



Federal Advisory Committee on Juvenile Justice

ANNUAL REPORT 2008



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Foreword

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

The Federal Advisory Committee on Juvenile Justice (FACJJ) commenced in 2004 and was charged with the responsibility of annually providing advice to the President and the Congress regarding State perspectives on legislation pertaining to juvenile justice and delinquency prevention and advice on the operation of the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP). The membership of FACJJ is composed of one representative from each State and territory and the District of Columbia.

On behalf of FACJJ, I am pleased to present the *2008 Annual Report*, which addresses major issues currently facing our Nation's juvenile justice system. Paramount among its concerns, FACJJ strongly urges the passage of the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008 (the JJDP Act).

The original JJDP Act of 1974 imposed various requirements on the States and territories intended to help prevent juvenile delinquency, to hold delinquent youth accountable for their actions and to assist them in becoming responsible citizens, and to protect the public safety. This *Annual Report* is a report card on the efforts and compliance by the States and territories in response to the requirements of the JJDP Act.

Although the States, territories, and the District of Columbia have made significant progress since the JJDP Act was first enacted in 1974, the changing landscapes of our communities and juvenile justice systems continue to present us with complex new issues and concerns.

The concerns and recommendations presented in this *Annual Report* reflect the experience and wisdom of juvenile justice experts and career professionals from every State and territory in the Nation. This *Annual Report* was written by your citizen advisors who have labored extensively in

the careful study of issues, engaged in lively and productive debates, and thoughtfully drafted for your consideration what is this year's "State of the States" perspective on juvenile justice.

The identified issues and recommendations cannot be adequately addressed without strong, concerned leadership from the White House, the Congress, and OJJDP. The members of your FACJ stand ready to assist our elected leaders in this endeavor.

The members of FACJ present this *Annual Report* to you with the firm belief that reauthorization of the JJDP Act is critical to the future of juvenile justice in this country and that the recommendations contained herein can enhance the juvenile justice system, help improve outcomes for at-risk youth, and better protect the public.

Harry W. Davis, Jr.
2008 FACJ Chair



Acknowledgments

Many individuals contributed to the preparation of this Report.

Annual Report Subcommittee members who volunteered considerable time and expertise guiding the drafting of the various chapters of this report are Vicki Blankenship, Harry Davis, Dick Gardell, Deirdre Garton, Robin Jenkins, Pam Kennedy, Bob Pence, Cecely Reardon, and Vincent Schiraldi. Other subcommittee members who contributed to this report are Bernardine Adams, David Brown, Barb Edmondson, Faye Fagel, Carlos Hendricks, Douglas Hermann, Gini Highfield, Jerrauld Jones, Gary Leofanti, Ron Lucero, Ed Morris, Ron Pagliarini, Darius Pridgen, Steven Teske, Jerry Walsh, Bruce Waters, and Ward Loyd.

The Annual Report Subcommittee would also like to thank all FACJJ members for their input and review and all the State Advisory Groups and their juvenile justice specialists whose responses to the annual FACJJ questionnaire helped inform the recommendations in this Report.

Special thanks go to former FACJJ member and Annual Report Subcommittee cochair Robert Shepherd, who oversaw the planning stages of this *2008 Annual Report*.

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This Report could not have come to fruition, however, without the skillful leadership, thoughtful guidance, and fine work of Subcommittee Cochairs Michael Arrington and Christine Thibeault, and the patient and excellent ministrations of Kay McKinney, writer/editor. Their efforts are greatly appreciated.



Introduction to the Federal Advisory Committee on Juvenile Justice


The Federal Advisory Committee on Juvenile Justice (FACJJ) was established by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in 2004 to comply with requirements of the Juvenile Justice and Delinquency Prevention (JJDP) Act that there be a national conference of member representatives of the State Advisory Groups to provide advice to the President, Congress, and the OJJDP Administrator regarding juvenile justice. Each year, FACJJ prepares two reports (one to the President and Congress and one to the Administrator of OJJDP) to inform Federal leaders of current concerns and recommendations emanating from the States, the five U.S. territories (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands), and the District of Columbia.

FACJJ is composed of 56 representatives who together bring a breadth and wealth of experience, knowledge, and leadership in juvenile justice. These 56 individuals could not take their assigned responsibilities more seriously. While no one person or group has simple answers to the difficult problems of delinquency, FACJJ—which represents every State, U.S. territory, and the District of Columbia—possesses an awareness of issues and the mature judgment to express profoundly significant recommendations. Indeed, this is precisely why the committee was formed.

The 2007 FACJJ Annual Report to the President and Congress focused on the need to reauthorize the JJDP Act.

This year, FACJJ has chosen to present a report card of sorts on national compliance with the four core protections of the JJDP Act. These core protections are:

- ◆ Deinstitutionalizing status offenders and nonoffenders.
- ◆ Separating adult and juvenile offenders in secure institutions.
- ◆ Eliminating the practice of detaining or confining juveniles in adult jails and lockups.
- ◆ Addressing the disproportionate number of minority youth who come into contact with the juvenile justice system.



In writing this Report, FACJJ looked at these core protections as “required subjects” on the report card because States, territories, and the District of Columbia participating in OJJDP’s Formula Grants Program must commit to achieving and maintaining compliance with the core protections in order to receive their annual formula grants. In addition, each State and territory is required to develop and implement a comprehensive 3-year juvenile justice and delinquency prevention plan that addresses a number of pressing juvenile justice

issues—issues that are not tied to receiving funding. For this Report, FACJJ has defined these nonrequired areas as “elective subjects.” Based on responses from the States and territories to an annual FACJJ questionnaire and on discussions with FACJJ members, this Report covers two “elective” issues:

- ◆ Effective assistance of counsel.
- ◆ Mental health and substance abuse in the juvenile justice system.



Federal Advisory Committee on Juvenile Justice Core Values

Children and adolescents are developmentally different from adults and from one another at different stages of development. Research confirms that children and youth are especially amenable to treatment and rehabilitation.¹ Therefore, FACJJ believes that each child (defined as a person under the age of 18) who comes into contact with the justice system is entitled to:

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.

¹Research 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.

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.



Executive Summary

The Federal Advisory Committee on Juvenile Justice (FACJJ) has developed 19 recommendations to the President and Congress that focus on major issues facing the Nation's juvenile justice system. These recommendations fall into five broad areas:

- 1. Deinstitutionalization of status offenders.*
- 2. Jail removal and sight and sound separation.*
- 3. Disproportionate minority contact.*
- 4. Effective assistance of counsel.*
- 5. Mental health, substance abuse, and the juvenile justice system.*

Deinstitutionalization of Status Offenders

The deinstitutionalization of status offenders (DSO) is one of the two original mandates of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974. The 1980 reauthorization of the Act incorporated the valid court order (VCO) exception, which allows States and territories that have enacted appropriate statutes to securely detain youth who have committed a status offense and subsequently have violated a court order regarding disposition of the status offense. The VCO exception remains a topic of much debate among juvenile justice professionals.

The DSO provision of the JJDP Act has been successful in encouraging States and territories to amend laws, policies, and practices that led to the secure confinement of many juveniles who committed no criminal

act. However, maintaining compliance with the DSO protection requires constant vigilance by States and territories. In addition, many juvenile courts continue to place youth who have not committed any criminal offense into secure detention although research suggests status offenders and nonoffenders are better served by receiving appropriate services through social service agencies outside of juvenile court involvement.

States and territories would benefit from increased technical assistance, help in implementing empirically based prevention programs, and flexible Federal funding to develop sufficient alternatives to secure detention. States and territories also need help in fostering collaboration among State agencies so that shrinking State and Federal resources could be used more

efficiently to address the behaviors of status offenders and nonoffenders.

The policy considerations that led to the DSO core protection are as valid today as they were when the JJDP Act was enacted. Reauthorization of the JJDP Act and reinforcement of the core protection that prohibits States and territories from securely detaining status offenders are essential for the safety of both status offenders and the public. Based on these concerns, FACJJ makes the following recommendations:

1. **FACJJ recommends that the President and Congress support statutes and programs that promote use of youth-serving social service agencies outside of the juvenile justice system to provide appropriate responses to status offenses and nonoffense behaviors.**
2. **FACJJ recommends that the President and Congress increase funding to youth-serving agencies to develop and expand nonsecure community-based alternatives for status offenders and nonoffenders.**
3. **FACJJ reaffirms its recommendation in the 2007 *Annual Report* that the President and Congress amend the JJDP Act to strongly encourage courts to use alternatives to secure detention when sanctioning a status offender for a violation of a valid court order.**
4. **FACJJ recommends that Congress fund further research and publications regarding the effects of securely detaining status offenders and nonoffenders and promote alternatives to secure detention that effectively address status offenses and other troubling noncriminal behavior. Such research will inform practitioners and policymakers about how detention impacts public safety and the impact that detention has on these youth.**
5. **FACJJ recommends that the President and Congress restore the following language to Section 261(e) of the JJDP Act regarding special needs and problems of juvenile justice in certain areas: “Not less than 5 percent of funds available for grants and contracts under this Section shall be available for grants and contracts designed to address the special needs and problems of juvenile delinquency in the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.”**

Jail Removal and Sight and Sound Separation

The second original mandate of the JJDP Act requires States and territories to eliminate the practice of detaining or confining juveniles—whether nonoffenders, status offenders, or delinquents—in jails, lockups, or other institutions in which they might have sight or sound contact with detained or incarcerated adults. When the Act was reauthorized in 1980, Congress added jail removal as a mandate, requiring that juveniles cannot be securely detained or held in adult jails and lockups.

Although States and territories are generally in compliance with the jail removal and sight and sound separation core protections, housing juveniles in adult facilities within sight and sound of adults is still a problem in some lockups and in smaller, more rural holding facilities. A critical policy issue that is not addressed by the current JJDP Act is the number of youth being tried as adults and held pretrial in, or subsequently sentenced to, adult facilities. Many States have passed laws making it easier to try certain juveniles as adults.

Studies show that many juvenile offenders held in adult facilities do not receive the education or other services they need to become productive citizens. Research studies also are finding that transferring juveniles to adult facilities does not prevent violence or recidivism and, in fact, increases rather than decreases rates

of violence among transferred youth. The issue of sentencing juveniles as adults is further complicated by the Office of Juvenile Justice and Delinquency Prevention's (OJJDP's) position requiring that juveniles sentenced as adults but sent to juvenile facilities must be removed from the juvenile facility 6 months after they reach a State or territory's age of majority.

Based on these concerns, FACJJ makes the following recommendations:

6. **FACJJ recommends that when reauthorizing the JJDP Act, the President and Congress expand the core protection dealing with jail removal and separation to apply to all youth until they reach the age of 18 regardless of which court—juvenile or adult—handles their cases. Congress should also provide appropriate funding to help States and territories comply with this protection.**
7. **FACJJ recommends that the President and Congress modify the JJDP Act to allow those juveniles convicted as adults and housed in juvenile facilities to remain in those facilities after they reach age 18 as allowed by the law of the State or territory.**
8. **FACJJ recommends that the President and Congress direct OJJDP to reexamine the process for enforcing compliance with the four core protections of the JJDP Act and ensure that the regulatory scheme complies with due process and with the Administrative Procedures Act.**
9. **FACJJ recommends that the President and Congress require OJJDP to establish a system of data collection about juveniles in the adult criminal justice system. The data should include information about age, race, ethnicity, gender, offense, pretrial detention, transfer mechanism, sentencing outcome, and pre- and post-trial placement in jails, prisons, or juvenile facilities. Congress should appropriate additional funding to assist both OJJDP and States in collecting this data.**
10. **FACJJ recommends that the President and Congress require OJJDP to conduct research on the impact on juveniles tried and/or sentenced as adults who are confined in adult facilities, the status of facility conditions in which youth are placed, and the availability of developmentally appropriate services and programs for youth in adult jails and prisons.**

Disproportionate Minority Contact

Congress amended the JJDP Act in 1988, requiring States and territories to make efforts to reduce the disproportionate number of minority youth confined in secure facilities. In 1992, Congress elevated the issue to a core requirement of the Act, and it went a step further in the 2002 reauthorization by broadening the concept from minority “confinement” to encompass minority youth who come into “contact” with the juvenile justice system at designated points. Unlike the other core protections, however, Congress did not require States and territories to show measurable progress toward reducing disproportionate minority contact (DMC) in the juvenile justice system.

Of all the core protections of the JJDP Act, DMC is the most complicated and the one with which the States have made the least progress. Most States and territories are in compliance with the DMC requirement for reporting data, but many have not moved beyond data collection.

DMC appears to stem from complicated social, economic, political, and even behavioral determinants. In the justice arena, some of the key challenges include a lack of urgency to address this issue, difficulty in collecting data (and integrating data systems), bias, lack of research about best practices, and failure to involve education systems.

It may be impractical to expect the juvenile justice system alone to address the DMC problem. Many

children in the juvenile delinquency system are in the child welfare system as well. Often, these dual jurisdiction children are minority children, and they could be better served if multiple Federal agencies pooled their fiscal and personnel resources to develop innovative, sustainable programs.

The complexity of the DMC issue requires more intensive national support and leadership. For that reason, FACJJ makes the following recommendations:

11. **FACJJ renews and reinforces its recommendations from prior FACJJ annual reports urging the President and Congress to:**
 - ◆ Appropriate additional funding so States can hire full-time DMC coordinators.
 - ◆ Offer concrete incentives to States that make an effort to move beyond data collection and begin implementing action steps that proactively address the DMC issue.
 - ◆ Increase the amount of research dollars appropriated to OJJDP so the Office can fund research and evaluation of best practices and other research to help States address the DMC issue more effectively.
12. **FACJJ recommends that the President and Congress direct the OJJDP Administrator to grant the U.S. “insular territories” (Guam, American Samoa, U.S. Virgin Islands, and the Commonwealth of the Northern Marianas) waiver from the DMC core protection based on the same waiver criteria granted to Puerto Rico.**
13. **FACJJ recommends that the President and Congress include the reduction of racial disparity in the justice system as a whole as a purpose area in the Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance Grant Program and promote communitywide collaboration among these grantees as a way to address DMC.**
14. **FACJJ recommends that the President and Congress create funding incentives for communities to pool funds from multiple Federal programs to address racial disparity in the juvenile justice system. The incentives should reward communities for effective collaboration among education, mental health and substance abuse, Medicaid, and child welfare programs.**
15. **FACJJ recommends that the President and Congress provide funds that will require the U.S. Departments of Education (ED), Health and Human Services (HHS), Labor (DOL), and Justice (DOJ) to create multidisciplinary teams that will work together to develop cross-training models, legal models, technical assistance, and emergency services for States and localities that wish to develop collaborative approaches to “dual jurisdiction” children, using evidence-based services. Dual jurisdiction children are those who are in both the juvenile justice and child welfare systems.**
16. **FACJJ recommends that the President and Congress create a Federal working group of representatives of ED, DOL, HHS, and DOJ to identify and reduce the number of rules and regulations that impede State and local collaboration for dual jurisdiction children.**

Effective Assistance of Counsel

Although not a required core protection of the JJDP Act, Congress addressed the importance of effective assistance of legal counsel for juveniles during the 1992 reauthorization of the JJDP Act. Following this, the Juvenile Justice Center of the American Bar Association conducted the first national assessment of access to counsel and the quality of representation afforded juveniles. The assessment found that the provision of counsel varied widely among States, with many young people waiving their right to counsel, even when counsel was readily available. The assessment also found that many

attorneys failed to provide effective assistance, due to overwhelming caseloads, a lack of resources and investigative support, and inadequate training.

Recent assessments by the National Juvenile Defender Center confirm that many of these shortcomings still exist. Many youth still waive their right to counsel. This tendency is especially troubling in view of changes in laws that subject juveniles to increased sanctions, longer sentences, transfer to adult criminal court, and other concerns.

Effective assistance of counsel also affects compliance of States and territories with the core protections of the JJDP Act: DSO, sight and sound separation, jail removal, and DMC. In addition, effective assistance of counsel could help address the mental health and substance abuse needs of many youth in the juvenile justice system. Based on these concerns, FACJJ makes the following recommendation:

17. FACJJ recommends that Congress amend the JJDP Act to require the provision of competent, effective, and zealous representation for both juveniles and the State (i.e., prosecutors) in juvenile proceedings; require these attorneys to possess specialized knowledge and/or experience with child and adolescent development and in juvenile law and related matters and procedures; and require States to adopt juvenile caseload and practice standards. This requirement shall not be construed to allow for the imposition of financial penalties for noncompliance.

Mental Health, Substance Abuse, and the Juvenile Justice System

States and territories continue to identify mental health assessment and treatment of youth as one of the most critical issues facing their juvenile justice systems. The 2002 reauthorization of the JJDP Act further highlighted this issue by requiring States to improve services to address behavioral (mental) health, substance abuse, and

co-occurring problems (having both a mental health and substance abuse condition) as part of their comprehensive juvenile justice program plans. Numerous research studies document the need for these services.

Yet, Federal funding has not been made available to help States develop or improve appropriate services. States have moved at disparate paces (and not made much progress) when it comes to addressing mental health and substance abuse (MH/SA) in the juvenile justice system. The MH/SA issue is complex, and FACJJ has identified two broad areas that need to be addressed: (1) clinical/research issues and (2) policy/funding issues.

In the clinical/research arena, critical issues include concerns that many youth with emotional issues are referred to the juvenile justice system in order to gain access to MH/SA services, and many youth in the justice system receive mental health interventions (for lack of better options) that may be better suited for other applications or settings. Other clinical/research issues include disagreements about which types of disorders are amenable to which treatments, what causation to delinquency can be attributed to mental illness/substance abuse, how to balance the public safety and correctional philosophies with the need to provide developmentally appropriate behavioral health care, and the role that trauma plays in the formation of behavioral disorders and substance abuse.

Policy/funding issues center around the lack of funding for States and territories to address MH/SA in the juvenile justice system; the lack of policies, interagency Federal coordination, and blended Federal funding to further the systems of care concept, which holds that mental health, physical health, child welfare, education, and juvenile justice systems and families are all part of the system of care needed to help youth with MH/SA issues; the need to more structurally and accurately define the boundaries of the juvenile justice system and to determine when and where to place MH/SA services in the system including debates over

the role of universal behavioral health screening for all juvenile justice youth; and the need for policies that allow youth at the preadjudication stage of the juvenile justice system to discuss MH/SA issues without fear of self-incrimination.

Because these issues are so complicated, this Annual Report includes an appendix that provides a more detailed, comprehensive examination of MH/SA in the juvenile justice system. Based on the complex issues surrounding MH/SA, FACJJ makes the following recommendations:

- 18. 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 culturally appropriate and relevant 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 delivered in community-based, recovery-focused settings that are the least restrictive possible.**
- 19. FACJJ recommends that Congress ensure that States can provide all youth in the juvenile justice system with appropriate access to mental health and substance abuse services by examining and modifying regulations, laws, or other barriers that impede effective and flexible use of juvenile justice, health, substance abuse, and other funds across Federal agencies. FACJJ recommends that Congress review and enact the regulatory amendments necessary to achieve this access to care as soon as possible.**

Deinstitutionalization of Status Offenders

A status offender (a juvenile who has committed an act that would not be a crime if an adult committed it) or nonoffender (such as an alien, dependent, or abused or neglected child) cannot be held, except with statutory exceptions (such as a valid court order), in secure juvenile detention or correctional facilities nor can they be held in adult jails any length of time.

Historical Perspective

As the Nation considered enacting laws to protect certain core rights of juveniles in the 1970s, there was an alarming recognition that youth who committed no violations of law or who committed violations of law that would not be criminal if committed by an adult were being detained in secure juvenile facilities, jails, lockups, and other secure institutions. From this troubling observation grew one of the first two core protections of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974: deinstitutionalization of status offenders (DSO).

The DSO requirement of the JJDP Act prohibits States and territories from securely detaining youth who commit offenses that are not criminal if committed by an adult (status offenders) and youth who have not committed any violation of law (nonoffenders such as youth who are aliens, dependents, or abused or neglected) in

juvenile correctional facilities populated by delinquent youth or in any other secure detention facility. Generally, status offenses include truancy, running away, ungovernability, curfew violations, and possession of alcohol by a juvenile. The DSO core protection of the JJDP Act is premised on the belief that youth who exhibit problematic behaviors but have not committed a criminal offense or violated the law are more properly served by community, social service, and mental health agencies and may actually be damaged by placement in secure detention or correctional facilities.

Deinstitutionalization of status offenders is one of the two original mandates of the JJDP Act of 1974. The 1980 reauthorization of the Act incorporated the valid court order (VCO) exception to the DSO requirement. This exception allows States and territories that have enacted appropriate statutes to securely detain youth

who have committed a status offense and subsequently have violated a court order regarding disposition of the status offense. For example, a youth who is ordered by a court to attend school pursuant to a mandatory school attendance statute but who violates the court order by continuing to be truant may be held in a secure treatment facility if the State or territory has statutes authorizing secure confinement for violation of a valid court order. For States and territories to remain in full compliance with the DSO core protection, a checklist outlining each detention as a result of a violation of a valid court order must be completed.

Since its adoption in 1980, the VCO exception remains a topic of much debate among juvenile justice professionals. Those who oppose the exception argue that it eclipses the rule and that because of potential damage to youth who are securely detained, status offenders should not be ordered detained by a juvenile court under circumstances that constitute secure confinement, whether that be in a secure correctional or treatment facility.

Proponents of the VCO exception argue that status offenders, although they have committed no violation of criminal law, may exhibit behaviors that place themselves and others at risk and may, in certain situations, require placement in a secure facility. Other proponents of the VCO exception argue that courts have inherent authority to enforce their orders by use of all possible means, including use of secure confinement, and that eliminating use of secure confinement inappropriately diminishes the power of the court.

As Congress considers reauthorization of the JJDP Act, FACJJ recommends retaining DSO as a core protection of the Act and retaining the VCO exception with an amendment that strongly encourages courts to limit the use of secure detention and to consider alternatives to detention when sanctioning a status offender for a violation of a valid court order.

Where Are We Now?

The JJDP Act has been extremely successful in effecting changes in State statutes and practices that previously led to the detention of an unacceptable number of status offenders and nonoffenders in correctional facilities. Following the JJDP Act and its DSO requirement, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) recorded approximately 171,581 violations of the DSO requirement and considered this a baseline number for measuring success. The number of DSO violations has dropped to 6,234 according to OJJDP's 2006 compliance monitoring reports (the latest year for which data are available). These numbers reflect the overwhelming success of the JJDP Act in reducing the number of youth who have committed no criminal act being held in correctional facilities. However, States and territories must remain especially vigilant in their efforts to provide alternatives to secure detention for youth who have committed no offense but have nevertheless violated a valid court order.

Responding to unlawful behavior committed by juveniles is, for the most part, a local rather than national issue. Consequently, despite the guidance of the JJDP Act, States and territories vary greatly on which youth are subject to the courts' jurisdiction if a status offense is committed and what action the court may take to address the offense. Although the number of status offenders and nonoffenders ordered detained in secure facilities has dropped precipitously since the JJDP Act was passed, trends and efforts to reduce DSO across States and territories remain uneven and in flux. As a result, some legal scholars have scrutinized the DSO core protection and its VCO exception.

A recent law review article, "Rethinking Juvenile Status Offense Laws: Considerations for Congressional Review of the Juvenile Justice and Delinquency Prevention Act," provides an explanation of how varied interpretation of the DSO provisions can be and promotes

precourt diversion as a means of keeping status offenders out of institutions. According to the article, “Several States have recently revisited their juvenile status-offense laws, enacting changes that require diversion services before court involvement. These changes reflect the JJDP Act’s emphasis on prevention by requiring social service intervention before a court may assume subject matter jurisdiction over status offenders. But as [cited] cases demonstrate, judicial interpretations of these jurisdictional prerequisites affect their real world application.” This article offers recommendations to Congress that renew the principle that noncriminal behaviors by youth should be addressed in the community without institutionalized placement and with the aid of social services.

Why do juvenile courts continue to order secure detention for youth who have not committed any criminal offense despite assertions that these youth could be better served outside of secure correctional facilities? Why are there such a variety of statutory mechanisms among States and territories for responding to status offense behaviors? In its 2003 annual report, *Unlocking the Future: Detention Reform in the Juvenile Justice System*, the Coalition for Juvenile Justice (CJJ) suggests that failure of parents to take appropriate responsibility for their children and failure of the community to provide adequate alternatives result in the inappropriate detention of many youth in secure correctional facilities. Other likely factors contributing to the detention of status offenders and nonoffenders in secure facilities include:

- ◆ Insufficient numbers of nonsecure placements.
- ◆ Funding cuts and insufficient resources that result in elimination of nonsecure placement options.
- ◆ Lack of resources and parental support to address noncriminal yet risky and sometimes extreme behaviors that may predict more serious problems.
- ◆ Unique challenges that exist in rural areas such as great distances between nonsecure facilities.

According to CJJ’s 2003 annual report, research from the Annie E. Casey Foundation suggests another answer: “An unstated reason for detaining youngsters, which operates more often than most juvenile officials would like to admit, is that those in charge don’t know what else to do with them.”

Another concern regarding the holding of status offenders and nonoffenders in secure facilities is the greater negative impact this policy appears to have on females than on males. Research has documented gender-based differences in the treatment of status offenders at many points in the juvenile justice process. Courts often take a “protective stance” toward teenage females and declare them ungovernable for sexual activity. In addition, once in the system, females are less likely than males to have access to social services; when they do have access, the services generally are designed for males and do not meet the gender-specific needs of females. This phenomenon may be due in part to the fact that juvenile offenders as a whole are more likely to be male, while over half of all status offenders are female. Research indicates that because the system does not always make distinctions between status offenders and delinquents, it is generally more equipped to work with males.

Challenges

Ensuring that the DSO core protection meets its objective of keeping status offenders and nonoffenders out of secure confinement requires effective compliance monitoring. This is a challenge for States and territories because the monitoring universe (i.e., the specific facilities that must be examined for compliance with Federal standards) changes. In addition, developing research regarding best practices in treatment facilities and shifts in resources lead to a constantly evolving landscape of alternatives to secure detention and treatment facilities along the entire spectrum of confinement. States and territories would benefit from increased technical

assistance, support for the adoption and implementation of empirically based prevention programs, and flexible Federal funding through OJJDP to help them develop sufficient alternatives to detention that would eliminate the necessity for secure detention.

A second challenge exists in fostering and enhancing collaboration between State agencies so that diminishing State and Federal resources can be used more efficiently. Status offenders and nonoffenders often exhibit troubling and sometimes very dangerous behaviors, even though they have committed no criminal offense. Addressing such complex behaviors requires parents and all youth-serving agencies to identify their individual roles and responsibilities for responding to such behaviors and to invest sufficient resources to establish programs and facilities that will ensure the appropriate intervention and safety of the juvenile and the community without the need for secure confinement.

Programs That Effectively Address DSO

There are many proven successful and promising practices that provide services to status offenders while in their homes and other nonsecure settings. A growing body of evidence documents many positive outcomes for youth in such programs, including greater access to health and mental health services, increases in educational achievement, improved family function, and more positive connections to the community.

OJJDP's Model Programs Guide (an online source of evidence-based programs available at www2.dsgonline.com/mpg/dmc_default.aspx) has identified several programs designed to reduce the detention of

status offenders. The programs, which have been classified as Exemplary, Effective, or Promising,¹ illustrate that DSO continues to be a concern for OJJDP and many communities. Examples include:

- ◆ **Exemplary:** Parenting with Love and Limits® integrates family therapy into one system of care for adolescent populations with primary diagnosis of oppositional defiant disorder or conduct disorder.
- ◆ **Effective:** San Diego (California) County Breaking Cycles offers a prevention component that targets youth not formally involved in the juvenile justice system but exhibiting problem behaviors such as disobeying parents, truancy, curfew violations, running away, and experimenting with drugs and alcohol.
- ◆ **Effective:** Vision Quest is a wilderness challenge program that offers an alternative to secure confinement for chronic and serious male offenders.
- ◆ **Promising:** Father Flanagan's Girls and Boys Town—Residential Program offers family-style residential group homes for youth ages 10–18.
- ◆ **Promising:** Independence (Missouri) Youth Court was developed in 1985 through the collaboration of the City of Independence, the Jackson County Family Court, the Juvenile Division of Jackson County, the local bar association, and the Independence Police Department.
- ◆ **Promising:** Wayne County Intensive Probation Program in Detroit, MI, consists of three programs targeting youth ages 12–17. The Intensive Probation

¹ The Model Programs Guide uses the following criteria to rate programs: *Exemplary* programs, when implemented with a high degree of fidelity, demonstrate robust empirical findings using a reputable conceptual framework and an evaluation design of the highest quality (experimental). *Effective* programs, when implemented with sufficient fidelity, demonstrate adequate empirical findings using a sound conceptual framework and an evaluation design of high quality (quasi-experimental). *Promising* programs, when implemented with minimal fidelity, demonstrate promising (perhaps inconsistent) empirical findings using a reasonable conceptual framework and a limited evaluation design (single group pre-/posttest) that requires causal confirmation using more appropriate experimental techniques.

Unit is operated by the juvenile court probation department. The In Home Care Program and the State Ward Diversion program are operated by private nonprofit agencies contracted with the juvenile court.

In addition to specific direct service programs that address the needs of status offenders in nonsecure settings, the Annie E. Casey Foundation launched a full-scale national initiative in 1992 designed to reform all aspects of detention within the juvenile justice system, including secure detention of status offenders. The Juvenile Detention Alternatives Initiative (JDAI) began as a mechanism to bring awareness to several problems associated with secure detention of youth. These problems include the negative impact detention has on youth by disrupting community connections, the increased risk of future adjudication and commitment to an institution, the lack of improved public safety as a result of secure detention, and the high financial cost of secure detention.

JDAI promotes a continuum of resources that maintain youth in the least restrictive setting without compromising public safety. For example, Bernalillo County, NM, one of JDAI's more recent model sites, provides a freestanding mental health site adjacent to the juvenile detention facility. The facility offers evaluations and assessments, therapy, and medication management without the need for secure detention. Another example of a JDAI program that directly addresses status offense behavior is found in Clayton County, GA, where collaboration between the juvenile justice and school systems has dramatically reduced the number of referrals schools make to the court system.

DSO Remains a Necessity

The policy considerations that lead to the DSO core protection are as valid today as they were when the JJDP Act was enacted in 1974. Despite overwhelming improvement in the area of DSO, work remains.

Research shows that status offenders held in detention facilities with youth who have committed crimes are more likely to engage in criminal behavior subsequent to their release from the facility. Research also shows that status offenders who receive assessment services and social service agency support and interventions are for the most part successfully served in the community, do not penetrate into the juvenile justice system, right their course, and have successful futures.

Reauthorization of the JJDP Act and reinforcement of the core protection that prohibits States and territories from securely detaining status offenders are essential to the welfare of the Nation's youth.

The impact on the Nation's youth of the failure to appropriately address status offenses and other troubling youth behaviors outside of secure correctional facilities is captured in these words taken from CJJ's 2003 annual report:

Even though we are not incarcerating these kids for a lifetime, incarceration has a lifetime effect, lifetime consequences, and lifetime results. If we can extend and explore every possible method of keeping them out of juvenile hall [and other locked facilities], then down the road they'll be better off and certainly our communities will be better off.

—Lt. Luther Pugh, 24-year veteran of the Santa Clara County (California) Sheriff's Department

Recommendations

Based on these concerns, FACJJ makes the following recommendations:

- 1. FACJJ recommends that the President and Congress support statutes and programs that promote use of youth-serving social service agencies outside of the juvenile justice system to provide appropriate responses to status offenses and non-offense behaviors.**

Those communities that offer a continuum of services through youth-serving agencies are better able to address noncriminal behaviors such as truancy, running away, defiant behaviors in the home, curfew violations, and use of alcohol by minors. It is often a lack of appropriate community-based services that results in the detention of status offenders and nonoffenders in secure correctional facilities, sometimes for extended periods of weeks or months.

2. FACJJ recommends that the President and Congress increase funding to youth-serving agencies to develop and expand nonsecure community-based alternatives for status offenders and non-offenders.

The solution to the problem of inappropriate detention of status offenders and nonoffenders is not going to come from the courts alone. The solution must involve collaboration among various stakeholders including State health and human service agencies, private mental health and family support service providers, schools, and other youth-serving agencies. Success of these efforts, however, is contingent on active engagement of parents and youth who are offered appropriate services. These agencies must receive adequate funding to develop and expand a continuum of community-based services such as adequate mental health services, adequate support to families in need of services, day reporting services that offer supervision, school-based services that address truancy and problem behaviors early, and sufficient residential treatment facilities to address the needs of those youth not able to remain in their homes. These solutions, although they may appear costly, actually will save money in the long run.

3. FACJJ reaffirms its recommendation in the 2007 Annual Report that the President and Congress amend the JJDP Act to strongly encourage courts to use alternatives to secure detention when sanctioning a status offender for a violation of a valid court order.

Although courts should have a full range of options in addressing violations of court orders, there is also a need for judges and others within the juvenile justice system to recognize the full impact of securely detaining youth, especially those who present no risk to public safety. Courts should make every effort to explore alternatives to detention that are available within their jurisdictions and to develop systems of graduated sanctions to be used before resorting to secure detention for status offenders. Those alternative solutions may require time, effort, and creative thinking, but the resulting disposition will ultimately benefit the youth and the community.

4. FACJJ recommends that Congress fund further research and publications regarding the effects of securely detaining status offenders and non-offenders and promote alternatives to secure detention that effectively address status offenses and other troubling noncriminal behavior. Such research will inform practitioners and policymakers about how detention impacts public safety and the impact that detention has on status offenders.

Research demonstrates the negative effects of securely detaining status offenders. Nevertheless, more data is needed to accurately assess the long-term effects of using correctional facilities rather than diversion from court into social service agency-based programs to address status offenders. Most juvenile justice practitioners are committed to the rehabilitative model of addressing problem behaviors of youth. Consequently, they should be aware if common practices are producing the opposite result of that intended (i.e., increasing the likelihood of future criminal conduct and deeper penetration into the juvenile justice and criminal justice systems).

5. FACJJ recommends that the President and Congress restore the following language to Section 261(e) of the JJDP Act regarding special needs

and problems of juvenile justice in certain areas: “Not less than 5 percent of funds available for grants and contracts under this Section shall be available for grants and contracts designed to address the special needs and problems of juvenile delinquency in the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.”

This recommendation restates, verbatim, the FACJJ recommendation in the *2007 Annual Report* addressing this critical funding provision for U.S. territories. This provision was included in the original JJDP Act, but was not contained in the 2002 reauthorization. The so-called insular provision is essential to the territories’ ability to address all the core protections. FACJJ strongly supports reinstatement of this funding provision.

Bibliography

Coalition for Juvenile Justice. 2003. *Unlocking the Future: Detention Reform in the Juvenile Justice System*. Annual Report. Washington, DC.

Kedia, S.R. 2007. Creating an adolescent criminal class: Juvenile court jurisdiction over status offenders. *Cardozo Public Law, Policy, and Ethics Journal* 5(3).

Shubik, C., and Kendal, J. 2007. Rethinking juvenile status offense laws: Considerations for congressional review of the Juvenile Justice and Delinquency Prevention Act. *Family Court Review* 45: 384, 388.

42 USC Sec. 223 (a)(11):

State Plans shall provide that:

- (A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding—
- (i) juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar State Law;
 - (ii) juveniles who are charged with or who have committed a violation of a valid court order; and
 - (iii) juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State; shall not be placed in secure detention facilities or secure correctional facilities; and
- (B) juveniles—
- (i) who are not charged with any offense; and
 - (ii) who are—
 - (I) aliens; or
 - (II) alleged to be dependent, neglected or abused; shall not be placed in secure detention facilities or secure correctional facilities.

42 USC Sec. 223 (a)(23)

Provide that if a juvenile is taken into custody for violating a valid court order issued for committing a status offense—

- (A) an appropriate public agency shall be promptly notified that such juvenile is held in custody for violating such order;
- (B) not later than 24 hours during which such juvenile is so held, an authorized representative of such agency shall interview, in person, such juvenile; and
- (C) not later than 48 hours during which such juvenile is so held—
- (i) such representative shall submit an assessment to the court that issued such order, regarding the immediate needs of such juvenile; and
 - (ii) such court shall conduct a hearing to determine—
 - (I) whether there is reasonable cause to believe that such juvenile violated such order; and
 - (II) the appropriate placement of such juvenile pending disposition of the violation alleged.



CHAPTER 2

Jail Removal and Sight and Sound Separation

Alleged and adjudicated delinquents cannot be detained or confined in a secure institution (such as a jail, lockup, or secure correctional facility) in which they have sight or sound contact with adult offenders. In addition, as a general rule, juveniles (individuals who may be subject to the original jurisdiction of a juvenile court based on age and offense limitations established by State laws) cannot be securely detained or confined in adult jails and lockups.

Historical Perspective

When Congress first passed the Juvenile Justice and Delinquency Prevention (JJDP) Act, the legislation required that States and territories eliminate the practice of detaining or confining juveniles—whether nonoffenders, status offenders, or delinquents—in jails, lockups, or other institutions in which they might have sight or sound contact with detained or incarcerated adults. During hearings prior to the passage of the JJDP Act and the jail removal requirement, former Senator Birch Bayh called the public’s attention to a number of tragic incidents in which young people lost their lives while in the custody of public authorities, including:

- ◆ Two 15-year-old boys who hung themselves, one while in a city jail in Niles, MI, the other in a county jail in Maine.
- ◆ A youth jailed in Alexandria, VA, who set fire to his mattress and killed himself on his 18th birthday.

- ◆ A 17-year-old who was gang raped by four cellmates while being held in a Louisiana parish jail.

When the Act was reauthorized in 1980, Congress added jail removal as a mandate, prohibiting States and territories from securely detaining or holding juveniles in adult jails and lockups. These two core protections, referred to today as jail removal and sight and sound separation, were intended to protect juveniles from abuse.

Where Are We Now?

Since the passage of the JJDP Act, the incidence of youth tried as juveniles and held in adult facilities has declined dramatically. According to data from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the number of separation violations has been

reduced from 83,826 to 1,628 (98.1 percent), and jail removal violations have decreased by 94.8 percent from 148,442 to 7,757 current violations. (Baseline data were submitted when States first began participating in the JJDP Act; current statistics are based on 2006 compliance data from OJJDP.)

Although States and territories are generally in compliance with the jail removal and sight and sound separation core protections, housing juveniles in adult facilities within sight and sound of adults is still a problem in some lockups and in smaller, more rural holding facilities. In addition, a critical policy issue that is not addressed by the current JJDP Act is the number of youth being tried as adults and held pretrial in, or subsequently sentenced to, adult facilities.

Many policymakers and the public reacted to the rising juvenile crime rate in the 1990s by demanding tougher penalties for delinquent and violent acts committed by juveniles and by allowing the transfer of more young people from the juvenile justice system to the adult criminal justice system. According to a 2005 policy brief from the National Juvenile Defender Center, between 1992 and 1995, 40 States passed laws making it easier to try juveniles as adults. Eighteen States further expanded juvenile transfer laws between 1998 and 2002. As a result, more than 200,000 youth are now prosecuted in adult courts each year.

These changes in law have had an impact on the number of juveniles being held in adult jails and lockups. For example, according to a *2006 National Report* from OJJDP, between 1990 and 1999, the adult jail inmate population increased by 48 percent, but the jail inmate population under age 18 increased by more than 300 percent. Moreover, on a typical day in 2007, close to 7,000 persons younger than age 18 were inmates in U.S. jails, according to the U.S. Department of Justice's (DOJ's) Bureau of Justice Statistics.

And stories of abuse are starting to surface again. A study conducted by BJS in 2005 and 2006 found that 21 percent and 13 percent, respectively, of the victims of inmate-on-inmate sexual violence in jails were youth under the age of 18. In addition, OJJDP's *2006 National Report* indicates that youth have the highest suicide rates of all inmates in jails. A 2007 report from the Campaign for Youth Justice indicates that juveniles are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility.

Juvenile offenders held in adult facilities often do not receive the educational or other services they need to become productive adult citizens. Although secure adult facilities are legally required to provide appropriate education to incarcerated youth, a study by BJS found that only 60 percent of jails provided educational services, only 11 percent provided special education services, and only 7 percent provided vocational training. Researchers also found that, compared with youth in adult facilities, youth in juvenile facilities rated staff as being more helpful in assisting them with meeting their personal goals, teaching them skills, and improving their interpersonal relations.

Recent studies find that, in addition to being potentially harmful to youth, transferring juveniles to adult facilities does not prevent violence or recidivism. A report released in 2007 by the Centers for Disease Control and Prevention found that transferring youth to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth. A 2003 study found that serious adolescent offenders who are prosecuted in criminal court are more likely to be rearrested more quickly and more often than their counterparts prosecuted in the juvenile justice system for violent, property, and weapons offenses, and are more often and more quickly reincarcerated.

The issue of sentencing juveniles as adults is further complicated by OJJDP's position that in order to be in

compliance with the sight and sound separation core requirement of the JJDP Act, juveniles sentenced as adults but sent to juvenile facilities must be removed from the juvenile facility 6 months after they reach a State or territory's age of majority. Although this position takes into consideration the safety of those youth sentenced as juveniles to juvenile facilities, it overlooks the safety of juveniles charged as adults. Much more data is needed about the effects of sentencing juveniles to adult facilities on all the juveniles in those facilities.

It is ironic that the JJDP Act, which has protected youth in the justice system for more than three decades, does not apply to those juveniles prosecuted in the adult criminal justice system, even though the original intent of the Act was to remove youth from adult facilities.

Some Signs of Change

There are inklings that States are moving away from holding youth in adult custody. A few States have changed their laws and others are actively considering legislation to reduce the number of youth in adult court through various ways, including increasing the age at which a youth can be prosecuted as an adult.

For example, Connecticut has passed new legislation, which goes into effect in January 2010, that raises juvenile court jurisdiction to age 18, thus changing the age (currently 16) at which juveniles can be prosecuted as adults. Delaware and Illinois have removed certain offenses from automatic exclusion in juvenile court so that those cases now have to originate in juvenile court before being subject to judicial transfer. Arizona added a reverse waiver for certain offenses, such as sex offenses. (In the past in Arizona, juveniles started in the adult system if they were charged with certain crimes, and there was no changing the procedure. Under the new law, a defense attorney can make a motion for the youth to be tried as a juvenile, and then there is a hearing at which the judge can decide to return the

youth to juvenile court.) Virginia revised its law that maintained "once an adult, always an adult." A juvenile now has to be convicted rather than just charged as an adult, in order to be tried a second time as an adult.

In addition, recent data indicate that the number of juveniles detained in adult facilities is declining. The Federal Advisory Committee on Juvenile Justice (FACJJ) believes this trend is a positive one, and that the majority of juvenile offenders should be handled by the juvenile justice system, not the criminal justice system. There are, of course, exceptions, and some very violent juvenile offenders should be transferred to the adult system. But, as noted earlier, research supports the idea that transferring juveniles to the adult criminal justice system fails to keep the public safer or to help keep juveniles out of future trouble.

Recommendations

Based on these concerns, FACJJ makes the following recommendations:

6. **FACJJ recommends that when reauthorizing the JJDP Act the President and Congress expand the core protection dealing with jail removal and separation to apply to all youth until they reach the age of 18, regardless of which court—juvenile or adult—handles their cases. Congress should also provide appropriate funding to help States and territories comply with this protection.**

To help implement this recommendation, FACJJ suggests that the JJDP Act require States and territories to remove youth charged as adults "pretrial" from adult jails over a 4-year phase-in period to allow for needed changes in State statutes. FACJJ also recommends that States be required to implement over a 3-year phase-in period the American Bar Association (ABA) standards for youth convicted as adults in adult jails and prisons as outlined in the ABA publication *Youth in the Criminal*

Justice System: Guidelines for Policymakers and Practitioners. Congress should provide additional funds to States and territories so they can assist jurisdictions to come into compliance with this requirement.

7. FACJJ recommends that the President and Congress modify the JJDP Act to allow those juveniles convicted as adults and housed in juvenile facilities to remain in those facilities after they reach age 18 as allowed by the law of the State or territory.

OJJDP's interpretation of the JJDP Act for compliance monitoring requires that a juvenile sentenced as an adult can be held in a juvenile facility no more than 6 months after that juvenile reaches the State's age of criminal responsibility. FACJJ believes that juveniles sentenced as adults, although in the legal custody of the adult criminal justice system, should be allowed to be physically held in a juvenile facility in accordance with the age of majority consistent with State or territorial law.

Many States have passed laws that transfer youth from the juvenile justice system to the adult system according to the interest of the State. As a result, there is a difference across the country in age designation, crime categories, and processes for juveniles charged, initial custody, prosecution, and conviction as an adult. Once a juvenile is convicted as an adult, States have different laws regarding the legal and physical custody. One example is State law that places a juvenile convicted as an adult in the legal custody of the adult system but in the physical custody of a youth correctional system.

Although the intent of mandated sentencing laws was to impose stricter sanctions on juvenile offenders who commit serious crimes, the research indicates that there is a longer-term public safety benefit when juveniles are provided with access to age-appropriate education, programs, and services; opportunities to increase skill development; and opportunities to learn and practice

positive behavior. These opportunities are generally more available in juvenile rather than adult correctional facilities.

Many States have established legal language that prioritizes public safety while allowing juvenile justice environments to take into account the malleability of the developing adolescent brain. Recent brain research indicates that the brain continues to develop, both physically and socioemotionally, well into an individual's mid 20s. For this reason, justice programs can take advantage of this malleability and potential responsiveness to change while keeping the public safe from criminal behavior. Interventions that focus on this combination of behavioral change and skill building while holding youth accountable are much more likely to be found in juvenile settings than in adult criminal justice institutions.

FACJJ has urged OJJDP to find States and territories to be in compliance with sight and sound separation when State statute incorporates the research in its sentencing practices and holds juveniles convicted as adults in juvenile facilities.

8. FACJJ recommends that the President and Congress direct OJJDP to reexamine the process for enforcing compliance with the four core protections of the JJDP Act and ensure that the regulatory scheme complies with due process and with the Administrative Procedures Act (APA).

When Congress passes new or revised laws, Federal agencies often are challenged to provide oversight and ensure compliance with the new laws even though administrative procedures and new regulation and compliance rules have not yet been approved by the appropriate Federal authorities. This situation occurred with the 2002 reauthorization of the JJDP Act. Since 2002, OJJDP has been required to monitor States and territories and provide guidance for compliance with the four core protections of the Act while waiting for

administrative regulations to be promulgated through the DOJ's Office of Justice Programs (OJP). Many States report that OJJDP's "interpretations" of these guidance statements have not been consistently applied and, in fact, decisions have been made to cite States and/or withhold formula funding as a result of findings guided by these interpretations. This is especially true of the jail removal and separation core protection. Much of the debate has centered on key provisions in the Act dealing with the Federal definition of an "adult inmate" and with the proposed monitoring universe that States need to manage in order to be deemed in compliance by OJJDP for continuation of Federal funding.

Since the last reauthorization, tension has built between the States and OJJDP over these issues—in large part due to the lack of clear administrative rules and the lack of opportunity for public input into the process of rule promulgation (e.g., following the APA process for rules development, posting for public comment, etc.). Given these problems, FACJJ recommends that when developing any regulatory/compliance rulings, interpretations, or guidance associated with the JJDP Act, OJJDP have a system in place that is prospective and informed by public comment in a fair and consistent process. OJJDP should ensure that the clarification and development or delineation of rules and administrative procedures are conducted in a transparent manner that includes a clear posting of the process and that allows States a fair amount of time to review and comment on the proposed regulations *before* OJJDP begins using the new regulatory guidance to make decisions about withholding funding or imposing other penalties.

Second, FACJJ suggests that there be some review and consideration of the system that DOJ, OJP, and OJJDP use to devise regulatory and other compliance-related guidance when the agency has not had sufficient time to follow DOJ's APA process. Public hearings, a State Advisory Group organization, or ad hoc council may be useful tools in the development of reasonable,

consistent, and informed guidelines for the implementation of Federal compliance standards.

- 9. FACJJ recommends that the President and Congress require OJJDP to establish a system of data collection about juveniles in the adult criminal justice system. The data should include information about age, race, ethnicity, gender, offense, pre-trial detention, transfer mechanism, sentencing outcome, and pre- and post-trial placement in jails, prisons, or juvenile facilities. Congress should appropriate additional funding to assist both OJJDP and States in collecting this data.**

There is a tremendous lack of data about the number of juveniles in the adult criminal justice system as a result of transfer and waiver laws. Yet this trend is one of the most important issues facing the juvenile justice system today. State and national policymakers need accurate current data in order to make sound policy decisions about transferring juveniles to adult courts.

- 10. FACJJ recommends that the President and Congress require OJJDP to conduct research on the impact on juveniles tried and/or sentenced as adults who are confined in adult facilities, the status of facility conditions in which youth are placed, and the availability of developmentally appropriate services and programs for youth in adult jails and prisons.**

The lack of research about the effects of transfer and waiver laws on youth, the juvenile and criminal justice systems, and public safety make it difficult for policymakers and practitioners to make informed decisions about the best way to handle serious juvenile offenders. For example: Are the right juveniles being transferred to adult court? Is there disproportionate representation of minorities, including females, in the transferred population? Is adult treatment making a difference in juvenile recidivism rates? Are the standards and guidelines related to the detention, transfer, waiver, or certification

of juveniles to adult court adequate? Are juveniles who are placed in adult facilities and institutions safe and secure? Congress should provide adequate funding and require OJJDP, as the Federal agency responsible for responding to juvenile justice issues, to conduct research to answer these questions.

Bibliography

American Bar Association Criminal Justice Section Task Force on Youth in the Criminal Justice System. 2001. *Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners*. Washington, DC. American Bar Association.

Bayh, B. 1973. Testimony before the U.S. Senate Committee on the Judiciary, September 10, 1973.

42 USC Sec. 223(a):

State Plans shall provide that:

(12)(A) juveniles alleged to be or found to be delinquent or juveniles within the purview of paragraph (11) will not be detained or confined in any institution in which they have contact with adult inmates; and

(13) . . . no juvenile shall be detained or confined in any jail or lockup for adults except—

(A) juveniles who are accused of nonstatus offenses who are detained in such jail or lockup for a period not to exceed 6 hours—

- (i) for processing or release;
- (ii) while awaiting transfer to a juvenile facility; or
- (iii) in which period such juveniles make a court appearance; and only if such juveniles do not have contact with adult inmates and only if there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates in collocated facilities have been trained and certified to work with juveniles.

Beck, A.J., Harrison, P.M., and Adams, D.B. 2007. *Sexual Violence Reported by Correctional Authorities, 2006*. Washington, DC. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Beck, A.J., and Harrison, P.M. 2006. *Sexual Violence Reported by Correctional Authorities, 2005*. Washington, DC. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Centers for Disease Control and Prevention. 2007. Effects of laws and policies facilitating the transfer of youth from the juvenile to the adult justice system. *Morbidity and Mortality Weekly Report* 56 (November 30, 2007). No. RR-9. U.S. Department of Health and Human Services.

Fagan, J., Kupchik, A., and Liberman, A. 2003. *Be Careful What You Wish For: The Comparative Impacts of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders*. Public Law Research Paper No. 03-61. New York, NY: Columbia University Law School.

Harlow, C.W. 2003. *Education and Correctional Populations*. Washington, DC. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

National Juvenile Defender Center. 2005. *Juvenile Transfer Reform*. Policy Summary. Washington, DC.

Sabol, W.J., and Minton, T.D. 2008. *Jail Inmates at Mid-year 2007*. Washington, DC. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Snyder, H., and Sickmund, M. 2006. *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC. U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Woolard, J.L., Odgers, C., Lanza-Kaduce, L., and Daglis, H. 2005. Juveniles within adult correctional settings: Legal pathways and developmental considerations. *International Journal of Forensic Mental Health* 4(2):118.

Disproportionate Minority Contact

States are required to address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come in contact with the juvenile justice system.

Historical Perspective

The Coalition for Juvenile Justice (formerly the National Coalition of State Juvenile Justice Advisory Groups) focused national attention on the disproportionate number of minority youth in the juvenile justice system in its 1988 annual report to Congress, *A Delicate Balance*. Congress first addressed this issue in 1988 by amending the Juvenile Justice and Delinquency Prevention (JJDP) Act to require States participating in the Office of Juvenile Justice and Delinquency Prevention's (OJJDP's) Formula Grants Program to make efforts to reduce the disproportionate number of minority youth confined in secure facilities.

In 1992, Congress elevated the issue to a core requirement of the Act, and it went a step further in the 2002 reauthorization by broadening the concept from minority "confinement" to encompass minority youth who come into "contact" with the juvenile justice system at designated points (arrest, referral, diversion, detention, petitioned/charges filed, delinquent findings, probation, confinement in secure correctional facilities,

and transfer to adult court). Unlike the other core protections, however, Congress did not require the States and territories to show measurable progress toward the reduction of disproportionality in the system; it simply requires that States and territories address juvenile delinquency prevention efforts and system improvement efforts related to the disproportionate number of minority youth who come into contact with the juvenile justice system.

By expanding the universe of decision points States are required to address in their data collection efforts, Congress recognized that disproportionate minority contact (DMC) is a complex systemwide issue. The earlier requirement regarding collecting data about confinement of minority youth had to do only with decisions to detain a juvenile pretrial or to place a juvenile in secure corrections postadjudication. Confinement did not address all the other decision points in the process including the decision to take a child into custody in

the first place, defer that child into another system such as the mental health or child welfare system, petition the court for a delinquency finding, find a child delinquent, etc. A review of the research literature suggests that disproportionality increases as a child penetrates the system, so gathering data from more decision points helps States identify where the disparities exist and where they do not.

DMC is intertwined with each of the other core protections. For example, a State's deinstitutionalization of status offender (DSO) violations may reflect the State's lack of appropriate facilities in which to place minority youth who run away from home or other placements (a status offense) because of physical or sexual abuse and/or neglect. This appears to be especially true for young women of color who have been placed out of their parents' home because of abuse concerns.

During the 1990s, a number of States reduced the age of criminal responsibility and made waiver into adult court easier. According to *Building Blocks for Youth*, these changes have impacted minority youth more heavily than white youth. At the same time, some States such as Washington and Oregon implemented new programs that take into account the developmental stage of youth ages 15 up to 24. They have allowed youth who have been adjudicated as adults to receive services in their juvenile systems. Because these individuals fall within the definition of an "adult" for the purposes of the JJDP Act, however, their presence in juvenile facilities constitutes a violation of sight and sound separation. Those States are in danger of losing their formula funding, resources that could be used for DMC reduction.

The evolution of DMC as a core protection evidences some successes, significant continuing challenges, substantial needs, and critical recommendations if the Nation is to begin to remedy this pervasive problem.

Government and Private Successes

OJJDP has worked to address issues around DMC, but the progress has been minimal. Since 1988, OJJDP has worked with States and localities to provide research, technical assistance, and other critical support to address racial disparity and data collection. OJJDP also has held regular annual regional and national conferences.

OJJDP supported the development of a much needed data collection tool, the Relative Rate Index (RRI), which has been used throughout the country to gather racial data at key decision points. The RRI computes the rate at which a particular event (e.g., arrest) occurs for youth in each racial/ethnic group and then calculates a ratio of these rates.

Although research evaluating DMC-specific programming is incomplete, OJJDP is expanding its Model Programs Guide (discussed in chapter 1) to include strategies and programs that are effective in reducing DMC. The Office has added a DMC-Reduction Best Practices Database to the guide and is inviting nominations of DMC-reduction initiatives believed to be effective. OJJDP also has added a national DMC Databook to its online Statistical Briefing Book. (The DMC Databook can be retrieved from the Web at <http://ojjdp.ncjrs.gov/ojstatbb/dmcd/index.html>.)

The DMC Databook enables users to review the processing of delinquency cases within the juvenile justice system and assess levels of DMC at various decision points. It includes national data for the 15-year period 1990–2004, which can be compared with local data.

OJJDP has also developed and begun to disseminate a train-the-trainer model on DMC that has been implemented in a few States with goals for broader dissemination.

Finally, OJJDP has completed the *Disproportionate Minority Contact Technical Assistance Manual*, which

provides detailed guidance on DMC identification, monitoring, assessment, intervention, and evaluation. The manual has been of great use to many communities that have committed to improving data collection and moving beyond data collection.

According to OJJDP, States and territories reported the following progress in 2007:

- ◆ All States and territories participating in OJJDP's Formula Grants Program were in compliance with the DMC requirement for reporting data.
- ◆ Each participating State and territory has an action plan to address data collection and problem identification.
- ◆ Twenty-nine States have full-time DMC coordinators to coordinate efforts statewide in addressing DMC issues. Seven States have part-time DMC coordinators and 19 States and territories have designated juvenile justice staff to facilitate their DMC-reduction efforts.
- ◆ Forty States have collected data for six or more out of nine contact points in their juvenile justice systems.

In addition to Federal and State efforts, several influential policy groups are addressing racial disparity in the juvenile justice system. As noted in chapter 1, the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) is supporting reforms to juvenile detention programs including programs aimed at reducing the racial disparity in the numbers of children of color detained in secure detention and correctional facilities. Much of that work has focused on using objective assessment instruments to assess the risks and needs of a child or youth.

The program was launched in 1992 and has been expanding since then. When the first JDAI sites gathered in Las Vegas, NV, only five jurisdictions were represented.

In 2006, during a similar gathering, 60 jurisdictions representing 16 States with 49 percent of all the juveniles detained in the country attended the conference.

One example of success is the Clayton County, GA, JDAI site (also mentioned in chapter 1) where the juvenile court, schools, and law enforcement have agreed on a protocol for referring school-based cases to the courts, using an objective risk assessment tool. The Casey Foundation reports that, as a result of this collaborative approach, public school referrals of African American youth to the juvenile court were reduced by 46 percent.

Since the mid 1990s, the MacArthur Foundation has been working on juvenile justice reform. The foundation has funded almost a decade of research around the relationship of adolescent brain development and appropriate programmatic responses. As a result of that research, the foundation launched the Models for Change Initiative and is currently funding major system reform efforts in Illinois, Louisiana, Pennsylvania, and Washington. They are also funding smaller-scale efforts to address mental health system reform as it relates to juvenile justice, DMC, and access to and quality of juvenile indigent defense. The goal is to develop replicable programs.

Addressing DMC has created the opportunity for leadership from different quarters of the juvenile justice community. The growing interest among the State judiciaries, advisory groups, law enforcement, prosecutors, and defenders as well as legislators is providing the groundwork for coordinated, systemwide reform to address DMC. Some of these efforts include programs that increase access to effective counsel, objective assessment instruments, detention criteria reform, alternatives to detention and incarceration, and cultural competency training. Pennsylvania's DMC Subcommittee Chair Dan Elby, Wisconsin's Chief Justice Shirley Abrahamson, Oregon's Governor Ted Kulongoski, and

Kansas’s State Representative Melody McCary-Miller have each taken up the mantle to aggressively address DMC in their States.

Challenges Remain

Of all the core protections of the JJDP Act, DMC is the most complicated and the one with which the States have made the least progress. DMC appears to stem from complicated social, economic, political, and even behavioral determinants. In the justice arena, some of the key challenges include a lack of urgency to address this issue, difficulty in collecting data (and integrating data systems), bias, lack of research about best practices, and failure to involve education systems.

Lack of Urgency

Congress has not required measurable progress toward eradicating DMC through the language of the JJDP Act, nor has it appropriated the funds needed to give States incentives to effectively address this endemic and pervasive problem. OJJDP has not focused its discretionary grants on piloting promising programs or on the kind of research the States need to implement these programs. States and communities have not engaged in the critical self-examination necessary to identify why disparities exist in their own communities. Despite more than 10 years of work, minority youth continue to be disproportionately represented at all stages of the juvenile justice system.

DMC is a complex and multifaceted problem that prompts many in the system to become defensive when the delicate issue of race is broached. Creating an environment in which communities and systems within communities can look at themselves critically is key to the success of any DMC-reduction effort. The perception that the disproportionality occurs because minorities commit more crimes is not supported by research that considers comparative Relative Rate Indexes. A research study of arrest rates for juveniles in three cities

showed that neither differential offending patterns nor certain risk factors related to poverty account for the different rates of arrest for juveniles.

Challenges Associated with Data Collection

Congress and OJJDP have been very helpful in urging communities to face their racial disparity issues by asking them to look at data from each of the many points of discretion in their systems. No two communities are exactly the same, and by examining this data, communities can begin to ascertain where problems lie and where resources should be expended to address those problems.

Accurate data can be a very powerful tool, but collecting it is a difficult task. Indeed, there are some counties, jurisdictions, and agencies across the country that lack any system for collection of data on DMC. Computerized data systems, when they exist, often are not integrated or compatible so simply gathering the information from a number of agencies within a jurisdiction is an enormous task. It is particularly difficult to gather law enforcement data, in part because of the sheer number of agencies involved. In addition, agreeing on data definitions and verifying data are difficult, complex, and time-consuming processes.

Bias

Research over the past 15 years indicates that decision-makers—whether intentionally or unintentionally—often are biased with regard to children of color. Programs and decisions regarding prevention, treatment, and sanctions vary greatly among different youth populations.

For example, researchers who reviewed studies conducted from 1970 through 1988 found that roughly two-thirds of the research reported minority youth, primarily African Americans, received more severe outcomes than white youth (Pope and Feyerherm, 1990). Subsequent analysis of the research literature published

in 2003 for the period 1989 through 1999 revealed similar findings.

Other research found that court officials' subjective assessments of youth not only shaped case outcomes for juveniles but also placed African Americans at a disadvantage relative to white youth. Probation officers were found to use different causal attributions when assessing the criminal behavior of minority and white youth. Specifically, officials viewed African American involvement in crime as related to internal or dispositional attributions (i.e., lack of individual responsibility), whereas delinquency among white youth was attributed to external causes (i.e., impoverished conditions). Because internal attributions resulted in perceptions that youth were at a higher risk for reoffending, decisionmakers recommended longer sentences for African American youth than for white youth.

Another study from 2005 concluded that, although racial disparities may be due in part to real differences in youth's backgrounds and circumstances and to differential access to resources, research suggests that these disparities also result from racial stereotyping in filtering and processing information.

The impact of these biases does not necessarily reflect intentional racism; rather it reflects a lack of understanding of the cultural experiences and influences affecting juveniles' reactions at the point of contact. This context, in addition to inadequate resources from prearrest to postadjudication, results in fewer youth of color benefiting from efforts to divert youth from the juvenile justice system.

Awareness is the driver of change. Not many stakeholders in the juvenile justice system intentionally discriminate against a person of color. The first step in changing behavior, however, is understanding that there is a problem of disparate impact. Since law enforcement officers are the first contact with the juvenile justice system for most youth, law enforcement policymakers must be aware of the numbers with regard to racial

disparity in their communities. Although they may be exercising discretion in a race-neutral manner, they need to know that they can examine those decisions in light of the cultural differences represented by people of color in their jurisdictions.

Community members sometimes believe that either differential offending or significant risk factors are the drivers of DMC. Studies over the past several years have revealed that the reality is much more complicated. For example, a study conducted by the Wisconsin Sentencing Commission found that Wisconsin judges tend to make race-neutral decisions in the most egregious cases; however, in drug cases and lower-level offenses, there is a disparity in the treatment of African American and white offenders, confirming some institutional bias.

Lack of Research About Best Practices

Although OJJDP has funded research to find best practices in various areas of the juvenile justice system, there remains a lack of research-based information about programs and strategies that work with different minority groups. States have been working on DMC issues with varying degrees of success for more than a decade, but there has not been a major study of any State's efforts to determine the formula for success. The lack of local resources and expertise and the lack of Federal resources to conduct these evaluations make it difficult to analyze the effectiveness of State and local efforts to reduce DMC.

Many States have progressed enough that their efforts could be evaluated, but a lack of funding prevents this from happening on a regular basis. In 2006, OJJDP awarded an 18-month grant to the Justice Research and Statistics Association to conduct an evaluation of the efficacy of DMC-reduction efforts in selected sites. This project is examining steps taken by these sites in reducing DMC and assessing and documenting the outcomes they have achieved. Ideally, all DMC-reduction efforts should be monitored and studied.

Failure To Engage the Education Community

Schools are not engaged in developing strategies to keep youth who are exhibiting problematic behaviors in the school system. Some suggest that the education community contributes to DMC by turning too quickly to the juvenile justice system to maintain discipline within schools, particularly for students of color. In addition, few schools are invested in partnerships to keep youth involved with the juvenile justice system in school. According to the National Association for the Advancement of Colored People, high suspension rates for minority children feed an already disproportionate juvenile justice system. Zero-tolerance policies are cited as contributing to schools' lack of cultural awareness. Educators often call on school resource officers rather than guidance counselors to address school misbehavior. By failing to adequately fund their education systems while requiring results that indicate educational progress, communities are forced to engage in education triage in which students of color often bear the life-long burden of undereducation. The impact of uneducated and unemployable individuals has long-term effects both on these individuals and their communities.

Critical Needs

The needs to address DMC are clear:

- ◆ Key local community leaders and policymakers, especially those in a position to motivate all components of the juvenile justice system, need to be educated about the complexity of the DMC issue and the need for community collaboration. Those leaders should include representatives from a number of disciplines, including local government, justice, human services, education, faith communities, and business.
- ◆ Resources are needed to fund full-time DMC coordinators in each State.
- ◆ Increased technical assistance is necessary to help States implement measurement standards and instruments for assessment and program development.
- ◆ Funding is needed for focus groups and collaborative efforts.
- ◆ Funding is needed for data collection and analysis.
- ◆ Resources are needed to fund diversion programs from prearrest through aftercare.

As noted throughout this chapter, much is happening across the Nation as States work to understand DMC more thoroughly; however, frustration continues to grow because many States have not moved beyond discussing the DMC issue. OJJDP is to be applauded for its dedicated efforts to help States and communities address DMC. But the complexity of the DMC issue requires more intensive support and leadership from the President and Congress. For that reason, FACJJ makes the following recommendations.

Recommendations

11. FACJJ renews and reinforces its recommendations from prior FACJJ Annual Reports urging the President and Congress to:

- ◆ Appropriate additional funding so States can hire full-time DMC coordinators.
- ◆ Offer concrete incentives to States that make an effort to move beyond data collection and begin implementing action steps that proactively address the DMC issue.
- ◆ Increase the amount of research dollars appropriated to OJJDP so the Office can fund research and evaluation of best practices and other research to help States address the DMC issue more effectively.

The JJDP Act requires that States cite efforts to solve their DMC problem, including State plans to address the issue. Most States are in compliance with this reporting requirement, but that does not mean that they are solving DMC. State DMC coordinators, as the name implies, coordinate all efforts statewide in addressing DMC issues and could help States move their plans forward. FACJJ strongly recommends that Congress provide the funding for this effort.

FACJJ believes States that are proactively addressing the DMC issue should be given incentives for their actions. This would encourage other States to move ahead and could result in promising practices that could be shared with other jurisdictions.

As budgets continue to tighten, policymakers, including congressional leaders, are pushing for and adopting data-driven, research-based programming—something that is sorely lacking in the area of DMC. OJJDP's budget shortfall over the past several years has left the Office with virtually no resources to help States move toward evidence-based programming. As the Federal agency primarily responsible for addressing juvenile delinquency and victimization, OJJDP is in a unique position to further advance the use of evidence-based practices and principles to reduce DMC. But the Office needs the financial support of the President and Congress to carry out this responsibility.

12. FACJJ recommends that the President and Congress direct the OJJDP Administrator to grant the U.S. "insular territories" (Guam, American Samoa, U.S. Virgin Islands, and the Commonwealth of the Northern Marianas) waiver from the DMC core protection based on the same waiver criteria granted to Puerto Rico.

In these island territories the indigent populations (Chamorros, Samoans, and Virgin Islanders), while seen as minorities based on national ethnic standards,

are not minorities in their populations and should not be viewed as minorities for purposes of the DMC requirement. Therefore, FACJJ urges Congress and the President to direct OJJDP to develop a new standard for monitoring compliance with DMC in these island jurisdictions or to provide the same waiver to them as granted to the citizens of Puerto Rico.

13. FACJJ recommends that the President and Congress include the reduction of racial disparity in the justice system as a whole as a purpose area in the Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance Grant Program and promote communitywide collaboration among these grantees as a way to address DMC.

The Office of Justice Programs' Bureau of Justice Assistance provides a number of justice assistance grants, including the JAG program, which targets local needs. FACJJ urges Congress to require grantees who receive these grants to engage in a collaborative process with other justice system stakeholders, faith communities, educators, business communities, service providers, and community associations to collect and analyze racial data for each jurisdiction; develop programs to address disparity; and monitor progress toward reducing that disparity over time. Continued collaboration is important because factors that have an impact on DMC cross a number of domains: the juvenile justice and education systems, the family, and intergenerational systems. DMC is also significantly impacted by socioeconomics as well as legislative and fiscal policies.

14. FACJJ recommends that the President and Congress create funding incentives for communities to pool funds from multiple Federal programs to address racial disparity in the juvenile justice system. The incentives should reward communities for effective collaboration among education, mental health and substance abuse, Medicaid, and child welfare programs.

- 15. FACJJ recommends that the President and Congress provide funds that will require the U.S. Departments of Education (ED), Health and Human Services (HHS), Labor (DOL), and Justice (DOJ) to create multidisciplinary teams that will work together to develop cross-training models, legal models, technical assistance, and emergency services for States and localities that wish to develop collaborative approaches to “dual jurisdiction” children, using evidence-based services. “Dual jurisdiction” children are those who are in both the juvenile justice and child welfare systems.**
- 16. FACJJ recommends that the President and Congress create a Federal working group of representatives of ED, DOL, HHS, and DOJ to identify and reduce the number of rules and regulations that impede State and local collaboration for dual jurisdiction children.**

As noted throughout this chapter, many factors affect the DMC issue, and it may be impractical to expect the juvenile justice system alone to address the problem. Pooling Federal, fiscal, and personnel resources from agencies such as ED, DOL, HHS, and DOJ, as suggested in recommendations 14, 15, and 16, could provide a sufficient amount of funding to develop effective sustainable programs. The rationale for these three recommendations is described below.

Children in the juvenile justice system are often in the child welfare system as well or were terminated from the child welfare system before they reached adolescence. Research confirms the link between child maltreatment and later delinquency, negative child and youth outcomes associated with institutional placements in the child welfare and juvenile justice systems, and the impact of inadequate behavioral health and educational services for children and youth in care. Research also shows unequivocally that child maltreatment increases the risk of arrest as a juvenile by 55 percent, increases the risk of arrest for a violent crime

as a juvenile by 96 percent, and is associated with earlier onset of juvenile crime. Research also confirms an array of related negative outcomes in education, employment, mental health, and substance abuse for maltreated youth. In addition, recent research establishes a relationship between placement in foster care, placement stability, and the risk of delinquency among maltreated children. For example, approximately 16 percent of children placed in foster care are formally charged with a delinquent act compared to 9 percent of maltreatment victims who were not removed from their families. Among maltreated females, placement in foster care—even when stable—increases the risk of delinquency.

Dual jurisdiction children usually start in the child welfare system. Once they reach adolescence and can be charged with a crime—no matter their risks, needs, or the seriousness of the crime committed—the goal appears to be to get the juvenile justice system to take them. The child welfare system tends to focus more on young children. This situation is further complicated by some of the court processes that handle both delinquency and dependency cases. Dual jurisdiction children generally:

- ◆ Are minority youth.
- ◆ Are placed outside the home.
- ◆ Live in a group home rather than in foster care or treatment foster care.
- ◆ Commit crimes in the group home.
- ◆ Are placed in detention because of placement issues.
- ◆ Have had previous contact with the juvenile justice system.
- ◆ Have a mental health diagnosis.
- ◆ Have not received mental health or substance abuse treatment.

States and communities across the country are trying collaborative approaches to bring together the child welfare and juvenile justice systems to better assess, plan for, treat, and place these children. For example:

- ◆ Los Angeles County, CA, which represents a large urban environment with 61 courts and 200,000 children in its care, has developed a multidisciplinary approach to assess and treat children who have been in foster care and then commit crimes. As a result of new legislation in California that allows for dual jurisdiction for children under both the dependency court and the delinquency court, representatives from social services, mental health, education, public defenders, district attorneys, and juvenile probation assess these children in order to develop treatment plan for each individual child. The county is also working with the University of California at Los Angeles to rigorously assess these children and to develop appropriate treatment plans using evidence-based practices.
- ◆ Montgomery County, AL, has been working for many years to integrate its delinquency and child welfare systems. The county believes that to treat a child it must treat the family as well. All the cases involving a family are assigned to one court and one judge. For dual jurisdiction youth, a full assessment is completed prior to the child's appearance in court. Probation officers, social workers, mental health providers, educators, public defenders, and district attorneys are all part of the initial conversations about the best approach for the child. Strong leadership from the chief juvenile court judge and the State's tobacco tax settlement windfall, which was dedicated to this integrated effort, have driven the successes of this program. These two factors reduced the turf protection that often plagues collaboration and supported the sustained effort required to see the project come to fruition. In addition, the county is dedicated to cross-training its

team members so that they understand the differences in each system, the rules that govern them, and the outcomes that they look for.

- ◆ Arizona, Colorado, South Dakota, and Wisconsin are working on collaboration issues. Initiatives to develop information-sharing protocols, blended funding schemes, multidisciplinary treatment teams, and performance-based measures are typical approaches to the collaborative process.

A primary barrier is the "siloed" nature of Federal funding streams to support child welfare and juvenile delinquency efforts. Unlike the Alabama model, in which the members of a team use the tobacco money to follow the child, Federal money follows the program. This reality, along with the Federal regulations that discourage innovation, are two of the most significant Federal barriers.

Innovation is happening in many States and localities despite Federal barriers. Local creativity helps find solutions to the many thorny issues around building an effective collaboration to stem the flood of child welfare children into the juvenile justice system. The role of the Federal Government should be primarily to facilitate the creativity that most communities want to bring to the raising of their own children. And, most importantly, the Federal Government should reorganize funding streams to allow Federal money to follow the child and not the program.

The government can help do this by taking the following steps:

- ◆ Supporting research on best practices and legal issues around collaboration and more effectively disseminating findings directly to States and municipalities and to national associations of elected officials.
- ◆ Surveying States to determine how they are already doing this work and then disseminating the results.

- ◆ Developing model laws to address the difficulties of information sharing among agencies and then allowing the use of integrated child welfare and juvenile justice system data to measure the co-occurrence of activity and recidivism rates across both systems.
- ◆ Creating Federal cross-agency teams to facilitate collaboration and the use of evidence-based services through technical assistance, training, and emergency consultation.
- ◆ Creating Federal cross-agency teams to facilitate the collection of outcome data that will persuade funders of the value of this approach.
- ◆ Working with other Federal agencies to reduce the number of rules that prevent agencies from working together.
- ◆ Appropriating more funds to provide the services and placements needed by dual jurisdiction children.

Bibliography

Annie E. Casey Foundation. 2008. *Results from the Juvenile Detention Alternatives Initiative*. Retrieved July 28, 2008, from the Web at www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/JDAIResults.aspx.

Bishop, D.M. 2005. The role of race and ethnicity in juvenile justice processing. In *Our Children, Their Children: Confronting Racial and Ethnic Differences in American*

Juvenile Justice, edited by D.F. Hawkins and K. Kemps-Leonard. Chicago, IL: University of Chicago Press.

Bridges, G.S., and Stein, S. 1998: Racial disparities in official assessments of juvenile offenders: Attributional stereotypes as mediating mechanisms. *American Sociological Review* 65:554–570.

Building Blocks for Youth. 2001. *And Justice for Some*. Washington, DC: Youth Law Center.

Gardell, R. et al. 1989. *Report on the Delicate Balance to the President, the Congress, and the Administrator of the Office of Juvenile Justice and Delinquency Prevention*. Bethesda, MD: National Coalition of State Juvenile Justice Advisory Groups.

Huzinga, D., Thornberry, T., Knight, K., Lober, R., Hill, K., and Farrington, D. 2007. *Disproportionate Minority Contact in the Juvenile Justice System: A Study of Differential Arrest/Referral to Court in Three Cities*. Final Report.

Leiber, M.J., and Mack, K.Y. 2003. The individual and joint effects of race, gender, and family status on juvenile justice decision-making. *Journal of Research in Crime and Delinquency* 40(1):34–70.

NAACP Legal Defense and Education Fund, Inc. *Dismantling the School to Prison Pipeline*. Retrieved July 28, 2008, from the Web at www.naacpldf.org/content/pdf/pipeline/Dismantling_the_School_to_Prison_Pipeline.pdf.

Pope, C.E., Lovell, R., and Hsia, H.M. 2002. *Disproportionate Minority Confinement: A Review of the Research Literature from 1989 Through 2001*. Bulletin. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. Available online at www.ojjdp.ncjrs.org/dmc/pdf/dmc89_01.pdf.

Pope, C.E., and Feyerherm, W.H. 1990. Minority status and juvenile justice processing: An assessment of the research literature (part 1). *Criminal Justice Abstracts* 22:327–335.

42 USC Section 5633[a][22]

Requires that State Plans:

(22) address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups, who come in contact with the juvenile justice system.

Effective Assistance of Counsel¹

Historical Perspective

On June 8, 1964, when Arizona police arrested 15-year-old Gerald Gault, both of his parents were at work, and no notice was left to inform them of his whereabouts. At no time were Gerald or his parents provided formal notice of the charges or any information about his right to an attorney. Two months after his arrest, Gerald was convicted of making an obscene telephone call and sentenced to confinement in a juvenile correctional facility.

In 1967, the matter reached the U.S. Supreme Court, which ruled that juveniles are persons within the meaning of the 14th Amendment and as such are entitled to due process of the law (*In re Gault*, 387 U.S. 1 [1967]). Justice Fortas opined: “Under our Constitution, the condition of being a boy does not justify a kangaroo court” (*Gault*, U.S. 387 at 27–28). Justice Fortas concluded, “[A] juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon the regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it” (*Gault*, U.S. 387 at 36–37).

Ultimately, the Supreme Court made it clear that the children have the right to *effective* assistance of counsel in *Strickland v. Washington* (466 U.S. 668 [1984]).

However, studies have revealed that numerous jurisdictions continue to fail to appoint counsel for juveniles in many cases, and that representation is often compromised by high caseloads, limited resources, and lack of training.

In 1974, Congress responded to *Gault* and other concerns about the treatment of youth in the juvenile justice system with the Juvenile Justice and Delinquency Prevention (JJDP) Act. When the Act was reauthorized in 1992, language was included to specifically address the importance of legal representation for juveniles, and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) awarded a grant to the Juvenile Justice Center of the American Bar Association (ABA) to build capacity and effectiveness of juvenile defenders

¹FACJJ acknowledges and expresses appreciation to FACJJ member Cecely Reardon, JD, for her significant contribution as the primary author of this chapter.

through increasing access to lawyers for young people in delinquency proceedings and enhancing the quality of representation provided. This project included a report commonly referred to as *A Call for Justice*, the first national assessment of access to counsel and the quality of representation afforded juveniles.

A Call for Justice made clear that the States' implementation of the right to counsel had not guaranteed effective assistance of counsel. Systems for the provision of counsel varied widely, with many young people waiving their right to counsel, even when counsel was readily available. The report found that many attorneys failed to provide effective assistance due to overwhelming caseloads, a lack of resources and investigative support, and inadequate training.

Subsequently, OJJDP awarded a grant to fund the establishment of the National Juvenile Defender Center (NJDC) to be housed within ABA's Juvenile Justice Center. NJDC became an independent entity in 2005, and currently operates to provide support, training, technical assistance, advocacy, collaboration, capacity building, and coordination for public defenders, court-appointed counsel, law school clinics, and nonprofit law centers.

Where Are We Now?

Recent assessments by NJDC confirm that shortcomings in effective juvenile advocacy exposed in *A Call for Justice* continue to exist (see www.njdc.info). These assessments reveal that juveniles are often permitted, if not encouraged, to waive their right to counsel, even if counsel is available. Commonly, juvenile defenders experience excessive caseloads, which result in minimal contact with their clients and limited preparation of cases. In a one-page fact sheet about *Gault* in its 2007 resource guide, NJDC notes that these systemic shortcomings are especially troubling "in the wake of a harsh wave of punitive legislation and massive juvenile code

revision (where) children are now subject to increased sanctions, longer sentences, harsher conditions, zero tolerance mandates, erosion of confidentiality protections, decreased procedural protections related to transfer to adult court, and even life sentences without the possibility of parole."

On May 15, 2007, in honor of the 40th anniversary of the *Gault* decision, the U.S. Senate adopted a resolution commemorating *Gault* and specifically acknowledging that 40 years after the decision, children continue to appear in court without legal counsel. The resolution, which passed by unanimous vote, endorsed support for "strategies to improve the juvenile justice system that appreciate the unique nature of childhood and adolescence" and pledged to "acknowledge and address the modern day disparities that remain for children after the *Gault* decision."

In its *2007 Annual Report to the President and Congress*, FACJJ recommended that language be inserted into the JJDP Act requiring: (1) the provision of competent, effective, and zealous representation for juveniles; (2) specialized training of attorneys who practice in juvenile court; and (3) adoption by States of juvenile defense caseload and practice standards. In addition, FACJJ recommended amending the Act to require that children facing court proceedings may not waive their constitutional right to counsel unless they first consult with an attorney.

As ABA's Presidential Working Group on the Unmet Legal Needs of Children and Their Families observed in 1993: "Many of the problems that plague the juvenile justice system—including appalling conditions of confinement, inappropriate transfer to adult court, overrepresentation of children of color, and inadequate health and educational services—could be remedied if every child accused of a crime was well represented by competent counsel, knowledgeable about juvenile justice issues and committed to furthering that child's interests at all points in the juvenile justice process."

Adoption of the 2007 FACJJ recommendations for the effective assistance of counsel will promote State compliance with the core protections of the JJDP Act:

- ◆ *Deinstitutionalization of status offenders:* There is a significant overlap between youth who are status offenders and those who are criminal offenders, and it is frequently the same behaviors by these two groups that result in incarceration. Effective assistance of counsel requires attorneys to advocate for resource-based dispositions that meet both the youth's and the community's needs and with which it is reasonable to expect the youth to comply. Effective advocacy focuses on crafting dispositions that promote successful life outcomes for youth and successful management of status offenders in the community.
- ◆ *Sight and sound separation in jails and lockups:* Effective assistance of counsel requires attorneys to visit their clients and monitor how they are treated in jails and lockups. Attorneys have greater access to these settings than parents and are in them more frequently than inspectors, increasing the likelihood that abuses will be noted and addressed.
- ◆ *Disproportionate minority contact:* Properly trained attorneys actively seek resources tailored to their clients' needs and advocate for the use of alternatives to detention and incarceration. National models addressing DMC have confirmed that reducing unnecessary detention and creating alternatives to detention are major steps in the reduction of DMC.

In addition, effective assistance of counsel could help address the mental health and substance abuse needs of many youth in the juvenile justice system. For example, a youth's attorney may be the first to become aware of a substance abuse, mental health, or special education issue.

Recommendations

Based on the concerns discussed in this chapter, FACJJ makes the following recommendation:

- 17. FACJJ recommends that Congress amend the JJDP Act to require the provision of competent, effective, and zealous representation for both juveniles and the State (i.e., prosecutors) in juvenile proceedings; require these attorneys to possess specialized knowledge and/or experience with child and adolescent development and in juvenile law and related matters and procedures; and require States to adopt juvenile caseload and practice standards. This requirement shall not be construed to allow for the imposition of financial penalties for noncompliance.**

Some States have taken concrete steps to ensure quality representation for juveniles in delinquency proceedings by promulgating standards of practice for lawyers practicing in juvenile courts, requiring training, and establishing standards regarding caseloads. In addition to individual State efforts, ABA, and the National Council of Juvenile and Family Court Judges have endorsed a set of guidelines for practice. Most notably, NJDC developed a series of policy recommendations and identified a set of core principles for providing effective representation. While these are promising efforts to promote and support standards for performance and to enhance representation, there is still much to be done.

FACJJ is cognizant that States and territories differ with respect to the existence of training requirements for attorneys who practice in juvenile court and acknowledges that the adoption of this requirement may create significant challenges for some jurisdictions and lead to unintended consequences in others. FACJJ is mindful of the difficulties that States and territories may have coming into compliance with this requirement and has specifically recommended that no monetary penalties

result from the failure of a State or territory to comply with this recommendation. Additionally, FACJJ tailored its recommendations to the Administrator of OJJDP to ensure that States and territories receive the assistance and support necessary for each jurisdiction to develop appropriate programming and guidelines to ensure effective assistance of counsel.

In addition, FACJJ is gravely concerned about OJJDP's recent decision to terminate its financial support for national efforts to promote the effective assistance of counsel. FACJJ believes that collaboration with national organizations with established track records in addressing effective assistance of counsel, combined with the financial support of OJJDP, is crucial to addressing this critical need.

Bibliography

National Juvenile Defender Center. 2007. Gault forty years later: Importance and impact. In *2007 Juvenile Defender Resource Guide*. Retrieved July 28, 2008 from the Web at www.njdc.info/publications.php.

National Juvenile Defender Center. 2008. *Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems*. 2nd ed. Washington, DC: Available from the Web at www.njdc.info/pdf/10_Principles.pdf.

Presidential Working Group on the Unmet Legal Needs of Children and Their Families. 1992. *America's Children at Risk: A National Agenda for Legal Action*. Washington, DC: American Bar Association.

Puritz, P., Burrell, S., Schwartz, R., Soler, M., and Warboys, L. 1995. *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*. Report of the American Bar Association Juvenile Justice Center, Juvenile Law Center, and Youth Law Center.



CHAPTER 5

Mental Health, Substance Abuse, and the Juvenile Justice System¹

States and territories continue to identify mental health assessment and treatment of youth as one of the most critical issues facing their juvenile justice systems. The 2002 reauthorization of the Juvenile Justice and Delinquency Prevention (JJDP) Act further highlighted this issue by requiring States to improve services to address behavioral (mental) health, substance abuse, and co-occurring problems (having both a mental health and substance abuse condition) as part of their comprehensive juvenile justice program plans.

Research documents the need for these services. Studies from 2000 and 2002 report as many as 70 percent of youth in the juvenile justice system have diagnosable mental health conditions, with females more afflicted than males. These numbers are striking when compared to the base rates for mental illness in the general child and youth population. A 2008 study found that mental illness rates in the general adolescent population (ages 12–17) range from 11 to 19 percent.

In addition, substance abuse is found in up to 60 percent of youth in the juvenile justice system. Moreover, many of these youth are troubled by multiple clinically significant problems, such as mental health and substance abuse conditions—commonly referred to as “co-occurring” disorders.

The 2002 JJDP Act reauthorization highlighted the impact of mental illness and substance abuse on youth in the juvenile justice system, but subsequent congressional appropriations supporting the Act have not increased to shore up or catalyze State improvements in the development and delivery of appropriate services. In fact, JJDP Act appropriations have dropped more than 60 percent since 2002. Consequently, States have moved at disparate paces (and not made much progress) when it comes to recognizing the obvious—that intervention in juveniles’ lives must address their cognitive, emotional, and social development in addition to their behavior if positive skills are to be achieved.

¹FACJJ acknowledges and expresses appreciation to FACJJ member Dr. Robert (Robin) Jenkins for his significant contribution as the primary author of this chapter.

Although Office of Juvenile Justice and Delinquency Prevention (OJJDP) staff have worked with States and territories on addressing this issue in their State plans, few U.S. Department of Justice (DOJ) or OJJDP resources have been allocated to support the research and development needed to address mental health/substance abuse (MH/SA) in juvenile justice. States have had to rely on private research from foundations—including the Annie E. Casey; Justice, Equality, Human Dignity and Tolerance; MacArthur; and Robert Wood Johnson foundations—and from other Federal agencies, most notably the U.S. Department of Health and Human Services (HHS).

HHS’s Substance Abuse and Mental Health Services Administration is the largest Federal contributor to applied clinical and systems work associated with children’s behavioral health and substance abuse. One recent example is a collaborative effort with the National Institute on Drug Abuse to accelerate the dissemination of research-based drug abuse treatment findings into community-based practice. Known as the Blending Initiative, the project grew out of a report from the Institute of Medicine that a 17-year gap exists between the publication of research results and its impact on treatment delivery.

Although the issues of MH/SA and juvenile justice are complex, the Federal Advisory Committee on Juvenile Justice (FACJJ) has identified two broad areas that need to be addressed: (1) clinical/research issues and (2) policy/funding issues.

Clinical/Research Issues

As with many social issues, professionals disagree on whether the presence of a mental condition contributes to or actually causes a youth to commit a crime or whether the commission of a crime exacerbates one’s risk of becoming mentally compromised by mental illness or maladjustment. In addition, the juvenile justice system, including secure detention, is often invoked as

a means for troubled youth to obtain screening, assessment, and mental health treatment based on a perception that those resources are more readily available in the juvenile justice system than in the community. As a consequence, these youth often are treated with interventions better suited for other situations or settings. This approach lends itself to overreliance on medical model interventions, when social, environmental, and interpersonal approaches are required. This development is partly because the psychiatry and psychology fields primarily fund evidence-based treatments for MH/SA rather than interventions such as positive youth development and milieu-focused interventions.

Professionals also disagree about which types of disorders are amenable to treatment and which require a public safety and correctional approach. For example, conduct disturbance and substance abuse are much more highly correlated with later antisocial behavior and crime than MH/SA disorders such as post-traumatic stress syndrome, anxiety disorders, and depressive disorders. More research and testing are needed to address this concern.

Because some disorders respond more quickly and favorably to psychotherapies and medications, the “treatability” of certain disorders within the boundaries of the juvenile justice system is also debatable. This debate also leads to questions about prevention. If certain disorders are dealt with cost-effectively at early stages of prevention and intervention, does it not make sense from a policy perspective to implement broader MH/SA prevention assessment and programming much earlier in the juvenile justice system? This question, in turn, leads to significant unresolved questions about how to effectively apply screening (e.g., universal, targeted, or symptomatic) tools to avoid widening the net and overdiagnosing MH/SA disorders among youth in the juvenile justice system.

The paucity of qualified MH/SA providers further complicates the MH/SA treatment issue. This scarcity

of providers challenges the juvenile justice system in many significant ways, including a lack of qualified screening/assessment providers and of qualified therapists and providers who have strong empirical training in evidence-based interventions. DOJ and OJJDP could help address this serious shortage by funding training for juvenile justice and mental health staff.

In addition to the above concerns, research shows that aggression breeds aggression in groups. Thus, placing mild-to-moderately aggressive youth in group settings with more aggressive youth causes the less aggressive youth to become more aggressive. Practitioners and policymakers need much more research, demonstration results, and evaluation to help them develop appropriate policies related to the proper environment size for housing youth and appropriate delivery systems.

Another concern is the role trauma plays in the formation of behavioral disorders and/or substance abuse. This issue is just beginning to be effectively researched. Policymakers and clinical practitioners should be more aware of the consequences of child trauma and its potential pathways to juvenile delinquency and MH/SA disorders.

Policy/Funding Issues

Funding for MH/SA services in the juvenile justice system is a critical issue. Congress has severely cut Federal funds for juvenile justice over the past decade, especially over the past 7 years. As a result, OJJDP lacks the funding and strategic planning needed to focus on MH/SA issues, basically leaving it up to the States and territories to tackle this problem. This erosion of funding indicates the lack of a national vision and policy concerning the Nation's most vulnerable youth.

Funding limitations affect many issues, but one of the most important is the lack of research about why there is differential access to and application of MH/SA services among diverse populations and cultures.

This disparity may contribute to the disproportionate number of minority youth who come into contact with the juvenile justice system.

Research about the system of care concept—which holds that mental health, physical health, child welfare, education, and juvenile justice systems and families are all part of the system of care needed for youth—indicates that these types of programs improve system outcomes (including fiscal, collaborative, and networking), consumer outcomes (including fewer commitments to detention centers, jails, and youth development centers), and school and juvenile justice outcomes. Other projects such as Wraparound Milwaukee confirm that braided/blended funding can make a positive difference for juvenile justice youth who have MH/SA disorders. Increased Federal funding and policies that support cross-agency, cross-categorical funding streams and allow for local flexibility and program creativity, while requiring appropriate compliance and monitoring controls, could result in more focused, positive outcomes for youth with MH/SA disorders.

Another policy issue centers around the need to more structurally define the boundaries of the juvenile justice system and to determine when and where to place MH/SA services in the system. For example, should these services be made available when a juvenile is arrested? Or when the youth is referred to court? Or should the services be made available only to youth already in institutions? The “get tough” policies of the 1990s that resulted in harsher penalties for juveniles have proven more expensive and less effective for both public safety and youth outcomes. Properly defining the boundaries of the juvenile justice system, placing services and programs for adolescents in the system in developmentally appropriate ways, and leveling programs at key points in the system could result in better outcomes for everyone.

Other critical policy issues include the need for State statutes that allow youth at the preadjudication stage

of the juvenile justice system to discuss MH/SA issues without fear of self-incrimination; the proper role of the Federal Government and OJJDP regarding mental health and substance abuse assessment and treatment; and the need for OJJDP to work more effectively with private foundations on research, program development, and evaluation.

Clearly, the many issues surrounding MH/SA and the juvenile justice system are intricate, complicated, and sometimes expensive policy questions to consider. For this reason, FACJJ has included an expanded version of this chapter in the appendix. The appendix provides a more detailed, comprehensive examination of MH/SA issues in the juvenile justice system, a deeper exploration into States' progress in addressing this issue, and a discussion of the many challenges that remain including challenges associated with research, clinical issues, and policy. The appendix also includes examples of innovative solutions to address mental health needs of youth in the juvenile justice system.

Recommendations

Based on the issues summarized in this chapter and detailed further in the appendix, FACJJ makes the following recommendations:

18. **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 culturally appropriate and relevant 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 delivered in community-based, recovery-focused settings that are the least restrictive possible.**
19. **FACJJ recommends that Congress ensure that States can provide all youth in the juvenile justice system with appropriate access to mental health and substance abuse services by examining and modifying regulations, laws, or other barriers that impede effective and flexible use of juvenile justice, health, substance abuse, and other funds across Federal agencies. FACJJ recommends that Congress review and enact the regulatory amendments necessary to achieve this access to care as soon as possible.**

As this chapter illustrates, addressing the mental health and substance abuse needs of youth in both the child welfare and juvenile justice systems is a complex, almost daunting task that requires the participation of many agencies and policymakers. Only when these multiple partners join the discussion will the Nation be able to effectively intervene in the lives of troubled juveniles by addressing their cognitive, emotional, and social skills along with their inappropriate behavior. The President and Congress need to exhibit national leadership in this area.

In these days of limited funding at all levels of government, it is simply common sense for agencies to pool their resources, both fiscal and physical. Yet, the red tape of the multiple separate Federal funding streams available to help youth makes this process practically impossible. If juvenile justice, social services, and physical and mental health agencies were allowed to combine their Federal monies, the States could begin to seriously and effectively provide the services that so many of the youth in the juvenile justice system need to turn their lives around.

Bibliography

- Cocozza, J., and Skowrya, K. 2000. Youth with mental health disorders: Issues and emerging responses. In *Juvenile Justice* 7(1).
- Dodge, K.W., Dishion, T.J., and Lansford, J.E., eds. 2006. *Deviant Peer Influences in Programs for Youth: Problems and Solutions*. New York, NY: Guilford Press, pp. xv, 366–394, 462.
- English, D.J., Widom, C.S., and Brandford, C. 2002. *Childhood Victimization and Delinquency, Adult Criminality, and Violent Criminal Behavior: A Replication and Extension*. Final Report. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.
- Holden, E.W., De Carolis, G., and Huff, B. 2002. Policy implications of the national evaluation of the comprehensive community mental health services for children and their families. *Children's Services: Social Policy, Research, and Practice* 5:57–65.
- Hubner, J., and Wolfson, J. 2000. *Handle with Care: Serving the Mental Health Needs of Young Offenders*. Annual Report. Washington, DC: Coalition for Juvenile Justice.
- Knopf, D., Park, M.J., and Paul Mulye, T. 2008. *The Mental Health of Adolescents: A National Profile, 2008*. San Francisco, CA: National Adolescent Health Information Center, University of California, San Francisco.
- Teplin, L.A., Abram, K., McClelland, G., Dulcan, M., and Mericle, A. 2002. Psychiatric disorders in youth in juvenile detention. *Archives of General Psychiatry* 59(12):1133–1139.
- Vinson, N.B., Brannan, A.M., Baughman, L.B., Wilce, M., and Gawron, T. 2002. The system of care model: Implementation in 27 sites. *Journal of Emotional and Behavioral Disorders* 9:30–41.



APPENDIX

Mental Health, Substance Abuse, and Juvenile Justice¹

The 2002 reauthorization of the Juvenile Justice and Delinquency Prevention (JJDP) Act put a much sharper focus on mental health, substance abuse, and co-occurring disorders by requiring States to include the provision of services to address these issue as part of their comprehensive juvenile justice program plans.

With the escalation of “get tough” juvenile and adult criminal justice policies during the 1990s, many States reported an increasing number of youth with documented mental health and/or substance abuse (MH/SA) disorders housed in detention centers, lock-ups and State facilities (Grisso, 2007). The numbers continue to grow and are staggering.

By now, most are familiar with the statistics. As many as 70 percent of youth “in the juvenile system” have diagnosable mental health conditions (Cocozza and Skowyra, 2000; Hubner and Wolfson, 2000; and Teplin et al., 2002), with females more afflicted than males. These numbers are striking when compared to the base rates for mental illness in the general child and youth population. A recent review of data sets concerning the overall mental health of adolescents found that mental illness rates in the general adolescent population (ages 12–17) range from 11 to 19 percent (Knopf, Park, and Mulye, 2008).

In addition, substance abuse is found in up to 60 percent of youth in the juvenile justice system. Moreover, many of these youth are troubled by multiple clinically significant problems, such as mental health and substance abuse conditions—commonly referred to as co-occurring disorders. In fact, even when conduct disorder (a pattern of rule violations and persistent misbehavior that violates societal rules and occurring for 6 months or more beginning before age 18) was removed from the diagnoses involved, 66.3 percent of the youth in a National Center for Mental Health and Juvenile Justice study still met the diagnostic criteria for a mental health disorder as defined by the *Diagnostic and Statistical Manual of Mental Disorders* (Skowyra and Cocozza, 2007). Fully 20 percent or more of youth in the juvenile justice system are so functionally impaired that mental health or substance abuse treatment should be considered before any other intervention (Skowyra and Cocozza, 2007).

¹FACJJ acknowledges and expresses appreciation to FACJJ member Dr. Robert (Robin) Jenkins, the author of this appendix.

Although there is no confirmed link implicating mental illness as causing juvenile crime (or vice versa—that is, delinquency causes mental illness), it is apparent that suicide, drugs, alcohol, and mental illness are key factors in the overall well-being and development of children involved in the juvenile justice system (Snyder, 2006). In comments to the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention, Howard Snyder reported that self-injury and violence are typically self-inflicted in juveniles, and that “juveniles are almost as likely to be a suicide victim as a homicide victim” (Snyder, 2006). Mental illness, substance abuse, developmental disabilities (e.g., mental retardation, learning disabilities), suicide, and victimization by violence confront the Nation’s youth in ways never before imagined.

Examples of State Progress

Although the 2002 JJDP Act reauthorization shone the spotlight on mental illness and substance abuse as critical factors affecting youth in the juvenile justice system, subsequent congressional appropriations supporting the Act have not increased to shore up or catalyze State improvements in the development and delivery of appropriate services. In fact, JJDP Act appropriations have dropped more than 60 percent since 2002. Given these funding dynamics, the overall report on State progress toward developing better systems of care, screening/triage, therapies, and aftercare is not a positive one.

States have moved at disparate paces when it comes to recognizing the obvious—that intervention in juveniles’ lives must address their cognitive, emotional, and social development in addition to their behavior if positive skills are to be achieved and recidivism reduced. States have accomplished gains in differing ways. Some have implemented judicial and/or administrative solutions, some have made clinical and programmatic improvements to attack behavioral health needs, and some have enacted system reform efforts such as Medicaid

adjustments, waivers, blending of juvenile justice and MH/SA funding along with integrated state-level departmental solutions.

The following are examples of the some of the efforts States and territories are making to improve behavioral health services for youth in the juvenile justice system. This list is by no means exhaustive and is meant only to illustrate the types of innovative and creative solutions that are being implemented to address mental health and juvenile justice.

- ◆ North Carolina has added Multi-Systemic Therapy (MST), empirically validated with juvenile justice youth and their families, as an approved Medicaid-reimbursable service in its State Medicaid plan in part to help address the growing population of juveniles with complicated co-occurring disorders. Functional Family Therapy, another empirically supported treatment, is also reimbursable in North Carolina for court-involved youth.
- ◆ Wisconsin has done a significant amount of work on adolescent brain development, dual jurisdiction children, and MH/SA treatment. One of the State’s major achievements is the Mendota Juvenile Treatment Center (JTC), which was created following a 1995 State legislative study of mental health and juvenile justice issues. The Mendota JTC has been rigorously evaluated and found to be a significantly effective, high-end (highly restrictive) residential treatment program for some of Wisconsin’s most serious juvenile offenders (Caldwell and Van Rybroek, 2005).
- ◆ Milwaukee, WI, has proven that the wraparound approach is a cornerstone of best community-based practice with its very successful Wraparound Milwaukee initiative. Operating since 1995, Wraparound Milwaukee has demonstrated that braided or blended funding and multilevel collaboration across Federal, State, and county governments can

yield excellent treatment and fiscal outcomes for youth in the juvenile justice system. Wraparound Milwaukee was named an exemplary program by the President's New Freedom Commission on Mental Health in 2004.

- ◆ For more than a decade, Tennessee has supported community-based crisis teams and in-home therapy programming through its recognition of providers such as Youth Villages. This program has grown to provide a strong continuum of care for juvenile justice (and other) youth with mental health or co-occurring disorders, including dual jurisdiction children (children who are in both the juvenile justice and child welfare systems). Youth Villages is now in nine States and the District of Columbia as a result of these jurisdictions' commitment to use empirically supported treatments (Multi-Dimensional Foster Care, MST, statewide crisis intervention services, etc.) and their abilities to negotiate flat-fee per case reimbursement rates with State juvenile justice and mental health entities. This combination of effective and research-based treatment coupled with managed juvenile justice and MH/SA dollars has enabled Youth Villages to achieve some impressive clinical as well as system reform efforts.
- ◆ Kansas, New York, and Vermont have used Medicaid waiver programs to expand and extend community-based mental health services to juvenile justice-involved youth (Koppelman, 2005). These waiver options allow States to write their own service definitions and State Medicaid plans in innovative, more flexible ways while reducing risk to the Federal Medicaid program. Such waivers typically allow services to children not usually covered by Federal Medicaid rules, often increasing State fiscal participation and/or otherwise reducing the risk to the Medicaid program by capping Federal fiscal outlays. Through increased Medicaid screening detection, and treatment services to a wider population of youth including those in the juvenile justice system, these States are demonstrating that integrated systems of care using Medicaid dollars can be implemented.
- ◆ Missouri, which once manifested substantial juvenile justice problems, is now held as one of the more progressive States in regard to juvenile justice. This happened in part because the State legislature recognized the need for unified family courts, more local investment in court and family services including MH/SA, reform of State institutional systems, and strategic alliances involving various State agencies (along with the mental health advocacy community). Missouri reformed its juvenile code in 1995, but did not stop there. In 1998, the Missouri Alliance of Mental Health and Juvenile Justice created earmarked State funding for pilot court services to address the mental health needs of juveniles. Local advocates hail these efforts and applaud the State for its vision in creating these opportunities. However, as in many other States, budget constraints have limited the expansion of these innovative justice-mental health partnerships.
- ◆ New Mexico has shown strong mental health-juvenile justice leadership as its implementation of the Juvenile Detention Alternatives Initiative (JDAI) has unfolded. In Bernalillo County, the detention facility came to the realization that, with effective screening and risk assessment—and the cooperation of New Mexico's State Medicaid director—it could fund increased psychological assessment and treatment services *on-site* using saved detention bed dollars combined with State Medicaid revenues generated through services attached to the Bernalillo County detention facility. This collaboration between State Medicaid, local county officials, local court and juvenile justice officials, and service providers represents the type of innovation

and creative, braided/blended funding that saves taxpayer dollars and also illustrates a needs-driven approach to the application of behavioral health services within the juvenile justice system.

There are many other examples of States working to improve MH/SA treatment options for juvenile justice-involved youth. Washington, through its Children's Mental Health Act, has developed wraparound programs in six counties to reduce barriers to youth in the juvenile justice system by increasing benefits for some services (Justice Policy Institute, 2007). The Justice Policy Institute notes mental health system improvements through legislative, funding, and/or policy improvements in Alaska, California, Idaho, and Pennsylvania. The National Mental Health Association, in its 2004 *Compendium of Promising Practices*, cites Colorado and the Denver Juvenile Justice Integrated Treatment Network, Indiana's DAWN Project, New York's Orange County Mental Health/Juvenile Justice Initiative, Florida's PACE program for gender-specific (girls) services, and others as very promising efforts toward the effective integration and application of mental health programming involving youth in the juvenile justice system (National Mental Health Association, 2004).

Federal and Private Efforts

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has long recognized the serious and growing prevalence of mental disabilities and cognitive/learning problems associated with juvenile delinquency. Yet, because its research and training and technical assistance dollars have been nearly eliminated (earmarked) from the budget over the past 6 years, OJJDP has had to rely on its Federal and local partners and private foundations to carry these issues forward. OJJDP did fund the Court Coordination Project through discretionary funding in 2005. The program offers an innovative approach to helping juvenile and family and mental health/drug courts provide coordinated, individualized services to youth with multiple needs. OJJDP

also ramped up its support of juvenile drug treatment courts and funded the National Council of Juvenile and Family Court Judges and the National Center on Juvenile Justice to improve case coordination and integrate family and community-based programming into court services. And, through its State Relations and Assistance Division, OJJDP has worked with State Advisory Groups to integrate mental health, substance abuse, and developmental disability assessment, intervention, and aftercare into States' mandatory 3-year delinquency prevention plans.

It should be noted, however, that other Federal agencies have some programs that more directly affect the outlook for youth involved in the juvenile justice system with MH/SA disorders.

The U.S. Department of Health and Human Services' (HHS's) Substance Abuse and Mental Health Services Administration (SAMHSA), for example, has in its strategic plan and funding matrix plans for increasing drug treatment courts, improving community-based substance abuse services for high-risk youth, and using State Incentive Grants and Substance Abuse Prevention Block Grant programs to reduce the occurrence of substance abuse disorders and risk among youth.

SAMHSA has also invested significant funding into improving local systems of care (SOC) for children and youth. Formally known as the Comprehensive Community Mental Health Services for Children and Their Families Program, SOC has been evaluated and shown to demonstrate impressive community-based outcomes for children where fully implemented with fidelity (Vinson et al., 2001; Holden, De Carolis, and Huff, 2002). SOC is the only program at the Federal level that supports integrated systems of care involving all juveniles, their families, and their communities.

Policy implications suggest that wider dissemination of SOC along with training, technical assistance, and ongoing quality management would significantly improve outcomes for all children with mental health disorders.

In the juvenile justice arena, SOC has resulted in specific improvements in outcomes including reductions in recidivism, detention days, detention stays (i.e., actual admissions), hospital admissions, length of hospital stays, and commitments to youth institutions.

The U.S. Department of Education has also funded prevention programs (e.g., Safe Schools, Healthy Students) that include MH/SA intervention requirements. In addition, private organizations (e.g., the William T. Grant Foundation, MacArthur Foundation, and Robert Wood Johnson Foundation) have advanced the field measurably, despite Federal funding limitations.

Issues and Challenges

The problems and challenges associated with mental illness, substance abuse, developmental disabilities, and juvenile justice are complex. Space limitations preclude an exhaustive exploration of each of them, but the following two topics summarize some of the major issues and challenges.

Clinical/Research Issues

Although there is widespread agreement concerning the prevalence of emotional and developmental disorders and their impact on youth, there is not agreement on the most effective methods for preventing or intervening at each stage of involvement in the juvenile justice system to improve chances of recovery (despite what the field has learned from SOC). There are also important professional disagreements about the “treatability” of various emotional conditions and their relationship to juvenile justice policy objectives—that is, whether mental health interventions are the best way to achieve optimal juvenile justice social policy gains.

Like many social issues, it is difficult to tell whether the presence of a mental health condition contributes to or causes a youth to commit a crime, or whether the commission of a crime exacerbates a juvenile’s risk of becoming mentally compromised by mental illness or maladjustment.

Many youth with emotional issues are referred to mental health services for lack of better alternatives and treated with interventions that may be better suited for other situations or settings. This lends itself to overreliance on medical model interventions when social, environmental, and interpersonal approaches are required. If other solutions were in place and integrated along the various earlier points of system contact, to allow for a much broader arsenal of tools to prevent or intervene earlier, then perhaps mental health disorders and/or substance abuse would be less of a concern. Theoretical approaches, such as positive youth development, restorative justice, and milieu-focused interventions are relevant here. These theoretical approaches have positive grounding in the empirical literature, and they can be powerful adjuncts to “counseling,” drug therapies, and other psychotherapeutic interventions.

For many youth, clinical diagnosis and treatment tend to occur only after they have been arrested or petitioned. Hence, the stresses of police investigation, juvenile court involvement, possible detention, and/or training school institutionalization confound understanding of the trajectories of mental illness. In other words, does the juvenile justice system worsen mental functioning? Or do mental disability and insufficient treatment exacerbate mental illness and further disinhibit youth behavior, impair judgment, and compromise culpability? In many cases, the answer could be “both.” However, limited research support for children’s mental health services has not allowed a thorough, systematic, and longitudinal investigation of these questions.

There is some evidence that, if found to have a mental health disorder at system entry, “youths with mental disorders at some point between ages 9 and 16 are at that much greater risk (15 percent to 20 percent) of offending as young adults than if they had not had those disorders” (Grisso, 2007a, p. 1626). Then there is the question of type of mental disorder. Grisso notes that Copeland and his colleagues at Duke University explored the epidemiology and risk associated with youth

mental disorders and found that type of disorder matters: “Adolescents’ emotional disorders (depression and anxiety disorders) were only marginally related to later adult crimes in comparison with their disruptive behavior disorders and substance use disorders. But adolescent emotional disorders comorbid with substance use disorders represented by far the greatest risk of future adult offending” (Grisso, 2007a, p. 1626).

Depression and anxiety, often masked in the misbehaving adolescent, also play a role in compromised social decisionmaking, suicide, and substance use. However, these diagnoses are less positively correlated with long-term adolescent and young adulthood criminal risk (although they are much more prevalent in females, who manifest typically different clinical diagnoses than males in the juvenile justice system).

These findings have great implications for prevention and intervention programming, and they call into question the actual “treatability” of various mental health diagnoses relative to juvenile justice policy objectives (e.g., public safety, reduced recidivism). Given the limited funding in public budgets, it would make sense from clinical, fiscal, and social policy perspectives to increase screening and early detection for behavioral problems, substance abuse, and disruptive disorders and to ramp up research and funding for intervention programs shown to be most effective including interventions that incorporate or balance more traditional evidence-based MH/SA approaches with empirically supported nonmental health technologies.

Furthermore, the ethics and social issues associated with universal screening programs are not agreed upon by everyone working with these children and families. Grisso warns of “iatrogenic injustice,” whereby the juvenile justice system could in many cases become the de facto mental health system for youth if effective screening, diagnosis, treatment, funding, and policy questions are not adequately addressed (Grisso, 2007b, p. 164). Grisso’s point is that by widening the net and

screening more and more youth in the justice system, practitioners may unintentionally overdiagnose (or misdiagnose) adolescents, mismatch treatment-to-diagnosis-to-outcome, or cause mental disabilities to worsen by responding inadequately to juveniles’ treatment needs. In addition, practitioners may attempt behavioral health treatments for conditions that could theoretically respond to other, more appropriate intervention methods. And connected to the concern about widening the net, referral sources may come to rely on the juvenile justice system as core providers of MH/SA services when other intervention systems may be more appropriate for youth and/or their families.

Another clinical concern deals with how psychiatry and psychology/social work are asked to respond to youth crime and mental illness. A major resource gap is caused by the rarity of qualified, board-certified child and adolescent psychiatrists—there are only 7,500 members in the American Academy of Child and Adolescent Psychiatrists, or 1 for approximately every 9,800 children in the United States. The lack of qualified providers coupled with the overreliance on psychiatry to resolve complicated social-emotional-developmental issues places an extreme burden on the medical community. To illustrate, the use of psychotropic medications in behavior-disordered children/youth has significantly increased over the past 25 years—up two- to three-fold from 1987 to 1996 (Zito et al., 2003). Although medications play an important role in the remediation of certain psychiatric/psychological conditions, their use in younger children and adolescents and for disruptive disorders (conduct disorder, oppositional-defiant disorder, attention deficit hyperactivity disorder [ADHD]) is less clinically substantiated and more controversial. Providers suggest that adolescents sometimes appear to be improperly or overmedicated when presenting to the juvenile courts or justice institutions. Although the American Academy of Child and Adolescent Psychiatry has published practice parameters and protocols for various diagnoses (e.g., Pappadopulos et al., 2004),

there seems to be no consensus among the psychiatric community as to the efficacy of medications in managing aggression and disruptive behavior disorders—only guidelines pending future research.

Research indicates that some of the more typical medications, when used by themselves without supplemental therapies to temper aggression (e.g., lithium, Dilantin, Depakote, Tegretol, risperidone, and some of the barbiturates) do not significantly reduce aggression or conduct problems in youth. To further confound the issues, additional research notes that it is sometimes impossible to judge improvements in hospitalized or institutionalized youth who receive pharmacotherapy immediately upon entry, because many youth get better simply by being removed from the environments contributing to their conduct problems (Malone et al., 1997). Certainly medications can and do serve as effective adjuncts to treatment in ADHD and conduct problems that are comorbid with depression, anxiety, and trauma responses; but when medicines are expected to perform a primary or central role in remediating adolescent mental illness, the dilemma for parents and providers is serious. The side effects of psychotropics can be serious and even life threatening. For these and other reasons, psychiatry must work with other allied health professionals, parents, and the judicial system to achieve optimal results. As Dr. Elizabeth Roberts writes, “Even while medicated, these conduct disordered children will violate the rights of others. No medication can teach a child the difference between what is right from what is wrong, or give him the motivation to comply with rules” (Roberts, 2006, p. 63).

In addition to these concerns, a plethora of other challenges confront therapists, counselors, and social workers in juvenile justice settings. There is a dearth of well-normed and validated assessment tools that take into account many cultural aspects of behavior. Further, many research programs and studies are conducted with youth already in the system—samples that are overrepresented by males, African Americans, Latinos/

Hispanics, Native Americans, and multiracial youth. There are too few clinical studies “on the outside” that point providers in the right direction in terms of empirically supported approaches to juvenile delinquency dealing with these types of subpopulations and cultures. On the positive side, OJJDP has invested in gender-specific research and compiled a Web site (<http://ojjdp.ncjrs.org/pubs/principles/contents.html>) for dissemination. However, there are far too few training dollars to get empirically supported gender-specific programs out into the field. Other private and educational resources have also generated strong literature on gender-specific services and their outcomes (Acoca, 1999).

Another challenge facing the juvenile justice system and mentally ill/substance abusing youth is the question of the milieu—the therapeutic environment. What is the best configuration in an institution to optimize the balance between accountability, restoration for criminal acts, and treatment? Research shows, for example, that aggression breeds aggression (e.g., social or peer contagion) in groups (Dodge, Dishion, and Lansford, 2006). Yet peer and social aggression stem from multiple layers including biological/developmental determinants, environmental contributors, family, and even community-ecological factors. Placing mild-to-moderately aggressive youth in group settings with other, more instrumentally aggressive youth causes less aggressive youth to become more aggressive. Yet, it is the norm to consistently house groups of delinquent youth together in large dormitories or general population settings. Psychiatry is then asked to help medicate and control aggression, although the system lacks the human resources and programs necessary to effectively manage and counsel youth when housed in this fashion (this is one form of iatrogenic injustice that Grisso writes about). Finally, youth are sent back home after learning to become more instrumentally aggressive (that is, using aggression to meet their behavioral or emotional needs) without the tools and reentry/

aftercare supports needed to try to change their newly adopted aggressive behaviors. This pattern, in which the system frequently fails to address the environmental determinants of delinquency, often results in recidivism.

The better answer to these kinds of challenges lies in the structure and function of institutions and clinical programs. Programs such as the Mendota Juvenile Treatment Center, Arizona's La Cañada's Residential and Substance Abuse Step Down Program, and Missouri's small pod-type cognitive-behavioral intervention programs house committed youth in small clusters, use small group and individual interventions (including the arts, recreational therapies, and vocational training), employ clinically trained (professional and paraprofessional) staff members, and use intensive treatment and security practices that achieve very positive results. These clinical interventions, matched with closely monitored security, capitalize on current research findings by avoiding the warehousing of juveniles in large structures while providing effective interventions that do not spawn more instrumental aggression.

Finally, another critical challenge facing those concerned with mental health and juvenile justice is the undiagnosed and difficult-to-assess issue of childhood victimization and trauma as causal to the formation of conduct disturbance. Many studies now note the prevalence of child victimization as a significant contributing factor to later maladjustment (English, Widom, and Brandford, 2002). Many traumatized, victimized children who are dealt with in the child welfare system later enter the juvenile justice arena without having their victimization addressed in ways that reduce their trauma. Why some youth manifest internalization disorders in response (e.g., anxiety, post-traumatic stress disorder, depression), others develop externalization disorders (e.g., conduct disorder, oppositional defiant disorder), and some appear to be adequately adjusted without later criminal behavior remains a research goal. Progress has been made as noted in the development of trauma-focused cognitive therapy (Cohen et al.,

2000). Yet, training and funding constraints in the juvenile justice field remain constant and severely handicap the much-needed dissemination of these effective trauma-focused intervention technologies.

Policy and Funding Issues

In the usual scheme of things, Congress makes laws and then appropriates funding to carry them out. Unfortunately, this has not always been the case with the JJDP Act. The Act affords core protections and goals for the improvement of public safety while safeguarding the developmental concerns of maturing adolescents. Yet Congress has consistently allowed what appears to be a systematic constraining of the underlying funding mechanisms for the Act. OJJDP has had nearly all of its prevention and many of its discretionary and research, training, and technical assistance funds earmarked for special interests over the past several years. This has resulted in an increasing focus on compliance monitoring and maintenance at the expense of innovation, research into best/promising practices, and OJJDP's ability to distribute already proven programs to the field.

This erosion of funding indicates the lack of a national vision and policy concerning the Nation's most vulnerable youth. If the country's policies are strong and its commitments to them solid, appropriate levels of funding would follow the policies.

From a policy perspective, research shows that different racial and ethnic groups have differential access to medical and psychiatric services (Garland et al., 2005; Rawal et al., 2004), which may contribute to disproportionate minority contact and confinement. Yet, the SOC research teaches that when implemented with adequate resources and fidelity, a comprehensive mental health services program can reduce or even eliminate differential access to mental health, substance abuse, and developmental disability services (Holden, De-Carolis, and Huff, 2002). Subsequently, juvenile justice outcomes are measurably improved.

Research also indicates that effectively implemented, high-quality mental health services do reduce subsequent court and institutional involvement of juveniles (Foster, Qaseem, and Connor, 2004). The research points policymakers toward solutions involving blended/braided Federal funding (sometimes known as “single-stream funding”), reduction of cross-agency barriers to qualify children for MH/SA care, increased access to care at all levels of the juvenile justice system, and increased cross-agency attention to research, training, and technical assistance at the community level.

Another policy consideration centers on the placement of various behavioral health services in the system. In many States and jurisdictions, defense attorneys advise youth not to cooperate with any allied health or other professional until adjudication or case disposition occurs. The issue of self-incrimination as a result of MH/SA screening or assessment is an important one. What does the term “best interest of the child” mean at various entry points along the juvenile justice continuum? Best interest in terms of legal outcome? Longer-term emotional and social adjustment? These issues are both constitutional and policy-related and must be addressed in both legal and research arenas. It would be very positive to work in a system where youth could speak about their emotional functioning and/or substance use early on when professionals are assessing their needs without fear of self-incrimination or legal bias as a result of their self-disclosure.

Perhaps as important on the policy front are questions about the role of MH/SA treatment in reducing and/or resolving juvenile crime. The epidemiological research clearly documents diagnosable or diagnosed problems among youth in the juvenile justice system; yet it does not come close to answering such questions as:

- ◆ How did these youth come to manifest MH/SA problems in ways that intersect with their risk for involvement in the juvenile justice system?

- ◆ What role does behavioral health maladjustment play in the evolution of juvenile delinquency? For example, what trajectories are in place that predict the development of juvenile delinquency as a result of MH/SA problems?
- ◆ Are MH/SA screenings the proper way to “catch” or intervene early to help promote prevention and/or recovery from diagnosed disturbances? Would positive youth development asset-building interventions make more sense? Or would a combination that makes best use of the science involved in these complementary approaches be the most effective?
- ◆ What about zero-tolerance policies? Do schools exacerbate behavioral health problems by too quickly dismissing children and youth from schools based on zero-tolerance or three-strikes policies? Have these policies inadvertently harmed youth by placing school resource officers (SRO) in schools and criminalizing behaviors that were once handled with administrative creativity and parent-principal teamwork?
- ◆ Is the juvenile justice system the correct response or a default to the system for juveniles with mental illness and co-occurring disorders? At what level is assessment available to determine the appropriate intervention, using the criminal justice system as a sanction for criminogenic risk?

Other policy issues center on the role of the Federal Government in juvenile justice. Once regarded as the ultimate safety net for youth in the juvenile justice system and developer of new research in the field, OJJDP has in recent years been relegated to focusing on compliance monitoring, providing more limited training and technical assistance, having fewer staff members who can provide resources out in the field, and making curious decisions about the allocation of discretionary funds. If Congress is to impact juvenile justice and safeguard the developmental needs of juveniles—as

distinct from adults—it should appropriate funds based on empirically documented needs, enact rules via OJJDP that ensure such needs are met, monitor OJJDP to ensure that administrative procedures are properly implemented, and evaluate progress that reflects actual performance rather than less rigorous survey methods.

OJJDP often competes within the U.S. Department of Justice with other offices and bureaus for program dollars that may, in the end, serve some of the same goals (e.g., public safety, gang activity reductions, community crime prevention). In this era of dwindling Federal allocations for social programs, it makes sense for Congress to re-evaluate the various funding streams going to agencies and departments in an effort to reduce duplication, avoid inter- and intra-agency competition for limited funds, and reduce system fragmentation.

Research and practice findings from private sources or public-private partnerships (e.g., MacArthur; Robert Wood Johnson; William T. Grant; Annie E. Casey; and Justice, Equality, Human Dignity and Tolerance Foundations) have shown that investment in adolescent and juvenile justice issues can increase cost savings, improve community safety, and improve the positive outcomes sought by an equitable juvenile justice system. It remains perplexing that OJJDP does not do more to seek partnerships with foundations that have significant assets and established research networks. In such partnerships, OJJDP could continue to focus on research, innovation, and knowledge generation and dissemination while also monitoring compliance with the JJDP Act's requirements.

As noted earlier, another concern lies in the unintended consequences of ramping up community safety in the 1980s and 1990s by criminalizing what used to be thought of as adolescent misbehavior through the interventions of SROs. Now that SROs are in many middle and high schools, a significantly higher number of incident reports, referrals to juvenile courts, and

student assistance teams are occurring. These result not only in substantially higher case processing within the juvenile court system, but more case planning and case management including referrals for mental health assessments and/or intervention.

As a consequence, State Advisory Group planning and training must include law enforcement assets within the schools because law enforcement effectively widens the prevention-intervention network and increases system demand. OJJDP has not, in recent memory, afforded program strategies that facilitate the development of best practices related to SRO/law enforcement training in areas of MH/SA intervention and referral. Without sound training and the integration of school-based law enforcement officials into multidisciplinary teams, SROs can unintentionally contribute to the overburdened juvenile courts and mental health delivery systems.

Still other questions exist pertaining to whose responsibility it is to provide comprehensive MH/SA services to youth in the juvenile justice system. Is this responsibility really the purview of OJJDP? The Office has no authority or influence over public health care financing or payment systems. It has no influence or authority over other Federal departments that could fund programs in related areas, such as exceptional children's services in schools, bullying prevention (in educational settings), etc. Should juvenile justice MH/SA always be relegated to another Federal agency or department such as HHS or SAMHSA? How can bridges be built if the current Federal array of offices, departments, agencies, and programs remains the same?

How can OJJDP work with the National Association of State Mental Health Directors, Mental Health America, National Institute of Mental Health, and others to develop a strong strategic plan to effectively provide mental health resources involving the juvenile justice system? And what is the best level in the ecology of services to locate federally funded programs? Should OJJDP concentrate only on State juvenile justice systems

and leave prevention/early intervention in community-based programs to other agencies?

Clearly these are intricate, complicated, and expensive policy questions to consider. Given the current focus on reauthorization of the JJDP Act, it makes sense for Congress and the OJJDP Administrator to work hard to define many of these critical issues, locate adequate funding, and develop the political will to ensure proper policy implementation that will meet the goals of the President and Congress.

Recommendations

With these policy, funding, clinical, and systems issues in focus, FACJJ makes the following recommendations:

- 18. 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 culturally appropriate and relevant 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 delivered in community-based, recovery-focused settings that are the least restrictive possible.**

Addressing the mental health and substance abuse needs of youth in both the child welfare and juvenile justice systems is a complex, almost daunting task that requires the participation of many agencies and policy-makers. Only when these multiple partners join the discussion will the Nation be able to effectively intervene in the lives of troubled juveniles by addressing their cognitive, emotional, and social skills along with their inappropriate behavior. The President and Congress need to exhibit national leadership in this area.

- 19. FACJJ recommends that Congress ensure that States can provide all youth in the juvenile justice system with appropriate access to mental health and substance abuse services by examining and modifying regulations, laws, or other barriers that impede effective and flexible use of juvenile justice, health, substance abuse, and other funds across Federal agencies; and recommends that Congress review and enact the regulatory amendments necessary to achieve this access to care as soon as possible.**

In these days of limited funding at all levels of government, it is simply common sense for agencies to pool their resources, both fiscal and physical. Yet, the red tape of the multiple separate Federal funding streams available to help youth makes this practically impossible. If juvenile justice, social services, and physical and mental health agencies were allowed to combine their Federal monies, the States could begin to seriously and effectively provide the services that so many of the youth in the juvenile justice system need to turn their lives around.

References

- Acoca, L. 1999. Investing in girls: A 21st century strategy. *Juvenile Justice* 6(1):3-13.
- Bilchik, S. 1998. *Mental Health Disorders and Substance Abuse Problems Among Juveniles*. Fact Sheet. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- Caldwell, M.F., and Van Rybroek, G.V. 2005. Reducing violence in serious juvenile offenders using intensive treatment. *International Journal of Psychiatry and Law* 28(6): 622-636.
- Cocozza, J., and Skowyra, K. 2000. Youth with mental health disorders: Issues and emerging responses. *Office*

of *Juvenile Justice and Delinquency Prevention Journal* 7(1):3–13.

Cohen, J., Mannarino, A., Berliner, L., and Deblinger, E. 2000. Trauma-focused cognitive behavioral therapy for children and adolescents: An empirical update. *Journal of Interpersonal Violence* 15:1202–1223.

Dodge, K.A., Dishion, T.J., and Lansford, J.E., eds. 2006. *Deviant Peer Influences in Programs for Youth: Problems and Solutions*. New York, NY: Guilford Press, pp. 366–394.

English, D.J., Widom, C.S., and Brandford, C. 2002. *Childhood Victimization and Delinquency, Adult Criminality, and Violent Criminal Behavior: A Replication and Extension*. Final Report. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

Foster, E.M., Qaseem, A., and Connor, T. 2004. Can better mental health services reduce the risk of juvenile justice system involvement? *American Journal of Public Health* 94: 859–865.

Garland, A.F., Lau, A.S., Yeh, M., McCabe, K.M., Hough, R.L., and Landsverk, J.A. 2005. Racial and ethnic differences in utilization of mental health services among high-risk youths. *American Journal of Psychiatry* 162:1336–1343.

Grisso, T. 2007a. Do childhood mental disorders cause adult crime? *American Journal of Psychiatry* 164:1625–1627.

Grisso, T. 2007b. Progress and perils in the juvenile justice and mental health movement. *Journal of the American Academy of Psychiatry and the Law* 35:158–167.

Holden, E.W., De Carolis, G., and Huff, B. 2002. Policy implications of the National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program. *Children's Services: Social Policy, Research, and Practice* 5:57–65.

Hubner, J., and Wolfson, J. 2000. *Handle with Care: Serving the Mental Health Needs of Young Offenders*. Washington, DC: Coalition for Juvenile Justice.

Justice Policy Institute. 2007. *The Accelerating Pace of Juvenile Justice Reform*. Retrieved February 24, 2008, from the Web at <http://modelsforchange.net/pdfs/StateHighlightsFINAL.pdf>.

Koppelman, J. 2005. *Mental Health and Juvenile Justice: Moving Toward More Effective Systems of Care*. Issue Brief no. 805 (July 22, 2005). Washington DC: The National Health Policy Forum, George Washington University.

Knopf, D., Park, M.J., and Paul Mulye, T. 2008. *The Mental Health of Adolescents: A National Profile, 2008*. San Francisco, CA: National Adolescent Health Information Center, University of California, San Francisco

Malone, R.P., Luebbert, J.F., Delaney, M.A., Biesecker, K.A., Blaney, B.L., Rowan, A.B., and Campbell, M. 1997. Nonpharmacological response in hospitalized children with conduct disorder. *Journal of the American Academy of Child and Adolescent Psychiatry* 36(2):242–247.

Massachusetts Alliance of Juvenile Court Clinics. Line Item 5055-0000. Retrieved February 24, 2008, from the Web at www.kidsandthelaw.org/MAJCC%20One%20Pager%20FY09%20Final.pdf.

National Mental Health Association. 2004. *Mental Health Treatment for Youth in the Juvenile Justice System: A Compendium of Promising Practices*. Alexandria, VA.

New Freedom Commission on Mental Health. 2003. *Achieving the Promise: Transforming Mental Health Care in America*. Rockville, MD: New Freedom Commission on Mental Health.

Pappadopulos, E., MacIntyre, J.C. II, Crismon, M.L., Findling, R.L., Malone, R.P., Derivan, A., Schooler, N., Sikich, L., Greenhill, L., Schur, S.B., Felton, C.J., Kranzler, H., Rube, D.M., Sverd, J., Finnerty, M., Ketner, S.,

Siennick, S.E., and Jensen, P.S. 2004. Treatment recommendations for the use of antipsychotics for aggressive youth (TRAAY): Part II. *Focus* 2(4):608–624.

Rawal, P., Romansky, J., Jenuwine, M., and Lyons, J. 2004. *Racial differences in the mental health needs and service utilization of youth in the juvenile justice system.* *Journal of Behavioral Health Services and Research* 31(3):242–254.

Roberts, E.J. 2006. *Should You Medicate Your Child's Mind? A Child Psychiatrist Makes Sense.* Emeryville, CA: Marlowe and Company.

Skowrya, K., and Coccozza, J. 2007. *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System.* Delmar, NY: Policy Research Associates, National Center for Mental Health and Juvenile Justice.

Snyder, H. 2006. Facts to consider: Mental health issues. *Meeting Summary From the Coordinating Council on Juvenile Justice and Delinquency Prevention.* Coordinating Council on Juvenile Justice and Delinquency Prevention. Retrieved February 24, 2008 from www.juvenilecouncil.gov/summary/Meeting_Summaryfinal.doc.

Teplin, L.A., Abram, K., McClelland, G., Dulcan, M., and Mericle, A. 2002. Psychiatric disorders in youth in juvenile detention. *Archives of General Psychiatry* 59(12):1133–1139.

Vinson, N.B., Brannan, A.M., Baughman, L.B., Wilce, M., and Gawron, T. 2001. The system of care model: Implementation in 27 sites. *Journal of Emotional and Behavioral Disorders* 9:30–41.

Zito, J.M., Safer, D., dosReis, S., Gardner, J., Magder, L., Soeken, K., Boles, M., Lynch, F., Riddle, M.A. 2003. Psychotropic practice patterns for youth: A 10-year perspective. *Archives of Pediatric Adolescent Medicine* 157(1):17–25.

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