alternative programs."¹⁸⁶ These early intervention programs appear in different forms, but all are geared to children and their families who have been targeted as being those most at risk for delinquent behavior and can include in-home training, community-based family counseling, and parent training, as well as family substance abuse prevention services and education. These programs target children who may not have had any previous or serious contact with law enforcement or the justice system (or have been the recipient of a formally filed petition of delinquency), but other indicators present in their family situation, such as the incarceration of other siblings and/or parents, for example, suggest a need for intervention and treatment.¹⁸⁷ In many cases, the children and their families who are targeted for such programs are brought to the attention and placed under the jurisdiction of the courts through other statutorily-created causes of action, like dependency and families-in-need-of services cases.

Where the courts have not acquired statutory jurisdiction, however, the participation by juveniles and their parents in such early intervention programs is essentially voluntary.¹⁸⁸ When the parent and child agrees to participate in the treatment and service modules offered to them, they must also be willing to accept any consequences that may occur as a result of their noncompliance. Often, as a component of the programs, the parent and child are required to sign a contract which binds them to certain expectations and rules. In some cases, the failure to abide by the program rules may subject a juvenile to further repercussions in the court system.

California is one of the states which prescribes a pre-intervention program through which services and/or other forms of counseling are provided for juveniles and their families, the ultimate goal, again, being preservation of the family.¹⁸⁹ Services provided to and participated

185. A combination of the third and fifth approach will provide the best statutory foundation to build a Therapeutic Family-Focused Juvenile Justice System model.

186. ARIZ. REV. STAT. ANN. § 8-321 (1995). See also CAL. WELF. & INST. CODE §§ 601.5, 1401; COLO. REV. STAT. ANN. § 16-8-203 (West 1998); 705 ILL. COMP. STAT. ANN. 405/5-310; MINN. STAT. ANN. §§ 242.32, 145A.15 (West 1992 & 1998); NEB. REV. STAT. § 43-3504 (1998); N.C. GEN. STAT. §§ 7B-1501, 143B-540 (1999); VA. CODE ANN. § 16.1-309.3(A) (Michie 1999).

187. HENGGELE ET AL., *supra* note 122, at 6-7.

188. ARIZ. REV. STAT. ANN. § 8-321; 705 ILL. COMP. STAT. ANN. 405/5-310.

189. CAL. WELF. & INST. CODE §§ 601.5, 748, 1401, 729.11.

in by the child and his family may prevent the removal of the child from the home and placement in a residential commitment program. Illinois, in another attempt to prevent juvenile delinquency, has, via legislative enactment, created community mediation panels composed of nonjudicial parties who dispose of less serious juvenile delinquency cases.¹⁹⁰ Such dispositions can, again, result in referrals of the child and/or family members for various forms of counseling and substance abuse treatment and circumvent exposure to the court system.

Having mentioned the above, however, it is important to note that state laws around the country vary in the application and use of community-based alternative programs as conceived in the statutory language of their respective jurisdictions. Virginia, for example, which advocates intensive forms of rehabilitative treatment for both juveniles and their families, has established community-based systems of services at both the pre-dispositional as well as post-dispositional levels.¹⁹¹ Colorado offers children and their families various forms of treatment and services through assessment centers which are multi-disciplinary, community-based models.¹⁹²

Once a juvenile has been formally charged with a delinquent act and he or she is faced with the prospect of a formal disposition hearing before a judge, the social agency involved then prepares a predisposition report to be considered by the court. The report contains a case plan which offers various rehabilitative as well as punitive methods of treatment to be incorporated into the child's sentence. Some of the rehabilitative components routinely offered for consideration include: crisis and other forms of counseling; family therapy; psychiatric, medical and/or physical evaluations; and substance abuse treatment. Depending on variances from state to state, these same treatment components are either offered to the juvenile's parents for voluntary participation, or the courts are given jurisdictional authority to specifically order the parents' participation in the same recommended services and forms of treatment. In those situations where parents' participation is voluntary, they can, as part of the formulation and preparation of the predisposition report, agree to participate in recommended forms of treatment; such agreements may, in some cases, prevent removal of their child from the home, or in other cases, allow for reunification after a previous detention. In those situations where the parent's participation is not voluntary, however, as in the case of Minnesota,¹⁹³ the court can go beyond the usual treatment modules for parents and chil-

190. 705 ILL. COMP. STAT. ANN. 405/5-310.

191. VA. CODE ANN. § 16.1-309.3(A).

192. COLO. REV. STAT. ANN. § 19-1-103(10.5) (West 1995).

193. MINN. STAT. ANN. § 260B.198(5) (West 1998).

dren participating in a diversionary program or while on probation. The court can require that the parents participate in and comply with certain treatment plans while the child is in a residential commitment program in anticipation of the future safety, lawful conduct, and compliance with the court's orders by the subject child.¹⁹⁴

Some states do not authorize courts to punish parents for failing to participate in various forms of treatment and/or services. In those states, if the parents are unwilling to participate in the treatments offered, the most that can be accomplished is documentation of the family member's resistance to participation. New Jersey's juvenile sentencing laws encourage parental participation in the juvenile's dispositional requirements but also note that any failure on the part of the parent to cooperate with the same requirements should not be weighed against the juvenile in arriving at an appropriate disposition.¹⁹⁵ New Jersey courts can, however, upon making a determination that the parent's conduct or lack of participation was a contributing factor to the child's commission of a delinquent act, order the same parent to participate in appropriate services and treatment programs.¹⁹⁶ In addition, New Jersey courts can also require a parent to pay restitution to the victim who suffered as a result of the child's delinquent behavior when it can be determined that the parent failed to exercise proper supervision over the child.¹⁹⁷ As an interesting converse to New Jersey, the Utah legislature, instead of enacting punitive measures for parents who fail to complete various court-ordered forms of treatment, provides juveniles with incentives of credited time for probation, detention and other forms of confinement where parents successfully complete family counseling.¹⁹⁸

Even though the courts' jurisdiction over parents in some states is limited as far as being able to exact particular requirements from parents whose children have been adjudicated delinquent, there are other states whose statutory provisions allow the courts to punish and/or hold parents in contempt where it can be demonstrated that the parents, either by actions of omission or commission contributed to a child's delinquency problems.¹⁹⁹ The authority of the juvenile court to utilize its contempt powers is, of course, more widely accepted where there is an

194. *Id.*

195. N.J. STAT. ANN. § 2A:4A-43(a)(4)-(5) (West 1987).

196. *See id.* § 2A:4A-43(b)(15).

197. *Id.* (noting that litigant's punishment can be enforced against the parent).

198. UTAH CODE ANN. § 78-3a-118(2)(p)(ii) (1996 & Supp. 2000).

199. ARIZ. REV. STAT. ANN. § 8-234(C) (West 1995 & Supp. 2000); ARK. CODE ANN. § 9-27-330(a)(10) (Michie 1998); FLA. STAT. ANN. §§ 985.231(1)(a)(5), (7), (9), (Harrison Supp. 2000); N.M. STAT. ANN. § 32A-2-28(C) (Michie 1991); TENN. CODE ANN. § 37-1-174(b) (Supp. 2000).

obvious attempt and/or move by the parent or legal guardian to thwart the court's directives as they relate to the juvenile involved and as contained in the court's disposition order. Ohio allows the court a minimal measure of authority over parents in most aspects of a juvenile delinquency case, but makes exceptions in those instances where the child has been adjudicated delinquent and there are apparent truancy problems and/or the parents have failed to exercise appropriate controls over the child.²⁰⁰

Another innovative method that some state legislatures have adopted to enable juvenile courts greater jurisdictional latitude over parents has been the requirement that parents post a bond or surety in order to exact compliance with the court's disposition order and secure performance by the juvenile (and in some cases the parents themselves) in proposed forms of treatment and while the juvenile is on probation and/or participating in some form of diversionary treatment program. Ohio,²⁰¹ Oklahoma,²⁰² and Arizona²⁰³ all allow for the posting of such a bond or surety, conditioned upon the child's successful discharge from probation. Of course, the bond in those instances can be forfeited if the court finds that the parent again failed or neglected to exert appropriate controls over their child.

Sometimes the courts achieve their purposes without any statutory mandate, as in the example of a juvenile who has been adjudicated delinquent and whose parent the court has ordered to submit to psychological or psychiatric examinations. In such a case, and if the parents fail to comply with the court's directives, the court might be inclined to remove the child from the custody of the parent. The mere possibility of removal from the home and subsequent placement of the child in a residential commitment program as part of the child's sentence can be incentive enough to garner the parent's compliance with various forms of court-approved service and treatment, including their participation in the following: community service; a parental responsibility training program; substance abuse treatment or counseling; payment of restitution; and payment of costs for the juvenile's detention and/or commitment.

California,²⁰⁴ like Florida²⁰⁵ and Minnesota²⁰⁶ and a number of other states,²⁰⁷ has given broad statutory authority to issue orders regarding

200. See OHIO REV. CODE ANN. § 2151.411(C)(1) (West Supp. 2001).

201. *Id.* § 2151.411(B).

202. OKLA. STAT. ANN. tit. 10, § 7303-5.3(A)(1) (West 1998).

203. ARIZ. REV. STAT. ANN. § 8-321(L) (West 1999).

204. CAL. WELF. & INST. CODE § 245.5 (West 1998).

205. FLA. STAT. ANN. § 985.231 (Harrison 1998).

206. MINN. STAT. ANN. § 260B.198 (West Supp. 2001).

207. ARIZ. REV. STAT. ANN. § 8-234 (West Supp. 2000); ARK. CODE. ANN. §§ 9-27-

parents' participation in the care and supervision of their children who have been adjudicated delinquent. That same authority extends to court-ordered treatment programs and services for the parents and/or other family members and is justified under the jurisprudential umbrella of the parents' responsibility to and involvement with the child, the best interests of the child, that which will best effect the child's rehabilitation, and the concept that court-ordered treatment of the parents is ultimately designed to advance the mental and moral well-being of the child.

Another (and somewhat controversial) means of obtaining jurisdiction over parents whose children are engaging in violations of the law, and one which is ripe for constitutional challenge, involves the enactment and application of what are commonly known as "criminal parental responsibility" laws. These laws often comprise separate criminal violations contained in state penal codes which hold parents criminally liable for failing to exercise supervision and control over their children who have engaged in delinquent acts. California,²⁰⁸ Kentucky,²⁰⁹ New York,²¹⁰ and Ohio²¹¹ are all states that have such laws, the violation of which constitutes a misdemeanor and for which sentences may include fines or incarceration. Even though Oregon's parental responsibility law also involves criminal liability and the potential for incarceration, there is a provision in the law whereby the court must first enlist family members' participation in parent effectiveness courses and/or order payment of restitution to the victim of the child's crime prior to ordering any incarceration.²¹² Of course, a number of other states include "parental responsibility" provisions in their state codes, but they do not necessarily ascribe criminal penalties for failure to abide by those provisions.²¹³

Florida exemplifies variations on all of the approaches which give courts jurisdiction over parents and legal guardians and which allow

330(a)(2), (3), (7)(A), (8), (9), (10), (13)(A) (Michie Supp. 1999); D.C. CODE ANN. § 16-2320(c) (Supp. 2001); IDAHO CODE § 20-520(1)(i) (Supp. 2000); 705 ILL. COMP. STAT. ANN. 405/5-110, 405/5-710(4), (5) (West 1999 & Supp. 2000); N.C. GEN. STAT. § 7B-2702(c) (1999); N.M. STAT. ANN. § 32A-2-28 (Michie 1999); OHIO REV. CODE ANN. § 2151.355(A)(24)(b) (West 1994); OKLA. STAT. ANN. tit. 10, §§ 7303-1.2(A)(1), -5.3 (West 1998); UTAH CODE ANN. § 78-3a-118(2)(p) (Supp. 2000); VA. CODE ANN. § 16.1-241(F)(3) (Michie Supp. 2000); WIS. STAT. ANN. § 938.34(2)(b) (West 2000).

208. CAL. PENAL CODE § 272 (West Supp. 2001).

209. KY. REV. STAT. ANN. § 530.060 (Michie 1999).

210. N.Y. PENAL LAW § 260.10 (McKinney 2000).

211. OHIO REV. CODE ANN. § 2151.355 (B)(2) (West 1994).

212. OR. REV. STAT. § 163.577 (1999).

213. See e.g., FLA. STAT. ANN. ch. 985.231(1)(a)(9) (Harrison Supp. 2000); 705 ILL. COMP. STAT. ANN. 405/5-110 (West 1999); N.J. STAT. ANN. § 2A:4A-43(b)(15) (West Supp. 2000); N.M. STAT. ANN. § 32A-2-28 (Michie 1999); OKLA. STAT. ANN. tit. 10, §§ 7303-5.3(A)(2), (7) (West 1998); TENN. CODE ANN. § 37-1-174 (Supp. 2000); VA. CODE ANN. § 16.1-241(F)(3) (Michie Supp. 2000).

for various methods of therapeutic intervention for family members of juveniles involved in the justice system. The legislative intent behind Florida's juvenile delinquency laws, while cognizant of a primary objective of protection of the public, also recognizes that focus on the preservation and strengthening of families can be a vital link in the prevention and reduction of acts of violence and other delinquent behaviors.²¹⁴ Under Florida law, parents are deemed to be responsible for providing sufficient support, guidance, and supervision to deter their children's participation in delinquent acts. While emphasizing parental responsibility, however, Florida also recognizes that the ability of parents to deter and control those same delinquent acts is often impeded by any number of factors, the least of which may be economic or social.

The policy provisions of the Florida legislation relating to juvenile delinquency have made it the responsibility of the State of Florida and its related agencies to identify those factors during the juvenile delinquency intake process which have a bearing on families' ability to support and manage their children. Those same agencies must thereafter provide appropriate recommendations to address the problems of juveniles and their families at either the judicial or nonjudicial level.²¹⁵ Prior to the filing of a petition for delinquency and upon a determination of need, it is the juvenile probation officer's responsibility to engage the parent or legal guardian in voluntary participation in any number of therapeutic services, such as courses in parenting skills, conflict resolution, or other forms of counseling and/or treatment. This may also be the opportunity and time for the officer to present other diversionary and/or treatment possibilities to the juvenile and his family. When the prosecuting attorney involved with a particular case makes the decision as to whether or not to file a petition for delinquency, he or she may take into account any recommendations made by the probation officer regarding the efficacy of filing, as well as whether or not the parents or legal guardians are willing participants in any proposed training or counseling.²¹⁶

As previously mentioned, Florida courts have broad jurisdictional powers over parents and legal guardians of juveniles alleged to have committed delinquent acts. Upon an adjudication of delinquency, the court may order the parents or guardians of the juvenile involved to participate in various forms of assistance and training, including courses of instruction in parenting skills and counseling.²¹⁷ At the time

214. FLA. STAT. ANN. chs. 985.01(d), 985.02(1)(3)(a) (Harrison 1998).

215. *Id.* ch. 985.02(7).

216. FLA. STAT. ANN. ch. 985.21(5) (Harrison Supp. 2000).

217. *Id.* chs. 985.201(3)(b), 985.204.

of disposition and again, upon a finding that a juvenile has committed a delinquent act(s), the court may order the parent to comply with any number of requirements, including the participation in family counseling and other professional counseling activities deemed necessary for the rehabilitation of the child or to enhance their ability to provide the child with adequate support, guidance, and supervision; ordering the parent to support the child and participate with the child in fulfilling any court-imposed sanctions; and rendering community service in a public service program. The court may also use its contempt powers to enforce any previously imposed court sanctions which relate to the parent or legal guardian.²¹⁸

In summary, most states, in their legislative enactments, seem to agree conceptually with the importance of available treatment programs and services not only for juveniles at risk for committing crimes but for their families and legal guardians as well. States differ, however, on the level of jurisdiction and authority the juvenile courts may exercise over family members in order to acquire compliance with beneficial forms of treatment.

Some states, in recognizing both the importance of the parental/family component in providing treatment for the child and, perhaps, certain constitutional limitations as they relate to jurisdiction over the parents, do not go beyond advocating voluntary participation on the part of family members in available treatment programs. Other states provide for voluntary treatment programs where the parents and/or their child contract and promise to comply with requirements of a particular program, failing which they may be subject to certain consequences, including, punitive measures administered by a court. Still other states allow the courts contempt powers over parents in specific areas where it can be demonstrated that the parents or guardians contributed to or failed to provide appropriate controls over the child's delinquent behaviors or where they obviously compromised the requirements of the child's disposition order.

A number of states have granted the courts' jurisdiction over parents by virtue of the parents' inclusion as parties to the cause of action and/or where the child has been adjudicated delinquent. In those instances, the courts are in a clear position to order the parents' participation in various forms of treatment and/or services, many of which are specifically enumerated in the statutes.

Whether the courts' jurisdiction to order and thus impact the treatment and services to parents and legal guardians of juveniles at risk in the criminal justice system is expansive or minimal, there nonetheless

218. *Id.* chs. 985.231(1)(a)(5), (c).

exists the continued recognition of the importance of a holistic approach towards treatment and services for the family component and in achieving rehabilitation of the child. Each jurisdiction will need to examine its respective statutes to determine the extent to which family can be required to participate. The Family-Focused Model and the therapeutic Family-Focused Juvenile Justice model are both post-adjudicatory, thereby eliminating the problems attached to the diversionary programs. The challenge for the future will be to integrate these concepts into traditional notions of constitutional and statutory jurisprudence.

IV. THERAPEUTIC JURISPRUDENCE

A. Overview

Over the last fifteen years we have witnessed an expansion of the traditional adjudicatory responsibilities of courts²¹⁹ that has transformed their role in fundamental ways. The following chart provides a comparison of the traditional court processes and the new transformed processes used by many courts. It was presented to the Great Lakes Court Summit, September 24-25, 1998.²²⁰

219. Carl Baar, *The Two Faces of Justice*, Address at the 2000 Annual Meeting of the American Political Science Association (Aug. 31 – Sept. 2, 2001). Baar's talk primarily dealt with the potential underlying consequences of therapeutic and restorative justice initiatives such as Drug Courts and Community Courts; however, his concerns are applicable to the current trend of judicial problem-solving.

220. David Rottman & Pamela Casey, *Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts*, NAT'L INST. OF JUST. J. (July 1999) (visited Apr. 23, 2001) <<http://www.ncsc.dni.us/RESEARCH/rottman.pdf>> .

TRADITION PROCESS	TRANSFORMED PROCESS
Dispute resolutions	Problem-solving dispute avoidance
Legal outcome	Therapeutic outcome
Adversarial process	Collaborative process
Claim or case-oriented	People-oriented
Rights-based	Interest-or-needs based
Emphasis on adjudication	Emphasis on post-adjudication and ADR
Interpretation and application of law	Interpretation and application of social science
Judge as arbiter	Judge as coach
Backward looking	Forward looking
Few participants and stakeholders	Wide range of participants and stakeholders
Individualistic	Interdependent

For the most part, the changes grew out of the judicial frustrations caused by an inability to effectively resolve cases containing complex substance abuse, family, and mental health issues enmeshed in traditional criminal justice cases. Judges searched for ways to deal with the huge influx of these cases that was created by changing societal conditions.²²¹ Traditional concepts were not working²²² and public confidence waned as many started to question the relevance of courts.²²³ When asked who was responsible for the failures, the public looked to the judges.²²⁴ In response, many judges expanded their traditional adjudicatory functions to include problem solving²²⁵ as they considered therapeutic interventions as dispositional options.²²⁶ Eventually, specialized courts emerged out of this new orientation.²²⁷ Drug treatment courts,²²⁸

221. David Rottman, *Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialist Judges?)*, CT. REV., Spring 2000, at 25.

222. Rottman & Casey, *supra* note 218, at 14.

223. *Id.* at 13.

224. *Id.*

225. See Rottman, *supra* note 221, at 22. "Problem-solving requires a shift in what is valued in the adjudication process: outcomes (rather than outputs), flexibility in decision making, listening to peoples' concerns, participation by community organizations, and consideration of what is best for communities as well as for individual defendants or victims." *Id.*

226. See Rottman & Casey, *supra* note 220, at 13.

227. See Rottman, *supra* note 221, at 22.

228. The Drug Court movement is one of the most influential forces on court reform towards the problem-solving orientation. See Peggy F. Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439 (1999) (discussing the history of the drug court movement).

domestic violence courts, mental health courts, gun courts, and other specialized courts started to appear on the national scene.²²⁹ Each identifies a target population, defined by the offense and/or the therapeutic needs of the individual and uses a modified court process to motivate behavior change. The purpose is to identify and treat the underlying cause of the criminal conduct using innovative treatment models combined with nontraditional justice system roles and processes.²³⁰

Despite the differences they may have, the common premise of these innovative judicial efforts is that positive therapeutic outcomes are important judicial goals, and the outcomes can be influenced by the design and operation of the courts. The inclusion and evaluation of therapeutic considerations as part of traditional justice system goals is called therapeutic jurisprudence.²³¹ "[T]herapeutic jurisprudence . . . suggests that the law itself can be seen to function as a kind of therapist or therapeutic agent. Legal rules, legal procedures, and the roles of legal actors (such as lawyers and judges) constitute social forces that, [sic] like it or not, often produce therapeutic or antitherapeutic consequences."²³² By determining the therapeutic consequences of the law, therapeutic jurisprudence can help reduce negative therapeutic results and enhance positive ones.²³³ Additionally, therapeutic jurisprudence can help determine the effectiveness of laws in comparison to their legislative purpose.²³⁴

A relatively new concept,²³⁵ therapeutic jurisprudence studies all facets of the law²³⁶ using social science as an analytical tool. The term was first used by Professor David Wexler in 1987.²³⁷ Professor Wexler and Professor Bruce Winick applied therapeutic jurisprudence princi-

229. Rottman, *supra* note 221, at 22.

230. OFF. OF STATE CT. ADM'R, FLA. SUP. CT., TREATMENT-BASED DRUG COURTS . . . A GUIDE (on file with the *Alabama Law Review*)

231. Hora, *supra* note 228, at 442-48.

232. DAVID B. WEXLER & BRUCE J. WINICK, LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE xvii (1996).

233. *Id.*

234. Hora, *supra* note 228, at 444.

235. WEXLER & WINICK, *supra* note 232, at xviii; Hora, *supra* note 228, at 442. The growth of therapeutic jurisprudence over the past ten years has been remarkable. There is an extensive accumulation of literature and an International Network on Therapeutic Jurisprudence. It was established to encourage work in therapeutic jurisprudence by serving internationally as a clearinghouse and resource center. See David B. Wexler, *International Network on Therapeutic Jurisprudence* (visited Apr. 22, 2001) <<http://www.law.arizona.edu/upr-intj>>. In 1998, the First International Conference on Therapeutic Jurisprudence was held in Winchester, England. Additionally, the University of Puerto Rico publishes, in English or Spanish, therapeutic jurisprudence writing, in relation to any legal system, by academics, professionals, and students in all relevant fields (e.g., law, psychology, psychiatry, social work, criminal justice and corrections, public health).

236. To date, Professor Wexler's publications are the most extensive resources that discuss all aspects of therapeutic jurisprudence. See generally WEXLER & WINICK, *supra* note 232.

237. See Hora, *supra* note 228, at 442.

ples first in mental health law; however, the application has since expanded "to many areas other than mental health law, including corrections, domestic violence, health care, tort reform, contract law, and the criminal court system."²³⁸

The fundamental principle underlying therapeutic jurisprudence is the selection of a therapeutic option that promotes health and *does not conflict with other normative values of the legal system*. The focus extends beyond specific issues in litigation and identifies the needs of the individuals standing before the court. "Thus, the orientation underlying therapeutic jurisprudence directs the judge's attention beyond the specific dispute before the court and toward the needs and circumstances of the individuals involved in the dispute."²³⁹

B. Juvenile Justice and Therapeutic Jurisprudence

Judges are constantly confronting some of society's most difficult problems, and this is especially true for juvenile court judges. The problems experienced by or caused by children and youth result from multiple and complex influences. Notwithstanding identification of the risk factors for juvenile criminal behavior, developing an appropriate accountable and rehabilitative judicial response is challenging and vitally critical to the safety of the community and to the permanent well-being of the youth standing before the court. "The mission of the juvenile or family court in addressing delinquency should be defined by carefully balancing competing, yet complementary goals—the welfare of children and the protection of the community."²⁴⁰

A recent meta-analysis study conducted by the American Psychological Association found that, of the over 400 recognized therapy

238. *Id.* at 443 (citations omitted). Other legal areas utilizing therapeutic jurisprudence principles include "homelessness, preventative law, comparative law, and family law." *Id.* The most notable recent application, Drug Treatment Courts, deals with the addicted criminal offender. *See id.* at 448-49. Drug Treatment Courts, housed in the criminal justice venue, were developed out of the

recognition on the part of judges, prosecutors, and defense counsel that the traditional criminal justice methods of incarceration, probation, or supervised parole have not stemmed the tide of drug use among criminals and drug-related crimes in America. . . . Faced with the task of processing the large number of drug offenders engulfed by our criminal justice system, many jurisdictions have turned to the concept of a 'Drug Treatment Court' in order to cope more effectively with the increased workload due to alcohol and other drug abuse-related cases.

Id. at 448-49.

"Through the introduction of drug treatment principles to addicted criminal defendants, and now juveniles and participants in family court, DTCs unknowingly apply the concepts of therapeutic jurisprudence every day in hundreds of courtrooms across America." Hora, *supra* note 228, at 448.

239. Rottman & Casey, *supra* note 220, at 14.

240. Robert E. Shepard, *The Juvenile Court in the 21st Century*, CRIM. JUST. MAG. (visited Apr. 22, 2001) <<http://www.abanet.org/crimjust/juvjus/JuvenCourt.html>>.

models, *the single most influential engine to change was the client and the family.*²⁴¹ The application of therapeutic jurisprudence principles to the Family-Focused Juvenile Justice model is intended to support the youth and family as “agents of change” so they can achieve the goals and objectives of the family-focused intervention.²⁴² These principles are designed to produce therapeutic outcomes beyond what normally can be expected which, in turn, promote public safety and accountability. To achieve these enhanced outcomes, the Therapeutic Family-Focused Juvenile Justice System model empowers families to address current and future problems with the support of an indigenous social network of friends, neighbors, and extended family.

The mandate placed on juvenile courts, to protect and reform children, is one of the most important responsibilities of any justice system.²⁴³ Because young offenders are considered to be susceptible to moral and social rehabilitation, juvenile courts attempt to rehabilitate, thereby preventing future criminal behavior and boosting public safety. In contrast, adult criminal courts seek to induce law-abiding behavior by means of punishment for wrongdoing.²⁴⁴

The history of juvenile justice demonstrates that the use of therapeutic interventions is not new to juvenile courts.²⁴⁵ The courts’ functions reflect society’s concerns for its children, which include ensuring that children are protected, have the ability to become productive citizens, have an opportunity to be educated, and, when they violate the law, are corrected and rehabilitated and the public is protected.²⁴⁶ “An equally important purpose is to preserve and strengthen families, so that they can raise their children without state interference.”²⁴⁷ A more

241. Michael Clark, *Common Factors of Positive Behavior Change—Increasing Your Therapeutic Approach with Youth*, JUV. JUST. TRAINERS ASS’N NEWSLETTER, Nov. 2000, at 2.

242. See Grimm, *supra* note 107.

243. The Honorable Cindy S. Lederman, *The Juvenile Court: Putting Research to Work for Prevention* 22 (visited May 29, 2001) <<http://www.ncjrs.org/html/ojjdp/jjjournal1299/3.html>>.

244. *The Janiculum Project Recommendations* (visited Apr. 22, 2001) <<http://www.ncjfcj.unr.edu/homepage/today/Janiculum.htm>>. The National Council of Juvenile and Family Court Judges convened over fifty juvenile court judges, prosecutors, defense counsel, court managers, probations officials, victims’ advocates, and scholars to examine the strengths and weaknesses of the juvenile court. *Id.* The report and recommendations, which followed a three-day symposium, were designed to serve as a blueprint for action for legislators, executive branch officials, and members of the judiciary for juvenile court reform. *Id.* “Janiculum . . .” refers to one of the historical hills in Rome which for hundreds of years stood as a watch point for approaching invasions from every direction.” *Id.* The participants reasoned the title to be appropriate in view of serious attacks to the unique treatment of our young in the specialized juvenile system by “legislators and others who are demanding a more aggressive approach to juvenile crime.” *Id.*

245. See *supra* Part I.

246. See Judge Leonard P. Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 JUV. & FAM. CT. J. 1, 39 (No. 2 1992).

247. *Id.* at 39.

heightened and intensified emphasis on therapy and rehabilitation, accompanied by appropriate accountability and due process safeguards, does not represent a dramatic philosophical shift from past and current juvenile justice considerations and objectives. However, the concentration on the family as a rehabilitative resource, coupled with expanded judicial involvement in therapeutic efforts, is a departure from most juvenile delinquency systems.²⁴⁸ The departure becomes clear when you examine the therapeutic family-focused model.

C. Applying Therapeutic Jurisprudence Principles to the Family-Focused Model

1. Introduction

Therapeutic jurisprudence principles can be implemented "on a continuum," beginning with an individualized, case-by-case approach.²⁴⁹ Next, they can be incorporated at the organizational level by instituting new therapeutic roles, procedures, court rules, information systems, and sentencing options. Additionally, the court can establish linkages with treatment and social service providers to support therapeutic goals. Finally, they can be supported at the policy making level by enactment of laws and policy that foster therapeutic outcomes.²⁵⁰ Many of the principles on the individual and organizational level will overlap.

Like therapeutic jurisprudence, which analyzes law from a therapeutics perspective,²⁵¹ therapeutic processes and procedures should be viewed through the lens of public safety and constitutional law. Although therapeutic interventions directed at causation factors of criminal conduct are effective public safety measures, the rehabilitation process of the therapeutic family-focused model must be designed to enhance public safety in accordance with constitutional guarantees. None of the components of the Therapeutic Family-Focused Juvenile Justice model are inconsistent with either public safety goals or consti-

248. Kumpfer & Alvarado, *supra* note 134. See also Clark, *supra* note 241. The model discussed in this Article is a new juvenile justice system concept which has never been implemented except in a few "specialty" courts. The initial evaluations are limited to the three family-focused juvenile programs operating in Pensacola, Florida. The evaluations are short-term due to the infancy of this approach. All three indicate a substantial decrease in recidivism as well as elimination of the specific behavior that resulted in the juvenile entering the juvenile justice system. Ashley Grimm, The Henry and Rilla White Foundation's Faith in Families Initiative Juvenile Drug Court Program (unpublished, on file with the *Alabama Law Review*).

249. Rottman & Casey, *supra* note 220, at 14.

250. *Id.*

251. WEXLER & WINICK, *supra* note 232.

tutional requirements.²⁵²

The Therapeutic Family-Focused Juvenile Justice System model evolved out of the knowledge and experience developed while operating a number of specialty courts within the juvenile justice system.²⁵³ These specialty courts have required special strategies to address the particular risk factors that influence the growth and development of children today. Like the therapeutic family-focused model, the objective of the specialized courts is to improve therapeutic outcomes.²⁵⁴

252. See generally Schall v. Martin, 467 U.S. 253, 267-70 (1984); McKeiver v. Pennsylvania, 403 U.S. 528 (1971); *In re Gault*, 387 U.S. 1 (1967).

253. In Pensacola, Florida, in addition to a juvenile drug court, there is also a specialty court serving only girls and a specialty court serving youths adjudicated for crimes of domestic violence or other violent behavior. Information regarding these may be obtained at the following: Office of Court Administration, Juvenile Justice Division, 2251 North Palafox, Pensacola, Florida, 32501.

254. Rottman, *supra* note 221, at 22-24. Rottman suggests that specialized courts promote therapeutic outcomes in several ways:

- Specialized courts provide a forum in which the adversarial process can be relaxed and problem solving and treatment processes emphasized.

- Judges and court staff become more sensitive to issues and more adept at developing individual and systemic responses to address these issues when a court's caseload presents a large proportion of cases in which similar therapeutic jurisprudence issues are likely to arise.

- Skill development in applying therapeutic jurisprudence principles may proceed faster because of a common focus and collegial support among judges

- Courts with exclusive subject matter jurisdiction are likely to attract a vigilant and involved bar that will further enhance the identification of therapeutic issues and possible remedies.

- A specialized court is in a better position to mobilize and coordinate treatment and social service providers in a locality, providing the court with access to skilled resources.

- The expertise of a specialized judge in a particular subject matter helps the court secure community-wide support for the court's programs.

- Specialized courts can be structured to retain jurisdiction over defendants, promoting continuity of supervision and accountability of defendants for their behavior in treatment programs. Continuing jurisdiction facilitates a proportionate response by court [sic] to the missteps during the treatment process rather than a one-shot chance at redemption.

Id. at 24.

He also submits that the specialized court approach can inhibit therapeutic outcomes because:

- Judges in specialized courts may become overly deferential to experts.

- The perspective promoted by maintaining distance from a subject matter is eroded by specialization.

- Specialized forums become dependent on a particular judge, creating problems of succession when judicial assignments rotate.

- The new generation of specialized forums proliferated in an era of particularly generous funding for criminal justice and an extraordinarily robust economy. The (usually) higher costs associated with specialized courts may prove fatal during an economic downturn.

- Specialized forums may impose costs on the trial court to which they belong by tying up resources, generating tensions within the bench, and creating conflicting loyalties among court staff. Such potential costs have not been taken into account in evaluations of special courts, which look at the outcomes associated with the specific defendants appearing in that court forum.

- Specialized courts are susceptible to capture by special interest groups, who

Unlike the specialty court, however, the therapeutic family-focused model is not designated for a specific therapeutic target population or specific offense category. Every youth who does not qualify for a pre-trial diversion or does not require long-term residential placement is placed on "probation" and receives the benefits of this approach. If not redirected, this population usually progresses to serious habitual offenders. There are a number of research findings that support this conclusion. According to the Office of Juvenile Justice and Delinquency Prevention, early intervention is one of the most important elements of an effective delinquency prevention and control program. It is also important to intervene immediately and effectively when delinquent behavior first occurs.²⁵⁵ It is important to establish a system of graduated sanctions that responds to the needs of each juvenile while providing for community safety.²⁵⁶ Although the average age of serious male offenders at their first contact with the juvenile justice system was 14.5 years of age, researchers of serious and violent offenders found that the actual delinquency careers of these offenders (based on their own statements and those of their mothers) started much earlier. Those who ended up in court for serious offenses at age 14.5 typically began to have minor problems at age 7, progressed to moderately serious behavior problems at age 9.5, and committed serious delinquency offenses at age 11.9. On average, more than seven years elapsed between the earliest minor problem behaviors and the first court appearance for an offense.²⁵⁷ Moreover, researchers have found that the most effective early intervention efforts are those that address multiple problems and occur simultaneously in the home and school—not merely episodic supervision contacts.²⁵⁸

An examination of the juvenile specialty court models, in particular the juvenile drug courts, suggests that, notwithstanding the differences, there are common therapeutic characteristics that appear in every court. One of these essential components is the focus on the role and functioning of the youth's family in terms of rehabilitating the youth.²⁵⁹ Additionally, there are other improved therapeutic processes derived from the juvenile specialty experience which include:

tend to make it "their" court.

- Judicial specialty problem-solving assignments can result in judicial stress and burnout and fewer opportunities for career advancement.

Id. (citations omitted).

255. Bilchik, *supra* note 118, at 2.

256. *Id.*

257. *Id.* at 5.

258. *Id.* at 6.

259. McGee et al., *supra* note 112, at 13.

Immediate intervention by the court and continuous supervision of the progress of the juvenile and his/her family by the judge;
Development of a program of treatment and rehabilitation services that addresses the *family's* needs, not simply the child's;
Judicial oversight and coordination of treatment and rehabilitation services provided to promote accountability and reduce duplication of effort;
Immediate response by the court to the needs of the child and his/her family and to noncompliance by either the child or the family with the court's program conditions; and
Judicial leadership in bringing together the schools, treatment resources, and other community agencies to work together to achieve the court's goals.²⁶⁰

The therapeutic family-focused model incorporates and enhances these improved therapeutic processes.

2. *Guiding Principles*

As with all justice system modifications, there are certain fundamental principles that direct the design and operation of the therapeutic family-focused model. Strict adherence to these principles is essential. Otherwise, traditional justice system values are jeopardized. The guiding principles, the processes, and the procedures discussed below were developed from the authors' extensive experience working with the specialty courts in Pensacola, Florida, and from the research conducted on the family's role in youth development and rehabilitation.

Our proposal suggests that the specialty court system used in Pensacola can and should be expanded into a system-wide approach, involving every youth placed on probation. The design accommodates both the voluntary participant (those that enter a plea, execute appropriate waivers, and agree to comply with the conditions of participation) as well as the non-voluntary (those that do not agree, but participate only because it is ordered as a condition of probation). As of the date of publication, no jurisdiction has implemented this concept.

a. *Public Safety*

Public safety is the number one consideration of the Therapeutic Family-Focused Juvenile Justice model. The combination of frequent in-home contact with the family and the juvenile, communication with school personnel, regular and frequent court appearances coupled with probation supervision significantly enhances public safety efforts. Mi-

260. *Juvenile Drug Courts*, *supra* note 1, at 7.

nor issues of noncompliance are more readily identified and appropriately addressed in order to prevent more serious violations which can impede or derail the rehabilitative process. Additionally, an immediate judicial response to noncompliance is an effective deterrent to the juvenile who is "testing the limits" of appropriate behavior.

b. Due Process

In the case of *In re Gault*, the United States Supreme Court stated that "[d]ue process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise."²⁶¹ *Gault* is one of the milestone decisions of the juvenile justice movement. It defined basic procedural due process requirements of juveniles charged with delinquent acts that could result in a deprivation of their liberty. Further, many states have expanded on the minimum standards set out in *Gault*.²⁶²

Like public safety issues, protection of due process rights is an essential component of the Therapeutic Family-Focused Juvenile Justice model. Failure to comply with due process standards not only affects the legality of the process, but it also adversely impacts therapeutic outcomes, as it undermines the relationship among the system, youth, and family.²⁶³

In the Therapeutic Family-Focused Juvenile Justice model, there are several stages where the due process rights of the youth must be taken into account. The model is post-adjudicatory, and therefore, all fundamental pre-adjudicatory rights attach.²⁶⁴ They resurface when, and if, noncompliance results in a possible deprivation of liberty, either by contempt (show cause) proceedings or violation of probation proceedings.²⁶⁵

261. 387 U.S. 1, 20 (1967).

262. See MARTIN R. GARDNER, UNDERSTANDING JUVENILE LAW 243-44 (1997).

263. Clark, *supra* note 241, at 3.

264. Melli, *supra* note 6.

The United States Supreme Court's "constitutional domestication" of the juvenile court, as Justice Fortas termed it in *Gault*, was picked up in the 1970s and early 1980s by state legislators. They began revising state juvenile codes to provide more formal procedures and to develop more precise guidelines for the exercise of judicial discretion. These due process reforms, like the Supreme Court's constitutionalization of the juvenile court, relied heavily on criminal court procedures and reshaped the juvenile court in a more adversarial format.

Id. at 387.

265. *Id.* at 386.

The United States Supreme Court, faced with a conflict between traditional due process requirements and the informal procedures of the juvenile court, made a critical choice. It analogized the juvenile commitment to incarceration for a crime and turned to the criminal law for guidance. Based on criminal due process re-

Unlike the specialty courts which are predominantly voluntary, the Therapeutic Family-Focused Juvenile Justice model is both voluntary and mandatory so that all probationers receive the family-focused services. Prior to disposition, the due process considerations will be the same for each. The voluntary client may agree to waive certain rights. The waivers must comport with all federal constitutional and statutory provisions regarding the juvenile waivers of rights as well as state constitutional and statutory requirements. Most frequently, these statutes involve confidentiality issues related to "treatment" participation and evidentiary privileges. Even for the non-voluntary client, the therapeutic family-focused design must comply with these provisions unless waived.²⁶⁶ Due process considerations resurface when non-compliance may result in detention. In these situations, the right to notice, the right to counsel, as well as other due process rights, attach.²⁶⁷

c. Empowerment

As with public safety and due process principles, the concept of empowerment is an essential and influential element of the Therapeutic Family-Focused Juvenile Justice model. The court's processes, procedures, and therapeutic services are designed and implemented to enhance and empower the family to effect change. The role the family is permitted to fulfill in the Therapeutic Family-Focused Juvenile Justice System model is critical. To facilitate the process of empowering families, the family intervention specialists and the court, along with all court-related agencies, avoid "doing for" the families and stress enabling the family to do for itself by stressing the development or enhancement of skills that are appropriated for the current situation in which the youth and family find themselves. Thus, in terms of implementing interventions to enhance law-abiding behavior on the part of the youth, most interventions are conducted by the family intervention specialist working directly with the parents or by the parents working directly with their child under the guidance of the family intervention

quirements, it held that Gerald Gault was denied due process because he did not have adequate notice of the charges, did not have the opportunity to confront his accuser, had not been provided with counsel, and had not been warned of his right against self-incrimination.

Id. at 385.

266. NAT'L DRUG CT. INST., EXCERPTS FROM A TREATISE ON ETHICS AND CONFIDENTIALITY IN DRUG COURTS: FEDERAL CONFIDENTIALITY LAWS AND HOW THEY AFFECT DRUG COURT PRACTITIONERS (1999); *see also* THE DRUG COURT CLEARINGHOUSE AND TECHNICAL ASSISTANCE PROJECT, THE AMERICAN UNIV., *Practical Guide for Applying Federal Confidentiality Laws to Drug Court Operations* (visited May 30, 2001) <<http://www.american.edu/justice/publications/Confed.htm>>.

267. Melli, *supra* note 6, at 385-86.

specialist. When there are violations of program rules or new law violations, the court may place the youth in detention. One of the overarching goals of the therapeutic family-focused model is to reduce the number of youths being placed in high cost residential placements. However, we recognize that some number of youths, for whatever reason, will be removed from their homes and the community. The team will make its decision out of an abundant concern for public safety. If the team decides that the youth cannot be treated while living at home without the likelihood of further law violations, the youth will be placed in a residential setting.

d. Collaboration and the "Team"

The Therapeutic Family-Focused Juvenile Justice System model exists as "a marriage between communities that have been traditionally at odds and foreign to each other—treatment communities, court communities, prosecutors, defense attorneys"²⁶⁸ and juvenile probation departments. The juvenile offender becomes a client of the "team," requiring each member to assume additional roles that will facilitate the rehabilitation of the youth.²⁶⁹ Each member must be willing to undertake additional demands and become familiar with the family-focused therapeutic methods.²⁷⁰ It is this shift in roles that focuses the court on both a legal and a therapeutic response. The Therapeutic Family-Focused Juvenile Justice System model looks to the needs of the offender and family, not solely to the legal formalism of traditional courts.²⁷¹

It is this collaborative team effort that poses some of the most difficult challenges that can undermine the therapeutic objectives. If there is not a philosophical consensus among all team members, the family and youth will receive conflicting messages from some members of the Therapeutic Family-Focused Juvenile Justice System team.²⁷² "The family is then caught in the middle and forced to choose among different approaches."²⁷³ This occurs when members of the Therapeutic Family-Focused Juvenile Justice System team do not understand or agree with the goals, principles, and outcomes for the program or for individual families. It can also occur when team members, other than the therapist, undertake to do the therapy themselves. When this hap-

268. Hora, *supra* note 228, at 469.

269. Michael D. Clark, *The Juvenile Drug Court Judge and Lawyer: Four Common Mistakes in Treating Drug Court Adolescents*, 51 JUV & FAM. CT. J. 37, 44-45 (2000).

270. *Id.*

271. See Hora, *supra* note 228, at 469.

272. See SELLS, *supra* note 179, at 210.

273. *Id.*

pens, the family intervention specialist must collaborate with these other team members or neutralize their negative therapeutic influence.²⁷⁴ The court is the central hub of the team effort²⁷⁵ and has the leadership role in developing an appropriate role for the team and its members.

e. Court Hearings

The court hearings in the Therapeutic Family-Focused model present unique opportunities to apply therapeutic principles and enhance outcomes. There are three types of court hearings in which the family will be involved: the disposition hearing, the status hearings, and the intermediate adjudicatory hearing.

i. The Disposition Hearing

This disposition hearing is the "sentencing" hearing where the youth is placed on probation. The family and the juvenile's attorney are present. It is critical that the court "set the stage" for the family-focused intervention by giving the family a brief overview of the family-focused model and why it is used; explaining the court's expectations concerning the family's participation; supporting the family intervention specialist by reinforcing the benefits of in-home therapy; and communicating to the family the team's genuine concern for the family and their eagerness to help them. This will help foster a good alliance between the family and the team and give a positive first impression.²⁷⁶

The judge discusses the distinction between voluntary and court-ordered participation and the benefits and drawbacks of each. The important distinction is the juvenile's waiver of certain rights²⁷⁷ which can enhance outcomes by eliminating delays between behavior and response.

ii. The Status Hearing

After being placed on probation, the youth and family initially attend weekly²⁷⁸ status hearings. This allows the court to monitor the

274. *Id.* at 210-11.

275. Clark, *supra* note 269, at 40.

276. *Id.* at 3.

277. All waivers are in writing and executed by the parents/guardians, the attorneys, and the judge. The judge must determine, after thorough questions, that the waivers were knowingly, voluntarily, and intelligently executed.

278. The extent of family dysfunction, their response to the family-focused intervention, and the juvenile's noncompliance with probation requirements will eventually determine the intervals

family's progress, support its efforts, and impose immediate motivational accountability measures as well as incentives. The Therapeutic Family-Focused model better manages the inevitable "stumbles and backslides" that occur during the process of change. Unlike the traditional system, which is usually an "all or nothing" proposition, non-compliance does not result in termination, yet the youth is held accountable. The court response is immediate and produces a therapeutic gain by linking the effect to the cause.

The hearings have a degree of formality and solemnity, yet are conducted in a manner that helps the reluctant or embarrassed family to comfortably dialogue with the court or team. The judge ensures the process is a positive therapeutic experience regardless of the action taken. The focus of the hearing is the family and therefore everyone's attention is directed to them. Extraneous discussions, unnecessary movement and other distractions are minimized so that the family will sense the importance of the proceeding and understand their significant status in the eyes of the court and team.

iii. The Intermediate Adjudicatory Hearing

The intermediate adjudicatory hearing is designed to comply with due process rights for the noncompliant youths that contest the basis for imposition of a sanction, which may include a brief deprivation of liberty. These evidentiary adversarial hearings are held as soon as possible following the alleged violation and are in the nature of contested violation of probation hearings or show cause (contempt) proceedings.²⁷⁹ All the *Gault* basic due process rights apply, as well as other specific statutory requirements of individual jurisdictions.²⁸⁰

If the probationer is determined to have violated the probation order, the consequence is an intermediate sanction, unless the court and team feel that the family-focused intervention is inappropriate and a more intense residential program is warranted. This is true whether the probationer is involved in a contempt process or the violation of probation process.

between status hearings. In the beginning each family attends weekly until such time as the family intervention specialist recommends to the team less frequent sessions. The hearings should be part of the court's regular calendar so that the court can immediately respond on an as-needed basis for crisis management and offender noncompliance.

279. The number of this type of hearing is fairly insignificant, as most will enter a plea to the contempt or the violation. This is consistent with the traditional contempt and violation of probation proceedings.

280. GARDNER, *supra* note 262, at 295.

f. The Multi-Disciplinary Staffing

Prior to each status hearing, the team meets to discuss the family's progress. The family intervention specialists prepares a report to the court that describes the progress of the family and the barriers to achieving their goals and objectives that are outlined in their Family Services Plan. This report is presented to the judge and the team at this meeting. The report states the overall goals of treatment, the progress made toward the treatment objectives for the previous week, a description of the advances being made in treatment, any barriers that are interfering with treatment success, analysis of how the therapist's assessment of the family have changed, and the testament objective to be achieved during the next week. The report is the primary communication tool for the team. Additional information is presented from other team members.

Accomplishments, noncompliance, incentives, school progress, sanctions, and other needs of the family and youth are some of the topics discussed during these meetings. It is not a clinical exercise but more of an informational process intended to identify a therapeutic and accountability strategy for the court appearance. Everyone provides input and recommendations. If possible, all team members will agree on an appropriate court response for the upcoming hearing, whether a positive or negative one. If a consensus is not reached, the court is the final arbiter.

During the discussions, it is important for the team to remember that the therapeutic model strives to induce a permanent change, as opposed to mere compliance or obedience with court-ordered requirements. Therefore, the team must keep a balanced perspective, weighing the therapeutic achievements against the shortcomings.²⁸¹ The ultimate goal is to "increase intrinsic motivation that will build sustainable *growth* that will continue far after the adolescent has finished. . . ."²⁸² This balanced view is often a difficult transition for the judge and lawyers who operate in a system that responds only to negative behavior.

g. Consequences and Incentives

The use of consequences and incentives is an important component of the Therapeutic Family-Focused Juvenile Justice System model and specialty courts. Consequences must be structured to promote each juvenile's ability to take responsibility for his or her actions. Positive rewards and incentives for compliance with program conditions are as

281. Clark, *supra* note 269, at 42.

282. *Id.*

important as negative sanctions for program noncompliance. Most persons working in specialty court programs agree that "the hallmark of any sanctioning scheme must be consistency and predictability."²⁸³ It is important to develop an appropriate array of both consequences and incentives and to communicate those to the family and youth early on in the process. They may range from comments from the court or team to more significant responses depending upon the nature and frequency of accomplishment or noncompliance. Some jurisdictions use "[s]pecially designed point systems and contracts between the [specialty] court and the participant [that] provide both positive and negative reinforcement and help to develop the participant's internal sense of accountability."²⁸⁴

The method of imposing sanctions and awarding incentives can be as important as the consequence or the reward itself. In the Therapeutic Family-Focused model, it is important for the parent or guardian, in carrying out parental responsibilities, to be the one who sanctions and rewards the youth. Therefore, the court, in conjunction with the family intervention specialist, must develop a method of accountability that supports parental involvement and helps to establish an appropriate parent/child relationship. Despite the best efforts of the therapist, there will be occasions when either the parent's or guardian's response or the degree of noncompliance will require the court to determine the proper consequence or incentive. If the court needs to deliver the sanction, it is important how it is done so as not to degrade or humiliate the youth or family. It is very important for the court to consider the thoughts and recommendations of other team members as to when this should be done and what the response should be.

h. System Accountability

As a result of the planning, collaborations, and communications between the various team members, the Therapeutic Family-Focused Juvenile Justice model creates an environment in which the system, including the youth and family, is held accountable. Through the adoption of goals and outcome measures, evaluation mechanisms, and information sharing systems, the court can monitor the system's effectiveness and identify areas of system failures.

283. *Juvenile Drug Courts*, *supra* note 1.

284. *Id.*

CONCLUSION

According to Thomas Bernard, in his book *The Cycle of Juvenile Justice*, “[t]here is a cyclical pattern in juvenile justice policies in which the same sequence of policies [fueled by philosophies of the time] has been repeated three times in the last two hundred years.”²⁸⁵ That cycle being “the introduction of leniency in a major reform, a gradual toughening up until officials must choose between imposing harsh punishments and doing nothing, and then the reintroduction of leniency in another major reform.”²⁸⁶ He argues that we are presently “somewhere in the ‘toughening up’ process.”²⁸⁷ He states that no policy has been able to accomplish the task of reducing crime, and that therefore, “every policy is eventually reformed [in perpetuation of] the cycle of juvenile justice.”²⁸⁸

This cycle of the juvenile justice system appears to be the result of reactionary responses to the frustrations of dealing with the complexity of juvenile delinquency, major swings in perspective due to influences of prominent theories, social factors of the times, and attempts to balance the constitutional issues of the court with a rehabilitative mission. Fortunately, some of us do not believe that we are doomed to continue to repeat the cycle. We hope that this is also true of the majority of practitioners who are working each day to reduce juvenile delinquency and improve the system that serves delinquent children and their families.

We believe that the focus has been too narrow in a desire to find a simple solution to delinquency, and that we have allowed the rulings on due process laws for juveniles to change our mission rather than seeking an approach that carries out the rehabilitative mission while protecting constitutional rights. We would like to see the cycles in juvenile justice stop in the new millennium—both the cycle of reactionary swings in the approach to administering juvenile justice, and the cycle of criminal behavior that is passed on from generation to generation. Although our model is a more intensive, laborious, and time-consuming approach, we propose this method because we believe that children deserve the best chance possible for a better, more productive life.

285. THOMAS J. BERNARD, *CYCLES OF JUVENILE JUSTICE* 1 (1992).

286. *Id.* at 164.

287. *Id.*

288. *Id.* at 165.