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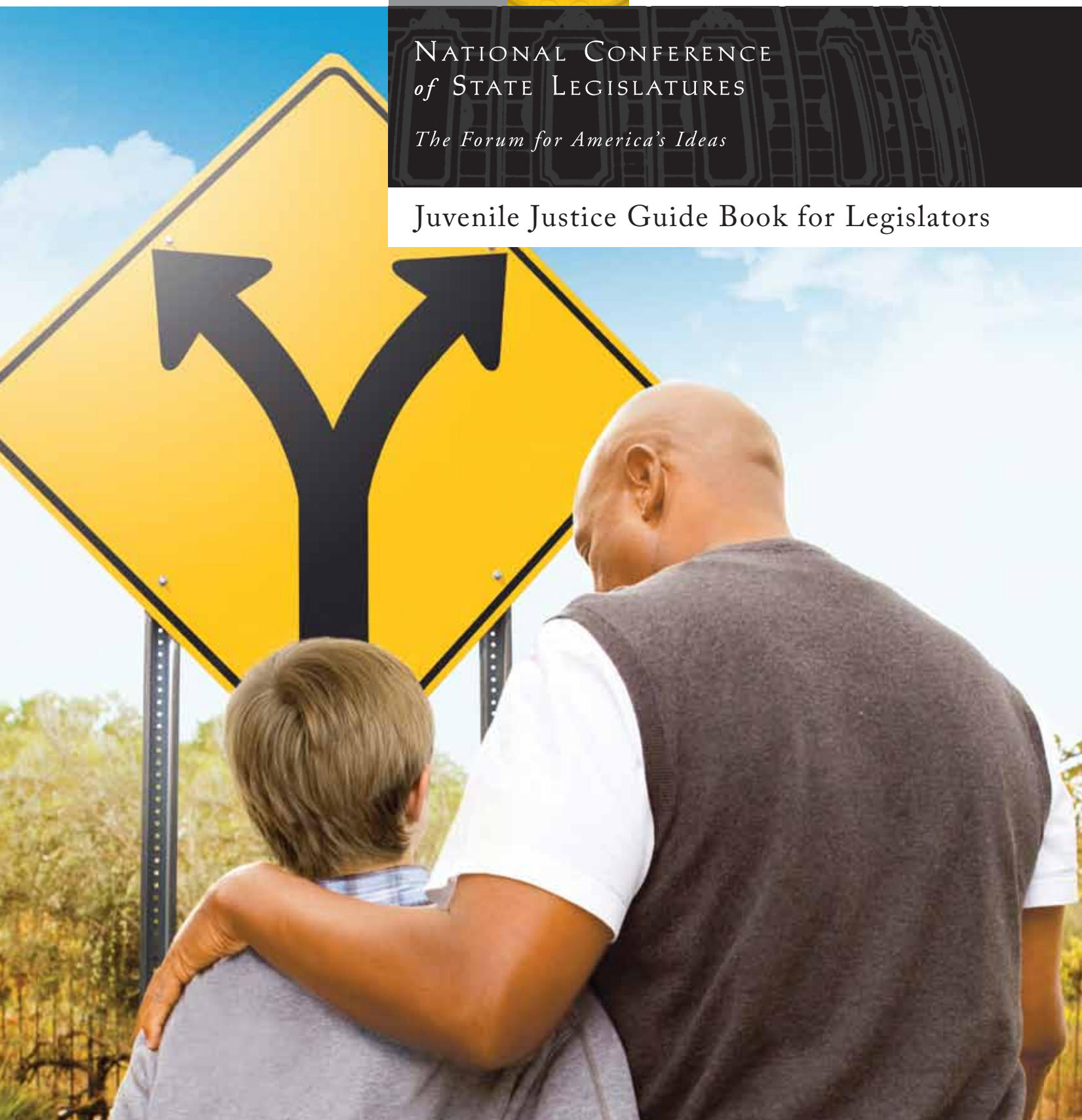
Juvenile Justice Guide Book for Legislators



NATIONAL CONFERENCE *of* STATE LEGISLATURES

Introduction & Overview

Juvenile Justice Guide Book for Legislators

Introduction

Preventing and addressing juvenile crime and delinquency remain perennial issues in state legislatures today. Juvenile justice policies require balancing the interests of rehabilitation, accountability and public safety, while also preserving the rights of juveniles. State lawmakers now more than ever are challenged with making informed choices on ways to cut costs and reduce crime and still meet the needs of youth who commit delinquent acts.

Juvenile justice reaches into courts, corrections, child protection, education, mental health and children's services. States have recognized in recent years that policies must facilitate collaboration with the justice system and other youth-serving agencies. The goal is to provide an integrated approach that can better interrupt the pathways youth follow into the delinquency system.

A significant amount of juvenile justice legislation in recent years looks to rebalance approaches to juvenile crime and delinquency. After punitive laws were enacted in response to the rise of juvenile crime in the early 1990s, the past decade has seen a steady decline in juvenile crime rates and a reexamination of juvenile justice policies. States are looking for more ways to address youth crime in ways that are cost-effective and that safeguard the public by treating and rehabilitating young offenders more effectively.

The Goal:

To provide an integrated approach that can better interrupt the pathways youth follow into the delinquency system.

Examining the State of Juvenile Justice

Currently, states are not complacent about juvenile crime and remain interested in improving public safety, juvenile justice systems and outcomes for youth. As the pendulum slowly swings toward more treatment-based options for youth, lawmakers across the country are faced with tough decisions about state services, with a strict reexamination of all programming, including those for youth.

Recent research by the Office of Juvenile Justice and Delinquency Prevention has shown that maintaining incarceration has proven not only to be costly, but also ineffective at keeping delinquent juveniles out of the criminal justice system. It points to the value of cost-benefit analysis of existing evidence-based programs, such as investing in community-based alternatives to incarceration and prevention programs. Today and in the coming years, states will consider such strategies as they allocate scarce resources.

Federal Level

Significant rulings at the federal level have reshaped juvenile policies. In 2005, the U.S. Supreme Court abolished the death penalty for juveniles in *Roper v. Simmons*, then in 2010, the Court determined that the Eighth Amendment ban against cruel and unusual punishment also prohibits juveniles from being sentenced to life in prison without parole for non-homicide crimes. The ruling built on the reasoning the Court applied in 2005, citing adolescent brain development studies that demonstrate juvenile and adult differences. In recent years, several state legislatures have also repealed statutes imposing juveniles to life sentences without parole.

Findings by the MacArthur Foundation's Research Network on adolescent brain development opened new pathways to understanding the developmental differences between adolescents and mature adults. The Network's research was cited in the Supreme Court death penalty and juvenile life without parole cases. The studies specifically reveal that, during adolescence, the brain begins its final stages of maturation and continues to develop well into a person's early 20s, concluding around age 25. Such research also is reflected in current legislative deliberations and policymaking within the juvenile and criminal justice systems.

Trends in State Law

State legislative responsibility for juvenile justice includes integrating policies that affect those agencies and their handling of children in contact with, or at risk of being in, the child welfare, mental health, juvenile justice or adult systems. In most states, different legislative committees have jurisdiction over various cross-cutting issues and agencies in juvenile justice.

With more and better information on adolescent development, juvenile policies have become increasingly research-based during the past decade. Overarching administrative laws have created commissions or legislative committees to evaluate and make recommendations for states' juvenile justice systems. State legislatures have enacted prevention and intervention statutes that address truancy, provide early intervention services for at-risk youth, reform detention and distinguish juvenile from adult offenders. Recent laws also provide due process protections for juveniles in the court room, examine the effects of race in juvenile justice, and provide for successful juvenile reentry into the community after incarceration.

States have continued to consider adjusting the age of juvenile court jurisdiction. At the forefront of this movement was a law that took effect on January 1, 2010, in Connecticut to return 16- and 17-year-olds to juvenile court jurisdiction. In another related action, Illinois recently raised the age of juvenile court jurisdiction from 17 to 18 for youth charged with misdemeanor offenses, and Colorado expanded eligibility for sentencing for select youth ages 18 to 21 to the youthful offender system instead of to the adult system.

States also have focused efforts on providing early intervention services for at-risk youth. A comprehensive 2010 Nebraska law seeks to reduce over-reliance on juvenile detention for kids who do not pose a significant public safety risk. It provides for early intervention with at-risk children and families by facilitating parental involvement, school attendance and alternatives to detention. In recent years, other states such as Louisiana and Illinois have focused on school attendance through truancy enactments to deter future delinquent behavior.

Recent state actions have addressed the continued need for collaboration among the many systems that touch youths' lives. A 2010 Minnesota law provides for coordination of youth programs with local schools, law enforcement agencies, faith communities, and community groups to provide intervention services to keep children out of the system. Significant recent enactments also have

focused on due process protections for juveniles, with measures that address access to and the right to quality defense counsel. Between 2008 and 2010, at least 10 states passed laws requiring that counsel be provided to youth during all critical stages of juvenile proceedings.

Addressing racial disparities in the juvenile justice system remains a priority. In 2008, Iowa became the first state to require "minority impact statements" for proposed legislation related to crimes, sentencing, parole and probation for grants awarded by state agencies; Connecticut soon followed. Similar to fiscal impact statements, the new requirements seek to provide greater understanding of the implications of a proposed law for minorities.

Current Models of Reform

The MacArthur Foundation's Models for Change Initiative

Models for Change is a national initiative funded by the John D. and Catherine T. MacArthur Foundation to accelerate reform of juvenile justice systems across the country. Focused on efforts in select states, the initiative aims to create replicable models for reform that effectively hold young people accountable for their actions, provide for their rehabilitation, protect them from harm, increase their life chances, and manage the risk they pose to themselves and to public safety.

The initiative, rooted in an evidence-based approach to juvenile justice reform, promotes a variety of systems reform models that are grounded in the core principles of fundamental fairness, developmental differences between youth and adults, individual strengths and needs, youth potential, responsibility and safety.

Models for Change is now a 16-state national initiative to advance juvenile justice system reforms around key principles of accountability and opportunity. The Models for Change Initiative continues to influence a rethinking of juvenile justice and can guide legislatures as they make important policy decisions about youth.

Another successful model is the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) focuses on the juvenile detention component of the juvenile justice system because youth are often unnecessarily or inappropriately detained at great expense, with long-lasting negative consequences for both public safety and youth development. Since its inception in 1992, JDAI has repeatedly demonstrated that jurisdictions can safely reduce reliance on secure detention. There are now approximately 100 JDAI sites in 24 states and the District of Columbia.

Missouri Model

The Missouri Division of Youth Services' (DYS) juvenile corrections system is a successful model for states considering juvenile justice reforms that favor residential treatment over prison for children who commit crime. Missouri's approach to youth corrections relies on personal treatment; rehabilitation; and making internal changes within juveniles in positive, small-scale settings rather than using isolation, punishment and behavioral compliance. The program emphasizes positive peer relationships and intense, consistent therapy in a small, intimate group atmosphere. Key components of the program are fostering a positive relationship between each juvenile and a member of the staff and providing stringent aftercare services.

Missouri's recidivism rate is dramatically lower than the rest of the nation and its overall costs are lower compared to other states corrections' spending. The program costs approximately $94 per day for every juvenile between the ages of 10 and 17, while costs per juvenile in surrounding states is approximately $140, according to a study by the American Youth Policy Forum.

Missouri's success has attracted criminal justice officials, policymakers, parents and juveniles from across the country to visit and leave surprised with the atmosphere and results that the youth program has achieved. Other states are also considering similar programs.

Roadmap for Guidebook

The following sections of the guidebook explore juvenile justice reform in the states.

Adolescent Development & Competency

This chapter discusses recent research that addresses adolescent culpability as compared to adults. The section gives a brief history of the juvenile justice system and highlights data that illustrate the idea that, because adolescents are biologically, psychologically and socially underdeveloped, their age and corresponding limitations of age may be considered as mitigating factors to delinquency. It discusses adolescents who are sent to adult court, federal standards and state legislation that responds to recent research on adolescent development.

Delinquency Prevention & Intervention

This section explains how early intervention in children's lives can divert juveniles from the adverse consequences attributable to delinquency. It discusses risk and protective factors and how they help increase or decrease the likelihood that a juvenile will engage in delinquent behavior. This section also provides examples of strategies and state activity related to truancy and drop-out prevention reforms, examines gang prevention, and considers the cost-benefit of prevention and intervention in youths' lives.

Indigent Defense, Counsel & Procedural Issues

This topic highlights the challenges states face in providing adequate legal defense to juvenile offenders, especially those who are indigent. It explores promising state options to address juvenile defense, which include making it more difficult for juveniles to waive counsel, changing processes for determining indigence, and increasing juvenile defender resources to better ensure quality counsel. It also includes a discussion of juvenile competency to stand trial and offers recommendations of expanded definitions of "competence" for juveniles that take into account social and cognitive development. Throughout, state legislative examples are noted.

Mental Health Needs of Juvenile Offenders

This section explores the approximately 70 percent of youth in the juvenile system who are affected by a mental disorder. Effective assessment and comprehensive responses to court-involved juveniles with mental health needs are discussed, to help break the cycle and produce healthier young people who are less likely to commit crimes. It describes the various disorders prevalent among youth and approaches to screening and assessing such disorders. Finally, the section highlights state policies that treat the mental health needs of juvenile offenders, including recent legislation to specifically address collaboration strategies in states.

Disproportionate Minority Contact

This topic examines the overrepresentation of youth of color in the juvenile justice system and discusses state actions to study and address disproportionality. The section provides examples and progress of specific localities under the Models for Change initiative that have implemented strategic innovations to help reduce disparities. Also included is a discussion of Annie E. Casey's Juvenile Detention Alternative Initiative, which gives priority to reducing racial disparities as an integral detention reform strategy.

Use of Medicaid for Juvenile Justice-Involved Children

This chapter explains how Medicaid can meet the unique needs of juvenile justice-involved youth. It offers a detailed overview of Medicaid, children's health insurance programs, and covered services. Included is a discussion of state compliance with federal reimbursement regulations and how to

streamline and improve data collection in order to determine Medicaid eligibility. It also highlights training of state juvenile justice staff on eligibility matters, and gives state legislative examples.

Reentry & Aftercare

This section discusses post-release supervision and services, and supports young people to make safe, successful transitions from residential placement facilities to their home communities. It describes the juvenile reentry population, gives suggested approaches to aftercare, and discusses reentry from a developmental perspective. Throughout, examples of state actions are given that support services to juvenile offenders who are reentering society.

Cost-Benefit Analysis of Juvenile Justice Programs

This chapter includes a timely discussion of the cost-benefit analysis of youth and juvenile justice programs. Cost-benefit analysis has seen a heightened national interest in recent years due to the state fiscal climate and suggests how lawmakers can allocate funds most efficiently. It highlights successful programs where cost-benefit analysis has helped save money and produce better results for system-involved youth.

References, Glossary & Resources

This final section provides source documentation of research discussed in the text and citations to legislation. The glossary section provides common meanings for many juvenile justice terms and information about key groups as sources for additional research and information is provided. This section also describes how NCSL's partnership project with MacArthur Foundation's Models for Change initiative is an ongoing resource that is available to help state legislatures with information, training and technical assistance on juvenile justice reform.

Balanced & Restorative Justice

Balanced and restorative justice (BARJ) is a philosophy that guides the juvenile justice systems in many states. According to the Pennsylvania Center for Juvenile Justice Training and Research, the goals of balanced and restorative justice can be divided into three parts—community protection, offender accountability and competency development—with an overall agenda aimed at producing law-abiding, productive and connected citizens through rehabilitation.

The successful use of each goal is important to the success of balanced and restorative justice. The Juvenile Justice and Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency provides instructions for what is entailed to meet each goal.

***(1)* Community protection** is described as the process of contributing to safe communities, with particular emphasis on known juvenile offenders, through prevention, supervision and control. The role of the juvenile justice system is to investigate complaints in a timely manner and to handle the intake and processing stages to ensure community safety.

***(2)* Offender accountability** means that, through their harmful conduct, juveniles incur an obligation to repair the damage they have done to the victim and the community. Most of the time, this responsibility is met through community service or restitution.

***(3)* Competency development** refers to the learning process juvenile offenders must go through to acquire the skills necessary to become law-abiding members of society. They must become proficient in pro-social, moral reasoning, academic, workforce and independent living skills. These abilities are best developed through training programs that enable juveniles to demonstrate their new talents in real-world settings.

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Cost-Benefit Analysis of Juvenile Justice Programs

Juvenile Justice Guide Book for Legislators

Introduction

To reach the best decisions for their constituents, lawmakers constantly assess the advantages and disadvantages of various courses of action. Sometimes these choices are simple, and rigorous analysis is not necessary. Often, however, the various costs and outcomes of policy decisions are difficult to project. In response to these challenges, a growing number of states are turning to data-driven cost assessment techniques to inform their policies. One such device, cost-benefit analysis (CBA), is gaining national attention due to its success providing valuable information to government leaders.

The Vera Institute of Justice (Vera) identifies the five basic steps of cost-benefit analysis as:

1. Determine the effects of the initiative,
2. Determine whose perspectives matter,
   (e.g. Who will be affected by each policy alternative?)
3. Measure costs in dollars and cents,
4. Measure benefits in dollars and cents, and
5. Compare the costs and benefits.

Cost-Benefit Analysis Defined

According to Vera, cost-benefit analysis is a systemic tool for evaluating public policy. It allows lawmakers to weigh multiple options and determine which will achieve the greatest results for the lowest cost.

Because cost-benefit analysis turns all outcomes into monetary values, it allows evaluators to compare programs that have different goals—for example, program A aims to reduce crime, while program B aims to curb substance abuse—in order to find the option with the greatest net societal benefit. It must be noted, however, that CBA determines only a program's cost-effectiveness, not its overall success. To understand the value of each option, CBA data must be assessed together with separately conducted program success evaluations. Reliable program assessments, combined with CBA analysis can help leaders identify the best policy options.

Development of Cost-Benefit Analysis

Cost-benefit analysis of public programs is gaining national attention thanks in large part to the work of Steve Aos and his colleagues at the Washington State Institute for Public Policy (WSIPP). WSIPP has advised the Washington Legislature on research-based approaches to public policy for the last 15 years on issues ranging from public health and education to housing and criminal justice. One such WSIPP cost-benefit analysis addressed Washington's problem with crime and overcrowded prisons.

In 2005, Washington was faced with a growing prison population that would necessitate the construction of three new prisons by 2030 at a cost of $750 million. In response, the Legislature appropriated funds through its capital budget bill for WSIPP to study evidence-based programs so investments could be made to reduce crime and save Washington money over the long-term.

WSIPP's study reviewed and analyzed 571 comparison group evaluations of adult corrections, juvenile corrections and prevention programs.

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Each study included met a strict set of criteria—such as only using programs currently being used in the field, not models, and having someone other than the program's developer conduct the assessment—to avoid conflicts of interest. WSIPP established these standards before their financial assessment began to ensure that they were relying on the best possible program data. The report, released in 2006, found that the state could save $2 billion and reduce crime by using evidence-based alternatives to incarceration.

A follow-up study from WSIPP, reported on in 2009, found that Washington is having success implementing the cost saving recommendations. The state invested $48 million in evidence-based programs in 2007 and has reduced its forecasted expenditures in prison construction.

Cost-Benefit Analysis Applied to Juvenile Justice

In January 2004, WSIPP released a report assessing the Community Juvenile Accountability Act, a 1997 Washington law that focused on reducing the state's juvenile crime by implementing evidence-based programs in the juvenile court system.

In this study, WSIPP found that programs such as functional family therapy (FFT is a family-based intervention program that focuses on improving protective factors and reducing risk factors for juvenile delinquent behavior) and aggression replacement training (ART is an intervention program that helps youths develop skills to control anger and use appropriate behavior) reduced recidivism and saved taxpayer dollars. In the case of aggression replacement training, $11.66 was saved for each $1 spent, and the rate of participants committing another felony within 18 months dropped by 24 percent.

In addition to Washington, other states—including Florida, Pennsylvania and Wisconsin—have used cost-benefit analysis to evaluate programs within their juvenile justice systems. A few of these states, including Pennsylvania, have borrowed elements of Washington's cost-benefit model to apply to their own state's data.

Florida

In Florida, legislators were searching for ways to reduce the amount of money spent housing juveniles in detention facilities. According to Florida's Office of Program Policy Analysis and Government Accountability (OPPAGA), 76 percent of juveniles in state detention centers were in need of mental health, substance abuse or psychiatric treatment, and 42 percent of those in detention were charged with misdemeanors or parole violations. OPPAGA found that these treatments and problems could be more effectively handled in diversion programs, and, between 2005 and 2008, 2,033 juveniles successfully completed such programs. To house these juveniles in detention centers would have cost $50.8 million. With the redirection program, however, the cost was $14.4 million. By using these programs, Florida gained a cost benefit of $36.4 million.

OPPAGA emphasized that, to realize benefits through diversion programs, cost-benefit analysis of evidence-based programs must be rigorous so projections match the realities. Separate assessments of program effectiveness must have been previously conducted. In this example, the juveniles who completed the diversion program were 46 percent less likely to be convicted of a felony in the future than those placed in detention facilities.

Pennsylvania

In 2008, the Prevention Research Center of Human Development, with funding from Pennsylvania's Commission on Crime and Delinquency (PCCD), issued a report detailing their study of Pennsylvania's return on investment for seven juvenile programs used throughout the state. The study found that these programs saved Pennsylvania $317 million in reduced criminal justice costs and salaries. The benefits per $1 invested ranged from $1 to $25 depending upon the program. The "LifeSkills Training" program, for example, benefitted $25.72 per $1 spent, saving Pennsylvanians $16.160 million over the course of its operation.

> "The benefits per $1 invested ranged from $1 to $25 depending upon the program.

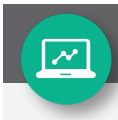
Report authors concluded that, given the significant cost benefits realized by these programs, other agencies should take a more active role in comparing, assessing and using cost-effectiveness data.

Wisconsin

What Works, Wisconsin!, a study requested by the Wisconsin Governor's Juvenile Justice Commission to examine evidence-based programs with growing delinquency prevention evidence, provides another example of cost-benefit analysis. *What Works, Wisconsin!* found that, in 2004, it cost $68,255 to house a juvenile offender in a corrections facility in Wisconsin for 12 months. The study analyzed many potentially beneficial programs, including Wraparound Milwaukee. This program coordinates treatment and services for delinquent and non-delinquent youth with mental health disorders, with the goal of keeping youth in the community and with their families when possible. Wraparound Milwaukee allows families to select from an array of services and provides "care coordination" to ensure the best use of resources. Although rigorous evidence-based studies have not been conducted for Wraparound Milwaukee, it reported in 2000 that 650 youth were served in the community at

a monthly cost of about $3,300 per participant; traditional incarceration would have cost $5,000.

The findings in *What Works, Wisconsin!* claim that the two biggest barriers to appropriately funding effective evidence-based programs are a lack of information available to policymakers and prohibitive start-up costs. If these obstacles can be overcome, the authors believe the benefits of using evidence-based programs will be substantial.



Cost-Effectiveness Analysis

Cost-benefit analysis is not the only cost assessment tool used by the states. Cost-effectiveness analysis also compares the relative costs and outcomes of two or more courses of action, but is different from cost-benefit analysis in that it does not turn all results into monetary values. Due to this limitation, cost-effectiveness analyses are generally only used to compare programs with similar goals.

Illinois' use of a cost-effective assessment helped the state save money and reduce crime rates by implementing evidence-based programs. The *Redeploy Illinois* initiative, passed by the Illinois legislature in 2004, is predicated on the belief that non-violent youth offenders are less likely to be involved in future delinquent behavior if they remain in their home communities to receive treatment instead of being sent to a detention facility. The programs also are less expensive than housing a juvenile in a detention center. The annual cost of housing one juvenile in a detention center was $70,827 in 2005.

The Redeploy Illinois initiative gives counties financial support to provide comprehensive services to delinquent youth in their home communities who might otherwise be sent to the Illinois Department of Juvenile Justice (IDJJ). In the first two years of implementation, the Redeploy Illinois pilot sites, on average, reduced their commitments to IDJJ by 44 percent. As of January 2010, Redeploy Illinois has nine programs serving juveniles in 20 counties. So far, for every $1 million spent by Redeploy Illinois pilot sites, IDJJ has had a cost avoidance of $3.55 million on juvenile incarceration.

The success of *Redeploy Illinois* has prompted its oversight board to recommend an increased financial investment to expand services to the entire state. The board also recommended that a cost-benefit analysis of *Redeploy Illinois* be conducted in addition to the program assessments to help understand its true value. As of January 2010, some of the program assessments had begun.

> ...the two biggest barriers to appropriately funding effective evidence-based programs are a lack of information available to policymakers and prohibitive start-up costs.

These include identifying programs with the best results, enabling states and localities to spend their limited resources effectively and allowing lawmakers to make decisions based on a calculated, supportable analysis.

Moving Forward

The success of these examples has increased national interest in replicating cost-benefit analysis and similar program assessments. To inform practitioners, Vera initiated a project to centralize information on the topic in the National Knowledge Bank for Cost-Benefit Analysis in Criminal Justice (CBKB.org). The website serves as a clearinghouse for resources and research and is also a center for active practitioners. It includes podcasts, videos and a cost-benefit toolkit developed specifically to provide general education and training on criminal justice cost-benefit analysis to various audiences.

Another project designed to increase the accessibility of cost-benefit analysis is the Results First Initiative. WSIPP partnered with the Pew Charitable Trusts and the MacArthur Foundation to develop a cost-benefit tool that can be applied to data collected from programs in other states. The project will include a software designed to help states identify evidence-based policies that maximize the return on investment for taxpayers.

Conclusion

Although cost-benefit analysis may appear complicated, it is important to remember that the goal is simply to weigh the advantages and disadvantages of one course of action over another.

For legislators interested in learning how cost-benefit analysis can be applied in their state, there are many developing resources to turn to. With this educational assistance, state leaders will be better able to decide how to value information derived from cost analyses.

For references and additional resources, please see the **References, Glossary & Resources** section.

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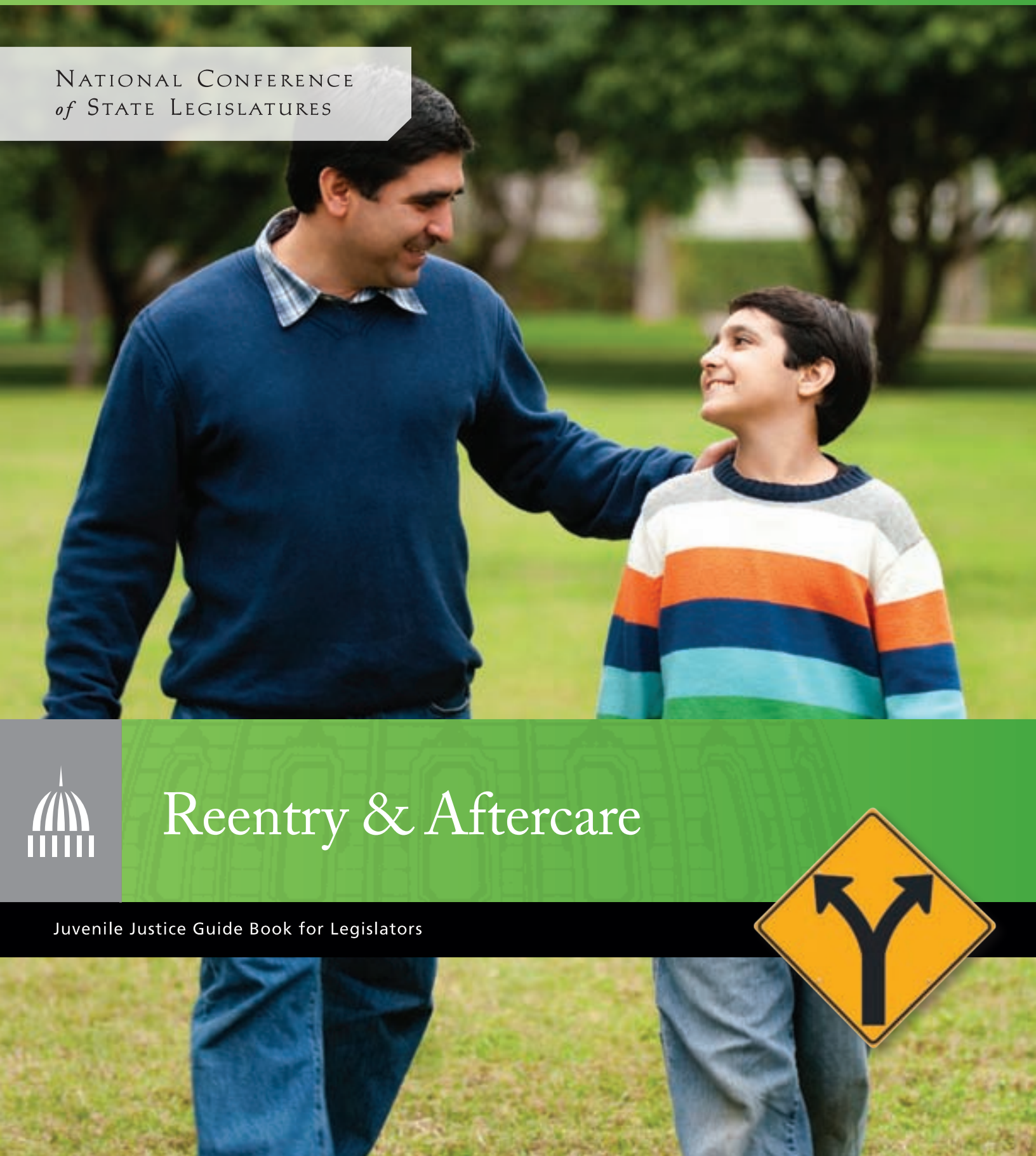

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Reentry & Aftercare

Juvenile Justice Guide Book for Legislators

Introduction

Every year, approximately 100,000 juveniles are released from juvenile detention facilities and other out-of-home placements. An out-of-home placement can be disruptive even for juveniles who have family, school, or community support. Juveniles released from confinement experience other challenges in returning to society.

For instance, many confined juveniles return to communities with high crime rates and poverty, unstable households and family relationships, failing school systems, and unemployment. Juvenile offenders—in general—are more likely to struggle with mental health and substance abuse issues. Reentry and aftercare programs attempt to transition and reintegrate formerly incarcerated juveniles back into society. Reentry and aftercare programs are essential to help adjust juveniles back into society and to reduce recidivism rates.

The Juvenile Reentry Population

Based on data from the Census of Juveniles in Residential Placement (1997-2007), OJJDP reports that the youth reentry population is overwhelmingly male, a racial minority, and age 15 or older. Reentry youth do not tend to come from two-parent households. At the time juveniles entered custody, 19 percent were living in two-parent households, 56 percent were living with one parent, and 26 percent were not living with any parent. Roughly one in eleven juveniles report having children of their own. Nearly 25 percent have a sibling who is or has been incarcerated, and 25 percent have a father who is or has been incarcerated.

Statistics of the Reentry Population

In 2006, nearly 93,000 juveniles were in some type of residential placement: 62 percent in post-adjudicatory secure facilities, 26 percent in pre-adjudicatory detention and 8 percent in detention awaiting placement. The majority of these facilities reported providing on-site services: 63 percent provided mental health treatment and 57 percent provided substance abuse treatment. Adjudicated juveniles are sentenced on average to four to six months.

> "Juveniles released from confinement experience other challenges in returning to society. For instance, many confined juveniles return to communities with high crime rates and poverty, unstable households and family relationships, failing school systems, and unemployment.

Approximately two-thirds of incarcerated youth were convicted of non-violent offenses. CJRP found that 32 percent of incarcerated juveniles were convicted of a property offense, 10 percent convicted of a drug offense, 10 percent convicted of a public order offense, 10 percent convicted of a technical violation of parole or probation, and 5 percent convicted of a status offense.

> Approximately two-thirds of incarcerated youth were convicted of non-violent offenses.

About 70 percent of juveniles in the system are affected with at least one mental illness. Seventy-one percent of juveniles in residential placement struggle with more than one emotional issue; the most common issues are related to anger management, anxiety, and depression. More than half of incarcerated juveniles report experiencing major depression, and nearly two-thirds report experiencing anxiety. In addition, two-thirds of juvenile offenders report regular drug use, not accounting for any alcohol consumption.

For juveniles enrolled in Medicaid prior to incarceration, health care remains an issue when reentering society. About 20 percent of state juvenile justice agencies and nearly 50 percent of state Medicaid agencies automatically terminate Medicaid benefits for juveniles in detention. Upon release, only 13 percent of state juvenile justice agencies and 26 percent of state Medicaid agencies attempt to automatically re-enroll eligible youth back onto Medicaid. In addition, 81 percent of local juvenile justice centers interviewed report that a one-day supply of medication is given upon release, and 77 percent of state juvenile justice agencies report providing a two-day supply of medication.

Juvenile offenders are more likely than their peers to be behind academically. More than half of youth in out-of-home placements have not completed the 8th grade, and in state prisons, BJS reports that 66 percent of juveniles had between an 9th and 11th grade education. A 2003 report by National Council on Disability reveals that incarcerated youth are three to five times more likely to have special educational disabilities than the general juvenile population. The report estimates 20 to 50 percent of incarcerated youth have attention deficit hyperactivity disorder and nearly 12 percent are developmentally disabled. Not all juvenile offenders return to school upon release. For instance, New York City reports that two-thirds of juveniles released from formal confinement do not return to school.

Juvenile offenders—by default—spend their developmental years in confinement. Although they usually serve less than one year in confinement, because of multiple placements, many leave the juvenile justice system having spent one-third of their adolescence incarcerated. Many released juveniles are also homeless. The Wilder Research Center found that 46 percent of juveniles between ages 10 and 17 who are currently homeless have previously been in a correctional facility. And 44 percent of the 46 percent were released from confinement into unstable housing situations.

Approaches to Reentry/Aftercare

As outlined in OJJDP's Juvenile Justice Practice Series, reentry/aftercare programs typically combine two different approaches: surveillance and services. Surveillance, or community restraint, practices include contact with parole correctional personnel, urine testing, electronic monitoring, employment verification, intensive supervision, house arrest and residence in halfway houses. Surveillance methods work to reduce capacity and opportunity to commit future crimes. Interventions include counseling, behavioral programs, restitution, probation, and vocational and educational programs; these programs work with individual behavior to prevent future delinquency. OJJDP suggests that surveillance is more effective when coupled with treatment/services.

Dr. David Altschuler, principal research scientist at the Johns Hopkins Institute for Policy Studies, co-authored an article in 2004 that identify seven domains where juvenile reentering society face challenges and opportunities. These domains include: family and living arrangements; peer groups and friends; mental, behavioral and physical health; substance abuse; education and schooling; vocational training and employment; and leisure, recreation and vocational interests.

Employment

A strong association exists between those who are employed and absence of criminal behavior. However, similar to recently released adult offenders, a juvenile's criminal record presents obstacles to securing employment; thus, it is key that these records can be expunged. Furthermore, if youth are confined during their adolescence, their employment history and academic preparation may be inadequate, which makes it more difficult for them to find jobs. Career and technical training available in residential placements often do not result in industry certification or are in industries in which few jobs are available in the juveniles' home communities. In many states, for example, most incarcerated youth come from urban jurisdictions, but many larger correctional facilities are located in more rural areas. Career training opportunities often will reflect facility locale and staff expertise of the staff, but not opportunities available in urban settings. It is important that career and technical training offered in facilities is based on industry recognized standards so that youth can continue training when they return home after placement.

The vast majority of delinquent youth will not go past a high school degree in their education pursuits. The likelihood that they will become productive adults is improved if they if they develop skills that will lead to employment at family sustaining wages.

Reentry from a Developmental Perspective

Juveniles reentering society experience many of the same challenges plaguing formerly incarcerated adult offenders; however, some juvenile justice experts, like Dr. Laurence Steinberg, Professor of Psychology at Temple University, contend that juvenile offenders experience additional obstacles because they are incarcerated during their developmental years.

Dr. Steinberg states that levels of maturity and development are key to how juveniles respond to reentry/aftercare services and how well they cope with the social obstacles of reentering society. Levels

of maturity and development reportedly affect how juveniles experience incarceration, and then the incarceration experience affects how juveniles develop and mature. Dr. Steinberg, and some of his peers, argues that psychosocial maturity is necessary for successful reentry, particularly because normal psychosocial development can be disrupted by incarceration. Psychosocial maturity includes development in three main areas: mastery and self-competence, interpersonal relationships and social functioning, and self-definition and self-governance. A certain level of psychosocial maturity is reportedly necessary for adult autonomy and responsibilities.

Recidivism

Recidivism can be measured in different ways. Although it varies, it tends to be unacceptably high. A study that focuses exclusively on juvenile offenders is the multi-site, seven-year project entitled Pathways to Desistance (Pathways). The study is an attempt to understand desistance—why do offenders stop offending? Pathways was created by the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice to study the results of sanctions and services in juvenile justice between 2000 and 2003; the study follows 1,354 juveniles involved in the juvenile justice system. Although the project is still in progress, preliminary findings have been released.

Pathways found that drug treatment services significantly reduced substance use in the six-month period, and drug treatment coupled with family involvement resulted in reduced drug use and re-offending. In initial Pathways interviews, more than 80 percent of young people indicated drug or alcohol use in the previous six months.

The project reports that, regardless of the intervention, 91.5 percent of juveniles who commit serious felony offenses have decreased or limited illegal activity within three years. The project also suggests that there is no difference in recidivism rates for incarceration periods ranging between three and thirteen months; in other words, preliminary findings suggest that there is no reduced recidivism with longer incarceration periods.

Pathways reported that six months after release, juveniles who received community supervision and community-based services were more likely to attend school, go to work, and avoid re-offending. The study found that the longer the duration of supervision, there was a decreased likelihood of re-offending and an increased engagement with school and work.

State Action

Models for Change

Pennsylvania is one of four states that are core participants in the MacArthur Foundation's Models for Change program. The initiative was established in 2004 and aims to accelerate promising efforts in the area of juvenile justice system reform. Aftercare is one of the targeted areas of improvement. In Pennsylvania, Models for Change reform efforts have focused on implementing reforms laid out in a Joint Policy Statement on Aftercare that was signed by five key states agencies. Goals of this statement include:

"Juvenile probation officers and residential treatment staff to collaborate in a single plan that integrates treatment and aftercare services, including appropriate education placements and goals developed in consultation with the appropriate school districts."

A risk assessment tool including, the Structured Assessment of Violence Risk in Youth (SAVRY) is used in Louisiana to guide the use of out-of-home placements to ensure that the placements are imposed on the juveniles with the highest risk of re-offending. Furthermore, detention alternatives are meant to minimize disruption of family and social support. Illinois' program, which began in 2005, provides fiscal incentives to communities that treat and rehabilitate juveniles in community-based settings; as a result, Illinois has been decreasing the number of juveniles committed to state facilities.

State Laws

Aside from state implementation of federal programs, state legislatures have been passing laws related to improving reentry/aftercare services and reducing recidivism.

States have addressed a variety of issues related to aftercare, such as employment and vocational training. For instance, California requires county juvenile justice plans for high-risk juveniles to assess job training services and strategies, and for an assessment of the efficacy of job training and employment on reducing delinquency.

In 2008, Connecticut started a program providing additional reentry and diversionary programs for delinquent youth. Texas' legislature, in 2009, directed $45.7 million dollars to its juvenile probation departments in order to enhance community-based alternatives. In 2010, Illinois passed legislation limiting the parole period for juveniles to a maximum of 6 months.

Since 2009, the Texas Juvenile Probation Commission is required to provide annual reports on the operations and conditions of juvenile probation services. Similarly, Maryland established a Task Force on Prisoner Reentry to address adult and juvenile offender issues. The Maryland Department of Public Safety and Correctional Services was awarded a $2 million grant as part of a federal program.

In 2008, New Hampshire established a committee to study in-home intervention and counseling services for families and children within the juvenile justice system. As a result of 2009 legislation in Illinois, the Department of Human Services is required to develop recommendations to ensure effective reintegration of young offenders into the community.

Conclusion

Juveniles recently released from confinement face numerous obstacles that hinder successful reentry. Thus, there is a great need for effective reentry services to prevent recidivism.

For references and additional resources, please see the **References, Glossary & Resources** section.

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Indigent Defense, Counsel & Other Procedural Issues

Juvenile Justice Guide Book for Legislators

Introduction

The American legal system is adversarial in nature; it relies on ardent advocacy from skilled attorneys to argue for the positions of their clients. The quality of representation provided plays a key role in the outcome of court decisions. Indigent juveniles rely on states for legal assistance at their delinquency proceedings, a right guaranteed to them by the 1967 U.S. Supreme Court case *In re Gault*.

To protect this right, states face the challenge of determining how to offer adequate legal counsel in light of financial and human resource limitations.

Past efforts to protect a child's right to an attorney have not always led to the desired results. The 1993 American Bar Association (ABA) report, America's Children at Risk: A National Agenda for Legal Action, examined deficiencies in America's juvenile defense systems and recommended structural improvements for overwhelmed attorneys. Recommendations included limited caseloads, early case involvement, comprehensive initial training, continued education, an increase in support staff and hands-on attorney supervision. These measures require both increased resources for juvenile defenders and attorney-client interaction before the initial court appearance. Although this report is now 17 years old, the issues it identified remain relevant for improving juvenile representation.

State lawmakers are in a position to decide what legislative measures are appropriate to provide indigent juveniles with legal defense. Policy decisions on procedures for indigence determinations, limitations on waiver of counsel, juvenile competency evaluations and allocations of attorney resources all have an impact on the quality of representation.

Determination of Indigence

Most states appoint counsel to youths only upon a determination that they qualify as indigent, and the application process for receiving counsel varies from state to state. An "indigent defendant" is someone who has been arrested or charged with a crime punishable by imprisonment and who lacks sufficient resources to hire a lawyer without suffering undue hardship. In at least one state—Michigan—the juvenile court must appoint an attorney to represent a youth regardless of indigence status, but this is not the norm.

> "An "indigent defendant" is someone who has been arrested or charged with a crime punishable by imprisonment and who lacks sufficient resources to hire a lawyer without suffering undue hardship.

Obtaining Court-Appointed Counsel

Many states—such as Florida, Delaware, Georgia and Tennessee—require administrative fees to submit an application to apply for court-appointed counsel. Florida charges $40, Delaware $100, Georgia $50 and Tennessee $50. Some consider these fees prohibitive to youths who have very little money, while others regard these fees as small and necessary to cover costs associated with providing legal defense. Each of these states has a mechanism to waive its fees if they would be prohibitively expensive to the defendant.

Once a state receives an application for juvenile indigent counsel, state appointed decision makers must rule on the submission. In Alabama, the presiding judge determines indigence, while Georgia leaves it to the public defender's office or any other agency providing the service. Other states, including Florida, assign the task to the clerk of the court. Most—if not all—states use these mechanisms or some combination thereof to make the indigence determination.

During the assessment, the decision maker considers numerous factors, some statutorily enumerated, others included in administrative codes. Most states use a combination of objective rules such as a percentage of the federal poverty guidelines ($22,350 for a family of 4 in the year 2011) and more subjective standards such as "substantial hardship" to guide the decision. Florida, Georgia and Texas use both of these standards for making indigence assessments.

A key factor in these determinations is whether the evaluator uses the parents' or the juvenile's finances as the basis for their assessment. In most states—including Maine, Massachusetts and Kentucky—the court considers the parents' financial status. Georgia law also considers the parents' finances, but allows the child's finances to be used if a conflict of interest exists between the parent and the juvenile. In at least one state—North Carolina—the child is presumed fiscally indigent unless they or their parents hire private counsel.

> "Once a state receives an application for juvenile indigent counsel, the decision maker must evaluate either the parents' or the child's finances and other enumerated factors to make their ruling.

Texas will presume indigence if certain factors are met, including whether the parents are incarcerated or receive food stamps.

Waiver of Counsel

Although it is every child's right to be represented by an attorney, lack of understanding and appreciation for that right have caused many to decline it. Children tend to distrust adults—especially strangers

such as a lawyer—they meet because they are in trouble. As a result, children nationwide often waive their right to counsel without truly understanding the consequences.

> “...children nationwide often waive their right to counsel without truly understanding the consequences.

According to the National Juvenile Defender Center, juveniles who waive counsel are more likely to enter guilty pleas without offering arguments or mitigating circumstances to the court and more likely to be sent to detention facilities.

The American Bar Association believes juvenile waiver of counsel should be completely prohibited, but most states that ban waiver only do so in limited situations. Iowa, for example, bars a child's ability to waive his or her right to counsel depending upon factors like the child's age and the potential consequences of the proceedings against them.

If a state does not want to completely bar juvenile waiver of counsel, the ABA recommends other measures, including requirements that a juvenile meet with an attorney prior to waiver, as is required in California, Colorado and Indiana. The ABA also recommends that states procedurally require all waivers to be submitted in writing in open court; that the waiver be renewed at each later stage of court proceedings; and that, if the right to counsel is waived, stand-by counsel be appointed and a full inquiry be made into the youth's capacity to make the choice.

Adhering to these suggestions, Louisiana law allows juveniles to competently waive their right to counsel after consultation with an attorney, parent or caretaker, and after the court explains the rights and the consequences of waiver to both the child and his or her guardian. The law also completely prohibits waiver when a child is in a proceeding that can result in placement in a mental hospital, psychiatric unit or substance abuse facility, when the child is charged with a felony delinquent act, or when a court ruling affects probation or parole revocations.

Competency to Stand Trial

To stand trial in the United States, defendants must be deemed mentally competent to understand the nature of the charges brought against them. Although mental sufficiency has generally focused on mental illness and developmental disability, increased attention is being given to juvenile incompetence based upon emotional and mental immaturity. Research conducted by the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice found that many children, especially under age 15, may not be capable of participating competently with their attorneys at their own trials.

An attorney's ability to effectively represent a client can be greatly affected by how they are able to relate to, and gather facts from, their client. The MacArthur study found that children were less able to understand the nature and purpose of their trial, less likely to give their attorney necessary information, and less able to view their situation rationally. As a result, the MacArthur report recommends an expanded definition of competence for juveniles that takes social and cognitive development into account.

"If an evaluation of the youth is ordered, the subsequent report must consider the child's ability to rationally understand the charges and potential punishments. It must also assess the child's capacity to participate meaningfully with the attorney in preparing his or her case.

Some states have incorporated these and similar ideas into their statutes. Florida's juvenile competency law, for example, allows either the court or a present attorney to make a motion for a determination of the child's competency. If an evaluation of the youth is ordered, the subsequent report must consider the child's ability to rationally understand the charges and potential punishments. It must also assess the child's capacity to participate meaningfully with the attorney in preparing his or her case.

Similarly, a 2010 California law requires a child to have a rational and factual understanding of the proceedings against him or her. The law also requires that a child development expert apply "accepted criteria" in evaluating the child in question.

Challenges to Providing Adequate Juvenile Defense

According to the American Bar Association, excessive workloads for attorneys representing the indigent can limit the quality of their counsel. The ABA guidelines for assessing whether legal representation is being negatively affected include whether enough time is being given to client interviews; whether factual investigations can be conducted, and whether sufficient preparations are made for pretrial hearings and trials.

According to the National Juvenile Defender Center, attorneys who practice juvenile defense generally take on a high number of cases, lack access to experts, and have little to no staff assistance with administrative and investigative tasks. The pressures caused by these conditions leave juvenile defenders little time to build relationships with their clients, which can negatively affect their representation.

A survey of juvenile court judges conducted by the National Juvenile Defender Center found that judges often want more background information on a child's education needs, medical and psychological

evaluations and family characteristics. This factual information can be determined by investigations and client interaction.

> ...attorneys who practice juvenile defense generally take on a high number of cases, lack access to experts, and have little to no staff assistance with administrative and investigative tasks.

Reports issued by many states—including Maine, Ohio and Virginia—have found that late attorney involvement and low ancillary resources have caused problems for juvenile representation. In a 2009 New Jersey Supreme Court case, *State ex rel. P.M.P.*, potential ways to address these issues were identified. It held that the right to counsel in delinquency proceedings attaches when a complaint is filed and a judicially approved arrest warrant is obtained. This early presence may allow attorneys more time to investigate a child's history, factual circumstances of the crime, and to develop an appropriately tailored strategy with dispositional alternatives.

Conclusion

Juvenile crime is a challenge for states in many respects, and the administration of indigent defense is no exception. At each step in the process—from indigent counsel application fees to adjudications—states balance the child's rights and needs against their ability to finance and administer representation. State options to address juvenile defense include making it more difficult for juveniles to waive counsel, changing processes for determining indigence and increasing juvenile defender resources to better ensure complete and competent counsel.

For references and additional resources, please see the **References, Glossary & Resources** section.

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References, Glossary & Resources

Juvenile Justice Guide Book for Legislators

References

Introduction

References

Bender, V.; M. King; and P. Torbet. *Advancing Accountability: Moving Toward Victim Restoration.* Pittsburgh, Pa.: National Center for Juvenile Justice, 2006.

The Juvenile Justice and Delinquency Prevention Committee of The Pennsylvania Commission on Crime and Delinquency. *Mission and Guiding Principles for Pennsylvania's Juvenile Justice System.* Harrisburg, Pa.: Pennsylvania Commission on Crime and Delinquency, 2004.

Torbet, P. *Advancing Community Protection: A White Paper for Pennsylvania.* Pittsburgh, Pa.: National Center for Juvenile Justice, 2008.

Torbet, P., and D. Thomas. *Advancing Competency Development: A White Paper for Pennsylvania.* Pittsburgh, Pa.: National Center for Juvenile Justice, 2005.

Case Law

Graham v. Florida, 560 U.S. __ (2010).

Roper v. Simmons, 543 U.S. 551 (2005).

Statutes

Colo. Rev. Stat. §22-2-139, §22-32-138, §22-2-409 (2010)

Conn. Gen. Stat. §51-10c (2008)

Ill. Rev. Stat. ch. 23, §50-17a-9 (2010)

Ill. Rev. Stat. ch. 65, §11-5-9 (2008)

Ill. Rev. Stat. ch. 705, §5-415, §5-501 (2008)

Iowa Code §2.56 (2008)

La. Children's Code Ann. art. 320, 321, 809 (West 2010)

La. Rev. Stat. Ann. §17:233 (West 2008)

Me. Rev. Stat. Ann. tit. 4, §1801 (2008)

Miss. Code Ann. §43-21-201 (2009)

Mont. Code Ann. §41-5-333 (2009)

Neb. Rev. Stat. §28-416, §29-2258, §29-2269 (2010)

N.D. Cent. Code §27-20-26 (2009)

Tenn. Code Ann. §37-1-126 (2008)

Adolescent Development & Competency

References

Bureau of Justice Statistics. *Sexual Victimization in Juvenile Facilities Reported By Youth, 2008-09* (NCJ 228416). Washington, D.C.: BJS, January 2010.

The Campaign for Youth Justice. *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform.* Washington, D.C.: Campaign for Youth Justice, March 2007.

Coalition for Juvenile Justice Emerging Concepts Brief. *What Are the Implications of Adolescent Brain Development for Juvenile Justice?* PowerPoint presentation made by Coalition for Juvenile Justice, Washington, D.C.: CJJ 2006: http://www.njjn.org/media/resources/public/resource_462.pdf

Florida State University. *Juvenile Life Without Parole for Non-Homicide Offenses: Florida Compared to Nation.* Tallahassee: FSU, Sept. 14, 2009.

Justice Policy Institute. *The Accelerating Pace of Juvenile Justice Reform.* Washington, D.C.: JPI, 2007.

MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Issue Brief #1: Adolescent Legal Competence in Court. Philadelphia: *MFRN, 2006.*

MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Issue Brief #2: Creating Turning Points for Serious Adolescent Offenders: Research in Pathways to Desistance. Philadelphia: *MFRN, 2006.*

MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Issue Brief #3: Less Guilty by Reason of Adolescence. Philadelphia: *MFRN, 2006.*

MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Issue Brief #4: Assessing Juvenile Psychopathy: Developmental and Legal Implications. Philadelphia: *MFRN, 2006.*

MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Issue Brief #5: The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Adult Criminal Court. Philadelphia: *MFRN, 2006.*

National Center for Juvenile Justice. *Juvenile Court Statistics 2006-2007.* Washington, D.C.: NCJJ, March 2010.

National Center for Juvenile Justice and Models for Change. *Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform.* Pittsburgh: NCJJ, November 2008.

Office of Juvenile Justice and Delinquency Prevention. Statistical Briefing Book: Juvenile Population Characteristics. Washington, D.C.: OJJDP, http://www.ojjdp.gov/ojstatbb/publications/StatBB.asp.

The University of Texas at Austin, LBJ School of Public Affairs. *From Time Out to Hard Time.* Austin, UTA, 2009.

Scott, Elizabeth and S. Steinberg, The Future of Children: Juvenile Justice. *Adolescent Development and the Regulation of Youth Crime* 18, no. 2 (Fall 2008).

Case Law

Atkins v. Virginia, 536 U.S. 304 (2002).

Graham v. Florida, 560 U.S. __ (2010).

Kent v. United States, 383 U.S. 541 (1966).

Roper v. Simmons, 543 U.S. 551 (2005).

Statutes

Ariz. Rev. Stat. Ann. §13-501 (2010)

Colo. Rev. Stat. §§18-1.3-407.5, 16-11-102.2, 18-1.3-104, 18-1.3-401, 18-1.3-407 (2009)

Colo. Rev. Stat. §19-2-508 (3) (c) (2009)

Colo. Rev. Stat. §19-2-517, §19-2-518 (2010)

Conn. Gen. Stat. §46b-120 (2010)

Ill. Rev. Stat. ch. 23, §17a-9 (2010)

Me. Rev. Stat. Ann. tit. 17-A, §1259 (2008)

Miss. Code Ann. §43-21-157 (2009)

Miss. Code Ann. §43-21-151 (2010)

Nev. Rev. Stat §62A.030, §62B.330 (2009)

Nev. Rev. Stat §62B.390 (2009)

Okla. Stat. tit. 10A, §§2-2-102, 2-5-206; tit. 21, §1123 (2010)

Tenn. Code Ann. §40-35-106 (2010)

Utah Code Ann. §78A-7-106 (2010)

Utah Code Ann. §62A-7-201 (2010)

Va. Code §16.1-272, §§53.1-202.2, 53.1-202.3 (2009)

Va. Code §16.1-249, §16.1-269.6 (2010)

Delinquency Prevention & Intervention

References

Baker, Myriam L.; Jane Nady Sigmom; and M. Elaine Nugent. "Truancy Reduction: Keeping Students in School." *Juvenile Justice Bulletin* (OJJDP) (September 2001).

Cal. Educ. Code §§48070.6, 52052.1 (West 2011).

Center for Children's Law and Policy. *JJDPA Reauthorization.* Washington, D.C.: CCLP, 2010.

Greenwood, Peter. "Prevention and Intervention Programs for Juvenile Offenders." *Adolescent Development and the Regulation of Youth Crime* 18, no. 2 (Fall 2008).

Huizinga, David: Loeber, Rolf; Thornberry, Terrence; and Cothern, Lynn. "Co-occurrence of Delinquency and Other Problem Behavior." *OJJDP Juvenile Justice Bulletin* (2000).

Shader, Michael. *Risk Factors for Delinquency: An Overview.* Washington, D.C.: OJJDP (2001).

Wasserman, Gail A., et al. "Risk and Protective Factors of Child Delinquency." *Child Delinquency Bulletin*

Public Laws

42 U.S.C.A. §§3796ee, 5601 et seq. (West 2011).

2008 Ill. Laws, P.A. #095-0781.

2008 S.C. Acts, Act #401.

2009 Ark. Acts, Acts 1166, 1257.

2009 Neb. Laws, L.B. #63.

Statutes

Colo. Rev. Stat. §§22-14-101 to -111, 22-82.3-101 to -110, 28-3-1701 to -1704 (2011).

Conn. Gen. Stat. Ann. §10-198a (West 2011).

Hawaii Rev. Stat. §321-325 to -354 (2011).

Ill. Ann. Stat. ch. 720, §5/12-6.4 (Smith-Hurd 2011).

Iowa Code Ann. §216A.132 (West 2011).

La. Child. Code Ann. art. 728(4) (West 2011).

La. Rev. Stat. Ann. §§14:92.2, 17:221, 17:233, 32:407, 32:414, 32:431.1 (West 2011).

Minn. Stat. Ann. §§120A.30, 145.958 (West 2011).

Mo. Ann. Stat. §§41.206 to .207 (Vernon 2011).

N.C. Gen. Stat. §§14-50.15 to .25 (2010).

Neb. Rev. Stat. §§43-245, 43-276, 79-209, 79-527, 81-1450 (2010).

Or. Rev. Stat. §339.925 (2011).

Pa. Cons. Stat. Ann. tit. 24, §19-1901-C (Purdon 2011).

Tenn. Code Ann. §49-6-3012 (2011).

Tex. Gov't Code Ann. §421.082 (Vernon 2011).

Utah Code Ann. §§53A-11-106, 76-9-801 to -803, 78A-6-1113 (2010).

Wash. Rev. Code Ann. §9.94A.533 (2011).

Indigent Defense, Counsel & Other Procedural Issues

References

American Bar Association: Division of Legal Practice Section of Family Law. "America's Children at Risk: A National Agenda for Legal Action." *Family Law Quarterly* 27, no. 3 (Fall 1993): 433-446.

ABA Standing Committee on Legal Aid and Indigent Defendants. Eight guidelines of public defense related to excessive workloads. Washington, D.C.: ABA, 2009; http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/defender/downloads/eight_guidelines_of_public_defense.authcheckdam.pdf.

Center for Policy Alternatives. *Juvenile Waiver of Counsel Policy Summary.* Washington, D.C.: CPA, 2005; http://www.njdc.info/pdf/CPAWaiver.pdf

MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Issue Brief #1: Adolescent Legal Competence in Court. Philadelphia: MFRN, 2006; http://www.macfound.org/atf/cf/%7BB0386CE3-8B29-4162-8098-E466FB856794%7D/ADJJCOMPETENCE.PDF

Sterling, Robin Walker. Role of Juvenile Defense Counsel in Delinquency Court. National Juvenile Defender Center. Washington, D.C.: NJDC, 2009.

Case Law

Application of Gault, 387 U.S. 1 (1967).

In the Interest of J.F.C., 660 P.2d 7 (1982)
(In reference to Colo. R. Juv. P. 3).

State ex rel. P.M.P., 975 A.2d 441 (N.J. 2009).

Statutes

Ala. Code §15-12-2 (2009).

Cal. Welf. & Inst. Code §634.

Cal. Welf. & Inst. Code §709.

Del. Fam. Ct. R. of Crim. P. 10.

Fla. Stat. Ann. §27.52.

Fla. Stat. Ann. §985.203(3).

Fla. Stat. Ann. §985.19.

Ga. Code Ann. §17-12-24.

Ga. Code Ann. §17-12-1(c).

Ga. Code Ann. §15-21A-6.

Ind. Code Ann. §31-32-5-1.

Iowa Code §Title VI Sub.5 232.11 (2009).

Ky. Rev. Stat. §31.120.

La. Child. Code art. 809.

La. Child. Code art. 810.

Mass. Gen. Laws. Ann. Ch. 261 §27A (2009).

MI Rules MCR 6.937.

Me. R. Crim. P. 44(b).

N.C. Gen. Stat. §7B-2000 (2009).

Tenn. Code. Ann. §37-1-126 (2009).

Tex. Fam. Code §51.10.

Tex. Fam. Code §51.102(B)(1)(A).

Mental Health Needs of Juvenile Offenders

References

Ditton, *Paula M. Mental Health Treatment of Inmate and Probationers*. Washington, D.C.: Bureau of Justice Statistics, 1999.

Grisso, Thomas. *Clinical Evaluations for Juveniles' Competency to Stand Trial: A Guide for Legal Professionals*. Sarasota, Fla.: Professional Resource Press, 2005.

_____. *Double Jeopardy: Adolescent Offenders with Mental Disorders*. Chicago: University of Chicago Press, 2004.

_____. "Juveniles' competence to stand trial: A comparison of adolescents' and adults capacities as trial defendants." *Law and Human Behavior* 27, no. 4 (2003): 333-63.

Grisso, Thomas; G. Vincent; and D. Seagrave, *Mental Health Screening and Assessment in Juvenile Justice*. New York: Guilford, 2005.

Grisso, Thomas, and V. Williams. *What Do We Know About the Mental Health Needs of Pennsylvania's Youth in Juvenile Detention? Findings and Recommendation from the Mental Health Assessment of Youth in Detention Project*. Harrisburg, Pa.: Juvenile Detention Centers Association of Pennsylvania, 2006.

Karmradt, Bruce. "Wraparound Milwaukee: Serving Youth With Mental Health Needs." Juvenile Justice - Youth With Mental Health Disorders: Issues and Emerging Responses 7, no. 1 (2000): http://www.ncjrs.gov/html/ojjdp/jjjnl_2000_4/wrap.html.

National Institute of Justice. *2000 Annual Report on Drug Use Among Adult and Juvenile Arrestees, Arrestees Drug Abuse Monitoring Program*. Washington, D.C.: NIJ, 2003.

National Juvenile Justice Network. *2007-2008 Advances in Juvenile Justice Reform*. Washington, D.C.: NJJN, 2008.

National Institutes of Mental Health. U.S. Department of Health and Human Services, *Attention Deficit Hyperactivity Disorder*. Washington, D.C.: NIMH, 2006..

National Mental Health Association. *Prevalence of Mental Disorders Among Children in the Juvenile Justice System*. Alexandria, Va.: NMHA, 2006.

Roberts, Albert R., and Kimberly Bender. "Overcoming Sisyphus: Effective Prediction of Mental Health Disorders and Recidivism among Delinquents, Federal Probation." Administrative Office of the U.S. Courts 70, no. 2 (2006), 1-4.

Skowyra, Kathleen R., and Joseph J. Cocozza. "Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System National Center for Mental Health and Juvenile Justice." National Center for Mental Health and Juvenile Justice 7, no. 25 (2007): 55-56.

_____. *Mental Health Screening with Juvenile Justice: The Next Frontier*, Models for Change, National Center for Mental Health and Juvenile Justice, (2007)

Skowyra, Kathleen R., and Susan Davidson Powell. *Juvenile Diversion: Programs for Justice-Involved Youth with Mental Health Disorders*. Washington, D.C.: National Center for Mental Health and Juvenile Justice, 2006.

Statutes

Ariz. Rev. Stat. Ann. §8-291.02, §13-4505 (2010).

California Welfare Institutions Code, §§1077, 1078 & 1755 (2000).

Cal. Penal Code §1054.3 (West 2009).

Colo. Rev. Stat. §19-2-709.5, §19-2-906 (2008).

Colorado Revised Statutes, §§16-8-201 – 205, 18-1.9-101 – 106, 19-2-1302 – 1304.

Colorado Revised Statutes, §§18-1.9-101- 106 (2004).

Colo. Rev. Stat. §16-8.5 (2008).

Colo. Rev. Stat. §18-1.9-103 (2008).

Idaho Code §20-211A.

Ill. Rev. Stat. ch. 705, §5-401.5 (2010).

La. Rev. Stat. Ann. §13:587.2(A) (West 2010).

Minn. Stat. Ch. 260B, §157.

Miss. Code Ann. §§43-21-201, 43-21-301, 43-21-321, 43-21-605, 43-27-201 (2006).

Nevada Revised Statutes Annotated, §62.

N.H. Rev. Stat. Ann. §§135:17, 604-A:2 (2010).

N.D. Cent. Code §5-01-08 (2007).

Or. Rev. Stat. §471.430 (2007).

Pa. Cons. Stat. tit. 42, §§6302, 6336.1, 6338, 6341(D) (2008).

Tenn. Code Ann. §37-1-5 (2009).

Tenn. Code Ann. §§16-22-113, 16-22-114(2009).

Tex. Human Resources Code Ann. §§61.077, 61.0773, 614.019 (Vernon 2009).

Texas Human Resources Code, Title 10, Section 141.042(3).

Virginia Code §§16.1-356, 358.

West Virginia Code §49-5-13a; §49-520; §49-5D-3.

Wash. Rev. Code Ann. §13.40.0357 (2008).

Cost-Benefit Analysis of Juvenile Justice Programs

References

Aos, Steve, and Elizabeth Drake. *Fight Crime and Save Money: Development of an Investment Tool for States to Study Sentencing and Corrections Public Policy Options.* Olympia: Washington State Institute for Public Policy, 2010.

_____. *WSIPP's Benefit-Cost Tool for States: Examining Policy Options in Sentencing and Corrections.* Olympia: Washington State Institute for Public Policy, 2010.

Aos, Steve; Marna Miller; and Elizabeth Drake. *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates.* Olympia: Washington State Institute for Public Policy, 2006.

Aos, Steve. Return on (Taxpayer) *Investment: Evidence-Based Options to Improve Statewide Outcomes—Update for the Legislature.* Olympia: Washington State Institute for Public Policy, 2010.

Chiu, Tina, and Senator Karen Fraser. *Webinar: Introduction to Cost-Benefit Analysis (CBA) and Justice Policy for State Legislators.* New York, N.Y.: The Vera Institute of Justice, 2010.

Drake, Elizabeth K.; Steve Aos; and Marna G. Miller. *Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State.* Olympia: Washington State Institute for Public Policy, 2009.

Jones, Damon; Brian K. Bumbarger; Mark T. Greenberg; Peter Greenwood; and Sandee Kyler. *The Economic Return on PCCD's Investment in Research-based Programs: A Cost-Benefit Assessment of Delinquency Prevention in Pennsylvania.* University Park, Pa., The Prevention Research Center for the Promotion of Human Development: The Pennsylvania State University, 2008.

Juvenile Justice Evaluation Center. *Cost-Benefit Analysis for Juvenile Justice Programs.* Washington. D.C.: OJJDP, 2002.

McGuire, Kathy. *Identifying Effective Programs Through Legislative Evaluation.* Presentation at NCSL's meeting, Opportunities for Working Families: A Leadership Forum for State Lawmakers. Florida Legislature Office of Program Policy Analysis and Government Accountability, 2009; http://www.ncsl.org/documents/sfn/KathyMcGuire09.pdf.

Redepoly Illinois Oversight Board. *Redeploy Illinois Annual Report Implementation and Impact.* Springfield, Ill.: RIOB, 2007.

_____. *Redeploy Illinois Annual Report to the Governor and General Assembly.* Springfield,Ill.: RIOB , 2010.

Small, S.A.; A.J. Reynolds; C. O'Connor; and S.M. Cooney. *What Works, Wisconsin: What Science tells us about cost-effective programs for juvenile delinquency prevention.* Madison, Wis.: University of Wisconsin-Madison, 2005.

Reentry/Aftercare

References

Altschuler, David M., and Rachel Brash. "Adolescent and Teenage Offenders Confronting the Challenges & Opportunities of Reentry." *Youth Violence and Juvenile Justice* 2, no. 1 (January 2004).

The Annie E. Casey Foundation. *Juvenile Detention Alternatives Initiative.* Baltimore: AECF, 2010.

Gies, Steve V. "Aftercare Services." *OJJDP Juvenile Justice Bulletin* (September 2003).

The John D. and Catherine T. MacArthur Foundation. Models for Change. "Aftercare" (Place: Publisher, 2010); http://www.modelsforchange.net/about/Issues-for-change/Aftercare.html?tab=issues.

_____. Justice Policy Institute "The Accelerating Pace of Juvenile Justice Reform." Chicago and Washington, D.C.: Models for Change/Justice Policy Institute, 2007.

Lattimore, Pamela K., and Christy A. Visher. *The Multi-site Evaluation of SVORI: Summary and Synthesis.* Research Triangle Park, N.C., and Newark, Del.: RTI International and University of Delaware/The Urban Institute, 2009.

Mears, Daniel P., and Jeremy Travis. *The Dimensions, Pathways, and Consequences of Youth Reentry.* Washington, D.C.: Urban Institute Justice Policy Center, 2004.

National Juvenile Justice Network. *New Research Shows Community-Based Alternatives as Effective as Institutional Placements for Curbing Re-arrest in Youth with Serious Offenses.* Washington, D.C.: NJJN, 2010; www.njjn.org.

National Reentry Resource Center. "Juveniles" (2010), http://www.nationalreentryresourcecenter.org/topics/juveniles.

Nellis, Ashley, and Richard Hooks Wayman. *Back on Track: Supporting Youth Reentry from Out-of-Home Placement to the Community.* Washington, D.C.: National Juvenile Justice and Delinquency Prevention Coalition, 2009.

Roy-Stevens, Cora. "Overcoming Barriers to School Reentry." *OJJDP Fact Sheet*, #03. (Place: Publisher, October 2004).

Snyder, Howard N. "An Empirical Portrait of the Youth Reentry Population." *Youth Violence and Juvenile Justice 2*, no. 1 (January 2004).

Snyder, Howard N., and Melissa Sickmund. *Juvenile Offenders and Victims: 2006 National Report.* Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2006.

State of Pennsylvania, Joint Policy Statement on Aftercare.Place: Publisher, Jan. 1, 2005; http://www.modelsfor change.net/publications/153.

Steinberg, Laurence; He Len Chung; and Michelle Little. "Reentry of Young Offenders from the Justice System: A Developmental Perspective." *Youth Violence and Juvenile Justice 2*, no. 1 (January 2004).

U.S. Department of Justice. Office of Juvenile Justice and Delinquency Prevention. "OJJDP Model Programs Guide: Aftercare." (Washington, D.C.: OJJDP, 2010); http://www.ojjdp.gov/mpg/progTypesAftercare.aspx.

Wiebush, Richard G., et al. *Implementation and Outcome Evaluation of the Intensive Aftercare Program.* Washington, D.C.: National Council on Crime and Delinquency, 2005.

Statutes

Cal. Gov't Code §30061 (West 2011).

Ill. Ann. Stat. ch. 720, §5/3-3-5 (Smith-Hurd 2011).

Md. Corr. Servs. Code Ann. §2-501 (2010).

N.H. Chaptered Law 235 (2008).

Tex. Hum. Res. Code Ann. §141.024 (Vernon 2011).

Medicaid for Juvenile Justice Involved Children

References

Bazelon Center for Mental Health and the Law. Medicaid Coverage of School-Based Mental Health Services. Washington, D.C.: Judge David L. Bazelon Center for Mental Health Law, August 2008; http://www.policyarchive.org/handle/10207/bitstreams/17628.pdf.

Belnap, Dan. "A Medicaid Primer for Juvenile Justice Officials." State Health Policy Briefing 2, no. 6. Portland, Maine: National Academy for State Health Policy, April 2008.

Breshears, Jennifer, and Megan Foreman. "Covering Kids." *State Legislatures* (June 2009).

Clark, Karen, and S. Gehshan. *Meeting the Health Needs of Youth Involved in the Juvenile Justice System.* Washington, D.C.: National Academy for State Health Policy, September 2006.

Courtney, Mark; S. Terao; and N. Bost. *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Conditions of Youth Preparing to Leave State Care.* Chicago: Chapin Hall Center for Children at the University of Chicago, 2004.

Cocozza, Joseph, and J. Shufelt. J*uvenile Mental Health Courts: An Emerging Strategy.* New York: National Center for Mental Health and Juvenile Justice, June 2006.

_____. *Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study.* New York: National Center for Mental Health and Juvenile Justice, June 2006.

Dailard, Cynthia, and C. Richardson. "Teenagers' Access to Confidential Reproductive Health Services" *The Guttmacher Report on Public Policy* 8, no. 4. Washington, D.C.: Guttmacher Institute. November 2005.

Ford, et al. *Trauma Among Youth in the Juvenile Justice System: Critical Issues and New Directions.* National Center for Mental Health and Juvenile Justice. New York: June 2007.

Foreman, Megan. *Adolescent Health: A Snapshot for State Legislatures.* Denver: NCSL, 2009.

_____. "Children's Oral Health." *LegisBrief* 15, no.36 (August/September 2007).

Glascock, Melanie, and S. Schwartz. *Improving Access to Health Coverage for Transitional Youth.* Washington, D.C.: National Academy for State Health Policy. July 2008.

Goodwin, K., and J. Saunders. *The Children's Health Insurance Program: A Primer for State Legislators.* Denver: NCSL, April 2009.

Grantmakers in Health. *Health and Justice: Health Care for People Involved in the Justice System* (Issue Brief No. 37). Washington, D.C.: March 2010.

Guttmacher Institute. *An Overview of Minors' Consent Law.* Washington, D.C.: Guttmacher Institute, December 2010.

Hanlon, Carrie, J. May, and N. Kaye. *A Multi-Agency Approach to Using Medicaid to Meet the Health Needs of Juvenile Justice-Involved Youth.* Washington, D.C.: National Academy for State Health Policy, December 2008.

The Kaiser Commission on Medicaid and the Uninsured and Georgetown University Health Policy Institute Center for Children and Families. *Children's Oral Health Benefits.* Washington, D.C.: March 2010.

The Kaiser Commission on Medicaid and the Uninsured. *The Medicaid Program at A Glance.* Washington, D.C.: November, 2008.

Kaye, Neva and S. Zemel. *Service Delivery Policies: Findings from a Survey of Juvenile Justice and Medicaid Policies Affecting Children in the Juvenile Justice System.* Washington, D.C.: National Academy for State Health Policy, August 2010.

_____. *Medicaid Eligibility, Enrollment and Retention Policies: Findings from a Survey of Juvenile Justice and Medicaid Policies Affecting Children in the Juvenile Justice System.* Washington, D.C.: National Academy for State Health Policy, December 2009.

_____. *Findings from a Survey of Juvenile Justice and Medicaid Policies Affecting Children in the Juvenile Justice System: Inter-Agency Collaboration.* Washington, D.C.: National Academy for State Health Policy. September 2009.

National Center on Addiction and Substance Abuse at Columbia University. *Criminal Neglect: Substance Abuse, Juvenile Justice and the Children Left Behind.* New York: October, 2004.

Puzzanchera, Charles. *Juvenile Arrests, 2006.* Office of Juvenile Justice and Delinquency Prevention, 2006.

Children's Health Insurance Program Reauthorization Act: One Year Later Connecting Kids to Coverage, www.InsureKidsNow.gov.

Sickmund, Melissa. *Juveniles in Residential Placement, 1997-2008.* Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, February 2010.

Ross, Donna, Marian Jarlenski, Samantha Artiga, Caryn Marks, *A Foundation for Health Reform: Findings of a 50 State Survey of Eligibility Rules, Enrollment and Renewal Procedures, and Cost-Sharing Practices in Medicaid and CHIP for Children and Parents During 2009*, Place: The Henry J. Kaiser Family Foundation, December 2009.

The Kaiser Family Foundation, *Medicaid Benefits: Online Database.* Washington, DC: 2011; http://medicaidbenefits.kff.org/sv_foot.jsp#36

National Conference of State Legislatures. *Health Reform and Women, Children and Adolescents.* Denver: NCSL, April 2011; http://www.ncsl.org/default.aspx?TabId=20194.

Disproportionate Minority Contact

References

The Annie E. Casey Foundation. Detention Reform: *An Effective Approach to Reduce Racial and Ethnic Disparities in Juvenile Justice.* Baltimore, Md.: AECF, 2009.

_____. *Juvenile Detention Alternatives Initiative.* Baltimore: AECF, 2010.

_____. *No Turning Back: Promising Approaches to Reducing Racial and Ethnic Disparities Affecting Youth of Color in the Juvenile System.* Baltimore, Md.: AECF, 2005.

Arizona Governor's Office for Children Youth and Families, Arizona Juvenile Justice Commission. *2006 Annual Report.* Phoenix: GOCYF, 2007.

Arya, Neelum, and Ian Augarten. *Critical Condition: African-American Youth In The Justice System.* Washington, D.C.: Campaign for Youth Justice, September 2008.

Arya, Neelum, et al. *America's Invisible Children: Latino Youth and the Failure of Justice.* Washington, D.C.: Campaign for Youth Justice, May 2009.

Center for Children's Law and Policy. *DMC Action Network e-News.* Washington, D.C.: CCLP, 2010.

_____. *DMC Action Network: Frequently Asked Questions.* Washington, D.C.: CCLP, 2010.

Colorado Supreme Court. Colorado Court Improvement Committee. *Program Report.* Denver, 2005.

Hinton Hoytt, Eleanor; Vincent Schiraldi; Brenda V. Smith; and Jason Ziedenberg. *Pathways to Juvenile Detention Reform; Reducing Racial Disparities in Juvenile Detention.* Baltimore: The Annie E. Casey Foundation, 2005.

Hsia, Heidi. *Summary of States' DMC-Reduction Activities Based on FY 2007 Formula Grants Application.* Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 2007.

Hsia, Heidi M.; George S. Bridges; and Rosalie McHale. *Disproportionate Minority Confinement: 2002 Update.* Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 2007.

The John D. and Catherine T. MacArthur Foundation. Models for Change. "Issues for Change: Racial Fairness" (2010), http://www.modelsforchange.net/issues/racial.

Johnson, Derrick. Testimony to the U.S. House of Representatives on behalf of the Arizona Juvenile Justice Commission. July 2007.

Juszkiewicz, Jolanta. *Youth Crime/Adult Time: Is Justice Served?* Washington, D.C.: Building Blocks for Youth, October 2000.

Males, Mike, and Dan Macallair. *The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California.* Washington, D.C.: Building Blocks for Youth, January 2000.

National Council of Juvenile and Family Court Judges. National Center for Juvenile Justice. *Minorities in the Juvenile Justice System.* Pittsburgh: NCJJ, 1999.

National Council on Crime and Delinquency. *And Justice for Some: Differential Treatment of Youth of Color in the Justice System.* Oakland, Calif.: NCDC, 2007.

New Mexico Children Youth and Families Department. *Statewide Disproportionate Minority Plan.* Albuquerque, 2002.

North Carolina Governor's Crime Commission. Criminal Justice Analysis Center. *Disproportionate Minority Contact Reduciton Initiatives in North Carolina*. Raleigh, 2006.

Pope, Carl E.; Rick Lovell; and Heidi M. Hsia. *Disproportionate Minority Confinement: A Review of the ResearchLiterature from 1989 Through 2001*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.

Saavedra, Jose D. *Just the Facts Snapshot of Incarcerated Hispanic Youth*. Washington, D.C.: National Council of La Raza, 2010.

Snyder, Howard N. *Juvenile Arrests 2004*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 2006.

Soler, Mark. *Disproportionate Minority Contact: Practical Applications and Implications*. Washington, D.C.: Center for Children's Law and Policy, 2007.

South Dakota Department of Corrections and Council of Juvenile Services. *Juvenile Justice and Delinquency Prevention Program: Announcement and Request for Proposals*. Pierre, 2006.

Torbet, Patricia; Hunter Hurst Jr.; and Mark Soler. *Guidelines for Collecting and Recording the Race and Ethnicity of Juveniles*. Center for Children's Law and Policy and National Center for Juvenile Justice. Washington, D.C., 2006.

U.S. Department of Health and Human Services. Substance Abuse and Mental Health Services Administration. *National Survey on Drug Use and Health*. Washington, D.C.:U.S. DHHS, 2003.

U.S. Department of Justice. Office of Juvenile Justice and Delinquency Prevention. *Disproportionate Minority Contact Technical Assistance Manual*, 4th ed., 4-13. Washington, D.C.: U.S. DOJ, July 2009.

The W. Hayword Burns Institute. *Community Justice Network for Youth*. San Francisco, Calif.: Burns Institute, 2010.

Wisconsin Office of Justice Assistance. Commission on Reducing Racial Disparities in the Wisconsin Juvenile Justice System. *Final Report*. Madison, 2008.

Ziedenberg, Jason. *Drugs and Disparity: The Racial Impact of Illinois' Practice of Transferring Youth Drug Offenders to Adult Court*. Washington, D.C.: Building Blocks for Youth, 2001.

Statutes

Conn. Gen. Stat. Ann. §§2-24b, 51-10c (2010).

Ind. Code Ann. §4-23-30.2 (West 2010).

Iowa Code Ann. §§2.56, 8.11 (West 2010).

Md. Educ. Code Ann. §7-430 (2010).

Mo. Ann. Stat. §211.326 (Vernon 2011).

Wash. Rev. Code Ann. §§2.56.030, 13.06.050, 13.40.027 (repealed), 13.40.038, 13.40.075 (repealed), 13.40.210, 13.40.510 (2011).

Glossary

Aftercare: Supervision and services provided to a juvenile following his or her release from a correctional facility. Generally includes evaluation of treatment, educational, vocational needs and a plan to help the young person with successful readjustment to the community.

Anxiety disorders: A chronic condition characterized by an excessive and persistent sense of apprehension with physical symptoms such as sweating, palpitations and feelings of stress. Anxiety disorders have biological and environmental causes.

Behavioral disorders: A disorder characterized by displayed behaviors over a long period of time that significantly deviate from socially acceptable norms for a person's age and situation.

The Children's Health Insurance Program (CHIP): A program that provides health insurance to some young people whose family incomes are too high to qualify for Medicaid but who are unable to afford or cannot access the private insurance market. CHIP provides health care coverage for low-income children whose family incomes are too high to qualify for Medicaid. States receive an enhanced federal match for services provided through CHIP as an incentive to offer coverage.

Competency to stand trial: This term refers a person's mental ability to understand the nature of the court proceedings against him or her. Competency, traditionally, has focused on mental illness and retardation, but increased attention is being given to juvenile incompetence based upon emotional and mental immaturity.

Cost-Benefit Analysis: A systemic tool for evaluating public policy turns all outcomes into monetary values, it allows evaluators to compare programs that have different goals—for example, program A aims to reduce crime, while program B aims to curb substance abuse—in order to find the option that offers the greatest net societal benefit.

Cost-Effectiveness Analysis: An evaluation that compares the relative costs and outcomes of two or more courses of action, but differs from cost-benefit analysis in that it does not turn all results into monetary values. Due to this limitation, cost-effectiveness analyses generally are used only to compare programs that have similar goals.

Depression: A mental state of altered mood characterized by feelings of sadness, despair and discouragement.

Disproportionate Minority Contact: The disproportionate number of minority youth who come into contact with the juvenile justice system.

Entitlement program: Programs that cannot deny benefits to any person who is eligible based on minimum federal requirements; therefore, states cannot limit the number of people who enroll.

Federal Medical Assistance Percentage: The Federal Medical Assistance Percentages (FMAPs) are used in determining the amount of federal matching funds for state expenditures for assistance payments for certain social services and state medical and medical insurance expenditures. The Social Security Act requires the secretary of Health and Human Services to calculate and publish FMAPs annually.

Federal poverty guidelines: The poverty guidelines are a measure of poverty issued each year in the Federal Register by the Department of Health and Human Services (HHS). The guidelines are a simplification of the poverty thresholds used for administrative purposes.

The poverty guidelines are sometimes also referred to as the "federal poverty level" (FPL), but that phrase is ambiguous and should be avoided, especially in situations (e.g., legislative or administrative) where precision is important.

Indigent defendant: Someone who has been arrested or charged with a crime punishable by imprisonment and who lacks sufficient resources to hire a lawyer without suffering undue hardship.

Medicaid: An entitlement program that operates through a state-federal partnership created by Congress in 1965, it provides health care coverage to specific groups of low-income people.

Mood disorder: A group of mental disorders involving a disturbance of mood, along with either a full or partial excessively happy or extremely sad syndrome not caused by any other physical or mental disorder. Mood refers to a prolonged emotion.

Post-traumatic stress disorder: An anxiety disorder that can develop after exposure to a terrifying event or ordeal during which grave physical harm occurred or was threatened. Traumatic events that may trigger PTSD include violent personal assaults, natural or human-caused disasters, accidents or military combat.

Presumptive eligibility: Patients who are likely eligible for Medicaid or CHIP can apply through a simplified process so that, pending the outcome of their application, they have immediate access to care. This option is most commonly used for pregnant women.

Procedural due process: Procedural due process refers to the aspects of federal due process clause that relates to the procedure of arresting and trying those who have been accused of crimes. It also applies to any other government action that deprives an individual of life, liberty or property.

Program assessments: The systematic and ongoing method of gathering, analyzing and using information from measured outcomes to improve statistical reliability.

Protective factors: Buffers to minimize or moderate the effect of risk factors and their ability to bring about delinquent behavior. Protective factors are circumstances that cancel out or mitigate the influence of risk factors.

Psychotic disorders: Mental disorders in which the personality is seriously disorganized and a person's contact with reality is impaired. During a psychotic episode, a person is confused about reality and often experiences delusions and/or hallucinations.

Recidivism: The arrest, conviction or incarceration of an individual who currently is on probation or parole or has previously been on probation or parole or has been incarcerated.

According to the Bureau of Justice Statistics, recidivism is measured by criminal acts that resulted in the re-arrest, reconviction or return to prison with or without a new sentence during a three-year period following a prisoner's release.

Risk factors: Factors—whether they are individual, family, peer or school and community—that increase a juvenile's risk for delinquent behavior.

Schizophrenia: A chronic, severe and disabling brain disorder that has affected people throughout history. People with the disorder may hear voices that other people cannot hear. They may believe other people are reading their minds, controlling their thoughts, or plotting to harm them. People with schizophrenia may not make sense when they talk. Sometimes people with schizophrenia seem perfectly fine until they attempt to vocalize their thoughts.

Status offenses: Actions that are a crime only when committed by juveniles. The most common status offenses are truancy, curfew violations, running away and alcohol violations.

Substantial hardship: In determining whether substantial hardship would result, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including, but not limited to, cash, stocks, bonds and any other property that may be applied to the satisfaction of judgments, and the seriousness of the charge or nature of the case.

Substantive due process: The substantive limitations placed on the content or subject matter of state and federal laws by the due process clauses of the 5th and 14th Amendments to the U.S. Constitution.

Truancy: An absence from school that is not excused by the school or a parent; some states provide a statutory age range within which students may be classified as truant.

Waiver of counsel: This refers to when a person forfeits his or her right to an attorney.

Resources

John D. & Catherine T. MacArthur Foundation

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www.macfound.org

The MacArthur Foundation is one of the nation's largest independent foundations. Through the support it provides, the Foundation fosters the development of knowledge, nurtures individual creativity, strengthens institutions, helps improve public policy, and provides information to the public, primarily through support for public interest media.

Models for Change

The MacArthur Foundation's Models for Change initiative collaborates with selected states to advance juvenile justice reforms that effectively hold young people accountable for their actions, provide for their rehabilitation, protect them from harm, increase their life chances, and manage the risk they pose to themselves and to public safety.

Models for Change Project Partners

Center for Children's Law and Policy
1701 K Street, N.W., Suite 1100
Washington, DC 20006
Phone (202) 637-0377
www.cclp.org

Coalition for Juvenile Justice
1710 Rhode Island Avenue N.W., 10th Floor
Washington, DC 20036
Phone (202) 467-0864
www.juvjustice.org

Council of Juvenile Correctional Administrators
170 Forbes Road, Suite 106
Braintree, MA 02184
Phone (781) 843-2663
www.cjca.net

Georgetown University's Center for Juvenile Justice Reform
3300 Whitehaven Street, N.W., Suite 5000
P.O. Box 571444
Washington, DC 20057-1485
Phone (202) 687-1527
cjjr.georgetown.edu

Justice Policy Institute
1012 14th Street, N.W., Suite 400
Washington, DC 20005
Phone (202) 558-7974
www.justicepolicy.org

Juvenile Law Center
The Philadelphia Building, 4th floor
1315 Walnut Street
Philadelphia, PA 19107
Phone (215) 625-0551
www.jlc.org

Mental Health Association in Pennsylvania
1414 North Cameron Street, 1st Floor
Harrisburg, PA 17103
Phone (717) 346-0549
www.mhapa.org

Models for Change Research Initiative
Temple University, Dept. of Psychology
1701 North 13th Street
Philadelphia, PA 19122
Phone (610) 805-0542
www.modelsforchange.net/about/research.html

National Academy for State Health Policy
1233 20th Street, NW, Suite 303
Washington, DC 20036
Phone (202) 903-0101
www.nashp.org

National Center for Juvenile Justice
3700 South Water Street, Suite 200
Pittsburgh, PA 15203
Phone (412) 227-6950
www.ncjj.org

National Center for Mental Health and Juvenile Justice
Policy Research Inc.
345 Delaware Avenue
Delmar, NY 12054
Phone (518) 439-7415
www.ncmhjj.com

National Juvenile Defender Center
1350 Connecticut Avenue N.W., Suite 304
Washington, DC 20036
Phone (202) 452-0010
www.njdc.info

National Youth Screening & Assessment Project
University of Massachusetts Law and Psychiatry Program 55
Lake Avenue North
Worcester, MA 01655
Phone (508) 856-8732
www.umassmed.edu/NYSAP

Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279
Phone (212) 334-1300
www.vera.org

W. Haywood Burns Institute
180 Howard St. Suite 320
San Francisco, CA 94105
Phone (415) 321-4100
www.burnsinstitute.org

Other Partners

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810 Seventh Street NW.
Washington, DC 20531
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Pew Center on the States
Washington, D.C. Office
901 E St. NW, 10th Floor
Washington, DC 20004-1409
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Philadelphia Office
One Commerce Square
2005 Market Street, Suite 1700
Philadelphia, PA 19103-7077
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NCSL Assistance

The guidebook was prepared under a partnership project of National Conference of State Legislature's (NCSL) Criminal Justice Program and the John D. and Catherine T. MacArthur Foundation's Models for Change: Systems Reform in Juvenile Justice initiative. The partnership project, "Informing Juvenile Justice Policy," is designed to provide information and training for state legislators and staff who contribute to more informed decision making on priority juvenile justice issues. The project's focus is on the multiple aspects of adolescent development and juvenile delinquency and on evidence- and research-based policy approaches. NCSL products and services highlight the work of the four core model states—Pennsylvania, Illinois, Louisiana and Washington—under the initiative and the 12 partner states participating in the action networks.

NCSL project meetings, publications and technical assistance highlighting Models for Change work have benefitted many state legislatures and also have contributed information to other Models for Change partners and the field on legislative priorities and actions in the states. NCSL has disseminated information to its members produced by the Foundations' Research Networks, the four Models for Change states, the 12 Action Networks and the Models' National Resource Bank. Services designed for the needs and environments of state legislatures include:

- Meetings and events for legislators to educate and bring together members from around the country to share their experiences with youth and juvenile justice reforms. Meetings often feature national experts and highlight successful state responses that focus on cost-effective, public safety benefits and better results for kids.

- Publications and information services for state lawmakers and legislative staff to contribute information on recent research, legislation, reform options and program models.

- Technical assistance on expressed legislative interests in considering and crafting juvenile justice reforms and to educate members on the Models for Change initiative.

Acknowledgments

- The NCSL juvenile justice project with the MacArthur Foundation, including preparation of this guidebook, is directed by Sarah Hammond in NCSL's Denver, Colorado, office. Chong-hwa Lee, a consultant to the project, was principal author of the Adolescent Development and Competency, Delinquency Prevention and Intervention, Mental Health Needs of Juvenile Offenders, Reentry/ Aftercare and Disproportionate Minority Contact chapters of this guidebook. Richard Williams of the NCSL Criminal Justice staff was author of the Cost-Benefit Analysis of Juvenile Justice Programs and Indigent Defense, Counsel and other Procedural Issues chapters of this guidebook; and Megan Foreman of NCSL's Health Staff wrote the Medicaid for Juvenile Justice Involved Children section of this guidebook. Donna Lyons in NCSL's Criminal Justice Program provided review assistance; Vicky McPheron, also in the Criminal Justice Program, provided administrative assistance; and Leann Stelzer in the NCSL Communications Program edited and assisted in production.

- Special thanks to reviewers Rey Banks, James Bell, Paula Braverman, Tina Chiu, Joseph Cocozza, Autumn Dickman, Patrick Griffin, Tom Grisso, Candice Jones, Kimberly Larson, Annie Salsich, Robert Schwartz, Mark Soler and Sarabeth Zemel.

- The project is overseen by Laurie Garduque, Director of Juvenile Justice, MacArthur Foundation. Her continued support and assistance to NCSL and state legislatures are gratefully acknowledged.

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Delinquency Prevention & Intervention

Juvenile Justice Guide Book for Legislators

Introduction

Engaging in delinquent behavior can lead to drug use and dependency, dropping out of school, incarceration, adult criminal behavior and injury. Early intervention and prevention of delinquent behavior can divert juveniles from the adverse consequences that can result from delinquency.

Risk and Protective Factors

There are identified risk factors that increase a juvenile's likelihood to engage in delinquent behavior, although there is no single risk factor that is determinative. To counteract these risk factors, protective factors have also been identified to minimize a juvenile's likelihood to engage in delinquent behavior.

The four areas of risk factors are: individual, family, peer, and school and community. Individual risk factors include early antisocial behavior, poor cognitive development, hyperactivity and emotional factors, such as mental health challenges. Family risk factors include poverty, maltreatment, family violence, divorce, parental psychopathology, familial antisocial behaviors, teenage parenthood, single parent family and large family size. Peer factors of association with deviant peers and peer rejection are identified as risk factors. School and community risk factors include failure to bond to school, poor academic performance, low academic aspirations, neighborhood disadvantage, disorganized neighborhoods, concentration of delinquent peer groups, and access to weapons. Many of these risk factors overlap. In some cases existence of one risk factor contributes to existence of another or others.

Generally, protective factors—such as positive school attendance, positive social orientation or the ability to discuss problems with parents—are a buffer to minimize or moderate the effect of risk factors and their ability to bring about delinquent behavior. Protective factors seem to mitigate the influence of risk factors. Both risk and protective factors are discussed as part of delinquency prevention and intervention.

Risk Factors

There are four identified risk factors that increase a juvenile's likelihood to engage in delinquent behavior.

1. Individual risk factors
2. Family risk factors
3. Peer risk factors
4. School and Community risk factors

> "Generally, protective factors—such as positive school attendance, positive social orientation or the ability to discuss problems with parents—are a buffer to minimize or moderate the effect of risk factors and their ability to bring about delinquent behavior.

Phases of Prevention and Intervention

Delinquency prevention and intervention efforts primarily are comprised of identifying the risk factors that contribute to delinquency, addressing those factors early, and building on protective factors to offset the risks. Although traditional delinquency prevention policies were targeted at school-age youth, more modern delinquency prevention and intervention efforts focus on pre-birth into childhood and adolescence.

> The most recent research suggests that the earliest prevention should begin in the womb and in the first years of a baby's life.

Pre-natal

For instance, research on brain development shows that neural connections regulating responses to stress are formed in utero and into the first 33 months of life (as noted in the "Adolescent Development and Competency" section). A child who grows up in a chaotic or abusive environment is more likely to have an over-reactive flight-or-fight reflex. Furthermore, someone who cannot maintain self-control under stress has a greater inclination to violence.

Early Childhood

Social research has shown a strong association between childhood abuse and neglect and delinquent behavior. A National Institute of Justice study showed that a history of child abuse and neglect increased the likelihood of juvenile arrest by 59 percent, adult arrest by 27 percent and violent crime by 29 percent. Other studies have shown that violence begets more violence. One study showed that children who were victims of violence were 24 percent more likely to report engaging in violence. One-third of the victims of child abuse or neglect are likely to subject their own children to abuse. In cases of extreme exposure to violence, children may develop post-traumatic stress syndrome, which makes it more difficult to form appropriate relationships, cause an increased tolerance for violence and lead to difficulty learning new information.

Quality early child care and education provide the bases for healthy growth and development, which includes physical well-being and structured early learning and educational opportunities. Nutrition, health care, parental involvement and interaction, and quality pre-school experiences also contribute. Positive early child care includes adequate staff qualifications and training, low staff-to-child ratios, adequate staff compensation and developmental curriculum.

> During the pre-teen years, the strongest risk factor for delinquency is influence from a delinquent peer group.

School Age

The next crucial phase of prevention and intervention occurs during the pre-teen years. During

this time, the strongest risk factor for delinquency is influence from a delinquent peer group. Other prominent risk factors for school-age children are involvement of family members in crime, academic failure and disinterest in school, family violence, drug use, and gang influence and membership.

Schools play a particularly important role during the school-age years. They provide a forum within which to promulgate programs and policies aligned with delinquency prevention and intervention. These programs can address a range of topics, such as drug and alcohol use, bullying, and gang prevention. In fact, most gang resistance programs are school-based. The school role also includes their discretion in disciplining and reporting juveniles, sometimes resulting in delinquency proceedings.

> “During this time, the strongest risk factor for delinquency is influence from a delinquent peer group.

Risk/Needs Assessments

Research shows the most effective interventions are those that target the right kids. Research by the Peabody Research Institute (2010) shows, in general, that intervention for high-risk delinquents, on average, more effectively reduces recidivism than when those interventions are applied to low-risk delinquents. Practically, juvenile justice systems will have more success in reducing recidivism if they focus interventions on higher-risk youth. The research further shows that therapeutic programs—such as restorative programs, programs centered on skill building, and counseling—were more effective than disciplinary or deterrence philosophies. It is important that the program type match the youth’s needs.

> “Research by the Peabody Research Institute (2010) shows, in general, that intervention for high-risk delinquents, on average, more effectively reduces recidivism than when those interventions are applied to low-risk delinquents.

Evidence-Based Programs

Model prevention evidence-based programs such as multi-systemic therapy (MST) and family functional therapy (FFT) have shown positive effects on recidivism. MST is a family systems approach designed to help parents deal effectively with their child’s behavior problems. It is provided in the home, school and other community locations. FFT targets youth with substance abuse, delinquency or violence in their home environment. It focuses on improving the function of the family by increasing problem-solving skills and emotional connections and providing appropriate parental structure for children in the home. Many states, including Pennsylvania, Florida and Washington, have implemented evidence-based programs. Research also has shown the effectiveness of smaller, local

programs that follow principles similar to these successful programs.

Intervening with Status Offenders

Status offenses are non-criminal behaviors that constitute an offense only because the juveniles are minors. The most common status offenses are truancy, curfew violations, running away and alcohol violations. Preventing and providing structured and appropriate services for status offenders are key to preventing future delinquency.

Many youth service experts recommend that status offenders benefit from assessment and early intervention for family problems, as opposed to a disciplinary focus and adjudication. These providers advocate organized, early assessment by community centers in collaboration with local agencies. The community centers identify the needs of and provide the necessary services for the juveniles—and their family members, if necessary—to help prevent delinquency.

> Status offenses are non-criminal behaviors that constitute an offense only because the juveniles are minors.

Truancy

Truancy is absence from school that is not excused by the school or a parent; some states provide a statutory age range within which students may be classified as truant. In general, research shows that truancy is a risk factor for other behaviors such as substance and alcohol use, dropping out of school, and involvement in the juvenile justice system. However, research conducted by Huizinga et al. also indicates that, although truancy can be a factor associated with delinquency, it is much less so than factors such as substance abuse or mental health problems.

When the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) evaluated seven national truancy reduction programs, it identified five elements of effective programs: parental involvement, a continuum of services, a collaborative effort (with law enforcement, mental health, mentoring and social services), school administrative support and commitment, and ongoing evaluation.

> ...although truancy can be a factor associated with delinquency, it is much less so than factors such as substance abuse or mental health problems.

Traditionally, habitual truants were suspended, expelled, and often referred to juvenile courts or the child welfare system. Now, research suggests that punitive policies only increase the likelihood of school dropouts. Studies suggest that the "positive youth development" approach—which creates a safe environment, enables connections with caring adults, and builds on strengths and assets of the

Truancy Reduction Strategies

The National Dropout Prevention Center/ Network (Smink and Reimer, 2005) recommend the following strategies as effective in reducing truancy:

- School-community collaboration
- Safe learning environments
- Family engagement
- Early childhood education
- Early literacy development
- Mentoring/tutoring
- Service learning
- Alternative schooling
- After-school opportunities
- Professional development
- Active learning
- Educational technology
- Individualized instruction
- Career and technical education

youth involved—is more likely to be successful. Such truancy programs can result in a decrease in crime during school days, decreased drug and alcohol use, increased school attendance, fewer dropouts and improved school performance.

Community-based truancy reduction programs work to break down the barriers to high school graduation. Other truancy reduction programs are school-based and work to reverse patterns of truancy before high school; these programs are predominantly used in middle schools.

Cost Benefit of Prevention

Policymakers must consider the cost, as well as the effectiveness, of prevention and intervention programs to address juvenile crime. Today's long-term investments in prevention can help to reduce crime and public spending well into the future. Efforts to address truancy, for example, represent policymakers' interest in ensuring children stay in school and receive an adequate education, stay out of trouble, and out of the juvenile and criminal justice systems.

> "Cost-benefit analysis helps guide policy and investments that invest in the long-term future of delinquency prevention.

The National Center for School Engagement estimates that the lifetime societal cost for each high school dropout is about $200,000.

The Washington Legislature uses cost-benefit analysis to evaluate delinquency prevention and other juvenile justice programs. Analysis of the Seattle Social Development Project, which uses

elementary classroom instruction to prevent later delinquency and substance abuse, is said to have saved $3,268 per student in reduced criminal justice system expenditures and losses to victims. In addition, a 1998 study of nine early childhood intervention programs found that, when targeted to high-risk populations, the programs provided long-term savings through increased tax revenues and decreased outlays for criminal justice, welfare, special education and other public costs.

> The National Center for School Engagement estimates that the lifetime societal cost for each high school dropout is about $200,000.

State Activity

State legislatures have enacted numerous laws in recent years to address juvenile delinquency prevention and intervention. States such as Arkansas have passed laws that allocate more funding for community-based and juvenile delinquency prevention programs, including those aimed at gang prevention, or measures that provide a path for the further development and implementation of delinquency prevention programs. Meanwhile, other states have focused on creating a collaboration of stakeholders to address prevention issues.

Early Childhood Care and Education

Programs in many states focus on improving early childhood care and education, which includes assistance to parents. Home visitation programs have been shown effective in reducing the incidence of abuse and neglect.

A Hawaii program provides new parents who are at risk of child abuse or neglect with child development training and health-related services; it has helped to significantly reduce abuse and neglect. Forty states have home visitation programs to prevent perpetuation of abuse or neglect at home.

> States also have begun to invest more in earlier education. Thirty-nine states have a pre-school program, and 13 provide supplemental funding for Head Start, an early childhood education program for children in low-income families or those with disabilities.

States have earmarked state revenue from other sources to pay for pre-school education initiatives. Georgia for example, earmarked state lottery funds to offer free pre-school for 4-year-olds. Colorado designated a portion of its crime prevention funds for early childhood programs, and California added a 50-cent tax on cigarettes to support early child development services (as well as smoking prevention programs).

In 2008, Illinois created the Commission on Children and Youth and entrusts its Early Learning

Council with primary responsibility for developing a strategic plan for children from birth to age 24. A 2010 Nebraska law provided methods of early intervention for children at risk.

Truancy and School Dropout Prevention

Because truancy is a strong indicator of future delinquent behavior, many state legislatures have focused on addressing truancy and minimizing school dropout rates.

Some states have passed legislation that require data collection and research on school dropout and graduation rates. For example, California passed a pupil retention statute in 2009 to require the superintendent to submit an annual report on students who drop out.

> Recently, Colorado began a prevention pilot program administered by the Department of Education to reduce drop out rates.

In 2009, Colorado passed three new laws related to truancy prevention. The state began a prevention pilot program administered by the Department of Education to reduce drop-out rates. Colorado also created an office of dropout prevention and student re-engagement within its Department of Education. The office focuses on reducing student drop-out rates and increasing graduation rates. Finally, Colorado created a residential youth challenge corps program that caters exclusively to at-risk youth, including those who are habitually truant.

> Some state policies provide various sanctions for truant behavior. Laws in 17 states require youth to remain in school or maintain a certain grade point average to earn or keep their driver's license.

In Louisiana, a habitually truant teen's driver's license may either be suspended or denied. Louisiana, as well as several other states, also can hold parents of truant students liable by punishing them with fines, school or community service, attendance at parenting classes, family counseling and suspension of a state-issued recreational license. In Minnesota, parents of a truant child may be ordered to deliver the child to school, and in Oregon, authorities may issue a school attendance citation.

Connecticut's truancy prevention initiative includes a special truancy docket, while Illinois allows the Chicago Board of Education to establish an Office of Chronic Truant Adjudication. Utah allows a school district to establish truancy support centers. In Nebraska, which requires its school districts to have a written excessive absenteeism policy, county attorneys are notified of habitual truancy.

There are many ways that states are approaching prevention of juvenile delinquency, crime, and

violence—including a 2009 Minnesota law regards youth violence as a public health concern; it coordinates prevention and intervention programs addressing relevant risk factors for violence. New service programs also were created. In 2010, for example, Missouri established a residential, military-based academy that focuses on training life skills, citizenship, life coping and academics.

> Louisiana, as well as several other states, also can hold parents of truant students liable by punishing them with fines, school or community service, attendance at parenting classes, family counseling and suspension of a state-issued recreational license.

Utah uses parental responsibility in an attempt to further prevent gang participation. Parents or guardians who have legal custody of juveniles who participate in illegal behavior and inflict property damage in association with gang activity are liable for damages up to $5,000.

Conclusion

Both preventing juveniles from ever engaging in delinquent behavior and intervening to prevent them from engaging in repeated delinquent behavior or criminal acts are essential components to administration of juvenile justice.

For references and additional resources, please see the **References, Glossary & Resources** section.

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Medicaid for Juvenile Justice-Involved Children

Juvenile Justice Guide Book for Legislators

Introduction

Medicaid can help meet the unique health needs of juvenile justice-involved youth. Youth involved with juvenile justice systems often have significant, sometimes costly, health needs, in part because they may not have received regular or continuous medical care. Although data are incomplete and vary by state, evidence suggests that a high percentage of youth who are involved with the juvenile justice system are Medicaid-eligible.

This group also is inherently high-risk, usually across multiple indicators. For instance, many of them are truant or doing poorly in school, lack caring adults or a positive sense of community, and come from families with very low incomes. A 2010 Grantmakers in Health report, Health Care for People Involved in the Juvenile Justice System, sums it up this way: "[Juvenile offenders] often have a family background that includes abuse or neglect, unmet mental health and substance abuse needs, low family income, a limited or uneven history with the health care system, and probable eligibility for public insurance programs... In fact, many young people in contact with the juvenile justice system are also in contact with several other public systems, such as Medicaid, special education programs, foster care, or child protective services."

The vast majority of young people who come into contact with the system are not incarcerated and remain eligible for publicly funded health insurance; therefore, this contact may offer states the chance to enroll vulnerable young people in Medicaid and put them on a path to well-being. The Office of Juvenile Justice and Delinquency Prevention's 2010 Survey of Youth in Residential Placement found that two-thirds of youth reported a need for health care (e.g., dental, vision, hearing, illness, injury), but more than one-third said one or more of their health care needs were not addressed.

Compliance with Federal Reimbursement Regulations

It is important to note the difference between juvenile justice-involved youth and youth who are incarcerated. The setting or placement a young person is remanded to, if he or she is adjudicated delinquent, will affect which state agency pays for health care. Federal Medicaid dollars cannot be used to reimburse "care or services for any individual who is an inmate of a public institution." A public institution does not include a medical institution, an intermediate care facility, a publicly operated community residence that serves no more than 16 residents, or a childcare institution for children who receive foster care or foster care payments.

Many more young people come into contact with the juvenile system than are actually incarcerated, which gives states an opportunity to enroll those who are eligible in public insurance programs. In 2008, 2.11 million people under age 18 were arrested, but a census in the same year showed that only 81,000 juvenile offenders were incarcerated.

Medicaid Overview

Medicaid, a state-federal partnership created by Congress in 1965, provides health care coverage to specific groups of low-income people. Participation in the program is optional, but all 50 states, the District of Columbia and the territories choose to do so. The states administer their Medicaid programs within federal guidelines, and the federal government is obligated to share in the cost. The federal share—called federal medical assistance percentage (FMAP)—ranges from 50 percent to around 75 percent of program costs and is based on a formula that is tied to the state's per capita income. Medicaid is an entitlement program, which means any person who is eligible based on minimum federal requirements must receive benefits; therefore, states cannot limit the number of people who enroll.

More than half of all Medicaid beneficiaries are children. Recent changes by the Patient Protection and Affordable Care Act (PPACA) enacted in March 2010 will require Medicaid programs to cover everyone, including children ages 6 to 18, in families with incomes up to 133 percent of federal poverty guidelines ($24,352 for a family of three in 2009). States are not required to expand Medicaid until 2014, but some have chosen to do so early. The Children's Health Insurance Program also provides health insurance to some young people whose family incomes are too high to qualify for Medicaid but who are unable to afford or cannot access the private insurance market. Between these two programs, children in families with incomes at or above 250 percent of federal poverty guidelines ($45,775 for a family of three in 2009) in 24 states and the District of Columbia may qualify for public health insurance coverage.

Because income requirements can vary not only by state but also within states based on the age of the child, it is important that people working with vulnerable populations clearly communicate with young people and their families information about programs for which they may be eligible. Children within the same family may be eligible for different programs.

> "...any person who is eligible based on minimum federal requirements must receive benefits; therefore, states cannot limit the number of people who enroll.

Most young people qualify for Medicaid based on their family's income, but states also must cover "categorically eligible" youth who qualify under Title IV-E of the Social Security Act, including foster care children, adoption assistance children and some children with disabilities. States have the flexibility to expand coverage to young people with higher family incomes or, in some cases, outside traditional eligibility groups, and many have done so. Under the PPACA, beginning in 2014, states also must provide Medicaid coverage to young people up to age 26 who age out of the foster care system, regardless of their income.

Children's Health Insurance Program

The Children's Health Insurance Program (CHIP) provides health care coverage for low-income children whose family incomes are too high to qualify for Medicaid. States receive an enhanced federal match for services provided through CHIP as an incentive to offer coverage. This federal match will increase 23 percentage points, subject to a 100 percent cap, between 2016 and 2019 under the PPACA, but states must maintain the income eligibility levels and enrollment procedures in place as of March 2010. States are allowed to limit enrollment and implement waiting lists to stay within budgetary limits.

Services Covered by Public Health Insurance Programs

Together, Medicaid and CHIP provided health care coverage to 40 million young people in FY 2009. Federal law requires that public insurance benefits for children be comprehensive. Under Medicaid, patients up to age 21 (and former foster children up to age 26 beginning in 2014) receive early and periodic screening, diagnostic and treatment (EPSDT) services, including vision and dental care, inpatient and outpatient hospital services, laboratory and x-ray services, and more. If screenings show that children need follow-up services, federal regulations require Medicaid programs to "…correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services."

It is important that staff who are enrolling juvenile justice-involved youth understand the specifics about the state's Medicaid and CHIP programs, since young people may fall into a number of eligibility categories.

Mental Health

Some estimate that 69 percent of males and 81 percent of females in the juvenile justice system have at least one mental health disorder, and evidence suggests that mental health is the largest unmet health need among these young people. For those with severe mental health disorders (e.g., schizophrenia, bipolar disorder) lapses in health care have devastating effects on their ability to function in the community and may lead to recidivism. OJJDP's survey of Youth in Residential Placement indicates that only 47 percent of youth facilities provide mental health assessments for all residents; 88 percent of youth who receive mental health counseling do not meet with a mental health professional.

Ensuring access to health services through Medicaid can ease youths' transition between incarceration and re-entry into community life. Medicaid covers a broad range of services for children with mental health needs, including treatments to improve a young person's emotional and behavioral

functioning. Medicaid allows these services to be delivered in various community settings, in schools or even in the child's home. Additional services such as therapeutic foster care, services to build a young person's social, communication and life skills, and even education for parents of children with special health care needs are covered. Coordinating the range of services and providers is paramount, however. For young people whose living situations are unstable or whose lives are chaotic, like many who come into contact with the juvenile justice system—navigating multiple complex systems is impossible, especially given that many of them have severe mental health needs. Strategies to coordinate care are addressed later in this chapter. The mental health needs of juvenile offenders are addressed at length in the Mental Health Needs of Juvenile Offenders Chapter of this guidebook.

Substance Abuse

Adolescent substance abusers are more likely to engage in risky or delinquent behaviors that might bring them in contact with the juvenile justice system. According to a 2003 study of nine selected cities by the Arrestee Drug Abuse Monitoring Program (ADAM), approximately half of juvenile male arrestees tested positive for one or more drugs at the time of arrest; marijuana was most common.

According to the National Center on Addiction and Substance Abuse's 2004 report, Criminal Neglect: Substance Abuse, Juvenile Justice and the Children Left Behind, 78 percent of young people ages 10 to 17 arrested exhibited one or more of the following characteristics: under the influence of alcohol or drugs while committing their crime, tested positive for drugs, arrested for committing an alcohol or drug offense, admitted having substance abuse and addiction problems, or shared some combination of these and additional drug-related characteristics.

"Adolescent substance abusers are more likely to engage in risky or delinquent behaviors that might bring them in contact with the juvenile justice system.

State Medicaid coverage for substance abuse rehabilitation and/or treatment services varies widely and can be highly complex. Each state's Medicaid agency can answer specific questions about the services it covers.

Reproductive Health

According to the National Center on Addiction and Substance Abuse, in 2007, up to 94 percent of young people held in detention centers have had sexual intercourse, compared to 48 percent of all high school students. Juvenile offenders also may have had many sexual partners and inconsistent or low rates of condom use, putting them at increased risk for sexually transmitted infections (STI). Data suggest that one-third of girls in juvenile justice facilities have been pregnant and one-quarter of young men report

having fathered a child; 40 percent of these have fathered more than one child.

The only time some young people see a health care provider is during their contact with the correctional system. This presents the public health system with an opportunity that frequently is not pursued, according to the 2004 Juvenile Residential Facilities Census. The report said that 19 percent of facilities offered STI testing on admission, and just 4 percent universally tested all youth for HIV. Some centers had no STI testing available.

The same 2004 census revealed that sexual risk-taking behavior commonly co-occurs with alcohol or drug use. Among young women ages 12 to 17 who were arrested in 2002, those who had been pregnant in the last 12 months were one and a half times more likely to have used alcohol or illicit drugs than girls who had not been pregnant.

> Data suggest that one-third of girls in juvenile justice facilities have been pregnant and one-quarter of young men report having fathered a child; 40 percent of these have fathered more than one child.

However, the census showed that only 18 percent of facilities provided universal pregnancy testing on admission. The data did not specifically address drug/alcohol use during pregnancy. Serious health consequences for infants and financial implications exist for states when pregnant women use alcohol or drugs.

The National Commission on Correctional Health Care recommends that incarcerated juveniles receive contraception and age-appropriate information about it at an appropriate time prior to discharge, in accordance with local laws. Medicaid programs universally provide family planning services to program enrollees, including minors, and may provide these services once juveniles leave the facility. States are reimbursed for these services at a 90 percent match rate; the federal government pays 90 percent of the cost of family planning services, and the state pays 10 percent. Services generally include physical exams and laboratory tests related to reproduction; patient counseling and education; and contraceptive methods, procedures, devices or pharmaceuticals. Abortion is not federally reimbursable as a family planning service.

State laws vary regarding the necessity of a parent's or guardian's involvement in reproductive health services for minors. According to the Guttmacher Institute, all states and the District of Columbia allow minors to consent to STI services (testing and subsequent treatment for sexually transmitted infections), but only 26 states and the District of Columbia explicitly allow minors to consent to contraceptive services. Research demonstrates that ensuring the confidentiality of reproductive health services for young people greatly enhances the chance they will use them.

Oral Health

Tooth decay is more common in populations overrepresented in the juvenile justice system, including low-income and minority youth. State-level data suggest that unmet oral health needs are prevalent among juvenile justice-involved youth. Among the general population, 68 percent of youth have decayed permanent teeth by age 19. This common chronic illness can lead to pain, weight loss, trouble sleeping, missed school days, poor appearance, decreased self-esteem, and infections that can lead to serious illness and even death.

> State-level data suggest that unmet oral health needs are prevalent among juvenile justice-involved youth.

Federal law requires Medicaid and CHIP programs to cover comprehensive dental services for children and adolescents. Federal law also allows states to provide dental-only coverage to children who meet the income eligibility requirements for CHIP but have health (but not dental) insurance through another source. Many Medicaid patients are unable to find dentists who accept public insurance, however. Dentists cite administrative burdens and low provider reimbursement rates as primary reasons for refusing Medicaid patients. The PPACA addresses these issues through workforce development programs and mechanisms that allow community health centers to contract with dental providers; alternative health professionals who can perform basic dental health services; and public health outreach, including educational campaigns and school-based dental sealant programs.

Strategies for Increasing Enrollment of Juvenile Justice-Involved Youth on Public Insurance

Suspend, Rather than Terminate, Eligibility

Federal regulations do not require states to terminate Medicaid enrollment of those who become inmates of a public institution; rather, states have the option to suspend eligibility. This distinction is important, since the average length of incarceration—and ineligibility for Medicaid—for juveniles is only 3.5 months. Suspending rather than terminating enrollment allows young people to more easily return to care. The average processing time for a Medicaid application is 45 to 90 days or longer, but coverage for a young person whose eligibility has been suspended can be reactivated immediately.

According to the National Academy for State Health Policy, some state Medicaid agencies have decided not to suspend eligibility because of technical roadblocks with computerized Medicaid data systems, including the expense required to update the systems to allow a suspension option, and/or because they want to maintain procedural fairness across enrolled populations.

Continuous Eligibility

In states where Medicaid agencies are allowed to suspend incarcerated young people, continuous

eligibility offers a second layer of protection for young people's immediate access to care once they are released. Under continuous eligibility, children enrolled in Medicaid or CHIP are guaranteed coverage for 12 months, regardless of changes in family income. In 2009, 22 states offered this option in their Medicaid programs. Again, since the average length of incarceration for a juvenile is 3.5 months, incarcerated young people might not see a gap in coverage if their Medicaid eligibility is suspended and they live in a state that offers continuous eligibility.

Presumptive Eligibility

Presumptive Eligibility allows patients who are likely eligible for Medicaid or CHIP to apply through a simplified process so that, pending the outcome of their application, they have immediate access to care. This option is most commonly used with pregnant women.

The federal Department of Health and Human Services can approve "qualified entities," such as a juvenile justice agency, to make a determination of presumptive eligibility. If the person is found ineligible, the state must cover the cost of the services provided under presumptive eligibility.

In 2009, 14 states practiced presumptive eligibility in Medicaid, and 11 use this option on all coverage for children, although the details vary greatly from state to state. It is important that juvenile justice agents know if their state Medicaid program offers this option, since it may help them deal with offenders' immediate health care needs. Examples include young women who are pregnant or people with severe mental health disorders.

Streamline Data Collection

States have various terms for streamlining data collection used to determine Medicaid eligibility, but the core function is to reduce the amount of information—often duplicative—young people and their families must provide to state programs. This process simplification could help any family applying for Medicaid, including justice-involved youth. Alabama, Louisiana and New Jersey use the Express Lane Eligibility Option, which allows Medicaid and CHIP agencies to use information the state already has collected through other programs (e.g., SNAP, formerly food stamps) and income tax records to verify eligibility. Louisiana and 15 other states use administrative renewals, where income verification is performed on behalf of the young person and his or her family, based on information received through other state systems. Twelve states do not require families to verify their incomes with their original application because it can be verified elsewhere. In 36 states, one application is used to determine eligibility for Medicaid or CHIP, and in 25 states, application forms can be filled out online.

Improve Data Sharing Between Medicaid, Juvenile Justice and Child Welfare Agencies

Ensuring that state agencies can communicate with each other and/or have some access to the other's records can provide a more streamlined system where young people have easier access to health care services. According to a survey conducted by the National Academy for State Health Policy, 24 of 29 state juvenile justice agencies polled were able to identify a detainee's Medicaid status through the state Medicaid agency. Conversely, Medicaid

agencies do not have similar ease of access. Of the 25 surveyed, only 12 could identify Medicaid-enrolled youth who were involved with the juvenile justice system. In some states, Medicaid agencies are under pressure to terminate youth who are incarcerated so they are not forced to repay the federal government for any services unlawfully reimbursed; privacy concerns exist for both agencies.

Effective agency coordination might also involve child welfare. Chapin Hall's Midwest Evaluation of the Adult Functioning of Former Foster Youth showed that more than half of their nationally representative sample of young people who were preparing to leave the foster care system had been in contact with the juvenile justice system. Family and/or environmental stress also may make it more difficult for young people to navigate daily life, much less multiple complex state systems. Unmet health needs or chronic conditions can make high-level functioning even more difficult.

Ensuring that staff from both agencies—including judges who sentence juvenile offenders—understand what facilities can house juveniles but allow them to remain eligible for Medicaid can save state resources. Judges who make decisions about child welfare placements also should be privy to health and juvenile records information to ensure that children and families who are in contact with several systems receive the appropriate support.

Data Sharing in California

California law requires juvenile justice agencies to notify the Medicaid agency about an inmate's release date, along with other information that would help the agency determine eligibility. Parents are notified of this process but need not participate unless they want eligibility determination stopped. If inmates are found eligible, they are issued Medi-Cal cards immediately upon release. Special, expedited actions are required for inmates with disabilities.

Train Juvenile Justice Staff to Screen for Eligibility

Under federal Medicaid regulations, funds are available to reimburse non-Medicaid government entities for administrative costs related to identifying and enrolling potentially eligible young people in Medicaid. Since so many of the youth who come in contact with the juvenile justice system are eligible for Medicaid, training agency staff to identify these youth and help them gain benefits at their first point of contact with the system may make the agency eligible for financial incentives. In 2009, $40 million in federal grants were awarded to a variety of government and nongovernment entities to create public-private partnerships to identify and enroll

eligible children. Further, states now are eligible to receive performance bonuses if they enact simplified outreach and enrollment procedures and reach target enrollment levels. Nine states received performance bonuses in 2009, with a high pay out of $39 million to Alabama.

Funding Medicaid Programs

Oregon's juvenile justice agency pays the salary of a Medicaid eligibility specialist. Stationed in the agency's central office, the specialist determines eligibility for youth in custody and enrolls or terminates juveniles based on adjudication. South Carolina and Wyoming report shared staff positions in the Medicaid and juvenile justice agencies, further streamlining the screening process and facilitating enrollment.

Texas screens all youth who make contact with the juvenile justice system for Medicaid eligibility, once at arrest and again during the trial process. A probation officer initially gathers the necessary information from the young person and his or her family to determine Medicaid eligibility. The process takes about 10 minutes. The officer then encourages the family to take the collected information to the Medicaid office and apply for benefits. In this instance, siblings or other children in the home may also be enrolled in Medicaid. If the case requires a hearing, the juvenile justice agency is required to work with the Medicaid office and enroll eligible juveniles. In Texas, 97 percent of juveniles who come into contact with the system are not incarcerated. Those eligible typically gain access to health care through Medicaid quickly as a result of their contact with the system.

Conclusion

Medicaid can help meet the unique needs of juvenile justice-involved youth. For states working toward providing health care for system involved youth, it is important to accurately assess capacity and consider options available to them.

For references and additional resources, please see the **References, Glossary & Resources** section.

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National Conference of State Legislatures

Mental Health Needs of Juvenile Offenders

Juvenile Justice Guide Book for Legislators

Introduction

Children with mental health needs sometimes enter a juvenile justice system ill-equipped to assist them. Between 65 percent and 70 percent of the 2 million children and adolescents arrested each year in the United States have a mental health disorder. Approximately one in four suffers from a mental illness so severe it impairs his or her ability to function as a young person and grow into a responsible adult.

Without treatment, the child may continue on a path of delinquency and eventually adult crime. Effective assessments of and comprehensive responses to court-involved juveniles with mental health needs can help break this cycle and produce healthier young people who are less likely to act out and commit crimes. The importance of screening and treatment are also discussed in the Delinquency Prevention & Intervention chapter of this guidebook.

65-70%

Between 65 percent and 70 percent of the 2 million children and adolescents arrested each year in the United States have a mental health disorder.

Disorders Prevalent Among Youth in the General Population

American children and teenagers sometimes experience conduct, mood, anxiety and substance abuse disorders. Often, they have more than one disorder; the most common "co-occurrence" is substance abuse with a mental illness. Frequently, these disorders put children at risk for troublesome behavior and delinquent acts.

Behavioral disorders are characterized by actions that disturb or harm others and that cause distress or disability. Attention Deficit Hyperactivity Disorder (ADHD) and conduct disorders are typical youth behavioral disorders. According to the Center for Disease Control, an estimated 9 percent to 10 percent of approximately 5.4 million American children suffer from ADHD, and 4.8 percent of them take medication for their condition.

Emotional disorders occur when a child's ability to function is impaired by anxiety or depression. The Center for Mental Health Services estimates that 1 in every 33 children and 1 in 8 adolescents are affected by depression, a potentially serious mood disorder that also afflicts many adults. The occurrence of depression among juvenile offenders is significantly higher than among other young people.

Youth in the Juvenile Justice System

Many juveniles who commit delinquent acts have a history of substance abuse. In the Department of Justice's Arrestees Drug Abuse Monitoring Program, half the male juveniles arrested in nine separate sites tested positive for at least one drug. Studies also have shown that up to two-thirds of juveniles in the justice system with any mental health diagnosis had dual disorders, most often including substance abuse.

In 2006, the National Mental Health Association reported that the prevalence of disruptive behavior disorders among youth in juvenile justice systems is between 30 percent and 50 percent.

Anxiety disorders, post-traumatic stress disorder in particular, also are prevalent among juvenile offenders, especially girls. Psychotic disorders such as schizophrenia, however, are rare in the general population as well as in children involved in the justice system.

Mental Health Assessment and Treatment

Mental health disorders are more complicated and difficult to treat in young people than in adults. Because adolescence is a unique developmental period characterized by growth and change, disorders in teens are more subject to change and interruption. Ongoing assessment and treatment, therefore, are important.

Screening and assessment are vital to addressing mental health treatment needs of youths in the juvenile justice system.

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Screening attempts to identify the youths who warrant immediate mental health attention and further evaluation. Assessments are a more comprehensive and intensive examination of problems and behaviors exhibited by a young person. Proper assessments help those who determine risks, placement and treatment.

Screening

According to the National Center for Mental Health and Juvenile Justice, youths who immediately receive a mental health screening are more likely to have their problems identified and treated. In many jurisdictions, however, screening only occurs after a juvenile has been adjudicated and placed in a correctional facility.

Efforts in Pennsylvania to improve the quality of services and care in juvenile justice have included

the use of screening protocols to identify young people with immediate needs as well as those who require further assessments. All young people in Pennsylvania detention centers are screened using the Massachusetts Youth Screening Instrument, Version 2 (MAYSI-2).

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Screening has resulted in a more effective response to youths with mental health needs, including promoting awareness and competency among detention professionals in the state. To encourage even more effective screening, Pennsylvania, in 2008, strengthened a juvenile's right against self-incrimination by restricting the use of statements and other incriminating information obtained during mental health and substance abuse screenings. Illinois and Texas have passed similar legislation in recent years.

Nevada has also recently passed a law requiring screening for mental health and substance abuse problems for juveniles who are taken into custody and held for detention hearings. The findings of these evaluations and subsequent treatment recommendations are required to be reported to the juvenile court.

Assessment

Some states have approached juvenile mental health issues from a different standpoint. Namely, they require evaluations of juveniles based on the seriousness or type of their offense. For example, in 2007, lawmakers in North Dakota and Oregon passed laws requiring alcohol and drug education, assessment and treatment for juveniles who commit alcohol-related offenses. Under a 2009 law in Tennessee, juveniles charged with offenses that would be felonies for adults must undergo court-ordered psychiatric evaluations.

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The state must pay for the mental health evaluation unless it is determined that the juvenile's parents can afford to reimburse the state.

The Cook County, Ill., Juvenile Court Clinic has a forensic evaluation process being adopted in other jurisdictions. The clinic consults with the court upon request, provides forensic clinical assessments, and provides information on community-based mental health resources and education programs. A clinical coordinator informs judges and probation staff about the juvenile's mental health evaluation and treatment needs. Likewise, in the last three years, Arizona, California, Colorado and New Hampshire have all established courtroom procedures that enable attorneys and judges to request mental health screenings for juveniles involved in delinquency proceedings.

> Other jurisdictions have created specialized courts to serve youth with mental health needs.

Other jurisdictions have created specialized courts to serve youth with mental health needs. In 2007, Tennessee authorized its juvenile courts to develop and operate drug court treatment programs for youth. In 2008, Louisiana allowed one of its judicial districts to designate at least one of its divisions to be used solely as a mental health court.

Recognizing that mental health needs of juveniles often go unrecognized and untreated, state legislators have been creating policy directives for prompt and complete evaluation of youth in the juvenile justice system. Although juvenile courts routinely have discretion to order mental health evaluations, a new law in Idaho requires mental health assessments and treatment plans before the child reaches the court. The law was intended to ensure prompt assessment, which can include convening a "screening team" of officials from health and welfare, probation, juvenile corrections, and other agencies, along with the child's parents.

Linkages to Competency

Mental health assessment is also crucial to address the legal issues surrounding a juvenile's competency to understand the adjudicatory process and to thoughtfully participate in and make decisions as part of that process. The prevalence of mental health issues among juvenile offenders and the impact on legal competency are also addressed in the Adolescent Development and Competency chapter.

> Typically, incompetence to stand trial is related to a mental disorder or developmental disability.

Typically, incompetence to stand trial is related to a mental disorder or developmental disability. Juvenile competency is further complicated by

developmental immaturity, with limited guidance in law on how to deal with this. As discussed in the Adolescent Development and Competency chapter, developmental immaturity distinguishes many juveniles from adults in important ways that make them less able to assist in their defense or to make important decisions as part of the process. This suggests that, in defining standards of competency for juveniles, simply applying the same standards as those used for adults will not work.

At least 10 states—Arizona, Colorado, Florida, Georgia, Kansas, Minnesota, Nebraska, Texas, Virginia and Wisconsin—and the District of Columbia specifically address competency in their juvenile delinquency statutes.

Virginia's statute, for example, directs how the issue of competency is to be raised and evaluated. Charges against an "unrestorably incompetent" juvenile are to be dismissed in one year for a misdemeanor offense, and in three years from the date the juvenile is arrested in what would be a felony case.

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In Arizona, case law supports a finding that, under state law, a juvenile need not have an underlying mental disease, defect or disability to be found incompetent. In that case, a juvenile court found that immaturity affected the ability of two juveniles to understand proceedings against them.

Absent statutory direction, courts in other states also recognize and review juveniles for incompetence. In Arizona, case law supports a finding that, under state law, a juvenile need not have an underlying mental disease, defect or disability to be found incompetent. In that case, a juvenile court found that immaturity affected the ability of two juveniles to understand proceedings against them.

A number of screening tools and comprehensive assessment instruments are available to juvenile justice system personnel. No one screening or assessment can predict with flawless accuracy future behaviors or the mental health status of an individual. However, experts recommend that juvenile justice systems use standardized, proven instruments with young people at different points in the juvenile justice process.

Diversion to Community-Based Mental Health Treatment

Community-based treatment is an option for juveniles who do not pose a danger to public safety and for whom detention intensifies their mental problems and creates difficult-to-manage situations for corrections systems personnel.

Diversion programs typically allow a juvenile to complete certain requirements in lieu of being processed for adjudication. Assessment, paired with diversion at the early stage in the juvenile justice process, is a promising way to prevent a juvenile's further involvement in the system, also discussed in the Delinquency Prevention & Intervention chapter. Diversion to the community is considered appropriate for many youth who have committed minor offenses. Effective diversion policy requires adequate community-based mental health services and alternatives to incarceration.

Detention can be a poor choice for juveniles for whom a mental health disorder may bring about a heightened sense of trauma and acute feelings of depression, anxiety and even suicide. Detention also can interrupt therapy and medication for juveniles already receiving them.

Diversion programs being used in communities throughout the country include models identified by the National Center for Mental Health and Juvenile Justice. The Integrated Co-Occurring Treatment Model in Akron, Ohio, is an intervention program that serves youths in the justice system who exhibit mental health problems and substance abuse.

The program provides diversion services for youth referred by the court and also offers a reintegration program. Juveniles go through an extensive assessment, followed by individual and family therapy interventions.

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Aftercare

Juveniles' access to mental health services after being released is an important part of a comprehensive approach to addressing their mental health needs. Without ongoing treatment, many children are more vulnerable to behaviors that prompt their return to the system. Community-based and home-based mental health services, family-based therapy, youth mentoring, and recreational and social opportunities are options that help create a continuum of care. Recent legislation in Virginia requires the Board of Juvenile Justice to develop regulations for mental health, substance abuse and other therapeutic treatments for young people returning to the community following commitment to a juvenile correctional center or post-dispositional detention. Texas lawmakers passed similar legislation establishing a continuity of care while the juvenile offender is on parole. Such actions provide an important policy framework for the mental health needs of juveniles.

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The Importance of Collaboration

The WrapAround Milwaukee program, recognized as a model for collaboration, has successfully integrated mental health, juvenile justice, child welfare and education systems to provide services to young people. Treatment plans are tailored to address the unique needs of each child and family. Evaluations indicate that the program is achieving positive results. The use of residential treatment has decreased by 60 percent since the program's inception, and inpatient psychiatric hospitalization decreased 80 percent.

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Similarly, the Dawn Project in Indiana is a successful collaboration among the Family and Social Services Administration; the divisions of Mental Health and Addiction; the Indiana Department of Education; the Indiana Department of Corrections; the Marion County Office of Family and Children; the Marion Superior Court, including the Juvenile Division; and the Mental

Health Association. The program helps youths with serious emotional disturbances and their families by developing integrated care plans designed to address each family's unique situation.

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Minnesota's largest county was awarded $520,000 from the federal Local Collaborative Time Study, through the Children's Mental Health Collaborative and the Juvenile Justice Coalition of Minnesota, to provide mental health intervention services and work toward systemic changes for justice-involved youth with mental or co-occurring disorders. Legislation in several states has specifically addressed collaboration. California requires the Department of Youth Authority and the Department of Mental Health to collaborate on training, treatment and medication guidelines for youths with mental illness who are under the jurisdiction of the Department of Youth Authority.

Colorado law instructs the Department of Human Services to select one urban and one rural site for community-based, intensive treatment and supervision pilot programs for mentally ill juveniles involved in the criminal justice system. The law requires juvenile justice and mental health agencies to collaborate in this effort. Beginning in 2004, Colorado created a legislative oversight committee and a task force for the continuing examination of the treatment of people with mental illnesses in the justice system. The task force is required to report its findings on an annual basis to the General Assembly and is authorized through 2015.

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West Virginia law also encourages collaboration, allowing the Division of Juvenile Services to convene multidisciplinary treatment teams for juveniles in their custody. As appropriate, team members include

a juvenile probation officer, social worker, parents or guardians, attorneys, appropriate school officials, and child advocacy representatives.

Conclusion

The mental health and substance abuse needs of court-involved youths challenge juvenile justice systems to respond with effective evaluation and intervention. Active partnerships with the mental health community and other child-serving organizations can improve the care and treatment of these young people and prompt healthier results for individuals, families and communities.

For references and additional resources, please see the **References, Glossary & Resources** section.

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Adolescent Development & Competency

Juvenile Justice Guide Book for Legislators

Introduction

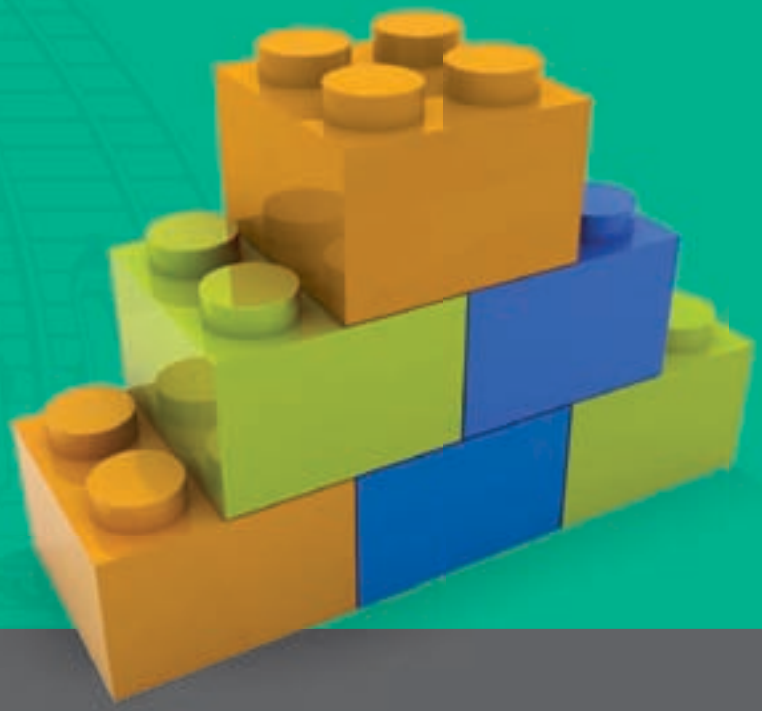
Juveniles are routinely accepted as different and treated differently than adults—both in social and legal contexts—based on their age. The distinction is not so clear, however, in regard to criminal liability. Juveniles can be adjudicated as an adult in criminal court or as a juvenile in a delinquency proceeding; the variance exists even among juveniles of the same age who commit comparable offenses.

Juvenile Justice History

Juvenile justice policies are based on society's perceptions and understanding of adolescents and their development. Juvenile justice aims not only to hold juvenile offenders accountable for their actions, but also to accommodate the ways in which they differ from adults. Therefore, shifts in public opinion about the inherent capabilities and limitations of juveniles usually are reflected in juvenile justice policies.

Before the 20th century, juvenile offenders were treated as adults. Under common law, children age 6 and younger could not be held liable for their actions, but all others were not distinguished from adults.

The concept of a juvenile justice system came about in the late 19th century along with a newfound understanding of children. In 1899, Illinois established a separate juvenile court system exclusively for children and separate from the criminal court. By 1925, 48 states had followed suit. By the mid-1900s, it had become widely accepted that children were inherently different from adults and should not be subject to the harsh treatment of the criminal justice system.



Development of Juvenile Justice

Early juvenile courts implemented benevolent and paternalistic policies. The mere existence of the courts represented the belief that children should not be held solely and fully responsible for their actions. Instead, the courts acted to protect children and to maintain their best interests. The underlying goal of juvenile courts was to rehabilitate offenders through individualized justice, with the ultimate belief that children have greater capacity for rehabilitation. Dispositions reflected the preference for treatment over punitive measures. Juveniles rarely were transferred to criminal courts, although that option was possible.

Beginning in the 1960s, a series of Supreme Court rulings required juvenile courts to make several structural changes. To meet both constitutional requirements and the rehabilitative goals, juvenile courts became obliged to provide procedural due process protections to juvenile defendants. Juvenile defendants today are provided most of the same rights—such as the right to an attorney—afforded to adult defendants. The main exception is that juvenile defendants do not have a constitutionally protected right to a jury trial in juvenile courts.

Shifts in the Development of Juvenile Justice

Public sentiment shifted drastically beginning in the 1980s. Juvenile crime rates, especially for homicides, rose during the 1980s and 1990s. The increase in juvenile crime, accompanied by heightened media attention, prompted a shift from a sympathetic view of juveniles to one of fear. Juvenile offenders were viewed as savvy criminals who had access to guns and could commit serious, violent crimes. Rehabilitative policies were considered inadequate due to high recidivism rates, and some serious offenders were termed *super-predators,* unreceptive to treatment-oriented sentences. Consequently, more punitive policies began to replace rehabilitative ones, and the transfer of juveniles to criminal courts became more common. Several states lowered the age at which juveniles could be within criminal court jurisdiction; many states eased the methods for transferring juveniles; and some states expanded the list of offenses for which transfer is possible. Policies increasingly reflected the popular mantra of *adult time for adult crime.*

> “ Juvenile crime rates have declined in the past ten years.

Most recently, along with declining juvenile crime rates, there has been a growing body of research on adolescent development, of which policymakers and other stakeholders have taken notice. The decline in crimes by juveniles has led the public to view juveniles as less threatening, diminished their status as super-predators, and led them to be more receptive to new research findings on adolescents. The research shows that adolescent brains are not fully developed until about age 25, and the immature, emotional, and impulsive nature that is characteristic of adolescents makes them more susceptible to commit crimes. Furthermore, some studies have shown that juveniles who commit crimes or otherwise engage in socially deviant behavior are not necessarily destined to be criminals as adults.

Adolescents Distinguished from Adults

Society already recognizes the inherent differences between children and adults, so it is routine and socially acceptable to treat youth differently in many settings.

Both federal and state laws restrict the rights and activities of children. Every state sets an age of majority, most at age 18; those who have not yet reached that age are subject to restrictions. State legislatures set age requirements for nearly every aspect of life—for example, to operate an automobile, possess or purchase a firearm, purchase alcohol or tobacco products, and gamble.

Neurobiological Development Research

Recent advances in modern technology, particularly in imaging technology, have provided more insight into brain activity and maturation. Several studies have concluded that adolescent brains are not as fully developed as adults’; one such longitudinal study was conducted by the chief of Brain Imaging in the Child Psychiatry Branch at the National Institute of Mental Health. This study concluded that the average human brain is not fully developed until age 25. Generally, the parietal lobes of the brain fully develop by age 16, but the temporal lobes are still developing and the frontal lobe continues to develop into the early 20s.

Research on Adolescent Characteristics and Development

A growing body of biological, social science and developmental research exists on adolescent development. Studies have suggested that adolescents should be distinguished from adults based on their neurobiological development and for psychosocial reasons. Adolescent brains are not as developed as adults, nor are adolescents as socially and emotionally mature, due to both biological reasons and the inherent lack of experience in youth.

The frontal lobe, particularly in the prefrontal cortex region, is responsible for executive functions such as advanced cognition (including the ability to reason), regulating emotions, controlling impulses, and judging consequences. The frontal lobes are thought to undergo the greatest and most important structural changes during the adolescent years.

Psychosocial and Developmental Research

The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice has conducted psychosocial and developmental research that has corroborated the neurobiological research on adolescent brains; the research has yielded the conclusion that decision-making capabilities are diminished in adolescents. Although the MacArthur Research Network's study shows that basic cognitive abilities and intellectual maturity mirror adults' by the time adolescents reach age 16, advanced cognition and psychosocial development continue into the 20s. With diminished advanced cognition, including the ability to reason and to understand, adolescents are more vulnerable to psychosocial and emotional influences. Coupled with their lack of experience and inefficiency in processing information, adolescents are less capable than adults of making decisions.

> "Research has yielded the conclusion that decision-making capabilities are diminished in adolescents.

The MacArthur Research Network's social science and developmental psychology research identifies psychosocial and developmental factors unique to adolescents that inhibit their decision-making capabilities. First, adolescents are more receptive and responsive to the influences and opinions of their peers than those of adults, although this varies by age group within the general juvenile population. Emerging evidence also suggests that the hormonal changes of puberty affect the adolescent brain's ability to process emotional and social information to make them more sensitive to others' opinions. Therefore, adolescents—who already value the opinions of their peers more highly than those of adults—are even more vulnerable to peer influence and pressure.

Studies also show that adolescents have poor risk assessment skills, so they tend to be less risk-adverse than adults. Adolescents have trouble weighing risks or valuing risks as accurately or as efficiently as

adults. Adolescents tend to lack future orientation: they are more prone to think about short-term, rather than long-term, consequences. They also have a greater propensity to value benefits over risks and to engage in sensation-seeking activities; several studies have indicated that sensitivity to rewards is heightened during adolescence.

Developmentally, adolescents also tend to be more impulsive and emotional—they are more inclined to make impulsive decisions, engage in impulsive behavior, and act recklessly compared to adults. Harvard Medical School's Dr. Deborah Yurgelun-Todd explains that adolescents tend to act and react more impulsively because they rely more on the area of the brain that generates emotional gut reactions, rather than trying to thoroughly analyze and rationalize. She also states that adolescents are less likely to consider the perspectives of others or all the potential ways to act or react. Developmental studies also have shown that the capacity for self-management and self-direction increases throughout adolescence.

Adolescents in Criminal Court

Although most juveniles are adjudicated within juvenile systems, transfers into criminal courts have become increasingly common. The centerpiece of more punitive juvenile crime policies of the 1980s and 1990s was legislation that enabled easier and more frequent transfers into criminal courts. Each year, roughly 250,000 juveniles are prosecuted in criminal courts. This number is estimated because it is hard to track the amount juveniles processed in criminal court. Transfer laws work with the underlying presumption that some juveniles have the same criminal responsibility as adults and therefore should be treated in the same manner. Although every state provides for at least one transfer method, most have several methods

Juvenile Court Jurisdiction

Most states rely on common law to determine the minimum age for juvenile court jurisdiction. Some states have a statutory minimum; five states set the minimum below age 9, and 11 states set the minimum at age 10. All states, by statute, provide a maximum age for original jurisdiction: two states set the maximum at age 15, 10 states at age 16, and 38 states and the District of Columbia at age 17.

Nearly all states also provide a maximum age for juvenile court jurisdiction for dispositional purposes; the maximum age ranges from 18 to 24, although most set it at age 20. Three states either do not specify a maximum or provide for the full disposition order to be completed within the juvenile system, regardless of age.

available. Three types of transfer laws are typical: judicial waiver laws, statutory exclusion laws, and prosecutorial discretion laws (also referred to as concurrent jurisdiction laws).

> Each year, roughly 250,000 juveniles are prosecuted in criminal courts.

Legal Competency as a Defendant

In evaluating legal competency to stand trial, the MacArthur Research Network studied a juvenile's ability to assist in and make crucial decisions regarding his or her legal defense. It found that juveniles, especially those under age 15, are likely not able to exhibit sufficient competency in either juvenile or criminal courts. Several aspects of being an adolescent compromise competence as a defendant. For instance, juveniles are less likely to trust and communicate effectively with their lawyers, both of which are essential elements in establishing a legal defense.

In addition, juveniles generally are less knowledgeable about the legal system. Underdeveloped cognitive and reasoning abilities, poor risk assessment skills, and shortsighted, emotional impulses further hinder juveniles from understanding the proceedings against them and making informed decisions. One study, for example, reported 55 percent of juveniles failed to demonstrate accurate comprehension of the *Miranda* warnings. The study showed adolescents commonly understand the right to remain silent to mean the right to remain silent until otherwise told. In fact, kids generally misunderstand the concept of a "right" as an entitlement more generally. It often is seen by children as something granted to them that can be taken away. According to another study, even when juveniles have an accurate understanding of their *Miranda* rights, they are less likely to assert them, especially when confronted by law enforcement officials. Furthermore, if adolescents are unable to accurately comprehend *Miranda* rights, questions remain about whether their waiver of those rights are, indeed, "knowing, intelligent, and voluntary."

> Fifty-five percent of juveniles failed to demonstrate accurate comprehension of the *Miranda* warnings.

Results of another MacArthur Research Network study suggested that a substantial percentage of juveniles, especially those under age 15, lacked legal competency as a defendant due to their own developmental immaturity. This study provided a different perspective on competency by breaking juveniles into different age groups. Generally, 11- to 13-year-olds exhibited significantly less competence than 14- to 15-year-olds who, in turn, exhibited significantly less than 16- to 24-year-olds. The study also showed that 16- to 17-year-olds and 18- to 24-year-olds exhibited similar levels of competence. Specifically, younger juveniles were less able to accurately evaluate risks and understand long-term consequences. Younger juveniles were more inclined to make decisions that aligned with what they thought authority figures wanted, even if that meant confessing or agreeing to a plea bargain.

Furthermore, concern exists about the prevalence of mental health issues and below-average intelligence

among juvenile offenders. Juveniles in the system are three times more likely to experience mental health issues than those who are not in the system. About two-thirds of juveniles under age 15 in juvenile detention have an IQ lower than 89, while only one-third in the general community have an IQ lower than 89. These issues magnify the already questionable competence inherent in juveniles. (Issues related to mental health also are discussed in the Mental Health Needs of Juvenile Offenders chapter.)

As a result, several states allow juveniles to be found incompetent to stand trial on the basis of developmental immaturity, mental illness or intellectual disability, thereby providing juveniles with greater procedural protections.

Questions of Legal Competency

In response to the latest research affirming adolescents' immature and underdeveloped nature, ongoing questions remain about a juvenile's capacity to meet legal competency—competence to participate in legal proceedings generally and in terms of culpability. A juvenile's lack of competence raises disconcerting questions about the administration of justice in both juvenile and criminal courts.

Legal Competency for Criminal Culpability

There are also questions regarding whether adolescents should be held to be as culpable as adults. In other words, should they be treated differently due to their immaturity? One response is that, because adolescents are biologically, psychologically and socially underdeveloped, their age and all corresponding limitations of age should be considered as mitigating factors.

Proponents of mitigating culpability for juveniles argue that they should not be held as culpable as adults for several reasons. First, as discussed above, adolescents have diminished decision-making abilities. They lack future orientation, are more vulnerable to peer influence, have poor risk assessment skills, and are more emotional and impulsive.

Another basis for mitigation is the extraordinary circumstances inherent in being an adolescent. For example, adolescents are particularly vulnerable to external coercion, especially the opinions and influences of their peers. Some criminal justice experts theorize that, especially in high-crime communities, the average adolescent succumbs to, instead of resisting, peer pressure. Adolescents who challenge peer pressure risk losing status, being ostracized, and even being assaulted. As minors, they are more vulnerable because they lack the resources and the freedom to physically remove themselves from the situation and re-locate. This is one reason juveniles are more prone to commit offenses in groups, as opposed to adult offenders who often act alone.

Furthermore, some contend that culpability should be mitigated for juveniles because their character is not yet formed. As discussed above, adolescents continue to undergo biological, psychological and emotional changes and are more prone to engage in impulsive, risky behavior. Studies also have shown that criminal behavior during adolescence is not necessarily a reliable predictor for criminal behavior as an adult.

In fact, some studies suggest that criminal behavior as an adolescent is more representative of anti-social behavior related to puberty, which most adolescents outgrow. Behavioral indicators of psychopathy in adults are common traits in the typical adolescent. In a MacArthur Research Network study, juveniles were tested by the PCL-YV, the youth version of the adult psychopathy test, and results showed that overall test scores for youth declined over time more so than for adults. Two-thirds of adults tested by the adult psychopathy test exhibited consistent scores throughout the test period.

Federal Standards

While the Supreme Court has recognized that juveniles have many of the same due process rights provided to adult offenders—including a right to counsel and, presumably, a right to be competent to stand trial—the Supreme Court has repeatedly distinguished juveniles as inherently immature and therefore warranting differential treatment from adult defendants.

In 2005, the Supreme Court, in *Roper v. Simmons*, held that it is cruel and unusual punishment to sentence to capital punishment a juvenile who is under age 18 at the time the crime is committed. This decision indicates the Court regarded juveniles as categorically different in the context of the death penalty.

As basis for its opinion, the Court in *Roper* relied on scientific evidence and noted three inherent differences between juvenile and adult offenders. First, juveniles, as a group, are inherently more susceptible to immaturity, recklessness and irresponsible behavior because they are underdeveloped biologically, socially and emotionally. Second, juveniles are more vulnerable to negative influences and peer pressure; they lack the control over their immediate surroundings that adults possess.

Third, because juveniles continue to develop physically and emotionally, their characters are not fully formed, and they are prone to exhibit negative personality traits that are transitory and will not follow into adulthood. Ultimately, the Court found that the culpability of a juvenile does not equal that of an adult and that no reliable method exists to distinguish between the juveniles who commit crimes because they are irreparably corrupt and those whose actions emanate from normal adolescence. As in *Atkins v. Virginia*, which banned the death penalty for mentally disabled offenders, the punishment that is reserved for the worst offenders with extreme culpability should not be imposed on those with diminished culpability.

In 2010, the Supreme Court again distinguished juvenile offenders as distinct from adult offenders due to their mitigated culpability. The Court in *Graham v. Florida* held that life imprisonment without the chance of parole is unconstitutional as applied to juveniles convicted of non-homicide offenses. The Court made another categorical rule regarding juvenile offenders and followed much the same rationale as the *Roper* decision. In making its ruling, the Court recognized that a sentence of life without parole is harsh, second only to capital punishment; therefore, juvenile offenders, whose culpability is inherently mitigated by the fact of age and who are not convicted of homicide must be given an opportunity to avoid such a sentence. A 2009 report published by Florida State University stated that, nationally, an estimated 109 juveniles were sentenced to life without parole for non-homicide offenses; although these juveniles came from eight states, most were Florida residents.

The Court in *Graham v. Florida* held that life imprisonment without the chance of parole is unconstitutional as applied to juveniles convicted of non-homicide offenses.

Trying and Sentencing Youth as Adults

The most common means of transfer is through judicial waiver laws, which traditionally was the only available method and remains the sole available method in eight states. Judicial waiver laws essentially allow juvenile court judges to waive their jurisdiction so charges may be filed in criminal court. Judges must officially approve of the transfer in a formal hearing or proceeding. Judicial waivers may be discretionary, presumptive or mandatory. Discretionary judicial waivers, available in 45 states, give judges the option to waive jurisdiction in certain types of cases. There are usually eligibility requirements—albeit low standards that are easily met—of minimum age, offense severity and previous record. Presumptive waivers, used in 15 states, apply to a certain category of cases, defined by statute, where a rebuttable presumption of transfer arises. Unless the offender presents evidence to rebut the presumption that transfer is appropriate, the case will be waived from juvenile court jurisdiction. Finally, mandatory waivers, used in 15 states, absolutely require transfers in certain cases so long as certain requirements are met. Juvenile court judges have no discretion and merely confirm whether the cases meet the statutory requirements for mandatory transfer.

Statutory exclusion laws exist in 29 states. These laws provide a statutory definition of *delinquency* in a manner that excludes certain offenses or cases from original court jurisdiction in juvenile courts. Those cases, therefore, originate in and are within criminal court jurisdiction from the very beginning. Statutory exclusion laws, along with mandatory judicial waiver laws, are referred to as *automatic transfers* because they, without any discretion, automatically provide for juvenile offenders to be charged in criminal courts. Thirty-eight states have some form of automatic transfer.

Fifteen states have prosecutorial discretion laws that give prosecutors the authority to file charges, and therefore initiate proceedings, in juvenile or criminal courts.

These laws also are referred to as concurrent jurisdiction laws because both juvenile and criminal courts have concurrent jurisdiction with each other. Prosecutors have broad discretion in determining whether to file charges in juvenile or criminal court. Unlike judicial waiver laws, prosecutorial decisions to charge juveniles in criminal courts are not reviewable, since the decisions are made prior to any official proceeding or evidentiary record and there usually are no statutory standards or factors to consider or guide prosecutors in their decisions.

The vast majority of transfer laws were passed in the last few decades. Currently, 44 states have mandatory judicial waiver laws, statutory exclusion laws, and/or prosecutorial discretion laws. These laws allow categorical transfers or provide prosecutors with the discretion to effectively allow such transfers. Thirty-four states have *once an adult, always an adult* transfer laws. Although some variations exist, these laws generally dictate that juveniles previously

adjudicated as an adult will automatically be within criminal court jurisdiction for any future offenses.

The efficacy of transfer laws and criminal prosecution of juvenile offenders is debatable; many have questioned whether transfer laws advance public safety and promote deterrence. According to an independent task force appointed by the director of the Centers for Disease Control and Prevention, transfers of juveniles into criminal courts have not been a deterrent, and transfers typically increased the rates of violence among the transferred youth. In fact, youth adjudicated in the criminal system are more likely to return to the system than are youth in the juvenile system, even though most juveniles in criminal courts are not charged for serious, violent offenses. Nevertheless, youth adjudicated as adults are more likely to be re-arrested, to re-offend, to re-offend more quickly, and to re-offend with more serious crimes.

> Youth adjudicated in the criminal system are more likely to return to the system.

A number of studies have focused on comparing the recidivism rates for juveniles adjudicated in criminal courts with those who remained in the juvenile system. A MacArthur Research Network study, for example, compared juveniles in New York who were charged as adults at age 16 with juveniles in neighboring New Jersey, where juvenile court jurisdiction extends to those under age 18. The study found that those adjudicated as adults in New York were more likely to be re-arrested more often and more quickly for serious offenses than their counterparts in New Jersey. Another study that compared the same groups found transferred juveniles who served at least one year in prison were 100 percent more likely to return to committing violent crimes. In contrast, transferred youth in New York who were not sentenced to prison time were 39 percent more likely to be re-arrested for violent offenses. A Pennsylvania study found that youth who were transferred to adult courts were 77 percent more likely to be re-arrested than those who remained in the juvenile justice system.

Many potential explanations exist for the differential in recidivism rates. Some theorize the culture and environment of adult facilities foster behavior in juveniles that increases their chances of recidivism. Juveniles in adult facilities, for example, are at an increased risk for being physically and sexually assaulted; this, in turn, increases the chances they will commit serious, violent offenses, especially if adequate therapy is not available to them. The culture and social norms within adult facilities—valuing domination, exploitation and retaliation—foster anti-social, criminal behavior. Juveniles also are exposed to techniques they can use to commit crimes when they return to society.

> A Pennsylvania study found that youth who were transferred to adult courts were 77 percent more likely to be re-arrested than those who remained in the juvenile justice system.

The number of juveniles held in adult facilities has increased substantially. The National Council on

Crime and Delinquency reports that juveniles in adult jails have increased by 208 percent since 1990; at least 40 states either allow or require juveniles charged as adults to be detained in adult jails. In a single-day census in 2007, 7,703 juveniles were being held in adult jails nationwide, and 3,650 state prisoners were under age 18.

Housing juveniles in adult facilities has resulted in a variety of challenges, some of which may contribute to higher recidivism rates of juveniles adjudicated as adults. First, challenges exist for adult facilities staff who must deal with the unique characteristics of developing and impressionable adolescent offenders. Typically, staff do not receive specialized training in dealing with youth, nor are any adjustments made to physical techniques to control juvenile inmates. Even in the presence of specialized training, staffing ratios make it difficult to provide juvenile inmates with the individual attention they may need. Adult facilities may have as few as one correctional officer for every 64 inmates, compared to juvenile facilities that typically have one staff member for every eight inmates.

Second, adult facilities face challenges as they attempt to accommodate the programming and treatment needs of juvenile offenders. Although jails are intended to provide temporary, transitional detainment, in reality, many youth may spend an extended period of time in jail while awaiting trial. Although most prisons have GED programs, offerings may be limited and there may be long waiting lists for higher education classes.

Adult facilities also struggle to deal with the mental health needs of juvenile offenders. As discussed in the Mental Health Needs of Juvenile Offenders Chapter, a high prevalence of mental health issues exist among juvenile offenders. Access to treatment and medication for behavioral management and mental illness is particularly challenging in adult jails that are ill-equipped to address such needs. Specialized therapy programs may be limited and have long waiting lists. Furthermore, being in adult facilities may exacerbate pre-existing mental health issues among juveniles.

Finally, juveniles in adult facilities are at increased risk of being physically and sexually assaulted. Youth are targets of violence perpetrated by both inmates and staff. High inmate-to-staff ratios and overcrowding are obstacles to ensuring safety for juvenile inmates. Juveniles in adult facilities are reportedly five times more likely to be victims of sexual abuse and rape than their counterparts in juvenile facilities.

Issues Related to Detention & Imprisonment

As more juveniles are charged and prosecuted as adults, more adolescents are detained and imprisoned in adult facilities. Under the Juvenile Justice and Delinquency Prevention Act which was re-authorized in 2002, juveniles under juvenile court jurisdiction cannot be held in adult jails, except in very limited circumstances. In such circumstances, jails must abide by the sight and sound separation requirement that restricts juvenile offenders from having contact with adult offenders. These provisions apply only to youth within juvenile court jurisdiction, not to those who are charged and prosecuted as adults.

Inadequate treatment for assaults may cause detrimental physical and emotional consequences. Efforts to ensure safety for juveniles by enforcing segregation from the general inmate population often means complete isolation, which can trigger mental issues such as depression and aggravate existing mental health problems. Youth in adult jails are reportedly 19 times more likely to commit suicide than their counterparts in the general population and 36 times more likely to do so than their counterparts in juvenile detention facilities.

State laws that address juveniles in adult jails and prisons vary widely. Some states, such as West Virginia and Kentucky, house all juveniles in juvenile facilities until they reach a designated age, regardless of the severity of the offense. Other states require transferred youth to be housed in adult jails, although post-disposition housing may not be specified. States such as Oklahoma require transferred youth to be housed in adult prisons with no special protections or treatment in place. Approximately 17 states and the District of Columbia have separate housing in prisons for juvenile offenders; however, these facilities often reach capacity, and the remaining children are housed with adults.

> A recent survey of adult jails found that 40 percent provided no educational services, only 11 percent provided special education classes, and only 7 percent provided vocational training

Although generally considered better than adult facilities, the conditions of juvenile detention facilities are reported to have similar problems of abuse, sexual assault and death. A January 2010 report by the Bureau of Justice Statistics found that 12 percent of juveniles in juvenile facilities reported being sexually abused while in detention; these offenses were predominantly perpetrated by staff members. Other issues in juvenile facilities include inadequate programs and medical and mental health care, abusive practices, inadequate building maintenance and sanitation, and overcrowding.

Recent Legislation

Several states have considered and/or changed age requirements regarding juvenile court jurisdiction. In 2007, three states raised the maximum age for original jurisdiction in juvenile courts. Connecticut, which previously had the largest number of inmates under age 18 in the adult system, raised the maximum age from 16 to 18. New Hampshire and Rhode Island raised their maximum ages from 16 to 17. A 2010 Illinois law authorized the Illinois Juvenile Justice Commission to study the impact of and develop plans for raising the maximum age of juvenile court original jurisdiction from 16 to 17. Also in 2010, Oklahoma passed a law allowing those who are up to six months into age 18 to be adjudicated in juvenile courts if the offense in question would constitute a misdemeanor if committed by an adult.

> Connecticut, which previously had the largest number of inmates under age 18 in the adult system, raised the maximum age from 16 to 18.

Four states have lowered the maximum age for juvenile court jurisdiction, which results in a categorical increase in the number of juveniles adjudicated in criminal courts. In 1993, Wyoming lowered the maximum age from 18 to 17. In 1996, New Hampshire and Wisconsin lowered the maximum age from 17 to 16; and New Hampshire raised its maximum to age 17 in 2007. In 2006, Rhode Island lowered its maximum age from age 17 to 16 by executive order with legislative approval; however, the legislature reversed this decision the following session and raised the maximum to age 17.

Other age-related statutory changes also have been made to juvenile court jurisdiction. Beginning in 2008, for example, Maine required blended sentencing for juveniles who were charged as adults but had not yet reached age 16 at the time of sentencing, and for certain offenses. In 2009, Colorado increased the age at which juveniles could be sentenced to juvenile offender systems. In 2010, Colorado also changed the minimum age from 14 to 16 at which prosecutors may use direct file, except for first- and second-degree murder and sex offense cases.

Other states have enacted laws regarding transfer methods. A 2009 Nevada law requires juvenile courts to hold a hearing to determine whether a transfer is necessary, and another law revises the provisions certifying juveniles as adults. Several transfer laws were passed in 2010. Arizona requires county attorneys to prosecute juveniles who are age 15, 16 or 17 at the time the offense is committed and for certain serious offenses as adults; Arizona allows county attorneys to prosecute juveniles who were at least age 14 at the time of the offense and for certain serious offenses. Colorado made some procedural changes to its direct file law by increasing the minimum age to 16; it requires the prosecutor to file charges in juvenile court with at least 14 days' notice of filing charges in criminal court, and provides criteria to be used in determining when direct file is appropriate. A Mississippi law essentially states the juvenile court jurisdiction is inapplicable if the court determines that a transfer to criminal court is appropriate. Two states have passed laws on transfer-related issues. Mississippi, in 2009, passed a "once an adult, always an adult" law, providing for an exception if the criminal court transfers or remands the case to juvenile court. In 2010, Utah passed a reverse waiver law under which a criminal court judge may transfer a juvenile's case back to juvenile court if the criminal court judge determines it is in the juvenile's best interest and considers whether the identified treatment needs can be met within the juvenile system within the time the juvenile court would continue to have jurisdiction.

A 2009 Colorado law provides that, after a juvenile is formally charged as an adult via direct file or a transfer hearing, a set list of factors be considered to determine whether the juvenile should be placed in an adult jail or detention facility.

> "A few states have recently passed legislation regarding detention and sentencing issues for juveniles charged as adults.

In 2010, Utah passed a measure allowing juveniles awaiting trial in criminal courts to be held in adult detention facilities. Virginia now allows juveniles transferred to or charged in criminal courts to remain in juvenile, rather than adult, detention facilities. In 2009, Virginia authorized juveniles convicted as an

adult and sentenced to incarceration to gain earned sentence credits for the portion of their sentences served in juvenile detention facilities.

Several states also have implemented policy changes regarding conditions of confinement in juvenile facilities. In 2006, Maryland expanded oversight of residential facilities to include private facilities. New York now limits the use of restraints by staff, and Florida has closed all four of its boot camps and prohibited the use of "harmful psychological intimidation techniques." Mississippi now does not allow juveniles to be placed for disposition in detention facilities that lack medical, educational or treatment services. Mississippi also now allows detention of first-time, non-violent juvenile offenders for no more than 10 days while alternative placement or supervision is determined.

Conclusion

Juvenile justice systems have changed substantially since their inception in 1899. The most recent advances in neurobiological and psychosocial research, which provide new insight into the development and competency of adolescents, have begun to inform and shape juvenile justice policies. States continue to strive for policies that balance punishment, public safety, and rehabilitation in their aim for juvenile justice.

For references and additional resources, please see the **References, Glossary & Resources** section.

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National Conference of State Legislatures

Disproportionate Minority Contact

Juvenile Justice Guide Book for Legislators

Introduction

Youth of color are disproportionately overrepresented throughout juvenile justice systems in nearly every state. Disproportionality is recognized as a concerning problem by both states and the federal government. In response to the disconcerting numbers, state legislatures have taken measures to study the causes of disproportionality, identify strategies to reduce it and to create a fundamentally fair system.

Minority youth come into contact with the juvenile system at a higher rate than their white counterparts. Minority youth are overrepresented at every step of the process—they are more likely to be arrested, detained and confined. The proportion of minorities increases with each successive step into the system. Research by the National Council on Crime and Delinquency and the Center for Children's Law and Policy also indicates that minority youth receive harsher treatment than white youth. They are more likely to be confined and sentenced for longer periods of time and are less likely to receive alternative sentences or probation.

Disparity

There are approximately 70.5 million youth aged 10-17; 59 percent are white, and 41 percent are racial minorities. In contrast, 31 percent of youth detained by law enforcement officials are white, while 69 percent are minorities.

The disparity is particularly stark for African American and Latino youth. African American youth represent 13 percent of the juvenile population; however, they are 31 percent of those arrested, 42 percent of those detained, 39 percent of those placed in a residential facility, 32 percent of those on probation, 35 percent of those adjudicated, 40 percent of those transferred to adult prison, and 58 percent of those sentenced to prison (2007). African American youth are four times more likely to be incarcerated than white youth.

In short-term juvenile detention facilities, 42 percent of inmates are African American, 25 percent are Latino and 30 percent are white. In long-term secure juvenile facilities, 40 percent of inmates are African American, 29 percent are Latino and 32 percent are white. In adult facilities, 36 percent of juvenile inmates are African American, 24 percent are Latino and 25 percent are white. From 2000 to 2008, the percentage of Latino youth in adult prisons increased from 12 percent to 20 percent.

Explanations for Racial and Ethnic Disproportionality

Overrepresentation cannot be explained by offending rates. Jurisdictional differences, various police practices, punitive juvenile crime legislation, and racial and ethnic-based biases all play a role in creating **race** disparities.

Jurisdiction

According to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the jurisdiction in which a juvenile is processed can influence the outcome of the case. Cases adjudicated in urban areas are more likely to result in harsher penalties than similar cases adjudicated in non-urban areas. On the other hand, some offenses like drug possession are not considered serious in urban areas, but are considered serious in rural and suburban areas. Because minority populations are concentrated in urban areas, a geographic effect may work to overrepresent minorities statewide.

Furthermore, minority youth crimes in urban areas tend to be more visible. For instance, white youth tend to use and sell drugs from their homes, while minority youth are more likely to do so on street corners or in public neighborhood gathering spots.

Law Enforcement

Police practices that target low-income, urban neighborhoods and the use of group arrest procedures contribute to racial and ethnic disparities in the juvenile justice system. Low-income neighborhoods, particularly in urban areas, are often majority minority.

> “ Police practices that target low-income, urban neighborhoods and the use of group arrest procedures contribute to racial and ethnic disparities in the juvenile justice system.

Therefore, increased police presence in these areas leads to increased police contact with minorities and a greater opportunity for police officers to witness crimes committed by minority youth. OJJDP arrest rate statistics show that African American youth are arrested at much higher rates than their white counterparts for drug, property and violent crimes.

Overrepresentation of minority youth at the initial contact with law enforcement carries over to each successive step in the juvenile justice process. The increased probability of arrest, partially due to increased police presence in disproportionately minority communities, makes it more likely that minority youth will have longer criminal histories. Due to this fact, minority youth are more likely to be charged harshly and given stricter sentences.

Adult Treatment of Juveniles

As a result of the increase in juvenile crimes in the early 1990s, many states enacted automatic transfer, direct file and judicial waiver laws.

- Automatic transfer laws categorically exempt prosecution of certain offenses from juvenile court jurisdiction, allowing juveniles to be adjudicated automatically in criminal courts. Twenty-nine states have automatic transfer laws, which are also referred to as statutory exclusion laws.
- Direct file laws grant prosecutors discretion to charge juveniles as adults. Fourteen states and the District of Columbia have such laws.
- Judicial waiver laws allow juvenile court judges to waive jurisdiction so juveniles can be adjudicated in criminal courts. Forty-four states and the District of Columbia allow discretionary judicial waivers, 14 states and the District of Columbia allow presumptive judicial waivers, and 15 states have mandatory judicial waiver laws.

> "Overrepresentation of minority youth at the initial contact with law enforcement carries over to each successive step in the juvenile justice process.

Research indicates that automatic transfer provisions have disproportionately affected minority youth.

According to a 1997 survey on minority youth in secure facilities, these juveniles were transferred to criminal court around five times their proportion of the general population in Connecticut, Massachusetts, Pennsylvania, and Rhode Island.

Minority youth were overrepresented by four times their population in Montana and Tennessee, and by around three times in Maryland and New Jersey. In a 1996 evaluation of transfers of minority youth to criminal court in California, African American and Latino youth were six times more likely than whites to be transferred. In Los Angeles County alone, African American and Latino juveniles were 12 and 6 times, respectively, more likely to be adjudicated as adults than whites.

According to a 2007 study commissioned by the Campaign for Youth Justice, 83 percent of criminal court cases with juvenile defendants involved minority youth. For cases involving African American youth, 50 percent were transferred via statutory exclusion, 32 percent were transferred under direct file laws, and 19 percent were transferred by judicial waiver. A 2009 Campaign for Youth Justice report estimates that Latino youth are 43 percent more likely to be waived to adult court than white youth.

A 2007 National Council on Crime and Delinquency report estimated that, in 2002, minority youth accounted for 75 percent of the 4,100 juveniles admitted to adult state prisons nationwide. African

American youth reportedly are 58 percent of total admissions to adult prisons. The same report found that nearly every state reported minority youth as overrepresented and white youth as underrepresented in admissions to adult state prisons.

Racial Bias

Overt and indirect racial biases contribute to creating the overrepresentation of minority youth in the system. OJJDP's analysis of various studies spanning 12 years reveals that, in approximately two-thirds of the studies, "negative racial and ethnic effects" were present at various stages of the juvenile justice process.

The complex explanations for the disproportionality, along with sensitive racial and ethnic issues, make it an important and difficult challenge for states.

Initiatives to Reduce the Racial and Ethnic Disparities

Federal Action

The federal Juvenile Justice and Delinquency Prevention Act (JJDPA), originally passed in 1974, sets standards for local and state juvenile justice systems and provides funding to encourage reform. To be eligible for funding, states must comply with the law's four core protections, one of which regards racial and ethnic disproportionality. This provision requires states to address the overrepresentation of minority youth at key stages of the juvenile justice process, from arrest to detention to confinement. The OJJDP, created by the JJDPA, is the central national office that facilitates coordination and provides leadership and resources to help states improve their systems.

States use various methods to address the disproportionality, including collecting data to determine the extent of the problem; establishing task forces and commissions to study policies to facilitate racially neutral decisions throughout the system; developing and expanding early intervention services for minority youth and their families; and creating alternatives to incarceration.

"To be eligible for funding, states must comply with the law's four core protections, one of which regards racial and ethnic disproportionality.

Models for Change

Models for Change is a national initiative funded by the John D. and Catherine T. MacArthur Foundation to accelerate reform of juvenile justice systems across the country. Focused on efforts in select states, the initiative aims to create replicable models for reform that effectively hold young people accountable for their actions, provide for their rehabilitation, protect them from harm, increase their life chances, and manage the risk they pose to themselves and to public safety. The Models for Change Research

Initiative emphasizes evidence-based practices and provides support to the states in develop, implement, and sustain lasting reform. Targeted juvenile justice leverage points where success will stimulate system-wide reforms.

- Aftercare
- Racial and ethnic fairness/ Disproportionate minority contact
- Mental health
- Community-based alternatives
- Right-sizing jurisdiction
- Evidence-based practices
- Juvenile indigent defense

While all states involved in the Models for Change initiative are working to reduce racial and ethnic disparities in the juvenile justice system, the DMC Action Network was launched in 2007 to bring together teams from select local jurisdictions, expose them to the latest thinking of national experts, and give them an opportunity to learn from one another about effective ways to reduce the disproportionate contact of minority and ethnic youth with the juvenile justice system.

The DMC Action Network is active in the four core states and in four additional partner states—Kansas, Maryland, North Carolina, and Wisconsin. Twelve localities originally participated in the DMC Action Network. Each locality was required to implement at least two strategic innovations to help reduce disparities. Examples of strategic innovations include initiatives on collecting and reporting data, increasing cultural competency[1], implementing detention alternatives, and reducing detention of post-disposition youth by using graduated sanctions or expediting post-disposition placements.

> "Models for Change seeks juvenile justice reform grounded in the core principles of fundamental fairness; developmental differences between youth and adults; individual strengths and needs; and youth potential, responsibility and safety.

Nine additional sites in Kansas, Maryland, North Carolina, Pennsylvania and Washington were added in 2009.

[1] In the fourth edition of OJJDP's *Disproportionate Minority Contact Technical Assistance Manual,* cultural competency is "defined as a set of congruent behaviors, attitudes, and policies that interface with each other in a system, an agency, or a network of professionals to work effectively in cross-cultural situations." The manual states that "[c]ultural competency training can engender a deeper awareness of cultural factors."

The original 12 DMC Action Network Localities and their Progress

- ***Peoria, Illinois***
  In-school restorative justice programs, such as peer juries and peacemaking circles, helped reduce school referrals to secure detention by 35 percent, including a 43 percent decrease in referrals of African American students.

- ***Sedgwick County, Kansas***
  Secure detention days were reduced by 45 percent, partially due to objective detention screening, alternatives to detention, and improved advocacy for diversion.

- ***Jefferson Parish, Louisiana***
  Juvenile justice databases were updated for more accurate race and ethnic data collection. After full implementation of the detention screening tool, the detention population decreased by 25 percent.

- ***Rapides Parish, Louisiana***
  A detention screening instrument was recently developed and tested. In July 2008, the instrument was used to guide decisions on whether a juvenile went to a secure facility, a detention alternative, or to a parent or guardian.

- ***Baltimore City, Maryland***
  Following a detention utilization study that showed 60 percent of juveniles admitted to secure detention had a risk assessment score low enough to not warrant detention, the Pre-Adjudication Coordination and Training (PACT) Center, a community-based detention alternative, was created. Ninety-five percent of PACT participants were present for their court hearings, and 93 percent did not receive additional charges while in the program.

- ***Union County, North Carolina***
  Plans developed to translate common forms into Spanish, provide cultural competency training, and conduct community forums. A graduated sanctions grid for probation violations reduced Union County's use of secure detention. A race and ethnic questionnaire was implemented at intake to better understand needs related to race, ethnicity and language.

- ***Allegheny County, Pennsylvania***
  A failure to adjust study on post-disposition placements was conducted to identify and better understand disparities.

- ***Berks County, Pennsylvania***
  A new detention screening instrument was implemented, and it reduced the average daily detention population by 50 percent. The Probation Department has eliminated 24 beds in its secure detention facility—it removed locks from doors and now uses the space for several youth and family programs. Further, as a result of closely examining data used in decision making, Berks began using multi-systemic

therapy instead of secure placements for post-disposition youth; it saved $4 million in the first year alone.

- ***Philadelphia, Pennsylvania***
  A system of graduated sanctions was developed, along with a graduated sanctions court. The Youth-Law Enforcement curriculum in the Police Academy has also been expanded to include a module of cadet training involving direct contact with youth.

- ***Benton/Franklin Counties, Washington***
  The Benton/Franklin Juvenile Court has made numerous community engagement attempts to better understand the needs, challenges and concerns of racial minority youth. The attempts included a needs assessment survey and a focus group process specifically for African American youth assigned to probation and their parents or guardians.

- ***Pierce County, Washington***
  In an attempt to increase cultural competency in the evidence-based program functional family therapy, a number of actions have been taken, including the implementation of a specialized caseload for minority youth, cultural competency training, and increased staff diversity. A two-fold increase in completion in this program has occurred, which is expected to favorably affect African American youth.

- ***Rock County, Wisconsin***
  An evidence-based, detention diversion program, aggression replacement training, was implemented, which has led to a 61 percent increase in minority youth diverted from detention. Due to policy reform, the site has also seen a 50 percent decline in African American youth being waived into adult criminal court since 2006.

Juvenile Detention Alternatives Initiative

The Juvenile Detention Alternative Initiative (JDAI) was founded by the Annie E. Casey Foundation to address the efficiency and effectiveness of juvenile detention. As one of JDAI's eight core strategies, JDAI gives priority to reducing racial disparities as an integral detention reform strategy.

Currently, there are 110 JDAI sites in 27 states and the District of Columbia. Within these sites, JDAI has made substantial progress in reducing the overrepresentation of minority youth in the system and in confinement, in particular. JDAI has worked to reduce the percentage of minority youth in secure detention and reduce the number of minority youth in detention generally.

JDAI has achieved this by implementing specific strategies that target racial disparities at the critical processing point of pretrial detention. JDAI developed risk assessment instruments for detention admissions screening; created new

or enhanced alternative detention programs; expedited case processing to reduce time spent in secure detention; and promoted new policies and practices for responding to youth who have violated probation, have outstanding warrants or are awaiting placement. In addition, JDAI continues to promote collaboration between agencies and among stakeholders. JDAI also relies heavily on data to identify stages of disproportionate treatment, advocates for the use of objective decision-making and encourages cultural competency.

Recent JDAI Accomplishments

- ***Multnomah County, Oregon***
  A detention intake team was created to evaluate youth in custody and help successfully implement risk assessment instruments and alternatives to detention. Between 1995 (when risk assessment instruments were first implemented) and 2000, the gap between detained white and minority youth—consisting of African Americans and Latinos—narrowed from around 11 percent to roughly 2 percent. Overall detention admissions were reduced by 65 percent. Also critical to the site's success was collaboration with law enforcement personnel and policymakers, sound data collection, and training to raise awareness about **race** disproportionality.

- ***Cook County, Illinois***
  Between 1996 and 2000, the number of minority youth in detention dropped 31 percent. Detention alternatives were developed for youth who did not pose a serious threat. Alternatives include community-based evening reporting centers that offer constructive activities during afternoons and early evenings so youth can stay at home and in school.

- ***Santa Cruz County, California***
  JDAI worked to reduce high rates of minority detention that emphasized streamlining case management and risk assessment screening tools. In Santa Cruz, a risk assessment instrument was used to detain only high-risk offenders; alternative programs and procedures were developed for low- and medium-risk youth. Partnerships with community organizations to provide culturally responsive alternatives to detention were critical. This included recognizing the importance of having a bilingual staff and staff with close community ties and life experience that help them relate to youth.

State Action

During the 1990s, states began to enact policies prescribing methods to curb the overrepresentation of minority youth in the juvenile justice system. Washington was the first passing legislation in 1993 to link county funding to programs that address

Burns Institute

The W. Haywood Burns Institute (BI) has worked in more than 50 jurisdictions to reduce racial and ethnic disparities. The BI has created and implemented a data template that quickly allows disparities and various decision points to be quickly identified. In nearly every jurisdiction, youth of color are overrepresented and detained for minor misbehaviors that do not result in detention for most white youth. The BI incorporates neighborhood involvement and stakeholder alliances to deconstruct the institutional culture and decision-making process that result in disparities. A key component of this work is surveying probation, law enforcement and judicial officers to determine their attitudes and perceptions about disparities and conducting department-wide trainings to highlight practices that result in disparities.

Changes in policies and practices that result in reducing disparities without jeopardizing public safety include creating detention alternatives for family disputes, instituting court notification systems, interventions prior to probation violations and behavior response grids.

Burns Institute and Disparity

As a result of this approach, some sites where the BI has been able to reduce disparities for Black youth include:

- St. Paul, Minnesota
- Baltimore County, Maryland
- Louisville, Kentucky
- Peoria, Illinois

Similarly, some sites where the BI has been able to reduce disparities for Latino youth include:

- Tucson, Arizona
- Santa Cruz, California
- Marin County, California

overrepresentation, improve data collection, and implement cultural and ethnic training for judges and juvenile court personnel. Subsequent Washington laws required overrepresentation reporting by state agencies, the implementation of pilot programs to reduce inequality in juvenile prosecution, and the development of detention screening instruments.

Washington was the first passing legislation in 1993 to link county funding to programs that address overrepresentation, improve data collection, and implement cultural and ethnic training.

Other states followed with similar efforts in the late 1990s and early 2000s. In response to the high rates of disproportionality, Connecticut formed a 20-member inter-branch Commission on Racial and Ethnic Disparity in the criminal justice system to explore ways to reduce the number of African Americans and Latinos in the system, including the juvenile justice system. In North Carolina, the Governor's Crime Commission created a Disproportionate Minority Contact Committee to evaluate overall disproportionality and make recommendations to reduce racial disparities.

Missouri took steps to require the state court administrator to develop standards, training and assessment on racial disparities. Oregon established the Office of Minority Services as an independent state agency and formed pilot programs to initiate cultural competency training and detention alternatives. Oregon is also in its tenth year of conducting an annual governor's summit on minority overrepresentation in the juvenile justice system; attendees include judges, attorneys, among others.

In 2007, South Dakota established pilot programs in three cities to address the higher rates of contact with the juvenile system for minority youth. The arrest rate for Native American youth in South Dakota is almost 2.5 times greater than for white youth, and they also are overrepresented in other areas of the state juvenile justice system. Federal funding from the JJDPA is helping South Dakota implement the programs, which focus on Native American cultural awareness and agency cultural assessment training for juvenile justice practitioners and service providers.

In Iowa, a Youth Race and Detention Task Force established in 2007 is addressing racial and ethnic disproportionality—particularly for African American youth—in juvenile detention centers. Wisconsin's governor formed a Commission on Reducing Racial Disparities in 2007 that is to recommend strategies and solutions for decreasing minority youth overrepresentation within the state's criminal justice system. The commission, in its final report in 2008,

listed numerous recommendations including better data collection, cultural awareness, stronger eligibility requirements for public defenders, and adequate interpreters throughout the judicial process.

Colorado's judicial and executive branches held a 2007 summit that was attended by more than 200 judges, judicial officers, prosecutors, child welfare administrators and others to discuss overrepresentation of minority youth in the state's juvenile court system. The Colorado Court Improvement Committee also sponsored cultural competency training for juvenile court personnel to address race disproportionality and raise awareness of culturally appropriate resources and approaches.

Iowa became the first state in 2008 to require a "minority impact statement," which is required for proposed legislation related to crimes, sentencing, parole and probation—as well as for any grant application to a state agency. A statement for proposed criminal legislation must include the estimated number of criminal cases the bill will affect and the bill's impact on minorities, its fiscal impact, and its impact on existing correction facilities and resources. Connecticut soon followed, requiring racial and ethnic impact statements for bills and amendments that could if passed, increase or decrease the pretrial or sentenced population of state correctional facilities. Similar to fiscal impact statements, the new requirements seek to provide greater understanding of the implications of a proposed law for minorities.

In Pennsylvania, a disproportionality subcommittee of a state advisory group has been working to improve the relationships between youth and law enforcement personnel in communities. Through a series of local forums, law enforcement officials and youth meet to learn from one another.

In 2008, Iowa became the first state to require a "minority impact statement."

Indiana created a Board for the Coordination of Programs Serving Vulnerable Individuals. Vulnerable individuals are defined as youth of color who receive services or who are otherwise vulnerable. The board has numerous duties, including coordinating racial and ethnic-specific data collection; recommending early intervention and prevention programs and monitoring, supporting and improving efforts to reduce disproportionate representation of youth of color in youth services. In 2008, Virginia adopted a law directing the Joint Commission on Health Care to continue its study of the mental health needs and treatment of young minorities.

Maryland enacted a 2010 law requiring cultural competency model training for all law enforcement officers assigned to public school buildings and grounds. The training is to facilitate improved

communication and understanding between the officers and school communities. The training requires personal exposure to the assigned community and learning about the available resources in order to prevent juvenile arrests.

Maryland enacted a 2010 law requiring cultural competency model training for all law enforcement officers assigned to public schools.

According to OJJDP's 2007 formula grant calculations, 33 states have designated state-level coordinators to address race disproportionality; 37 states have subcommittees under their state advisory groups; and 34 states have invested financial support for local reduction sites that are working on the issue.

Strategies For The Future

As states continue to study and formulate policies to reduce racial and ethnic disparities, some common problems and effective strategies are emerging. Reduction efforts are predominantly data driven; however, data collection is a common problem because race identification often is complex and personal. A standardized model for uniform data collection helps local data collectors accurately record and report information.

One important aspect of data collection is to recognize and record both race and ethnicity. Research suggests that, if ethnicity and race are not identified separately, Latino youth may be significantly undercounted. Guidelines from the National Center for Juvenile Justice and the Center for Children's Law and Policy suggest a series of questions—in addition to self-identification, observation and other sources such as court documents—to help obtain the most accurate and detailed documentation. Reliable data are important to effective analysis and development of appropriate solutions to reduce racial disparities. Awareness is a critical aspect of reducing institutional biases. The Models for Change initiative has raised awareness about racial and ethnic disproportionality among community representatives, leaders, parents and others. Some states have sponsored seminars and training sessions for prosecutors, judges, agency personnel and others involved in the juvenile justice process. According to OJJDP, 15 states have implemented cultural competency training and/or organization cultural competency assessments. Many counties, parishes and cities also have implemented awareness programs.

In line with JJDPA's system-wide effort to address racial and ethnic disproportionality, the Center for Children's Law and Policy and the Models for Change initiative suggest states analyze and address the problem at nine critical processing points. The Center for Children's Law and Policy encourages creation of an oversight body composed

of stakeholders to identify where disparities exist, pinpoint unnecessary juvenile justice system involvement, and monitor implementation of reforms to address disproportionate minority representation. One specific suggestion is to use standardized screenings and protocols, which would remove subjectivity in decision-making.

Risk assessment that helps avoid overuse of secure detention also helps to reduce minority detention and overrepresentation. The Juvenile Detention Alternatives Initiative has used risk assessment instruments with measurable success in local programs, particularly in Multnomah County, Ore.

Appropriate use of alternatives to secure confinement of juveniles in correction facilities can be used to reduce disproportionality. These include community-based services and graduated parole violation sanctions. According to the Office of Juvenile Justice and Delinquency Prevention, 19 states currently use objective risk assessment instruments, and 25 fund alternatives to detention. Many counties, parishes and cities also have implemented such reforms.

Conclusion

The overrepresentation of minority youth in the juvenile system remains a complex issue for states. It also prompts questions about equality of treatment for youth by police, courts and other personnel in criminal and juvenile justice systems. How these juveniles are handled can significantly affect their development and future opportunities. State attention to the issue, along with the research and resources of various private organizations, can strengthen efforts to reduce the disproportionality and improve fairness for all youth in juvenile justice systems.

For references and additional resources, please see the **References, Glossary & Resources** section.

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