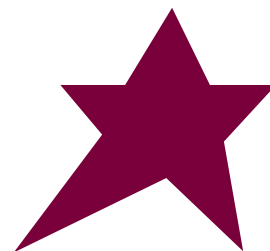
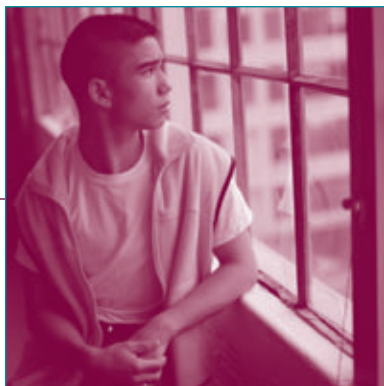
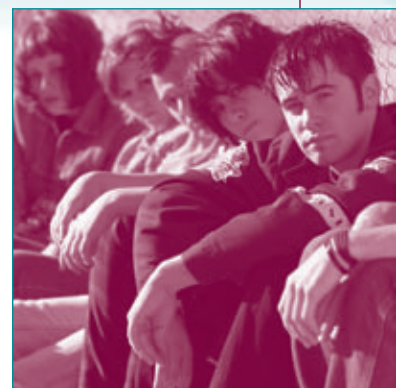
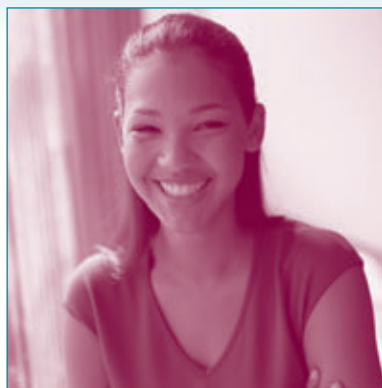


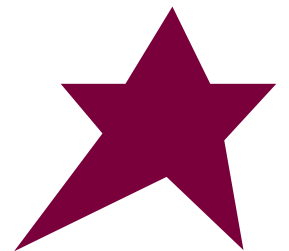
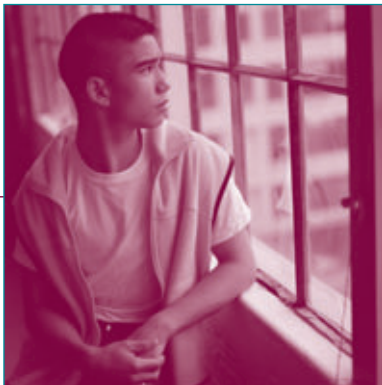
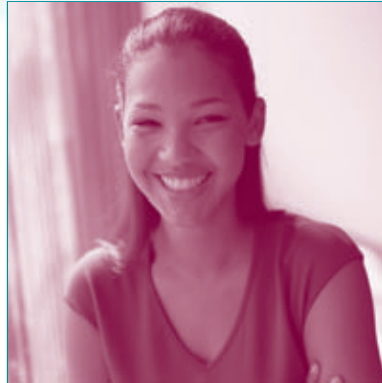
Federal Advisory Committee on Juvenile Justice

ANNUAL REPORT 2005



The opinions included in this publication are those of the Federal Advisory Committee on Juvenile Justice, and do not necessarily reflect the official position or policies of the Office of Juvenile Justice and Delinquency Prevention and the U.S. Department of Justice.

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



DECEMBER 2005 □

Table of Contents

Foreword	v
Acknowledgments	vii
Executive Summary	ix
Introduction to the Federal Advisory Committee on Juvenile Justice	1
National Leadership Needed	3
Serious Issues Require Serious Advocacy	7
Federal Advisory Committee on Juvenile Justice Recommendations	15
References	23
Committee Members	27

Foreword

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

On behalf of the Federal Advisory Committee on Juvenile Justice (FACJJ), I am pleased to present this report, which highlights some of the most pressing juvenile justice issues facing our country and calls for strong national leadership to address these needs. The concerns discussed in this 2005 *Federal Advisory Committee on Juvenile Justice Annual Recommendations Report to the President and the Congress of the United States* reflect the need for the nation's leaders at all levels of government to refocus on juvenile justice and delinquency prevention. The country has made substantial progress in reducing juvenile delinquency for more than 20 years, and now is not the time to end these efforts. One way to keep the focus on juvenile issues is to fully fund and support the Office of Juvenile Justice and Delinquency Prevention, a component of the U.S. Department of Justice, Office of Justice Programs.

The recommendations in this report were written before Hurricanes Katrina and Rita devastated many parts of the country, resulting in the need for massive federal financial assistance. FACJJ recognizes the burden these storms have placed on the federal budget, but requests that the nation's youth programs will not be the victim of funding cuts. One of the issues discussed in this report is the detrimental effects congressional earmarks have had on federal funding for youth programs. In light of the soaring costs of our recent natural disasters, it is even more urgent that Congress heed the call to stop allocating scarce federal dollars to favored programs. The nation can no longer afford to support the burgeoning number of earmarked programs.

Earmarks and the other juvenile justice issues highlighted in this report were identified by states and territories responding to an FACJJ survey as the issues most in need of attention. The common thread running through the majority of recommendations is the need for national leadership at all levels of the federal government, from the White House to Congress to the U.S. Department of Justice.

On behalf of FACJJ, I urge the nation's leaders to carefully consider the recommendations in this report and to work with other policymakers, practitioners, and citizens to keep the focus on juvenile justice. None of us can allow the progress that has been made in juvenile justice reform and delinquency prevention to fade away.

David R. Schmidt
2005 FACJJ Chair

Acknowledgments

This report would not have been possible without the help of many individuals who contributed both considerable time and valuable ideas to its preparation. Many thanks go to Robert E. Shepherd, Jr., and Patricia Connell, co-chairs of the Annual Report Committee, for their leadership and guidance. Other committee members who shared their expertise and participated in the many meetings and conference calls needed to fine-tune the report are Bernardine Adams, Ned Chester, Jeriel Heard, Bob Mardis, Ken Moore, and Glenn Quinney. The committee would also like to thank David Schmidt, Chair of the Federal Advisory Committee on Juvenile Justice (FACJJ), for taking the time to participate in all of the committee's conference calls. Kudos also go to Kay McKinney for her contributions in compiling, writing, and revising the report. The committee also thanks Robin Delany-Shabazz, Designated Federal Official, and Robert Samuels of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for their help and support.

Special thanks go to the Planning Committee, chaired by Harry W. Davis, Jr., and Billy Wasson, who designed and sent out a questionnaire to FACJJ members, and to all who responded to the questionnaire including State Advisory Groups and state juvenile justice specialists. Their responses helped form the basis of this report. Thanks also to FACJJ members for their input and review.

Finally, the committee thanks Daryel Dunston, Wanda Keyes, and Mary T. Sheahan from OJJDP's Juvenile Justice Resource Center for their help in handling the logistics and other details associated with arranging numerous FACJJ and Annual Report Committee meetings.

Executive Summary

The status of juvenile justice appears promising, with the juvenile arrest rate for violent crimes at its lowest since at least 1980. There are other signs of promise as well. But on closer examination, the picture is not quite as rosy as it appears on the surface. Most states struggle daily with a multitude of juvenile justice problems.

These many problems are compounded by a lack of adequate funding at all levels of government. Funding for many federal juvenile justice programs has been cut significantly in recent years. In addition, congressional earmarks are taking a drastic portion of federal money appropriated for youth programs.

The nation needs a reinvigoration of leadership, advocacy, and federal funding for juvenile justice and delinquency prevention programs. This leadership must start at the White House and Congress and extend to the U.S. Department of Justice. There are many reasons the nation's leaders must keep the focus on juvenile justice. For example, emerging findings from adolescent brain research have broad implications for the juvenile justice system and the way it addresses juvenile delinquency. The overrepresentation of minorities in the juvenile justice system remains a complex problem that states are finding difficult to remedy.

Tribal communities also are struggling to deal with delinquency and crime among American Indian and Alaska Native youth. The spiraling use of methamphetamines (meth) is having devastating effects on many communities and is resulting in a growing number of child abuse and neglect cases in many parts of the country. The use of computers to sexually exploit children also is a concern and presents numerous challenges for the juvenile justice system.

National attention must promptly be shifted back to juvenile justice and delinquency prevention. The President and Congress should lead the way by becoming visible and vocal advocates for juvenile justice and by allocating significant and consistent funding for youth programs. These leaders should ensure that the progress that has been made in preventing and controlling juvenile delinquency and crime continues by fully supporting the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the programs it oversees.

The Federal Advisory Committee on Juvenile Justice (FACJJ) developed 10 recommendations that focus on the need for sufficient funding of OJJDP programs, the detrimental effects of earmarking federal funds, and the need to amend the Juvenile Justice and Delinquency Prevention Act so that it operates more effectively and efficiently.

Federal Advisory Committee on Juvenile Justice Recommendations

FACJJ makes the following recommendations to the President and Congress:

1. FACJJ recommends that the President and Congress fund the Formula Grants Program in the next fiscal year and beyond at the fiscal year (FY) 2002 level of \$89 million. FACJJ reiterates this recommendation from 2004 because this level of funding is crucial if states are to continue their efforts to comply with the four core requirements of the JJDP Act [Section 223(a)(11), (12), (13), (22)]. This higher level of funding is especially needed to help states continue to correct the disproportionate number of minority youth who come into contact with the juvenile justice system.
2. FACJJ recommends that the President and Congress allocate no less than \$37.5 million (excluding earmarks) for the Title V Program in the next fiscal year and beyond, and also require the program to be administered as a formula-based block grant.
3. FACJJ recommends that Congress reauthorize the Juvenile Accountability Block Grant (JABG) program and fund the program at its original authorization level of \$350 million. The President's 2006 budget eliminates this delinquency prevention program.
4. FACJJ recommends that the President and Congress appropriate funds in the next fiscal year and beyond for the new Juvenile Delinquency Prevention Block Grant program, which was authorized in the 2002 reauthorization of the JJDP Act, but which has never been funded.
5. FACJJ recommends that the President and Congress maintain funding 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, especially truant youth who often end up in the juvenile justice system. (In reality, the juvenile justice system should be a court of last resort for truant youth.)
6. FACJJ again recommends that the President and Congress eliminate all earmarks from juvenile justice grant programs. If Congress continues to steer scarce OJJDP funds to favored local, state, or national programs through earmarks, the earmarked programs should be funded in addition to OJJDP's annual baseline appropriation. Earmarks should not take money away from existing authorized programs. **IN ADDITION, ONLY EVIDENCE-BASED PROGRAMS SHOULD BE FUNDED.**
7. FACJJ recommends that Congress amend the FY 2002 JJDP Act to require that all future juvenile justice appropriations bills include funds for the Formula Grants Program accountability-based sanctions supplement. The supplement was included in the FY 2003 appropriation but was removed in both the FY 2004 and FY 2005 appropriations bills. If the JJDP Act is not amended prior to passage of the FY 2006 appropriations bill, FACJJ recommends that Congress amend the appropriations bill to ensure that accountability-based sanctions supplement funding is included for FY 2006.

8. 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 JJDP Act in the same year in which the state was found to be out of compliance with any of the four core requirements.
9. FACJJ recommends that the President and Congress modify the JJDP Act to require that federal government agencies, in conjunction with the OJJDP Administrator, develop and implement programs that comply with the four core requirements of the JJDP Act.
10. FACJJ recommends that the President and Congress amend the Social Security Act to allow all states to use Medicaid's 1915 [c] waiver to provide home- or 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.

Introduction to the Federal Advisory Committee on Juvenile Justice

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

FACJJ comprises appointed representatives from the State Advisory Groups (SAGs) of each of the 50 states, the District of Columbia, and the 5 U.S. territories. (SAGs are appointed by the governors and assist their states in developing and implementing the juvenile justice plans their states are required to submit to OJJDP every 3 years in order to receive formula grant funds.) The OJJDP Administrator invites all of the SAGs to nominate, through their governor's office, one of their members to serve as a primary member of FACJJ and another to serve as an alternate in the absence of the primary member. Members serve on one of four committees established to help FACJJ address its mandated responsibilities: the Annual Report Committee, the Grants Committee,

the Legal Affairs Committee, and the Planning Committee.

FACJJ provides states with an opportunity to have direct input into the federal policy development and budget process. 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.

FACJJ meets twice a year. During 2005, the advisory committee met in May in Albuquerque, New Mexico, where members learned about some of the juvenile justice problems facing American Indian and Alaska Native communities, and in October in San Antonio, Texas, where participants discussed the impact of immigration on juvenile justice systems in border states, ethics and values in juvenile justice practice, and results of the 2006 FACJJ questionnaire to the states.

The advisory committee's mandated responsibilities include preparing two annual reports:



one to the President and Congress and one to the OJJDP Administrator.

This 2005 *Federal Advisory Committee on Juvenile Justice Annual Recommendations Report to the President and Congress of the United States* is the committee's second annual report and outlines critical concerns and issues identified by FACJJ members. It contains 10 recommendations that illustrate why juvenile justice must remain a national priority. The advisory committee's 2005 recommendations report

to the OJJDP Administrator and the Office's responses to the recommendations will be posted on the FACJJ Web page.

For Further Information

More information about FACJJ, including a list of members, meeting summaries, and annual reports, is available on the FACJJ Web page at www.ojjdp.ncjrs.org/facjj.

National Leadership Needed

As the nation looks to the future, the status of juvenile justice appears promising. The juvenile arrest rate for violent crimes is the lowest it has been since at least 1980 (Snyder, 2005). The overall adolescent and teen birth rate dropped by more than 50 percent between 1992 and 2004, binge drinking and illicit drug use among high school seniors declined, and the number of juveniles who are victims of crime also has dropped drastically (Land, 2005).

The President, Congress, other policymakers, and citizens, however, must not let this good news lull them into a state of complacency. Why? Because on closer examination, the juvenile justice picture is not quite as rosy as it appears on the surface. While the sensational (but infrequent) heinous crimes often grab the attention of the media and the public, most states struggle daily with a multitude of less sensational juvenile justice problems, some of them ongoing problems, others emerging. The increasing number of female juvenile offenders and the lack of gender-specific programs for them is one critical emerging problem. Another is the growing use of methamphetamines (meth) by both juveniles and adults, and the many problems associated with it (including child abuse). The distressingly large numbers of youth in the juvenile justice system who suffer from mental health and substance abuse disorders has practitioners scrambling to find appropriate screening and treatment programs. The disproportionate number of

minority youth in all stages of the juvenile justice system also remains a troublesome issue despite states' best efforts to correct this overrepresentation. American Indian/Alaska Native (AI/AN) youth continue to experience violent crime at much higher rates than do members of the general population. They also often have less access to services. As the Federal Advisory Committee on Juvenile Justice stressed in last year's annual report to the President and Congress, there certainly is no shortage of juvenile justice problems remaining to be addressed.

Moreover, findings emerging from adolescent brain development research are shedding new light on why juveniles may behave the way they do. These findings have the potential to change the way the juvenile justice system does business, from providing prevention and intervention services to keeping youth and adults separated in secure facilities to reexamining the trend to transfer certain types of juvenile offenders to adult criminal court.



The President, Congress, and the U.S. Department of Justice (DOJ) can ill afford to put juvenile justice on the back burner. The many troublesome issues mentioned throughout this report call for strong leadership and advocacy at the highest level.

Although FACJJ does not doubt that the President and Congress are concerned about the well-being of the nation's youth, creating new programs, such as the Juvenile Delinquency Prevention Block Grant (JDPBG) program and then not appropriating funds for it sends mixed signals. Why did Congress create a program it did not intend to fund? Equally disturbing is the fact that this new but as yet unfunded program eliminated funding for many existing programs.

Continuing to cut federal funding for delinquency prevention programs sends a signal that juvenile justice is not a high priority for either the White House or Congress. Consider these recent funding statistics for the Office of Juvenile Justice and Delinquency Prevention (OJJDP):

- OJJDP's appropriation in fiscal year (FY) 2005 was \$384 million; almost \$362.9 million remained after rescissions and other administrative costs were removed. The President's proposed budget for FY 2006 cuts the appropriation almost in half to \$187 million.
- Funding for the Juvenile Accountability Block Grant (JABG) program went from a high of \$350 million in 1998 to \$55 million in FY 2005, with \$11 million of that amount set aside for rescissions and other administrative costs. The President's 2006 budget proposal eliminates this program, which awards grants to states to fund programs in 16 purpose areas specifically defined by Congress.
- Since its inception in 1994, funds available to states for the Title V Community Prevention Grants Program (Title V) have varied greatly

from a high of \$40.5 million in FY 1999 to \$14.7 million in FY 2005. Title V is the only federal funding source dedicated solely to delinquency prevention.

- The appropriation for the Formula Grants Program, which helps states meet the four core requirements of the Juvenile Justice and Delinquency Prevention (JJDP) Act, was cut from \$95.1 million in FY 1998 to \$84 million in FY 2005. However, after rescissions and other administrative costs were subtracted, only \$68 million remained for distribution to states.

National leadership is also needed when it comes to remedying the detrimental effects congressional earmarks are having on federal funding for youth programs. OJJDP's annual appropriation continues to take major hits from earmarks, which are special interest projects that Congress mandates federal agencies to support at a specific level of funding. These programs are not subject to the same level of review, performance standards, or oversight required of other government-funded programs. Nor is there any guarantee that the programs are addressing the most pressing delinquency prevention needs in their communities or in the nation, which is even more disturbing in light of shrinking funds at all levels of government.

In recent years, earmarks have taken on a life of their own, raising concern across the political spectrum. According to the Heritage Foundation, a Washington, DC-based think tank, earmarked projects skyrocketed from fewer than 2,000 projects in 1998 to 10,656 in the 2004 budget. The total cost of these projects in 2004? More than \$23 billion (Riedl and Miller, 2004).

Earmarked programs take an especially high toll on the budgets of federal agencies with youth programs. According to a database compiled by *Youth Today*, Congress earmarked nearly \$696 million for 1,363 youth projects in 2005. That's

a huge increase from 2004, when \$133.1 million was set aside for 441 projects (Kelly, 2005). Moreover, the bulk of this money goes to just a few favored projects. According to a *Youth Today* analysis, of the \$696 million in earmarks in 2005, 74 percent—or \$515 million—was directed to 284 programs. The remaining \$181 million was divided among the remaining 1,079 earmarked projects (Kelly, 2005). Not surprisingly, the analysis also found that earmarked funds tend to go to states with influential members of Congress regardless of the size of a state's youth population.

As for OJJDP, its FY 2005 appropriation of \$362.9 million contained more than \$100 million for 247 earmarks. The earmark awards ranged from a high of \$4 million to a low of \$45,000. In addition, of the \$15 million Congress gave to OJJDP for juvenile mentoring programs in 2005, almost half (close to \$7 million) was earmarked for the Big Brothers Big Sisters national program.

Exhibit 1

OJJDP's 2005 budget: \$362.9 million

Total number of earmarks: 247

Example of earmark amounts:

- \$4 million (2 projects)
- \$3 million (4 projects)
- \$2 million (2 projects)
- \$1.9 million (1 project)
- \$1.75 million (3 projects)
- \$1.6 million (1 project)
- \$1.5 million (3 projects)
- \$45,000 (1 project)

Besides taking a drastic portion of federal program appropriations, earmarked programs are not held accountable for their effectiveness (or ineffectiveness). Because these programs bypass the competitive grant process by going directly to a member of Congress, they do not have to meet performance standards nor demonstrate that they work. In fact, it is often difficult for federal agencies to monitor earmarked programs as program staff believe they are not subject to agency oversight because their funding came directly from Congress. In addition, some earmarked projects are here today, gone tomorrow, leaving behind no trace of what their program accomplished. If Congress insists on funding earmarks, FACJJ recommends that they fund only those projects that have been proven effective and that the federal agency responsible for monitoring the earmark be given the authority to hold the recipient accountable. In addition, Congress should make it clear to earmark recipients that they will be monitored and held accountable by their funding agency.

Clearly, earmarks are detrimental to the federal budget process and FACJJ urges Congress to exercise national leadership by eliminating earmarks for youth programs. FACJJ recognizes that some of the programs may be worthy of funding, that many members of Congress support youth projects in their home states because they truly believe they are beneficial, and that the youth-serving organizations that receive earmarks are not going to join the call to eliminate earmarks. Nevertheless, FACJJ firmly believes it is time to set aside individual reasons and goals and to move forward to support programs that have the greatest potential of meeting the most critical needs of the juvenile justice system and the children in its care. In other words, it is time to eliminate earmarks.

Progress in preventing juvenile delinquency and crime has been made with federal dollars, and the President and Congress must make sure the progress continues. In recent years, OJJDP, the Office that Congress created to address juvenile crime and delinquency, has not received the support it needs from the White House, Congress, or DOJ to do its job. The juvenile justice community needs a fully supported, fully funded, and fully staffed OJJDP to help it continue to make progress in preventing delinquency, intervening when it occurs, and protecting the public. Although FACJJ acknowledges that homeland security and financial

aid for natural disasters are, rightfully, national priorities and that the federal budget needs to be balanced, the juvenile justice system should not carry the burden of the nation's budget cuts. Nor should OJJDP have to continue to share its shrinking budget dollars with favored congressional earmark programs. The President and Congress, along with DOJ, can lead the way by becoming more vocal advocates for juvenile justice programs and by consistently and adequately funding programs authorized under the JJDP Act. To do otherwise is to shortchange the nation and its children.

Serious Issues Require Serious Advocacy

As stressed in the previous section, the nation needs a reinvigoration of leadership and federal funding for juvenile justice and delinquency prevention. This leadership must start at the White House and Congress and extend to the U.S. Department of Justice (DOJ).

Many of the achievements and improvements evident today in the juvenile justice system are due to past investing and advocacy at the national level.

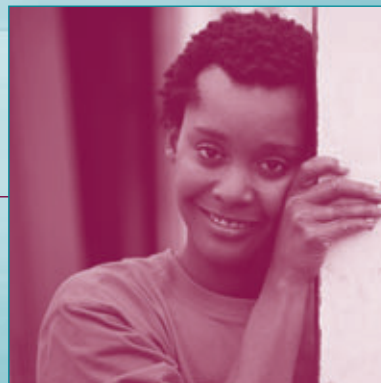
The President and Congress have an obligation to keep this progress going. A fully funded and visibly supported Office of Juvenile Justice and Delinquency Prevention (OJJDP) can help them meet this obligation. The states have made great strides under OJJDP's leadership and support in coming into compliance with the four core requirements of the JJDP Act, which require states to:

- Deinstitutionalize status offenders and nonoffenders.
- Separate adult and juvenile offenders in secure institutions.
- Eliminate the practice of detaining or confining juveniles in adult jails and lockups.
- Address the disproportionate number of minority youth who come into contact with the juvenile justice system (DMC).

Although most states are in compliance with the Act's requirement to address DMC, they have not found a way to successfully correct this situation. A strong commitment and continued federal funding are essential in helping states solve this problem.

OJJDP also continues to support valuable research on a number of critical juvenile justice issues, including youth gangs and the causes and correlates of juvenile delinquency; provides funding to help communities address issues such as truancy, substance abuse, underage drinking, and children's exposure to violence; and offers a wealth of training and technical assistance to state and local jurisdictions on myriad issues. OJJDP also assists American Indian and Alaska Native (AI/AN) communities in developing and implementing culturally sensitive tribal youth programs.

However, many troublesome juvenile justice problems remain and new issues are constantly surfacing and demanding attention. The nation needs OJJDP to help



practitioners and policymakers respond to these problems and issues. The following is just a sampling of the reasons the President and Congress must keep juvenile justice on the front burner, and must fully and visibly support OJJDP.

Adolescent Brain Research

Emerging research about brain development in adolescents is shedding new light on their competency to make mature decisions during this age period. These findings should not be viewed as an arcane topic of interest only to academics and researchers. Rather, the emerging findings have broad implications for the juvenile justice system and the way it addresses juvenile delinquency. The findings clearly point out that the teenage brain is a work in progress and may help explain what is “going on” with adolescents.

The research, conducted by the University of California at Los Angeles, Harvard Medical School, and the National Institute of Mental Health, found that a child’s brain has not finished developing when he or she reaches adolescence. Key findings include the following (American Bar Association, 2004):

- The brains of adolescents are far less developed than previously believed.
- The frontal lobe, the largest part of the brain and the part that controls the brain’s most advanced functions, undergoes more changes during adolescence than at any other time in an individual’s life and is the last part of the brain to 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.

Findings from the research have been cited in discussions ranging from the juvenile death penalty to the rate of teenage car crashes. The research was referenced when the U.S. Supreme Court ruled in March 2005 that it is unconstitutional to sentence anyone to death for a crime he or she committed when under the age of 18. State legislators in Maryland and Virginia pointed to the research when proposing laws related to teenage driving (Williamson, 2005).

Although one of the researchers in the study has emphasized that the research has not proven any correlation between brain changes and behavior (Williamson, 2005), and science cannot determine an individual’s accountability for his or her actions, the research has implications for juvenile justice practitioners and policymakers on a number of fronts.

For example, the research could lead the field to re-examine the trend that began during the 1980s and 1990s of managing juvenile detention and correctional facilities like adult facilities. Adolescent maturity—or lack thereof—could mean a change in staff training and program development for these facilities and for law enforcement and juvenile justice practitioners across the board. The findings could also come into play when considering waiver and transfer laws, which allow the transfer of some juvenile cases to criminal court. Adolescent brain research could also have an impact on the development of federal laws, such as legislation under consideration by both the U.S. Senate and the U.S. House of Representatives to address gang violence, including that committed by youth. (House Bill H.R. 1279, “Gang Deterrence and Community Protection Act of 2005,” and Senate Bill S. 155, “Gang Prevention and Effective Deterrence Act of 2005,” were pending at press time.)

Findings about adolescent brain development also lend further support to research from the MacArthur Foundation, which indicates that juvenile offenders 15 and younger may not have the competence to serve as defendants in a criminal trial (MacArthur Foundation, 2003). Adolescent brain development research is still in the early stages, but it is an issue the nation and the juvenile justice community must be prepared to address, and one in which today's policymakers can take a lead role.

Minorities in the Juvenile Justice System

The overrepresentation of minorities in the juvenile justice system remains a national concern from arrest rates to juveniles in residential placement. For example, although the disparity in violent crime arrest rates for black juveniles and white juveniles declined from 6-to-1 in 1980 to 4-to-1 in 2003, juvenile arrests for violent crimes still disproportionately involved black youth in 2003 (Snyder, 2005). States with AI/AN populations also struggle with DMC in all stages of the juvenile justice system and with a lack of funding and appropriate programs to address the needs of tribal youth.

DMC is a complex problem, one for which solutions are difficult. One reason is that the factors that have an impact on overrepresentation cross a number of domains: the juvenile justice and education systems, the family, and socioeconomic conditions (Devine, Coolbaugh, and Jenkins, 1998). Thus, it may be impractical to expect the juvenile justice system to address the problem alone. Recent data from the Annie E. Casey Foundation indicate that the disparity may begin as early as the foster care system. According to the data, although children of color are not abused more often than are other children, they are put into foster care faster, stay there longer, receive fewer services, and are

permanently reunited with their families less often than Caucasian children (Annie E. Casey Foundation, 2005). The foundation also reports that African American and AI/AN children are about three times more likely than Caucasian children to be in the national child welfare system, and Latino children are overrepresented in foster care in selected cities and states. These data have serious implications for the juvenile justice system because many of these children often end up somewhere in the system later in their lives.

OJJDP has done a good job of encouraging and helping communities address DMC, but the issue definitely has not been solved. In fact, nearly all the states responding to an informal FACJJ survey listed addressing DMC as one of their top five juvenile justice problems. Most states participating in OJJDP's Formula Grants Program have completed the first steps of identifying and assessing DMC in their states and are in the process of implementing interventions (OJJDP, 2005a), but they need help in finding something that really works to keep minority youth out of the juvenile justice system. States face a multitude of DMC questions. For example, how do transfer/waiver laws affect minority youth? Does access, or lack of access, to legal counsel have an impact on DMC? What kind of culturally appropriate assessment tools and programs are available for minority youth? Is cultural sensitivity training available for practitioners?

A recent report from the Building Blocks for Youth Initiative (2005) provides an overview of some of the effective strategies, challenges, and lessons learned by jurisdictions and advocates across the country in their attempts to reduce DMC. The report discusses the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, efforts of the W. Haywood Burns Institute, and campaigns in 12 cities, counties, and states to reduce DMC within the justice system.

The White House and Congress owe it to the many juvenile justice practitioners that are making a good faith effort to address DMC to keep the focus on this issue. They must provide adequate funding that will allow OJJDP to continue providing strong leadership and financial and technical resources to help states reduce the disproportionate number of minority youth who come into contact with the juvenile justice system at any point from arrest to reentry.

Tribal Youth Issues

Although violent crime is at a 30-year low nationwide, some hot spots remain. One of those spots is Indian country, according to David Iglesias, U.S. Attorney for the District of New Mexico, who spoke at the 2005 FACJJ spring meeting in Albuquerque, New Mexico. A recent analysis of AI/AN youth and violent crime backs up this statement. The analysis found the following (Perry, 2004):

- The rate of violent crimes committed against AI/AN individuals is more than twice the national average and this disparity occurs across all age groups.
- The violent crime rate in every age group under age 35 is significantly higher for AI/AN individuals than for the general population.
- From 1976 to 1999, 7 in 10 AI/AN juvenile murder victims were killed by another American Indian.
- The alcohol violation arrest rate for AI/AN youth age 17 or under was nearly double that for youth of all ages in 2001.

Drug and alcohol use is a particular problem among AI/AN youth. The 2003 National Survey on Drug Use and Health (NSDUH) found that the rate of current illicit drug use among AI/AN youth ages

12 to 17 was almost twice as high as the rate among youth overall: 19.3 percent versus 11.2 percent (Office of Applied Studies, 2004). Further findings from the survey illustrate the severity of this trend: the highest rate (62.4 percent) of lifetime illicit drug use was among AI/AN individuals; the lowest rates of lifetime illicit drug use were among Hispanics at 37 percent and Asians at 25.6 percent (Office of National Drug Control Policy, n.d.). Tribal communities, like many other communities across the country, are struggling to combat the widespread use of one drug in particular: methamphetamine (meth). Although solid statistics about meth use by tribal youth are difficult to find, anecdotal evidence abounds. Jan Morley, a former assistant U.S. Attorney, touched on the magnitude of the problem when she addressed a national gathering of tribal and state leaders in Minnesota. “Methamphetamine has become an epidemic in our Indian country. We’re losing our children to this drug war, and we need to take our children back,” she said (Ruble, 2003).

The Navajo Nation Tribal Council is so concerned about the drug that its members unanimously voted to criminalize the sale, possession, and manufacture of meth on the reservation in an effort to reduce violent crime. The sponsor of the legislation, who said data showed that 40 percent to 90 percent of violent crime on the Navajo Reservation involved meth, also reported that the council had seen children as young as 9 years old using meth (Kolb, 2005).

FACJJ members from states with significant tribal youth populations also point to a rising trend in meth use in Indian country and to a lack of resources to prevent and treat meth addiction and the many consequences associated with it.

Tribal communities also find themselves dealing with children born with fetal alcohol syndrome (FAS). This syndrome is a set of physical and mental handicaps that can occur in a baby when a

woman drinks alcohol while she is pregnant. Although this completely preventable disease knows no racial or ethnic boundaries, some states with high AI/AN juvenile populations report that significant numbers of young people in their juvenile justice systems suffer from FAS. The behavioral problems and cognitive deficits associated with FAS present the juvenile justice systems in these states with some of their biggest challenges.

When dealing with delinquency and crime among AI/AN youth, policymakers and others should be prepared to address several circumstances unique to tribal youth. For example, there are 562 federally recognized tribes within the United States, each with its own history, traditions, and cultural practices. In addition, there are considerable differences between American and tribal justice systems. The American system of justice, which has European roots, employs a philosophy of retribution that is punitive and guided by codified laws and written rules. Moreover, it dictates a separation of powers and the separation of church and state. In contrast, tribal justice systems are indigenous and based on a holistic philosophy. These systems are guided by unwritten customary laws, traditions, and practices that are passed down by example and through oral teachings of tribal elders. The wisdom of tribal elders and cultural traditions are at the heart of many tribal juvenile justice systems today. Other tribal communities incorporate aspects of both American and traditional tribal justice systems into their systems of juvenile justice.

Despite the differences in cultures, traditions, language, and justice systems, most AI/AN communities have at least one need in common: the need for federal, state, local, and tribal governments to work together to develop, implement, and maintain juvenile justice programs for tribal youth both on and off the reservation.

Meth Crisis

The spiraling use of meth is having devastating effects on many communities, and especially on their children. Meth is highly addictive, has dangerous toxic effects on the central nervous system, can be easily made in home labs, and endangers the environment and anyone who comes into contact with it. This includes children of users and makers, neighbors, and law enforcement and other personnel required to clean up the hazardous chemicals that make up meth labs.

Long-term meth use can cause violent behavior, anxiety, depression, delusions, and rages (Ells, Sturgis, and Wright, 2002). When high, meth users often do not sleep for days; conversely, when they crash or stop using, they may sleep for days at a time. Besides being exposed to dangerous chemicals and possible meth lab explosions in their homes, children of meth users often are uncared for and unsupervised. They also may be subjected to irrational and brutal punishments during their parents' periods of violence and paranoia (Huddleston III, 2005).

A recent survey by the National Association of Counties (NACo) confirms the havoc meth is playing in the lives of many children. The study found that meth is a major cause of child abuse and neglect in many places in this country. NACo surveyed counties in 13 states where child welfare activities are performed at the county level. Child welfare agencies from 303 counties in all 13 states responded. Almost half (40 percent) of the child welfare officials responding to the survey reported an increase in out-of-home placements of abused and neglected children because of meth use in the past year (National Association of Counties, 2005). More specifically, over the past 5 years, 71 percent of California counties and 70 percent of Colorado counties responding to the survey reported an increase in out-of-home placements.

Unlike the crack cocaine crisis of the 1980s and 1990s, which occurred mostly in urban areas, meth users often live in rural regions of the country — areas often unprepared to deal with the severity of the epidemic. These regions do not have the fiscal resources, programs, or personnel necessary to cope with the many challenges meth brings, including the rising number of child abuse and neglect cases.

Meth use by juveniles is a concern as well. Although overall teen drug use continues its gradual decline, according to the 2004 Monitoring the Future survey (Johnston et al., 2004), the use of meth by 10th- and 12th-graders held steady through 2002 before finally showing a decline in 2003. However, while meth use by 10th-graders continued to decline in 2004, it did not decline among 12th-graders.

A study by the National Institute of Justice that examined meth use by juvenile arrestees in five cities found that compared with nonmeth users, juvenile arrestees were far less likely to attend school, more likely to have been arrested previously, and more likely to have been incarcerated (Pennell et al., 1999). The same study found that juveniles were most likely introduced to meth by friends and used the drug the first time simply to experiment. It is apparent that information about the destructive nature of meth needs to be included in drug and alcohol abuse programs.

In August 2005, the White House announced it was stepping up federal efforts to combat meth use. As part of this effort, the Office of National Drug Control Policy (ONDCP) and the U.S. Departments of Health and Human Services and Justice are working together to develop programs to reduce meth production and trafficking, provide prevention and treatment services, and help social agencies deal with the young victims of meth use. ONDCP has also established a Web site (www.MethResources.gov) that offers information about publications and research, training and technical assistance, and funding opportunities.

This is a good first step. The growing use of meth calls for swift action by child welfare, law enforcement, and the juvenile and criminal justice systems at all levels of government to develop comprehensive, coordinated responses to the widespread use of this dangerous drug.

Computer Exploitation of Children

Most children are no strangers to cyberspace. They have ready access to the Internet through computers in their homes, schools, and public libraries. Unfortunately, computers also can lead to more than educational opportunities: they can lead to online sexual exploitation of children by adult predators. The Youth Internet Survey, conducted in 2001 by the University of New Hampshire and the National Center for Missing and Exploited Children, found that many youth are exposed to sexually explicit pictures on the Internet without seeking them or expecting them (Finkelhor, Mitchell, and Wolak, 2001). According to the survey, one in five Internet users ages 10 to 17 (19 percent) received an unwanted sexual solicitation over the Internet in the past year. The majority of the exposures (70 percent) occurred while the youth were using computers at home; most of the remaining 30 percent happened at someone else's home. Two-thirds of the solicitations took place in chat rooms and 24 percent occurred through e-mail or instant messages.

Juveniles often are lured into providing personal information and developing relationships with adult sex offenders through online chat rooms. A national survey of federal law enforcement agencies about Internet-related sex crimes with juvenile victims turned up some disturbing findings. The survey found that the victims of sexual offenses that originated with online encounters were primarily teenage girls ages 13 to 15 (Wolak, Finkelhor, and Mitchell, 2004). The survey also found that most

offenders did not deceive these young girls about their ages or their desires to develop sexual relationships. Even more disturbing, most victims met and had sex with the adult offender more than once.

The Internet offers a perfect cover for sexual predators because it provides privacy, anonymity, and access to unsupervised children and teenagers who may be susceptible to manipulation. It is also a marketplace for offenders seeking material for their child pornography collections.

Online exploitation of children presents numerous challenges for the juvenile justice system. Internet crimes demand new specialized ways of investigating and gathering forensic evidence. They call for enhanced victim support services for juveniles and their families. Researchers from both surveys discussed above point out that healthcare and mental health professionals, juvenile justice practitioners, educators, parents, and children need to be made

aware of how vulnerable youth are to online exploitation and need to understand the actual hazards of the dangerous relationships that can develop from online encounters.

Congress has funded OJJDP's Internet Crimes Against Children (ICAC) program since 1998. The program provides grants to state and local law enforcement agencies to develop task forces to respond to online crimes against children. The task forces are regional, multijurisdictional, and multi-agency in scope. The ICAC program includes forensic and investigative components, training and technical assistance, victim services, and community education. To date, OJJDP is supporting 45 task forces that cover all 50 states. Recognizing the insidious nature of computer-based exploitation of children, FACJJ urges the President and Congress to keep the focus on this issue by continuing to support ICAC and other OJJDP programs designed to combat this harmful crime.

Federal Advisory Committee on Juvenile Justice Recommendations

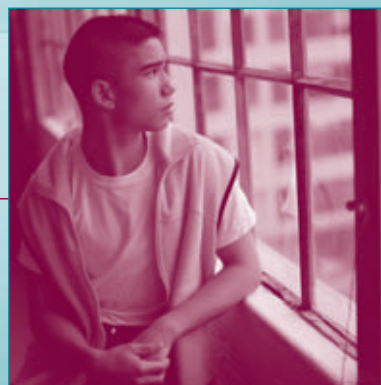
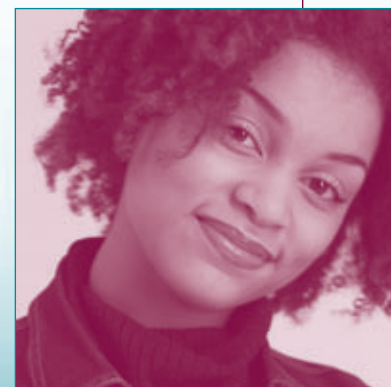
The Federal Advisory Committee on Juvenile Justice (FACJJ) first and foremost urges the President and Congress to once again make delinquency prevention a national priority. The juvenile justice system has made great strides since the Juvenile Justice and Delinquency Prevention (JJDP) Act was first signed into law in 1974. The many reforms resulting from the Act have contributed to significant system improvements and a juvenile arrest rate that continues to decline. However, this good news, combined with the nation's understandable focus on homeland security and terrorism, has resulted in juvenile justice taking a backseat with the White House and Congress in recent years.

National attention must be promptly shifted back to juvenile justice. FACJJ asks the President and Congress to lead the way by becoming visible and vocal advocates for juvenile justice and by allocating significant and consistent funding for all programs created by the JJDP Act. The recommendations discussed in this chapter focus on the crucial need for sufficient funding of Office of Juvenile Justice and Delinquency Prevention (OJJDP) programs, the detrimental effect of earmarking federal funds, and the need to amend the JJDP Act so that it operates more effectively and efficiently.

Funding Issues

Funding for most of the programs created by the JJDP Act has been cut drastically during the past several years. These cuts often have a trickle-down effect, with many state and local governments slashing their own juvenile justice funds. Consequently, policymakers and practitioners across the country find themselves trying to address a multitude of serious juvenile justice problems at the same time that federal, state, and local funds are declining—and in some cases, disappearing altogether. FACJJ is concerned that if funding for juvenile justice programs continues to shrink, so will the inroads that have been made in reducing juvenile delinquency and serious juvenile crime.

Several OJJDP programs have suffered funding cuts in recent years, including the Formula Grants Program. This program provides funding to help states comply with the four core requirements of the JJDP Act (described on page 7)



and develop prevention and intervention programs. The Title V Community Prevention Grants Program (Title V) is another program that has been hit hard by funding cuts. In addition to a continual decline in funding, Congress earmarked the Title V allocation so heavily in fiscal year (FY) 2003 that OJJDP could not make any Title V awards that year. This action led to a serious disruption of state and local Title V delinquency prevention efforts (OJJDP, 2005b).

The Juvenile Accountability Block Grant (JABG) program has also experienced drastic funding cuts recently; moreover, the President's 2006 budget eliminates this important delinquency prevention program altogether. JABG provides block grants to states to support programs that promote greater accountability in the juvenile justice system.

A new Juvenile Delinquency Prevention Block Grant (JDPBG) program (not to be confused with the JABG or Title V programs discussed above) was authorized by Congress in 2002, but has never received an appropriation. Funding for the activities the new program was to replace also has been eliminated, leaving the juvenile justice community without some much needed programming.

FACJJ is also concerned about sustained funding for the U.S. Department of Education's 21st Century Community Learning Centers (even though it is not an OJJDP program), which make afterschool programs available to at-risk youth.

Based on these concerns, FACJJ makes the following recommendations regarding federal funding of juvenile justice and related education programs:

1. **FACJJ recommends that the President and Congress fund the Formula Grants Program in the next fiscal year and beyond at the FY 2002 level of \$89 million. FACJJ reiterates this recommendation from 2004 because this level of funding is crucial if states are to continue their efforts to comply with the four core requirements of the JJDP Act [Section 223(a)(11), (12),**

(13), (22)]. This higher level of funding is especially needed to help states continue to correct the disproportionate number of minority youth who come into contact with the juvenile justice system.

Although Congress appropriated \$84 million for this program in FY 2005, little more than \$68 million remained for distribution to states after rescissions and other costs (including 10 percent for research and 2 percent for training and technical assistance) were removed.

This program provides formula grants to help states, territories, and the District of Columbia (hereafter referred to as "states") achieve and maintain compliance with the four core requirements of the JJDP Act. As indicated earlier, most states have made significant progress in meeting the first three requirements, but are having a difficult time effectively addressing the disproportionate number of minority youth who come into contact with the juvenile justice system (DMC). The overrepresentation of minorities is a complex problem that stretches across all stages of the juvenile justice system and is one that defies simple solutions. Although nearly all states have completed collecting and assessing data about their own DMC problem in their states, they need help in moving beyond data collection. They need help with finding something that really works to keep minority youth, including black, Hispanic, and American Indian and Alaskan Native (AI/AN) children, out of the juvenile justice system across the board. They need help in developing culturally appropriate services for these youth, services that range from prevention to intervention to detention.

OJJDP is to be applauded for its considerable efforts to help states address DMC, but much work remains to be done before the overrepresentation of minority youth in the juvenile justice system will be eliminated. Congress must allow OJJDP to continue its efforts by funding the Formula Grants Program at the requested level so that states can receive the

monetary support needed to address DMC, and so that OJJDP can continue to help states find programs that really succeed in keeping minority youth from having contact with the juvenile justice system.

2. FACJJ recommends that the President and Congress allocate no less than \$37.5 million (excluding earmarks) for the Title V Program in the next fiscal year and beyond, and also require the program to be administered as a formula-based block grant.

The FY 2005 appropriation for the Title V Program was \$20 million but after rescissions and other costs (including 10 percent for research and 2 percent for training and technical assistance activities) were removed, only \$14.7 million remained for distribution to the states.

Communities receiving Title V grants have made significant progress in building community coalitions, developing data-driven prevention plans, and implementing evidence-based program strategies. Moreover, local evaluations of the programs implemented with Title V funds are showing changes in targeted behaviors, improvements in local conditions, and reductions in community risk factors for juvenile delinquency and other adolescent problem behaviors (OJJDP, 2004.) It is clear that the Title V Program is making a difference in delinquency prevention efforts, and many state administrators report that if adequate federal funding is not forthcoming, gains made under this program could very well be reversed, and juvenile crime and arrests may begin to increase (OJJDP, 2005b). The Title V Program has also led to the creation of a well-received, user-friendly online Model Programs Guide and Database. The guide and database help communities, practitioners, and researchers locate scientifically tested and proven programs and strategies that can meet their needs. (Information about the database is available on the Title V page of OJJDP's Web site: <http://ojjdp.ncjrs.gov/titlev/index.html>).

FACJJ also recommends that Congress direct OJJDP to continue administering the program as a formula-based block grant program rather than as a discretionary grant program. FACJJ is concerned about how the program would be set up if it becomes a competitive bid process. For example, would states compete nationally, regionally, or among similarly populated states for funding? Some states may not have the capacity to compete effectively in a national competitive grant process, leaving them out of the process altogether. Also, if the Title V Program became a national discretionary program, OJJDP would then set priorities for states to address with their funding. Although FACJJ believes that OJJDP should set national priorities, the advisory committee also believes state and local governments should determine which programs to support with Title V funds (based on individual community needs).

3. FACJJ recommends that Congress reauthorize the Juvenile Accountability Block Grants (JABG) program and fund the program at its original authorization level of \$350 million. The President's 2006 budget eliminates this delinquency prevention program.

The JABG program has seen severe cuts in funding since it was originally authorized at \$350 million in 1998. Congress appropriated \$55 million for this program in FY 2005, but after rescissions and other costs (including 10 percent for research and 2 percent for training and technical assistance) were removed, only \$44 million remained for distribution to states. States and communities need JABG funding to develop programs to hold juvenile offenders and the juvenile justice systems accountable.

Congress first introduced this program as the Juvenile Accountability Incentive Block Grants (JAIBG) program. The word "incentive" was dropped from the title and other revisions to the program were made during the 2002 reauthorization of the JJDP Act. OJJDP awards JABG grants to

states to fund programs in 16 purpose areas specifically defined by Congress. (For a list of the purpose areas, see the JABG Web page at www.ojjdp/ncjrs.gov/jabg/index.html). JABG funding also allows OJJDP to provide training and technical assistance to help communities implement accountability-based sanction programs. Training topics during 2005 included gender-responsive programming for females and mental health services for youth in detention and corrections facilities—topics of great concern to FACJJ and State Advisory Group (SAG) members.

A national evaluation of the program (when it was still known as the JAIBG program) reported that the program had substantially achieved Congress' expectations (Parent and Barnett, 2003). The evaluation found that states had made a large proportion of their JAIBG funds available to local units of government, thus helping jurisdictions address local problems. Moreover, the evaluation found that the JAIBG program stimulated collaboration among units of local government, law enforcement, courts, prosecutors, defenders, probation, detention, community organizations, schools, and social service agencies. Many state JAIBG coordinators noted the positive effects and benefits of these multiagency collaborations

4. FACJJ recommends that the President and Congress appropriate funds in the next fiscal year and beyond for the new Juvenile Delinquency Prevention Block Grant program, which was authorized in the 2002 reauthorization of the JJDP Act, but which has never been funded.

When Congress reauthorized the JJDP Act in 2002, it consolidated seven previously independent OJJDP programs into a single new prevention block grant program. This new Juvenile Delinquency Prevention Block Grant (JDPBG) program repealed funding for a number of existing OJJDP programs,

including gang programs and mentoring programs. The new program was to make block grants available to states and Indian tribes to carry out the general purposes of repealed programs. In a nutshell, critical programs were repealed, but the anticipated JDPBG funding to replace them never surfaced. Why authorize a program if there is no intention of funding it?

A fully funded JDPBG program would allow OJJDP to fund delinquency prevention programs that address many of the issues FACJJ has identified as needing attention:

- Treatment for juveniles with mental health problems.
- Substance abuse treatment programs.
- Initial intake screenings of every juvenile taken into custody.
- Gang prevention programs.
- Programs that focus on the needs of female juvenile offenders.

The many cuts in OJJDP's budget, coupled with the large number of congressional earmarks in its major funding streams and the lack of a specific appropriation for the JDPBG program, have left the Office unable to develop new prevention programs or continue funding former programs that respond to the needs of the juvenile justice community.

5. FACJJ recommends that the President and Congress maintain funding 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, especially truant youth who often end up in the juvenile justice system. (In reality, the juvenile justice system should be a court of last resort for truant youth.)

The 21st CCLC program provides funds for after-school programs that offer academic enrichment opportunities for children attending low-performing rural and innercity schools. Congress appropriated \$991.1 million for this program in FY 2005 and 2006; FACJJ recommends that the program be required to reach out to truant youth. Truancy has long been identified as an early warning sign of potential future delinquent behavior. It is a complex problem that requires collaboration among schools, service providers, law enforcement agencies, and courts.

The 21st CCLC program provides youth development activities, drug and violence prevention services, and counseling, and works with the families of the children participating in these programs. Reaching out to truant youth, helping them to get back into school, and working with them to achieve academic success can go a long way toward keeping them out of the juvenile justice system.

Congressional Earmarks

Despite calls for an end to earmarks, OJJDP's budget continues to be hit hard. As noted earlier, OJJDP's FY 2005 appropriation of \$362.9 million was hampered by more than \$100 million in earmarks. 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. Because earmarks are so detrimental to the budgets of youth programs, FACJJ makes the following recommendation:

6. FACJJ again recommends that the President and Congress eliminate all earmarks from juvenile justice grant programs. If Congress continues to steer scarce OJJDP funds to favored local, state, or national programs through earmarks, the earmarked programs should be funded in addition to OJJDP's

annual baseline appropriation. Earmarks should not take money away from existing authorized programs. IN ADDITION, ONLY EVIDENCE-BASED PROGRAMS SHOULD BE FUNDED.

FACJJ is just one of many groups concerned about earmarking. The White House Task Force for Disadvantaged Youth opposed earmarks for youth programs in its final report (2003). The Heritage Foundation continues to call attention to federal funding of questionable earmarked projects in a series of Web memos (Riedl and Miller, 2004). Citizens Against Government Waste (2005) publishes an annual *Pig Book Summary* (a donation to the organization is required to obtain a copy), which lists earmarks in all federal appropriations bills. *Youth Today*, an advocacy group, compiled a database of earmarks in the 2005 budgets of federal agencies with youth programs and found that Congress earmarked nearly \$696 million for favored youth programs (Kelly, 2005). Further analysis showed that the bulk of the money was set aside for just a few projects.

Besides stripping OJJDP and other agencies of valuable funding, earmarks often also strip the funding agency of authority to hold earmarked grantees accountable. These grantees are not subject to the same level of review, performance standards, or oversight as grantees that have to compete for their federal funds. Or, as an assistant deputy secretary in the U.S. Department of Education put it: "Congress hasn't given us the authority to ask a lot of questions of earmark recipients" (Archibald, 2005).

If Congress continues to earmark OJJDP's appropriation despite the problems it causes, earmarked funds should go only to those programs that have been proven effective, federal agencies should be given the authority to hold the programs accountable, and funding for the programs should be added to, not subtracted from, OJJDP's baseline appropriation.

Making the decision to end the earmarking process will not be an easy one. Nevertheless, FACJJ strongly urges the President and Congress to do the right thing and eliminate all earmarks from juvenile justice programs.

Legislative Changes

As noted throughout this section, the reauthorization of the JJDP Act, signed into law on November 2, 2002, as part of the 21st Century Department of Justice Appropriations Authorization Act, made both major and minor changes to the JJDP Act. Some changes were minor word changes, but those changes have made a serious impact on states participating in OJJDP's Formula Grants Program. For example, one change affects the amount of extra federal dollars available to help states implement accountability-based programs; another affects the financial penalty a state may receive for failing to comply with any one of the four core requirements of the JJDP Act.

FACJJ also remains concerned that federal agencies that have the authority to detain juvenile offenders are not required to abide by the four core requirements of the JJDP Act. FACJJ suggests that Congress amend the JJDP Act to rectify these issues. The advisory council also favors amending the Social Security Act to make Medicaid funds available to provide home- and community-based services for treating children at-risk of being placed in psychiatric hospitals or residential treatment programs, including juvenile detention and training school facilities.

Based on these concerns, FACJJ recommends the following changes to existing legislation:

7. FACJJ recommends that Congress amend the FY 2002 JJDP Act to require that all future juvenile justice appropriations bills include funds for the Formula Grants Program accountability-based sanctions supplement. The supplement was included in the FY 2003

appropriation but was removed in both the FY 2004 and FY 2005 appropriations bills. If the JJDP Act is not amended prior to passage of the FY 2006 appropriations bill, FACJJ recommends that Congress amend the appropriations bill to ensure that accountability-based sanctions supplement funding is included for FY 2006.

For the past 2 years Congress has failed to add an accountability-based sanctions supplement to the Formula Grants appropriation. The supplement, which Congress originally added in 1998, allows states participating in the Formula Grants Program to receive an additional amount of money based on the size of their juvenile population to implement accountability-based programs. In 2004 and 2005, OJJDP made up for the loss of funds by deobligating available Formula Grant funds, but the Office most likely will not be able to do so in future years. This could have serious consequences for states. Withholding the accountability-based sanctions supplements could force states to end the effective programs they have already implemented, or are in the process of implementing, based on past supplements. Accountability-based programs hold juvenile offenders accountable for their inappropriate behavior and offenses and help them accept responsibility for their delinquent actions. FACJJ urges the President and Congress to advocate for these types of programs by amending the JJDP Act to include the accountability-based sanctions supplement in all future Formula Grants Program appropriations.

8. 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 JJDP Act in the same year in which the state was found to be out of compliance with any of the four core requirements.

The JJDP Act requires that states participating in the Formula Grants Program come into compliance with the four core requirements of the Act or have

the amount of their annual formula grants reduced until they come into compliance. The 2002 reauthorization of the JJDP delayed by 1 year the time at which this financial penalty would take effect.

While on the surface the change appears to benefit the states by giving them a chance to come into compliance before being penalized, in reality it is detrimental. As currently written, the law requires OJJDP to impose a financial penalty on a state 1 year after it is found out of compliance even if it comes back into compliance. For example, if a state is found out of compliance in FY 2004 but comes back into compliance that same year, OJJDP, by law, is forced to reduce the state's FY 2005 formula grant. Amending the act so that the penalty goes into effect the same year in which a state is deemed out of compliance will allow OJJDP to work with the state and help it come into compliance so the state does not lose any money. Immediate sanctions also force a state to address a problem right away, rather than waiting until the sanction takes effect in a year.

9. FACJJ recommends that the President and Congress modify the JJDP Act to require that federal government agencies, in conjunction with the OJJDP Administrator, develop and implement programs that comply with the four core requirements of the JJDP Act.

Federal government agencies that have jurisdiction over youth, such as the Bureau of Indian Affairs, U.S. Park Police, U.S. Immigration and Customs Enforcement, the Federal Bureau of Prisons, and federal military institutions, are not required to provide the youth whom they detain with the basic protections outlined in the JJDP Act. This means the following for juvenile status offenders (such as runaways) and nonoffenders (such as dependent or neglected children)—

- Juveniles can be held in secure federal detention or correctional institutions.
- Alleged and adjudicated juvenile offenders do not have to be separated by sight and sound

from adult offenders being held in the same facility.

- Juveniles can be securely detained or confined in adult jails and lockups.
- Federal facilities holding juveniles do not have to make any attempt to address the disproportionate number of minority juveniles who may come into contact with the juvenile justice system.

The lack of any protective requirements regarding juveniles in federal facilities can be especially detrimental to AI/AN and undocumented juveniles. For example, juveniles accounted for 15 percent of the total custody population in Indian country jails in midyear 2002 (Minton, 2003). Although this does not necessarily mean these youth were not protected, it does illustrate the number of AI/AN youth held in custody and indicates why this is a serious issue. The needs and safety of detained youth are the same whether they are in the custody of federal agencies or state/local jurisdictions. Congress and the President can help ensure their safety by amending the JJDP Act to require all agencies with jurisdiction over juveniles to abide by the core requirements of the Act and by providing additional funding to help these agencies do so. Moreover, the amendment should ensure that if a federal agency violates the core requirements of the Act, the state in which the violation took place would not lose any of its formula grant money.

On a related issue, FACJJ believes the Interstate Compact for Juveniles should be amended to conform to the regulations of the JJDP Act. FACJJ urges states participating in the Interstate Compact for Juveniles to revise the regulation that allows states to hold runaways and status offenders for up to 90 days in secure confinement. This regulation is contrary to the JJDP Act. (The Interstate Compact for Juveniles is a multistate agreement that provides a consistent mechanism for tracking and supervising juveniles who are under court supervision and who move across state lines. The compact has been

adopted by 28 states and is under consideration in 7 other states.)

10. FACJJ recommends that the President and Congress amend the Social Security Act to allow all states to use Medicaid's 1915 [c] waiver to provide home- or 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.

The juvenile justice system has become the primary placement system for youth needing mental health services. In fact, thousands of children are incarcerated in juvenile detention centers only because they are waiting for community mental health services (U.S. House of Representatives, Committee on Government Reform, Minority Staff, Special Investigation Division, 2004). Making Medicaid funds available to provide home- and community-based services to treat children with mental health needs *before* they enter the juvenile justice system is

crucial and makes sense for a number of reasons. It makes treatment available to more children. It reduces the trauma to a child of having to be taken from the home for treatment. It saves states money because home- or community-based services cost less than residential treatment programs. It may prevent at-risk youth from ever becoming involved in the juvenile justice system and, ultimately, from ending up incarcerated.

Although Medicaid will pay for mental health services for many youth (based on family income), youth lose their Medicaid eligibility in most states if they are detained or incarcerated. Some states have been successful in using waivers to access Medicaid funds for detained youth. However, a waiver process should not be necessary. A juvenile eligible for Medicaid services should remain eligible regardless of his or her detention/incarceration status. Depriving these youth of access to mental health services that their parents cannot afford will almost certainly lead to further serious problems and involvement with the juvenile justice system and perhaps the criminal justice system.

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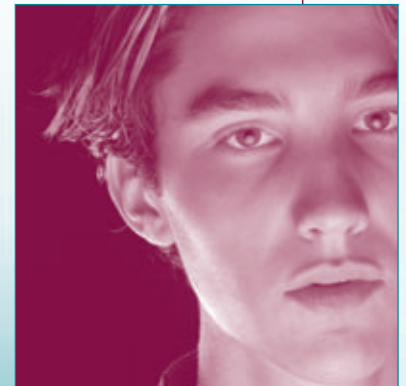
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