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The Disregarding of the Rehabilitative Spirit of Juvenile Codes: Addressing Resentencing Hearings in Blended Sentencing Schemes

Grace E. Shear

INTRODUCTION

A
mid statutory provisions across the nation, legislative grace envelopes juvenile offenders and formally recognizes the malleability of minors. Over a century ago, the first state juvenile court was established in Chicago, Illinois, thereby initiating the specialized treatment of America’s juvenile offenders. Legislators appreciated the vulnerability of juveniles and sought to emphasize rehabilitation above retribution. In spite of juvenile statutory safeguards, states are currently ignoring, and thus negating, the unique nature of serious juvenile offenders through the application of adult probation standards during resentencing hearings under complex blended sentencing schemes. The phrase ‘serious juvenile offender’ is generally used in place of specific state terms and phrases, such as ‘youthful offender,’ to prevent confusion or misapplication of distinctions in state juvenile systems. Serious juvenile offenders may be classified as “an intermediate level between juvenile and adult,” which generally parallels most youthful offender statutes across the nation.

Every state and the District of Columbia has enacted a juvenile code of varying form, whether intermingled with its family code or outlined in a separate statutory section. Each of these codes, while not identical,
emphasizes the utilization of "‘best interests’” and “‘rehabilitative ideal[s]’” for juvenile dispositions.7 The recent inception of blended sentencing schemes, however, complicates the unique nature of juvenile codes, as the juvenile and criminal correctional systems differ in their “philosophy of justice.”8 Thirty-two states follow blended sentencing provisions that "enable a juvenile court judge to impose both a juvenile disposition and a stayed adult criminal sentence when a juvenile offender is found guilty of a crime."9 In particular, states commonly utilize resentencing hearings to mark the transition between blended juvenile and adult sanctions.10 Resentencing hearings occur when a juvenile offender in state custody reaches the age of majority while facing continuing sanctions under a blended sentencing scheme.11 The court has general resentencing options such as continuing the juvenile sentence, probating the juvenile offender, or transferring the offender to an adult correctional facility.12 This Note, however, focuses on the probation alternative as its application offends legislative intent regarding the rehabilitative nature of juvenile codes and proceedings.

This Note seeks to outline the purpose of state juvenile codes and highlight the disparity between juvenile codes and the adult probation standards utilized during resentencing hearings under newly developed blended sentencing schemes. While federal and state juvenile laws coincide, this Note focuses on state codes and courts, as states are the primary actors in most juvenile proceedings.13 Part I addresses the development of juvenile courts and the main purposes of state juvenile codes, whose unique nature is emphasized by the juxtaposition of adult penal code purposes and objectives. Part II surveys state legislation regarding blended sentencing, specifically examining the purpose and function of the resentencing

2010).

8 Donna M. Bishop, Juvenile Offenders in the Adult Criminal Justice System, 27 CRIME & JUST. 81, 126 (2000) (citation omitted).
12 See id. at 146.
13 See id. at 147.
This section will showcase the problematic consequences of utilizing adult probation standards in the absence of specialized juvenile probation standards. Juvenile offenders are adversely affected throughout these legal proceedings, and Part III discusses the consequences of these judicial and legislative limitations. Finally, Part IV proposes a reconciliation of juvenile considerations and adult probation standards, establishing a common ground whereby the principles of the juvenile code are upheld in light of the juvenile’s more advanced age upon resentencing. This Note ultimately concludes that blended sentencing schemes are rooted in the juvenile condition. Thus, courts and legislatures are obligated to craft and utilize appropriate juvenile probation standards, such as the proposed six-prong analysis, during resentencing hearings in properly keeping with legislative intent and juvenile justice jurisprudence. Blended sentencing schemes are a flexible approach to the transient nature of juvenile offenders; however, the flexibility is negated by a lack of specifically tailored probation standards in resentencing hearings.

I. EXAMINATION OF JUVENILE AND PENAL CODES

A. Historical Analysis of Juvenile Codes and Courts

During the formation of the American legal system, juvenile criminal capacity was determined by the arbitrary age demarcations of seven and fourteen. Until a child reached the age of seven, a universal presumption of innocence prevented a child of such “tender” years from being held criminally responsible. Between the ages of seven and fourteen, however, children enjoyed only a waning presumption of innocence as they aged, and by fourteen they were deemed to have the maturity and capability of possessing criminal intent. A determination of intent capability on the part of the child would result in trial and punishment as an adult or complete release from the criminal system. This disparate dichotomy, whereby a juvenile was released from all culpability or sentenced as an adult, was inadequate to address the complexities of juvenile delinquency. Therefore, beginning in the early twentieth century, states across the nation drafted and enacted juvenile codes so that children accused of

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15 See David Myers, Boys to Men: Transferring Juveniles to Adult Court, in YOUTH VIOLENCE AND DELINQUENCY: MONSTERS AND MYTHS 29, 31 (Marilyn D. McShane & Frank P. Williams III eds., 2007).


17 Id.

18 Id.
conduct that would be criminal in an adult might be processed apart from
the criminal justice system in an environment more closely attuned to
their rehabilitative needs." Adult sanctioning standards, state legislators
believed, were inappropriate for juveniles as they were rooted in penal
rather than rehabilitative interests. 20

Progressive legislators and legal scholars alike recognized the necessity
of safeguarding the nation's youth, criminal or otherwise. 21 Much of
the juvenile justice movement was undergirded by the notion of parens
patriae, whereby the state assumed a parental role. 22 Scholar and Judge
Julian Mack declared that just "as a wise and merciful father handles his
own child," so too should the state handle a juvenile offender. 23 Similarly,
the establishment of a juvenile court was seen as "the recognition of the
obligation of the great mother state to her neglected and erring children,
and her obligation to deal with them as children, and as wards, rather than
to class them as criminals and drive them by harsh measures into the
ranks of vice and crime." 24 States' sensitivities to youth prompted reliance
on rehabilitation rather than punishment as a means of uplifting and
reforming the nation's juvenile delinquents. A youth's age, circumstance,
and continued emotional and mental development cultivated an optimistic
rather than fatalistic outlook of reform, which more closely parallels adult
criminals. 25

The Illinois Juvenile Court Law of 1899 established the nation's first
juvenile court and initiated an ongoing juvenile justice movement. 26 Various other laws thereafter were implemented to address the mounting
inadequacies of funding and personnel. 27 These basic laws provided the
model after which current juvenile codes were crafted and where the core
principles of specialized treatment and rehabilitation remain. 28 By 1912,
thirty-two states had enacted a variation of juvenile court and probation
legislation, and by 1925, only two states abstained. 29 States sought to
differentiate between juvenile and adult offenders in a manner more
effective than the arbitrary age categorization of earlier years and began

20 See id.
21 See Feld, supra note 7.
22 Myers, supra note 15, at 31-32.
24 Hastings H. Hart, Distinctive Features of the Juvenile Court, ANNALS AM. ACAD. POL. &
SOC. SCI., July 1910, at 57, 60.
25 See Elizabeth S. Scott & Thomas Grisso, The Evolution of Adolescence: A Developmental
26 See generally Illinois Juvenile Court Act, 1899 Ill. Laws 131.
27 See Breckenridge, supra note 2, at 5.
28 See Smallheer, supra note 10, at 261 & n.8.
to draft juvenile codes in an effort to statutorily preserve juvenile offender safeguards.  

B. Contemporary Analysis of Juvenile Codes and Courts

Currently, each state has established a juvenile code, the variation of which reflects each individual state's ideologies. These state codes standardize a variety of juvenile issues, such as juvenile court jurisdiction, juvenile procedure, and juvenile rights. Though the rehabilitative rationale persists, state codes have evolved in organization and substance. Several states, including Alabama, Kentucky, North Carolina, and Oregon, designate distinct code sections as their juvenile code, while in states such as California, Indiana, and Nebraska, the juvenile code is interspersed throughout their family, welfare, or delinquency codes.

Juvenile codes serve as statutory guides for the treatment and adjudication of juvenile offenders primarily through prefaces containing juvenile court purpose clauses. The National Center for Juvenile Justice recognizes five main categories of purpose clauses, and while they are not mutually exclusive, each category is reflective of the unique juvenile condition. Unfortunately, in the case of serious juvenile offenders, the purpose clauses ultimately may be negated by the application of adult probation standards.

1. "Balanced and Restorative Justice" Model. The most common purpose clauses contain an adaptation of "balanced and restorative justice." Seventeen states purport that their juvenile courts should equally consider "public safety, individual accountability to victims and the community, and the development in offenders of those skills necessary to live law-abiding and productive lives." Of these seventeen, some strictly adhere to this model and others take a more traditional tone by emphasizing rehabilitation, care, and guidance regarding the third prong of the model. This latter prong is of particular importance because it codifies the optimism of juvenile law, recognizing the reformative nature of juvenile courts and dispositions.

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30 47 AM. JUR. 2D Juv. Crts. and Delinquent and Dependent Child. §1 (2010).
31 See Griffin et al., supra note 6.
32 See id.
33 Nat’l Center for Juv. Just., supra note 6 (select “State Profiles” drop-down menu; then select “Alabama,” “Kentucky,” “North Carolina,” “Oregon,” “California,” “Indiana,” and “Nebraska” links).
34 Griffin et al., supra note 6.
35 Id.
36 Id.
37 Id.
38 Id.
Despite minor differences, states across the nation constructed juvenile codes to reflect elements of this reformatory approach.39

2. "Standard Juvenile Court Act" Model.40—Another nine states41 model their juvenile court purpose clauses after the Juvenile Court Act,42 originally enacted in 1925 and most influentially revised in 1959.43 Eight additional states use portions of this Act in their juvenile code purpose clause.44 The Act's explicit purpose was to treat each juvenile offender with

the care, guidance, and control that [would] conduce to his welfare and the best interest of the state, and that when he [was] removed from the control of his parents the court [should] secure for him care as nearly as possible equivalent to that which they should have given him.45

State courts modeled after this Act emphasize the parental role of the state in guiding and rehabilitating a juvenile offender, thereby capitalizing on the malleability of juveniles. Most importantly, these juvenile codes mandate the prevalence of care rather than castigation throughout juvenile proceedings.

3. "Legislative Guide" Model.46—Several states employ more elaborate purpose clauses in replication of the legislative guide model introduced in the 1960s.47 As a publication of the Children's Bureau (now part of the U.S. Department of Health and Human Services), the Legislative Guide Model provided guidance for drafting family and juvenile acts.48 The four main provisions of the legislative guide model are included in six states' juvenile court purpose clauses:

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39 See Griffin et al., supra note 6 (listing states following the balanced and restorative justice model as Alaska, Florida, Idaho, Illinois, Kansas, Maryland, New Jersey, Pennsylvania, and Wisconsin, and states following a model similar to the balanced and restorative justice model as Alabama, California, District of Columbia, Indiana, Minnesota, Montana, Oregon, and Washington).

40 Griffin et al., supra note 6.

41 Id. The nine states adhering to the Standard Juvenile Court Act include Georgia, Iowa, Louisiana, Michigan, Mississippi, Missouri, Nevada, Rhode Island, and South Carolina.

42 Gus Martin, Juvenile Justice: Process and Systems 45 (2005) ("In 1938, Congress passed the Juvenile Court Act, which essentially promoted national adoption of many concepts of juvenile justice administration that had been originally enacted under the Illinois Juvenile Court Act of 1899. Rehabilitation and treatment of juveniles had become pervasive as a matter of policy.").

43 Griffin et al., supra note 6.

44 Id.

45 Id.

46 Id.

47 Id. (listing states following the legislative guide model as New Hampshire, New Mexico, North Dakota, Ohio, Tennessee, and Vermont).

48 Id.
(a) 'to provide for the care, protection, and wholesome mental and physical
development of children' involved with the juvenile court; (b) 'to remove
from children committing delinquent acts the consequences of criminal
behavior, and to substitute therefor a program of supervision, care and
rehabilitation;' (c) to remove a child from the home 'only when necessary
for his welfare or in the interests of public safety;' and (d) to assure all
parties 'their constitutional and other legal rights.'

Provisions (a) through (c) are of particular importance because they indicate
recurring principles of care and rehabilitation. Furthermore, clause (c) is
directly implicated in resentencing hearings as it relates to a juvenile's
potential status in the home.

4. Welfare and Best Interest Model.—Three states are governed by even more
stringent juvenile standards than those previously described. Kentucky,
Massachusetts, and West Virginia's juvenile codes “emphasize[] the
promotion of the welfare and best interests of the juvenile as the sole
or primary purpose of the juvenile court system.” While other codes
encompass aspects of rehabilitation, accountability, and community
protection, the purpose clauses of these codes are most closely aligned
with the traditional purposes of juvenile courts. Juvenile legislation is
rooted in child welfare, and from it stems accountability and community
improvement. Thus, the spirit of the welfare and best interest model
emanates from each purpose clause put forth by the various juvenile
codes.

5. Penal Model.—Six other states have modified their juvenile court
purpose clauses to emphasize a greater penal interest. While elements
of these clauses are found in most juvenile codes, states such as Texas and
Wyoming emphasize purpose clauses composed of what could be considered
derivative objectives under the traditional juvenile model. Of these six
states, several incorporate penal interests into a more general legislative
guide model, such as “protection of the public and public safety.”

However, despite the presence of more penal objectives, punishment is

49 Id. (quoting the Legislative Guide for Drafting Family & Juvenile Court Acts, a
publication issued by the U.S. Children's Bureau in the 1960s).
50 Id. (listing states following the traditional child welfare model as Kentucky,
Massachusetts, and West Virginia).
51 See id.
52 Id. (listing states following a model that emphasizes punishment, deterrence, ac-
countability and/or public safety as Connecticut, Hawaii, North Carolina, Texas, Utah, and
Wyoming.
53 See id.
54 Id. (internal quotation marks omitted).
not always the sole juvenile court purpose.\textsuperscript{55}

### C. Criminalization of State Juvenile Courts and Codes

Although a 2008 study reported a decrease in juvenile violent crime rates for the preceding fourteen years,\textsuperscript{56} state legislatures around the nation have drafted their juvenile codes and court systems to reflect increased criminalization of juvenile behavior. Between the years of 1992 and 1996, forty-seven states and the District of Columbia materially revised their juvenile offender legislation\textsuperscript{57} to address "escalating juvenile arrests for violent crime and public perceptions of a violent juvenile crime epidemic."\textsuperscript{58} States increasingly came to endorse punishment as their juvenile codes "de-emphasize[d] rehabilitation and intervention in the child's best interest."\textsuperscript{59} Accordingly, these revisions reflected a shift in the focus of juvenile courts from the rehabilitation of juvenile offenders to public safety and accountability.\textsuperscript{60} However, in spite of "a great deal of commentary emphasizing the increasingly punitive nature of the juvenile justice system" and changes in legislation paralleling societal shifts, "the rehabilitative philosophy [of juvenile codes] remains embedded in the law."\textsuperscript{61} The United States Supreme Court maintains that the juvenile system is a rehabilitative system, though it recognizes that the rehabilitative "idealistic hopes" are rarely realized.\textsuperscript{62} Consequently, despite indications

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55 Smallheer, supra note 10, at 261.
58 Id. at xi.
60 Barry C. Feld, Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform, 79 MINN. L. REV. 965, 1071 (1995) (identifying the trend toward "public safety, punishment, and individual accountability" within juvenile code legislative purpose clauses); see also Andrew Walkover, The Infancy Defense in the New Juvenile Court, 31 UCLA L. REV. 503, 523-24 (1984) ( naming "accountability and punishment" as emerging purposes of juvenile justice statutes and recognizing a heavier consideration of "culpability and accountability" in "waiver and dispositional decisions").
62 McKeiver v. Pennsylvania, 403 U.S. 528, 543-44 (1971). Recently, the Court has continued to hold that the juvenile system is primarily a rehabilitative, rather than punitive, institution. See Schall v. Martin, 467 U.S. 253, 263 (1984) ("[T]he Constitution does not mandate
of the increasingly punitive nature of juvenile courts and codes, "neither legislatures nor courts are yet willing to abandon the goal of rehabilitation." A balanced approach of reconciliation between these seemingly conflicting interests recognizes that punishment and rehabilitation are not mutually exclusive; states must incorporate each into their codes and sentencing schemes as a means to address serious juvenile offenses.

D. Adult Penal Code Purposes and Objectives

The disparity between juvenile and penal code purposes and objectives mandates that the courts assess juveniles under heightened scrutiny during resentencing hearings. The courts' utilization of adult probation standards primarily relies on principles of state penal codes rather than juvenile codes, thus nullifying each juvenile code's carefully tailored legislative purpose. The objectives and portions of the Model Penal Code have been adopted by several states to address adult criminal behavior. The purpose of state penal codes radiates from the "distinctive feature of the penal law that it condemns offenders as wrongdoers, marshalling the formal censure of conviction and coercive sanctions on this ground."6

In contrast to juvenile code objectives, the purposes of the Model Penal Code as reflected in most state codes66 are:

(a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;
(b) to subject to public control persons whose conduct indicates that they are disposed to commit crimes;
(c) to safeguard conduct that is without fault from condemnation as criminal;
(d) to give fair warning of the nature of the conduct declared to constitute an offense; [and]
(e) to differentiate on reasonable grounds between serious and minor offenses.67

Furthermore, the particularized diction and syntax of most state penal code

63 Sheffer, supra note 61, at 484.
65 Id. at 1434.
67 MODEL PENAL CODE § 1.02(1)(a)–(e) (1985).
objectives place a greater emphasis on the offender's conduct rather than the offender. While the language is state specific, juvenile codes instead target the juvenile and seek to treat the offender rather than merely address particularized conduct.

II. Resentencing Hearings Under Blended Sentencing Schemes

A. Blended Sentencing as a Response to Juvenile Delinquency

In an effort to address the disparity between the rehabilitative nature of their juvenile codes and the late twentieth century societal emphasis on retribution, state legislatures began to experiment with new juvenile offender sentencing options. In contrast to the dichotomous approach of early juvenile proceedings, blended sentencing recognizes the intermediate status of serious juvenile offenders through a hybridization of juvenile and adult justice philosophies. Minnesota crafted the first blended model in 1992, thereby initiating the dissemination of blended sentencing schemes. This development required the reassessment of serious juvenile offenders' sentences at the age of majority and “recognize[d] the poor applicability of a bright-line test to distinguish adults from juveniles.” All but eighteen states have enacted a variation of blended sentencing laws that enable judges to simultaneously implement a juvenile sanction and stay an adult sanction contingent upon the juvenile’s behavior. There are two general blended sentencing schemes, juvenile and criminal, though both serve similar purposes. Fifteen states follow juvenile blended sentencing where courts are authorized “to combine a juvenile disposition with a suspended criminal sentence—which functions as a kind of guarantee of good behavior.” The juvenile will remain in the juvenile sanctioning system if he demonstrates such good behavior, but he may be sent to the adult system

68 See id. Each delineated purpose of § 1.02(1)(a)–(e) specifically references “conduct,” thereby illustrating a legislative focus on specific actions rather individual offenders.

69 See supra Part I.B.

70 Smallheer, supra note 10, at 276–77.


72 Id. at 277–78.


75 See id.

76 Id.
BLENDED SENTENCING SCHEMES

if uncooperative. Seventeen other states have implemented criminal sentencing laws guided by “a mechanism whereby individual juveniles who have left the juvenile system for criminal prosecution may be returned to it for sanctioning purposes.” The return is generally conditioned on the juvenile’s compliance with previous sanctions and orders. States such as Minnesota and Montana are governed by Extended Jurisdiction Juvenile statutes that are a bit more flexible in approach, though they share the same premise as general blended sentencing statutes.

Blended sentencing laws “serve as a wake-up call . . . [to give the juvenile] one last chance to change [his] criminal behavior.” Focusing on the individual characteristics of juveniles, blended sentences “offer rehabilitation with a punitive provision attached should rehabilitation fail.” These specialized provisions appear to reflect a legislative presumption in favor of implementing juvenile sanctions for compliant offenders. Furthermore, such a presumption suggests that distinct juvenile standards of assessment may be necessary during resentencing hearings under blended sentencing schemes in order to comply with juvenile code purposes and the intent of blended sentencing schemes. These sentencing schemes serve as extensions of juvenile-based proceedings, thus perpetuating the ultimate rehabilitative objective.

B. Resentencing Hearings Provide a Second Look

In varying statutory fashion, state juvenile codes provide for the return of a juvenile offender to the sentencing court upon reaching the age of majority. Several aspects of this return to the sentencing court are state specific, such as the age of majority or possible dispositions, though the resentencing premise remains constant. The term resentencing generally is not explicit in juvenile codes but is instead described as being “returned to the sentencing court.” Furthermore, this is “not a re-sentencing procedure in the strict sense, as nothing in the language of [the statute] would support it”.

78 Id.
79 Id.
at 15.
80 Id. at 15.
81 Smallheer, supra note 10, at 276 (alteration in original) (quoting David Holmstrom, Punishment Alone Fails to Contain Juvenile Crime, CHRISTIAN SCI. MONITOR, Apr. 9, 1998, at 13).
82 Hunt, supra note 73, at 671 (citation omitted).
83 See Griffin et al., supra note 9 (showing that all but eighteen states have adopted some variation of blended sentencing whereby the juvenile offender is resentenced upon reaching the age of majority); see also, e.g., Ky. REV. STAT. ANN. § 640.030(2) (LexisNexis 2008).
84 § 640.030(2).
renders the original sentence void." The resentencing hearing is a "second look" at the way in which a juvenile offender is serving a sentence and "provides the trial court the opportunity to consider alternative methods of fulfilling the sentence, other than simply transferring the youthful offender to adult corrections." Resentencing hearings share the rehabilitative underpinnings of juvenile codes as they serve similar roles in states across the nation.

During the "second look," state courts determine whether a juvenile offender should return to the juvenile department for the remainder of the sentence, be mandated to complete the sentence as part of adult corrections, or be placed on probation. These three alternatives allow judges to consider a juvenile offender's progress, or lack thereof, and adjust the remaining sentence accordingly. As juveniles develop, it is imperative to reassess the manner in which they are serving their sentences in order to ensure effectiveness. The third disposition alternative of probation separates itself from the others in that it offers an opportunity to allow a serious juvenile offender to return home or to the community. Because juvenile codes generally prioritize the home as a preferred placement for juvenile offenders, this disposition demands the use of juvenile standards during this critical phase.

C. Utilization of Probation Under Blended Sentencing Schemes

Probation is a unique instrument of the court, reflecting the rehabilitative spirit as it assists offenders in rejoining society with court guidance. The American Correctional Association defines probation as "[a] court-ordered disposition alternative through which . . . an adjudicated delinquent is placed under the control, supervision and care of a probation field staff member." Scholars "agree that probation has many advantages over imprisonment," the most pertinent being the "increased opportunities for rehabilitation." The rationale of probation largely mirrors that of juvenile codes; thus, the spirit of the code guides a court's decision to grant or deny

86 Id.
87 Id. (internal quotation marks omitted).
88 See Smallheer, supra note 10, at 278–79 (citations omitted).
probation. Soon after the Illinois Juvenile Court Act of 1899 established the first juvenile court, probation became the primary way the juvenile courts managed juvenile offenders. Interaction between states and juveniles on a probationary basis "represented a significant advance toward humanizing the justice system for delinquent youths." The use of probation as a means of juvenile offender rehabilitation is enhanced by its simultaneous promotion of "accountability through interventions designed to make amends with victims and [its ability] to repair community relationships damaged by delinquency." Juvenile offenders and probation are inherently linked, and courts must consider their rehabilitative relationship during resentencing hearings.

D. This Misuse of Adult Probation Standards

Individual state statutes governing adult probation delineate guidelines, and most share a general philosophy that "the court is supposed to grant probation when the defendant does not pose a risk to society or need correctional supervision, and if the granting of probation would not underrate the seriousness of the crime." Specifically, Kentucky statutes authorize courts to grant probation for a non-violent defendant not otherwise constrained by statutory probation prohibitions unless

(a) [t]here is substantial risk that during a period of probation or conditional discharge the defendant will commit another crime; (b) [t]he defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or (c) [a] disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.

This statute reflects a legislative presumption, also present in other states, in favor of probation through its construction: "probation...shall be granted, unless" one of the three specifications is met. While courts recognize this presumption in favor of probation regarding adults, the ability to rebut this presumption in favor of probation at the resentencing hearings of serious juvenile offenders should be even more restricted because of the rehabilitative and least restrictive mandates permeating juvenile law.

94 Id. at 358.
95 Id.
96 Petersilia, supra note 92, at 177 (citation omitted).
97 Ky. REV. STAT. ANN. § 533.010(2)(a)–(c) (LexisNexis 2008).
98 See Petersilia, supra note 92, at 177 (citation omitted).
99 § 533.010(2).
III. Systemic Consequences of the Conflict

Numerous consequences stem from the conflict between juvenile code purpose clauses and the judicial use of adult probation standards during resentencing hearings. Generally, the conflict promotes the nullification of legislative intent and represents a dangerous precedent if continued unchallenged.

A. Disregard of Juvenile Code Legislative Intent

When a serious juvenile offender is denied probation based upon the utilization of adult standards, the ideological foundation of the juvenile code is shaken. Resentencing courts must recognize the "highly impressionable" nature of juvenile offenders and utilize appropriate standards because the environment in which a juvenile is placed "may affect the individual's future behavior and structural brain development."100 Many state juvenile codes encourage the courts' use of the "least restrictive alternative" regarding the disposition of juveniles.101 The misuse of adult probation standards during resentencing hearings seems to violate this provision of the codes that include it. While not all juvenile codes require a least restrictive alternative, they do emphasize the "best interest,"102 which is most effectively determined by the utilization of the proper standards of assessment.103 A court's denial of probation implicates one of the two other resentencing alternatives: completing the sentence under juvenile or adult correctional systems.104 Consequently, juvenile offenders who might have been granted probation under utilization of juvenile probation standards may instead be improperly placed in a correctional system, juvenile or adult.

Furthermore, the unique nature of juveniles, which initiated the formation of juvenile codes and courts, has been increasingly ignored. Remnants of the age categorizations105 of early American juvenile law still constrain the legal system from dealing effectively with juveniles. Although a resentencing hearing occurs once a serious juvenile offender reaches the age of majority,106 it is recognized that age alone is an improper indication

100 Melissa S. Caulum, Comment, Postadolescent Brain Development: A Disconnect Between Neuroscience, Emerging Adults, and the Corrections System, 2007 Wis. L. Rev. 729, 731-32 (citation omitted).
101 Feld, supra note 7, at 223 (citation omitted).
102 Feld, supra note 7, at 193.
103 See supra Part I.B.
104 See Smallheer, supra note 10, at 278-79.
105 See, e.g., Ky. REV. STAT. ANN. § 635.020(2)-(4) (LexisNexis 2008).
106 See supra Part II.B.
of which correctional system should govern the continued sanction.\textsuperscript{107} Studies indicate that "[t]he human brain continues to mature until at least the age of twenty-five, particularly in the areas of judgment, reasoning, and impulse control."\textsuperscript{108} Thus, juveniles reaching the age of majority may be more aptly considered "emerging adults" rather than adults,\textsuperscript{109} as is the custom. Recent studies conclude "that emerging adulthood is a period between adolescence and adulthood which is 'theoretically and empirically distinct.'"\textsuperscript{110} Juvenile codes promote rehabilitative sanctions, and as juvenile offenders retain the very characteristics the codes seek to protect, state courts must adhere to the ideological principles of those juvenile codes. Though scholars caution that neuroscience presently maintains a relatively high level of generality and courts ought to consider it one among many factors in addressing juvenile justice disparities,\textsuperscript{111} it is imperative that this distinct juvenile nature be recognized and appreciated properly by state courts during resentencing hearings.

\section*{B. Disproportionate Sanctions}

In addition to violating the rehabilitative spirit of juvenile codes, the misapplication of adult probation standards may also result in various harms to the juvenile. Juvenile offenders convicted of similar offenses under different justice systems may receive disproportionate sanctions.\textsuperscript{112} Disparities between juvenile and adult justice systems and methods of sentencing "raise issues of sentencing policy fairness and justice."\textsuperscript{113} For example, the "disjunction between two separate criminal justice systems"\textsuperscript{114} is readily apparent in property offenses, whereby juveniles who are sentenced under adult sanctions may receive shorter sentences than the juveniles sentenced under juvenile sanctions; while for violent crimes, juveniles who are sentenced under adult sanctions may receive longer sentences.\textsuperscript{115}

\begin{footnotesize}
\begin{enumerate}
\item See Hunt, supra note 73 (noting the "poor applicability of a bright-line [arbitrary age difference] test" used by courts to distinguish juveniles from adults). \textit{But see} Feld, supra note 7, at 248 (arguing that while "age provides a crude and imprecise indicator of criminal maturity," it "remains the most useful criterion on which to allocate mitigation" in terms of "administrative and functional convenience").
\item See Caulum, supra note 100, at 731 (citation omitted).
\item See Jeffrey Jensen Arnett, \textit{Emerging Adulthood: A Theory of Development From the Late Teens Through the Twenties}, 55 Am. PSYCHOLOGIST 469, 469 (2000) (arguing that the period of development dubbed "emerging adulthood is neither adolescence nor young adulthood").
\item Caulum, supra note 100, at 739 (quoting Arnett, supra note 109, at 469).
\item Terry A. Maroney, \textit{The False Promise of Adolescent Brain Science in Juvenile Justice}, 85 Notre Dame L. Rev. 89, 94–95 (2009).\textsuperscript{\textcopyright}
\item Feld, supra note 7, at 244; \textit{see also} Tonya Aultman-Bettridge, \textit{Analyzing Juvenile Justice Policy: A Critical Review} 10 U. Fla. J.L. & Pol'y 341, 361–62 (1999).
\item Feld, supra note 7, at 244.
\item Id.
\end{enumerate}
\end{footnotesize}
sentences than juveniles sentenced under juvenile sanctions.\textsuperscript{115} Although aspects of the two systems have merged through the creation of provisions such as blended sentencing, the purpose of each remains distinct. Courts must reassess their use of adult probation standards in the juvenile based resentencing hearing process in order to establish parity among juvenile sanctions across the nation.

\textit{C. Threatened Flexibility of Juvenile Sanctions}

Within this parity, however, juvenile proceedings must retain a sense of flexibility. Most states created juvenile codes and courts in an effort to provide judges with flexibility to determine individual juvenile sanctions.\textsuperscript{116} Juveniles are unique and their physical and emotional disparities necessitate the ability of courts to craft sanctions suitable to each offender. Historically, juvenile judges have “had unfettered discretion in terms of the length of sentence and sentence structure for the juvenile.”\textsuperscript{117} And while the “[f]lexibility within juvenile sentences continues to be a mainstay of the juvenile corrections system,” it is threatened by the misuse of adult standards during proceedings such as resentencing hearings.\textsuperscript{118} The courts’ utilization of adult sentencing standards relies on more determinate sentencing guidelines that diminish the flexibility of courts in sanctioning juveniles. The creation of appropriate probation standards for courts to use during resentencing hearings may preserve the unique flexibility of juvenile proceedings and subsequent sanctions. For without it, the unique nature of juveniles is overshadowed by the convenient misuse of adult standards.

\textit{D. Inappropriate Juvenile Placement in Adult Facilities}

If a juvenile offender fails to meet the adult probation standards, the court may require that the rest of the sentence be served within the adult criminal system. This may not be in the best interest of the juvenile, however, for adult facilities are incapable of adequately sustaining the financial and administrative burdens of juvenile offenders.\textsuperscript{119} Furthermore, “[t]he infusion of juvenile offenders poses a challenge to corrections officials to develop more programming and age-appropriate conditions of confinement for young or more vulnerable inmates.”\textsuperscript{120} Juvenile offenders require specialized treatment regarding “management, programming, and

\begin{itemize}
  \item \textsuperscript{115} Id.
  \item \textsuperscript{116} Caulum, \textit{supra note} 100, at 747.
  \item \textsuperscript{117} Id. (citation omitted).
  \item \textsuperscript{118} Id.
  \item \textsuperscript{119} See Feld, \textit{supra note} 7, at 219 (citation omitted).
  \item \textsuperscript{120} Id. (citation omitted).
\end{itemize}
control” as traditional adult techniques are not appropriate. Courts must take care to apply the correct standards to juvenile proceedings in an effort to utilize state resources for probation and incarceration most effectively.

The conflict between juvenile and adult correctional philosophies culminates in several unintended consequences to the juvenile. The misuse of adult standards nullifies not only the principles of juvenile codes but may also result in increased recidivism of juvenile offenders who do not receive the proper sanctions. Studies have shown that “[t]hose who were incarcerated were more likely to reoffend than those who were sentenced to probation, but those sentenced in criminal court to either incarceration or probation fared worse than their counterparts in juvenile court.” An additional study of juvenile detention facilities determined that “[50–70%] of previously confined youth are rearrested within [one] or [two] years after release.” Scholars have attributed this recidivism to many factors including institutional differences regarding inmate population, organization, staffing, treatment, and educational opportunities.

The malleability of minors is further implicated when juvenile offenders do not receive the proper treatment or placement in an appropriate facility. Research has shown that “[b]ecause adolescents as a group tend to be highly sensitive to peer pressure, young offenders are especially likely to engage in violent behavior and to develop identities linked to domination and control” while in adult correctional facilities. More specifically, in a 1989 study on Texas prisons, nearly one quarter of juvenile offenders in adult correctional facilities “reported that they had either been assaulted or witnessed an act of assault by a fellow inmate,” and others described their experiences in prison as being more frequently characterized by the threat of violence than their experiences in juvenile facilities. Legal scholar Donna M. Bishop advocates alternative sanctions for juvenile offenders because juveniles “attributed the greatest benefit to intensive, long-term programs in which they had formed relationships of trust with caring adults.” Positive, long-term relationships that foster juvenile offender

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121 Id. at 220.
122 Bishop, supra note 8, at 131.
124 Bishop, supra note 8, at 138–148; see Jarod K. Hofacket, Comment, Justice or Vengeance: How Young is Too Young for a Child to be Tried and Punished as an Adult?, 34 Tex. Tech. L. Rev. 159, 167 (2002) (citation omitted).
125 Bishop, supra note 8, at 145.
126 Id.
127 Id. at 146.
128 Id. at 147.
rehabilitation are best cultivated outside of adult institutional pressures.\textsuperscript{129} Thus, the misuse of adult probation standards during resentencing hearings produces a variety of adverse consequences both in ideology and in effect.

IV. PROPOSED RECONCILIATION OF JUVENILE CODES AND PROBATION STANDARDS

As the cost of incarceration continues to rise,\textsuperscript{130} it is imperative that courts establish specialized standards to assess serious juvenile offenders. Rehabilitation and punishment are not mutually exclusive, and aspects of the punitive adult system can coexist with the rehabilitative spirit of juvenile codes and courts without violating juvenile justice jurisprudence. Adult probation standards reflect the rigidity of the criminal system, and "[t]aken together, the behavioral– and cognitive–development research and the Supreme Court’s suggestion that maturity among offenders is fluid indicate that states should take a more flexible approach to promote rehabilitation efforts" during juvenile proceedings.\textsuperscript{131}

Blended portions of juvenile and adult sanctions should parallel the blended nature of the sentencing scheme under which resentencing hearings occur. The traditional factors used in consideration of adult probation should be revised and expanded to reflect a stronger treatment and rehabilitative orientation. In order to uphold the unique juvenile condition, courts must consider factors such as standards regarding age and mental development; previous interactions with the state, criminal or otherwise; and progress made prior to the resentencing hearing, regarding counseling, rehabilitation, and education. This assessment is coupled with the consideration of traditional adult standards including the seriousness of the offense; promotion of just punishment and rehabilitation for the offense; adequate deterrence to future criminal conduct; and the protection of the public from future crimes. Thus, a holistic factor review would provide helpful parameters by which to craft appropriate probation standards under blended sentences. State legislators, pursuant to their respective juvenile codes and adult probation statutes, should address a more succinct integration of these factors.

The conflicting philosophies and disparities between juvenile and adult correctional systems prompted considerable commentary on integrating the two systems during the late twentieth century. One scholarly approach

\textsuperscript{129} See id.


\textsuperscript{131} Caulum, supra note 100, at 746; see also Graham v. Florida, 130 S. Ct. 2011, 2030 (2010) (The court held that sentencing juveniles to life without parole for non–homicide offenses was unconstitutional; therein, the Court heavily relied upon youth brain development and consideration of the unique juvenile condition.)
proposes abolishing the juvenile system and modifying the adult system so as to render juvenile status merely a mitigating factor in sentencing proceedings.\textsuperscript{132} Barry C. Feld suggests that punishment and rehabilitation are inherently incompatible and the increase in punitive measures in juvenile codes replaces the traditional rehabilitative approach.\textsuperscript{133} This is rather extreme, however, for juvenile law is quite complex. Other scholars, including Julianne P. Sheffer, maintain that while punishment and rehabilitation are grounded in different philosophies, they each can be sought after in separate juvenile and adult correctional systems.\textsuperscript{134} Blended sentencing schemes, if properly implemented, are effective because they “do not overpenalize youths, they ensure that more youths are afforded rehabilitation opportunities, and they offer public protection by more effectively rehabilitating youths so that they are less likely to re-offend.”\textsuperscript{135} An integrated approach that simultaneously holds “serious and habitual juvenile offenders accountable and provide[s] effective rehabilitative services”\textsuperscript{136} is necessary to reconcile the disparity between juvenile and adult systems and ultimately uphold the traditional ideal of\textit{pares patriae}.

It is unlikely that the juvenile court system will be dismantled in the near future, and thus, courts and legislatures must work to preserve the juvenile condition through appropriate standards. Courts may initially have to play a more integral role until legislatures are able to establish statutory guidelines. As such, courts should utilize a six-pronged analysis when determining whether to grant probation to a serious juvenile offender during resentencing hearings under blended schemes: (a) juvenile’s age and cognitive development; (b) prior juvenile record and relationship with the state; (c) counseling and education efforts undertaken previously and their success; (d) availability and/or likelihood of continued treatment during probation; (e) the seriousness of the offense in light of promoting just punishment and rehabilitation for the offense; and (f) adequate deterrence to future criminal conduct while protecting the public from future crimes.

\textbf{CONCLUSION}

Juvenile courts and codes were established in recognition of the unique rehabilitative potential of juvenile offenders. As a product of the Progressive movement of the early twentieth century, the codification of leniency laws helped preserve this unique condition.\textsuperscript{137} Juvenile

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\bibitem{132} Feld, \textit{supra} note 59, at 69.
\bibitem{133} \textit{Id.}
\bibitem{134} Sheffer, \textit{supra} note 61, at 506–07.
\bibitem{135} Hunt, \textit{supra} note 73, at 670 (citation omitted).
\bibitem{136} Sheffer, \textit{supra} note 61, at 511 (citing Charles E. Springer, \textit{Rehabilitating the Juvenile Court}, 5 \textit{NOTRE DAME J.L. ETHICS & PUB. POL'Y} 397, 420 (1991)).
\bibitem{137} Barry C. Feld, \textit{A Century of Juvenile Justice: A Work in Progress or a Revolution That

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codes initially emphasized rehabilitation and continue to do so despite modifications to include more punitive objectives. The integration of punitive and rehabilitative objectives is reflected in the blended sentencing schemes that the majority of states utilize in serious juvenile offender dispositions. Fundamentally, "blended sentencing provisions can be seen as a compromise protecting the safety of society and the needs of youthful offenders, by ensuring accountability and providing rehabilitation."138

As the juvenile and adult correctional systems blend, the disparities in philosophy become increasingly apparent.

The resentencing hearing represents the ideological collision of juvenile and adult correctional systems and subsequently renders state juvenile codes ineffective. The courts lack proper legislative guidance during their reassessment of serious juvenile offenders at the age of majority, and thus they are limited in the way that they determine the offender's eligibility for probation. The spirit of the juvenile code is thereby ignored, and juvenile offender vulnerabilities are no longer protected. The resentencing hearing serves the integral purpose of allowing the court to adjust an offender's sentence based upon individual circumstance. This purpose is negated, however, by the courts' use of adult probation standards.

This Note does not seek to implement a specific statutory revision; rather, it seeks to identify and discuss the disparity between juvenile and adult correctional sanctions under blended sentencing schemes and the negative consequences thereof. As state law varies a great deal, no single statutory recommendation would suitably address this issue. Judicial and legislative adaptations of the proposed six-pronged analysis, however, would help to ensure the preservation of the unique juvenile condition through its incorporation of both juvenile and adult probation considerations. Mounting economic and social tensions across the nation necessitate a timely reformation of serious juvenile offender resentencing; for without it, juveniles are neither protected nor uplifted. Thus, it is imperative that state scholars and legislators reexamine blended sentencing schemes and the role of the resentencing hearing in juvenile justice jurisprudence as it relates to serious juvenile offender rehabilitation.

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138 Smallheer, supra note 10, at 289.