



Federal Advisory Committee on Juvenile Justice

ANNUAL REPORT 2004



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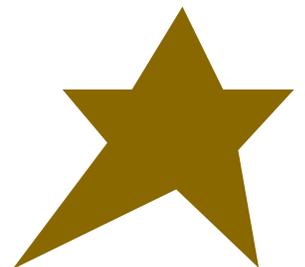


Federal Advisory Committee on Juvenile Justice

ANNUAL REPORT 2004

Recommendations Report
to the President and
the Congress of the
United States

January 2005





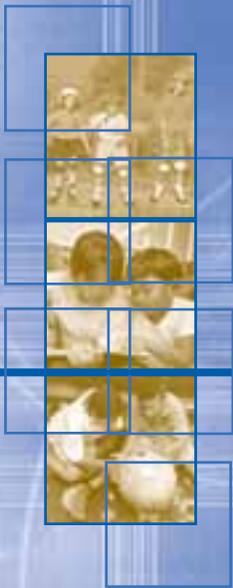
Acknowledgments

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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:

I am pleased, on behalf of the Federal Advisory Committee on Juvenile Justice (FACJJ), to present the *Federal Advisory Committee on Juvenile Justice Annual Recommendations Report to the President and the Congress of the United States*. As charged by the Juvenile Justice and Delinquency Prevention Act of 2002, this report (and a separate report to the OJJDP Administrator) addresses some of the critical juvenile justice issues facing our country today and makes concrete recommendations on ways to address them.

The concerns highlighted in this report were derived from a questionnaire sent to states and territories and reflect national as well as individual state and regional concerns about juvenile delinquency and crime. Although the wide-ranging responses to the questionnaire made it

clear that states and territories experience different problems, the issues discussed here represent the most serious juvenile justice problems facing the nation today.

Although encouraged by a declining juvenile crime rate and numerous juvenile justice reforms, we remain troubled by the number of critical juvenile justice issues policymakers and practitioners continue to face everyday. We believe the recommendations in this report can help effectively address these issues. The recommendations have been thoroughly studied, discussed, and debated by FACJJ members and have been approved by the FACJJ membership.

On behalf of FACJJ, I urge you to carefully consider our recommendations to policymakers, practitioners, and the American public in the spirit in which they were submitted—to better the lives of the children we all serve by improving the juvenile justice system.

David R. Schmidt
2004 FACJJ Chair



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Executive Summary

The nation's efforts to prevent and address juvenile delinquency, many of them spawned by the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, are paying off. The latest crime statistics show a continuing drop in the number of juveniles arrested for violent crimes: for example, the juvenile arrest rate for murder declined 72 percent between 1993 and 2002.

Although juvenile crime rates have declined in recent years, the focus on delinquency prevention has also waned. However, this is not the time to cut back on efforts to prevent juvenile crime; rather, it is the time to maintain focus on prevention and make it a national priority.

Prevention programs work. They cost less than high-end intervention efforts, protect the public, and help improve young people's lives. Moreover, serious juvenile justice problems remain and new ones continue to emerge. For example, the number of minority youth in all stages of the juvenile justice system remains disproportionate and troubling. The number of juvenile female offenders has increased significantly,

but there is a lack of gender-specific programming to deal with them. Likewise, many youth in the juvenile justice system suffer from both mental health and substance abuse disorders, and the services available to treat them are seriously inadequate.

Many jurisdictions transfer and waive juveniles to adult court for certain offenses, and limited emerging research about this practice is raising concerns. Child abuse is also a critical issue, one with serious implications for the juvenile justice system because the victims of abuse and neglect often end up in the system as delinquents or serious offenders. Youth gangs appear to again be on the increase in some communities; the reappearance of these gangs demands prevention and intervention responses.

Despite these problems, funding for delinquency prevention programs continues to shrink. Federal budget cuts and congressional earmarks are impacting the number of programs that can be funded at all levels of government. State and local jurisdictions are finding they need to get the most for their money by replicating programs that

have been proven to work and by funding innovative new programs that can help prevent delinquency.

It is important not to lose the ground gained over the past several decades in developing prevention programs that keep youth from even once making contact with the juvenile justice system. The President and Congress must lead the nation in making delinquency prevention a priority once again.

FACJJ Recommendations

The Federal Advisory Committee on Juvenile Justice (FACJJ) recommends that the President and Congress:

1. Fund the Formula Grants program in fiscal year (FY) 2005 and beyond at the FY 2002 level of \$89 million. This level of funding will provide the resources necessary for the states to continue their efforts to comply with the four core requirements of the JJDP Act [Section 223(a)(11), (12), (13), (22)] and to support state and local delinquency prevention and intervention efforts to improve the juvenile justice system.
2. Reinstate the accountability-based sanctions supplement to the Formula Grants program allocation in FY 2005 and in all future appropriations, funding the supplement at \$26 million (the same amount allocated in FY 2002 and FY 2003). The supplement was not included in the FY 2004 Formula Grants appropriation.
3. Amend the JJDP Act of 2002 to impose the financial penalty a state receives for failing to comply with the four core requirements of the Act in the same year in which the state was found to be out of compliance with any of the four core requirements.
4. Fund the Juvenile Accountability Block Grants (JABG) program at its original authorization level of \$350 million. This level of funding is especially crucial in light of the new JABG legislation signed into law by President Bush on November 2, 2002, which requires assessments of the effectiveness of activities funded under JABG.
5. Increase funding for the Title V Community Prevention Grants Program (Title V) to its previous highest level of \$95 million, the same amount allocated in FY 1999 through FY 2002, and require the program to be administered as a formula-based block grant until the new Juvenile Delinquency Prevention Block Grant (JDPBG) program receives an appropriation greater than \$95 million.
6. Appropriate funds in FY 2005 and beyond for the newly authorized but unfunded JDPBG program. The appropriation should be equal to or greater than that of the Title V program (\$95 million).
7. Eliminate all earmarks from juvenile justice grant programs. If Congress continues to insert earmarks into the Office of Juvenile Justice and Delinquency Prevention (OJJDP) budget, the earmarked programs should be funded in addition to the agency's baseline appropriation. Earmarks should not take money away from existing authorized programs. The diminishing funds remaining each year in the OJJDP budget after congressional earmarks significantly reduces the awards OJJDP can make to states and reduces the number of critical research, evaluation, and demonstration programs OJJDP can support.

8. Modify the JJDP Act to mandate that federal government agencies, in conjunction with the OJJDP Administrator, develop and implement programs to comply with the four core requirements without imposing a financial penalty on the states. As a result of the current discrepancies, American Indian and Alaska Native and undocumented juveniles are often held in jails with adults and/or incarcerated for status offenses and nonoffenses.
9. Revise the JJDP Act so that the Coordinating Council on Juvenile Justice and Delinquency Prevention (the Coordinating Council) has as its designated chair and vice-chair high-ranking officials from the Executive Office of the President who have broad authority in the executive branch for domestic policy issues relating to children and families. FACJJ also recommends that Congress add the Secretary of Agriculture and the Secretary of the Interior to the membership of the Coordinating Council. In addition, as a technical correction, the Commissioner of the Immigration and Naturalization Service should be changed to the Assistant Secretary for Immigration and Customs Enforcement.
10. Increase funding by \$250 million for the U.S. Department of Education's 21st Century Community Learning Centers program and require that the program designate at-risk youth as a priority population to be served. At-risk youth include truant youth who do not have an adult caregiver available to provide care and supervision during out-of-school time and youth involved with juvenile justice and/or child protective services.
11. Authorize all states to use Medicaid's 1915(c) waiver for home- and community-based services for children currently residing in, or at risk of placement in, either psychiatric hospitals or residential treatment facilities, including juvenile detention and training school facilities.
12. Repeal the changes made to the Anti-Lobbying Act in the 21st Century Department of Justice Appropriations Authorization that prohibit individuals from expending federal grant funds to directly lobby Congress and other federal government officials for juvenile justice reforms, policies, laws, and funding.
13. Support the amendment of the JJDP Act to prohibit the imposition of the death penalty on persons who are under the age of 18 at the time of the commission of their offense.



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), and supported by the U.S. Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP). FACJJ's role 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 is comprised of 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.) In late 2003, the OJJDP Administrator invited the advisory group from each state and territory to nominate, through its governor's office, one of the

SAG's members to serve on the newly established FACJJ. (OJJDP also requested that a second member be nominated as an alternate to serve in the absence of the primary member.) Although the final composition of the committee was left to the OJJDP Administrator, the Administrator accepted each of the governors' nominations and appointed those individuals to serve on FACJJ.

FACJJ provides states an opportunity to have direct input into the federal policy development and budget processes. This advisory committee serves as a vehicle for governors to communicate their needs, wants, and visions for juvenile justice funding and to make connections with other federal agencies.

The advisory committee held its first meeting in January 2004 in Point Clear, AL. During the meeting, members elected a FACJJ chair and vice chair and established four committees to address mandated responsibilities: the Annual Report Committee, the Planning Committee, the Grants Committee, and the Legal Affairs Committee. The group also made its first recommendations to the OJJDP Administrator. FACJJ met again in July 2004 in Denver, CO, and in December 2004

in Washington, DC. (More detailed information about FACJJ, including a list of members and meeting summaries, is available at www.ojjdp.ncjrs.org/jjac.)

The advisory committee's mandated responsibilities include preparing two annual reports: one that provides advice to the President and Congress about state perspectives on the operation of OJJDP and on federal legislation pertaining to juvenile justice and delinquency prevention, and one that advises the OJJDP Administrator on functions or aspects of the operation of OJJDP. The first FACJJ reports are due to OJJDP no later than 1 year after the inaugural FACJJ meeting, or in January 2005; subsequent reports will be produced annually.

This first *Federal Advisory Committee on Juvenile Justice Annual Recommendations Report to the President and the Congress of the United States* reflects concerns and issues identified by governors and those working on the front lines with this country's juveniles as being the most in need of immediate attention. It offers an overview of the progress that has been made in addressing juvenile justice and delinquency prevention over the past three decades and outlines some of the critical issues facing today's juvenile justice practitioners and policymakers. Finally, the report includes 13 recommendations from FACJJ on steps that need to be taken to improve the juvenile justice system, prevent juvenile delinquency and violence, intervene when juvenile delinquency and violence occur, and provide practitioners with the programs and tools they need to help youth avoid future delinquency and violence.



A Look at Juvenile Crime: Past and Present

Since the JJDP Act was signed into law on September 7, 1974, the federal government, states, and local communities have done much to reform juvenile justice and effectively address juvenile delinquency and violent crime. Together, these entities have focused on prevention, intervention, and accountability.

Today, it is clear that these efforts are paying off. The proof can be found in juvenile crime statistics, both past and present. For example, in 1974, arrests of juveniles under the age of 18 for violent crimes such as murder, rape, and robbery had increased 216 percent compared with 1960. Juveniles under the age of 18 committed 23 percent of all violent crimes and 45 percent of all serious crimes (Raley, 1995). The statistics continued to be sobering into the early 1990s, with the substantial growth in the number of juveniles arrested peaking in 1994 when law enforcement agencies made more than 2.7 million juvenile arrests. The number of juvenile arrests for murder was especially troubling: 3,700 (Snyder, Sickmund, and Poe-Yamagata, 1996).

Now, fast forward to 2002 (the latest year for which arrest data is available), when law enforcement agencies made an estimated 2.3 million arrests of persons under the age of 18. Juveniles accounted for 17 percent of all arrests and 15 percent of all violent crime arrests, down considerably compared with 1974. Moreover, between 1994 and 2002, the juvenile arrest rate for Violent Crime Index offenses fell to its lowest level since at least 1980. The number of juvenile arrests for murder also dropped considerably in the past decade, falling from approximately 3,840 in 1993 to 1,360 in 2002. This represents a 72-percent decline in the juvenile arrest rate for murder between 1993 and 2002 (Snyder, 2004b).

Reforms in the juvenile justice system have been numerous, with many of them attributable to the JJDP Act of 1974 (as amended). Today, thanks to the Act and to federal, state, and local governments' working together, the nation is doing a much better job of addressing the needs of youth in the juvenile justice system. States have made

tremendous strides in no longer placing status offenders and nonoffenders in correctional institutions, in separating juvenile offenders from adult offenders in secure facilities, and in eliminating the practice of detaining or confining juveniles in adult jails and lockups. States also are beginning to address the disproportionate number of minority youth who come into contact with the juvenile justice system.

In addition, the JJDP Act continues to provide the impetus, the guidance, and some of the funding needed to help states and communities develop programs that address youth who are at risk of delinquent behavior; intervene positively with those already in the system; and hold serious, violent juvenile offenders accountable while also protecting public safety.



Prevention: Make It a Priority

Unfortunately, while juvenile crime rates continue to decline, the nation's prevention efforts are also decreasing.

Policymakers and practitioners must intervene now to ensure that prevention remains a priority. Because the results of prevention programs are not immediate, selling the idea of prevention to citizens and community leaders is often difficult. Moreover, the need for prevention programs sometimes gets overlooked, especially when the media focus on the rare but sensational violent juvenile crimes that result in punitive responses. As a result, the nation turns its attention to "quick fixes" rather than long-term solutions. Financially stressed local governments often find it difficult to carve out money for juvenile justice prevention programs because they are already funding (at a high cost to taxpayers) expensive high-end intervention measures to reduce delinquency.

However, making prevention a priority is the smart way to go, both fiscally and in terms of improving young peoples' lives. It has been estimated that a typical single criminal career spanning the juvenile and adult years can cost society between \$1.7 and \$2.3 million in 1997 dollars

(Cohen, 1998). It does not take a mathematician to conclude that spending money on prevention efforts is a far wiser investment than paying for the costs of crime down the road, both in terms of dollars and in the toll it takes on offenders and victims.

Furthermore, numerous studies have demonstrated the effectiveness of prevention and early intervention programs in reducing delinquency and serious juvenile crime. Successful strategies often focus on identifying risk factors that threaten the healthy development of a child, such as delinquent peer groups, unstable families, and school failure, and counteracting them with protective measures such as positive youth activities, relationships with supportive adults, and academic competence.

The High/Scope Perry Preschool Program, founded in Ypsilanti, MI, in 1962, helps low-income, at-risk children get a positive start in life. Researchers have found that adults born in poverty who participated in the program at ages 3 and 4 had half as many criminal arrests, higher earnings and property wealth, and greater commitment to marriage than a control group of adults

who did not participate in the program (Schweinhart, 2003). The same study found that over each participant's lifetime, the public is receiving an estimated \$7.16 for every dollar originally invested.

Another program that has been successful in helping reduce juvenile offenses is the Prenatal and Early Childhood Nurse Home Visitation Program. Under the program, nurses visit low-income, first-time mothers during pregnancy and continue visits until the child is 2 years old. Several rigorous studies have indicated that the program helps reduce risk for early antisocial behavior and helps prevent child abuse, maternal substance abuse, and maternal criminal involvement, all of which are problems associated with youth crime (Olds, Hill, and Rumsey, 1998). Research also indicates that because the program focuses on low-income women, government funding costs are recovered by the time a woman's first child reaches age 4, primarily because of a reduced number of subsequent pregnancies and related reductions in use of government welfare programs (Olds et al., 1993).

Research from the Rand Corporation has shown that delinquency prevention programs not only work, but also are cost effective. For example, researchers have found programs such as modest graduation incentives or intense delinquent supervision that try to steer young people from wrongdoing can prevent as many as 250 crimes per \$1 million spent (Greenwood et al., 1998). The same research suggests that the cost of some early intervention alternatives might be offset by the money saved by not having to send these high-risk youth to prison in the future.

It is never too early to begin efforts to prevent serious juvenile offending and it is never too late

to intervene with known serious and violent juvenile offenders, according to OJJDP's Study Group on Serious and Violent Juvenile Offenders, a panel of distinguished juvenile justice experts (Loeber and Farrington, 1999).

And according to OJJDP's Study Group on Very Young Offenders, the nation's prevention efforts need to target a new population: children under the age of 13. In 1997, juvenile courts handled more than 180,000 juvenile offenders younger than 13 years old. These child delinquents accounted for 1 in 3 juvenile arrests for arson, 1 in 5 juvenile arrests for sex offenses, and 1 in 12 juvenile arrests for violent crime (Snyder, 2001).

Just as troublesome is another finding by the same group that indicates children referred to court for a delinquency offense for the first time before age 13 were far more likely to become chronic juvenile offenders than youth first referred to court at an older age (Loeber, Farrington, and Petechuk, 2003). Although today's focus is primarily on adolescent juvenile offenders, the study group concluded that prevention interventions focusing on child delinquency would "probably take the largest 'bite' out of crime" (Loeber, Farrington, and Petechuk, 2003:9).

As illustrated later in this report, there is no shortage of problems that need to be addressed and, in fact, new problems will continue to arise as new groups of high-risk adolescents emerge. Moreover, the juvenile population is projected to continue to grow throughout the 21st century. The U.S. Bureau of the Census (Census Bureau) estimates that the juvenile population will increase 14 percent between 2000 and 2025, or about one-half of 1 percent per year. In 2000, juveniles accounted for 25 percent of the U.S.

resident population. The Census Bureau estimates that this proportion will remain essentially constant through at least 2025, meaning that the relative increases in the juvenile and adult populations will be equivalent during the first quarter of the 21st century.

Although it is important to strike a balance among prevention, intervention, and accountability, solidly investing in prevention programs

allows communities and practitioners to be proactive rather than reactive when addressing juvenile delinquency and serious crime. The President and Congress should continue to be trailblazers by providing leadership and prevention funds that ease the need for detention and other costly measures that state and local governments are obligated to fund. Youth are an investment worth making.



Serious Problems Remain

Despite the encouraging news about the falling juvenile arrest rate, serious juvenile justice issues remain and new ones are emerging. For example, juvenile drug offenses are up significantly, arrest rates for females are increasing more (or decreasing less) than arrest rates for males in most offense categories, and the overall juvenile arrest rate for simple assault in 2002 remained near its all-time high (Snyder, 2004b). The disproportionate number of minority youth in all stages of the juvenile justice system remains troubling as well. And the trend of transferring juveniles to adult court for certain offenses has raised serious concerns that call for solid research and analysis.

Youth gangs continue to be a problem and may once again be on the rise. In addition, entirely too many youth in the juvenile justice system suffer from mental health disorders. A new congressional report, in fact, concluded that many juvenile detention facilities are being used as a way to hold youth waiting for community mental health services (U.S. House of Representatives, Committee on Government Reform, Minority Staff, Special Investigation Division, 2004).

The issues discussed in this section make it clear that this is definitely not the time to cut back on prevention efforts. No one issue is more important than the others; rather, each demands equal attention. Congress and other policymakers, practitioners, and citizens must remain vigilant and recommit their energies to addressing youth problems.

Minorities in the Juvenile Justice System

Reducing the disproportionate number of minority youth in the juvenile justice system must remain a priority for the President, Congress, and the nation. Although Congress elevated the issue of addressing disproportionate minority *confinement* to a core requirement of the JJDP Act in 1992 and broadened the requirement in 2002 to encompass the disproportionate number of minority youth who come into *contact* with the juvenile justice system at any point, far too many minority youth remain in the juvenile justice system.

For example, the disparity in violent crime arrest rates for black juveniles and white juveniles declined substantially between 1980 and 2002, but juvenile arrests in 2002 disproportionately involved minorities. Whereas white youth comprised 78 percent of the juvenile population and black youth 16 percent in 2002, 55 percent of juvenile arrests for violent crimes involved white youth and 43 percent involved black youth (Snyder, 2004b). Most Hispanics (an ethnic designation, not a race) were classified as white (Snyder, 2004b).

Moreover, the 1999 Census of Juveniles in Residential Placement (CJRP), which gathers information about juvenile offenders in custody, found that in nearly all states, a disproportionate number of minority offenders were in residential placement in 1999. Although minority youth accounted for 34 percent of the U.S. juvenile population, they accounted for 62 percent of juveniles held in both public and private juvenile residential facilities in 1999 (Sickmund, 2004). In addition, a study of Latino and Latina youth found that they are more likely to be incarcerated than white youth charged with the same types of offenses and they often receive more punitive treatment for the same crimes (Villarruel and Walker, 2002).

Whether minority youth are being transferred to adult court for trial more often than other youth is also a concern. Findings from the limited research that has been done about waivers and transfers indicate that this may be the case. A study that examined Illinois' mandatory law of transferring young drug offenders to adult court found that minority youth are far more affected by the law than white youth. In fact, the study found that 99 percent of the youth transferred to adult court in Cook County (Chicago) for drug crimes in 1999–2000 were African American or Latino (Ziedenberg, 2001). Researchers said this

occurred even though surveys, such as the 1999 National Household Survey on Drug Abuse and the National Institute of Drug Abuse Survey, show that white youth use drugs at the same or higher rates than youth of color.

Although most states participating in OJJDP's Formula Grants program have made progress in addressing the disproportionate number of minorities who come into contact with the juvenile justice system, the issue of overrepresentation of minorities has not been corrected. Consequently, much work remains to be done in this area. In addition, more information about the treatment of other racial groups, including Hispanics, American Indians and Alaska Natives (AI/AN), and Asian and Pacific Islanders is needed; these groups make up a large portion of the population of some states. This is definitely not the time to let prevention efforts wane.

Juvenile Female Offenders

The rising number of juvenile female offenders and the lack of gender-specific programs for them are critical issues that need to be addressed across the juvenile justice system. Between 1993 and 2002, the total arrest rate for juvenile males declined 26 percent; the rate for juvenile females declined only 1 percent. The contrast in arrest rates for males and females is even more pronounced when comparing data over 22 years. Between 1980 and 2002, the total arrest rate for juvenile males declined 19 percent and the rate for juvenile females rose 30 percent. More specifically, between 1980 and 2002, the female juvenile arrest rate for Violent Crime Index offenses increased 49 percent and the male rate fell 25 percent. Between 1993 and 2002, these rates fell 25 percent for juvenile females and 48 percent for juvenile males. Even more startling is the difference in gender arrest rates between 1980

and 2002 for certain offenses. For example, the arrest rate for females for aggravated assault increased 99 percent compared with 14 percent for males, simple assault rates increased 258 percent for females compared with 99 percent for males, and weapons violations rose 125 percent for females compared with 7 percent for males (Howard Snyder, National Center for Juvenile Justice, personal communication, Sept. 13, 2004).

These trends are reflected in all parts of the juvenile justice system, from law enforcement to courts to corrections. For example, between 1990 and 2000 (the latest year for which court statistics are available), the number of delinquency cases involving males increased 15 percent and the number of cases involving females increased 61 percent. Correspondingly, between 1990 and 2000, the number of cases in which a youth was in detention prior to disposition increased more for females than for males (53 percent versus 2 percent), as did the number of cases in which courts ordered placement in a residential facility (66 percent for females versus 14 percent for males) and the number of cases placed on formal probation (159 percent for females versus 63 percent for males) (Stahl, Finnegan, and Kang, 2003).

Statistics tell only part of the story. Females' development, their pathways to delinquency, and the delinquent acts they commit are very different from those of males. Prevention and intervention programs in place for males likely will not work for females. Yet states and communities have been slow to develop and implement programs specifically geared toward females (Shepherd, 2002). Overburdened practitioners often do not have a good understanding about the type of programs that work well with females and tend to use the same programs they use with males. Some may even mix females and males together in programs and facilities despite the many differences between the causes for, and the types of, female and male delinquency.

Research indicates that female juvenile offenders often have histories of physical, emotional, and sexual abuse (all risk factors for delinquency); family problems; academic problems; trouble developing healthy relationships with others; and physical and mental disorders (American Bar Association and National Bar Association, 2001). These factors are especially problematic because the relationships and connections that females develop with others form a key part of their development. Consequently, at-risk females require programs that provide physical and emotional security, positive female role models, and a sense of belonging and self-worth, all of which are needs that differ considerably from those of males (Greene, Peters, and Associates, 1998).

Policymakers and citizens tend to underestimate the seriousness of females in the juvenile justice system because female offenders remain outnumbered by male offenders and are viewed as less dangerous. Thus, the needs of females in the juvenile justice system often go unmet and services geared specifically to them are overlooked all across the juvenile justice spectrum. Because of the lack of information and programming for this special population, juvenile justice experts fear that some of the programs being used for females in institutions and community-based programs may not be developmentally sound or culturally competent (American Bar Association and National Bar Association, 2001).

Obviously, the need for more research, more data collection, more gender-specific programs and practices, more information about effective programs, and more training and technical assistance to help states implement quality, gender-specific programs is critical. Now is the time to develop evidence-based programming to help females who are already in trouble and to prevent future delinquency by females who are at risk of such behavior. These efforts are especially important

in light of recent statistics, which indicate that the larger increases in juvenile female arrests for assault are also being seen in adult arrest trends. Between 1993 and 2002, adult male arrests for aggravated assault declined 9 percent and adult female arrests increased 29 percent. Similarly, arrests of adult males for simple assault declined 2 percent and adult female arrests increased 41 percent (Howard Snyder, National Center for Juvenile Justice, personal communication, Sept. 13, 2004). Cutting back on prevention efforts now does not make sense and will only lead to further problems for communities and practitioners attempting to deal with the rising number of female juvenile offenders.

Mental Health and Substance Abuse

A high number of youth in the juvenile justice system suffer from mental health and substance abuse disorders. A review of 34 studies on mental health needs and services in the juvenile justice system found rates of mental disorders substantially higher among youth involved in the justice system than among youth in the general population (Otto et al., 1992). Likewise, many of these youth also have substance abuse disorders (Cocozza and Skowrya, 2000).

A recent study of 292 male juveniles entering long-term commitment facilities in Illinois and New Jersey found that in the month prior to commitment, 68 percent had been diagnosed with a mental health disorder and 50 percent had received a substance abuse diagnosis (13 percent were alcohol dependent, 26 percent were marijuana dependent, and 13 percent were dependent on some other substance) (Snyder, 2004a).

A longitudinal study at Northwestern University Medical School in Chicago, IL, has been examining alcohol, drug, and mental health (ADM) disorders among juvenile detainees in the Cook

County (IL) Detention Center since November 1995. Preliminary data show that two-thirds of detained youth have one or more ADM disorders. Data also indicate that females have greater mental health needs and greater risk factors than males. The same data suggest that, nationwide, more than 670,000 youth processed in the juvenile justice system each year would meet diagnostic criteria for one or more ADM disorders that require mental health and/or substance abuse treatment (Teplin 2001).

Mental health experts and juvenile justice practitioners alike agree that the services available in the juvenile justice system to address these issues are inadequate. According to a recent congressional report, 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). The report, commissioned by Representative Henry Waxman (D-CA) and Senator Susan Collins (R-ME), found that juvenile detention facilities spend an estimated \$100 million each year to house youth who are waiting for mental health services. Unfortunately, this is not a new problem: a 1992 report by the National Coalition for the Mentally Ill in the Criminal Justice System noted that the needs of juvenile offenders with emotional problems often go unmet (Holden and Kapler, 1995). The Surgeon General, in a 1999 report, also noted the short supply of mental health services across the country, including wraparound services for children who have serious emotional problems and multisystemic treatment programs (U.S. Department of Health and Human Services, Office of the Surgeon General, 1999). The same report also cites a lack of mental health professionals available to serve children and adolescents with serious mental disorders.

Caring for youth with mental health disorders is challenging and complex, and demands more data collection, research, and evaluation. Quality screening and assessment tools are required, and the juvenile justice system needs to ensure that all juveniles entering the system have full-scale mental health assessments, followed up with treatment plans that address individual needs. Social services, mental health, education, and juvenile justice agencies need to work together to develop evidence-based collaborative responses, including community-based programs such as alternatives to institutional care for youth with serious mental health disorders. Practitioners need information about proven treatment programs and the training to help implement them.

Increasing the number of states allowed to use Medicaid funds to provide home- or community-based mental treatment for at-risk children would be a tremendous step in helping both these children and the juvenile justice system. It would help keep at-risk children out of the juvenile justice system and provide the treatment they need to grow into mentally healthy, law-abiding adults.

Juvenile substance abuse also remains a serious problem for the juvenile justice system. In contrast to the declining overall juvenile arrest rate, juvenile arrests increased 59 percent for drug abuse violations and 46 percent for driving under the influence between 1993 and 2002. There were an estimated 186,600 juvenile arrests for drug abuse violations and 21,800 arrests for liquor law violations in 2002 (Snyder, 2004b).

The 2003 Monitoring the Future report (Johnston et al., 2003), which surveyed 8th-, 10th-, and 12th-graders, found that drug use among these youth decreased 11 percent between 2001 and 2003. It also found that 17.3 percent of students had used an illicit drug in the past 30 days, 28.3 percent had used drugs during the past year, and

37.4 percent had used a drug at some point in their life. The use of inhalants during the past year by eighth graders increased 14 percent between 2002 and 2003. The same survey found that 33.3 percent of these youth had used alcohol in the past year.

The illegal use of alcohol is especially troublesome among AI/AN youth. Statistics indicate that for AI/AN youth, the age of first involvement with alcohol is lower, the frequency of drinking and the amount of alcohol consumed are higher, and the negative consequences of drinking are more common and more severe than for youth in the general population. According to the Bureau of Justice Statistics publication *American Indians and Crime* (Greenfeld and Smith, 1999), the number of arrests of AI/AN youth younger than 18 for alcohol-related violations is twice the national average.

Again, surveys and statistics do not tell the whole story. Youth who use alcohol and drugs are at greater risk of more serious delinquency and many of them end up in the juvenile justice system. However, the juvenile justice professionals who are on the front lines with these young people report a lack of screening and assessment tools, drug and alcohol treatment options, funding for treatment programs, and coordination of limited substance abuse resources. Addressing these issues demands a two-pronged approach: a continuation of prevention efforts and a commitment to intervention efforts that include adequate funding, comprehensive assessment tools, effective treatment programs, and program coordination. Policymakers, researchers, practitioners, and the public must address the shortage of funds, assessments, and programs available to deal with the prevalence of mental health disorders and the substance abuse problems of youth in the juvenile justice system. To do otherwise will deprive a

large segment of the nation's youth of critically needed treatment. This is definitely the time to make prevention a priority.

Waivers and Transfers

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. The number of delinquency cases judicially waived to criminal court grew 70 percent between 1985 and 1994, and then declined 54 percent between 1994 and 2000. These statistics may be misleading because little data are available about the number of juveniles sent to adult court through other means. In other words, the decline in the number of youth being judicially waived to adult court does not necessarily mean that fewer juveniles are going to adult court; it just means that fewer are being sent there by a juvenile court (Puzzanchera et al., forthcoming).

Many states have transfer laws that regulate the conditions and ages under which juveniles may be prosecuted as if they were adults. Transfer laws generally fall into three categories: judicial waiver, which allows a juvenile court judge to make the decision to send a juvenile to criminal court; direct file laws, which let prosecutors decide, in specific classes of cases, whether a case should be tried in juvenile or criminal court; and statutory exclusion provisions, which legislatively mandate that certain types of cases involving juveniles must be tried in criminal court. Most states have more than one mechanism for transferring juvenile cases to criminal court (Griffin, 2003).

Blended sentencing laws followed closely on the heels of judicial transfer laws. These laws allow courts to impose juvenile and/or criminal sanctions on juveniles adjudicated or convicted of certain serious, violent offenses. These sentences are generally based on the age of the juvenile and the offense committed. Some laws allow juvenile court judges to impose adult criminal sanctions on certain categories of serious offenders and to combine a juvenile disposition with a suspended criminal sentence. Other laws allow the juvenile court to impose a criminal sanction rather than a juvenile one on a youth offender who meets a prescribed set of qualifications. A third type of blended sentencing laws authorizes a juvenile court to sentence an offender to a juvenile correctional facility for a time period during which the offender may come to exceed the age of the court's extended jurisdiction (Griffin, 2003).

Is this trend of juvenile transfer and certification to adult court and blended sentences working to reduce serious juvenile crime? What effect has it had on the youth transferred and on the juvenile and criminal justice systems? Are the right juveniles being transferred to adult court? Is there disproportionate representation of minorities, including females, in the transferred population? Are juveniles with substance abuse and mental health disorders being inappropriately transferred to criminal court? Is adult treatment making a difference in juvenile recidivism rates? There is little research that addresses these questions, but the research that is emerging indicates some disturbing findings.

In response to the increasing number of adolescents being tried as adults in criminal court and the number of younger children being tried in juvenile court, the MacArthur Foundation

Research Network on Adolescent Development and Juvenile Justice in Philadelphia, PA, examined the competence of children to stand trial based on their age (MacArthur Foundation, 2002). The study looked at the capacity of children and adolescents to participate in a trial based on their intellectual and emotional immaturity. Results from the study indicate that when compared to adults, a significantly greater proportion of juveniles 15 and younger (and an even larger proportion of juvenile offenders this age) are probably not competent to stand trial in a criminal proceeding. The study found that age and intelligence were the only significant predictors of performance on evaluation of abilities relevant to competence to stand trial. According to the study, youth and adolescents identified as “seriously impaired” performed at a level comparable to adult defendants with mental illness who most likely would be considered incompetent to stand trial. It is important to note that the MacArthur study examined only youths’ competence to stand trial, not whether they should be held fully responsible for an offense.

In addition, new research about adolescent brain development has found that the parts of the brain that govern impulse, judgment, and other characteristics may not reach complete maturity until an individual reaches age 21 or 22 (American Bar Association, 2004). In other words, a person’s brain is not fully developed during adolescence.

As noted earlier in this report, a study of Illinois’ practice of transferring young drug offenders to adult court found that minority offenders are transferred more often than white youth. The study also found that 59 percent of the youth transferred to adult court had no previous juvenile court contact or service. Moreover, most of the youth transferred to adult court for drug

offenses were given adult probation, which often provides less supervision and rehabilitative services than does the juvenile justice system (Ziedenberg, 2001).

Another recent study examined the effects of transfer laws on recidivism, comparing the impact of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders. Researchers found that serious adolescent offenders who are prosecuted in a criminal court are likely to be rearrested more quickly and more often for violent, property, and weapons offenses, and are more often and more quickly incarcerated again. Adolescents prosecuted and punished in juvenile court are more likely to be rearrested for drug offenses (Fagan, Kupchick, and Liberman, 2003). These findings led researchers to suggest that waiver policies and laws based solely on age and offense are ineffective and may even increase the risk of serious crimes by adolescents and young adults.

In addition to the questions raised earlier, there is also concern about a lack of standards and guidelines related to the detention, transfer, waiver, or certification of juveniles to adult court, and of the safety and security of such juveniles when placed in adult facilities and institutions. Earlier studies have shown that young offenders face many risks when they enter the adult prison system, including sexual assault and physical beatings by staff and other inmates (Fagan, Frost, and Vivona, 1989).

These emerging studies show clearly that additional strong and independent research examining the waiver issue and its effects on juveniles, courts, correctional facilities, and communities is needed. The country cannot afford to continue making substantive changes in the juvenile justice system without knowing if these changes work.

Child Abuse

Close to 900,000 children across the country (12.3 out of every 1,000) were abused in 2002 according to the latest figures from the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (2004). More than 60 percent of these child victims experienced neglect, almost 20 percent were physically abused, 10 percent were sexually abused, and 7 percent were emotionally maltreated. According to HHS, more than 80 percent of the perpetrators were their parents.

The number of abused and neglected children has special significance for the juvenile justice system because many of these children end up in the system. Research from OJJDP's Rochester (NY) Youth Development Study found that a history of maltreatment increases the chances of youth violence by 24 percent (Thornberry, 1994). The same study, which began following a group of males and females in 1988 when they were ages 13 and 14, also found that children who witness family violence are more likely to become involved in delinquent behaviors. Child abuse victims are more likely than other youth to engage in serious and violent delinquency, use drugs, perform poorly in school, experience mental health problems, and, for females, become pregnant (Kelley, Thornberry, and Smith, 1997). Moreover, when compared with juvenile females who have not been abused and neglected during childhood, juvenile females who have been abused and neglected are nearly twice as likely to be arrested both as juveniles and as adults, and 2.4 times more likely to be arrested for violent crimes (Widom, 2000).

The number of children in foster care also has serious implications for the juvenile justice system. Latest figures indicate that more than one-half million children are in foster care and

one-third of the group has been in foster homes for at least 2 years (Perez, O'Neil, and Gesiriech, 2003). Children becoming "lost in the system" or being abused by their foster caretakers, a lack of medical and mental health services, and inflexibility in state programs can all lead to poor outcomes for children in foster care, including delinquent or criminal activity.

The juvenile justice system in many states also finds itself dealing with another form of child abuse: fetal alcohol syndrome (FAS), a completely preventable disease. According to the Fetal Alcohol Spectrum Disorders Institute (2003), prenatal alcohol exposure (caused by maternal alcohol consumption during pregnancy) is the most common cause of birth defects and developmental disabilities in the country. It is estimated to affect somewhere between 2 and 14 of every 1,000 live births and can result in costs of more than \$1 million for institutional and medical care throughout an individual's lifetime.

The need to design and implement programs that reduce child maltreatment as a means of preventing delinquency is often overlooked by policymakers and communities. However, effective prevention programs do exist. The nurse home visitation program mentioned earlier in this report helps reduce juvenile offending by helping to prevent child abuse. A model court program promoted by the National Council of Juvenile and Family Court Judges helps children spend less time in foster care (Mentaberry, 1999). The Pew Commission on Children in Foster Care, noting that the nation's foster care system has problems, has recommended sweeping changes to the system, including a more flexible system of federal financing to allow states to provide prevention and other services to families (Perez, O'Neil, and Gesiriech, 2003). Adoption of this recommendation would help protect vulnerable children from child maltreatment.

Youth Gangs

Youth gangs threaten citizens and cause irrevocable damage to young people who become gang members. According to the 2002 National Youth Gang Survey (the latest data available), every city with a population of 250,000 or more reported having a youth gang problem in 2002 (Egley and Major, 2004). Preliminary results from the survey indicate a slight increase in the prevalence of gang activity compared with 2001, suggesting that youth gang activity may be on the rise after stabilizing for several years. Another finding from the survey points to a definite need to be concerned about this issue: 42 percent of law enforcement officers who responded to the survey indicated that their youth gang problem was “getting worse” in 2002 compared with 2001, and only 16 percent indicated it was “getting better.” In the 2001 survey, these figures stood at 27 percent and 20 percent, respectively.

A number of cities (142) with populations of 100,000 or more reported both a gang problem and gang-related homicides in 2002. Eighty-nine of these cities reported a total of 577 gang-related homicides, with 2 cities (Chicago and Los Angeles) reporting a total of 655 gang-related homicides. Because approximately 1,300 total homicides were recorded in Chicago and Los Angeles in 2002, these results suggest that almost half of the homicides in Chicago and Los Angeles were youth gang related.

Tribal communities have also expressed concern about youth gangs. Twenty-three percent of Indian country communities responding to a survey about youth gangs in their communities indicated they experienced a youth gang problem

in 2000 (Major et al., 2004). Reported gang members generally were juvenile males involved in property crimes such as vandalism and graffiti.

An upcoming report examining trends from the National Youth Gang Surveys from 1999–2001 indicates that female involvement in youth gangs is also a growing concern. In 2000, 42 percent of all jurisdictions reporting gang problems indicated that a majority of their gangs had female members (Egley, Major, and Howell, forthcoming).

It is apparent that the nation needs to refocus on preventing gang membership. Fight Crime: Invest in Kids, a Washington, DC-based nonprofit group of police chiefs, sheriffs, prosecutors, and crime victims, released a report in 2004 that highlighted programs in Baton Rouge, LA; Boston, MA; and Philadelphia, PA; that have been effective in keeping youth out of gangs. The programs include collaborative approaches to ensure that at-risk youth have the support and services they need to change their lives and stay away from gangs and violence; intervention to help parents effectively control and guide their children before they become full-fledged gang members; and prevention starting as early as preschool to help children grow up safely and stay away from delinquency and crime.

Longitudinal research has shown that gang membership significantly predicts delinquency and, in fact, is an even more powerful predictor of delinquency than associating with delinquent peers or having committed a prior violent act (Battin-Pearson et al., 1998). In light of the fact that youth gang activity may be on the rise again, this is definitely not the time to cut back on prevention and intervention programs.



Prevention Dollars Are Shrinking

Congress pointed to the need for delinquency prevention programs in the 21st Century Department of Justice Appropriations Authorization when it reauthorized the JJDP Act in 2002 (Pub. L. No. 107-273). The JJDP Act legislation directs that the problems facing the juvenile justice system “be addressed through a 2-track common sense approach that addresses the needs of individual juveniles and society at large by promoting quality prevention programs . . . and programs that assist in holding juveniles accountable for their actions and in developing the competencies necessary to become responsible and productive members of society” (42 U.S.C. § 5601 [Sec. 101(A)(B)]).

Despite this directive, federal funding for delinquency prevention programs has been cut drastically during the past 3 years. OJJDP’s Formula Grants program, which provides funds to help states meet the four core mandates of the JJDP Act and to develop and implement delinquency prevention programs, was cut \$25 million between 1998 and 2004. Funding for the Title V

Community Prevention Grants Program (Title V), the only federal funding source dedicated solely to delinquency prevention, has been cut almost in half, from \$95 million in 2002 to \$49 million in 2004. Appropriations for the Juvenile Accountability Block Grant (JABG) program, which helps states and local jurisdictions implement accountability-based programs and services, were slashed from \$249 million in 2002 to \$60 million in 2004. Congress appropriated no money for the new Juvenile Delinquency Prevention Block Grant (JDPBG) program, which consolidates a number of former OJJDP programs, including mentoring and gang reduction activities.

A large number of congressional earmarks has further hampered OJJDP funding streams. OJJDP’s fiscal year (FY) 2004 budget included more than 170 earmarks, ranging from \$5.9 million to \$24,737. In fact, the budget included 2 earmarks of \$5.9 million each, and 19 other earmarks of \$1 million or more. The Title V program appropriation had so many earmarks in FY 2003 that OJJDP could not make program

awards: after the earmarks were addressed, only \$2.5 million out of the original \$46.5 million remained.

The White House Task Force for Disadvantaged Youth (2003, p. 85) addressed the dilemma of congressional earmarking in its final report to the President. The task force asked five of the main youth-serving federal agencies, including DOJ, to provide information about all of the earmarks that appeared in their youth programs for FY 2003. Of the five departments surveyed, DOJ had by far the largest number of earmarked programs: 160, totaling \$147.3 million. The next closest agency, HHS, had 88 earmarked programs totaling \$29.7 million.

Although some earmarked programs may be worthy of federal funding, they have an unfair advantage over other programs seeking federal funds because they are not subject to the same level of review, performance standards, or oversight, nor is there any guarantee that they are addressing the most pressing delinquency prevention needs in their communities. In reality, federal funds should be directed at programs that have the best potential of meeting the greatest needs of the juvenile justice system and the children in its care.

If earmarked programs continue to be a part of the congressional budget process, they should be funded in addition to an agency's baseline appropriation. Earmarks should not take money away from existing authorized program appropriations. Earmarked programs also should be held to the same high performance and accountability standards as other federally funded programs.

Despite shrinking budgets at all levels of government (federal, state, and local), policymakers must continue to place emphasis on delinquency

prevention and intervention efforts. It is important not to lose the ground gained over the past several decades in developing prevention programs aimed at keeping youth from ever having contact with the justice system.

States need to look at programs that have been proven to work and commit resources to replicating these programs in other states and localities. These include programs that address substance abuse and mental health, mentoring, balanced and restorative justice principles, and truancy and dropout prevention and collaborative projects that involve schools, community agencies and businesses, and juvenile justice professionals. The Blueprints for Violence Prevention project, launched by the Center for the Study and Prevention of Violence at the University of Colorado at Boulder in 1996, has identified 11 programs that successfully reduced juvenile violence, aggression, delinquency, and substance abuse, and has designated 21 others as promising. Each of these programs has undergone a rigorous evaluation process.

It is even more imperative, in light of shrinking government budgets, that states and communities get the most for their money by funding quality delinquency prevention programs that have been proven effective or promising. At the same time, however, states and communities should also consider funding innovative new programs that have the potential to make a difference in preventing juvenile delinquency.

Quick fixes are not the answer to preventing and intervening in juvenile delinquency. Long-term solutions are the answer. This concept may be a difficult sell in this era of here today, gone tomorrow "sound-bite" promises. However, FACJJ cannot place enough emphasis on the importance of keeping the focus on juvenile delinquency

prevention programs—programs whose results may not be seen for years. This is clearly not the time to pull federal dollars from prevention programs. The President and Congress must continue to take the lead in increasing investment in such programs.

In discussions leading to the passage of the first JJDP Act in 1974, former Senator Birch Bayh (D) of Indiana, a primary sponsor of the bill

(along with the late Senator Roman Hruska (R) of Nebraska), expressed concern about youth having to commit crimes before they could get help. Consequently, he advocated a one-word description of the Act: “prevention” (Raley, 1995).

The nation and its policymakers would do well to remember that definition today.



FACJJ Recommendations

1. *FACJJ recommends that the President and Congress fund the Formula Grants program in FY 2005 and beyond at the FY 2002 level of \$89 million. This level of funding will provide the resources necessary for states to continue their efforts to comply with the four core requirements of the JJDP Act [Section 223(a)(11), (12), (13), (22)] and to support state and local delinquency prevention and intervention efforts to improve the juvenile justice system.*

The appropriation for the Formula Grants program has declined by \$25.6 million over the past 6 years, from \$95.1 million in FY 1998 to \$70 million in FY 2003 to \$69.5 million in FY 2004. A continuing decline in funding will have a serious impact on states' efforts to achieve or to remain in compliance with the JJDP Act's four core requirements of:

- □ Deinstitutionalizing status offenders and nonoffenders (DSO).
- □ Separating adult and juvenile offenders in secure institutions (separation).

- □ Eliminating the practice of detaining or confining juveniles in adult jails and lockups (jail removal).
- □ Addressing the disproportionate number of minority youth who come into contact with the juvenile justice system (DMC).

OJJDP has been administering the Formula Grants program since 1975. Formula grants are appropriated by Congress and awarded by OJJDP to the 50 states, 5 territories, and the District of Columbia on the basis of their proportionate population under age 18.

To receive formula grant funds, states must develop and implement a comprehensive 3-year juvenile justice and delinquency prevention plan and commit to achieving and maintaining compliance with the core requirements.

Most states are in full compliance with the first three requirements and are making progress toward meeting the DMC requirement, which was added as a core requirement when the JJDP Act was amended in 1992

(OJJDP forthcoming). However, being in compliance with the DMC requirement does not necessarily mean that states have corrected the overrepresentation of minority youth in the nation's juvenile justice system; much work remains to be done in this area.

Although the disparity in violent crime arrest rates for black juveniles and white juveniles declined substantially between 1980 and 2002, juvenile arrests in 2002 still disproportionately involved minorities. White youth comprised 78 percent of the juvenile population, and black youth, 16, in 2002, yet 55 percent of juvenile arrests for violent crimes involved white youth and 43 percent involved black youth. As referenced before, most Hispanics (an ethnic designation, not a race) were classified as white (Snyder, 2004b).

It is difficult to find statistics on Hispanic involvement in the juvenile justice system in general. However, CJRP does provide counts of the race/ethnicity of youth in custody. Of the 104,413 youth in custody on the CJRP census date in 2001, 18,102 (or 17 percent) were Hispanic (Sickmund, Sladky, and Kang, 2004). Furthermore, a 2002 study of Latino and Latina youth found these youth are more likely to be incarcerated than white youth charged with the same types of offenses, and they often receive more punitive sentences for the same crimes (Villarruel and Walker, 2002).

The Formula Grants program is the most significant resource available to help communities invest in and target minority-focused juvenile crime prevention. In addition, states have to remain continually vigilant to maintain their compliance with the JJDP Act. Formula Grants program funds are crucial to these efforts. For example, formula grant

funds can be used to help rural areas (which may not have separate, extensive programs for youth) provide temporary, nonsecure supervision for status offenders instead of placing them in adult jail and lockup facilities (which is in violation of the JJDP Act).

Once states have achieved compliance with the core requirements, they can use their formula grant funds for programs to improve their juvenile justice systems. These programs range from prevention to intervention to aftercare. Examples of the types of programs that can be funded according to the Act [Sec. 223(a)(9)(A–S)] include community-based alternative programs, programs to strengthen families, initiatives to keep youth in school, programs that address juvenile alcohol and drug abuse, and programs designed to provide mental health services to juveniles who need them. As indicated in the previous section of this report, there is no shortage of problems to be addressed. For example, juvenile justice communities across the country are struggling to address the needs of youth who have substance abuse problems and/or mental health disorders and the needs of the rising number of females in the juvenile justice system.

Prevention services often come and go with no continuity for providing services to families and children. The lack of an adequate and stable funding source compounds the problem. The federal government can help alleviate this lack of continuity by providing consistent fiscal resources and training and technical assistance to help states implement prevention efforts. However, all of the responsibility in this area does not fall on the federal government. States and communities need to implement proven research-based prevention and intervention programs and

strive to sustain these programs with funding from other sources.

Despite the falling juvenile crime rate, the nation cannot afford to cut back on prevention and intervention efforts. Continuing to reduce the annual appropriation for the Formula Grants program sends a message that prevention is no longer a national priority. FACJJ strongly urges the President and Congress to counteract this message by promoting the significance of delinquency prevention programs and their long-term positive impact on the country and its youth. The Formula Grants program is the heart and soul of the JJDP Act. Congress can reaffirm its commitment to the basic goals and strategies of the Act by funding the Formula Grants program in FY 2005 and beyond at the FY 2002 level of \$89 million.

2. *FACJJ recommends that the President and Congress reinstate the accountability-based sanctions supplement to the Formula Grants program allocation in FY 2005 and in all future appropriations, funding the supplement at \$26 million (the same amount allocated in FY 2002 and FY 2003). The supplement was not included in the FY 2004 Formula Grants appropriation.*

Since 1998, Congress has added an accountability-based sanctions supplement to the annual Formula Grants appropriation. States participating in the Formula Grants program receive an additional amount of money based on the size of their juvenile population to implement accountability-based programs. To receive the grants, states are required to certify that they have in place, or will be putting in place, a system of accountability based on graduated sanctions. Withholding the appropriation in future fiscal

years could force states to cut the effective programs they have implemented, or are in the process of implementing, based on past accountability-based sanctions supplements.

Accountability-based programs hold juvenile offenders accountable for their inappropriate behavior and offenses and help them accept responsibility for their delinquent actions. Many communities have developed programs that apply consequences or sanctions based on the juvenile's age and the seriousness of the offense. Sanctions increase in response to further violations. Accountability-based graduated sanctions provide the juvenile justice system with a way to both prevent further delinquent behavior and to intervene before serious delinquent behavior becomes violent criminal behavior.

FACJJ recommends that the accountability-based sanctions supplement be reinstated to the Formula Grants program allocation in FY 2005 and beyond.

3. *FACJJ recommends that the President and Congress amend the JJDP Act of 2002 to impose the financial penalty a state receives for failing to comply with the four core requirements of the Act in the same year in which the state was found to be out of compliance with any of the four core requirements.*

The 2002 reauthorization of the JJDP Act reduced the dollar amount a state is to be penalized for noncompliance with any one of the core requirements and delayed by 1 year the time at which this penalty would take effect. A state should be penalized in the same year it was ruled out of compliance. Immediate sanctions have the advantage of forcing a state to immediately address a problem rather than putting it off. Also, if a state

is financially sanctioned for noncompliance in the same year in which an infraction occurs, the state can immediately rectify the problem, thus allowing OJJDP to then find it in compliance and issue supplemental funding.

Under the new system, a state found to be out of compliance in one year will be financially penalized the next, even if it has already rectified the problem.

From an administrative standpoint, dragging out the penalty process over 2 years (finding noncompliance in one year and applying financial sanctions the next) creates administrative and programmatic problems for both OJJDP and the states.

4. *FACJJ recommends that the President and Congress fund the JABG program at its original authorization level of \$350 million. This level of funding is especially crucial in light of the new JABG legislation signed into law by President Bush on November 2, 2002, which requires assessments of the effectiveness of activities funded under JABG.*

Funding for the JABG program has been drastically reduced since its inception in 1998. The program was originally authorized at \$350 million; however, the amount authorized by Congress is not the same as the amount actually appropriated. Congress appropriated \$250 million in FY 1998 and FY 1999; \$237.9 million in FY 2000; \$249.5 million in FY 2001 and FY 2002; and \$190 million in FY 2003. The appropriation in FY 2004 was whittled to \$60 million.

OJJDP awards JABG grants to states to fund programs in purpose areas specifically defined by Congress. States must pass through at least 75 percent of the funds to

local jurisdictions. To be eligible to receive JABG funds, states and localities must use a Juvenile Crime Enforcement Coalition to develop a Coordinated Enforcement Plan for reducing juvenile crime. Fifty-five eligible jurisdictions, including all 50 states, 4 territories (American Samoa did not receive an award), and the District of Columbia, are participating in the JABG program.

JABG helps states develop programs that promote greater accountability among offenders and the juvenile justice system. Holding youth accountable for their delinquent acts by imposing swift, consistent, graduated sanctions that are proportionate to the severity of the offense and the age of the offender can help combat delinquency, foster responsible behavior, and protect the public. For the juvenile justice system, accountability means increasing its capacity to develop youth competence, efficiently tracking juveniles through the system, and providing enhanced options such as restitution, community services, and victim-offender mediation.

Congress originally established the Juvenile Accountability Incentive Block Grants program in 1998. The November 2002 reauthorization of the JJDP Act changed the name of the program to the Juvenile Accountability Block Grants (JABG) program, expanded the original 12 purpose areas to 16, adjusted funding levels, and introduced new reporting and monitoring requirements. The new provisions took effect in FY 2004.

The 16 purpose areas for which JABG funds can be used are:

- □ Graduated sanctions.
- □ Corrections/detention facilities.

- □ Court staffing and retrieval services.
- Prosecutors (staffing).
- □ Prosecutors (funding).
- □ Training for law enforcement and court personnel.
- Juvenile gun courts.
- □ Juvenile drug courts.
- □ Juvenile records systems.
- Information sharing.
- □ Accountability.
- Risk and needs assessment.
- □ School safety.
- □ Restorative justice.
- Juvenile courts and probation.
- Detention/corrections personnel.

The 2002 reauthorization requires states and communities to assess the effectiveness of their JABG-funded activities to see if they are having an impact on juvenile crime or on the juvenile justice system. OJJDP has developed and implemented a system of outcome-based performance measures appropriate for all activities funded with JABG funds. The system includes a list of 289 carefully defined performance indicators organized around the 16 JABG program purpose areas.

FACJJ recommends that the President and Congress restore higher levels of funding to the JABG program and help states hold juvenile offenders and the juvenile justice system accountable.

5. *FACJJ recommends that the President and Congress increase funding for Title V to its previous highest level of \$95 million, the same amount allocated in FY 1999 through FY 2002, and require the program to be administered as a formula-based block grant until the new JDPBG program receives an appropriation greater than \$95 million.*

The Title V program was established by the 1992 reauthorization of the JJDP Act and continued in the 2002 reauthorization. Title V is the only federal funding source dedicated solely to delinquency prevention, yet funding for this program has been cut almost in half, from \$95 million in FY 2002 to \$49 million in FY 2004. In FY 2003, Congress appropriated \$46.5 million for the Title V program but earmarked the bulk of the appropriation to support programs other than Title V. Consequently, after determining that the \$2.5 million that remained in the appropriation after the earmarks were addressed was too small an amount to be distributed on a formula basis, OJJDP could not make Title V awards in FY 2003.

Title V grants help communities develop and implement collaborative, community-based delinquency prevention plans. These plans focus on risk and protective factors that research has shown are critical to the onset of delinquent behavior. Many Title V communities are implementing research-based prevention programs. OJJDP awards Title V grants to states based on the relative size of their population subject to original juvenile court jurisdiction. States, in turn, award funds to communities to implement delinquency prevention plans that meet their local needs.

Because a state or local government is required to provide a 50-percent cash or

in-kind match for each Title V grant, the level of community ownership of, and investment in, these programs is significant and has contributed to the overall success of the Title V program. Several states and communities have provided more than the match and have incorporated the Title V program model into other grant programs. In addition, the Title V program gives communities an incentive to secure additional finances to sustain their prevention activities after Title V funding has ended.

Communities receiving Title V grants are also required to form a prevention policy board (PPB) made up of local representatives from social services; child welfare, health, and mental health agencies; law enforcement; private industry; religious institutions; and civic organizations. This board assesses the factors that are putting children in their community at risk and the protective factors that are helping keep them safe, and then develops a comprehensive system of strategies that meets the needs of both the children and the community. Bringing together community leaders with diverse backgrounds and experience through the PPBs helps broaden community perspective, enhance support for prevention activities, and improve access to resources.

Until the new JDPBG program receives an appropriation greater than \$95 million, FACJJ recommends that OJJDP continue the current formula-based distribution of Title V grants. Deciding to change the funding process to a competitive discretionary program or some other alternative in response to the current shortage of Title V funds would serve as a disincentive to states and to Congress to support future funding. In

addition, discontinuing a broad national distribution of Title V funds to all states could result in less support from the states for the core requirements. Finally, at a time when state budgets are being reduced, Title V funding is crucial to help states and local communities develop effective, research-based prevention programs.

6. *FACJJ recommends that the President and Congress appropriate funds in FY 2005 and beyond for the newly authorized but unfunded JDPBG program. The appropriation should be equal to or greater than that for the Title V program (\$95 million).*

The 2002 reauthorization of the JJDP Act, part of the 21st Century Department of Justice Appropriations Authorization that was signed into law on November 2, 2002, consolidated several previously independent juvenile justice programs into a new single block grant program, the JDPBG program. This new block grant program replaces the following parts of Title II of the previous JJDP Act: Part C (National Programs), Part D (Gangs), Part E (State Challenge Activities), Part F (Treatment of Juvenile Offenders Who Are Victims of Child Abuse or Neglect), Part G (Mentoring,) Part H (Boot Camps), and the first subpart of Part I (White House Conference on Juvenile Justice). The new program authorizes OJJDP to provide block grants to states and Indian tribes to carry out the general purposes of the repealed programs.

However, Congress appropriated no money in FY 2004 for this delinquency prevention program. Consequently, OJJDP is unable to fund programs that address many of the serious issues that FACJJ has identified as needing attention. For example, the new block grant

program authorizes OJJDP to make grants for delinquency prevention programs that address a variety of issues, including treatment for juveniles with mental health problems, mentoring programs, substance abuse treatment programs, initial intake screenings of every juvenile taken into custody, gang prevention programs, afterschool activities, and programs that address risk and protective factors. Fully funding the JDPBG program would also allow OJJDP to develop and fund innovative new programs that have the potential to help at-risk youth and prevent juvenile delinquency and crime.

Although the juvenile crime rate is declining, communities and states are struggling to address a number of serious juvenile justice issues, many of which could be addressed through this new block grant program. The lack of an appropriation for the JDPBG program, coupled with the large number of congressional earmarks in the other OJJDP funding streams, is hampering OJJDP's ability to develop programs to respond more effectively to the needs of the juvenile justice community.

This is not the time to cut funding for OJJDP's delinquency prevention efforts. FACJJ recommends that the President and Congress appropriate funding for the JDPBG program in FY 2005 and beyond.

7. *FACJJ recommends that the President and Congress eliminate all earmarks from juvenile justice grant programs. If Congress continues to insert earmarks into the OJJDP budget, the earmarked programs should be funded in addition to the agency's baseline appropriation. Earmarks should not take money away from existing authorized programs. The diminishing funds remaining each*

year in the OJJDP budget after congressional earmarks significantly reduces the awards OJJDP can make to states and reduces the number of critical research, evaluation, and demonstration programs OJJDP can support.

OJJDP's FY 2003 appropriations were hit especially hard by earmarks. As noted earlier, the Title V program was so heavily earmarked that OJJDP could not make any awards because there was not enough money left in the appropriation. The JABG program was hampered by earmarks as well; in fact, \$75 million of the \$190 million appropriation was earmarked for a single program. The agency's discretionary funding was also earmarked, including \$3 million for a national parenting program.

Things did not get much better in FY 2004, when OJJDP's budget included more than 170 earmarks: 2 programs received \$5.9 million each and 19 additional programs received \$1 million or more.

In addition to cutting into OJJDP's budget, earmarked programs often are not subject to agency oversight, do not always serve the neediest youth population, and are not required to undergo the same rigorous application and review process required for other programs that compete for government grants.

FACJJ is not the only federal advisory group seriously concerned about the number of federally earmarked youth programs. The White House Task Force for Disadvantaged Youth has also expressed concern about this issue. In a report to the President, the task force stated that it opposes "earmarks for youth programs because they significantly reduce accountability, and they exclude potentially

higher quality projects that could otherwise successfully compete for funds. This weakens what should be a strong force on proven, positive short-term and long-term results for youth” (White House Task Force for Disadvantaged Youth, 2003, pp. 84–85).

It is also difficult to hold earmarked programs accountable. For example, some programs believe that since their funding comes directly from Congress, they are not subject to agency oversight. Other programs may not have the expertise or staff needed to address accountability and performance issues. Furthermore, there often is no evaluation or research to indicate whether or not an earmarked program works. In this age of shrinking government budgets, it is crucial that federal agencies have the fiscal ability to fund programs that have been proven to work or at least have the resources needed to fund and evaluate promising programs.

FACJJ believes it would be best if Congress eliminated earmarks for juvenile justice programs. If earmarks continue to be a reality of the federal budget process, then Congress should add funds for these programs to OJJDP’s baseline appropriation. Earmarked programs should no longer take dollars away from the agency’s baseline appropriation.

8. *FACJJ recommends that the President and Congress modify the JJDP Act to mandate that federal government agencies, in conjunction with the OJJDP Administrator, develop and implement programs to comply with the four core requirements without imposing a financial penalty on the states. As a result of the current discrepancies, AI/AN and undocumented juveniles are often held in jails with adults and/or incarcerated for status offenses and nonoffenses.*

Many federal government agencies that have jurisdiction over youth, such as the Bureau of Indian Affairs (BIA), U.S. Park Police, U.S. Immigration and Customs Enforcement (ICE) (formerly the Immigration and Naturalization Service), the Federal Bureau of Prisons; and federal military institutions; are not required to abide by the rules of the JJDP Act. Thus, youth in their custody are not subject to the same safeguards guaranteed to other detained youth. Juvenile justice practitioners note that AI/AN youth and undocumented juveniles are two populations especially affected by this disparity.

A recent federal investigation of BIA detention facilities found that these facilities frequently house juvenile detainees with adult inmates. (A resulting report, *Indian Jails: A Clarion Call for Reform*, was prepared by the Office of the Inspector General of the U.S. Department of Interior in 2004.) In testimony before the U.S. Senate Finance Committee, Inspector General Earl Devaney (2004) expressed concern about the holding of juveniles in adult BIA facilities and reported on an incident in which a juvenile had been raped while being held in jail awaiting social services (because there was no other holding place available). He also cited the death of a 16-year-old girl who died of alcohol poisoning while being held in a detention cell in another BIA facility. Other problems cited by the Inspector General included overcrowded, rundown facilities and a lack of trained personnel.

The needs and safety of detained youth are the same whether they are in the custody of federal agencies or state or local jurisdictions. The JJDP Act has helped states make tremendous improvements in the way they handle detained juveniles. It has been 30

years since the JJDP Act was first enacted; it is time that the mandates of the Act apply to all agencies that have jurisdiction over juveniles.

9. *FACJJ recommends that Congress revise the JJDP Act so that the Coordinating Council on Juvenile Justice and Delinquency Prevention (Coordinating Council) has as its designated chair and vice-chair high-ranking officials from the Executive Office of the President who have broad authority in the executive branch for domestic policy issues relating to children and families. FACJJ also recommends that Congress add the Secretary of Agriculture and the Secretary of the Interior to the membership of the Coordinating Council. In addition, as a technical correction, the Commissioner of INS should be changed to the Assistant Secretary for ICE.*

The White House Task Force for Disadvantaged Youth (2003, p. 33) recommended in its final report that a Disadvantaged Youth Policy Initiative be created to help ensure that the federal government more effectively meets the needs of this population. The task force proposes that the initiative be coordinated through the Executive Office of the President. The purpose of the initiative would be to develop and coordinate policy, maximize interagency collaboration, coordinate federal research, and find and elevate models of “what works.”

Rather than reinventing the wheel, the Coordinating Council should be used as the framework for the new initiative. Having officials from the Executive Office of the President oversee the Coordinating Council would help it focus on the needs of disadvantaged youth, and promote and strengthen the

interagency collaboration needed to make a difference with disadvantaged youth.

The current Coordinating Council, as restructured by the 1992 amendments to the JJDP Act, comprises nine ex-officio members and nine nonfederal members who are juvenile justice practitioners. The ex-officio members are the Attorney General; the Secretaries of HHS, Labor, Education, and Housing and Urban Development; the OJJDP Administrator; the Director of the Office of National Drug Control Policy; the Chief Executive Officer of the Corporation for National Service; and the Assistant Secretary of ICE. The President may designate other key federal officials with significant decisionmaking authority to serve on the Coordinating Council.

10. *FACJJ recommends that the President and Congress increase funding by \$250 million for the U.S. Department of Education’s 21st Century Community Learning Centers (21st CCLC) program and require that the program designate at-risk youth as a priority population to be served. At-risk youth include truant youth who do not have an adult caregiver available to provide care and supervision during out-of-school time and youth involved with juvenile justice and/or child protective services.*

The 21st CCLC program provides funds for afterschool programs that offer academic enrichment opportunities for children attending low-performing rural and inner-city schools. Congress appropriated \$993.5 million for the program in FY 2003.

Originally established in 1997, the 21st CCLC program was reauthorized under the No Child Left Behind Act. The program provides academic activities to help students

meet state and local education standards. These programs also offer youth development activities; drug and violence prevention services; technology education; art, music, and recreation; and counseling and character education to enhance the academic components. In addition, literacy and related education activities are offered to the families of children participating in 21st CCLC programs.

Academic failure is often associated with the beginning of delinquency and the escalation of serious offending, and interventions that improve a child's academic performance have been shown to reduce delinquency (Maguin and Loeber, 1996). In addition, serious violent crimes by juveniles occur most frequently in the hours immediately following the close of school on school days (Snyder and Sickmund, 1999, p. 65); juveniles also are at the highest risk of being victims of violence at the end of the school day (Snyder and Sickmund, 1999, p. 35).

Findings from a national study released in May 2004 illustrate the need for afterschool programs. According to *America After 3 PM: A Household Survey on Afterschool in America*, 14.3 million students in kindergarten through grade 12 take care of themselves once the school day ends (Afterschool Alliance, 2004). Of this number, almost 4 million are middle school students in grades 6 through 8. The survey also found that African American and Hispanic youth spend more time unsupervised than do other children. Accordingly, 53 percent of African American parents and 44 percent of Hispanic parents said they would enroll their children in an afterschool program if one were available. This compares with 23 percent of Caucasian parents who said they would enroll their children in afterschool programs.

An analysis of research findings from several studies about afterschool programs found that such programs do make a difference (Miller, 2003). The analysis, funded by the Nellie Mae Education Foundation, found that quality afterschool programs can increase student learning, help students behave better in school, improve their attitudes toward school, and help develop better relationships with their parents. The analysis also found that students who lack adult supervision after school are at greater risk for drug and alcohol use, depression, and behavior problems, and generally have lower self-esteem and poor academic performance.

A review of evaluations of afterschool programs by the Harvard Family Research Project (2003) had similar findings. The review found that 12 different evaluations to assess prevention outcomes noted decreases in youth delinquency (including criminal arrest) and violence.

11. *FACJJ recommends that the President and Congress authorize all states to use Medicaid's 1915(c) waiver for home- and community-based services for children currently residing in or at risk of placement in either psychiatric hospitals or residential treatment facilities including juvenile detention and training school facilities.*

Four states (Indiana, Kansas, New York, and Vermont) have received waivers to their state Medicaid plans that allow them to use Medicaid funds to provide home- and community-based services to treat children with mental health needs. Making these funds available to treat children's mental health disorders helps make treatment available to more children, reduces the trauma of having to be taken from the home for treatment, and

saves states money because home- or community-based services are less costly than residential treatment.

Treating children's mental health disorders early is critical because these youth often are at risk of failing in school, abusing drugs and other substances, or becoming involved with the juvenile justice system. In fact, as indicated in the introduction of this report, several studies have shown that a large number of youth in the juvenile justice system have a mental health disorder that requires treatment. Increasing the number of states allowed to use Medicaid funds to provide home- or community-based mental health treatment for at-risk children could go a long way toward helping to keep these children out of the juvenile justice system. It would also help contribute to their growth into mentally healthy young adults.

Considerable confusion exists as to whether Medicaid funds can be used to treat juveniles who are being held in juvenile detention facilities prior to adjudication. Federal regulations (42 C.F.R. Section 435.1009) governing the use of Medicaid funds from HHS prohibit using these funds for the treatment of any person who is considered to be an inmate of a public institution. (An inmate of a public institution is defined as a person living in a public institution.) However, the regulations go on to say that an individual is not considered an inmate of a public institution if "he is in a public institution for a temporary period pending other arrangements appropriate to his needs" [(42 C.F.R. Section 435.1009 (b)]. Nevertheless, many states consider detained juveniles ineligible for mental health services funded by Medicaid. New Mexico is one of the few states that has made Medicaid funding available for preadjudicated juveniles

held in detention facilities. Existing Medicaid regulations that continue to deprive preadjudicated youth of access to the mental health services that many of their parents cannot afford will almost certainly lead to further serious problems.

12. *FACJJ recommends that the President and Congress repeal the changes made to the Anti-Lobbying Act in the 21st Century Department of Justice Appropriations Authorization that prohibit individuals from expending federal grant funds to directly lobby Congress and other federal government officials for juvenile justice reforms, policies, laws, and funding.*

Effective November 2, 2002, the JJDP Act (Pub. L. No. 107-273) amended the Anti-Lobbying Act, 18 U.S.C. § 1913. Basically, the amendment broadened the scope of prohibited lobbying using federal funds at all levels of government, broadened the application of the Act to any users of federal funds, and prescribed civil penalties in place of the former criminal ones. The Anti-Lobbying Act governs only lobbying activities conducted using federal funds.

13. *FACJJ recommends that the President and Congress support the amendment of the JJDP Act to prohibit the imposition of the death penalty on persons who are under the age of 18 at the time of the commission of their offense.*

Although juveniles must be held accountable for committing serious violent crimes (especially capital crimes), research about the brain development of adolescents is shedding new light on adolescent legal culpability. This research, in effect, is finding that a child's brain has not finished developing when he or she reaches adolescence.

A fact sheet prepared by the American Bar Association's Juvenile Justice Center (2004) adeptly summarizes the complex findings of the research and points to the critical necessity of taking this research into consideration before imposing a death penalty on a juvenile offender. These are some of the key findings highlighted in the fact sheet:

- □ The brains of adolescents are far less developed than previously believed.
- □ The frontal lobe, the largest part of the brain and the part which controls the brain's most advanced functions, undergoes more changes during adolescence than at any other time in an individual's life and is the last part of the brain to fully develop.
- □ Adolescents often use the emotional part of the brain, rather than the frontal lobe, to make decisions.

- □ The parts of the brain that govern impulse, judgment, and other characteristics may not reach complete maturity until an individual reaches age 21 or 22.

Adolescence is also a time of fluctuating hormonal and emotional changes for both males and females. When coupled with other circumstances such as family abuse and violence, psychological and mental problems, substance abuse, and neighborhood and community conditions, these changes can trigger violent behavior.

Although science cannot determine accountability, the emerging brain research sends a clear scientific message that because an adolescent's brain is not as fully developed as an adult's, he or she is less competent in making mature decisions. As such, offenders who are under the age of 18 at the time they commit a serious crime should not be subjected to the death penalty.



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