Federal Advisory Committee on Juvenile Justice

ANNUAL REPORT 2007

Federal Advisory Committee on Juvenile Justice Annual Recommendations Report to the President and Congress of the United States

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Foreword

Dear Mr. President; Members of Congress; Administrator of the Office of Juvenile Justice and Delinquency Prevention; Governors and Chief Executives of the States, Territories, and the District of Columbia; and my fellow concerned citizens:

On behalf of the Federal Advisory Committee on Juvenile Justice (FACJJ), I am pleased to present this report, which stresses the need to expeditiously reauthorize the Juvenile Justice and Delinquency Prevention (JJDP) Act. I encourage both new and returning members of Congress to seriously consider the recommendations in this report as we work together to make critical decisions about the direction of juvenile justice in this country.

To make sure that the recommendations truly represent the concerns of the states and juvenile justice practitioners, FACJJ sent an online questionnaire to the State Advisory Groups (SAGs) in all states and territories. We were encouraged by the high response rate of 87 percent (47 jurisdictions) and are confident that the issues discussed in this report accurately reflect the concerns of juvenile justice practitioners across the nation. The three major problems identified by the states—disproportionate minority contact, mental health assessment and treatment, and detention reform—are becoming entrenched issues. FACJJ believes that promptly reauthorizing the JJDP Act will help policymakers and practitioners successfully address these issues before they become even further ingrained into the system.

On behalf of FACJJ, I thank the President and Congress for the opportunity to share our concerns and recommendations about juvenile justice. As the nation's leaders, you are in a position to make decisions that will make a difference for the nation's youth. FACJJ urges you to keep a spotlight on juvenile justice to help ensure that the reforms that have been made over the past 30-plus years do not fade away and that new reforms needed to further improve the system can be developed and implemented.

David R. Schmidt
2007 FACJJ Chair

Acknowledgments

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Special thanks also go to members of the Planning Subcommittee, cochaired by Mr. Davis and Ms. Garton, for developing the Annual Request for Information questionnaire sent to FACJJ members. The recommendations in this report would not have been possible if the State Advisory Groups and their juvenile justice specialists had not responded to the questionnaire. Their contributions were invaluable. The subcommittee also thanks Robin Delany-Shabazz, designated federal official of the Office of Juvenile Justice and Delinquency Prevention for her patience, help, and support, and all FACJJ members for their input and review.

The subcommittee also recognizes the help of Daryel Dunston and Francesca Stern of EDJ Associates, Inc., which provides support to FACJJ, for handling the many logistics necessary to prepare this report. Finally, the subcommittee thanks writer Kay McKinney, whose adept writing and editing turned the subcommittee members' thoughts and suggestions into a cohesive whole.

Executive Summary

The Federal Advisory Committee on Juvenile Justice (FACJJ) has developed 15 recommendations to the President and Congress that focus on the need to promptly reauthorize the Juvenile Justice and Delinquency Prevention (JJDP) Act, to amend the Act to improve juvenile justice, and to address critical issues confronting the states' juvenile justice systems.

1. **FACJJ recommends that the President and Congress show their support for the nation's youth (especially those at risk) by reauthorizing the JJDP Act in 2007, the year in which it is due to be reauthorized. As the issues discussed throughout this annual report illustrate, it is crucial that the country's policymakers act judiciously and swiftly to ensure that juvenile justice is not relegated to the legislative backburner.**

2. **FACJJ recommends that the President and Congress restore the following language to Section 261(e) of the JJDP Act regarding special needs and problems of juvenile justice in certain areas: "Not less than 5 percent of the funds available for grants and contracts under this Section shall be available for grants and contracts designed to address the special needs and problems of juvenile delinquency in the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands."**

3. **FACJJ recommends that Congress amend the statement of findings in the 2002 reauthorized JJDP Act (42 U.S.C. § 5601 et seq.) to reflect the core values FACJJ has adopted as guiding principles of juvenile justice. FACJJ further recommends that reauthorization also focus on strengthening the existing four core requirements of the JJDP Act (Section 223a[11], [12], [13], and [22]).**

4. **FACJJ urges that the reauthorization of the JJDP Act continue to specifically spell out the important role State Advisory Groups (SAGs) play in implementing a state's formula grants and to further direct Office of Juvenile Justice and Delinquency Prevention (OJJDP) to provide technical and financial support to an independent, nationally representative, nonprofit organization representing SAG members so that the SAGs can meet the statutory obligations as defined in the JJDP Act.**

5. **FACJJ recommends that Congress offer concrete incentives to states that make an effort to move beyond collecting data about disproportionate minority contact (DMC) and begin implementing action steps that proactively address the DMC issue.**

6. **FACJJ recommends that Congress appropriate additional dollars to states through JJDP Act block grants so that they can implement action steps in addressing DMC.**

7. **FACJJ recommends that Congress increase the appropriations to the states to include additional funds above the formula grant amounts under Title II to support a full-time DMC coordinator for each state.**

8. **FACJJ recommends that Congress direct the OJJDP Administrator to develop a comprehensive training curriculum on best practices for addressing DMC for police, court, probation, and school personnel. In addition, Congress should direct OJJDP to fund a pilot project that would require cross-agency collaboration among state and local agencies addressing DMC in order to glean best practices.**

9. **FACJJ recommends that the President and Congress amend the JJDP Act by inserting language that encourages states to reduce the number of children unnecessarily or inappropriately placed in secure pretrial detention. The new language should encourage states to enact legislation that requires basing secure pretrial detention on the criteria of public safety and risk of flight from the court's jurisdiction, set and adhere to guidelines for expedited case processing, and encourage states (through education and funding) to develop and use appropriate alternatives to secure pretrial detention for juveniles who pose no immediate risk to public safety or risk of flight.**

10. **FACJJ recommends that Congress amend the JJDP Act to strongly encourage courts to use alternatives to secure detention when sanctioning a status offender for a violation of a valid court order.**

11. **FACJJ recommends that the President and Congress insert language into the JJDP Act that encourages states to redefine, in their statutes, an act of prostitution by a child as an act of child exploitation rather than a delinquent or criminal act. This would allow a child prostitute to be treated as an exploited, neglected, or abused child or as a child in need of services.**

12. **FACJJ recommends that Congress revise the JJDP Act regarding the number of youth required to be appointed to each SAG. The Act currently requires that one-fifth of each SAG's members be under the age of 24 at the time of their appointment; FACJJ recommends that one-fifth be changed to one-eighth.**

13. **FACJJ recommends that the President and Congress insert language into the Act that requires the provision of competent, effective, and zealous representation for both juveniles and the state (i.e., prosecutors) in juvenile proceedings; requires these attorneys to receive specialized training in child and adolescent development and in juvenile law and related matters and procedures; and requires states to adopt juvenile defense caseload and practice standards.**

14. **FACJJ recommends that the President and Congress insert language into the Act requiring that accused children in court proceedings may not waive their constitutional right to counsel unless they first consult with an attorney, and that if they do waive their right to counsel, a full inquiry and finding be made by the court regarding the child's comprehension of that right and his or her capacity to make the choice knowingly and intelligently.**

15. **FACJJ recommends that sex offender registration and public notification laws allow for judicial discretion when applied to juveniles, and that states exclude juveniles from mandatory registration and public notification laws.**

Introduction to the Federal Advisory Committee on Juvenile Justice

The Federal Advisory Committee on Juvenile Justice (FACJJ) is an advisory body established by the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended (Section 223). It is supported by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), a component of the Office of Justice Programs, U.S. Department of Justice. The role of FACJJ is to advise the President and Congress on matters related to juvenile justice and delinquency prevention, to advise the OJJDP Administrator on the work of OJJDP, and to evaluate the progress and accomplishments of juvenile justice activities and projects.

FACJJ comprises appointed representatives from the State Advisory Groups (SAGs) of each of the 50 states, the District of Columbia, and the 5 U.S. territories. (SAGs are appointed by the governors and assist their states in developing and implementing the juvenile justice plans their states are required to submit to OJJDP every 3 years in order to receive formula grant funds.)

The advisory committee's mandated responsibilities include preparing two annual reports: one to the President and Congress and one to the OJJDP Administrator.

This 2007 *Federal Advisory Committee on Juvenile Justice Annual Recommendations Report to the President and Congress of the United States* is the committee's fourth annual report and outlines critical concerns and issues identified by FACJJ members and their state SAGs. It contains 15 recommendations that illustrate why juvenile justice must remain a national priority and emphasizes the importance of reauthorizing the JJDP Act. The recommendations were developed using questionnaire responses from SAGs from 47 states and territories, which identified their states' primary juvenile justice concerns.

More information about FACJJ, including the group's annual reports to the OJJDP Administrator, a list of members, and meeting summaries, is available on the FACJJ Web page at www.facjj.org.

A Time for Decisions

Since the Juvenile Justice and Delinquency Prevention (JJDP) Act was first enacted more than 30 years ago, the juvenile justice landscape has changed considerably. The basic premises of the original Act remain—to support state and local programs that prevent juvenile delinquent behavior, to offer core protections to youth in the juvenile justice system, and to protect the safety of communities. However, the importance of other specific purposes of the Act has ebbed and flowed according to public opinion and perceived needs in the juvenile justice system.

The JJDP Act is due once again for reauthorization in 2007. Juvenile justice in this country has reached a crossroads, and the Federal Advisory Committee on Juvenile Justice believes it is time for the President, Congress, state and local policymakers, citizens, and juvenile justice practitioners to ask some serious questions about the future of the juvenile justice system, the JJDP Act, and the nation's children.

Rehabilitation Versus a Punitive Approach

One of the first questions that needs to be answered is, "What is the mission of the juvenile justice system? Should it focus on rehabilitation with a goal of reducing future criminal behavior in youth?" There are some who perceive the rehabilitative approach as too soft because it does not provide punitive consequences believed to reduce criminal behavior. However, research by criminologists over the past several years has shown that punitive consequences do not, in fact, reduce criminal behavior and in some cases actually increase it. The National Institutes of Health (NIH) released an independent report in 2004 that concluded that "get tough" programs such as group detention homes and boot camps are not only ineffective but may actually exacerbate existing problems among delinquent youth (U.S. Department of Health and Human Services, National Institutes of Health, 2004). Similarly, the NIH study also concluded that scare tactics (such as the Scared Straight program) and initiatives that consist of adults lecturing to adolescents (such as the D.A.R.E. program) do not work either.

Rehabilitative approaches are the smart, not soft, method necessary to address both the present needs of juveniles and the potential for future criminal conduct. Such smart

approaches base policy and practice on well-researched programs that have been demonstrated to reduce juvenile crime, protect the public, and accomplish the public safety and public policy roles of Congress.

A growing body of research has identified the risk factors associated with juvenile crime and the protective factors shown to reduce the likelihood of criminal behavior in youth (Loeber and Farrington, 1998). Youth are exposed to both types of factors in their families, at school, among their peers, and in their communities. Being smart on juvenile delinquency requires assessing the factors and influences that put youth at risk of delinquency, determining available resources, and establishing prevention programs to either reduce risk factors or provide protective factors that buffer juveniles from the impact of risk factors.

Another growing body of research identifies programs with a rehabilitation framework that have been proven to prevent and reduce juvenile crime. The Blueprints for Violence Prevention program supported by the Office of Juvenile Justice and Delinquency Prevention is a directory of effective programs that have been rigorously evaluated scientifically and found to be effective. The NIH study did note two Blueprints programs that have shown positive results: Functional Family Therapy and Multisystemic Therapy. OJJDP also created and supports the *Model Programs Guide,* a Web-based tool that helps practitioners find scientifically effective programs that address a range of issues across the juvenile justice spectrum.

Although FACJJ recognizes that rehabilitation may not work with all youth and that some serious, violent offenders do need to experience punitive consequences, the advisory committee believes that the rehabilitative approach has proven effective as an overarching juvenile justice system philosophy. Such an approach will work if it treats at-risk and delinquent youth in an age-appropriate manner; provides developmentally appropriate, evidence-based services and supports; and ensures that sanctions, when needed, are graduated and appropriate to a juvenile's age and offense. This is being smart—not soft—on crime.

The country can no longer afford to make substantive changes in the juvenile justice system without knowing if they work. Instead of enacting "quick-fix" legislation in response to the well-publicized sensational criminal actions of a few, it is time for policymakers to focus on programs that have been proven effective.

States and communities need reliable data and information about those rehabilitative programs that work and those that do not. They need information about the cost-effectiveness of proven programs. They need training and technical assistance to help them translate research findings and put them into practice in service settings.

With strong federal support from OJJDP, FACJJ believes that the juvenile justice system can begin to focus on the rehabilitative programs that have the greatest potential to reduce juvenile delinquency, prevent future violence, improve the juvenile justice system, and protect the public. That is being smart on crime.

Juveniles or Adults?

Another question that needs to be answered is "Should the juvenile justice system treat delinquent youth as juveniles or as adults?"

Many policymakers and the public reacted to the rising juvenile crime rate in the 1990s by demanding tougher penalties for delinquent and violent acts committed by juveniles and by allowing the transfer of more young people from the juvenile justice system to the adult criminal justice system. According to a policy brief from the National Juvenile Defender Center (NJDC), between 1992 and 1995, 40 states passed laws making it easier to try juveniles as adults (National Juvenile Defender Center, 2005). Eighteen states further expanded

juvenile transfer laws between 1998 and 2002. As a result, more than 200,000 youth are now prosecuted in adult courts each year.

What kind of results stem from this trend? According to the same NJDC brief, many of the young people transferred to adult court are nonviolent offenders who have been convicted of drug or property crimes. Moreover, minority youth are disproportionately transferred to the adult criminal system.

Several research studies show that juveniles transferred to the adult judicial system tend to become more serious criminals, leading to higher rates of recidivism. Researchers in one study found that serious adolescent offenders who are prosecuted in criminal court are likely to be rearrested more quickly and more often than their counterparts in the juvenile justice system for violent, property, and weapons offenses, and are more often and more quickly re-incarcerated (Fagan, Kupchick, and Liberman, 2003). A Florida study found that 49 percent of youth transferred to adult courts were rearrested, compared to 37 percent of those retained in the juvenile justice system. Nearly twice as many transferred youth were rearrested for more serious offenses (National Juvenile Defender Center, 2005).

Does transferring juveniles to the adult judicial system protect the public? The NIH study mentioned earlier concluded that the practice is not, in fact, making communities safer. In addition, waiving juveniles to criminal court may end up costing taxpayers. Many adult courts and correctional facilities are already overburdened with adult offenders and sending juveniles into the adult system further strains court and corrections budgets.

Moreover, emerging research about brain development in adolescents sheds new light on teenagers' competency to make mature decisions. These findings have broad implications for the juvenile justice system and the way it addresses juvenile delinquency. The research clearly points out that the teenage brain is a work in progress and may help explain what is going on with adolescents. The research indicates that the brains of adolescents are far less developed than previously believed and that the frontal lobe, the largest part of the brain and the part that controls the brain's most advanced functions, undergoes more changes during adolescence than at any other time in an individual's life (American Bar Association, 2004). The research also shows that adolescents often use the emotional part of the brain, rather than the frontal lobe, to make decisions. This use of emotional thinking, as opposed to more rational mature thinking, causes adolescents to underestimate risk and the consequences of their behavior.

FACJJ believes that the majority of juvenile offenders should be handled by the juvenile justice system, not the criminal justice system. This belief supports a recommendation by the National Council of Juvenile and Family Court Judges that the decision about whether to transfer a juvenile charged with a serious crime to criminal court should be made by a juvenile delinquency court judge after an individual hearing with a youth who is represented by qualified counsel (National Council of Juvenile and Family Court Judges, 2005).

There are, of course, exceptions, and some very violent juvenile offenders should be transferred to the adult system. But these decisions should be made on a case-by-case basis, and judges should consider questions such as: How dangerous is the offender? How violent was the offense? Will locking up the offender keep the community safer? Does the offense indicate a pattern of violence? How mature is the offender? Are there developmental or mental disabilities? Can the offender benefit from treatment, such as mental health or substance abuse programs?

FACJJ supports the notion of being smart—not soft—on juvenile crime by acknowledging that juveniles are not simply little adults and by urging communities to implement prevention and intervention programs that will help juvenile offenders become law-abiding citizens.

Federal-State Partnership

Intense emotions and differing political philosophies often dominate the discussion when it comes to advocating policy directions for the juvenile justice system and all those touched by it. Animated, respectful debates are healthy and necessary as long as neither side loses sight of the main goals of the discussion: to improve juvenile justice, to hold offenders appropriately accountable, and to protect the public safety.

When Congress passed the JJDP Act in 1974, it created a unique federal-state partnership to implement the goals of the Act. The federal partner is OJJDP and the state partners as defined by the JJDP Act are the SAGs. The JJDP Act requires each state participating in OJJDP's Formula Grants Program to appoint a SAG composed of citizens and practitioners who have a wide range of juvenile justice experience. The SAGs develop a roadmap, or comprehensive plan, for their states to follow in addressing juvenile justice. They collect and examine state and community juvenile justice data, decide which programs to fund and implement to meet congressional mandates, coordinate juvenile justice and delinquency prevention programs, and advise their governors and state legislators on matters related to juvenile justice. SAGs do this in partnership with OJJDP, the federal flagship juvenile justice agency, which historically has provided research, training, technical assistance, and advice to states regarding effective and best practices in juvenile justice.

Because SAGs are made up of individuals from various disciplines, members are able to bring the big juvenile justice picture to the discussion table. Policy and program decisions are not dominated by one group (e.g., social services, law enforcement, or courts). Instead, members work together to develop coordinated systemic solutions to systemic problems. Equally important is the philosophy behind the SAGs that community members, not federal policymakers, know what is best for their communities.

In the late 1980s, the nation saw a substantial growth in juvenile violent crime. The rate of violence peaked in 1994 but has been declining since then. Specifically, between 1994 and 2004 (the most recent year for which data are available), the juvenile arrest rate for Violent Crime Index offenses (murder, forcible rape, robbery, and aggravated assault) fell 49 percent. As a result, the juvenile Violent Crime Index arrest rate in 2004 was at its lowest level since at least 1980. From its peak in 1993 to 2004, the juvenile arrest rate for murder fell 77 percent (Snyder, 2006). Part of the reduction in crime may well be due to the SAGs' role in developing locally responsive programs to address juvenile delinquency and crime.

This federal-state partnership is particularly valuable because it allows citizens and practitioners to make decisions about the types of juvenile delinquency and crime that are affecting their communities and the types of programs they believe are best suited to address these problems, often using OJJDP guidance or research as a decisionmaking tool. Decisions are made by those on the front lines within a community and/or state, including youth and families who have directly experienced the juvenile justice system.

This unique partnership has worked well for more than 30 years, and FACJJ believes that solidifying this partnership is critical to ensuring that states continue to comply with the mandates of the JJDP Act and effectively address juvenile delinquency and crime.

Although strong feelings and differing philosophies sometimes result in conflict between the federal government and the organization representing the SAGs, civil, thoughtful discussions can lead to long-term successful solutions to problems. FACJJ believes that compromising and working together to strengthen the partnership between OJJDP and a national, nonpartisan, and public/nonprofit organization of SAGs is the smart way to have the largest, most positive impact on the nation's children.

Smart Choices

Congress can make "smart choices" about juvenile justice by engaging in thoughtful deliberations when considering reauthorizing the JJDP Act. Instead of passing new laws or enacting new juvenile justice programs in response to public outcry, Congress should ensure that changes to the Act are based on research findings about what is most effective in preventing and reducing juvenile crime and in making communities safer.

A responsible juvenile justice system should provide the right services and sanctions to the right children at the right time. Congress and the President should keep in mind that the JJDP Act is for youth in the juvenile justice system as well as for their victims, families, and communities. It should not focus exclusively on either victims or offenders. Supporting balanced and restorative justice programs is one way to do this. These programs promote restitution, community service, victim-offender mediation, and other innovative programs designed to hold juvenile offenders accountable while at the same time developing their competency.

Helping states and communities implement programs that are evidence-based and have been proven effective is another smart choice. Congress can choose to do this by ensuring the continuation of OJJDP and by providing ample funding for the agency to develop programs that make a difference, field test these programs to ensure they are implemented with fidelity, evaluate the programs, and disseminate results to communities nationwide.

Coordinating youth programs is another smart choice. The federal government spent $203 billion in 2003 on programs for children, but only $508 million of that was specifically directed toward juvenile justice programs. The amount available for juvenile justice programs in 2007 is even less at $375 million. Although many of the agencies administering funds for programs affecting children, youth, and families work collaboratively across department and agency lines, such work is limited to a small number of selected programs or initiatives. Administering agencies rarely plan or budget jointly; shared decisionmaking and collaboration have not yet become the typical means of managing and administering appropriated program dollars. Congress can help accomplish this by strengthening the authority and functions of the Coordinating Council on Juvenile Justice and Delinquency Prevention, overseen by the U.S. Department of Justice and OJJDP.

Congressional members have a responsibility to serve their constituents, but FACJJ urges caution in writing and passing new legislation based in large part on responses to emotional, public outcry. Because the media tends to focus on the most sensational of crimes, the public often gets the wrong impression about the extent of juvenile crime in this country. Any new legislation should always be grounded in solid research and evaluation, and FACJJ urges Congress to be prepared to look at the long-term results of the new laws.

The Adam Walsh Act[1] is one example of a law that may have unintended consequences for juveniles. Signed into law in July 2006, the Act creates a national sex offender registry to be available on the Internet. Any sex crime is despicable, especially when committed against a child, and offenders should be punished. However, it is important to differentiate between adult and juvenile sex offenders. Research shows that most juveniles who engage in illegal sexual behavior are not sexual predators and do not meet the accepted criteria for pedophilia (National Center on Sexual Behavior of Youth, 2003). Research also indicates that juvenile sex offenders are less likely to re-offend than adults,

[1] The Act's official name is the Sex Offender Registration and Notification Act. It is often referred to as the Adam Walsh Act in memory of the son of John and Reve Walsh, who was abducted and murdered in 1981 at the age of 6. Mr. Walsh is the host of the TV show *America's Most Wanted.*

especially if they receive appropriate treatment. These findings need to be taken into consideration when it comes to mandating public registries and public notification laws.

As the nation's lawmakers, Congress sets the policy pace for juvenile justice. The pendulum has swung back and forth for the past two decades, appearing to be tough on crime at times and soft at other times. As noted earlier, juvenile justice has reached a crossroads. It is time now to find a middle road, to work to rehabilitate the majority of juvenile offenders, and to reserve the most severe sanctions for the most serious, violent offenders. Policymakers should also base laws and practices on solid research and be cognizant of their long-term effects.

FACJJ urges Congress to be smart on juvenile crime by reauthorizing the JJDP Act and by carefully considering the recommendations in this report, which are made in the spirit of bipartisanship and a desire to continue to improve juvenile justice.

Major Concerns

To help ensure that this annual report to the President and Congress accurately reflects the juvenile justice concerns and needs of states, FACJJ solicits input from the SAGs through an Annual Request for Information (ARI). The responses received from 47 states and jurisdictions to the 2006 ARI helped shape the recommendations in this report.

States identified three topics as the most critical issues confronting their juvenile justice systems:

1. Disproportionate minority contact (DMC) (38 states).
2. Mental health assessment and treatment (30 states).
3. Detention reform (22 states).

A number of states also mentioned three other issues: substance abuse treatment (18), coordination of services and resources (15), and juvenile substance abuse (15). There was also a large increase (from 5 percent in 2005 to 33 percent in 2006) in the number of states calling for an emphasis on evidence-based programming.

Disproportionate Minority Contact

As in past years, addressing the disproportionate number of minority youth who come into contact with the justice system remains the most troublesome issue for many states, especially those in the South (12) and Midwest (11). Of the 38 jurisdictions that identified DMC as a major issue, 24 expressed concern that minority youth are entering the system more quickly and penetrating more deeply. One jurisdiction noted specifically that minority youth are overrepresented in the confinement stage of the juvenile justice system.

States also reported problems with collecting and using DMC data, and suggested that services and programs addressing DMC need to be coordinated at the jurisdictional level; recommended that DMC services be tailored to the jurisdiction, especially in small and rural communities; and expressed concern

about the impact of DMC on a specific minority group or groups in a jurisdiction.

FACJJ also addressed the DMC issue in its first three annual reports. Although states are making efforts to reduce the number of minority youth disproportionately represented at all stages of the juvenile justice system, progress seems to be slow. Consider these statistics:

- The racial composition of the juvenile population in 2004 was 78 percent white and 17 percent black, yet of all juvenile arrests for violent crimes in 2004, 52 percent involved white youth and 46 percent involved African American youth (Snyder, 2006).
- Substantial racial differences exist in the process of drug offense cases. Drug cases involving youth are much more likely than cases involving white youth or youth of other races to be petitioned at intake (Snyder and Sickmund, 2006).
- Custody rates are higher for black youth than for youth of other races. On October 22, 2003, for every 100,000 black juveniles living in the United States, 754 were in custody in a juvenile facility; the custody rate was 348 for Hispanics and 190 for whites (Snyder and Sickmund, 2006).

DMC is an extremely complex issue with roots that reach well beyond the juvenile justice system. As evidenced by the states' responses to the ARI, it is an issue that is far from being resolved.

Mental Health Assessment and Treatment

Thirty states indicated that addressing mental health assessment and treatment is an emerging issue in their jurisdictions. Concern about this topic was spread evenly across the country with 10 western, 8 midwestern, 7 southern, and 5 northeastern states citing concerns about mental health.

Nearly half of these 30 jurisdictions expressed concern about the increasing number of juvenile offenders entering their systems who have significant mental health issues. The second most commonly mentioned concern is that many of these youth do not receive the mental health services, especially early assessment, that they need. Several jurisdictions also mentioned that juveniles may be "warehoused" without treatment. In states where mental health services are scarce, youths who need treatment may enter the juvenile justice system because that is the only place they can receive treatment.

Many states reported that the lack of services has a disproportionate effect on minority youth. Early screening and assessment programs were mentioned as a major way to address this issue.

This issue is a continuing concern to FACJJ. Numerous studies over the past 10 to 15 years confirm that the majority of youth who formally enter the juvenile justice system exhibit a wide array of conduct, affective (e.g., depression), anxiety, and developmental disorders; substance use/abuse; and/or learning disabilities. Many of these youth never receive the treatment services that they need for a variety of reasons, including lack of appropriate risk and assessment tools, scarcity of treatment programs, and lack of funding to pay for treatment.

The lack of treatment is not a new issue. In a 1999 report, the Surgeon General noted the short supply of mental health services across the country, including wraparound services for children who have serious emotional problems (U.S. Department of Health and Human Services, Office of the Surgeon General, 1999). The same report also cited a lack of mental health professionals available to treat children and adolescents with serious mental disorders. Congress itself pointed out that thousands of children are incarcerated in juvenile detention centers for no reason other than they are waiting for community mental health services (U.S. House of Representatives, Committee on Government Reform, Minority Staff, Special Investigation Division, 2004). Despite repeated calls for action,

nothing seems to change regarding providing mental health assessment and treatment for youth in the juvenile justice system.

Detention Reform

Of the 22 states reporting detention reform as a major issue, the majority were in the South (9) and West (6). States reported that the number of youth in detention is increasing, with only one jurisdiction reporting a decrease. States also mentioned a lack of education, screening and assessment, substance abuse treatment, mental health treatment, and coordinated care for youth in detention.

Several states reported an increase in the use of inappropriate detention facilities for youth, such as placing youth with adult offenders or in short-term coeducational detention facilities that include youth of different ages.

Juvenile courts handle an estimated 1.6 million delinquency cases and adjudicate delinquent youth in nearly 7 out of every 10 petitioned cases. The daily census of youth under age 18 who are incarcerated is 97,000 and 25 percent of those youth are detained while awaiting placement or court proceedings (Snyder and Sickmund, 2006). Detention reform is a difficult issue, and one heavily influenced by public reaction. Some jurisdictions have gone from locking up too many juveniles, regardless of their offense, to putting public safety at risk by locking up very few youthful offenders. Detention reform should include developing and using risk assessment tools to determine which offenders need be locked up based on their offense and risk of flight and by supporting community-based alternatives to detention.

Substance Abuse Treatment

The need for substance abuse treatment for youth in the juvenile justice system was cited as a major problem by 18 states, 8 of them western states.

States reported a need for residential detoxification treatment, mental health and substance abuse screening, family support services, treatment providers, and transportation to and from providers. Youth under 16 years old are particularly underserved.

States also cited poor prevention and early assessment and treatment services. This lack of services is critical because many youth entering the juvenile justice system are substance abusers and may have dual diagnoses and are thus placed in inappropriate programs.

Coordination of Services and Resources

The lack of coordination of youth and family services was cited as a problem by 15 states. This issue was especially prevalent in the South, with 9 states mentioning it as a problem compared to 1 state in the West.

More than half of these states are concerned about duplication of services. States reported that multiple agencies have different approaches, philosophies, funding streams, information systems, and points of entry and exit. Agencies often communicate poorly, compete for the same resources, and do not work well together. These problems result in duplication of services, ineffective programs, confusing policies, and gaps. This is especially troublesome because youth involved in the juvenile justice system often are engaged with multiple agencies. One jurisdiction identified the fragmentation of funding at the federal level as contributing to the problem.

Juvenile Substance Abuse

Fifteen states reported that juvenile substance abuse is an emerging problem, with responses spread out fairly evenly across the country. Although the drugs used by juveniles vary by locale, the most commonly cited were tobacco and alcohol. Several states also

reported local increases in drug and liquor law violations or problems with specific drugs such as marijuana, methadone, and methamphetamine. Other problem drugs include crack, cocaine, ecstasy, heroin, and prescription drugs. States noted that substance abuse is associated with the high rate of teen suicide, pregnancy, school dropout rates, and fetal alcohol syndrome.

Suggested Recommendations

The states were asked to suggest recommendations to the President and Congress and to OJJDP. Not surprisingly, their most frequent request to the President and Congress was to increase federal funding for juvenile justice programs. The states suggested recommendations focused on four broad topics:

1. Increase funding for juvenile justice programs (32 states).
2. Support and prioritize evidence-based programs (10 states).
3. JJDP Act issues (8 states).
4. Training and technical assistance (8 states). The most frequently requested type of assistance was for youth-serving programs, followed by assistance in developing evidence-based programs and assistance in disseminating research findings.

Suggested recommendations to the OJJDP Administrator also focused on providing more training and technical assistance on delinquency prevention and intervention, mental health, and substance abuse programs. States also want OJJDP to prioritize and support evidence-based programs, mental health assessments and treatment, and DMC reduction activities.

Recommendations

Based on the need to reauthorize the JJDP Act and on states' concerns about juvenile justice issues, FACJJ makes the following 15 recommendations to the President and Congress:

Reauthorization

1. **FACJJ recommends that the President and Congress show their support for the nation's youth (especially those at risk) by reauthorizing the Juvenile Justice and Delinquency Prevention Act in 2007, the year in which it is due to be reauthorized. As the issues discussed throughout this annual report illustrate, it is crucial that the country's policymakers act judiciously and swiftly to ensure that juvenile justice is not relegated to the legislative backburner.**

Since the JJDP Act was first enacted in 1974, the nation, under OJJDP's leadership, has made great strides in reforming the juvenile justice system and in effectively addressing juvenile delinquency and violent crime. The juvenile arrest rate for violent crimes continues to decline and is the lowest it has been since at least 1980 (Snyder, 2006). However, violent crime in the United States did increase slightly between 2004 and 2005. Although it is too soon to tell if this small increase is indicative of a future trend, it does raise a red flag that federal, state, and local governments and communities need to continue to focus on preventing juvenile delinquency and crime (Butts and Snyder, 2006).

In addition, many persistent problems remain. Juvenile arrests still disproportionately involve minorities (Snyder, 2006). The majority of youth who formally enter the juvenile justice system exhibit mental health and substance abuse disorders, yet jurisdictions often lack the funding, assessment, and treatment programs needed to adequately address these disorders. Inadequate and/or improper detention facilities plague many jurisdictions, and there is a great need for research and information about effective alternatives to detention. The increase in female juvenile offending is also of concern. According to the most recent *Juvenile Arrests Bulletin*, between 1980 and 2004 juvenile arrest rates for simple assault increased more than twice as much for females as for males—106 percent for males and 290 percent for females (Snyder, 2006). Although male

offenders continue to dominate the juvenile custody population, the number of female offenders in custody increased 52 percent from 1991 to 2003. The number of female delinquents rose 96 percent and the number of female status offenders dropped 38 percent (Snyder and Sickmund, 2006).

FACJJ believes that the juvenile justice system should provide rehabilitation, public safety, and accountability in a balanced and restorative manner to each child (defined as a person under the age of 18) who comes into contact with it. The JJDP Act helps states accomplish these ends by requiring them to deinstitutionalize status offenders (DSO), separate juveniles from adults in secure institutions, refrain from detaining or confining juveniles in adult jails and lockups (hereinafter *jail removal*), and address the disproportionate number of minority youth who come into contact with the juvenile justice system.

FACJJ urges Congress to promptly reauthorize the JJDP Act and the President to use the power of his office to ensure that reauthorization. At the same time, FACJJ encourages Congress to engage in thoughtful deliberations instead of enacting legislation based on reaction to the relatively small number of violent juvenile crimes often sensationalized by the media. A reauthorized Act should be based on the real-life needs of juveniles and on research and evaluation findings.

The Act must continue to reflect the basic core protections of the juvenile justice system: protecting public safety, ensuring offender accountability, and offering treatment to meet the needs of both youth in the system and those at risk of entering the system.

Additionally, FACJJ strongly encourages Congress to eliminate all earmarks from juvenile justice programs. If congressional earmarks continue, they should be funded in addition to OJJDP's annual baseline appropriation and go only to those programs that have been proven effective. (FACJJ is just one of many groups concerned about earmarking.)

As part of the reauthorization, FACJJ strongly recommends that Congress amend the JJDP Act to require that federal government agencies, in conjunction with the OJJDP Administrator, develop and implement programs that comply with the four core requirements of the JJDP Act: DSO, separation, jail removal, and DMC.

Many federal agencies that have jurisdiction over youth are not required to (and thus often do not) abide by these requirements. The Bureau of Indian Affairs, U.S. Park Police, U.S. Immigration and Customs Enforcement, Federal Bureau of Prisons, federal military prisons, and other federal agencies do not always provide the youth they detain with the basic protections outlined in the JJDP Act.

FACJJ has made this recommendation in its previous three reports and will continue to bring the issue to the attention of the President and Congress until appropriate action is taken. FACJJ offered examples of the egregious treatment of detained American Indian/Alaska Native and undocumented immigrant youth in its 2006 report to the President and Congress. With the growing methamphetamine problem in Indian Country and stronger enforcement of immigration laws, FACJJ continues to be concerned about the needs and safety of youth in custody of federal agencies, and reiterates its recommendation that federal agencies should be required to abide by the JJDP Act.

2. **FACJJ recommends that the President and Congress restore the following language to Section 261(e) of the JJDP Act regarding special needs and problems of juvenile justice in certain areas: "Not less than 5 percent of the funds available for grants and contracts under this Section shall be available for grants and contracts designed to address the special needs and problems of juvenile delinquency in the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands."**

This language was included in the 1997 JJDP appropriations but was deleted from the JJDP Act of 2002, and it represents a loss of between $90,000 and $100,000 in grant funds for these four island jurisdictions. The original provision provided additional funds to help the territories address juvenile delinquency issues unique to the islands and to supplement their limited juvenile delinquency budgets. The loss of this funding over the past 5 years has been devastating. FACJJ urges Congress to restore the funds.

3. **FACJJ recommends that Congress amend the statement of findings in the 2002 reauthorized JJDP Act (42 U.S.C. § 5601 et seq.) to reflect the core values FACJJ has adopted as guiding principles of juvenile justice. FACJJ further recommends that reauthorization also focus on strengthening the existing four core requirements of the JJDP Act (Section 223a[11], [12], [13], and [22]).**

From its inception, the JJDP Act has been based on congressional findings that focus on arrest data from 1974, infrastructure problems of the juvenile justice system, the need for technical expertise, innovation in alternative and rehabilitative programming, and the enormous financial and social costs of delinquency that required immediate and comprehensive action by the federal government to reduce and prevent delinquency.

Four core requirements in the Act advance age-appropriate juvenile justice principles as prerequisites to federal funding (42 U.S.C. § 5633[d]). These core requirements are: (1) deinstitutionalization of status offenders (42 U.S.C. § 5633[a][11]); (2) separation between juveniles and adults in detention facilities (42 U.S.C. § 5633[a][12]); (3) separation between juveniles and adults in jails and lockup facilities (42 U.S.C. § 5633[a][13]); and (4) prevention and system improvement efforts designed to reduce disproportionate minority contact with the juvenile justice system (42 U.S.C. § 5633[a][22]).

Significant improvements have been realized since the original enactment more than a quarter of a century ago. Similarly, the level of expertise in the practice and administration of juvenile justice has improved, resulting in a more comprehensive understanding and refinement of the rehabilitative, treatment, and safety needs that can be supported only through reauthorization of the JJDP Act.

In January 2006, the FACJJ adopted a statement of core values for juvenile justice that reflects the wealth of knowledge and experience gained through implementation of the JJDP Act. These core values recognize that children and adolescents are developmentally different from adults and from one another at different stages of development. Further evidence confirms that children and youth are especially amenable to treatment and rehabilitation. Therefore, the FACJJ believes that each child (defined as a person under the age of 18) who comes into contact with the justice system is entitled to:

- Services provided by culturally competent, appropriately trained professionals committed to the treatment and rehabilitation of children and competitively compensated for the services they provide.
- A full continuum of culturally appropriate integrated services from prevention through secure confinement and reentry and aftercare, provided in the least restrictive environment.
- Services based on an objective assessment of risk and protective factors that are equally accessible across all classes, cultures, jurisdictions, and linguistic and ethnic groups and are individualized, gender specific, and developmentally appropriate.
- A system that provides a safe place to live, sustained subsistence, emotional and spiritual nurturing, relevant and appropriate educational opportunities, and appropriate and adequate healthcare, including substance abuse and mental health treatment.

- A juvenile justice system that provides rehabilitation, public safety, and accountability in a balanced and restorative manner.
- Early zealous and effective legal representation, including an assessment of competence and a timely and just legal process.
- A system in which individuals and entities work in a collaborative manner.
- A system in which no child is subject to disproportionate contact, involvement, or outcome based on race, class, disability, culture, ethnicity, or gender.
- The support of a functional family (including extended family) and services provided with collaborative involvement of the child's biological and/or perceived family.
- Separation from adults in institutional settings.

These core values reflect and strengthen the core requirements of the JJDP Act and will provide a strong foundation as Congress proceeds with reauthorization. FACJJ recommends that Congress adopt and use these core values to help guide its decisions when reauthorizing the JJDP Act.

4. **FACJJ urges that the reauthorization of the JJDP Act continue to specifically spell out the important role State Advisory Groups play in implementing a state's formula grants and to further direct OJJDP to provide technical and financial support to an independent, nationally representative, nonprofit organization representing SAG members so that the SAGs can meet the statutory obligations as defined in the JJDP Act.**

As noted in chapter 1, the JJDP Act requires states participating in OJJDP's Formula Grants Program to appoint a SAG made up of representatives from a broad spectrum of law enforcement, juvenile justice, and public agencies; representatives from nonprofit organizations; volunteers who work with delinquents or potential delinquents; and others.

The partnership between the federal government (OJJDP) and states and communities (SAGs) is a unique model that has worked well. The SAGs have historically played an important juvenile justice role in their states.

The leadership and advocacy provided by the SAGs are responsible for much of the progress in meeting the core protections mandated by Congress and for improving the overall levels of public safety and juvenile justice system functioning at state levels. It was the SAGs that first became organized regarding the issue of overrepresentation of minority youth at many stages of the juvenile justice process and brought this issue to the attention of Congress, resulting in a core protection (added in 1992) designed to improve outcomes for minority children in the juvenile justice system.

The current Act requires OJJDP to provide technical and financial assistance to a national organization composed of members of the SAGs. Having such a group offers SAG members opportunities to hear about programs that are working in other communities and to keep current about emerging trends, issues, and research. A national nonpartisan and fully representative group composed of SAG members also provides a mechanism for new members to learn from experienced members, thus keeping them from having to reinvent the wheel and often saving tax dollars.

Congress, recognizing the critical state perspective the SAGs bring to the national juvenile justice picture, has supported the role of the SAGs in every reauthorization since the JJDP Act was first passed. For example:

- The 1980 amendments to the JJDP Act acknowledged the value of citizen input to the legislative process and required the SAGs to make at least annual recommendations regarding juvenile justice to their governors and legislators.
- The Juvenile Justice Runaway Youth and Missing Children's Act amendments of 1984 required the OJJDP Administrator to provide,

at least every other year, a conference to advise the Congress and the President with regard to state perspectives on the operation of the Act and OJJDP.

- Concerned that the provisions inserted in 1984 were insufficient to enable the SAGs to meet their statutory responsibilities, Congress added a new amendment in 1988. Noting the important work of providing state perspectives on juvenile justice issues, Congress directed OJJDP to provide assistance, including sufficient funding, to an organization representing the SAGs so that they could accomplish all activities required under Section 241 of the Act. These activities include conducting an annual conference of SAG members; disseminating information, data, standards, advanced techniques, and program models; reviewing federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions or aspects of the work of OJJDP; and advising the President and Congress regarding state perspectives on the operation of the Office and federal legislation pertaining to juvenile justice and delinquency prevention.

OJJDP and a national organization representing SAG members have engaged in a national cooperative partnership since 1988. Although it has had its challenges over the years, in the final analysis the partnership has worked, providing outstanding training, state-to-state communications, and a central governance body for state representatives concerned about juvenile justice and federal funding. But in recent years, the relationship between OJJDP and the national organization has become strained at times. FACJJ urges Congress to help OJJDP and the SAGs (as represented by their national, nonprofit, nonpartisan organization), to work through their differences and reaffirm their partnership. Never has juvenile justice been so successful across the country as when this partnership was strong, respectful, and collaborative. An optimal OJJDP/SAG partnership will involve political and philosophical "give and take" from the SAGs and from OJJDP. But the end result—an improved juvenile justice system—will be worth the effort, as documented in prior years when such a partnership produced the successful, progressive results envisioned by Congress.

Disproportionate Minority Contact

5. **FACJJ recommends that Congress offer concrete incentives to states that make an effort to move beyond collecting data about disproportionate minority contact and begin implementing action steps that proactively address the DMC issue.**

The 1988 amendments to the JJDP Act required states participating in OJJDP's Formula Grants Program to make efforts to reduce the disproportionate number of minority youth confined in secure facilities. In 1992, Congress elevated this issue to a core requirement of the Act, meaning that states failing to demonstrate efforts to reduce the overrepresentation of minority youth in confinement would risk losing 25 percent of their annual Formula Grant allocation. When the Act was reauthorized in 2002, Congress went a step further and broadened the concept to encompass minority youth who come into contact with the juvenile justice system at any point. In other words, states are now required to examine whether minority youth are unfairly represented at each point of contact throughout the juvenile justice system. Although much is happening across the nation as states work to understand DMC more thoroughly, frustration is growing because many states have not moved further than discussing the DMC issue.

Potential strategies for addressing DMC are being discovered. Efforts such as the Burns Institute assessment of the status of local jurisdictions in regard to DMC and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative

(JDAI) are providing practitioners with insight on how to initiate steps to address DMC. In addition, 46 states have designated DMC coordinators who facilitate their states' efforts to address DMC.

FACJJ recommends that Congress encourage states to take the following action steps toward addressing DMC:

- **Designate a full-time staff person to be a state DMC coordinator.** This staff person coordinates all efforts statewide in addressing DMC issues. The coordinator can help collect or enhance data needed to understand the issue, providing training and technical assistance at the local level, informing practitioners and policymakers about DMC issues, and facilitating the processes necessary to move toward action steps and systemic change to proactively address DMC.

- **Assess the status of DMC in local jurisdictions throughout the state.** Many local jurisdictions have found that conducting a comprehensive assessment of the DMC issue is an excellent first step. It can help define the problem, identify critical points in the system contributing to DMC, and provide the data needed to begin to craft a strategy to address the issue.

- **Consider a juvenile detention system that securely detains juveniles only when they are a threat to public safety or a flight risk.** Jurisdictions implementing this philosophy through the Casey Foundation's JDAI have significantly reduced the number of juveniles in secure detention facilities. These jurisdictions use a risk assessment tool to determine the threat to public safety and/or risk of flight and to determine whether a juvenile offender should be securely detained. A valid and reliable risk assessment tool can mitigate bias in the decisionmaking process and thus help minimize DMC. The concept of tracking and responding to data in a timely fashion should help jurisdictions develop and maintain a reasonable detention system, a system that ensures public safety by determining which youth should go into secure detention and which would be better served by receiving appropriate community-based services.

- **Provide training on the issue of DMC for juvenile justice practitioners.** Training should include curriculums for police, courts, probation, and schools regarding best practices in dealing with DMC issues, cultural competence, and alternatives to secure detention. A growing body of information suggests the key entry points for juveniles entering secure detention are police, courts, probation, and schools. One effort, in a multifaceted approach to addressing DMC, is training practitioners at these entry points to operate within the best practices for addressing DMC.

6. **FACJJ recommends that Congress appropriate additional dollars to states through JJDP Act block grants so that they can implement action steps in addressing DMC.**

As states and local jurisdictions implement the practice of detaining only those juveniles who pose a threat to public safety or risk of flight, community-based alternatives must be developed to provide programs and accountability for juveniles not detained. Jurisdictions are finding that they can enjoy cost savings as they reduce their detention facility population. Those savings can fund community-based alternatives for juveniles not detained. However, there often is a lag time between the reduction in the detention population and the accumulation of real dollars spent on community-based alternatives. The federal government should fill a vital role by funding more community-based alternatives to secure detention. This would be an excellent use of federal funds while local jurisdictions develop plans to continue these programs after the federal funding ends. Congress should lead this effort by providing the funds to create more community-based alternatives to detention.

7. **FACJJ recommends that Congress increase the appropriations to the states to include additional funds above the formula grant amounts under Title II to support a full-time DMC coordinator for each state.**

As noted under Recommendation 5, FACJJ believes that every state should designate a full-time staff person to serve as the state DMC coordinator. FACJJ acknowledges the cost of implementing this recommendation and asks Congress to provide the funding support states need to carry out this suggested mandate.

8. **FACJJ recommends that Congress direct the OJJDP Administrator to develop a comprehensive training curriculum on best practices for addressing DMC for police, court, probation, and school personnel. In addition, Congress should direct OJJDP to fund a pilot project that would require cross-agency collaboration among state and local agencies addressing DMC in order to glean best practices.**

As noted earlier, police, courts, probation, and schools are the key entry points for juveniles entering secure detention. Minority youth are overrepresented in the detention population at each point of entry. FACJJ believes that all states should provide training to police, court, probation, and school professionals on best practices that reduce DMC. As the federal agency responsible for addressing juvenile delinquency and improving juvenile justice practices, OJJDP is in an excellent position to develop and deliver this training on a national level.

Detention Reform

9. **FACJJ recommends that the President and Congress amend the JJDP Act by inserting language that encourages states to reduce the number of children unnecessarily or inappropriately placed in secure pretrial detention. The new language should encourage states to enact legislation that requires basing secure pretrial detention on the criteria of public safety and risk of flight from the court's jurisdiction, set and adhere to guidelines for expedited case processing, and encourage states (through education and funding) to develop and use appropriate alternatives to secure pretrial detention for juveniles who pose no immediate risk to public safety or risk of flight.**

Secure pretrial detention is appropriate for juveniles who present either a public safety danger to the community or a risk of flight from the court. However, an alarmingly high number of juveniles accused of crimes are detained in secure detention centers before trial although they have been charged with nonviolent, relatively minor offenses and pose no risk of flight. Many of these youth are juveniles who have untreated drug abuse and/or mental health problems or are minority youth. Secure pretrial detention in these cases is both costly and detrimental to the youth. Juveniles placed in alternative pretrial programs benefit from better mental health assessments and treatment, and stronger connections with family, school, and religious and community supports.

FACJJ recognizes that secure pretrial detention is appropriate for some youths, but states should take steps to ensure that secure detention is used only when necessary and that an appropriate risk assessment instrument is used to determine that need. (A risk assessment instrument is an objective, point-based tool used to assess a youth's risk of reoffending and/or failing to appear for hearings.)

Further, when youth are detained or placed under other court-ordered conditions, state and local jurisdictions should take steps to expedite case processing for at least three reasons:

- To ensure that a juvenile's ultimate disposition is conducted as close in time to the alleged delinquent act as is reasonably feasible.

- To reduce unnecessary stays in detention.
- To make efficient use of detention beds and detention alternative slots.

JJDP Act Amendments

10. FACJJ recommends that Congress amend the JJDP Act to strongly encourage courts to use alternatives to secure detention when sanctioning a status offender for a violation of a valid court order.

FACJJ suggests that the JJDP Act be amended to provide that status offenders (juveniles accused or adjudicated of an offense that would not be illegal if committed by an adult) who violate a valid court order be confined in secure detention facilities only after other, less restrictive alternatives have been exhausted. FACJJ also suggests that a juvenile placed in secure detention for violating a court order should be confined only for brief periods of time, not to exceed 48 hours if possible.

FACJJ acknowledges that some juveniles held under either a pretrial or dispositional order of the juvenile court run away, associate with individuals who put them at risk, or are truant from school. In such cases, judges have to weigh many factors and make difficult decisions. In addition to maintaining the dignity of the court, judges must also ensure a juvenile's safety. Juveniles who run often are vulnerable to exploitation. Many are females running away from either an abusive home or an abusive system. Youth who do not attend school put themselves at greater risk of failure.

Although secure detention is sometimes necessary for a juvenile's protection, its main purpose—to hold only those juveniles who are a danger to the community or at risk of flight—is often ignored. In many cases, secure detention has become an easy place to "park" bothersome and troubled young people, both before trial and for violations of valid court orders. In reality, many of these juveniles would benefit more from alternative programs designed to prevent further illegal actions.

Confining young nonviolent offenders in jails with more hardened offenders can provide a training opportunity in criminal methods for some juveniles and create a physical or emotional threat for others. Studies have shown that the use of secure detention also increases long-range recidivism rates (Coalition for Juvenile Justice, 2003).

Juvenile courts in many communities, including those in California, Illinois, New Mexico, North Dakota, and Texas, have found that placing nonviolent juveniles in appropriate alternatives to secure detention helps both young people and their communities (Coalition for Juvenile Justice, 2003). Furthermore, using secure detention to hold only those juveniles who present a danger to their communities saves tax dollars and redirects resources toward more cost-effective home- and community-based alternatives to confinement, as secure detention is much more expensive than alternatives such as electronic monitoring and home detention.

The National Council of Juvenile and Family Court Judges has identified 16 key principles to guide courts toward achieving excellence. Principle 6 states: "Juvenile delinquency court judges should ensure their systems divert cases to alternative systems whenever possible and appropriate" (National Council of Juvenile and Family Court Judges, 2005).

FACJJ urges juvenile court judges to keep this principle in mind and to "think outside the box" when considering sanctions for juveniles who violate valid court orders. Doing so will help preserve the integrity of the court process, reduce recidivism, and save tax dollars.

11. FACJJ recommends that the President and Congress insert language into the JJDP Act that encourages states to redefine, in their statutes, an act of prostitution by a child as an act of child exploitation rather than a delinquent or criminal act. This would allow

a child prostitute to be treated as an exploited, neglected, or abused child or as a child in need of services.

Juveniles involved in prostitution tend to be the most vulnerable of youth. Many have histories of victimization, trauma, abuse, and neglect. Many have experienced homelessness and other forms of abandonment. Many become involved in prostitution to meet basic needs when social service providers and/or other responsible adults have failed to provide. Holding such children accountable for sexual actions with adults only serves to further exploit their vulnerabilities and perpetuate the failure of responsible adults to provide appropriate services. In many instances, the crime of prostitution, as applied to juveniles, purports to hold juveniles accountable for conduct to which they are legally unable to consent. Redefining child prostitution as an act of child exploitation allows states to mobilize resources to provide appropriate services to these children and to shift law enforcement resources to apprehension and prosecution of adult exploiters.

12. **FACJJ recommends that Congress revise the JJDP Act regarding the number of youth required to be appointed to each SAG. The Act currently requires that one-fifth of each SAG's members be under the age of 24 at the time of their appointment; FACJJ recommends that one-fifth be changed to one-eighth.**

Over the years, youth membership in SAG planning has proven invaluable and essential. Nonetheless, ongoing logistical challenges often confront SAGs attempting to meet at a time convenient for youth and young adult members to attend. SAGs generally convene regularly and in centralized locations, creating travel, scheduling, and out-of-school or out-of-work time issues. Even when meeting times and dates are adjusted to nights and/or weekends, youth and young adult members often have an array of commitments or obligations that prevent them from regularly attending SAG meetings.

Based on experiences reported by SAGs, FACJJ believes that relevant youth advice and recommendations can be obtained through methods other than representation on the SAG. For this reason, FACJJ recommends that the Act require each SAG's State Plan to include a method and schedule for gathering information and opinions from youth members about their experiences, resources, and challenges involving the juvenile justice system. At a minimum, SAGs should be required to collect data from youth and young adults involved at various decision points in the juvenile justice system through surveys, focus groups, site visits, or other comparable methods to ensure that juvenile justice service recipients are appropriately represented in the planning process.

Given the array of modern technology and data collection tools available, FACJJ believes that youthful voices can be heard without their regularly attending meetings. SAGs can, either through their own staff and administrative resources or via collaboration with other agencies, develop outreach and data collection tools and methods to ensure that youth are solicited for their experiences and recommendations. SAGs should at a minimum expend resources to see that information-gathering meetings are held in state juvenile justice institutions, detention centers, and court and/or community programs to gain access to juvenile justice youth and their families. Documentation of methods used, results gained, and resources allocated toward these ends should be included in SAG plans and annual updates.

FACJJ also recommends that youth members be allowed to serve in that capacity only until they reach the age of 30.

Legal Counsel

13. **FACJJ recommends that the President and Congress insert language into the Act that requires the provision of competent, effective, and zealous representation for both juveniles**

and the state (i.e., prosecutors) in juvenile proceedings; requires these attorneys to receive specialized training in child and adolescent development and in juvenile law and related matters and procedures; and requires states to adopt juvenile defense caseload and practice standards.

Representing juveniles in delinquency proceedings is a complex specialty in the law, and it is different from—but equally as important as—the legal representation of adults. Children and adolescents are at a crucial stage of development, and skilled juvenile defense advocacy can positively impact the course of children's lives through holistic and zealous representation. Youth in juvenile delinquency court should be represented by well-trained attorneys with cultural understanding and manageable caseloads (National Council of Juvenile and Family Court Judges, 2005).

Legal advocacy in juvenile delinquency proceedings is a specialty that requires ongoing training in unique areas of the law (National Legal Aid and Defender Association, 1997). In addition to understanding the juvenile court process and systems, juvenile defense attorneys and prosecutors should be competent in juvenile law, the collateral consequences of adjudication and conviction, potential immigration consequences, and other disciplines that uniquely impact juvenile cases, particularly child and adolescent development; competency and capacity; substance abuse; immigration; mental health, physical health, and treatment; sex offending; special education; transfer to adult court and waiver hearings; and zero-tolerance, school suspension, and expulsion policies.

To be effective, juvenile defense attorneys should receive comprehensive training on topics including (but not limited to) detention advocacy, litigation and trial skills, dispositional planning, post-dispositional practice, educational rights, appellate advocacy, and administrative hearing representation (American Bar Association, 2002). Standards for juvenile defense caseloads established by the National Advisory Commission on Criminal Justice Standards and Goals should be adopted to ensure that juvenile defense attorneys are providing effective representation. A growing number of jurisdictions have adopted standards of practice to govern representation by counsel in juvenile matters, and such standards should be adopted in every state to assist in improving the quality of representation.

14. **FACJJ recommends that the President and Congress insert language into the Act requiring that accused children in court proceedings may not waive their constitutional right to counsel unless they first consult with an attorney, and that if they do waive their right to counsel, a full inquiry and finding be made by the court regarding the child's comprehension of that right and his or her capacity to make the choice knowingly and intelligently.**

Youth who are not old enough to vote, drink, buy cigarettes, or sign a binding contract routinely may waive their constitutional right to counsel when facing prosecution. Accused juveniles commonly appear in court without any representation (American Bar Association, 2003). Juveniles obviously lack the knowledge and decisionmaking capabilities of adults; they simply do not have the legal knowledge to understand the consequences of waiving their constitutional right to counsel. One study showed that nearly 80 percent of juveniles do not fully understand the concepts entailed within the Miranda rights, particularly the right to consult with an attorney (Grisso and Pomicter, 1977).

A national study observed that juveniles who lack legal assistance tend to enter admissions of guilt without offering any defense or mitigating evidence (American Bar Association, 1995). Judges are more likely, therefore, to regard these youth as in need of detention or incarceration (Texas Appleseed, 2000). Studies show that youth placed in detention and corrections are more vulnerable to assault, suicide, and sexual abuse, and are more likely to commit further crimes after their release (Coalition for Juvenile Justice, 2003).

States can protect the right to counsel by prohibiting waiver of counsel for juveniles or, alternatively, by mandating that juveniles consult with an attorney before waiving counsel. The Institute of Judicial Administration and the American Bar Association's *Juvenile Justice Standards* hold that: "A juvenile's right to counsel may not be waived" (Institute for Judicial Administration/American Bar Association, 1979).

Ten states do prohibit juveniles from waiving their right to counsel, although states apply this rule differently depending on juveniles' ages. Fifteen states offer lesser protection of juveniles' right to counsel by creating specific requirements for waiver (American Civil Liberties Union, Children's Law Center, and Office of the Ohio State Public Defender, 2006)

States should be required to meet national professional standards for the protection of children's right to counsel and should be held to a standard that:

- Prevents juveniles from waiving counsel without prior consultation with an attorney.
- Requires that if the right to counsel is waived, a full inquiry and finding be made by the court regarding the juvenile's comprehension of that right and his or her capacity to make the choice knowingly and intelligently.
- Mandates that all waivers of right to counsel be submitted in writing and in open court.
- Mandates that the offer of counsel be renewed at each subsequent stage of court proceedings at which the juvenile appears without counsel (American Bar Association, 2001).

Sex Offender Registry

15. FACJJ recommends that sex offender registration and public notification laws allow for judicial discretion when applied to juveniles, and that states exclude juveniles from mandatory registration and public notification laws.

An increasing number of states require certain adjudicated juveniles to register as sex offenders. Although it is clearly important for states to establish registration requirements for sex offenders to ensure public safety, FACJJ recognizes that children are different from adults and should be treated differently with respect to registering as sex offenders. Public safety concerns that have led to registration and notification laws should be balanced with the traditional goals of rehabilitation of juveniles while holding them accountable for their behavior.

In July 2006, the Sex Offender Registration and Notification Act (SORNA) was signed into law. Often referred to as the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248), the Act creates a national sex offender registry to be available on the Internet. Concerned about the effect this law will have on juvenile sex offenders, FACJJ passed a resolution during its spring meeting on April 23, 2007. The resolution (see appendix) asked that:

- The U.S. Attorney General not apply the Act retroactively to juveniles adjudicated delinquent of qualifying offenses occurring prior to the passage of the Act.
- All regulations applying to juveniles be drawn narrowly with respect to types of juvenile offenses to be included within the registry, targeting only the most violent offenses.
- The U.S. Department of Justice (DOJ) analyze the Act and promulgate regulations that ensure that the Act is implemented in light of the goals of the JJDP Act.
- A copy of the FACJJ resolution be forwarded to DOJ's Office of Legal Policy.

DOJ published proposed guidelines to SORNA in the *Federal Register* on May 30, 2007. Comments are due by August 1, 2007. These guidelines do not

address the concerns expressed in the FACJJ resolution and FACJJ strongly urges DOJ to take these concerns into consideration when finalizing the guidelines.

FACJJ is concerned that recent attempts to increase accountability and to deter criminal acts by adults have been applied to juveniles without regard to the fundamental differences between juveniles and adults that have been recognized by the U.S. Supreme Court over the years, most recently in *Roper* v. *Simmons*, 543 U.S. 551 (2005). Mandatory registration laws that apply to all sex offenders do not take into account critical differences between juvenile and adult sex offenders. These laws establish a blanket approach for all ages for a category of crime that includes a wide range of forbidden behaviors. Such application fails to acknowledge research that demonstrates clear differences between adults and juveniles who engage in such behaviors.

Mandatory registration laws do not allow for judicial discretion. Such laws will result in the unnecessary stigmatizing of many juvenile offenders for the rest of their lives. Registration for life will make it difficult for these juveniles to obtain gainful employment, secure stable housing on reaching adulthood, and otherwise have access to opportunities to live productive lives.

Mandatory registration laws at the national level that automatically incorporate state sex offender rolls may result in inequitable treatment of juveniles, as states will have varying requirements for registration. The impact of mandatory registration is especially difficult for families in cases involving sibling abuse where one child must register and one child has been victimized.

Key Differences

Many state registration laws do not differentiate between adult and juvenile sex offenders, even though research shows that juvenile offenders are different from adult offenders and, in many cases, do not present the same risks as adults who commit sex crimes. Research (National Center on Sexual Behavior of Youth, 2003) shows that:

- Youthful sex offenders are largely motivated by curiosity and opportunity, not by deviant sexual attraction as are adult offenders.
- Juvenile sex offenders are less likely to reoffend than adults, especially if they receive appropriate treatment.
- Juvenile sex offenders are more responsive to treatment than adult sex offenders because juveniles are better able to learn effective interpersonal and social skills, and because juvenile behavior is not yet fully integrated into more permanent adult patterns.
- Most adolescents who engage in illegal sexual behavior are not sexual predators and they do not meet the accepted criteria for pedophilia.

State Variations

All 50 states have some form of sex offender registry and public notification laws, often referred to as "Megan's Laws," but these laws vary from state to state in how they pertain to juveniles. Some state laws do not expressly include juveniles, and some include only those who have been convicted as adults. Some states require juvenile sex offenders to register for life, some for a certain number of years, and some allow for termination of the registration duty on a clear showing that the juvenile has not reoffended and that registration is no longer necessary to protect the public. Some states make a jury trial a condition precedent to juvenile registration, some allow the juvenile court the discretion of waiving the registration requirement, and some states have enacted "Romeo and Juliet" laws exempting teens who engage in consensual sex. Several states require a hearing process by which juveniles are registered on public lists.

Negative Effects

Mandatory sex offender registry laws remove important discretion from judges and prosecutors. Juvenile court judges and prosecutors are more informed and better equipped than legislators to evaluate the circumstances of juvenile offenders on an individual case basis and determine the need for registration.

Juveniles faced with possible mandatory registration as sex offenders for life or for an extended time are more likely to take their cases to trial, requiring more victims to testify. Mandatory registration requirements also can have the effect of eliminating plea negotiations and forcing prosecutors to try cases based on weak evidence or with witnesses who do not want to testify. In such cases, the prosecutor may have no option but to dismiss charges or risk an acquittal.

Judicial Discretion

FACJJ recommends that states that do not exclude juveniles from sex offender registration laws should give judges the discretion to determine at sentencing whether a juvenile adjudicated/convicted of a sex offense should be required to register and, if so, the duration of the registration and any conditions of registration. Such determination should be made on a case-by-case basis, taking into account the specific facts and circumstances of the case and the juvenile, and should be based upon a judicial finding that the juvenile poses a serious risk to the community or is likely to commit another sex offense.

Treatment and Rehabilitation

With research showing lower rates of recidivism for juvenile sex offenders who receive appropriate treatment, it is imperative to acknowledge treatment as an effective and powerful tool in protecting the community. States should be required to develop guidelines and standards for a system of programs for treatment and monitoring juvenile sex offenders.

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Appendix: Federal Advisory Committee on Juvenile Justice Resolution Concerning Comment on Proposed Regulations Implementing the Sex Offender Registration and Notification Act

WHEREAS, the Federal Advisory Committee on Juvenile Justice (FACJJ) acknowledges the impact of sexual abuse on victims and the need to protect the public from sexual predators; and

WHEREAS, Section 111(8) of the Sex Offender Reporting and Notification Act (the "Act") makes the provisions of the Act applicable to juveniles adjudicated delinquent where the juvenile offender is 14 years or older at the time of the offense and the adjudicated offense is comparable to "aggravated sexual abuse" as described in 18 U.S.C. § 2241; and

WHEREAS, the U.S. Department of Justice has described broadly the term "aggravated sexual abuse" as encompassing forcible rape or its equivalent, and offenses involving sexual acts with victims below the age of 12; and

WHEREAS, most adjudications of delinquency result from entry of a plea in which national registration as a sex offender was not a consideration prior to passage of the Act; and

WHEREAS, most plea agreements in delinquency cases are focused on rehabilitation and not retribution; and

WHEREAS, research has established that juvenile offenders are more amenable to treatment and less likely than adults to reoffend; and

WHEREAS, retroactive application of the Act to qualifying juvenile adjudications will have consequences not considered during the adjudicative process or intended in passage of the Act as applied to juveniles; and

WHEREAS, implementation of the Act to adjudications prior to passage of the Act will be unduly burdensome to the States and, in certain cases, may be impossible for States to implement; and

WHEREAS, Section 113(d) of the Act grants the Attorney General authority to specify the applicability of the requirements of the Act to sex offenders convicted before the enactment of the Act or its implementation in a particular jurisdiction;

NOW THEREFORE, BE IT RESOLVED THAT THE FACJJ recommends that the Administrator of the Office of Juvenile Justice and Delinquency Prevention respond on or before April 30, 2007, to the proposed regulations in accordance with the following:

1. That the Attorney General not apply the Act retroactively to juveniles adjudicated delinquent of qualifying offenses occurring prior to the passage of the Act;
2. That all regulations applying to juveniles be drawn narrowly with respect to types of juvenile offenses to be included within the Registry, targeting only the most violent offenses;
3. That the U.S. Department of Justice analyze the Act and promulgate regulations that ensure that the Act is implemented in light of the goals of the Juvenile Justice and Delinquency Prevention Act; and
4. That a copy of this resolution be forwarded to the Office of Legal Policy, U.S. Department of Justice.

THIS 23RD DAY OF APRIL 2007.

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