THE AGE OF (GUILT OR) INNOCENCE: ¹
USING ADR TO REFORM NEW YORK’S JUVENILE JUSTICE SYSTEM IN THE WAKE OF MILLER V. ALABAMA

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I. INTRODUCTION

“Youth matters.”² The concept is deceptively simple. Of course youth matters. One must be a certain age to drive, to vote, to drink, to be elected president. However, the issue becomes much more complex in the context of criminal responsibility and punishment. Should children be held less accountable for their crimes because of their age? Do juveniles have a greater capacity for rehabilitation than adults? By explaining that youth matters in Graham v. Florida³ and holding that juveniles cannot be sentenced to life in prison without parole for non-homicide crimes,⁴ Justice Kennedy of the United States Supreme Court answered these two questions with a resounding “yes.”

Although short, the phrase “youth matters” will have long-lasting implications for the American juvenile justice system. Most recently, in the Supreme Court case Miller v. Alabama, the Court reaffirmed and expanded on its stance that juvenile offenders have diminished culpability and an increased capacity for change.⁵ Relying heavily on scientific research about brain development,⁶ the Court declared juvenile mandatory life sentences without parole unconstitutional.⁷ In writing for the majority, Justice Kagan emphasized the need for individualized evaluation and sentencing of minors and the importance of their potential for reform.⁸

¹ Title inspired by Edith Wharton’s novel, THE AGE OF INNOCENCE (1920).
³ Graham, 130 S. Ct. at 2028–32.
⁴ Id. at 2030.
⁵ Miller, 132 S. Ct. at 2460 (quoting Graham, 130 S. Ct. at 2026–27, 2029–30).
⁶ Id. at 2464 (quoting Graham, 130 S. Ct. at 2026).
⁷ Id. at 2460.
⁸ Id.
The urging of the Court to consider juveniles’ diminished culpability and increased capacity for change is relevant not only to how youths are sentenced, but also to how they are adjudicated. Currently, the juvenile justice system in the United States is in crisis: too many youths with mental health issues are languishing in detention centers as a result of crimes they committed at least in part due to their mental health conditions. This Note proposes that New York State reform its juvenile justice system to better conform to the ideals of treatment and rehabilitation espoused in Miller by using alternative dispute resolution (“ADR”), and, specifically, juvenile mental health courts, to adjudicate and treat youthful offenders suffering from mental health conditions.

Section II of this Note provides an overview of the American juvenile justice system, beginning with the most recent Supreme Court decisions regarding juveniles, then moving on to a history of juvenile justice in America, and concluding with a more focused look on juvenile justice in New York State. Section III discusses why ADR is appropriate for the adjudication of youthful offenders and highlights certain ADR methods that are currently in practice in the juvenile justice system. Finally, Section IV proposes a new system for juvenile justice in New York State in which juvenile offenders suffering from mental health issues have the option of being adjudicated in juvenile mental health courts rather than in traditional juvenile justice settings.

II. BACKGROUND

A. Juvenile Justice and the United States Supreme Court

Within the last eight years, the United States Supreme Court has decided three seminal juvenile justice cases. First, in the 2005 case Roper v. Simmons, the Court considered the constitutionality of imposing the death penalty on juvenile offenders. Roper involved a brutal murder committed by Christopher Simmons, who was seventeen years old and a Missouri high school student at the

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10 See generally 543 U.S. 551 (2005).
time of the crime. Simmons confessed to the killing, was tried as an adult, and was ultimately convicted and sentenced to death. He attempted to appeal his conviction in both state and federal courts but was unsuccessful. However, after the Supreme Court held in Atkins v. Virginia that the Eighth and Fourteenth Amendments prohibit the execution of the mentally retarded, Simmons filed a new petition for post-conviction relief, arguing that the reasoning in Atkins established that the Constitution prohibits the execution of juveniles as well. The Missouri Supreme Court agreed with this view and Simmons’ death sentence was set aside.

The Supreme Court then granted certiorari to reconsider its previous holding in Stanford v. Kentucky, which rejected the proposition that the Constitution bars capital punishment for juveniles. Writing for the majority, Justice Kennedy held that “the Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of eighteen when their crimes were committed.”

Five years later, the Supreme Court’s decision in Graham v. Florida again significantly altered the landscape of the American juvenile justice system. The issue in Graham was whether the Constitution allows a juvenile offender to be sentenced to life in prison without the possibility of parole for a non-homicide crime. Terrence Jamar Graham was seventeen when he was arrested for the robberies of two homes. In perpetrating these crimes, Graham violated the conditions of his probation for an armed burglary and attempted armed robbery he had committed six months earlier when he was sixteen. Although he could have received as little as five years in jail, the trial court judge sentenced him to life in prison due to his “escalating pattern of criminal conduct.”

11 Id. at 556.
12 Id. at 557.
13 Id.
14 Id. at 558–59.
16 Roper, 543 U.S. at 559.
17 Id. at 559–60.
19 Roper, 543 U.S. at 556.
20 Id. at 578.
22 Id. at 2017–18.
23 Id. at 2018–19.
24 Id.
25 Id. at 2019–20.
judge concluded that nothing else could be done to help him or deter him from a life of crime.\footnote{26}

Graham filed a motion challenging his sentence under the Eighth Amendment’s Cruel and Unusual Punishment Clause, but it was considered denied after the trial court failed to rule on it within sixty days.\footnote{27} The First District Court of Appeal of Florida affirmed, after which the Florida Supreme Court denied review.\footnote{28} The United States Supreme Court, however, granted certiorari\footnote{29} and reversed.\footnote{30} The Court held, in an opinion again written by Justice Kennedy, that “for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole.”\footnote{31}

Many legal scholars and attorneys alike were surprised when the Supreme Court granted certiorari in the 2012 case \textit{Miller v. Alabama}\footnote{32} because it was the third time in just six years that the Court agreed to consider whether a particular form of punishment should be forbidden for juveniles. Perhaps even more surprising, it was the second time in just one and one-half years the Court decided to review the constitutionality of juvenile life sentences.\footnote{33} What is commonly referred to as \textit{Miller v. Alabama} is actually a consolidation of two similar cases, \textit{Miller v. Alabama} and \textit{Jackson v. Hobbs}, which the Court heard simultaneously. In both cases, teenage defendants had been convicted of murder and sentenced to mandatory terms of life in prison without the possibility of parole.\footnote{34}

In 1999, fourteen-year-old Kuntrell Jackson and two other boys attempted to rob an Arkansas video store.\footnote{35} On the way there, Jackson learned that one of his companions was carrying a shotgun.\footnote{36} Jackson stayed outside of the store for most of the rob-
bery but at some point decided to enter, after which one of his friends shot and killed the store clerk. 37 Jackson was charged as an adult with capital felony murder and aggravated robbery, 38 and a jury ultimately convicted him of both crimes. 39 The trial court imposed a statutorily mandated sentence of life imprisonment without the possibility of parole. 40 Jackson filed a state habeas petition, arguing that a mandatory life-without-parole term for a fourteen-year-old violates the Eighth Amendment. 41 However, the court granted the State’s motion to dismiss, and the Arkansas Supreme Court affirmed. 42

The second defendant before the court in *Miller v. Alabama*, Evan Miller, was also fourteen years old at the time of his crime. 43 Along with a friend, he beat his neighbor and set fire to the neighbor’s trailer, killing him in the process. 44 Miller was initially charged as a juvenile, but his case was later removed to adult court, where he was charged with murder in the course of arson. 45 Miller was found guilty, and the trial court imposed a statutorily mandated punishment of life without parole. 46 The Alabama Court of Criminal Appeals affirmed. 47

In *Miller v. Alabama*, the United States Supreme Court found for the defendants, reversing the judgments of both the Arkansas Supreme Court and the Alabama Court of Appeals. 48 The Court held that “mandatory life without parole for those under the age of eighteen at the time of their crimes violates the Eighth Amendment’s prohibition of ‘cruel and unusual punishments.’” 49 The opinion, written by Justice Kagan, explained that mandatory sentences of life in prison without parole do not allow for the consideration of a juvenile’s youth and attendant circumstances, or of the nature of his crime. 50 Such sentences also prevent the consideration of a juvenile offender’s “lessened culpability” and greater

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37 Id.
38 Id.
39 Miller, 132 S. Ct. at 2461.
40 Id.
41 Id.
42 Id.
43 Id. at 2460.
44 Miller, 132 S. Ct. at 2462.
45 Id. at 2462–63.
46 Id. at 2463.
47 Id.
48 Id. at 2475.
49 Miller, 132 S. Ct. at 2460.
50 Id.
“capacity for change.” Moreover, Kagan reasoned, mandatory sentencing structures “run afoul” of the Court’s requirement of individualized sentencing that takes into account mitigating circumstances for defendants facing the most serious penalties.

The rationale behind the Court’s decision in Miller is consistent with, and heavily reliant on, the holdings in Roper and Graham. Taken together, the line of three cases culminating in Miller clearly illustrates the evolution of the Court’s attitude toward youthful offenders and how they should be adjudicated and sentenced. In short, these decisions are “the sharpest indication to date of a shift in how the American judicial system views young felons—from irredeemable predators to victims of circumstance with a potential for rehabilitation.”

An analysis of the Miller opinion reveals two key ideas that contributed to the majority’s ultimate decision in the case. First, “youth matters.” As the Juvenile Law Center explained in its amicus brief, “A child’s age is far ‘more than a chronological fact’; it bears directly on children’s constitutional rights and status in the justice system.” In other words, juveniles are not physiologically, mentally, or emotionally the same as adults, and therefore their crimes cannot be considered in the same way. Second, as a result of these differences, juveniles are inherently less blameworthy than adults; they have “diminished culpability and greater prospects for reform.” Considering these factors, the “penological justifications for imposing the harshest sentences on juvenile offenders,” even when they commit the most heinous crimes, is thus considerably “diminished.”

As initially explained in the Roper decision and then reiterated in both Graham and Miller, the reasons for the majority’s philosophy on juvenile offenders are threefold. First, youth have a “lack of maturity” and an “underdeveloped sense of responsibility” that often result in “impetuous and ill-considered actions and deci-

51 Id. (quoting Graham, 130 S. Ct. at 2026–27, 2029–30).
52 Id. at 2460.
54 Miller, 132 S. Ct. at 2465 (citing Graham, 130 S. Ct. at 2028–32).
56 Miller, 132 S. Ct. at 2465.
57 Id.
sions.”58 Second, juveniles are more vulnerable to negative influences and outside pressures, partly because they have less control, or less experience with control, over their environment.59 Finally, “the character of a juvenile is not as well formed as that of an adult,”60 meaning that juveniles’ personality traits are more transitory and less fixed, and their actions are thus less indicative of any kind of “irretrievable[ly] deprav[ity].”61

The Court reached these conclusions based “not only on common sense—on what ‘any parent knows’—but on science and social science as well,”62 relying in part on amicus briefs from the American Psychological Association and the American Medical Association, among other organizations. The decisions in Roper and Graham were supported by the fact that “‘developments in psychology and brain science’”63 showed “‘fundamental differences between juvenile and adult minds’”64 that “lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed.’”65 Since Roper and Graham, scientific evidence supporting these conclusions has “become even stronger.”66 A growing body of research in developmental neuroscience,67 including studies on the physiology of adolescent brains,68 “continues to con- firm and expand on the fundamental insight that . . . the signature qualities of adolescence reduce juveniles’ culpability and increase their capacity for change.”69

For example, using magnetic resonance imaging (“MRI”) technology, scientists have been able to study the development of adolescents’ brains and have determined that they undergo significant changes well past the age of twenty that can have an impact on their morality, judgment, and impulse control.70 Much research

58 Roper, 543 U.S. at 564 (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)).
59 Id. at 569.
60 Id. at 570.
61 Miller, 132 S. Ct. at 2464.
62 Id. (quoting Roper, 543 U.S. at 569).
63 Id. at 2469 (quoting Graham, 130 S. Ct. at 2026).
64 Id. at 2469.
65 Id. (citing Graham, 130 S. Ct. at 2027).
66 Id. at n.5.
68 Id. at 4–5.
69 Id. at 5.
has focused on changes that occur within the brain’s frontal lobes—specifically in the prefrontal cortex—and in the connections between brain structures, as these areas play a vital role in executive functions.\textsuperscript{71} In sum, the most current findings show that “the brain systems that govern many aspects of social and emotional maturity, such as impulse control, risk avoidance, planning ahead, and coordination of emotion and cognition, continue to mature throughout adolescence,” with the prefrontal cortex being “among the last areas in the brain to mature fully.”\textsuperscript{72} Such findings are critical because they demonstrate that “even in late adolescence, important aspects of brain maturation remain incomplete.”\textsuperscript{73} Accordingly, “juveniles may thus be expected to change as they age and their brains mature, evincing both fewer impulses toward reckless and criminal behavior and an increased ability to restrain such impulses.”\textsuperscript{74}

The implications of the \textit{Miller} decision are significant and far-reaching and represent a veritable sea change in the legal approach to handling juvenile offenders. As a result of the Court’s ruling, the mandatory sentencing structures in twenty-six states across the country were essentially declared unconstitutional.\textsuperscript{75} However, questions remain as to when and how individual states will implement the Court’s new guidelines, and whether the decision applies retroactively to the more than 2500 juvenile life sentences that have already been handed down.\textsuperscript{76} What is certain is that the decision does \textit{not} place a “categorical bar” on life without parole for juveniles that would foreclose judges from doling out that punishment.\textsuperscript{77} Rather, the holding is more limited in that it prohibits \textit{mandatory} sentences of life without parole for youthful offend-

\textsuperscript{71} Brief for American Psychological Association et al., \textit{supra} note 67, at 12.
\textsuperscript{72} \textit{Id.} at 14.
\textsuperscript{73} \textit{Id.}
\textsuperscript{74} \textit{Id.}
\textsuperscript{76} \textit{Id.} For example, in May 2013, the Illinois legislature “finished the year’s legislative session and walked out of the Capitol” without implementing any new legislation that would bring the state’s sentencing guidelines into compliance with the \textit{Miller} decision. More than one hundred Illinois prisoners who were convicted as juveniles are currently still facing life without parole. Paige Sutherland, Bryan Lowry, & Ananth Baliga, \textit{Cruel, Unusual, and a Matter of Law in Illinois}, \textit{The Atlantic} (June 5, 2013, 12:19 PM), http://m.theatlantic.com/national/archive/2013/06/cruel-unusual-and-a-matter-of-law-in-illinois/276557/.
\textsuperscript{77} \textit{Miller}, 132 S. Ct. at 2469.
2013] THE AGE OF (GUILT OR) INNOCENCE

ers.\textsuperscript{78} The Court’s decision allows for, and, in fact, requires, that judges take into account juvenile offenders’ individual circumstances when sentencing them in order to avoid the risk of disproportionate punishment.\textsuperscript{79}

However, it is interesting to note that despite the limited nature of the holding, Justice Kagan remarks in the majority opinion that, given the Court’s findings in \textit{Roper, Graham,} and \textit{Miller} about juveniles’ diminished culpability and increased capacity for change, it is the majority’s belief that “appropriate occasions” for sentencing juveniles to life in prison without parole will be “uncommon” in the future.\textsuperscript{80} Such dictum seems suggestive of how the Court might rule in any future juvenile justice cases it hears to limit even further the availability of certain severe punishments for juvenile offenders. Indeed, in his dissent to the \textit{Miller} decision, Chief Justice Roberts calls the majority opinion a mere “way station,” and states that “unless confined, the only stopping point for the Court’s analysis would be never permitting juvenile offenders to be tried as adults.”\textsuperscript{81} Therefore, although the scope of the \textit{Miller} decision is technically somewhat narrow, when viewed alongside the holdings in \textit{Roper} and \textit{Graham}, it is illustrative of the Court’s current (and perhaps future) philosophy on juvenile justice as a whole. Viewed in this context, the Court’s insights about juvenile offenders are not just relevant to the juvenile death penalty and juvenile life without parole; according to Roberts, the conclusion that juveniles are typically less culpable than adults “has pertinence beyond capital cases.”\textsuperscript{82}

The \textit{Miller} decision has therefore “granted states with an unprecedented opportunity to think holistically about how [they] want to address the needs of both victims and youthful offenders.”\textsuperscript{83} It is not only up to the twenty-six states directly affected by the decision to amend their sentencing schemes; it is up to all fifty states to take a cue from the trajectory of change evident from the \textit{Miller} line of cases and reform their juvenile justice systems ac-

\textsuperscript{78} Id.
\textsuperscript{79} Id.
\textsuperscript{80} Id.
\textsuperscript{81} Id. at 2481–82 (Roberts, J., dissenting).
\textsuperscript{82} \textit{Graham}, 130 S. Ct. at 2039 (Roberts, J., concurring).
B. History of the American Juvenile Justice System

Approaches to adjudicating youthful offenders in the United States over the last 150 years have been so varied and volatile that the evolution of the juvenile justice system has been called “schizophrenic” and compared to a “roller coaster,” a “metronome,” and a “pendulum.” For most of the nineteenth century, juvenile offenders were tried as adults. However, a confluence of factors resulted in significant changes in the late 1800s. Industrialization and immigration led to the urbanization of major cities, which in turn caused a rise in crime. Truancy and delinquency quickly increased, leading to a general “desire to rescue children and restore them to a healthful, useful life.” At the same time, an interest in social science and social justice was growing, and reformers began to call attention to the “brutality” of incarcerating young children alongside adult criminals in prisons with sub-standard living conditions.

Juveniles below a certain age, reformers argued, lacked criminal intent and were less able than their adult counterparts to understand the wrongfulness and consequences of their conduct.

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85 Bronner, supra note 53.
88 Gertz, supra note 86, at 343.
89 CHILDREN AND JUVENILE JUSTICE, supra note 84, at 4.
90 Id.
91 Id.
92 Id.
93 Id. See also Gertz, supra note 86, at 342.
94 It is generally accepted that “a criminal offense consists of two elements: an actus reus (or bad act), and a mens rea (a guilty state of mind.)” JOHN KAPLAN ET AL., CRIMINAL LAW: CASES AND MATERIALS 109 (4th ed. 2000). "Mens rea is also often referred to as “scienter” or “criminal intent.” WAYNE R. LAFAYE, CRIMINAL LAW 239 (4th ed. 2003). Since early common law, there has been an unwillingness to punish children for criminal activity, as they are “thought to be incapable of forming criminal intent.” Id. at 486.
95 Gertz, supra note 86, at 343–44.
Furthermore, progressives believed that children had a greater potential for rehabilitation and that imprisoning them with adults would not provide the treatment they needed in order to later make positive contributions to society. They called attention to the “greater vulnerability and salvageability of children” and advocated for separate court proceedings and institutions for youths that would focus on treatment and supervision as a means for preventing recidivism. These progressives believed that society’s role was not necessarily to determine a young offender’s guilt or innocence, but to explore the cause of his behavior and rehabilitate him through clinical, rather than punitive, procedures.

The efforts of reformers resulted in the Illinois legislature passing the Juvenile Court Act in 1899, which established the first juvenile court in the United States that same year in Chicago. The new court was meant to be more flexible and informal than adult criminal court and was intended to provide a more individualized, less adversarial approach to the adjudication of children. It was developed based on the concept of parens patriae, originally a British doctrine, that embodies the idea that “the State ha[s] the inherent power and responsibility to provide protection for children.” Stemming from this concept, a “key element” of the new juvenile court process was its focus on “the welfare of the child,” with children being seen as “in need of the court’s benevolent intervention.”

The new court operated on a civil, rather than criminal, system and focused more on rehabilitation than punishment, with the goal of eventually reintegrating juvenile offenders back into society as productive citizens. Several characteristics of the Illinois court

96 Id. at 344.
98 Conward, supra note 97, at 42.
99 SNYDER & SICKMUND, supra note 87, at 86.
100 Gertz, supra note 86, at 344.
101 SNYDER & SICKMUND, supra note 87, at 86. See also CHILDREN AND JUVENILE JUSTICE, supra note 84, at 3; Lode Walgrave, Not Punishing the Children, but Committing them to Restore, in PUNISHING JUVENILES: PRINCIPLE AND CRITIQUE 99 (Ido Weijers & Antony Duff eds., 2002).
102 Id.
differentiated it from an adult criminal court. For example, hearings were private and more informal, records were confidential, and a new vocabulary was used to describe the proceedings—those involved spoke of “initial hearings” instead of “arraignments,” of “findings of involvement” instead of “convictions,” and of “dispositions” instead of “sentences.” Even the physical surroundings were different, with the judge sitting at a desk or table rather than behind a bench. Most importantly, though, the new juvenile court was set apart by its goals to investigate, diagnose, and prescribe treatment rather than assign guilt and blame.

Within the first quarter of the twentieth century, nearly every state followed the example of Chicago and established a juvenile court that treated child offenders differently from adult criminals. By 1925, there were juvenile courts in every state but two. For several decades, as the juvenile justice system grew, it enjoyed a period relatively free of criticism. However, as the system became more established, its informality and focus on judicial discretion gradually became the subject of increased skepticism. Critics raised concerns that “it lacked the important constitutional protections that grew out of the overall criminal justice system, including due process and right to counsel.”

The 1960s marked a major turning point for the American juvenile justice system. It was during this period that several important Supreme Court decisions granted juvenile offenders many of the same constitutional rights and protections as their adult counterparts. One of the most influential of these cases was In re Gault, in which the Supreme Court “offered the first severe legal critique of the parens patriae conception of juvenile justice.” In Gault, the Court held that the judicial proceedings which had led to a fifteen-year-old boy being sentenced to six years in detention for placing a lewd phone call to his neighbor had deprived him of his right to counsel, to notice of the charges against him, to confront
and cross-examine witnesses, and to the privilege against self-incrimination. The Court recognized that denying juveniles such rights was an unacceptable violation of due process.

Gault was followed by In re Winship in 1970, in which the Court held that juveniles, like adults, are constitutionally entitled to proof beyond a reasonable doubt when they are charged with a crime. Then in 1975, Breed v. Jones extended the constitutional protection against double jeopardy to juveniles. With young offenders gradually being afforded the same rights and protections as adults, there emerged a growing consensus that they should also be held as accountable as adults and treated similarly.

At the same time, the media began reporting more frequently on juvenile crime, and, with the onset of the 1980s, the drug epidemic spread, youth unemployment grew, and juvenile homicide rates increased. The result was a fear of juvenile crime among the public that “pushed the juvenile justice system toward more repressive action.” The goals of rehabilitation and reintegration that had characterized the juvenile justice system in its infancy were thus essentially all but abandoned and replaced with a push to treat juvenile offenders more harshly. At the federal level, the Reagan administration, believing that the juvenile justice system was too protective of juvenile offenders at the expense of public safety, began targeting serious or repeat juvenile offenders using a

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115 See generally Gault, 387 U.S. 1.
116 Id.
119 Gertz, supra note 86, at 349.
120 Id. at 348. See also Conward, supra note 97, at 47 (arguing that “juveniles are attributed a significant amount of the blame for the perceived rise in violent crime,” largely because of “media sensationalism of juvenile offenders”).
121 Bronner, supra note 53.
122 According to one report, “Extensive media coverage of violent crimes” led to the public’s perception that “violence committed by juveniles had reached epidemic proportions.” Conward, supra note 97, at 47 (quoting Patricia Torbet et al., U.S. Dept of Justice, Office of Juvenile Justice and Delinquency Prevention, State Responses to Serious and Violent Juvenile Crime 1 (July 1996)).
123 C. Aaron McNeece & Sherry Jackson, Juvenile Justice Policy: Current Trends & 21st Century Issues, in THE JUVENILE JUSTICE SOURCEBOOK: PAST, PRESENT AND FUTURE 41, 43 (Albert R. Roberts ed., 2004). See also Snyder & Sickmund, supra note 87, at 88 (explaining, “Although there was a substantial misperception regarding increases in juvenile crime, many States responded by passing more punitive laws.”).
124 See generally McNeece & Jackson, supra note 123, at 43–44.
“get tough” approach to shift the system “in the direction of control.”

C. Juvenile Justice in New York State

A similar trend occurred at the state level, with almost every state changing its laws and expanding the grounds for charging and sentencing juveniles as adults. New York was no exception. From the 1970s to the 1990s, New York “largely abandoned its focus on rehabilitation for juvenile offenders in favor of punitive sanctions and institutional placement.” One particular impetus for the crack down on juvenile crime in New York was the 1978 murder of two people on a New York City subway by a fifteen-year-old who, due to his age, was ultimately sentenced to only five years in jail. Public outrage ensued, which in large part led then-governor Hugh L. Carey to sign legislation lowering the age at which juveniles could be tried as adults for certain offenses. Until this point, the age of criminal responsibility was sixteen for all crimes. However, the Juvenile Offender Act of 1978 lowered the age of criminal responsibility to thirteen for murder and fourteen for assault, arson, burglary, kidnapping, and rape. The age for general criminal responsibility was left at sixteen, where it remains today. In fact, New York is one of only two states in

125 Id. at 44.
126 Bonner, supra note 53.
128 See John Eligon, Two Decades in Solitary, N.Y. TIMES (Sept. 23, 2008), available at http://www.nytimes.com/2008/09/23/nyregion/23inmate.html?pagewanted=all&_r=0. This was the case of Willie Bosket. Id.
129 Id.
132 Singer & McDowall, supra note 130, at 523.
133 See N.Y. Fam. Ct. Act § 301.2(1) (McKinney 2010); Penal § 30.00(2). Two bills, The Assembly Leadership Bill and the Sentencing Commission Bill, were introduced in New York in early 2012 that proposed raising the age of criminal responsibility in the state from sixteen to eighteen. However, neither bill passed. Merril Sobie, Raising the Age: New York’s Archaic Age of Criminal Responsibility, N.Y.L.J. (Sept. 4, 2012), available at http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202569840581&Raising_the_Age_New_Yorks_Archaic_Age_of_Criminal_Responsibility&shreturn=20130108154853. As of July 2013, advocacy groups were still pushing New York lawmakers to pass similar legislation without success. While the age currently
which the statutory cut-off age for juvenile jurisdiction is fifteen; any child sixteen or older, regardless of his alleged crime, is processed in the adult criminal system. Thus, New York’s Juvenile Offender law is one of “the most punitive delinquency law[s] in the nation.”

Proponents of the Juvenile Offender Act claimed that harsher punishments, such as those made possible by the Act, would have a deterrent effect on serious juvenile crime. However, research has shown that the juvenile homicide, assault, rape, and arson rates have not decreased as a result. On the other hand, there is evidence that prosecuting juveniles in adult criminal courts can result in their committing serious crimes in the future. The problems with New York’s juvenile justice system, however, go well beyond the inefficacy of the Juvenile Offender Act; as one reporter has put it, “the system, as it stands, is not working.”

One major issue is that too many juveniles in New York are being arrested and incarcerated unnecessarily. The state places nearly 1700 juveniles in institutional facilities each year, and many of these youths most likely do not even pose a risk to public safety. For example, in 2007, 53% of those incarcerated were sent away merely for committing a misdemeanor. In some cases, they were incarcerated for the sole reason that “there [were] no...
312 CARDOZO J. OF CONFLICT RESOLUTION [Vol. 15:297

community-based alternatives to incarceration available.”143 Part of the problem is that New York does not have a standardized statewide system for determining whether juveniles confined to institutional facilities are actually a danger to society.144 As explained in a 2010 report by the New York State Juvenile Justice Advisory Group:

New York State’s juvenile justice system is a sprawling network of state and local agencies and non-profits with a wide array of practices and standards. A child who is arrested and ultimately ‘placed,’ or incarcerated, as part of his or her sentence will, in almost every case, have appeared before a minimum of five different entities, each answering to a different executive and often following different standards. Those standards and procedures differ from county to county, leading to a ‘system’ of uncoordinated assessment, response and protocols.145

The sheer number of stakeholders and procedures involved on the path from arrest to detention make New York’s juvenile justice system at best confusing, at worst ineffective.

Another problem is that despite incarceration, or perhaps because of it,146 juvenile recidivism is extremely high. Sixty-three percent of youths released from New York State custody are rearrested within two years, 43% of those for felonies.147 Long-term research shows even higher recidivism rates. Data from the New York State Office of Children and Family Services has revealed that 91% of youths convicted of a felony at age sixteen were rearrested by the time they were twenty-six.148

Third, there is a mental health crisis in the juvenile justice system regarding the number of juveniles with mental health issues

143 CHARTING A NEW COURSE, supra note 127, at 14.
144 Id.
146 When juveniles are placed in adult prisons, incarceration can increase recidivism instead of prevent it. Teenagers housed with adult prisoners are exposed to trauma such as violence and sexual abuse. Zelon, supra note 103. Research shows that exposure to abuse and maltreatment is, in turn, correlated with delinquent behavior, violent crime and arrest. See TOUGH ON CRIME, supra note 145, at 18. Juvenile offenders placed in youth detention centers are generally no better off. They are often subject to “Dickensian conditions of confinement,” and suffer extreme abuse and neglect. Reports of such brutality led to a two-year study by the United States Department of Justice, the results of which noted how this “culture of violence perpetuate[s] more violence.” Id. at 20.
147 TOUGH ON CRIME, supra note 145, at 17.
148 Zelon, supra note 103.
who go untreated.\textsuperscript{149} With juvenile courts moving away from rehabilitative goals and more toward punitive measures in recent years, court-involved youths with mental health issues have increasingly been punished for their crimes without being treated for their underlying conditions. Put plainly, “the sad reality is that the current juvenile justice system is simply not equipped to meet the mental health needs of large numbers of juveniles who either have psychiatric disorders or are at risk of developing them.”\textsuperscript{150} This is a problem not just in New York, but nationwide. Most youths across the country involved in the juvenile justice system—between 65\% and 70\%—experience mental health disorders.\textsuperscript{151} In one study, 79\% of youth who met criteria for at least one mental health disorder, actually met criteria for two or more diagnoses.\textsuperscript{152} More than 60\% were diagnosed with three or more mental health disorders.\textsuperscript{153} Approximately 27\% had a mental health disorder severe enough to require significant and immediate treatment, suggesting that more than a quarter of youth should be receiving some form of mental health services while involved in the juvenile justice system.\textsuperscript{154} In New York State in particular, nearly 50\% of juveniles admitted to state-run institutions in 1997 were determined to have mental health needs.\textsuperscript{155}

Sections II, III, and IV below focus on methods for improving the New York State juvenile justice system in accordance with the Supreme Court’s findings in \textit{Miller}, specifically in regard to the adjudication and treatment of juvenile offenders with mental health issues.

\textsuperscript{149} Cocozza & Shufelt, \textit{supra} note 9, at 1. \textit{See also} Callahan et al., \textit{supra} note 9, at 133.
\textsuperscript{151} Callahan et al., \textit{supra} note 9, at 130.
\textsuperscript{153} Id.
\textsuperscript{154} \textit{Id.} at 4.
\textsuperscript{155} \textit{Charting a New Course, supra} note 127, at 59.
III. Discussion

A. ADR as a Solution to Problems within the Juvenile Justice System

The Supreme Court has “recognized as legitimate” four goals of criminal punishment: retribution, deterrence, incapacitation, and rehabilitation. The theory of retribution has roots in the Old Testament and can be defined as “administering criminals their ‘just deserts’ for their crimes.” In other words, it can be thought of as “pay-back” to the offender for the damage caused by his offense. The idea behind deterrence is to intimidate an offender so as to prevent him from committing additional crimes in the future. Incapacitation is meant to physically stop an offender from committing another offense, or to remove the physical capability of offending. Finally, the premise of rehabilitation is “address[ing] the root of the problem and formulat[ing] a proper treatment regime using social and personalized measures.”

Unlike retribution, rehabilitation is forward-looking—it does not so much address the crime already committed, but instead aims to prevent recidivism. The underlying theory is that “the offender committed the specific offense for specific motives, which are social, economic, mental, behavioral or physical,” and, “with appropriate treatment, these motives will not spur the offender to commit further offenses.”

Retribution has long played a role in the adult criminal system, and, since the 1970s, has enjoyed a resurgence as that system’s dominant penological goal. In contrast, at its inception, rehabili-

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156 Graham, 130 S. Ct. at 2028 (citing Ewing v. California, 538 U.S. 11, 25 (2003)).
157 Christopher D. Lee, They All Laughed at Christopher Columbus When He Said the World Was Round: The Not-So-Radical and Reasonable Need for a Restorative Justice Model Statute, 30 St. Louis U. Pub. L. Rev. 523, 526 (2011).
159 Id.
160 Id. at 69–70.
161 Id. at 70.
162 Id. at 66–67.
163 Id. at 67.
164 See Hallevy, supra note 158, at 68. See also Lee, supra note 157, at 526 (explaining, “Our traditional criminal system is known as a retributive justice system.”); Gilbert et al., supra note 103, at 1200 (describing adult criminal courts as “seek[ing] to induce law-abiding behavior by means of punishment for wrongdoing”).
tion was the primary objective of the American juvenile justice system. However, the focus in large part switched to retribution toward the end of the twentieth century. The goal, though, appears to have come full circle, with the Supreme Court indicating in its rulings in *Roper*, *Graham*, and, most recently, *Miller*, that due to juveniles’ “lessened culpability” and “greater capacity for change,” the emphasis of juvenile adjudication and sentencing should be on rehabilitation.

ADR refers to “a variety of processes available for resolving disputes other than through traditional litigation.” It “differs fundamentally from the adversarial system in that it seeks a mutually satisfactory process and resolution to a dispute.” There are several reasons why certain ADR methods may be better suited than conventional methods of adjudication for facilitating the rehabilitation of juvenile offenders. For example, while there are many different philosophies and approaches to ADR, in general, it is considered to be more creative, more flexible, and more focused on problem-solving than typical adversarial processes. In addition, because the parties play such a large role in crafting a resolution to the matter in question, they often come away from the process feeling empowered, and the resulting outcomes are thus frequently more satisfactory and long-lasting.

These aspects of ADR make certain ADR methods well-suited for adjudicating juvenile offenders, who are generally char-

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165 Gertz, supra note 86, at 344.
166 See Gilbert et al., supra note 103, at 1212 (“‘There is a cyclical pattern in juvenile justice policies in which the same sequence of policies [fueled by philosophies of the time] has been repeated three times in the last two hundred years.’ That cycle being ‘the introduction of leniency in a major reform, a gradual toughening up until officials must choose between imposing harsh punishments and doing nothing, and then the reintroduction of leniency in another major reform.’”) (quoting Thomas J. Bernard, *Cycles of Juvenile Justice* 1 (1992)).
169 Id.
170 See Pamela L. Airey, Comment, *It’s a Natural Fit: Expanding Mediation to Alleviate Congestion in the Troubled Juvenile Court System*, 16 J. AM. ACADE. MARRIAGE. LAW 275, 279–80 (1999). In a study on the use of ADR, the National Council of Juvenile and Family Court Judges recognized the link between ADR and the treatment of juveniles, explaining, “Although perhaps not foreseen by its Illinois founders in 1899, ADR was essential to the foundation upon which the juvenile court movement was based.” Id.
171 Schneider, supra note 168, at 1084.
173 Id. at 13.
acterized by their capacity for reform. The less litigious and adversarial nature of ADR, combined with its emphasis on problem-solving rather than punishment, is consistent with the prospective goals of rehabilitation. In addition, ADR addresses the Supreme Court’s requirement, repeatedly stressed in the Miller decision, of individualized sentencing that takes into consideration a juvenile’s youth and other attendant or mitigating circumstances.174 The flexibility of certain ADR processes allows for such an individualized approach to juvenile offenders, in contrast to the more formal process of litigation and the one-size-fits-none “solution” of incarceration. In sum, as one commenter has put it, ADR methods offer the parties involved in a juvenile adjudication the ‘opportunity to resolve legal and social issues without formal legal proceedings’. . . The lack of formality associated with ADR also makes it easier to engage in problem-solving discussions . . . This interactive approach inevitably results in an increased likelihood that the parties will honor terms of an agreement.175

B. Types and Goals of ADR Methods Used within the Juvenile Justice System

ADR is commonly described as being divided into three main categories: negotiation, mediation, and arbitration.176 When analyzing ways to integrate ADR into the juvenile justice system, mediation, and, more specifically, victim-offender mediation (“VOM”), is often the method that is discussed.177 In fact, “the most widespread use of mediation with juvenile offenders is victim-offender mediation.”178 VOM generally involves bringing juvenile offenders together with their victims for a face-to-face encounter overseen by a neutral third party.179 The goal of the session is to

174 Miller, 132 S. Ct. at 2460.
175 Conward, supra note 97, at 74 (quoting Hon. Leonard P. Edwards, The Future of the Juvenile Court: Promising New Directions, 6 The Juvenile Court 131, 134 (Winter 1996)).
176 Schneider, supra note 168, at 1086.
178 Smith, supra note 177, at 14.
179 Id. See also Gertz, supra note 86, at 351.
reach a mutually agreed upon solution\textsuperscript{180} that often involves an apology, as well as restitution and/or some form of service to the community in which the offense took place.\textsuperscript{181}

VOM is used primarily with the concept and goals of restorative justice in mind.\textsuperscript{182} Restorative justice is a theory of law thought to have existed since humankind first started forming communities that reflects aspects of Native American and Aboriginal notions of justice.\textsuperscript{183} While retributive justice views crime as a conflict between the offender and the state, in the restorative justice framework, crime is seen as a conflict between the offender and the individual injured by the crime.\textsuperscript{184} In other words, restorative justice places a special emphasis on the needs of the victim, advocating a process that “allows those involved in a crime (the victim, the offender, and others affected) to more directly address the harm that was caused and help heal the victim.”\textsuperscript{185} At the same time, the offender is taught responsibility and accountability, and is helped to understand the impact of his actions.\textsuperscript{186}

While restorative justice principles and practices have proven effective in adjudicating some juvenile offenders, therapeutic jurisprudence (“TJ”), a related but distinct legal concept, is more commonly associated with mental health, and is more appropriate for adjudicating and rehabilitating those young offenders with mental health conditions. TJ is a concept that “grew out of mental health law,”\textsuperscript{187} and that has been defined as “the use of social science to study the extent to which a legal rule or practice promotes the psychological and physical well-being of the people it affects.”\textsuperscript{188} In short, it is “the study of the law as a therapeutic agent”—one that can “enhance the mental health functioning”\textsuperscript{190} of those in

\textsuperscript{180} Gertz, supra note 86, at 351.

\textsuperscript{181} Smith, supra note 177, at 14.

\textsuperscript{182} See Lee, supra note 157, at 544 (explaining, “One of the first types of restorative justice programs developed was victim-offender mediation (VOM).”).

\textsuperscript{183} Id. at 528–29.

\textsuperscript{184} Gertz, supra note 86, at 351–52.

\textsuperscript{185} Lee, supra note 157, at 528.

\textsuperscript{186} Smith, supra note 177, at 14.


\textsuperscript{188} Geary, supra note 150, at 679 (internal citations omitted). See also Gene Griffin & Michael J. Jenuwine, Essay, Using Therapeutic Jurisprudence to Bridge the Juvenile Justice and Mental Health Systems, 71 U. CIN. L. REV. 65, 66 (2002).

\textsuperscript{189} Wexler, supra note 187. See also Geary, supra note 150, at 680.

\textsuperscript{190} Ellen Waldman, Substituting Needs for Rights in Mediation: Therapeutic or Disabling?, 5 PSYCHOL. PUB. POL’Y & L. 1103, 1104 (1999).
contact with the judicial system. TJ focuses attention beyond the specific issues and disputes before the court, and instead places an emphasis on the individuals involved and their special needs and circumstances.\textsuperscript{191}

One way that TJ has been practiced in both the criminal and juvenile justice systems is through the implementation of what are called “problem-solving” or “treatment” courts. In fact, TJ is considered the “theoretical basis for the entire ‘treatment court’ movement”; the formation of these courts to address the specific needs of certain types of offenders is “perhaps the best example of the application of therapeutic jurisprudence concepts in the justice system.”\textsuperscript{192} Examples of problem-solving courts include drug treatment courts, domestic violence courts, and mental health courts.\textsuperscript{193} Each of these types of courts identifies a target population, defined by the offense and/or the therapeutic needs of the individual and uses a modified court process to motivate behavior change. The purpose is to identify and treat the underlying cause of the criminal conduct using innovative treatment models combined with nontraditional justice system roles and processes.\textsuperscript{194}

Problem-solving courts are thus ideal for adjudicating juvenile offenders; their focus on treatment and rehabilitation, rather than punishment, and their use of non-traditional, “creative solutions to the issues presented by each individual offender”\textsuperscript{195} is directly in line with the Supreme Court’s recent juvenile justice jurisprudence.

C. The Availability of ADR Programs in New York State

New York is relatively progressive in terms of the number of ADR programs available within the state for youths who have come in contact with the juvenile justice system. The New York State Unified Court System Office of Alternative Dispute Resolution Programs administers the Community Dispute Resolution Centers Program, which serves as a resource in all sixty-two New York counties, and offers youth initiatives and educational pro-

\textsuperscript{191} Gilbert et al., supra note 103, at 1198.
\textsuperscript{192} Geary, supra note 150, at 680–81.
\textsuperscript{193} Gilbert et al., supra note 103, at 1197–98.
\textsuperscript{194} Id.
\textsuperscript{195} Geary, supra note 150, at 681.
programs as alternatives to criminal, civil and family court litigation. These initiatives include Conflict Resolution Education, Peer Mediation, Parent/Child Mediation, PINS (Persons In Need of Supervision) Mediation, and Juvenile Accountability Conferencing.

New York has also been at the forefront of the problem-solving court movement. There are nearly three hundred problem-solving courts in operation in New York State, including drug treatment courts, mental health courts, sex offense courts, community courts, domestic violence courts, and integrated domestic violence courts. Most of these courts are only for adult offenders, though. However, some problem-solving courts for juveniles do exist within the state, many of which were established by the Center for Court Innovation (“CCI”), an organization founded in 1996 that “functions as the [New York State] court system’s independent research and development arm, creating demonstration projects that test new ideas.” The Center’s projects on juvenile justice have helped establish juvenile community courts, youth courts, juvenile attendance courts, and youthful offender domestic violence courts. However, no juvenile mental health courts have been created. As of November 2012, there were twenty-eight mental health courts in New York State, but not one of them was designated solely for juvenile offenders with mental health conditions.

One entity in New York State that does somewhat resemble a juvenile mental health court is the Red Hook Community Justice Center in Brooklyn, New York. A demonstration project of the CCI, the Center was launched in 2000 and is home to “the nation’s first multi-jurisdictional community court.” The court has a sin-

197 Id.
199 The Center for Court Innovation, Who We Are, http://www.courtinnovation.org/who-we-are. See also Sammon, supra note 198, at 927–28.
202 Red Hook Community Justice Center, Programs and Services Pamphlet (2012).
gle judge who hears cases that “under ordinary circumstances would go to three different courts: Civil, Family and Criminal.”\(^{203}\) The court thus provides a “coordinated, rather than piecemeal approach to people’s problems.”\(^{204}\) The Center also houses a clinical program that assesses and makes referrals for litigants thought to be in need of mental health services and/or drug abuse treatment.\(^{205}\) In addition, educational and community service programs are often mandated as alternatives to incarceration.\(^{206}\)

The holistic approach and various services offered by the court, including mental health referrals, make it somewhat similar to a juvenile mental health court, and have inspired imitation around the state—following the success of the Red Hook Community Court, community courts have also been established in Harlem, Staten Island and Manhattan.\(^{207}\) However, these courts differ from juvenile mental health courts in several important ways. First and foremost, they handle adults, as well juveniles. Second, their focus is not solely on adjudicating those with mental health issues. Although some people who come before these courts have mental health conditions, and, as a result, are provided with mental health services as part of their dispositions, these courts also handle many cases with no mental health component. Thus, while the Red Hook Community Justice Center certainly provides a model to be learned from, it is not an adequate substitute for a juvenile mental health court.

IV. Proposal

A. The Case for Juvenile Mental Health Courts

In order to bring New York’s juvenile justice system in compliance with the Supreme Court’s call for increased focus on the treatment and rehabilitation of young offenders, juvenile mental health courts must be established throughout the state. Youths with mental illness often do not respond well to, or benefit from, traditional juvenile justices procedures because their illnesses “make it

\(^{203}\) Id.
\(^{204}\) Id.
\(^{205}\) Interview with Naureen Rashid, Director of Court Operations, Red Hook Community Justice Center, in Brooklyn, N.Y. (Feb. 26, 2012).
\(^{206}\) Id.
\(^{207}\) Id.
difficult to make appropriate decisions or to conform their behavior to required norms,” or because “traditional punishments may be counterproductive to their needs or treatment goals.”208 As one study has explained, “Because juvenile courts have drifted away from a rehabilitation philosophy to focus more on punishment, a gap has developed for youths with a wide array of behavioral health and justice problems.”209 Juvenile mental health courts help to fill this gap. Grounded in the theory of therapeutic jurisprudence, their main purpose is “to treat and rehabilitate youth.”210 Using an “intensive case-management approach” that “embraces the idea that treatment, rather than punishment alone, is the most effective strategy to help youth avoid future involvement in the juvenile justice system,” they provide “individualized, community-based mental health services”211 to adjudicate and treat young offenders with unmet mental health needs.

The first juvenile mental health court was established in Santa Clara County, California in 2001,212 and as of February 2012, forty more were identified in fifteen states across the country, with the greatest number located in Ohio and California (nine and eight respectively).213 While practices and procedures vary from court to court, “all appear to focus on the importance of developing individualized treatment programs for offenders and returning to the rehabilitative ideal.”214 Participation is also always voluntary.215 Other common features of most juvenile mental health courts include a separate docket from the standard juvenile court proceedings, community supervision to ensure compliance with court orders, and judicial review to monitor participants’ progress.216

Perhaps the most distinguishable characteristic of juvenile mental health courts is their multidisciplinary approach. Virtually all such courts use a team of professionals to develop treatment plans for participating youths.217 Most often, the teams are com-

209 Callahan et al., supra note 9, at 133.
211 Gardner, supra note 208, at 101.
212 Id.
213 Callahan et al., supra note 9, at 130, 132.
214 Geary, supra note 150, at 688.
215 Mental Health Court, supra note 210; Geary, supra note 150, at 684.
216 Callahan et al., supra note 9, at 131.
217 Cocozza & Shufelt, supra note 9, at 3.
posed of district attorneys, public defenders, mental health providers, case managers and probation officers. These team members, and the agencies they work for, collaborate to develop individually tailored treatment plans for each offender, and connect youths and their families with community-based mental health and social services. Depending on the child’s needs, such services could include individual counseling, family therapy, substance abuse treatment, pharmacological intervention and management, and special education planning.

Characteristics that are more variable among individual courts include eligibility criteria, both in terms of diagnoses and offenses, points of referral, and length of court involvement. For example, a 2012 survey of all U.S. juvenile mental health courts currently in existence found that 70% accept juveniles charged with felony offenses, but 21% exclude those charged with violent crimes. Thirty-four percent can only be accessed pre-adjudication, while 26% are only accessible post-adjudication. Forty percent operate on a both a pre- and post-adjudication basis. Different courts might also offer certain incentives for participation, sanctions for noncompliance, and ancillary services. Research shows, for example, that 40% of courts will dismiss the charges against juvenile offenders upon successful completion of treatment. In the remaining 60%, charges are not dismissed, or dismissal is at the discretion of the court. The similarities and differences among juvenile mental health courts are best illustrated through a brief examination of two sample programs.

B. Case Studies

1. Court for the Individualized Treatment of Adolescents (CITA), Santa Clara, California

Perhaps the best-known and most studied juvenile mental health court to date was the country’s first. CITA, established in...
February 2001 as a multi-system initiative, accepts juvenile offenders who have a biologically based serious mental illnesses (“SMI”) or a severe head injury that has contributed to their criminal activity.226 Examples of SMIs include brain disorders such as schizophrenia, severe anxiety, bipolar disorder, major depression, and severe ADHD.227 The court also accepts some candidates with certain developmental disabilities, such as mental retardation and autism, and degenerative diseases of the brain.228 On the other hand, youths diagnosed with conduct disorders, oppositional defiant disorder, impulse control disorder personality disorder, or adjustment disorder are excluded.229 Eligibility is also limited based on age and the nature of the offense committed. The court will only accept youths who were under the age of fourteen at the time of their criminal activity, and participants cannot have committed certain violent felonies.230

Juveniles are identified as candidates for CITA upon an initial screening when they first arrive at juvenile hall.231 Youths deemed eligible for the program are then assessed further, and, subject to consensus of a team comprised of the district attorney, defense counsel, a probation officer, and a mental health coordinator, may be offered participation.232 Those who agree to CITA jurisdiction and choose to participate receive a comprehensive clinical assessment, which can include psychological, behavioral, educational, social, and family evaluations.233 Based on the results, the court’s mental health coordinator develops an individualized treatment and rehabilitation plan.234 More serious offenders may be incarcer-


227 Geary, supra note 150, at 689; Ellen Harris & Tammy Seltzer, The Role of Specialty Mental Health Courts in Meeting the Needs of Juvenile Offenders 3 (2004), available at www.bazelon.org/issues/criminalization/juvenilejustice; Program Descriptions, supra note 226; Cocozza & Shufelt, supra note 9, at 2.

228 Geary, supra note 150, at 689; Harris & Seltzer, supra note 227, at 3; Program Descriptions, supra note 226; Cocozza & Shufelt, supra note 9, at 2; David E. Arredondo et al., Juvenile Mental Health Court: Rationale and Protocols, 52 Juv. & Fam. Ct. 1, 11 (2001).

229 Mental Health Court, supra note 210; Arredondo et al., supra note 228, at 6.

230 Program Descriptions, supra note 226; Cocozza & Shufelt, supra note 9, at 2; Mental Health Court, supra note 210; Arredondo et al., supra note 228, at 6 n.4.

231 Geary, supra note 150, at 689; Harris & Seltzer, supra note 227, at 3.

232 Geary, supra note 150, at 689; Harris & Seltzer, supra note 227, at 3.

233 Program Descriptions, supra note 226; Cocozza & Shufelt, supra note 9, at 2.

234 Geary, supra note 150, at 689; Harris & Seltzer, supra note 227, at 3.
ated during implementation of the plan, but the majority are released and placed on an electronic monitoring system.\textsuperscript{235} Participants return to CITA every thirty to ninety days for one year for judicial review of their compliance and progress.\textsuperscript{236} Supervision is also provided through visits by a probation officer who reports back to the court.\textsuperscript{237} Upon successful completion of the program, participants are released from the court’s jurisdiction and any pending charges are dropped.\textsuperscript{238}

2. Crossroads, Summit County, Ohio

Although originally established in 1999 as a drug court, Crossroads began including mental health treatment in 2003. The court now accepts juveniles age twelve to seventeen who suffer from a major affective disorder, severe post-traumatic stress disorder, psychotic disorder, or co-occurring substance use disorders.\textsuperscript{239} Those whose only diagnosis is conduct disorder, oppositional defiant disorder, or ADHD are not eligible for participation.\textsuperscript{240} The court also excludes youth who have committed serious felonies or are charged with drug-trafficking or gang-related crimes.\textsuperscript{241} Candidates with prior convictions are precluded as well.\textsuperscript{242}

Eligible participants are referred to Crossroads post-adjudication, and are, upon the court’s acceptance and their consent to jurisdiction, assessed and treated by community mental health providers.\textsuperscript{243} Probation officers serve as case managers and provide supervision and monitoring services. Participants remain in the program for a minimum of one year.\textsuperscript{244} Upon successful com-

\textsuperscript{235} Geary, supra note 150, at 689; Harris & Seltzer, supra note 227, at 3.
\textsuperscript{236} Geary, supra note 150, at 689; Harris & Seltzer, supra note 227, at 3.
\textsuperscript{237} Program Descriptions, supra note 226; Cocozza & Shufelt, supra note 9, at 2.
\textsuperscript{238} Geary, supra note 150, at 689.
\textsuperscript{240} Program Descriptions, supra note 226; Cocozza & Shufelt, supra note 9, at 3; Skowyra & Cocozza, supra note 239, at 56.
\textsuperscript{241} Program Descriptions, supra note 226; Cocozza & Shufelt, supra note 9, at 3; Skowyra & Cocozza, supra note 239, at 56.
\textsuperscript{242} Program Descriptions, supra note 226; Cocozza & Shufelt, supra note 9, at 3; Skowyra & Cocozza, supra note 239, at 56.
\textsuperscript{243} Program Descriptions, supra note 226; Cocozza & Shufelt, supra note 9, at 3; Skowyra & Cocozza, supra note 239, at 56.
\textsuperscript{244} Program Descriptions, supra note 226; Cocozza & Shufelt, supra note 9, at 3.
pletion, all charges and related probation violations are expunged from their records.245

C. Benefits and Concerns

Adjudicating youthful offenders with mental health issues in mental health courts results in the vitally important benefit of “diverting delinquent youth from a punitive setting to a more rehabilitative environment,” thereby allowing for the “tangible opportunity for youth to receive individualized mental health care.”246 This not only positively impacts youths and their families, but such diversion “also improves the efficacy of the juvenile justice system.”247 Despite these advantages, however, juvenile mental health courts do have their detractors. Critics have four main concerns.

First, some commenters cite the problem of what has been termed “net-widening.”248 While juvenile mental health courts are intended to prevent youths with mental health issues from unnecessary involvement with the juvenile justice system, there is speculation that the existence of these courts will actually have the opposite effect, entangling an even greater number of juveniles in the system.249 Some are concerned that parents may seek the assistance of juvenile mental health courts in order to obtain services for their children even if they are not at all delinquent, or that law enforcement officers might be quicker to arrest youths with mental issues for very minor offenses if they believe mental health courts can be of help to them.250 However, these concerns can be at least partially alleviated by statistics indicating that most juvenile health courts do not accept participants with low level or status offenses, but instead limit eligibility to those with misdemeanor or felony charges.251

245 PROGRAM DESCRIPTIONS, supra note 226; COCOZZA & SHUFELT, supra note 9, at 3; SKOWYRA & COCOZZA, supra note 239, at 56.
246 Gardner, supra note 208, at 104.
247 Id. at 104–05.
248 COCOZZA & SHUFELT, supra note 9, at 5; MENTAL HEALTH COURT, supra note 210; Callahan et al., supra note 9, at 133.
249 MENTAL HEALTH COURT, supra note 210.
250 Id.
251 Callahan et al., supra note 9, at 133.
Another criticism often raised is the issue of coercion.\textsuperscript{252} Although participation in juvenile mental health court programs is voluntary, critics question the ability of youths, and especially youths with mental health issues, to make informed decisions about accepting these courts’ jurisdiction and to understand any potential consequences of noncompliance.\textsuperscript{253} Some fear that courts may “employ persuasive techniques to encourage defendants to complete treatment plans in the hopes of increasing compliance.”\textsuperscript{254} While this is certainly a legitimate concern, and one that courts must consider very seriously, steps can be taken to ensure that participation is truly voluntary. For instance, the involvement and supervision of parents, case managers and public defenders during each part of the adjudication process can help to safeguard against any coercive techniques. It should also be noted that despite concerns over the potential for coercion, “the Conference of Chief Justices, the Conference of State Court Administrators, and the American Bar Association have all expressed support for the maintenance and formation of specialized therapeutic courts.”\textsuperscript{255}

Third, there is concern over cost. According to one report, “The major hurdle to developing and sustaining effective [juvenile mental health courts] is the same one faced by the behavioral health system—funding.”\textsuperscript{256} However, when evaluating the expense of establishing mental health courts, it is important to keep in mind that the cost is relative to the exorbitant expenses associated with incarceration; while the funding needed to create juvenile mental health courts might be considerable, it is estimated that the cost for one juvenile’s stay in a secure facility in New York exceeds $275,000 per year.\textsuperscript{257} As a benchmark for comparison, that is more than what New York City spends annually per child on public school education—almost seventeen times more.\textsuperscript{258}

The costs also must be weighed against both immediate and future benefits for individual participants, as well as for society as a whole. While justice can be expensive, “youthful offenders must not be denied access to mental health services in the name of retri-

\textsuperscript{252} Cocozza & Shufelt, \textit{supra} note 9, at 5; \textit{Mental Health Court, supra} note 210; Callahan et al., \textit{supra} note 9, at 133.

\textsuperscript{253} Cocozza & Shufelt, \textit{supra} note 9, at 5; \textit{Mental Health Court, supra} note 210; Callahan et al., \textit{supra} note 9, at 133.

\textsuperscript{254} Geary, \textit{supra} note 150, at 681.

\textsuperscript{255} \textit{Id.} at 681–82.

\textsuperscript{256} Callahan et al., \textit{supra} note 9, at 133.

\textsuperscript{257} Zelon, \textit{supra} note 103.

\textsuperscript{258} \textit{Id.}
bution or inadequate funding.”259 In addition, the establishment of juvenile mental health courts might eventually pay for itself:

The allocation of additional resources to juvenile mental health needs today would not only fulfill the original mandate of the juvenile court to provide treatment, rather than punishment; it would also save society money in the long run by reducing the need to expend resources on these juveniles later in their lives.260

In other words, “[d]ollars allocated today to meet the mental health needs of youth with mental disabilities ‘will be repaid many times over through lower public costs’ by way of ‘reduction[s] in expensive long term health care, diminished need for welfare benefits, and less costly judicial processes.’”261

Finally, some critics are skeptical about the efficacy of juvenile mental health courts, as they have yet to be the subject of comprehensive long-term studies.262 However, certain courts have been evaluated to some extent, and the results are promising. A study of CITA participants, for example, showed overall positive outcomes for graduates. The findings indicated “reductions in the frequency of serious, violent, and other delinquency behavior among youth who completed the CITA program.”263 A three-year study of the Alameda County Juvenile Collaborative Court located in California also yielded positive results. As a result of the program, juvenile detentions declined 76%, new law violations decreased 68%, psychiatric crisis among youth decreased, and participants’ behavior, school attendance, self-esteem, mental health, and access to medication improved.264

259 Geary, supra note 150, at 672.
260 Id.
262 A study funded by the National Institute of Justice is currently underway to “assess the impact of juvenile mental health courts as an innovative alternative to case processing and disposition of youth with mental health needs in contact with the juvenile justice system.” For more information, see http://www.ncmhjj.com/projects/default.shtml.
263 MENTAL HEALTH COURT, supra note 210.
264 Gardner, supra note 208, at 103.
D. A New Vision for New York

Rather than modeling juvenile mental health courts in New York after one specific program already in existence in the U.S., the ideal program model would be created by learning from, and emulating the best practices of several different currently operating courts. Certain elements of the New York system that are common of all juvenile mental health courts would be given—for example, the goals of the program would be treatment and rehabilitation, rather than punishment and confinement (unless in-patient mental health services were required), and the program would be based on a multidisciplinary approach to adjudication. After opting into participation, each juvenile would be assigned a team of professionals that would devise an individual treatment plan tailored to his specific needs and circumstances and then closely monitor his compliance with the team’s recommendations. Some other characteristics that vary more from court to court would need to be determined, in particular criteria for eligibility, points of entry, incentives and sanctions, and availability of ancillary services.

1. Criteria for Eligibility

There are three main factors that usually determine whether a juvenile offender is an eligible candidate for mental health court: age, diagnosis, and nature of alleged criminal activity. In terms of all three of these categories, an ideal New York system would be as inclusive as possible in order to serve the needs of the most youths. Based on the theory that “young people with mental illness should be diverted from the traditional juvenile justice system into evidence-based treatments in their communities whenever possible and appropriate, consistent with public safety concerns," the court would be more like Crossroads than CITA in regard to age-based eligibility, and would accept all youths under the age of criminal responsibility. CITA’s exclusion of youths over the age of fourteen seems arbitrary, especially in light of the recent research that indicates that brain development continues well past the age of twenty.

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265 Id. at 102.
266 The upper age limit would be sixteen or eighteen, depending on whether legislation to raise the age of criminal responsibility in New York is passed in 2014. See Sobie, supra note 133; El-Naggar, supra note 133.
267 See Sacks, supra note 70, at 780.
2013]  THE AGE OF (GUILT OR) INNOCENCE  329

On the other hand, the New York program would follow CITA’s more inclusive practice of accepting youths with SMIs, as well as those suffering from severe head injuries and developmental disabilities, instead of emulating the Crossroads policy of limiting eligibility to those with only a handful of conditions. When it comes to the types of crimes committed, research shows that most juvenile mental health courts accept both felony and misdemeanor charges.得8 Again, in order to cast as wide a net as possible and serve the most possible youths, the New York system would follow this example.

2. Points of Entry

The point at which youths with mental health issues are diverted from the traditional juvenile justice system and toward a more treatment-focused program is critical to their eventual rehabilitation. The sheer volume of juveniles in detention suffering from mental health conditions illustrates a disturbing trend of mental illness becoming a proxy for criminalization. Accordingly, the assessment of juvenile offenders for mental health issues and the opportunity to transfer cases to a mental health court should take place as early as possible, preferably at the time of initial intake. Thus, the point of entry for proposed juvenile mental health courts in New York would be pre-adjudication during an offender’s first contact with a jurisdiction’s probation department。得9 Ideally, probation officers or clinicians specially trained to recognize signs of mental illness would conduct comprehensive mental health evaluations and divert those presenting with symptoms away from the traditional court system and toward mental health court. However, because not all mental health conditions can be recognized right away, the option to transfer cases to juvenile mental health courts at subsequent points should be available as well. Again, because the goal would be to serve as many juvenile offenders suffering from mental health conditions as possible, there must be several possible points of entry into the proposed juvenile mental health court system.

268  See Callahan et al., supra note 9, at 132.
269  In New York State, after a juvenile’s initial contact with police and arrest, he can either be released or detained. Next, there is an intake with probation, at which point he can be referred for “adjustment” (i.e. diversion), or his case can continue on to court for the first of what could potentially be several hearings. See CHARTING A NEW COURSE, supra note 127, at 21.
3. Incentives and Sanctions

Juvenile mental health courts vary tremendously in their incentives for participation and sanctions for non-compliance.\(^{270}\) A common practice, however, and one that both CITA and Crossroads follow, is to drop all charges upon participants’ successful completion of their treatment programs.\(^{271}\) The New York system would follow suit. The expunging of participants’ criminal records is absolutely critical to the success of juvenile mental health courts and the rehabilitation of their participants. As explained in a recent study, “The importance of dismissal of charges by [juvenile mental health courts] cannot be overemphasized. Having a conviction or adjudication record can follow a youth and complicate his or her life in unanticipated ways, such as by limiting access to federal student loans, employment, and military service.”\(^{272}\)

A criminal record can also impact one’s educational and housing prospects. Many colleges require disclosure of prior convictions, which makes acceptance less likely, and families that live in public housing can lose their homes if a family member is convicted of a crime.\(^{273}\) Finally, “the evils of a criminal record . . . forever brand a juvenile offender an untrustworthy member of society,” permanently damaging his reputation, and possibly even resulting in a reversion to crime.\(^{274}\) This is especially likely if having a record precludes finding employment. Juveniles with mental health issues should not have to suffer from the lifelong stigma and consequences of being labeled a criminal. As such, charges would be dropped and records expunged upon successful participation in a New York juvenile mental health court so youths can leave the program with a clean slate and maximum potential for future success.

4. Ancillary Services

As with incentives and sanctions, the types of ancillary services that juvenile mental health courts provide vary by jurisdiction. There are two programs that offer services of particular interest. As a component of its program, the Alameda County Juvenile Mental Health Court provides civil advocacy to participants

\(^{270}\) See id. at 132.
\(^{271}\) See id.; Geary, supra note 150, at 689; Cocozza & Shufelt, supra note 9, at 3.
\(^{272}\) Callahan et al., supra note 9, at 133.
\(^{273}\) Zelon, supra note 103.
\(^{274}\) Conward, supra note 97, at 58–61.
and their families to help ensure that their needs are met. Many youths enmeshed in the juvenile justice system struggle with obtaining medical benefits, housing, and educational support. Civil advocates appointed by the Alameda court assist with these matters, as well as with issues related to social security, consumer protection, and unemployment. As a result, participants’ access to important services are increased, along with their potential for success in the program and beyond.

The King County Juvenile Treatment Court, located in Seattle, Washington, offers another unique program to participating youths. Part of that court’s treatment plans is a mentoring initiative that matches juvenile offenders with positive role models from their communities who speak or meet with them each week. Mentor services not only benefit the mentees by providing them with another level of support during their involvement with the court, but can also positively impact the community: the Washington State Institute for Public Policy has hailed the program for reducing crime and costs to Washington taxpayers.

V. Conclusion

Every year, doctors, scientists, and researchers are learning more about the brain and how it changes with age. As knowledge about human development evolves, so must the law. The United States Supreme Court has recognized this need, most recently in its decision in Miller v. Alabama. This watershed case reexamines the significance of youth as related to culpability, and emphasizes juvenile offenders’ capacity for change. It brings the focus of the juvenile justice system back toward the goal of rehabilitation, and, in doing so, provides the opportunity for states across the country to reconsider their treatment of juvenile offenders.

An examination of conditions in New York reveals that too many youths with mental health problems are coming in contact with the juvenile justice system. Moreover, a staggering number of

275 Gardner, supra note 208, at 102.
276 Id.
277 Id. at 103.
280 MENTORING, supra note 279.
them are being convicted of, and incarcerated for, offenses that are, at least in some way, connected to their mental health conditions. In order to remedy this situation, New York must take a cue from the Supreme Court: it must embrace a more therapeutic approach to juvenile justice, incorporating the goals of treatment and rehabilitation rather than punishment.

While there is still much to be learned about juvenile mental courts, and while they may not be a perfect solution to the problems with New York’s juvenile justice system, their treatment practices and rehabilitative goals are consistent with the Supreme Court’s views, espoused in *Miller*, on the diminished culpability and increased capacity for change of juveniles. Establishing a juvenile mental health court system would thus bring New York one step closer to conformity with the Court’s current jurisprudence on juvenile justice, while at the same time helping youths in dire need of mental health treatment.