

BACKGROUND PAPER  
THE JOINT CENTER HEALTH POLICY INSTITUTE

# HOW THE JUVENILE JUSTICE SYSTEM REDUCES LIFE OPTIONS OF MINORITY YOUTH

EDGAR S. CAHN



Joint Center  
**HEALTH POLICY**  
INSTITUTE

DELLUMS COMMISSION

BETTER HEALTH THROUGH  
STRONGER COMMUNITIES:  
PUBLIC POLICY REFORM TO  
EXPAND LIFE PATHS OF YOUNG  
MEN OF COLOR

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**HOW THE JUVENILE JUSTICE SYSTEM REDUCES  
LIFE OPTIONS OF MINORITY YOUTH**

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HEALTH POLICY INSTITUTE**

**WASHINGTON, D.C.**

# **How the Juvenile Justice System Reduces Life Options of Minority Youth**

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## PREFACE

During the past twenty-five years, a series of public policies have had a negative impact upon young men from communities of color. These policies, which have been enacted and often amended incrementally, are numerous. They include the abandonment of rehabilitation and treatment for drug users in favor of interdiction and criminal sanctions in the 1980s, state policies to divert youthful offenders to adult criminal systems, and the imposition of zero-tolerance policies to exclude youth with problems from public schools in the 1990s. These policies have had a cumulative and hardening effect of limiting life options for young men of color. High school dropout rates and declining enrollment in postsecondary education, at the same time that rates of incarceration increase, are explained, to a significant degree, by these policies.

The Dellums Commission, chaired by former Congressman and Mayor-elect Ron Dellums, was formed by the Health Policy Institute of the Joint Center for Political and Economic Studies to analyze policies that affect the physical, emotional, and social health of young men of color and their communities and to develop an action plan to alter those public policies that limit life paths for young men of color. To understand the issues more fully and to inform its deliberations in formulating an ambitious but realistic action plan, the Dellums Commission asked experts in various fields to prepare background papers on specific issues. These background papers serve to inform the Dellums Commission's recommendations.

This background paper focuses on racial disparities in the juvenile justice system. It provides an analysis of reasons that minority youth are overrepresented in the juvenile justice system and ways in which the system negatively affects the life options of these youth, including a state-by-state review of access to counsel and practices that contribute to these disparities. In addition to recommendations for reducing disparities, this paper provides a framework for developing a system that expands the life options of minority youth. This paper complements and reinforces the conclusions of other Dellums Commission background papers on education, health, criminal and juvenile justice, recidivism, the child welfare system, the media, and community well-being.

The work of the Dellums Commission is part of a larger effort by the Joint Center Health Policy Institute (HPI) to ignite a “Fair Health” movement that gives people of color the inalienable right to equal opportunity for healthy lives. In igniting such a movement, HPI seeks to help communities of color identify short- and long-term policy objectives and related activities that:

- Address the economic, social, environmental, and behavioral determinants of health;
- Allocate resources for the prevention and effective treatment of chronic illness;
- Reduce infant mortality and improve child and maternal health;
- Reduce risk factors and support healthy behaviors among children and youth;
- Improve mental health and reduce factors that promote violence;
- Optimize access to quality health care; and
- Create conditions for healthy aging and the improvement of the quality of life for seniors.

We are grateful to Edgar S. Cahn for preparing this paper and to those Joint Center staff members who have contributed to the work of the Health Policy Institute and to the preparation, editing, design, and publication of this paper and the other background papers. Most of all, we are grateful to Mayor-elect Dellums, the members of the Commission, and Dr. Gail Christopher, Joint Center vice president for health, women and families, for their dedication and commitment to improving life options for young men of color across the United States.

*Margaret C. Simms  
Interim President and CEO  
Joint Center for Political and Economic Studies*



## EXECUTIVE SUMMARY

### FINDINGS

When it comes to minority youth, the juvenile justice system fails in two ways. It fails to deliver equal justice by protecting the presumption of innocence upon which our legal system is built. And it fails to protect the more fundamental presumption that youth are youth and that growing up involves learning by trial and error. Most youth, at some point, do something prohibited by law. But for minority youth, that first mistake triggers a narrowing of life options reflected in disproportionate contact with the system, disproportionate confinement by the system, and a spiraling descent, first into custodial confinement in institutions for juveniles and then, following a higher and higher probability, into prison when, or even before, they reach adulthood.

Minority youth grow up in a minefield of trip wires labeled “zero tolerance,” “the war on drugs,” truancy, mental health problems, lack of parental support, learning disability, and enforced custodial care stemming from abuse and neglect. Institutionalization through the juvenile justice system supplies an all-purpose dumping ground for youth of color—even though more effective, humane, and economical alternatives are available.

The legal system holds out a framework designed to ensure that juveniles enjoy a protected developmental status. That protection is enshrined in the Constitution, the Juvenile Justice and Delinquency Prevention Act (JJDPA), and the American Bar Association Juvenile Justice Standards. The research examined in preparing this report includes a wide-ranging set of rigorous empirical studies. In the course of this research, we have yet to identify a single jurisdiction in compliance with the law, delivering what the law guarantees, for youth of color.

Juveniles of color pay the price. They waive their right to counsel without knowing what that means. Their competence or lack of competence to stand trial is ignored. Youth of color are disproportionately detained rather than sent home. They are denied the option to post bail.

And as for the public defense counsel—they live with caseloads that make effective representation impossible; they often do not get to see their young clients until just before it is time to enter a plea; and they lack investigative and support staff, adequate training, and adequate pay. They pressure juveniles to accept a plea bargain regardless of innocence or mitigating circumstances. There is an over-reliance on probation officers who make recommendations and function de facto as judge, prosecutor, and defense counsel combined. Minority youth are rarely adequately represented in the

critical process of fashioning a sentence. Once incarcerated, youth do not get the guaranteed education or therapeutic services required by law. And it gets no better following release.

As a result, up to 75 percent of a city’s young men of color come into contact with the police. By 2004, 60 percent of African American youth who had dropped out of school had spent time in prison. Black men make up more than half the population in prison, even though they only make up 12 percent of the total population. Life options close down early—and stay closed.

### RECOMMENDATIONS

The natural “juvenile justice system” that we most often count on in everyday life to respond to deviant juvenile behavior is not the formal legal system but the world of family, schools, peer groups, and community-based organizations. Real justice for juveniles will require a partnership between that world and the formal law enforcement system.

Juveniles make good and bad choices trying to figure out how to survive, how to gain respect, and how to realize dreams and hope for the future. The most effective “juvenile justice” initiatives are those that enlist the youth, their peers, their families, their neighbors, and neighborhood-based institutions as partners. Those initiatives provide an array of incentives and sanctions that signal what kinds of behavior will and will not enable youth to survive, to be valued, to develop, and to shape their future. This report contends that the best investment will be in those initiatives that involve youth in helping others, that enable them to define themselves as contributors, that foster a peer culture that rewards doing the right thing, that enlists the energy of youth in making a better world, and that mobilizes peer pressure to disapprove of and sanction behavior that endangers others, impairs healthy development, or interferes with the rights of others.

Reforming the current system requires a five-pronged set of initiatives:

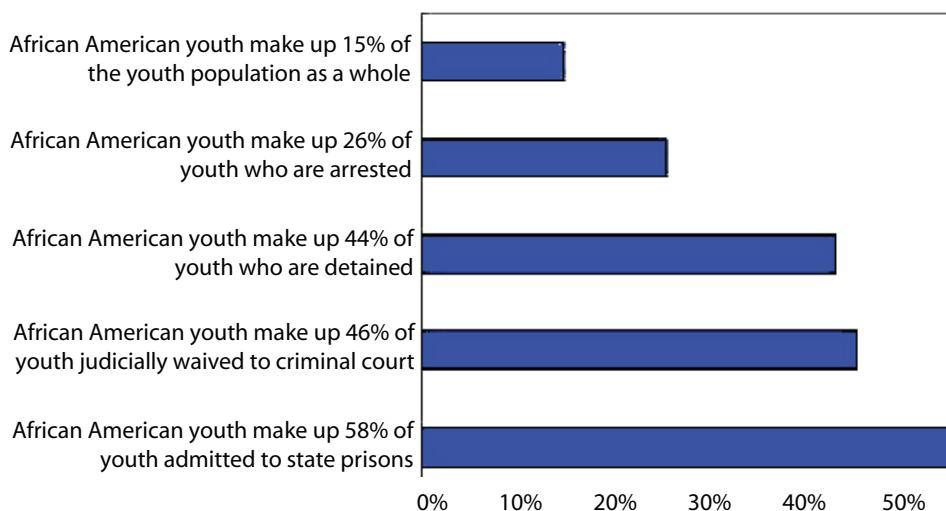
1. Divert most youth offenders from the system at the outset in ways that make the first contact with the law an intervention point that avoids stigmatization, provides needed assistance, advances youth development, and rewards pro-social use of each youth’s strengths;
2. Provide safe, effective, and economical alternatives to institutional placement, starting with wrap-around services but extending to opportunities for the youth and family to function as assets and contributors, and help them rebuild their communities;

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3. Honor the right to effective counsel for juveniles whose offenses require the system to consider the need for institutional placement in order to protect the community;
4. Provide the educational and rehabilitative services guaranteed by law to those juveniles who are institutionalized;
5. Halt the trend toward treating juvenile offenders as adult criminals and the trend toward building more and more prisons as a response to crimes committed by juveniles.

All of these initiatives have been undertaken in one place or another. The challenge is to set in motion a process that aligns the entire system of juvenile justice with what those initiatives have proven possible. The youth themselves are the single most underutilized resource in changing the system. The recommendations section at the end of this report describes specific exemplary programs that have demonstrated what can and should be done.

### The Proportion of African American Youth Increases at Every Stage of Involvement in the Justice System



Source: Eileen Poe-Yamagata and Michael A. Jones, *And Justice for Some: Differential Treatment of Minority Youth in the Justice System* (Washington, D.C.: Building Blocks for Youth, April 2000).

## I. INTRODUCTION

*"The right to counsel for juveniles was established in 1967 with the landmark case In re Gault. In Gault, Supreme Court Justice Abe Fortas wrote, 'under our Constitution the condition of being a boy does not justify a kangaroo court,' and the Court ruled against the argument that a probation officer or judge could adequately represent a minor, given the 'awesome prospect' of incarceration until the age of majority. The Supreme Court held in Gault that children have the right to remain silent and that no child can be convicted unless compelling evidence is presented in court, under the due process clause of the 14<sup>th</sup> amendment. Gault was a major change in juvenile law in that it upheld the constitutional rights of children. As Justice Fortas wrote: 'Neither the 14<sup>th</sup> amendment nor the Bill of Rights is for adults only.' The 6<sup>th</sup> amendment also protects children's rights to assistance of defense counsel and, moreover, to effective assistance of counsel."*<sup>1</sup>

In theory, the right to counsel ought to ensure that the life options enjoyed by juveniles of color are not reduced by the justice system. *Gault* sought to create a constitutionally mandated level playing field for juveniles in protecting the presumption of innocence and ensuring that they were not unduly subject to loss of liberty. Yet, statistics show that the legal requirements that *Gault* imposed are not being implemented, and an unsettling number of children are paying the price.

Minority youth, who make up 23 percent of the total population ages 10 to 17, constitute 52 percent of incarcerated youth.<sup>2</sup> The latest data provided by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) reveal that in 1997 there were 7,400 new admissions of juveniles to correctional facilities and three out of four of them were minority youth.<sup>3</sup> That overrepresentation is present at every stage in the juvenile justice process, and African American youth are the most overrepresented.<sup>4</sup> In six states and the District of Columbia, minority youth constitute more than 75 percent of juveniles in residential placement.<sup>5</sup> And that stark disparity does not disappear when they become adults. Minorities make up approximately 12 percent of the total population, but make up 63 percent of the incarcerated population.<sup>6</sup> "Black men are the only group to hold the distinction of having more of their number in prison than in college."<sup>7</sup>

This paper seeks to provide (1) an overview; (2) a synopsis of reviews made on a state-by-state basis of access to counsel and practices that produce these disparities; and (3) recommendations together with actual examples of ways to prevent the juvenile justice system from reducing the life options of minority youth.

In 1967, the socioeconomic Alfred Blumstein predicted that if then-current patterns continued, the chances of a city-living black male being arrested at some time in his life for a non-traffic offense was as high as 90 percent.<sup>8</sup> In 1990, the Washington, D.C.-based Sentencing Project revealed that on an average day in the United States, one in every four African American men ages 20-29 was either in prison or jail or on probation/parole.<sup>9</sup> In 1992, the National Center on Institutions and Alternatives estimated that approximately 75 percent of all the 18-year-old African American males in Washington, D.C. could look forward to being arrested and jailed at least once before reaching 35. In both D.C. and Baltimore, on an average day, over 50 percent of all young African American males were either in prison, in jail, on probation/parole, on bail, or being sought on arrest warrants.<sup>10</sup>

The disparity begins with arrests. A combination of policies and practices, which are detailed in this paper result in the statistical probability that, whether innocent or guilty of an offense, a majority of minority youth will have been arrested before reaching the age of 21. Following arrest, it is more likely that they will be detained rather than sent home. And once detained, it is far more likely that they will be incarcerated.

This state of affairs clearly violates national policy as set forth in the Juvenile Justice Delinquency Prevention Act (JJDPA). The Act was designed to "provide the necessary resources, leadership and coordination to develop and conduct effective programs to prevent delinquency, to divert juveniles from the traditional juvenile justice system and to provide critically needed alternatives to institutionalization ..."<sup>11</sup> In *Cruz v. Collazo*, the Supreme Court declared that the statute clearly evinced the intention to implement the least restrictive alternatives in providing the necessary resources to be provided for the states to develop programs to divert juveniles from the traditional juvenile justice system and to provide alternatives to institutionalization.<sup>12</sup> Unfortunately, the statute did not create a "private right of action" to enable youth to enforce that intent or hold states accountable in using those funds to realize that objective.

Even without a private cause of action, the right to counsel could have gone far in advancing that objective. Effective representation at the earliest stages can have important effects on the outcome of a case. An attorney who talks to a client immediately after arrest can:

- Learn about conversations that the youth may have had with police, intake workers, and family;
- Explain the process and ensure that the youth does not inappropriately waive the right to counsel, admit guilt, or make other detrimental statements or decisions;

- Quickly identify people who are in a position to speak well of the youth (e.g., teachers, ministers) and ask them to testify on the youth's behalf; and
- Provide the detention hearing judge with enough information (e.g., family strengths, possibility of placement with extended family, or other alternatives to detention) to warrant release rather than detention.

But no such benefit can arise if appointment of counsel comes too late or if the youth is not effectively represented. In some jurisdictions, appointment of counsel for arrested youth may not take place until the youth appears in court. And so far, there does not appear to be any state where juveniles are adequately represented. As we shall see, in most states juveniles waive their right to counsel without knowing the implications of that decision. Even where counsel is routinely appointed, they commonly enter a plea bargain of guilty without the opportunity and often without even trying to determine whether a valid defense is available.

It is not as much the criminality of the behavior that brings juveniles into the justice system, but the lack of viable alternatives and diversion programs for children with severe emotional and behavioral problems, children who have been expelled from school, and children whose families cannot provide adequate care. Incarceration of youth becomes the default response to any deviant behavior with which the justice system or other youth serving systems are unable to cope.

The evidence below, detailing an over-reliance on the traditional juvenile justice system, indicates a failure to adhere to the JJDPA's preference of diversion over incarceration.

## II. TRIPWIRES TO THE JUVENILE JUSTICE SYSTEM

*Zero tolerance, mental health problems, status offenses, and the war on drugs are tripwires that have greatly increased the odds that a young person of color will enter the juvenile justice system.*

### A. HOW SCHOOLS PUSH YOUTH INTO INCARCERATION

Today, with the implementation of “zero-tolerance” policies, youth face arrest and incarceration for a variety of misdemeanors that previously would never have warranted involvement with the juvenile justice system. Instead of sending youth who get in trouble at school to the principal’s office, youth are now often sent straight into the criminal justice system. These policies were implemented with the purpose of “getting tough” on crime and were a result of the 1980s drug policies. “With regard to school discipline (the policy) intends, through severe punishment of both serious and non-serious offenses, to ‘send a message’ to potentially

disruptive students. Like zero-tolerance drug policies, zero-tolerance discipline arises out of fear, and assumes that a ‘tough’ stance that reassures the community that schools are still in control will somehow solve the underlying problems. Available evidence contradicts that assumption, however. In the almost 15 years since the initial application of zero tolerance in school settings, and the 7 years since zero tolerance was made national policy for firearms in schools, there are no credible data that the policy contributes to improved student behavior or increased school safety.”<sup>13</sup>

Zero-tolerance policies do not take into account the realities of youth in the educational and criminal system, as well as adolescent development. For example, zero-tolerance policies in Maryland have resulted in the creation of School Resource Officers. These are law enforcement officials from the local police department or sheriff’s office who patrol school grounds and occasionally teach classes to students or staff on subjects concerning school safety. The primary mission of School Resource Officers is “to patrol, to investigate, to apprehend, and to process criminals.”<sup>14</sup> The Resource Officer may also be called upon to investigate criminal activities off campus that may involve students of the school. By mandating the use of police officers in our schools, youth are criminalized as soon as they enter the school’s hallways.

A zero-tolerance policy enables the school system to push kids out and into the juvenile justice system, particularly those children with special education needs. A Maryland juvenile court judge described what was happening to special education children: “Learning disabled kids are being dumped into the juvenile justice system because the Board of Education is not doing what they need to do. Children are not identified as Special Education, they do not receive the services they need, they cannot read and the schools just pass them along. As soon as they act out they are kicked out.”<sup>15</sup>

There is increasing evidence that zero-tolerance policies, while facially neutral, are having a disproportionate impact on students of color.<sup>16</sup> Black students, already suspended or expelled at higher rates than their peers, suffer the most under these zero-tolerance policies. Zero tolerance means that black students will be pushed out of schools and into detention cells faster.<sup>17</sup>

### B. THE CRIMINAL JUSTICE SYSTEM AS A DUMPING GROUND FOR YOUTH WITH SPECIAL EDUCATION NEEDS, SUBSTANCE ABUSE PROBLEMS, AND MENTAL HEALTH PROBLEMS

*There are way too many kids here who have no business being here but, nonetheless, end up pleading to some offense. Whose responsibility is it? It is a severe failing of the system.*  
— Washington State Detention Center Staff<sup>18</sup>

Children with mental health problems, learning disabilities, behavioral problems, and addiction issues are not getting what they need in the community, so they often end up in the juvenile court system. In particular, youth with mental health problems and substance abuse problems that manifest in anti-social behavior are facing, as one youth advocate termed it, “punishment in lieu of treatment.”<sup>19</sup> In 1994, a study by the Office of Juvenile Justice and Delinquency Prevention found that 73 percent of juveniles screened at admission to a juvenile correctional facility had mental health problems and 57 percent reported having prior mental health treatment or hospitalization.<sup>20</sup> The National Mental Health Alliance estimates one-quarter to one-third of youth have anxiety or mood disorders and approximately 19 percent of youth involved with the juvenile justice system are suicidal.<sup>21</sup>

It is clear that the lack of appropriate treatment in the community has led to the use of the juvenile justice system as a band-aid to provide treatment for children in need. In many states, inpatient services do not exist and often there are few effective outpatient services. Frequently, youth entering the juvenile justice system who are in obvious need of mental health services or substance abuse treatment will simply be incarcerated because there is no other place to put them.

### **C. THE INCREASING USE OF STATUS OFFENSES TO INCARCERATE YOUTH**

Status offenses are actions which would not lead to an arrest if committed by an adult. The most common status offenses are truancy, running away from home, incorrigibility (disobeying parents), curfew violations, and alcohol possession by minors.

The Juvenile Justice Delinquency Prevention Act requires states to “provide within three years … that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult (i.e., status offenders), shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities.”<sup>22</sup> Congress specified that status offenders and non-offenders must be removed from “secure” juvenile detention and correctional facilities and prohibited juveniles—including accused and adjudicated delinquents, status offenders, and non-offenders—from being detained in adult jails and lockups. Excluded from this requirement are juveniles who have committed violations of the Youth Handgun Act and juveniles who are charged with or who have committed a violation of a valid court order. The JJDPA further mandates state policies to require individuals who work with both such juveniles and adult inmates to be trained and certified to work with juveniles.<sup>23</sup>

There is no comprehensive oversight to monitor compliance with the JJDPA; thus, it is difficult to evaluate whether it is being effectively implemented. Status offenders constitute a large percentage of youth offenders and overcrowded youth shelters still force many jurisdictions to place status offenders in juvenile correction facilities.<sup>24</sup> In many rural areas, juvenile correctional facilities are the only option aside from adult correctional facilities for status offenders, even when it is clear other services would be appropriate.<sup>25</sup>

“According to the National Center for Juvenile Justice (NCJJ), approximately 80 percent of status offenders are diverted from formal prosecution without the filing of a court petition; thus, the NCJJ statistics on petitioned cases provide only a partial view of the total national status offender picture.”<sup>26</sup> Black youths are more likely to be petitioned to court for a status offense than whites or other youths (5.5 per 1,000 for blacks versus 3.8 per 1,000 for whites or others).<sup>27</sup> Black status offenders are also more likely than whites to be sent to an out-of-home placement.<sup>28</sup>

### **D. THE WAR ON DRUGS**

The so-called “war on drugs” has had a devastating effect on minorities and particularly minority youth. Although white youth sell and use drugs at the same or higher rates as youth of color,<sup>29</sup> black and Latino youth are arrested, prosecuted, and imprisoned at dramatically higher rates for drug-related offenses.

- In 1980, 14.5 percent of all juvenile drug arrests were black youth; by 1990, black youth constituted 48.8 percent of juvenile drug arrests.<sup>30</sup>
- A black youth with a drug case is more than twice as likely to be held in police custody for a drug offense as a white youth.<sup>31</sup> While half of all drug arrests involving white youth result in formal processing, 75 percent of drug arrests involving black youth are prosecuted.<sup>32</sup>
- Among young people incarcerated in juvenile facilities for the first time on a drug charge, the rate of commitment among black youth is 48 times that of whites, while the rate for Latino youth is 13 times that of whites.
- Black youth are three times more likely than white youth to be admitted to an adult prison for a drug conviction.<sup>34</sup> While the rate of young whites being sent to prison for drug offenses from 1986-1996 doubled, the comparable black rate increased six-fold.<sup>35</sup>

These statistics are astounding. The nation’s war on drugs not only incarcerates minority youth at a higher rate than white youth, but continues to punish them and limit their life options well after they have served their time.

## E. THE “INVISIBLE PUNISHMENT” OF MINORITY YOUTH

Because of the complex interaction of socioeconomic disadvantage, institutional racism, and discriminatory sentencing policies, minority youth are more likely to be incarcerated than white youth. The collateral consequences—termed “invisible punishment” by Jeremy Travis, former director of the National Institute of Justice—are legal barriers, which are increasingly and disproportionately harming the life options of young African Americans—in particular, their economic, political, and social well-being.<sup>36</sup> For anyone convicted of a felony drug offense, the collateral consequences include lifetime bans on the receipt of welfare and food stamp benefits.<sup>37</sup> For anyone convicted of any drug-related activity, the collateral consequences include the denial of public housing benefits and the denial of student loans.<sup>38</sup> As minority youth are disproportionately convicted and incarcerated for drug-related offenses, their ability to participate in their communities when they are released from incarceration is drastically affected. Also, laws that disenfranchise felons in general have the same disproportionate effect on African Americans as the restrictions on drug offenders.<sup>39</sup>

The above tripwires for minority youth entering the criminal justice system and the continuing “invisible punishment” once they are released play a major role in limiting their life options. A key component in all of this is exactly how the criminal justice system interacts with minority youth when they enter the criminal justice system. Do the inequalities of the juvenile justice system extend to access to counsel and quality representation? Clearly, they do. From the beginning, during appointment of counsel to incarceration and through the appeal process, minority youth are continually at a significant disadvantage in the criminal justice system.

## III. RIGHT TO COUNSEL AND DUE PROCESS

Over the past seven years, the American Bar Association Juvenile Justice Center has been assessing the status of this nation’s juvenile justice system. Its reports reveal a system that is not providing equal access to counsel. This failure contributes directly to the disproportionate incarceration of minorities, the use of jails as a dumping ground for children with mental health and drug abuse problems, and conversion of the juvenile justice system into a vehicle for entry into the adult criminal justice system. The overwhelming majority of individuals working in the juvenile justice system are trying their best to positively affect the lives of children. However, the limited resources they have been provided with and the flawed framework of the system have created a war that cannot be won.

## A. ELIGIBILITY AND APPOINTMENT OF COUNSEL

In some states, access to counsel is blocked by complicated processes and burdensome fees and eligibility requirements. Many states have no uniform system for assigning counsel to accused youth, leaving it up to each respective county to make the determination. In Maryland, local public defender offices are responsible for assigning counsel, resulting in unequal access across the state. The Public Defenders offices impose various fees on youth and parents, often without assessing their income levels.<sup>40</sup> Frequently, states require the youth or the parents to fill out overly burdensome forms to be eligible for counsel. In Pennsylvania and Ohio, there are many problems with the screening process used to determine indigence. The typical screening form is designed for adult indigence determinations and is rarely adapted for juveniles. It asks the youth for personal information, usually only known by their parents, such as monthly income and employment information, asset information, allowable monthly expenses such as child support, child care, medical and dental expenses, transportation costs, and monthly costs, such as rent, food, and credit cards.<sup>41</sup> The parent often must apply in person within a short window of time to secure representation. In Maryland, parents have ten days after arraignment and prior to adjudication to gather the necessary paperwork and get to the public defender’s office.<sup>42</sup> This can present a challenge for parents who are working full time or are otherwise unavailable.

## B. WAIVER OF COUNSEL

The Institute of Judicial Administration/American Bar Association (IJA/ABA) Juvenile Justice Standards provide that juveniles “should not be permitted to waive constitutional rights on their own” during custodial interrogation.<sup>43</sup> Despite these standards, across all states, waiver of counsel is a common and pervasive occurrence. Most children are not aware of their right to or the benefits of counsel. Sometimes, youth are told by a probation officer or even a district attorney that they do not really need an attorney. Other times, the youth might be too afraid to speak up or totally unable to understand the consequences of their waiver.<sup>44</sup> When juveniles do waive counsel, it is up to the judge to ensure that they understand the consequences of that decision. However, according to a Washington Juvenile Justice Assessment Project survey, judges fail to discuss the voluntary nature of such waiver 69 percent of the time.<sup>45</sup> “At times, children proceed without counsel even though they have not waived the right to an attorney. Hearings may proceed for reasons of expediency, and no formal waiver is even attempted.”<sup>46</sup> These are unacceptable reasons for denying juveniles their right to counsel and increase the likelihood that they will fall deeper into the justice system.

In some states, it was reported that youth waived their right to counsel 40 to 50 percent of the time.<sup>47</sup> In one Louisiana parish, it was estimated to be 90 percent of the time.<sup>48</sup> “In the absence of effective counsel … juveniles may be unable to make an informed choice and may enter into a plea bargain because they do not fully understand the implications.”<sup>49</sup>

“Plea bargains are not inherently bad or even detrimental to the youth as long as they are not made for expediency’s sake and the youth clearly is guilty. *Juvenile Justice Standards* (IJA-ABA, 1980) provides that a juvenile should not accept a plea bargain unless it is clear that the juvenile fully understands the alternative choices and the implications of a plea bargain in the event of rearrest or failure to adhere to sentencing and probation provisions.”<sup>50</sup>

Although children are usually advised of their right to counsel during arraignment, waiver is often obtained even before the youth has spoken with an attorney. In some jurisdictions, it has been reported that probation officers obtained and even encouraged the waiver of counsel.

Certain states have restrictions in place that prevent youth from waiving their right to counsel. For example, Montana prevents a youth or parents from waiving counsel if adjudication could result in a sentence for a period of more than six months.<sup>51</sup> Maine was one of the only states in which judges took an active role in stemming this problem by regularly refusing to accept waivers of counsel and pleas before a juvenile has been given the opportunity to speak with counsel.<sup>52</sup>

The OJJDP’s 2004 report on access to counsel discusses concerns about juveniles waiving their right to detention hearings.

In the ABA Juvenile Justice Center’s 1995 national study, 34 percent of public defenders’ offices and a similar proportion of court-appointed counselors reported that some juveniles waive their rights at the detention hearing. Forty-six percent said that only “sometimes” or “rarely” is there an advisory colloquy with the judge before the youth waives this right. More recent interviews with state attorneys and court officers found that both the time the judges allot for colloquies and the quality of colloquies varied considerably. Reasons cited for waiver were that juveniles think their case is not very serious and parents fear the cost of engaging an attorney (perhaps unaware that one could be appointed free of charge or unable to navigate the eligibility procedures). In states with high waiver rates, researchers found that many juveniles

waive counsel without ever talking to an attorney and do not understand what waiver means, and yet their competency to waive counsel is not challenged.<sup>53</sup>

## **C. BAIL AND ITS EFFECT ON THE INDIGENT**

The IJA/ABA’s *Juvenile Justice Standards* strongly discourages money bail for juveniles, stating, “The use of bail bonds in any form as an alternative interim status should be prohibited.”<sup>54</sup> The JJDPA suggests that existing alternatives to secure detention, such as conditional release, electronic monitoring, shelter care, contract homes, or house arrest should be explored and proffered to the court as alternative means of guaranteeing the appearance of a child in court.<sup>55</sup> While most states’ laws expressly “equate a juvenile’s right to bail with the right possessed by an adult, the use of money bail in the juvenile system has been criticized particularly because it disadvantages indigent defendants, especially children, who are not usually financially independent.”<sup>56</sup> The use of bail in the juvenile courts should not become a substitute for other, more appropriate forms of release. The IJA/ABA’s *Juvenile Justice Standards* states a strong presumption for incarceration release and consider the following as the only permissible factors for pretrial detention:

- Protecting the jurisdiction and processes of the court [to ensure appearance of a child in court];
- Reducing the likelihood that the juvenile may inflict serious bodily harm on others during the interim period; or
- Protecting the accused juvenile from imminent bodily harm upon his or her request.<sup>57</sup>

“Georgia is a prime example of how this use of bail affects juveniles from poorer backgrounds. Children in the delinquency system have a right to bail in Georgia, although that right can only be invoked by the parent or guardian. Under Georgia law, a juvenile himself cannot request that bail be set, even though the right as a constitutional matter belongs to the youth and it is his liberty, not that of his family member, at stake. Most courts do not inform children and their parents of the right to bail, and the few jurisdictions that utilize a bail system do not follow any discernible guidelines about the appropriate level of bail or form of security to set for juveniles.”<sup>58</sup> In one jurisdiction, the court routinely set bail amounts upwards of \$2,500 for nonviolent charges without conducting an inquiry into the family’s ability to post bond, the potential harm in releasing the child, or the likelihood that the child will not appear for the next court hearing.<sup>59</sup> As one appointed counsel observed about this process, “bail is used as a means to continue custody when no legal grounds exist.”<sup>60</sup>

## D. THE ROLE OF PROBATION OFFICERS

Probation officers play too large a role in the adjudication process, often filling the roles of counsel and judge. As employees of the court, they are increasingly relied upon to make recommendations about probation and detention, negotiate binding consent agreements, and serve as key witnesses in disposition hearings.

One probation officer shared, “I tell the kids to waive counsel. What’s the point? Look who’s representing them [referring to the public defenders]?”<sup>61</sup>

Many juvenile defense attorneys expressed concern about the judges’ total reliance on the court service unit to make recommendations and their almost absolute deference to those recommendations. Youth interviewed in detention expressed confusion between the role of their lawyers and probation officers who often took on the responsibility of counseling youth about their legal rights and options.<sup>62</sup>

In Georgia, it was reported that judges adopt recommendations from the probation officer on detention and disposition an average of 95 percent of the time, and for sentencing, defer to their assessment of a child’s character and demeanor.<sup>63</sup> Defense attorneys rarely object. In one Montana county courtroom, counsel agreed with probation officers on disposition almost 90 percent of the time.<sup>64</sup>

The role of a probation officer is often unclear in the juvenile defense system. As juvenile defense attorneys have limited resources at their disposal, they often rely on probation officers for essential background knowledge on the case. Specifically, in Pennsylvania, probation officers are usually relied upon quite heavily in the disposition phase of a case. Prosecutors and judges also rely heavily on probation officers “for conducting a predisposition investigation and making sentencing recommendations. In this capacity, the probation officer serves as the key witness, and his or her predisposition report is the central, if not the only, piece of evidence the court considers in sentencing a child.”<sup>65</sup>

In many cases, probation officers have elicited incriminating statements from juveniles, in the absence of counsel, which were later used against the youths at trial. In Louisiana, it is common for probation officers to carry guns, as firearm training incurs a significant salary boost.<sup>66</sup>

## E. THE IMPACT OF HIGH CASELOADS

Public defenders are overloaded with cases and, as a direct result, the quality of their representation suffers. In its

national survey, the ABA found that excessive caseloads were “the single most important barrier to effective representation” and led to burnout and job dissatisfaction. Although the U.S. Bureau of Justice Assistance recommends an annual caseload no greater than 200 to 250 for public defenders handling juvenile cases on a full-time basis, national and state studies indicate that caseloads are much larger. The average juvenile caseload in the ABA’s national survey was 300 (of a total caseload exceeding 500).<sup>67</sup> Although some states have minimum practice standards to limit the maximum number of cases that should be undertaken, they are rarely followed or enforced.

*I had 30 arraignments a week ... [I would get the cases and have no time to prepare.] The only way to do it is to create an assembly line. I can only survive if I plead out half of my cases at arraignment. A ‘good’ attorney can’t survive. My caseload was way too high to be able to do a decent job. I would have my secretary fill out a [guilty] plea form on every case right when we got the case. Then I’d have it ready for arraignment, a completed [guilty] plea form in every file.*

— Former Washington State Public Defender<sup>68</sup>

In some jurisdictions, juvenile caseloads do not necessarily exceed 200 in a year, but attorneys often must handle cases in district court and circuit court, as well as their juvenile cases, pushing their caseloads well above standards.

In some instances, it was reported that lawyers may have 15 cases set for trial on one day, or 40 to 50 cases on calendar for a day.<sup>69</sup> One public defender described the caseload as “mind-numbing.” Thus, in most jurisdictions the problem of excessive caseloads is present despite the apparently low numbers of juvenile cases. It was reported in Maryland that caseloads can be well over 360 cases.<sup>70</sup> In Washington, public defenders averaged about 400 cases annually, with some carrying as many as 700 cases.<sup>71</sup> In Georgia, average caseloads for juvenile defense attorneys were estimated to be over 900 cases per year.<sup>72</sup> There is no doubt that heavy caseloads inevitably prevent lawyers from establishing meaningful client contact and providing effective representation.

“In many states surveyed, large caseloads result in an over-dependence on probation officers, who often have more contact with youth—either in detention facilities or other placements—than do attorneys. Juveniles may not understand that the probation officer has no duty of confidentiality to them and that what they say to the officer can be used against them in court. When overburdened defense counsel rely on information from probation officers, the attorney’s role as an advocate may be diluted.”<sup>73</sup>

## F. TRAINING, PAY, AND SUPPORT SERVICES

Lack of training, inadequate pay, and substandard support services all contribute to the relatively poor level of representation for youth. Most states have no minimum practice standards, and attorneys fresh out of law school undertake juvenile defense without an understanding of the complex issues involved in the cases. Low salary caps force attorneys to take more cases than they can handle. Public defenders have severely limited resources at their disposal.

The lack of training programs or classes for juvenile defense varies from state to state. There is a general misconception that juvenile law is easy and is the place where new attorneys can gain experience before moving on to the adult criminal system. States such as Texas, Montana, and Maine have little or no judicial requirements for training prior to representing juveniles and have no resources available to gain such training. On the other hand, Maryland's Office of the Public Defender offers a program entitled Juvenile Court Attorney Training, a one-week program dealing primarily with the particular challenges and skills necessary to providing an effective defense for juveniles. Social workers and attorneys are used as instructors in the Maryland training program. There are also follow-up classes available.<sup>74</sup> Further, the lack of knowledge surrounding regulations pertaining to children in need of special education, such as the Individuals with Disabilities Education Act (IDEA), means that attorneys cannot provide the best representation possible.

Across the states, it was reported that inadequate pay was a major problem in juvenile defense. Generally, pay varied from county to county within the same state. Texas employs a flat-fee pay system, creating a disincentive to perform more than the minimal amount of work required.<sup>75</sup> Other states employ low salary caps; these are particularly problematic. Low salary caps force attorneys to take on more cases to make up the difference. In Virginia, the salary cap of \$120 per case is so low that many attorneys refuse to take juvenile delinquency cases.<sup>76</sup> Payment of hourly rates can be arbitrary, which complicates the process even further. For example, it was reported in Texas that judges routinely pay attorneys a certain amount for the first court appearance and then significantly reduce the amount for each subsequent appearance if the case is not concluded that day. Another contributor to poor representation is the significant gap in pay between public defenders and prosecutors.<sup>77</sup> In Louisiana, public defenders are paid between \$20,000 and \$30,000 a year with no benefits, while prosecutors are paid almost 50 percent more with benefits.<sup>78</sup>

## G. PRE-TRIAL PREPARATION AND TRIAL PERFORMANCE

It is no surprise that overloaded, underpaid, and inexperienced attorneys with limited resources at their disposal are not able to provide quality representation. Counsel often arrive at the courtroom with little or no information about the case and having barely met with their client only minutes prior to adjudication.

It was reported in Maryland that 90 percent of detained youth did not even know their public defender's name.<sup>79</sup> In Louisiana, out of more than 100 youth interviewed, 40 percent never met with their attorney prior to adjudication, and another 29 percent met with their attorney for only a few minutes prior to adjudication.<sup>80</sup> The majority of public defenders do not investigate the underlying facts of cases or the educational, mental health, or other social history required to represent young clients. Most of the defenders do not have access to a trained and experienced investigator for one reason or another, nor do they have readily available social worker staff to collect social history information. In Ohio, it was reported that only 55 percent of attorneys bothered to ask their client about the circumstances surrounding their arrest.<sup>81</sup>

When cases do go to trial, the level of advocacy is sub par. In a majority of jurisdictions, the dispositional hearing is held on the same day as the acceptance of the plea. Very few attorneys present additional evidence at this hearing, but instead, the majority report that they rely on the recommendations of the probation officer. The reasons cited for this reliance include the following:

- Attorneys are not usually paid for work on dispositional issues;
- Attorneys believe that the probation officers know better than they do what is appropriate for the child; and
- Attorneys complain that there are not enough dispositional alternatives available.<sup>82</sup>

Across all states, substandard representation is largely attributable to the poor quality of advocacy and lack of preparation by public defense attorneys. During adjudication, these attorneys have trouble remembering clients' and witnesses' names, are unfamiliar with the facts and circumstances of the cases, and elicit damaging testimony from their own clients on the witness stand.<sup>83</sup> In Georgia, a judge stated that in about 12 percent of the juvenile cases that come before him, "defendants take the stand and wind up admitting what they are charged with."<sup>84</sup> The lack of advocacy also extends to the filing of pre-trial motions. In

Pennsylvania, for example, only 1 percent of appointed counsel reported regularly filing pre-trial motions (e.g., suppression of evidence or violation of Miranda rights).<sup>85</sup>

## H. POST-DISPOSITIONAL REPRESENTATION

A lack of post-dispositional representation was cited as a major problem in all states. Most public defenders rarely file an appeal or have any contact with their client post-disposition. Even if an appeal is filed it is common for the process to take up to a year, leaving the child in limbo.<sup>86</sup> Further complicating the process, courts often deny funding for post-disposition advocacy.<sup>87</sup>

The statistics speak for themselves. In Louisiana, more than 90 percent of the youth surveyed had not had any contact with their lawyer since being incarcerated.<sup>88</sup> In Maryland, between 1996 and 2002, just 32 juvenile appeals were pending in the court of appeals. In some states, attorneys were hard pressed to remember ever filing an appeal.<sup>89</sup>

Throughout all the states, it was agreed that the costs associated with post-dispositional advocacy presented the biggest problem. In addition, it was unanimously agreed upon that there was a certain futility in filing appeals when the appeal process would take longer than the client's sentence and a stay of the sentence was not possible.

## IV. DISPROPORTIONATE MINORITY CONFINEMENT AND CONTACT

According to the Juvenile Justice Delinquency Prevention Act, disproportionate minority confinement occurs when the ratio of minorities in detention, correctional facilities, and jails exceeds the percentage of the minority population in the general population.<sup>90</sup> "A 1993 University of Washington study by Dr. George Bridges has shown that disproportionate numbers of racial and ethnic minorities are found at each stage of the process in the juvenile justice system—starting from police stops on the street all the way through to sentencing."<sup>91</sup>

The Juvenile Justice Delinquency Prevention Act of 2002 broadens the Disproportionate Minority Confinement initiative to encompass disproportionate minority contact at all decision points in the juvenile justice system.<sup>92</sup> The 2002 Act also requires intervention strategies that include delinquency prevention and systems improvement components. Yet, in 2003, a study initiated by the Building Blocks Initiative in King County and conducted by Christopher Murray & Associates concluded that "racial disproportionality starts with the telephone to the detention screeners."<sup>93</sup> As the youth are processed through the justice

system, their racial/ethnic differences tend to aggregate and the minority youth suffer an enormous "cumulative disadvantage."<sup>94</sup>

"In 1997, in 30 out of 50 states (which contain 83 percent of the U.S. population) youth of color represented the majority of youth in detention. Even in states with tiny ethnic and racial minority populations (like Minnesota, where the general population is 90 percent white, and Pennsylvania, where the general population is 85 percent white), more than half of the detention population are youth of color. In 1997, OJJDP found that in every state in the country (with the exception of Vermont), the minority population of detained youth exceeded their proportion in the general population."<sup>95</sup> While African American youth currently represent 15 percent of the nation's overall youth population, they represent 26 percent of youth arrested, 31 percent of youth referred to juvenile court, and 44 percent of detained youth.<sup>96</sup> The following statistics provide only a small sample of the underlying problem.

### Georgia

- In one county, an estimated 95 percent of the delinquency cases are African American, yet they only comprise 40 percent of the county's general population. In a large urban county with a 45 percent African American general population, 86 percent of the delinquency cases involved African American youth. The disproportionate number of detained African American youth is particularly revealing.<sup>97</sup>
- In 2000, African American children made up 62 percent of the state's overall detention population, while only 29 percent of the general population was African American. The figures are even starker for long-term incarceration: 72 percent of children held in secure correctional facilities in 1999 were African American.<sup>98</sup>
- According to studies by the Department of Juvenile Justice (DJJ), in 2001, Hispanic and African American male detention populations between the ages of 13 and 17 were projected to increase 31 percent and 24 percent, respectively, by 2006.<sup>99</sup>

### Kentucky

- "Minority youth are typically overrepresented at every stage in the juvenile justice process. In 1999, minorities made up approximately 37 percent of the juvenile population in the United States, yet 63 percent were held in juvenile detention facilities before their adjudication or were committed to state juvenile correctional facilities ... Kentucky's minority population in 1999 totaled roughly 10 percent of the total juvenile population in the state."<sup>100</sup>

- “In Kentucky, more than 7,300 juveniles were admitted to detention in 1999. Of those, minority youth made up 41 percent of the detention population. This rate is four times greater than their proportion of the general Kentucky juvenile population. Of the juveniles committed to the custody of the Department of Juvenile Justice for supervision and treatment, either in the community or in a secure corrections program, approximately 25 percent were minorities. Additionally, between 1997 and 2000, African American youth made up more than half of the youths transferred to adult court. The proportion of black females in commitment was more representative of the general population of black female juveniles in the state. While these numbers do not consider such factors as the offense committed or number of prior referrals, they do provide evidence of disproportionate minority confinement.”<sup>101</sup>
- “About 15 percent of the youth interviewed in facilities expressed concern that the system showed evidence of minority youth being treated differently than their white counterparts, while only a handful of youth noted differences based on gender and/or handicapping conditions. While limited information was obtained regarding the specifics of these allegations, it is clear that the perception of some youth in the system regarding disparate treatment is present.”<sup>102</sup>

#### **Louisiana**

- Among drug offenses, 78 percent of those involving African American youth are brought to trial, compared to 56 percent of those involving white youth.<sup>103</sup>

#### **Maryland**

- In 14 of the 15 jurisdictions surveyed, alcohol violations, simple assault, and theft/shoplifting accounted for the most commonly committed offenses by both white and African American youth. The data demonstrate that although youth of all races are committing similar types of offenses, minority youth—particularly African American youth—are being carried further along in the system than their white counterparts.<sup>104</sup>
- According to interviews with youth at several facilities around the state, almost 50 percent of the youth had been detained for probation violations, violating electronic monitoring, or for outstanding warrants.<sup>105</sup>
- “A study conducted by the National Center on Institutions and Alternatives shows the devastating effects of the drug war in Baltimore, Maryland. A

total of 18 white juveniles were arrested in the city of Baltimore in 1980 and charged with drug sales; by 1990, that number had actually dropped to 13 such arrests. In stark contrast, 86 black juveniles were arrested in Baltimore in 1980 for drug sales; by 1990, with the drug war in full swing, that number burgeoned to 1,304 black juveniles. Black juveniles in Baltimore were being arrested for drugs at roughly 100 times the arrest rate than whites of the same age.”<sup>106</sup>

#### **Ohio**

- In 1997, while white youth constituted 66 percent of the juvenile court referral population, they made up 53 percent of the detained population. By contrast, African American youth made up 14.3 percent of the state population and 44 percent of the detained population. In every offense category (person, property, drug, public order), a substantially greater percentage of African American youth were detained than white youth.<sup>107</sup>
- In 1997, 7,400 new admissions to adult prisons were youth under the age of 18. Three out of four of these youths were minorities.<sup>108</sup>

#### **Texas**

- “Over 75 percent of the children incarcerated in Texas in 1997 were children of color.<sup>109</sup> In 1999, the number of Texas juveniles in Texas Youth Correction (TYC) facilities exceeded the adult prison populations of over a dozen states. Most of the incarcerated youth in Texas are serving sentences for nonviolent offenses.”<sup>110</sup>
- “Minorities comprised 50 percent of the youth population statewide, but they accounted for 65 percent of the juveniles held in secure detention, 80 percent of the juveniles placed in secure corrections, and 100 percent of the juveniles held in adult jails.”<sup>111</sup>

#### **Virginia**

- Despite demographic differences, there was agreement in every jurisdiction that children and youth of color are overrepresented in Virginia’s juvenile justice system. Studies by national advocacy groups and the Virginia Department of Criminal Justice Services show that minorities are overrepresented at every stage of the process.<sup>112</sup>
- Even though many detention centers are regional, housing youth from several different counties with varying demographics, staff reported predominantly African American detention populations. In one jurisdiction, a detention administrator received a call

from a judge who requested the release of a group of white youth from detention despite the intake officer's assessment that the youth presented a risk to public safety. In a recent detention report, the Virginia Department of Juvenile Justice projected that the number of African American youth at risk for being detained will increase by 11 percent between 2000 and 2010.<sup>113</sup>

### Washington State

- "In 1998, Dr. Bridges released a study on probation officers' attitudes toward different racial groups. He found that, holding all other factors constant, probation pre-sentencing reports consistently portrayed African American and white youth differently, resulting in harsher sentences for the African American children. 'What struck me was the profoundly different ways the reports described children who are seemingly different only by their race,' said Dr. Bridges in an interview. 'The children would be charged with the same crime, be the same age and have the same criminal history, but the different ways [the children] were described was just shocking.'"<sup>114</sup>
- "A social worker interviewed described a review of her caseload and realized that it was disproportionately white, meaning that she was receiving a disproportionate number of referrals by defense attorneys for white youth. If a defender doesn't refer a case for help from a social worker, it is less likely that case will have sentencing alternatives developed. These types of devastating consequences reinforce the need for defenders to receive training as to how to address their own and systemic biases in the justice system."<sup>115</sup>

While a significant amount of data has been collected on the disproportionate number of African Americans in the juvenile justice system, the statistics also indicate a rising number of Native Americans and Hispanics. Because many Native Americans live on reservations, they are subject to federal law and make up the majority of the juveniles in the federal juvenile detention system. In the past, statistics were not adequately tracking the number of Hispanics entering into the system. Better tracking methods are now being implemented to rectify this oversight. Many courts and detention centers are lacking in translators, which has caused significant problems in understanding court proceedings and has prevented equal access to counsel.

Montana is one of the very few states where we have statistics that might offer insight into the broader problem. Hispanics in Montana comprise 2 percent of youth, 1 percent of youth in adult jails, 5 percent of youth in secure

detention facilities, and 8 percent of youth incarcerated in secure juvenile correctional facilities.<sup>116</sup> Concerning Native Americans, Albin et al. report that, although they "constitute 10 percent of Montana's youth and 10 percent of juvenile arrests, they comprised 14 percent of youth incarcerated in secure juvenile correctional facilities, 15 percent of youth in secure detention facilities and 19 percent of youth in adult prisons ... Native American youth suffer unique problems in the state. Each Indian reservation in Montana has a different collection of resources available to its youth. Most have few resources internally and have further complications because of multiple levels of jurisdiction for different youth."<sup>117</sup>

## V. THE DUMPING GROUNDS

It has been stated in numerous articles, journals, assessments, and books that the juvenile detention system has turned into a dumping ground for community, school, and health programs that are being under-funded and as the first, instead of the last, resort for children with behavioral problems. There arises an opportunity to help children greatly in need, every time one enters the juvenile justice system. Too often children end up in detention with the difficulties in their life compounded.

### A. MENTAL HEALTH

#### Georgia

- One juvenile court judge estimates that more than 60 percent of the children in his court need mental health services. "Half of my kids are on psychotropic meds," said one probation officer in a large urban county. A DOJJ official estimated that "90 percent of the girls in long-term secure facilities are on some form of medication to address mental health illnesses ... The Commissioner of the DOJJ stated that 32 percent of the children in the Department's custody have been institutionalized for mental health problems and 80 percent of these children are on some form of psychotropic medication."<sup>118</sup>

#### Kentucky

- "Youth with learning disabilities and/or an emotional disability are arrested at higher rates than their non-disabled peers."<sup>119</sup>
- "It is estimated that 18 percent of mentally retarded, 31 percent of learning disabled, and 57 percent of emotionally disturbed youth will be arrested within five years of leaving high school."<sup>120</sup>

#### Maine

- "According to one Department of Human Services (DHS) employee, 'hundreds of kids are being committed to the custody of DHS because the

Department of Corrections (DOC) doesn't have the dollars to pay for their care.' Under the use of 'C-5' hearings, a section of the juvenile code which were designed to address circumstances when it would be 'contrary to the welfare of the juvenile' to continue living with his parents, 'two hundred to three hundred of the 2,900 kids in DHS custody come from the juvenile justice system.' DHS reportedly fights these proceedings, claiming it is ill-equipped to handle teenagers and that it lacks the resources."<sup>121</sup>

**Maryland**

- "In a 2001 survey of families with children in the juvenile justice system, over half the families reported that their child had been hospitalized two or more times for psychiatric disorders and 10 percent had attempted suicide."<sup>122</sup>

**Montana**

- Seventy to ninety percent of the youth in the two most heavily utilized correctional facilities have severe emotional disabilities, although those facilities were not designed to handle such youth.<sup>123</sup> Eighty to ninety percent of youth probably have some sort of mental health or substance abuse problem, and many have both.<sup>124</sup> Programs providing services to youth with such dual diagnoses are rare.<sup>125</sup>

**North Carolina**

- "Overall, 57 percent of survey respondents reported that mental health issues related to the charges against juveniles 'very often' or 'often'; 42 percent indicated that defense attorneys' training in mental health issues was lacking, inadequate, or very inadequate. Fifty percent of responding attorneys themselves indicated they received inadequate, very inadequate, or no training in mental health issues."<sup>126</sup>
- "The North Carolina development centers estimate that as of December 2001, 17 percent of their juvenile population was taking psychotropic medication. 20 percent were behaviorally or emotionally disabled. This is inconsistent with a 1994 OJJDP study, which found that, nationally, 73 percent of juveniles screened at admission to a juvenile correctional facility had mental health problems and 57 percent reported having prior mental health treatment or hospitalization."<sup>127</sup>

**Ohio**

- It is estimated that 18 percent of mentally retarded, 31 percent of learning disabled, and 57 percent of emotionally disturbed youth will be arrested within five years of leaving high school.<sup>128</sup>

- Studies of incarcerated youth suggest that as many as 70 percent suffer from disabling conditions.<sup>129</sup>

**Texas**

- "Despite the fact that expert appointment is uncommon, many judges and attorneys acknowledge that children in delinquency court often have a host of developmental issues, mental health problems and special education needs. According to the *Austin American Statesman*, in 1999, 42 percent of all children incarcerated had mental health needs. Experts can be valuable at all stages of the proceedings. In addition to sorting out competency issues (the only purpose for which most Texas courts employ experts) experts can assist in determining whether a child had the mental ability to waive rights or understand his actions and in identifying whether a child has special needs or conditions that should be considered when making dispositional and placement decisions."<sup>130</sup>

**Virginia**

- "Children and youth with mental health needs are funneled into the justice system at alarming rates, with anywhere from 50 percent to 85 percent of youth in detention in need of medication."<sup>131</sup>

**Washington State**

- "In 2000, Washington's Juvenile Rehabilitation Administration found that 40 percent of kids incarcerated in its facilities met the criteria for 'serious mental health disorder.' Less than three years later, in February 2003, 58 percent of youth in residence met the same criteria."<sup>132</sup>
- "Defenders fail to adequately help their clients with mental health and other serious problems. Eighty-three percent of defenders surveyed reported only 'sometimes' or 'rarely' raising issues such as mental capacity, competency, low educational level, low comprehension level or literacy as often as they thought appropriate. Twenty-two percent said they did not raise the issues even when they felt the case merited it because there were not enough resources to adequately explore the issue. Twenty-three percent explained they did not raise these important issues because judges are not receptive to the arguments. Significantly, an additional 50 percent said they did not raise these issues because 'plea bargaining with reasonable prosecutors prevents the need.' This last reasoning reflects an unwillingness or inability to creatively address issues on sentencing, even when a good plea deal has been obtained."<sup>133</sup>

### B. SUBSTANCE ABUSE

#### Georgia

- “Probation officers in a rural county estimate that 70–75 percent of their youth have some form of substance abuse that needed treatment... However, even if the court identifies substance abuse as the underlying problem with youth, programs for rehabilitation are scarce, especially in rural counties. Even in the urban counties, there are no substance abuse residential programs designed for children.”<sup>134</sup>

#### Maryland

- “6,799 juveniles were arrested for drug abuse violations—1,360 for liquor law violations and 301 for driving under the influence in 2001.”<sup>135</sup>

#### North Carolina

- “Without factoring in the influence of drugs or alcohol in arrests on other charges, arrests for substance abuse constituted 16 percent of all juvenile arrests. In North Carolina, arrests of juveniles for drug and alcohol related violations in 2002 numbered 2,250, and constituted 5 percent of complaints against juveniles.”<sup>136</sup>
- “A 2001 survey of North Carolinian high school students indicated a slight decrease in active drug use among 9th–12th graders since 1997, but overall drug use remained high.”<sup>137</sup>

### C. ZERO TOLERANCE

“‘Zero tolerance’ is a catch phrase that refers to the current policy of schools to immediately and automatically impose severe sanctions on a student for any violation of school rules and regulations.”<sup>138</sup> This has had an overwhelming impact on the nation’s schools as the proliferation of cases referred to juvenile court involving minor school infractions, such as running in the halls, skipping classes, and talking back to a teacher, are no longer being dealt with by the school officials, but by disciplinary hearings and even reports to the district attorney for prosecution.<sup>139</sup>

#### Georgia

- “Georgia has a statute which makes it a ‘misdemeanor of a high and aggravated nature’ to ‘disrupt or interfere with the operation of any public school.’ This law is routinely invoked against students for behavior ranging from cursing at the principal to fighting with another student on school property.”<sup>140</sup>
- “Certain public school districts enforce a policy that permanently expels a child if they are sent to boot camp. Once this occurs, the child must complete the

rest of his or her education in an alternative school, a place that has been criticized as a dumping ground for behavior disordered children and a gateway back into prison ... The consequences of court intervention for children with school charges can be far-reaching; because so many of them waive counsel and plead to the charges, they become a delinquent youth in the system, acquiring a record which may be used in the future to impose harsher penalties.”<sup>141</sup>

#### Kentucky

- “In one county it was noted that of the 26 cases on the juvenile court docket for the day, nearly half were school-related charges, none of which were felony offenses, and many which appeared to be brought back repeatedly for review. Investigators noted in several instances that youth were sent to detention for violations of school policies, and it was clear that in some counties the courts were readily accessible to school personnel who wished to punish a student quickly for misconduct. The infractions ranged from ‘mouthing off’ to a teacher to missing school after having been warned about truant behavior.”<sup>142</sup>
- “Many of these youth had disabilities that qualified them for special education services, and there were concerns that they were unidentified and/or simply not receiving appropriate services. Investigators noted in one county a profoundly mentally disabled student was brought to court charged with truancy where a prior finding of dependency had been made on his behalf and that of his siblings. In another case, investigators noted an eight-year-old child was brought before the court with a request by the prosecuting attorney to detain him for school-related conduct perceived to be threatening. While these instances were more blatant in nature, the increase in school-related charges poses significant challenges to juvenile defenders.”<sup>143</sup>

#### Louisiana

- “A public defender in one parish estimates that approximately 25 percent of his caseload came from schools while a prosecutor in another parish estimated 30 percent came from schools... One judge estimates almost 60 percent of the youth in the system have special education needs that are not being met by the schools.”<sup>144</sup>

#### Maine

- Surveillance and security efforts have led to dramatic increases in the criminal punishment of high school students. So have new federal and state laws requiring school personnel to report certain categories of offenders to police or prosecutors.<sup>145</sup>

### **North Carolina**

- “Long-term suspensions increased by 22 percent between the 1999–2000 and 2000–2001 school years. Ninth graders received about one-third of all long-term suspensions. Over half of the long-term suspensions were given to black/multi-racial students. Approximately four percent of the overall student population received multiple short-term suspensions of any length. In all, out-of-school suspensions in 2000–2001 resulted in over 650,000 lost instructional days for North Carolina public school students. Students who received one or more out-of-school suspensions were less likely to score at or above grade level on End-of-Grade and End-of-Course achievement tests across subject areas. Black/multi-racial students are greatly overrepresented in multiple short-term suspensions, long-term suspensions and expulsions.”<sup>146</sup>
- “In one county, two-thirds of delinquency case complaints come from the public school system. Children as young as six and seven are referred to court for issues that seem to clearly relate to special education status.”<sup>147</sup>

### **Virginia**

- Virginia is among the many states to enact zero-tolerance policies in schools that have dramatically affected the number of children and youth referred to juvenile court.<sup>148</sup>
- One detention center administrator reported that the detained population increases during the school year.<sup>149</sup>
- “Some interviewees reported that the zero tolerance policies allowed schools in their jurisdictions to practice ‘dumping’ kids from one school to another. Some reported that this practice of dumping most affected children and youth who need special education services and older youth who are sent to adult education programs. One juvenile defender said, ‘If we could fix schools we’d fix delinquency by 75 percent.’”<sup>150</sup>

## **VI. YOUTH IN THE ADULT SYSTEM**

With children as young as 12 being charged as adults, the adult criminal justice system is not equipped to handle the myriad problems and issues arising from their special developmental and educational needs and vulnerabilities. The most recent studies demonstrate that putting young offenders in adult prisons leads to more crime, higher prison costs, and increased violence.

While transferring youth into the adult system was originally used to deter juveniles from committing crime, the facts show that this approach has done just the opposite. “One study, comparing New York and New Jersey juvenile offenders, shows that the rearrest rate for children sentenced in juvenile court was 29 percent lower than the rearrest rate for juveniles sentenced in the adult criminal court.”<sup>151</sup> “A recent Florida study compared the recidivism rate of juveniles who were transferred to criminal court versus those who were retained in the juvenile system, and concluded that juveniles who were transferred recidivated at a higher rate than the non-transfer group. Furthermore, the rate of re-offending in the transfer group was significantly higher than the non-transfer group, as was the likelihood that the transfer group would commit subsequent felony offenses.”<sup>152</sup>

Incarcerating youth offenders in adult prisons also places juveniles in real danger. “Children in adult institutions are 500 percent more likely to be sexually assaulted, 200 percent more likely to be beaten by staff, and 50 percent more likely to be attacked with a weapon than juveniles confined in a juvenile facility.”<sup>153</sup> A 2001 Report of the Surgeon General, titled *Youth Violence*, explained that “placing youths in adult criminal institutions exposes them to harm. Results from a series of reports indicate that young people placed in adult correctional institutions, compared to those placed in institutions designed for youths, are eight times as likely to commit suicide, five times as likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent as likely to be attacked with a weapon.”<sup>154</sup>

### **A. PROSECUTION OF JUVENILES AS ADULTS: WAIVER AND TRANSFER PROVISIONS**

#### **Maryland**

- “Maryland is among 29 states that provide for legislative waiver (often called automatic waiver). Youth legislatively waived must be charged in the adult system. With a few exceptions, the law provides two mechanisms that allow a juvenile to return his case to juvenile court. A juvenile automatically charged as an adult may petition the Court to transfer or ‘reverse waive’ jurisdiction back to the juvenile court. At a reverse waiver hearing, the burden is on the child’s defense attorney to address five factors through the presentation of evidence that reverse waiver is ‘in the child’s interests or the interests of society.’ Additionally if the child is found not guilty of the charge that automatically sent him to the adult system, the criminal court may hold a reverse waiver hearing to send the sentencing hearing back to the juvenile court.”<sup>155</sup>

### Montana

- Children as young as age 12 can be transferred to district court. Other statutes allow for transfer for certain felonies when the child is 14 and 16.<sup>156</sup>

### Virginia

- “The Juvenile and Domestic Relations District Court (juvenile court) has original and exclusive jurisdiction over juveniles—defined as persons under the age of 18—accused of acts that would be crimes if committed by an adult (misdemeanors and felonies), traffic violations, as well as status offense jurisdiction over a child who commits an act prohibited by law that would not be a crime if committed by an adult.”<sup>157</sup>
- Once a child is tried and convicted as an adult, the juvenile court no longer has the jurisdiction to charge the youth as a juvenile for criminal acts that would otherwise merely constitute delinquency. This means that, unless the State Attorney chooses not to file the juvenile in criminal court, juvenile courts are limited to merely holding a preliminary hearing if a juvenile, 14 or older, is accused of committing a “violent juvenile felony.” Juvenile courts also lose jurisdiction over any “ancillary charges” (a delinquent act committed by the juvenile as part of the same act or transaction as a felony delinquent act) brought against juveniles tried as adults.<sup>158</sup>

## B. PROSECUTION OF JUVENILES AS ADULTS: THE PRACTICAL REALITY

### Kentucky

- “Between January 1997 and January 2000, Kentucky’s juvenile courts referred 336 juvenile offenders to criminal (adult) court for prosecution and possible commitment to prison. This number represents only those youth actually transferred, and not those who are considered by courts for transfer. In Jefferson County alone, it is estimated that up to 300 transfer cases are filed per year, although many are not actually transferred.”<sup>159</sup>

### Maryland

- “Reports indicate that as many as a thousand children and youth a year are being prosecuted as adults in Maryland.”<sup>160</sup>

### Texas

- “The number of children certified to adult court decreased from 433 in 1998 to 236 in 1999. Researchers at the Texas Criminal Justice Policy Council found that African Americans, and to a lesser extent, Hispanics were more likely to be certified

than their Anglo counterparts, even where they were adjudicated for the same offense, were the same age and had similar adjudication histories in the juvenile court.”<sup>161</sup>

- “Many attorneys state that the reason for the decline in certifications is the determinate sentencing provision of the Texas Family Code, which permits a prosecutor to seek in juvenile court a sentence of up to forty years. Under determinate sentencing, a juvenile will first serve his sentence at the Texas Youth Commission (TYC, or the juvenile corrections facility of the state of Texas), but may later be transferred to adult prisons and become subjected to adult parole laws. The transfer occurs at the request of TYC and is rarely denied.”<sup>162</sup>
- “Judges that appoint attorneys for juveniles who have been certified to adult court do not appear to factor the minor’s age, background or circumstances into the appointment.”<sup>163</sup>

### Virginia

- “There is scant information available about the number of children and youth transferred from the juvenile court to the Circuit Courts in Virginia and even less information about what happens to them once they enter the adult system.”<sup>164</sup>
- “In 1996, the Virginia Department of Criminal Justice Services issued a report about juveniles convicted of murder in Circuit Court in Virginia. The report indicated that juveniles convicted of murder as adults received sentences ‘which exceeded Virginia adult sentencing guidelines’ and that ‘juveniles released from prison for homicide ... served more years on average than adults released during the same time period.’”<sup>165</sup>
- “Investigators found no statistics regarding youth transferred to adult court, and most interviewees were unaware of any data regarding juveniles in the adult system. Judges guessed that three to five percent of the court’s cases are sent to Circuit Court. One Commonwealth’s Attorney kept no records or statistics but claimed to have filed five or six motions to transfer within the last six months. The investigator was unable to confirm that number with any court personnel. Another Commonwealth’s Attorney claimed to file only one motion to transfer per month, yet defenders in that jurisdiction reported that the Commonwealth’s Attorneys regularly filed motions as negotiation leverage. Defenders around the state reported that it is routine for the Commonwealth’s Attorney to file motions to transfer and offer to move

to dismiss the motion if the juvenile pleads guilty to a juvenile charge.”<sup>166</sup>

## VII. RECOMMENDATIONS

The system is not working. The juvenile court system was designed with the mission to “develop and implement effective and coordinated prevention and intervention programs and to improve the juvenile justice system so that it protects public safety, holds offenders accountable, and provides treatment and rehabilitative services tailored to the needs of juveniles and their families.”<sup>167</sup> As a part of the U.S. Department of Justice, it also has the mission “to ensure fair and impartial administration of justice for all Americans.”<sup>168</sup>

There is no equal access to quality counsel and representation in delinquency proceedings. *Even if there were equal access, it would not be sufficient to offset the ways in which the juvenile justice system disproportionately circumscribes life options for youth of color.*

The most important thing one can do is to keep a youth out of the system altogether. If a youth comes into contact with the system, diversion must be the primary first step.

### A. THE STARTING POINT: KEEP THE YOUTH OUT OF THE SYSTEM

Diversion—i.e., sending a youth back to back to his/her home, family, and community—ought to be the presumptive first step. In Washington, D.C., that appears to be the prevailing police practice for white juveniles but not for juveniles of color. A report released by the OJJDP in September 2005, entitled “Alternatives to the Secure Detention and Confinement of Juvenile Offenders,” highlights two principal reasons for avoiding detention and confinement: crowding and the negative impact that confinement and detention may ultimately have on juvenile offenders.<sup>169</sup> The following contains excerpts from that bulletin, expanding on these reasons for avoiding detention and confinement.

#### Crowding

In “Alternatives to the Detention and Confinement of Juvenile Offenders,” the authors note the rise in the population and consequent crowding of juvenile detention and confinement facilities:

Over the past 15 years, crowded detention and confinement facilities have become more common. Between 1990 and 1999, the number of delinquency cases involving detention increased by 11 percent, or 33,400 cases. Over the same time period, the number of adjudicated cases resulting in out-of-home placement (e.g., training schools, camps, ranches, private

treatment facilities, group homes) increased 24 percent, from 124,900 in 1990 to 155,200 in 1999. As a result, approximately 39 percent of all juvenile detention and confinement facilities had more residents than available beds. As the system becomes more crowded, detention staff must learn how to manage continuous admissions and releases and the general lack of stability in such a setting.<sup>170</sup>

The report also highlights the potential risks of crowding:

Crowding can create dangerous situations in terms of facility management; it also is detrimental to the rehabilitation and treatment of the youth who are confined. In addition to the logistical problems inherent in crowded conditions (e.g., where youth will sleep, how they will be fed, how they will be educated), crowded conditions can also give rise to violence. Youth are more likely to have to be transported to the emergency room as a result of injuries sustained during interpersonal conflicts in crowded facilities. Youth who are detained for long periods of time usually do not have the opportunity to participate in programming designed to further their educational development (e.g., obtaining a general equivalency diploma). In addition, treatment programs in detention facilities are not designed to address chronic problems (e.g., substance abuse, history of physical or sexual abuse) requiring sustained and intensive interventions. Instead, programming in detention facilities is generally designed to assist youth in adjusting to the correctional environment, ease the transition back to the community upon release, and identify problems needing long-term intervention. Thus, while the youth is in detention, long-term educational and mental health needs are often put on hold. Between 50 and 70 percent of incarcerated youth have a diagnosable mental illness and up to 19 percent may be suicidal, yet timely treatment is difficult to access in crowded facilities. In the worst case scenario, crowded facilities lead to increased institutional violence, higher operational costs, and significant vulnerabilities to litigation to improve the conditions of confinement.<sup>171</sup>

#### Unproven Effectiveness of Detention and Confinement

The second reason for avoiding the detention and confinement of juvenile offenders, as highlighted in the 2005 OJJDP report, is that detention and confinement do little to rehabilitate the detained youth and may in fact have a negative impact on the youth:

The time a youth spends in secure detention or confinement is not just time away from negative factors

that may have influenced his or her behavior. Detaining or confining youth may also widen the gulf between the youth and positive influences such as family and school. Research on traditional confinement in large training schools (i.e., correctional units housing as many as 100 to 500 youth), where a large majority of confined youth are still held in the United States, has found high recidivism rates. As many as 50–70 percent of previously confined youth are rearrested within one or two years after release. Some states have limited the size of these facilities, while others continue to operate 300- and 400-bed training schools. In either configuration, although the long-term nature of a youth's sentence affords a greater opportunity to provide necessary treatment, educational, vocational, and medical services, confinement in these facilities represents a significant separation from the communities to which all youth will return and therefore creates a substantial obstacle in terms of community reentry upon release.<sup>172</sup>

The report notes that, in fact, alternatives to detention and confinement, such as community-based programs, have yielded distinct and more positive results:

Community-based programs are cost-effective solutions for a large number of delinquent youth. These alternatives to secure detention and confinement are intended to reduce crowding, cut the costs of operating juvenile detention centers, shield offenders from the stigma of institutionalization, help offenders avoid associating with youth who have more serious delinquent histories, and maintain positive ties between the juvenile and his or her family and community.

Between the 1960s and mid-1990s, significant research demonstrated that community-based programs (e.g., intensive supervision, group homes, day reporting centers, probation) were more effective than traditional correctional programs (e.g., training schools) in reducing recidivism and improving community adjustment. Even studies with less favorable results showed that community-based programs produced outcomes similar to those of traditional training schools but at significantly reduced costs.

Studies conducted on state and local levels also testify to the effectiveness of well-structured, properly implemented, community-based programs as alternatives to secure correctional environments. For example, Massachusetts relies less on holding youth than most other states, turning instead to a network of small, secure programs for serious offenders (generally fewer than 20 youth per facility), complemented by a full continuum of structured community-based

programs for the majority of committed youth. These programs allow for a greater connection between the youth and his or her family, school, and other community-based support systems and have shown powerful effects in reducing subsequent involvement in delinquency. States can reduce their reliance on secure detention and confinement, choosing instead to place youth in graduated sanctions programs that are responsive to the risks and needs of the delinquent youth.<sup>173</sup>

### B. PROBATION OFFICER ASSESSMENT TOOLS AND BEST PRACTICES

Probation officers have the role of promoting probation which, “by definition, represents a system for maintaining offenders and alleged offenders in the community rather than prison.”<sup>174</sup> As discussed above, they too often take on the role of prosecutor, defender, and judge. Standing “at the threshold of the delinquency system, [they] are ideally positioned to attach to a child the label ‘bad,’ ‘sad,’ ‘mad,’ or ‘can’t add’—or no label at all.”<sup>175</sup> These labels can funnel children into incarceration, more appropriate educational programs, family services, mental health evaluations, or substance abuse programs. Because probation officers have such an important role, ensuring that they are adequately trained with the most current and effective screening tools and informed of the local diversion options should be made a top priority. Properly identifying the needs of children entering the system should be a priority for diverting kids, who are in need of social services, away from incarceration.

Determining whether pretrial detention is appropriate is one of the first decisions that probation officers must make when children are first brought in. Pretrial detention is not to be used for punishment. It is used for three reasons. (1) They detain “those whom the authorities believe might commit new crimes before their cases are disposed of are detained to protect society. (2) Those whom the system believes will not show up in court are kept under lock and key so they can be produced at the appointed hour. (3) An unstated third 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.”<sup>176</sup> It is important that this third reason be acknowledged so that clear measurable steps can be taken to address this problem. “If staff do not accept and act upon the notion that detention use must be tied to risk of non-appearance or rearrest, there is nothing to preclude them from putting kids in custody to ‘teach them a lesson’ or ‘to have them assessed.’”<sup>177</sup>

The Florida Legislature has enacted a provision prohibiting the use of secure detention in certain instances. This is

a prime example of a measure that acknowledges that inappropriate uses of detention are common. It reads as follows:

A child alleged to have committed a delinquent act should not be placed in secure detention for the following reasons:

1. To punish, treat or rehabilitate the child.
2. To allow a parent to avoid his or her legal responsibility.
3. To permit more convenient administrative access to the juvenile.
4. To facilitate further interrogation or investigation.
5. Due to lack of more appropriate facilities.<sup>178</sup>

Due process requires that people should not be locked up before trial to take care of social problems. In order to remove a juvenile from the community, there needs to be a system in place that requires an objective test that shows, by clear and convincing evidence, that such removal is necessary to protect the community or to ensure they will return for the next hearing. Research has shown that over half of the youth arrested will have no further contact with the juvenile justice system, therefore it is important to focus our resources on the needs of juveniles who most need intervention services.<sup>179</sup>

## **Risk Assessment Instruments**

Risk assessment instruments (RAIs) have proven to be effective methods for “determining an offender’s risk of reoffending, receiving technical violations, failing to appear before the court, or other negative outcomes. Classification and risk assessment play a vital role in determining the number and type of youth best suited for either diversion or release from confinement. Diversion programs have been criticized at times for expanding the use of sanctions for more minor offenses rather than decreasing the overall number of youth in secure settings. Some critics have claimed that diversion programs are often unable to attract the large number of candidates needed to reduce the size and costs of the detained and confined population.”<sup>180</sup> RAIs offer intake officers an objective racially neutral tool to assist in channeling low-risk youth away from incarceration and back to their communities until their trial date, thereby freeing up resources for more high-risk individuals.

The key attributes of objective classification and risk assessment instruments are:

- They employ an objective scoring process.
- They use items that can be easily and reliably measured, meaning that the results are consistent both across staff and over time as they relate to individual staff members.
- They are statistically associated with future criminal behavior, so that the system can accurately identify offenders with different risk levels.<sup>181</sup>

The RAIs should be designed to accomplish the following:

- Introduce greater consistency and equity to the decision-making process;
- Focus limited system resources on the highest-risk and highest-need offenders, while reducing the unnecessary use of secure detention, residential treatment, and correctional placements;
- Ensure that decisions are based both on concerns for community safety and concerns about the youth’s needs and necessary treatment interventions;
- Provide a mechanism to facilitate linking youth with the types of programs that are most appropriate to their offense, level of risk to reoffend, needs, and strengths; and
- Provide for administrative overrides, both mandatory and discretionary. Mandatory overrides reflect policy positions.<sup>182</sup>

RAI results, combined with the initial investigations of intake officers, can be used to help determine appropriate actions at every step of the judicial process, including whether a case should be handled formally, diverted, or handled informally; whether pretrial detention is required; in determining the appropriate type of detention; and in determining the type of post-dispositional programs.<sup>183</sup> Different types of screenings may be used at various steps within the system. The more information a judge has regarding a child’s support system, educational abilities, and health status, the better he or she will be able to determine which diversion or supervisory program is most appropriate.

Fine-tuning the RAIs takes time. “If important facts were missed in these tests or if the point system was off, the instrument could throw too many youth in detention or allow the wrong kids into community programs.”<sup>184</sup>

“Applying objective standards simply won’t work effectively or efficiently if the process for making decisions is unstructured, haphazard, or lacking authority. Clear designation of responsibility, specific time frames, supervisory review, and high-quality documentation are necessary components of reformed admissions practices.”<sup>185</sup>

Cook County took three years to refine its RAIs. This may seem like a long time, but long-lasting system change does not happen overnight. The results have been impressive. Below are some examples of effective intake tests and programs that are implementing them.

### ► Massachusetts Youth Screening Instrument Version 2 (MAYSI-2)

The MAYSI-2 is an intake screening tool developed at the University of Massachusetts in the 1990s. The informational Web site on the MAYSI-2 tool (available at <http://www.maysiware.com>) describes the tool as follows:

The MAYSI-2 is a brief screening tool designed to assist juvenile justice facilities in identifying youths 12 to 17 years old who may have special mental health needs. It is intended for use at any entry or transitional placement point in the juvenile justice system (e.g., intake probation, pretrial detention, and state youth authority reception centers). The MAYSI-2 can be administered routinely to all youths in probation intake interviews or within 24 to 48 hours after their admission to juvenile justice facilities. It requires no more than 15 minutes to administer and does not require the expertise of a mental health professional for scoring and interpretation.

The MAYSI-2 is a paper-and-pencil self-report inventory of 52 questions. Youths circle YES or NO concerning whether each item has been true for them “within the past few months.” Youths read the items themselves (5th grade reading level) and circle the answers. Administration takes about 10 to 15 minutes and scoring requires approximately three minutes. The MAYSI-2 is available in both English and Spanish as well as in software form.<sup>186</sup>

### ► Multnomah County Detention Reform Initiative

In a 2006 publication on reforming the juvenile justice system, the Center on Juvenile and Criminal Justice (CJCJ) highlighted Multnomah County, Oregon, as a model for positive reform. The report revealed the following:

In 1994, minority youth in Multnomah County were 31 percent more likely to be detained in juvenile detention

than white youth. In 2000, the identical percentage of white and minority youth were detained in the county—22 percent for each group. To make this change, the county used the following interventions:

- **A Disproportionate Minority Confinement Committee** was established to make racial equity a priority throughout the reform process. Committee members were drawn from the juvenile court, the police department, the district attorney, public schools, the county commission, probation, and Portland State University to set up a collaborative relationships and a model for the reform process.
- **Data-driven research tools** were used throughout the reform process to provide objective analyses that may have helped curb the defensiveness and emotion that surround politically sensitive subjects like race.
- **Detention alternatives** were established, including shelter care, foster homes, home detention, and a day reporting center. Many programs were contracted out to local providers in communities of color, where the majority of detained youth live.
- **A sanctions grid of detention alternatives for Violators of Parole (VOPs)** was developed. Before reform, 20-30 percent of admissions to detention were VOPs, with little regard to actual need or threat that the youth posed. The county developed a “sanctions grid” that included things like a warning and then community service before the intake staff could re-detain a VOP. This tool helped to minimize staff inconsistencies and detention levels.
- **Objective screening and assessment measures**
  - A cross-agency team spent over a year developing and testing an RAI to guide admissions decisions. The RAI avoids criteria like “good family structure” or “gang affiliation” that may be very subjective or skewed to the detriment of minority youth.
- **A detention intake team** was created to implement the RAI and to hold itself accountable for equitable treatment of minorities. The team reviews every single youth in detention every day and looks at their RAI scores, their case status, and their amenability to treatment. This level of close scrutiny and quality control has led to swift and successful compliance with the system’s reform efforts.
- **Increased staff diversity and diversity training** were also implemented.<sup>187</sup>

## ►The Texas First Time Offender Program

The Texas First Time Offender program represents one holistic approach to the mental health needs of juveniles in the justice system. The program is described at length in a 2005 article, “Mental Health and Juvenile Justice: Promising Practices in Texas,”<sup>188</sup> excerpted below:

The Texas First Time Offender program, available in 43 of the 254 counties in the state, provides services that range from screening and assessment, substance abuse counseling, case management and connecting the family to community support systems. This program works to keep young people from criminal behavior by addressing their mental health needs and by working to increase the stability of the family.

Tarrant County’s Family Matters works with youth deemed at risk for delinquency by the county’s Juvenile Probation Department. This program arranges and coordinates such treatment services as individual and family counseling and family stabilization.

The Texas state legislature provided funding for the Special Needs Diversionary Program (SNDP) in 2001. This is an alternative to incarceration for juveniles with mental health needs, seeking to prevent their removal from their homes and to keep them from further involvement with the juvenile justice system. At the same time, legislation was enacted requiring that every juvenile formally referred to juvenile probation departments be given a standard mental health screening.

These screenings can result in the juvenile being referred for further mental health assessment. In 2004, 18 percent of juveniles screened were referred for further mental health assessment. However, fewer than half of those referred actually received a subsequent assessment, due to limited access, especially in smaller localities.

SNDP applies a team approach in which a juvenile probation officer who receives special training is paired with a licensed mental health practitioner. Each team manages a caseload of 12 to 15 youth and their families. Bexar, Dallas, El Paso, Tarrant, Travis, Hidalgo, and Cameron counties, representing half of the state’s juvenile justice population, were selected for SNDP’s first round of funding (2002). In its first year, 764 youth were enrolled in 19 sites, served by 38 teams. More than fifty-two percent of these juveniles finished the program.

Dr. Jeannie von Stultz, director of Mental Health Services for the Bexar County Juvenile Probation Department, says that SNDP brought a welcome change in that treatment is now geared toward addressing a diagnosis based on screening and assessment, rather than controlling behavior. “We use MAYSI [the Massachusetts Youth Screening Instrument] which allows us to prescribe more specific treatment,” von Stultz said.

The diversionary program is designed for juveniles who meet certain criteria: they must be at risk of removal from their families because of their psychiatric symptoms, or they must have been identified by their school system as needing special education due to their emotional difficulties. And it is mandatory that a family member or other adult in the young person’s life agree to participate in the program. Otherwise the juvenile is not eligible.

Juveniles and their families who qualify can receive a wide range of support services. According to von Stultz, that system of care is especially critical for the success of the program. “We provide skills training and therapy for the child and the family. Many of our families have had bad experiences with various parts of the system and get overwhelmed,” she said. “Our program includes a family advocate, and that aspect works very well.”

The SNDP approach provides intensive intervention and is family-based. The team works with the juvenile and the family to create an individualized case plan, incorporating such services as individual and family therapy, rehabilitation services, skills training, and chemical dependency education. SNDP guidelines require that the team meet with the family three to five times a week. Two of these visits must occur in the home. The family is encouraged to play an active role so that, over time, they become less dependent upon the SNDP team and more reliant on supports available to them in the community.

One of the positive outcomes reported by the Bexar County program in its first year was that the majority of family and youth who participated in the program were successful in identifying resources within themselves that helped them manage stressful situations.

Erin Espinosa is concerned about continuity of care for youth who come through the state’s SNDP, which provides services to enrolled juveniles and their families for four to six months. “What we’ve seen so far is a gap in the availability of services after young people

leave our programs,” she said. “Of the 75 percent of kids who are tied back into follow-up care, less than 25 percent actually receive it.” This is especially true in the rural areas. “Urban areas have more opportunities to provide continuity of care and community for these kids,” Espinosa said. “In the rural areas, there’s not much available for them after the programs.”

While the major goal of the SNDP program is to provide an alternative to incarceration for juveniles in need of mental health services, ultimately its success depends upon the local availability of these services once the youth completes the program. The Texas Juvenile Probation Commission is working on a plan to address this gap through the use of telemedicine. The Telemental Health Pilot Initiative would utilize the latest advances in telecommunications to connect communities in need with the mental health expertise of a major regional medical center specializing in psychiatric services.<sup>189</sup>

As Frank Orlando observes in “Controlling the Front Gates: Effective Admissions Policies and Practices,” a report on policies and practices for overcoming admissions problems in juvenile detention facilities: “Implementing reforms based on objective standards, rather than the often unbridled, subjective discretion common to many intake operations, is bound to meet resistance. Trying to introduce these new approaches in the face of this opposition is a formula for failure. If police departments do not agree to new eligibility criteria, for example, they can undermine political support for the reforms by claiming they are ‘soft on crime.’ Similarly, if judges don’t endorse the use of RAIs to determine who is admitted, they will be unwilling to authorize intake workers to release low-risk youth. Finally, many times line staff interpret new, objective approaches as attacks on their judgment and professional abilities. Overcoming these concerns requires regular meetings, training, and effective use of data to demonstrate the new approach’s value. Once the new system is implemented, the benefits of these objective processes need to be continuously reinforced through routine reports and other forms of feedback.”<sup>190</sup>

### Expeditors

“Expeditors” are one tool described by Orlando as a means of ensuring case-level quality control. He describes the role and reason for using expeditors further in “Controlling the Front Gates”:

These individuals review all admissions, checking to ensure that they meet eligibility criteria, that the risk assessments are properly scored and, if appropriate, working to facilitate release to a detention alternative.

When youth are detained, the expeditor (or intake supervisor) will continue to monitor the case so that changes in circumstances (e.g., reductions in charges that alter RAI scores) can be acted upon. The expeditor also watches for persistent errors. For example, if intake workers consistently mis-score a particular risk-factor, the expediter will take note and make sure that training is conducted to improve performance.<sup>191</sup>

Sacramento County began using an expeditor in 1994, whose role is to “reduce the unnecessary use of detention in Juvenile Hall by advocating alternative release programs for both pre- and post-dispositional detainees. The county set three measurable goals for the position: (1) making at least 100 alternative recommendations per month to the court for pretrial detainees, (2) reducing the average time from disposition to actual placement by three days, and (3) reducing the average daily pretrial population at the hall by 10 beds. The most recent data show even more dramatic results. Since the expeditor position was established, the detained pretrial population has been reduced by an average of 37 beds.”<sup>192</sup>

### Early Resolution Programs

Orlando’s report also highlights admissions incentives, like Early Resolution Programs, which mitigate a prosecutor’s traditional hesitance to release juveniles from custody:

Getting kids out of custody is a big negative for prosecutors... [the Annie E. Casey] Juvenile Justice Initiative (JJI) overcame that obstacle with an innovation that proved desirable to enough of the players that they adopted it. Indeed, the reform involved not only releasing eligible kids to community-based programs, but speeding up the whole juvenile justice process at the same time. Called Early Resolution, it provided kids who were eligible for community-based alternatives to detention the opportunity to have their case settled earlier in the process and avoid trial. Previously, prosecution, defense, and probation officers would get together with the judge right before the trial to see if a settlement could be reached. By that time, of course, everyone would have done all the work to get ready for the trial. Early Resolution freed the prosecutors from that time-consuming task for cases settled up front. “The change benefited the staff by letting them concentrate on fewer cases and better cases.”<sup>193</sup>

Prosecutors were willing to accept the program because it resulted in more plea bargains. Defense attorneys were willing to accept the program because it included “a complete and open ‘discovery’ process, which provided the

defense with a lot of information about the case early on. In addition, the prosecutors often offered the defense a better deal to settle the case early.”<sup>194</sup> The program allowed probation officers to write substantially shorter reports for each juvenile, which resulted in more short reports, but “fewer long reports than they would wind up having to do for a full blown trial.”<sup>195</sup>

## C. CRITICISMS OF DIVERSION — AND RESPONSES

### “Diversion programs cost money.”

The investment in diversion is frequently rejected on grounds that 50 percent of the youth who are diverted would not be back in the juvenile justice system even *without* a formal diversion program.

Research has shown that approximately 54 percent of males and 73 percent of females arrested will have no further contact with the juvenile justice system. Even without juvenile justice programming, most youth will have no further involvement in the system. The critical task is to target only those youth who need intervention services and to match them with the appropriate kinds and levels of programming they need, rather than to serve youth who are unlikely to commit another crime...

Diversion programs have been criticized at times for expanding the use of sanctions for more minor offenses rather than decreasing the overall number of youth in secure settings. Some critics have claimed that diversion programs are often unable to attract the large number of candidates needed to reduce the size and costs of the detained and confined population.<sup>196</sup>

### Response:

The objection that one is throwing away money on kids who would not come back into the system is best addressed by investing in youth development programs and programs that enlist the youth in contributing to the community. At least 80 percent of the juveniles who are arrested have major academic problems, family problems, and mental health problems. A diversion program that is designed to help them develop self-esteem and make good life choices, and that creates a peer culture built on community service and helping others, is a good investment.

### Prosecutors need to be “tough on crime.”

Prosecutors can now divert, but they often are reluctant to, or become extremely punitive about the most minor

infraction of a consent order because they believe they will be held accountable by the public for being soft on crime if the youth commits another offense.

### Response:

There are empirically validated Risk Assessment Instruments (RAIs) that provide a scientific basis for recommending diversion. Failure to make maximum use of diversion represents prosecutorial subversion of public policy.

The 2005 OJJDP report, “Alternatives to the Secure Detention and Confinement of Juvenile Offenders,” provides an extensive description of those systems and how they might be used:

Much like a pretrial release process in the adult system, an objective detention risk assessment system is needed for juvenile courts and correctional agencies to determine whether youth should be placed in secure confinement while awaiting adjudication and disposition hearings. The two major concerns in reaching such a decision are whether the youth will appear for court hearings and whether the youth is likely to commit additional crimes if released from custody. Such risks should be assessed through objective, valid, and reliable means. Secure detention can then be used sparingly. The factors to be considered in objective detention risk assessments (and in other classification and risk assessment instruments) can be separated into four categories:<sup>197</sup>

1. Number and severity of the current charges.
2. Earlier arrest and juvenile court records.
3. History of success or failure while under community supervision (e.g., preadjudication, probation, parole).
4. Other “stability” factors associated with court appearances and reoffending (e.g., age, school attendance, education level, drug/alcohol use, family structure).

Typically, jurisdictions construct an additive point scale to quantify the level of risk that each youth reviewed for release or detention presents to help decision makers ensure that low-risk youth charged with non-serious crimes are not placed in detention. Conversely, such instruments also serve to ensure that youth who pose a serious risk to themselves and others are not readily released without proper supervision.

A number of jurisdictions use objective detention risk assessments to reduce the number of youth detained prior to formal adjudication. Sacramento, CA; Multnomah County, OR; and Cook County, IL implemented risk assessment instruments as part of their involvement with the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative. Administrators in Cook County, IL, for example, combined the use of a validated risk assessment instrument with an array of alternatives to detention for those youth who do not require secure custody. Immediately upon a youth's arrest, on-call probation staff complete an objective detention risk assessment before the initial detention decision. The assessment's numerical score produces a recommendation to either detain or release and, if release is recommended, the assessment outlines any special conditions that may be required.<sup>198</sup>

If diversion is not available, avoiding detention within the system becomes the second step, for reasons that will be discussed below. The provision of counsel prior to detention at the earliest possible stage is critical—and there are jurisdictions where that is being done. (See Exemplary Programs listed below.)

### D. BEYOND DIVERSION

Neither diversion nor the avoidance of detention by themselves is sufficient to reduce the risk factors or enhance the protective factors that shape a youth's life options. Preserving and even expanding those life options must begin with systematic efforts to reduce the risk factors and enhance the protective factors that shape a youth's development in each of the five domains where those factors operate: individual, family, school, peer, and community.<sup>199</sup> Providing juveniles with stronger family and community support systems can decrease their likelihood of risky behavior and increase their ability to make good decisions.

Families are often fragile. Increasingly, foster care systems are relying upon kinship care to rebuild an appropriate home for youngsters. But many children are being raised by their grandparents, and those elders are stretched to the limit. They can provide a foundation, but they, too, need support and back-up.

The analysis in this paper starts from the premise that the real juvenile justice system is home, family, peer group, school, neighborhood, and community. Enhancing the capacity of that system to do the best job it can is our starting point.

We have to go beyond the usual deficit orientation, which focuses on "fixing" a youth and his/her family. We must

begin instead from a strength-based perspective, asking: What can that youth do now—to help other youth, to help the neighborhood, to create a new peer culture, and even to effect system change in the juvenile justice system itself?

Most thinking and action in this field is geared either to the individual juvenile or perhaps to the juvenile's family. In fact, we are dealing with an entire peer culture in neighborhoods and communities where 40 percent of youth never finish high school, where childhood is not experienced, where substance abuse is part of one's environment, and where hope has all but disappeared. That obliges us to begin thinking in terms of how to create a peer culture built on civic responsibility, on helping others, and on community service that makes pro-social activity a path to personal development and fulfillment, as well as a means to address individual and family needs.

When one looks for exemplary programs, there are few that begin to approach the loss of life options in terms of creating a new peer culture. And while use of foster care and kinship care is common, there are few efforts that seek to recreate the extended family or build the informal social networks needed to enhance the capacity of fragile, overtaxed households headed by a single adult.

## VIII. A FRAMEWORK FOR THE DEVELOPMENT OF A SYSTEM THAT EXPANDS LIFE OPTIONS FOR MINORITY YOUTH

### A. CO-PRODUCTION: PARTNERSHIPS BETWEEN COMMUNITY, FAMILIES, YOUTH, AND THE FORMAL JUVENILE JUSTICE SYSTEM

The starting premise is that no program or intervention can generate the intended outcomes or realize its maximum potential unless it can enlist those it is helping as co-workers and co-producers of the intended outcomes. The challenge is to enlist those youth, their families, and their communities as "co-producers" of expanded life options for youth of color.

Achieving this is not easy with youth who do not believe they have the causal power to shape their destiny and who have typically been labeled marginal or worse in school.

Five principles guide the Time Dollar Institute (also known as Time Banks USA) in its work to enlist both youth and adults:

1. **An Asset Perspective:** Even the most troubled youth has both present capacity to help others and developmental potential that can be tapped.

2. **Honoring Contribution:** Contributions must be valued and rewarded as real work.
3. **Reciprocity:** Calling upon youth who receive help to “give back” by helping others prevents dependency and leads to stronger outcomes all round.
4. **Social Networks:** Clients and service providers need to collaborate to build a new kind of extended family as a web of mutual support that will remain as a personal safety net.
5. **Respect:** Giving a new listening to those who go unheard and ignored and providing formal vehicles and advocates to amplify their voices and assert their rights.

## **1. An Asset Perspective**

Youth have the present capacity to help others and to build community through various forms of public service. Various exemplary programs described below recognize this capacity.

### ***1a. Tapping Present Capacity***

#### **►Time Dollar Youth Court**

The Time Dollar Youth Court is a project of Timebanks USA. A peer model Youth Court, where the jury is proactive, provides a role for youth jurors that vests them with power to help others and values their present ability to reach out to their peers and to express approval or disapproval of a specific act, while still affirming that youth's worth and potential. When offenders are enlisted as jurors, they enjoy immediate status elevation as part of a peer group entrusted with protecting the community and setting standards for acceptable conduct. By making juror duty a mandatory element of the sentence in nearly all cases, the Time Dollar Youth Court has tapped the present capacity of teenagers and created a role that enables at-risk youth to function as contributors and to participate as valued members of a peer culture centered around civic engagement.

In addition to requiring community service combined with other sanctions, such as restitution and a Life Skills course, this Youth Court enlists virtually all offenders as jurors so that now every jury is composed of nearly 100 percent offenders. In 2005, it conducted 696 hearings. Analysis of recidivism rates stayed at approximately half the recidivism rate of a control group. The effect was most pronounced for the first six months following arrest, when re-arrest rates were in the 7-9 percent range; re-arrests rose after six months to 15-18 percent, but that remained far below the recidivism rate of 30 percent or higher for the control group

that was just sent home. In effect, these offenders sitting as jurors had reduced recidivism rates by 50 percent. They have become major assets to the community, advancing the rule of law effectively among peers. The community service to which they are sentenced seeks to provide appropriately crafted opportunities to function as a resource to others. Thus, respondents charged with truancy have been sentenced to tutoring first- and second-graders, resulting in impressive academic improvements by tutees who badly wanted the approval of these older youth. Respondents charged with stealing cars have been sentenced to watch the cars of seniors who are attending church services. In a summer program, youth helped renovate basements for a computer lab that they would use. Linking these roles to rewards with Time Dollars is an essential part of the strategy used to develop a positive peer culture. Time Dollars are earned for each hour as a juror; these can be cashed in for rewards such as a recycled computer. This Youth Court is now operating at a scale that demonstrates how at-risk youth, enlisted as assets, can provide the first line of defense against penetrating the juvenile justice system.

#### **►Youth Community Service Club**

A Youth Summit in Washington, D.C. proposed the creation of a teen community service club where teenagers can earn rewards, satisfy high school community service requirements (where applicable), and have fun by serving as mentor, buddy, tutor, or counselor for a younger kid or as senior helper or neighborhood aide.

#### **►Mandatory Community Service**

Many programs for juvenile offenders now include a mandatory community service element in their programs.

### ***1b. Tapping Developmental Potential: Investing in Youth Development***

#### **►Children’s Law Center of Massachusetts: The EdLaw Project**

The EdLaw Project is an advocacy organization which aims to secure equal opportunity for Boston youth by affirming each child's right to an education. The EdLaw Project's informational Web site further describes the history and goals of the program:

In partnership with the Youth Advocacy Project (described below in the section Effective Representation for Youth), the Children's Law Center of Massachusetts, Inc. launched the EdLaw Project in January 2000. The project was based on local research showing that nearly 80 percent of the Youth Advocacy Project's delinquency clients experienced school

failure prior to court involvement and on national research indicating that lack of appropriate academic achievement is the leading indicator for chronic court involvement. The EdLaw Project advocates for appropriate education services for Boston's high-risk children, addressing such issues as academic failure, suspension and expulsion, undetected special needs, inadequate education while in state custody, and reintegration in the school system following detention or incarceration. The project has grown to include three attorneys and, in addition to direct advocacy work, has partnered with local residents and agencies, such as La Alianza Hispana, Parents Place, the Center for Law and Education, and the Boston Parents Organizing Network, to deliver a variety of workshops and conferences for parents and youth workers on parental engagement, parental rights and responsibilities, and the components of a quality standards-based education (Children's Law Center of Massachusetts, Inc., and Youth Advocacy Project, 2000).<sup>201</sup>

### ► TeamChild

The 2004 OJJDP report, "Access to Counsel," highlights the efforts of several agencies to provide legal advocacy services to youth, including the Washington state-based TeamChild. The report describes TeamChild as follows:

A majority of youth involved in the juvenile justice system are struggling with untreated mental illness, addiction, learning disabilities, and unsafe living environments. Many of these youth are disconnected from school, positive adults and peers, and stable homes. Once involved in the juvenile justice system, they drift further away and are often excluded altogether from community support. Many youth can be diverted from delinquency and violence if their basic needs are met. This basic premise underlies the work of TeamChild, a Washington-based civil legal advocacy project for youth involved in the juvenile justice system.

TeamChild goes to the roots of delinquency by providing civil legal advocacy and mentoring to young people who are having difficulty gaining access to education, treatment, and safe living situations. Public defenders, juvenile probation officers, community service providers, and courts refer youth to TeamChild for representation. As part of its unique relationship with youth, TeamChild actively engages them in problem solving, gives them a voice in planning for their future, and helps them develop the skills they need for adulthood and independence.

TeamChild has been proven to be a cost-effective approach to reducing recidivism among juveniles.

A study done by the Washington State Institute for Public Policy showed that TeamChild saves taxpayers nearly \$4,000 for each child receiving full services. TeamChild's holistic advocacy for youth has been recognized nationally and replicated around the country.

TeamChild was piloted in 1995 through a Title II Formula Grant from OJJDP. The project was born out of collaboration among Columbia Legal Services, the Seattle-King County Defender Association, and the Washington Defender Association. Since its creation, TeamChild has grown from a one-person office in Seattle to an organization with five offices and more than a dozen staff members helping hundreds of youth in five Washington counties. TeamChild's successful expansion over the past eight years is built on a solid service delivery model that fills a critical need for communities struggling to support youth in trouble.<sup>202</sup>

### ► Maya Angelou School

In Washington, D.C., the Maya Angelou School also strives to divert youth from violence and delinquency by meeting children's educational needs. The school's informational website (available at [http://www.dcpubliccharter.com/communityint/schools/maya\\_pcs.htm](http://www.dcpubliccharter.com/communityint/schools/maya_pcs.htm)), describes the school's mission and curriculum as follows:

The Maya Angelou School's mission is to create learning environments in urban communities where teens, particularly those who have not succeeded in traditional schools, can reach their potential. Through the Maya Angelou Public Charter School and related See Forever programs, students develop the academic, social, and employment skills that they need to build rewarding lives and promote positive change in their communities. The Maya Angelou School's special focus is on integrating the world of work into the traditional academic setting. Sponsored by the See Forever Foundation, the school provides a challenging curriculum for the city's most underserved students. The school environment supports a personal approach to learning, with wrap-around support for students that includes team-building activities, field trips, access to quality mental/physical health care, and a talented energetic staff committed to the empowerment of students and their families. School is open year-round between eight and ten hours daily. Classes have a 7:1 student teacher ratio, and class work is technologically relevant. Second-year students choose to train in either the catering or technology field. In addition to classes, each student receives three to five hours of individual tutoring per week. It is estimated that 50-70 percent

of graduates will go on to college, and the rest will move directly into the workplace. Maya Angelou was chartered in 1997 by the D.C. Public Charter School Board.<sup>203</sup>

### ► Fresh Start

Fresh Start is an example of a non-residential program, mentioned in the 2005 OJJDP report, “Alternatives to Secure Confinement and Detention.” The report includes a detailed description of the program as follows:

One example of a nonresidential skills training program is Fresh Start in Baltimore, MD. Fresh Start was established to provide hands-on training and education for juvenile delinquents in the Baltimore area. The primarily voluntary program targets youth ages 16–19 who are convicted of nonviolent crimes and who typically come from low-income, high-crime neighborhoods. The 40-week program is designed to help youth learn practical skills, such as carpentry and boat repair, and to integrate education and employment experience. Fresh Start has recently partnered with local colleges so that program graduates can attend college-level courses at a reduced cost. In 2000, Fresh Start added a Workforce Development Center to its array of program services. Each Fresh Start graduate is assigned to a job retention counselor who helps the youth navigate common workplace challenges. Approximately 90 males graduate from the program each year. Approximately 50 percent of those who enter the program complete all modules, and those who finish the first eight weeks have an 80 percent completion rate. Fresh Start tracks its graduates for three years after program completion. Graduates from 1997 to 2000 had a rearrest rate of 19 percent and a reincarceration rate of seven percent, well below the rearrest rate of 75 percent that other Maryland Department of Juvenile Justice programs reported. About 66 percent of the graduates were employed, and 15 percent continued their education.<sup>204</sup>

### ► Gulf Coast Trades Center

The 2005 OJJDP report also discussed the residential skills program Gulf Coast Trades Center, located in Texas:

An example of a residential skills program that is not combined with an at-home alternative is the Gulf Coast Trades Center (GCTC), a private, nonprofit organization that has served troubled youth in the Houston, TX, area since 1971. GCTC serves youth ages 16–19 who are referred by the Texas Youth Commission or by a probation officer. The program provides education, job training, life skills planning,

and aftercare programs. GCTC also runs the Youth Industry Program, which trains youth in carpentry skills, and the Raven School, which prepares students to take the General Educational Development test. Other youth are trained and permitted to work in the culinary arts, horticulture, automotive technology, desktop publishing, and secretarial positions. Recent evaluation results demonstrate that from September 1999 through August 2000, 84 percent of the participating youth completed the program and 70 percent were employed when they left the program. In addition, 1999–2000 graduates had a 16 percent rearrest rate, compared with a rearrest rate of approximately 54 percent among all youth released from the Texas Youth Commission in 1999.<sup>205</sup>

## 2. Honoring Contribution

There will never be enough money to pay even minimum wage to all the kids we need as buddies and mentors and engaging in constructive roles in the community. But there is no shortage of stuff that kids want and that can be purchased or secured through charitable donations. Youth respond to incentives. If those incentives reinforce a youth's sense of self-esteem, then they can compete successfully for many with the high-risk rewards that drug dealers now can offer. There are ways to make doing the right thing pay off with meaningful rewards that reinforce a youth's sense of self-worth.

### ► COPS Dollars

In “Violent Neighborhoods, Violent Kids,” another article published by the OJJDP, Marcia Chaiken noted that the COPS dollars utilized in California served as a useful tool for channeling youth energy into productive activities:

In Redding, CA, police officers have capitalized on boys' economic motivations by giving groups of youth “COPS dollars” when they complete projects to improve their neighborhoods. Endorsed by local merchants, COPS dollars can be redeemed at restaurants and other businesses popular with community youth. As a result of this program, boys in blighted areas who used to hang out and get into trouble are removing litter, cleaning up vacant lots, and creating play and recreation areas for themselves and younger children. Judging from their willingness to approach officers and ask what needs to be done in return for COPS dollars, boys—in addition to the police, businesses, and other residents—favor this approach.<sup>206</sup>

### ► Time Dollars

A tax-exempt complementary currency, Time Dollars, provides one way to track contribution and structure eligibility for rewards without heavy reliance on scarce dollars.

- In violence-prone schools in Albany, NY, the School of Social Welfare at SUNY worked with the principals to set up a Time Dollar store. Students and parents spent a semester deciding what they wanted in the store and what kinds of activities would earn Time Dollars. Violence plummeted, attendance rose, and there were dramatic improvements in academic achievement. Time Dollars are earned both by tutoring and mentoring other students and by helping both teachers and administration to keep the school looking spotless, cheerful, and friendly.
- In Chicago's notorious Englewood neighborhood, low-achieving schools utilized a Time Dollar peer tutoring program with older students tutoring younger students to improve academic achievement and attendance and to reduce violence. Parents and children work together to earn a recycled computer; parents had to earn 10 Time Dollars and students 100 Time Dollars to secure a recycled computer. Over 5,600 families have now gained recycled computers.
- From its inception in 1995, the Time Dollar Youth Court in Washington, D.C. has enabled jurors (including respondents) to secure recycled computers by spending 50 hours each on the jury. (Respondents do not earn Time Dollars for the community service part of their sentence, but they do earn Time Dollars as jurors.) An "alumni club," which was funded for one year for Youth Court respondents who completed their jury duty and sentence, awarded Time Dollars for community service that enabled the "alumni" to go on trips, secure grocery gift cards for their families, and go bowling.
- In San Diego, an organization providing therapy to young women returning from prison and trying to get their children back from foster care charged Time Dollars for the therapy and the transitional housing. The women earned the Time Dollars teaching teenage young women about AIDS, HIV, and sexual abuse, as well as by performing assigned roles in the therapy program.
- One of the poorest counties in West Virginia has a small community populated by the descendants of escaped slaves and Native Americans who escaped the Trail of Tears. A church partnering with community

groups has spearheaded a community building effort that has built recreational facilities, winterized homes, and provided after-school programs for children. In 2005, they opened a Time Dollar store to enable residents to secure items they could never have afforded for participating in the effort. Five hours (either as receiver or provider of services) could be redeemed for one token. Two tokens enabled one to secure a Bronze level reward; four tokens secured a Silver level reward; and eight tokens a Gold level reward. Gifts-in-Kind has indicated that its merchandise could be used to stock such a store. This could serve as a prototype for a Time Dollar web store as a joint public/private venture so that youths earning Time Dollars through designated community service can get electronics, financial aid (scholarships and loan forgiveness), Metro passes, clothes, athletic equipment, meals, tickets to special events (sports, concerts, movies), discounts, snack food, computers and printers, modems and software, Internet access, and school supplies.

### 3. Reciprocity: Self-Esteem Programs

Human service projects and "do-good" charitable activities provide free services in order to reduce suffering and address social problems. The focus is on "helping" and on "fixing" people with problems. Helping professionals and volunteers rarely ask, encourage, or require any "pay back" by the recipient—and in the process, they unwittingly send two messages that undermine their mission. The first is: We have something you need, but you have nothing we need, want, or value. The second message is: The way you get more of our help is by having more problems. To secure the kind of engagement from youth and community that is critical, a different message needs to be sent: We need each other—to build the kind of world we all want. Reciprocity is central. That does not mean that a youth must help the same person or agency that helped her or him. It can take the form of "pay it forward." But organizations are now beginning to appreciate that "giving back" in some way is essential to building self-esteem and establishing a partnership based on mutual respect.

### ► Youth Advocate Program

The Youth Advocate Project (a neighborhood-based wrap-around program described below) has just added "pay back" as one of its core practices in fulfilling its mission to provide an alternative to compulsory institution for youth who are deeply embedded in the criminal justice system. After an internal review, it undertook to change its mission statement:

Our mission is to provide individuals who are, have been or may be subject to compulsory care with the

opportunity to develop, contribute and be valued as assets so that communities have safe, proven, effective and economical alternatives to institutional placement.<sup>207</sup>

The Individual Service Plan that YAP develops for each youth includes an appropriate opportunity to “pay back” by engaging in a project that redefines the youth as a community asset. Examples include working with Habitat for Humanity to renovate housing and a project with the Houston police demolishing crack houses. The following example illustrates this new contribution-centered approach:

Youth worked with the local fire fighters to conduct fire safety assessments in the neighborhood. They became trained to go door to door to assess fire safety readiness. They also conducted public demonstrations of fire safety at town fairs with the fire fighters. They assisted their parents in fundraising activities. Both the parent and the youth groups convened at least twice per week for a total of six hours per week. An educational and a social skills development activity occurred at least once a month. The project ended with a celebratory event in the community where a check for over \$1,000 was presented to the local parks and recreational department to improve the local skate park. The prime reward for the youth was the realization that they contributed to their community. YAP also used its flex fund to pay for a local bike shop to rehab six bicycles for the youth as a concrete additional reward for the 96 hours of service that they provided. Parents working together on this project began to know each other well. One family decided to continue the project past the 16 weeks. YAP helped them continue and is now working with them on establishing a neighbor-to-neighbor time dollar exchange system for them and their neighbors.

### ► **Manna**

Manna is a community development corporation that builds and renovates affordable housing in some of Washington, D.C.’s most disadvantaged neighborhoods.<sup>208</sup> Manna sought legal help to close crack houses in those neighborhoods it was seeking to rebuild. The law firm of Holland & Knight offered the legal services on condition that every hour the lawyers gave is paid back by the community in one of three ways: providing tutoring, cleaning up the neighborhood, and campaigning for decent street lighting. That reciprocal effort generated a major investment by the law firm, time that had a market value of over \$240,000.<sup>209</sup>

### ► **East Capitol Center for Change**

This grassroots organization in Washington, D.C. operates a re-entry program for young men returning from prison.

In return for providing job references and help preparing a resume, a payback is required. Staff members try to find a role that excites and engages these young men. Some coach sports teams at public housing complexes plagued by violence. Others serve as school monitors who are able to clear the halls and get students out of bathrooms, and keep them from skipping class or doing drugs, where school officials have long failed.<sup>210</sup>

## **4. Social Networks: Family and Community Support Programs**

Sooner or later, services end. Evenings and weekends come and there may be no staff available. Sometimes one simply needs a friend; a ride; help with an algebra assignment; a hair cut or dress alteration; or some simple home repair that an agency is not authorized or equipped to provide. This is what families, especially extended families and neighbors, used to provide. Now, many families are fragile, headed by a single adult. And these families do not know whom to trust or whom they can turn to. Even confidentiality and privacy laws operate to prevent clients from getting to know each other. And when formal services are terminated or taper off, the absence of informal support systems leaves those families or those youth as isolated, fragile, and vulnerable as they were at the outset.

This is where programmatic investments in engaging and strengthening the family, building new kinds of extended family, and creating social networks become critically important. It is also where recent research on reducing violence becomes relevant. A \$51 million study extending over 10 years by renowned researchers from Harvard, Columbia, and the University of Michigan finally pinned down the critical factor. They called it “collective efficacy,” which turns out to mean neighbors stopping kids from painting graffiti, having fights, and hanging out on street corners. It is an invisible local culture that boils down to looking after each others’ kids.

### **4a. Investment in Family and “Wrap-Around” Services**

#### **► Youth Advocate Program (YAP)**

This national organization operates programs as an alternative to institutionalization in 65 communities. They hire neighborhood residents and train them as advocates who function as a kind of extended family for youth who would otherwise have to remain institutionalized. For the past 25 years, the program has been able to maintain an 80 percent success rate in keeping those youth from re-entering the juvenile justice system. The Office of Juvenile Justice and Delinquency Prevention, in its aforementioned study in alternatives to secure detention and confinement, singled

out YAP's Tarrant County, Texas, program as an exemplary project:

An example of a successful intensive probation program that includes a wide range of services and programs for youth and their families is the Tarrant County Advocate Program-North (TCAP) in Texas. Started in November 1994, TCAP is funded by Tarrant County Juvenile Services. Approximately 50 youth at a time participate in the four- to six-month program, which serves an average of 210 youth per year. Most are male (95 percent) and Hispanic (49 percent) or white (47 percent), and approximately 80 percent are involved with gangs. TCAP uses paid mentors or advocates to link youth and their families with community-based services. These advocates contact the families three or four times per week, tailoring the program to fit individual family needs. Program activities include counseling, job training, subsidized youth employment, vocational training, anger management classes, tutoring, community service restitution projects, character development courses, and parent education classes. During 2002, TCAP served 527 youth and their families; 385 families completed the program. Of these youth, 96 percent were successfully maintained in the community or were diverted from out-of-home placement or commitment to the Texas Youth Commission.<sup>211</sup>

### ►La Bodega de la Familia

La Bodega de la Familia is a partnership between New York parole and probation officers that turned an abandoned grocery store in Loisaida, New York, into a hub for family support. The organization has, in fewer than 10 years, earned an "Innovations in the American Government Award" honoring imaginative and effective programs that meet urgent economic and social challenges. The organization is further described by its informational Web site as follows:

By working in partnership with New York State parole and probation officers, it is improving community justice supervision outcomes by tapping the natural support of families. Serving over 1000 families, La Bodega's bilingual staff provides three core services:

1. Family Case Management, practiced through Family Justice's Bodega Model, for families with a loved one involved with the criminal justice system and struggling with addiction or drug abuse, mental illness, or both.
2. 24-hour support for families experiencing a drug- or family-related emergency.

3. Walk-in and prevention services for all neighborhood residents.

Although many of Loisaida's residents lack adequate health resources and often suffer from the shame and stigma of criminal justice involvement, the Loisaida community also offers abundant resources. Community- and faith-based organizations, settlement houses, schools, health care facilities, and close-knit families provide a web of support through good and bad times.<sup>213</sup>

### ►Annie E. Casey Foundation and Casey Family Services

The Annie E. Casey Foundation is devoted to fostering public policies, human service reforms, and community supports for disadvantaged families and children, including programs designed to help foster families. One of these programs is Casey Family Services (CFS), a nonprofit child welfare agency program sponsored by the foundation. CFS provides comprehensive services to disadvantaged children, including foster care, post-adoptive programs, reunification, and special programs designed to strengthen families and inform parents.<sup>214</sup>

### 4b. Investment in Reducing Violence by Creating Collective Efficacy

Since 1997, when Robert J. Sampson, Stephen W. Raudenbush, and Felton Earls published their classic study, *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy in Science*, it has been known that collective efficacy, defined as social cohesion among neighbors combined with their willingness to intervene on behalf of the common good, is linked to reduced violence. Violence associated with concentrated disadvantaged and residential instability is largely mediated by collective efficacy. While we know that neighborhoods that have collective efficacy are safer, no one had undertaken efforts to figure out how to create it where it was absent.

### ►Alameda County Public Health Department

In 2004, the Alameda County Public Health Department began developing a Neighborhood Empowerment model for West Oakland and Sobrante Park. This was the first systematic attempt to find out how to create collective efficacy in violence-prone neighborhoods that clearly lacked collective efficacy. Resources included funding, staffing, and in-kind support. Partners brought in by the Alameda County Public Health Department included residents, community-based organizations, schools, churches, the City of Oakland Neighborhood services, the police, and public works. That partnership undertook a number of actions, including

surveys and forums; leadership training; building and strengthening Resident Action Council and Neighborhood Committees; and launching youth employment and development programs.

Time Bank training was provided to resident leaders and staff with a view toward utilizing this tool to empower residents, increase leadership, generate social capital, support positive growth for youth, and foster healthier behavior. Time Banking was introduced as a way to enable resident groups to come to the table as contributors so that power could be shared and public agencies could become more responsive to community needs. Evaluation systems are in place that should enable policymakers to know whether this multi-year investment pays off in realizing specific outcomes such as renovated parks, decreased drugs, safer neighborhoods, reduced violence, reduced inequities, and improved health and well-being.<sup>215</sup>

## **5. Respect**

### ***5a. A Fresh Listen to Those Who Go Unheard and Ignored While Providing Formal Vehicles and Advocates to Amplify Their Voices and Assert Their Rights***

The source of this core principle of respect is our own Declaration of Independence: We hold these truths to be self-evident: that all men are created equal, that we are endowed with certain inalienable rights—to life, liberty and the pursuit of happiness. Right to counsel is surely one of those “inalienable rights” guaranteed to all youth when the juvenile justice system takes action that may jeopardize their life, liberty, or pursuit of happiness. It is clear that there are exemplary programs that seek to make good on that guarantee.

Every element of the system requires a major upgrade to honor the constitutional rights of juveniles. This is only possible if the number of cases that require appointment of counsel is radically reduced by institutional reforms that divert youth from the system and that provide them the choice of non-stigmatized alternatives that are attractive and credible.

Access to Justice Commissions, just established in several states, can become a vehicle to ensure that states are actively addressing the need to provide access to well-trained, experienced, and dedicated defense attorneys for indigent youth in the juvenile justice system. The elements needing radical upgrading have been identified previously:

- Access to counsel prior to arraignment—at the earliest possible moment;

- Ensuring meaningful informed consent to any waiver of counsel;
- Counsel competent in the practice of juvenile law and in youth development;
- Full determination of a juvenile’s competence to stand trial;
- Adequate attorney training; and
- Integrating legal services with social services.

The case for investing in raising the standard for juvenile defense is clear, as indicated in John Spratt’s 2005 analysis of the President’s budget. The President’s 2005 budget cut JJDPA grants, \$151 million dollars below the 2004 enacted level, and \$155 million cut below the amount needed to maintain purchasing power at the already under-funded 2004 level.<sup>216</sup>

Before describing some of the exemplary programs that have tried to honor the promise of equal access to justice, it is important to describe certain efforts that have been undertaken to amplify the voice of youth directly as a vehicle for changing the juvenile justice system and empowering youth to have a say in how that system operates and how it affects them.

### ***5b. A Voice for Youth***

#### **►Time Dollar Youth Grand Jury**

In 2002, the Time Dollar Institute convened a Youth Grand Jury in response to proposals from youth court jurors at multi-session community meetings, known as charettes, convened to map a future for the Youth Court. The intent was to undertake an investigation of the systemic problems that produce the cases seen in Youth Court. The 15 youth jurors who volunteered for the Youth Grand Jury decided that they wanted to investigate what the District government was doing about substance abuse and teenagers. A law professor guided the inquiry; law students helped to identify and secure witnesses. Every other Saturday for nearly six months, the Youth Grand Jury met. The result was a report and indictment entitled *Youth Speaking Truth to Power, What the District of Columbia Is and Isn’t Doing about Teen Substance Use and Abuse and What Teens Can Do to Help Prevent and Treat Teen Substance Use and Abuse in the District of Columbia*. The members of the Grand Jury presented their report to an audience composed mainly of District officials. The indictment produced numerous results:

## How the Juvenile Justice System Reduces Life Options of Minority Youth

- Funding was mandated by the D.C. Council of teen drug treatment programs.
- \$2 million was committed by the mayor for drug prevention and treatment programs specifically for youth (compared with zero dollars in prior years) as a direct result of the Youth Grand Jury indictment.
- The District's Substance Abuse Strategic Plan was changed, identifying treatment and prevention programs for youth as of highest priority and specifically calling for involvement of “*youth as partners and co-workers in the design and implementation of prevention initiatives and the shaping of District policy.*”
- A Time Dollar Drug Free Club for youth recommended by the Youth Grand Jury was created.
- From the District's substance abuse agency, APRA, \$25,000 was secured to create a youth-designed and -operated web page addressing teen substance abuse and related issues.
- The Youth Grand Jury was given responsibility for a workshop and presentation on drug prevention and treatment at the Mayor's Youth Summit.
- Two Youth Court jurors were appointed to the Mayor's Blue Ribbon Commission, two to the APRA Advisory Council, and three youth court members were appointed to the Juvenile Justice Advisory Group.
- The D.C. Coalition Against Drugs and Violence designated Time Dollar Institute as Lead Agency, securing \$100,000 on a proposal committing the Coalition to create a Youth Division.

In 2006, funding was received to convene a second Youth Grand Jury to revisit the findings of the first Youth Grand Jury and assess what progress had been made and what remains to be done.<sup>217</sup>

### ► Books Not Bars and the Youth Force Coalition

In early 2001, it was a foregone conclusion that a new super-jail for youth would be built in Alameda County. Opposition came from youth groups, but no one thought the youth had a prayer. Nevertheless, from 2001 to 2003, Books Not Bars—along with the Youth Force Coalition and other allies—stopped Alameda County from building one of the biggest juvenile halls in the country.

In spring 2001, Books Not Bars and the Youth Force Coalition (a coalition of youth organizations throughout the

San Francisco Bay Area) learned about Alameda County's plans to build an enormous “super-jail for kids” in remote Dublin. Despite the fact that juvenile crime in Alameda County had been declining for years, the county board wanted to replace its 299-bed juvenile hall with one nearly twice as large—540 beds. It wanted to build this gigantic jail in Dublin all the way across the county from Oakland, the county's largest city and home to most of the youth in juvenile hall (and to most of their families). A 540-bed hall would have been among the nation's largest.

Bit by bit, these youth chipped away at the super-jail with an avalanche of “hip-hop”-style protests. In May 2001, their campaign persuaded state officials to withdraw more than \$2 million from the project. By July, two of the five county supervisors (Keith Carson and Nate Miley) had come out firmly against the super-jail. Also in July, the county agreed to begin a comprehensive study of its juvenile justice system. And, slowly but surely, the planned dimensions of the super-jail shrank. In spring of 2002, Books Not Bars and four nationally renowned juvenile justice policy groups published *Alameda County at the Crossroads*,<sup>218</sup> a devastating report critiquing the super-jail plans. Later that year, the County began searching for alternate locations. In 2004, environmentalists and Dublin homeowners threatened the county with a barrage of lawsuits. After being pummeled for two years in the press, in Sacramento, in their meeting rooms, and everywhere else, this was the final straw for the supervisors. On May 6, the super-jail plans finally died. The board voted unanimously to meet the community's demands. The supervisors reduced the proposed expansion by 75 percent from 241 new beds to only 33 new beds. And the new hall will be in the center of the county, where families can more easily visit and support their children.<sup>219</sup>

### ► Juvenile Justice Advisory Boards

The JJDPA provides federal grants to states and communities for “planning, establishing, operating, coordinating, and evaluating projects … for the development of more effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency and programs to improve the juvenile justice system.”<sup>220</sup> The express intent of the act is to divert youth from the traditional juvenile justice system and to provide critically needed alternatives to institutionalization.

To be eligible for these grants, each applicant state must submit a plan for carrying out its purposes and create an advisory group to prepare, implement, supervise, and ensure compliance with this plan. This advisory group must “have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency, the administration of juvenile justice, or the reduction of juvenile delinquency.”<sup>221</sup> At least one-fifth of

(this group's) members shall be under the age of 24 at the time of appointment and at least three members who have been or are currently under the jurisdiction of the juvenile justice system."<sup>222</sup> Additionally, the advisory group must "contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system."<sup>223</sup> In addition, the group must include representatives of nonprofit agencies that specialize in family strengthening and youth development.

This author knows from experience that present methods for securing meaningful youth participation have been ineffective. But the requirement to involve youth and youthful offenders could provide an opportunity for existing youth groups specifically organized to address youth problems and issues. Those groups, in turn, could designate spokespersons and press for their appointment to the state advisory group. These state advisory groups actually exercise *de facto* authority over the establishment of priorities, the allocation of funds and, in many instances, the actual award of specific grants. An investment in youth groups that took advantage of this vehicle for empowerment might provide an important corrective and an ongoing voice for youth of color whose life options have been limited by the way in which the juvenile justice system currently operates.

## **B. EFFECTIVE LEGAL REPRESENTATION FOR YOUTH: LEGAL ADVOCACY PROGRAMS**

### **►First Defense Legal Aid**

The 2004 OJJDP bulletin on access to counsel focuses on First Defense Legal Aid (FDLA) as an effective legal advocacy program for youth and gives a detailed description of the program, excerpted below:

Since its formation in 1994, First Defense Legal Aid (FDLA) has provided legal aid to adult and juvenile residents of Chicago, IL. During this period, legal representation for Chicago minors has increased from 11 percent annually to 22 percent. In Illinois (and many other states), police can question a suspect for up to 72 hours without the presence of legal counsel. Public defenders cannot be appointed until a defendant appears in court and indigence is determined. FDLA bridges this gap in legal representation, intervening at the outset of all cases involving juveniles. This early intervention is especially important for juveniles, who, because of their youth and inexperience with the legal system, can easily be intimidated into making false statements.

FDLA attorneys respond to an average of 25 to 50 calls per day, 700 to 1,500 calls per month. They provide

consultation over the phone. They also go to the police station if an individual is being subjected to custodial interrogation, as youth often do not understand their rights and may unwittingly make statements against their interests as a result of coercion, intimidation, or confusion. FDLA attorneys also ensure that clients' special needs (such as receiving medical attention or prescribed medications while in police custody) are being met. In addition, they document and report any violations of procedural or legal rights that may occur while clients are in police custody.

FDLA offers legal advice and educates the public about the criminal and juvenile justice systems. It conducts outreach through street law programs, public service announcements, social workers, and various agencies. With the addition of an education coordinator to the staff, FDLA expanded its education and outreach capabilities considerably. During the first half of 2001, FDLA made 190 public education presentations at area high schools, elementary schools, social services agencies, halfway houses, and churches. By providing peer educator training in more than half of Chicago's public schools, FDLA has been able to increase the juvenile population it serves. FDLA emphasizes its "train the trainers" initiative, which identifies community leaders and shows them how to present FDLA's public education program. In this way, basic "know your rights" information is communicated regularly to staff and clientele of a variety of educational and social services agencies. The FDLA staff also conducts training on specific legal issues such as search and seizure, "criminalization" of youth, and juvenile rights.

In September 2000, FDLA opened an office in Chicago's Englewood community. A National Association for Public Interest Law staff attorney assigned to the Englewood office provides early-intervention legal representation and public education to community residents. FDLA's Project E.A.G.L.E. (Englewood Access to Genuine Legal Empowerment) was undertaken in response to a growing rift between Englewood residents and Chicago police. Englewood was in the national news in 1999 when detectives claimed that two children, ages 7 and 8, confessed to the murder of an 11-year-old. DNA evidence later exonerated the children, bringing public attention to the failure of police to properly investigate crimes in this neighborhood. The way the police handled the homicide investigation accentuated the need for guaranteed free legal representation and legal education in Chicago's poor communities.

FDLA's role expanded further in 2001 with the passage of Illinois Public Act 91–0915. This law requires early access to legal counsel for children younger than 13 who are in police custody and who have been accused of homicide or sexual assault.<sup>224</sup>

### ►Mesa County Partners

The 2004 OJJDP report on access to counsel also describes a legal advocacy program in Colorado, the Mesa County Partners:

Mesa County Partners in Grand Junction, CO, has shown considerable promise in tackling overrepresentation of minorities in the juvenile justice system. Mesa County's chief judge was aware of the county's disproportionate minority confinement problem as early as 1993, when court data revealed that minority (predominantly Hispanic) youth constituted 60 percent of all youth in the juvenile justice system, but just 12 percent of all youth in the general population. Analysis of the data found little difference between minority and non-minority youth with regard to seriousness of crimes committed or number of police contacts. The overrepresentation of minorities emerged at the commitment stage because minority juveniles often did not have an attorney, did not understand or trust the system, and had not appeared in court for previous offenses (with the result that these offenses, which usually were minor, accumulated until the judge ordered incarceration).

Mesa County Partners formed its Minority Family Advocacy Project in 1995 to work with minority youth who become involved with the juvenile justice system. The program uses two staff advocates and 12 bilingual volunteer family advocates who walk juveniles through the system, help them obtain defense counsel, and make sure the juveniles know their rights. The staff advocates attend all detention hearings, see that paperwork reaches the public defender or court-appointed attorney, and help youth understand the status of their case—work that public defenders often do not have time to do. The staff advocates, who work with approximately 100 youth at any given time, pair with 40 volunteer advocates, who spend three to four hours per week with the juveniles, as mentors, tutors, and friends. The program is funded with OJJDP Formula Grant funds through the Colorado Division of Criminal Justice and matching county funds. Stipends for the volunteers come from WRAP, an agency supported by the county's Division of Human Services and the local school system.<sup>225</sup>

### ►Public Defender Service for the District of Columbia

For the District of Columbia, the OJJDP report on access to counsel highlights the efforts of the Public Defender Service (PDS) to provide quality legal representation for juveniles and describes PDS as follows:

The Public Defender Service (PDS) for the District of Columbia was created in 1960. In 1970, the organization expanded and assumed its current name. The mission of PDS is to provide and promote quality legal representation for indigent adults and children who become involved in court proceedings in the District. PDS seeks to protect society's interest in the fair administration of justice. Although a major portion of the agency's work is devoted to ensuring that no innocent person is wrongfully convicted of a crime, PDS also provides legal representation for individuals who are facing involuntary civil commitment in the mental health system and for children in the delinquency system who have disabilities. The strength of PDS has always been the quality of the legal services it delivers. PDS concentrates its resources on complex and serious cases and has developed considerable institutional knowledge and expertise that it leverages to the legal community through training and consultation.

Since its creation in 2002, the Family Court of the Superior Court of the District of Columbia has had jurisdiction over children who are charged with delinquent acts, as well as all proceedings involving neglect, divorce, custody, adoption, and other family-related matters. Under the “one family, one judge” requirement of the Family Court, the same judge is assigned to all such matters involving the same child whenever it is practical, feasible, and lawful to do so. This system provides continuity for juvenile public defenders. The Family Court judges become more familiar with the cases, and the defenders are likely to have better access to guardians ad litem, education advocates, social workers, and others assigned to a case. In general, the system is intended to provide a more team-like, family-oriented approach to child welfare and juvenile justice.

PDS has incorporated many effective elements in its juvenile defense activities on behalf of individual clients and brings about system change largely by training non-PDS lawyers who represent juvenile clients. PDS has developed a specialty curriculum on juvenile defense and periodically conducts comprehensive training for attorneys who practice in delinquency court. PDS also offers training sessions

and conferences on special education advocacy and disability law as they relate to juveniles in the delinquency system. For example, in 2002, PDS conducted a training series on Hot Topics in Education and Community-Based Services for Children with Disabilities in the Juvenile Justice System. Participants in these training events include defense and special education attorneys who practice in the delinquency and neglect courts, as well as civil legal services lawyers, paralegals, law students, social workers, and youth advocates from local universities and nonprofit organizations.

The materials from these training events include practice tips, copies of pertinent laws and regulations, checklists, forms, sample correspondence and pleadings, and information on resources and local contacts. The resulting “tool box” provides a practical “how to” approach to assist attorneys—particularly education advocates—in working collaboratively with the school system and other agencies responsible for delivering services to children with special needs.

PDS also compiles a Youth Resource Directory of services for youth involved with the juvenile justice system. Public defenders, guardians ad litem, social workers, and other practitioners can use the directory to find services for youth in their care. The directory is organized by type of service: acute psychiatric care, alternative living, drug education and treatment, educational and vocational training, medical and mental health services, monitoring programs, after school and mentoring programs, and other services. Three members of the PDS Offender Rehabilitation Division staff are experts in juvenile mental health and are available for consultation. Consultation is also available through the Division’s Duty Day services.

In addition to the eight to twelve defense attorneys in the PDS Juvenile Division, two PDS social workers focus exclusively on juvenile cases and assist with pretrial detention alternatives and long-term program development. PDS attorneys also represent juveniles in special education, child disability, and other civil matters that are related to (or collateral consequences of) delinquency proceedings. Two of the PDS special education attorney positions are funded through an award under OJJDP’s Juvenile Accountability Block Grants (JABG) program. Thus, PDS has developed a “team defense” approach to ensure that juveniles receive quality defense, that education needs are recognized and responded to as available resources permit, and that children with special needs receive public benefits, social services, and community-based treatment services where appropriate.

In 1982, in response to concerns about incarcerated youth in need of legal guidance and access to counsel, PDS created the Juvenile Services Program (JSP) at Oak Hill Youth Center, the District’s juvenile corrections facility. In 1999, JSP became a component of the PDS Community Defender Program. The JSP coordinator and staff attorney develop services beyond the gates of Oak Hill to help divert youth from the facility and meet the needs of youth who leave the facility for distant residential placements. JSP also works to facilitate reentry into the community for youth at Oak Hill and for children in any of the District’s shelters. Under the JSP coordinator’s supervision, the staff attorney trains and supervises law clerks, who work to ensure that the due process rights of incarcerated youth are protected at disciplinary hearings. Over the years, JSP has worked with thousands of incarcerated youth, but no definitive research has been conducted on the eventual outcomes for these youth. Recently, the Mayor’s Blue Ribbon Commission on Youth Safety and Juvenile Justice voted to demolish Oak Hill and replace it with new facilities and more community-based programs for delinquents. PDS is monitoring these developments as it continues to offer legal services to preadjudicated, detained, incarcerated, and committed youth.<sup>226</sup>

## ►New York Legal Aid Society

The 2004 OJJDP report also includes a description of the New York Legal Aid Society, and a discussion of the two means by which the Society provides legal counsel for juveniles:

Founded in 1876, the New York Legal Aid Society in New York City is the nation’s oldest and largest legal services organization. The society has two components that deal with legal counsel for juveniles: the Juvenile Rights Division (JRD) and the Criminal Defense Division (CDD).<sup>227</sup>

### *Juvenile Rights Division*

JRD represents 90 percent of the youth who appear before the Family Court in New York City in cases involving abuse and neglect, delinquency, and persons-in-need-of-supervision status offenses. The division represented more than 36,000 youth in 2002; child protection cases far outnumbered delinquency cases. JRD’s delinquency teams represent children younger than 16 who are charged as delinquents in family court. Initiated a few years ago, delinquency teams now operate in four New York City boroughs: the Bronx, Brooklyn, Manhattan, and Queens. Teams consist of a supervising attorney and staff attorneys, a social worker,

and an educational consultant from PEAK (Providing Educational Assistance to Kids), a JRD project that addresses education-related issues of delinquency clients. The teams also have access to paralegals, investigators, and interns. Social workers and PEAK educational specialists become involved in cases early in the process so they can prepare a dispositional plan and testify for an alternative to incarceration. If a youth is involved in both a child protection matter and a delinquency matter, a special team is created to coordinate the youth's representation. Team attorneys and educational consultants represent youth in any school suspension or other school-related proceeding. Team members meet regularly to discuss cases and strategies. JRD also has a delinquency practice group consisting of representatives from the four boroughs who meet to discuss citywide trends and legal issues. This group and the individual delinquency teams identify issues, such as conditions of confinement, to be addressed by JRD's special litigation unit.

JRD maintains a shared online directory, which includes a practice manual, recent case law, and a motions bank. The division also conducts ongoing training for unit staff, including specialized instruction for child protective services and delinquency matters. These specialized resources, together with the opportunity to focus exclusively on delinquency cases, enable team attorneys to gain greater expertise in legal and dispositional issues relevant to delinquency matters.<sup>228</sup>

### *Criminal Defense Division*

The Criminal Defense Division (CDD) represents juveniles charged as adults (youth ages 13–15 who are charged with serious felony offenses and youth 16 and older, who are considered adults under New York law). In 1996, CDD created a juvenile offender team in its Manhattan trial office to represent youth ages 13–15 who were charged in adult criminal court with violent felony offenses. These cases, which are prosecuted under New York's juvenile offender law, constitute a small percentage of CDD's total caseload yet require a great deal of time and attention. CDD formed a specialized team to handle juvenile offender cases because it recognized that effective legal representation for these youth requires specific expertise in child and adolescent development, psychiatric diagnoses prevalent among youth, and the effects of child abuse and neglect—areas not ordinarily familiar to attorneys trained to represent adults.

The multidisciplinary juvenile offender team consists of a director, seven experienced attorneys, an investigator, a forensic social worker, and a therapeutic social worker. The team meets biweekly to confer on cases, discuss case strategy, and share experiences from the courtroom

and program referrals. Team members also share their specialized knowledge in case consultations with CDD attorneys and social workers who represent older teenagers.

CDD's team model emphasizes early case analysis to explore trial and sentencing strategies. Team members collect social, education, and mental health histories to enhance case advocacy. This approach results in speedier dispositions, fewer and shorter incarcerations, and greater use of alternatives to incarceration. In the majority of cases, the team secures placements in community-based programs that offer alternatives to incarceration. The team's therapeutic social worker, whose position is funded by grants, works onsite at a community-based program and in clients' homes, providing counseling and services to clients and their families. The therapeutic social worker intervenes in family crises and focuses on improving family members' communication and self-esteem.

CDD's juvenile offender team also works with special litigation units in CDD and JRD and with the Legal Aid Society's prisoner rights project to address, through litigation and legislation, issues facing incarcerated youth. The team also collaborates with JRD attorneys and social workers to coordinate advocacy for clients appearing in both family court and criminal court. Additionally, CDD juvenile offender team attorneys represent clients in school suspension and school placement matters. The team has also formed working relationships with education advocacy and youth services groups in the community and overall has significantly improved the level of advocacy provided to young people in New York City's adult criminal system.<sup>229</sup>

### ► **Youth Advocacy Project**

The OJJDP's "Access to Counsel" report also describes the efforts of the Youth Advocacy Program in Massachusetts:

The Youth Advocacy Project (YAP) was founded in 1992 by the Committee for Public Counsel Services and the public defender office for the Commonwealth of Massachusetts. YAP's initial mission was limited to defending indigent juveniles charged with serious criminal offenses and who faced the possibility of incarceration in an adult facility. The mission was later broadened to encompass the underlying issues that contribute to juvenile offending. In 1993, YAP began to represent youth charged with lesser offenses and to offer expanded advocacy and other intervention services.

YAP's primary function is to provide comprehensive legal representation and advocacy for youth charged as

delinquent and youthful offenders in Boston's juvenile courts. In 1999–2000, YAP attorneys handled 820 delinquency and youthful offender cases involving 525 youth. YAP offers clinical assessments, service planning, referrals, and social services consultation to high-risk youth. It also works with youth in disciplinary and administrative proceedings, including school suspension and expulsion hearings, special education meetings, and Department of Youth Services conferences. Although YAP services are available to youth ages 7–21 throughout Boston, its constituency comes primarily from the predominantly African American neighborhoods of Dorchester and Roxbury. Most youth receiving direct legal services are boys, yet equal numbers of boys and girls receive prevention services.

The Committee for Public Counsel Services' 15-person oversight committee, which is appointed by the Massachusetts Supreme Judicial Court, oversees YAP. The YAP staff includes a director, one supervising attorney, two social workers, a psychologist, a community liaison, a Know the Law workshop coordinator, and an administrative assistant. Staff members are often assisted by law students, graduate students of social work and public health, and undergraduate interns.

YAP is intensively involved in community efforts and outreach. It has offered several hundred training sessions on a variety of juvenile justice issues for attorneys and youth services professionals and has conducted 700 Know the Law workshops for more than 10,000 participants. The Roxbury Network and the Dudley Outreach Workers Network are partnerships between YAP and more than a dozen Roxbury youth-serving agencies. The goals of the networks are to maximize the use of existing resources, work collaboratively to improve existing services and implement new ones, and develop a strategy for long-term systemic change. YAP also publishes a Community Notebook designed to assist lawyers, probation officers, staff in the Department of Youth Services and Department of Social Services, and other youth workers in understanding the needs of their clients and identifying community resources available to meet those needs.

In 2003, YAP created the Juvenile Defender Support Network. With the assistance of a JABG grant, YAP added two staff members to train and support the 375 solo practitioners who provide the bulk of the indigent defense services to court-involved children throughout Massachusetts.

YAP also hosts the Equal Justice Partnership (EJP), which consists of upper-level managers from most of the Commonwealth agencies involved in Massachusetts' juvenile justice system. The primary goal of EJP is to enhance the capacity of the juvenile court to promote healthy outcomes for court-involved youth by improving communication and collaboration among juvenile justice system stakeholders. EJP is developing a model job-readiness program for youth on probation, piloting a youth development assessment tool, and developing Youth Development Approach training curriculums for agencies that work with court-involved youth.<sup>230</sup>

## **1. Services for Juveniles in Incarceration**

For juveniles who commit the most heinous crimes where incarceration is appropriate, the JJDP has emphasized the importance of rehabilitation as a top priority. Education is an essential component of reducing recidivism and rehabilitating young offenders. A significant number of juveniles incarcerated are in need of educational assistance. In the U.S. Department of Education's Twenty-First Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act (IDEA), it was noted that "IDEA [Individuals with Disabilities Education Act] ensures that students with disabilities will receive a Free Appropriate Public Education, and these assurances clearly extend to students in correctional facilities. In the landmark case *Green v. Johnson*, the U.S. District Court of Massachusetts ruled that students with disabilities do not forfeit their rights to an appropriate education because of incarceration."<sup>231</sup>

The report also stated the following: "IDEA requires that States identify, locate, and evaluate all children with disabilities residing in the State who need special education and related services. Education agencies are responsible for conducting a full, individual evaluation to determine whether a child is eligible for services under IDEA and to determine the educational needs of the child. This requirement generally applies to youths in correctional facilities as well as those in more typical educational settings."<sup>232</sup> Nevertheless, this "child find" policy often results in schools failing to identify children-in-need in the school system, and once they enter the justice system, jails find it even more difficult to identify them—although at the same time, it is even more necessary.

Even when children are properly identified as in need of special services, the failures in communication between schools and correctional facilities can result in a denial of appropriate services during the child's time in incarceration. It is uncommon for youths identified with disabilities

prior to entering correctional facilities and those identified upon entering incarceration to have their school records transferred between the two facilities in a timely manner. The exchange of information between public schools and correctional facilities can be so problematic that school officials sometimes must learn about a youth's incarceration through informal means of communication. "Staff in correctional facilities reported that some school districts refused to release student records without parental permission, delaying the identification of students with disabilities and the provision of appropriate services. In fact, [researchers found] it was not uncommon for youths to have exited the correctional system by the time their school records arrived."<sup>233</sup>

Failure to implement the IDEA's child find provision has resulted in a number of class action suits against correctional facilities failing to properly identify and assess juveniles. The same Department of Education report also describes a series of cases concerning the failure of schools and detention facilities to comply with the IDEA:

In *Andre H. v. Sobol*, the plaintiffs claimed that the detention holding facility did not conduct any screening or child find activities, did not convene any multidisciplinary team meetings, and did not make any attempts to get records from youths' previous schools. The case was settled out of court 7 years after initiation. In *Smith v. Wheaton*, a school was accused of failing to meet timelines for evaluating youths for special education eligibility or developing Individualized Education Plans (IEPS). The plaintiffs also asserted that major components of IDEA were not being followed, such as providing related services (e.g., counseling, occupational therapy) and creating transition plans. After an 11-year legal battle, the courts ruled that juvenile detention facilities must provide a broad array of educational and rehabilitative services. Furthermore, school districts must promptly release school records to the facility when a child is incarcerated, as well as ensure appropriate special education placements upon the child's release. These cases demonstrate the nature of the difficulties in identifying and assessing the special education needs of students with disabilities in correctional facilities.<sup>234</sup>

## 2. Providing Effective Education and Rehabilitation Services

The Board of Education's report also remarked that "The curriculum used in juvenile facilities often parallels that used in local school districts; curriculums in adult facilities are usually modeled on adult education programs, with the GED or high school equivalency as the credential earned."<sup>235</sup> But children who fall under the IDEA are required to have an

Individualized Education Plan, so adult-style curriculum and methods for teaching the subject matter often fail to meet the IDEA requirements and fail to meet students' needs. As the Board's report further remarked:

Researchers suggest that the components of an effective corrections special education program include: (1) a functional assessment that uses ongoing measurement to identify discrepancies between a predetermined curriculum or program standard and the youth's level of educational achievement, social/vocational adjustment, and ability to function independently; (2) a functional curriculum that meets a student's individual needs, including social, daily living, and vocational skills; (3) functional instruction that uses positive and direct instructional strategies; (4) vocational training opportunities; (5) transition services; (6) a full range of educational and related services; and (7) professional development for educators and staff. Further, research suggests that effective and ineffective rehabilitation programs differ in a variety of ways. Effective programs are distinctive in the types of intervention they provide, their duration and intensity, the characteristics of staff, the relationship between the staff and offenders, and the extent to which the programs address the social and economic factors affecting offenders. By identifying changeable behavior characteristics, the conceptualization of delinquent behavior is also a critical factor driving the development and implementation of rehabilitation programs. In addition to addressing the offender's environment, feelings, behavior, and vocational skills, effective programs also use a cognitive behavioral and social learning approach. They include techniques to improve reasoning skills, empathy, and awareness of behavioral consequences.<sup>236</sup>

The report also makes the following key points:

Much attention has been given to the interpretation of the IDEA Amendments of 1997 requirement that students with disabilities be served in the least restrictive environment. The law holds that:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only when the nature or severity of the disability of a child is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. (§612(a)(5)(A))

Interpreting the application of this mandate within the confines of a correctional facility is particularly difficult. Some researchers have labeled correctional facilities *the most restrictive environment*. Nonetheless, youths with disabilities in correctional facilities may receive educational services with non-disabled, incarcerated peers.<sup>237</sup>

### **3. Transitional Skills**

The Individuals with Disabilities Education Act also requires that between the ages of 14 and 16 transitional services be made available for juveniles to begin “preparing for such post-school outcomes as employment, postsecondary education, adult services, independent living, and community participation.”<sup>238</sup>

“Correctional facilities often stress employment in corrections industry rather than vocational education, providing further evidence of the relatively low priority afforded to education. Very few correctional facilities have formal vocational education programs that provide offenders with marketable skills and assistance in employment planning. Furthermore, the existing vocational education programs often exclude youths with disabilities because they do not have a high school diploma, adequate reading skills, or other prerequisite skills.”<sup>239</sup>

### **4. Improving Incarceration Special Education**

A number of methods for improving the special education requirements for children falling under the IDEA have been identified. The aforementioned *Twenty-First Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* does an excellent job of presenting them, as follows:

State, regional, or national efforts are required to provide standards of best practice and resources for technical assistance. Given the relatively small number of special educators within correctional facilities and the broad scope of their responsibilities, these individuals cannot be expected to design, implement, and evaluate their own special education programs. Rather, this is an area in which State education agency personnel or regional staff might provide assistance and leadership. Technical assistance to correctional facilities could be provided to design educational programs that comply with curriculum standards and graduation requirements, as well as meet the unique needs of the students with disabilities. Furthermore, coordination among State agencies that work with incarcerated youths could be enhanced through new channels of communication and timely exchange of records.

The professional development needs of the academic staff in correctional facilities are well-documented, most specifically in the area of special education. Teachers need specialized training to work with offender populations. Because relatively few prospective teachers enter corrections education, institutions of higher education cannot justify pre-service programs geared toward this particular subspecialty. Consequently, in-service training is essential. A State or regional comprehensive personnel development program that is aligned with State standards is required for enhancing the skills of correctional special educators.

Finally, to better assess the adequacy of corrections special education programs, State and local agencies should consider conducting results-based evaluations of their programs. These evaluations might include data on an array of results for youths with disabilities, including successful transition to community-based education programs, high school completion, mastery of State content standards, postsecondary employment, social adjustment, enrollment in postsecondary education programs, and recidivism. The evaluations could be linked with State standards so evaluation results can be used to inform professional development activities, guide reforms in curriculum and instruction, and generally improve corrections special education programs.<sup>240</sup>

## **IX. CONCLUSION**

The juvenile justice system is broken. It was built around two principles: (1) youth are not adults and therefore, youthful offenders need a system appropriate to their stage of development; and (2) youth, when faced with possible loss of liberty, are entitled to effective assistance of counsel guaranteed by the 14th Amendment and the Bill of Rights, particularly the 6th Amendment.

In practice, neither of those principles is being honored, and minority youth are being subjected disproportionately to disregard of both their developmental needs and their constitutional right to counsel. Accordingly, a system has developed that expends vast sums of money institutionalizing youth who should not be institutionalized; who may not even have committed an offense; who may not even have been competent to stand trial; who have waived rights they never should have waived; who have been represented by counsel that is neither competent nor adequately trained, staffed, or prepared to provide representation; who are accepting plea arrangements that will stigmatize them; and who are being confined in institutions that subject them to even greater developmental damage.

## How the Juvenile Justice System Reduces Life Options of Minority Youth

Substantial reforms are needed just to honor the right to effective counsel. But this report contends that fixing a broken system of legal representation, while necessary, cannot be the sole remedy for the devastating effect that the juvenile justice system now has on the life options of minority youth. This report contends that the primary remedies must be: (1) keeping youth out of the system altogether; (2) investing in their development; (3) enhancing the capacity of home and family to provide developmental support; (4) remedying the past failure of home and school to aid development; (5) building safe neighborhoods; (6) providing youth with opportunities to utilize their capacity to help others; (7) honoring that contribution with meaningful rewards and incentives; (8) creating a peer culture that is based on and that rewards civic engagement; and (9) creating vehicles whereby the voice of youth as a force for advancing

social justice can be amplified. We know how to do that. There are ample pilot programs and exemplary programs that demonstrate the value and cost effectiveness of these alternatives to subjecting youth to the formal adjudicatory process.

But it is equally clear that there will remain a much smaller number of youth for whom a formal judicial determination of involvement is appropriate and obligatory. In those cases, nothing short of effective assistance of counsel is tolerable. Given the disproportionate contact that minority youth have with the juvenile justice system, the life options of those youth can only be preserved by a multi-pronged effort to keep them out of the system and to honor their fundamental constitutional and statutory rights.

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<sup>218</sup> The report is available at <http://www.cjcj.org/pdf/alameda.cross.pdf>.

<sup>219</sup> See <http://www.ellabakercenter.org/page.php?pageod=18&cntentid=64>.

<sup>220</sup> 42 U.S.C.A. § 5631(a).

<sup>221</sup> As stated in the act: "This group includes at least one locally elected official representing general purpose local government; (II) representatives of law enforcement and juvenile justice agencies, including juvenile and family court judges, prosecutors, counsel for children and youth, and probation workers; (III) representatives of public agencies concerned with delinquency prevention or treatment, such as welfare, social services, mental health, education, special education, recreation, and youth services; (IV) representatives of private nonprofit organizations, including persons with a special focus on preserving and strengthening families, parent groups and parent self-help groups, youth development, delinquency prevention and treatment, neglected or dependent children, the quality of juvenile justice, education, and social services for children; (V) volunteers who work with delinquents or potential

delinquents; (VI) youth workers involved with programs that are alternatives to incarceration, including programs providing organized recreation activities; (VII) persons with special experience and competence in addressing problems related to school violence and vandalism and alternatives to suspension and expulsion; and (VIII) persons with special experience and competence in addressing problems related to learning disabilities, emotional difficulties, child abuse and neglect, and youth violence.”

<sup>222</sup> 42 U.S.C.A. § 5633(a)(3)(A).

<sup>223</sup> 42 U.S.C.A. § 5633(a)(3)(D)(iii).

<sup>224</sup> OJJDP, “Access to Counsel,” 20-21.

<sup>225</sup> Ibid., 21.

<sup>226</sup> Ibid., 24-25.

<sup>227</sup> Ibid., 22.

<sup>228</sup> Ibid.

<sup>229</sup> Ibid., 23.

<sup>230</sup> Ibid., 26-27.

<sup>231</sup> *Twenty-First Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, <http://www.ed.gov/about/reports/annual/osep/1999/chapii.pdf>, 8.

<sup>232</sup> Ibid., 9.

<sup>233</sup> Ibid., 10.

<sup>234</sup> Ibid.

<sup>235</sup> Ibid.,11.

<sup>236</sup> Ibid., 11-12.

<sup>237</sup> Ibid., 13.

<sup>238</sup> The Individuals with Disabilities Education Act, 20 U.S.C. 33 § 1401(a)(19).

<sup>239</sup> Ibid., 17.

<sup>240</sup> Ibid., 19-20.

## ABOUT THE AUTHOR

Dr. Cahn is founder and chairman of the Board at Time Banks USA. He is the originator of Time Dollars and Time Banking, creator of Co-Production, and president and founder of the Time Dollar Institute. He is author of *No More Throw-Away People* (Essential Books, 2004) and *Time Dollars* (co-author, Jonathan Rowe, Rodale Press, 1992), among other publications.

In 1980, Dr. Cahn created Time Dollars, a local, tax-exempt currency designed to validate and reward the work of rebuilding communities. Prior to his work with Time Dollars, he enjoyed a distinguished career as special counsel and speechwriter for Attorney General Robert Kennedy; special assistant to the Director, Office of Economic Opportunity; co-founder of the National Legal Services Program during the War on Poverty; and co-founder and co-dean of the country's first clinical law school (Antioch School of Law). He was awarded a BA magna cum laude from Swarthmore College, an MA and PhD from Yale University, a Fulbright Scholar to Pembroke College, Cambridge University, and a JD from Yale Law School. He was recently appointed Distinguished Professor of Law, University of the District of Columbia School of Law.

## ABOUT THE JOINT CENTER HEALTH POLICY INSTITUTE

The mission of the Joint Center Health Policy Institute (HPI) is to ignite a “Fair Health” movement that gives people of color the inalienable right to equal opportunity for healthy lives. HPI’s goal is to help communities of color identify short- and long-term policy objectives and related activities in key areas. The Joint Center for Political and Economic Studies is a national, nonprofit research and public policy institution. Founded in 1970 by black intellectuals and professionals to provide training and technical assistance to newly elected black officials, the Joint Center is recognized today as one of the nation’s premier think tanks on a broad range of public policy issues of concern to African Americans and other communities of color.

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### ***State Public Education Policy and Life Pathways for Boys and Young Men of Color,***

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