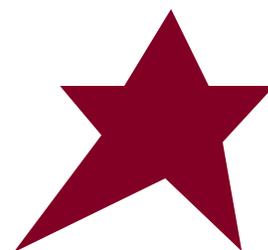
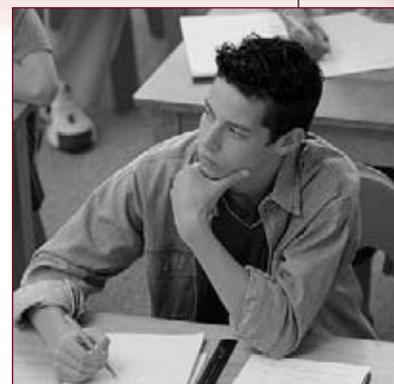


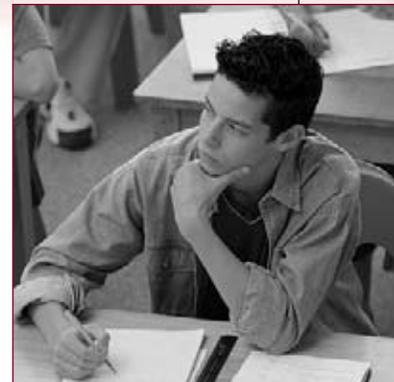
# ***Federal Advisory Committee on Juvenile Justice***

ANNUAL REPORT 2006



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 2006

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# Foreword

**D**ear 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 focuses attention on some of the most pressing juvenile justice needs facing our country and calls for strong national leadership to address these issues. The issues discussed in this third annual FACJJ Report to the President and the Congress of the United States are problems which juvenile justice practitioners across the nation are struggling to successfully address.

They are complex issues and require fiscal resources as well as innovative solutions. Recognizing the many demands on the nation's budget, this report calls for coordination and collaboration at the federal level to help pool resources and to use federal tax dollars more wisely. The report also points to the detrimental effects earmarks are having on funding for juvenile justice programs, and asks Congress to do its part by eliminating this harmful practice.

On behalf of FACJJ and the nation's youth, I urge national 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. We have made progress in reducing juvenile crime, but we must continue to concentrate on preventing delinquency and intervening when it happens, or our efforts of the past two decades will have been for naught. FACJJ looks forward to working with the President and the new Congress in 2007, and urges these leaders to restore funding for juvenile justice programs.

David R. Schmidt  
2006 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, cochairs of the Annual Report Subcommittee, for guiding this document through to its completion. Other subcommittee members who participated in the many meetings and conference calls needed to finalize this report, and who contributed numerous expert suggestions, are Bernardine Adams, Ned Chester, Linda Hayes, Robin Jenkins, Pam Kennedy, Bob Mardis, and Tom McBride. Billy Wasson and Glenn Quinney also participated in the development of this report. The subcommittee also recognizes the role played by David Schmidt, chair of the Federal Advisory Committee on Juvenile Justice, who took the time to participate in all of the subcommittee's conference calls and meetings.

Special thanks also go to the Planning Subcommittee, cochaired by Harry W. Davis, Jr., and Deirdre Garton, for designing and distributing the questionnaire sent to FACJJ members. The responses submitted by State Advisory Groups and their juvenile justice specialists formed the basis of this report. The subcommittee also thanks Robin Delany-Shabazz, designated federal official of the Office of Juvenile Justice and Delinquency Prevention, for her help and support, and all FACJJ members for their input and review.

Finally, the subcommittee thanks Daryel Dunston and Francesca Stern of EDJ Associates, which provides support to FACJJ, for their help in handling the logistics and other details associated with arranging numerous FACJJ and Annual Report subcommittee meetings, and acknowledges the skillful and faithful dedication of Kay McKinney, who drafted this report and nurtured it while undergoing a difficult period in her personal life.

# Federal Advisory Committee on Juvenile Justice Core Values

Children and adolescents are developmentally different from adults and from each other at different stages of development. Further evidence confirms that children and youth are especially amenable to treatment and rehabilitation.<sup>1</sup> Therefore, we believe that each child (defined as a person under the age of 18) who comes into contact with the justice system is entitled to:

1. Services provided by culturally competent, appropriately trained professionals who are committed to the treatment and rehabilitation of children and who are competitively compensated for the services they provide.
2. A full continuum of culturally appropriate integrated services from prevention through secure confinement, reentry, and aftercare provided in the least restrictive environment.
3. Services based on an objective assessment of risk and protective factors, equally accessible across all classes, cultures, jurisdictions, and linguistic and ethnic groups, which are individualized, gender-specific, and developmentally appropriate.
4. A system that provides a safe place to live, sustained subsistence, emotional and spiritual nurturing, educational opportunities that are relevant and appropriate, and adequate health care (including substance abuse and mental health treatment).
5. A juvenile justice system that provides rehabilitation, public safety, and accountability in a balanced and restorative manner.
6. Early, zealous, and effective legal representation, including an assessment of competency and a timely and just legal process.
7. A system in which individuals and entities work in a collaborative manner.
8. A system in which no child shall be subject to disproportionate contact, involvement, or outcome based on race, class, disability, culture, ethnicity, or gender.
9. The support of a functional family (including extended family) and services provided with collaborative involvement of the biological and/or perceived family of the child.
10. Separation from adults in institutional settings.

<sup>1</sup> Research conducted by the University of California at Los Angeles, Harvard Medical School, and the National Institute of Mental Health has found that a child's brain has not finished developing when he or she reaches adolescence.

# Executive Summary

**T**he field of juvenile justice is a continually changing landscape of issues and concerns. Just as one critical issue is resolved, new and equally urgent problems appear. These changes keep policymakers and practitioners constantly juggling to meet demands for adequate funding; training; and prevention, intervention, and treatment programs.

Although serious juvenile justice problems remain (and in some instances have grown more complex in the past 30 years), national leaders and the public itself sometimes seem oblivious. FACJJ members acknowledge that concerns about terrorism and unprecedented natural disasters during 2005 captured both national attention and funding, but the country must not lose sight of the very real needs of the juvenile justice system.

If ignored, the neglected, victimized, and troubled youth of today may become suicidal and/or delinquent. They may become runaways and perhaps even the criminal adults of tomorrow. This is especially true in the area of mental health. Numerous studies have confirmed that considerably more than half of the youth involved with the juvenile justice system have at least one diagnosable mental health disorder and more than 60 percent meet the criteria for three or more diagnoses (Shufelt and Coccozza, 2006). Properly assessing the needs of these youth, providing adequate treatment in community-based settings, and finding ways to pay for the treatment are major concerns of juvenile justice practitioners around the country. FACJJ believes there are a number of steps the President and Congress can take to help federal and state agencies collaborate on developing and funding mental health programs for at-risk youth and for those already in the juvenile justice system.

Although not ignored by policymakers, the disproportionate number of minority youth who come into contact with the juvenile justice system remains a complex, deeply entrenched, difficult issue to resolve. Questions remain about many issues that may affect disproportionate minority contact (DMC). For example, what effect do waiver and transfer laws have on minority youth? Are detained minority youth provided mental health services if needed? How often are minority youth provided with adequate legal counsel? DMC is a complex issue that requires a long-term commitment to its resolution. Most states, with guidance from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), have made some progress in addressing DMC. One of their first steps has been to collect data about minority youth who are held in detention and secure confinement. Although this data provides good information about juveniles once they actually enter the system, there is a critical lack of data that identifies the extent to which children of color are disproportionately brought into the system as a result of contact with law enforcement officials on the street and a lack of information about the efficacy of promising

practices. FACJJ believes that the President and Congress can help the nation make progress in eliminating DMC by giving this issue the funding priority it needs.

Complex problems, competing needs, and a lack of fiscal and physical resources have led policymakers to push juvenile justice systems to adopt evidenced-based practices and programs. On the surface, this seems like common sense. However, moving evidence-based research about practices and programs off the shelf and into the field is no easy task. Implementing such programs is an immense challenge, one that requires research, staff training, and long-term commitment by both policymakers and practitioners. States also need help in learning how to develop or strengthen their own research and evaluation activities. FACJJ believes the President and Congress can help practitioners make better use of limited taxpayer dollars and provide more effective services to the nation's children by restoring research and evaluation funding to OJJDP.

FACJJ believes that all youth who come into contact with the juvenile justice system are entitled to early, zealous, and effective representation by legal counsel. But findings from the American Bar Association and the National Juvenile Defender Center show practice contradicts this belief, specifically when it comes to representation of minority youth. Moreover, representing youth is quite different from representing adults. Youth have different needs and probably less understanding of the court process than adults. The presence of specially trained and committed juvenile defense attorneys might help lower detention rates and might result in fewer transfers or waivers and more creative dispositions actually tailored to the needs of the juvenile without compromising public safety. FACJJ believes the President and Congress should address the need for competent legal counsel when reauthorizing the Juvenile Justice and Delinquency Prevention (JJDP) Act in 2007.

The JJDP Act has made a big difference in the nation's efforts to prevent juvenile delinquency and crime and to intervene when these acts occur. The JJDP Act of 2002 is due to be reauthorized in 2007. The advisory committee recommends several additions and changes to the JJDP Act, including requiring federal agencies with jurisdiction over youth to abide by the core requirements of the Act, eliminating earmarks from OJJDP's budget allocation, and changing the year in which a state is financially penalized for failing to comply with the JJDP Act. FACJJ urges the President and Congress to begin working now on the reauthorization.

FACJJ also continues to be seriously concerned about the erosion of federal funding for juvenile justice programs. The advisory committee finds the disproportionate number of earmarks in OJJDP's annual budget appalling and detrimental to the Office, to state and local practitioners, and, most critically, to the youth they are supposed to serve. FACJJ also remains extremely concerned about lack of sufficient funding for OJJDP programs, including the Formula Grants, Title V Community Prevention Grants, and Juvenile Accountability Block Grants programs. The President and Congress must make juvenile justice delinquency prevention and intervention a funding priority once again if the cycle of violence and delinquency is to be broken.

Although the topic is controversial, the practice of sentencing convicted juveniles to prison for life without the possibility of parole (LWOP) raises several issues that many believe need to be examined. One of these issues is the lack of data and analysis about youth who are sentenced to LWOP. For example, are juveniles convicted of murder more likely than adults convicted of murder to receive sentences of LWOP? What is the racial composition of youth who receive these sentences? FACJJ believes that young people found guilty of serious, brutal crimes should be held accountable and punished for their criminal actions. However, the advisory committee also believes that legislators and practitioners need more accurate data to help them

make informed decisions about LWOP sentences. FACJJ asks Congress and the President to help the nation address this issue.

## **FACJJ Recommendations**

Based on the concerns discussed above and on the advisory committee's core values, FACJJ makes the following 18 recommendations to the President and Congress:

### **Mental Health**

1. FACJJ recommends that the President and Congress provide funding to OJJDP, the U.S. Department of Health and Human Services (HHS), and the National Science Foundation (NSF) to fully fund and evaluate mental health services for juveniles in pilot sites in a variety of urban, suburban, and rural communities, including American Indian/Alaskan Native (AI/AN) communities, to study the effect such a placement of resources will have on the penetration of youth into the juvenile justice system.
2. FACJJ recommends that the President advocate for, and Congress enact, legislation compelling the OJJDP Administrator and the Coordinating Council on Juvenile Justice and Delinquency Prevention to devise a workable plan that mandates that mental health/substance abuse services be provided for youth at all levels of the juvenile justice system. This legislation should include mental health and substance abuse screening, triage, evaluation, treatment, and aftercare/reentry services in a community-based, recovery-focused setting that is the least restrictive possible. FACJJ encourages the President and Congress to maximize federal Medicaid and/or other funds toward these plans.
3. FACJJ recommends that Congress loosen the language and/or rules of Title XIX (Grants to states for Medical Assistance Program) of the Social Security Act to allow Medicaid reimbursement for therapeutic services delivered to youth while they are institutionalized in juvenile justice facilities. Congress should also encourage states to adopt these Medicaid reimbursement policies.

### **Disproportionate Minority Contact**

4. FACJJ recommends that the President and Congress create a new funding stream that would appropriate money to OJJDP to support accurate data collection and to develop, evaluate, and replicate evidence-based strategies that reduce DMC. Congress could easily fund this new DMC program by redirecting OJJDP earmarks into a new formula and discretionary program.

### **Research, Evaluation, and Evidence-Based Programs**

5. FACJJ recommends to the President and Congress that they restore funding in the amount of \$76 million for Part D of the JJDP Act, which supports OJJDP research, evaluation, technical assistance, and training activities. This funding is needed for a variety of activities, including programs to help states develop or strengthen their capabilities to conduct independent research and evaluation activities.
6. FACJJ recommends to the President and Congress that they allocate money to OJJDP to fund the evaluation and replication of evidence-based principles, practices, and programs for target populations, and money to fund the evaluation and replication of innovative and promising practices to prevent and reduce juvenile delinquency and meet the core requirements of the JJDP Act.

7. FACJJ recommends to the President and Congress that they require the National Science Foundation, National Institutes of Health (NIH), the National Institute of Justice (NIJ), and other federal agencies that have evaluation responsibilities to develop partnerships with OJJDP to fully evaluate OJJDP programs.

#### Reauthorization

8. FACJJ recommends that the President and Congress begin working now toward the 2007 reauthorization of the JJDP Act by assigning it to the appropriate committee(s) so that hearings can be held and the Act can be reauthorized in a timely manner.
9. FACJJ recommends that the President and Congress amend the JJDP Act to require that federal government agencies, in conjunction with the OJJDP Administrator, develop and implement programs that comply with the four core requirements of the JJDP Act [Section 223(a)(11), (12), (13), (22)].
10. FACJJ again recommends that the President and Congress amend the JJDP Act 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.
11. FACJJ again recommends that the President and Congress eliminate all earmarks from juvenile justice grant programs. If Congress continues to steer limited 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.

#### Administration and Funding

12. FACJJ recommends that the President and Congress fund the Formula Grants Program in the next fiscal year and beyond at no less than the FY 2002 level of \$89 million, which was inadequate in 2002. FACJJ reiterates this recommendation from 2004 and 2005 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. 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.
13. FACJJ reiterates its recommendation from 2005 that the President and Congress allocate no less than \$37.5 million (excluding earmarks) for the Title V Community Prevention Grants Program (Title V) in the next fiscal year and beyond, and also require the program to be administered as a formula-based block grant.
14. FACJJ recommends that Congress fund the Juvenile Accountability Block Grants (JABG) program at its original authorization level of \$250 million. The 2006 appropriation was \$50 million. Also, the U.S. Department of Justice should distribute the JABG annual report to the President, Congress, and the States.
15. FACJJ recommends that the President and Congress appropriate funds in the next fiscal year and beyond for the new Juvenile Delinquency Prevention Block Grant (JDPBG) program, which was authorized in the 2002 reauthorization of the JJDP Act but never funded.

### Effective Legal Counsel

16. FACJJ recommends that the President and Congress, as part of the reauthorization of the JJDP Act of 2002, insert language into the Act that requires the provision of competent, effective, and zealous attorneys for both juveniles and the state (i.e., prosecutors) in juvenile proceedings, and that these attorneys receive specialized training in child and adolescent development and in juvenile law and related matters and procedures. FACJJ also recommends that Congress allocate specific funding to OJJDP to provide training for attorneys (both prosecution and defense) who represent juveniles with mental health issues.

### Life Without Parole

17. FACJJ recommends that the President support, and Congress enact, legislation mandating judicial or administrative review of the possibility of parole for any youth convicted of a federal offense committed before the offender's 18th birthday. The legislation should also require federal courts that have imposed such a sentence in the past to reassess such sentence and substitute one that allows for the possible parole of the offender.
18. FACJJ recommends that the President and Congress amend Part D of the Juvenile Justice and Delinquency Prevention Act to require OJJDP to serve as a central depository, and to analyze and disseminate national data on youth tried and sentenced as adults, with a focus on youth sentenced to lengthy mandatory minimum sentences or to life without parole.

# 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 representatives of the State Advisory Groups (SAGs) 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 also serve on one of the subcommittees established to help FACJJ address its mandated responsibilities: the Annual Report Subcommittee, the Grants and Legal Affairs Subcommittee, and the Planning Subcommittee.

The advisory committee's mandated responsibilities include preparing two annual reports: one to the President and Congress and one to the OJJDP Administrator. This 2006 *Federal Advisory Committee on Juvenile Justice Annual Report* to the President and Congress of the United States is the committee's third annual report and outlines critical concerns and issues identified by the states. The recommendations were developed using questionnaire responses from nearly 40 SAGs identifying their states' primary juvenile justice concerns, supplementary information from FACJJ members, and a set of guiding principals or core values statements developed by FACJJ.

Of the 37 states that responded to the questionnaire, more than half (28) reported that the disproportionate number of minorities who have contact with the juvenile justice system is their top concern. Fifteen states indicated that addressing the mental health disorders of youth in the juvenile



justice system is a major problem. Nearly all the responding states (31) stressed the need for the President and Congress to adequately fund federal juvenile justice programs.

FACJJ meets twice a year, and members discuss, debate, and approve the annual report recommendations. (The meetings also include training sessions.) During 2006, the advisory committee met in May in Washington, D.C., where members learned about findings on adolescent brain research and about an OJJDP-supported research study on the prevalence of mental health needs of youth involved in the juvenile justice system. Training topics at the October meeting in Columbia, South Carolina, focused on information sharing and the juvenile justice system, and on DMC.

FACJJ provides states with an opportunity to have direct input into the federal policy development and budget processes. The advisory committee serves as a vehicle for Governors to communicate their needs, wants, and visions for juvenile justice in general and funding in particular, and to make connections with other federal agencies. The annual reports provide the states with an opportunity to share their juvenile justice concerns with the President, Congress, and OJJDP.

## **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.facjj.org](http://www.facjj.org).

# Mental Health

The numbers of youth in the juvenile justice system who have behavioral health involvement issues remain high. Increasingly, data from regional and national studies document the extraordinarily high rates of children and youth who progress through the juvenile justice system with behavioral and/or emotional problems of diagnostic severity (Shufelt and Coccozza, 2006; Abram et al., 2003; Coalition for Juvenile Justice, 2000).

Strong research over the past 10 to 15 years confirms that the majority of youth who formally enter the juvenile justice system often exhibit a wide array of conduct, affective (e.g., depression), anxiety, and developmental disorders; substance use/abuse; and/or learning disabilities. These mental health/developmental disability/substance abuse issues typically occur in multiple forms, or what behavioral health professionals term *comorbidities*. The problems usually evolve over many years and are difficult to resolve using short-term interventions. Furthermore, children from non-Caucasian origins (African-American, Hispanic, and multiracial youth in large measure) are diagnosed with disproportionately higher clinical levels of disturbance in many categories, especially the externalization disorders (e.g., conduct disorder, attention-deficit hyperactivity disorder, oppositional defiant disorder), and learning problems. They also are prone to failing and dropping out of

school at substantially higher rates than their Caucasian counterparts.

What is not known is why the prevalence rates among those at risk of and those who actually enter the juvenile justice system are so high. Many theories have been suggested, including but not limited to (1) genetic or familial patterns of criminal tendencies in repeat generations of offenders; (2) better use of mental health/substance abuse screening and diagnostic tools across systems; (3) institutional patterns of social stress, exclusion, and culturally inappropriate treatments or interventions, including the absence of culturally appropriate screening and assessment tools; (4) complex environmental and social patterns impinging on children in vulnerable situations (e.g., poverty, availability of guns/drugs, overcrowded schools, etc.); (5) the rise of violence and gangs, and the effects of the media on young, impressionable children; and (6) food additives or changes in the biology or processing of



the food chain resulting in metabolic differences among children.

Another notable dynamic evident in the public school system is that significantly more minorities are labeled exceptional and placed in exceptional children's services programming classes or conditions, often viewed as a precursor to school expulsion and an expedited pathway into the juvenile justice system. (*Exceptional children* are those identified by the Education for All Handicapped Children Act of 1975 and the Individuals with Disabilities Education Act as requiring free and accessible public education and other services as a result of having a disability diagnosed through observation, evaluation, and assessment of academic performance.) It is also not known why so many children in the general population (regardless of juvenile justice involvement) are now treated with psychopharmacology when compared to rates of even 10 to 20 years ago (Olson et al., 2006).

In addition to the startling numbers of youth presenting with diagnosable and treatable behavioral health problems (including substance abuse), the dynamics associated with disparities among recipients of behavioral health care are also unclear (Elster et al., 2003). It is clear, however, that children and youth in the United States appear to be under a high level of stress, exacerbated by a diverse and complicated set of risk factors, and receive treatment at highly disparate rates.

## **Financial Dilemma**

These observations, and the data that they are based on, once again call for a national urgency from our elected leadership, OJJDP, and other federal agencies to adequately fund mental health and substance abuse research and treatment programs for juvenile justice (and at-risk) youth. The data supporting this urgency is compelling. Fully 43 to 70 percent of all youth in the juvenile justice system have diagnosable conditions requiring behavioral, pharmacological, or substance abuse intervention.

Moreover, the deeper into the system that youth penetrate, the more serious and complex their disorders tend to be. Compounding the situation even further is the massive and complex system of payment that consumers and families face when attempting to locate evaluation and/or treatment. For example, when a youth enters a detention center or juvenile justice institution, he or she loses Medicaid eligibility (or funding if already qualified) because of federal rules. Thus, a mentally ill juvenile may lose the only funds available to achieve competent mental health/substance abuse assessment and care by virtue of his or her penetration into the system. For those low-to-moderate income youth who lack health insurance of any kind, accessing mental health care is frequently impossible.

When youth appear with questionable or no financial resources for behavioral health care, it becomes an agency or system task to provide for their needs. Juvenile justice agencies report a lack of expertise, staffing, and training to care adequately for emotionally challenged youth. Social services agencies are helpful in arranging for public resources, but not every youth qualifies for social services assistance. Mental health agencies do not originate treatment funding (except in some cases where states carve out special or target population money for subclasses of consumers) nor do they have sufficient staff in psychiatry, psychology, or social work to meet the treatment needs of juvenile justice youth.

Currently, there are 7,400 board-certified child and adolescent psychiatrists serving 71 million children from birth to age 18 nationwide (American Academy of Child and Adolescent Psychiatry, 2006; Levin, 2006). Because of the shortage of qualified mental health professionals across the country, juvenile justice systems are forced to provide care using less qualified staff, or it may be that care is expected to be provided by nonsystem professionals with the burden of these costs placed on providers or reimbursement systems outside the justice system. In some instances, care is unavailable or not provided

at all. Consequently, cost shifting occurs among juvenile justice, mental health, social service, and education systems. Who are the losers in this shell game of finance? Youth involved in the juvenile justice system and their families.

## System of Care

The number of children in the juvenile justice system who have mental health disorders and the critical lack of funding to pay for their treatment have led researchers and practitioners to look for ways to reform the mental health arena. A concept that has received attention over the past decade is the system of care. This philosophy holds that mental health, physical health, child welfare, education agencies, and the juvenile justice system are all integral parts of the system of care of children and families (Stroul and Freidman, 1986).

According to the National Technical Assistance Center for Children's Mental Health at Georgetown University, effective systems of care are built on three core values, which assert that services should be community based, culturally competent, and child centered and family focused. Effective systems of care are guided by a set of principles, based on these three core values, which call for services to be "comprehensive; individualized; coordinated; integrated; involve families; be provided in the least restrictive, most appropriate setting; and emphasize early identification and intervention" (National Technical Assistance Center, n.d.).

## Comprehensive Model

In addition to the systems of care framework, a research activity funded by OJJDP has resulted in the development of a comprehensive model that provides a conceptual and practical framework to help the juvenile justice and mental health systems respond to the mental health needs of juveniles. *Blueprint for Change: A Comprehensive Model for the*

*Identification and Treatment of Youth with Mental Health Needs Involved with the Juvenile Justice System (Comprehensive Model)* provides a roadmap juvenile justice and mental health policymakers and practitioners can navigate to improve how their systems respond to the needs of youth under their care (Skowryra and Coccozza, 2006). The *Comprehensive Model* is based on nine principles, including the need to divert youth with mental health needs into evidence- and community-based programs and the importance of involving families and caregivers in the development of treatment plans.

The systems of care framework and the *Comprehensive Model* send encouraging messages, but the mental health needs of many youth in the juvenile justice system remain unmet. Although conceptually sensible and elegant, systems of care require extensive community, state, and federal leadership. These elements often contradict existing funding and treatment strategies, which are typically short-term, geared toward cost savings rather than youth recovery and resilience, and do not always require or measure evidenced-based intervention methods. These short-term, inadequately implemented financing and intervention approaches go against the core values of the FACJJ, which call for each youth who comes into contact with the justice system to have equal access to adequate health care, including substance abuse and mental health treatment. Because FACJJ believes that this situation requires immediate, urgent action by the nation's leaders and juvenile justice practitioners, the group makes the following recommendations to the President and Congress.

1. **FACJJ recommends that the President and Congress provide funding to OJJDP, the U.S. Department of Health and Human Services (HHS), and the National Science Foundation (NSF) to fully fund and evaluate mental health services for juveniles in pilot sites in a variety of urban, suburban, and rural communities, including American Indian/Alaskan Native (AI/AN) communities, to study the effect such a**

**placement of resources will have on the penetration of youth into the juvenile justice system.**

FACJJ is aware of the fiscal responsibilities that the President and Congress have to provide for many needs throughout the country and abroad. However, there is no higher priority than the nation's children. And the most vulnerable of these children appear to be those who manifest behavioral health and/or substance abuse treatment needs at early ages. In addition, there is little research about what works for ethnic, racial, and other unique populations (e.g., AI/AN, especially children growing up on reservations; children of recent immigrants; and young girls). Other subpopulations of concern include children growing up in some of the country's highest risk environments: those with extraordinarily high rates of alcoholism, poverty, school failure, and drug use and dependence (including skyrocketing methamphetamine use).

OJJDP needs significantly more research, evaluation, and implementation dollars to help solve the puzzle of what can be done to help these unique subpopulations. NSF, HHS's National Institutes of Health (NIH), and other federal agencies have strong research budgets that can assist OJJDP in the development, testing, evaluation, and dissemination of effective, evidence-based mental health and substance abuse interventions for children and their families living in ethnically, racially and/or culturally different environments. FACJJ strongly encourages the President and Congress to legislatively or administratively encourage cross-agency research agendas that benefit these groups.

- 2. FACJJ recommends that the President advocate for, and Congress enact, legislation compelling the OJJDP Administrator and the Coordinating Council on Juvenile Justice and Delinquency Prevention to devise a workable plan that mandates that mental health/substance abuse services be provided for youth at all levels of the juvenile justice system. This legislation should include mental health and substance abuse screening, triage, evaluation, treatment,**

**aftercare, and reentry services in a community-based, recovery-focused setting that is the least restrictive possible. FACJJ encourages the President and Congress to maximize federal Medicaid and/or other funds toward these plans.**

Research documents higher incidence and prevalence of mental health and substance abuse disorders among youth in the juvenile justice system. Tragically, once a youth enters this system (especially juvenile justice institutions) access to mental health and substance abuse services falters, and these services become even more difficult to obtain when a youth is incarcerated.

Current Medicaid rules preclude using Medicaid dollars to pay for mental health treatment while youth are in state institutions. It seems only logical that if youth in the juvenile justice system are in need of services but cannot obtain them, or if they are receiving them before incarceration but lose them on entering a facility, national leaders and policymakers have a moral and human obligation to find effective mental health and substance abuse treatment services for them. It is unconscionable that needed treatment services are discontinued simply because a youth enters a state facility. This is comparable to providing weekly dialysis services to unincarcerated patients but denying them these services if they are sent to jail or prison. It simply makes no sense.

Denying youth mental health and substance abuse treatment or weakening these services through incarceration and poor system management elevates the risk of recidivism, later life maladjustment, potential relationship and/or family problems, and socially maladaptive behavior. In addition, the fiscal cost of delaying or not providing sufficient and effective treatment is unacceptably high. With rates of adult incarceration spiraling (especially among African Americans and other non-Caucasian individuals), it is becoming a national emergency to find solutions for youth that will prevent their incarceration either as young offenders or as adults.

There is no rational basis for existence of these gaps in effective mental health/substance abuse services.

**3. FACJJ recommends that Congress loosen the language and/or rules of Title XIX (Grants to States for Medical Assistance Program) of the Social Security Act to allow Medicaid reimbursement for therapeutic services delivered to youth while they are institutionalized in juvenile justice facilities. Congress should also encourage states to adopt these Medicaid reimbursement policies.**

As noted under the previous recommendation, there is no sound argument for denying Medicaid-reimbursed mental health and substance abuse treatment to incarcerated youth (in either detention or training schools), especially if they were eligible to receive these services prior to their incarceration. Children who are severely and persistently challenged and have multiple diagnoses including learning disabilities, executive management and behavioral control disorders, trauma and attachment disorders, and youth who have been abused, neglected, or left dependent are especially vulnerable. These children often are emotionally unstable, immature, and have problems with social judgment.

As noted throughout this section, figuring out who is going to pay for mental health and substance abuse treatment for youth in the juvenile justice system is a major concern for jurisdictions at all levels of government, from local to county to state to Federal. Unfortunately, while the funding debate goes on, the best interests of youth in need of treatment often get lost in the shuffle. According to a report from the Justice Policy Institute, it is sometimes cheaper for a county to send delinquent youth

to state institutions than it is to develop community-based treatment programs because the state, rather than the county, pays for the institutional service (Tyler, Ziedenberg, and Lotke, 2006). In reality, this practice is more costly both in terms of lack of care for youth who need these services and for the taxpayers who end up footing a bill for institutional care that could be tens of thousands of dollars more expensive than a community-based treatment program.

Several states have restructured their juvenile justice budgets to address this dilemma. California, Illinois, Ohio, Pennsylvania, and Wisconsin have devised ways to fund programs that keep youth in the community, reduce the number of youth who become incarcerated, and provide better treatment services to youth. The states' plans are described in *Cost Effective Corrections: The Fiscal Architecture of Rational Juvenile Justice Systems*, available online at [www.justicepolicy.org/reports/CostEffectiveYouthCorrections306.pdf](http://www.justicepolicy.org/reports/CostEffectiveYouthCorrections306.pdf).

FACJJ urges Congress to work assertively to allow states both the flexibility and the funding needed to continue Medicaid-reimbursable services to youth when they enter a state facility, and to encourage states to make use of these Medicaid reimbursements. Reimbursable services should be therapeutic only—states should not be reimbursed for management, holding, or accountability activities. Allowing states flexibility regarding Medicaid-reimbursed services could encourage states to be more resourceful and more effective in providing services to youth in detention centers or community-based programs.

# Disproportionate Minority Contact

**F**ACJJ believes that no child should be subject to disproportionate contact with the juvenile justice system based on race, class, disability, culture, ethnicity, or gender. However, this is not always the case as minority youth continue to be overrepresented in the juvenile justice system despite national, state, and local efforts to remedy this situation.

Juvenile justice systems have been grappling with this difficult issue for years. The 1988 amendments to the JJDP Act required states participating in OJJDP's Formula Grants Program to address disproportionate minority *confinement* as part of their eligibility for receiving federal funds. In 2002, Congress broadened this requirement to include disproportionate minority *contact* and, in addition to confinement, directed states to look at the numbers of minority youth who come into contact with the juvenile justice system at any point, from arrest to reentry. The 2002 change also requires states to develop intervention strategies that address both delinquency prevention and efforts to improve juvenile justice systems so that all youth are treated equally.

Although there is a growing momentum and focus on DMC at the state level, the fact remains that minorities are overrepresented in the juvenile justice system. DMC is a complex issue with roots that go in many different directions. In addition to issues of disparate treatment, certain minority

youth may present additional risk factors that make it more likely they will engage in delinquent behavior. Many individual, family, and community factors have an impact on minority youth long before the juvenile justice system does.

## Family and Social Factors

Research has shown that child abuse victims are more likely than other youth to engage in serious and violent behavior (Kelley, Thornberry, and Smith, 1997). Rates of child abuse and neglect differ considerably by race with Pacific Islander, American Indian/Alaskan Native, and African-American children suffering abuse and neglect at nearly twice the rate of Asian, Hispanic, and non-Hispanic white children (U.S. Department of Health and Human Services, 2003).

Research also shows a connection between family poverty and juvenile delinquency



(Snyder and Sickmund, 2006), and statistics indicate that a minority child is much more likely than a nonminority child to live in poverty. Almost one-third of African-American and Hispanic children lived below the poverty level in 2003, compared with slightly more than one-tenth of white and Asian children (Child Trends Data Bank, 2003).

Family stability can also affect a child's behavior. A recent study found that youth ages 12 to 17 who lived in families with both biological parents were generally less likely than youth in other families to report problem behaviors such as running away from home, sexual activity, major theft, assault, and arrest (Snyder and Sickmund, 2006). Again, family statistics vary by race and ethnicity. A survey from 1996 found that 69 percent of U.S. children under age 18 lived with married parents, but the proportion differed significantly by race: the proportion was highest for Asian children (82 percent) and lowest for African-American children (35 percent).

In addition, the prevalence and types of problem behaviors often vary by race. According to the National Longitudinal Survey of Youth, which asked juveniles about their law-violating behaviors, African-American and Hispanic youth reported they are much more likely than white youth to be expelled from school. Other findings: African-American youth were significantly less likely than white or Hispanic youth to report having sold drugs but were significantly more likely than white or Hispanic youth to report committing an assault (Snyder and Sickmund, 2006).

These statistics make it clear that many minority children face environmental, social, and family factors that put them at risk of delinquent, and perhaps violent, behavior in the future. It is also clear that the President, Congress, the U.S. Department of Justice, and the nation need to keep the spotlight on DMC. It is an issue that is not going to go away quickly nor easily. Not only is the juvenile population projected to continue to grow throughout the 21st century, the racial character of this population is expected to shift. The U.S. Census Bureau estimates

that the number of Hispanic juveniles in the United States will increase 58 percent between 2000 and 2020, bringing the Hispanic proportion of the juvenile population to 23 percent by 2020.

## **Myriad Contributing Issues**

Other issues raised throughout this report, such as the availability of mental health treatment and adequate legal counsel, may also contribute to DMC. For example, how does access, or lack of it, to mental health services influence whether a minority youth will come into contact with the juvenile justice system, and if so, whether he or she will be sent to detention rather than be provided with psychological counseling? How often are minority juvenile offenders provided with adequate legal counsel and how does this affect the outcome of their cases? Will the adoption of objective screening criteria for detention or the establishment of alternatives to detention programs reduce the rate at which minority youth are detained compared to their white counterparts? What effects do waiver and transfer laws have on minority populations?

A national study found that 82 percent of cases filed in adult courts involved minority youth; in 9 out of 10 jurisdictions studied, minority youth were overrepresented in waiver cases, including a county in Alabama where minority youth represented 30 percent of the population and 80 percent of the transfers (Juszkiewicz, n.d.). National data also illustrate that minority youth have a rising level of overrepresentation the deeper they penetrate into the juvenile justice or criminal justice systems. Thus, the waiver, transfer, or placement of minority young people into adult courts for trial as adults is proportionately higher than it is for majority youth. This statistical fact creates a problem for policymakers in determining whether to use offense-based or other so-called objective criteria in determining which juveniles are going to be handled as adults. There is always an element of discretion, either on the part of the judge in deciding whether to transfer

a young person in the traditional judicial waiver process or on the part of the individual making charging decisions in an offense-based certification system (although the exercise of judicial discretion is more transparent). FACJJ believes that a judicial transfer process best preserves the individualization that represents the best of the traditional juvenile justice system, with the insertion of specific criteria to govern the exercise of that discretion. Thus, the committee would prefer to see states go back to the judicially driven system when deciding which youth are no longer salvageable in the juvenile justice system, rather than continuing to adhere to the prosecutorial or legislative waiver processes substituted in many jurisdictions in the past two decades. It is ironic that as juvenile crime rates have dropped drastically, especially for serious and violent offenses, the number of young people in adult prisons grew, impacting disproportionately on poor minority youth.

## Complexity of DMC

Despite the many issues, states and OJJDP continue to work diligently to address DMC. Most states have been able to collect reasonably uniform and accurate information about youth who are held in detention and secure confinement. The same cannot be said for data at earlier points in the system, such as when youth initially come into contact with law enforcement (their initial point of contact with the juvenile justice system). This problem can be illustrated by looking at the task in one state. In Illinois, data about confinement is obtained from 16 counties that operate detention facilities and 1 state agency that operates correctional institutions. To get adjudication and probation information, 101 separate county court systems must be polled. And to reach arrest level data, information must be gathered from thousands of local police jurisdictions. Even if all the actors in the system are cooperative, there are likely to be problems with uniformity in both the way the data is collected and the way it is reported. For this reason, many states continue

to expend significant resources on enhancing and collecting data.

Adding to the complexity is a lack of information about how the number of students referred by schools to the juvenile justice system influences DMC statistics. For example, how do zero tolerance policies and referrals by school resource officers affect the number of minority youth in the juvenile justice system?

For those states that have gone beyond collection, there is a dearth of information about how to address the fairness issue and how to ultimately reduce DMC. Many states have provided sensitivity training to both State Advisory Group (SAG) members and various actors in the system, but such trainings seem to have had no effect. Some states have chosen to use a community mapping strategy pioneered by the Burns Institute, but there is insufficient data on its effectiveness or the length of time it will take to produce meaningful change.

Other states have simply chosen to increase the percentage of dollars or programs that target communities in which significant minority groups reside, hoping in that way to decrease the number of minority youth who come in contact with the juvenile justice system. Setting aside equity of service issues, this approach has its own problems. Too often, model evidence-based programs have only been validated with one or two populations. Programs shown to be effective in reducing delinquency in male black populations may not be effective with Hispanic females.

The DMC issue is further complicated by the fact that it takes multiple, sustained, systemwide change to effectively address the issue. Perhaps it is not so much a lack of programs, but rather the inability of jurisdictions to sustain such systemwide change, that is frustrating practitioners. A shortage of resources, revolving staffs, and constantly shifting priorities contribute to this inability. In addition, effectively addressing DMC requires ongoing data collection, assessment, monitoring, and program

development, all of which demand a long-term commitment.

In addition, resources generally do not exist for state and local jurisdictions to conduct rigorous evaluations of programs targeting DMC. To help address this, OJJDP has developed performance measures that states are required to use as a baseline to track whether they are making any improvements in reducing DMC. Although there are more technical assistance and training tools available and the field is constantly learning more about how to address DMC, juvenile justice practitioners and policymakers continue to plead for information and training on evidence-based practices that have been proven effective in reducing DMC.

FACJJ and the Governors its members represent ask the President and Congress to recognize that DMC is an extremely complex issue with roots that extend well beyond the juvenile justice system, and to recognize that it is an issue that is far from being resolved. In the 18 years since Congress made DMC a requirement of the JJDP Act, federal funding for juvenile justice programs has dwindled dramatically. Yet much work remains to make DMC a thing of the past. Results from *Disproportionate Minority Confinement 2002 Update*, an OJJDP survey of states, indicate just how much work does remain. Based on these survey results, OJJDP identified the following challenges that must be overcome before a significant reduction in DMC can be achieved (Hsia, Bridges, and McHale, 2004):

- **Factors contributing to DMC have still not been identified in a number of states.** Some states have been unable to complete quality assessment research, which requires high levels of data collection and analysis skills and in-depth conceptual understanding of complex DMC issues.
- **Incomplete and inconsistent data systems hinder DMC efforts.** Although states recognize the need to enhance juvenile justice information systems, little has been done to improve data collection. (OJJDP notes there has been some

improvement in this area since the *Disproportionate Minority Confinement 2002 Update* was released.)

- **Evaluation of DMC efforts and monitoring of DMC trends must be ongoing.** Continuing evaluation and monitoring are crucial to effectively addressing DMC. Although most states recognize this, many do not conduct evaluations, due in part to a lack of incomplete and inconsistent data systems and a lack of resources. (Since the *Update* was released, OJJDP has established performance measurement systems that all states are required to implement.)
- **Reducing DMC requires that not only programmatic components, but also entire systems, change.** Multiple factors at different decision points contribute to DMC, yet many states tend to focus on prevention and intervention programs targeting minority youth, their families, and their communities. However, change within the entire juvenile justice system is needed as well (and is now mandated by the JJDP Act).
- **Mechanisms to assess and respond to DMC issues need to be institutionalized.** DMC is a deeply entrenched social issue requiring comprehensive, long-term attention that can best be achieved by establishing and institutionalizing mechanisms that continually examine and respond to factors that cause DMC.

FACJJ acknowledges that the President is concerned about the nation's youth, especially at-risk youth, as evidenced by his Helping America's Youth initiative,<sup>2</sup> and the advisory committee does not doubt that members of Congress are equally

<sup>2</sup> Helping America's Youth, led by First Lady Laura Bush, focuses on connecting at-risk children and teenagers with family, school, and their communities, with the goal of helping these youth reach their full potential. Information about the initiative is available at [www.helpingamericasyouth.org](http://www.helpingamericasyouth.org).

concerned about the well being of the country's young people. DMC, however, remains a priority issue for FACJJ members and the states they represent. In fact, 28 of 37 states that responded to an informal FACJJ survey rated DMC as their number one problem. The nation's leaders must rekindle their passion about this issue and focus on solving it. One way to do this is to fund research, based on good data collection, to determine what works and what does not work with various targeted minority populations. Congress added the DMC core requirement to the Act, and now FACJJ is asking the nation's leaders to provide the financial help states need to meet this complex mandate.

This request, of course, raises a financial red flag. Many important issues, including homeland security and an unprecedented number of natural disasters, require a massive amount of federal funds. But there is a fairly simple solution to the shortfall of juvenile justice dollars: eliminate earmarks and redirect these monies to a DMC-specific program. OJJDP's fiscal year (FY) 2006 budget included more than \$104 million in earmarks. If only a portion of that money had been allocated instead to a DMC program, maybe the nation could begin making true progress in eliminating DMC. Because reducing, and ultimately eliminating, DMC must remain a priority, FACJJ makes one critical recommendation regarding addressing the disproportionate number of minority youth who come into contact with the juvenile justice system:

**4. FACJJ recommends that the President and Congress create a new funding stream that would appropriate money to OJJDP to support**

**accurate data collection and to develop, evaluate, and replicate evidence-based strategies that reduce DMC. Congress could easily fund this new DMC program by redirecting OJJDP earmarks into a new formula and discretionary program.**

FACJJ is not asking Congress to keep throwing money at a problem, but is asking for dollars to develop evidence-based practices and programs that could specifically help reduce DMC. For example, the funding could also be used to institute a pilot program at a law enforcement academy on how to accurately and completely gather DMC data. As budgets continue to shrink at all levels of government, it is crucial that states and communities get the most for their money by supporting quality prevention and intervention programs. The Center for the Study and Prevention of Violence at the University of Colorado has identified a number of "blueprint" programs based on credible research that can effectively address various juvenile justice issues (Center for the Study and Prevention of Violence, n.d.). It makes fiscal sense to use federal money to fund a similar program to find and replicate programs that have the greatest potential for reducing and eventually eliminating DMC.

Policymakers and juvenile justice practitioners need both research-based information about programs that have been effective, and training and technical assistance to implement these programs. OJJDP has a responsibility to provide this leadership, a responsibility that can be met only if Congress provides the necessary funding.

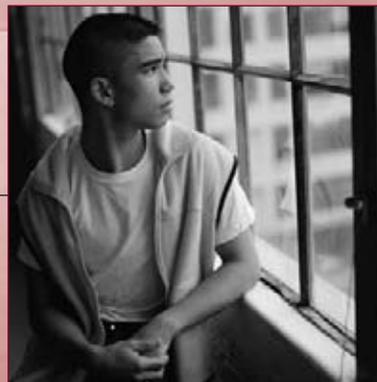
# Research, Evaluation, and Evidence-Based Programs

The past 10 years have seen a dramatic increase in information about the effectiveness of programs to reduce delinquency. Public policymakers, both nationally and in some states, have been pushing for and adopting evidenced-based juvenile and adult criminal justice programs. Similar to the pursuit of evidenced-based medicine, their goal is to improve the juvenile and adult justice systems by implementing policies and programs that have been proven by research and evaluation to work. This movement has been driven in large part by system costs that have grown exponentially during the past 20 years. The growth can be attributed partly in response to the “get tough” policies of the 1980s and 1990s, which led many states to substantially increase their investments in institutional capacity. The passage of the Government Performance Results Act of 1993, which requires federal agencies to develop performance measures and to monitor their programs’ progress in meeting goals), and numerous studies and publications about evidence-based programs from the violence prevention, medical and education communities also have contributed to the focus on more effective programs.

Until about 10 years ago, there was a general sense that “nothing works” for youth research advances. Broadened understanding of the nature of mental health disorders among youth and have led to an improved understanding of the characteristics of effective

treatment and intervention programs (Redding, 2000). Much of this work has centered on the development of demonstrated, effective interventions, commonly referred to as *evidence-based practices*. Such practices involve standardized treatments that have been shown through controlled research to result in improved outcomes across multiple research groups. These advancements have occurred in both the mental health and juvenile justice fields. On the mental health side, there have been a number of studies and meta-analyses reviewing the effectiveness of treatment for mental disorders in children and adolescents. There have been similar efforts in juvenile justice to identify effective programs, most notably the Blueprints for Violence Prevention work supported by OJJDP.

The Blueprints program uses several research-based criteria to determine if a program is effective, including three key issues (Center for the Study and Prevention of Violence, n.d.):



- Evidence of deterrent effect: Does the program create the positive intended outcome as judged by a research-based evaluation design using random selection and/or assignment with appropriate control groups?
- Sustained effects: Does the program have sustained treatment or intervention effects? In other words, do participants maintain gains made as a result of an intervention beyond the life of the treatment or intervention? The Center for the Study and Prevention of Violence (CSPV) uses 1 year as the interval of study. That is, if positive and attributable effects can be measured 1 year after the intervention has ended, then the program meets this criterion.
- Multiple site replication: Has the program been successfully replicated in more than one site? Replication establishes program effectiveness and helps researchers and practitioners understand what works best, in what situations, and with whom. Replication establishes the strength of a program and its prevention effects and demonstrates that it can be successfully implemented in other sites.

The standards for the Blueprints program are high, which may explain why only 11 programs have been identified as Blueprints programs. However, CSPV has identified several other programs as promising. These programs have some of the characteristics of Blueprints programs, but have not met all of the criteria for evidence-based/effective programs. For example, they have a strong theoretical basis, but may have been implemented in one site only. Or they may have a strong evaluation component, but have not been in place for the requisite year of aftercare study, etc. In short, they appear promising because they meet a couple of the standards but not all.

Some states have gone so far as to pass legislation requiring that public funds allocated to state agencies for services to youth be spent on evidence-based practices. For example, Oregon recently passed

legislation that requires the state's juvenile justice, mental health, and child welfare agencies to document that 25 percent of their budgets, including both federal and state dollars, will be spent on evidence-based practices. This requirement, which is being phased in over a 4-year period, increases to 50 percent in the second phase and ultimately reaches 75 percent at the end of the 4-year period (Oregon Department of Human Services, 2005).

In this age of fierce competition for funding from all levels of government, it is critical that juvenile justice policymakers and practitioners focus on and implement principles and practices that reduce recidivism and use dollars more effectively. Two decades of research have led to a set of principles, which can assist policymakers and justice professionals in their efforts to achieve both goals.

During the past decade especially, researchers have made substantial strides in identifying proven methods of reducing offender recidivism. These research efforts, based on meta-analysis (the synthesis of data from many research studies), provide concrete and scientifically proven indicators of how to improve offender outcomes. The National Institute of Corrections (NIC) has identified eight specific evidenced-based principles necessary for effective interventions (National Institute of Corrections, n.d.). The principles are listed in developmental sequence, which is in line with how most cases flow through the juvenile and criminal justice systems. The eight principles are:

- Assess actuarial risk and needs of offenders.
- Enhance intrinsic motivation of the offender by using motivational interviewing techniques.
- Target interventions by assessing several areas, including the level of risk of offenders, their criminogenic needs, and how well the proposed programs are matched to the offenders' culture, gender, learning style, etc.

- Train staff to provide evidence-based programming that emphasizes cognitive behavior strategies and other skill-focused outcomes.
- Increase positive reinforcement to address problem behaviors.
- Engage community members and organizations in providing positive reinforcement of offenders' desired new behaviors.
- Measure outcomes of any evidence-based practice.
- Provide measurement feedback about program and staff performance and needs.

## Challenge of Implementing Evidence-based Principles

Accepting these principles is one thing, but implementing them is a totally different issue that has proven to be difficult. It is often especially challenging to achieve the level of agency collaboration and continued commitment necessary to successfully implement evidence-based principles. For example, NIC has found that in adult community corrections, organizations often begin introducing evidence-based principles with the goals of reducing recidivism and using dollars more effectively. Although many of the organizations go on to successfully implement components of evidence-based principles such as cognitive-behavior programming, risk and needs assessment, and assertive case management, few are able to sustain implementation of these principles throughout their operations (National Institute of Corrections, 2004). It is a safe bet to assume the same would be true for juvenile community corrections organizations.

Policymakers and society alike are often in search of quick fixes and unwilling to make the long-term commitment it takes to make systemic change. Moreover, they do not realize the complexity involved in the task of selecting and implementing

evidence-based principles and practices. Although there are many proven programs available, some are expensive, and most require extensive training to be implemented correctly. FACJJ applauds OJJDP for developing the popular and reliable *Model Programs Guide*, an online database of evidenced-based programs covering the entire continuum of youth services—from prevention through sanctions to reentry. (The guide can be retrieved from the Web at [www.dsgonline.com/mpg2.5/mpg\\_index.htm](http://www.dsgonline.com/mpg2.5/mpg_index.htm).) Although this is a positive step, many communities and states lack the technical expertise, funding, and skill needed to bring evidence-based programs and practices up to scale in their local areas. Washington State, which has been working on implementing research-based programs since 1997, has found that four steps are necessary before communities can implement evidence-based programs (Barnoski, 2005):

- Find research-based programs scientifically shown to work.
- Develop an assessment to identify the most appropriate program for each youth.
- Implement quality assurance to ensure services are delivered as designed.
- Conduct a valid outcome evaluation.

Although seemingly simple, each of these steps requires some social science expertise in analysis, planning, implementation, and evaluation. Furthermore, to implement them comprehensively often requires extended funding over longer periods of time and may require blended funding sources (e.g., Medicaid, state health insurance, juvenile justice funding).

A report prepared for the Wisconsin Governor's Juvenile Justice Commission and the Wisconsin Office of Justice Assistance points out that instituting a program that has been proven to work involves much more than simply selecting an evidence-based program (Small et al., 2005). It means choosing a program that is appropriate to the audience,

allocating adequate funding and staff, and implementing the program with fidelity.

In addition, one of the principles NIC identified as necessary to effectively implement evidence-based principles and practices is the need to measure relevant processes and practices (e.g., measures of fidelity and implementation), a step many local and state jurisdictions are unprepared or reluctant to undertake because of a lack of evaluation expertise or dollars.

As the federal agency primarily responsible for addressing juvenile victimization and delinquency, OJJDP is in a unique position to help states prepare for evaluation activities and to further advance the use of evidence-based principles and practices across the country. However, OJJDP faces a major roadblock: a drastic loss of funding for research activities. The agency's appropriation in FY 2006 was \$325 million, down from \$362.9 million (after rescissions and other administrative costs were removed) in FY 2005. Equally disturbing is the amount of OJJDP's FY 2006 budget Congress earmarked for special interest programs: \$104 million. Not only do earmarked programs take a drastic portion of OJJDP's budget, they also are not held accountable for their effectiveness (or ineffectiveness). This goes against the wishes of most state and local policymakers, who try to use limited taxpayer dollars to fund only programs that are already proven effective.

It also goes against the desire of President Bush, who believes that federally funded youth programs should focus not on promises but on achieving results (White House Task Force For Disadvantaged Youth, 2003a). His White House Task Force for Disadvantaged Youth (2003) concluded that one of the federal government's most important roles in the social services arena is to support research and program evaluation. The task force went on to say that these responsibilities, along with performance measurement, are vital to strengthen and improve federally funded youth programs.

The research is clear about which interventions result in reducing juvenile recidivism, and today's leaders, especially Congress, must be clear in their vision whether or not they are willing to accept the status quo or take steps necessary to make a more effective use of the tax resources they are responsible for spending. It is with these concerns in mind that FACJJ makes the following recommendations.

- 5. FACJJ recommends to the President and Congress that they restore funding in the amount of \$76 million for Part D of the JJDP Act, which supports OJJDP research, evaluation, technical assistance, and training activities. This funding is needed for a variety of activities, including programs to help states develop or strengthen their capabilities to conduct independent research and evaluation activities.**

Congress allocated zero dollars in FY 2006 for OJJDP's Part D activities. In removing OJJDP's research capability, Congress left the Office with virtually no resources to help states move toward more evidence-based programming. Ironically, this goes completely against the Government Performance Results Act of 1993, which Congress itself passed to hold programs accountable for their performances. OJJDP's *Model Programs Guide* is an excellent resource and a good start to help State Advisory Groups and others understand programming options. However, the shortfall comes in helping transfer proven programs to practice (a process known as technology transfer or the application of research-based findings out in the actual field). By adequately funding Part D of the OJJDP Act, Congress would give OJJDP important and critical resources to provide research and technical assistance to states and communities on how to cost effectively transfer evidence-based programming.

- 6. FACJJ recommends to the President and Congress that they allocate money to OJJDP to fund the evaluation and replication of evidence-based principles, practices, and programs for target populations, and money to fund the evaluation and replication of**

**innovative and promising practices to prevent and reduce juvenile delinquency and meet the core requirements of the JJDP Act.**

There are still significant gaps in many areas dealing with child and youth mental health, particularly in areas relating to externalization disorders (e.g., conduct disorders and attention deficit/hyperactivity disorders), substance abuse, and co-occurring disorders (combinations of psychiatric and substance abuse disorders). This is quite true for culturally and racially different subpopulations and for those living in very high risk conditions (e.g., AI/AN youth on reservations, immigrant children, those living in communities with high poverty or high violence rates). Congress should allocate funds to allow OJJDP to work collaboratively with NIH's National Institute on Mental Health, NSF, and others to continue filling in the research gaps in areas such as brain development science, environmental and community interventions, individual and family programs/services, and institutional and re-entry/aftercare services. Such collaborative research would help reduce these gaps and lead states toward cost-effective and outcome-focused programs.

**7. FACJJ recommends to the President and Congress that they require NSF, NIH, the National Institute of Justice (NIJ), and other federal agencies that have evaluation responsibilities to develop partnerships with OJJDP to fully evaluate OJJDP programs.**

As noted above, because a huge share of the federal research budget is now allocated to the research institutes and NSF, it makes sense that the President and Congress compel these organizations to set aside a significant portion of their research dollars for effective delinquency and violence prevention research, evaluation, and technical assistance. NSF already has an impressive history of technology

transfer research, as does NIH's Centers for Substance Abuse Prevention. Furthermore, the Centers for Disease Control and Prevention and the National Institute of Child Health and Human Development have invested significant research dollars in such topics as injury and violence prevention. It is logical to leverage these agencies and their research capabilities with OJJDP's abilities to disseminate research to the juvenile justice field.

The JJDP Act already requires OJJDP to collaborate with other federal agencies and to coordinate federal delinquency prevention programs. Although FACJJ appreciates the Administrator's efforts to do this through his leadership of the federal Coordinating Council on Juvenile Justice and Delinquency Prevention, other federal agencies do not have similar provisions in their authorizations. It is critical that the President and Congress make federal collaboration a priority and instruct other federal agencies with programs that serve youth to collaborate and develop funding and other partnerships with OJJDP.

The President's own White House Task Force on Disadvantaged Youth (2003b) found that because federal youth program statutes are often written quite broadly, agencies with youth-focused programs have discretion in the activities they fund and the populations they serve. This often results in haphazard responses that lack rationale. The task force stated that "these problems require that all youth-serving agencies have a clear and focused mission and a plan to ensure collaboration among federal programs involved in addressing the same issue." FACJJ urges the President to make this happen by making it clear to the leaders of agencies such as the U.S. Departments of Education, Health and Human Services, Labor, Homeland Security, and Housing and Urban Development; the Office of National Drug Policy; and other agencies that he expects this collaboration to take place.

# Reauthorization

The Juvenile Justice and Delinquency Prevention (JJDP) Act of 2002 is due to be reauthorized by the President and Congress in 2007. Since the Act was originally passed in 1974, the nation has made great strides in reforming the juvenile justice system and in effectively addressing juvenile delinquency and violent crime. Much of the credit for these achievements goes to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), which was created by the Act, and to the programs funded under the Act.

The JJDP Act has helped local jurisdictions, states, and the nation do some things very well, especially in the areas of prevention and intervention. For example, the juvenile arrest rate for violent crimes is the lowest it has been since at least 1980 (Snyder, 2005). This is in direct contrast to the 1980s and 1990s, when the nation saw a surge in juvenile arrest rates and violent crimes.

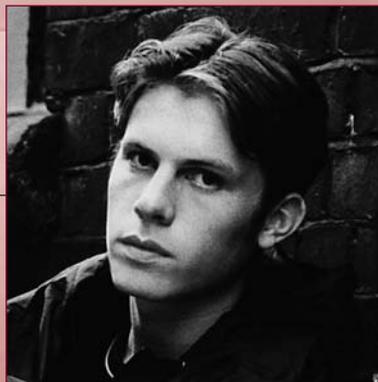
States also have made tremendous progress in complying with the first three core requirements of the JJDP Act and are working diligently on the fourth requirement, which is more complex and requires sustained systemwide change. The four requirements call for states to:

- 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 disproportionate minority contact (DMC).

Although compliance rates for the first three requirements have remained consistently high in recent years, it requires much work on the part of states and OJJDP to ensure that the rates remain high. As quickly as local and state juvenile justice systems identify and begin to address an issue, other critical issues arise that demand equal attention and dollars.

As noted earlier in this report, achieving compliance with the DMC core requirement is more difficult because the overrepresentation of minority youth in the juvenile justice system is a complex issue with no easy, one-size-fits-all solution. Most states continue to need assistance in reducing DMC; progress has been made but much remains to be done. Many factors have to be addressed before the DMC problem will be solved, and



more research and information are needed about programs and strategies that are effective in addressing this issue.

## **Noncompliance by Federal Agencies**

Although most states comply with the JJDP Act, many federal 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), the Federal Bureau of Prisons, and federal military institutions are not required to comply with the law and, in fact often do not provide the youth they detain with the basic protections outlined in the JJDP Act. This egregious situation is in direct contrast to FACJJ's belief that children and adolescents are developmentally different from adults and from each other at different stages of development, and therefore need to be treated differently than adults.

FACJJ members are especially concerned about federal agencies' treatment of detained AI/AN and undocumented immigrant youth. Although it is difficult to find statistics regarding the actual number of AI/AN juveniles held in adult facilities, a 2003 federal investigation of BIA detention facilities found that many of these facilities frequently house juvenile detainees with adult inmates.

In a June 2004 testimony before the U.S. Senate Committee on Indian Affairs, Inspector General Earl Devaney reported that of the 74 detention facilities in Indian Country, 8 house only adult inmates, 11 hold juveniles only, and almost half—25—hold a combination of adults and juveniles (Devaney, 2004a). In September 2004 testimony before the U.S. Senate Finance Committee, Mr. Devaney again 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 (Devaney, 2004b).

He also cited the death of a 16-year-old girl who died of alcohol poisoning while being held in a detention cell at the Chemawa Indian School (CIS), a BIA facility in Salem, Oregon. In November 2005, Mr. Devaney's office released a report that concluded that inaction by senior BIA officials resulted in the failure to maintain a safe environment at the detention facility, and ultimately, became a factor in the girl's death (U.S. Department of the Interior, 2005). The report also cited information that the CIS holding facility failed to meet detention standards and that a lack of supervision and training of BIA administration and CIS staff may have also contributed to the student's death.

The treatment of detained undocumented immigrant youth raises concerns as well. According to a 2005 report from the U.S. Department of Homeland Security's Office of Inspector General (OIG), the Customs and Border Patrol (CBP) apprehended almost 122,000 juveniles in the United States in 2004. Of this number, almost 85 percent were apprehended along the southwest border, many in rural areas.

Customs and Border Patrol policies allow undocumented youth to be held for a maximum of 24 hours at patrol or port of entry facilities. However, the OIG reported that juveniles often were held in CBP facilities for more than 24 hours. In addition, a review of the records of almost 2,000 juvenile aliens detained by ICE<sup>3</sup> found that the time these youth were held before being placed in longer term facilities ranged from 6 to 225 days.

The OIG also determined that although the apprehending agency may request that a juvenile alien be

<sup>3</sup> The U.S. Department of Homeland Security's juvenile responsibilities are handled by the Bureaus of Customs and Border Protection and Immigration and Customs Enforcement. Transporting and housing undocumented detained juveniles who are apprehended with family members is the responsibility of ICE; the U.S. Department of Health and Human Services is responsible for the transport and care of unaccompanied juvenile aliens.

sent to a facility close to where he or she was apprehended, the juvenile may be sent to a facility much further away. For example, juveniles detained in the Tucson Border Patrol area were sent to facilities in Florida, Georgia, and Washington. This is especially problematic if the juvenile's parents are being detained in the state in which they were apprehended.

The OIG also assessed whether these detained youth are provided access to legal counsel and determined that while CBP provides detained undocumented juveniles with a list of individuals or organizations that offer free legal services, the contact information on the lists is not consistently accurate.

These assessment findings raise many questions about how federal agencies treat undocumented juveniles in their custody. FACJJ is concerned that many of these youth may be detained in violation of the core requirements of the JJDP Act. FACJJ believes legal counsel and language assistance should be made available to the juveniles at their first entry into the immigration legal system. Those who are detained should be housed in the least restrictive environment commensurate with their charges, and the housing facilities should be maintained in accordance with the state and local childcare agency housing regulations. Training schools or detention facilities used to house undocumented juveniles should comply with American Correctional Association standards for residential facilities. FACJJ also believes that juveniles detained in border states should not be treated differently from those detained in nonborder states. FACJJ is also concerned that undocumented juveniles who are not accompanied by a parent or guardian when apprehended may be treated differently than those who are accompanied by an adult.

The needs and safety of detained youth are the same whether they are in the custody of federal agencies or state or local jurisdictions, and federal agencies should be required to abide by the JJDP Act.

## Earmarks

In reauthorizing the Act, FACJJ once again joins the loud chorus of many others, including President Bush, in calling for an end to earmarked programs. While OJJDP struggles to find the funds to support critical research and evaluation programs, Congress continues to award limited federal funds to a multitude of favored programs that are not held accountable for their effectiveness and most likely do not meet the most pressing juvenile justice needs of the nation as a whole.

Consider these disturbing numbers from OJJDP's FY 2006 appropriation:

- JJDP Act, Part D—Funding for Research, Evaluation, Technical Assistance, and Training: \$0.
- JJDP Act, Part E—Funding for Developing, Testing, and Demonstrating Promising New Initiatives and Programs: \$104,672,824 (after rescissions and administrative costs); of that amount, \$104,632,641 was earmarked by Congress for 364 specific programs. The amount left for OJJDP for discretionary purposes: \$40,183.
- JJDP Act, Part G—Funding for Juvenile Mentoring Programs: \$9,744,963 (after rescissions and administrative costs); of that amount, \$6,901,596 was earmarked to Big Brothers/Big Sisters of America, leaving \$2.8 million for OJJDP to distribute.

It is obvious from the large amount of money Congress earmarks that these national lawmakers believe there is a need to fund youth and juvenile justice programs. However, with so many competing priorities and the scarcity of federal funds, FACJJ finds it fiscally unsound and professionally unwise to continue the earmarking process. FACJJ urges that the money set aside each year for earmarks be appropriated instead to OJJDP so that the Office can meet its congressional mandate of addressing juvenile crime and delinquency. Appropriating sufficient funds to OJJDP will allow the Office to focus on programs that have the greatest potential for

reducing juvenile delinquency and that address the many needs identified by the practitioners who are on the front lines with the nation's youth every day.

However, if Congressional earmarks continue despite the many calls to eliminate them, the earmarked programs should be funded in addition to OJJDP's annual baseline appropriation, only evidence-based practices and programs should be funded, and OJJDP (and other federal agencies) should be given the authority to hold the earmarked programs accountable.

The issues outlined here and in the previous two FACJJ annual reports (2004, 2005) illustrate the obstacles states and communities are up against when it comes to effectively addressing the many needs of juveniles under their jurisdiction. They also indicate the crucial importance of supporting the JJDP Act and—just as importantly—providing the resources OJJDP needs to help states and communities design and implement effective juvenile justice programs that meet the needs of at-risk youth, hold offenders accountable, and help keep the public safe.

Rather than resting on what has been accomplished thus far under the Act, FACJJ strongly recommends that the President and Congress reauthorize the JJDP Act, and amend it as needed, so that states can begin directing resources to more targeted needs—many of which are mentioned throughout this report.

**8. FACJJ recommends that the President and Congress begin working now toward the 2007 reauthorization of the JJDP Act by assigning it to the appropriate committee(s) so that hearings can be held and the Act can be reauthorized in a timely manner.**

The nation and its children need the reauthorization of the JJDP Act to help continue the downward trend in juvenile delinquency and to provide the resources necessary to appropriately address and resolve a multitude of critical juvenile justice issues. Much has changed since the Act was first authorized in 1974 and last reauthorized in 2002. Congress

needs to begin re-examining the Act, studying the parts that have been successful and rethinking those that have not. This will allow adequate time to discuss changing needs and problems with juvenile justice practitioners and policymakers from both sides of the political aisle and to consider improvements and changes that need to be made to the Act. Many of today's juvenile justice issues are complex and require serious, in-depth discussions about the best way to address them. In addition, FACJJ has several recommendations on how to improve the JJDP Act. To help ensure that juvenile justice does not get lost in the shuffle of new legislation and changing national priorities, FACJJ urges Congress to begin the JJDP Act reauthorization process now.

**9. FACJJ recommends that the President and Congress amend the JJDP Act to require that federal government agencies, in conjunction with the OJJDP Administrator, develop and implement programs that comply with the four core requirements of the JJDP Act [Section 223(a)(11), (12), (13), (22)].**

FACJJ remains extremely concerned that federal government agencies that have jurisdiction over youth are allowed to detain youth in violation of the core requirements of the JJDP Act. FACJJ has recommended for the past 2 years that Congress amend the Act to rectify this situation, yet no action has been taken.

Findings from OIG of both the U.S. Departments of Homeland Security and the Interior (discussed earlier in this section) make it crystal clear that a serious problem exists. The bottom line is that it should be illegal for the federal government to be allowed to house detained youth without providing them the protections outlined in the JJDP Act. Many of these youth are indigent and lack advocates. FACJJ urges Congress to rectify this inequity by amending the Act and by requiring the development of a compliance, monitoring, and data collection process.

**10. FACJJ again recommends that the President and Congress amend the JJDP Act 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 2002 reauthorization of the JJDP Act delayed by 1 year the time at which states receive a financial penalty for being out of compliance with the Act. 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 2005, but comes back into compliance that same year, OJJDP, by law, is forced to reduce the state's FY 2006 formula grant. Congress can fix this during the reauthorization process by changing the Act so that the penalty goes into effect the same year in which a state is deemed out of compliance. This will allow OJJDP to work with the state and help it come into compliance so that 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 the following year.

# Administration and Funding

A continued lack of federal funding for juvenile justice continues to imply a lack of commitment to addressing and combating juvenile justice issues. This 2006 report reiterates many of the same recommendations made in 2004 and 2005 as the same programs continue to suffer from an insufficient funding stream.

According to a column by Dr. Ronald D. Utt of the Heritage Foundation (Heritage Foundation, 2006), one of the reasons dealing with the problem of budgetary earmarks is so difficult is a lack of agreement on what constitutes an earmark. As of April 2006, no fewer than 51 pieces of legislation aimed at reforming the lobbying and earmarking process were making their way through the legislative process, showing that earmarks are a growing concern in many areas, not just among the juvenile justice community.

Although FACJJ cited this as an area of growing concern in the 2005 report and recommended the elimination of such programs, the number of earmarked programs in the OJJDP appropriation increased dramatically from 247 in FY 2005 to 364 in FY 2006. The amount of funding designated for those projects increased from \$100 million to \$104 million, despite the fact that OJJDP's total appropriation fell from \$362.9 million (after rescissions) to \$342.7 million.

This continued disproportionate funding for earmarked programs leaves FACJJ

members with greater concern than ever about the following:

- Earmarked programs are not held accountable for program performance. These programs bypass the competitive grant process and go directly to a member of Congress. Thus, they do not have to meet performance standards (as do programs that compete for funds). If Congress continues to fund earmarked programs, FACJJ continues to recommend that it fund proven projects and monitor them to hold them accountable for their performance.
- FACJJ acknowledges that some earmarked programs are worthy of funding and that many members of Congress support these projects because they believe they are worthwhile. However, FACJJ members continue to call for setting aside individual goals and preferences and throwing support behind the most effective programs.

Although earmarks are perhaps of greatest concern to



FACJJ members, the committee also makes recommendations that address the continued lack of federal funding for juvenile justice programs (discussed in more detail below). The President and Congress need to consistently and adequately fund the programs authorized under the JJDP Act in order to provide the financial resources needed to address juvenile justice issues.

Funding for most of the programs created by the JJDP Act continues to face cuts, or in some cases, is even nonexistent. FACJJ members continue to raise concern that if funding for juvenile justice programs is not revived, the progress that has been made in addressing juvenile justice issues will begin to erode.

Major OJJDP programs, such as the Formula Grants Program, the Title V Community Prevention Grants Program (Title V), and the Juvenile Accountability Block Grants (JABG) program continue to be hit hard. In 2002, Congress created a new program, the Juvenile Delinquency Prevention Block Grant (JDPBG) program, to replace other juvenile justice programs, but never provided an appropriation. This continued lack of federal funding gives the impression that neither the White House nor Congress believes that addressing juvenile justice issues is an important priority. Because it is imperative that the nation's leaders keep a focus on juvenile justice, FACJJ makes the following recommendations:

**11. FACJJ again recommends that the President and Congress eliminate all earmarks from juvenile justice grant programs. If Congress continues to steer limited 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.**

FACJJ is just one of many groups concerned about earmarking; among others that have gone on record opposing earmarks are the White House Task Force

for Disadvantaged Youth (2003b), the Heritage Foundation (Riedl and Miller, 2004), Citizens Against Government Waste (2006), and Youth Today, an advocacy group (Kelly, 2005).

FACJJ once again strongly urges the President and Congress to do the right thing and eliminate all earmarks from juvenile justice programs. If congressional earmarks continue, federal agencies should at a minimum 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.

**12. FACJJ recommends that the President and Congress fund the Formula Grants Program in the next fiscal year and beyond at no less than the FY 2002 level of \$89 million, which was not adequate in 2002. FACJJ reiterates this recommendation from 2004 and 2005 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. 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.**

The appropriation for the Formula Grants Program, which helps states meet the four core requirements of the JJDP Act, was cut from \$95.1 million in FY 1998 to \$80 million in FY 2006. Most states continue to have a difficult time effectively addressing the core requirement regarding the disproportionate number of minority youth who come in contact with the juvenile justice system (addressed in more depth elsewhere in this report.)

**13. FACJJ reiterates its recommendation from 2005 that the President and Congress allocate no less than \$37.5 million (excluding earmarks) for the Title V Community Prevention Grants Program (Title V) in the next fiscal year and beyond, and also require the program to be administered as a formula-based block grant.**

Since its inception in 1994, funds available to states for Title V, the only federal funding source dedicated solely to delinquency prevention, have continued to decline from a high of \$40.5 million in FY 1999 to just \$5 million in FY 2006. Title V funds are administered on a formula basis of relative youth population and are competitively awarded to units of local government for a broad range of data-driven, evidence-based delinquency prevention programs that benefit youth who are at risk of having contact with the juvenile justice system.

Communities that receive Title V grants:

- Develop data-driven prevention plans.
- Build community coalitions.
- Implement evidence-based program strategies.

Local evaluations show progress in areas such as:

- Improving local conditions.
- Reducing community risk factors.
- Changing targeted behaviors (OJJDP, 2004).

In a 2005 OJJDP report, many state administrators reported that if increased federal funding is not made available, gains made under this program could be lost. (OJJDP, 2005b).

14. FACJJ recommends that Congress fund the Juvenile Accountability Block Grants (JABG) program at its original authorization level of \$250 million. The 2006 appropriation was \$50 million. Also, the U.S. Department of Justice should distribute the JABG annual report to the President, Congress, and the states.

Funding for the JABG program fell from a high of \$250 million in 1998 to \$50 million in FY 2006. This program awards grants to states to fund programs in 16 purpose areas specifically defined by Congress. States and communities continue to need JABG funding to develop programs to hold juvenile offenders and juvenile justice systems accountable. JABG funding also is used to provide training and

technical assistance to help communities implement accountability-based sanctions programs.

A national evaluation of the program indicated that the program had succeeded in meeting the goals established by Congress, but this seemed to trigger decreased, not increased, funding (Parent and Barnett, 2003). The evaluation indicated that states had made a large proportion of these funds available to local units of government and assisted these jurisdictions in dealing with local problems while at the same time stimulating collaboration at the local level.

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

The 2002 reauthorization consolidated seven previously independent OJJDP programs into one new program. The new program was to make block grants available to states and AI/AN tribes to carry out the general purposes of repealed programs. This anticipated funding has never been appropriated, although the other programs were eliminated.

Funding the JDPBG program would address numerous issues of concern to FACJJ, including treatment for juveniles with mental health problems, gang prevention programs, initial intake screenings for all juveniles taken into custody, and programs focusing on female juvenile offenders' needs. At present, budget cuts and earmarks have left OJJDP unable to develop new prevention programs or continue funding existing ones that address these issues.

If Congress is unable to fund this program, FACJJ recommends that it be eliminated.

# Effective Legal Counsel

**F**ACJJ believes that every child who comes into contact with the justice system is entitled to early, zealous, and effective legal representation. It appears this is not happening for many juveniles.

For several years, the American Bar Association (ABA) and the National Juvenile Defender Center (NJDC) have been assessing the extent to which states are addressing the right to counsel in juvenile proceedings. Findings from the assessments have been universally consistent and discouraging and include the following:

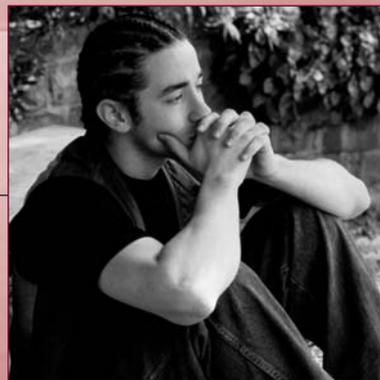
- Lawyers are appointed or assigned to represent indigent youth in a startlingly low percentage of cases; moreover, this impacts disproportionately on lower income minority juveniles.
- When assigned, lawyers do not get involved early enough in the process (frequently not until after a detention hearing is held). Holding a juvenile in detention is often a predictor of more severe sanctions and a higher rate of waiver or transfer to adult court.
- Lawyers frequently do not meet with their juvenile clients until the day of a hearing and often inadequately investigate the facts of a case.
- Lawyers do not sufficiently address mental health issues, including the competency of the youth to stand trial.

- Lawyers engage in insufficient motion practice such as contesting the legality of searches or the admissibility of confessions.
- Lawyers seldom appeal adverse results to the next higher court or challenge rulings made and conclusions reached.

These findings contradict many of the key principles outlined in *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* (2005). Developed by the National Council of Juvenile and Family Court Judges (NCJFCJ), the guidelines outline 16 key principles necessary for juvenile delinquency courts to achieve excellence. Principle 7 states:

“Youth charged in the formal juvenile delinquency court must have qualified and adequately compensated legal representation.”

The principle goes on to stress that “juvenile delinquency court administrative judges are responsible to ensure that counsel is available to every youth at



every hearing, including post-disposition reviews and reentry hearings” (page 25).

Adequate legal representation also plays into NCJFCJ’s Principle 6, which calls on juvenile delinquency court judges to divert cases to alternative systems whenever possible and appropriate. This means doing indepth investigations to make sure the most appropriate disposition is handed down (page 133). Consequently, a juvenile’s attorney has a responsibility to fully investigate the facts and to make sure that the court is aware of the background, needs, and actions of the adjudicated delinquent juvenile (page 135).

Although much has happened in the past 5 years that addresses the issue of legal counsel at the national level (mostly through NJDC), less has happened at the state level with the exception of the creation of NJDC’s nine Regional Juvenile Defender Centers. Each center coordinates regional activities; helps compile and analyze juvenile indigent defense data; facilitates opportunities for juvenile defenders to organize and network; offers targeted, state-based training and technical assistance; and provides case support specifically designed for complex or high-profile cases.

There has been little empirical study of the role counsel has in influencing decisions involving minority youth. A few studies have indicated that the presence of counsel may result in more serious dispositions for delinquent youth, but these data may reflect the unwillingness of courts to allow waiver of counsel in more serious cases, and thus such cases are disproportionately represented in the statistics.

Recent pilot projects undertaken by the Annie E. Casey Foundation, through its Juvenile Detention Alternatives Initiative, indicate that early assignment of a lawyer to a minority youth may reduce detention rates, and this reduction enhances the experiences of minority youth in the juvenile justice system. It may also reduce the incidence of waiver or transfer for minorities because a lawyer can

influence prosecutorial decisionmaking regarding whether a juvenile should be handled as a juvenile or as an adult.

The presence of committed, highly trained juvenile defense attorneys at an early stage of the juvenile justice process may have many beneficial consequences such as lower detention rates, more acquittals or dismissal of charges, fewer transfers or waivers, and more creative dispositions actually tailored to juveniles’ needs.

FACJJ is especially concerned about how a lack of adequate counsel affects the disposition of cases involving minority and economically disadvantaged youth. The latest data from OJJDP’s 2003 Census of Juveniles in Residential Placement found that minority youth accounted for 61 percent of all offenders held. Nationally, the custody rate was highest for African-American youth and lowest for Asian youth. Specifically, for every 100,000 African American juveniles living the United States, 754 were in custody in a juvenile facility on the 2003 census date; the rate was 496 for AI/AN, 348 for Hispanic youth, 190 for whites, and 113 for Asians (Snyder and Sickmund, 2006.) Furthermore, as noted elsewhere in this report, the majority of youth receiving sentences of life without parole are African American youth. These statistics, combined with the ABA’s finding that lawyers are appointed to represent indigent youth in only a low percentage of cases, raise serious concerns about the lack of adequate, qualified legal counsel for minority youth.

Representing juveniles is a complex task and can only be effective in a culture that supports both a vigorous defense and a thorough exploration of juveniles’ mental health and social needs in order to decrease recidivism and to serve the rehabilitative purposes of the juvenile process. Juvenile defenders cannot properly represent their clients unless the system provides access, when appropriate, to mental health evaluations and consultations from mental health providers, and offers access to information about community-based treatment resources and

social services to the juvenile and his or her family. Without these resources, the disposition alternatives that a lawyer can present to the court will inevitably focus on incarceration and punishment at the expense of more creative, rehabilitative, and, very possibly, more effective responses to offender behavior. This element of the process does not come naturally to lawyers and needs to be supported by the culture of the juvenile process and by adequate compensation of the lawyer for engaging in this process.

The annual National Juvenile Defender Summits sponsored by the NJDC offer a splendid example of the training that can be done, and these summits should be replicated in every state. Several states, such as California, Georgia, North Carolina, and Virginia have developed standards of practice for lawyers representing juveniles and every state should follow their lead (with the support of OJJDP).

Some states allow for the appointment of guardians ad litem for juvenile offenders to supplement the role that counsel plays in representing juveniles, especially youth with severe educational disabilities or mental health problems and juveniles who, for a number of reasons, may be candidates for placement in the custody of the state welfare department. Appointment of a guardian ad litem allows the defense lawyer to focus on the offense itself, and all but eliminates the conflict that may arise in cases in which the best interests of the juvenile may well lie in continued contact with, and oversight by, the juvenile justice system and /or removal of the juvenile from the custody of his or her parents. A juvenile's faith in the fairness of the system

requires that he or she believe that his or her lawyer is vigorously representing his or her stated wishes and not acting as a quasi-guardian ad litem. OJJDP should sponsor a study of the role of guardians ad litem in delinquency cases and assess the value of lawyers performing this ancillary role.

**16. FACJJ recommends that the President and Congress, as part of the reauthorization of the JJDP Act of 2002, insert language into the Act that requires the provision of competent, effective, and zealous attorneys for both juveniles and the state (i.e., prosecutors) in juvenile proceedings, and that these attorneys receive specialized training in child and adolescent development and in juvenile law and related matters and procedures. FACJJ also recommends that Congress allocate specific funding to OJJDP to provide training for attorneys (both prosecution and defense) who represent juveniles with mental health issues.**

This recommendation supports FACJJ's core value that every juvenile who comes into contact with the justice system is entitled to early, zealous, and effective legal representation. Yet findings from state assessments conducted by the ABA and NJDC indicate many juveniles are not adequately represented by legal counsel. Representing and prosecuting juveniles is much different than representing and prosecuting adults, and requires specialized training. Congress could help ensure that all youth receive the legal representation to which they are entitled by including language about this in the JJDP Act.

# Life Without Parole

**F**ACJJ believes that children and adolescents are developmentally different from adults and from each other at different stages of development, and that young offenders are especially amenable to treatment and rehabilitation. This does not mean that they should not be held accountable for their delinquent and/or criminal actions. It does call into question, however, the wisdom of sentencing young offenders convicted of serious crimes to lengthy mandatory minimum sentences or to life in prison without the possibility of parole.

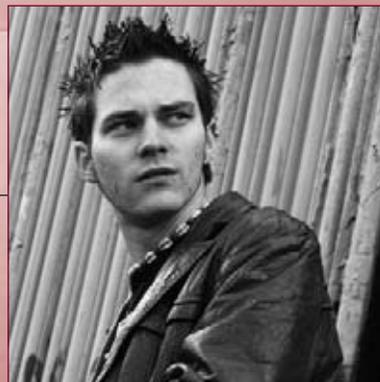
Although data on adolescents serving lengthy adult sentences are not readily available, Human Rights Watch (HRW) and Amnesty International report that at least 2,225 young offenders are serving life without parole sentences in the United States for crimes they committed before they were age 18. A 2005 report, *The Rest of Their Lives*, details the findings from a study the two groups conducted about juveniles sentenced to life sentences in the United States. According to the report:

- More than half (59 percent) of the youth sentenced to LWOP were first-time offenders who had neither a prior adult criminal record nor a juvenile delinquency adjudication.
- Sixteen percent of the young offenders were between 13 and 15 years old at the time they committed their crimes.

- The majority (60 percent) of those youth receiving life sentences without the possibility of parole were African American.
- Most (93 percent) of the youth offenders sentenced to life in prison were convicted of murder. However, 26 percent of these youth were found guilty of “felony murder” crimes, meaning they may have been deemed responsible for a murder, even if they did not personally or directly cause the death of the victim.

Sending convicted juveniles to prison for lengthy minimum sentences, or for life, reflects the nation’s response to the rising juvenile crime rate of the late 1980s and early 1990s. Many states responded by enacting laws that allow youth accused of committing specific crimes to be tried as if they were adult offenders. Nearly all states currently have laws allowing juveniles to receive life sentences.

Serious juvenile crime has been on the decline for much of the past decade, with the juvenile arrest rate



for violent crimes in 2003 the lowest it has been since 1980 (Snyder, 2005). Nonetheless, the proportion of juveniles receiving life sentences has been increasing. According to the HRW report:

- The number of juveniles convicted of murder dropped 55 percent between 2000 and 1990, but the percentage of youth receiving sentences of life in prison without parole increased 216 percent. Specifically, of the 2,234 youth convicted of murder in 1990, 3 percent were sentenced to life; in 2000, the numbers were 1,006 and 9 percent, respectively.

The study reported similar findings throughout the nation, noting that in 11 of 17 years between 1985 and 2001, youth convicted of murder in the United States were more likely than adult murder offenders to be sentenced to life without parole.

The advisory committee recognizes that these data need further indepth analysis to determine the many factors that affect statistical outcomes. Numerous variables need to be examined to determine what the findings actually illustrate. For example, because teens tend to associate in groups, four or five offenders may be charged with, and convicted of, felony murder when only one individual did the actual killing. In contrast, an adult convicted of felony murder most likely acted alone. In fact, data from the Bureau of Justice Statistics show that homicides committed by juveniles are likely to involve more than one offender. Of homicides involving multiple offenders in 2002, 34 percent involved offenders age 14 to 17, whereas only 12 percent involved offenders age 25 and older (Fox and Zawitz, 2006).

Other disparities raise concerns as well, especially regarding the disproportionate number of minority youth who receive life sentences. As noted earlier, HRW found that the majority of youth sent to prison with no chance of parole were African American. Even more disturbing is the fact that African-American youth receive life sentences at a rate estimated to be 10 times greater than that of white

youth (6.6 versus 0.6). The ratio is far greater in some states, such as California, where African-American youth are 22.5 times more likely to receive a life without parole sentence than white youth, and Pennsylvania, where Hispanic youth are 10 times more likely to be sentenced to life than white youth.

Doing away with sentences to mandatory minimum periods of incarceration or to life for juveniles does not mean being soft on crime. Rather, it means recognizing and accepting that adults and juveniles are developmentally different. Science supports this fact. Emerging adolescent brain research scientifically points to a difference in maturity levels between adults and juveniles (American Bar Association, 2004). The research also shows that an adolescent's brain is not fully developed until he or she reaches age 21 or 22. The research goes on to show that adolescents often use the emotional part of the brain, rather than the frontal lobe (the largest part of the brain and the part that controls the brain's most advanced functions) to make decisions. The U. S. Supreme Court cited this research in 2005 when banning the death penalty for anyone convicted of committing a crime when he or she was under the age of 18. Is it just, then, to lock juveniles up for life or for lengthy minimum prison terms for crimes committed before the age of 18?

This is not to say that young people convicted of serious and sometimes heinous crimes should not be punished. Indeed, some of these young offenders should be locked up for a long time, but the law should always leave open the possibility of rehabilitation and parole.

The law should also allow courts to send serious juvenile offenders, when appropriate, to juvenile facilities that do a good job of holding them accountable and providing an opportunity for rehabilitation. The Giddings State School in Texas has been cited by both the *Denver Post* (2006) and by author John Huber (*Last Chance in Texas: The Redemption of Criminal Youth*) as a tough, successful program for serious violent offenders. Convicted

youth generally serve 4 to 6 years in the facility and go through a grueling process that forces them to take ownership of their crimes and the damage they have caused their victims. These youth have a choice: make progress or go to an adult prison.

**17. FACJJ recommends<sup>4</sup> that the President support, and Congress enact, legislation mandating judicial or administrative review of the possibility of parole for any youth convicted of a federal offense committed before the offender's 18th birthday. The legislation should also require federal courts that have imposed such a sentence in the past to reassess such sentence and substitute one that allows for the possible parole of the offender.**

Although FACJJ members believe that young people convicted of serious, violent crimes should be held accountable and punished for their crimes, the advisory committee also believes that young offenders are amenable to treatment and rehabilitation. Whereas taking a life or inflicting great bodily harm on another individual should never be ignored or go unpunished, young people who have committed such acts should not be sentenced to prison for lengthy minimum sentences or to life with no possibility of parole. Legislators and courts should recognize that it is possible to rehabilitate many of these individuals, although it may take time.

The advisory committee is also concerned about the disproportionate number of minority youth who

receive sentences in state court to lengthy mandatory minimum periods of imprisonment or to life without parole. According to Human Rights Watch, not only are the majority of youth receiving life sentences African American, these youth receive such sentences 10 times more often than white youth. It also appears that many youth receiving life sentences are first-time offenders. There is also an apparent disparity in some states in the severity of punishments juveniles and adults receive for the same type of crime.

**18. FACJJ recommends that the President and Congress amend Part D of the Juvenile Justice and Delinquency Prevention Act to require OJJDP to serve as a central depository, and to analyze and disseminate national data on youth tried and sentenced as adults, with a focus on youth sentenced to lengthy mandatory minimum sentences or to life without parole.**

Policymakers and juvenile justice practitioners need reliable, consistently collected data about the number of juvenile offenders tried in criminal court and about those sentenced to mandatory minimum periods of confinement or to life without parole. Although there is information about the number of states imposing adult sanctions on juvenile offenders, much more data and indepth analysis are needed about youth tried in criminal courts, including their ages, the crimes they are charged with committing, and the sentences they receive. Accurate, reliable data are also needed about the rate of recidivism among juveniles sentenced in criminal court, the impact of transfer and waiver on minority youth, and the types of services and treatment provided to youth sentenced to adult facilities.

Policymakers and practitioners need more statistical and analytical information about a number of issues, including the proportion of capital crimes committed by adults versus juveniles, differences in the nature and level of violence committed by the two groups, and the effect public opinion has on the judicial outcome of highly publicized cases. Providing this data is crucial to ensuring that age

<sup>4</sup> Several FACJJ members expressed concern about Recommendation 17, which suggests the need to reassess sentences of LWOP for convicted youth and substitute sentences that allow for parole. Members opposing this recommendation were concerned about the effect the retroactive review of a sentence might have on the victims or families of victims, and about mandating that an already imposed sentence be changed. States on record as opposing the recommendation are: Louisiana, Florida, Michigan, Minnesota, Mississippi, North Carolina (abstained), New York, Oregon, South Dakota, and West Virginia.

does not become an aggravating factor in charging a youth or in settling his or her disposition.

As the primary federal agency responsible for addressing issues of juvenile crime and delinquency, it is appropriate that Congress provide funding for and mandate OJJDP to collect and analyze national

data about youth tried and sentenced as adults and youth sentenced to life without parole. Until this information is available, policymakers and practitioners will be limited in their ability to make informed decisions about these issues.

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