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## Note, Minors in the Major Leagues: Youth Courts Hit a Home Run for Juvenile Justice

Christina M. Dines  
*Notre Dame Law School*

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## MINORS IN THE MAJOR LEAGUES: YOUTH COURTS HIT A HOME RUN FOR JUVENILE JUSTICE

CHRISTINA M. DINES\*

*“We must move away from the total reliance on the adversary contest for resolving disputes. For some disputes, trials will be the only means, but for many, trials by the adversary contest must in time go the way of the ancient trial by battle and blood. Our system is too costly, too painful, too destructive, too inefficient for a truly civilized people. To rely on the adversary process as the principal means of resolving conflicting claims is a mistake that must be corrected”<sup>1</sup>*

### ABSTRACT

*Youth courts provide an efficient—albeit unconventional—alternative to the formal juvenile justice system. Although structures of youth courts vary, the purpose remains the same: to rehabilitate and deter youth offenders in a forum largely governed by their minor peers—one free of the stigma associated with the traditional justice system. This Note examines the expansion of youth courts; various structures of the courts; advantages and disadvantages of a system driven by peer mentorship and peer decision-making; typical sanctions imposed on a juvenile offender; and the wider implications of youth court from an economic and social justice perspective.*

### INTRODUCTION

In 1984, Chief Justice of the Supreme Court Warren Burger identified a problem in the traditional courtroom contest; namely, that overuse of litigation creates an unsustainable and impractical drain on finances, emotional health, and time. In the years since, Alternative Dispute Resolution (“ADR”) techniques, such as mediation, have spiked in use, offering a lower cost, higher efficiency “social good” to parties

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\* Candidate for Juris Doctor, Notre Dame Law School, 2017; Bachelor of Arts, University of Notre Dame, 2014. I would like to express my gratitude to Professor Stephen F. Smith for his guidance on this Note, the members of the *Notre Dame Journal of Law, Ethics & Public Policy* for their editorial assistance, and to my family for their unwavering support.

1. T *Focused Legal Representation*, DISP. RESOL. COUNS., LLC, <http://disputeresolutioncounsel.com/legal-representation/> (last visited Mar. 10, 2016).

involved than litigation provides.<sup>2</sup> ADR serves to combat the “total reliance on the adversary contest.”<sup>3</sup> While the benefits are great, ADR is not altogether that radical of a notion; indeed, “[mediation] has, in the widest sense of consensual settlement, long been a part of litigation: whether it took the form of the last minute negotiated settlement at the door of the court, the negotiated agreement reached during the long course of litigation.”<sup>4</sup> Despite its history and benefits, ADR by itself is not sufficient to correct the mistake of “total reliance” on litigation.<sup>5</sup>

Indeed, another solution to the problem presented by Justice Burger lies in an unconventional source: children. Youth courts provide an alternative to the formal juvenile justice system. Whereas ADR offers a physical alternative to the courtroom, youth courts reinvent the courtroom. In some youth court models, minors can act as the judge, jury, and bailiff; they question, deliberate, and sentence. In doing so, the minors help the parties save money, time, and resources. On a macro-level, they contribute to the decrease in crime, recidivism rates, and incarceration. Moreover, the youth court system approaches conflict with a focus on rehabilitation and positive peer mentorship. One minor who had been referred to the Salt Lake Peer Court noted, “You didn’t judge me. You talked to me like I’m a human being and not a criminal. You made me feel like I matter and that I’m not just a piece of dirt.”<sup>6</sup>

With profound deterrence, rehabilitation, and economic benefits, as evidenced through reduced recidivism rates and a less strained federal judiciary in juvenile cases,<sup>7</sup> it seems as though youth court may be too good to be true. Are minors the key to a successful “civilized society” as noted by Justice Burger—one rooted in efficiency and healing? If youth courts are the solution, is there a deeper problem lurking behind the litigation process? Specifically, what features of the youth court make it a success? Moreover, what are the disadvantages of a courtroom controlled by minors? It is only through exploring the direct and indirect consequences of the youth court system that we can fully determine whether minors are the cure to both the headache of high costs and inefficiency, as well as the emotional heartache of the traditional federal juvenile system.

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2. Lord Neuberger of Abbotsbury, Master of the Rolls, Address at Gordon Slynn Memorial Lecture (Nov. 11, 2010).

3. *Id.*

4. *Id.*

5. See U.S. CTS., FED. JUDICIAL CASELOAD STATISTICS 2014, <http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2014> (listing caseload statistics and data on the work of the appellate, district, and bankruptcy courts and on the probation and pretrial services systems).

6. *Peer Court Brochure*, SALT LAKE PEER COURT (2014), <http://saltlakepeer court.org> [<https://web.archive.org/web/20160429082442/http://saltlakepeer court.org/wp-content/uploads/2014/01/Peer-Court-Brochure.pdf>].

7. April Warren, *Teen Court puts justice in hands of offenders’ peers*, OCALA STAR BANNER (June 23, 2013), <http://www.ocala.com/article/20130623/ARTICLES/130629892/1454?p=4&tc=pg>.

Part I of this Note will discuss the history of youth courts, including the origin and legislative approval process. Part I will also examine the structure and characteristics of various types of youth court models by discussing the parties involved, issues of anonymity, age requirements, selection protocol, and training process. It will compare and contrast multiple systems implemented in various counties. Part I will focus on four representative examples, one of each of the four types of youth court models. Part II will critique the structure of youth courts. It will also examine the impact of youth courts, both on the individual communities in which they are established, as well as the broader indirect influence on the caseload of the federal judiciary.

### I. ORIGIN & PRACTICE

The number of youth courts has spiked radically since its implementation in the 1970s.<sup>8</sup> In 1994, there were only seventy-eight youth courts; as of October 2015, there were 1,400 nationwide.<sup>9</sup> The first youth court program was created and implemented by the American Bar Association (“ABA”) in conjunction with community organizations who sought to prevent youth offenders from spiraling into a pattern of misconduct.<sup>10</sup>

The rationale driving the youth court system is the need for an alternative justice system that relies on rehabilitation and accountability. Youth courts strive to prevent imposing a stigma on young, one-time offenders. Irene Sullivan, retired circuit judge and current law professor at Stetson University College of Law, noted that, “[d]iverting [youth offenders] into teen court or youth court where they are handled outside the formal court process is good because it keeps them from having a formal record.”<sup>11</sup> Moreover, Sullivan commented that youth courts are “a more therapeutic and rehabilitative way of treating juveniles.”<sup>12</sup> Indeed, Sullivan affirmed that “children do not benefit from a formal court process,” where they are “stigmatized as delinquents.”<sup>13</sup> Sullivan’s viewpoint that youth courts provide a necessary alternative is echoed by program director for the National Association of Youth Courts, Jack Levine. Levine noted that “youth who succeed in the teen court do not have any record which could haunt them later in life.”<sup>14</sup> Levine further reflected upon the mission of youth courts, commenting on how goals of rehabilitation are intertwined with reduced recidivism rates. Levine noted: “[t]he goal of youth/teen courts is preventing penetration into the system by young people who can better be served without formal prosecution and detention.”<sup>15</sup> The goals of

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8. *Id.*

9. JUDICIAL COUNCIL OF CAL., FACT SHEET: YOUTH COURTS (Feb. 2016), [http://www.courts.ca.gov/documents/Youth\\_Courts.pdf](http://www.courts.ca.gov/documents/Youth_Courts.pdf).

10. *Id.*

11. Warten, *supra* note 7.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

deterrence and reduced recidivism rates reflect the broader mission of rehabilitation.

Youth courts can convene in various locations, each at the discretion of the particular community in which the program resides. The City of Palatine youth court, for example, meets at the community police department.<sup>16</sup> Other programs meet at state courthouses,<sup>17</sup> high schools,<sup>18</sup> and community centers.<sup>19</sup> Convening in a courtroom environment lends itself to the gravity and solemnity of the situation, whereas convening on school campuses or at community centers reflects the rehabilitative and mentorship aspects of youth court. Regardless of the specific meeting place, simply *having* a meeting place within the community reflects rehabilitative goals as well as accountability towards affected community members. The mere existence of youth courts demonstrates the importance of positive youth community involvement. Additionally, youth courts typically convene in the evening, which allows parents to “be involved, unlike traditional juvenile court where parents must take off time from work if they want to be in the courtroom with their child.”<sup>20</sup>

#### A. *Legislative Approval*

Viewed at a macro-level, youth courts serve the same general purpose to rehabilitate, punish, and deter youth offenders. Nonetheless, not all youth courts are created equal. In fact, “youth courts are tailored to each community’s needs, and no two communities are alike.”<sup>21</sup> As such, legislation varies immensely state to state. Moreover, there is variation among youth courts even within the same state. For example, in Florida, “[t]he parameters of teen court programs vary across the state.”<sup>22</sup> Some states specifically delineate the offenses that they can hear (i.e., truancy, property-related) while other states legislate only to the general type of offense (i.e., class of misdemeanor).

However, “[w]here statutes are available, they overwhelmingly specify the type of cases that teen courts can handle.”<sup>23</sup> Most statutes delineate misdemeanors and ordinances as the most common offenses. Additionally, legislation can limit the type of misdemeanor handled.

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16. SALT LAKE PEER COURT, SCHEDULED PEER JURY SESSIONS 2015, [http://www.palatine.il.us/assets/1/police/2015\\_Peer\\_Jury\\_Dates.pdf](http://www.palatine.il.us/assets/1/police/2015_Peer_Jury_Dates.pdf).

17. *Internship Application*, SALT LAKE PEER COURT (2015), <http://saltlakepeer court.org/wp-content/uploads/2015/08/Intern-Job-Posting.pdf> (last visited Mar. 10, 2016).

18. Deana Carpenter, *Peer jury at Keystone Oaks High offers alternative to judicial system*, PITTSBURGH POST-GAZETTE (Nov. 26, 2014), <http://www.post-gazette.com/local/south/2014/11/26/Peer-jury-at-Keystone-Oaks-High-offers-alternative-to-judicial-system/stories/201411260106>.

19. *SBCUSD Youth Court*, SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT, <http://www.sbcusd.com/index.aspx?NID=8419> (last visited Oct. 3, 2016).

20. Warren, *supra* note 7.

21. *Id.*

22. *Id.*

23. Michelle E. Heward, *An Update on Teen Court Legislation*, YOUTH COURT (Sep. 2006), [http://www.youthcourt.net/update\\_on\\_teen\\_court\\_legislation.pdf](http://www.youthcourt.net/update_on_teen_court_legislation.pdf).

Texas, for example, “limits the misdemeanors to ‘fine only.’”<sup>24</sup> Utah, as well, “excludes class A misdemeanors and a number of specific cases that are gang related or require mandatory dispositions if they were before the juvenile court.”<sup>25</sup>

Some state legislation takes felony offenses into consideration. For example, Rhode Island legislation “allow[s] felony offenses to be handled by teen courts but only with written consent from the chief justice of the family court.”<sup>26</sup> Additionally, Kentucky is unique in that it “does not have statutes that legislate teen court procedure.”<sup>27</sup> Nonetheless, Kentucky teen courts “operate under the jurisdiction of the Administrative Office of the Courts and only judges can refer cases to teen courts in Kentucky after a plea or finding of guilt in the juvenile court.”<sup>28</sup> In New York, as well, twenty-six percent of youth courts “accepted some felonies (non-violent, property-related), and over half accepted school rule and truancy violations.”<sup>29</sup> New York youth courts also process “a variety of misdemeanors, as well as tobacco, alcohol and minor drug violations.”<sup>30</sup>

Interestingly, not all youth courts stem directly from youth court legislation. For example, a 1995 report noted that “the Dundalk (MD) High School Student Court relie[d] on the county board of education policy that grants principals the authority in suspension matters to designate other administrators and school professionals to discipline students.”<sup>31</sup> Moreover, “states without legislation or those with legislation that are silent regarding the offenses that teen courts can handle have more flexibility in the types of cases they can accept.”<sup>32</sup> However, “referring agencies,” whose decisions are based on their “comfort level with the appropriate cases that teen courts should handle,” often restrict what kinds of cases may be heard in youth courts that exist without statutory restrictions.<sup>33</sup>

Existing legislation typically delineates teen courts as dispositional, and “an admission by the offending youth of their involvement in the behavior that brings them before the court is generally a prerequisite to participation in the program.”<sup>34</sup> In contrast, “[a]djudicatory programs are those where the youth is allowed to enter a not guilty plea and have the facts of their case heard to determine their responsibility for the offense.”<sup>35</sup> Adjudicatory programs require “extensive training and

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24. *Id.* at 5.

25. *Id.* at 5–6.

26. *Id.* at 6.

27. *Id.*

28. *Id.* at 7.

29. *Id.*

30. *Id.*

31. MARGARET FISHER, *YOUTH COURTS: YOUNG PEOPLE DELIVERING JUSTICE*, 13 (2002), <https://www.ncjrs.gov/pdffiles1/ojdp/196944.pdf>.

32. Heward, *supra* note 23, at 7.

33. *Id.*

34. *Id.* at 5.

35. *Id.*

expertise” on the part of the volunteer participants,<sup>36</sup> as the role of fact-finder is more rigorous than that of a sentencing jury. Due to the added burden placed on youth court volunteers, “[d]ispositional programs are far more common than adjudicatory programs” and indeed are overwhelmingly required by legislation among states.<sup>37</sup> West Virginia is unique in that it “is silent” as to adjudication, and only expressly “refers to dispositional requirements, which could be imposed after adjudication or an admission.”<sup>38</sup> Indeed, West Virginia is the outlier in that its statute “has a unique provision indicating that ‘in no case may the court require a juvenile to admit the allegation against him or her as a prerequisite to participation in the teen court program.’”<sup>39</sup> Due to this atypical statute, West Virginia “leaves open the potential need to adjudicate the youth’s involvement in the offense that brings him before the teen court, and to treat the program as adjudicatory.”<sup>40</sup>

Where a youth court is dispositional and engages in sentencing instead of adjudicating, it is limited in how it can sentence. For example, the Tennessee legislation surrounding youth courts “specifies that the program has no authority to recommend transfer of temporary legal custody or to require placement or treatment in any specific program.”<sup>41</sup> However, Tennessee legislation allows a youth court jury to “recommend restitution; performance of community service work; limitations upon driving privileges; participation as a teen court member; attendance at court-approved education workshops on subjects such as substance abuse, safe driving, and victim awareness; curfew limitations; school attendance; or essay-writing or similar research or school projects.”<sup>42</sup> Such sentences, focused largely on rehabilitation, accountability, and deterrence, are typical amongst youth courts nationwide.

In several states, legislation “specifically anticipates educational components.”<sup>43</sup> California specifically maintains that youth court volunteer participation “satisfies state curriculum requirements for ‘instruction in our American legal system, the operation of the juvenile and adult criminal justice systems, and the rights and duties of citizens under the criminal and civil law and the State and Federal Constitutions.’”<sup>44</sup> Other state legislatures delineate that students are the target group from which selection as volunteers on youth courts should stem. Tennessee, for example, requires “that a juvenile court judge choose volunteer youths from local public and private high schools or middle schools.”<sup>45</sup> Further, Tennessee legislation expressly states that youth courts may convene in public schools: “[E]very juvenile court judge, whether or not such judge establishes a teen court, may hold juvenile

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36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 8.

43. *Id.*

44. *Id.*

45. *Id.*

court proceedings at a public high school or middle school in the county of the court's jurisdiction for at least one day per year."<sup>46</sup> The statute continues: "Such court proceeding are publicized in cooperation with the local school authorities in a manner to encourage youth observation and, where appropriate, participation."<sup>47</sup>

Moreover, many state statutes encourage students to become involved in youth courts. Indeed, "Utah and Washington local school boards may provide school credit for participation in a teen court program."<sup>48</sup> Additionally, state legislation can encourage not only students, but also teachers, to lend their time as volunteers in youth courts. For example, Mississippi allows youth courts "to credit the time teachers and students spend participating in teen court as instructional time."<sup>49</sup> The "strong partnerships" between schools and states is reflected in legislation.<sup>50</sup> Indeed, "Utah and Vermont also include education officials on their teen court advisory boards."<sup>51</sup> Youth courts do not work to hide offenses of youth defendants, but to address them head-on and find creative sentencing solutions. The unity and collaborative efforts between schools and youth courts reflect the youth court system's focus on building and restoring community ties as well as encouraging positive mentorship.

Although the details of youth courts legislation vary immensely, there are nonetheless broader aspects that are typically delineated. For example, "age and prior offenses of offending youth are often included" in youth court legislation.<sup>52</sup> "[W]aiver of constitutional and statutory rights, consent for involvement in the program, mandatory involvement of parents, and mandatory requirements of restitution for victims" are also expressly accounted for in state legislation.<sup>53</sup> Nonetheless, despite much overlap in statutory provisions, only some state statutes "describe the volunteer roles that will be assumed in teen court, and require adult involvement in teen court judge positions."<sup>54</sup> Indeed, while some state legislation explicitly requires implementation of a particular youth court model, "[o]ther states leave this open to allow programs to assume different program models."<sup>55</sup> The mere fact that communities retain the power to create youth court programs that are reflective of their area's particular needs demonstrates the continued mission of youth courts to rehabilitate youth within their respective communities, and hold youth accountable for wrongs committed against community members.

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46. *Id.* at 8–9.

47. *Id.* at 9.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*



## B. *Current State of Youth Courts*

The youth court system can determine sentencing for a particular category of offenders. Typically, offenders who can participate are juveniles who have admitted to the offense, where the offense was a non-violent misdemeanor, and whose parents or legal guardians have agreed to allow the minor to participate and abide by its outcome.<sup>56</sup> In fact, ninety-three percent of youth courts mandate that offenders admit guilt in order to participate.<sup>57</sup> Further, “[i]n the 7% of youth court programs that allow youth to plead ‘not guilty,’ if a youth chooses to plead ‘not guilty,’ the program conducts a hearing to determine guilt or innocence. If the defendant is found ‘guilty,’ then an appropriate disposition is rendered by the youth court.”<sup>58</sup>

There are four different youth court models: adult judge, youth judge, peer jury, and youth tribunal.<sup>59</sup> The term “youth court” encompasses all four models. Approximately fifty-three percent of youth courts utilize the adult judge model, where the judge is an adult, but youth jurors determine sentencing; thirty-one percent utilize the peer jury model, where a panel of youth jurors—instead of youth attorneys—question the offender; eighteen percent utilize the youth judge model, where a minor serves as a judge (typically following service as a youth court attorney); ten percent utilize the youth tribunal model, where youth attorneys—rather than a panel of youth jurors—question the offender.<sup>60</sup> It is also possible for a youth court to adopt a combination of the four models. Additionally, “[p]rograms may also adopt different models depending on the offense. For instance, they may use the adult judge model for most cases, except truancy cases, where the youth tribunal is used. The most common combination found in the study was the mix of adult judge and peer jury.”<sup>61</sup>

### 1. Adult Judge Model

In the adult judge model, “youth volunteers serve in the roles of defense attorneys, prosecuting attorneys, clerks, bailiffs, and jurors, while the adult volunteer, either an attorney or judge, serves in the role of judge.”<sup>62</sup> This Note presents the youth court in Riley County, Kansas, as a representative example of the adult judge model.<sup>63</sup>

56. *Peer Jury*, VILLAGE OF PALATINE, [http://www.palatine.il.us/departments/police/peer\\_jury.aspx](http://www.palatine.il.us/departments/police/peer_jury.aspx) (last visited Mar. 10, 2016).

57. *Youth Courts: Facts and Stats*, NATIONAL ASSOCIATION OF YOUTH COURTS, <http://www.youthcourt.net/about/facts-and-stats> (last visited Mar. 10, 2016).

58. *Id.*

59. *Id.*

60. SCOTT B. PETERSON & JILL BERES, *THE FIRST REPORT TO THE NATION ON YOUTH COURTS AND TEEN COURTS* (Jennifer Batton & Ed Krauss eds., 2008); *Youth Courts: Facts and Stats*, *supra* note 57.

61. SARAH S. PEARSON & SONIA JURICH, *YOUTH COURT: A COMMUNITY SOLUTION EMBRACING AT-RISK YOUTH 13* (2005), <http://www.aypf.org/publications/Youth%20Court%20-%20A%20Community%20Solution.pdf>.

62. *Id.*

63. *Youth Court*, RILEY COUNTY KANSAS, <http://www.rileycountyks.gov/1207/Youth-Court> (last visited Mar. 1, 2016) [hereinafter RILEY COUNTY KANSAS].

The Riley County youth court meets two evenings per month at the Riley County Courthouse, and is comprised of an adult judge, a youth clerk, and a youth jury.<sup>64</sup> First, the clerk announces “the defendant for each case along with its corresponding case number.”<sup>65</sup> Then, the defendant has an opportunity to “give his/her version of the events.”<sup>66</sup> After, the clerk again acts as the voice of the youth court by reading the summary of the police report. Following this summary, an adult judge and the youth jury are able to directly ask the defendant specific questions about the incident. Each juror must ask a minimum of one question. Finally, the jury deliberates. The jury selects a “foreperson for each case to announce the sanctions decided.”<sup>67</sup> The defendant must complete the sanctions imposed “in 90 or 180 days depending on the offense.”<sup>68</sup> There is no indication of what crimes would warrant lengthier time for completion.

Adults who are “interested in serving as a judge” must contact an employee at Riley County to apply.<sup>69</sup> In adult judge models, the adult is “generally an attorney or judicial officer,” though this is not a firm requirement.<sup>70</sup> However, although Riley County utilizes the adult form model where an adult judge presides over the youth court, the youth jurors have a tremendous amount of power in determining the outcome.<sup>71</sup> To accommodate this power, they are closely vetted for the process. First, they must be selected as youth jurors. The page-long application asks about previous volunteer experience, questions their intent as to what prompted them to apply to act as a youth court volunteer, inquires as to what personal qualities make them a strong candidate, and prompts them to list the “afterschool activities” in which they participate.<sup>72</sup> Notably, Riley County youth court does not merely allow previous offenders to act as jurors in future cases, but requires participation as a “[m]andatory [s]anction[ ].”<sup>73</sup> There is no information provided as to what percentage of a jury is comprised of previous offenders who are carrying out one of their sanctions.

The Riley County youth court highlights that “[t]he purpose of youth court is to direct juvenile offenders away from the formal court system while still holding them accountable for their actions.”<sup>74</sup> Their website emphasizes that the program “[p]rovides early intervention and

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64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. FISHER, *supra* note 31, at 10.

71. See also *Youth Court*, KITSAP COUNTY JUVENILE, <http://www.kitsapgov.com/juv/Offender/YouthCourt.htm> (last visited Mar. 10, 2016) (explaining that at Kitsap County Youth Court, the adult judge serves to facilitate and oversee the proceedings rather than retain full control and exert influence: “[s]tudents serve as the bailiff, clerk, jurors, prosecuting and defense advocates and *ultimately the judge.*”) (emphasis added).

72. RILEY COUNTY KANSAS, *supra* note 63.

73. *Id.*

74. *Id.*

new opportunities for juveniles,” and that the mandatory community service sanction “help[s] juveniles learn responsibility,” thereby reaching punishment goals of specific deterrence and rehabilitation.<sup>75</sup> Further, victims recognize that “the defendant is being held accountable,” and are thus more likely to feel that justice has been served.<sup>76</sup> Volunteers, both in the form of adult judges and youth jurors, “gain exposure to the legal system.”<sup>77</sup> Notably, because the youth court results in “early intervention,” society at large benefits from reduced and prevented crime.<sup>78</sup> The Riley County youth court system not only benefits offenders, but also volunteers, victims, and society at large.

Like all youth courts, the Riley County youth court is a “voluntary program” that requires consent of offenders and their parents or legal guardians.<sup>79</sup> However, the Riley County youth court seemingly diverges from other youth courts, in that “[t]ypical referrals are first time misdemeanor offenses” (emphasis added).<sup>80</sup> Thus, in certain circumstances, Riley County may accept non-first time offenders into their youth court. Common crimes heard in Riley County youth court include: “misdemeanor law violations such as theft, simple assault, property damage, possession of alcohol, and possession of marijuana,” as well as “status offenses such as truancy or curfew violations.”<sup>81</sup> Notably, Riley County imposes two mandatory sanctions for all offenders whose crimes are heard in their youth court: participation in both community service and jury duty at Riley County. However, it remains in the jury’s discretion to determine whether the offender will serve between one and five days as a juror. Optional sanctions include issuance of an apology to the victim, a “[t]opic appropriate essay,” counseling, imposition of a curfew, participation in alcohol and drug information courses, and random alcohol and drug testing.<sup>82</sup> Additionally, “[r]estitution” is listed as an optional sanction. Thus, presumably, the jury is free to impose other reasonable and appropriate sanctions as well.<sup>83</sup>

After participation in youth court, past offenders are offered a survey in which they can evaluate their experience and sanctions.<sup>84</sup> They are asked to provide open-ended feedback on their “interactions with the Youth Court Coordinator,” and rate how strongly they agree with specific statements about the youth court.<sup>85</sup> For example, they are asked to rate how strongly they believe: that the Coordinator treated them with respect; that the Coordinator’s treatment towards them was fair and consistent; that the “program requirements and expectations

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Youth Court Completion Survey*, RILEY COUNTY, <http://www.surveymonkey.com/r/?sm=udpuvDjRIUmT4kijfOlqfw%3d%3d> (last visited Aug. 30, 2016).

85. *Id.*

were explained” at the first appointment; and that the Coordinator answered their questions “in a timely manner” during their supervision.<sup>86</sup> The survey also addresses youth court proceedings, and again asks participants to discuss how strongly they believe: that they were treated fairly; that the youth court was respectful; that the sanctions received were fair; and that they were able to “talk an adequate amount of time in Court.”<sup>87</sup>

Notably, the survey seeks to track the mindset of participants, and asks whether offenders began the program “highly motivated” and whether they were ultimately “glad” to partake in “Youth Court rather than Juvenile Court.”<sup>88</sup> Additionally, there is an opportunity for participants to comment on sanctions that, while not offered by the jury, they would have imposed on themselves.<sup>89</sup> Thus, even after a participant has fulfilled their sanctions, there is yet another opportunity for formal self-reflection.

Further, because all offenders who partake in youth court are mandated to serve as jurors in future youth court proceedings, the survey also examines their participation, and questions whether “the jury carefully considered all sanction options available” or whether “[t]he jury did not discuss sanction options” but instead had one member who “suggested options and all agreed.”<sup>90</sup> There are also questions regarding drug and alcohol services for those who were sanctioned to testing. The survey asks for their feedback regarding how strongly they believe: that “drug testing procedures were explained”; that they “benefited from the alcohol/drug services”; and that testing helped them “refrain from using drugs.”<sup>91</sup> Offenders who were required to partake in mental health services are asked how strongly they believe they have benefited, and how helpful the Youth Court Coordinator was in providing appropriate assistance.<sup>92</sup> Further, the survey takes an interest in the participants’ education, and asks how helpful the Coordinator was in assisting offenders in setting and achieving educational goals as well as in explaining “education alternatives” and employment.<sup>93</sup>

The survey also provides information into the process of Riley County youth court, as it asks participants whether they were discharged as “[s]uccessful, [u]nsuccessful, or [r]evoked (sent back to County Attorney).”<sup>94</sup> The survey inquires as to whether, in terms of the offense that led the participant to youth court, there has been further contact with law enforcement.<sup>95</sup> The survey concludes by asking about “the Juvenile Intake process” and provides an open-ended comment

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86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

section, as well as asking surveyors whether they “[came] through Juvenile Intake prior to being offered Youth Court,” whether they were “offered referrals at the time of [their] intake,” and whether the referrals (to drug testing, alcohol testing, or counseling) were “appropriate for the reason [they] came through Juvenile Intake.”<sup>96</sup> Juvenile Intake and Assessment (“JIA”) can refer offenders to participate in youth court. JIA “conducts assessments on juvenile offenders and/or children in need of care who are brought into custody by law enforcement,” and “assists law enforcement with youth taken into custody by gathering information, completing an assessment, and [assisting] in determining appropriate placement when necessary.”<sup>97</sup> The primary goal of JIA is to “prevent further contact with law enforcement”; hence, they refer offenders to youth court if it is deemed necessary.<sup>98</sup> An advantage of the adult judge model may be that the presence of an adult judge solemnizes the proceedings, whereas a disadvantage may be that the presence of an adult judge reduces the goal of positive peer-to-peer mentorship that other forms of youth court may more easily reach.

## 2. Youth Judge Model

Similarly to the adult judge model of youth courts, the youth judge model places youth volunteers “in all roles, including that of judge, under the monitoring of an adult volunteer, usually an attorney.”<sup>99</sup> Additionally, throughout the proceedings, “[a]n adult youth court coordinator or adult volunteer is present in the courtroom to ensure that the process runs smoothly.”<sup>100</sup> As in the Riley County adult judge model youth court, where the court clerk reads a summary of the police report for each participating offender, in the youth judge model, “[d]epending upon the format of the youth court, the youth attorneys may receive a police report or other document detailing the misconduct some time prior to the hearing.”<sup>101</sup> A youth clerk is also present during the youth judge model proceedings, and is responsible for “handl[ing] the paperwork during the hearing.”<sup>102</sup> A youth bailiff exists as well, who “calls the court to order, announces the case, administers the oath, escorts individuals in and out of the courtroom, and closes proceedings.”<sup>103</sup>

As is common with all youth courts, there is an emphasis on accountability and retribution. It is the role of the prosecutor to present “the impact of the respondent’s behavior on all victims” to the court.<sup>104</sup> Often, they can involve victims in the proceedings, “or the

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96. *Id.*

97. *Juvenile Intake and Assessment*, RILEY COUNTY KANSAS, <http://www.rileycountyks.gov/166/Juvenile-Intake-and-Assessment> (last visited Aug. 30, 2016).

98. *Id.*

99. PEARSON & JURICH, *supra* note 61, at 13.

100. FISHER, *supra* note 31, at 10.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

prosecutor may obtain a written victim impact statement or may rely on a more generalized community impact statement for the type of offense that occurred.”<sup>105</sup> The defense attorneys representing the offenders serve to ensure “that the jury understands the broader context in which the misconduct has occurred, including any remorse, steps taken to remedy the harm prior to the hearing, and any consequences already imposed by the parent.”<sup>106</sup> Additionally, the defense attorney can present to the youth court any “troubles or difficulties the respondents experience in their lives.”<sup>107</sup> Both the prosecutors and defense attorneys are able to engage in fact-finding, forming arguments, interviewing witnesses, and preparing and asking questions during the proceeding, as well as “present[ing] opening statements, evidence, and closing arguments to a jury.”<sup>108</sup> Finally, “the youth jurors deliberate and determine a disposition for the respondent using restorative justice goals.”<sup>109</sup>

This Note examines the Brownsville Youth Court (“BYC”) as the representative youth judge model of youth courts. The BYC is part of the Brownsville Community Justice Center, which “is dedicated to building multiple off-ramps for young people who come into contact with the justice system.”<sup>110</sup> Youth court is only one of several “off-ramps” implemented by the Brownsville Community Justice Center; other efforts include the creation of clinics, social services programs, and community service initiatives.<sup>111</sup> The BYC “trains teenagers to serve as jurors, judges and advocates, handling real-life cases involving their peers.”<sup>112</sup> While the majority of their caseload involves offenses of theft and assault, the BYC also hears “offenses such as curfew violations, vandalism, [and] disorderly conduct.”<sup>113</sup>

The primary goal of the BYC “is to use positive peer pressure to ensure that young people who have committed minor offenses restore harm done to the community and receive the help they need to avoid further involvement in the justice system.”<sup>114</sup> The BYC achieves this goal by emphasizing responsibility, community restoration, help, and leadership. Responsibility for one’s actions is a message “more likely to be heard and understood” when it “comes from other young people.”<sup>115</sup> The BYC strives to allow “respondents to reflect on their actions and understand how their behavior affects others around

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105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Brownsville Community Justice Center*, CENTER FOR COURT INNOVATION, <http://www.courtinnovation.org/project/brownsville-community-justice-center> (last visited Aug. 30, 2016).

111. *Id.*

112. *Brownsville Youth Court*, CENTER FOR COURT INNOVATION, <http://www.courtinnovation.org//brownsville-youth-court> (last visited Aug. 30, 2016).

113. *Id.*

114. *Id.*

115. *Id.*

them.”<sup>116</sup> Much in line with the emphasis on responsibility, the BYC also explicitly prioritizes “[r]estoring the [c]ommunity,” both through conventional means such as community service and public apologies, as well as through more creative measures such as sanctioning offenders to “help plant trees in local parks, help community groups set up for local events, and assist in local activities for younger children.”<sup>117</sup> Additionally, the BYC focuses on offering help to offenders by providing counselors and workshops with the goal of “help[ing] youths make better decisions and avoid future involvement with the justice system.”<sup>118</sup> Finally, the BYC emphasizes leadership. To foster leadership, the BYC trains youth court members in “group-decision making, critical thinking and public speaking,” as well as encouraging those “who have successfully gone through the youth court program as respondents” to become active members of youth court.<sup>119</sup> These four priorities reflect the BYC’s focus on restorative justice.

Similarly to other youth court programs, the BYC holds hearings year-round, twice weekly.<sup>120</sup> However, the BYC diverges from typical youth courts in six respects. First, the BYC allows younger offenders to participate in youth court proceedings; whereas, as aforementioned, “[i]n general, youth courts handle respondents aged 12 to 18,”<sup>121</sup> the BYC hears cases from offenders ranging from age ten to age eighteen.<sup>122</sup> Second, the BYC members are selected as part of a six-month internship.<sup>123</sup> Third, and in tandem with the internship program, the BYC offers a stipend to youth court members.<sup>124</sup> As of August 2013, the BYC provided a monthly stipend of one hundred dollars to active youth court members who served for five hours or more per week.<sup>125</sup> The stipend is connected to the BYC’s internship program, and is available for the six-month span of the internship.<sup>126</sup> Fourth, the BYC provides over three times more training to its youth court members than other youth courts. Youth court members at the BYC partake in thirty-two hours of formal training, whereas most youth court volunteers receive

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116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Youth Courts: Facts and Stats*, *supra* note 57 (Typically, “70% of youth courts hold hearings all year long.”); Ashia Barnes, *Brownsville Youth Court: Alumni Reflections*, BROWNSVILLE COMMUNITY JUSTICE CENTER (Jan. 14, 2014), <http://brownsvillejusticecenter.blogspot.com/search?q=youth+court>.

121. AMERICAN BAR ASSOCIATION, YOUTH CASES FOR YOUTH COURTS DESKTOP GUIDE: A GUIDE TO THE TYPICAL OFFENSES HANDLED BY YOUTH COURTS 13 (2007), [http://www.americanbar.org/content/dam/aba/migrated/publiced/youthcases\\_youthcourts.auth\\_checkdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/publiced/youthcases_youthcourts.auth_checkdam.pdf) [hereinafter A GUIDE TO THE TYPICAL OFFENSES HANDLED BY YOUTH COURTS]; Barnes, *supra* note 120.

122. *Law Internships for Teens*, BROWNSVILLE COMMUNITY JUSTICE CENTER (Aug. 1, 2013), <http://brownsvillejusticecenter.blogspot.com/search?q=youth+court>.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

only ten hours.<sup>127</sup> Notably, despite the stipend, the thirty-two hours of training are unpaid.<sup>128</sup> However, youth volunteers receive community service credit for their participation in the lengthy training program.<sup>129</sup> Fifth, whereas “53% of youth court programs *require* respondents to participate in jury duty at least once as part of their sentence,”<sup>130</sup> the BYC only “encourage[s]” past offenders to train and participate as a member of youth court.<sup>131</sup> Finally, sixth, whereas “55% of youth courts close their hearings to the general public,”<sup>132</sup> the BYC opens youth court hearings to the public.<sup>133</sup>

The BYC’s lengthy training program is only one indicator of what it deems as “a competitive training internship program.”<sup>134</sup> The BYC internship is unique in that its members are selected “based on the quality of their applications and interview performance,” and must also “perform well on the bar exam and have demonstrated themselves throughout the training process.”<sup>135</sup> Membership on the BYC is limited to “Brooklyn teens age 14–18 who are enrolled in school or [a] GED program.”<sup>136</sup> Between July 2011 and July 2012, the BYC received four hundred and fifty applications from prospective teenagers who were interested in volunteering for youth court; of those applicants, the BYC “invited 107 teens into [their] training classes and selected 39 to serve in [their] first and second cohorts combined.”<sup>137</sup>

The BYC has made strides to embed themselves in the community. Through hosting an open house, the BYC sought to “introduce . . . neighbors and community stakeholders to the program.”<sup>138</sup> To educate the public on the merits of youth courts, the open-house began with a discussion of “an overview of the program, referral process, and benefits of youth court membership,” and was followed by an observa-

127. *Id.*; see also *Youth Courts: Facts and Stats*, *supra* note 57; *Alley Pond Park Adventure Course*, BROWNSVILLE COMMUNITY JUSTICE CENTER (Aug. 17, 2012), <http://brownsvillejusticecenter.blogspot.com/2012/08/alley-pond-park-adventure-course.html>. Additionally, the BYC provides volunteers with informal training; for example, in conjunction with the Greenpoint Youth Court, youth court volunteers “participate[d] in team building and leadership exercises” on an adventure course to “problem solve and accomplish a shared goal.” *Id.*

128. *Law Internships for Teens*, *supra* note 122.

129. *Id.*

130. *Youth Courts: Facts and Stats*, *supra* note 57 (emphasis added).

131. *Brownsville Youth Court*, *supra* note 112.

132. *Youth Courts: Facts and Stats*, *supra* note 57.

133. BROWNSVILLE YOUTH COURT, YOUTH COURT LOCATION & YOUTH COURT OVERVIEW, [http://www.courtinnovation.org/sites/default/files/documents/BYC\\_FS.pdf](http://www.courtinnovation.org/sites/default/files/documents/BYC_FS.pdf) (last visited Mar. 12, 2016).

134. *Law Internships for Teens*, *supra* note 122.

135. *Id.*

136. *Id.*

137. *The Brownsville Youth Court Turns One Year Old!!!*, BROWNSVILLE COMMUNITY JUSTICE CENTER (July 16, 2012), <http://brownsvillejusticecenter.blogspot.com/2012/07/brownsville-youth-court-turns-one-year.html>.

138. *Youth Court Opens its doors to the community*, BROWNSVILLE COMMUNITY JUSTICE CENTER (Mar. 22, 2013), <http://brownsvillejusticecenter.blogspot.com/2013/03/youth-court-opens-its-doors-to-community.html>.



tion of a youth court hearing.<sup>139</sup> Additionally, in line with the BYC's secondary goal to educate and benefit volunteer youth members, the open house concluded with "a question and answer session with current youth court members and staff"; volunteers "shared their reasons for joining the Brownsville Youth Court, skills they have gained since joining, and future career goals."<sup>140</sup> The BYC participates in numerous service activities. For example, in 2015, the BYC joined with the Municipal Arts Society "to implement an exciting new initiative called *Designing Change*," which "uses design and art as a tool to engage youth in community-based planning and urban design projects in Brownsville, Brooklyn."<sup>141</sup> The program allows participants to help with the "revitalization of their neighborhood."<sup>142</sup> Volunteers of the BYC also participate in service work such as "street and sidewalk clean-ups, the installation of public art, graffiti removal, greening a vacant lot and planning for a permanent street plaza."<sup>143</sup> The BYC's open house and community service work not only aligns with their personal mission of "[r]estoring the [c]ommunity," but also parallels the rehabilitative goals of youth courts nationwide.<sup>144</sup>

### 3. Peer Jury Model

The peer jury model is most striking in that it is the only model that does not utilize youth attorneys. Rather, "[t]he peer jury court is composed of one presiding juror and a panel of jury members who all question the respondent, parent, and other witnesses and then deliberate and decide upon a disposition."<sup>145</sup> These youth jurors act as the attorneys and the judge, as they have the authority to ask questions and examine witnesses as well as exercise final decision-making power. However, "in recent developments, courts may assign a community advocate to ensure that the impact of the respondent's behavior is fully explored."<sup>146</sup> The courts that opt to assign advocates may also "appoint a defense advocate to support the respondent during the hearing and ensure that sufficient information is provided about the circumstances of the respondent."<sup>147</sup> These assigned defense advocates "may even make opening statements and closing arguments."<sup>148</sup> Court clerks and bailiffs are also roles filled by youth. As in the other models, the clerk is responsible for paperwork while the bailiff "calls the court to order, announces the case, administers the oath, escorts individuals in and out

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139. *Id.*

140. *Id.*

141. *Place Based Work: A Year In Review*, BROWNSVILLE COMMUNITY JUSTICE CENTER (Jan. 29, 2016), <http://brownsvillejusticecenter.blogspot.com/2016/01/place-based-work-year-in-review.html>.

142. *Id.*

143. *Id.*

144. *Brownsville Youth Court*, *supra* note 112.

145. FISHER, *supra* note 31.

146. *Id.*

147. *Id.*

148. *Id.*

of the courtroom, and closes proceedings.”<sup>149</sup> This Note examines the Village of Palatine youth court as the representative peer jury model of youth courts.

In the Village of Palatine, located in Cook County, Illinois, a juvenile officer reviews a case where a youth is arrested and determines whether they meet the criteria necessary to be referred to youth court. As in other youth courts, the offender must admit guilt, agree to participate, and gain parental consent. The Village of Palatine describes the youth court process: “[t]he youth offender . . . appears before the peer jury, the case is summarized and the jury questions the offender regarding the crime, including their intent, and how their actions affect others.”<sup>150</sup> The structure of youth court, in which jurors are able to directly question the offender, lies in sharp contrast with that of the federal jury system.<sup>151</sup> Moreover, the jurors’ questioning into the offender’s intent and consideration of “how their actions affect others” reflects the youth court’s emphasis on accountability.<sup>152</sup> This focus on accountability is also made clear in their sentencing, as “[t]he youth is then sentenced to typically community service, writing an apology letter or report on crime, or attending educational workshops or counseling.”<sup>153</sup> Given that the offender must admit guilt as a prerequisite to participating, the youth court of the Village of Palatine does not address culpability. The court is strictly limited to questioning for the purpose of sentencing. The court’s sentencing takes a rehabilitative approach, as service, letters of apology, and counseling serve to restore an offender’s role in the community. Notably, the Village of Palatine youth court recruits volunteers through advertising that requires them to contact the Chief of Police of the Palatine Police Department.<sup>154</sup>

#### 4. Theorizing the Tribunal Model

Unlike the other three models, the youth court tribunal model does not utilize a peer jury. As the least utilized model, it typically includes a panel of three youth judges, youth prosecutors, and youth defense attorneys.<sup>155</sup> Given the paucity of information regarding this least utilized model, as well as the preference for the adult judge model, youth judge model, and peer jury model, this Note theorizes how the characteristics of the tribunal model play out in light of the overarching purpose of youth courts. Despite the limited use of the tribunal model, a framework can be developed to analyze its potential advantages and disadvantages, as well as predict its limitations.

Given that the tribunal model utilizes a panel of three judges—eliminating the use of a peer jury entirely—as well as opposing counsel,

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149. *Id.*

150. *Peer Jury*, *supra* note 56.

151. *Justice 101*, UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/usao/justice-101/trial> (last visited Sept. 24, 2016).

152. *Peer Jury*, *supra* note 56.

153. *Id.*

154. *Id.*

155. PETERSON & BERES, *supra* note 60; PEARSON & JURICH, *supra* note 61.

it is likely that state legislation allowing the model is adversarial rather than dispositional. Whereas a youth court utilizing peer juries invokes the notion of sentencing, involvement of youth lawyers suggests advocacy and argumentation. Tribunal models, in this respect, fit squarely into the purpose of an adversarial youth court, rather than one characterized as dispositional.<sup>156</sup> Moreover, with youth judges having the power to both determine guilt and issue sentences, additional and more rigorous training is likely expected. The youth attorneys also must receive intensive training in order to gain a basic foundation of the legal system, substantive law, rules of evidence, confidentiality, and courtroom procedure and etiquette.

### C. *Sentencing in Action: Examples of Punishment*

Given their status as minors, there is limited information about the formal charges and sentencing of offenders in youth courts. Although concrete information regarding specific individuals is non-existent, some youth courts publicize sentencing terms with names redacted, thus providing offenders with notice as to what they can expect, as well as providing information to journalists so as to raise awareness about the benefits of youth court programs.

With names redacted, the City of Ocala, Florida publicized information regarding Marion County Teen Court, which utilizes the adult judge model. The city newspaper, Ocala Star Banner, issued an article entitled: "Teen Court puts justice in hands of offenders' peers."<sup>157</sup> The article outlines both the offense and the sentencing determination, as well as offers insight into the types of questions that youth court volunteers ask as jury members. The article, noting that it "is withholding the teens' names because of their ages," paints a picture of a seventeen-year-old defendant who "had caved to mounting peer pressure and taken some oxycodone pills from her father, who had just had back surgery."<sup>158</sup> The defendant ingested one pill, but attempted to return the other pills.<sup>159</sup> However, she could not locate her father's bottle, and placed the remaining pills into her backpack.<sup>160</sup> A classmate who learned of the pills notified school administration.<sup>161</sup> The presiding adult judge, Assistant State Attorney Victoria Grimes, noted that the "indiscretion could carry a punishment of up to five years behind bars and a \$5,000 fine."<sup>162</sup> When Grimes asked if the defendant would have stolen the pills had she known this information, the defendant

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156. Indeed, perhaps the low number of tribunal model youth courts directly correlates to the hesitance to allow for adversarial models (where youth courts can both determine guilt of the offender and sentence the offender) and the preference for dispositional models (where offenders must admit guilt as a prerequisite to involvement, and where youth jurors can only determine sentencing).

157. Warren, *supra* note 7.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

responded that she “wouldn’t have done it.”<sup>163</sup> Notably, this question-and-answer structure reflects the youth court’s goal of accountability. Additionally, the youth jury was composed of those “who might be sympathetic to the girl’s case” because “[n]ot too long ago, they themselves were in the hot seat.”<sup>164</sup> Indeed, “serving jury duty was part of their own sentences.”<sup>165</sup> After deliberating, these youth jurors agreed upon a sentence: the defendant was to “perform 120 hours of community service, serve 12 jury duty rotations, undergo family counseling for communication, write an apology to her parents, and verbally apologize to her mother in open court.”<sup>166</sup> Such an emphasis on communication aligns with the mission of youth courts to heighten accountability.

## II. IMPACT & CRITICISM

### A. *Criticism*

#### 1. Rooted in Shame and Blame, or Rhyme and Reason?

Many of the offenses committed by youth are “because of negative peer pressure.”<sup>167</sup> To combat the negative pressure that leads to wrongdoing, “[t]een courts work on positive teen pressure.”<sup>168</sup> Critics of the youth court system argue that it relies on embarrassment and shaming of juvenile offenders in order to gain deterrence value and lower recidivism rates. Ironically, some proponents of youth court programs agree. Aaron Vanatta, the school police officer who started the peer jury in 2012, stated that the peer jury relies on “‘positive peer pressure and mentoring’ to discipline and divert offendees from the mainstream justice system.”<sup>169</sup> He elaborates that, “[s]tudents tend to respond better to their peers when they tell them they are going down the wrong path as opposed to an adult authority figure telling them.”<sup>170</sup> A teenage member of the peer jury echoed this sentiment, stating that “[i]t’s more embarrassing to go in front of your peers so it gets better results.”<sup>171</sup>

Other youth programs, also acknowledge that embarrassment is an inevitable result of committing an offense. One peer jury sentencing of a youth offender at the Youth Court of the District of Columbia included a requirement to “make a formal apology to his mother for the suffering and embarrassment his behavior had caused her.”<sup>172</sup> Marion County Teen Court in Ocala, Florida, has also sentenced youth

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163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. Carpenter, *supra* note 18.

170. *Id.*

171. *Id.*

172. Tina Rosenberg, *For Young Offenders, Hope in a Jury of Their Peers*, N.Y. TIMES: OPINIONATOR (Oct. 13, 2011), [http://opinionator.blogs.nytimes.com/2011/10/13/for-teen-offenders-hope-in-a-jury-of-their-peers/?\\_r=3](http://opinionator.blogs.nytimes.com/2011/10/13/for-teen-offenders-hope-in-a-jury-of-their-peers/?_r=3).

offenders to make an “open-court apology” to those who suffered from their wrongdoing.<sup>173</sup>

Concerns about embarrassing offenders in order to create deterrence value also exist at the peer jury program for New Trier Township. One reporter for the Chicago Tribune wrote of the New Trier Township peer jury program: “It’s uncomfortable. It’s embarrassing.”<sup>174</sup> Sharing this skeptical sentiment of the New Trier Township youth court, the executive director of Youth Services of Glenview/Northbrook states: “I and police don’t like it because we believe strongly in holding people accountable for their mistakes in judgment, but not in embarrassing them.”<sup>175</sup> Commenting on the youth court process, in which the teenage jurors have the ability to “question the offender for about [fifteen] minutes, asking why they committed the crime, if it was their idea, if they apologized to the victim or when they realized what they did was wrong,” Northfield Police Chief Bill Lustig stated: “They’re mortified. They’re embarrassed standing up there going through this. They certainly don’t want to go through that process again.”<sup>176</sup> Remarkably, the negative feedback that shame and blame underlie New Trier’s youth court system exists despite the fact that, like the majority of youth courts, the hearings are closed to the general public.<sup>177</sup>

Proponents of the youth court system do not deny that peer pressure is a component of the program; rather, they view the pressure as positive, rather than negative. Jeffrey Butts, director of the Research and Evaluation Center at John Jay College of Criminal Justice in New York, affirms that, “[t]he most powerful factor [in youth courts] is peer support for pro-social behavior.”<sup>178</sup> Given that the offenders are often required to serve as jurors on youth court as part of their sentencing terms, “teenagers get a chance to sit in judgment on others just like them.”<sup>179</sup> Moreover, acting as jurors provides “a long-term experience of contributing something, of having their views treated as valuable and worthwhile.”<sup>180</sup> This experience of returning to youth court as a juror, rather than as an offender, mitigates the amount of embarrassment that they may feel long-term about the process.

Additionally, in a 2005 national update, the American Youth Policy Forum (“AYPF”) confronted the issue of peer pressure, stating: “Indeed, if negative peer pressure can induce adolescents to anti-social behavior, the exposure to peers in positions of leadership who model

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173. Warren, *supra* note 7.

174. John P. Huston, *Peer Jury helps teens avoid criminal record*, CHI. TRIBUNE (Nov. 13, 2012), [http://articles.chicagotribune.com/2012-11-13/news/ct-tl-peer-jury-20121112\\_1\\_peer-jury-juvenile-offenders-juvenile-court](http://articles.chicagotribune.com/2012-11-13/news/ct-tl-peer-jury-20121112_1_peer-jury-juvenile-offenders-juvenile-court).

175. *Id.*

176. *Id.*

177. *Youth Courts: Facts and Stats*, *supra* note 57; see also Huston, *supra* note 174.

178. Tina Rosenberg, *Where Teenagers Find the Jury Isn’t Rigged*, N.Y. TIMES: OPINION-ATOR (Oct. 18, 2011), [http://opinionator.blogs.nytimes.com/2011/10/18/where-teens-find-the-jury-isnt-rigged/?\\_r=0](http://opinionator.blogs.nytimes.com/2011/10/18/where-teens-find-the-jury-isnt-rigged/?_r=0) [hereinafter Rosenberg, *Where Teenagers Find the Jury Isn’t Rigged*].

179. *Id.*

180. *Id.*

positive behaviors provide the young offender with a new perspective about their role in society, and a peer support group for times of need.”<sup>181</sup> The testimony of Tynesia Fields, a peer-member of the BYC (a youth judge model youth court), echoed the AYPF’s view that youth courts can shape the offender’s view of their role in society. Speaking of her time serving as a youth court member in her community of Brownsville, Brooklyn, New York, Fields noted:

The neighborhood in which I have grown since birth is associated with negative stereotypes in the media and the residents too often live up to them. This is the same city that has raised me—that I love—but it is known for its murders, robbery, gangs, high incarceration rates and teenage pregnancy. Through my community and my experiences[,] I have learned that a reputation can either be a self-fulfilling prophecy, or encourage one to do better than what is expected. Thus, I am not a product of my surroundings, but a servant for my community. I come into daily contact with youth who have fallen into these stereotypes and I try to help empower them through peer mentoring.<sup>182</sup>

Speaking to the power of positive peer-to-peer mentorship, Fields argued that the youth court program empowers offenders to rise above the crime that surrounds them. “Unlike the crab in a barrel mentality,” she stated, “this system allows peers, all trying to avoid the limited expectations of the community, to help one another claw their way out of the barrel.”<sup>183</sup> Fields viewed her role on youth court as interactive, rather than unilateral.

Yet, not all proponents of youth courts view the peer system as collaborative. Rather, many view the *process* (although perhaps not its *effects*) as a unilateral undertaking by those who serve on youth court to “tell respondents clearly that their behavior is wrong.”<sup>184</sup> The conversation is not rooted in embarrassment, but in understanding. Before offenders can rectify and learn from their mistakes, they must understand their mistakes. In order to achieve this goal, the ABA notes that “youth volunteers work through creative ways to have respondents understand in concrete terms that their behavior has harmed specific individuals and the community.”<sup>185</sup> Moreover, the ABA contends that this conversation, although perhaps one-sided, is effective because youth court peer volunteers “turn peer pressure into a positive tool.”<sup>186</sup>

Perhaps the shame that surrounds offenders in youth court proceedings is equal to, if not lesser than, the shame that accompanies the federal juvenile justice system. Indeed, Marion County Teen Court in

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181. PEARSON & JURICH, *supra* note 61, at 19.

182. Tynesia Fields, *Brownsville Youth Court: Alumni Reflections*, BROWNSVILLE CMTY. JUST. CTR. (Feb. 6, 2014), <http://brownsvillejusticecenter.blogspot.com/2014/02/brownsville-youth-court-alumni.html>.

183. *Id.*

184. A GUIDE TO THE TYPICAL OFFENSES HANDLED BY YOUTH COURTS, *supra* note 121, at 2 (emphasis added).

185. *Id.*

186. *Id.*

Ocala, Florida, notifies youth court participants that “if they do not complete the program they could return to the traditional system, where they face harsher sanctions.”<sup>187</sup> Several factors of the youth court system mitigate the effect of embarrassment. For example, the majority of youth court proceedings are closed to the public. In New Trier’s youth court, “[j]urors are not allowed to sit in on cases in which they know the offender, and visitors must sign a form agreeing they will not discuss the names of anyone involved or the specifics of the cases.”<sup>188</sup> The Palatine Peer Jury also regulates press-related concerns, and emphasizes that “[n]o list of offenders appearing before the jury is published” and that “[t]he press is not permitted to report individual cases.”<sup>189</sup> Additionally, some youth courts do not read formal charges against youth offenders aloud.<sup>190</sup> Moreover, given that many of the youth court volunteers had formerly been in the “hot seat” themselves,<sup>191</sup> they are perhaps more likely to be sympathetic towards the offender than would a jury in the federal juvenile justice system. These measures, far from atypical in youth court programs, mitigate the threat of embarrassment to offenders who enter into the youth court system.

## 2. Youth Courts: A Costly Sentence for Adult Tax Payers?

The youth court system is praised for its economic benefits. Indeed:

Youth court cases . . . save the system money. . . . On average, it costs \$480 for each teen court participant who successfully completes his or her sentence, according to the 2005 report by the American Youth Policy Forum. An average juvenile justice case winding through the formal court system can cost anywhere from \$3,500 to \$50,000 per case, according to Levine. Since many involved in teen courts are volunteers with only one or two salaried staffers, per-program costs for teen courts are mostly administration and materials cost . . . .<sup>192</sup>

Moreover, the cost of youth courts is not a substantial strain on taxpayers. In Florida, for example, the “youth court system is funded from the purse strings of other offenders.”<sup>193</sup> In Florida, “[s]tate legislation passed in 1996 allowed for youth court funding through the collection of \$3 from anyone convicted of violating a state criminal statute or a municipal ordinances, according to the American Bar Association.”<sup>194</sup> Furthermore, in Marion County, Florida, “[e]ach teen court participant must also pay a \$25 fee.”<sup>195</sup>

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187. Warren, *supra* note 7.

188. Huston, *supra* note 174.

189. *Peer Jury Brochure*, VILLAGE OF PALATINE, [http://www.palatine.il.us/assets/1/policy/Peerjury\\_Brochure.pdf](http://www.palatine.il.us/assets/1/policy/Peerjury_Brochure.pdf) (last visited Mar. 2, 2016).

190. Warren, *supra* note 7.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

Florida is not the only state that has successful youth courts that function without a substantial strain on the taxpayers. In Washington, D.C., the cost of a single youth court case is \$444.<sup>196</sup> While this “is obviously more expensive than simply driving a teenager home to mom” following a wrongdoing, it costs exponentially more to incarcerate a juvenile for a year, which can cost approximately \$80,000.<sup>197</sup> Indeed, these numbers indicate that youth courts are “a far cheaper alternative to the formal juvenile justice system.”<sup>198</sup> Moreover, the youth court system is “an investment that leads to far greater savings in human and financial terms later.”<sup>199</sup> Thus, taxpayers are not strained by the existence of youth court programs; rather, they reap the positive externalities of the system (service projects within the community, revitalization of neighborhood property, reduced recidivism rates) without shouldering the cost.

## B. *Impact Beyond the Offenders: An Opportunity for Youth Court Members and the Community*

### 1. Benefits to Members

Youth courts primarily serve to “determine a fair and restorative sentence or disposition for the youth respondent.”<sup>200</sup> Thus, the principal goal of youth courts focuses on the offenders themselves. “At the same time,” boasts the ABA, “youth court offers opportunities for other young people to participate actively in the decision-making process for handling juvenile delinquency, as they gain hands-on knowledge of the juvenile and criminal justice systems.”<sup>201</sup> Through assuming roles of jurors, judges, attorneys, bailiffs, or clerks, youth court members “have a chance to contribute directly to the administration of justice and develop a foundation for that trust.”<sup>202</sup> Ashia Barnes, a former member of Brownsville Youth Court who served for one year, echoed this sentiment. Of her time as a youth court member, where she heard cases with peers “every Tuesday and Thursday,” she noted: “Brownsville Youth Court taught me that my voice matters and that service is essential if we want our community to survive and to strive.”<sup>203</sup> Barnes noted both how youth court positively affected the community and how volunteering in youth court affected her personal growth. “Not only did Brownsville Youth Court teach me the fundamental tools necessary to be a leader, they believed in me and my dreams.”<sup>204</sup> Barnes continued to express her gratitude for her prior role on youth court, exclaiming:

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196. Rosenberg, *Where Teenagers Find the Jury Isn't Rigged*, *supra* note 178.

197. *Id.*

198. *Id.*

199. *Id.*

200. *Youth Courts: Facts and Stats*, *supra* note 57.

201. A GUIDE TO THE TYPICAL OFFENSES HANDLED BY YOUTH COURTS, *supra* note 121, at 2.

202. J. Robert Flores & Karen J. Mathis, *Preface of A GUIDE TO THE TYPICAL OFFENSES HANDLED BY YOUTH COURTS*, *supra* note 121, at ii.

203. Barnes, *supra* note 120.

204. *Id.*



“Brownsville Youth Court taught me things I could use in my future, such as team building skills, resume writing, professionalism, and interviewing skills!”<sup>205</sup>

The testament of another long-term volunteer at the BYC, Tynesia Fields, also aligns with the ABA’s secondary goal of offering “opportunities for other young people to participate actively in the decision-making process for handling juvenile delinquency.”<sup>206</sup> Fields, who served on the BYC between 2011 and 2013, noted how educational her experience as a youth court member had been, stating: “Involvement with the Brownsville Youth Court has allowed me to continue fulfilling my passion for service such as advocating for children’s and racial [and] ethnic justice and cultural rights as well as gain more knowledge in other interests, including criminalization and homelessness.”<sup>207</sup> Additionally, Fields noted that her membership in a youth court program has influenced her professional trajectory. She stated: “[The BYC’s] constructive atmosphere has inspired me to pursue a career in law and to become a youth advocate.”<sup>208</sup> This testimony demonstrates that youth who meaningfully participate in their communities experience personal growth. Indeed, community activism and involvement positively influences volunteers as well as provides benefits to the community.

## 2. Benefits to the Community

Parties not directly involved in youth courts nonetheless reap its benefits. When crime lessens, the community benefits. It is significant, then, that youth courts produce positive results and decrease recidivism. For example, the Tennessee youth court noted:

During our fourteen or so years of [operating] youth courts in Tennessee, our average to date is that fewer than 6% of youth who go through the [program] as offenders commit another offense. That’s a 94% success rate! Last year, with more youth participating and more hearings, fewer than 4% of youthful offenders were charged with another offense. That’s a 96% success rate!<sup>209</sup>

Overall, “[f]ewer than 10 percent of youth court participants find their way back into the system.”<sup>210</sup> This is in contrast to the traditional juvenile system, which has “a recidivism rate of 30 percent to 70 percent.”<sup>211</sup> “An Urban Institute study of four youth courts,” as well, “compared teenagers who had committed the same crimes.”<sup>212</sup> The study revealed that “[t]hose who went to youth court had less than half the one-year recidivism rate of those who went to the formal juvenile justice

205. *Id.*

206. A GUIDE TO THE TYPICAL OFFENSES HANDLED BY YOUTH COURTS, *supra* note 121, at 2.

207. Fields, *supra* note 182.

208. *Id.*

209. *About Tennessee Youth Courts*, TENN. B. ASS’N, <http://www.tba.org/info/about-tennessee-youth-court> (last visited Mar. 10, 2016).

210. Warren, *supra* note 7.

211. *Id.*

212. Rosenberg, *Where Teenagers Find the Jury Isn’t Rigged*, *supra* note 178.

system.”<sup>213</sup> Such proven success rates provide insight into the growth of youth courts nationwide.

Notably, however, “[a] 2005 American Youth Policy Forum report on youth courts cautions against comparing these statistics because teen courts deal with first-time offenders with less severe crimes, while the traditional system deals with a large portion of repeat offenders.”<sup>214</sup> Nonetheless, reduced crime of any type is positive in a given community. Moreover, lower recidivism rates—although a positive externality for communities—are only one piece of the large puzzle that is the youth court system. The mere fact that youth gather regularly to engage with their peers and adult mentors—and, in the process, gain exposure to the legal community—is a positive result of the youth court system. Moreover, as the BYC exemplified, youth court volunteers are active in their respective communities. The BYC partook in the “revitalization of their neighborhood” by leading and participating in service projects, oftentimes with other community youth groups. Their goal of “restoring the community” continues to be achieved through their heavy involvement with their peers in the community.<sup>215</sup> Even if the recidivism rates are taken with a grain of salt, the other positive externalities arising from the youth court system provide a foundation that strongly supports the existence of—and growth of—the youth court system.

#### CONCLUSION

In the world of youth courts, minors play a major role. The integrity and effectiveness of the youth court system—as well as its goals of rehabilitation and accountability—depends on minors who think creatively and act fairly. Each of the four youth court models strives to redirect an offender to a better path—one free of the stigma associated with the traditional justice system, and one that encourages communication between the offender and his or her peers, the offender and his or her family, and the offender and his or her community. Although an unpredictable resource for dispute resolution, minors serving on youth courts may nonetheless provide the sort of ingenious solution for which Justice Berger advocated—and in the process, give an entirely new meaning to the notion of “a jury of one’s peers.”

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213. *Id.*

214. Warren, *supra* note 7.

215. See *Brownsville Youth Court*, *supra* note 112.

