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Shay Bilchik, Administrator

July 1997

JUVENILE JUSTICE BULLETIN

Mobilizing Communities To Prevent Juvenile Crime

Donna Bownes and Sarah Ingersoll

Youth violence concerns every American citizen because it destroys the social fabric of communities. Effective reduction of youth violence and victimization requires a balance of strong policing, holding youth accountable for their behavior, and targeted prevention through community action. OJJDP recognizes the need for locally driven efforts to effect long-term solutions and supports communities that are making such efforts. Through Title V Incentive Grants for Local Delinquency Prevention Programs (Community Prevention Grants), OJJDP allocated \$20 million in fiscal year 1997 to States to comple-

ment law enforcement and justice system efforts by helping local communities foster strong families and nurture law-abiding and healthy children.

Local communities are using Community Prevention Grants and matching funds to develop research-based delinquency prevention programs that are locally controlled. The programs supported by these grants seek to halt violent crime before it begins by offering young people opportunities to engage in productive and positive activities.

Investing in Prevention

As more communities attempt to prevent youth crime by developing and implementing long-term solutions, the demand for resources, best practices, and strategies continues to grow. If this country is to reduce delinquency and resultant criminality, there must be a coordinated, substantial, and sustained public and private investment of financial and human resources in families, communities, and the systems that support and protect them.

The importance and utility of making these types of investments, and efforts that have been successful, are described in major reports such as the Carnegie Corporation's *A Matter of Time and Great Transitions: Preparing Adolescents for a*

From the Administrator

If we are to prevent the juvenile crime that is tearing the social fabric of our Nation, we must invest our human resources and financial capital in both activities designed to ensure our immediate public safety and those aimed at the long-term prevention of juvenile crime. The most effective prevention initiatives are those that are locally designed, controlled, and implemented. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) funds Community Prevention Grants under Title V of the Juvenile Justice and Delinquency Prevention Act to help communities in 49 States, 5 territories, and the District of Columbia prevent juvenile delinquency. The grants, which require a 50-percent cash or in-kind match, have stimulated additional funding in many participating communities.

Mobilizing Communities To Prevent Juvenile Crime provides promising prevention approaches, summarizes the risk factors challenging youth, features effective prevention programs supported by OJJDP, and describes planning, training, and technical assistance opportunities available through OJJDP's Community Prevention Grants. By combining the knowledge we have now concerning effective prevention programs and a community-based planning and implementation program, we are confident we are maximizing our opportunity for success.

Shay Bilchik
Administrator

In Marquette County, Wisconsin, Community Prevention Grants funded the Child At-Risk program, which provides family management skills training and a tailored parenting education program designed for typically hard-to-reach parents.

In Crawford County, Kansas, community leaders have established the Truancy Diversion Counseling program to counsel at-risk youth and keep them in school and out of trouble. Community mobilization efforts such as this are critical to making the Nation's streets safer.

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Shay Bilchik, Administrator

March 1997

JUVENILE JUSTICE BULLETIN

Child Development–Community Policing: Partnership in a Climate of Violence

Steven Marans, M.S.W., Ph.D.
Miriam Berkman, J.D., M.S.W.

The New Haven Department of Police Services and the Child Study Center at the Yale University School of Medicine have developed a unique collaborative program to address the psychological impact of the chronic exposure to community violence on children and families. The Child Development–Community Policing (CD–CP) program brings police officers and mental health professionals together to provide each other with training, consultation, and support, and to provide direct interdisciplinary intervention to children who are victims, witnesses, or perpetrators of violent crime. The New Haven program serves as a national model for police-mental health partnerships across the country.

Children's Exposure to Violence

The experience of victimization by violence is far too common among children in America, as evidenced below:

- ◆ In 1994, almost 2.6 million youth ages 12 to 17 were victims of crime—simple and aggravated assaults, rape, and robbery (Bureau of Justice Statistics, "National Crime Victimization Survey." Unpublished table.).
- ◆ In 1994, an estimated 3.1 million children were reported to public welfare agencies for abuse or neglect. More than 1 million of those children were

substantiated as victims (Wiese and Dara, 1995).

- ◆ Homicide is the leading cause of death among African American males ages 15 to 24 (Hawkins, Crosby, and Hammett, 1994).
- ◆ A survey of inner-city high school students revealed that 45 percent had been threatened with a gun, or shot at, and one in three had been beaten up on their way to school (Sheley and Wright, 1993).

In addition, an alarming number of children who are not the direct victims of physical assault become potential psychological casualties as they witness violence both at home and in the broader community. For example:

- ◆ In a study conducted at Boston City Hospital, 1 out of every 10 children seen in their primary care clinic had witnessed a shooting or a stabbing before the age of 6—50 percent in the home and 50 percent in the streets. The average age of these children was 2.7 years (Taylor et al., 1992).
- ◆ In a study of New Haven 6th, 8th, and 10th grade students, 40 percent reported witnessing at least one violent crime in the previous year (New Haven Public Schools, 1992).
- ◆ In a survey of fifth and sixth grade students in Washington, D.C., 31 percent reported having witnessed a shooting;

From the Administrator

Too many of our Nation's children are falling victim to pervasive violence. Even young people who do not bear the physical scars of domestic and societal violence are often emotional casualties.

The tragic consequences to children of chronic exposure to violence are considerable. They include depression, anxiety, stress, and anger. Alcohol abuse, academic failure, and the increased likelihood of acting out in a violent manner are part of the costly legacy left by a climate of violence.

With the support of the Office of Juvenile Justice and Delinquency Prevention, the New Haven Department of Police Services and the Yale University Child Study Center have established a program that addresses the adverse impact of continuing exposure to violence on children and their families, and attempts to interrupt the cycle of violence impacting so many of our children.

Reflecting New Haven's commendable commitment to community policing, the Child Development–Community Policing Program brings law enforcement and mental health professionals together to help children who are victims, witnesses, and even perpetrators of violent acts.

I am pleased to present this promising model of professional partnership for your consideration.

Shay Bilchik
Administrator

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OJJDP

Shay Bilchik, Administrator

May 1998

JUVENILE JUSTICE BULLETIN

A Juvenile Justice System for the 21st Century

Shay Bilchik

The growth of violent juvenile crime over the past decade has stirred significant debate on the viability and effectiveness of this Nation's juvenile justice system. Between 1988 and 1994, juvenile arrests for violent crimes increased more than 50 percent. These increases have strained the juvenile justice system beyond capacity, from intake and detention to court and correctional services. The result, in many jurisdictions, is a system that does not consistently serve the public safety, hold juveniles accountable, or meet the treatment and rehabilitation needs of each juvenile offender. With generally inadequate funding and fluctuating public support, the juvenile justice system has fallen short of meeting the challenge presented during the past decade.

Recently, the U.S. Department of Justice announced new national statistics showing a decline in arrests for juvenile violent crime (6 percent), led by a decline in murder arrests (14 percent), between 1995 and 1996. While this is a promising sign, juvenile violence remains unacceptably high. As the 100th anniversary of the juvenile court approaches, it

is time to examine how the juvenile justice system can operate more effectively to reduce juvenile crime, particularly violent crime, and meet system goals. The juvenile justice system needs to be revitalized so that it will ensure immediate and appropriate sanctions, provide effective treatment, reverse trends in juvenile violence, and rebuild public confidence in and support for the system.

Since the first juvenile court was established in Chicago, IL, in 1899, a variety of strategies have been pursued to address the particular issues posed by juvenile offenders. Results have been mixed. Young people need to know that if they break the law, they will be held accountable. They also need to be put on a path toward responsible adulthood. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has developed a strategy, set forth in the publication *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*¹ (*Comprehensive Strategy*), to help communities prevent delinquency and establish a juvenile justice system based on graduated sanctions that combine accountability with increasingly intensive treatment services. The *Comprehensive Strategy* calls for immediate interventions when high-risk or delinquent behavior first occurs.

From the Administrator

The challenges of the next century will include significant problems that face us today and that we will need to continue to address. Building a juvenile justice system that protects our communities and ensures that all youth become productive, contributing adults will be high on that list.

Considerable progress has been made since the birth of the juvenile justice system at the end of the last century. The investment of time and labor by countless juvenile justice and youth service professionals has paid promising dividends. Nevertheless, some individuals question whether a separate juvenile justice system best serves the welfare of our children and our communities, and others ask whether the resources provided for juvenile justice have been adequate to the task at hand.

The fact is that much remains to be done if we are to construct a juvenile justice system that will meet both the challenges remaining from the 20th century and those that will arise in the future. To create an effective juvenile justice system for the 21st century, we must take to heart the lessons learned from this century—many of which are set forth in this Bulletin—and redouble our efforts on behalf of America's children.

Shay Bilchik
Administrator

An earlier version of this Bulletin was published in *Crime & Delinquency* 44(1):89-101, 1998, Sage Publications, Inc.

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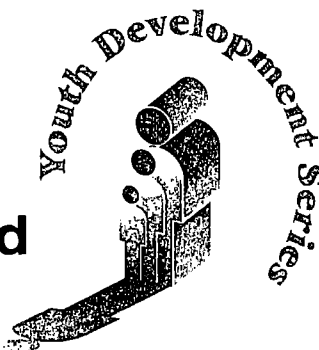


Shay Bilchik, Administrator

December 1997

JUVENILE JUSTICE BULLETIN

Developmental Pathways in Boys' Disruptive and Delinquent Behavior



Barbara Tatem Kelley, Rolf Loeber, Kate Keenan, and Mary DeLamatre

This Bulletin is part of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Youth Development Series, which presents findings from the Program of Research on the Causes and Correlates of Delinquency. Teams at the University at Albany, State University of New York; the University of Colorado; and the University of Pittsburgh collaborated extensively in designing the studies. At study sites in Rochester, New York; Denver, Colorado; and Pittsburgh, Pennsylvania, the three research teams have interviewed 4,000 participants at regular intervals for nearly a decade, recording their lives in detail. Findings to date indicate that preventing delinquency requires accurate identification of the risk factors that increase the likelihood of delinquent behavior and the protective factors that enhance positive adolescent development.

Boys may follow various developmental pathways that lead to increasingly disruptive and delinquent behavior. To most parents, teachers, youth workers, mental health professionals, and juvenile justice practitioners, the development of disruptive and delinquent behavior in boys may appear erratic and unpredictable. These adults may be confronted by boys at various ages who display disruptive behavior at home, at school, and/or

in the community and commit delinquent acts, such as minor theft, vandalism, robbery, and rape.

It is difficult for these adults to see a pattern in such behaviors or to accurately predict what disruptive or delinquent youth will do next. Parents, who are most intimately familiar with their sons' lives, may have limited knowledge of so-called "normal" child and adolescent behavior, much less an awareness of how best to handle their own troublesome boys. Teachers and youth workers encounter a fairly wide spectrum of child and adolescent behavior on a daily basis, but often are not fully aware of an individual boy's long-term progression into disruptive and delinquent behavior. Troubled boys frequently are not referred to mental health professionals or brought to the attention of juvenile justice practitioners until they have established a serious pattern of disruptive and/or delinquent behavior. Once such patterns are well entrenched, intervention efforts are more difficult.

This Bulletin summarizes longitudinal research from the Pittsburgh Youth Study, which examined an all-male sample. The study shows that the development of disruptive and delinquent behavior by boys generally takes place in an orderly, progressive fashion, with less serious

From the Administrator

*Two roads diverged in a wood, and I—
I took the one less traveled by,
And that has made all the difference.*
(Robert Frost, "The Road Not Taken")

The paths we take early in life often do make a considerable difference in the destinations that await us down the road. Pathways of particular concern are those that route some young boys to disruptive behavior and delinquency.

Researchers with the Pittsburgh Youth Study, a principal component of the Office of Juvenile Justice and Delinquency Prevention's Program of Research on the Causes and Correlates of Delinquency, have documented three developmental pathways that boys follow as they progress to more serious problem behaviors. Each pathway represents conceptually similar behaviors that unfold over time. They include conflict with authority (defiance and running away), covert actions (lying and stealing), and overt actions (aggression and violent behavior).

The longitudinal research summarized in *Developmental Pathways in Boys' Disruptive and Delinquent Behavior* helps us to better understand past, present, and future antisocial behaviors. This knowledge, in turn, will better equip us to identify problem behaviors early enough to intervene effectively before they lead to serious delinquency.

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OJJDP

Shay Bilchik, Administrator

June 1997

JUVENILE JUSTICE BULLETIN

Epidemiology of Serious Violence



**Barbara Tatem Kelley, David Huizinga,
Terence P. Thornberry, and Rolf Loeber**

This Bulletin introduces the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Youth Development Series, created to present findings from the Program of Research on the Causes and Correlates of Delinquency for public officials, juvenile justice practitioners, and other interested parties. The Causes and Correlates program—three coordinated, longitudinal research projects supported by OJJDP funding since 1986—represents a milestone in criminological research because it constitutes the largest shared-measurement approach ever achieved in delinquency research. Teams at the University at Albany, State University of New York; the University of Colorado; and the University of Pittsburgh collaborated extensively in designing the studies. At study sites in Rochester, New York; Denver, Colorado; and Pittsburgh, Pennsylvania, the three research teams have interviewed 4,000 participants at regular intervals for nearly a decade, recording their lives in detail.

The Causes and Correlates program is providing an empirical foundation for a new generation of preventive, judicial, and therapeutic interventions. The research findings to date indicate that preventing the onset of delinquency requires accurate identification of the risk factors that increase the likelihood of delinquency

behavior and the protective factors that enhance positive adolescent development.

It is vital that we now take the next step from research to action. OJJDP believes that the important findings presented in the Youth Development Series and the insights derived from them will stimulate informed public debate about juvenile crime and shape future responses to this critical societal problem.

Juvenile Offending Rates and Victimization Trends

By the early 1990's, rates of criminal violence, including youth violence, reached unparalleled levels in American society. Compared to adolescents in other countries, American teenagers exhibit alarmingly high rates of violence. For example, an American 17-year-old is 10 times more likely to commit murder than his or her Canadian counterpart (Silverman and Kennedy, 1993; Blumstein, 1994).

Criminologists now question the conventional wisdom that young adults represent the most violence-prone age group. In recent years, teenagers have so accelerated their rate of involvement that

From the Administrator

Over the past decade, juvenile violence has spread like an epidemic among a small, but nonetheless significant, segment of America's young people. Just as a single dose of medicine will be ineffective against a virulent illness, so will one-time remedial action prove inadequate to prevent or successfully intervene in juvenile delinquency. Long-term, continuing solutions are needed—solutions based on a thorough understanding of the developmental changes in a child's journey to adulthood, the varied negative influences they face along the way, and the pathways some follow to delinquent and criminal behavior.

To share new information about child development and delinquency, OJJDP is initiating a series on youth development that will present some of the most notable findings from our Program of Research on the Causes and Correlates of Delinquency. *Epidemiology of Serious Violence*, the first Bulletin in the series, answers basic questions about the varying levels of involvement in violent acts according to age, sex, and ethnicity and recommends a public health model of prevention, treatment, and control.

The findings and conclusions presented here will be invaluable to all those who are working to turn America's youth away from violence and toward a safer future.

Shay Bilchik
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Shay Bilchik, Administrator

May 1998

JUVENILE JUSTICE BULLETIN

Serious and Violent Juvenile Offenders

Serious and violent juvenile (SVJ) offenders comprise a troubled and often dangerous population. Although their numbers are small, they are responsible for a disproportionate amount of crime. To know what to do about this difficult problem and to garner the necessary financial, political, and public support to deal with it effectively, policymakers need a solid research foundation. To build this research base, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) convened the Study Group on Serious and Violent Juvenile Offenders. The findings of this distinguished panel of researchers are quite hopeful and compelling. They conclude that it is never too early to begin efforts to prevent SVJ offending, and it is never too late to intervene with known serious and violent juvenile offenders.

Expanding upon OJJDP's formative work on the *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders* (Wilson and Howell, 1993), the Study Group carefully documented what is known about SVJ offenders, what programs have been tried, how these programs have performed, what lessons can be drawn from them, and what research and evaluation efforts are needed to advance knowledge about preventing and controlling SVJ offending. One of the primary goals of the Study Group was to provide further guidance to jurisdictions across the country that are implementing OJJDP's Comprehensive Strategy. This strategy, originally developed from research on general delinquency, emphasizes strengthening the family and other

core socializing institutions, implementing prevention programs targeting key risk factors, identifying potential offenders at a young age, and employing graduated sanctions based on assessments of risks and needs. The Study Group used this framework to guide its efforts.

Over a period of 2 years, the Study Group of 22 researchers worked collaboratively under the direction of Rolf Loeber, Ph.D., Professor of Psychiatry, Psychology, and Epidemiology at the University of Pittsburgh, and David P. Farrington, Ph.D., Professor of Psychological Criminology at the University of Cambridge, England. The final product, *Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions* (Loeber and Farrington, 1998), analyzes current research on risk and protective factors and the development of SVJ offending careers, integrating it with information on the effectiveness of prevention and intervention programs. The interventions examined range from those targeting children to those focused on adults, and from programs in the juvenile justice system to programs involving homes and schools. By highlighting the link between risk and protective factors and programming, the Study Group has provided a comprehensive synthesis of available literature and specially commissioned data analyses to focus specifically on serious and violent juvenile offenders. This Bulletin summarizes the latest, most comprehensive research on SVJ offenders and is intended to stimulate interest in and discussion of the findings and issues raised by the Study Group's report.

From the Administrator

A recent report by the Office of Juvenile Justice and Delinquency Prevention's (OJJDP's) Study Group on Serious and Violent Juvenile Offenders provides valuable insights into the pathways to serious and violent juvenile offending. *Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions* uses OJJDP's *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders* as a foundation to construct an analysis of risk and protective factors that will enable communities to build effective prevention and intervention programs for serious and violent juvenile offenders.

The Study Group of distinguished experts chaired by Drs. Rolf Loeber and David Farrington presents empirical evidence that the key to reducing serious and violent offending lies with early prevention efforts aimed at high-risk youth and interventions with serious and violent juvenile offenders.

This Bulletin and the report it summarizes provide critical guidance toward both ends by examining a broad range of prevention and intervention programs, from those that focus on early childhood to those focusing on late adolescence. It is my hope that the information the Bulletin provides will renew our commitment to tackling what has for too long seemed an overwhelming problem—serious and violent juvenile offending.

Shay Bilchik
Administrator

file JJ bill

MEMORANDUM

TO: Juvenile Justice Conferees' Legislative Assistants

FROM: Marc Schindler (Youth Law Center) & Jill Ward (CDF)
Co-Chairs, Juvenile Justice Coalition

DATE: October 20, 1999

RE: Juvenile Justice legislation

As conferees consider juvenile justice legislation, we've provided you with a packet of recent news clippings and a copy of ACLU's letter to Education Secretary Richard Riley and Attorney General Janet Reno.

If you need additional information, please feel free to contact either of us. We can be reached by phone at: 202/637-0377 (Marc) or 202/662-3503 (Jill) or by email at: mschindler.ylc@erols.com or jward@childrensdefense.org.

Viewpoints

Responding to juvenile violence

Resist urge for tougher punishment; boost prevention funding instead

By JAMES G. SHERMAN

Recent episodes of juvenile violence have been a stark reminder of how vulnerable we and our children are. How should we as a society respond?

Congress is currently considering several new versions of juvenile justice legislation. A Congressional Conference Committee must decide on final recommendations. Much that is in the bills proposed would weaken the protections our juvenile justice laws traditionally have given children.

The House version is particularly disturbing in that it focuses almost entirely on punishment. It would impose mandatory sentences on youthful offenders and permit disruptive disabled youngsters to be expelled from school. It gives federal prosecutors, rather than judges, the discretion to try children as adults.

It would permit teens as young as 13 to be placed in adult jails, where they would be at risk of assault and abuse. Juveniles are eight times more likely to commit suicide, five times more likely to be sexually assaulted and twice as likely to be assaulted by staff in adult jails than in juvenile facilities.

It also broadly opens up juvenile records, with potentially devastating consequences for future employment and education. That strikes at the heart of the presumption that children who get into trouble deserve a second or third chance.

We need to encourage our representatives to consider other possibilities.

First, prevention pays. Every \$1 spent for high-quality early childhood care and education saves at least \$6 in later costs for special education, the impact of crime, and welfare.

Programs that provide home visiting have been shown to reduce abuse and neglect, which are directly linked to later criminal activity. After-school services such as the local Teen REACH provide constructive options

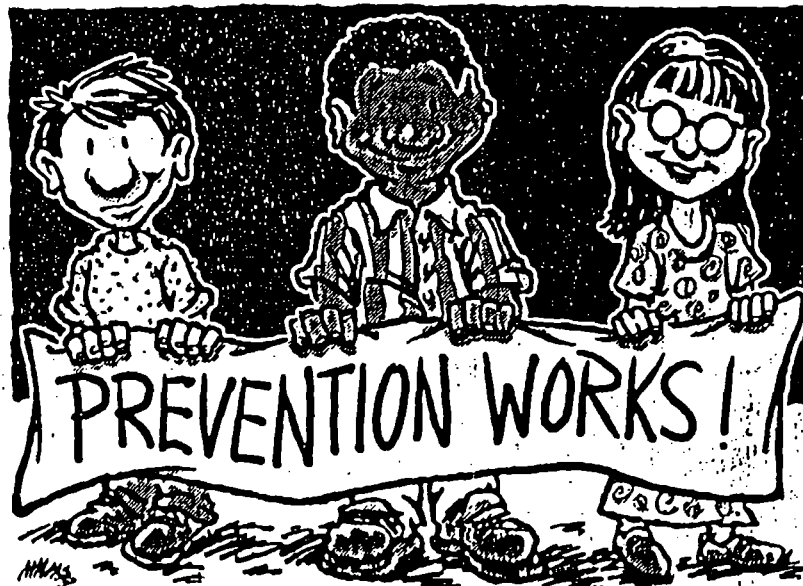
during a time of day when teens are most likely to get into trouble. When Waco, Texas, implemented such a program, juvenile crime dropped by 10 percent. Prevention works.

Second, programs designed to minimize the depth and duration of involvement in the juvenile justice system are working. Five thousand dollars of intensive home-based services to first-time delinquents saves \$30,000 in incarceration costs for 70 percent of those who receive the services.

Third, the Department of Corrections in Illinois has stated repeatedly that it cannot build itself out of this problem due to the influx of kids into their system. Instead, it is investing heavily in community-based interventions. The Children's Home is working with Peoria County Juvenile Court Services to provide after-school services funded by the Peoria County Board. Judges can now refer youths into this program as an alternative to residential care or incarceration.

At the request of the Department of Corrections, we also started the first Day Reporting Center in the state to serve those youths coming out of the Department of Corrections so their length of stay can be shortened and they can be integrated back into their homes and neighborhoods. It is an intensive program with counseling, job preparation, life-skill development, family involvement and educational programming. Not only do these programs save taxpayers thousands of dollars, we believe they will prove to be far more effective.

Fourth, a small group of chronic offenders is responsible for most juvenile violence. Juvenile arrest rates have declined, but public concern remains high due to violent crime



dropping less than overall juvenile crime. Traditionally, the 17-to-24-year-olds were the high-risk years, but we are now seeing more violent crime from 11-to-13-year-olds. This has, in part, caused the recent legislative initiatives.

There are violent and dangerous kids who should be locked up, but they are a very small part of the population. The majority of children need alternative services that can best be provided in community-based programs, such as those offered by Children's Home and other local agencies.

But to address this smaller group of very dangerous youths, let's not overturn a legal history which allows all juveniles to be dealt with differently from adults. And let's resist pressures to minimize funds for mental health services and maximize funds for more stringent measures.

We should oppose weakening the core protections of the Juvenile Justice and Delinquency Prevention Act. We should insist that the final bill dedicate funds specifically for prevention programs designed to keep children safe and out of trouble. No legislation that is serious about reducing crime and delinquency can deny the merits of prevention.

Rep. Henry Hyde, a Republican from Wood Dale, sits on the Conference Committee. He needs to hear from us. So does Congressman Ray LaHood. Urge them to consider the future of our nation's youth by funding prevention, not just punishment.

James G. Sherman is president and chief executive officer of the Children's Home Association of Illinois.

Black juveniles face unequal treatment in court

Black juveniles are twice as likely as whites to be waived to adult court for the same crimes. In fact, at every stage black juveniles are treated more harshly than whites.

Congress has recognized this blatantly unequal treatment under the law, and directed the states to assess the extent of the disparity and take measures to correct it.

Now, however, House and Senate conferees, working on the juvenile justice bill, are on the verge of discarding that mandate — at the very time many states are finally addressing the problem.

Sen. Orrin Hatch, R-Utah, who made the proposal, argues that whatever gap exists is because black youths commit a disproportionate amount of the crime. Unfortunately, that's true.

Yet the difference in crime is small compared to the difference in the treatment of black and white juveniles caught up in the system.

Indiana, like most states, has studied the problem. It has found the disparity in treatment between black and white juveniles isn't something dreamed up by the NAACP and other civil rights advocates.

The gap is real. It is pervasive. It is unconscionable.

Black youths account for only 15 percent of the population ages 10-17. But they account for 26 percent of the arrests. Once arrested, they're more likely to be charged. Charged, they're more likely to be sent to detention centers.

Bill Gist, director of the Indiana Juvenile Justice Task Force, points out that the unequal treatment starts with the initial charge. His research shows that blacks are more likely than whites to be charged for the same offense.

At that point, the gaps widen. In a state where 10 percent of the population is black, black youngsters account for one in three juvenile arrests.

Yet other states have tackled the problem and shown it's possible to narrow the gap without jeopardizing public safety.

If Sen. Hatch prevails, such efforts to eradicate the institutional racism in juvenile justice likely will die for lack of federal support. And black young people all over the country will continue to be the victims of an unequal justice.

YOUNG AND DEADLY

WHY CHILDREN KILL

Alone, confused and armed

Maya Bell
of The Sentinel Staff

Juan Langley learned the value of obedience early in life. When his mother asked for crack cocaine, the 12-year-old obliged and bought it for her.

Eve Postell learned the value of hard work. When she needed money, she went out to "make some" -- not by baby-sitting like other 13-year-olds, but by yanking gold chains off people's necks.

Damon Peterson learned the value of guns when he was 13, living by the golden rule: "Bite or be bitten."

James Conley learned the value of sharing. By the time he was 8, he was allowed a beer or two from his stepfather's six-pack.

By age 12, James had followed the tradition of most men in his life, landing behind bars but with a distinction all his own. He had become the youngest killer in Florida's adult prison system.

Today, Peterson, Postell, Langley and Conley are among Florida's growing army of young marauders.



Dennis Calabrese



James Conley

born in innocence but bred into violence.

Values? Compassion? Respect for life?

Such ideas were as foreign to them as theoretical physics or microbiology. And few people in the justice system -- prosecutors, defense attorneys, judges, child psychologists -- are surprised.

Young predators will continue to kill, they say, as long as children are born in chaos to irresponsible or inept parents, and as long as the weapon of choice -- the gun -- is easily accessible.

Most wayward children, of course, never kill or maim. And some children from seemingly loving, stable backgrounds commit unthinkable crimes.

As a rule, though, most children who kill have accomplices. It could be a detached mother trapped in poverty. An anonymous father. Dead-end role models. Drugs, abuse or neglect. A neighborhood awash in violence. Or a justice system too overburdened to recognize a child's cry for direction, or just plain love.

Florida warehouses a lot of these kids. Today, more than 1,250 inmates are serving time for killing someone or attempting to kill when they were 17 or younger. Ninety-five were 12, 13, or 14 at the time. Thirty-six are still under 18. Sixty-six percent are black males. Nearly 400 are serving life sentences. Seven are on death row.

Stephanie Powell, who at age 13 shot a cab driver in the head before skipping out on the \$6 fare, could be the poster child for many of her violent peers: She pretty much raised herself. Severely under socialized, the Palm Beach County teen never thought about consequences.

When told she killed someone's father, she replied: "What's a father?"

Across Florida, the scenes are eerily similar:

Timothy Brown and Keith King, 14 and 17, were riding double on a bike, high on pot and cocaine, when they made a bet: The first to kill a cop wins. The loser: a Broward County deputy finishing paperwork in his patrol car. One of the boys fired a

.38-caliber pistol at the officer's head. He died instantly.

Fourteen-year-old Ricardo Gray shot a young man with a MAC 11 submachine gun a few days after the victim demanded that Gray apologize for stepping on his toe at a Miami flea market.

Ending a long-running feud, 13-year-old Princess Haliburton shot and killed her 14-year-old Orlando neighbor, who Princess thought was threatening her.

After each killing came the predictable, anguished communal cry, "How could this happen?"

There are no excuses, but there are plenty of clues.

Keith King watched his dad kill his mother and later die of AIDS. Tim Brown's mother, an addict, abandoned him as a baby. His father left when he was 11, and later was murdered.

Ricardo Gray, a runaway and dropout at age 14, lived on his own with siblings and friends, drinking and smoking pot.

Princess Haliburton's mother gave her the gun to carry for protection when Princess was only 11.

"I'm really the guilty person here," Jeannie Haliburton said as her daughter was led to prison.

What about Columbine?

Like most children who kill, these youngsters came from a different world than the kids whose murderous school rampages stunned the nation in the past two years.

In one world, crime and death are staples of life. In the other, they're just staples of the nightly news or the latest computer game.

In one world, soccer moms haul their kids to practice in SUVs. In the other, mothers or grandmothers teach their children the survival game: how to dive into the bathtub when bullets fly.

That becomes second nature when homicide is the leading cause of death among minority youths in the United States.

Until a few months ago, most Americans didn't concern themselves with that world, or the children who populate it.

Then came Columbine in Littleton, Colo.

High school outcasts Dylan Klebold and Eric Harris, middle-class boys from two-parent families, killed 12 classmates, a teacher and then themselves, proving that the forces that lead children to kill are neither simple nor singular. No matter whose children they are. No matter where they live.

Littleton was a massacre, but it was quick -- one afternoon, 14 kids dead, noted James Garbarino, Cornell University psychologist and author of a new book about boys who kill.

"There is a long, slow massacre that has been going on for years that accounts for twice as many kids killing or getting killed every week," Garbarino said. "The families and communities of these kids have been putting teddy bears at memorials for a generation now, largely in silence."

Now, they are joined in their grief. Columbine established a common ground.

"No longer can we believe that we and our children are immune to lethal youth violence," Garbarino wrote, "because today almost every teenager . . . goes to school with a kid who is troubled enough to become the next killer, and chances are that kid has the access to the weapons necessary to do so."

An explosive mix

Damon Peterson can teach that lesson better than any professor. Now 22, he has had six years to reflect on his hopeless childhood and the forces that led him to kill.

His words do not ring with the hollowness that comes from other killers who voice regret. Instead, they reflect a young man who has had time to think about himself and others who grew up under similar circumstances.

First, he says, he never should have been born. And neither should have many other children.

"There should be a law: If you want to have a child, have 15 years of planning," he says. "Someone who's not going to love their child, teach their child discipline and really nourish and train their child's mind should not have the right. If you want to fill your sexual desire, get a condom. But if you want a child, have 15 years."

It took 16 years for Peterson to become a killer.

He offers his advice from Charlotte Correctional Institution, where he is serving a life sentence for killing a German tourist during a robbery attempt. Abandoned by his crack-addicted mother and fending for himself since age 10, guns were his security blanket.

Peterson insists he didn't intend to murder Jorg Schell in 1993. The gun, he said, went off by accident during a robbery attempt in Homestead.

That's not unusual. Most kids who kill don't plan their murders. More common are haphazard killings by youngsters who are out of control, out of the mainstream, out of luck.

And in easy reach of a gun.

Even in the rarer cases of kids who plot their murders, guns play a major role. Nobody will ever know whether Brevard County siblings Cathy Jones and Curtis Fairchild Jones would have killed Sonya Speights if they hadn't swiped their daddy's gun and hunted down the ammunition. But they did, taking turns shooting their father's fiancée, a teachers aide who the children feared would compete for their dad's love.

In Lake County, 11-year-old Patrick Boykin took his parents' revolver from a closet and shot his 13-year-old sister, Constance, four times.

Whatever their motives, these and thousands of other kids became lethal because of guns.

The number of killings committed by armed juveniles in the United States quadrupled between 1983 and 1993, the year the death toll peaked at 3,486. That was, on average, more than 67 slayings every week by a child with firepower. During the

same period, however, nongun killings by youngsters barely changed.

In other words, remove guns from the mix and the seismic leap in juvenile killings this past decade would have been flat. The same is true for juvenile suicides.

"It's the guns, stupid," said Vincent Schiraldi, executive director of the Center on Juvenile and Criminal Justice. "If you wanted to make kids in America more murderous, you could hardly do better than double their number in poverty and give them a whole bunch more guns. That's basically what we did."

Researchers blame another scourge: crack. The introduction of the cheap form of cocaine into inner cities in the 1980s kick-started a youth arms race, according to a study by Alfred Blumstein, a criminologist at Carnegie Mellon University in Pittsburgh.

Poor people such as Juan Langley's mother, a welfare mom from the projects in Brooksville, could buy the drug one hit at a time — or even send their children to buy it for them. Piecemeal street buying, though, required piecemeal street sellers who came cheap: impoverished kids who, looking around them, could not imagine a better future.

Suddenly, Blumstein said, youngsters such as Langley were vulnerable to theft and unable to go to the police. So they got guns from older boys. Or they traded for them. Or they stole them.

Over time, guns became status symbols, signaling power, safety, manhood. Langley would use his gun to shoot his cousin in a fight that started over a \$5 crack sale.

By 1988, Blumstein said, the diffusion of guns reached white neighborhoods, and the youth arms race was on. Two years later, one of every 20 students reported having carried a gun to school in the previous 30 days, according to the U.S. Department of Justice.

Suddenly neighborhood brawls that used to end in bloody noses ended in shootouts. And drug deals too often ended in death.

The case of Brevard teens Dennis Calabrese, Robert McKevitt and Geoffrey Calvert is typical. All are serving life sentences after stealing guns, ambushing two young drug pushers and shooting them dead during an LSD deal.

"American kids are not more violent by nature," said Larry Steinberg, director of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. "We don't lead the world in non-gun violence -- assault, battery, aggravated assaults -- but compare gun-related violence, and we're off the charts."

Actually, out of this world: In 1996, handguns killed 30 in Great Britain, 15 in Japan and 9,390 in the United States.

Few people think, though, that ending youth homicide is as simple as keeping guns from kids. "People think the issue is guns," said Randy Means of the Orange-Osceola State Attorney's Office. "It's not. It's violence. Kids are violent, and they're violent for some reason."

The brain change

Science has been shedding light on some of those reasons, and they pretty much parallel Means' armchair philosophy: "It begins at home. It's a function of poverty and parenting."

Deprivation or inadequate parenting, of course, is no excuse for murder. "For every murderer, there are five people who grew up in the same environment and didn't kill," said Chuck Morton, the Broward prosecutor who convicted the two teens who killed Deputy Patrick Behan on a dare.

However, scientists note that not every smoker gets lung cancer, either. The key is sorting out who is at risk, and researchers in the hybrid field of child development and biology have made a pivotal discovery about the roots of violence:

Experience changes the brain.

In short, the brains of children repeatedly subjected

to trauma -- chaos, abuse, neglect, fear -- are perceptibly different than the brains of kids blessed with most of the right stuff. The buttons that make them react to stress are permanently reset on high-alert, or on dead-numb.

Given the right set of wrong circumstances, some of these children will resort to violence. Given access to a gun, some will kill.

It's not the genetics of the brain that are changing, but the modern experiences imprinted on the brain, said Bruce Perry, a child psychiatrist and neurobiologist doing pioneering research on violence at Baylor College of Medicine.

Many children in today's violence-saturated world of walled communities and public housing are untethered. They have fewer ties to a belief system, to their culture, parents or communities. Across all socioeconomic spectrums, Perry said, they feel alienated.

And growing up in such a world changes how children behave because that's what the brain is designed to do, Perry said.

That's why specialists have said for 20 years that early experiences are so vital to healthy development. The experiences branded on the brain during the first three years of life act as a template, directing how a child will perceive, organize information, behave and respond to stress.

Imprinted with too much chaos, too many stressors and too little love, young brains physically change. Some adopt a persistent state of fear. Their flight or fight switch is always on. Others shut down emotionally, which Perry said may explain Stephanie Powell, the girl who killed the cabdriver.

"Explanations are not exculpations. So when kids do violent things, they should be held accountable," Perry said. "But the question is: 'Do we hold them accountable in the same way as a person who methodically planned a murder?' "

Call for reform

Jan Staniszki doesn't think so.

A real estate developer in Orlando, Staniszki was foreman of the jury that convicted Princess Haliburton of manslaughter. The 13-year-old Orlando girl had been charged as an adult with first-degree murder and faced life in prison. The jury, though, decided that she did not plan to shoot neighbor Erika Bearden.

Three years later, Staniszki still can't get the case off his mind.

"One kid is dead," he said. "The other is in prison. Why? For premeditation? No. Because her mother gave her a gun. Give any child a gun at age 11 and there's a good chance it will be used."

He worries about Princess' future — and ours. He finds it incomprehensible that a child her age was sent to a woman's prison for seven years because Florida's juvenile-justice system doesn't have a program appropriate for girls such as her.

Her attorney tried to get Princess in a program in another state, but the cost was too high. To Staniszki, the cost of not doing so is even higher.

"Obviously, you have to make a child aware of the gravity of the crime and be held accountable, but not in the same way as pathological killers," he said. "We have to be accountable, too. There needs to be reform with punishment."

Staniszki's lament is common. When kids kill, there is much anguish about the appropriate punishment and the likely result of their spending their formative years in prison with hardened criminals. One police officer described as cherubs the Brevard children who executed their father's girlfriend. He could not reconcile their sweet faces with their deeds.

But when faced with a child who kills, prosecutors have trouble reconciling their crimes with the limited punishment available in the juvenile system.

Juvenile offenders can be held only until they turn 19, or sometimes 21, but rarely is punishment lengthy.

The obvious solution would be to keep young

killers, especially those who will be turned loose one day, in the juvenile system until they are old enough to be moved to the adult system.

And while that option is discussed, it also is dismissed as too expensive. Locking up kids in adult prison is much cheaper than treating them in a juvenile program.

But an increasing number of prosecutors and judges realize that the justice system can't afford to shrug off damaged children with an, "Oh well, another of life's casualties."

And little by little that attitude is changing. The juvenile homicide rate is dropping, and many factors are credited: gun buy-backs, get-tough policies, a strong economy and, not least of all, prevention, intervention and mentoring programs.

The approaches may differ from community to community, but the results of ignoring them don't.

Last year, 95 youngsters and teens were arrested across Florida on charges of murder, attempted murder or manslaughter; 72 were charged as adults. More than half were black males. Most were 16 or 17 years old, but 20 of them were 13 or 14.

If other children grow up like Damon Peterson, now a model inmate, a self-taught writer and the spiritual leader of Muslims in his prison, they may find incarceration their salvation from a worse fate.

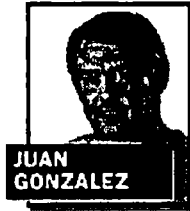
"If I could trade my experience for a million dollars, I wouldn't do it," Peterson said.

"I wouldn't do it. Because the man I've become now, the feet that I'm standing on now, there ain't no way in hell I would have obtained that on the street."

New York Daily News
October 15, 1999

Juvenile Crime Bills Off Mark

Ever since the Columbine High School shooting in April, Congress has been under increasing pressure to do something about gun control and youth violence.



The Senate and the House passed separate versions of a new juvenile crime bill in the spring, and Republican leaders of both houses are nearing agreement on a compromise version.

So far, all the media attention has focused on opposing gun-control provisions in the two bills. The Senate's version is supposedly tougher, though not by much.

But a coalition of children and youth organizations has a different focus: They claim provisions in both bills will be disastrous for juveniles.

Further, the advocates say, the Senate's version will allow the criminal justice system to step up its devastating tendency to target blacks in disproportionate numbers.

"Everyone's forgotten about the juvenile part of the juvenile justice bill," said Vincent Schiraldi, executive director of the Washington-based Justice Policy Institute, a coalition member.

Everyone knows that juveniles locked up with adults become easy targets for beatings, rapes and other forms of abuse from adult inmates.

But an amendment in the House bill would do away with dozens of court consent decrees that have forced state prison systems to segregate juveniles from adult prisoners and offered youths greater protections from abusive treatment by guards.

In addition, both bills would allow federal prosecutors to try youths as young as 13 as adults, increase mandatory sentences and do away with confidentiality provisions in juvenile courts.

The Senate bill would even remove a provision in current law that requires states to track the racial and minority composition of those in the juvenile justice system and to address issues of disproportionate confinement.

Sens. Orrin Hatch of Nevada and Jeff Sessions of Alabama gutted that requirement, calling it a quota system and unconstitutional.

During an amazing speech on the Senate floor this spring, Hatch, the powerful chairman of the Judiciary Committee, insisted there is no discrimination in our justice system:

"The fact that 13% of the offenders are African-American and 67% of those incarcerated are — I don't see any information here saying that higher percentage was unjustifiably put in jail," Hatch said. "Does that mean there are a lot of white people getting off? I don't see any evidence of that. Statistics are statistics, but when people go to jail, it is generally because they have committed a crime."

Inconvenient statistics, of course, are precisely what Hatch and Sessions want to eliminate.

One of every three young black men in America today is in prison, in jail, on probation or on parole — a statistic so overwhelming it defies rational explanation.

In a powerful new book, "The Race to Incarcerate," author Marc Mauer of the Sentencing Project documents that in 1995, according to the federal government's own studies, African-Americans were 13% of the population and 15% of drug users, yet they comprised 33% of people arrested, 55% of those convicted and 74% of those sentenced to prison for possession.

Simply put, young whites who use illegal drugs in the suburbs, on college campuses or in downtown nightclubs never get targeted by narcotics sweeps the way blacks and Latinos in the inner city are targeted.

So the jails fill up with young blacks and Latinos, and nobody questions why. It's the same with violent crime.

"Suddenly, we have all these shootings by white kids in rural communities attacking other white kids," Schiraldi said. "So what does the Senate say? Let's abolish [measures to reduce] minority disparate sentencing. ... How do you figure that?"

There's been a 37% drop in violent crime by juveniles since 1993, and a 43% drop in juvenile homicides, Schiraldi said, but most of the nation believes the opposite. Everyone is convinced our young people are out of control.

We can thank television for that.

Even as overall homicides plummeted by 20% between 1992

and 1996, television network coverage of homicide rose by 721%, Schiraldi noted.

Murder sells. And locking up black kids wins votes. Now the Senate even wants to lock up the facts.

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BODY:

Judges Should Decide Which Children Are Tried as Adults

Several papers ran stories on the Justice Policy Institute's recently released study on prosecutorial discretion. In Florida, it shows, prosecutors, not judges, decide whether juvenile defendants should be tried as adults.

The devastation this policy has brought on Florida's children and families is quite evident. "On every indicator for which we evaluated prosecutorial discretion waiver, from public safety, to targeting violent offenders, to racial equity, the practice was found sorely wanting," stated Jason Ziedenisberg, policy analyst for the Justice Policy Institute and co-author of the report.

In 1995, 7,000 of Florida's children were referred to adult court compared to 9,700 nationwide. This decision has been taken out of the hands of judges, who are experienced, and given to prosecutors, who are not experienced, and are parties to the legal battle. Federal law calls for judges to decide whether children should be tried as adults in federal court.

The institute's report was compiled from such sources as the Florida Department of Corrections, the Florida Department of Juvenile Justice and the U.S. Justice Department. It found that black children were 2.3 times more likely to be referred to adult court by Florida prosecutors. Youths tried as adults committed new crimes twice as fast as those tried as children.

Frank Davies of The Miami Herald stated in his article published Sept. 28, "State prosecutors in Florida are sending too many juveniles, including nonviolent offenders, into the adult-court system, and this trend has failed to reduce the state's high juvenile-crime rate, according to a new study."

Jason Ziedenisberg, who co-wrote the Justice Policy Institute's study, says Florida was chosen because it was the first state to give prosecutors control over where to file charges on its children.

Congress is considering a massive youth-crime bill, HR 1501, pushed by U.S. Rep. Bill McCollum of Longwood, a candidate for the U.S. Senate from Florida. We, as citizens of this state, must not let this archaic, nonrehabilitative, brutal, anti-child legislation spread to become national law. Become vocal. Write your congressional representatives now.

Remember to oppose proponents of similar legislation when you use your priceless, precious vote.

Florida's children and the nation's will thank you.

DORIS GREEN

Lakeland

Ventura, Beatty Offer Hope

- How refreshing to see Jesse Ventura and Warren Beatty toying with the thoughts of running for president. Both seem to be honest, qualified and in touch with the average American.

Gov. Ventura and Mr. Beatty both understand that this country is controlled by special interests and corporate America, and the average American hasn't any say so anymore. They also understand that the left-wing Democrats have moved so far to the right that they have become Republicans, and we all know the Republicans haven't anything to offer the working class.

The working class is the backbone of America. They contribute more than any other class to this country. It's time they regain their voice, and, thanks to Jesse Ventura and Warren Beatty, the American people stand a chance.

JOHN L. GASKINS

Eaton Park

Military Records Missing

I wish to thank Congressman Charles T. Canady and his staff for the excellent support provided to me and my family. Because of a medical problem, I was in need of my service records.

We were told they were lost, "probably" as a result of a fire at the National Personnel Records Center in St. Louis on July 12, 1973. The VA informed me that 80 percent of all Army veterans serving between Nov. 1, 1912, and Jan. 1, 1960, are missing, with no back-up records.

I found this hard to believe, and requested the congressman to help me. Many requests were made by his office to high ranking officials in our government. In spite of all his efforts, success was not to be.

This experience leads me to believe that there is no hope, for me or my family.

Good luck to the "millions" of veterans attempting to locate their service records. They will need it.

JOHN CASHIN

Lakeland

Segregation Legacy Active

I take this opportunity to respond to the recent column ["Polk School System Still Segregated," Sept. 27], written by Charles M. Streeter. As a retired school principal of the Polk School System, I concur with everything written in this article.

I have often said that we are no closer to a unitary school system as we were 30 years ago. We must understand that, although segregation has been legally abolished, its legacy still exists in the Polk School System and it will probably take years to overcome, especially under the present leadership in our district office.

Polk County schools need statesmen, as opposed to politicians, leading our school system. In other words, we need honest leaders who can walk the walk, as well as talk the talk. Our children -- especially African-American; Hispanic; and poor, white children -- are suffering in our school system, not from lack of proper funds, but from the lack of good, sound management skills. A good example of this is the waste of thousands of taxpayers' dollars during the restructuring of the schools in Fort Meade. The area of superintendent should be held accountable for such waste of funds. No wonder teachers, custodians, maintenance workers, secretaries, lunchroom workers, bus drivers and other employees are among the lowest-paid school personnel in this state (ranked 56th).

In order to raise test scores and have high morale in our public school system, we need certified and

- qualified teachers. One way to employ them and keep them is by keeping salaries in line with other counties. There is no valid reason or excuse for Polk County to be paying its teachers and other employees the salaries they are earning. Wake up, Polk County school leaders -- especially the superintendent, who thinks that reducing the number of teachers and increasing class sizes will enhance the learning of our children. Indeed, to decrease the number of teachers in our schools, is ridiculous to be sure.

Other school districts are working hard, with qualified leaders, in maintaining high standards, high test scores, high morale and good leadership. Why is Polk County always hiring consultants to fix something? With effective leaders, there wouldn't be the problems that we are encountering to fix.

The taxpayers of Polk County deserve better. However, nothing is going to get better or fixed until we rid ourselves of racism, nepotism, favoritism and tokenism. No human being should have to work under the stress, pressure and conditions existing in our school system -- regardless of race, creed or gender.

L.D. WILCOX

Haines City

This letter is in response to Charles M. Streeter's column on Sept. 27, titled "Polk School System Still Segregated."

Consistent with Mr. Streeter's previous articles, his lengthy and verbose attempt to indict the Polk County school system for numerous failings comes up terribly short on facts. Because Mr. Streeter still believes that government is the panacea for all problems, he is unable to distinguish when change also requires personal sacrifice and discipline.

Mr. Streeter asks many, many questions but unfortunately provides no answers; i.e., he attempts to relate three questions regarding African-American mental liberation, psychological damage and the removal of all vestiges of racism to the failure of desegregation.

Desegregation was intended only to provide an even playing field for black students in America. Only when we change the hearts of men will serious gains be made in truly addressing the "vestiges of racism," etc. in our society.

Secondly, Mr. Streeter's attempt to use statistics to indict the school system because African Americans are poorly represented in administrative positions is ludicrous. Perhaps, many potential black educators simply do not elect to pursue educational careers. After all, recruitment of qualified teachers, black and white, is a serious problem in today's economy. Would Mr. Streeter prefer to make his statistical model work with quotas without regard to qualifications?

Mr. Streeter does ask an interesting question as to why there are fewer black educators currently than there were during the pre-segregation days of the dual system. Perhaps, because the black community, before the Great Society, was a close-knit, accountable society in which black teachers and principals were well-respected leaders and not simply employees of a government school system. Perhaps, because pastors were leaders, two-parent families were the norm and the black community was not condemned to dependency by welfare under the guise of compassion.

Unfortunately, Mr. Streeter refuses to recognize that most attempts of government to intervene in areas of personal responsibility always result in failure, and the suggestion that the desegregation order be extended is an example of the same.

DAN C. FRODGE

Alturas

SPCA Makes Progress

I would like to commend The **Ledger** and staff writer Billy Townsend for an excellent article titled "SPCA Nears Goal for New Clinic"[Sept. 20]. This article did a very good job of reminding the citizens of Lakeland and Polk County about the services provided by the SPCA and the need for the new spay-neuter center.

There were many years when care of these animals was done by "foster homes" in which volunteers would take numerous animals into their homes until they could be adopted. John and Claudia Kersey provided one of these homes, and had adapted their home and fenced yard to care for as many as 40 cats. The care provided by these foster homes was a true labor of love. SPCA volunteers would also staff an adoption area outside the Lake Miriam Publix each Saturday in the hope of finding suitable families for these homeless pets.

In 1989, a large bequest from an animal lover provided the funds needed to build the present permanent shelter and adoption center on Brannen Road. Now we are nearing our financial goal to provide a nonprofit spay-and-neuter center, which will help to reduce the number of homeless animals.

Sincere thanks go to the many generous individuals, companies and governmental groups helping to make this dream a reality. I know that the SPCA thanks you, and so do Fido and Fluffy.

EUGENE L. ROBERTS

Former SPCA President, 1989-1991

Lakeland

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October 8, 1999

The Honorable Janet Reno
Attorney General
U.S. Dept. of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Richard Riley
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Attorney General Reno and Secretary Riley:

We are writing to express our concerns with the juvenile justice bills, HR 1501 and S. 254, currently pending in conference committee. Numerous amendments, many unrelated to juvenile justice, were added during passage of these bills. The result is an enormous bill laden with constitutional and civil liberties violations that should not become law.

What follows is only a partial list of some aspects of the bill that we oppose. Unless these problems are fixed, we urge you to oppose this bill. For purposes of clarity, the issues are divided into several categories: privacy, church/state, expansion of federal police power, new mandate on the states, free speech, mandatory sentencing and new death penalties, invalidating prison litigation and eliminating the disproportionate minority confinement protection.

Privacy

Senate Bill 254 contains four provisions not found in H.R. 1501 that present serious privacy issues:

- **Expanding DNA Database:** Secs. 1501-1503 contains a bill introduced by Senator Kohl that expands the use of CODIS, the federal DNA database. This bill did not go through a committee process and did not benefit by having Senators debate and improve upon it. As a result, it fails to provide basic

privacy protections to the database and could, for example, result in including DNA samples and records of innocent people in the federal registry.

- **Eroding Fourth Amendment Protections:** Sec. 211 expands the use of clone pagers to allow the government to obtain private information from a person's pager without obtaining a warrant.
- **Automatic Drug Testing without Probable Cause:** Sec. 321 requires that states institute an automatic drug testing program for certain specified offenses. Testing would take place even without probable cause to establish that the person had been using drugs.
- **Mandating HIV Testing without Protecting Privacy:** Sec. 222 requires that states institute mandatory HIV testing without providing privacy protections to the person tested.

Church/State

House Bill 1501 contains two church/state provisions not found in S. 254:

- **Eliminating Attorneys Fees in Establishment Clause Cases:** Sec. 1101 limits recovery on attorney's fees in establishment clause cases, even when the party has established a constitutional violation.
- **Posting Ten Commandments:** Sec. 1202 is a Congressional declaration of the right of states to post the Ten Commandments in public places, even though the Supreme Court has held this practice to be unconstitutional.

Expansion of Federal Police Power

- **Expanding Asset Forfeiture Power:** Sec. 1614 of the Senate Bill contains an extraordinarily broad asset forfeiture provision. It would allow the government to seize property for any crimes of violence. For example, a person who commits a misdemeanor assault in his home would be at risk of having his home forfeited.
- **Expanding Federal Prosecution of Firearms Offenses:** Sec. 301 of H.R. 1501 codifies "Project Exile" a pilot program in Richmond, Virginia, aimed at expanding the federal prosecution of gun offenses. This program would require that the federal government establish a similar program in every office of the US Attorney. It would mandate "cooperation" between state and federal agencies. It would require prosecutors to bring the most serious charge permitted under law and give federal prosecutors the authority to bring cases in state court. It would allow prosecutors to avoid using the local jury pool (often communities of color) by bringing cases in federal court. The Senate Bill contains a similar provision called CUFF that is less expansive than the House Bill.
- **Eliminating Judicial Review in Juvenile Cases:** Both bills contain provisions that eliminate judicial review in juvenile cases and allow prosecutors unreviewable discretion to prosecute children as young as 14 as adults. This will have the effect of bringing more criminal cases in federal

court – a system that is not equipped to handle juvenile cases. Both bills would create new “gang” crimes that would expand the federal government’s role in prosecuting criminal cases.

New Mandate on the States

- **Requiring Mandatory Detention:** Sec. 222 of S. 254 creates a new core requirement that mandates that states pass laws detaining children for at least 24 hours if they have brought a gun to school – regardless of the circumstances under which that happened. Although the provision is ostensibly to require children who need it to get mental health treatment, nothing in the bill requires treatment and children in detention will not get treatment in most state systems.

Free Speech

- **Mandating Internet Filtering:** The House bill requires schools to certify that they have internet filtering technology on their computers in order to qualify for funding. The Senate bill requires manufacturers of software to provide a filtering or blocking system to prevent access to material on the internet by minors. These provisions will prevent access to protected information and put companies and schools in the position of serving as censors.
- **Prohibiting Internet Commerce of Firearms:** Sec. 1661-1663 of the Senate bill establishes harsh new penalties for selling firearms or explosives over the internet. This stigmatizes legitimate commerce and creates a new broad death penalty provision if a juvenile dies as a result of violating this section.

New Mandatory Sentencing Provisions and Death Penalties

Mandatory sentencing deprives federal court judges of needed discretion and results in overcrowding of prisons with non-violent offenders. Additionally, minority communities are hit hardest by mandatory sentencing.

- **New Mandatory Minimum Sentencing Provisions:** The following crimes would be subject to mandatory minimum sentencing provisions: life imprisonment for a repeat sex offender (even non-violent cases), transfer of a firearm to a juvenile (no exception for family members), career criminal predicates for juveniles (using juvenile adjudications for calculating three strikes determinations), discharging firearms in a school zone, using a firearm to commit a crime of violence, drug trafficking, distributing drugs to minors, using minors to distribute drugs and distributing drugs near schools.
- **New Death Penalties:** The following crimes would be subject to the death penalty: discharging firearms in school zone, interstate travel in aid of criminal gangs, gang related witness intimidation, using the internet to engage in unlawful firearms transactions and eco-terrorism.

Invalidating Prison Litigation

- **Eliminating Valid Consent Decrees:** Sec. 110 of H.R. 1501 establishes strict limits on the use of consent decrees in prison cases. This provision will force states to litigate cases because they will be unable to settle through consent decrees. Existing consent decrees will be invalidated, depriving federal judges of authority to remedy violations of the Eighth Amendment.

Disproportionate Minority Confinement

- **Eliminating Protections for Minority Children in Detention:** The Senate bill eliminates the requirement under current law that states address problems of disproportionate minority confinement in their juvenile detention centers. This provision was passed to require states to make efforts to address the serious problem of overrepresentation of minority youth in juvenile detention centers. States are given broad discretion to determine what measures to take and improvements have been made in a number of states at addressing this problem. The provision does not create any quotas nor mandate states to release certain children from facilities.

We urge you to oppose passage of this legislation and to do what you can to improve it. We would be happy to speak with you further to discuss this letter or any other aspects of the juvenile justice bill. Please contact Terri Schroeder for any questions on Church/State issues at 675-2324, Ron Weich for Free Speech issues at 778-1818 or Rachel King for any other areas of the bill at 675-2314.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Laura Murphy".

Laura Murphy,
Director

Clinton Presidential Records Digital Records Marker

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YOUTH CRIME/ADULT TIME IS JUSTICE SERVED?

EXECUTIVE SUMMARY

Prepared by
Jolanta Juskiewicz, Ph.D
Pretrial Services Resource Center

October 2000

Building Blocks for Youth

For a fair and effective
youth justice system

Building Blocks for Youth

Youth Law Center

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NEWS RELEASE

EMBARGO UNTIL 12:01 a.m., EDT, Oct. 26, 2000

October 16, 2000

Contact: Tommy McDonald, 415-255-1946

To preview report, visit private web location:

<http://www.buildingblocksforyouth.org/ycat/>

Username: bblocks. Password: 3333

New Report Finds Growing Trend of Prosecuting Youth in Adult Court Casting Too Wide a Net; Many Youth Charged with Non-Violent Offenses

**In 85 Percent of Cases, Prosecutors and Statutory Exclusion Laws,
Not Judges, Waived Youth into Adult Court; Racial Disparities
Found in the Process**

HOUSTON – Prosecuting juveniles in adult criminal court through direct filing by prosecutors and statutory exclusion laws casts too wide a net, sending many young people into adult courts and jails for non-violent charges, according to a new report released on October 26 at the National Juvenile Defender Summit in Houston.

The report, *Youth Crime/Adult Time: Is Justice Served?*, was commissioned by Building Blocks for Youth, a national initiative addressing racial fairness in the justice system and promoting rational and effective juvenile justice policies. The study was prepared by the Pretrial Services Resource Center, an independent non-profit organization that has worked on pretrial issues for more than 20 years. Based on extensive data from 18 of the largest jurisdictions in the country, the report covered 2,584 cases, which were all of the felony cases in the criminal courts of the jurisdictions involving juveniles during the first six months of 1998.

Although prosecution in adult court has traditionally been reserved for youth charged with the most serious offenses, several findings in the report suggest that cases brought against youth prosecuted as adults are either not particularly serious or not strong. For example, a substantial portion of those prosecuted as adults were charged with non-violent offenses, many were released soon after their arrests, and many were not convicted at all or were transferred back to the juvenile court. Yet the consequences of adult prosecution are significant. Two-thirds of the youth who were detained before trial were held in adult jails, and one-third of those were held in the general population with adult inmates.

"The system is herding these kids into the adult system where they don't belong. Most of the youths sent to the adult system could be better served in the juvenile system," said Mark Soler, President of the Youth Law Center and head of Building Blocks for Youth. "This report shows that many of these cases did not hold water once the evidence was scrutinized."

The report found that judges make very few of the decisions to prosecute youth as adults. In 45 percent of the cases in the study, prosecutors exercised authority to file charges against youth directly in adult court, and in 40 percent of the cases, state statutes mandated that youth be prosecuted as adults. Judges made the decision to prosecute youth as adults in only 15 percent of the cases.

—MORE—

The report also found that minority youth, particularly African-American youth, were over-represented and received disparate treatment at several stages of the process, especially in cases involving drug and public order offenses. Of all the cases in the study, 82 percent involved minority youth. African-American youth represented over half of the cases.

"We are calling on leaders at every level of our society to take immediate actions in light of the dire findings of this report," said Rick Dovalina, National President of the League of United Latin American Citizens (LULAC). "This report reveals very disturbing aspects about the transfer process and we must take concrete steps to ensure that justice is served for all of our children, not just some of them."

"While we believe that youthful offenders must be held accountable for their actions, the fact that these youths are often housed with and exposed to adult offenders before and during their trials is troubling," said Kweisi Mfume, President and CEO of the National Association for the Advancement of Colored People (NAACP). "We are subjecting children to the same penalties as adults with little or no hope education or any form of rehabilitation. This is tantamount to throwing away their lives and giving up all hope for their future."

Building Blocks for Youth, civil rights leaders, and youth advocates call on the next President and the Congress to commit at least an additional \$100 million for the Department of Justice to address this issue throughout the country. They also urge strengthening federal law to reduce the disproportionate involvement of minority youth at all points in the justice system and prohibit the incarceration of children in adult jails and prisons.

Among the other key findings of the report:

- Overall, 82 percent of the youth charged in adult court were minority youth.
- Drug cases were filed against African-American youth at five times the rate of White youth (17 percent vs. three percent).
- Nearly two-thirds of the youth who were detained before trial were held in adult jails.
- White youth were twice as likely as African-American youth to be represented by private counsel. Youth represented by private counsel were less likely to be convicted and more likely to be transferred back to juvenile court.
- African-American (43 percent) and Latino (37 percent) youth were more likely than white youth (26 percent) to receive a sentence of incarceration (as opposed to a split sentence or probation.)

Youth Crime/Adult Time: Is Justice Served? is the third in a series of reports sponsored by the *Building Blocks for Youth* initiative. In February, the initiative released *The Color of Justice*, which found that youth of color in California were significantly more likely than white youth charged with similar crimes to be sentenced by adult court to incarceration. In April, *Building Blocks for Youth* released a comprehensive national report, *And Justice for Some*, which found that minority youth receive more severe treatment than white youth at every decision point throughout the justice system, even when charged with the same offenses.

An embargoed copy of *Youth Crime/Adult Time: Is Justice Served?* can be viewed at a private web location as of October 16, 2000 at <http://www.buildingblocksforyouth.org/ycat/>. The report will be made publicly available on October 26, 2000.

###

YOUTH CRIME/ADULT TIME: IS JUSTICE SERVED?

CALLS FOR ACTION

To address the unnecessary involvement of children in the adult criminal justice system and the grave risks of placing children in adult jails, the serious racial disparities in the justice system, and inadequate resources for representation of children in the justice system documented by *Youth Crime/Adult Time: Is Justice Served?* as well as in previous *Building Blocks for Youth* reports, *And Justice for Some* and *The Color of Justice*, leaders at every level of our society should take immediate action:

THE NEXT PRESIDENT AND ATTORNEY GENERAL SHOULD:

Meet with civil rights leaders and *Building Blocks for Youth* partners to discuss how they plan to address this issue.

Commit at least an additional \$100 million for the Department of Justice to address this issue throughout the country. Funding should support further research; data collection on African American, Latino, Native American, and Asian youth; identifying and promoting information on promising approaches and practices; new demonstration projects; replication initiatives; and a national public education campaign.

Strengthen the Disproportionate Minority Confinement (DMC) protections in the Juvenile Justice and Delinquency Prevention Act by proposing and supporting legislation (similar to legislation already passed by the House of Representatives) to address the disproportionate involvement of minority youth at all points in the justice system, from first contact with police to incarceration. Legislation should include new, more substantial federal oversight measures on dmc provisions to require states to annually report to OJJDP on their actions to address Disproportionate Minority Confinement; to require states to make their plans public every year and to hold public hearings throughout the state before they submit their state funding plan to OJJDP; and to require states to report specific data on African American, Latino, Native American, and Asian youth.

Strengthen provisions of the Juvenile Justice and Delinquency Prevention Act, to prohibit placing children in adult jails under any circumstances.

Increase resources for juvenile defenders.

Support revisions of current law to require drug treatment, not incarceration, for non-violent youth with drug offenses.

CONGRESS SHOULD:

Strengthen the Disproportionate Minority Confinement (DMC) protections in the Juvenile Justice and Delinquency Prevention Act by proposing and supporting legislation (similar to legislation already passed by the House of Representatives) to address the disproportionate involvement of minority youth at all points in the justice system, from first contact with police to incarceration. Legislation should include new, more substantial federal oversight measures on dmc provisions to require states to annually report to OJJDP on their actions to address Disproportionate Minority Confinement; to require states to make their plans public every year and to hold public hearings throughout the state before they submit their state funding plan to OJJDP; and to require states to report specific data on African American, Latino, Native American, and Asian youth.

Strengthen provisions of the Juvenile Justice and Delinquency Prevention Act to prohibit placing children in adult jails under any circumstances.

Appropriate at least an additional \$100 million for the Department of Justice to address this issue throughout the country.

Require that states spend 25% of the funds they receive under the Juvenile Justice and Delinquency Prevention Act to collect specific data on police contacts, juvenile justice system contacts, and transfers to adult criminal court for African-American, Latino, Native American, and Asian youth; replicate effective programs to reduce racial disparities in detention; and fund a state coordinator to serve as point person on disproportionate minority confinement.

Hold oversight hearings in Congressional districts on the issues of disparate treatment of minority youth, particularly for members of key Congressional committees in locations where research shows the most significant disparities.

Increase resources for juvenile defenders.

Revise current laws to require drug treatment, not incarceration, for non-violent youth with drug offenses.

GOVERNORS, STATE LEGISLATORS, STATE AGENCY ADMINISTRATORS, AND LOCAL OFFICIALS SHOULD:

Immediately stop incarcerating young people with adult inmates in adult jails and prisons, and strengthen state laws to prohibit incarceration of youth with adults in adult jails and prisons under any circumstances.

Immediately appoint a state commission including members of the public to investigate and visit all state juvenile and adult correctional facilities where youth are held; hold public hearings on the disparate racial impact of their state laws providing for prosecution of juveniles in adult criminal court; conduct a state census on the number of youth incarcerated with adults; and report the findings to the public.

Declare a moratorium on building new juvenile detention and correction facilities and adding new secure beds until the public commission issues its findings to the public.

Increase resources for juvenile defenders.

Revise current laws to require drug treatment, not incarceration for non-violent youth with drug offenses.

JUDGES, POLICE, PROSECUTORS, DEFENSE ATTORNEYS, AND OTHER PUBLIC OFFICIALS SHOULD:

JUDGES:

Refuse to send youth to the adult criminal justice system and refuse to send youth to adult jails and prisons until the states have investigated racial disparities in the justice system and implemented necessary reforms.

Bring together law enforcement, juvenile justice system personnel, community organizations, and youth to analyze where and how decisions are made in the justice system that lead to differential treatment of minority youth, and recommend and implement necessary reforms.

POLICE:

Collect basic information on contacts with youth, e.g. date, time, place, age, race, reason for contact, result of contact, etc... to establish local data bases for analyses of decisionmaking by law enforcement.

Work with juvenile justice system personnel, community organizations, and youth to analyze where and how decisions are made in the justice system that lead to differential treatment of minority youth, and recommend and implement necessary reforms.

PROSECUTORS:

Refuse to charge youth in the adult criminal justice system until the states have investigated racial disparities in the justice system and implemented necessary reforms.

Work with juvenile justice system personnel and community groups to analyze where and how decisions are made in the justice system that lead to differential treatment of minority youth, recommend, and implement necessary reforms.

NATIONAL ORGANIZATIONS SHOULD:

Join the *Building Blocks for Youth* network in calling on our nation's public officials to provide effective leadership on these specific action steps.

Monitor the activities of the federal and state governments to address this issue.

Ask states to provide data on African-American, Latino, Native American, and Asian youth and reports on their activities.

Request meetings with state officials, and report to their members and the public.

Urge local affiliates to contact state juvenile justice specialists, obtain the state's DMC plan, meet with the state juvenile justice specialist, and report the findings to the public.

LOCAL ORGANIZATIONS AND INDIVIDUALS SHOULD:

Join the *Building Blocks for Youth* network in calling on our nation's public officials to provide effective leadership on these specific action steps.

Contact the state juvenile justice specialist to obtain a copy of the state's DMC plan.

Request a meeting with the state juvenile justice specialist to review the state DMC plan.

Report the findings to public officials, the public and the media.

Visit adult jails and prisons and investigate the conditions and the status of youth in adult jails and prisons.

Urge state officials to create state commissions called for in the Calls For Action, request to serve on the state commission, and monitor the activities of the state commission.

Help bring together law enforcement, juvenile justice system personnel, community organizations, and youth to analyze where and how decisions are made in the justice system that lead to differential treatment of minority youth, and recommend and implement necessary reforms.

PRIVATE FOUNDATIONS SHOULD:

Support research on this issue and the development of effective models of reform.

Support efforts to educate the public, policymakers, public officials, parents, citizen groups, and others on these issues.

THE MEDIA SHOULD:

Review the state plan on Disproportionate Minority Confinement by contacting the state juvenile justice specialist to obtain a copy of the state's dmc plan, investigate the state's actions and report findings to the public.

Investigate the impact of state laws providing for prosecution of juveniles in adult criminal court.

Visit adult jails and prisons and investigate the conditions and the status of youth in adult jails and prisons.

Interview public officials on their actions to create a state commission called for in the Calls For Action, and monitor the work and findings of the commission.

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ALABAMA: Mr. Don Lee, Phone: (334) 242 - 5814
ARKANSAS: Ms. Cheryl Moten, Phone: (501) 682 - 1708
ARIZONA: Ms. Patricia Cordova, Phone: (602) 542 - 3191
CALIFORNIA: Ms. Todd Browning, Phone: (916) 323 - 5900
COLORADO: Ms. Pat Cervera, Phone: (303) 239 - 4476
CONNECTICUT: Mr. Gary Lukasewski, Phone: (860) 418 - 6320
DISTRICT OF COLUMBIA: Ms. Doris Howard, Phone: (202) 727 - 0947
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VIRGINIA: Ms. Marion Kelley, Phone: (804) 225 - 4072
VERMONT: Ms. Renee Kievit-Kylar, Phone: (802) 241 - 2953
WASHINGTON: Ms. Rosalie McHale, Phone: (360) 407 - 0148
WISCONSIN: Ms. Kerrie Kaner, Phone: (608) 266 - 7839
WEST VIRGINIA: Ms. Angela Saunders, Phone: (304) 558 - 8814 x 220
WYOMING: Ms. Renee Gamino, Phone: (307) 777 - 6994

MEMORANDUM

TO: Administration contacts

FROM: Marc Schindler
Youth Law Center

DATE: 10/23/00

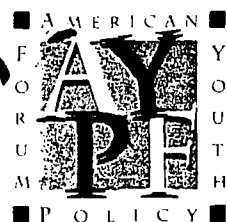
RE: *Youth Crime/Adult Time: Is Justice Served?*

On behalf of the *Building Blocks for Youth* initiative, I am enclosing the executive summary and press release for the new *Building Blocks for Youth* report, *Youth Crime/Adult Time: Is Justice Served?* prepared by Jolanta Juskiewicz of the Pretrial Services Resource Center.

Overall, the report reveals disturbing aspects in the transfer of youth, especially minority youth, to the adult criminal court and raises serious questions about the fairness and appropriateness of prosecuting youth in the adult court. Major finding show:

- ◆ Most determinations to prosecute youth in the adult criminal court were made by prosecutors or legislatures (85%), and not by judges (15%).
- ◆ Overall, 82% of youth charged in adult criminal courts were minority youth.
- ◆ Minority youth were disproportionately charged in adult criminal court. For example, in Jefferson County, Alabama, African-American youth accounted for approximately 3 out of 10 felony arrests, but represented 8 out of 10 felony cases filed in criminal court.
- ◆ A majority of youth were released before trial, most within 24 hours of having charges filed, and many were released without bail, raising the question whether the initial charge was particularly serious.
- ◆ Nearly two-thirds of all the youth who were detained pretrial were held in adult jails, where previous research shows that youth are at serious risk of assault and suicide.
- ◆ White youth are twice as likely as African-American youth to be represented by private retained counsel. Youth who are represented by private retained attorneys were less likely to be convicted and more likely to be transferred back to juvenile court.
- ◆ African-American (43%) and Latino (37%) youth were more likely than White youth (26%) to receive a sentence of incarceration (as opposed to a split sentence or probation).

Also enclosed is a copy of the "Calls For Action" for the next President, Attorney General, and Congress, and for state and local public officials, national and local organizations, foundations, and the media. The executive summary, full report, "Calls For Action", press release, and fact sheets will be available on the *Building Blocks for Youth* initiative website on October 26th at: www.buildingblocksforyouth.org. If you have any questions about the enclosed executive summary or the *Building Blocks for Youth* initiative, please contact me at 202/637-0377.



To Anne O'hery

file: juvenile justice

EMBARGOED FOR RELEASE
June 14, 2000

CONTACT: Richard Mendel
(410) 547-1663
Samuel Halperin
(202) 775-9731

**GROUNDBREAKING STUDY REVEALS "GET TOUGH" APPROACHES
FAIL TO REDUCE JUVENILE CRIME, OFFERS APPROACHES
PROVEN FAR MORE EFFECTIVE**

**Coalition Urges Taxpayers to Support Strategies That Work, and to Demand
Accountability from Programs that Don't**

WASHINGTON, DC—Demonstrating that trying youthful offenders in adult courts—"adult time for adult crime"—is a counterproductive fad that actually *exacerbates* juvenile crime, a groundbreaking new report unveils alternative approaches that are far more effective in preventing teens from committing crimes—and in protecting the communities in which they live.

Based on nine months of research, data analysis and investigation into dozens of successful programs around the nation, *Less Hype, More Help: Reducing Juvenile Crime, What Works—and What Doesn't* shows that America has the knowledge to substantially reduce youth crime and violence without a substantial increase in spending. Unfortunately, the research also shows, the reforms that will solve the problem are not being widely used.

Supported by the Walter S. Johnson Foundation, and written by Richard Mendel, the report was released by the American Youth Policy Forum in partnership with a broad coalition including the National Urban League, the Child Welfare League of America, the National Crime Prevention Council, the Coalition for Juvenile Justice, the National League of Cities and the National Collaboration for Youth.

At today's news conference the groups joined together in a Call-to-Action for citizens, communities, and the media to "hold lawmakers accountable" by challenging officials to match their tough rhetoric about crime with sound policies and programs that really work to reduce adolescent crime.

Are your state and your local governments wasting money on ineffective youth crime strategies? See the attached "**CALL-TO-ACTION**" with "**Hard Questions for Every Community Seeking to Reduce Juvenile Crime.**"

"The good news from our research is that we really do know what works for stopping most young people from becoming adult criminals," said American Youth Policy Forum project director Samuel Halperin. "The bad news is that taxpayers continue throwing good money into approaches that sound good but don't work. No matter how you look at it, 'adult time' is nothing but a catchy rhyme with no basis either in reason or research."

Focused largely on the real-life success of early intervention and family counseling programs, and backed by solid research and analysis, the approaches that do work have proven enormously effective in areas such as Orange County and San Francisco, CA;

American Youth Policy Forum

Boston, MA; Charleston, SC; Milwaukee, WI; Eugene, OR; Salt Lake City, UT; Philadelphia, PA; Everglades and Fort Lauderdale, FL; Giddings, TX; and Seattle, WA. The replication of their success is hindered, however, by a fixation on the politically expedient strategy of putting young offenders into adult courts – an approach which has, in study after study, been proven both costly and ineffective.

“It really doesn’t matter whether you’re right, left, or center on the philosophy of treating juvenile offenders; everyone shares the overarching goal to stop young people from committing crimes,” said National Urban League President Hugh Price. “Most people would be outraged—and frightened—to know that much of the \$10 to \$15 billion being spent every year fighting juvenile crime is not paying off in making our communities safer and, in many cases, actually increases the risks of juvenile offenses.”

Obstacles to Progress

In the 1990s, virtually every state passed laws to transfer more youths to adult courts. These “adult time for adult crime” solutions sound tough, *Less Hype, More Help* finds, but they do nothing to reduce crime. The report cites the following facts:

- ◆ **Transfer to the adult justice system increases criminality.** Youth offenders transferred to criminal court re-offend more often, and with more serious offenses, than those retained under juvenile jurisdiction. A Florida study of more than 5,000 offenders found that transferred youth were rearrested more than 50 percent more often and had a shorter time to re-arrest. Studies in Minnesota, New York and Pennsylvania report similar findings.
- ◆ **The threat of adult time does not make communities safer.** States which have moved most aggressively to use the threat of adult court to deter youths from committing crime have not seen noticeable improvements. New York State changed its waiver law in 1978 to allow youths as young as 14 to be charged for violent offenses, but violent crime rates among New York City youths did not decline in comparison to Philadelphia, which had no such transfer law. When Idaho passed a new law in 1981 requiring transfer for all violent offenders ages 14 and above, the state’s juvenile crime rate increased. The rate decreased in both Montana and Wyoming, where the juvenile courts retained jurisdiction over most violent juvenile offenders.
- ◆ **Confining youths with adults is dangerous and counterproductive.** Compared with youth in juvenile institutions, *youths in adult institutions are eight times more likely to commit suicide, five times more likely to be sexually assaulted and 50 percent more likely to be attacked by a weapon. Prisons are, however, excellent places for troubled youths to learn tricks of the crime trade from grizzled veteran criminals.*
- ◆ **Transfer to adult court is expensive, and wastes funds needed to implement what works.** The majority of youths transferred to criminal court spend months awaiting trial—with a cost to taxpayers of up to \$200 per day. The California Legislative Analyst’s Office estimates that “get-tough” transfer provisions enacted in March 2000 could cost taxpayers \$100 million per year in added operating costs, plus \$200-300 million for new jail construction.

Some Juvenile Approaches Are Also Part of the Problem

Experts agree that the best opportunity to reduce juvenile crime lies in effective juvenile justice programming and aggressive delinquency prevention. Unfortunately, current efforts often fail in these areas. Most of the funds now spent on juvenile justice pay for incarcerating young people. Yet three-fourths of the young people removed from their homes by juvenile courts are not serious violent offenders, and despite a cost of \$100 to \$150 per day, recidivism studies routinely find that 50 to 70 percent of youth incarcerated in juvenile institutions go on to commit additional crimes. A follow-up study on youth released from Minnesota's correctional "training schools" in 1991 found that 91 percent were re-arrested within five years of release. In Maryland, a study of 947 youths released from correctional facilities in 1994 found that 82 percent were referred to juvenile or criminal courts within two years.

Meanwhile, most juvenile justice agencies suffer other serious problems that sap their effectiveness:

- overwhelmed with cases, many juvenile courts cannot provide individualized justice
- many probation agencies are understaffed and devote few resources to community-based treatment and supervision of youth at risk of becoming serious chronic offenders
- many juvenile justice agencies pay little attention to research and results, and instead continue funding politically appealing programs that don't work; and
- disproportionate treatment of minority youth is rampant.

Likewise, many school-based and community-based efforts to prevent the onset of delinquency are crippled by a similar lack of focus, quality, and attention to what really works.

WHAT WORKS

For youth who do not pose an immediate threat to public safety, **most of the winning strategies work with young people in their own homes and communities, rather than institutions. They focus heavily on the family environment, both in responding to, and preventing, juvenile crime.**

Responding to Juvenile Crime

Focus on Families

The *Less Hype, More Help* report highlights two home-based, family-focused intervention models that have demonstrated dramatic success in stopping young people from committing crimes. In South Carolina, youth who took part in **Multisystemic Therapy** had 43 percent fewer arrests than youth receiving conventional juvenile court treatment services. In Missouri, youth who participated in this approach had a five-year re-arrest rate of 22.1 percent compared with 71.4 percent for those treated independently of their families. Multisystemic Therapy, widely used in Memphis, TN, costs only \$4,500 per month – less than one-sixth the cost of one year of incarceration or residential treatment.

Like Multisystemic Therapy, **Functional Family Therapy** works with youths and families in their homes—employing tactics that reverse the negative dynamics that produce criminal behavior. In nine clinical trials dating back to 1973, **Functional Family Therapy** reduced re-offending by 25

to 80 percent in comparison to groups receiving alternative treatments. It costs only \$2,000 per youth.

Another family-oriented approach is **Multidimensional Treatment Foster Care**, an Oregon-based model that provides an alternative to incarceration or placement in a group home. In addition to placing chronic juvenile offenders into closely-monitored foster care, the program works with the youths' permanent guardians to prepare for their return. In a recent clinical trial of this approach, chronic offenders were arrested less than half as often as youth sent to group homes. They spent less than half as many days incarcerated, and were seven times as likely to remain arrest-free after treatment.

Preventing Juvenile Crime

Early Treatment of Conduct Problems

Virtually all youth who become chronic delinquents exhibit behavior problems in early childhood. Fortunately, several intervention models have demonstrated strong success in reducing troublesome behavior among children with conduct problems. For instance, a Seattle-based approach called the "Incredible Years" uses a combination of parent training and direct treatment of children to reduce conduct problems by 30 percent or more for 95 percent of troubled youths served. Other studies have found that positive impacts from such programs remained for 10-14 years after treatment.

Positive Youth Development

The *Less Hype, More Help* report cites several youth development programs that have proven successful in limiting delinquency. An after-school recreation program targeting all children in an Ottawa, Canada public housing project led to a 75 percent drop in arrests—while the arrest rate at a nearby housing project without such a program rose by 67 percent. A study of the Big Brothers Big Sisters project found that youth assigned a mentor were 46 percent less likely to take drugs and one-third less likely to strike another person.

Early Childhood Intervention

Of all the strategies tested, by far the most promising for preventing delinquency are those aimed at children in the first four years of life. In Syracuse, NY, a program targeted 108 low-income families with pre-natal home visits and quality pre-school-age child care. When these children were 13 to 16 years-old, only 1.5 percent had records for delinquency problems, compared with 17 percent of youth not receiving the services. Carefully-studied early childhood programs in Houston, TX, New Haven, CT, Elmira, NY and Memphis, TN have also produced significant long-term reductions in conduct problems.

RECOMMENDATIONS

The seven diverse and nationally-respected organizations co-publishing *Less Hype, More Help* urge policymakers to heed the overwhelming evidence that transferring youth to adult courts exacerbates the criminality of individuals, and fails to deter other youth from crime. The groups urge policymakers to consider more effective approaches and to overcome entrenched barriers to implementing reforms that truly work. Specifically, the report recommends:

- 1) **End over-reliance on corrections and other out-of-home placements.** In most states, local juvenile courts face strong financial incentives to commit youth to state correctional institutions instead of treating them locally. The costs to retain youth at home and provide community-based supervision are paid entirely by the locality in most states. States should financially assist communities that treat youthful offenders locally and require them to share the costs when they commit non-dangerous offenders to state correctional institutions.
- 2) **Invest in research-driven interventions for juvenile offenders.** Research-based evidence proves today's common practices are often ineffective and sometimes counterproductive. The federal government and juvenile justice agencies should invest in programs proven effective by research and solid evaluation.
- 3) **Measure results, and cut-off funds for programs that don't work.** The federal government should require all states and localities receiving federal funds to measure and report their results. Juvenile justice agencies nationwide should create outcome databases to measure the effectiveness of programs.
- 4) **Engage community partners.** Two of the characteristics found almost uniformly in delinquent youth are lack of attachment to caring adults and lack of involvement in positive activities. States should encourage juvenile courts and probation agencies to strengthen partnerships with residents and community based organizations.
- 5) **Mobilize communities to implement comprehensive strategies.** Since 1994, the federal Office of Juvenile Justice and Delinquency Prevention has provided funding for more than 600 communities to undertake comprehensive planning and action to address juvenile crime. Despite promising results, proposals pending in Congress threaten to eliminate the program. Congress should reject these proposals.

The groups ended today's event with a **Call-to-Action** for the public to "take a hard line" by holding policymakers accountable to back up tough-talking rhetoric with strong policies rooted in the evidence of what works to reduce juvenile crime. The *Less Hype, More Help* partners outlined **Hard Questions for Communities** seeking to reduce juvenile crime and called on citizens and the media to demand answers to these searching questions from their public officials.

The full, 93-page *Less Hype, More Help* report will be available on June 14, 2000 online at www.aypf.org. Hard copies can be obtained from the American Youth Policy Forum, 1836 Jefferson Place, NW, Washington, DC 20036, 202-775-9731, for \$5.00 to cover the cost of postage and handling in the contiguous United States. Prepaid orders only, please.

For
Policymakers
and
Practitioners



NEW!
\$5.00

LESS HYPE, MORE HELP: REDUCING JUVENILE CRIME, WHAT WORKS -- AND WHAT DOESN'T

On June 14, 2000, the American Youth Policy Forum and six co-publishers will release a new report, *Less Hype, More Help: Reducing Juvenile Crime, What Works -- and What Doesn't*, revealing that:

- AMERICA HAS THE KNOWLEDGE TO SUBSTANTIALLY REDUCE YOUTH CRIME AND VIOLENCE WITHOUT A SUBSTANTIAL INCREASE IN SPENDING
- "GET TOUGH" APPROACHES FAIL TO REDUCE JUVENILE CRIME AND FAIL TO KEEP AMERICANS SAFE FROM CRIME
- TRYING YOUTHFUL OFFENDERS IN ADULT RATHER THAN JUVENILE COURTS IS A COUNTERPRODUCTIVE FAD THAT ACTUALLY *EXACERBATES* JUVENILE CRIME
- FAMILY AND COMMUNITY-BASED APPROACHES & YOUTH DEVELOPMENT PROVE FAR MORE EFFECTIVE
- THE REFORMS NECESSARY TO SOLVE THE PROBLEM ARE NOT BEING WIDELY USED

A coalition of national organizations urges taxpayers to support strategies that work, and to demand accountability from programs that don't.

Supported by the Walter S. Johnson Foundation. Learn more about the nature of this report in the table of contents on the reverse side.

AMERICAN YOUTH POLICY FORUM
CHILD WELFARE LEAGUE OF AMERICA
COALITION FOR JUVENILE JUSTICE
NATIONAL COLLABORATION FOR YOUTH
NATIONAL CRIME PREVENTION COUNCIL
NATIONAL LEAGUE OF CITIES, Institute for Youth, Education, and Families
NATIONAL URBAN LEAGUE

Less Hype, More Help: Reducing Juvenile Crime, What Works -- and What Doesn't

By Richard A. Mendel

PART ONE: Breakthroughs

CHAPTER ONE: WHAT IF?

(A Journey to the State-of-the-Art in Delinquency Prevention and Treatment)

- New Knowledge on Youth Crime and Its Causes
- Advances in Community-Based Treatment of Juvenile Offenders
- Re-Inventing Juvenile Corrections
- Winning Strategies to Prevent Delinquency Before it Starts
- Mounting Comprehensive Community Strategies

PART TWO: Barriers

CHAPTER TWO: SUPERPREDATORS OR SCAPEGOATS?

(How Severe is America's Juvenile Crime Problem?)

- Beyond the Myth of the Superpredator
- Epidemiology of an Outbreak
- A Scapegoat Generation?
- Even Without Superpredators, Concerns About Youth Crime are Real
- Tending the Garden

CHAPTER THREE: RHYME WITHOUT REASON

(Second Thoughts on "Adult Time for Adult Crime")

- Weighing the Consequences
- Collateral Damage
- A Question of Punishment

PART THREE: Re-inventing Juvenile Justice and Delinquency Prevention

CHAPTER FOUR: WORTHY OF THE NAME?

(How Well Are America's Juvenile Justice Systems Doing the Job?)

- Fifty-One Systems
- Overwhelmed Courts
- Glaring Imbalance Between Institutional and Community-Based Services
- Underinvestment in Community-Based Services
- Inattention to Research and Results
- Counterproductive "Net-Widening"
- Violations of Adolescents' Civil and Human Rights
- A Bird's Eye View: Juvenile Justice in Seven Urban Areas

CHAPTER FIVE: THE AMBULANCE OR THE FENCE?

(Best Practice and Common Practice in Delinquency Prevention)

- Prevention in Early Childhood
- School-Based Prevention
- Effective Child Welfare
- Intervening with Behaviorally Troubled Children

RECOMMENDATIONS:

Meeting the Juvenile Crime Challenge

APPENDIX I: Recommendations from America's Police Chiefs

APPENDIX II: The Costs of Juvenile Crime

The full 93-page **Less Hype, More Help** report will be available on June 14, 2000 online at www.aypf.org. Hard copies can be obtained from the American Youth Policy Forum, 1836 Jefferson Place, NW, Washington, DC 20036, 202-775-9731, for \$5.00 to cover the cost of postage and handling in the contiguous United States. Prepaid orders only, please.

Sixteen Hard Questions for Every Community Seeking to Reduce Juvenile Crime

- 1. Does your state transfer many youth to stand trial in adult criminal courts who are not chronic or violent offenders – despite the overwhelming evidence that such transfers actually increase future offending?**
- 2. Is your state locking up more and more juvenile offenders in adult jails and prisons – significantly heightening their risks for suicide, sexual assaults and physical beatings and exposing them to daily contact with career criminals?**
- 3. Does your state spend the bulk of its juvenile justice resources to incarcerate youthful offenders – despite the high costs at juvenile correctional facilities and even higher recidivism rates?**
- 4. What percentage of youth incarcerated in your state's juvenile corrections facilities are non-violent offenders without a record of chronic delinquency?**
- 5. Does your local juvenile justice agency offer the one type of intervention proven to dramatically reduce recidivism among chronic adolescent offenders – intensive, family-focused counseling delivered by trained therapists using clear treatment protocols to identify and address the factors propelling a young person toward crime?**
- 6. Do your state and local juvenile justice agencies provide close supervision and effective counseling/support services for youth returning to the community following incarceration – the youth population most likely to commit serious crimes?**
- 7. Does your community provide constructive responses to less serious offenses by youth – recruiting local volunteers and engaging community-based organizations to employ “restorative justice” strategies like youth aid panels, family-group conferencing, drug courts, and teen courts that hold young people accountable while connecting them to positive resources in the community?**
- 8. Has your local juvenile justice agency developed a flexible menu of “intermediate sanctions” – day treatment programs, evening reporting centers, weekend detention, evening curfews, community service projects, etc. – to ensure appropriate, predictable, and proportionate responses when youth break the law repeatedly?**

Sixteen Hard Questions, cont'd

9. Is your local juvenile probation agency overwhelmed with cases – with probation officers required to supervise far more than the maximum caseload (30:1) recommended by juvenile justice experts?
10. Do your state and local juvenile justice agencies carefully measure results of their programs in terms of recidivism and cost-effectiveness – and do they direct scarce funding to strategies and programs that work?
11. Does your local juvenile justice system treat minority youth more harshly than white youth and violate the rights of youth by confining juvenile offenders in overcrowded or otherwise substandard conditions or by failing to fully inform youth before allowing them to waive their rights to legal representation and against self-incrimination?
12. Does your state/locality deliver high-quality prevention programs for all or most high-risk infants and toddlers and their families – strategies proven to sharply reduce future offending?
13. Are your local schools wasting prevention dollars on programs and strategies that have never demonstrated success in reducing delinquent and/or substance abuse behaviors, rather than targeting these dollars to strategies with strong evidence of effectiveness?
14. Does your community provide coordinated, high-quality services for troubled youth at extreme risk for delinquency – or do child welfare, mental health, special education, and juvenile justice bureaucracies work separately (or at cross purposes) even when they are dealing with the same troubled young people?
15. Are high-quality after-school programs and other positive youth development opportunities available for all or most teens in your community – particularly teens in less advantaged neighborhoods where crime is prevalent and positive adult supervision can be scarce?
16. Has your community mobilized its leadership to analyze and address the local youth crime challenge – collecting data on critical risk factors (gang involvement, gun availability, substance abuse, domestic violence, and others) and developing and implementing comprehensive plans to reduce juvenile crime rates?

Questions based on:

LESS HYPE, MORE HELP: Reducing Juvenile Crime, What Works—and What Doesn't. Washington, D.C.
American Youth Policy Forum and others, 2000.

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LESS HYPE, MORE HELP:

Reducing Juvenile Crime, What Works -- and What Doesn't

Richard A. Mendel

**American Youth Policy Forum
Child Welfare League of America
Coalition for Juvenile Justice
National Collaboration for Youth
National Crime Prevention Council
National League of Cities, Institute for Youth, Education, and Families
National Urban League**

07/05/00 WED 11:48 FAX

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REMARKS:

Re: juvenile justice

To: Lissa and
Hester

DoJ wanted to
know if HRC would
want to put a
quote in the press
release for this
report

Ann - the JT
report - HLT

EMBARGOED



OJJDP

John J. Wilson, Acting Administrator

June 2000

JUVENILE JUSTICE BULLETIN

Special Education and the Juvenile Justice System

Sue Burrell and Loren Warboys

A significant proportion of youth in the juvenile justice system have education-related disabilities and are eligible for special education and related services under the Federal Individuals with Disabilities Education Act (IDEA). While 8.6 percent of public school students have been identified as having disabilities that qualify them for special education services (U.S. Department of Education, 1998), youth in the juvenile justice system are much more likely to have both identified and undiscovered disabilities. For example, youth with learning disabilities or an emotional disturbance are arrested at higher rates than their non-disabled peers (Chesapeake Institute, 1994; SRI International, Center for Educational Human Services, 1997), and studies of incarcerated youth reveal that as many as 70 percent suffer from disabling conditions (Leone et al., 1995).

Information about a youth's disability may be relevant at every stage of a juvenile court case. It may help to determine whether formal delinquency proceedings should proceed or suggest important directions for investigation and case strategy. Information about the disability often helps to explain behavior in a way that facilitates constructive intervention, and it is essential to arriving at a disposition that will both meet the youth's rehabilitative needs and comply with IDEA requirements.

Helping youth to reach their educational potential by protecting their rights under IDEA can give them the tools they need to succeed in life. In fact, many of the behavioral and educational issues addressed through the special education system closely parallel issues encompassed in the juvenile court disposition process. In ensuring that disability-related needs are identified and met, IDEA may play a significant role in reducing delinquent behavior.

This Bulletin, directed to judges, attorneys and advocates, probation officers, educators, institutional staff, mental health professionals, and service providers, seeks to heighten awareness of special education issues in the juvenile justice system and ensure that youth with disabilities receive the services they need. The Bulletin summarizes pertinent provisions of Federal law related to special education, discusses how the special education process and information about disabilities may be useful in juvenile delinquency proceedings, and examines special education in the context of juvenile and adult institutions.

Federal Laws Related to Special Education

Congress first enacted a comprehensive special education law in 1975: the Education for All Handicapped Children Act

From the Administrator

Large numbers of youth involved with the juvenile justice system have education-related disabilities, and as many as 20 percent of students with emotional disabilities are arrested at least once before they leave school. Information regarding disabilities can assist those providing needed services to youth at every stage of the juvenile justice process and even help to determine whether formal delinquency proceedings should take place.

Special Education and the Juvenile Justice System is intended to inform judges, attorneys, advocates, probation officers, institutional staff, and other youth-serving professionals about the impact of special education issues on juvenile justice matters. The Bulletin summarizes the provisions of the Individuals with Disabilities Education Act and analyzes their relevance to the juvenile justice process—from intake and initial interview to institutional placement and secure confinement.

While special education considerations may impose significant responsibilities on the juvenile justice system, they also serve as a substantial information resource for juvenile justice professionals. This Bulletin increases our understanding of issues surrounding special education, helping equip those who work with juveniles to meet the special needs of all youth.

John J. Wilson
Acting Administrator

Twenty percent of students with emotional disturbances are arrested at least once before they leave school, as compared with 6 percent of all students (Chesapeake Institute, 1994). By the time youth with emotional disturbances have been out of school for 3 to 5 years, 58 percent have been arrested. Similarly, by the time youth with learning disabilities have been out of school for 3 to 5 years, 31 percent have been arrested (SRI International Center for Education and Human Services, 1997).

for IDEA concepts. For example, California uses "individual with exceptional needs" to refer to "a child with a disability," as defined by IDEA, and "designated instruction and services" to refer to "related services," as defined by IDEA.⁸ While a State may grant protections beyond those required by IDEA, States may not provide fewer rights than would be afforded under Federal law.

Definition of Disability

To be eligible under IDEA, a youth must have one or more of the disabilities listed in the statute and implementing final regulations and, because of that disability, require special education and related services. The range of qualifying disabilities is broad, including:¹⁰

- ◆ Mental retardation.
- ◆ Deaf-blindness.
- ◆ Deafness.
- ◆ Hearing impairment.
- ◆ Speech or language impairment.
- ◆ Visual impairment.
- ◆ Emotional disturbance.
- ◆ Orthopedic impairment.
- ◆ Autism.
- ◆ Traumatic brain injury.
- ◆ Other health impairment.
- ◆ Specific learning disability.
- ◆ Multiple disabilities.

Disabilities that are frequently encountered among delinquents include emotional disturbance, specific learning disability, mental retardation,¹¹ other health impairment, and speech or language impairment.

The two most common disabilities found in the juvenile justice system are specific learning disability and emotional disturbance. Specific learning disability is defined as "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations."¹² It may include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia but not a learning problem that is primarily the result of environmental, cultural, or economic disadvantage.¹³ Emotional disturbance is defined as:

- (1) [A] condition exhibiting one or more of the following characteristics

over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - (C) Inappropriate types of behavior or feelings under normal circumstances.
 - (D) A general pervasive mood of unhappiness or depression.
 - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (II) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.¹⁴

Additional IDEA definitions of disability terms can be found in 34 C.F.R. § 300.7(c).

Free Appropriate Public Education

Every youth with a disability, as defined by IDEA, is entitled to free appropriate public education (FAPE). This entitlement exists for all eligible children and youth, including those involved in the juvenile justice system,¹⁵ "... between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school."¹⁶

IDEA also requires that, "to the maximum extent appropriate,"¹⁷ youth with disabilities, including those in public and private institutions or other care facilities, are educated with youth who are not disabled. Placement in special classes, separate schooling, or other removal from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. This provision is often referred to as the requirement for education in the "least restrictive environment."

Identification, Referral, and Evaluation

IDEA requires school districts and other public agencies to seek out all youth who

(EHA).¹ Since then, Congress has amended the law a number of times and renamed it the Individuals with Disabilities Education Act (IDEA). The first broad revision of the law occurred in 1997, with amendments that significantly changed a number of key special education provisions.² Proposed implementing regulations for the 1997 IDEA amendments were widely debated. Final regulations were published March 12, 1999, and took effect May 11, 1999.³

As a condition of receiving Federal funds under IDEA, States must demonstrate to the U.S. Secretary of Education that they have policies and procedures in effect that fulfill specific requirements of the law.⁴ Local education agencies (LEAs) must have policies, procedures, and programs consistent with State policies and procedures that demonstrate eligibility.⁵ The Federal program is administered by the Office of Special Education Programs, Office of Special Education and Rehabilitative Services, U.S. Department of Education.

Two other Federal statutes provide additional protection for youth with disabilities: the Rehabilitation Act of 1973⁶ and the Americans With Disabilities Act.⁷ Although both Acts have a broader purview, they are often invoked to ensure fair treatment for youth with educational disabilities. Both provide for the filing of administrative complaints with the Office of Civil Rights, U.S. Department of Education, which has the authority to investigate and order compliance.

In addition, all States have enacted laws and regulations reflecting IDEA requirements. Some of these, however, are being revised to reflect the 1997 IDEA amendments and the implementing regulations. These laws are often found in State education codes and regulations. Although most State special education laws closely track IDEA, some use different terminology



may have a disability. States and LEA's must identify, locate, and evaluate all youth with disabilities and implement a system to determine which ones are currently receiving special education and related services. This is often called the child find obligation.¹⁸ In conjunction with these requirements, States typically have statutes, regulations, policies, and procedures designating who may refer youth for evaluation and the process that must be followed.

To determine eligibility for special education and related services, States must notify parents, obtain parental consent to evaluation, use a variety of assessment tools—administered by knowledgeable personnel—appropriate to the youth's cultural and linguistic background, and provide for reevaluation.¹⁹ State policies and procedures typically set time limits for each step in the notice, consent, and evaluation/reevaluation process. Reevaluation must occur at least once every 3 years, but a child's parents and teachers may request it at any time.²⁰

The Individualized Education Program

Under the 1997 IDEA amendments, an LEA is required to have an individualized education program (IEP) in effect at the beginning of each school year for each youth with a disability in its jurisdiction.²¹ Federal regulations call for no more than 30 days to pass between the determination that a child needs special education and related services and the conduct of the meeting²² to develop an IEP for the child. A team that includes the following people develops the IEP:²³

- The child's parents.²⁴

- At least one regular education teacher of the child (if the youth is or may be participating in a regular education environment).
- At least one special education teacher of the child or, if appropriate, at least one special education provider of the child.
- A qualified representative of the LEA.
- An individual who can interpret the institutional implications of evaluation results.
- Others (at the discretion of the parents or the agency) who have knowledge or special expertise regarding the youth, including related service personnel as appropriate. This category also could, at the discretion of the parents or the agency, include persons such as probation officers, institutional staff, or other service providers with knowledge or special expertise regarding the youth.
- The child with a disability (if appropriate).

In developing the IEP, the IEP team considers, among other factors, the youth's present levels of educational performance, his or her special education needs, the services to be delivered, objectives to be met, timelines for completion, and assessment of progress. IDEA requires each IEP to include the following basic elements:²⁵

- A statement of the child's present levels of educational performance, including:
 - How the child's disability affects his or her involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children).
 - For preschool children, if appropriate, how the disability affects the

child's participation in appropriate activities.

- A statement of measurable annual goals, including benchmarks or short-term objectives, related to:
 - Meeting the child's needs that result from his or her disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities.
 - Meeting each of the child's other educational needs that result from his or her disability.
- A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to:
 - Advance appropriately toward attaining the annual goals.
 - Be involved and progress in the general curriculum and participate in extracurricular and other nonacademic activities.
 - Be educated and participate with other children with disabilities and nondisabled children in the activities described above.
- An explanation of the extent, if any, to which the child will not participate with nondisabled youth in the regular class and in extracurricular and other nonacademic activities.
- A statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in the assessment. If the IEP team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of an assessment), a statement of why that assessment is not appropriate for the child and how the child will be assessed is needed.
- A projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of these services and modifications.
- A statement of how the child's progress toward the annual goals will be measured and how the child's parents will be regularly informed of their child's progress—at least as often as parents are informed of their nondisabled

children's progress—toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

IDEA also requires IEP's to include:

- ◆ A statement of transition service needs of the student that focuses on the student's courses of study (e.g., advanced placement courses, vocational education) if the youth involved is 14 years old (or younger if determined appropriate by the IEP team). The statement must be updated annually.
- ◆ A statement of needed transition services for the student, including, if appropriate, a statement of the inter-agency responsibilities or any needed linkages for transition services if the youth involved is 16 years old (or younger if determined appropriate by the IEP team).

The requirement that transition services be provided to assist youth in moving from school to postschool activities has particular significance for youth in the juvenile justice system. These services include post-secondary education, vocational training, employment (including supported employment), continuing and adult education, specific adult services, independent living, and community participation.²⁶ For example, the IEP may call for the student to receive specific assistance in applying for admission to a local community college or enrollment in an automobile mechanics program. When the purpose of the meeting will

be consideration of the student's transition service needs or needed transition services, or both, the youth with a disability of any age must be invited to the IEP meeting. Finally, the 1997 IDEA amendments require the IEP team to consider special factors in developing the IEP. Accordingly, the amendments direct the IEP to:

(i) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) Consider whether the child requires assistive technology devices and services.²⁷

IEP's must be implemented as soon as possible after the IEP meeting and must be reviewed by the IEP team at least once per year and revised as needed to address any lack of expected progress, results of reevaluation, information provided by the parents, the youth's anticipated needs, or other matters.²⁸ By statute, most States set specific timelines for each stage in the referral, evaluation, and IEP development process.

Special Education and Related Services

Under IDEA, special education means "... specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. ..." It includes "instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings and instruction in physical education. ..." IDEA also requires that related services be provided to help youth with disabilities benefit from special education services. These services include "... transportation, and such developmental, corrective, and other supportive services as are required to assist the child with a disability to benefit from special education ... (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only)." The term also includes social work services in schools and parent counseling and training.²⁹

Due Process Protections

Parents are involved to the maximum extent possible. They are provided with a full range of procedural safeguards, including the right to examine records, receive written notice of proposed actions (or refusal to take requested actions), and participate in meetings relating to the identification, evaluation, and educational placement of their child and the provision of FAPE to the child. Federal law also requires States to provide an opportunity for parents to initiate due process proceedings and the mediation of disputes with respect to identification, evaluation, and educational placement of their child and the provision of FAPE to the child.³²

When a parent (as defined in 34 C.F.R. § 300.20) cannot be identified, the whereabouts of the parent cannot be discovered after reasonable efforts, or the student is a ward of the State (as defined by State law), IDEA provides for the assignment of a surrogate parent to protect the educational rights of the child. The surrogate parent may not be an employee of the LEA, State educational agency (SEA), or other agency involved in the education or care of the child (with the exception of nonpublic



agency employees providing noneducational care for the child who meet the other requirements); must have no interest that conflicts with the interest of the child he or she represents; and must have knowledge and skills that ensure adequate representation of the child.³³

States may provide for the transfer of parental rights to a student with a disability when the student reaches the age of majority as defined by State law (except if the student has been determined incompetent under State law). Such provisions must ensure that the individual student and the parents receive any required notice under the regulations, that all other rights accorded to the parents under IDEA transfer to the student, that all rights accorded to the parents under IDEA transfer to students incarcerated in adult or juvenile State or local institutions, and that the parents and individual student shall be notified of whatever rights are transferred pursuant to such provisions. There is also a special rule for States that have a mechanism to determine that a student with a disability who has reached the age of majority does not have the capacity to provide informed consent to his or her educational program (even though there has been no determination of incompetence). Such States must provide procedures for appointing the parent or, if the parent is not available, another individual to represent the student's educational interests throughout the period of IDEA eligibility.³⁴

Under IDEA, States and LEAs must establish a mediation procedure to resolve disputes and make it available whenever a due process hearing is requested. Mediation must be voluntary, scheduled in a timely manner, held in a place convenient to the parties to the dispute, and conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Mediation must not be used to deny or delay the parents' right to pursue their complaints through the due process hearing procedures or to deny any other rights afforded under part B of IDEA. Any agreement reached through mediation must be put in writing.³⁵

Parents may pursue complaints through a due process hearing conducted by the State or, in some States, the LEA.³⁶ States are required to develop model forms to assist parents in filing due process requests. Each party (e.g., the parents, the educational agency) must disclose any evaluations and recommendations the party intends to use at least 5 business days prior to the hearing. The hearing

Special Education Timeline³⁷

Referral/request for evaluation:	Public agency must ensure that within a reasonable amount of time following parental consent to evaluation, the child is evaluated, and if the child is determined eligible, special education and related services are provided. (34 C.F.R. § 300.343(b)(1)).
Development of IEP:	Meeting to develop IEP must be held within 30 days of a determination that a child needs special education services. (34 C.F.R. § 300.343(b)(2)).
Implementation of IEP:	Must occur "as soon as possible" following the IEP meeting (34 C.F.R. § 300.343(b)(1)), and at the beginning of every school year, the LEA must have in effect an IEP for each child with a disability. (20 U.S.C. § 1414(d)(2)(a)).
Review of IEP's:	Periodically and at least annually, the IEP team must review IEP's and revise as appropriate. (20 U.S.C. § 1414(d)(A), 34 C.F.R. § 300.343(c)).
Reevaluation:	At least once every 3 years or when the child's parent or teacher requests it. (20 U.S.C. § 1414(a)(2), 34 C.F.R. § 300.536(b)).

³⁷ States have many more specific time limits and requirements in their statutes and regulations than this sample timeline provides.

officer must not be employed by the State agency or the LEA that is involved in the education or care of the child. At the hearing, the parents may be accompanied by and advised by an attorney and by other persons with special knowledge of or training about the problems of youth with disabilities. Parents have the right to present evidence; prohibit the introduction of any evidence not disclosed 5 business days before the hearing; confront, cross-examine, and compel the attendance of witnesses; obtain a written or, at the option of the parents, electronic verbatim record of the hearing; and obtain written or, at the option of the parents, electronic findings of fact and decision.³⁷

If the due process hearing is conducted by an LEA, any party aggrieved by the findings and decision in the hearing may appeal the decision to the SEA.³⁸ Any party who does not have a right of appeal from a due process hearing to the SEA, or who wishes to appeal an SEA ruling, may file a civil action in the appropriate State court or Federal district court.³⁹ Reasonable attorneys' fees may be awarded by the court at its discretion to the parents of a child with a disability who is the prevailing party in any action or proceeding brought under section 615 of the Act. IDEA also provides for the award of attorneys' fees in connection with IEP meetings convened as the result of administrative proceedings,

judicial action, or, at the discretion of the State, precomplaint mediation. However, it prohibits the awarding of attorneys' fees following the rejection of a settlement offer, unless the parents were substantially justified in rejecting the offer.⁴⁰

In addition to the remedies offered through due process hearings or civil actions in relation to individual cases, States must have a complaint procedure in place for alleged IDEA violations. Possible outcomes of these procedures include monetary reimbursement or other corrective action appropriate to the needs of the child and appropriate provision of future services. Any organization or individual may use the State complaint process, and complaints must be resolved within 60 days after a complaint is filed.⁴¹

The "Stay Put" Rule

As a general matter, Federal law requires that, absent some agreement to the contrary, the youth shall remain in his or her current education placement pending the completion of any due process proceedings, court proceedings, or appeals.⁴² In *Honig v. Doe*,⁴³ the U.S. Supreme Court interpreted this provision to mean that school officials may not unilaterally exclude youth with disabilities from their educational placement. Except as provided in 34 C.F.R. § 300.526, such youth must be allowed to "stay put" in existing

educational placements during the pendency of any administrative or judicial proceeding. Prominent in the Court's reasoning was that Congress enacted the Federal law after finding that school systems across the country had excluded one of every eight youth with disabilities from classes. Congress intended to strip schools of the unilateral authority they had traditionally employed to exclude students with disabilities, particularly students with emotional disturbances.⁴⁴

Since the enactment of IDEA in 1975 (then EHA), there has been considerable discussion of the stay put requirement. Some people have argued that the schools' options were too limited and cumbersome when there was a legitimate need to remove a dangerous or extremely disruptive youth. The 1997 IDEA amendments attempt to strike a balance between the need to provide a safe, orderly environment and the need to protect youth with disabilities from unwarranted exclusion through disciplinary proceedings. The amendments include limited exceptions for misconduct involving weapons, illegal drugs, or situations in which the youth or others are in danger of injury.

Under the 1997 IDEA amendments, school personnel may suspend youth with disabilities for up to 10 school days or less at a time for separate incidents of misconduct to the extent such action would be applied to youth without disabilities. If, for example, a student without a disability would be suspended from class for 3 days for particular misbehavior, the same sanction could be imposed on a student with a disability for the same kind of behavior. School personnel may also remove such youth to an interim alternative educational setting for up to 45 days if they possess or carry weapons to school or school functions, knowingly possess or use illegal drugs, or sell or solicit the sale of controlled substances while at school or school functions.⁴⁵ IDEA specifically defines controlled substances, illegal drugs, and weapons.⁴⁶

The 1997 amendments also permit a hearing officer to order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer determines that the public agency has demonstrated by substantial evidence that maintaining the current placement "is substantially likely to result in injury to the child or to others." Before making such an order, the hearing officer must consider whether the current place-

ment is appropriate and whether the public agency has made reasonable efforts to minimize the risk of harm in the current placement (e.g., with supplementary aids and services). The officer should determine that the interim alternative educational setting would enable the youth to continue to progress in the general curriculum and continue to receive those services and modifications that will enable the child to meet the goals called for in the IEP.⁴⁷ In addition, services and modifications to attend to the child's behavior and prevent the behavior from recurring must be addressed.

Disciplinary removal for more than 10 consecutive school days (or a series of removals adding up to more than 10 days and constituting a pattern of removal) constitutes a change of placement, which triggers a number of procedural safeguards.⁴⁸ For example, the LEA must review the youth's behavioral intervention plan and modify it as necessary to address the behavior not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change in placement. If the LEA did not previously conduct a functional behavioral assessment and implement a behavioral intervention plan, it must convene an IEP meeting to develop a plan to address the behavior.⁴⁹ Moreover, the public agency must provide services to the extent required under section 300.121(d).⁵⁰

If it is contemplated that a youth with a disability will be removed from school for more than 10 school days, the IEP team must immediately (or within 10 school days of the decision to take disciplinary action) review the relationship between the child's disability and the behavior subject to disciplinary action. In making this "manifestation determination,"—a requirement under the 1997 amendments—the team and other qualified personnel consider all relevant information including evaluation and diagnostic results and other relevant information from the parents and observations of the youth. The team also considers whether the IEP and placement were appropriate, whether services were being provided consistent with the IEP, whether the disability impaired the youth's ability to understand the consequences of the behavior subject to discipline, and whether the disability impaired the youth's ability to control the behavior.⁵¹

If it is determined that the behavior was not a manifestation of the youth's disability, the disciplinary procedures applicable to

youth without disabilities may be applied.⁵² If the behavior was a manifestation of the youth's disability, the LEA should immediately remedy any deficiencies in the IEP or its implementation⁵³ and observe the 10-day or 45-day limits and other protections on placing the youth in an interim alternative educational setting. Again, even if the behavior was not a manifestation of the youth's disability, the LEA must continue to provide educational services to the extent required under section 300.121(d).⁵⁴

Parents have the right to an expedited appeal of the manifestation determination and the placement. While proceedings challenging the interim alternative placement or manifestation determination (in the case of drugs, weapons, and hearing officer placement) are pending, the youth must remain in the interim alternative placement until the pertinent time period expires unless the parents and public agency agree otherwise. However, if the school proposes to change the youth's placement after this time period, the youth has the right to return to the original placement unless a hearing officer has extended his or her placement. The only exception is that, if school personnel maintain that it is dangerous for the youth to be in the current placement, the LEA may request an expedited hearing to determine whether he or she should be placed in the alternative educational setting or other appropriate placement during the due process proceedings.⁵⁵

The stay put rule also protects the rights of some youth who have not officially been determined eligible for special education and who have engaged in behavior subjecting them to disciplinary removal. Under the 1997 IDEA amendments, such youth are entitled to the stay put rule and other disciplinary due process protections if the LEA had "knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred."⁵⁶ The agency is deemed to have that knowledge if the parents have expressed concern in writing to agency personnel that the youth is in need of special education; his or her behavior or performance demonstrates the need for such services; the parents have requested an evaluation of special education eligibility; or the teacher or other LEA personnel, in accordance with the agency's established child find or special education referral system, have expressed concern to the director of special education of the agency or other personnel about the youth's behavior or performance.⁵⁷

Special Education in Juvenile Delinquency Cases

IDEA's comprehensive system of identification, evaluation, service delivery, and review has special relevance for juvenile justice professionals. The purpose of the special education system, like the juvenile justice system, is to provide individualized services designed to meet the needs of a particular youth. The enhanced behavioral intervention and transition service needs requirements in the 1997 IDEA amendments bring special education goals even closer to those of the juvenile court. Moreover, the careful documentation of service needs and ongoing assessment of progress required by IDEA bring valuable informational resources to juvenile justice professionals.

This section presents a brief overview of how special education information may be helpful as cases make their way through juvenile court. Some of the issues discussed, such as insanity or incompetence, arise only occasionally. Others, such as the impact on disposition of whether a child has a disability, are relevant in every case in which a delinquent youth is eligible for special education services.

Intake and Initial Interviews

The short timeframe for juvenile court proceedings leaves little room for missed opportunities. Juvenile justice professionals must be alert from the earliest moment for clues to the youth's special education status or existing unidentified disabilities. This process, which should become part of the standard operating procedure, includes carefully interviewing the youth and his or her parents, routinely gathering educational records, procuring examinations by educational and mental health experts, investigating educational services at potential placement facilities, and coordinating juvenile court proceedings with the youth's IEP team. Under the 1997 IDEA amendments, whenever a school reports a crime allegedly committed by a youth with a disability, school officials must provide copies of the youth's special education and disciplinary records to the appropriate authorities to whom the school reports the crime, but only to the extent that the Family Educational Rights and Privacy Act (FERPA) permits the transmission. FERPA allows school officials to transmit school records to law enforcement officials only if parents consent in writing to the transmission and in certain other narrowly

tailored situations (see 34 C.F.R. § 99.30). This requirement should help ensure that, at least in appropriate school-related cases, special education history, assessments, and service information are readily available early in the court process.⁵⁸

Juvenile justice professionals can learn to recognize disabilities by carefully reading the legal definitions of disability. It is important to understand that youth may have a variety of impairments that are not immediately apparent. Numerous checklists and screening instruments are available to help recognize signs of disabilities and to determine eligibility for special education services (National Council of Juvenile and Family Court Judges, 1991).

If circumstances suggest the need for an eligibility evaluation, modification of a previously existing IEP, or some other exercise of the youth's rights under special education law, juvenile justice professionals should ensure that appropriate action is expeditiously taken. They should request that parents give written consent for the release of records and should submit a written request for information, evaluation, or review to the LEA.

Juvenile justice professionals could start by contacting the LEA to obtain its policies and procedures for providing special education services to youth in the juvenile justice system. Some districts have designated an individual to deal with compliance issues, and that person may be helpful in expediting or forwarding requests to the right person or agency. Most jurisdictions have a number of other groups that can provide advocacy or other assistance in navigating the special education system. Protection and advocacy offices, special education advocacy groups, learning disabilities associations, and other groups providing support or advocacy for particular disabilities may greatly assist juvenile justice professionals.

Determination of Whether Formal Juvenile Proceedings Should Go Forward

Nothing in IDEA prohibits an agency from "reporting a crime committed by a child with a disability to appropriate authorities" or prevents law enforcement and judicial authorities from "exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability."⁵⁹ These provisions, outlined in the 1997 amendments, were made in response to concerns that

IDEA's procedural protections could be interpreted to preclude juvenile court jurisdiction over school-related crimes committed by youth with disabilities. In the past, at least one court ruled under State law that a school could not initiate a juvenile court prosecution as a means of evading the procedural requirements of IDEA.⁶⁰ Other courts found the juvenile court lacked jurisdiction in cases involving noncriminal school-related misconduct in which special education procedures had not been followed.⁶¹

In at least one case decided after the 1997 amendments, the court confirmed that IDEA does not prevent juvenile courts from exercising jurisdiction over students with disabilities, even if the school is attempting to evade its special education responsibilities. Nonetheless, intake officers and prosecutors should scrutinize whether such evasion has occurred in determining whether a particular case belongs in the juvenile justice system and how it should be processed.⁶² Courts and hearing officers have stressed that the school's responsibility to comply with IDEA procedural requirements does not end when a youth with a disability enters the juvenile justice system.⁶³

Even if courts have the power to act, that does not mean the power should be exercised in every case. Long before the 1997 IDEA amendments, a number of courts found that the best course was to dismiss the juvenile court case or defer it until special education proceedings stemming from the misbehavior could be completed.⁶⁴

Many juvenile justice professionals have encountered cases in which a youth enters the juvenile justice system for a relatively minor offense and his or her stay escalates into long-term incarceration because of the youth's inability to succeed in programs developed for low-risk delinquent youth. This may happen either because the disability-related behavior makes it difficult for the youth to understand or comply with program demands or because his or her behavior is misinterpreted as showing a poor attitude, lack of remorse, or disrespect for authority.

If the juvenile court petition involves a youth with an identified or suspected disability, juvenile justice professionals should first consider whether school-based special education proceedings could provide services or other interventions that would obviate the need for juvenile court proceedings. This is particularly true for incidents occurring at school. The 1997

IDEA amendments require thorough scrutiny of behavioral needs and implementation of appropriate interventions that may far exceed what most juvenile courts are able to provide. In appropriate cases, the juvenile court may wish to consider:

- ◆ Continuing or deferring the formal prosecution pending the outcome of special education due process and disciplinary proceedings that may alleviate the need for juvenile court intervention.
- ◆ Placing first-time offenders and/or youth alleged to have committed offenses that are not considered too serious for informal handling into diversion or informal supervision programs. Through such programs, the court imposes specific conditions on the youth's behavior, such as regular school attendance, participation in counseling, observation of specified curfews, or involvement in community service programs. If the youth successfully complies with these conditions, the case is dismissed at the end of a specified period—usually 6 months to 1 year. Allowing the youth to remain in the community, subject to such conditions, may facilitate the completion of special education proceedings while ensuring heightened supervision of the youth. Through IEP development or modification, the youth might be determined eligible for services that supplant the need for formal juvenile court proceedings.
- ◆ Dismissing the case in the interest of justice. This option should be considered in cases in which the disability is so severe that it may be difficult or impossible for the youth to comply with court orders. This may occur, for example, if the offense is relatively minor, the youth suffers from mental illness, emotional disturbance, or mental retardation; and/or services are forthcoming through the special education system.

Detention

Youth taken into secure custody at the time of arrest are entitled to judicial review of the detention decision within a statutory time period. Depending on the jurisdiction and characteristics of the case, the length of detention may range from several hours to several months. Many professionals view the detention decision as the most significant point in a case. Detention subjects the youth to potential physical and emotional harm. It also restricts the youth's ability to assist in his or her defense and to demonstrate an ability to act appropriately in the community.

Unfortunately, youth with disabilities are detained disproportionately (Leone et al., 1995). Experts posit that one reason for this is that many youth with disabilities lack the communication and social skills to make a good presentation to arresting officers or intake probation officers. Behavior interpreted as hostile, impulsive, unconcerned, or otherwise inappropriate may be a reflection of the youth's disability. This is another reason why it is important to establish the existence of special education needs or suspected disabilities early in the proceedings. Juvenile justice professionals must be sensitive to the impact of disabilities on case presentation at this initial stage and work to dispel inaccurate first impressions at the detention hearing.

In some cases, it may be appropriate for the court to order the youth's release to avoid disrupting special education services. This is particularly true if adjustments in supervision (e.g., modification of the IEP or behavioral intervention plans) may reduce the likelihood of further misbehavior pending the jurisdictional hearing. Similarly, if there are early indications that a special education evaluation is needed, it may be important for the youth to remain in the community to facilitate the evaluation. Many jurisdictions have home detention programs that facilitate this type of release by imposing curfews or other restrictions on liberty that allow the youth to live at home and attend school pending the outcome of the delinquency proceedings.

Waiver or Transfer to Adult Criminal Court

Every jurisdiction has a mechanism by which some juveniles may be tried in the criminal justice system. Juveniles waived or transferred to the criminal justice system are treated like adults and may receive any sentence that could be imposed on an adult criminal (with the exception, in some States, of the death penalty). Although some jurisdictions have automatic filing rules (statutory transfer) for particular offenses and others provide for prosecutorial direct file (concurrent jurisdiction), many have waiver provisions that involve the exercise of judicial discretion. In judicial waiver jurisdictions, the judge must consider whether the youth is amenable to treatment and rehabilitation in the juvenile justice system.

When making this determination, the existence of specific learning disabilities, mental retardation, serious emotional disturbance, traumatic brain injury, developmental dis-

abilities, or other disabilities qualifying the youth for special education services should be taken into account (Barnum and Keilitz, 1992; Woolard et al., 1992). For example, it may be significant for the court to know that the youth has a previously undiagnosed learning disability that could be addressed through special education and related services available in the State's juvenile training school or other State facilities for secure confinement of serious juvenile offenders. Information about particular disabilities (e.g., mental retardation) may also help to dispel inaccurate images of the youth in relation to waiver criteria such as criminal sophistication or mitigate his or her role in the alleged offense.

The court should also be informed of the status of previous juvenile court orders or service mandates through the special education system for mental health, education, or other services (Beyer, 1997). If these services were not implemented, it would be unjust to place the mantle of rehabilitative failure on the youth. In such cases, the juvenile court should retain jurisdiction to ensure that appropriate special education and other services are provided.

Evidentiary Issues

The record documenting the extent and nature of any disability—and its impact on the youth's thinking and acting—may play a critical role in helping to determine the existence of important evidentiary issues:

- ◆ **Insanity.** Occasionally, mental illness or mental status may affect functioning so drastically that the youth may be legally insane under State law. Records of special education evaluation and services in connection with emotional disturbance, traumatic brain injury, or other disabilities may be helpful in evaluating sanity.
- ◆ **Incompetence.** A youth may be declared incompetent for adjudication if the court finds that he or she is unable to understand the nature of juvenile court proceedings or is unable to assist the defense attorney.⁶⁵ Information about the impact of the youth's disability (e.g., a low level of intellectual functioning, problems in communicating, emotional disturbance, perceptual difficulties, and deficits in memory) may have a bearing on the court's finding (Grisso, 1997; Grisso, Miller, and Sales, 1987).
- ◆ **Intent to commit the offense (*mens rea*).** As in criminal cases, delinquency

allegations may be sustained only if each element of the offense is proved beyond a reasonable doubt.⁶⁶ One of the required elements is the intent to commit the particular offense. Evidence of a disability, particularly one involving limited mental functioning, may suggest the need to evaluate this issue and may sometimes be relevant and admissible on the issue of intent.

- ◆ **Confessions.** The admissibility of confessions in State court may be challenged on the grounds that the youth did not make a valid waiver of rights under *Miranda v. Arizona*⁶⁷ or the confession was not made voluntarily. In determining the validity of *Miranda* waivers, courts consider all of the circumstances, including the youth's age, experience, education, background, and intelligence, and his or her capacity to understand the nature of the warnings, the meaning of the right to counsel and privilege against self-incrimination, and the consequences of waiving those rights.⁶⁸ Whether the confession was made voluntarily is also measured against all of the circumstances surrounding the interrogation, with the focus on circumstances showing coercion.⁶⁹ Many of the criteria governing admissibility of confessions involve areas that may be affected by any number of disabilities.

Thus, a youth with mental retardation who is unable to explain to counsel what happened in relation to the alleged offense may have grounds to claim incompetence. A youth whose learning disability relates to comprehension of written materials may have grounds to challenge a claimed waiver of *Miranda* rights if the waiver was based on written forms. A youth who is mentally ill or emotionally disturbed may have grounds to claim that his or her statement was not voluntary (Greenburg, 1991; Grisso, 1980; Shepherd and Zaremba, 1995). Records of a youth's special education history may be useful to advocates in deciding whether to seek the advice of experts on the impact of the disability on such issues. The records may also help show past impairment with respect to particular issues (Bogin and Goodman, 1986).

Disposition

Education may be the single most important service the juvenile justice system can offer young offenders in its efforts to rehabilitate them and equip them for success. School success alone may not stop

delinquency, but without it, troubled youth have a much harder time (Beyer, Opalack, and Puritz, 1988). When special education needs are evident, they should be an essential part of the social study report prepared by the probation department to guide the court in making its disposition order. Moreover, juvenile justice professionals should coordinate disposition planning with education professionals to avoid conflict and to take advantage of the rich evaluation resources and services available through IDEA.

The resulting disposition order should reflect the court's review of special education evaluations and the goals, objectives, and services to be provided under the IEP. If the youth is to be placed out of the home, the court should demand specific assurance that the facility will meet the youth's educational needs under IDEA. The juvenile court should also use its disposition powers to ensure special education evaluation and placement for previously unidentified youth who show indications of having a disability.

In deciding whether or where to place a youth with a disability, it is also important for the court to understand the impact of the disability on behavior. Youth with attention deficit disorder (ADD), for example, commonly act impulsively, fail to anticipate consequences, engage in dangerous activities, have difficulty with delayed gratification, have a low frustration threshold, and have difficulty listening to

or following instructions. They may begin to associate with delinquents or self-medicate through drugs and alcohol because they are rejected by others. Proper medication has a dramatic effect in helping many of these youth control their behavior, and a variety of professionals are skilled in treating ADD in medical, psychiatric, or educational settings (Logan, 1992). Unless the characteristics of ADD and the existence of effective interventions are recognized, youth with this disability stand a good chance of being treated harshly, often through incarceration, based on the outward manifestations of their disability. Juvenile justice professionals should respond appropriately to evidence of such disabilities by ensuring that appropriate medical, mental health, and other services are provided.

Juvenile justice professionals also must learn to recognize potential problems for youth with certain disabilities in particular settings, so as not to set the youth up for failure. This does not mean that juvenile justice professionals need to become diagnosticians or clinicians. However, they should consult with education, mental health, and medical professionals. It is important to seek professional advice about the kinds of settings in which the youth can function best and the kinds of settings most likely to lead to negative behavior. For example, a youth with an emotional disturbance may not be able to function in the large dormitory setting typical of some institutions. Such youth may feel especially vulnerable because of past physical or sexual abuse or may simply suffer from overstimulation in an open setting. They may require a setting in which external stimuli are reduced to the greatest extent possible and intensive one-on-one supervision is provided. Youth with other disabilities may need programs that minimize isolation and emphasize participation in group activities.

Postdisposition monitoring. Juvenile justice professionals should ensure that youth with disabilities receive the services ordered at disposition. Cases should be reviewed to determine whether different or additional services are needed and whether the placement continues to be appropriate. As part of this monitoring, juvenile justice professionals should ensure that special education rights under IDEA are being protected. When modification of the disposition plan is needed, they should coordinate its development with the youth's IEP team. When it appears



that the youth's special education needs are not being met in the current placement, the court should order appropriate changes or, if necessary, terminate juvenile court jurisdiction.

Youth With Disabilities in Institutional Settings

Nationally, youth and adults confined in institutions have an astonishingly low level of functioning with respect to basic skills needed for living in the community:

About one third of prisoners are unable to perform such simple job-related tasks as locating an intersection on a street map, or identifying and entering basic information on an application. Another one-third are unable to perform slightly more difficult tasks such as writing an explanation of a billing error or entering information on an automobile maintenance form. Only about one in twenty can do things such as use a schedule to determine which bus to take. Young prisoners with disabilities are among the least likely to have the skills they need to hold a job. For them, education is probably the only opportunity they have to become productive members of society.⁷⁰

Institutional education has a clear, positive effect in reducing recidivism and increasing postrelease success in employment and other life endeavors. For youth with disabilities, special education and related services provided through institutional schools are critically important to that success.

The provisions of IDEA cover all State and local juvenile and adult criminal corrections facilities.⁷¹ The only exclusion from the entitlement to a FAPE applies (to the extent that State law does not require special education and related services under part B to be provided to students with disabilities) to any youth ages 18 through 21 who, in his or her last educational placement prior to incarceration in an adult criminal corrections facility, was not actually identified as a child with a disability and did not have an IEP under part B.⁷²

A facility failing to comply with IDEA may be challenged through administrative proceedings, individual lawsuits, or class-action civil rights litigation. Over the years, court and administrative decisions have applied IDEA's

protections to youth in juvenile detention centers and training schools and those in jails and prisons (Youth Law Center, 1999). Dozens of decisions, rulings, and consent decrees address a range of issues, including identification of youth with disabilities, access to educational records, evaluation, IEP development, service delivery, staff qualifications, and timelines for compliance with required components in the special education program (Puritz and Scali, 1998; Youth Law Center, 1999). Additional decisions address remedies such as compensatory education for failure to provide special education services to youth in institutions.⁷³

Providing special educational services to youth in custody presents many challenges. Factors to be dealt with include length of stay, the facility's physical layout, and the need for heightened security. This section discusses a number of issues that often arise.

Identification of Youth With Disabilities in Institutional Settings

IDEA's child find obligation requires that all youth with disabilities be identified, located, and evaluated and that a practical method be implemented to determine whether eligible youth are receiving needed special education and related services. One way to meet this obligation is to have an efficient system in place to determine whether the youth has been previously identified as eligible. Routine screening when the youth is admitted to or enters the school program could reveal information about previous placements, special classes, and other indicators that the youth was in special education. Because it is important to obtain prior school records promptly, it may be helpful to identify a contact person at the LEA who can verify special education records. As noted previously, the 1997 IDEA amendments require LEA's to forward special education and disciplinary records.⁷⁴

Facilities also must find youth with disabilities who have not been identified previously as eligible for special education. Intake staff, probation officers, and regular education staff should be trained to recognize students who may have disabilities and take immediate steps to initiate referral for evaluation. Because the evaluation process calls for parental consent, the referral is best initiated by parents. LEA's should assist parents in making written requests. However, nothing in Federal law prevents other individuals or agencies from making the initial

request for evaluation of IDEA eligibility. Educators, probation officers, or attorneys should consider making the formal request if parents are unavailable or unwilling.

This identification process must occur even in facilities such as detention centers, in which the typical length of stay may be only a few days or weeks. In reality, some youth in short-term facilities spend much longer periods in custody (e.g., awaiting placement or trial in adult criminal court), and many will return to the facility in connection with probation violations or future cases. In addition, useful information gathered at one facility may be shared with subsequent placements.

Evaluation

Facilities and agencies that have custody of a youth for only a short time are not exempt from the mandate to begin the evaluation process, even though the complete evaluation may take several weeks. If a youth is moved before the evaluation is complete, the school should forward the information to the student's next educational placement.

A common problem, particularly for short-term facilities, is that the education program may have insufficient staffing or staff without the requisite qualifications to conduct eligibility evaluations.⁷⁵ In such cases, the facility should make arrangements through the LEA serving its youth to ensure that full evaluations by qualified personnel are provided. The facility also must ensure that requests for reevaluation by parents and teachers are honored.⁷⁶

Interim Services and Implementation of the IEP

When a facility confines a youth who has an IEP, it must implement the existing IEP or hold a new IEP meeting in accordance with Federal law,⁷⁷ just as a school district would have to implement the IEP of a special education student transferring from another district. If the IEP team elects to modify the IEP, it must provide interim services comparable to those called for in the existing IEP until the new IEP is developed. Federal law requires IEP's to be implemented as soon as possible after initial IEP or revision meetings.⁷⁸ Many States have set time limits on the maximum duration of interim services.⁷⁹

In some cases, juvenile facilities confine youth who have had IEP's in the past but who have no current IEP or who were not in school immediately prior to incarceration.

Federal law does not specifically address the length of time after which IEP's are no longer required to be implemented. However, the existence of a previous IEP is strong evidence that the youth has a disability and is eligible for services. In practice, officials should implement the previous IEP unless they can document persuasive reasons for not doing so.⁶⁰ If the IEP is no longer appropriate, a new program should be developed as soon as possible.⁶¹

Several of the IEP requirements called for in the 1997 IDEA amendments have particular significance for youth in institutional settings. The requirements for positive behavioral interventions may overlap with institutional case plans. Accordingly, educational staff should coordinate goals and objectives with institutional staff to ensure consistent practice and enable institutional staff to recognize and deal effectively with disability-related behavior.

The inclusion of transition service needs in IEP's beginning at least by age 14 (or younger if determined appropriate) should be closely coordinated with institutional planning for parole or release of juvenile offenders. When appropriate, planned services should include assistance in obtaining full-time employment or enrolling in college (Leone, Rutherford, and Nelson, 1991). As part of transition planning, it is advisable to establish contact with local community programs. Local school districts often are reluctant to take students back after out-of-district placements, so early contact is critical for effective post-release programs. At least one court has confirmed that institutions must ensure that students' special education needs can be met and that current IEP's are implemented as soon as possible in their next placement.⁶²

In addition, the 1997 IDEA amendments provide that youth with disabilities are entitled to extended school year services if the child's IEP team determines they are needed to ensure FAPE. The youth's IEP team determines whether extended school year services are needed on an individual basis.⁶³ Extended school year services may be an important right for youth with disabilities who are incarcerated during the summer.

Integration With Nondisabled Students

The Federal requirement that special education students be educated, to the extent appropriate, with students who are not dis-

abled applies in the juvenile institutional context.⁶⁴ Institutions may not provide a generic special education program and force all youth with disabilities to attend. Students may be placed in special education classes only as specifically called for in each IEP.⁶⁵ As in the outside community, youth must be served with nondisabled students to the maximum extent appropriate.

Discriminatory Disincentives

Facilities must not allow discriminatory disincentives to participation in special education services.⁶⁶ Special education programs should not interfere with programs in which youth with disabilities may otherwise participate, including extracurricular activities. Detention staff, for example, may not require youth to choose between special education services and other desirable programs, such as vocational classes. Similarly, a disability may not preclude a student's placement in a less secure facility, such as a camp, or keep the student from being granted a furlough.

Due Process Protections for Confined Youth

The due process protections embodied in special education law are particularly important for youth in institutional care. At the time of confinement, youth should receive a handbook that sets forth their rights and affirms that officials will not discriminate on the basis of disability.⁶⁷ Facilities should also inform youth and their parents (or surrogate parents) of their rights under IDEA. Documentation of all actions taken to provide special education to an individual student is essential.

The due process protections outlined in special education law must remain distinct from any institutional grievance procedure. It is impermissible for officials to require students or parents to fulfill steps not called for by IDEA in order to challenge school officials' decisions. In meeting the due process requirements, facilities must be careful to meet mandated timelines because delays may undermine the purpose for which the timelines were established. Especially in short-term placements, officials should establish expedited procedures to quickly resolve challenges to agency decisions by the youth or parent.

Officials must include parents in the IEP process consistent with IDEA. Unless a court expressly limits their rights, parents of youth in institutional settings have all

the rights that are accorded to parents of youth who are not in out-of-home placements.⁶⁸ For some placements, especially prisons, distance is the biggest obstacle to parental involvement. Distance must not prevent a parent from participation. If a youth is placed far from his or her parents' residence, teleconferencing may be essential. The burden is on the facility to keep all parties—especially parents—involved in the IEP process.

In some cases, surrogate parents could be appointed as an important part of a youth's due process protection. Surrogate parents have all the rights regarding education that the parents have. In institutional settings, as in the community, the surrogate parent must be independent and have no conflict of interest. For example, in a juvenile detention center, the surrogate parent may not be a probation department employee.⁶⁹

Special Education in Lockdown and Other Restricted Settings

When youth with disabilities are removed to lockdown units or other restricted settings, facilities must still provide special education services required by the IEP. While the 1997 IDEA amendments provide for modification of IEP's of students with disabilities incarcerated in adult criminal corrections facilities if there is a "bona fide security or compelling penological interest,"⁷⁰ no such exception exists for juvenile facilities. Accordingly, the normal rules for implementing and modifying IEP's would seem to apply. If misbehavior is school related, placement in lockdown or other restricted settings where youth with disabilities are unable to attend the regular institutional school may constitute a change of placement. A change of placement triggers additional disciplinary procedural safeguards, including review of behavioral intervention plans, functional behavioral assessments, manifestation determinations, and time limits on exclusion. As in noninstitutional settings, students and parents have the right to challenge changes in placement or modifications to their IEP's.

The practical difficulties in providing services to youth in lockdown and restricted settings should prompt institutional and educational administrators to work to reduce the length of time spent in such settings. To reduce the need for lockdown, institutional educators also should pay close attention to behavior intervention strategies when developing the initial IEP. Finally, staff development should include

Online Resources

A wealth of information about IDEA, research on disabilities, methods of providing special education and related services, organizations that focus on particular disabilities, and special education in the juvenile justice system is available on the Internet. These are just a few of the many Web sites for practitioners interested in special education and juvenile justice issues.

Bazelon Center for Mental Health Law

Washington, DC
www.bazelon.org

Bazelon presents a number of online informational publications, legal briefs and analyses, and advocacy primers relating to youth with disabilities, with an emphasis on mental disabilities.

Coordinating Council on Juvenile Justice and Delinquency Prevention

Washington, DC
www.childrenwithdisabilities.ncjrs.org

As part of its effort to promote a national agenda for children and foster positive youth development, the Coordinating Council has created the Children With Disabilities Web site. The site offers families, service providers, and others information about advocacy, education, employment, health, housing, recreation, criminal assistance, and transportation covering a broad array of developmental, physical, and emotional disabilities, including learning disabilities.

Learning Disabilities Association (LDA)

Pittsburgh, PA
www.ldnatl.org

This national nonprofit organization has chapters in 50 States. Its Web site offers families and professionals information on advocacy, research, legal developments, and access to local LDA chapters. LDA

has a broad range of fact sheets, news alerts, and other publications on specific learning disabilities, legal issues, and advocacy for youth with disabilities.

National Association of Protection and Advocacy Systems, Inc.

Washington, DC
www.protectionandadvocacy.com

This national association of protection and advocacy and client assistance programs serves people with disabilities. The Web site contains publications and fact sheets on disability-related legal issues, legal alerts, an extensive list of organizations focusing on disabilities, and information about how to access protection and advocacy services.

The National Center on Education, Disability, and Juvenile Justice

College Park, MD
www.edjj.org

This newly created center is jointly funded by the Office of Special Education Programs, U.S. Department of Education and the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. The National Center on Education, Disability, and Juvenile Justice (EDJJ) was created to develop more effective responses to the needs of youth with disabilities in the juvenile justice system or those at risk for involvement in the juvenile justice system. EDJJ's home is at the University of Maryland, with partners at Arizona State University, University of Kentucky, American Institutes for Research, and the Pacer Center. EDJJ's Web site offers training and materials, publications, parent support, links to other resources, and conferences and forums. Particular areas of focus include prevention, education programs, transition and aftercare, and policy studies.

National Information Center for Children and Youth With Disabilities (NICHCY)

Washington, DC
www.nichcy.org

This is a national information and referral center for families, educators, and advocates on specific disabilities, special education and related services, educational rights, and referral organizations that can help with information, advocacy, and support. NICHCY publishes fact sheets on disabilities and legal issues, news digests, guides for parents and students, IDEA training materials, and publications on educational rights.

Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice

Washington, DC
www.ojjdp.ncjrs.org

This Web site offers a wide range of information on juvenile justice issues, including publications, resources, grants and funding, and ways to contact the agency with particular questions or research needs. It includes many education-related resources. For example, the Web site's search function yields close to 150 documents on special education.

Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education

Washington, DC
www.ed.gov/offices/OSERS/OSEP/index

This Web site gives practitioners access to the 1997 IDEA regulations, annual reports to Congress, links to OSEP-sponsored Web sites of other organizations, research on youth with disabilities, and materials on implementation of the 1997 IDEA.

ing institutional staff on IDEA mandates and on problems youth with disabilities may experience in institutional settings.

In many ways, behavior intervention prescribed through IDEA's mandates overlaps with the mission of the greater juvenile institution to intervene in and prevent

inappropriate behavior. Institutional staff and educators should work together to meet the behavioral needs of incarcerated youth with disabilities.

Youth With Disabilities Convicted In Adult Criminal Court and Incarcerated in Prison

Most youth with disabilities under the age of 22 incarcerated in adult criminal corrections facilities are covered under IDEA's provisions. The only group excluded from entitlement to FAPE comprises inmates ages 18 through 21 (to the extent that State law does not require that special education and related services under part B be provided to students with disabilities) who, in the last educational placement prior to their incarceration in adult criminal corrections facilities, were not identified as having disabilities and did not have IEP's.⁹¹ The 1997 IDEA amendments also provide that youth convicted as if they were adults under State law and incarcerated in prison are not entitled to participation in State and districtwide assessments, the benefit of requirements related to transition planning, or transition services if their eligibility for services will end, because of their age, before they are eligible to be released from prison based on consideration of their sentence and eligibility for early release.⁹² As noted previously, the 1997 IDEA amendments permit the IEP team to modify the IEP of an inmate convicted in adult criminal court under State law and incarcerated in a prison if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.⁹³ Other than these limitations, all IDEA protections apply to eligible youth in prisons.

Conclusion

Although the special education system imposes significant duties on the juvenile justice system, it offers substantial resources to professionals working throughout that system. Its emphasis on identifying behavior related to disabilities and developing practical ways to address that behavior offers a constructive, positive approach to meeting the needs of the many delinquent youth who have disabilities. Ensuring that special education needs are met at every point in the juvenile justice process will inevitably support and enhance the success of delinquency intervention.

Endnotes

1. Pub. L. No. 94-142 (1975).

2. Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*, revised and

amended by Pub. L. No. 105-17, 111 Stat. 37 (1997). Some of the 1997 amendments became effective on their passage; others took effect in 1998.

3. 34 C.F.R. § 300.1 *et seq.* (1999). The U.S. Department of Education issued a notice clarifying that compliance with new provisions in the regulations was not required for fiscal year 1998 but was required for fiscal year 1999 and carryover funds from fiscal year 1998.

4. 20 U.S.C. § 1412(a); 34 C.F.R. § 300.110, §§ 300.121-300.156.

5. 20 U.S.C. § 1413(a); 34 C.F.R. § 300.220, §§ 300.121-300.156.

6. 29 U.S.C. § 794 (1973).

7. 42 U.S.C. § 12101 *et seq.* (1990); *see also Pennsylvania v. Yeskey*, 118 S. Ct. 1952 (1998) (holding that the Americans with Disabilities Act extends to prison inmates).

8. California Education Code § 56026.

9. California Education Code § 56363.

10. 20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.7(a)(1).

11. Children with ADD or ADHD may be eligible for services under the category of "other health impairment," 34 C.F.R. § 300.7(c)(9)(i) or through section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).

12. 20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.7(c)(10)(i).

13. 20 U.S.C. § 1401(26)(B) and (C); 34 C.F.R. § 300.7(c)(10)(i) and (ii).

14. 34 C.F.R. § 300.7(c)(4).

15. 20 U.S.C. § 1412(a); 34 C.F.R. § 300.2(b)(iv). The 1997 IDEA amendments permit States to exclude youth ages 18 through 21 who, in the educational placement prior to their incarceration in an adult criminal corrections facility, were not actually identified as being a youth with a disability or did not have an IEP. 20 U.S.C. § 1412(a)(1)(B)(ii). Note that the implementing regulation permits exclusion of this group for those who, in the last educational placement prior to incarceration in an adult criminal corrections facility, were not actually identified as being a youth with a disability and did not have an IEP. 34 C.F.R. § 300.311(a).

16. 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.121(a). However, the general age eligibility provisions do not apply to youth ages 18 through 21 if State law or practice, or the order of any court, does not provide for public education to youth in that age range. 20 U.S.C. § 1412(a)(1)(B)(i); 34 C.F.R. § 300.122(a)(1).

17. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.550.

18. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.125.

19. 20 U.S.C. § 1414(a)-(c); 34 C.F.R. §§ 300.532-500.543.

20. 20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.536.

21. 20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.342(a).

22. 34 C.F.R. § 300.343(b)(2).

23. 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.344(a).

24. The importance of parental participation is underscored in detailed notice, scheduling, and documentation of efforts requirements. 34 C.F.R. § 300.345.

25. 20 U.S.C. § 1414(d)(1)(A)(vi); 34 C.F.R. § 300.347(b).

26. 20 U.S.C. § 1401(30); 34 C.F.R. § 300.29.

27. 20 U.S.C. § 1414(d)(3)(B); 34 C.F.R. § 300.346(a)(2).

28. 34 C.F.R. § 300.342(b)(ii), § 300.343(c).

29. 20 U.S.C. § 1401(25); 34 C.F.R. § 300.26(a)(1).

30. 20 U.S.C. § 1401(25)(A)-(B); 34 C.F.R. § 300.24(a)(1)(i)-(ii).

31. 20 U.S.C. § 1401(22); 34 C.F.R. § 300.24.

32. 20 U.S.C. § 1415(b); 34 C.F.R. §§ 300.501-300.512.

33. 20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.515.

34. 20 U.S.C. § 1415(m); 34 C.F.R. § 300.517; *see also Paul Y. v. Singletary*, 979 F. Supp. 1422 (S.D. Fla. 1997).

35. 20 U.S.C. § 1415(e); 34 C.F.R. § 300.506.

36. 20 U.S.C. § 1415(f); 34 C.F.R. § 300.507.

37. 20 U.S.C. § 1415(h); 34 C.F.R. § 300.509.

38. 20 U.S.C. § 1415(g); 34 C.F.R. § 300.510.

39. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.512.

40. 20 U.S.C. § 1415(i)(3); 34 C.F.R. § 300.513.

41. 34 C.F.R. §§ 300.660-300.662. Apart from the State complaint process pursuant to IDEA, complaints may be filed with the Office of Civil Rights, U.S. Department of Education, for discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) or title II of the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*).

42. 20 U.S.C. § 1415(j); 34 C.F.R. § 300.514.

43. 484 U.S. 305 (1988).

44. 484 U.S. at 323-324.

45. 20 U.S.C. § 1415(k)(1)(A); 34 C.F.R. § 300.520(a).

46. 20 U.S.C. § 1415(k)(10); 34 C.F.R. § 300.520(d).
47. 20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.521.
48. 34 C.F.R. § 300.519; *see generally* 20 U.S.C. § 1415(k)(1)(a).
49. 20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.520(b).
50. 20 U.S.C. § 1412(a)(1)(A); § 1415(k)(3); 34 C.F.R. § 300.121(d), § 300.522.
51. 20 U.S.C. § 1415(k)(4); 34 C.F.R. § 300.523.
52. 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.524.
53. 34 C.F.R. § 300.523(f).
54. 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.121(d).
55. 20 U.S.C. § 1415(k)(2), § 1415(k)(7); 34 C.F.R. § 300.525, § 300.526, § 300.528.
56. 20 U.S.C. § 1415(k)(8)(A); 34 C.F.R. § 300.527(a).
57. 20 U.S.C. § 1415(k)(8)(B); 34 C.F.R. § 300.527(b).
58. 20 U.S.C. § 1415(k)(9)(B); 34 C.F.R. § 300.529(a); *see also* Northside Independent School District (No. 106-SE-1297), 28 Individuals With Disabilities Education Law Report (IDELR) 1118 (State Education Agency Texas 1998); *Smith v. Wheaton* (No. H-87-190 (TPS)), 29 IDELR 200 (D. Conn. 1998); *Cabot School District* (No. H-99-02), 29 IDELR 300 (Ark. 1998).
59. 20 U.S.C. § 1415(k)(9); 34 C.F.R. § 300.529(a).
60. *Morgan v. Chris L.*, 25 IDELR 227 (6th Cir. 1996) (unpublished decision).
61. *See, e.g., Flint Board of Education v. Williams*, 276 N.W.2d 499 (Mich. App. 1979) (violation of school rules and regulations); *In re McCann*, 17 Educ. for the Handicapped L. Rep. [now the IDELR] 551 (Tenn. Ct. App. 1990) (truancy and unruly behavior).
62. *State of Wisconsin v. Trent N.*, 26 IDELR 434 (Wis. Ct. App. 1997); *Cabot School District* (No. H-99-02), 29 IDELR 300 (Ark. 1998).
63. *Cabot School District* (No. H-99-02), 29 IDELR 300 (Ark. 1998); *State of Connecticut v. David F.*, 29 IDELR 376 (Conn. Super. Ct. 1998).
64. *In the Matter of Shelly M.*, 453 N.Y.S.2d 152 (1982); *In re Ruffel*, 18 IDELR 1171 (N.Y. Fam. Ct. 1992).
65. *See Dusky v. United States*, 362 U.S. 402 (1960); *Drope v. Missouri*, 420 U.S. 162 (1975); *see, e.g., In re Patrick H.*, 63 Cal. ptr. 2d 455 (Cal. Ct. App. 1997).
66. *In re Winship*, 397 U.S. 358, 368 (1970).
67. 384 U.S. 436 (1966). *Miranda* warnings must precede any custodial interrogation. Note that the U.S. Supreme Court will decide in *Dickerson v. United States*, 120 S. Ct. 578 (mem.) (No. 99-5525) (review granted, Dec. 6, 1999), Fourth Circuit, U.S. Court of Appeals, No. 97-4750, 166 F.3d 667, whether *Miranda* has been overruled in *Federal* cases by a statute (18 U.S.C. § 3501) that purports to restore voluntariness as the test for admissibility.
68. *See Fare v. Michael C.*, 442 U.S. 707, 725 (1979).
69. *See Haley v. Ohio*, 332 U.S. 596, 599 (1948); *Reck v. Pate*, 367 U.S. 433, 442 (1961); *see, e.g., In re J.J.C.*, 689 N.E.2d 1172 (Ill. App. Ct. 1998), suppressing as involuntary the confession of a youth with a history of mental problems and learning disabilities.
70. Letter to Mr. George M. Galarza, Warden of California State Prison-Corcoran; 30 IDELR 50 (U.S. Department of Education, Office of Special Education Programs, 1997).
71. 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.2(b)(iv).
72. 20 U.S.C. § 1412(a)(1)(B)(ii); 34 C.F.R. § 300.122(a)(2).
73. *See, e.g., State of Connecticut-United School District No. 1 v. State Department of Education*, 27 IDELR 3 (Conn. Super. Ct. 1997).
74. 20 U.S.C. § 1415(k)(9)(B); 34 C.F.R. § 300.529(b)(2).
75. 20 U.S.C. § 1414(b); 34 C.F.R. § 300.532.
76. 20 U.S.C. § 1414(c); 34 C.F.R. § 300.536.
77. 20 U.S.C. § 1414(d)(4); 34 C.F.R. § 300.346(b); *Alexander S. v. Boyd*, 876 F. Supp. 773, 802 (D.S.C. 1995), *aff'd in part and rev'd in part on other grounds*, 113 F.3d 1373 (4th Cir. 1997), *cert. denied*, 118 S. Ct. (1998).
78. 34 C.F.R. § 300.342(b)(ii).
79. *See, e.g., CALIF. EDUC. CODE* § 56325 (West 1998), requiring immediate provision of an interim placement implementing the existing IEP to the extent possible within existing resources, with review by the IEP team within 30 days.
80. *See, e.g., Boyd*, 876 F. Supp. at 802.
81. 34 C.F.R. § 300.342(b)(ii). Different rules apply to some juveniles in adult criminal corrections facilities. *See* 34 C.F.R. § 300.122(a)(2) concerning individuals ages 18 through 21 convicted as adults under State law and housed in adult criminal corrections facilities.
82. *Smith v. Wheaton* (No. H-87-190 (TPS)), 29 IDELR 200 (D. Conn. 1998).
83. 34 C.F.R. § 300.309.
84. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.550.
85. OCR Region IX, No. 09-91-1343-I (1992) (unreported).
86. 29 U.S.C. § 794.
87. OCR Region IX, No. 09-91-1343-I (1992) (unreported) (OCR found discrimination against students with hearing impairments in violation of section 504 in part because the student handbook lacked such a statement).
88. *See, e.g., Maine Department of Education*, 17 IDELR 211 (State Education Agency, Maine, 1990), *but see* 34 C.F.R. § 300.122(a)(2) regarding individuals ages 18 through 21 convicted as adults under State law and residing in adult criminal corrections facilities.
89. 20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.515(c)(2), *but see* 34 C.F.R. § 300.517(a)(2) if State transfers rights at the age of majority for all students.
90. 20 U.S.C. § 1414(d)(6)(B); 34 C.F.R. § 300.311(c).
91. 20 U.S.C. § 1412(a)(1)(B)(ii); 34 C.F.R. § 300.311(a).
92. 20 U.S.C. § 1414(d)(6)(A)(ii); 34 C.F.R. § 300.311(b)(2).
93. 20 U.S.C. § 1414(d)(6)(B); 34 C.F.R. § 300.311(c); *see, e.g., New Hampshire Department of Education v. City of Manchester, N.H. School District*, 23 IDELR 1057 (D.N.H. 1996).

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Acknowledgments

This Bulletin is dedicated to the memory of Loren Warboys, who passed away in December 1999 after an extended struggle with leukemia. Early in his career, Loren recognized the need for advocacy on behalf of youth with disabilities in the juvenile justice system, and he worked for the next two decades to protect their legal rights. As one of only a handful of nationally recognized legal experts in this field, Loren was constantly involved in policy discussions over legislation and regulations. He was counsel in a number of groundbreaking cases on behalf of youth with disabilities in institutions and wrote many articles and training manuals on the interplay between juvenile justice and special education. He also spent countless hours consulting on these issues with families, educators, public officials, and juvenile justice professionals. Loren's unflagging compassion and commitment have had a lasting effect in making the juvenile justice system more attuned and better equipped to meet the needs of youth with disabilities.

Sue Burrell is a staff attorney and Loren Warboys was the managing director of Youth Law Center, a San Francisco-based private, nonprofit law firm specializing in protecting the rights of youth in juvenile justice and child welfare systems throughout the Nation. The authors were guided in the preparation of this Bulletin by the many ideas and experiences offered to them over the years by youth with disabilities in the juvenile court process and juvenile institutions. The hope that these youth may enjoy a bright future and reach their greatest potential has truly inspired this work.

Renee Bradley, Ph.D., from the U.S. Department of Education's Office of Special Education Programs, contributed significantly to the review of this Bulletin to ensure its relevance to both the education and juvenile justice communities.

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The Office of Juvenile Justice and Delinquency Prevention is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime.

Keep juvenile justice

YOUTH LAW CENTER CHILDREN'S LEGAL PROTECTION CENTER

Protecting America's most vulnerable children

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April 24, 2000

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Ann O'Leary
Office of the First Lady
The White House
Washington, DC 20500

Dear Ms. O'Leary:

Enclosed is a copy of "And Justice for Some: Differential Treatment of Minority Youth in the Justice System," the second of five reports to be released this year by *Building Blocks for Youth*, a major new initiative led by the Youth Law Center to promote a justice system that is both fair and effective. This comprehensive report, written by Michael Jones and Eileen Poe-Yamagata of the National Council on Crime and Delinquency, makes three major points:

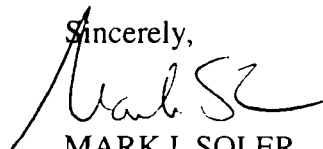
1. The justice system falls more heavily on minority youth than on white youth charged with similar offenses. This occurs at every stage of the system, including filing of charges, detention before trial, waiver to adult criminal court, incarceration in juvenile facilities, and incarceration in adult prisons.
2. The disparities in the system are cumulative, so that minority youth have an enormous "cumulative disadvantage" when it comes to justice in this country.
3. As states emphasize prosecution of young people as adults and punishment by incarceration, rather than prevention, community-based programs, and rehabilitation, these disparities are likely to continue for the foreseeable future.

In light of the findings contained in the report, we are very interested in arranging a meeting to discuss the enclosed "Calls for Action" which the *Building Blocks* initiative will issue with the enclosed report.

417 Montgomery Street, # 900
San Francisco, CA 94104
Phone: 415-543-3379
Fax: 415-956-9022

Thank you for your consideration of this important issue. We will follow up shortly.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark I. Soler", written over the printed name.

MARK I. SOLER
President

MS/sm
Encls.

MEMORANDUM

TO: Juvenile Justice Legislative Assistants

FROM: Marc Schindler (Youth Law Center) & Jill Ward (CDF)
Co-Chairs, Juvenile Justice Coalition

DATE: June 12, 2000

RE: Disproportionate Minority Confinement

In April a new report detailing racial disparities in our nation's juvenile justice system was released by the *Building Blocks for Youth* initiative, a national project lead by the Youth Law Center to address unfairness in the juvenile justice system and promote rational and effective justice policies. The report, *And Justice for Some*, was prepared by the National Council on Crime and Delinquency (NCCD) -- the nation's oldest criminal justice think-tank and gives a comprehensive view of the treatment of youth of color in the justice system by comparing state and federal data and building on the most complete and up-to-date information on arrest, referral, detention, case processing, waivers to adult court, and incarceration. The report found that African-American youth with no prior admissions were six times more likely to be incarcerated in public facilities than white youth with the same background and Latino youth were three times more likely than white youth to be incarcerated. For a copy of the report, visit www.buildingblocksforyouth.org

Following up on the findings of the report, the enclosed letters were sent to President Clinton and Senator Hatch, Chairman of the conference on the juvenile crime bill, urging their support in strengthening the DMC provision under current law that requires states to address the disproportionate confinement of minority youth in the juvenile justice system.

Finally, **Senator Wellstone and Representative Scott will sponsor a briefing on the report on Tuesday, June 13, 2000 at 1:30 pm in 2456 Rayburn House Office Building.** Please feel free to call Marc at 637-0377 or Jill at 662-3505, if you have any questions. We encourage you to attend and hope to see you there!

Ann,

This memo and the attached letters were just sent to the Hill. If you have any questions or suggestions please don't hesitate to contact me.

Marc Schindler

June 12, 2000

The Honorable William Jefferson Clinton
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

On behalf of the civil rights and children's advocacy communities, we would like to take this opportunity to bring to your attention a recently released report which examines the differential treatment that minority youth receive in the justice system. This important report, "And Justice For Some," was commissioned by the *Building Blocks for Youth* initiative, a national campaign to address unfairness in the juvenile justice system and promote rational and effective justice policies. The report is the most comprehensive and up-to-date comparison of state and federal data on arrest, referral, detention, case processing, waiver to adult court and incarceration. It clearly documents that youth of color experience more severe treatment than white youth for comparable offenses at every stage of the juvenile justice process – putting them at a "cumulative disadvantage" that has led to a devastating over-representation of minority youth in the justice system.

We should note that we have serious concerns about several aspects of the juvenile justice legislation pending before the Conference committee, such as language which would result in more children prosecuted as adults, weakening protections for keeping children out of adult jails, and allowing easier access to records of juvenile arrests, and oppose both versions of the bill in their current forms. We are particularly concerned though by efforts to weaken the Disproportionate Minority Confinement (DMC) provision in the Juvenile Justice and Delinquency Prevention Act (JJDP). As you know, the JJDP directs states to identify the extent to which disproportionate minority confinement exists in their states, to assess the reason that it exists, and to develop strategies to address the disproportionate number of minority children in confinement. While the House-passed juvenile justice bill, H.R. 1501, retains the DMC requirement in federal law, the Senate-passed juvenile justice bill, S.254, substantially revises the current DMC language by removing any reference to minority groups. The Senate provision attempts to bury the issue and will significantly hinder efforts to remedy the disparate treatment of minority youth in our juvenile justice systems.

With the release of *And Justice for Some*, it is again abundantly clear why it is so critically important not only to maintain the current law's requirement but to strengthen the language to encourage states to address this issue effectively and promptly. Although we have long known that the juvenile justice system tends to treat minority youth more harshly, the data in this report demands renewed efforts in this area and a commitment by federal, state and local leaders to make this issue a top priority. Among the reports key findings:

African-American youth with no prior admissions to a secure facility were six times more likely to be incarcerated in public facilities than white youth with the same background. Latino youth were three times more likely than white youth to be incarcerated.

In every offense category – person, property, drug, public order – a substantially greater percentage of African-American youth were detained than white youth.

Minority youth are over represented in the detained population in almost every state.

African-American youth are more likely to be formally charged in juvenile court than white youth, even when referred for the same offense.

Minority youth were much more likely to be waived to criminal court than white youth, even when charged with the same offenses. This was true in every offense category.

When minority youth and white youth are charged with similar offenses, minority youth are more likely to be placed in locked facilities. Minority youth are over represented in residential placement facilities for all offense categories.

Nationally, custody rates were 5 times greater for African American youth than for white youth. Custody rates for Latino and Native American youth were 2 ½ times the custody rate of white youth.

In 1997, 7,400 new admissions to adult prisons involved youth under the age of 18. Three out of four of these youth were minorities.

As a result of the current law requirement, 40 states to date are implementing or developing interventions plans to address the overrepresentation of minority youth in the juvenile justice system. To our knowledge, no state has ever claimed that it has had to release a minority youth from secure confinement on the basis of race as a result of this provision, and all states are in compliance with the current DMC provision in federal law.

We strongly believe that by gutting the DMC provision, the issue of such widespread disparities in the treatment of minority youth will be minimized and current efforts underway in the states to remedy the disparate treatment of minority youth would be seriously undermined. Indeed, with data revealing that minority youth are increasingly being incarcerated with adults - where youth are five times more likely to be sexually assaulted and eight times more likely to commit suicide than in juvenile facilities - it is now more important than ever that efforts to address these disparities be strengthened and encouraged.

We applaud the Administration for taking a strong stance on this issue as shown in the Statement of Administration Policy on the juvenile justice legislation. With the release of this new and comprehensive report we are asking that you renew your commitment, as we have, to ensure that this provision is not only maintained in the final juvenile justice bill but that efforts be strongly encouraged at the state and community level to ensure a fairer and more equitable justice system for all of America's children and youth.

We appreciate your consideration, and look forward to working with you on what we believe to be a most basic issue of fundamental fairness in the justice system.

Sincerely,

Enrique "Rick" Dovalina
LULAC National President

Marian Wright Edelman
President, Children's Defense Fund

Ira Glasser
Executive Director, ACLU

Kweisi Mfume
President and CEO, NAACP

Hugh B. Price
President, National Urban League

Mark Soler
President, Youth Law Center

June 12, 2000

The Honorable Orrin G. Hatch
Chairman
United States Senate Judiciary Committee
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the civil rights and children's advocacy communities, we would like to take this opportunity to bring to your attention a recently released report which examines the differential treatment that minority youth receive in the justice system. This important report, "And Justice For Some," was commissioned by the *Building Blocks for Youth* initiative, a national campaign to address unfairness in the juvenile justice system and promote rational and effective justice policies. The report is the most comprehensive and up-to-date comparison of state and federal data on arrest, referral, detention, case processing, waiver to adult court and incarceration. It clearly documents that youth of color experience more severe treatment than white youth for comparable offenses at every stage of the juvenile justice process – putting them at a "cumulative disadvantage" that has led to a devastating over-representation of minority youth in the justice system.

Although we have serious concerns about several aspects of the juvenile justice legislation pending before the Conference committee and oppose both versions of the bill in their current forms, we are particularly concerned by the efforts to undermine one of the core protections of the Juvenile Justice and Delinquency Prevention Act (JJDP). As you know, the JJDP directs states to identify the extent to which disproportionate minority confinement (DMC) exists in their states, to assess the reason that it exists, and to develop strategies to address the disproportionate number of minority children in confinement. While the House-passed juvenile justice bill, H.R. 1501, retains the DMC requirement in federal law, S.254 substantially revises the current DMC language by removing any reference to minority groups. We believe that the Senate provision inappropriately attempts to bury the issue and will significantly hinder efforts to remedy the disparate treatment of minority youth in our juvenile justice systems.

With the release of *And Justice for Some*, it is again abundantly clear why it is so critically important not only to maintain the current law's requirement but to strengthen the language to encourage states to address this issue effectively and promptly. Although we have long known that the juvenile justice system tends to treat minority youth more harshly, the data in this report demands renewed efforts in this area and a commitment by federal, state and local leaders to make this issue a top priority. Among the reports key findings:

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We strongly believe that by gutting the DMC provision, the issue of such widespread disparities in the treatment of minority youth will be minimized and current efforts underway in the states to remedy the disparate treatment of minority youth would be seriously undermined. Indeed, with data revealing that minority youth are increasingly being incarcerated with adults - where youth are five times more likely to be sexually assaulted and eight times more likely to commit suicide than in juvenile facilities - it is now more important than ever that efforts to address these disparities be strengthened and encouraged.

We urge you to continue to support states in building on the progress that has been made to date by strengthening the statutory language under current law that requires states to address the disproportionate confinement of minority youth in the juvenile justice system.

We appreciate your consideration and look forward to working with you on what we believe to be a most basic issue of fundamental fairness in the justice system.

Sincerely,

Enrique "Rick" Dovalina
LULAC National President

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President, Children's Defense Fund

Ira Glasser
Executive Director, ACLU

Kweisi Mfume
President and CEO, NAACP

Hugh B. Price
President, National Urban League

Mark Soler
President, Youth Law Center

cc: The Honorable Henry Hyde
The Honorable Patrick Leahy
The Honorable John Conyers, Jr.