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Juvenile Injustice in Wyoming

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JUVENILE INJUSTICE IN WYOMING

*John M. Burman*¹

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1. John M. Burman is Professor of Law and Faculty Supervisor of the Legal Services Program at the University of Wyoming College of Law. He thanks Scott Dutcher, University of Wyoming College of Law class of 2005, for his valuable assistance in researching and conducting the survey which is described in this article. Without his assistance, this article would never have been written. Thanks, also, to the George W. Hopper faculty research fund at the College of Law for its financial assistance.

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If the juvenile court system [in Wyoming] is to be successful, a single uniform system of courts with uniform rules and regulations is necessary. The existing judicial structure results in cases being heard in different courts, under varying statutes, and by judges with varying levels of training merely because of accidents of scheduling.²

The words were written nearly a quarter of a century ago, yet they are as true today as they were when written in 1981. Though the report which contained the statement identified clear deficiencies, and proposed workable solutions for Wyoming, nothing was done (Wyoming's relative

2. COLUMBIA RESEARCH CENTER, INC., STATE OF WYOMING OFFICE OF ATTORNEY GENERAL, EXECUTIVE SUMMARY, THE WYOMING JUVENILE JUSTICE SYSTEM, AN EVALUATION 84 (1981) [hereinafter "1981 REPORT"].

inactivity regarding its juvenile justice system stands in marked contrast to the flurry of activity in other states as “[t]he late 1980s and early 1990s were a time of cataclysmic changes in the juvenile justice process across the country.”³ Wyoming’s juvenile justice system continues to suffer from the same deficiencies identified in 1981. And the solutions proposed then would, if they had been adopted, have greatly benefited Wyoming’s children. Unfortunately, it is too late for the generations of children who came of age since 1981. It is not too late, however, to help those to come. But we have to act if juvenile injustice in Wyoming is to become juvenile justice.

PART I. THE WYOMING JUVENILE JUSTICE SYSTEM

A. Overview

As other states, Wyoming treats juveniles involved with the criminal justice system differently than it treats adults, at least theoretically, emphasizing treatment of the former, and punishment of the latter.⁴ Unlike most other states, however, Wyoming’s juvenile justice system has undergone few changes in the last quarter of a century. As a result of sporadic and *ad hoc* changes, neither the philosophy behind Wyoming’s juvenile justice system, to the extent there is one, nor the statutes which implement it, are clear. Further, although knowledge about treatment of juvenile offenders has undergone extensive changes in recent years,⁵ few of those changes are reflected in Wyoming’s system.

State laws regarding juveniles are codified in Title XIV of the Wyoming Statutes. Children who come into contact with the legal system may fall into any one of three categories under Wyoming’s juvenile laws: (1) children who are neglected or abused by their parents or other custodians;⁶ (2) children who are in need of supervision (CHINS);⁷ or (3) children who have committed a delinquent act, an act, that is, which would have been a

3. Barry C. Feld, *Juvenile and Criminal Justice Systems’ Responses to Youth Violence*, 24 CRIME & JUST. 189, 189 (1998). See also JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 89 (“The 1990’s have been a time of unprecedented change . . .”).

4. See, e.g., H.T. RUBIN, JUVENILE JUSTICE: POLICIES, PRACTICES, AND PROGRAMS vii (2003) (Children’s “needs, rather than what they had done, would become the spotlight of judicial attention.”). Mr. Rubin holds a law degree and a masters degree in social work. His long career includes stints as a Colorado legislator, a lawyer in private practice, a juvenile court judge in Denver, and the Director for Juvenile/Criminal Justice and Senior Staff Attorney for the Institute for Court Management of the National Center for State Courts. He has written widely about juveniles and juvenile courts. *Id.* at v.

5. Edward J. Latessa et al., *Beyond Correctional Quackery—Professionalism and the Possibility of Effective Treatment*, 66 FEDERAL PROBATION 43, 44 (September 2002) (“Two decades ago, our knowledge was much less developed. But the science of crime and treatment has made important strides in the intervening years.”).

6. See Child Protection Act, WYO. STAT. ANN. §§ 14-3-401 to -440 (LexisNexis 2003).

7. See Child in Need of Supervision Act, WYO. STAT. ANN. §§ 14-6-401 to -440 (LexisNexis 2003).

crime if committed by an adult.⁸ The third group of children, those who have committed a crime, is subject to the Juvenile Justice Act (“the Act”), which is the focus of this article. Although they ostensibly fall under the Act, many children in the third group never come into the juvenile justice system. Rather, they are treated as adults.

The Act attempts to integrate the two concepts of punishment (for the criminal act) and rehabilitation (of the troubled child who committed the act). Juveniles subject to the Act generally have access to fair and equitable treatment. Unfortunately, as discussed in detail later in this article,⁹ the Act is filled with loopholes, with the result that the Act does not even apply to most juvenile offenders in Wyoming. Instead, most juveniles are subject to disparate treatment, depending on where they live, where they are arrested, what choices the prosecutor makes, and whether the child appears before a municipal court, a circuit court, a juvenile court, or a district court.

The Act has four significant loopholes. First, it does not grant original, exclusive, or even primary jurisdiction over juveniles to the juvenile courts to handle the most common offenses committed by children. Accordingly, most children charged with crimes never appear before a juvenile court.¹⁰ Instead, they are charged, tried, and sentenced as adults, in adult courts (either circuit or municipal courts).¹¹ This happens even though it is juvenile courts, and generally not circuit or municipal courts,¹² that have the authority and access to resources to order a broad array of therapeutic interventions for the child and the child’s family members.¹³

Second, even if a circuit or municipal court determines that a child should be in a juvenile court, the judges in those courts have no authority to “transfer” the child’s case to juvenile court, where he or she could obtain significantly more comprehensive interventions. Rather than vesting the authority to transfer in judges, that authority is given to prosecutors.¹⁴ The result is a counter-intuitive role reversal in which a judge is bound by a prosecutor’s decision about whether to transfer, instead of vice versa.

Third, Wyoming has a uniquely narrow definition of “status offenses.” (A status offense is one involving conduct that is not criminal if engaged in by an adult. Instead, the action is a crime because of the individ-

8. See Juvenile Justice Act, WYO. STAT. ANN. §§ 14-6-201 to -252 (LexisNexis 2003).

9. See *infra* notes 20-48 and accompanying text.

10. See *infra* notes 21-24 and accompanying text.

11. See *infra* notes 185-91.

12. Some communities have developed programs that provide services to children in circuit or municipal courts.

13. See WYO. STAT. ANN. § 14-6-229 (LexisNexis 2003) (explaining the dispositional powers of the court)

14. *Id.* § 14-6-237(h).

ual's "status" as a child.)¹⁵ The most common status offenses in most states involve alcohol and curfews.¹⁶ It is legal, for example, for an adult to possess or drink alcohol. It is not legal, however, for a person under age twenty-one to do so.¹⁷ In Wyoming, by contrast, certain, common alcohol offenses are excluded from the statutory definition of "status offense."¹⁸ While it is a crime, it is not a status offense for a person in Wyoming who is under age twenty-one to possess or use alcohol or a controlled substance "on any street or highway or in any public place. . . ."¹⁹ By eliminating such offenses from the definition of status offenses, children who are charged and convicted of such offenses are treated as adults in adult court, rather than in juvenile court as children potentially in need of treatment for inappropriate behavior. Since many children who come into contact with the law do so as the result of an alcohol or controlled substance offense that occurred in public, treating them as adults promotes a culture of punishment, rather than one of treatment or rehabilitation, a culture contrary to the very notion of treating juveniles differently than adults.

Finally, the Wyoming juvenile justice system is not really a system at all. It is a maze, which is virtually impossible to navigate. Wyoming's criminal, civil, and juvenile statutes create confusion and conflict, making it impossible to determine with certainty which court, if any, has the authority and responsibility to assess, supervise, incarcerate, or treat children. If an adult court (a circuit court or a municipal court) takes jurisdiction, which happens in most cases involving children, the courts often have neither the authority nor the access to resources to provide treatment or rehabilitation. The only avenue generally available is punishment, even if the court determines that treatment would be more appropriate.

B. Juveniles Are Subject to the Jurisdiction of Several Different Courts

A juvenile can enter the Wyoming court system through a variety of doors, some of which lead to adult courts and only one of which leads to juvenile court. Accordingly, a juvenile's chances of getting appropriate treatment depend mainly on which door the juvenile enters through, not on the juvenile's needs.

The determination of which door a juvenile enters, and thus whether the focus of the court will be punishment or treatment, is generally left to law enforcement officers or prosecutors, who may have little training in assessing a child's needs. While communities differ across the state, most children enter the court system when they are issued a citation by a law en-

15. *Id.* § 5-6-112(b)(iii).

16. RUBIN, *supra* note 4, at 7-6.

17. WYO. STAT. ANN. § 12-6-101(b) (LexisNexis 2003).

18. *Id.* § 5-6-112(b)(iii).

19. *Id.*

forcement officer. This citation usually leads directly into either a municipal or a circuit court, both of which are adult courts. In adult courts, proceedings are open to the public and criminal statutes apply. Accordingly, these courts have limited authority to consider an individual's age in either its processes or sentencing.²⁰ Not only do adult courts have little flexibility regarding juveniles, they generally have little or no authority over the child's parents.

Another point of entry for juveniles is an arrest or investigation that leads to the filing of criminal charges against the child by a prosecutor in the municipal, circuit, or district court. As with the issuance of a citation, the filing of a criminal charge leads to an adult court. The only difference is that the person making the decision to charge the child is a prosecutor, and not a law-enforcement officer.

Finally, a fairly small number of children are charged with committing "delinquent acts." (A delinquent act is one that would be a crime if committed by an adult.)²¹ A delinquency action is initiated by the filing of a complaint in juvenile court by the prosecutor.²² This is the only door into juvenile court, other than the filing of a petition against parents for neglect of their child,²³ or the filing of a petition asserting that a child is in need of supervision.²⁴ Filing a complaint for delinquency invokes the Wyoming juvenile justice system, the juvenile courts as defined by statute and as most people understand that term. Instead of the punishment philosophy of adult court, juvenile court takes a materially different treatment approach.

Entry into the jurisdiction of the juvenile court changes everything. That difference is immediately apparent from the very purposes of the Juvenile Justice Act. The Act strives to balance competing objectives. "Consistent with the protection of the public and public safety," the Act is to both "promote the concept of punishment for criminal acts" and "remove, where appropriate, the taint of criminality from children committing certain unlawful acts; and [t]o provide treatment, training and rehabilitation that empha-

20. As noted below, some adult courts in Wyoming have been very creative in developing methods for handling juveniles. See *infra* note 48 and accompanying text.

21. WYO. STAT. ANN. § 14-6-201(a)(ix) (LexisNexis 2003) ("'Delinquent act' means an act punishable as a criminal offense by the laws of this state or any political subdivision thereof, or contempt of court under W.S. 14-6-242, or an act violating the terms and conditions of any court order which resulted from the criminal conviction of any child but does not include a status offense.").

22. *Id.* § 14-6-211(a).

23. *Id.* § 14-3-412. The decision of whether to file a neglect action is left to the discretion of the prosecutor. "A petition shall be signed by the district attorney on information and belief of the alleged facts." *Id.*

24. *Id.* § 14-6-411(a). The decision whether to file a CHINS case is left to the discretion of the prosecutor. "The district attorney shall determine whether the best interest of the child requires that judicial action be taken." *Id.*

sizes the accountability and responsibility of both the parent and the child for the child's conduct."²⁵ While doing so, the juvenile court is "[t]o provide for the care, the protection and the wholesome moral, mental and physical development of children"²⁶ The difference between these purposes and the punishment meted out by adult courts²⁷ is dramatic.

Second, the proceedings in juvenile courts are confidential,²⁸ as are the records of them.²⁹ By contrast, adult courts, and their records, are open to the public.³⁰ Juvenile courts have their own procedures, and are not governed by the Wyoming Rules of Civil or Criminal Procedure.

Third, the treatment focus of juvenile courts comes into clear relief with the requirement for the formation of a multi-disciplinary team,³¹ generally referred to as an MDT. The MDT consists of the child's parent(s), a representative of the school district, a representative of the Department of Family Services ("DFS"), the child's mental health professional, and the prosecutor or his or her representative.³² The juvenile court may also appoint additional members to the MDT, including a substance abuse specialist, the child's guardian *ad litem*, and/or other "professionals or persons who have particular knowledge relating to the child, or expertise in children's services."³³ The MDT is to "review the child's personal and family history, school, mental health and department of family services records and any other pertinent information."³⁴ It is then to "formulate recommendations consistent with the purposes of this act."³⁵ Those recommendations go to the

25. *Id.* § 14-6-201(c)(i) & (ii) (emphasis added).

26. *Id.* § 14-6-201(c)(iii).

27. *See, e.g.,* Ted Lauer, *The Wyoming Criminal Code Revisited: Reflections After Fifteen Years*, 33 LAND & WATER L. REV. 523, 524 (1998) ("Wyoming has followed the pattern of the rest of our nation, expanding the reach of the criminal law to new forms of conduct, and increasing both the potential punishment for crimes and the sentences actually imposed in individual cases.").

28. WYO. STAT. ANN. § 14-6-224(b) (LexisNexis 2003).

29. *Id.* § 14-6-239.

30. *Id.* § 14-6-203(g). The status of court records involving juveniles who appear in circuit or municipal court is confusing, at best. First, the Act says: "Except as provided by subsection (j) of this section, all information, reports or records made, received or kept by any municipal, county or state officer or employee evidencing any legal or administrative process or disposition resulting from a minor's misconduct are confidential and subject to the provisions of this act." *Id.* Then, subsection (j) undermines the confidentiality "created" by subsection (g): "Nothing contained in this act shall be construed to require confidentiality of any matter, legal record, identity or disposition pertaining to a minor charged or processed through any municipal, justice of the peace or circuit court." *Id.* § 14-6-203(j).

31. *Id.* § 14-6-227(b).

32. *Id.* § 14-6-227(c).

33. *Id.* § 14-6-227(d).

34. *Id.* § 14-6-227(e).

35. *Id.* § 14-6-227(f).

juvenile court after the court has taken jurisdiction,³⁶ for example, after the court has found or the child has admitted that he or she committed the alleged delinquent act.

A fourth fundamental difference is that the Juvenile Justice Act grants the juvenile court authority over both the child and his or her family.³⁷ Such authority is critical to effectively addressing the child's treatment needs. In adult courts, by contrast, the courts have authority, and limited authority at that, only over the child charged with the criminal offense.

The fifth, and perhaps most significant difference between the authority of adult courts and that of juvenile courts is in the number and scope of options available to a juvenile court that determines that a child has committed a delinquent act. Rather than simply sentencing the child as a criminal, the juvenile court is directed to make a disposition "consistent with the purposes of this act."³⁸ As discussed above, the purposes of the act include "treatment, training and rehabilitation."³⁹ As the purposes of the Act are very different, a juvenile court is directed to consider different factors in determining the disposition of a delinquent child.

The juvenile court is to "place on the record the predisposition report and the recommendations, if any, of the multidisciplinary team."⁴⁰ The MDT's recommendations are so important that if the court decides not to follow them, the court "shall enter on the record specific findings of fact relied upon to support its decision to deviate from the recommended disposition."⁴¹

The benefits of being in juvenile court are obvious and significant. Unfortunately, too many children do not enjoy those benefits, often with no consideration having been given to the children's needs or the potential benefits of treatment. The reason is the Act does not grant exclusive or even primary jurisdiction over children to the juvenile courts, the only courts expressly authorized to treat children, and not simply to punish them.

36. *Id.* § 14-6-227(h). *See also id.* § 14-6-229(a)(i) ("In determining the disposition to be made under this act in regard to any child . . . [t]he court shall place on the record . . . the recommendations, if any, of the multidisciplinary team.")

37. *Id.* § 14-6-230(a) ("[T]he court may make an order of protection in support of the decree and order of disposition, restraining or otherwise controlling the conduct of the child's parents, guardian or custodian or any party to the proceeding whom the court finds to be encouraging, causing or contributing to the acts or conditions which bring the child within the provisions of this act.")

38. *Id.* § 14-6-229(a)(iii).

39. *Id.* § 14-6-201(c)(ii).

40. *Id.* § 14-6-229(a)(i).

41. *Id.* § 14-6-229(a)(ii).

C. *The Juvenile Courts Have Only Concurrent Jurisdiction*

“In most states, the juvenile court has original jurisdiction over all youth charged with a law violation”⁴² Ensuring equitable and consistent treatment of Wyoming’s children in the courts can happen only if all, or at least most, children appear before the same kind of courts, courts which have the jurisdiction and access to resources to order appropriate treatment, along with appropriate sanctions.⁴³ This cannot happen because the current structure of the Juvenile Justice Act does not ensure that children enter the system through the same door.

The fundamental structural flaw in the Act is in the jurisdictional provisions. “Except as provided in subsection (d) of this section, *the juvenile court has concurrent jurisdiction in all cases*, other than status offenses, in which a minor is alleged to have committed a criminal offense or to have violated a municipal ordinance.”⁴⁴ Concurrent jurisdiction means, of course, that another court or courts (adult courts, in this case) also have jurisdiction. The Act goes on to ensure that most children will come before an adult court, and not before a juvenile one: “Except as provided in subsection (f) of this section, all cases over which the juvenile court has concurrent jurisdiction shall be originally commenced in the juvenile court but may thereafter be transferred to another court having jurisdiction pursuant to W.S. 14-6-237.”⁴⁵

The statutory exclusion from juvenile court jurisdiction, “[e]xcept as provided in subsection (f),” effectively prevents most cases involving children from coming before a juvenile court:

The following cases, excluding status offenses, may be originally commenced either in the juvenile court *or in the district court or inferior court having jurisdiction*:

- (i) *Violations of municipal ordinances*;
- (ii) *All misdemeanors* except those cases within the exclusive jurisdiction of the juvenile court⁴⁶

Granting adult courts jurisdiction over violations of municipal ordinances and most misdemeanors has three significant effects. First, many children are deprived of the chance to receive the appropriate and necessary

42. JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT, *supra* note 3, at 93.

43. 1981 REPORT, *supra* note 2, at 84.

44. WYO. STAT. ANN. § 14-6-203(c) (LexisNexis 2003) (emphasis added) (provisions for the direct-file of certain charges are omitted).

45. *Id.* § 14-6-203(e).

46. *Id.* § 14-6-203(f) (emphasis added).

treatment that a juvenile court is both authorized to provide and mandated to consider. Second, prosecutors (and often the arresting law-enforcement officer) generally decide which child goes to which court. And third, decisions about which child should go to which court need not be based on objective risk assessment and the child's corresponding treatment needs, but on other factors, such as convenience.

The Juvenile Justice Act does provide limited exceptions to the general grant of concurrent jurisdiction: "*The juvenile court has exclusive jurisdiction in all cases, other than status offenses, in which a minor who has not attained the age of thirteen (13) years is alleged to have committed a felony or a misdemeanor punishable by imprisonment for more than six (6) months.*"⁴⁷

While such cases should be in juvenile court, they constitute a small minority of cases involving children.

The structure of the Act means that most cases involving children will not be heard in juvenile courts. This is a result of granting juvenile courts "concurrent jurisdiction" over children (along with adult courts), especially for violations of city ordinances and most misdemeanors. Accordingly, the most common juvenile offenses may be brought in either adult or juvenile court, and the statutes provide no guidance on how this decision should be made, especially when a child is alleged to have committed a minor offense. In practice, the decision is often made by a law-enforcement officer when he or she decides to issue the child a citation which will automatically place the child in a circuit or municipal court. Getting the matter into juvenile court is more cumbersome and generally requires that the officer refer the matter to the prosecutor for the filing of a petition (the prosecutor may have developed a method of screening the child to determine whether juvenile court or some other disposition is appropriate,⁴⁸ or the

47. *Id.* § 14-6-203(d) (emphasis added).

48. In Teton County, for example, a risk assessment is performed on each juvenile who enters the court system for anything other than traffic offenses. Telephone interview with Nicole Georgette Krieger, Deputy Teton County Prosecuting and County Attorney (Mar. 31, 2004). The assessment is done with the assistance of a juvenile diversion officer, who then makes a recommendation about diversion to the County Attorney's Office. *Id.* The assessment is used to determine if the child is appropriate for "juvenile diversion." *Id.* Juvenile diversion is a program in which a child and at least one of the child's parents agree to a "diversion contract." In exchange for a dismissal, without prejudice, of the criminal charge, the child and the child's parents must appear before the circuit judge before the diversion contract becomes effective and the motion to dismiss is granted. *Id.* The contract establishes a form of probation. *Id.* The child, and the child's parent(s) agree to conditions such as counseling, drug and alcohol evaluation, treatment, and testing, and, often a restorative justice component in which the child has to meet with the victim of the crime and take responsibility for what happened. *Id.* The contract also includes a written admission of guilt which can be used in any subsequent proceedings. *Id.* If the child completes the contract, the matter is over. *Id.* If he or she does not, the underlying charges are refiled, and the written admission of guilt may be

prosecutor may simply use his or her discretion, subject to the parameters discussed below).

The statute does provide some limitations to a prosecutor's charging discretion. For example, the statute requires that a child under the age of thirteen be charged in juvenile court if the child is charged with a felony or a misdemeanor that carries a sentence of more than six months in jail. The law still allows a prosecutor, however, to charge a twelve-year-old or younger child with a misdemeanor in adult court, rather than in juvenile court, and obtain a jail sentence for that child of up to six months. To put this in real terms, a nine-year-old who is charged with fighting under title 6, chapter 6, section 101 of Wyoming Statutes may be charged and sentenced as an adult in circuit court because the maximum jail sentence is six months.⁴⁹ But, if the same nine-year-old were accused of making an obscene phone call under title 6, chapter 6, section 103, a misdemeanor punishable by up to one year in jail, the prosecutor would, at least initially, have to bring the charge in juvenile court.⁵⁰

D. Why Does Such a System Exist in Wyoming?

Wyoming's current juvenile justice system was enacted in the early 1970s.⁵¹ With minor modifications,⁵² the overall scheme has remained intact for more than twenty-five years. Since Wyoming's juvenile court system is so intertwined with the adult courts, changes to the latter may have led to unintended consequences for the former.

Another reason for the overlapping adult and juvenile court systems seems to be a general attitude that not all children can or should fit into the juvenile court system because if they did, they would overwhelm it. The argument is an economic one; there are simply not enough resources to go around if all children came within the purview of the juvenile courts. It is, quite simply, easier and cheaper (in the short-run) to convict and punish children in adult courts than to provide treatment in juvenile courts. This is,

used against the child. *Id.* While empirical data on the success of the program are not available, the anecdotal evidence suggests that the program is working. *Id.* Key factors include a grant which pays for two juvenile diversion officers, a committed prosecutor, and an involved judge. *Id.* Over sixty juveniles have gone through diversion in the eighteen months since the program was initiated. *Id.* While empirical data are not yet available, the anecdotal evidence is that the program has been successful in reducing recidivism. *Id.*

49. WYO. STAT. ANN. § 6-6-101 (LexisNexis 2003).

50. *Id.* § 6-6-103.

51. The Wyoming Juvenile Court Act, 1971 Wyo. Sess. Laws 255. *See also*, Kennard F. Nelson, Comment, *The Wyoming Juvenile Court Act of 1971*, 8 LAND & WATER L. REV. 237 (1973).

52. The Legislature has often tinkered with the Juvenile Justice Act, but it has never changed the general scheme. *See, e.g.*, 1993 Wyo. Sess. Laws 1993, ch. 161 (amending the Juvenile Justice Act by creating multidisciplinary teams).

however, penny-wise and pound-foolish. In the long-run, it is far easier and cheaper to treat a child who runs afoul of the law than to house an adult prisoner.⁵³ And not surprisingly, children who run afoul of the law often become adult offenders.⁵⁴

E. Juvenile Courts Should Not be a Part of the District Courts As They Now Exist

A fundamental, structural problem with Wyoming's juvenile courts is that they are a branch of the district courts.⁵⁵ Accordingly, responsibility for juvenile justice rests with judges who have many other responsibilities. District courts are responsible for many criminal matters (felonies), which often take priority over most other cases because of the speedy trial requirement.⁵⁶

District courts also have civil jurisdiction over disputes which exceed \$7000.00,⁵⁷ domestic relations cases, such as divorces⁵⁸ and paternity cases.⁵⁹ Finally, probate court, which has jurisdiction over guardianships and conservatorships, in addition to the probating of estates, is a branch of district court.⁶⁰ In short, district court judges are responsible for many other criminal and civil cases. Their dockets are very crowded and growing more so every year.

53. S. AOS ET AL., WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, THE COMPARATIVE COSTS AND BENEFITS OF PROGRAMS TO REDUCE CRIME 5 (May 2001) ("From a cost-benefit point of view, we identified some programs that can improve the effectiveness of Washington's taxpayer-financed criminal justice system . . . these programs are good bets both to lower crime rates and to lower the costs of crime to taxpayers and crime victims . . . Several of these interventions produce benefit-to-cost ratios that exceed twenty dollars of benefits for each dollar of taxpayer cost.").

54. T. Marcus Funk, *Youthful Indiscretion: Reexamining The Policy of Expunging Juvenile Delinquency Records*, 29 U. MICH. J.L. REFORM. 885, 905-06 (1996) ("According to one study, eighty percent of chronic juvenile offenders later will become adult offenders. Moreover, research has revealed that an individual who was criminally active as a juvenile is almost four times as likely to become an adult offender than an individual without history of such early criminality." (internal citations omitted)).

55. WYO. STAT. ANN. § 5-8-101 (LexisNexis 2003).

56. WYO. R. CRIM. P. 48(b)(2) (LexisNexis 2003) (Generally, a criminal matter "shall be brought to trial within 180 days following arraignment . . .").

57. WYO. CONST. art. 5, § 10 ("The district court shall have original jurisdiction of all causes both at law and in equity and in all criminal cases . . ."); WYO. STAT. ANN. § 5-9-128(a)(1) (LexisNexis 2003) (Circuit courts have jurisdiction over civil disputes when the amount in controversy does not exceed \$7,000.00); WYO. STAT. ANN. § 5-9-129 (LexisNexis 2003) ("Circuit courts have original jurisdiction in all misdemeanor cases.").

58. WYO. STAT. ANN. § 20-2-104 (LexisNexis 2003).

59. *Id.* § 14-6-204.

60. *Id.* § 2-2-201.

F. Prosecutors Should Not Have Discretion to Decide to Which Court to send a Child

Another fundamental problem is that prosecutors, county and district attorneys, are elected officials in Wyoming.⁶¹ (Municipal court prosecutors are appointed by the municipality's governing body. They are authorized only to bring actions in municipal courts for violations of municipal ordinances.) Those elected officials have the authority to decide which children should enter which door into the legal system (municipal prosecutors have only one choice – children charged with violations of city ordinances go to municipal court). The decision about where a child should go has profound consequences for all concerned, especially the child. That decision, therefore, should be based on the child's needs, and not political or other pressures on a prosecutor. Further, it should be made by an impartial evaluator, not an elected official.

Elected prosecutors should, and must (if they are to be re-elected) reflect their constituents' views about crime and punishment. It does not necessarily follow, however, that giving those prosecutors discretion regarding children will lead to either appropriate decisions about children's treatment needs or the most efficient use of limited resources. This is especially true as prosecutors are given virtually no legislative guidance on how to make such decisions. Also, elected prosecutors often have limited knowledge or training regarding juvenile issues, though many hire attorneys with such qualifications to handle juvenile matters.

Vesting an elected prosecutor with the authority to decide which court a child should appear before may place him or her in a difficult position, caught between preserving public safety through enforcing criminal statutes and addressing the best interests of a child through treatment. The problem with giving prosecutors discretion regarding children was identified in 1981 when the State commissioned a comprehensive evaluation of its juvenile justice system: "[T]he county attorney's mandate to represent the interests of the State may conflict with an obligation to serve the 'best interests of the child.' The county attorney can not be an impartial, neutral decision maker while serving two conflicting mandates."⁶²

Determining which children should go to which court, i.e., which children should receive treatment, is critical. Granting that discretion to elected prosecutors was such a concern when the State's system was evaluated in 1981 that the report directly addressed, and advocated changing, the system:

61. District and county attorneys are elected. *Id.* § 18-3-301. City attorneys are appointed by the governing body of the municipality. *Id.* § 15-3-204(a).

62. 1981 REPORT, *supra* note 2, at 262.

We recommend that the county attorney cease to function as the principal gatekeeper of the juvenile justice system and that this function be shifted towards a more impartial magistrate This reform would leave the County Attorney free to represent the State's interest in these proceedings⁶³

In addition to granting discretion to county prosecutors, who are not and probably should not be impartial, the Act creates a strange paradigm. Children who commit minor offenses are usually charged as adults in adult court. If they repeat the bad behavior or commit worse acts, they may come to the attention of the prosecutor and be taken to juvenile court. The result is counter-intuitive. The children who engage in minor misconduct, and are likely the most susceptible to treatment and rehabilitation, generally do not have that option. Instead, children who misbehave consistently or behave very badly are often given the benefit of the much different objectives and much broader array of services available in juvenile court.

The issue of which children should go to which court is not an academic one. Rather, it raises the critical question of how should we treat children? One may argue that children who behave very badly are more in need of treatment than children who merely behave badly. That may be true, but it does not follow that those who behave badly, but not too badly, are not in need of treatment, and will not benefit from it. The questions should be: (a) How should children in need of treatment be identified? (b) And after they have been identified, how should they be treated?

The structure of the Act profoundly affects the analysis. If the statutes required an impartial professional to effectively screen children for risk factors at the first sign of trouble, or provided a framework for making charging decisions, children at high risk for future delinquent behavior could be identified, and appropriate intervention could be done at a time when intervention would be the most effective. Instead, identification of high risk children is delayed or may never happen at all. The result is that children may never have the opportunity to benefit from the more comprehensive dispositional options available to juvenile courts, where problems, such as parental neglect or an underlying mental health issue, would likely be discovered and dealt with more effectively.

G. Transferring a Child from One Court to Another

"Transfer," also referred to as "waiver," means walking a child out of one court and into another; theoretically, the transfer is from the wrong court to the right one, or at least to a more appropriate one. Statutes in forty-six states, including Wyoming (The Juvenile Justice Act), provide a mecha-

63. *Id.*

nism for transferring cases, usually from juvenile court to adult court.⁶⁴ While the mechanism exists in Wyoming, it fails to provide adequate protection for children charged with minor crimes or with status offenses.

If a child is originally charged in a juvenile court as a delinquent, the court may order, or any party may petition, for the action to be transferred to another court having jurisdiction "of the offense charged."⁶⁵ The transfer statute provides guidance on when the child should be transferred from juvenile court.⁶⁶ The "determinative factors" the juvenile court should consider are:

- (i) The seriousness of the alleged offense . . . and whether the protection of the community required [transfer];
- (ii) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- (iii) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted;
- (iv) The desirability of trial and disposition of the entire offense in one (1) court when the juvenile's associates in the alleged offense are adults who will be charged with a crime;
- (v) The sophistication and maturity of the juvenile . . . ;
- (vi) The record and previous history of the juvenile . . . ;
- (vii) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile . . . by the use of procedures, services and facilities currently available to the juvenile court.

These factors generally result in transfer of a child from juvenile court to an adult court when the alleged offense is serious, the child has a criminal history demonstrating that the juvenile is unlikely to benefit from the more therapeutic approach provided in the juvenile court, or both.

If a child is originally charged in district court, the court may order a transfer hearing or the child, through his or her attorney, may petition the court for a transfer hearing, where the court would hear testimony on the factors discussed above.

If a child is originally charged in the circuit or municipal court, however, the ability to transfer the matter to juvenile court is severely lim-

64. PATRICK GRIFFIN, SPECIAL PROJECT BULLETIN, TECHNICAL ASSISTANCE TO THE JUVENILE COURT, NATIONAL CENTER FOR JUVENILE JUSTICE, TRYING AND SENTENCING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER AND BLENDED SENTENCING LAWS 2 (October 2003).

65. WYO. STAT. ANN. § 14-6-237(a) (LexisNexis 2003).

66. *Id.* § 14-6-237(b).

ited. The statute begins with a prohibition on transfer. "No court other than the district court shall order the transfer of a case to juvenile court. . . ."⁶⁷ The statute then provides a window, through which transfer might occur. After a proceeding in circuit or municipal court has begun, the court "may on the court's own motion, or on the motion of any party, suspend further proceedings and refer the case to the office of the district attorney to determine whether a petition should be filed in the juvenile court . . ."⁶⁸ If the prosecutor elects to file a petition in juvenile court, the circuit or municipal court proceedings are to be dismissed.⁶⁹ If the prosecutor elects not to file a petition in juvenile court, the action in adult court proceeds.⁷⁰

District or county attorneys act on behalf of the state in juvenile courts. They also represent the state in circuit courts. In municipal courts, however, the city or town attorney acts as prosecutor. Accordingly, there is a built-in disincentive for a district or county attorney to transfer a case from municipal to juvenile court; it simply increases the attorney's workload.

The procedure for requesting transfer has the remarkable result that the final decision about whether to transfer is made by the prosecutor, whose decision binds the court, as well as the other parties. The most a judge may do is ask. In addition to vesting the authority to transfer in elected prosecutors, the statute also provides no guidance on how that discretion should be exercised. Specifically, it does not direct the prosecutor to even consider the "determinative" statutory factors that are to govern transfers between juvenile courts and district courts.⁷¹ Granting unfettered discretion to elected prosecutors, with no guidelines on how that discretion should be exercised, promotes the paradoxical approach of treating some troubled children as adults by keeping them in the adult court with virtually no therapeutic interventions until they get "bad enough" to warrant something more, which only the juvenile courts have the authority to order.

H. Wyoming's Definition of Status Offenses Does Not Comply With Federal Mandates, and Compounds the Structural Problems With the Juvenile Justice Act

As noted above, the term "status offense" is used to distinguish a "criminal offense" from an offense that is crime only because of the age (or status) of the child who commits the offense.⁷² Typical status offenses are underage alcohol use or possession, truancy, curfew violations, running

67. *Id.* § 14-6-237(h).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* § 14-6-237(b).

72. *See supra* note 15 and accompanying text.

away or smoking.⁷³ The distinction between crimes and status offenses was created to avoid labeling a child a criminal for violating a law that was enacted to protect the child, and also to facilitate a more therapeutic legal reaction to child offenders. The Juvenile Justice Act emphasizes this distinction and requires a different legal response to status offenses than to criminal offenses.

The federal Juvenile Justice and Delinquency Prevention Act ("JJDP") prohibits the jailing of status offenders,⁷⁴ as does Wyoming.⁷⁵ The difference is in the definition of status offense. The JJDP describes status offenses as acts that would not be criminal except for the offender's age.⁷⁶ Wyoming's definition, unfortunately, is markedly and regrettably different.

A "status offense" in Wyoming is:

[A]n offense which, if committed by an adult, would not constitute an act punishable as a criminal offense by the laws of this state or a violation of a municipal ordinance, but does not include a violation of W.S. 12-6-101 (b) or (c) [minor under the influence or in possession of alcohol offenses] or any similar municipal ordinance.⁷⁷

The exclusion of alcohol offenses, the most common "status offenses" by far, has two profound results. First, it hinders Wyoming's efforts to comply with the federal Juvenile Justice and Delinquency Prevention Act. The failure to comply with that act means the State cannot receive federal funding unless the State can certify that it does not jail status offenders as defined by the federal statute. Wyoming cannot make such a certification and, as a consequence, the State foregoes approximately \$600,000.00 per year in federal funding.

Second, excluding alcohol offenses from the definition of "status offenses" limits the legal responses which may be made. The response generally available to prosecute children charged with such offenses in adult courts. The conventional wisdom is that treating status offenders will result in less delinquent or criminal behavior in the future. The empirical data, however, are mixed. "Status offenders, like delinquents, re-offend fre-

73. JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT, *supra* note 3, at 100.

74. 42 U.S.C.A. 5633(a)(11)(A) (2002) (Specified juveniles "shall not be placed in secure detention facilities or secure correctional facilities.").

75. WYO. STAT. ANN. § 7-1-108(a) (LexisNexis 2003) (district courts and circuit courts); *id.* § 5-6-113 (municipal courts).

76. 42 U.S.C.A. 5633(a)(11)(A) (2002) (Although the JJDP does not use the term "status offense," it refers to "juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult").

77. WYO. STAT. ANN. § 14-6-201(a)(xxiii) (LexisNexis 2003) (emphasis added).

quently but usually commit new status offenses.”⁷⁸ It is increasingly clear, however, that drug addiction “is responsive to appropriate treatment.”⁷⁹ And since many status offenses, at least as defined by federal law, involve alcohol and drug offenses, treatment, and not incarceration, is a more appropriate and effective intervention.

One result of excluding alcohol offenses from status offenses, and thereby having them heard in adult courts, is that children can and do spend time in jail (or “juvenile detention”) for committing such offenses, which are not status offenses in most states. The reason is the interplay of three statutes. First, the statute making possession or use of alcohol by a minor a crime provides that a violation of the statute is a misdemeanor; further, that statute provides no minimum sentence.⁸⁰ Second, Wyoming law limits municipal court authority to imposing jail sentences which do not exceed six months.⁸¹ Third, circuit courts have similar authority. They may sentence criminal defendants convicted of misdemeanors to serve a maximum penalty of six months in jail for all misdemeanors not otherwise defined.⁸² Both municipal courts and circuit courts, therefore, may sentence children to up to six months in jail for alcohol offenses. As discussed in detail below, jail, commonly referred to as juvenile detention, is a very harsh, costly, and ineffective response to juvenile alcohol use.⁸³

I. Only a Juvenile Court May Order the Parents to be Involved with a Child's Treatment

As previously discussed, the legal consequences for a child and his or her family, including punishment and treatment services, depend primarily on the court before which a child appears. Only one court, the juvenile court, is given jurisdiction over the child's parents.⁸⁴ The juvenile court also has the authority to order treatment, therapeutic services, and/or educational interventions as part of its disposition of a case.⁸⁵ Adult courts have significantly fewer options. Generally, the only sentencing options are to fine or jail a defendant, or to place him or her on probation.

A juvenile court is the only court that can order the provision of therapeutic or rehabilitative services by or through the Department of Family Services.⁸⁶ Broad authority, consistent treatment and clear guidance, along

78. RUBIN, *supra* note 4, at 7-4.

79. Shelley Johnson et al., *Drug Courts and Treatment: Lessons To Be Learned from the "What Works" Literature*, CORRECTIONS MANAGEMENT QUARTERLY, Fall 2000, at 70, 71.

80. WYO. STAT. ANN. § 12-6-101 (LexisNexis 2003).

81. *Id.* § 5-6-301.

82. *Id.* § 6-10-103.

83. *See infra* notes 232-70 and accompanying text.

84. WYO. STAT. ANN. § 14-6-203(b)(ii) & (ii) (LexisNexis 2003).

85. *Id.* § 14-6-229.

86. *Id.*

with appropriate parental involvement, are critical to dealing effectively with children and their related family problems. While Wyoming's Juvenile Justice Act provides the framework for this to occur, the Act has a small front door, through which only a few children pass, and it leaves the back door wide open, so most children either exit through that door or never even enter a juvenile court. The result is widespread circumvention of the Juvenile Justice Act, with children charged, tried, and convicted of crimes in adult courts.

The comparison of alternatives available to juvenile courts versus those available to adult courts is stark. Juvenile courts have broad jurisdiction. As shown below, they have authority over parents and other household members.

First, a child is not to appear in juvenile court alone. The juvenile court "shall insure the presence at any hearing of the parents, guardian or custodian."⁸⁷ Second, in addition to requiring their presence at hearings involving the child, a juvenile court may make a child's parents and other household members parties to a juvenile proceeding.⁸⁸ Third, the juvenile court may order "any party to the proceeding" to perform or "refrain from" performing any act.⁸⁹

In adult courts, by contrast, a child defendant often appears alone (some adult courts require a parent to attend with a minor).⁹⁰ Parents or other persons responsible for a child cannot be made parties. And since they cannot be made parties, adult courts have no authority to order them to do, or not do, anything. Such courts are not, however, totally without the power to impose less penal sanctions than a fine and/or a jail sentence.

A county may employ probation counselors who can be utilized in either a district or juvenile court action.⁹¹ This authority was likely intended to encourage counties to provide supervision for juveniles prior to vesting authority and responsibility for juvenile probation with the Department of Family Services in the 1990s.⁹²

Municipal courts have been provided minimal statutory guidance on whether and how to treat children who violate city ordinances differently than adult offenders. One of the few is a prohibition on placing children in

87. *Id.* § 14-6-215(a).

88. *Id.* § 14-6-215; *see also id.* § 5-8-102(a)(v) (The juvenile court has jurisdiction over the "parents, guardian or custodian of any minor alleged to be delinquent, in need of supervision or neglected, and all persons living in the household with the minor").

89. *Id.* § 14-6-203(b)(ii) - (iii).

90. *See infra* note 187 and accompanying text.

91. WYO. STAT. ANN. §§ 5-3-501 to -504 (LexisNexis 2003).

92. 1993 Wyo. Sess. Laws, ch. 142, Section 1 (codified at WYO. STAT. ANN. 14-6-229(m) and (n) (LexisNexis 2003)).

jail with adults.⁹³ In addition, a child may not be placed in jail for a status offense.⁹⁴ These prohibitions were probably added to comply with the federal Juvenile Justice Act requirement that states prohibit the jailing of juveniles with adults and prohibit the jailing of juvenile status offenders as defined by the federal Act. As noted above, however, when Wyoming defined "status offense" to exclude alcohol offenses it left municipal (and circuit) courts free to jail juveniles for alcohol status offenses. Wyoming law does not, therefore, currently comply with the federal Juvenile Justice Act.⁹⁵

The only other Wyoming statute that authorizes a municipal court to treat a minor defendant differently than an adult is a little known, and seldom (if ever) used provision establishing "special probation for minor defendants:" "As a condition of probation or suspension of sentence, the court may require a defendant who is a minor to complete a juvenile service program offered by a community juvenile services board under the Community Juvenile Services Act [§§ 14-9-101 through 14-9-108]."⁹⁶

As far as the author can determine, no Community Juvenile Services Boards currently operate within Wyoming. Accordingly, if a municipal court sentences a child to detention, it has no authority to also order treatment or educational services for the child during his or her incarceration. A municipal court also has no authority to order the parent to take or refrain from taking any action that might be adversely affecting the child.

Circuit courts have similar, limited authority. They may not jail status offenders,⁹⁷ and have authority to order "special probation" for juvenile offenders using the Community Juvenile Services Board programs, if they exist.⁹⁸ Circuit courts have some additional authority.

Circuit courts have the authority to utilize the probation statutes for juveniles.⁹⁹ This includes the authority for circuit courts to order the Department of Family Services to complete a presentence investigation report on minor offenders.¹⁰⁰ While having the information provided in a report is a prerequisite to ordering treatment, the circuit court has authority to order the report, and the authority to impose conditions of probation,¹⁰¹ it does not have the authority to then order treatment by DFS or anyone else to meet the needs identified in the report.

93. WYO. STAT. ANN. § 5-6-112 (LexisNexis 2003).

94. *Id.* § 5-6-113.

95. *See supra* notes 72-83 and accompanying text.

96. WYO. STAT. ANN. § 5-6-114 (LexisNexis 2003).

97. *Id.* §§ 7-1-107(a), 7-1-108(a).

98. *Id.* § 7-13-304(c).

99. *Id.* § 7-13-302.

100. *See id.* §§ 7-13-302, 7-13-101(a).

101. *Id.* § 7-13-303(a).

Finally, a district court may sentence a male first felony offender child to the Wyoming Boy's School while the child is under the age of majority (eighteen).¹⁰² It appears that no court has ever used this option. Paradoxically, there is no similar provisions for female offenders. The provision is probably not used because it still prohibits a court from fixing a minimum sentence¹⁰³ and allows the Department of Family Services to parole the offender.¹⁰⁴

PART II. TREATMENT OF JUVENILES IN WYOMING'S CIRCUIT, MUNICIPAL, AND DRUG COURTS

As described earlier, a juvenile is potentially subject to the jurisdiction of three different courts: the juvenile court (a branch of district court); circuit court,¹⁰⁵ which has jurisdiction over misdemeanors;¹⁰⁶ or municipal court, which has jurisdiction over misdemeanors resulting from violations of municipal ordinances. In addition, the drug court statute allows for the creation of a drug court within an existing court.¹⁰⁷ Treatment of juveniles varies considerably, both among the different levels of courts, and within the levels themselves. In an effort to gather empirical data, all judges of circuit and municipal court were contacted. Ten circuit court judges and eight municipal court judges were interviewed. While not scientific, the survey is the most complete look to date at how juveniles are treated in circuit and municipal courts in Wyoming.

Although many similarities exist between circuit and municipal courts, there are significant jurisdictional and structural differences. Those differences contribute to the disparate treatment of juveniles.

A. Structure and Jurisdiction

1. Circuit Courts

Circuit courts are part of the state court system. Eligibility for and appointment of all state judges is pursuant to Title 5 of the Wyoming Statutes. Circuit judges must be Wyoming lawyers.¹⁰⁸ They are appointed by the Governor,¹⁰⁹ paid by the state (along with their clerical staffs),¹¹⁰ and

102. *Id.* § 7-13-101(a).

103. *Id.* § 7-13-101(b).

104. *Id.* § 7-13-101(c).

105. The survey questions were prepared by the author. The survey was conducted by Scott Dutcher. Thanks to the judges who took time to visit with Scott.

106. A misdemeanor is a crime for which the punishment is imprisonment of one year or less. WYO. STAT. ANN. § 5-9-101(a) (LexisNexis 2003).

107. For a discussion of drug courts, *see infra* notes 148-84 and accompanying text.

108. WYO. STAT. ANN. § 5-9-111(a)(ii) (LexisNexis 2003).

109. *Id.* § 5-9-110 (incorporating Art. 5, § 4 of the Wyoming Constitution, which creates the judicial nominating commission and provides for appointment of judges by the governor).

serve four-year terms before they must stand for retention.¹¹¹ Circuit court judges must devote full-time to their judicial duties, and may not practice law.¹¹² While their salaries and those of their staffs are paid by the state, counties are responsible for providing facilities and equipment for them.¹¹³

Circuit courts have “original jurisdiction in all misdemeanor criminal cases.”¹¹⁴ They also exercise limited civil jurisdiction.¹¹⁵ Circuit court jurisdiction may be extended by the governing body of a city or town within the county where the circuit court is located to include persons charged with violating a city or town ordinance.¹¹⁶ If that happens, all money collected for violations of ordinances is to be deposited in the general fund of the city or town.¹¹⁷

In criminal matters, a circuit court may place a criminal defendant on probation.¹¹⁸ The probationary powers of the court are broad, and include the authority to order an individual to “conform his conduct to any other terms of probation the court finds proper.”¹¹⁹ The term of probation is generally limited to the maximum sentence for the crime. If, however, “the probation period . . . includes participation in a substance abuse treatment program or a drug court [the probation period] may exceed the maximum term of imprisonment established for the offense, but shall not exceed two (2) years”¹²⁰ Violation of probation may result in imposition of a suspended sentence.¹²¹ Appeals from circuit court are to the district court.¹²²

Circuit courts also hear many domestic violence cases. Petitions for orders of protection under the Family Violence Protection Act¹²³ are heard in circuit courts. In addition, circuit courts have concurrent jurisdiction, with the district courts, to consider petitions for orders of protection from victims of stalking.¹²⁴

110. *Id.* § 5-9-102(b).

111. *Id.* § 5-9-109.

112. *Id.* § 5-9-118.

113. *Id.* § 5-9-124.

114. *Id.* § 5-9-129.

115. *Id.* § 5-9-128(a). Generally, circuit courts have jurisdiction over claims that do not exceed \$7,000.00, as well as actions for Forcible Entry and Detainer and Family Violence Protection Actions. *See id.* § 35-21-102(a)(ii).

116. *Id.* § 5-9-105.

117. *Id.* § 5-9-106.

118. *Id.* § 5-9-134. A circuit court may place a defendant on probation pursuant to Wyoming Statute. *Id.* §§ 7-13-301 to 7-13-307.

119. *Id.* § 7-13-301(a)(iv).

120. *Id.* § 5-9-134.

121. *Id.* § 7-13-302.

122. *Id.* § 5-9-141.

123. *Id.* § 35-21-102(a)(ii).

124. *Id.* § 7-3-506(a)(I).

Circuit courts see many juveniles because many alcohol and drug offenses are misdemeanors,¹²⁵ over which the circuit courts have original jurisdiction.¹²⁶ All cases in circuit court, including those involving juveniles, are treated the same under the statute. The courts and the courts' records are open to the public, whether the defendant is an adult or a juvenile¹²⁷ (juvenile cases in district court are confidential matters).¹²⁸

2. Municipal Courts

Municipal courts, by contrast, are solely creatures of the city or town in which they operate. They are established "for the trial of all offenses arising under ordinances" of the city or town.¹²⁹ The number of such judges is established by ordinance,¹³⁰ and they are "appointed by the mayor with the consent of the council."¹³¹ A municipal judge's salary is to "be prescribed by ordinance of the city or town."¹³² The term of a municipal judge is "the same as the terms of other appointed officers of the city or town."¹³³ Terms may vary as "the term of appointment" of a municipal judge is established by ordinance of the governing body.¹³⁴

Cities and towns have the authority to pass ordinances to regulate various types of conduct.¹³⁵ They may enforce those ordinances "by imposing fines not exceeding seven hundred fifty dollars (\$750.00), or imprisonment not exceeding six (6) months, or both."¹³⁶ Since the jurisdiction of municipal courts is limited to enforcing ordinances, all criminal matters in municipal court will involve misdemeanors. By statute, all fines assessed

125. Juveniles are often charged with offenses such as minor in possession (of alcohol) (*Id.* § 12-6-101(b)); driving while under the influence of intoxicating liquor or controlled substances (*Id.* § 31-5-233(b)); or possession of a small amount of a controlled substance (*Id.* § 35-7-1031(a)(iv)). Those charges are filed and prosecuted in circuit courts.

126. *Id.* § 5-9-129.

127. WYO. CONST. art. I, § 8. ("All courts shall be open . . .").

128. WYO. STAT. ANN. § 14-3-424(b) (LexisNexis 2003) ("Except in hearings to declare a person in contempt of court, the general public are excluded from hearings under this act. Only the parties, counsel for the parties, jurors, witnesses, and other persons the court finds having a proper interest in the proceedings or in the work of the court shall be admitted."); *see also id.* § 14-3-437(a) ("Throughout proceedings pursuant to this act the court shall safeguard the records from disclosure.").

129. *Id.* § 5-6-101; *see also id.* at § 15-1-103(a)(xxii)(A) ("[P]olice court of the city or town has jurisdiction to punish any violator of the ordinances of the city or town . . .").

130. *Id.* § 5-6-102.

131. *Id.* § 5-6-103.

132. *Id.* § 5-6-104.

133. *Id.*

134. *Id.* § 5-3-204(b)(iii).

135. *Id.* § 15-1-103(a)(xii)-(xlix).

136. *Id.* § 15-1-103(a)(xii) (this subsection appears to be misnumbered as it comes after (xxxix) and is the second (xii) under (a)).

and collected by municipal courts “shall be deposited with the city treasurer.”¹³⁷

Municipal ordinances generally include provisions regulating the use or possession of alcohol and/or controlled substances by minors, and a prohibition on driving while under the influence.¹³⁸ Because laws regulating alcohol and controlled substances are the laws most commonly breached by juveniles, many juveniles come within the jurisdiction of municipal courts. The sentence for violating an ordinance may not exceed \$750.00, six months in jail, or both.¹³⁹ Although they may be incarcerated, juveniles may only be incarcerated in a “juvenile detention facility.”¹⁴⁰ Juveniles may not, however, be incarcerated for a so-called “status offense”¹⁴¹ (an offense which, if committed by an adult, would not constitute an act punishable as a criminal offense by the laws of this state or a violation of a municipal ordinance, but does not include a violation of W.S. 12-6-101(b) [minor in possession] or (c) or any similar municipal ordinance¹⁴²).¹⁴³

Municipal courts also have special probationary powers regarding minors. As a condition of probation “the court may require a defendant who is a minor to successfully complete a juvenile service program offered by a community juvenile services board under the Community Juvenile Services Act.”¹⁴⁴ The Community Juvenile Services Act authorizes, *inter alia*, the creation of community juvenile services boards to “[r]eview existing community juvenile services”¹⁴⁵ and to “[d]evelop a community juvenile services strategic plan.”¹⁴⁶ Unfortunately, the act has never been funded, aside from a few pilot programs.

As with circuit courts, all proceedings are open to the public, regardless of the age of the defendant. Appeals from municipal courts are also to the district court for the county in which the municipal court is located.¹⁴⁷

137. *Id.* § 5-6-204.

138. *See, e.g.*, CASPER, WYO., CITY ORDINANCE, ch. 10.52.030 (Driving or having control of a vehicle while under the influence of intoxicating liquor or controlled substance); LARAMIE, WYO., CITY ORDINANCE, ch. 10.24 (Driving While Under the Influence).

139. WYO. STAT. ANN. § 15-1-103(a)(xii) (LexisNexis2003).

140. *Id.* § 5-6-113(b). A “juvenile detention facility” is a “facility which may legally and physically restrict and house a child, other than the Wyoming boys’ school, the Wyoming girls’ school, the Wyoming state hospital or other private or public psychiatric facility within the state of Wyoming.” *Id.* § 5-6-112(b)(i).

141. *See supra* notes 74-75 and accompanying text.

142. WYO. STAT. ANN. § 5-6-112(b)(iii) (LexisNexis2003).

143. *Id.* § 5-6-113(a).

144. *Id.* § 5-6-114 (citation omitted).

145. *Id.* § 14-9-106(b)(i).

146. *Id.* § 14-9-106(b)(ii).

147. *Id.* § 5-6-203.

3. Drug Courts

Fifteen years ago the first drug court was established in Dade County, Florida.¹⁴⁸ Since then, drug courts have mushroomed. By May of 2001, 688 drug courts were in operation, including 485 adult drug courts, 158 juvenile drug courts, thirty-eight family drug courts, and nine combination adult/juvenile/family courts.¹⁴⁹ Another 432 were on the drawing board.¹⁵⁰ The reason for the explosive growth is “the popular view that drug courts will reduce substance abuse and criminal recidivism through frequent judicial monitoring and community-based treatment.”¹⁵¹ While it is difficult to determine their effectiveness, in part because drug court programs vary so widely, there is “some evidence . . . to suggest that drug courts have been successful at reducing drug use and recidivism among program participants.”¹⁵² And “court-based intervention has been found to be a good investment of public funds.”¹⁵³ Three years ago, Wyoming jumped on the drug court bandwagon.

In 2001, the Wyoming Legislature recognized that there was “a critical need” to develop “criminal justice system programs that will break the cycle of drug and alcohol abuse and addiction and the crimes committed as a result of drug and alcohol abuse and addiction.”¹⁵⁴ To try to meet that need, legislation was passed that allowed for the creation and funding of drug courts.¹⁵⁵ By June 30 of this year, seventeen drug courts will be operating in Wyoming.¹⁵⁶ Most (ten) are in circuit courts; six are in district court; and one is in municipal court.¹⁵⁷ Participation in drug courts has grown along with the number of drug courts. In fiscal year 2002, 222 persons, including 48 juveniles, participated in drug courts in Wyoming.¹⁵⁸ During the

148. Johnson et al., *supra* note 79, at 72.

149. S. BELENKO, THE NATIONAL CENTER ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIVERSITY, RESEARCH ON DRUG COURTS” A CRITICAL REVIEW 2001 UPDATE 5 (June 2001).

150. *Id.*

151. See Johnson et al., *supra* note 79, at 70; see also A. HARRELL & A. GOODMAN, THE URBAN INSTITUTE, REVIEW OF SPECIALIZED FAMILY DRUG COURTS: KEY ISSUES IN HANDLING CHILD ABUSE AND NEGLECT CASES 8 (February 1999) (“Treatment that is combined with urinalysis and court monitoring with sanctions is more likely to be successful than treatment alone.”).

152. See Johnson et al., *supra* note 79, at 71-72.

153. HARRELL & GOODMAN, *supra* note 151, at 8.

154. 2001 Wyo. Sess. Laws ch. 150, § 1 (codified at WYO. STAT. ANN. § 5-10-101 (LexisNexis 2003)).

155. *Id.*

156. E-mail from Dean Jessup, Deputy Administrator of Operations, Substance Abuse Division, to John M. Burman, Professor of Law, University of Wyoming College of Law (April 9, 2004) (on file with author). Mr. Jessup is the Deputy Administrator of Operations for the Substance Abuse Division of the Wyoming Department of Health, which is responsible for the implementation and administration of drug courts in Wyoming.

157. *Id.*

158. *Id.*

following fiscal year, 379 persons, including 110 juveniles, participated in drug courts.¹⁵⁹ Wherever located, drug courts represent a fundamentally different approach to treating persons convicted of alcohol and/or drug offenses, many of whom are children.

The difference in approach reflects the different purposes of a drug court, which are significantly different than those of a traditional adult court. To begin with, drug courts are premised on the principle, now well-established by empirical research, “that drug treatment is effective.”¹⁶⁰ Accordingly, drug courts (in Wyoming) are to: (1) develop “sentencing options” for cases involving drugs; and (2) combine “judicial supervision, supervised probation, drug testing, treatment, aftercare and monitoring of drug court participants.”¹⁶¹ Those purposes are not unlike the goals for juvenile courts.¹⁶²

Drug courts’ goals reflect the different purposes. They “include:”

- (i) To reduce alcoholism and other drug dependency among offenders;
- (ii) To reduce recidivism rates in both drug use and criminal activity;
- (iii) To reduce the drug related court workload;
- (iv) To increase the personal, familial and societal accountability of offenders; and
- (v) To promote effective interaction and use of resources among criminal justice personnel, state agencies and community agencies.¹⁶³

Judges in drug courts assume a fundamentally different role than the one typically played by judges. Traditionally, judges are to be objective decision-makers. They are to perform their duties “impartially and diligently.”¹⁶⁴ Judges are to decide matters based on the evidence presented to them in court, with all parties present and given an opportunity to participate.¹⁶⁵ That role changes in drug court.

Instead of acting as a dispassionate decision-maker, a drug court judge generally takes an active part in developing and supervising drug court participants’ treatment plans. As part of the plans, drug court participants

159. *Id.*

160. HARRELL & GOODMAN, *supra* note 151, at 6.

161. WYO. STAT. ANN. § 5-10-101(a)(I) & (ii) (LexisNexis 2003).

162. *Id.* § 12-6-201(c)(ii)(c) (stating the purposes of juvenile court include to “provide treatment, training and rehabilitation”).

163. *Id.* § 5-10-101(b).

164. WYOMING CODE OF JUDICIAL CONDUCT, Cannon 3 (LexisNexis 2003).

165. *Id.* Canon 3(b)(7).

make “frequent appearances”¹⁶⁶ before the court “for reinforcement or sanctions.”¹⁶⁷ As a consequence, the drug court judge’s role is transformed into one of ensuring that the treatment plan is both available and followed by the participant. Accordingly, the judge generally becomes much more involved in monitoring the participant’s progress, or lack thereof, than a judge typically does.¹⁶⁸ Whether that is good or bad is an issue unto itself. There can be no doubt, however, that an important change in the judge’s role occurs.

Drug courts are also a good investment. As of November 1 of last year, 443 adults and 158 juveniles had participated in Wyoming’s drug courts, at an average cost of about \$4,500.00.¹⁶⁹ While that may seem expensive, the cost of incarceration is much higher. Municipalities, counties, and the State saved between \$10,000.00 and \$27,000.00 per individual by having that person participate in drug court instead of placing him or her in a jail or prison.¹⁷⁰ Drug courts provide other benefits. Drug court “participants are more productive citizens as the drug court program requires either employment or enrollment in an educational program.”¹⁷¹ Ultimately, the value of drug courts is difficult to measure. “The [Substance Abuse] Division cannot adequately measure the positive effect on families and communities.”¹⁷²

Not all persons charged with drug or alcohol offenses are eligible for or allowed to participate in drug courts. First, there must be a drug court in the “local court” in which the defendant appears.¹⁷³ Drug courts currently operate in Wyoming in Laramie, Natrona, Sheridan, Sweetwater, and Uinta counties, among others. Second, the defendant must be eligible. Each drug court is to “establish conditions for referral of proceedings” to the court.¹⁷⁴ Only cases where there is “agreement of the parties” are to be transferred to

166. DIANE K. GALLOOWAY, PH.D., ANNUAL REPORT ON THE DRUG COURT PROGRAM TO THE JOINT LABOR, HEALTH, AND SOCIAL SERVICES INTERIM COMMITTEE 1 (Nov. 1, 2003) [hereinafter “ANNUAL REPORT”].

167. *Id.*

168. Johnson et al., *supra* note 79, at 71.

169. ANNUAL REPORT, *supra* note 166, at 1.

170. *Id.*

171. *Id.*

172. *Id.*

173. A drug court may be established and funded if it, among other things:

- (i) [i]ntegrate[s] substance abuse treatment . . . (ii) [u]se[s] a nonadversarial approach involving both the prosecution and defense counsel to promote public safety while providing appropriate treatment for the adjudicated individual; (iii) [i]dentiff[ies] eligible participants early and promptly place the eligible participant in the drug court program; (iv) [p]rovide[s] access to a continuum of substance abuse related treatment and rehabilitation services; [and] (v) [m]onitor[s] long term abstinence by frequent drug and alcohol testing

WYO. STAT. ANN. § 5-10-106(a) (LexisNexis 2003).

174. *Id.* § 5-10-107(a).

drug court.¹⁷⁵ The drug court participant must “agree to the release of medical and other records relevant to the treatment of the participant.”¹⁷⁶ Finally, the drug court judge is to inform each participant that he or she “may be subject to a term of probation that exceeds the maximum term of imprisonment established for the offense”¹⁷⁷ Once in the drug court program, the role of the judge shifts significantly.

As noted earlier, the purpose of drug courts includes “combining judicial supervision” with “supervised probation, drug testing, treatment, aftercare and monitoring of drug court participants.”¹⁷⁸ Judicial supervision is combined with community-based treatment. In drug court, judges “hold regular status review hearings . . . [which] provide an opportunity for the judge to monitor participants’ progress in treatment . . . and maintain offender accountability.”¹⁷⁹

No empirical data on the success of drugs courts in Wyoming exists, yet the judges who administer them believe that they are having a positive effect, certainly more positive than the effects of simply running the same individuals through adult courts, which have considerably more limited sentencing options.

As noted above, there is “some evidence” that drug courts work. And while much of the literature is “promising, other studies are providing reason for pause.”¹⁸⁰ The primary variable seems not to be differences in judicial involvement, but “the quality and content of the treatment programs”¹⁸¹ In the final analysis, the approach is on target, though additional research is needed to fully understand the strengths and weaknesses of such programs and how to improve them.¹⁸² It is on target because drug addiction “is a chronic, relapsing condition not effectively addressed by increasing sanctions.”¹⁸³ It is, however, “responsive to appropriate treatment . . . even when treatment is involuntary.”¹⁸⁴

175. *Id.*

176. *Id.*

177. *Id.* § 5-10-107(c).

178. *Id.* § 5-10-101(a)(ii).

179. Johnson et al., *supra* note 79, at 71.

180. *Id.* at 72. See also BELENKO, *supra* note 149, at 1 (stating “drug use and criminal activity are relatively reduced while participants are in the program. Less clear are the long-term post-program impacts of drug courts on recidivism and other outcomes”).

181. *Id.*

182. BELENKO, *supra* note 149, at 3.

183. *Id.* at 71.

184. *Id.*

B. Juveniles in Circuit and Municipal Courts Which Do Not Have Drug Courts

While accurate numbers are virtually impossible to gather, the vast majority of juveniles who come into contact with the legal system do so as a result of misdemeanor offenses, generally involving alcohol and/or drugs, which are heard in either circuit or municipal courts. Given the inherent differences in the structure and jurisdiction of those courts, disparate treatment seems a likely result. To determine if juveniles are treated differently, a survey of Wyoming's circuit and municipal judges was conducted in the summer and fall of 2003, in preparation for and before this article was written. The objective was to try to determine how juveniles are treated in different courts around the state. Ten circuit judges and eight municipal court judges were interviewed about how juveniles are treated in their courts.

1. Circuit Courts

Most circuit court judges surveyed¹⁸⁵ saw fifteen or more juveniles per month. The majority were charged with an alcohol-related offense, such as being a minor in possession of alcohol (MIP), driving while under the influence (DUI), or possession of a controlled substance. Since such offenses are typically a juvenile's first involvement with the legal system, circuit courts are generally the first court with which juveniles come into contact. Empirical evidence is almost non-existent, and the following is based on judges' perceptions as expressed in the survey.

Judges were asked how they treat juveniles when they first come into court because of an MIP charge, and how they are treated if they return because of repeat offenses. A first-time MIP offender is generally fined and given a suspended jail sentence. The offender may also be placed on unsupervised probation. Several judges also impose a community service obligation (community service may also be a method of working off a fine). As described above, Teton County has implemented a "juvenile diversion" program, which diverts juveniles away from an adult sentence toward a more treatment-oriented program.¹⁸⁶

Second-time MIP offenders generally receive a harsher penalty. The fine is increased, and several judges imposed jail time. Some others sentence juveniles to supervised probation. Community service may also be required.

185. Judges "surveyed" refers to the ten circuit court judges who were interviewed by telephone during the summer and fall of 2003 by Scott Dutcher, UW College of Law class of 2005. Responses varied with respect to every question posed. Assertions represent the authors subjective view of when most or a majority of judges said they reacted in certain ways.

186. See *supra* note 48.

Most juveniles appear in circuit courts without representation, though some judges require a parent to appear with the child. Generally, juveniles are treated the same as adults, except that the offenses differ as an adult cannot, for example, be charged with MIP. Similar treatment, of course, flies in the face of the theory of juvenile courts, which focus primarily on treatment, not punishment.¹⁸⁷

Many judges develop unique and creative methods of handling juveniles. One judge, for example, requires juveniles to write letters of apology to their parents. Another mandates that those who have dropped out of school earn GEDs. A third oversees a "juvenile diversion" program. Each program is noteworthy. The problem is that their availability depends on individual judges, prosecutors, and communities. How a child is treated, therefore, depends less on what that child did or needs, than on where the child is arrested and charged.

2. Municipal Courts

As expected, the treatment of juveniles in municipal courts varies substantially. The first important distinction is between those municipal courts which see a substantial number of juveniles, and those which do not. Not surprisingly, the municipal court judge in Laramie sees many juveniles. And not surprisingly, municipal judges in small towns tend to see very few. Juveniles charged with alcohol or drug related offenses tend to wind up in circuit court. Only those juveniles charged with other misdemeanors, such as minor property offenses, show up in most municipal courts.

When municipal court judges see juveniles, they tend to treat them similarly to how they are treated in circuit courts. The most significant difference is that municipal judges in many towns, especially smaller ones, have very limited options. Fines, unsupervised probation, or jail time are often the only available alternatives. Unsupervised community service may be ordered in place of fines.

Creativity is not confined to the circuit court bench. Some municipal courts in Wyoming operate extremely successful drug courts. In Evanston, Judge Lavery opened a drug court in 2001 which handled all drug offenses. The court is now expanding to include all drug-related offenses (for example, a theft committed to get cash to buy drugs). The court is an example of what can be done within the existing judicial framework in Wyoming.

The Evanston drug court works on three levels. On the first level are first-offenders who screening shows to have no serious drug problems.

187. See, e.g., JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT, *supra* note 3, at 86 (stating the key element in juvenile court "is the focus on the welfare of the child").

Offenders on Level One are placed on probation, subject to random drug testing, and required to take a twelve-hour "Life skills" course.

If screening reveals a drug or alcohol problem, the offender is placed on Level Two. He or she is required to come to court once per week, receive periodic drug testing, meet with a case manager twice per week, complete a "basic character" program, and attend two recovery meetings per week. The basic character program is a peer-based program where those juveniles who have progressed through the program determine the progress of others. Juveniles who are still in school are required to remain there and attend regularly. Those no longer in school must have and maintain employment.

Third Level offenders are those juveniles who were on Level Two, but were not making satisfactory progress. Level Three involves more intense supervision. The judge becomes a surrogate parent, making sure children go to school, go to work, and fulfill their obligations to the court.

Perhaps the most common complaints raised by municipal judges are: (1) poor communication among courts; (2) limited alternatives for juveniles, especially treatment options; and (3) financial constraints which, in turn, limit treatment options.

PART III. OTHER STATES' APPROACHES TO JUVENILES INVOLVED WITH THE LEGAL SYSTEM

Except for juveniles charged with federal crimes, juveniles are subject to state law and the jurisdiction of state courts. Accordingly, there are fifty different sets of standards, one for each state.¹⁸⁸ Despite the plethora of differences, it is possible to discern two general trends, trends which do not include Wyoming. First, most states vest exclusive jurisdiction over children in one court, often referred to as a juvenile,¹⁸⁹ or family,¹⁹⁰ court. Second, most states have a central intake system, through which all children must pass, before entering the judicial system.¹⁹¹

A. *Exclusive Jurisdiction Over Juveniles*

Although states vary significantly, the vast majority, forty-five, share one important feature¹⁹² – one court has jurisdiction over all juveniles, with some exceptions (the most common exception is that juveniles charged with serious felonies are tried in regular criminal courts). Vesting one court

188. Juveniles in U.S. Territories or the District of Columbia are subject to the laws of their respective jurisdiction.

189. See, e.g., IDAHO CODE § 31-30-1-1 (Michie 2003).

190. See, e.g., MICH. STAT. ANN. § 712A.2 (Michie 2003).

191. See, e.g., *supra* notes 174-178 and accompanying text.

192. The exceptions are: Illinois, Louisiana, Nebraska, Texas, and Wyoming.

with exclusive jurisdiction has the obvious advantage that children are not subject to different procedures and standards, depending on where and by whom they are arrested or taken into custody.

As described above, the majority of the judges surveyed believe that the lack of communication among Wyoming's courts is a significant problem.¹⁹³ Further, the differing dispositional or sentencing options available in different courts presents another significant problem.¹⁹⁴ They do not think, however, that vesting exclusive jurisdiction over juveniles in Wyoming's juvenile courts would be an improvement.¹⁹⁵

B. *Central Intake For Juveniles*

One method to avoid treating similarly situated children differently is to have them all pass through a central intake system. While the majority of states have such a system, they vary widely.

While their authority varies, twenty states send all children entering the court system to be screened or evaluated, usually by an intake officer or juvenile probation officer.¹⁹⁶ The intake officer generally has the authority to determine how the matter should proceed, including the authority to make a final disposition.¹⁹⁷ Another nine states have a central intake system, but the intake official's power is limited to recommending action to either the court or the prosecutor.¹⁹⁸ Only nine states, including Wyoming, have no centralized intake system, and discretions about how to proceed are left with the prosecutor.¹⁹⁹

Four states, all of which have significant populations, empower counties to create a centralized intake system.²⁰⁰ Wyoming's sparse population likely makes a county-based system inappropriate.

193. See *supra* notes 185-87 and accompanying text.

194. *Id.*

195. *Id.*

196. Alabama, Alaska, ALASKA STAT. § 47.12.040 (2003); Arizona, Ariz. Juv. Ct R 2; Georgia, Geo. Juv. Ct. R 4.1; Hawaii, HAW. REV. STAT. § 571-21 (2003); Kansas, KAN. STAT. ANN. § 75-2023 (2003); Kentucky, KY. REV. STAT. ANN. § 610.030 (2003); Maine, 15 ME. REV. STAT. ANN. 15 § 3301; Maryland, Md. Cts. & Jud. Pro. § 3-8A-10; Michigan, MICH. COMP. LAWS. ANN. § 722.823 to 722.825 (2003); Nebraska, NEB. REV. STAT. § 43-274 (2003); Nevada, NEV. REV. STAT. § 62.128 (2003); New York, North Dakota, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, and Wisconsin.

197. See, e.g., ALASKA STAT. §§ 47.12.040 and 47.12.060 (2000).

198. Three states, Mississippi, Missouri and New Jersey, allow the intake official to make recommendations directly to the court. Six states, Arkansas, Florida, Indiana, New Mexico, Oklahoma and West Virginia, require the intake official to make recommendations to the prosecutor.

199. The other states are Colorado, Delaware, Indiana, Louisiana, Mississippi, New Hampshire, South Dakota, and Vermont.

200. California, Minnesota, North Carolina, and Texas.

A fairly recent innovation is “blended sentencing,” in which children are subject to some combination of juvenile court and adult court sanctions. Fifteen states have “juvenile blended sentencing,” meaning that juvenile courts are empowered “to impose adult criminal sanctions on certain categories of serious juvenile offenders.”²⁰¹ Seventeen others have “criminal blended sentencing,” empowering adult, criminal courts to sentence juveniles transferred from juvenile court using sanctions normally available only in juvenile court.²⁰² Under either system, the sentencing court typically imposes an adult sentence, which is suspended, pending satisfactory completion of a juvenile court disposition.²⁰³ If the child does not comply with the juvenile disposition, the suspended adult sentence is imposed.²⁰⁴ While no empirical evidence is available on either method, both broaden the potential judicial responses to juvenile misconduct.²⁰⁵

A state may also extend juvenile court jurisdiction beyond the age when typically it would end, normally when a child reaches eighteen, the typical age of majority, or age twenty-one²⁰⁶ Minnesota law now provides, for example, for extending juvenile court jurisdiction over some children.

A child in Minnesota who is at least fourteen and not older than seventeen years of age, and who is charged with a felony, may be subject to the “extended jurisdiction” of the juvenile court (as of 1999, statutes in thirty-five states extended juvenile court in delinquency cases until the juvenile’s twenty-first birthday).²⁰⁷ The prosecutor must request such treatment, and the request shall be granted if the prosecutor shows “by clear and convincing evidence that designating the proceeding an extended jurisdiction juvenile prosecution serves public safety.”²⁰⁸ The court will then make both a juvenile disposition under the juvenile code, and simultaneously impose an adult criminal sentence, which will be stayed pending satisfactory completion of all conditions of the juvenile disposition.²⁰⁹ If the child fails, or commits another criminal act, the stay is lifted and the adult criminal sentence is im-

201. GRIFFIN, *supra* note 64, at 2.

202. *Id.*

203. *Id.* at 13.

204. *Id.*

205. *Id.*

206. The age of majority in Wyoming is eighteen. WYO. STAT. ANN. §14-1-101(a) (LexisNexis 2003). A “child” or a “minor” under the Juvenile Justice Act is an individual who is under the age of majority. *Id.* § 14-6-201(a)(iii) & (xv). A juvenile court in Wyoming has jurisdiction over “a minor alleged to be delinquent . . .” *Id.* § 13-6-203(b). A juvenile court order of disposition may, however, remain in effect until a delinquent child reaches age twenty-one. *Id.* § 14-6-231(c)(ii).

207. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE, GUIDE FOR IMPLEMENTING THE BALANCED AND RESTORATIVE JUSTICE MODEL 5 (June 2003).

208. MINN. STAT. § 260B.130 Sbd.2 (2002).

209. MINN. STAT. ANN. § 260B.130 (West 2004).

posed.²¹⁰ The juvenile court's authority over the child is "extended" until the child reaches age 21 (jurisdiction normally expires when a child reaches the age of majority, which is eighteen in Minnesota.)²¹¹ Extending jurisdiction until a juvenile addresses the related issues of public protection and punishment. Once again, no empirical evidence exists to show the effectiveness of extending jurisdiction. The system does, however, provide an additional dispositional alternative, which may be appropriate in some circumstances.

Other states have developed their own, unique juvenile court systems. Illinois, for example, which started the nation's first juvenile court system in 1899,²¹² empowers a juvenile police officer to make an informal or formal "station adjustment" in a juvenile case, including the imposition of conditions (much like probation).²¹³ If the juvenile fails to abide by the conditions of the adjustment, the officer may refer the matter to the state's attorney.²¹⁴ The statute further authorizes the state's attorney to establish a panel of community members which may then make final adjudications in juvenile cases.²¹⁵

Although states' central intake systems vary greatly, twenty-eight have one, and another four authorize counties to create such a system. Eight states, including Wyoming, vest the discretion of how to proceed with the prosecutor. Only two states, Wyoming and Louisiana,²¹⁶ empower the prosecutor with discretion on how to proceed and provide for concurrent jurisdiction in more than one court.

PART IV. GENERAL PRINCIPLES OF JUVENILE LAW

Before embarking on a discussion of how to change Wyoming's system for handling children, it is important to consider general principles which have emerged from this and other states' experiences with juveniles over the past century. Certain principles and approaches clearly do not work, and others seem worthy of consideration and adoption. All are predicated on the notion that children are different than adults, and they should be treated differently. Implicit in this notion is the reciprocal one that "[c]riminalizing adolescent crimes provides only symbolic benefits but al-

210. MINN. STAT. ANN. § 260B.130(5) (West 2004).

211. MINN. STAT. ANN. § 260B.007(9) (West 2004).

212. RUBIN, *supra* note 4, at 1-1.

213. 705 ILL. COMP. STAT. ANN. 405/5-301 (West 2004).

214. *Id.* at (1)(f).

215. 705 ILL. COMP. STAT. ANN. 405/5-310 (West 2003).

216. Louisiana is hardly desirable company as "Louisiana has a notoriously inadequate juvenile justice system . . ." K.C. Wolf, *Justice By Any Other Name: The Right to Jury Trial and the Criminal Nature of Juvenile Justice in Louisiana*, 12 WM. & MARY BILL RTS. J. 275, 298 (2003).

lows youths to acquire criminal records earlier and thereby receive more severe sentences for subsequent adult offenses.”²¹⁷

A. Science-Based or Promising Programs. What Works and What Doesn't

Twenty years ago, empirical evidence of what worked and did not work was virtually non-existent. Today, the picture has changed dramatically. A significant body of research about what does not work, as well as what does work, has been accumulated.²¹⁸

A variety of treatment programs, some used widely (and in Wyoming), have been shown to be ineffective. The list of programs that do not work includes many that are both popular and seem, at least intuitively, that they should work. Programs that do not work include: (1) boot camps; (2) scared-straight programs; (3) control-oriented ones, such as “intensive supervision;” (4) wilderness programs; (5) and psychological interventions “that are non-directive or insight oriented.”²¹⁹

Just as a variety of programs have been shown to be ineffective, others work. Programs now exist that “are good bets both to lower crime rates and to lower the net costs of crime to taxpayers and crime victims . . . [some programs] produce benefit-to-cost ratios that exceed twenty dollars of benefits for each dollar of taxpayer cost.”²²⁰ While the specifics of programs may vary, the principles that make for successful programs remain fairly constant. Eight principles have emerged. A program should: (1) have a culture of organization, extending to “well-defined goals [and] ethical principles . . . ;” (2) be based on “empirically-defined needs;” (3) have a professionally trained director and program staff; (4) include a method of determining offender risk, based on proven psychometric tools; (5) target for change those factors which lead to recidivism, “using empirically valid behavioral/social learning/cognitive behavioral therapies . . . ;” (6) use therapeutic approaches that address “anti-criminal modeling, effective reinforcement and approval, problem-solving techniques, structured learning procedures for skill building, effective use of authority, cognitive self-change, relationship practices, and motivational interviewing;” (7) stress cooperation between different agencies that provide services; and (8) routinely evaluate itself.²²¹ Programs that do not consider the above principles “are almost cer-

217. Feld, *supra* note 3, at 210.

218. Latessa et al., *supra* note 5, at 45.

219. *Id.*; see also AOS ET AL., *supra* note 53, at 5, 21-22 (“[J]uvenile offenders in [boot camps] had higher, not lower, subsequent recidivism rates . . . boot camps are cheaper up front . . . but the increased costs to taxpayers and crime victims associated with the higher recidivism rates more than offsets the up-front taxpayer savings.”(emphasis added)).

220. AOS ET AL., *supra* note 53, at 5.

221. Latessa et al., *supra* note 5, at 45; see also AOS ET AL., *supra* note 53, at 5, 17-22.

tain to have little or no impact on offender recidivism.”²²²

It is tempting, and easy, to throw one’s hands up in despair, proclaiming that “nothing works,” so why bother. That would be a mistake. Perhaps the most important lesson of the last quarter century is that while many programs do not work, others do. We should, instead, think outside the box and stop doing what we are doing simply because we have been doing it for a long time, and things “aren’t all that bad.” And juvenile justice should not be about individual philosophies or experience about what works and what does not work. Rather, it is time to look at the empirical data and develop programs based on principles that have been shown to work.

B. Characteristics of Effective Programs or Approaches to Juvenile Offenders

Recent trends in juvenile justice include balanced and restorative justice principles that strive to balance: (1) offender accountability; (2) competency development; and (3) community protection. In addition to systems that hold juveniles accountable for their behavior, ensure community safety and improve the ability of juveniles to make better choices in the future, there are ways to structure the process, from initial law enforcement contact, to completion of the sentence or disposition, that will improve a juvenile’s chance of success.

The successful programs used to rehabilitate juvenile offenders have also become far more scientific over the past few decades. While there are no clear recipes for success, there are many research-based programs and processes that are key to successful interventions.²²³ The following sections expand on these key components for success.

C. Balanced and Restorative Justice (BARJ)

The term “Balanced and Restorative Justice (BARJ)” means a judicial process that focuses on being therapeutic, rather than retributive, yet balances helping the child offender with offender accountability and community protection.²²⁴ This notion is not new. The concept of BARJ has been around in some fashion or another since long before the inception of the juvenile justice system over one hundred years ago. It is based on the

222. Latessa et al., *supra* note 5, at 45.

223. AOS ET AL., *supra* note 53, at 17-23.

224. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE, BALANCED AND FOR JUVENILES: A FRAMEWORK FOR JUVENILE JUSTICE IN THE 21ST CENTURY 9 (1997) [hereinafter “A FRAMEWORK FOR JUVENILE JUSTICE IN THE 21ST CENTURY”]. Balanced and restorative justice principles are an important part of Teton County’s juvenile diversion program. Telephone interview with Nicole Georgette Krieger, Deputy Teton County Prosecuting and County Attorney (Mar. 31, 2004).

proposition that a “good” juvenile justice system must consider the individual circumstances of each child, as well as the child’s criminal behavior and the actual harm caused to the victim and the community, as a prerequisite to “restoring” the victim. In the absence of a balanced and restorative approach, the child often fails to “get the message” and change his or her future behavior, while the victim and the community are often effectively excluded from the process and left feeling cheated and further victimized by the juvenile justice system.

As a general matter, juvenile proceedings, both in Wyoming²²⁵ and elsewhere,²²⁶ are confidential. “Victims and other citizens are generally uninvolved”²²⁷ The reason is that confidentiality serves an important purpose in a juvenile system, but it can lead to a misperception that the juvenile got off with a slap on the wrist when often the juvenile receives longer and harsher sentences, in the name of “rehabilitation.”²²⁸

The critical difference with BARJ is the focus on the victim, instead of on the offender. By contrast, both a traditional punitive response or a more therapeutic approach focus on the offender. The BARJ approach refocuses the juvenile justice system on the true clients – the victim and the community.²²⁹ The reason for the change in focus is that it is important for both the child and the victim to feel as though they were treated fairly, and that both are healed, to the extent possible. Accordingly, formally involving the victim in the process is vital.

In BARJ, the victim and the offender must usually face each other on a very personal level, which requires the offender to take responsibility for his or her actions. Unfortunately, most juvenile justice systems have ignored this important link. The following comparison of juvenile systems shows the difference BARJ provides:

Retributive Justice Says:

1. Offender accountability is defined as taking punishment
2. Victims are peripheral to the process

225. WYO. STAT. ANN. § 14-3-424 (LexisNexis 2003).

226. See Barry C. Feld, *Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy*, 88 J. CRIM. L. & CRIMINOLOGY 68, 92 (1997); M.C. Walker, *Repealing Mississippi Youth Court: The Consequences of Lifting Confidentiality Requirements on Juvenile Justice in Mississippi*, 71 MISS. L. J. 999, 1002 (2002) (“Confidentiality has been an important defining aspect of the “juvenile justice system.”).

227. Walker, *supra* note 226.

228. *Kent v. US*, 383 U.S. 541, 556 (1966) (“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.”).

229. A FRAMEWORK FOR JUVENILE JUSTICE IN THE 21ST CENTURY, *supra* note 224, at 9.

3. Emphasis on adversarial relationships
4. Community on the sidelines – represented abstractly by state
5. Imposition of punishment to deter and prevent
6. Response focused on offender's past behavior
7. Dependence upon proxy professionals.

BARJ:

1. Accountability is defined as assuming responsibility and taking action to repair harm.
2. Victims are central to the process of resolving crime.
3. Emphasis on dialogue and negotiation
4. Community is facilitator of restorative process
5. Restitution as a means of restoring both parties; goal of reconciliation
6. Response focused on harmful consequences of behavior with emphasis on the future.
7. Direct involvement by participants

As described above, the juvenile justice process in Wyoming varies widely, but generally fails to provide restorative processes. The development of drug court models and the Teton County diversion program have been steps in the right direction.

D. Effective Legal Processes

One of the more challenging problems that sabotages attempts to restore juvenile offenders and victims in Wyoming is the lack of a uniform and consistent process for juveniles. Research has shown that immediate, clear and measured, or fair, responses are critical to an effective process for children.²³⁰ If a child is kept waiting too long before being held accountable, or if the ultimate response is out of proportion to what the child feels is fair, either too harsh or too easy, more barriers are created.

A child with an attitude, who feels his or her crime did not warrant the punishment, is much more likely to change that attitude if he or she must

230. See, e.g., Juvenile Justice and Delinquency Prevention Act of 2002 § 101, (A)(10)(B), 42 U.S.C. 5601 (2004). Congress found that there is a need to create

programs that assist in holding juveniles accountable for their actions and in developing the competencies necessary to become responsible and productive members of their communities, including a system of graduated sanctions to respond to each delinquent act, requiring juveniles to make restitution, or perform community service, for the damage caused by their delinquent acts, and methods for increasing victim satisfaction with respect to the penalties imposed on juveniles for their acts.

personally listen to the victims describe their hurt, humiliation, or anger.

PART V. JUVENILE DETENTION

Before discussing the pros and cons of juvenile detention, it is useful to define it, both what it is, and what it should be. Far too often, juvenile detention is nothing more than jail. A child is confined in a correctional facility with limited opportunities for treatment or education (other than a library of donated paperbacks). It should be something very different.

The National Juvenile Detention Association defines “juvenile detention” as “the temporary and safe custody of juveniles who are accused of conduct subject to the jurisdiction of the court who require a restricted environment for their own or the community’s protection while pending legal action.”²³¹ It includes “*a wide range of helpful services which support the juvenile’s physical, emotional and social development.*”²³²

A. *Juvenile Detention is Increasing*

Until 1989, the number of juveniles held nation-wide in adult jails had been decreasing.²³³ “Dejailing” made sense as most of the jailed children were not serious offenders; they were “run-of-the-mill delinquency suspects, status offenders, or abandoned, abused, or neglected children.”²³⁴ Since 1989, however, the trend has gone the other way. Courts and state legislatures have both been transferring more children to adult courts; this has resulted in “substantially increased pretrial jailing for juveniles.”²³⁵

Whether Wyoming was part of the national trend is not clear, as reliable information is not available. As discussed below, however, it is clear that juvenile detention today in Wyoming is fairly common, and how and why it happens appears to depend on where a child is arrested and charged, not on whether pre-trial detention is necessary to protect the public or whether post-conviction detention is part of individualized treatment plans.

B. *Juvenile Detention in Wyoming*

Before discussing the pros and cons of juvenile detention, it is useful to know what is happening in Wyoming. Although complete information is not available, the Wyoming Statistical Analysis Center at the University of Wyoming (WYSAC) has collected and analyzed reasonably good, and very

231. Definition of Juvenile Detention, *available at* <http://www.njda.com/learn-guiding-djd.html> (last visited February 26, 2004).

232. *Id.* (emphasis added).

233. RUBIN, *supra* note 4, at 17-1.

234. *Id.*

235. *Id.*

recent, information about juvenile detention in Wyoming.²³⁶ The report shows that juvenile detention in Wyoming is not unusual, and that the frequency and duration of detention vary widely.

WYSAC collected information about juveniles held in adult jails from agencies that detain juveniles in eleven counties, including Albany, Campbell, Laramie, and Sweetwater.²³⁷ WYSAC also collected information about the court involved and the frequency and length of stay of juveniles in one juvenile detention facility (in Lander).²³⁸ Agencies in eleven counties reported about juveniles held in adult jails. (Although the information initially received from Laramie County suggested that juveniles were held in adult jails, they are actually held in juvenile detention centers). With the exception of Laramie County, only one, the juvenile detention center in Fremont County, reported on juveniles held in a juvenile detention center.

Six-hundred sixty-one juveniles were held in adult jails in the eleven reporting counties in 2003, and four-hundred forty-one were held in juvenile detention facilities.²³⁹ Of those held in adult jails, one-hundred forty-three were sent to detention by circuit courts; one-hundred four were committed by juvenile courts; thirty-seven were sentenced by district courts; and municipal courts sent one-hundred thirty-six.²⁴⁰ The average length of stay varied considerably, depending on the court involved. Campbell County, for example, detained more juveniles in adult jails than any other reporting county. Children sent to detention by district court stayed an average of 13.37 days; those ordered to detention by juvenile courts were in detention an average of 7.81 days; those referred by circuit courts stayed an average of 5.67 days; and those committed by municipal judges stayed an average of only 2.31 days.²⁴¹

Significant disparities exist among the counties as to which court sends juveniles to detention, whether in juvenile detention centers or in adult jails, as well as the average time juveniles spent in detention. In Laramie County, for example, circuit courts sent eighty-five juveniles to juvenile

236. WYOMING STATISTICAL ANALYSIS CENTER, UNIVERSITY OF WYOMING, JUVENILES JAILED IN WYOMING: 2003 PRELIMINARY REPORT (2004) [hereinafter "WYSAC 2003 REPORT"].

237. *Id.* at 1. WYSAC also received information from Fremont, Goshen, Lincoln, Niobrara, Platte, Sublette, and Uinta counties.

238. *Id.* at 3.

239. Email from Kyle Kotter, Data and Graphics Editor, Wyoming Statistical Analysis Center, to John M. Burman, Professor of Law, University of Wyoming College of Law (May 13, 2004) (on file with author).

240. *Id.*

241. *Id.*

detention centers adult jails for an average of nearly twenty (19.81) days.²⁴² By contrast, municipal courts in the same county sent only three juveniles to adult jail for an average of less than one day (.79 of a day).²⁴³ As circuit courts and municipal courts have similar criminal jurisdiction (misdemeanors or their equivalent under city ordinances) it is hard to understand why the difference exists.

There was a dramatic drop in the average length of stay in other counties in which circuit courts confined juveniles in adult jails. The next longest average length of stay for reporting agencies was in Albany County, where the average length of stay was only 6.21 days, significantly less than half as long as in Laramie County.²⁴⁴ Whatever the reasons for the difference, it is clear that circuit courts in Laramie County send juvenile offenders to detention for much longer periods than circuit courts elsewhere in the state. Since circuit courts have identical jurisdiction throughout the state, it is difficult to understand the disparity. Similar discrepancies exist whatever category of court one selects.

Spending time in detention has potentially serious consequences, both for the detained child and for the child's school. First, suspension or expulsion from school, a necessary concomitant of detention, is a significant factor in students dropping out of school completely, never to return.²⁴⁵ Second, dropping out has serious, life-long consequences for a child. Persons who do not receive a high-school diploma invariably obtain lower-paying jobs, if they obtain them at all.²⁴⁶ Third, "dropping out is significantly and positively related to subsequent criminal involvement"²⁴⁷

For the school, the consequences are financial. A school's "average daily membership," on which the state's contribution to the school is based, does not include any pupils 'who have been absent for more than ten (10) consecutive calendar days"²⁴⁸ Spending money to prevent children from dropping out not only benefits the children, it is a good investment. One study found, for example, that every dollar spent on preventing students

242. Email from Kyle Kotter, Data and Graphics Editor, Wyoming Statistical Analysis Center, to John M. Burman, Professor of Law, University of Wyoming College of Law (May 14, 2004) (on file with author).

243. *Id.*

244. *Id.*

245. P.J. Smith, *Looking Beyond Traditional Educational Paradigms: When Old Victims Become New Victimizers*, 23 *HAMLIN L. REV.* 101, 152 (1999).

246. S. DORN, *CREATING THE DROPOUT, AN INSTITUTIONAL SOCIAL HISTORY OF SCHOOL FAILURE* 77 (1996).

247. T.P. Thornbry, M. Moore, and R.L. Christenson, *The Effect of Dropping Out of High School on Subsequent Criminal Behavior*, 23 *CRIMINOLOGY* 3, 17 (1995).

248. WYO. STAT. ANN. § 21-13-101(a)(i) (LexisNexis 2003).

from dropping out, led to a savings of \$4.74.²⁴⁹

One-hundred ninety-five children were detained in 2003 in the Fremont County juvenile detention center.²⁵⁰ Eighty-six came from juvenile court; seventy-nine were sent by circuit court; thirty came from municipal courts; and only four originated in district court.²⁵¹ The average lengths of stay were: circuit court: 16.56 days; district court: 16.65; juvenile court: 18.05; and municipal courts: 7.08.²⁵² The numbers show that children in Fremont County were detained much more often, and the average length of stay was also substantially longer than for juveniles committed out of other courts in the state.

The 2003 WYSAC Report raises disturbing questions. First, and foremost, does detention depend primarily on which court in which county a child appears before, or is there a better explanation for the discrepancies? And second, what, if anything, does juvenile detention accomplish? Information to answer the first question is currently lacking, though the discrepancies suggest that juvenile detention has no rhyme or reason. Information about the efficacy of juvenile detention is available from other jurisdictions, though not from Wyoming, and that information strongly suggests that juvenile detention, for most juveniles, is counter-productive.

C. *Does Juvenile Detention Work?*

Children may be detained before trial, “pre-trial detention,” or after having been found guilty of a criminal or juvenile act. Four scenarios often lead to juvenile detention. The first is that a child is arrested and is detained pending trial. The second is that a child is charged with a criminal act (in adult court), pleads or is found guilty, and is sentenced to jail. Third, a child is found guilty of a delinquent act, and part of the “disposition” of the matter is that the child is sentenced to detention for some period of time. Fourth, a child does not behave properly after being told that he or she must, as a condition of being released, either before trial or as a condition of probation. Then, the child does not act as he or she has been told by the judge. Such defiance often leads to revocation of parole or probation and, thus, detention. The question which arises under any of these scenarios is why put the child in jail?

Pretrial detention of juveniles, as with adults, is not uncommon. And there are certainly times that it is necessary to jail a child to protect the public from further criminal acts. It appears, however, that pretrial detention

249. R.R. Reed, *Education and the State Constitutions: Alternatives for Suspended and Expelled Students*, 81 CORNELL L. REV. 582, 606 (1996).

250. WYSAC 2003 REPORT, *supra* note 236, at 3.

251. *Id.*

252. *Id.*

is not reserved just for those children who present a risk to society, but it may occur without any real consideration being given to the level of risk presented by the child.

Pretrial detention obviously involves a significant invasion of a child's liberty interest. According to the United States Supreme Court, therefore, there is "no doubt that the Due Process Clause is applicable in juvenile proceedings."²⁵³ Nevertheless, the Court upheld pretrial detention of juveniles because it "properly promotes the interests both of society and the juvenile . . ."²⁵⁴ While pretrial detention is constitutional, its efficacy is very much in doubt with respect to "ordinary" children who come into contact with the justice system.

A fundamental problem with how pretrial detention often operates is that the decision of whether to detain a juvenile is often not the result of an objective process undertaken by a professional or even an objective individual, such as a judge, to determine the risk presented by a child, and the corresponding need to detain him or her. Instead, and all too frequently, "law enforcement officers . . . influence the decision whether an alleged juvenile law violator shall be initially locked . . ." into a detention facility.²⁵⁵

The determination of whether a child should be detained pending trial or hearing, should be based on an objective assessment of the risk that child presents if he or she is not detained, not on the subjective judgment of a law enforcement officer. Numerous risk assessment instruments are available to make such a determination, and are used in many jurisdictions.²⁵⁶ The risk assessment instruments provide factors to help determine: (1) which children need to be detained; (2) which children may be released with conditions (and what those conditions should be); and (3) which children may be released without conditions.²⁵⁷ The factors include objective, fairly measurable ones, such as the seriousness of the offense involved, prior offenses, current legal status, and prior releases, if any.²⁵⁸ Risk assessment instruments are not, of course, fool-proof, and their application will not always reach the correct result. They are far superior, however, to the subjective determinations of the arresting or other law enforcement officers, and can help eliminate the kind of disparate treatment of children which appears to exist in Wyoming, and elsewhere.²⁵⁹

253. Schall v. Martin, 467 U.S. 253, 263 (1984).

254. *Id.* at 268.

255. RUBIN, *supra* note 4, at P3-1.

256. *Id.* at P3-4.

257. *Id.*

258. *Id.* at P3-5.

259. *See, e.g.,* B. Feld, *The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make*, 79 J. CRIM. L. & CRIMINOLOGY 1185, 1337 (1989) ("The overuse and abuse of pretrial detention is a recurrent theme in juvenile

Just as pretrial detention will, at times, be warranted, so will detention after a finding that a child has committed a crime or a delinquent act. When detention is appropriate, the conditions of detention become critical. The gulf between appropriate detention and merely confining a child, is often wide.

As noted above, the National Juvenile Detention Association (NJDA) has defined juvenile detention as “*the temporary and safe custody of juveniles who are accused of conduct subject to the jurisdiction of the court who require a restricted environment for their own or the community’s protection while pending legal action.*”²⁶⁰ Juvenile detention should include “a wide range of helpful services which support the juvenile’s physical, emotional and social development.”²⁶¹

While the definition’s reference to “temporary” custody applies directly to pretrial detention, the remainder of the definition applies to all types of juvenile detention. Of particular importance are the emphases on “safe custody” and the availability of “a wide range of helpful services which support the juvenile’s physical, emotional and social development.”²⁶² Detention, in short, should be more than confinement to protect the public, it should also be beneficial to the child.

The NAJD provides guidance on what additional “helpful services” should be available to a detained child. “Helpful services *minimally include: education, recreation, counseling, nutrition, medical and health care services, reading, visitation, communication and continuous supervision. Juvenile Detention includes or provides for a system of clinical observation and assessment that complements the helpful services and reports findings.*”²⁶³ Far too often, those services are not available to a detained child. Rather, the child is simply confined. While detention may be appropriate because of the nature of the child’s actions, the threat to the public, and the child’s needs, the detention becomes inappropriate because of the absence of “helpful services.”

Juvenile detention standards for Wyoming have been developed by the Juvenile Justice Subcommittee of the State Advisory Council on Juvenile

justice.”); M. White, *Juvenile Detention Symposium, Systemic Critique and Transformation*, 3 DIST. COL. L. REV. 403, 406 (1995) (“It has been used as a catchall. That is why you have a youth confined for murder rubbing shoulders with a youth detained for armed robbery, alongside a youth who is there for breaking and entering, next to a youth locked up for not going to school.”).

260. National Association of Juvenile Detention, Definition of Juvenile Justice, *available at* <http://www.njda.com/learn-guiding-djd.html> (last visited February 26, 2004) (emphasis added).

261. *Id.*

262. *Id.*

263. *Id.* (emphasis added).

Justice (“the Council”).²⁶⁴ The Council begins with the notion that juvenile detention is not just jail. Pre-adjudicatory juvenile detention should provide “a continuum of care,” said the Council, which “should include . . . 24-hour intake, runaway programs, host homes, home detention, emergency shelter, crisis care . . . secure facilities, groups homes, and secure detention.”²⁶⁵ Furthermore, children held in pre-adjudicatory detention “must have been charged with a delinquent or criminal offense that meets the objective criteria for secure placement, or the juvenile has been charged with a delinquent or criminal offense and the juvenile meets the criteria for secure placement.”²⁶⁶ Pre-adjudicatory detention, in short, should not depend on where a child is arrested or in which court the child appears.

Whether detained pre-adjudication or post-adjudication, the Council echoed the NAJD’s provisions providing an array of support services. “All juveniles in pre-adjudicatory secure detention or post-adjudicatory incarceration *shall have access to services* that shall minimally include” visitation, communication, supervision, medical, emergency and mental health services, [and] nutrition.”²⁶⁷ If a child is held in detention for more than seven days, additional services “shall be provided or made available: education, counseling, recreation, clinical observation and assessments that complement the other services.”²⁶⁸ The Council’s report discusses each service in detail. Regarding education, for example, the Council said that a juvenile detention center which holds a child for more than seven days “must provide adequate and secure space for conducting educational programs for juveniles which must be equally available to all classifications of juveniles.”²⁶⁹ While there is no reliable information about what is happening to Wyoming children who are detained, whether for more or fewer than seven days, anecdotal information available to the author suggests that nothing approaching the Council’s standards is available to many children detained in Wyoming.

PART VI. OPTIONS FOR IMPROVING WYOMING’S JUVENILE JUSTICE SYSTEM

President Reagan made famous the expression that “if it ain’t broke, don’t fix it.” While it is difficult to obtain consensus on much of anything, especially regarding how courts should deal with juveniles, it is hard to argue that Wyoming’s juvenile justice system “ain’t broke.” A “system” which treats children very differently based on where they live, who arrests

264. The Juvenile Justice Subcommittee “is charged with developing a balanced juvenile justice system within Wyoming which promotes community protection, fair and appropriate placement, accountability and competency development for juvenile offenders.” STATE ADVISORY COUNCIL ON JUVENILE JUSTICE, EXECUTIVE SUMMARY, JUVENILE DETENTION STANDARDS 1 (February 2000).

265. *Id.* at 4.

266. *Id.*

267. *Id.* (emphasis added).

268. *Id.*

269. *Id.* at 16.

them, and prosecutors' individual predilections, as happens in Wyoming, is broken. It needs to be fixed. The question is how.

The state has four options. First, leave things alone. Second, send all children to juvenile courts, the courts designed to treat them. Third, empower adult courts, especially circuit courts, to exercise juvenile court jurisdiction over children who come before them. Finally, develop an entirely new system of courts, generally referred to in this article as "family courts," which have expertise in dealing with children, not just those involved in "criminal conduct," but those involved in divorces and other such matters, and their families. The first option, doing nothing, would allow the current unjust "system" to continue. The current system is broken, and another option should be chosen. Each of the other three is discussed below.

A. It is Unrealistic to Send all Children to Juvenile Courts

As described above, juvenile courts currently have all the authority needed to treat, and not simply punish, children.²⁷⁰ It is unrealistic, however, for them to absorb all children who come into contact with the justice system, most of whom now appear either in circuit or municipal courts. Saddled with burgeoning caseloads, especially criminal and domestic relations matters, it is not realistic for the district courts, which include the juvenile courts, to absorb significantly more children.

In addition to increasing juvenile courts' caseloads substantially, simply requiring all children to be diverted to juvenile court does not address the underlying need to refocus Wyoming's juvenile justice system to incorporate balanced and restorative justice concepts, especially the need for offender accountability.

To avoid overloading the juvenile court system, the legislature could begin by limiting adult court jurisdiction to juvenile offenses that do not carry a potential jail or detention sentence. This would prevent the detention of a child in juvenile or adult detention for minor offenses when there was no opportunity to have a full hearing on the child's right to have the matter transferred to juvenile court and appropriate services are not available. Such a change would likely cost money and time, but both would be well spent.

Sending all, or even many more, children to juvenile court would significantly increase the dockets of the district courts (which include the juvenile courts) while shrinking the caseloads of circuit and municipal courts. The former are part of the state system, and could assist in handling the juvenile court's increased caseload.

270. See *supra* notes 31-36 and accompanying text.

A circuit court judge may be a district court commissioner.²⁷¹ A court commissioner may act in the absence of a district court judge,²⁷² and may “take evidence and make findings, and report the same to the district court.”²⁷³ District court commissioners have express powers under the Juvenile Justice Act. “In the absence or incapacity of the [juvenile court] judge, the detention or shelter care hearing may be conducted by a district court commissioner.”²⁷⁴ At such a hearing, the “commissioner may make any order concerning the child’s release, continued detention or shelter care as authorized to the judge . . . [but the] commissioner shall not make final orders of adjudication or disposition.”²⁷⁵ Then, the juvenile court “shall review the reports, orders and actions of the commissioner as soon as reasonably possible and confirm or modify the commissioner’s orders and actions as it deems appropriate.”²⁷⁶

In addition to the ability to act as district court commissioners, circuit court judges may be assigned to hear matters typically heard by a district court judge.

A judge of the district court may assign to a circuit court judge any case or proceeding within the jurisdiction of the district court subject only to Supreme Court rules, acceptance of the assignment, consent of the parties in a civil case if the dispute involves \$20,000.00 or more, or consent of the prosecutor and the defendant in a criminal case if the potential penalty exceeds five years.²⁷⁷

No statutory barrier appears to exist, therefore, to a district court assigning juvenile cases to a circuit court. And, “[f]or purposes of assignment, all circuit court judges throughout the state shall have concurrent jurisdiction with all district court judges throughout the state.”²⁷⁸

The significant increase in the workload of a juvenile (district) court which would likely result from sending most children to juvenile court would require a reallocation of judicial resources. Such an increase might well be accompanied by a decrease in the docket of circuit courts, making those judges potentially available to assist in managing the increased juvenile court docket. The statutory framework for that to happen is already in place. General assignments are already being used, and their use could be

271. WYO. STAT. ANN. § 5-9-118 (LexisNexis 2003).

272. *Id.* § 5-3-107(a)(i).

273. *Id.* § 5-3-107(a)(v).

274. *Id.* § 14-6-210(a).

275. *Id.* § 14-6-210(b).

276. *Id.* § 14-6-210(c).

277. *Id.* § 5-3-112(a); *see also id.* § 5-9-131(a).

278. *Id.* § 5-9-130 (emphasis added).

expanded.

B. Broaden Circuit Courts' Jurisdiction to Include Juvenile Court

Many, if not most, children appear in circuit courts, charged with misdemeanors such as minor in possession of alcohol or driving while under the influence. Although many children appear in circuit courts, such courts are adult courts. The proceedings are open to the public, persons convicted of crimes, including children, have criminal records, and, unless the court has established a drug court,²⁷⁹ circuit courts are very limited in how they handle children. Children who are found guilty of or plead guilty to misdemeanors in circuit courts are generally subject to the same sentences as adults. That is, the general sentencing options are a fine not to exceed \$750.00, a jail sentence which does not exceed six months, or both.²⁸⁰ Circuit courts also have authority to place a person on probation pursuant to the general probation provisions of Wyoming law.²⁸¹ They have special probationary powers when one of the conditions of probation is participation in a substance abuse program or drug court. In such cases, "the probation period . . . may exceed the maximum term of imprisonment established for the offense, but shall not exceed two (2) years."²⁸²

One option for improving Wyoming's juvenile justice system is to broaden circuit courts' jurisdiction to include the powers that juvenile courts already have, and to require that all children be afforded the benefits of a treatment-centered approach, rather than one aimed primarily at punishment, unless objective screening shows that a child should not have those rights.

Broadening circuit court jurisdiction has some appeal, the courts and judges already exist and the courts already handle many children. Simply expanding circuit court jurisdiction may not, however, achieve the consistency that a single point of entry, e.g., all children going to juvenile court or some other specified court, would achieve, and that should be a primary objective of any reform.

If circuit court jurisdiction were broadened, and the current juvenile court system remained as it is, a child would still be subject to appearing before different judges, depending on the nature of the act which brought the child into the court system and/or a prosecutor's decisions about where the child should go. The objective of consistency would likely not be achieved.

C. Develop Specialized, Family Courts

279. For a discussion of drug courts, *see supra* notes 148-84 and accompanying text.

280. WYO. STAT. ANN. § 6-10-103 (LexisNexis 2003).

281. *Id.* § 5-9-134; *see also id.* §§ 7-13-301 to 7-13-307.

282. *Id.* § 5-9-134.

1. What are Family Courts?

A recent trend around the country is to combine “juvenile cases with other family-related case types such as divorce and domestic violence, into some form of a ‘family court.’”²⁸³ While they take different forms, one basic idea remains constant. All matters involving children and their families come before a single court, which has expertise in such matters and access to resources to order appropriate treatment. While the variety of family courts makes it difficult to define one, a working definition is: “A specialized court, with jurisdiction over a wide range of family issues. Its unique capacity to resolve cases lies in its jurisdiction, and its ability, as a social service portal, to promote treatment for members of dysfunctional families.”²⁸⁴ Perhaps the most important principle in family court is to have one judge for one family. That may not seem to be a big deal, but it is.

a. One Judge for One Family

Consider the following example, which involves a married couple and their two children, ages nine and fourteen, who live in Cheyenne. After years of domestic violence, mother seeks a domestic violence protection order under the Family Violence Protection Act. Jurisdiction for such a request is in circuit court,²⁸⁵ so mother goes there. Mother decides she wants out of the marriage completely, so she files for divorce, which has to go to district court.²⁸⁶ Meanwhile, father gets picked up for driving while under the influence, inside the city limits, and is charged with a violation of a city ordinance, which is heard in municipal court.²⁸⁷ Finally, the fourteen-year old is arrested for burglary, and a petition alleging juvenile delinquency is filed by the prosecutor in juvenile court.²⁸⁸ Although juvenile court is a division of district court, the district court judge who hears the juvenile case may not be the same judge who is hearing the divorce. As a result, the family finds itself in front of four different courts (circuit, municipal, district, and juvenile) and four different judges. It is possible that each judge knows what the others are doing, and that the orders from all four courts are consistent, but it is not likely.

If Wyoming had a family court, the family described above would be in one court in front of one judge, who would deal with all the family’s issues. The ideal is what is referred to as an “all-encompassing” family

283. RUBIN, *supra* note 4, at vii.

284. KENTUCKY ADMINISTRATIVE OFFICE OF THE COURTS, STATE JUSTICE INSTITUTE, RURAL FAMILY COURTS IN KENTUCKY: LESSONS LEARNED 15 (hereinafter “RURAL FAMILY COURTS IN KENTUCKY”).

285. WYO. STAT. ANN. § 35-21-102(a)(ii) (LexisNexis 2003).

286. *Id.* § 20-2-104.

287. *Id.* § 5-6-102.

288. *Id.* § 14-6-203(c).

court. Such a court has jurisdiction over: “delinquency, status offenses, abuse and neglect, termination of parental rights, child support, other custody matters, criminal actions among family members . . . and felonies by parents against children, civil protection orders in domestic violence cases, child and adult mental illness commitment procedures, and adult abuse cases.”²⁸⁹ Many family courts are not “all-encompassing;” their jurisdiction does not include all of the foregoing. At a minimum, a family court “should integrate delinquency, abuse and neglect, divorce or custody-related, and domestic violence” matters.²⁹⁰

b. A Family Court Can Coordinate Decisions and Resources

The rationale for family courts is that bringing all matters involving families and family members before one court will improve coordination, eliminating the all too common problem that one court does not know what another is doing, or even if another is involved. Courts may enter orders which inadvertently conflict with each other, leaving a family in the Catch 22 of not being able to comply with all court orders without violating some. If all matters involving a family were brought before a single judge, that judge could easily coordinate decisions and potentially make available resources which a judge in a separate court could not.

Consider the different resources available to judges in different courts. A circuit court judge hearing a misdemeanor case may fine or sentence the defendant to jail or probation.²⁹¹ If the probation involves a substance abuse program, the period of probation may extend beyond the maximum jail time.²⁹² In domestic violence cases, the court may order, *inter alia*, that: (1) the parties refrain from contact; (2) the respondent vacate the home; (3) custody of the minor children be given to petitioner; (4) the respondent pay child support; and (5) the respondent undergo counseling.²⁹³ The court has no authority, however, to direct that any entity, such as DFS, assist in providing those services. A district court hearing a divorce must make a “just and equitable” distribution of property²⁹⁴ between the divorcing spouses, make the custody arrangement which is “in the best interests” of the children,²⁹⁵ and order child support,²⁹⁶ including medical support.²⁹⁷ The court is limited, however, by what the parties have to offer. No matter how compelling the need, the court cannot order the provision of support services

289. RUBIN, *supra* note 4, at 39-1. Hawaii family courts have such broad jurisdiction. *Id.*

290. *Id.*

291. Exceptions exist, of course, such as the Teton County diversion program. *See supra*, note 48.

292. WYO. STAT. ANN. § 5-9-134 (LexisNexis 2003).

293. *Id.* § 35-21-105(a).

294. *Id.* § 20-2-114.

295. *Id.* § 20-2-201(a).

296. *Id.* §§ 20-2-301 to -315.

297. *Id.* §§ 20-2-401 to -406.

for the children by an agency such as DFS, which it could do in a juvenile case.

A juvenile court, by contrast, has broad authority to order appropriate services and treatment for a child and the child's family.²⁹⁸ The juvenile court does not, however, have the authority to be directly involved in either a domestic violence action under the Family Violence Protection Act, or a divorce. Further, juvenile courts typically review juvenile cases annually.

Finally, the municipal court has jurisdiction over a DUI charge that results from the violation of a city ordinance,²⁹⁹ but the court has no involvement, and perhaps no knowledge, that the defendant in a DUI action is also involved in other actions, including a divorce with the attendant issue of child custody. The drinking that led to the DUI may well relate to the family, and appropriate treatment may be fundamental to the family's other legal issues, but the municipal court simply cannot address those issues.

By combining all a family's legal issues in one court in front of one judge, that judge should have much better access to information about the family and what it needs. Assuming that judge has the authority to order appropriate services for the family, regardless of the particular issue that brings the family into court, much better remedies should be possible. The court, too, should develop expertise and experience about families. With better information about the family and greater knowledge about families, the decisions should be better informed.³⁰⁰

c. Families Need Greater Access to Community-based Services

A court's order to provide services, whether in a juvenile court or a family court, is only as good as the service providers. The effectiveness of drug courts, for example, seems to be a result of the quality of their treatment programs.³⁰¹ Accordingly, for a family court system to be effective, the services it orders to be provided need to be provided and provided well. Improving access to services will, of course, cost money.

Agencies such as DFS or mental-health centers will likely be directed to provide services to families under circumstances when they would not have had to previously, e.g., as a part of a divorce decree, a family court might order the parents to receive some sort of counseling, or that the chil-

298. *Id.* § 14-6-229.

299. *Id.* § 5-6-102.

300. RUBIN, *supra* note 4, at 39-3.

301. S. Johnston et al., *supra* note 79, at 72; *see also* HARRELL & GOODMAN, *supra* note 151, at 6 (Long-term drug treatment resulted in "large and significant decreases in alcohol and drug use, criminal activity, AIDS risk, and homelessness, and increases in employment, income, and physical and mental health . . .").

dren receive treatment. Under current law, such services are provided when the juvenile court takes jurisdiction, and are not part of a divorce decree. A family court will not be effective, however, without the flexibility to craft orders, in a variety of contexts, that require the provision of appropriate services.

A family court system is not, of course, a panacea. The treatment and other interventions ordered by a family court are only as good as the providers of those services. Nevertheless, the potential exists for significant improvements. Hawaii has "all-encompassing" family courts. The chief judge of the Hawaii family court has observed:

A well-organized and unified family court will provide a prompt and fair resolution of the unique legal problems of children and families. In doing so it will a) help save lives, b) reduce emotional turmoil, c) promote family harmony as much as possible, d) enhance efficiency and effectiveness. It is an idea that will truly "count for the future." It will build in a commitment to therapeutic justice based on the very work you do.³⁰²

2. Implementing a Family Court System in Wyoming

Family courts systems vary significantly. Accordingly, there is no one right way to design or implement one. Some states have created entirely separate courts, with separate jurisdiction, and separate judges, which essentially manage themselves.³⁰³ Others have created a family court system within the existing court structure, normally by making family court a division of an existing court, such as Wyoming's district courts. Judges are then assigned to the family court for a limited term, and then reassigned to a different division at the end of the term.³⁰⁴ And there is, of course, a hybrid model, in which a separate court is created, with separate support personnel, but judges rotate through the family court.³⁰⁵ Whatever the model, the common thread is that a family appears in one court, in front of one judge, for all family-related issues, and that judge has broad authority to address the family's issues.

Whatever the model, having appropriate jurisdiction and access to the resources necessary to address families' problems are both critical. Having the appropriate authority will require statutory changes. Having necessary resources available will require money. Both require action by the legislature.

302. RUBIN, *supra* note 4, at 39-2.

303. *Id.* ("Rhode Island, Delaware, and South Carolina fit this model.").

304. *Id.* Hawaii, the District of Columbia, and New Jersey fit this pattern. *Id.*

305. *Id.* Vermont has a hybrid court. *Id.*

Wyoming can profit from the experiences of other states which have implemented family courts, especially those which have done so in rural areas. In Kentucky, for example, the state faced the challenge of developing a model that would work in both urban and rural areas. As part of creating a family court system, the State of Kentucky conducted a comprehensive study of its efforts.³⁰⁶ That study included a survey of 268 rural family courts across the country (“rural” was defined to be a county with a population of less than 150,000 inhabitants,³⁰⁷ meaning, of course, that every county in Wyoming would be “rural.”). The study considered the unique problems of “multi-county districts with a single judge,”³⁰⁸ which are common in Wyoming. The study contains important lessons for other states considering implementing family courts.

The survey described above identified the five “most critical areas” for the success of a family court: (1) judicial leadership; (2) access to social service programs; (3) new funding; (4) a team approach; and (5) community collaboration.³⁰⁹ The survey assumed, of course, that a policy decision to develop and implement a family court system has been made and that the statutory barriers to family court jurisdiction have been removed.

The creativity already shown by Wyoming courts in creating drug courts supports the notion that telling courts how to do something is not the best approach. Rather, consulting with them to develop goals, and then allowing them to determine how best to meet them seems to be a far better approach. Given the significant differences that prevail in Wyoming, trying to determine the best way to accomplish a goal is not very realistic. Creating and funding pilot family courts would allow courts to craft systems tailored to meet their unique needs. Their experiences could then be evaluated and future directions determined. To those who wonder whether other states’ experiences will translate into Wyoming, the answer is look north, Wyoming’s first family court is now in operation.

An experimental family court opened recently in Big Horn County.³¹⁰ Big Horn County has had a drug court for a couple of years. A broad-based, loose coalition of interested parties came together to try and expand the benefits of that court.³¹¹ With financial support from an eight-

306. RURAL FAMILY COURTS IN KENTUCKY, *supra* note 284, at 71.

307. *Id.*

308. *Id.* at 1.

309. *Id.* at 77.

310. Telephone Interview with the Honorable Gary P. Hartman, Big Horn Family Court (April 8, 2004). Along with the Honorable Robert E. Skar, Judge Hartman presides over the court.

311. The coalition included Judges Hartman and Skar, the Department of Family Services, Public Health personnel, the Public Defender’s Office, prosecutors, treatment providers, especially substance abuse and mental health professionals, faith-based initiatives, and educators.

een-month grant from DFS, the Big Horn Family Court is striving to empower families to help themselves by building on each family's strengths. Doing so requires a significant investment of time and resources, judicial and otherwise. The reason for the increase in judicial resources is that the court is taking a very active role in monitoring families' progress, meeting with them weekly to get status reports. While it is far too early to evaluate the court's success, the participants are pleased with the initial results. Good results are possible only with a significant commitment of time, energy, and money. Whatever the final expense, it is likely to be far less than the benefits to children and their families.

The goals are the key. This article has identified three of them: (1) one judge per family; (2) coordination of decisions and resources; and (3) increased access to community-based services. Creating a family court system may not be the only way to accomplish those goals, but it is one approach that has worked in other places. The effect on juvenile justice of establishing such a system would go a long way toward remedying the ills which pervade the current "system." Perhaps most importantly, both uniformity and access to services would be improved immensely.

PART VII. CONCLUSION

The idea of family courts as a method of improving Wyoming's juvenile justice system is not new. The 1981 evaluation of Wyoming's Juvenile Justice System says:

The State should also reconsider the creation of a Family Court. The Family Court could include jurisdiction over juvenile delinquency, status offenses, adoption, termination of parental rights, guardianship, uncontested divorces, child support, the enforcement of court decrees, and other domestic matters . . . Some action is necessary to improve the speed and availability of judicial services . . .³¹²

The need to improve the system has increased, not decreased since 1981. It is time to act to help children and families in Wyoming.

312. 1981 REPORT, *supra* note 2, at 257-58.