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JUVENILE JUSTICE: REHABILITATING THE SYSTEM AFTER THE INTRODUCTION OF MANDATORY MINIMUM SENTENCES

I. INTRODUCTION

In Massachusetts, a separate juvenile justice system exists to protect juveniles from the harsh reality of the adult court system. In 1906, indigent citizens demanded a separate court system for juvenile offenders. This resulted from a belief that children were not morally responsible for their actions as adults and were more conducive to rehabilitation. As a result, the Massachusetts legislature created a separate judicial system for individuals under seventeen who engage in acts that would be criminal for an adult.¹

The division of childhood from adulthood warrants a separate juvenile justice system.² Yet the modern juvenile system fails to effectively rehabilitate today's youth offenders.³ The juvenile system simply cannot keep up with the changes, therefore, does not effectively rehabilitate today's

¹ See MASS. GEN. LAWS ch. 119, § 53 (1992); see also James M. Cronin, *Juvenile Violence and the Massachusetts Transfer Statute*, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 371, 9 (1995) (stating theory behind Massachusetts' separate system for young criminals). The courts were even thought to assume the care and custody of the children to the same extent their own parents would exercise the role. *Id.* This gave courts broad discretion in handling the young offenders. *Id.* Advocates of the juvenile court claimed young people were incapable of committing crimes because they lacked the moral and cognitive capacity necessary for criminal liability. Janet E. Ainsworth, *Youth Justice in a Unified Court: Response to Critics of Juvenile Court Abolition*, 36 B.C. L. REV. 927, 934 (1995).

² See Catherine J. Ross, *Disposition in a Discretionary Regime: Punishment and Rehabilitation in the Juvenile Justice System*, 36 B.C. L. REV. 1037, 1038 (1995) (explaining the rehabilitative ideal behind the juvenile system). Wide judicial discretion which allows the court to assume the role of parent is the most effective manner to reach the goals of the system. *Id.* at 1038-39. The judge could use this discretion to assist the young offender in his rehabilitation. *Id.* By giving advice, the judge can steer a young offender. *Id.*

³ Ainsworth, *supra* note 1, at 945. The child, by definition, is seen as opposite of adult and thus necessarily must be adjudicated separately. *Id.* The legislature must view young people as essentially different to warrant a separate justice system. *Id.* at 936. Most juvenile offenders in the system, however, are adolescents who can be harmed by being treated like children. *Id.* at 938.

young offenders.⁴ Problems such as poverty, drugs, guns, changes in family, economic and education, contribute to the ineffectiveness of the current juvenile system.⁵ The introduction of mandatory minimum sentences, a potential solution meant to update the system, instead exacerbates the problems inherent in today's juvenile system.⁶ Mandatory minimum sentences take away judicial deference in imposing a sentence and lack the uniformity of sentences for similarly situated offenders that is necessary for fair rulings.⁷

The solution to this problem lies in increasing resources for the juvenile justice system and making juvenile justice a higher priority. With increased resources, the juvenile system can be modernized to help today's young offenders. More resources are necessary to educate those employed by the system who are supposed to help the juveniles. Furthermore, increased resources outside the courts, such as more police officers in the community, would provide a preventative measure to lower the number of juveniles who commit crime and thus end up in the juvenile system.

⁴ Task Force on Juvenile Justice, *The Massachusetts Juvenile Justice System of the 1990s: Rethinking a National Model*, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 339, 18 (1995).

⁵ See Francine T. Sherman, *Struggling for a Future: Juvenile Violence, Juvenile Justice: Forward*, 36 B.C. L. REV. 889, 892 (1995) (determining that complex changes in society have not been recognized in the juvenile system). "Family deprivation, violent social climate, availability of weapons, lack of economic opportunity, racial tension, inadequate education, and lack of individual and community responsibility all contribute to the problem." *Id.* Sherman argues that the system needs to adapt to modern times and modern problems. *Id.*; see also Stephen Wizner, *On Youth Crime and the Juvenile Court*, 36 B.C. L. REV. 1025, 1025 (1995) (quoting prosecutor recognizing system designed to punish little boys who broke windows, not drug dealers).

⁶ Task Force, *supra* note 4, at 16.

⁷ See Book Note, *Determinate Sentencing and Judicial Participation in Democratic Punishment*, 108 HARV. L. REV. 947, 947 (1995) (reviewing Lois G. Forer, *A RAGE TO PUNISH: THE UNINTENDED CONSEQUENCES OF MANDATORY SENTENCING* (1995)) (citing survey that 90% of federal judges and 75% of state judges oppose mandatory sentences). Mandatory minimum sentences have increased incarceration rates, but have strained the use of otherwise beneficial sentencing guidelines. *Id.* Prisons are overcrowded because legislatures are quick to impose sentencing guidelines and judges follow the guidelines by incarcerating the criminals. *Id.*; see also Don J. DeBenedictis, *The Verdict is in: Throw Out Mandatory Sentences, Judges Tell ABA Journal Poll*, 79 A.B.A. J. 78, 78 (1993) (showing that survey results highlight judicial animosity due to loss of discretion and flexibility).

Part II of this article traces the history of the juvenile court system in Massachusetts and focuses on the appropriateness of court transfers for young offenders. Part III examines the problems with today's juvenile system. Part IV discusses the implementation of mandatory minimum sentences in the Massachusetts juvenile system, the adult system and in federal courts. Part V illustrates the ineffectiveness of mandatory minimum sentences in the juvenile system. Finally, Part VI concludes by suggesting more economic resources be allocated to help juveniles before they become criminals, and if they still commit crime, more resources are needed to better handle the youthful offender of today once they arrive in juvenile court.

II. HISTORY OF THE JUVENILE SYSTEM IN MASSACHUSETTS

A. *In General*

The juvenile justice system dates back to the late nineteenth and early twentieth centuries.⁸ Historically, the courts in Massachusetts did not follow the national model of separate court systems. Even in the early twentieth century, juvenile offenders found themselves in adult courts and adult correctional facilities.⁹ In 1921, juveniles had a separate court in Massachusetts, but young offenders could still be transferred to adult court if the crime was punishable by death or life imprisonment.¹⁰

In the early 1970s, legislation prompted by the Massachusetts Committee on Children and Youth led to the revamping of correctional facilities of the juvenile system.¹¹ Now the facilities include small community-based programs instead of large, more traditional facilities.¹²

State legislatures across the United States developed juvenile justice systems, separate from the adult system, to accommodate the public perception that children are not as blameworthy as adult offenders and therefore should not suffer adult punishment.¹³ In 1906, Massachusetts legisla-

⁸ Ainsworth, *supra* note 1, at 931.

⁹ Task Force, *supra* note 4, at 8.

¹⁰ *Id.* Pursuant to the 1948 amendments to juvenile process statutes, the Youth Service Board had discretion to examine which system could better serve the needs of the offender aged fourteen to seventeen. *Id.*

¹¹ *Id.* at 9. The changes in the system reflected the humanization efforts of the new Department of Youth Services commissioner to be more therapeutic. *Id.*

¹² *Id.* The new facilities were necessary because the old system was ineffective. *Id.*

¹³ *See id.* at 3 (describing rationale that family and social environment strongly influence childrens' behavior); *see also* Ainsworth, *supra* note 1, at 940 (stating children lack judgment to understand future consequences of their actions and make wise decisions).

tures implemented a system solely to address the needs of young offenders with a focus towards rehabilitation.¹⁴ Legislators thought it best to examine both the offense and the offender involved to rectify the problem which led to the juvenile's criminal behavior.¹⁵

In the mid-nineteenth century, as the country's needs changed, society turned away from religion and education and moved towards providing better family life and vocational training.¹⁶ As the twentieth century approached, the Massachusetts legislature developed a separate juvenile court founded on the notion of paternalism where the court served as a parent to the young offender.¹⁷ In the 1900's, the courts used industrial training as a popular method of rehabilitation.¹⁸ The lives of Americans changed, resulting in more economic dependence for young people and a "consequent postponement of [young people's] attainment of full personhood within society."¹⁹

At the end of the twentieth century, children's dependency on their families and society has lasted longer as they look to adults for moral development and guidance. In today's culture, adolescents are still unsure of their roles in life.²⁰ Therefore, as a class, the legislatures "treated [children] differently from adults in almost every aspect of their lives."²¹ With the turn of the twentieth century came the development of a "childhood subclass" where legislatures labeled young adults with child-

¹⁴ See Task Force, *supra* note 4, at 3 (implying adult justice system solely concerned with punishment).

¹⁵ *Id.* at 6 (emphasizing the different level of culpability of a juvenile offender). The juvenile court ideally tried to examine the offender's lifestyle to rectify the problem and lessen the chance that he would become an adult criminal. *Id.*

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7 (describing the role of the court as parent in juvenile offenders' lives). The court assumed the role of parent, called *parens patriae*, in determining the most fitting method of rehabilitation. *Id.*

¹⁸ *Id.*

¹⁹ See Ainsworth, *supra* note 1, at 932 (citing changes brought about by industrial age). The increasingly urban work force required more skilled, older laborers which strongly contrasted with the young farm hands of the nineteenth century. *Id.* at 931. As a result, children went to school longer hours and worked less. *Id.* at 932.

²⁰ *Id.* at 933 (analyzing changing times and its effect on the culture of children). The characteristics of children as vulnerable and malleable "were considered to be biologically rooted, and thus intrinsic and invariant, ... [and] justified, indeed demanded," they be treated differently. *Id.*

²¹ *Id.* at 933.

hood characteristics.²² This subclass consisted of adolescents which legislatures had previously considered adults.²³ With these cultural notions serving as a backdrop, the Massachusetts legislature created a separate juvenile justice system to correct and rehabilitate young offenders.²⁴

The American judicial system attempts to punish the individual.²⁵ In the 1950's and 1960's, activists attempted to shift the focus of punishment from the crime to the criminal.²⁶ Nevertheless, the notion of "crime as sin" still existed and legislatures and courts wanted to hold criminals responsible for their actions.²⁷ The "counter-reformation" of the 1970s and 1980s saw criminals receiving their "just deserts."²⁸ The law of public opinion demanded these changes as a result of the belief that criminals were getting away with light sentences.²⁹ Consequently, legislatures enacted mandatory minimum sentencing and sentencing guidelines for both adults and juveniles.³⁰

Throughout the 1900's, there was a blurring of the previously strict demarcation between childhood and adulthood.³¹ Children today must

²² *Id.* at 933, 938.

²³ *Id.* at 938. One would expect to find qualities of dependence, vulnerability and malleability in adolescents because they are classified as children. *Id.* at 940. This, however, is usually not the case. *Id.*

²⁴ Ainsworth, *supra* note 1, at 934 (detailing inherent differences between child and adult which led to separate systems).

²⁵ Thomas R. Burton, III, Book Note, 16 B.C. THIRD WORLD L.J. 167, 168 (1996) (reviewing Lois G. Forer, A RAGE TO PUNISH: THE UNINTENDED CONSEQUENCES OF MANDATORY SENTENCING (1994)).

²⁶ See Book Note, *supra* note 7, at 948 (suggesting more humane treatments for criminals such as community service and recognizing prisoners' rights).

²⁷ *Id.* A humanitarian movement was unable to promote alternative sentences, such as community service and to recognize the rights of prisoners. *Id.*

²⁸ *Id.* Public opinion swayed legislatures and judges to encourage lengthy incarceration of criminals. *Id.*

²⁹ *Id.* (explaining public perception of judges who are soft on violent crime). As a result, the public began a "movement towards eliminating judicial discretion in sentencing." *Id.*

³⁰ *Id.*

³¹ See Ainsworth, *supra* note 1, at 935 (explaining blending of certain behavior which adults borrow from children and vice versa). Competence and responsibility do not occur immediately at a person's eighteenth birthday. *Id.* at 948. It appears more reasonable to say that a child develops into an adult over time. *Id.* Adulthood does not happen at the same point for everyone; there is no convenient marking point. *Id.*

confront guns, drugs, and poverty, causing them to grow up abnormally fast and adopt "adult mannerisms, perspectives, and activities at an early age."³² Nonetheless, the juvenile justice system remains largely unchanged since the early nineteenth century despite society's changes over the past one hundred years.

In 1991, the National Council on Crime and Delinquency recognized the Massachusetts juvenile justice system as a national model for effectively balancing juvenile rehabilitation with public safety.³³ The picture today, however, is not as encouraging for the once-praised Massachusetts system.³⁴

The Massachusetts legislature designed the juvenile court process to mirror the adult court system, but with greater expertise and focus on the unique circumstances of young offenders.³⁵ The courts assign juvenile cases to one of four divisions of the Juvenile Court Department.³⁶ During arraignment, the process is similar to that in adult court; either the judge sets bail or detains the offender pending trial.³⁷ If an offender is brought before the juvenile court to determine delinquency, the judge holds a hearing.³⁸ If the juvenile court finds an offender delinquent, the judge places the offender on probation or commits him to the Department of Youth Services (DYS).³⁹ During probation, the court monitors the offender.⁴⁰ If the court commits the offender to DHS, it is DHS, not the court, that determines the placement, treatment, and eventual release of the offender.⁴¹ For the offenders in DHS' control, DHS is the final authority on most disputes.⁴²

³² *Id.*

³³ See Task Force, *supra* note 4, at 5 (citing praise for juvenile system).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* The four divisions are located in Bristol County, Boston, Springfield and Worcester. *Id.* at n.19.

³⁷ *Id.* at 10.

³⁸ Task Force, *supra* note 4, at 16.

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 11. The average probation period lasts for eleven months. *Id.* The length of time is determined by a risk versus need analysis, weighing the offense and a variety of factors which may encourage delinquency, such as drugs and family problems. *Id.* Probation services vary greatly due to different resources which the court may use. *Id.*

⁴¹ *Id.* at 11. Judges polled agreed that DHS deals better with serious offenders than those who are committed for less serious offenses. *Id.* The more serious offenders are

B. Transfer Hearings

In some cases, juveniles cannot benefit from the separate juvenile system.⁴³ A juvenile court may transfer a young offender to adult court by judicial waiver, legislative waiver, or prosecutorial waiver.⁴⁴ The key issue in a transfer hearing is whether the juvenile system can rehabilitate the juvenile; if not, then the transfer is ordered.⁴⁵ Judicial waiver authorizes the judge to transfer a juvenile to adult court if: (1) the offender presents a significant danger to the public and the juvenile system cannot rehabilitate the offender, and (2) the offense is one of eight named by statute, such as murder, rape, and kidnapping.⁴⁶ By contrast, a legislative waiver focuses on the crime charged, rather than the offender.⁴⁷

From 1975 until 1990 transfer hearings followed the premise that the justice system could not try offenders under the age of fourteen as adults.⁴⁸ In certain circumstances, the court may transfer an offender between the ages of fourteen and seventeen to an adult hearing. For instance, the court may transfer the offender if he committed a crime which requires a state prison sentence or if the DYS previously had custody of the offender for an offense involving serious bodily harm.⁴⁹ If the juvenile meets either of these conditions, the judge must provide written findings which prove by clear and convincing evidence that the juvenile poses a significant danger to the public and DYS cannot rehabilitate him.⁵⁰

In 1990, the state legislature introduced amendments which created a rebuttable presumption that the juvenile system could not likely rehabili-

placed in a secure facility where they are treated without external influences. *Id.* at 11-12. A review panel determines the level of an offense. *Id.* at 12. This method of review provides uniformity of punishment. *Id.* DYS has the authority to determine the length of time the offender will stay in a facility. *Id.* at 4.

⁴² *Id.* at 15.

⁴³ Cronin, *supra* note 1, at 16.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* Other crimes which necessitate a mandatory transfer hearing include manslaughter, forcible rape, aggravated rape, armed assault with intent to murder, armed assault with intent to rob and armed burglary. *Id.* at 17.

⁴⁷ Task Force, *supra* note 4, at 13.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 14. The findings have to be supported with other evidence of the offender's family, school and social history which indicate that rehabilitation is unlikely. *Id.*

tate a juvenile accused of murder.⁵¹ The presumption shifts the burden of production to the juvenile to prove that he does not pose a danger to society.⁵² The statute also reduced the burden of proof from clear and convincing evidence to a preponderance of the evidence in cases involving the eight serious offenses eligible for transfer.⁵³

Massachusetts law regarding transfer hearings gained statewide attention in 1997 with the widely publicized murder case of *Commonwealth v. O'Brien*.⁵⁴ The Supreme Judicial Court of Massachusetts (SJC) reversed a District Court ruling which held that Edward O'Brien, age fifteen when he allegedly murdered his neighbor, would be tried in juvenile court.⁵⁵ The SJC held that the lower court applied an erroneous standard in determining the appropriateness of a transfer to Superior Court for trial as an adult.⁵⁶

Since then, the Massachusetts legislature repealed the statute that allowed young offenders accused of murder to be tried in juvenile court.⁵⁷ Massachusetts General Laws chapter 200, § 7, currently provides that any person between the age of fourteen and seventeen years who is charged with committing murder in the first or second degree shall be treated "in accordance with the usual course and manner of criminal proceedings."⁵⁸

C. Mandatory Minimum Sentences

Mandatory minimum sentences require judges to impose specified minimum prison terms if an offense meets certain statutory criteria.⁵⁹

⁵¹ *Id.*

⁵² Task Force, *supra* note 4, at 14.

⁵³ See *supra* note 46 (listing offenses which make an offender eligible for transfer).

⁵⁴ 423 Mass. 841, 673 N.E.2d 552 (1996).

⁵⁵ *Id.*

⁵⁶ *Id.* The District Court judge concluded that the defendant had rebutted the prosecution's presumption that he was not amenable to rehabilitation and thus declined to transfer the defendant for trial as an adult. *Id.* at 844. The standard for transfer hearings is to determine "whether the child is amenable to rehabilitation within the juvenile justice system." *Id.* at 845. The juvenile must show that he does not present a danger to society; the prosecution must show by a preponderance of the evidence that the juvenile is dangerous. *Id.* The SJC found O'Brien failed to meet the burden. *Id.*

⁵⁷ MASS. GEN. LAWS ch. 119, § 61 (repealed 1996) states "If a child is charged with murder. . . , there shall exist a rebuttable presumption that the child presents a significant danger to the public and such child is not amenable to rehabilitation within the juvenile justice system." *Id.* at 843, n.2.

⁵⁸ MASS. GEN. LAWS ch. 200, § 7.

⁵⁹ See Book note, *supra* note 7 (citing article quoting survey that 90% of federal

Judges criticize minimum sentences because they lack discretion.⁶⁰ Mandatory sentences minimize the unique factors and circumstances of each case.⁶¹ Using mandatory minimum sentencing of adults as a guide, it is clear that mandatory minimum sentencing cannot help the troubled juvenile system. The problems created by such mandatory minimums, such as judicial deference and lack of individuality, will especially be felt by the use of such mandatory sentences in the juvenile system. Instead, the juvenile justice system as a whole needs to receive increased resources to best acknowledge today's young offenders and treat them appropriately. Only then will the juvenile system effectively help young offenders in today's society.

III. PROBLEMS WITH CURRENT JUVENILE SYSTEM

As society changes, so must the justice system.⁶² Over the last 90 years, the juvenile justice system has remained stagnant. With rampant social problems including racism, economic imbalance, gender imbalance, and age bias, the juvenile system is unequipped to handle today's youth offenders.

A. Racism

Racial problems do exist in juvenile court. As such, they play a critical role in how the system functions.⁶³ African Americans are more likely to be in the justice system than other minorities and they are also subject to more severe sanctioning than other minorities.⁶⁴ While race does not affect sentencing guidelines or mandatory minimums at the legislature level,

judges and 75% of state judges oppose mandatory sentences).

⁶⁰ See DeBenedictis, *supra* note 7 (showing survey results highlight judicial animosity due to loss of discretion and flexibility).

⁶¹ See Karen Levine, *Bench Conference with Judge Maria I. Lopez*, MASS. LAW. WKLY., Feb. 17, 1992 at 26 (stating anything that removes judicial discretion is problematic).

⁶² See Paul J. Liacos, *The State of the Massachusetts Judiciary*, MASS. LAW. WKLY., Feb. 4, 1991, at 5 (recognizing the rapid changes in society need to be addressed in the judiciary).

⁶³ Ainsworth, *supra* note 1, at 936 n.44.

⁶⁴ *Id.*; see also Don DeBenedictis, *supra* note 7, at 78 (describing harsh effect of mandatory minimums and sentencing guidelines on minority offenders).

it does play a critical role in the processing of offenders.⁶⁵ Despite this, African Americans still receive higher sentences.⁶⁶

B. Economics

Most juvenile offenders are from low economic classes.⁶⁷ The system recognizes the economic status of the offender, whether consciously or not, and this affects the treatment of the offender.⁶⁸

C. Gender

Gender is a variable affecting how a judge treats an offender.⁶⁹ Historically, girls were charged with certain crimes more frequently than boys, for example, those involving sexual promiscuity and running away.⁷⁰ Courts also considered gender in sentencing, with consideration taken for pregnancy or care of minor children.⁷¹ Although gender is not a factor under sentencing guidelines, women generally receive lower sentences than similarly situated men.⁷²

D. Age

The Massachusetts legislature sought to eliminate discrepancies which result from characteristics such as race and gender by implementing mandatory sentences and sentencing guidelines. Both mandatory sentences and sentencing guidelines maintain neutrality with respect to race and gender.⁷³ Nevertheless, even with guidelines and mandatory sentences, judicial discretion still influences the length of an offender's sentence.⁷⁴

Many of the problems juvenile offenders face result from our violent society. With the glorification of violence on television and other medi-

⁶⁵ Barbara S. Meierhoefer, *The Role of Offense and Offender Characteristics in Federal Sentencing*, 66 S. CAL. L. REV. 367, 388 (1992).

⁶⁶ *Id.*; see also William W. Schwarzer, *Sentencing Guidelines and Mandatory Minimums: Mixing Apples and Oranges*, 66 S. CAL. L. REV. 405, 407 (1992) (describing racial disparities in sentencing).

⁶⁷ Ainsworth, *supra* note 1, at 936 n.46.

⁶⁸ *Id.*

⁶⁹ *Id.* at 936 n.45.

⁷⁰ *Id.*

⁷¹ Meierhoefer, *supra* note 65, at 385.

⁷² *Id.* at 388.

⁷³ *Id.*

⁷⁴ See also Book Note, *supra* note 7, at 950 (stating hidden discretion may allow for imbalances in assigning penalties).

ums, viewers are hardly fazed by murder.⁷⁵ For instance, the popular movie "Natural Born Killers" glorifies senseless killing and has even inspired real life killing sprees. Unfortunately, society has come to accept the violence which pervades daily life. Unsurprisingly, juvenile crime is increasing.⁷⁶ Youth gangs have increased in size and power, involving more children in violent activities.⁷⁷ It appears that society has lost control.

To combat crime society needs to regain control.⁷⁸ Currently, the community does not appear to be part of the solution.⁷⁹ The disintegration of the family, evidenced by single parent families, divorce, and children born out of wedlock, appears to be contributing to ineffective control of the nation's youth.⁸⁰ Once courts address the problems of disparity and violence, they can begin to make improvements to the system. The Massachusetts legislature originally thought that the addition of mandatory minimum sentences would improve the juvenile justice system. Yet after examining the effects of such sentences on adults, it appears this solution may not benefit the juvenile courts.

IV. MANDATORY MINIMUM SENTENCES FOR ADULTS

During the 1980s, Congress restructured federal sentencing.⁸¹ Before the 1980s amendments, judges had wide discretion to impose sentences.⁸² Strong disapproval in the legal community led Congress to pass the Sen-

⁷⁵ See Cronin, *supra* note 1, at 8 (arguing violent behavior has become too common for it to upset the viewer). Unfortunately, society has become desensitized to seeing such acts of violence in every day life. *Id.*

⁷⁶ See *Id.* at 4 (reporting increasing level of juveniles committing crimes such as rape, murder, robbery, and aggravated assault).

⁷⁷ *Id.* at 5. Gangs increasingly engage in activities such as street-level drug trafficking. *Id.*

⁷⁸ See also Cronin, *supra* note 1, at 7-8 (concluding society today is not conducive to achieving social control).

⁷⁹ *Id.*

⁸⁰ *Id.* at 7 (claiming breakdown of family unit contributes to weakening and undermining of society).

⁸¹ Meierhoefer, *supra* note 65, at 367.

⁸² See Charles Ogletree, Jr., *The Death of Discretion? Reflections on the Federal Sentencing Guidelines*, 101 HARV. L. REV. 1938, 1941 (1988) (suggesting importance of punishment fitting offender, instead of punishment fitting crime). Before the 1980s, legislatures did not favor a single type of punishment; judicial discretion allowed judges to select among purposes of punishment for an appropriate sentence. *Id.*

tencing Reform Act of 1984, creating a seven member United States Sentencing Commission ("Commission") to draft sentencing guidelines.⁸³ The Commission sought to promote fairness and certainty as well as to eliminate sentencing disparities among similarly situated offenders.⁸⁴

In 1949, the Supreme Court of the United States rejected the idea that every offense requires identical punishment, yet this is precisely the goal of mandatory minimums.⁸⁵ Federal courts use the guidelines and the Massachusetts legislature has passed similar guidelines which incorporate the goals of the federal guidelines.⁸⁶

The guidelines fail to eliminate sentencing disparities.⁸⁷ Previously, judges could determine which factors they deemed relevant to both the offense and sentence and give weight to those factors accordingly.⁸⁸ The 1984 guidelines, however, do not consider characteristics of the offender, such as age, which may mitigate a sentence.⁸⁹ The guidelines consider only the past criminal record of the offender, which increases one's sentence, and the offender's acceptance of responsibility, a factor which decreases one's sentence.⁹⁰ The guidelines emphasize the harm caused by the offender's act and not the circumstances which might mitigate punishment.⁹¹

⁸³ Meierhoefer, *supra* note 65, at 367. Offenders actually served much shorter sentences than what judges originally prescribed for an offense, with early parole for good time. *Id.*

⁸⁴ Olgetree, *supra* note 82, at 1938; *see also* Alexander Wohl, *The Calculus of Rationality: Reviewing the Sentencing Guidelines*, 78 A.B.A. J. 37, 37 (1992) (concluding judicial discretion in previous sentences led to inconsistent results); Robert J. Kane, *Towards a Policy of Fairness in Sentencing*, MASS. LAW. WKLY., June 8, 1992, at 11 (arguing discretion which allows prejudice and opinion to influence judgments does not promote fairness).

⁸⁵ *Williams v. New York*, 337 U.S. 241, 247 (1949).

⁸⁶ MASS. ANN. LAWS, SPEC. LAWS ch. 66, § 3 (1996).

⁸⁷ *See* Olgetree, *supra* note 82, at 1950 (detailing shortcomings of guidelines which need revisions for effective results).

⁸⁸ *See* Meierhoefer, *supra* note 65, at 367 (explaining guidelines system which determines which factors deemed relevant to a sentence for specific offenses).

⁸⁹ *See also* Olgetree, *supra* note 82, at 1951 (suggesting the guidelines neglected to include important characteristics of offenders in determining sentences).

⁹⁰ *Id.* at 1953.

⁹¹ *Id.*

Judicial discretion, known as departure, is allowed when factors are present which the Commission did not consider.⁹² As a result, the uniformity and consistency that the guidelines sought to achieve does not exist yet.⁹³ For example, some judges impose the maximum sentence under the guidelines and decrease the sentence if mitigating factors exist.⁹⁴ Other judges start at the minimum sentence and increase it if there are justifiable factors, while still other judges begin their analysis in the middle of the guidelines.⁹⁵ Therefore, sentences for similarly situated offenders remain inconsistent.⁹⁶ Furthermore, judges may not consider important mitigating factors unique to the individual offender.⁹⁷ This discretion intrudes into an otherwise rigid sentencing scheme.⁹⁸

Other consequences of mandatory sentences include prison overcrowding and lack of deterrence for future offenders.⁹⁹ The United States has the highest incarceration rate in the world.¹⁰⁰ Filling the country's prisons does not prevent future crimes as politicians and the public once hoped.¹⁰¹ With mandatory minimum sentences, criminals are imprisoned for longer periods of time than without such minimum sentences.¹⁰² Most criminals do not think about the consequences of their actions.¹⁰³ Economically and socially disadvantaged offenders regard prison as no worse than the everyday state of their existence.¹⁰⁴ Because criminals do not

⁹² Meierhoefer, *supra* note 65, at 368.

⁹³ See Burton, *supra* note 30, at 176 (discussing inconsistency because judges no longer consider significant mitigating circumstances when sentencing).

⁹⁴ *Id.* at 175.

⁹⁵ *Id.* at 175 (illustrating that even with mandatory minimums there is room for judicial discretion and varying sentences).

⁹⁶ *Id.* (stressing need to incorporate mitigating factors into sentencing decision to be fair).

⁹⁷ *Id.*

⁹⁸ Schwarzer, *supra* note 66, at 407.

⁹⁹ See Burton, *supra* note 30, at 171 (considering effects of mandatory minimums which the Commission did not strongly consider).

¹⁰⁰ *Id.* In 1994, the United States had over one and a half million prisoners. *Id.*

¹⁰¹ *Id.* at 170-71 (describing popular opinion of society and politicians who think crime is best controlled by incarceration).

¹⁰² *Id.* at 171 (stating Commission did not seriously consider longer sentences and prison overcrowding).

¹⁰³ Burton, *supra* note 30, at 171.

¹⁰⁴ *Id.* at 172 (describing social and economic factors which affect crime, such as labor market and welfare).

consider the consequences of committing crime, mandatory minimums cannot deter them.¹⁰⁵ Consequently, mandatory minimums, as prescribed by the sentencing guidelines, fail to achieve their goal of treating similarly situated offenders in a like manner.¹⁰⁶ By eliminating judicial discretion and removing individual factors of offenders, the guidelines simply cannot improve sentencing criminals.¹⁰⁷

Many judges dislike mandatory minimum sentences.¹⁰⁸ Judges and commentators argue the uniqueness of the individual case deserves its own review.¹⁰⁹ In addition, mandatory sentences do not recognize ambiguous circumstances and the individuality of the offender.¹¹⁰ Nevertheless, cases from both Massachusetts and the Court of Appeals for the First Circuit hold that mandatory minimum sentences represent a valid exercise of the legislature's authority.¹¹¹ As early as 1976, in *Commonwealth v. Jackson*,¹¹² the Supreme Judicial Court of Massachusetts ("SJC") upheld the validity and constitutionality of mandatory minimum sentences.¹¹³ The mandatory minimum sentence applicable in *Jackson* required the imposition of a one year prison term because the defendant carried an unlicensed firearm.¹¹⁴ In *Jackson*, the SJC held that the mandatory sentence did not deny the defendant due process.¹¹⁵ Additionally, the SJC stated that the

¹⁰⁵ *Id.*

¹⁰⁶ See Ogletree, *supra* note 82, at 1944 (suggesting general consensus of guidelines' shortcomings due to lack of similar sentences).

¹⁰⁷ *Id.* at 1956-59. The guidelines fail to consider mitigating factors and personal characteristics of an offender, an obvious downfall in them. *Id.*

¹⁰⁸ DeBenedictis, *supra* note 7, at 78 (showing depth of judicial dislike of mandatory sentencing, focusing on drug law violations).

¹⁰⁹ See, e.g., Kevin J. Reddington, *Facts Explained Judge's Controversial Sentence*, MASS. LAW. WKLY., Nov. 1, 1993, at 10 (claiming mandatory sentencing appeals to a knee-jerk reaction but ignores specifics of individuals); Kane, *supra* note 84, at 11 (arguing courts should acknowledge uniqueness of each individual); Levine, *supra* note 61, at 26 (stating need of judiciary to recognize different circumstances of each case).

¹¹⁰ Kane, *supra* note 84, at 11. Further, it seems to go against the American ideals and values of fairness and individuality to not recognize the "circumstances of the offense and the characteristics of the offender." *Id.*

¹¹¹ See 369 Mass. 904, 918, 344 N.E.2d 166, 175 (1976) (holding validity of statute which bears reasonable relation to permissible legislative objective).

¹¹² 369 Mass. 904, 344 N.E.2d 166 (1976).

¹¹³ *Id.* at 918, 344 N.E.2d at 175.

¹¹⁴ *Id.* at 905, 344 N.E.2d at 168.

¹¹⁵ *Id.* at 917, 344 N.E.2d at 174.

legislature has wide discretion in "prescribing penalties and defining crimes."¹¹⁶

V. MANDATORY MINIMUM SENTENCES FOR THE JUVENILE JUSTICE SYSTEM

Implementing mandatory minimum sentencing will frustrate the juvenile court system. Unlike the adult system, young offenders deserve unique and separate examination. In sentencing an individual, the legislature should allow courts discretion to consider the individual differences between each offender.

Mandatory minimum sentences restrain judges by prohibiting the exercise of their discretion to impose a sentence based on individual factors of the offender.¹¹⁷ In the juvenile court, the offender's age carries significant weight in sentencing because the legislature emphasizes rehabilitation.¹¹⁸ The trend in sentencing guidelines, however, reduces the impact of youth as a mitigating factor.¹¹⁹ Instead, a downward departure from the guidelines due to age occurs only in cases involving the elderly and sick, which does not help young people.¹²⁰

Unlike adults, children deserve individual adjudication.¹²¹ The juvenile system traditionally examines both the offense and the offender.¹²²

¹¹⁶ *Id.* at 919, 344 N.E.2d at 175. The legislature can determine that harsh, inflexible penalties, necessary to serve as a deterrent, are a valid sole objective of a statute. *Id.* at 919, 344 N.E.2d at 176. Citing a Massachusetts case from 1910, the SJC stated that the legislature can determine that an inflexible rule serves the best interests of society. *Id.* (citing *Commonwealth v. Mixer*, 207 Mass. 141, 146 (1910)). In 1993, the First Circuit reaffirmed that courts have the power to depart from sentencing guidelines. *United States v. Rivera*, 994 F.2d 942 (1st Cir. 1993).

¹¹⁷ *Meierhoefer*, *supra* note 65, at 368. Instead of giving the judges full discretion, judges must consider the specific offense and offender factors, weighed accordingly, when imposing sentences. *Id.*

¹¹⁸ *Cronin*, *supra* note 1, at 1.

¹¹⁹ *Meierhoefer*, *supra* note 65, at 383.

¹²⁰ *Id.*

¹²¹ *Ross*, *supra* note 2, at 1038. Originally, the juvenile justice system worked best by giving judges wide discretion. *Id.* at 1038-39. Juveniles deserve to have their individuality considered as part of their treatment. *Sherman*, *supra* note 5, at 893. Thus, the courts need to respect the individual differences of juveniles. *Id.*

¹²² *See supra* note 14-15 (suggesting differences with juveniles necessitate

Mandatory minimums do not adequately consider these individual differences between offenders.¹²³ These mitigating factors have an important place in the courtroom and deserve the court's consideration.¹²⁴

VI. CONCLUSION

The legislature based the juvenile justice system on the idea that young offenders are not responsible for their actions, and therefore, rehabilitation will not work.¹²⁵ But how can the court rehabilitate a teenager living in a completely different world?¹²⁶ The problems, temptations, and other factors that cause an offender to commit a crime do not disappear when he returns from the juvenile system. Rehabilitation efforts will fail if the offender returns to the same environment. The society which initially helped cause the problem should be part of the solution.¹²⁷ No one wants to claim responsibility for their own behavior; it seems easier to blame someone else. This is part of the problem. Legislatures should permit courts to hold delinquents accountable for their behavior.¹²⁸ Accepting responsibility for one's own actions could deter future offenders. Strengthening families and supporting other core social institutions, such as education and religion, could also help prevent further problems.¹²⁹

investigating individuality of offender).

¹²³ Burton, *supra* note 30, at 176.

¹²⁴ *Id.*

¹²⁵ See Ainsworth, *supra* note 1, at 927 (citing initial reasons juvenile system considered beneficial for young offenders). Originally, the system rehabilitated young criminals, preventing them from becoming career criminals. *Id.* There should be some consideration into whether rehabilitation will help the offender at all. Cronin, *supra* note 1, at 16.

¹²⁶ Wizner, *supra* note 5, at 1025.

¹²⁷ See Sherman, *supra* note 5 and accompanying text (explaining different crimes when juvenile system was developed). When the legislature developed the juvenile system, its purpose was to help juvenile criminals who committed crimes which were important one hundred years ago. Wizner, *supra* note 5, at 1025. Crimes committed today are not necessarily best served by rehabilitating the offender according to the old system. *Id.*

¹²⁸ See Sherman, *supra* note 5, at 893 (suggesting hopeful solutions begin with preventative measures and accountability).

¹²⁹ See Cronin, *supra* note 1, at 22 (recommending ideas which could improve the current juvenile system). Cronin also suggests promoting delinquency prevention, swift intervention when delinquent behavior occurs, and identifying those chronic and serious offenders. *Id.* Social control is critical in lowering crime rates. *Id.* at 7. Nevertheless, it does not appear at this stage that society will provide the needed social control. *Id.* at 8.

All the best solutions in the world need resources, especially economic, to achieve their goals. Unfortunately, programs aiding juvenile offenders rarely receive state appropriated funds.¹³⁰ If society thinks so little of these offenders, how can they see themselves any differently? People live up to others' expectations. By treating young offenders as criminals, society is completing a self-fulfilling prophecy. A good solution would allow the offenders to help themselves. By creating an opportunity for them, they will see hope and the chance for a different tomorrow.¹³¹ Education is one possible avenue to give children the chance for a brighter future. An alternative to crime, no matter how small, is successful if it prevents just one juvenile from committing crime.

The legislature needs to modernize the current juvenile justice system to effectively rehabilitate the nation's youth. Unfortunately, using mandatory minimum sentences in juvenile court will not help the problem. Any solutions would involve reprioritizing and increasing resources to the juvenile system. Nothing will quickly fix the problem, a problem that will not go away. Society should place juvenile crime high on its list of priorities.¹³² Rehabilitation is a noble way of guiding a troubled offender, but all juvenile offenders may not benefit from rehabilitation. Sometimes the adult system can better handle some offenders and transfer to the adult court makes the most sense.

Mandatory minimum sentences for adult criminals did not bring about positive changes in sentencing as once hoped. Using the adult court as an indicator of the potential success of mandatory sentences, the juvenile system will not benefit from using them either. Sentencing guidelines will not reduce the problems within the system and appear to add a whole new spectrum of problems. Instead of delaying the inevitable, the juvenile justice system needs to be revamped. For instance, resources could be de-

¹³⁰ See Ainsworth, *supra* note 1, at 928, n.3 (arguing society is unwilling to pay for programs that will help children). Although children's problems are emotionally compelling, programs which aid children are underfunded. *Id.* Society does not want to pay for programs to effectively fight these problems and the few poorly funded programs that do exist are the first budgets cut. *Id.* As a result, the juvenile justice system does not have the necessary resources to supply services that could provide meaningful intervention in the lives of young offenders. *Id.* at 929.

¹³¹ Sherman, *supra* note 5, at 894. By furthering our aspirations in young people, they will seek higher goals for themselves. *Id.*

¹³² *Id.* at 889. Due to high crime rates for both adult and juvenile offenders, society does not notice extreme levels of violence anymore. *Id.*

voted to educating juveniles so they will not commit crime. In addition, increasing the number of police officers could deter crime from being committed. Together with a new system recognizing the current characteristics of today's youth offenders and a case-by-case approach to each sentence, there is the hope of making offenders productive members of society, instead of career criminals.

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