EARLY INTERVENTION AND THE EIGHT PERCENT PROBLEM: EFFECTIVELY MERGING THEORIES OF REHABILITATION AND RETRIBUTION IN THE CALIFORNIA JUVENILE JUSTICE SYSTEM

I. INTRODUCTION

I urge you to consider this: As you demand tougher penalties for those who choose violence, let us also remember how we came to this sad point. In our toughest neighborhoods, on our meanest streets, in our poorest rural areas, we have seen a stunning and simultaneous breakdown of community, family, and work, the heart and soul of civilized society. This has created a vast vacuum which has been filled by violence and drugs and gangs. So I ask you to remember that even as we say “no” to crime, we must give people, especially our young people, something to say “yes” to.1

Upon first glance, the California juvenile justice system appears to be trying to fulfill two conflicting goals. On the one hand, as evidenced throughout history, Californians have demanded a separate criminal system for youthful offenders that attempts to rehabilitate the child in order to make him into a productive member of society.2 On the other hand, as evidenced through recent legislation such as the Three Strikes Law3 and Proposition 21,4 Californians have also demanded harsher penalties for chronic and violent juvenile offenders.5 These two goals, saving the child and punishing the criminal, seem to be inconsistent with one another. It would appear that any criminal justice system that attempts to accomplish one would not be able to accomplish the other. However, a juvenile justice system that implements an early intervention approach to juvenile crime can effectively accomplish both goals.

The dual goals of the California juvenile justice system are based upon two traditional theories of punishment.6 The prevalent ideal behind the origin of the juvenile justice system was based upon a theory of rehabilitation.7 However, in recent years, there has been a trend towards a more retributivist approach for chronic, violent juvenile offenders.8 The problem with both of these theories is that they are after-the-fact remedies.9 Although both attempt to lower juvenile crime rates, they are often triggered only after the child has committed a violent act. The theory of rehabilitation offers to save the child, but it starts too late. The child has already committed the violent act and has formed bad habits. The theory of retribution gives the offender his just deserts, but it also does so too late. Society and his victim have already suffered the harm of his violent act.

Early intervention consolidates rehabilitation and retribution into a working approach.10 The key to such an approach is that it acknowledges that a small percent of juveniles—approximately eight

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2. See e.g. Jennifer Taylor, Student Author, California’s Proposition 21: A Case of Juvenile Injustice, 75 S. Cal. L. Rev. 983, 985-86 (2002).
5. Taylor, supra n. 2, at 984.
percent—account for more than half of all repeat offenders. It also recognizes that today’s juvenile offenders will become tomorrow’s adult criminals. As such, early intervention aims to attack problems of delinquency when the juvenile first enters the system for a nonviolent act in order to prevent future crime. It does not wait to act until the juvenile becomes a violent, chronic offender. However, the function of rehabilitation is still served because the child is steered away from a criminal path and made into a productive member of society. The function of retribution is also still served because retributivist sentences are still available for those who become chronic, violent offenders.

This paper will begin with a brief overview of both the American and Californian juvenile justice systems in order to understand the ongoing conflicts between the theories of rehabilitation and retribution. It will then describe the risk factors that identify potential members of the small group of repeat offenders and apply the traditional theories of rehabilitation and retribution to that group. Finally, it will address early intervention and how this approach can effectively meet the dual needs of the California juvenile justice system. In particular, this paper will use Orange County’s Eight Percent Early Intervention Program to illustrate the benefits of intervening early in a juvenile’s criminal career.

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11. *Id. at “Graduated Sanctions” [¶ 1].
12. *Id.
13. See id. at “Prevention” [¶ 1].
14. See id. at “Prevention” [¶ 2].
15. See id.

* J.D. candidate 2005, Whittier Law School; B.A. in History with a minor in Criminal Justice, California State University of Fullerton, 2002. Thank you to my wonderful parents, Lucy and Javier, for your never-ending love and support. You inspire me everyday to work harder and to never give up. Thank you Melinda for your love and for turning the music down. Helen, thank you for your beautiful friendship. I am glad to have had you by my side throughout law school. This paper is dedicated to my fiancé, Jaime, who inspired me to write on this subject. I love you and I admire you for the work you do with these children.