

BACKGROUND PAPER
THE JOINT CENTER HEALTH POLICY INSTITUTE

THE IMPACT OF WAIVERS TO ADULT COURT, ALTERNATIVE SENTENCING,
AND ALTERNATIVES TO INCARCERATION ON YOUNG MEN OF COLOR

MICHAEL L. LINDSEY



DELLUMS COMMISSION

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STRONGER COMMUNITIES:
PUBLIC POLICY REFORM TO
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WASHINGTON, D.C.

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Printed in the United States.

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PREFACE

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

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

This background paper focuses on the impact of decisions to transfer young men of color from the juvenile justice system to adult criminal courts, as well as the impact that alternative sentences and alternatives to incarceration have on these youth. In addition to providing historical perspective and an overview of the relevant literature, the paper offers promising practices in alternative sentencing and alternatives to incarceration, and policy options to ensure proper interventions and assistance for young men of color. This paper complements and reinforces the conclusions of other Dellums Commission background papers on education, health, criminal and juvenile justice, recidivism, the child welfare system, the media, and community well-being.

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

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

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

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



INTRODUCTION

On June 10, 2005, Judge Manny Alvarez, a Texas State District judge, dismissed a murder indictment against 16-year-old Marco Lopez. The judge said that the court lacked jurisdiction over the case because Marco's case was transferred to the adult system without the "blessing" of a jury.¹ If upheld by the appellate courts, Judge Alvarez's conclusion that a jury is required to sanction the transfer of a juvenile to the adult system will dramatically change the way juveniles are certified to stand trial as adults in Texas. Judge Alvarez stated: "The bottom line is he is being treated differently. I don't think the system would suffer if we implement one more step that's afforded to adults—that the issue not be decided by one person, but by a jury of his peers."²

Herein lies both the dilemma and the challenge. We want juveniles to be treated differently *in* the adult system and we want them *out* of the adult system. If such an adumbrated request is made, receiving something less than what is desired should not be a surprising result. . Probation officers should not be put in the position of distilling the critical information written by medical doctors, licensed psychologists, and certified/licensed social workers. Why not let these doctors personally present this information to the court? Before we clang the bell of high costs, we should consider the cost to the youthful defendant, and ultimately to society, of our unwillingness to invest up front.

When prosecutors go to work, their basic job description is to get a conviction. If one's core responsibility is to prove guilt, where is the motivation to consider, address, and advocate for mitigating factors? At the present time, we do not have a cure for the common cold or for many cancers, but we treat these diseases aggressively, with substantial funds for research. We have yet to curb some of the senseless and random juvenile crime; however, our response has overwhelmingly been to punish offenders, rather than to explore more appropriate treatment modalities. Why? It seems that it is because many of those who are incarcerated do not look like those who hold the purse strings for funding, who legislate "artificial adults" (children generally 17 years of age or younger who are tried as adults by virtue of state or federal legislation), or who decide that cells are better than classrooms.

We live in an era when the world is obsessed with information access. Yet, schools are expelling students—many of whom will never earn a traditional high school diploma—who need the most help. Actuarial data shows that the lifetime earning potential of such adults is significantly less than adults who complete high school and have postsecondary education and degrees. Why are troublemakers thrown out of

school? That is exactly where they want to be; no working, no thinking, no growing—or so the argument goes. These youth should be in school earlier in the day, stay later at night, and be required to attend on weekends. There are sufficient curricula to ensure that they will, in fact, have fun and come to view education as a powerful tool.

One summer some years ago, I was among a group of volunteer mentors meeting with poor kids—many of whom were failing in school and had experiences in the juvenile justice system. In a hot, non-air conditioned community recreation hall, we were trying to let these kids know that others cared about them, that they were responsible for many of the bad things that were happening in their lives, and that together we could turn things around. One of those kids, who was big, seemingly intellectually slow, and not very verbally skillful, asked me: "Dr. Mike, when you go to the *big* meetings, do you talk to them like you are talking to us? Do they listen and think that we got a chance?" I still remember this being a pretty emotional moment for me, and I succinctly replied, "Yes, I say the same things to them." That kid's questions often leap into my consciousness when I am speaking with legislators, judges, attorneys, educators, program service providers, clinicians, corporate executives, clergy, and others, and I remember that I am supposed to be speaking for all those kids who cannot come to the meetings—and if they did, they would not know what or how to say what was on their minds. We can speak for them; professionals have the knowledge, executives and legislators have prerogatives within their ambit, and judges have power. These need to be exercised—and must be—for those with the least resources.

This paper will address issues concerning the impact of decisions to transfer young men of color from the juvenile justice system to adult criminal courts, as well as the impact that alternative sentences and alternatives to incarceration have on these youth. While the terms "youth" and "young men of color" will be used throughout this discussion, overwhelmingly the youth affected by these decisions are African American, as data below illustrates. Increasingly, however, young men of Hispanic/Latino heritage are disproportionately represented in the juvenile and criminal justice systems. We can expect that their numbers will increase as the Latino population in the United States increases, and educational, employment, and language challenges continue to create barriers for these youth. Native American youth are disproportionately involved in the justice systems in the jurisdictions where large numbers of American Indians live. Among Asian youth, there is a greater tendency for youth from refugee families, compared with immigrant families, to become involved in America's justice systems. This, however, is an overgeneralization, given the diversity of countries and families of Asian origin. Where appropriate, other distinguishing data will be included.

¹ *The Dallas Morning News*, 11 June 2005, p. 1A.

² *The Dallas Morning News*, 11 June 2005, p. 17A.

OPERATIONAL DEFINITIONS OF TERMS *Reverse Waiver*⁵

Juveniles in the adult criminal justice system represent one of the most significant challenges to our community goal of helping young people develop into responsible, contributing members of society. Their involvement in adult courts seems to reduce the likelihood of success in realizing such citizenship aspirations. Youth can, by transfer, be adjudicated in adult court under one of the following provisions, which vary from state to state.

Judicial Waiver

A hearing is held in juvenile court, often at the prosecutor's request, to ask for the judge to "waive" the juvenile court's jurisdiction over the matter and transfer the juvenile for trial in the "adult" system. In *Kent v. United States*, the Supreme Court held that juvenile courts must provide the "essentials of due process" when transferring juveniles to adult court.³ Some jurisdictions have two types of waivers: voluntary (upon request by the youth and the parent, guardian, or guardian *ad litem*) and involuntary (upon request by the state attorney or statutorily mandated). In either case, a hearing is held, and the court decides where the case must be processed.⁴

³ *Kent v. United States* 1966. These entitlements include: representation by counsel, access to social service records, and a written statement of the reasons for the waiver. In an appendix to the opinion, the Court detailed "criteria and principles concerning waiver of jurisdiction." They include: a) the seriousness of the alleged offense to the community and whether the protection of the community requires waiver; b) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; c) whether the alleged offense was against persons or against property, with greater weight given to offenses against persons, especially if personal injury resulted; d) the prosecutive merit of the complaint— i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the [prosecuting attorney]); e) the desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in [criminal court]; f) the sophistication and maturity of the juvenile, as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living; g) the record and previous history of the juvenile, including previous contacts with [social service agencies], other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to [the court], or prior commitments to juvenile institutions; h) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services, and facilities currently available to the Juvenile Court. Notwithstanding this very comprehensive set of considerations enumerated by the Court, they do not include adult prosecution for drug violations. Yet, the current "war on drugs" has resulted in the prosecution of many young men of color in adult criminal court.

⁴ Florida Department of Juvenile Justice 2002.

When a juvenile has been transferred to adult court, the youth may petition for a hearing to be sent back to juvenile court. Reverse transfer procedure offers an opportunity to mitigate injustices created by policies that inappropriately send thousands of youth into the adult system. Blanket use of reverse waiver—in lieu of genuine policy change that stems the flow—is unsound, however. As the American Civil Liberties Union strongly cautions, given that the child will have fewer resources than the government, placing the burden of proof on the child to prove why he should be prosecuted in juvenile court is patently unfair. This is especially true if the child is not adequately represented by counsel, which sometimes happens, especially to poor children.

*Statutory Exclusion*⁶

Legislatures have statutorily excluded certain young offenders from juvenile court jurisdiction based on the offender's age and the offense committed. The offenses most often targeted are capital offenses and other murder and violent offenses. A number of states exclude other felony offenses.

*Concurrent Jurisdiction (The Prosecutor)*⁷

Under this option, state statutes give prosecutors the discretion to file certain cases in either juvenile or criminal court because original jurisdiction is shared by both courts (also referred to as "direct file" statutory provisions). Prosecutorial transfer, unlike judicial waiver, is not subject to judicial review and is thus not required to meet the due process requirements established in *Kent v. United States*.⁸

Blended Sentences

Most states utilize a blended sentence whereby the adult sentence is suspended as long as the juvenile complies with his juvenile sanction and successfully completes rehabilitation.

⁵ Reverse waiver is allowed in: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Iowa, Kentucky, Maryland, Mississippi, Montana, Nebraska, Nevada, New York, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Wisconsin, and Wyoming. (Colorado only allows for reverse waiver in the case of a judicial transfer, but not in the case of direct file.) See Coalition for Juvenile Justice 2005.

⁶ Statutory exclusion is allowed in: Alabama, Alaska, Arizona, California, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Washington, and Wisconsin. See Coalition for Juvenile Justice 2005.

⁷ States with Direct File Provisions are: Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Louisiana, Michigan, Montana, Nebraska, Oklahoma, Vermont, Virginia, and Wyoming. See Coalition for Juvenile Justice 2005.

⁸ *Kent v. United States* 1966; Snyder, et al. 2000: 1-4.

The age considered legal for criminal court processing varies among the states. The age of defining adulthood is usually 18; however, some states, such as Wisconsin and New Hampshire, have lowered their criteria to age 17. New York, North Carolina, and Connecticut have lowered their age minimum for criminal court jurisdiction to 16 years. Opponents contend that these “statutory exclusions” (whether for offenders age 16 or 17), used solely to address “criminal” responsibility, are unfair because in all other legal circumstances, age 18 is considered the standard. On the other hand, supporters contend that this change provides a deterrent effect and points to reductions in juvenile arrests for serious offenses as evidence. Other states, such as Minnesota, not only utilize blended sentences, but have also extended the juvenile court’s jurisdiction to age 21. This new Extended Juvenile Jurisdiction (EJJ) legislation, combined with blended sentencing, enables the juvenile courts to address the treatment needs of young offenders while simultaneously considering public safety.⁹

Once an Adult, Always an Adult¹⁰

Some jurisdictions require that, once a juvenile is prosecuted in criminal court, all subsequent cases involving that juvenile will be under criminal court jurisdiction.

Alternative Sentencing

In most cases, if a juvenile delinquent or criminal offender is given an alternative sentence, it is some form of treatment or punishment in the community, rather than incarceration. There are a few exceptions, one of which is the “blended sentence.”¹¹ Alternative sentences do not include a period of confinement. These are sentences to community-based services and/or intervention programs.¹²

⁹Torbet et al. 2000; Jones and Connelly June.

¹⁰This is allowed in: Alabama, Arizona, California, Delaware, the District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. Coalition for Juvenile Justice 2005.

¹¹Carlie 2002.

¹²Carlie 2002. Examples include: academic education, behavior management, community service, control/monitoring (e.g., telephone contact, personal visits, electronic), crisis intervention, diversion programs, education, employment, foster care, individual/family/group counseling, intensive probation, mediation, mentoring, milieu management, outdoor activity, reality therapy, restitution, sex offender treatment, shoplifting awareness, skill development, substance abuse treatment, and use as speakers.

HISTORICAL PERSPECTIVE AND LITERATURE REVIEW

On April 24, 2005, the Department of Justice reported that America’s jails and prisons now hold more than 2.1 million people. Although the crime rate has fallen over the last decade, the number of people in prison and jail is outpacing the number of inmates released. This increase can be attributed to get-tough policies enacted in the 1980s and 1990s. Among them are mandatory drug sentences, three-strikes-and-you’re-out laws for repeat offenders, and truth-in-sentencing laws that restrict early releases.¹³ In October 2000, the U.S. Bureau of Justice Assistance released a national assessment of juveniles in adult prisons and jails.¹⁴ This report documented the number of youth in adult facilities as of 1998, as well as their demographic and offense characteristics, the legal and administrative processes by which such commitments are permitted, the issues faced by adult correctional systems in managing juveniles, and the conditions of juveniles confined in adult facilities.

This section reviews the history of the juvenile justice system in the United States. We must begin with the unfortunate reality that the process has come full circle. “Pendulum swings” in the justice system refer to whether the current philosophy is more focused on treatment or punishment. Currently, in the juvenile justice system, many protections for children that were in place prior to the establishment of the first juvenile court in 1899 have been legislated away, thereby reflecting political policy that predates 1899.

Juvenile courts in the United States, as a separate institution, are only about 100 years old. Americans have almost always felt that youthful offenders should be treated differently from adult criminals, however. Both colonial and post-revolutionary war American courts based our jurisprudence on the English common law rules of criminal law and criminal procedure. By the early nineteenth century, special doctrines governing the prosecution of children had emerged. Under those doctrines, a child’s *capacity* to commit the crime of which he was accused had to be ascertained. This was broadly referred to as the “infancy defense”—children under the age of seven had no capacity to commit the crime; children between the ages of seven and 14 lacked the capacity to commit an offense (a presumption that could be rebutted); and children who were 14 and older had full capacity to commit the crime and were thus held to the adult standard.¹⁵ In 1899, Illinois established the first juvenile court by enacting the Juvenile Court Act, which focused not on an adversarial process, but rather on diagnosis and treatment. By 1925, juvenile courts

¹³ *Dallas Morning News* 2005.

¹⁴ Austin et al. 2000.

¹⁵Holtzman 2005.

were established in all but two states. In 1938, the Federal Delinquency Act was passed, providing for judicial discretion in transferring juvenile defendants to juvenile court. By the mid-1940s, all states had created juvenile court systems.¹⁶

Because juvenile proceedings were civil in nature, they were not constrained by the same constitutional limitations of criminal proceedings.¹⁷ Beginning in 1966, however, a series of United States Supreme Court decisions ordered many procedural requirements into juvenile court proceedings, significantly altering the operation of juvenile courts.¹⁸ In 1974, as a response to national concern regarding juvenile crime rates, Congress passed the Juvenile Justice and Delinquency Prevention (JJDP) Act.¹⁹ The JJDP Act authorized the establishment of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The Act also allocated federal funds to state juvenile research, rehabilitation, and prevention programs.

The same political climate that saw Congress pass the JJDP Act was influenced by a number of factors. During the 1960s, child welfare services were created, which resulted in the removal of more dependent and neglected children from their homes. The courts' *parens patriae* role was diminished, shifting the emphasis to procedural due process. This period also saw a shift from the medical model (diagnosis and treatment) in working with youth, to the more adversarial, legalistic model. The 1970s saw more movement toward total revision of the juvenile justice system.²⁰ These changes were characterized by Judge Patrick Tamilya as three thrusts of a new wave in juvenile justice. First, the legalistic approach introduced the full array of criminal and civil procedures

into the juvenile process (delinquency and dependency child abuse proceedings). Second, with the diversionary approach, the court or its agents would direct the youth to the appropriate agency before court action was taken or before there was an official adjudication. Such diversion could range from programs to voluntary placement out of the home. Third, the anti-structure approach was characterized by the utilization of the *least restrictive alternative*, with creativity in non-traditional interventions as its hallmark.²¹

With an increase in juvenile crime in the 1970s and 1980s, there were calls for harsher punishment of juveniles and less emphasis—programmatically and fiscally—on treatment. The following comments reflect some of the caustic vitriol expressed at that time. In “Natural Born Killers?” McNulty makes these observations: “In the final years of this decade and throughout the next, America will experience an ‘echo boom’—a population surge made up of the teenage children of today’s aging baby boomers. As today’s five-year-old children become tomorrow’s teenagers, America faces the most violent juvenile crime surge in its history. The warnings of this coming storm are unmistakable. More violent crime is committed by older teenagers than by any other age group. Teenagers from fatherless homes commit more crime than teenagers from intact families. Put these two demographic facts together, and we are in for a catastrophe in the early 21st century.”²² McNulty’s recommendations center on reform of the juvenile justice system. He suggests three principles to guide this reform: “First, the gap between lawbreaking and accountability must be significantly narrowed. Too many ‘minor’ crimes by young offenders, such as truancy and vandalism, are tolerated by law enforcers, sending the message that there is no sanction for illegal behavior... Second, violent crimes must be punished with appropriate penalties. Violent juveniles should receive substantial time in prison—with no early parole—as a matter of both justice and public safety... Third, there must be a sanction for every crime.”²³

In his article, “The Coming of the Super-Predators,” Dilulio states: “I have interviewed [Lynne] Abraham, [District Attorney of Philadelphia,] just as I have interviewed other justice-system officials and prison inmates, as a reality check on the incredibly frightening picture that emerges from recent academic research on youth crime and violence. All the research indicates that Americans are sitting atop a demographic crime bomb. And all of those who are closest to the problem hear the bomb ticking.”²⁴ As the article goes on to state, “kiddie-crime” literature began with the 1945 Philadelphia cohort study, with the “most famous” findings reporting

¹⁶ Langemo 2004

¹⁷ Kendall 2003-2004.

¹⁸ Holtzman 2005. *Kent v. United States* held: Fourteenth Amendment procedural due process requires that waiver hearings be conducted in state juvenile courts before juveniles can be transferred to criminal court. *In re: Gault* 387 U.S. 1 (1967), the Court held that: the Fourteenth Amendment procedural due process gives juveniles the right to adequate notice of all charges brought against them in state juvenile and criminal courts, as well as the right to assistance of counsel in all juvenile court delinquency proceedings; that the Fifth Amendment, as applied to the states through the Fourteenth Amendment gives juveniles the right against self-incrimination. Further, the Court held: the Sixth Amendment, as applied to the states through the Fourteenth Amendment, gives juveniles the right to confront and cross-examine witnesses when they are involved in criminal court proceedings. In 1970, *In re: Winship* (397 U.S. 358) was decided, where the Court held: Fourteenth Amendment procedural due process requires the “beyond a reasonable doubt” standard to be used by juvenile court judges in establishing a child’s delinquency, rather than the “preponderance of the evidence” standard, which had previously been utilized in many states. The Court denied juveniles the right to a jury trial, holding that the Sixth Amendment, as applied to the states by the Fourteenth Amendment, does not require a trial by jury in the adjudicative stage of all state juvenile proceedings (*McKeiver v. Pennsylvania*, 403 U.S. 528 [1971]).

¹⁹ 42 U.S.C. 5601-784.

²⁰ See, for example, the Juvenile Justice Standards, prepared by the American Bar Association and the Institute of Judicial Administration.

²¹ Tamilya 1996.

²² McNulty 1995: 84.

²³ McNulty 1995: 86-87.

²⁴ Dilulio 1995: 23-28.

that 6 percent of the boys committed about 50 percent of the crimes.²⁵ Dilulio asserts that, “[t]he abject moral poverty that creates super-predators begins very early in life in homes where unconditional love is nowhere but unmerciful abuse is common.”²⁶ He suggests that the behavior of super-predators is driven by “two profound developmental defects. First, they are radically present-oriented. Not only do they perceive no relationship between doing right (or wrong) now and being rewarded (or punished) for it later ... they quite literally have no concept of the future ... Second, the super-predators are radically self-regarding. They regret getting caught. For themselves, they prefer pleasure and freedom to incarceration and death.” Dilulio’s central idea focuses on religion: “We must, therefore, be willing to use public funds to empower local religious institutions to act as safe havens for at-risk children, provide adoption out-placement services, administer government funded ‘parenting skills’ classes, handle the youngest non-violent juvenile offenders, provide substance-abuse treatment, run day-care and pre-school programs, and perform other vital social and economic development functions.”²⁷

Shelden suggests that many of these “just desert” reforms stem, in part, from an acceptance of the premises postulated by Wilson and Kelling in 1982 in an article published in the *Atlantic Monthly*.²⁸ Wilson and Kelling state their theory as follows: “If the first broken window in a building is not repaired, the people who like breaking windows will assume that no one cares about the building and more windows will be broken. Soon the building will have no windows.”²⁹ Shelden notes that Wilson and Kelling conclude that crime flourishes because of lax law enforcement—the classic deterrence argument. They suggest that if rude remarks by loitering youth were left unchallenged, such behavior would likely escalate to more serious crimes—hence, the need to nip the future “super-predator” in the bud.³⁰

In another article, Shelden powerfully argues that the war on crime, disproportionately waged on ethnic minorities and the poor, has its roots in the need to fuel and perpetuate the *criminal justice industrial complex*, defined as a “symbiotic relationship between the formal criminal justice agencies and various businesses and other governmental agencies and institutions.”³¹ In summary fashion the tenor of Mr. Shelden’s treatise is highlighted below.

²⁵ Dilulio 1995: 24-25.

²⁶ Dilulio 1995: 25-26.

²⁷ Dilulio 1995: 27.

²⁸ Shelden 2004; Wilson and Kelling 1982.

²⁹ Wilson and Kelling 1982.

³⁰ The “broken windows” approach was widely used in New York City by New York City Police Commissioner William Bratton and Mayor Rudolph Giuliani (early 1990s).

³¹ Shelden 2004.

Taking a Larger View: the Globalization of Crime Control

The legal system at home and the military apparatus abroad are two sides of the same phenomenon: both perpetuate American capitalism and the American way of life. Today these two systems are larger than ever and they spread themselves literally into every corner of the globe. The “war on crime” (and the “war on drugs”) is a set of beliefs and values that stresses the use of force and domination as appropriate means to solve problems and gain political power, while glorifying the means to accomplish this—military power, hardware, and technology. This war on crime also involves a blurring of external and internal security functions, leading to a more subtle targeting of civilian populations, as well as an ideology that places emphasis on the efficient solving of problems that require the use of state force, the latest and most sophisticated technology, various forms of intelligence gathering, the use of “special operations” (e.g., SWAT) within both the police and the prison system, the use of military discourse and metaphors (e.g., “collateral damage” and “under siege”), and collaboration with the highest levels of the governmental and corporate worlds—the defense industry and the crime control industry.

The Incarceration Boom—Expanding the Prison-Industrial Complex

The incarceration rates in the United States are higher than in any other country in the world. This rising incarceration rate has done considerable damage to racial minorities and their communities. Justice Department figures show a significant racial gap in incarceration rates. About 12 percent of black males between the ages of 20 and 39 are either in prison or jail, compared with only 4 percent of Hispanic males and a mere 1.6 percent of white males.

Prisons as a “Market” for Capitalism

The amount of money that flows into the coffers of the prison industrial complex from tax dollars alone is quite substantial. The budget for both state and federal correctional institutions came to \$34.1 billion in fiscal year 2000, which represents an increase of almost 80 percent since 1992. The budgets for both probation and parole have also been increasing. While in fiscal year 1992 the average budgets for both systems came to \$23 million, the average was \$71 million in 2000—an increase of 209 percent. What is most interesting about the budgets for probation and parole is that the largest increases went to the *parole* system; average parole budgets increased from \$25.5 million in 1992 to \$43.1 million in 2000, compared with a very modest increase for *probation* budgets from \$55.7 million to \$56.3 million. Literally thousands of companies, large and small, are seeking profits in this booming industry.

Corporate Interests—the Role of ALEC

A little known component of the prison industrial complex is an organization known as the American Legislative Exchange Council (ALEC). The mere existence of this organization demonstrates the classic connections between politics, economics, and the criminal justice system. Its membership consists of state legislators, private corporation executives, and criminal justice officials. More than one-third of the state lawmakers in the country are members, and they are mostly Republicans and conservative Democrats. ALEC was established in 1973 by Paul Weyrich (who also co-founded the Heritage Foundation and is now the head of a group called the Free Congress Foundation, a very conservative group). Annual corporate membership dues range from \$5,000 to \$50,000. Corrections Corporation of America is a member, as are many Fortune 500 companies.³² ALEC's mission is to promote "free markets," along with small government, states' rights, and privatization. Within ALEC, there is a Criminal Justice Task Force. Among the duties of this group is to write "model bills" on crime and punishment. Some of the "model bills" they helped draft include "mandatory minimum sentences," Three Strikes laws, "truth in sentencing," and similar legislation.

Rural Prisons—Uplifting Rural Economies

In this country, there are more prisoners than there are farmers. Many rural towns have become dependent on an industry that is itself dependent on the continuation of crime-producing conditions. Much of the construction of American prisons during the past two decades has been in rural areas, largely because of the promise of economic stimulus to these areas. The following data provide ample illustration. Whereas an average of four new prisons per year were built in non-metropolitan areas during the 1960s and 1970s, this average increased four-fold to about 16 per year during the 1980s. During the 1990s, the average increased to 24.5 per year, and by the end of the 1990s, there were about 235,000 prisoners and 75,000 workers in the new rural prisons built during that decade alone.

Exploiting Prisoners to Enhance Rural Populations

Even though prisoners cannot vote in almost every state, they are *counted* in the U.S. census, and this count is translated into the pouring of federal dollars into small towns all over the country. It is also important to note the impact that rural prisons have had on redistricting. One result of the "phantom" increase in rural populations is an increase in the

voting power of the rural districts, many of which have added more (mostly Republican) congressional seats. The increasing tendency to house prisoners in far-away rural communities amounts to "coercive mobility," which has a negative impact on informal methods of social control in poor communities. In many poor neighborhoods, up to 25 percent of the adult males are behind bars on any given day. This results in the removal of both *human capital* and *social capital* from these communities. It is estimated that as much as \$25,000 per year leaves the community for every man who is incarcerated. This money goes directly into the communities that have the prisons.

Are minority youth transferred to adult court because of their offending behaviors or in order to fund the *criminal justice industrial complex* outlined above? Data reviewed in the next section raises troubling questions.

KEY THEMES

In April 2000, Building Blocks for Youth published the second of five reports of a multi-year initiative funded to protect minority youth in the justice system and promote rational and effective juvenile justice policies.³³ Among the findings from this report are the following:

1. In every offense category, a substantially greater proportion of African American youth were detained than were referred to juvenile court.
2. African American youth were more likely than white youth to be formally charged in juvenile court, even when they were referred for the same offense.
3. Among all offense types, African American youth were overrepresented and white youth were underrepresented in cases judicially waived to adult court.
4. Minority youth were much more likely than white youth to be waived to criminal court. This was true in every offense category.
5. African American youth were overrepresented among cases receiving a disposition of out-of-home placement (e.g., commitment to a locked institution). This was true in all offense categories and was most pronounced among drug offense cases.
6. Among youth charged with similar crimes, across every offense category, minority youth were more likely to be placed out of the home.

³² Ameritech, AT&T, Bayer, Bell Atlantic, Bell South, DuPont, GlaxoSmithKline, Merck & Co., Sprint, and Pfizer were named in the article. The companies that have supported ALEC through various grants include Ameritech, Exxon Mobile, Chevron, and several corporate foundations, including the Proctor and Gamble Fund, Exxon Educational Foundation, Bell Atlantic Foundation, Ford Motor Company Fund, and many others. See <http://www.capitalresearch.org>.

³³ Building Blocks for Youth is a multi-year initiative to protect minority youth in the juvenile justice system, coordinated by the Youth Law Center (Washington, DC). See Poe-Yamagata and Jones 2000.

7. Minorities constitute the majority of youth held in both public and private facilities; however, minority youth—especially Latino youth—are a larger proportion in public facilities than in private facilities.

When such data is presented, the question often posed is as follows, “Doesn’t this overrepresentation exist only because minority youth commit more crimes?” Engen, Steen, and Bridges provide one of the more recent literature reviews in this area, as well as the results of their own study.³⁴ With respect to the literature review, they note: “Findings from research on racial disparities in juvenile justice outcomes are mixed and the causes of minority overrepresentation in juvenile justice remain unclear ... Race effects are more prevalent among studies that examine earlier stages in the juvenile justice process or that examine cumulative measures of disproportional severity, and among studies that compare outcomes for white youth to those for black youth ... [Our] findings offer support for a structural-process perspective on the role of race in juvenile justice, and suggest that disproportionately punitive treatment is more clearly associated with being black than being ‘non-white.’”³⁵ With respect to the results of their study, the authors conclude:

We found significant evidence that race affects the severity of dispositions, and that the divergent findings in the literature are due, in part, to methodological differences among studies. Importantly, however, our findings also challenge the notion that racial disparities, and differences among studies, are explained away if studies include statistical controls for offending. Furthermore, several methodological features significantly increase the likelihood of finding race effects, which suggests that the literature on the whole may *underestimate* the extent to which studies are consistent in finding that race affects formal control. Finally, our analyses reveal strong evidence that disparity in formal social control of youth is linked to the structure of the juvenile justice process.³⁶

Many other carefully controlled studies have addressed this same question. An Iowa study (1993) states, “when the influence of all other factors (current offense, prior record, etc.) were controlled, not all of the overrepresentation was accounted for. *Although legal factors, such as offense severity, most often had the strongest impact on decision making, being African American, Hispanic or Native American did influence case processing even after considering relevant legal and social factors.* The extent to which minorities and non-minorities received

such differential treatment varied by the decision making stage and the county in which such decisions occurred [emphasis added].”³⁷

A Maryland study (1995) makes this cogent statement on whether or not the problem is that minorities commit more crimes, “The results of regression analysis show that after controlling for offense history, gender, race, and age, African American male youth overrepresentation exists in the Maryland juvenile justice system.”³⁸ A Pennsylvania overrepresentation report (1992) states: “The results showed that even with characteristics of *offense, social and delinquency history controlled*, formal intake outcomes were more common for African Americans, followed by Latinos, than they were for whites [emphasis added].”³⁹ The results of a 1993 Washington State study include these comments:

Counties with large concentrations of youth of color, counties with a large proportion of their population in urban areas, counties with a high violent crime rate and high rates of chronic juvenile involvement in offending experience significantly higher levels of disproportionality than others. However, disproportionality in these counties is neither caused nor explained *solely* by a high number of youth of color committing offenses, getting arrested or cited and referred to the juvenile court, and being prosecuted and adjudicated for their offenses. *These county characteristics reflect more about the social context in which juvenile justice is administered—and the factors affecting the actions of juvenile justice officials—than they do about the characteristics of youth processed through the juvenile court* [emphasis added].⁴⁰

In October 2000, Building Blocks for Youth published its third report.⁴¹ After analyzing the specific question of youth in adult courts, the following findings were published.

1. In nine of the ten jurisdictions, African American youth were disproportionately charged in adult court. This means that the proportion of young African Americans whose felony cases were filed in the adult courts was higher than the proportion of African American youth who were arrested for felony offenses.
2. African American youth were overrepresented in all categories of juvenile offense categories, especially

³⁴ Engen, Steen, and Bridges 2002.

³⁵ Engen, Steen, and Bridges 2002: 194.

³⁶ Engen, Steen, and Bridges 2002: 213.

³⁷ Moore and Kuker 1993: 93.

³⁸ Maryland Department of Juvenile Justice 1995: 34.

³⁹ Kempf 1992: 65.

⁴⁰ Bridges et al. 1993: 77-78.

⁴¹ Juskiewicz 2000.

in drug and public order offense cases. Although African American youth accounted for 64 percent of all juveniles arrested for felony drug offenses, they represented 76 percent of the drug offenses that were filed in adult court. Similarly, while African American youth accounted for two-thirds (68 percent) of all youth arrested for public order offenses, they represented over three-fourths (76 percent) of all youth whose public order offenses were filed in adult court.

3. During the first six months of 1998, in the 18 jurisdictions included in the study, the overwhelming majority (82 percent) of cases that were filed in adult courts involved minority youth. African American males constituted half (52 percent) of the entire sample.
4. In all of the major categories of offenses charged i.e., violent, property, drug, and public order—the highest percentage of cases involved African American youth.
5. Most determinations (85 percent) of whether to charge a juvenile as an adult were not made by judges. This was particularly true for African American youth, 89 percent of whom were charged in adult court through direct file or statutory waiver.
6. More than 45 percent of cases where minority youth were tried as adults resulted from direct filing by prosecutors.
7. The majority of youth in the sample, regardless of the category of offense, were released before trial. For youth who were released on bail, the average bail amount was significantly lower for African American youth (\$8,761) than it was for white youth (\$10,174) and Latino youth (\$13,556).
8. In nearly one-third of the 18 jurisdictions included in the study, less than half of the youth were convicted.
9. Overall, substantial numbers of youth were not convicted, and significantly fewer African American youth were convicted than youth of other racial and ethnic backgrounds. Forty-three percent of African American youth were not convicted, compared with 28 percent of Latino youth and 24 percent of white youth. The low conviction rate for African American youth raises substantive issues regarding the practice of “overcharging” of minority youth by police and prosecutors. Although charged with delinquent or

criminal offenses, when some of these cases were heard in court, they were dismissed for lack of evidence to support the charged offense(s).

10. Youth represented by private attorneys were less likely to be convicted and more likely to be transferred back to juvenile court, regardless of the racial/ethnic group.
11. African American (43 percent) and Latino (37 percent) youth were more likely than white youth (20 percent) to receive a sentence of incarceration (as opposed to a split sentence or probation). This held true when controlling for the adjudicated offense. For example, of those convicted of a violent offense, 58 percent of African American youth and 46 percent of Latino youth received a sentence of incarceration, compared with 34 percent of white youth.

Much has been proffered regarding the relationship between the “war” that America’s justice and political systems have declared on drugs, and the consequent disparity of arrests and imprisonment of ethnic minorities, especially males—and particularly African American males. A May 2005 report released by The Sentencing Project critically examined the results of the war on marijuana.⁴² The authors make the following observations:

Narrowly focusing on people incarcerated in state and federal prison for marijuana offenses diverts the lens of analysis from the real target: low level marijuana users... Such persons face many of the same challenges and obstacles as people who have been incarcerated. These include a denial of federal financial aid for higher education, lack of access to federal aid such as food stamps, denial of entry to public housing, and a prohibition on the right to vote, in some states for life.⁴³ In addition to the institutional hurdles, there remain informal barriers for persons with a felony conviction, such as the difficulty to compete for employment with a criminal record. All of these critical issues are a cost of the drug war and exist equally whether one spends time in prison or serves a sentence in the community.⁴⁴

Chicken Little, yelling “the sky is falling, the sky is falling,” is similar to the Shakespearean theme of “Me thinkst thou

⁴² King and Mauer 2005.

⁴³ As Mauer (2004) points out: “Emerging research also suggests that disenfranchisement laws may affect voter turnout in neighborhoods of high incarceration even among people who are eligible to vote (emphasis added). Since voting is essentially a communal experience—we talk about elections with our families and often go to the polls together—limitations on some members of the community translate into lower overall participation.” See Mauer 2004: 6.

⁴⁴ King and Mauer 2005: 29.

protest too much” insofar as both analogies may describe the criticism that minorities receive when they assert that there is a conspiracy to either destroy them or to keep them down. Conspiracy theories notwithstanding, practices within the criminal justice machinery are ominous. We live in an industrialized and civilized society in which we are governed by rules that manage our interrelationships. Deft consideration of and respect for others are ground rules for this complicated set of (often non-verbal) ways of getting along. Understandably, the majority makes the rules by which others play. Thus, minorities have watched and then mimicked the observed behaviors in order to actualize their American vision. Yet, minority group after minority group seems to have failed to get it right: American Indians signed treaties that are illusory; Japanese and Chinese were “accepted” until they posed a threat; non-mainstream Europeans changed their names to fit in; Latinos now do the work that not even blacks want to do; and African Americans are the rebellious poster children for America’s ills. The never-ending message always seems clear: not yet quite good enough. Those who make enough money to self-medicate themselves in response to the racism hurt less; a suburban house, kids in private school, international vacations, and grown-up toys are distractions from the cuts and stabs of the “colored person” label. Black doctors, lawyers, professors, executives, and consultants “pass” while they are dressed in business attire; but all of those who have seen the mountain top via their bank account are treated like “just another nigger” when they are dressed in jeans or sweat clothes. They are followed when shopping, pulled over by patrol cars, and beaten and handcuffed for asking too many questions.

How, then, can those at the very fringe of survival, the unemployed, the under-housed, the poorly fed, the under-educated, and those challenged with emotional problems learn to be adaptive and to *self-actualize* in a society that puts them in cages, otherwise humiliates and degrades them for their failures, and restricts their options for getting back on their feet when they have paid their dues? Here, the obvious must be stated: there are some bad people in this world, and we will always need prisons—some with minimum security, some with medium security, and some with extremely high security. Such persons, however, are not the normative population of our criminal justice system. As data show, people are more likely to receive mental health treatment once they have committed an offense than they are from a community mental health facility.⁴⁵ Yet, going to court does not help them (or society) get better; on the contrary, it ensures that they get worse. If our objective is to keep prisons full and to keep prison employees on the payrolls, we are on the right track. But, if the goal is to create a world in which those who choose to achieve goals can do so, then we are no more likely to be successful than a neurosurgeon performing surgery in the dark.

⁴⁵ U.S. Department of Health and Human Services 2001.

Anomie is a condition of an individual or society that is characterized by a breakdown or absence of norms and values, accompanied by a sense of dislocation and alienation.⁴⁶ Poorly functioning neighborhoods do have norms, but they are not the norms to which laws require allegiance; stealing is a way to survive, abusing drugs takes away pain, and physical abuse displaces onto an innocent victim the retaliation that cannot be meted upon a more powerful or inaccessible culprit. Thus, there are norms, but they are not conforming or “adaptive” norms. A psychological result for people with failing lives in failing communities is ennui, defined as a feeling of utter weariness and discontent resulting from satiety or lack of interest.⁴⁷ We hear young people’s conversations range from a desolate “I don’t give a damn” to “I won’t live to be 25 or 30.” With such feelings of futility, the mean side of a person can emerge (or can be tapped by others, such as gangs). To help young people turn their lives around, our “game-day strategy” must respond to the data listed below.

- Of the 450,000 increase in drug arrests during the period from 1990 to 2002, 82 percent of the growth was for marijuana-related offenses, with 79 percent for possession alone.
- Marijuana arrests now constitute nearly half (45 percent) of the 1.5 million annual drug arrests.
- Marijuana arrests increased by 113 percent between 1990 and 2002, while overall arrests decreased by 3 percent.
- African Americans are disproportionately affected by marijuana arrests, representing 14 percent of marijuana users in the general population, but 30 percent of those arrested.
- An estimated \$4 billion is spent annually on the arrest, prosecution, and incarceration of marijuana offenders.⁴⁸

How prudent are such policies when, on the one hand, the medicinal value of marijuana is being debated, while on the other hand, within the justice arena, the current lives and future potential of so many people are now being marginalized for small amounts of marijuana possession and use? Even if the practices of institutional disenfranchisement are inadvertent, there is still ample evidence of their insidious nature and the need to *intentionally* alter the current justice, social, and political policymaking course. In the title of their article, Blumenson and Nilsen frame the outcome of this course as

⁴⁶ Webster’s College Dictionary 2001.

⁴⁷ Webster’s College Dictionary 2001.

⁴⁸ King and Mauer 2005: 1-2.

follows: “How to Construct an Underclass, Or How the War on Drugs Became a War on Education.”⁴⁹ In the article, they note: “The United States has been waging a highly publicized war on drugs for a long time . . . Even fewer know that in the ‘90s, educational deprivation became a weapon in the drug war, resulting in the denial of high school or college opportunities to tens of thousands of students . . . The war on drugs has spawned a second front—a war on education. The casualties of this war are all the poor or lower-income people who cannot afford to buy a private education . . . African American students make up a disproportionately large percentage of these expulsions and suspensions—33 percent, although they made up only 17 percent of the students. The immediate consequence for these students was a total withdrawal of public education in the many states that do not offer alternative schooling to expelled or suspended students.”⁵⁰

A Washington state case illustrates a troublesome outcome for youth over the age of 18 who are in need of a public education.⁵¹ The holding of the Washington State Supreme Court runs counter to the spirit and letter of the federal statute the Individuals with Disabilities Education Improvement Act of 2004 (IDEA).⁵² Thomas Mayes provides a critique of this court decision, explaining the potential negative public policy impact it could have on other states considering similar acts: “The core terms of IDEA, both before and after the 1997 IDEA amendments, are fairly straightforward. Each state receiving financial assistance under the IDEA is required to find and evaluate children with disabilities and provide those children with a “free appropriate public education” (FAPE) . . . As a general rule under IDEA, FAPE is to be provided to all children with disabilities who are ages three through twenty-one.”⁵³ It appears that the Washington State Supreme Court partly based its decision to deny educational programs to youth older than 18 years of age on 1997 amendments to IDEA.⁵⁴ Mayes observes, however, that “[s]pecifically, the 1997 amendments allow state law to deny FAPE only to a narrowly defined subset of the inmate class—adult prisoners with disabilities, ages eighteen to twenty-one, who in the last educational placement prior to incarceration in an adult correctional facility [were not] actually identified as being a child with a disability [and] did not have an IEP [Individualized Education Plan]. By limiting the breadth of this provision’s

reach only to a select portion of all inmates, Congress clearly intended that the remaining inmates with disabilities retain a right to FAPE.”⁵⁵

It may be argued that, because the IDEA was amended in 1997, Congress therefore necessarily intended to change the law. Long settled precedent, however, shows that this may not be the motivation for such an amendment. Consider the clear language from the congressional legislative history, which states that the amendment requiring continuation of services for expelled students was a “clarification of current law.”⁵⁶ As Mayes concludes: “Not only is the Supreme Court of Washington’s decision in *Tunstall* not legally supportable, it is also bad public policy. This discussion of public policy is necessary because other states may be emboldened to adopt similar legislation by the United States Supreme Court’s denial of certiorari in *Tunstall*. This is particularly important because several states, in addition to Washington and California, have been historically reluctant to offer special education in adult correctional facilities . . . Notwithstanding the denial of certiorari in *Tunstall* by the Supreme Court of the United States, other states should steer clear of the course plotted by the State of Washington.”⁵⁷

The next section discusses solutions and considers alternatives to incarcerating ethnic minority youth in the juvenile justice system or adjudicating them in the adult criminal justice system.

MODELS, PROMISING PRACTICES, AND SOLUTIONS

There has been much discussion and research on the differences that exist between the cognitive capacities and capabilities of adolescents in comparison with adults. This dialogue produced questions about whether the differences shown between adolescents and adults are great enough to require differential treatment and consideration of adolescents by the justice system (i.e., prosecutors, judges, and treatment and placement facilities). Grisso has addressed many of these questions using instruments he developed to assess the ways in which the cognitive capacities and performance of adolescents is different from adults.⁵⁸ In 1999 and 2000, two major longitudinal studies were published that definitively showed the differences in the growth patterns of an adolescent’s brain.⁵⁹ Data from these studies scientifically validated

⁴⁹ Blumenson, E., and E. S. Nilsen, “How to Construct an Underclass, Or How the War on Drugs Became a War on Education,” *The Journal of Gender, Race & Justice*, 6: 2002.

⁵⁰ Harvard University Advancement Project & Civil Rights Project 2000: 61-62.

⁵¹ *Tunstall v. Bergeson*, 5 P.3d 691 (Wash. 2000), cert. denied, 532 U.S. 920 (2001).

⁵² 20 U.S.C.A. § 1400-87 (West 1990 & Supp. 1998).

⁵³ Mayes 2003: 196.

⁵⁴ Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No. 105-17, 111 Stat 37 (1997).

⁵⁵ Mayes 2003: 200.

⁵⁶ H.R. Rep. 105-95, 90 (1997); Sen. Rep. 105-17, 11 (1997).

⁵⁷ Mayes 2003: 207-8, 210.

⁵⁸ Grisso 1997; Grisso 1986; Grisso 1998; Grisso, Miller, and Sales 1987.

⁵⁹ Giedd et al. 1999; Thompson 2000.

pre-frontal lobe growth, an area of the brain associated with logical thinking, reasoning, and an ability to appreciate long-term consequences of one's actions. These are precisely the questions that those who work with teenagers have long asked. Teachers, counselors, therapists, parents, volunteers, and others have wondered, collectively and individually, what makes a teenager so different from the person he was earlier in life and how long this phase lasts until he "settles down."

Support for answering these questions, particularly from the perspective of how adolescent behavior should be considered in the juvenile and criminal justice system, came from the John D. and Catherine T. MacArthur Foundation, which has provided funding for research and development in this area.⁶⁰ In 1996, the John D. and Catherine T. MacArthur Foundation funded juvenile justice practitioners, who developed and provided training that applied the findings of research on adolescent development to practical issues confronted by juvenile court practitioners across the juvenile justice continuum.⁶¹ Six training modules were developed as a result of this initiative. A summary of all of the MacArthur modules is presented below. More detailed information is included on those whose subject matter relates directly to the theme of this paper.

Module One—Kids Are Different: How Knowledge of Adolescent Development Theory Can Aid Decision Making in Court

The goal of Module One is for participants to develop a working knowledge of key aspects of adolescent development and to learn how to apply this knowledge to their decision making at critical junctures in the juvenile court process. Participants will gain an appreciation of how teenagers develop their cognitive skills, moral framework, social relations, and identity. This knowledge will aid juvenile court professionals in assessing each child at important stages in the juvenile court process, including intake, detention, waiver, adjudication, and disposition. Specifically, an understanding of adolescent development will help court personnel to identify those factors that led to a particular child's development in the court system and what interventions are likely to be most effective for that child.

⁶⁰ The Foundation also created the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice in 1997. The mission of the Network is to develop new knowledge regarding the assumptions on which the juvenile justice system functions, and to improve legal practice and policymaking with accurate information about adolescent development. For more information about the Network. See <http://www.mac-adoldev-juvjustice.org>.

⁶¹ The Youth Law Center (Washington, D.C.), the Juvenile Law Center (Philadelphia, PA), and the American Bar Association Juvenile Justice Center (Washington, DC).

Module Two—Talking to Teens in the Justice System: Strategies for Interviewing Adolescent Defendants, Witnesses, and Victims

The ability of children and adolescents to comprehend what others say to them and to express themselves through language progress as they mature. In general, adolescents begin to think and express themselves more like adults, as they develop the ability to think more efficiently and effectively. These intellectual changes are gradual, however, and it is not until middle or late adolescence that these abilities become integrated into an individual's general approach to thinking and reasoning.

Adolescents' attitudes about time differ from those of adults. Adolescents seem to discount the future more than adults do and weigh more heavily the short-term (as opposed to long-term) consequences—both the risks and benefits—of decisions. Adolescents tend to be more concerned about what will happen that day and have more difficulty talking about an event that will not occur until some time in the future. Thus, for example, in a cellblock interview, one teenager wants to know if he will be released that day and views questions about whether he will go back to school as a seemingly irrelevant, future concern.

Module Three—Mental Health Assessments in the Justice System: How To Get High Quality Evaluations and What To Do With Them in Court

There are key differences between an evaluation conducted for therapeutic purposes and one conducted for forensic purposes. In general, a therapeutic evaluation is an evaluation voluntarily initiated by the youth or parent for the purpose of identifying treatment needs. A forensic evaluation is any evaluation that is completed for use in court or to assist decision-makers in a court proceeding. A few psychological tests have been designed for forensic purposes and specifically assess psycho-legal constructs (e.g., Grisso's *Miranda* Waiver measures, Competence Screening Test, Competency Assessment Tool-Criminal Adjudication, Competency Assessment for Standing Trial-Retardation).

The mere presence of a psychological disturbance does not mean that it is related to the legal issue at hand; a mental health professional has to make the connection. Most psychological tests were developed for therapeutic purposes and not specifically for use in forensic contexts. Therefore, inferences have to be made about how they apply to the question at hand. It is best if legally relevant psychological conditions are directly assessed by administering tests that are specifically designed to answer the psycho-legal questions at issue. The more inferences an evaluator needs to draw in order to reach a conclusion about a legally relevant condition, the more caution should be exercised.

Knowledge of where a young person is in his development can assist the court in making a more informed determination of amenability to treatment. Such knowledge allows the court to examine whether services provided in the past were appropriate for the young person's needs. For example, in the context of a transfer hearing, a determination that the provided services did not address the young person's unique developmental needs does *not* suggest that the young person was resistant to treatment, but rather that he was not provided with the right type of treatment and should remain in juvenile court. By contrast, a finding that a young person has received appropriate services in the past suggests that he may not be receptive to treatment and should therefore be transferred to adult court.

There are a number of concerns regarding the treatment and assessment of minority clients. First, many of the assessment instruments have inadequate normative data on ethnic minorities. As a result, generalizing test results for minority youth presents validity and reliability problems. Second, some clinicians who administer these evaluations to minority youth are unfamiliar with the culture of the youth and may misinterpret adaptive behaviors of the youth (and/or family) as pathological. Third, some African American clients do not open up and speak comfortably in unfamiliar settings, which may lead some therapists to conclude that the youth is "nonverbal" and, therefore, not amenable to traditional "talk" psychotherapy.⁶²

Disposition plans and sentences must specifically address the developmental needs of the individual. It is not enough, for example, to state in a disposition order that a young person should receive counseling while he is on probation. Instead, a disposition plan must specify the particular services a young person will receive to help him learn to walk away from provocative situations, for example, or to succeed in some area of interest and not rely on negative peers for approval.

Module Four—The Pathways to Juvenile Violence: How Child Maltreatment and Other Risk Factors Lead Children to Chronically Aggressive Behavior

Module Four focuses on the developmental dynamics of violent offending—what causes the onset of violent behavior in children and what causes chronic violent behavior to continue into adulthood. Studies have shown that many children who commit violent acts have experienced maltreatment and were exposed to a number of "risk factors" that made them more susceptible to a cycle of chronic violent offending. But research also demonstrates that most children who face these risk factors do not become violent offenders. This indicates that there are "protective factors" that enable at-risk children to avoid engaging in anti-social behavior. Juvenile court

personnel are in a unique position to intervene and break the cycle.

Module Five—Special Ed Kids in the Justice System: How to Recognize and Treat Young People with Disabilities that Compromise Their Ability to Comprehend, Learn, and Behave

The goal of Module Five is for participants to learn how to identify and help children in the juvenile justice system with disabilities that affect their ability to comprehend, learn, and behave appropriately. Children who are learning disabled; severely emotionally disturbed; suffer from Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder; or are developmentally delayed may be at greater risk for delinquent behavior as a result of their disabling conditions. Studies, in fact, have shown that there is a high prevalence of such disabilities among youth who come into contact with the juvenile courts. As a result, juvenile court professionals often make critical decisions regarding how the justice system will respond when a special education child offends. Moreover, juvenile court personnel regularly face the challenge of securing an appropriate education for children with special needs in the justice system.

Module Six—Evaluating Youth Competence in the Justice System

Empirical studies raise questions about the criteria that courts have used to determine competence. Empirical studies show that most juveniles who receive a *Miranda* warning do not understand it well enough to waive their constitutional rights in a "knowing and intelligent" manner.⁶³ For example, Grisso conducted tests to determine whether juveniles could paraphrase the words in the *Miranda* warning, whether they could define six critical words in the *Miranda* warning (such as "attorney," "consult," and "appoint"), and whether they could give correct true-false answers to twelve re-wordings of the *Miranda* warnings. *Most juveniles ages 14 and under, and many juveniles ages 15 to 17, did not understand the Miranda warning as well as the average adult offender did.* Compared with adults, juveniles were far less able to understand the four components of a *Miranda* warning, demonstrating significantly less comprehension of at least one of the four components of the warning. *Juveniles most frequently misunderstood the Miranda advisory that they had the right to consult with an attorney and to have one present during interrogation.*

Adjudicative competence, or competence to stand trial (which includes the entering of a guilty plea), is one protection that has taken on new implications in the modern context of punitive approaches to youth who misbehave. The "test" for adjudicative competence was defined by the U.S.

⁶² Lindsey 1998; Lindsey and Cuellar 2000; Lindsey 1996; Dana 1993.

⁶³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

Supreme Court in *Dusky v. United States* as “whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has rational as well as factual understanding of the proceeding against him.”⁶⁴

The important work in this area was acknowledged by a landmark United States Supreme Court decision, issued March 1, 2005, which held that the execution of juvenile offenders is cruel and unusual punishment, and inconsistent with the mores of civilized society.⁶⁵ The Court noted: “The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability. An unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender’s objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death. In some cases a defendant’s youth may even be counted against him.”⁶⁶ In a clear message to lower courts the Supreme Court also stated:

It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption. As we understand it, this difficulty underlies the rule forbidding psychiatrists from diagnosing any patient under 18 as having antisocial personality disorder, a disorder also referred to as psychopathy or sociopathy, and which is characterized by callousness, cynicism, and contempt for feelings, rights, and suffering of others. If trained psychiatrists with the advantage of clinical testing and observation refrain, despite diagnostic expertise, from assessing any juvenile under 18 as having antisocial personality disorder, we conclude that States should refrain from asking jurors to issue a far greater condemnation—that a juvenile offender merits the death penalty.⁶⁷

If this most draconian option is eliminated, other sentencing alternatives may be considered. There is no shortage of discussion on the subject of alternative sanctions for youth; indeed, the difficulty lies in producing a qualitative assessment of the voluminous literature in the field. Provided below is a non-ranked discussion of programs and initiatives that reflect the range of options that are being used in various jurisdictions nationwide. A Program Assessment Instrument was

created to assess the effectiveness of the programs designed to work with minority clients.⁶⁸ While it has been used in many states, this tool still requires the rigor of reliability and validity studies to refine its utility. Thus far, it has served as an initial step to provide more objective feedback to program administrators and their staff on the programmatic elements, practices, and services that characterize effective programs.

There is another effect that must be considered in an assessment of sentencing alternatives and alternatives to incarceration. Minority offenders—especially African American offenders—are more likely to be viewed as “bad” and in need of “fixing” than are white offenders. Systemically, our criminal justice system “fixes” them by issuing harsher and longer sentences. Underlying this approach is the sociological construct called “attribution theory,” as Bridges and Steen aptly explain.⁶⁹ These authors state: “Racial and ethnic stereotypes are important to understanding whites’ reactions to minorities, particularly in the administration of criminal and juvenile justice. When minority offenders are stereotyped as particularly predatory or disposed to chronic criminal offending, they are seen as more villainous and therefore as deserving of more severe penalties. Sociological theories of law and deviance view such stereotypes as essential to explaining racial differences in criminal penalties.”⁷⁰ Furthermore, Bridges and Steen write:

Three findings are noteworthy. First, probation officers consistently portray black youths differently than white youths in their written reports, more frequently attributing black’s delinquency to negative attitudinal and personality traits. Second, these attributions about youth shape assessments of the threat of future crime and sentence recommendations. *Court officials rely more heavily on negative internal attributions than on the severity of the youth’s crime or his or her prior criminal history in determining the likelihood of recidivism. Finally, attributions about youths and their crimes are a mechanism by which race influences judgments of dangerousness and sentencing recommendations.* Insofar as officials judge black youths to be more dangerous than white youths, they do so because they attribute crime by blacks to negative personalities or their attitudinal traits and because black offenders are more likely than white offenders to have committed serious offenses and have histories of prior involvement in crime. Insofar as officials recommend more severe sentences for black youths than whites, they do so because they recommend severe sentences for

⁶⁴ *Dusky v. United States* 362 U.S. 402 (1960).

⁶⁵ *Roper v. Simmons* 543 U.S. 551 (2005).

⁶⁶ *Roper v. Simmons* 2005: 19.

⁶⁷ *Roper v. Simmons* 2005: 19-20.

⁶⁸ See Appendix A.

⁶⁹ Bridges and Steen 1998.

⁷⁰ Bridges and Steen 1998.

youths whose crimes they attribute to negative personality traits and who they perceive as more dangerous than others [emphasis added].⁷¹

In an article on juveniles waived into adult correctional facilities, Shefi highlights many of the important problems that youth face in these facilities and reviews some of the effective adult correctional models that house juveniles in such facilities.⁷² She describes an overview of the model facility as follows: “The comprehensive maximum-security juvenile treatment facilities for waived youth... should be small, or at a minimum, contain small, self-contained units. Offenders should be separated in units or facilities based upon age, offense, or required treatment services. In order to maximize efficiency, facility administrators should establish interactive networks with local businesses, schools, and agencies to provide unified assessment, education, treatment, planning coordination, services, monitoring, and individualized evaluation. Additionally, corrections staff should be trained in appropriate means of interacting with, and understanding, troubled youth. Programs in these facilities should be structured and intensely supervised, but there should also be a foundation of respect.”⁷³ The programs for serious juvenile offenders, described below, are profiled in the article by Shefi.

The Riverbend Secure Juvenile Correctional Facility – St. Joseph, Missouri

This facility illustrates the effectiveness of a small and secure—but not oppressive—institution in which interaction between inmates and staff is built upon a foundation of mutual respect, and strong incentives are in place to encourage program participation and compliant behavior. Riverbend places a heavy emphasis on treatment with an approach that centers upon the belief that treatment occurs 24 hours every day. Although Riverbend is a secure facility, the atmosphere is decidedly positive. In 1999 and 2000, only 11 percent of juveniles who were released from the Department of Youth Services (DYS) custody or transferred from a secure residential facility to a non-secure community program were either re-arrested or returned to juvenile custody within one year. Additionally, a 1993 DYS study found that only 28 percent of the youth released from residential care violated parole or were recommitted to DYS within three years of release. A DYS study of five thousand youth discharged from DYS in the 1980s found that only 15 percent were arrested as adults. Riverbend, therefore, serves as an excellent example of a successful alternative to juvenile incarceration in adult facilities.

The Texas Gulf Coast Trades Center (Gulf Coast)

This is another successful residential correctional facility for serious juvenile offenders. Gulf Coast makes education and career preparation the cornerstone of its treatment and rehabilitation philosophy. Like Riverbend, Gulf Coast does not use locked cells or physical restraints; it houses 144 youth in six open dormitories. More than 60 percent of Gulf Coast participants complete their GEDs and more than 60 percent find employment in their chosen occupational field. Data from the Texas Youth Commission indicate that less than 16 percent of youth who graduated from Gulf Coast from 1995 through 1999, were incarcerated within one year of release.

The Florida Environmental Institute’s Last Chance Ranch (Ranch)

Comprehensive residential wilderness programs divide youth into small groups based on their strengths and treatment needs and establish a series of increasingly difficult outdoor challenges that emphasize and promote self-reliance, community participation, teamwork, and individual accomplishment. Located in the Florida Everglades, the Florida Environmental Institute’s Last Chance Ranch offers waived juveniles an opportunity to voluntarily participate in the program, rather than being incarcerated in an adult facility. Like Riverbend and Gulf Coast, the Ranch does not use bars, handcuffs, or locked restraints, but rather houses its 22 male participants in two dormitories. Although the Ranch is expensive, it is effective. From 1997 through 2000, Ranch graduates had a one-year recidivism rate of less than 16 percent. In 2000, only one out of 21 Ranch graduates was convicted of a new offense.

VisionQuest

This private national youth services organization operates comprehensive wilderness programs in Pennsylvania, Arizona, New Jersey, Florida, and Oklahoma, and treats an average of 1,500 youth per month. VisionQuest programs include education, community service, individual and group counseling, therapeutic experiences in working with animals, vocational assessment and planning, and physical challenges that provide youth with the opportunity to experience success and teamwork. Although they are serious long-term offenders, VisionQuest graduates have very low recidivism rates; in fact, 69 percent to 86 percent of program participants are not subsequently incarcerated.⁷⁴

The definitions of alternative sentencing and alternatives to incarceration were discussed earlier.⁷⁵ Described below are

⁷¹ Bridges and Steen 1998.

⁷² Shefi 2003.

⁷³ Shefi 2003.

⁷⁴ Shefi 2003.

⁷⁵ Shefi 2003: 4-5.

some of the other alternatives that are available. This list provides examples of the optional strategies that are available and does not necessarily indicate “best practices” initiatives.

*The Sentencing Service Project (SSP)*⁷⁶

The Sentencing Service Project is based in San Francisco, California, and provides services nationwide. It provides a variety of sentencing and mitigation services, including pre-trial, pre-plea parole consideration, and disposition and sentencing reports and recommendations. [A]bsent viable alternatives, courts rely solely on the recommendations of probation or correctional staff for sentencing decisions. SSP staff [develop] a comprehensive social and developmental history, and an examination of applicable mitigating circumstances and current criminal justice research. Recommendations are then made, which may include a mitigated sentence or an alternative to jail, prison, or the California Youth Authority. Alternatives include advocating for institutional programs that can shorten a defendant’s length of stay and provide rehabilitative objectives. Other options may include fines, community service, victim reconciliation and/or restitution, house arrest, work release, or placement in a residential out-patient halfway house.

*Changing Lives Through Literature (CLTL)*⁷⁷

CLTL is a program that began in Massachusetts in response to a growing need within the criminal justice system to find alternatives to incarceration. Burdened by expenses and repeat offenders, prisons can rarely give adequate attention to the needs of inmates. Professor Robert Waxler and Judge Robert Kane discussed the possibility of using literature as a way to reach hardened criminals. In the fall of 1991, Professor Waxler and Wayne St. Pierre, a New Bedford District Court probation officer, initiated the first program at the University of Massachusetts Dartmouth. Eight men were sentenced to probation instead of prison, with an important stipulation: they had to complete a Modern American seminar. For 12 weeks, those men—many of whom did not have a high school diploma and who had among them 148 convictions for crimes such as armed robbery and theft—met in a seminar room at the university. The men began to listen to their peers, to increase their ability to communicate ideas and feelings to men of authority, and to engage in dialogue in a democratic classroom where all ideas are valid. The program has spread throughout Massachusetts, and was soon established in Texas, as well as Arizona, Kansas, Maine, New York, Rhode Island, and Connecticut.

⁷⁶ See http://www.cjcrj.org/programs/sentencing_service.php.

⁷⁷ See <http://cltl.umassd.edu/home-flash.cfm>.

*Center for Alternative Sentencing and Employment Services (CASES)*⁷⁸

Throughout its history, CASES has found innovative solutions to problems in the justice system. In 1967, the Vera Institute of Justice founded the Court Employment Project to give judges sentencing options other than prison or probation for teen offenders. Similarly, the Community Service Sentencing Project was begun in 1979 to offer judges an intermediate option for chronic misdemeanor adult offenders. The Court Employment Project (CEP) is an award-winning, non-residential program for teenage felony offenders, which functions as an alternative to incarceration. CEP combines a strengths-based youth development focus with an emphasis on accountability to the courts. The youth development model emphasizes youths’ skills and abilities—rather than focusing on their deficiencies—and helps them set high expectations for their own educational, vocational, and social development.

*Center for Community Alternatives (CCA)*⁷⁹

Since 1981, CCA has provided effective sentencing, post-conviction, and capital mitigation services to defense attorneys and their clients. Client Specific Planning (CSP) is part of CCA’s array of criminal justice programs and is available to defendants in federal and state courts. CSP services are based on extensive interviewing, as well as thorough background investigation and assessment. CSP plans are developed from this research and typically include referrals to specific treatment programs; employment; vocational or educational programs; housing; and other relevant support services. Alternative sanctions often include “client specific” community service placements, victim restitution, and home detention. Where an alternative sentence is not feasible, CSP staff work to mitigate the length of incarceration, and work with the client and the appropriate corrections department to achieve the most beneficial classification possible.

*The Office of Juvenile Justice and Delinquency Prevention’s (OJJDP) Balanced and Restorative Justice Model (BARJ)*⁸⁰

Restorative justice is designed to heal the harm that has been done to the individuals and the community involved in a criminal act. Victims and community members become central to the justice process, meeting with the offender, helping the offender recognize the harm done, and defining the appropriate restitution to be made. Offenders are held directly accountable to the people they have harmed, and the

⁷⁸ See <http://www.cases.org/programs.html>

⁷⁹ See <http://www.communityalternatives.org/mitigation>.

⁸⁰ Office of Juvenile Justice and Delinquency Prevention 1998.

response is focused on restoring the emotional and material losses of the victims, as well as restoring community safety and social harmony.

*Juvenile Sanctions Center*⁸¹

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the National Council of Juvenile and Family Court Judges (NCJFCJ) have joined a multi-year partnership to improve immediate and intermediate sanctioning options for youthful offenders, including those hard-to-reach “special populations.”⁸² Through this partnership, OJJDP has underwritten the new Juvenile Sanctions Center—a self-contained program located at the Reno offices of the NCJFCJ. A graduated sanctions system is a set of integrated intervention strategies designed to operate in unison to enhance accountability, ensure public safety, and reduce recidivism by preventing future delinquent behavior. The term “graduated sanctions” implies that the penalties for delinquent activity should move from limited interventions to more restrictive (i.e., graduated) penalties according to the severity and nature of the delinquent act.

*The Annie E. Casey Foundation—Juvenile Detention Alternatives Initiative (JDAI)*⁸³

In December 1992, the Annie E. Casey Foundation launched this multi-year, multi-site project. JDAI’s purpose was straightforward: to demonstrate that jurisdictions can establish more effective and efficient systems to accomplish the purposes of juvenile detention. The initiative was inspired by work that the Foundation had previously funded in Broward County, Florida, where a crowded, dangerous, and costly detention operation was radically transformed. Broward County’s experience demonstrated that interagency collaboration and data-driven policies and programs could reduce the number of youth behind bars without sacrificing public safety or court appearance dates. The initiative has four objectives: (1) to eliminate the inappropriate or unnecessary use of secure detention; (2) to minimize failures to appear in court and the incidence of delinquent behavior; (3) to redirect public finances from building new facilities to responsible alternative strategies; and (4) to improve conditions in secure detention facilities. The work of JDAI is being replicated nationwide. Its Web site provides the most recent update of its locations and extensive activities.

⁸¹ See <http://www.ncjfcj.org/>.

⁸² “Special populations” include: minority youth overrepresented in the juvenile justice system, youth with mental health needs, female offenders, and youth with special education needs.

⁸³ See <http://www.aecf.org/initiatives/juveniles/jdai/htm>.

*The Sentencing Project*⁸⁴

The Sentencing Project, incorporated in 1986, has become a national leader in the development of alternative sentencing programs and in research and advocacy concerning criminal justice policy. The Sentencing Project has provided technical assistance and helped to establish alternative sentencing programs in more than 22 states, and has consulted on issues such as juvenile detention, racial disparities, and the trial of juveniles in adult court. The Sentencing Project has sponsored the development of the National Association of Sentencing Advocates for courtroom professionals who assist in the sentencing defense of persons charged with crimes.⁸⁵ The Sentencing Project has sought to restrict the practice of “automatically” transferring children to adult court without judicial review for several reasons. To begin with, children are responsible for their actions in ways that differ from adults. They are less able to exercise their rights and less able to comprehend court proceedings. They are frequently denied access to education and are subjected to abuse when placed in adult jails and prisons. Many court systems fail to provide adequate defense services to children in adult court. At the same time, racial disparity characterizes decisions to prosecute children as adults. Adult sentences, imposed upon children, are unduly harsh—destroying the formative years of a young person’s life and, in the instance of lengthy sentences, the prospect of having a life outside of a prison. The Sentencing Project staff provides leadership and training to a broad range of criminal justice practitioners on policies and practices designed to produce more constructive outcomes in the system.

*Juvenile Drug Courts*⁸⁶

Based on the success of adult drug courts, juvenile drug court programs are being implemented for drug-involved juvenile offenders. The courts provide immediate and continuous court intervention, which includes requiring the child to participate in treatment, submit to frequent drug testing, appear at regular and frequent court status hearings, and comply with other court conditions geared toward accountability, rehabilitation, long-term sobriety, and cessation of criminal activity. Juvenile drug courts require the family to be closely involved in the treatment process, and a number of them require parents to participate in special parent groups that provide both support and the opportunity to develop parenting skills. The drug court judge not only oversees the performance and progress of a child and his family, but also brings together the schools, treatment resources, and other community agencies to work toward achieving the drug court’s goals.

⁸⁴ See <http://www.sentencingproject.org>.

⁸⁵ National Association of Sentencing Advocates, <http://www.sentencingproject.org>.

⁸⁶ Office of Justice Programs 1998.

IMPLICATIONS FOR POLICY CHANGE

Adolescents represent one of the most challenging populations with which to work. For many of them, their relationship with their parents or guardians serves as the “checks and balances” that steer them back on course when adolescent experimentation and risk-taking bring them beyond the limits of acceptable behavior. Within this adolescent population, two sets of young men are particularly troublesome for law enforcement and other adults (e.g., educators) who must work with them. On one end of the spectrum are the privileged kids, who are often financially spoiled, but who lack necessary parental love, attention, and support. The extroverted youth among this group are often rude and demonstrate a sense of entitlement. Their bad behaviors are typical for adolescents: substance abuse, driving infractions, self-injury, theft, destruction of property, and injury to other persons. When such a teenager is caught, his parents often hire a private attorney, put their child in psychotherapy, meet with the principal, have someone from the religious community speak for the character of the child and/or the family, and come to court armed with a plan to put this child back on track. Judges and prosecutors approve of this response. If the delinquent offense is not too egregious, this case is disposed of in due course. Middle class families pursue a similar process, although the lawyer may not be as expensive and the “family plan” for intervention may not be as polished.

In contrast, the poor adolescent male delinquent or criminal has a public defender—a court-appointed attorney with a high caseload, who has spent very little time with this client preparing a legal defense for the case, a social history update, a current psychological evaluation, or an education plan. This male offender is more likely to be in detention or jail pending the hearing of his case and he comes to court in “prison” clothing. His parent(s) may or may not be there—and may also have previous justice system involvement of their own—and an extended family presence at the hearing is unlikely. In short, he comes to court willing to accept the best deal he can get.

Help is available for all of these youth; however, poor clients who need help from the system most in order to turn their lives around get little of what they need (a comprehensive, competent, community-based intervention plan) and a lot of what they do not need (confinement in a cell, criminal justice system therapy, a watered-down “lite” education plan, and required adaptation to the personalities of three shifts of adult residential facility staff). The cohort of super-predators emerges largely from our flawed educational, social, and justice systems, not from their biological parents. The United States of America, a technologically sophisticated international superpower, is capable of embracing such children in need and putting them in a nurturing environment so that they thrive and our community and society prosper. If a cancer

cell is neglected, it metastasizes and destroys the human body. This is analogous to neglecting the small “cancerous” behaviors noted in daycare, in first grade, during Little League, or at the corner store. This observation is not an endorsement of the “broken windows” postulate mentioned above; rather, it is an acknowledgement that raising a healthy child requires deliberate, consistent relationships with the child from a familial or systemic perspective.

This can be done. Unfortunately, we do not yet have a state, county, city, or community model to use as a template for building such relationships. In the meantime, it is necessary to wait for the day when some locality gets it right, or is ordered (and funded) to do so by the legislature or the courts.⁸⁷ Since this day has not yet come, it is important to consider some of the things that can, should, and must immediately be done to hold youth accountable, to intervene and assist in turning their lives around, and to demonstrate to them that others do care and are going to compassionately hold them accountable.

- All entities that provide services to youth must collaborate. A model management information system that ensures that a child’s file becomes accessible to all other system providers once he is identified as in need of services is necessary. Additions can be made to this file, but no “new” file may be created. To protect confidentiality, some information will have restricted access; passkeys can provide entry, and criminal penalties should be imposed on those who abuse the access privilege.
- Standards for program and cultural competence must be created, and courts must use these standards for holding service providers accountable. There are far more programs that fail children than there are children who fail the programs. While judges can hold programs accountable, the American Bar Association and judicial groups can hold the courts accountable.
- The services recommended for youth must be comprehensive. Educators, psychologists, social workers, psychiatrists, physicians, the faith community, parents, relatives, and friends can all contribute to the kind of comprehensive plan that a youth needs.
- The comprehensive plan should consist of wrap around services. No one agency can provide all that a youth and his family need. Given that management information systems exist and courts can hold programs accountable, it is possible to know how and where to involve service providers to address the unmet needs of the youth and his family.

⁸⁷ In most cases, formidable amounts of new money are not needed. Spending allocated funds for children, youth, and families in most cities, counties, and states is often duplicative and inefficient.

- The services should be community based. The behavior of many youth improves when they are “sent away” to residential treatment programs. There will be a greater capacity to transfer that ability to learn appropriate behavior when the intervention is close to where the youth lives and involves others close to where he lives.
- The service delivery system must address prevention, intervention, and after-care issues. “Re-entry initiatives” have improved insofar as they are highlighting the need for re-entry services; however, this three-part service delivery system is anemic at present.
- The services must be for the youth *and* his family. The focus must be not only on the best interests of the child, but also on the best interests of the family.
- When juveniles are in facilities with adults, they must be housed separately. The minimal goal should be to effect sight and sound separation, but separate facilities should be provided whenever possible.
- A research task force is needed to further consider the implications of adolescent brain development for raising healthy children within the context of the social and justice systems. The unique cultural considerations of brain development research have yet to be addressed.
- A complete reform of school expulsion and zero tolerance policies is necessary. Educating youth in mainstream environments allows them to learn from a diverse array of their peers, not just from a cohort of troubled, expelled colleagues.
- The range of options available for alternative sentences and alternatives to incarceration must be expanded.
- Counseling, education, training, and adaptive skills programs for youth in adult correctional facilities need to be provided.
- Voting rights for some felons after their punishment terms are completed must be restored.⁸⁸
- As a component of an intervention plan, criminal histories from the records of some felons should be removed.
- Incentives to have those on probation and parole complete those requirements earlier than initially allowed for in the case disposition must be developed.
- Federal and state legislation must be enacted and funded to initiate a longitudinal pilot program in one or more American cities and/or counties to begin this strategic reform process.

*We can do less, but we should not.
We must do more, and we can.*

⁸⁸ Identifying which offenses this restoration of voting rights applies to is beyond the scope of this paper.

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ABOUT THE JOINT CENTER HEALTH POLICY INSTITUTE

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

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Cover and text design: Marco A. White, Manager of Technology & Publications

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