

JASON TASHEA\*

## **Youth Courts International: Adopting an American Diversion Program Under the Convention on the Rights of the Child**

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\* Jason Tashea is a Fulbright Fellow to Kosovo studying juvenile justice. He is also a co-founder of Youth Courts International. He has a J.D. from the University of Oregon. He would like to thank Denise Wike at Anchorage Youth Court, Alexandra Martins of the United Nations Office of Drugs and Crime, Robert Ainley, and the indispensable Laura Horton for all of their help.

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## INTRODUCTION

Worldwide, a majority of children do not need to be, nor do they belong, in the criminal justice system.<sup>1</sup> Most children wind up in the justice system because they commit non-violent crimes, status offenses, or illegalized survival behaviors like stealing to eat or homelessness.<sup>2</sup> Once detained, many justice systems fail to meet the needs of child offenders. Children are often treated as adults by systems that retributively put children in prison.<sup>3</sup> In prison, children are at a high risk of sexual, physical, and mental abuse, offering little chance of successful reintegration and rehabilitation into society.<sup>4</sup> On account of these known harms, juvenile justice experts and the international community have called for greater utilization of diversion to keep children out of harm's way and to help better reintegrate them into society.<sup>5</sup>

To help combat this problem, communities throughout the United States have adopted a peer-to-peer diversion program called “youth court” (or “teen court” or “peer court”). This program is tailored to non-violent child offenders that avoids detention and a permanent record by using positive peer-pressure. With over 1,200 youth courts throughout the United States,<sup>6</sup> they lower recidivism, save cities and counties money, and offer a pro-social alternative to the traditional justice system. These successes in the U.S. can and should be recreated abroad, but so far youth courts are largely unheard of outside of the United States.

<sup>1</sup> U.N. Secretary-General, *Violence Against Children In Conflict with the Law, Annex 4*, 14 (April 4–5, 2005), available at [http://www.essex.ac.uk/armedcon/story\\_id/000280.pdf](http://www.essex.ac.uk/armedcon/story_id/000280.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> See Vincent Schiraldi & Jason Zeidenberg, *The Risks Juveniles Face When They Are Incarcerated with Adults*, JUST. POL'Y INST. (1997), available at [http://www.justicepolicy.org/images/upload/97-02\\_REP\\_RiskJuvenilesFace\\_JJ.pdf](http://www.justicepolicy.org/images/upload/97-02_REP_RiskJuvenilesFace_JJ.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> See generally U.N. Secretary-General, *supra* note 1.

<sup>6</sup> Tina Rosenberg, *For Young Offenders, Hope in a Jury of their Peers*, N.Y. TIMES (Oct. 13, 2011, 8:30 PM), <http://opinionator.blogs.nytimes.com/2011/10/13/for-teen-offenders-hope-in-a-jury-of-their-peers/>.

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To combat this dearth of information about youth courts internationally, this article aims to introduce youth courts and their applicability under relevant international standards and norms. This Article will first discuss the challenges and inadequacies in administering juvenile justice. Second, it will give an overview of the Convention on the Rights of the Child (“CRC”) and other international standards and norms that create a framework for juvenile justice procedure. Third, the Article will introduce how youth courts work generally and how they are statutorily created. Fourth, this Article analyzes how the youth court model meets the CRC’s standards. Last, the Article will discuss the compelling reasons why more nations should adopt youth courts. This Article will show that the youth court model meets and exceeds international standards and norms, and that it also meets justice sector needs by being an efficient, cost effective, and successful diversion alternative to traditional justice procedures.

## I

### CHALLENGES IN ADMINISTERING JUVENILE JUSTICE

The international community recognizes the need for diversionary alternatives for children in conflict with the law because of both procedural and substantive problems.<sup>7</sup> There are both procedural challenges and challenges found in retributive justice models that emphasize the need to divert child offenders away from the traditional criminal system. It is difficult to make universal claims about the problems that the world faces in administering juvenile justice because every country faces unique hurdles; however, speaking broadly, the majority of children in the criminal justice system worldwide do not actually belong there.<sup>8</sup> The harms enumerated below are not limited to developed or developing countries, nor is the list exhaustive, but these harms can be found in some capacity throughout the world.

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<sup>7</sup> U.N. Secretary-General, *Guidance Note of the Secretary-General: UN Approach to Justice for Children*, 1 (Sept. 2008); Interagency Panel on Juvenile Justice, *Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes*, 5 (June 2011).

<sup>8</sup> U.N. Secretary-General, *supra* note 1, at 14.

### *A. Procedural Challenges*

Procedural challenges for children in conflict with the law include the inflexibility of traditional justice systems, the lack of due process, and delayed access to justice. Often justice systems are not flexible enough to deal with children's needs on a personal and developmental level. In regards to the traditional justice system, often police, intake officers, and judges are unaware and unprepared for these unique needs.<sup>9</sup> The lack of training and sensitivity to children often puts child offenders into the same criminal category as adult offenders, which means children languish in prison and become victims of abuse.<sup>10</sup>

Moreover, access to justice for alleged child offenders can be an agonizingly long process.<sup>11</sup> Many children are held in detention centers after their arrest with no clear process to get them in front of a judge.<sup>12</sup> This denial of access to justice coupled with the fact that a majority of child offenders could be better rehabilitated outside of the traditional justice system illustrates major shortcomings that alleged child offenders face in navigating traditional justice systems.

### *B. Challenges in Punishment*

If a child navigates the process of trial and sentencing, punishment of the child is another shortcoming. In practice, children given jail sentences are not integrated into society, but rather, are kept away from social integration. Non-rehabilitative measures like prison are antithetical to a productive juvenile justice system, and are expensive in comparison to diversion alternatives.

Often punishments for child offenders are retributive—those that merely punish—instead of rehabilitative—those that reintegrate the child into society.<sup>13</sup> Retributive punishments are often applied to

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<sup>9</sup> Juvenile Justice Panel, *The Need for Protection* (on file with author); see also DEFENCE FOR CHILDREN INTERNATIONAL, FROM LEGISLATION TO ACTION? TRENDS IN JUVENILE JUSTICE SYSTEMS ACROSS 15 COUNTRIES 11 (2007), available at <http://www.defenceforchildren.org/files/DCI-JJ-Report-2007-FINAL-VERSION-with-cover.pdf>.

<sup>10</sup> UNICEF, *Child Protection from Violence, Exploitation and Abuse*, [http://www.unicef.org/protection/57929\\_57999.html](http://www.unicef.org/protection/57929_57999.html) (last updated May 25, 2012); UNICEF, *Study Recommends Ways to Increase Juvenile Justice in Afghanistan*, [http://www.unicef.org/infobycountry/afghanistan\\_44679.html](http://www.unicef.org/infobycountry/afghanistan_44679.html) (last visited Apr. 2, 2013).

<sup>11</sup> FAIR TRIALS INTERNATIONAL, JUSTICE IN EUROPE DETENTION WITHOUT TRIAL (2011), available at <http://www.fairtrials.net/documents/DetentionWithoutTrial1.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> *Juvenile Justice*, INTERAGENCY PANEL ON JUVENILE JUSTICE, <http://www.ipjj.org/juvenile-justice/overview> (last visited Apr. 2, 2013).

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minor offenders and can be harsher than the minor offense requires.<sup>14</sup> Retributive approaches are often out of sync with what best suits the victim, offender, and society.<sup>15</sup> An integrative, rehabilitative, and restorative approach for many child offenders is more productive and useful in lowering the likelihood that that child will reoffend.<sup>16</sup> This is largely because these programs reinforce socially positive behavior that teaches children how to act in a socially responsible manner. In contrast, to imprison a child is to merely deprive them of their rights, which does nothing to correct the behavior or cause that initially brought them to the justice system.

Further, when it comes to child imprisonment, children are often imprisoned with hardened adult offenders.<sup>17</sup> Rather than turn the child away from crime, prison can often teach the child how to become a better criminal.<sup>18</sup> This is counterproductive when the child committed a minor crime like shoplifting or vandalism, yet this is the reality for many child offenders. Beyond imprisonment being counterproductive, time in prison dramatically increases the chance for the child to come in contact with physical or sexual violence, HIV, or other infectious diseases.<sup>19</sup> It is senseless to subject children to these risks when society gains so little from their imprisonment.

The procedural and sentencing shortcomings discussed above are why the international community actively seeks to divert juvenile offenders from the adult adjudicatory system, prioritize keeping children out of prison, and proactively decrease child recidivism. These standards and norms are encapsulated in a number of international documents.

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<sup>14</sup> JILL YUNG, THE NATIONAL JUVENILE DEFENDER CENTER, THE USE AND ABUSE OF JUVENILE DETENTION: UNDERSTANDING DETENTION AND ITS USES (2008), available at <http://www.njdc.info/pdf/factsheetdetention.pdf>.

<sup>15</sup> *Juvenile Justice*, *supra* note 13.

<sup>16</sup> PUBLIC SAFETY CANADA, RESTORATIVE JUSTICE AND RECIDIVISM (2003), available at [http://www.publicsafety.gc.ca/res/cor/sum/\\_fl/cprs200301-eng.pdf](http://www.publicsafety.gc.ca/res/cor/sum/_fl/cprs200301-eng.pdf).

<sup>17</sup> Office of the United Nations High Commissioner for Refugees, *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* (Feb. 1999), <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf>; U.N. Secretary-General, *supra* note 1 at 4, 22-23.

<sup>18</sup> UNICEF, PROGRESS FOR CHILDREN: A REPORT CARD ON CHILD PROTECTION 20 (2009), available at [http://www.unicef.org/protection/files/Progress\\_for\\_Children-No.8\\_EN\\_081309\(1\).pdf](http://www.unicef.org/protection/files/Progress_for_Children-No.8_EN_081309(1).pdf); Schiraldi, *supra* note 3, at 1.

<sup>19</sup> *Juvenile Justice Panel*, *supra* note 9.

## II INTERNATIONAL STANDARDS AND NORMS GUIDING JUVENILE JUSTICE

Internationally, there is only one binding convention regarding the rights of children: the Convention on the Rights of the Child.<sup>20</sup> The CRC has been ratified by 194 nations,<sup>21</sup> and is thus relevant to any program aimed at juvenile justice. The CRC and the Universal Declaration of Human Rights both note that on account of a child's unique developmental place in society, children are accorded similar rights to adults, but are also given extra protection on account of their vulnerability.<sup>22</sup>

Because of the unique place children have in all societies, it is important to develop justice systems around those needs. The CRC sets standards and norms regarding juvenile justice and is supplemented by non-binding agreements, rules, and guidelines<sup>23</sup> that clarify the parameters for what the international community deems proper regarding both the human and procedural rights of a child.

The CRC, *inter alia*, emphasizes the need for diversion programs for a more successful and humane juvenile justice system.<sup>24</sup> These documents require that diversionary programs must have consent from the child or parent or guardian,<sup>25</sup> the ability for parents to be

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<sup>20</sup> Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (Nov. 20, 1989) [hereinafter CRC].

<sup>21</sup> *Somalia to Join Child Rights Pact: UN*, REUTERS (Nov. 20, 2009), <http://af.reuters.com/article/topNews/idAFJ0E5AJ0IT20091120>. The U.S., Somalia, and South Sudan are the only outstanding nations to not ratify the CRC. See Bonfacio Taban Kuich, *South Sudan Parliament Discusses Child Rights*, SUDAN TRIBUNE (Nov. 21, 2012), <http://www.sudantribune.com/spip.php?article44591>.

<sup>22</sup> CRC, *supra* note 20, at preamble.

<sup>23</sup> UN Standard Minimum Rules for the Administration of Juvenile Justice, G.A. Res. 40/33, U.N. Doc. A/RES/40/33 (Nov. 19, 1985) [hereinafter Beijing Rules]; the UN Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, U.N. Doc. A/RES/45/113 (Dec. 14, 1990) [hereinafter Havana Rules]; UN Guidelines for Action on Children in the Criminal Justice System, U.N. Econ. and Soc. Council Res. 1997/30, 36th Plenary Meeting (July 21, 1997) [hereinafter Vienna Guidelines]; UN Standard Minimum Rules for Non-Custodial Measures, G.A. Res. 45/110, U.N. Doc. A/RES/45/49 (Dec. 14, 1990) [hereinafter Tokyo Rules].

<sup>24</sup> CRC, *supra* note 20, at art. 40(3)(b); Beijing Rules, *supra* note 23, at para. 6, 11.1, 11.2; Vienna Guidelines, *supra* note 23, at para. 15.

<sup>25</sup> Beijing Rules, *supra* note 23, at para. 11.3.

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present,<sup>26</sup> and should make an effort to provide community programs<sup>27</sup> and decrease recidivism.<sup>28</sup>

A juvenile diversion program also needs to meet the procedural standards of Articles 37, 39, and 40 of the CRC. Those rights include a presumption of innocence;<sup>29</sup> the right to not self-incriminate or confess or acknowledge guilt;<sup>30</sup> that all matters are determined by a competent, independent, and impartial authority;<sup>31</sup> the right to be heard in any judicial proceeding and to effectively participate and be informed of the process;<sup>32</sup> the right to have the matter determined quickly;<sup>33</sup> the right to confidential proceedings;<sup>34</sup> the right to appeal;<sup>35</sup> the right of non-discrimination;<sup>36</sup> and the right to an interpreter.<sup>37</sup> All of these individual procedural rights and protections coalesce into the ideal administration of juvenile justice.

The previously mentioned documents also devise a list of acceptable punitive elements for a diversion program that include, but are not limited to: verbal sanctions, like admonitions, reprimands, and warnings; fines; restitution; and community service.<sup>38</sup> These punishments can be combined in any way, but they are not an exhaustive list of sanctions.<sup>39</sup> The possible permutation of sanctions

<sup>26</sup> CRC, *supra* note 20, at art. 40(2)(b)(iii); Beijing Rules, *supra* note 23, at para. 15.2.

<sup>27</sup> Beijing Rules, *supra* note 23, at para. 11.4; Tokyo Rules, *supra* note 23, at para. 2.5.

<sup>28</sup> Beijing Rules, *supra* note 23, at commentary to rule 11.4; Vienna Guidelines, *supra* note 23, at para. 15.

<sup>29</sup> CRC, *supra* note 20, at art. 40(2)(b)(i); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, U.N. Doc. A/16316, at art. 14(2) (Mar. 23, 1976) [hereinafter ICCPR]; Beijing Rules, *supra* note 23, at para. 7.1 (This particular rule may or may not be applicable depending on the design of the youth court system).

<sup>30</sup> CRC, *supra* note 20, at art. 40(2)(b)(iv); ICCPR, *supra* note 29, at art. 14(3)(g).

<sup>31</sup> CRC, *supra* note 20, at art. 40(2)(b)(iii); ICCPR, *supra* note 29, at art. 14(1); Beijing Rules, *supra* note 23, at para. 14.1.

<sup>32</sup> CRC, *supra* note 20, at art. 12 & 40(2)(b)(ii); Beijing Rules, *supra* note 23, at para. 14.2.

<sup>33</sup> CRC, *supra* note 20, at art. 40(2)(b)(iii); Beijing Rules, *supra* note 23, at para. 20.1.

<sup>34</sup> CRC, *supra* note 20, at art. 40(2)(b)(vii); Beijing Rules, *supra* note 23, at para. 8; Tokyo Rules, *supra* note 23, at para. 3.11 & 3.12.

<sup>35</sup> CRC, *supra* note 20, at art. 40(2)(b)(v); ICCPR, *supra* note 29, at art. 14(5).

<sup>36</sup> CRC, *supra* note 20, at art. 2; Beijing Rules, *supra* note 23, at para. 2.1; Havana Rules, *supra* note 23, at 4; Tokyo Rules, *supra* note 23, at para. 2.2.

<sup>37</sup> CRC, *supra* note 20, at art. 40(2)(b)(vi); ICCPR, *supra* note 29, at art. 14(3)(f).

<sup>38</sup> Tokyo Rules, *supra* note 23, at para. 8.2.

<sup>39</sup> Tokyo Rules, *supra* note 23, at para. 8.2 (l) & (m).

gives a significant amount of flexibility for diversion programs to be created in a way that reflects the local community and culture.

In total, diversion programs in adherence with international standards need to incorporate community programs, decrease recidivism and require consent from at least the child, and in some cases, the guardian. At the same time, procedural safeguards must exist to protect the child's substantive and procedural rights. If all of these components are met, the diversion program is in accordance with the CRC and can be considered for official adoption by its signatories.

### III

#### WHAT IS A YOUTH COURT AND HOW DOES IT WORK?

Youth courts are diversion programs for minor, child offenders where youth volunteers fill the roles of bailiff, attorney, and possibly judge. Currently there are an estimated 1,250 individual youth courts operating throughout the United States,<sup>40</sup> up from 500 in 1998.<sup>41</sup> The youth court system saves valuable time and money that would otherwise be squandered on more expensive and time-consuming criminal justice hearings and trials. Youth courts have also been shown to decrease juvenile recidivism and increase community involvement all while protecting the procedural rights of the child offender.

##### *A. Youth Courts Generally*

Youth courts around the United States use a peer-to-peer approach that will look and feel like a traditional sentencing hearing; the difference is that most, if not all, individuals in the courtroom are under the age of eighteen.<sup>42</sup> While youth courts may be structured differently, they generally accept the same type of defendants and utilize positive peer-pressure and rehabilitative sanctions to better the offender and local communities.

Youth courts come in four models: youth judge, tribunal, adult judge, and peer jury.<sup>43</sup> The youth judge and tribunal models use only

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<sup>40</sup> J.M. SCHNEIDER, HAMILTON FISH INST., YOUTH COURTS: AN EMPIRICAL UPDATE AND ANALYSIS OF FUTURE ORGANIZATIONAL AND RESEARCH NEEDS 5 (2008).

<sup>41</sup> JEFFREY A. BUTTS, JANEEN BUCK & MARK B. COGGESHALL, URBAN INST. JUSTICE POL'Y CENTER, THE IMPACT OF TEEN COURT ON YOUNG OFFENDERS 2 (2002).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 7.

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youth volunteers to facilitate the process.<sup>44</sup> Both approaches usually have an adult in the courtroom to make sure that the process is run orderly; however, juveniles do the procedural, substantive, and dispositive work.<sup>45</sup> The adult judge model allows youth volunteers to be the attorneys and bailiff, but leaves the final judgment to a practicing adult attorney who fills the role of the judge.<sup>46</sup> The peer jury model takes advantage of youth volunteers to fill dispositive roles; some will use an adult judge in this model to help the process along, but leave youth volunteers and previously sentenced offenders to make up the jury pool.<sup>47</sup> This style works like a grand jury in the United States where each side presents its argument and the youth jury makes the final decision on the sentence; the peer jury can question the defendant directly.<sup>48</sup>

No matter which model is chosen, most youth courts only accept defendants that have little or no criminal record, are being charged with a misdemeanor<sup>49</sup> or minor crime, and consent to take part in the youth court diversion.<sup>50</sup> It should not be understated—the youth court model is not a silver bullet for juvenile crime, as juveniles committing serious crimes or suffering from addiction, mental, or familial problems need and deserve more structure and support than what a youth court can offer. However, the youth court model does act as a successful alternative for first time and minor offenders.

For those minor offenders, the positive use of peer pressure is trumpeted by youth court proponents as the reason why those who complete the youth court process are less likely to recommit a crime

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* Some research tends to illustrate that the adult judge model is less effective than the youth led model. Many, including this author, believe that the success of the youth court system is in the pro-social peer pressure that comes with being sentenced by your peers. Having an adult judge would diminish this important aspect of youth courts. JEFFREY BUTTS & JANEEN BUCK, U.S. DEP'T OF JUSTICE, TEEN COURTS: A FOCUS ON RESEARCH 9–10 (Oct. 2000).

<sup>47</sup> BUTTS, *supra* note 41.

<sup>48</sup> *Id.*

<sup>49</sup> Misdemeanor is “[a] crime that is less serious than a felony and is usually punishable by fine, penalty, forfeiture, or confinement (usually for a brief term) in a place other than prison (such as a county jail).” BLACK’S LAW DICTIONARY 1089 (9th ed. 2009).

<sup>50</sup> A study in 1998 showed the types of offenses accepted by youth courts “often” or “very often”, nationally: theft, 93%; assault, 66%; alcohol offenses, 60%; vandalism, 59%; disorderly conduct, 62%; traffic, 29%; truancy, 22%; weapon possession, 11%. BUTTS, *supra* note 41.

than those who successfully complete a traditional justice system sentence.<sup>51</sup> While each program defines recidivism differently, most studies show that youth courts, no matter what model or in what jurisdiction, have a lower recidivism rate than the traditional justice system.<sup>52</sup> When youth court research was at its high in the 1990s, a number of studies showed that juvenile recidivism was three to eight percent within six to twelve months after the successful completion of a youth court sentence.<sup>53</sup> This is significantly lower than traditional juvenile systems, with rates between thirty and fifty percent.<sup>54</sup>

On top of pro-social peer pressure, youth courts take a more rehabilitative and restorative approach in sentencing. The Urban Institute conducted a national survey of sanctions imposed by youth courts around the United States and found that community service; victim apology statements; a reflective personal essay; youth court jury duty; drug and alcohol class; restitution; and victim impact classes were the most common sanctions.<sup>55</sup> These sanctions possess a restorative aspect that is overlooked by retributive and punitive sentences. Youth courts encourage a sense of criminal and social responsibility that forces the offender to take a greater assessment and ownership of their actions.<sup>56</sup>

Beyond lowering recidivism, the youth court model has other positive benefits. First and foremost, the youth court model decreases the caseload of minor offenses in the traditional system, thus freeing up scarce judicial resources and saving money.<sup>57</sup> The average cost per defendant going through the youth court system in Anchorage, Alaska, from intake to completion of a sentence is approximately

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<sup>51</sup> Julieta Kendall, *Can It Please the Court? An Analysis of the Teen Court System as an Alternative to the Traditional Juvenile Justice System*, 24 J. JUV. L. 154, 159 (2004); Barbara Gilleran Johnson & Daniel Rosman, *Recent Developments in Nontraditional Alternatives in Juvenile Justice*, 28 LOY. U. CHI. L.J. 719, 726 (1997).

<sup>52</sup> BUTTS, *supra* note 46; *see also* Johnson, *supra* note 51, at 726.

<sup>53</sup> Jeffrey A. Butts & Janeen Buck, *Teen Courts: A Focus on Research, Evaluation Research*, JUVENILE JUSTICE BULLETIN (Oct. 2000), available at [https://www.ncjrs.gov/html/ojjdp/jjbul2000\\_10\\_2/page4.html](https://www.ncjrs.gov/html/ojjdp/jjbul2000_10_2/page4.html).

<sup>54</sup> *More Teens Now Judged by Peers*, CHI. TRIB., at 22, Dec. 21, 1994, [http://articles.chicagotribune.com/1994-12-21/news/9412210168\\_1\\_teen-court-adult-judge-deputy-probation-officer](http://articles.chicagotribune.com/1994-12-21/news/9412210168_1_teen-court-adult-judge-deputy-probation-officer).

<sup>55</sup> BUTTS, *supra* note 41.

<sup>56</sup> Johnson, *supra* note 51, at 726.

<sup>57</sup> Stacey Colino, *Welcome to Teen Court*, CAL. LAW. 34 (Feb. 1991) (on file with author).

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\$500.<sup>58</sup> This is compared to holding a juvenile in pre-trial, which can cost around \$200 a day.<sup>59</sup> Second, benefits affect both offenders and volunteers by enhancing perceptions of procedural justice,<sup>60</sup> improving attitudes towards authority,<sup>61</sup> and creating a greater knowledge of the legal system.<sup>62</sup> Youth court also creates a venue for youth volunteers to increase their interpersonal and communication skills.<sup>63</sup>

These benefits and structures can be found in youth courts across the United States; however, a specific model is needed to more clearly draw parallels and comparisons with international standards and norms. For this purpose, the Anchorage Youth Court (“AYC”) will be used.<sup>64</sup> It has the most developed statutory framework of any youth court in the country<sup>65</sup> and has a two-decade history offering a long-term model for the ensuing analysis. Further, AYC makes a good model because there has been more research and analysis of this program than any other in the United States or abroad.

### ***B. Anchorage Youth Court as a Model***

Founded in 1989, the Anchorage Youth Court is by far the largest youth court in Alaska, handling on average 400 juvenile diversions a

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<sup>58</sup> ANCHORAGE YOUTH COURT (AYC) FACT SHEET (May 2011) (on file with Anchorage Youth Court) [hereinafter AYC FACT SHEET]; *see also* Email from Denise Wilke, AYC Legal Advisor, to author, Apr. 15, 2013 (on file with author).

<sup>59</sup> *Id.*

<sup>60</sup> KRISTINE BUTLER-MEJIA, *SEEN BUT NOT HEARD: THE ROLE OF VOICE IN JUVENILE JUSTICE* (1998).

<sup>61</sup> Butts, *supra* note 53.

<sup>62</sup> A.P. LoGalbo, *Is Teen Court a Fair and Effective Juvenile Crime Diversion Program?* (1998) (unpublished manuscript) (on file with University of South Florida, New College); *see also* J.B. Wells, K.I. Minor, and J.W. Fox, *An Evaluation of Kentucky's 1997-98 Teen Court Program* (1998).

<sup>63</sup> Tracy Godwin, *Teen Courts: Empowering Youth in Community Prevention and Intervention Efforts*, 20 PERSPECTIVES (Winter 1996).

<sup>64</sup> For the sake of full disclosure, I was a student volunteer for the Anchorage Youth Court from 1997–2003 and have retained a personal and professional connection with the program in the interceding years; however, this is not why I chose AYC as my model. AYC is the most statutorily mature and developed youth court in the nation, and thus offers the richest comparison to international standards and norms. *See generally* AYC FACT SHEET, *supra* note 59; Butts, *supra* note 41.

<sup>65</sup> BUTTS, *supra* note 41, at 5; Email from Jeffrey Butts, Director of the Research and Evaluation Center, John Jay College of Criminal Justice (Oct. 27, 2011, 22:23 GMT+1) (on file with author).

year with 310 youth volunteers.<sup>66</sup> Youth court jurisdiction in Alaska is created by statute<sup>67</sup> and administered on the municipal level.<sup>68</sup> In Alaska, there is no statewide youth court jurisdiction; the jurisdiction of a youth court is identical to the municipal area in which it resides.<sup>69</sup> Within that municipal area, a non-profit corporation may be created to handle the administration of the youth court process.<sup>70</sup> The powers of the non-profit are delegated by statute and the Commissioner of the Department of Health and Social Services (“the Department”),<sup>71</sup> and the bylaws of that non-profit must set out standards and procedures regarding:

- a system that will hold the minor accountable for the conduct that brought them to the youth court;<sup>72</sup>
- the guarantee of rights of the minor as afforded by the state and federal constitutions;<sup>73</sup>
- consent from both the minor and his parents or legal guardians to secure youth court jurisdiction over the minor;<sup>74</sup>
- an appeals process of a verdict or sentence;<sup>75</sup>
- the right to refer to the Department of Corrections if the juvenile fails, without good cause, to comply with all aspects ordered by the youth court.<sup>76</sup>

Finally, the youth court also has subpoena power through the Commissioner of the Department that is subject to the privileges witnesses have in state courts.<sup>77</sup>

AYC only accepts certain types of juvenile offenders. Statutorily, diversion through AYC can only occur if the crime committed does

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<sup>66</sup> AYC FACT SHEET, *supra* note 59.

<sup>67</sup> ALASKA STAT. § 47.12.400 (2012).

<sup>68</sup> *Id.* at (b).

<sup>69</sup> *Id.* There is some room within this rule, like how two municipalities could team up under one youth court; however, for the most part, one youth court per municipality remains the reality.

<sup>70</sup> *Id.* at (c).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at (c)(1).

<sup>73</sup> *Id.* at (c)(2).

<sup>74</sup> *Id.* at (c)(3).

<sup>75</sup> *Id.* at (c)(5).

<sup>76</sup> *Id.* at (c)(6).

<sup>77</sup> *Id.* at (d).

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not exceed a class A misdemeanor.<sup>78</sup> The referring authority is namely the Department, usually through an intake officer (“Officer”) at the time of intake; the referral can also be made by a state of Alaska court.<sup>79</sup> Often the Officer will look to the nature of the crime and the criminal history of the juvenile, sometimes allowing a juvenile with a limited criminal record to choose youth court diversion.<sup>80</sup>

The referring authority will meet the defendant and their parent or guardian and explain that AYC is an option (this includes background on procedures and possible sentencing options); the authority will also allow for the defendant and their guardian to meet with counsel if they wish.<sup>81</sup> At this point, the child and their custodian have an option to accept the diversion or to continue through the traditional justice system. Entering AYC diversion requires that the defendant, custodian, and intake officer sign an agreement stating that they have 120 days to complete the diversion process.<sup>82</sup> If the child does not complete the process within 120 days, their case will be sent back to formal court proceedings.<sup>83</sup> The agreement also requires a plea of no-contest to the charges.<sup>84</sup> The defendant is billed a fifty-dollar service fee to enter diversion.<sup>85</sup>

Once the child is accepted into diversion, the process guarantees that the proceeding shall be in “substantial conformity” with the rules and statutes of the Alaska court system; this means that outside of the right to a speedy trial, which is waived, all of the rights guaranteed by both the Alaska and U.S. Constitutions are protected.<sup>86</sup> Throughout

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<sup>78</sup> *Id.* at (a); ALASKA STAT. § 47.12.040 (2012). (Misdemeanor means a minor or lesser offense.)

<sup>79</sup> ALASKA STAT. § 47.12.060 (2012); ANCHORAGE YOUTH COURT CONSTITUTION art. 1, § 2 (2007) [hereinafter AYC CONST.].

<sup>80</sup> ANCHORAGE YOUTH COURT, WHAT IS ANCHORAGE YOUTH COURT? (2011) (on file with Anchorage Youth Court); BUTTS, *supra* note 41.

<sup>81</sup> AYC CONST. art. V, § 1.

<sup>82</sup> *Id.* at § 2.

<sup>83</sup> *Id.*; State of Alaska Dep’t of Health and Soc. Serv. Div. of Juvenile Justice Youth Court Agreement ¶ 5 (on file with Alaska Dep’t of Health and Soc. Serv. Div. of Juvenile Justice) [hereinafter *HHS Intake Form*]; Super. Ct. State of Alaska 3d Jud. Dist., Juvenile Diversion Agreement ¶ 6 (on file with Superior Court of Alaska, Third District) [hereinafter *Judicial Intake Form*].

<sup>84</sup> *HHS Intake Form*, *supra* note 83, at para. 1; *Judicial Intake Form*, *supra* note 83, at para. 2.

<sup>85</sup> *HHS Intake Form*, *supra* note 83, at para. 8. (This money is used by AYC to cover administrative costs.)

<sup>86</sup> AYC CONST. art. VI.

this process, confidentiality is explicitly protected; referral records are maintained for administrative purposes only and will not otherwise be disseminated.<sup>87</sup> No formal, long term record will be kept, so long as the child successfully completes the diversion process.<sup>88</sup>

After the referral is made and the agreement is signed, the case is assigned AYC youth lawyers as the state prosecutor and defense; the volunteers are seventh to twelfth grade students (approximately twelve to eighteen years old).<sup>89</sup> All juvenile volunteers in AYC complete an eight-week course on legal terms, procedure, misdemeanor law, and other aspects of the criminal justice system.<sup>90</sup> After a student enrolls and finishes the course work, a standardized test is given (like a bar exam), and students with a passing score are made second attorneys and are also allowed to function as bailiffs.<sup>91</sup> After working as a second attorney on ten cases, the youth volunteer is able to become a first attorney.<sup>92</sup>

The attorneys are given their case files a week before the sentencing hearing. The defense is required to contact their client no later than the Sunday before the hearing.<sup>93</sup> Those representing the State will prepare a probable cause statement and sentencing recommendations that will take into account aggravating and mitigating factors; the defense will put together a short biography on the defendant and also create their own sentencing recommendations.<sup>94</sup>

The hearing is held in courtroom space donated by the State of Alaska. The sentencing is presided over by three youth judges, who must be in grades ten, eleven, or twelve (approximately fifteen to eighteen years old).<sup>95</sup> A legal adviser, which can be anyone with a Juris Doctorate, sits in the back of the courtroom, able to offer advice

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<sup>87</sup> ALASKA STAT. § 47.12.310 (2012); *HHS Intake Form*, *supra* note 83, at para. 6; AYC CONST. art. VI, § 2.

<sup>88</sup> ANCHORAGE YOUTH COURT, ANCHORAGE YOUTH COURT REFERRALS FACT SHEET (2011) (on file with Anchorage Youth Court).

<sup>89</sup> AYC CONST. art. 1, § 4.

<sup>90</sup> ANCHORAGE YOUTH COURT, ANCHORAGE YOUTH COURT PROGRAM DESCRIPTION (2011) (on file with Anchorage Youth Court).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> ANCHORAGE YOUTH COURT, NEW MEMBER MANUAL, Attachment 1, at 1 (2011) (on file with Anchorage Youth Court).

<sup>94</sup> *Id.* at 2.

<sup>95</sup> AYC CONST. art. I, § 4.

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to either side when requested.<sup>96</sup> Both sides present their statements and their recommended sentences, and the defendant will be given the chance to speak before the judges retire to their chambers to agree on a final sentence; the sentence is then read in court.<sup>97</sup>

The sentence can take a variety of different forms. All sentences include community work service and an essay. In cases regarding shoplifting or theft, an anti-shoplifting class is required.<sup>98</sup> Regarding community work service, the hours of service are determined by benchmarks that can be affected by aggravating or mitigating factors; no sentence can exceed sixty hours per individual count.<sup>99</sup> Other sentencing options include taking AYC classes to become a member, an apology letter to the defendant's family or to the victim, a defensive driving class, drug and or alcohol assessment, fire prevention program, participation in the Parent Adolescent Mediation Program, restitution, a victim impact class, participation in the Victim Offender Mediation Program or a weapons safety class.<sup>100</sup> After the sentence is handed down, the defendant is referred to AYC's sentencing coordinator where a plan will be created with the child for successful completion of the sentence. This plan will include working with the child's schedule and allowing the child to pick from a list of community service sites to complete their sentence at.<sup>101</sup>

On the contrary, if the child finds that the sentence was given unfairly or not within their rights under the Alaska or U.S. Constitutions, then they have the right to a written appeal within five business days.<sup>102</sup> With proper grounds—there are nine<sup>103</sup>—the appeal will be heard by a new panel of three AYC judges who have the power to deny the appeal, grant the appeal, or remand the case back to the trial judges with instructions.<sup>104</sup> It is also possible for the child to

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<sup>96</sup> *Id.* at art. III, § 3.

<sup>97</sup> ANCHORAGE YOUTH COURT, ANCHORAGE YOUTH COURT NO-CONTEST SCRIPT (2011) (on file with Anchorage Youth Court) [hereinafter NO-CONTEST SCRIPT].

<sup>98</sup> ANCHORAGE YOUTH COURT, SENTENCING OPTIONS *in* ANCHORAGE YOUTH COURT CURRICULUM 83-85 (2011) (on file with Anchorage Youth Court) [hereinafter AYC SENTENCING OPTIONS].

<sup>99</sup> *Id.* at 85–87.

<sup>100</sup> *Id.* at 83–85.

<sup>101</sup> *Id.* at 83.

<sup>102</sup> ANCHORAGE YOUTH COURT, SENTENCING APPEAL INSTRUCTIONS 1 (2011) (on file with Anchorage Youth Court) [hereinafter AYC SENTENCING APPEAL INSTRUCTIONS].

<sup>103</sup> AYC CONST. art. VI, § 6.

<sup>104</sup> AYC SENTENCING APPEAL INSTRUCTIONS, *supra* note 102, at 2.

end diversion for any reason and be tried in the traditional justice system.<sup>105</sup>

Appeal or not, upon successful completion of the sentence, the original referring authority is notified of completion and the child's file is closed without any formal record.<sup>106</sup> Failure to complete the sentence within the prescribed time reverts the case back to the traditional justice system to be formally tried.<sup>107</sup>

The structure and sanctions AYC provides and the statutory administrative safeguards in place to protect the rights of children make youth court a very effective diversion program with the best interest of the child in mind. The culmination of all of these factors makes AYC an ideal program under the standards of the CRC.

#### IV DOES A YOUTH COURT SYSTEM MEET INTERNATIONAL STANDARDS AND NORMS?

The AYC model meets or exceeds the standards of the CRC: from the general purpose of diversion and rehabilitative sentencing to the procedural protections for presumption of innocence; the right to not self-incriminate or confess or acknowledge guilt; that all matters are determined by a competent, independent, and impartial authority; the right to be heard in any judicial proceeding and to effectively participate and be informed of the process; the right to have the matter determined quickly; the right to confidential proceedings; a right to appeal; non-discrimination; and the right to an interpreter.

##### *A. Diversion and Sentencing Options*

The youth court model meets the standards and norms of the CRC. The CRC supports the creation of diversion programs that successfully address a juvenile offender without using the traditional criminal justice system, so long as the child can consent freely to the diversion program.<sup>108</sup> Other aspects considered by the CRC are the involvement of community programs, the use of alternative sentencing options, and that the program decrease recidivism.<sup>109</sup>

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<sup>105</sup> BUTTS, *supra* note 41, at 5.

<sup>106</sup> ALASKA STAT. § 47.12.260 (2012).

<sup>107</sup> BUTTS, *supra* note 41, at 5.

<sup>108</sup> CRC, *supra* note 20, at art. 40(3)(b).

<sup>109</sup> Beijing Rules, *supra* note 23, at commentary to rule 11.4; Vienna Guidelines, *supra* note 23, at para. 15.

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As a program, youth courts focus on repairing the relationship between the defendant and the victim—no matter what the crime. The AYC model requires the defendant to write a letter apologizing and reflecting on the crime they committed and what they learned through the youth court process.<sup>110</sup> If there was anything stolen or damaged as a part of the defendant's crime, restitution may also be a part of the sentence to make the victim whole.<sup>111</sup> This contact between the victim and the offender gives the youth court process a restorative approach. The international community has stated that juvenile ownership of their actions is a crucial part of any juvenile diversion.<sup>112</sup>

A part of that ownership comes from the incorporation of community programs. The CRC calls for an integrated and multifaceted approach to rehabilitating a child.<sup>113</sup> AYC's mandatory sentencing includes community work service, which allows the defendant to socialize while helping their community. The other sentences, depending on the crime, include a community aspect as well, including parent and/or victim mediations, victim impact classes, and shoplifting or drug or alcohol courses. All of these sentencing alternatives are not about punishing the child, but rather helping to rehabilitate the child's relationship with their community, the victim, and their family, all of which meet the standards of the CRC.

The last factor the CRC looks for in a diversion program is if it decreases recidivism.<sup>114</sup> While the research is scattered, and in some cases dated, the overall sense is that youth courts decrease recidivism of juvenile offenders by one-third to one-half as compared to juvenile offenders that go through the traditional justice system.<sup>115</sup> While there is some debate about the research methodology of juvenile recidivism,<sup>116</sup> the AYC program has studies showing that recidivism

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<sup>110</sup> AYC SENTENCING OPTIONS, *supra* note 98.

<sup>111</sup> *Id.*

<sup>112</sup> Beijing Rules, *supra* note 23; Vienna Guidelines, *supra* note 23.

<sup>113</sup> CRC, *supra* note 20, at art. 40(3)(b).

<sup>114</sup> Vienna Guidelines, *supra* note 23.

<sup>115</sup> Rosenberg, *supra* note 6; BUTTS, *supra* note 41; BUTLER-MEJIA, *supra* note 53; A.P. MCNEECE, M.K. FALCONER, C. BRYANT & M. SHADER, HERNANDO COUNTY TEEN COURT: EVALUATION OF 1996 CONTINUATION GRANT ACTIVITY (1996).

<sup>116</sup> BUTTS, *supra* note 46.

amongst offenders that successfully finish their program is a mere six percent after six months of completion.<sup>117</sup>

The youth court model fits and exceeds the international standards and norms for diversion. It is a program that provides community programs; alternative rehabilitative sentences; and is proven to decrease recidivism.

***B. Consent from Child and Guardian, and Guardian's Right to be Present***

International standards and norms require diversion programs to have consent from the alleged child offender; youth courts meet this standard. Beijing Rule 11.3 on Diversion states, “[a]ny diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian.”<sup>118</sup> CRC General Comment 10 explicitly allows for a requirement of parental consent, especially if the child is under sixteen years old.<sup>119</sup> So, either consent of the child or the guardian (or the combination) is required to meet the consent requirement under the CRC.<sup>120</sup>

As the CRC envisions, Alaska statutorily requires consent from the defendant and their guardian to process intake into diversion.<sup>121</sup> The referral officer explains the youth court system to the child and guardian, and then the charged child is told if they plead no-contest to their charge(s) and accept the terms of the youth court program, they are able to freely enter that program with parental approval.<sup>122</sup> Alternatively, if the child decides at any point to recant their no-contest plea or simply decided that the youth court alternative is not for them, they can return to the traditional justice system.<sup>123</sup> At the youth court hearing itself, the judges ask the defendant if they chose

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<sup>117</sup> ANCHORAGE YOUTH COURT, PROGRAM DESCRIPTION (2011) (on file with Anchorage Youth Court).

<sup>118</sup> Beijing Rules, *supra* note 23, at para. 11.3.

<sup>119</sup> General Comment No. 10: Children's Rights in Juvenile Justice, Committee on the Rights of the Child, 44th Sess., Jan. 15-Feb.2, 2007, § 4, para. 27, CRC/C/GC/10 (Apr. 25, 2007) [hereinafter Comment 10].

<sup>120</sup> *Id.*

<sup>121</sup> ALASKA STAT. § 47.12.400 (c)(3) (2011).

<sup>122</sup> AYC CONST. art. V, § 1.

<sup>123</sup> BUTTS, *supra* note 41, at 5; *Judicial Intake Form*, *supra* note 83, at para. 3 It should also be mentioned that any admission by the child within the process of entering or being heard in AYC are not admissible later in the traditional justice system.

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to plead no-contest, if they have entered into the youth court program of their free will, and if they want to continue in the youth court process; the hearing will not continue without affirmative answers to all three questions.<sup>124</sup> These safeguards meet the requirement of consent as lined out by the CRC and the Beijing Rules.

***C. The Presumption of Innocence, Right Against Self-Incrimination and Acknowledgement of Guilt***

The presumption of innocence and the right against self-incrimination and acknowledgement of guilt are fundamental rights that are upheld by the youth court model. The CRC explicitly states:

[e]very child alleged as or accused of having infringed the penal law has at least the following guarantees: (i) To be presumed innocent until proven guilty according to law; . . . (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality.<sup>125</sup>

The youth court model respects the rights set out by the CRC and are codified in the Alaska statutes.<sup>126</sup> Further, AYC procedure explicitly offers the opportunity for the child and/or guardian to confer with counsel before signing the voluntary agreement to enter diversion;<sup>127</sup> as an added safeguard, the defendant is again asked by AYC if their consent to diversion was understood and voluntary.<sup>128</sup> In both situations, the child chooses whether or not to assume guilt, and by pleading no-contest the child has not actually admitted guilt. These procedural safeguards illustrate that the assumptions lie with the child's innocence; however, the child has the option to contract that right away to enter diversion and receive a clean record upon successful completion of their sentence. The combination of these safeguards and protections are in line with the CRC's protection of the presumption of innocence, the right against self-incrimination, and the right against acknowledging guilt.

***D. Determined by a Competent, Independent, and Impartial***

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<sup>124</sup> NO-CONTEST SCRIPT, *supra* note 97.

<sup>125</sup> CRC, *supra* note 20, at art. 40(b)(i), (iv).

<sup>126</sup> ALASKA STAT. § 47.12.400.

<sup>127</sup> AYC CONST. art. V.

<sup>128</sup> NO-CONTEST SCRIPT, *supra* note 97, at para. 7.

*Authority*

The CRC, parroted by the Tokyo and Beijing Rules, guarantees that the child's matter be

determined . . . by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians[.]<sup>129</sup>

General Comment 10 specifically names the police and other justice agencies as possible authorities to determine if diversion is appropriate.<sup>130</sup>

At both the point of diversion and the diversion process itself, the child received competent, independent, and impartial authority. An intake officer or judge decides whether or not to offer diversion.<sup>131</sup> Regarding the competence of either an intake officer or judge, they are individuals within the justice system that are trained to deal with criminal issues and are educated on diversion, as diversion is one of the five options a child has in the juvenile justice system.<sup>132</sup> The youth volunteers working as lawyers and judges, who the defendant has contracted to be adjudicated by, have taken a mandatory course on criminal law and procedure and passed the AYC bar exam.<sup>133</sup> After passage of the exam, they are bound by the U.S., Alaska, and AYC constitutions, and are held to the ethics rules and procedures created by AYC.<sup>134</sup>

Both lawyers and judges in an AYC hearing follow an explicit ethics code that requires independence and impartiality.<sup>135</sup> Impartiality is also guaranteed by not allowing a youth judge or lawyer to participate in a hearing where they know or attend the same school as the defendant.<sup>136</sup> A breach of these rules is handled by the

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<sup>129</sup> CRC, *supra* note 20, at art. 40(b)(iii).

<sup>130</sup> Comment 10, *supra* note 119, at 10, § 4, para. 27.

<sup>131</sup> AYC CONST. art. V.

<sup>132</sup> Andre B. Rosay & Thomas S. Begich, *Juvenile Probation Officer Workload and Caseload Study*, 26 AK. JUSTICE FORUM 6 (2010), available at [http://justice.uaa.alaska.edu/forum/26/4/winter2010/e\\_jpo.html](http://justice.uaa.alaska.edu/forum/26/4/winter2010/e_jpo.html).

<sup>133</sup> ANCHORAGE YOUTH COURT RULES OF CONDUCT para. 1 (2011) (on file with Anchorage Youth Court) [hereinafter AYC RULES OF CONDUCT].

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at para. 1–3.

<sup>136</sup> *Id.* at para. 6.

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AYC Bar Counsel, Executive Director, and student Ethics Board.<sup>137</sup> If the youth volunteer is found in breach of the AYC Ethics Rules, they are tried in front of AYC and, if found guilty, AYC has a right to remove that person from the AYC Bar.<sup>138</sup> This illustrates that these protections are taken seriously and are checked by official procedure.

At both the point of referral and sentencing, the process is determined by competent, independent, and impartial authorities. The education that members of AYC go through, and the checks that ensure the referral authority and the sentencing panel act independently and impartially, all meet the standards set out by the CRC regarding the competency and impartiality of the authority in charge.

***E. Right to Be Heard and Participate***

Regarding the child's right to be heard and able to participate in their hearing, the CRC requires that "the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."<sup>139</sup>

As previously discussed, the child decides whether or not to participate in youth court from the point of intake. At the hearing itself, the defense will ask the defendant for biographical information and anything specific they want to share with the court, allowing the defendant to be a part of the process.<sup>140</sup> After both sides have presented their sentencing recommendations to the court and before the judges deliberate their ruling, the court offers the defendant the opportunity to speak on his own behalf.<sup>141</sup> The defendant may choose if and how to use this opportunity.<sup>142</sup> Only after the judges have

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<sup>137</sup> ANCHORAGE YOUTH COURT, RULES OF CONDUCT, ETHICS BOARD RULES AND PROCEDURES (2011) (on file with Anchorage Youth Court) [hereinafter AYC ETHICS RULES].

<sup>138</sup> AYC CONST. art. IV, § 4.

<sup>139</sup> CRC, *supra* note 20, at art. 12(2).

<sup>140</sup> ANCHORAGE YOUTH COURT, NEW MEMBER MANUAL, Attachment 1, 2 (on file with Anchorage Youth Court).

<sup>141</sup> NO-CONTEST SCRIPT, *supra* note 97, at para. 3.

<sup>142</sup> *Id.*

allowed the defendant an opportunity to speak will they adjourn to chambers to decide the sentence.<sup>143</sup>

From the start to the finish of the diversion process, the child is allowed to participate and be heard in accordance with the standards set by the CRC.

#### ***F. Right to Be Determined Quickly***

The CRC calls for matters to be “determined without delay.”<sup>144</sup> AYC runs at a faster pace than the traditional justice system. This is largely because nearly every case diverted through AYC is a no-contest sentencing hearing and therefore there is no need for pre-trial motions regarding witnesses or evidence because the facts of the case are stipulated. Therefore, the average time between referral to AYC and the defendant’s appearance in youth court is a mere fourteen days,<sup>145</sup> and the case is only held in diversion for up to 120 days before it is reopened in the traditional court system by default.<sup>146</sup> This structurally limits the amount of time the procedure can take, which is what the CRC calls for.

#### ***G. Confidentiality***

The CRC says the child’s privacy is to be “fully respected at all stages of the proceedings.”<sup>147</sup> As mentioned before, the confidentiality of these proceedings are protected at the statutory<sup>148</sup> and administrative level.<sup>149</sup> The code of ethics that all AYC members follow explicitly bans sharing the defendant’s confidential information.<sup>150</sup> If confidentiality is breached by an AYC member, there are procedures to reprimand or disbar that person from practice as a lawyer or judge within AYC.<sup>151</sup> These safeguards put in place by both the State and AYC create privacy for the defendant from intake to final sentence. These statutory and administrative guarantees on confidentiality meet the CRC’s standards.

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<sup>143</sup> *Id.* at para. 14.

<sup>144</sup> CRC, *supra* note 20, at art. 40(2)(b)(iii).

<sup>145</sup> AYC FACT SHEET, *supra* note 58.

<sup>146</sup> AYC CONST. art. V, § 2.

<sup>147</sup> CRC, *supra* note 20, at art. 40(2)(b)(vii).

<sup>148</sup> ALASKA STAT. § 47.12.400(f) (2012); ALASKA STAT. § 47.12.310 (2012).

<sup>149</sup> AYC CONST. art. VI, § 2; AYC ETHICS RULES, *supra* note 137, at 5, 6.

<sup>150</sup> AYC ETHICS RULES, *supra* note 137.

<sup>151</sup> *Id.* at Rule 1.

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### ***H. Right to Appeal***

If at any point in the process the child feels their rights were infringed, or that a sentence or decision was unjust, they are guaranteed, under the CRC, to have the decision reviewed by a “higher competent, independent and impartial authority or judicial body.”<sup>152</sup>

As discussed above, the right to appeal is a U.S. and Alaska constitutional right upheld by AYC,<sup>153</sup> and is also codified in Alaska statutes<sup>154</sup> and reflected in the AYC constitution.<sup>155</sup> After the initial trial, the defendant can appeal. The appeals process will bring the trial court’s sentence in front of three new youth court judges that will decide whether to uphold, overturn, or remand the case for further consideration.<sup>156</sup> So long as the defendant has grounds to file an appeal, AYC has procedures to conduct such an appeal in line with the CRC.

#### *I. Right Against Discrimination and the Right to an Interpreter*

Through out an AYC diversion, there is a tenant of non-discrimination. While AYC does not have specific rules on discrimination or the right to a translator, the Alaska and U.S. constitutions protect defendants against discrimination within the criminal justice process. AYC documents do not mention the right to an interpreter, but since AYC must uphold Alaska and U.S. constitutional rights there is no error. Further, AYC can fix this by adding a provision enshrining such a right.

The substantive goals and procedural protections for diversion that the CRC sets the standards for are upheld by the youth court model.

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<sup>152</sup> CRC, *supra* note 20, at art. 40(2)(b)(v).

<sup>153</sup> ALASKA STAT. § 417.12.400(c)(2).

<sup>154</sup> *Id.* at (c)(5).

<sup>155</sup> AYC CONST. art. VI, § 6.

<sup>156</sup> AYC SENTENCING APPEAL INSTRUCTIONS, *supra* note 102.

## V

**WHY SHOULD THE INTERNATIONAL COMMUNITY ADOPT THE  
YOUTH COURT MODEL?**

The benefits to local communities that adopt a youth court model will be real and immediate. Not only are they culturally flexible<sup>157</sup> and can be structured to meet most any community's needs, but youth courts also decrease risks to children held in detention; protect children's rights; ease overcrowding in pre-trial and post-trial detention facilities; lower court backlog; decrease juvenile recidivism; and save money for local governments. Further, youth courts have also been shown to increase community involvement and support of the criminal justice system of both participants and defendants.

Youth court diversion keeps children out of pre-trial and post-trial detention facilities. Because the child goes from intake to diversion, there is minimal time that the child will be detained. This means that risks—including physical, sexual and mental abuse, and contact with HIV and other diseases—are greatly diminished. It also means that the child's due process rights are more likely to be protected. Instead of languishing in a pre-trial facility, the youth court diversion puts the child on a fast path towards rectifying their alleged crime and once more integrating into society. Youth courts protect against the physical, mental, and legal harms that many children face in criminal justice systems around the world.

Advocates of the youth court system make a strong argument that the success of the youth court system is predicated upon positive peer pressure.<sup>158</sup> Proponents of youth courts argue the desire for peer acceptance that put the child in the trouble in the first place can be channeled into something positive when that same child is judged and sentenced by their peers.<sup>159</sup> This is a truly unique aspect to the youth court system that the traditional juvenile system cannot replicate.<sup>160</sup>

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<sup>157</sup> ADA PECOS MELTON, BUILDING CULTURALLY RELEVANT YOUTH COURTS IN TRIBAL COMMUNITIES, SELECTED TOPICS ON YOUTH COURTS: A MONOGRAPH (Tracy Goodwin Mullins ed. 1999).

<sup>158</sup> Kendall, *supra* note 51, at 159; BUTTS, *supra* note 41; Johnson, *supra* note 51, at 721.

<sup>159</sup> Kendall, *supra* note 51, at 159; Johnson, *supra* note 51, at 724.

<sup>160</sup> This point holds true even when comparing youth court models. There is some evidence that the youth court models with an adult judge have a higher recidivism rate than those models that placed youth volunteers in all important in court roles. JEFFREY A.

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Further, the youth court model offers a pressure release valve for overburdened criminal justice systems. Take Anchorage for example: in 2010, juvenile intake had 1,333 unique juveniles processed;<sup>161</sup> AYC took 197 of those juveniles for diversion, accounting for fifteen percent of the juveniles processed in Anchorage.<sup>162</sup> This means that detention centers, courts, and probation officers had fifteen percent fewer juvenile offenders to administer, at no added cost to the justice sector. From a policy and budget perspective, these are immediate and real benefits.

While youth courts create immediate savings they also decrease long term costs by lowering recidivism, because those processed through youth court are less likely to commit another crime. A recent study showed that AYC has an eighty-eight percent non-recidivism rate after one year of completing a sentence; this means Anchorage authorities will have fewer recidivists coming through their pre-trial facilities and courts, saving future resources and time.

These saved resources mean saved money. The average U.S. youth court has a yearly budget of \$50,000.<sup>163</sup> To put one child through youth court diversion can cost around \$450, depending on the jurisdiction.<sup>164</sup> To house a child in a juvenile detention facility can cost around \$200 a day in the United States,<sup>165</sup> which is a stark contrast in financial savings. AYC boasts that putting just four offenders through their diversion will save the city enough money to pay for AYC's yearly budget; AYC actually diverts one-hundred times that many offenders.

Beyond the institutional benefits, youth courts positively affect the youth involved because it is the first chance for the youth volunteers and defendants to experience the profession of law. The youth court program increases civic involvement and interest amongst youth. It increases the knowledge and appreciation of a constitutional

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BUTTS & JENNIFER ORTIZ, TEEN COURTS—DO THEY WORK AND WHY? 19 N.Y. ST. B.A. J. 18 (2011).

<sup>161</sup> ALASKA DEPT. OF HEALTH AND HUMAN SERVICES, JUVENILES, REFERRALS, AND CHARGES FOR EACH REGION AND OFFICE FISCAL YEAR 2010 (2011) available at [http://www.hss.state.ak.us/djj/information/stats\\_fy2010/FY10\\_referrals\\_charges.pdf](http://www.hss.state.ak.us/djj/information/stats_fy2010/FY10_referrals_charges.pdf).

<sup>162</sup> AYC FACT SHEET, *supra* note 58. As a side note, 2010 was a uniquely low year for AYC diversions. On average, AYC takes 300–400 cases.

<sup>163</sup> SCHNEIDER, *supra* note 40, at 5.

<sup>164</sup> Rosenberg, *supra* note 6.

<sup>165</sup> AYC FACT SHEET, *supra* note 58.

democracy, which can be particularly advantageous in nations looking to establish and foster a Western style rule of law. Individually, youth volunteers will increase their critical thinking and written and oral advocacy skills.

These benefits are real and have been recreated in rural, urban, and tribal America with great success. Youth court diversion should be widely adopted internationally because it limits physical and legal harms to children, provides a practical policy alternative to trial and detention, and improves youth appreciation of the rule of law and legal institutions. These are benefits that any country, at any stage of development, can appreciate.

### CONCLUSION

Ending where this Article started, most children do not belong in the criminal justice system, and all communities should aim to alleviate the number of children in prison and increase the number rehabilitated child offenders. Youth courts are a tool for both of these goals. They are also in compliance with the CRC, *inter alia*, allowing any signatory of the Convention to support their implementation without contravening its terms. The youth court model, for many types of offenders, is a successful tool that diminishes the number of children held in pre-trial facilities and tried by the State. Keeping children out of prison lowers the physical, mental, and legal abuse, and lowers the chances for future recidivism. For policy makers, youth courts are an inexpensive and efficient alternative to the traditional juvenile justice system already in place. For all of these reasons, states and international organizations should take a serious look at alleviating juvenile justice problems by the implementation of a youth court system.