GANG DETERRENCE AND COMMUNITY PROTECTION ACT OF 2005

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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H.R. 1279, GANG DETERRENCE AND COMMUNITY PROTECTION ACT OF 2005

TUESDAY, APRIL 5, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2 p.m., in Room 2141, Rayburn House Office Building, Hon. J. Randy Forbes presiding.

Mr. FORBES. I would like to call this meeting of the Subcommittee to order, and let me first of all say good afternoon to everyone who's here. I want to welcome you to this important hearing to examine the issue of the problem of gang violence in America.

The bill we are considering today sends a clear message to gangs, which is basically this: It stops now. Gone are the days of the Sharks and the Jets from the "West Side Story." No longer are fists and jeers the weapon of choice. Now, drive-by shootings with semi-automatics, brutal group beatings, and machete attacks are the standard.

No longer are gangs loosely-knit groups of wayward teens. Today's criminal gangs are highly organized, highly structured bodies whose ages range anywhere from elementary school to middle-age. They are trained in military techniques and their primary purpose is to commit illegal violent criminal activities in furtherance of their gang organization. They are in our schools, on our streets, and in our communities.

The problem of gangs is not a new one, but today it's a different one and a bigger one and one that is growing more rapidly and more uncontrollably than ever before. According to the U.S. Department of Justice, there are currently over 25,000 gangs that are active in more than 3,000 jurisdictions across the United States. Today, the FBI and the U.S. Justice Department estimate that there are somewhere between 750,000 and 850,000 gang members in our nation.

Let me put this in perspective for you. Today, in our Army and Navy combined, there are 859,000 active duty members. This is virtually a one-on-one ratio to gang members in the United States. You can even add the Air Force and the Marine Corps to that figure and we would not reach a two-to-one ratio of military personnel to criminal gang members. In fact, if the criminal gang members in the United States were a military force located in another coun-

try, they would comprise the sixth-largest military in the world in terms of soldiers.

Gangs have declared war on our nation. They are ravaging our communities like cancer, urban, rural, rich, and poor, and they are metastisizing from one community to the next as they grow.

There is no overriding societal value to being a member of a criminal gang, and if you are part of a criminal gang, this bill says two things. First, this bill puts the full force of our nation's Federal, State, and local law enforcement officers and prosecutors behind apprehending criminal gang members. If you ask our nation's law enforcement officers what they need to combat gangs, they will tell you this: our Federal law enforcement officers have the resources, but not the intelligence system to combat the gang problem, and our local law enforcement officers have the intelligence network, but not the resources to combat the problem. This bill will marry the two and authorize the funding to make this partnership successful.

Second, this bill says that if you are a member of a criminal gang and you commit a violent gang crime, you are going to jail for a minimum of 10 years, period. While some may criticize mandatory minimum penalties as unduly harsh, such penalties are invaluable tools to use against gangs to secure cooperation from gang members and infiltrate tightly-knit organized crime syndicates operating as sophisticated street gangs.

Moreover, in light of the Supreme Court's recent decision in *Booker* and *Fanfan*, rendering the guidelines as only advisory, mandatory minimums are the only effective means to ensure that fair and consistent sentences are imposed, and we will see more of them unless something is done to reimpose a mandatory guideline system.

This bill will create new criminal gang prosecution offenses, enhance existing violent crime penalties to deter and punish criminal gangs, and enact violent crime reforms needed to effectively prosecute gang members. This is a tough bill. Make no mistake about it, we recognize there are those who want it softer. But criminal gangs in America are not soft, and the crimes they commit are real, and they are hard. Only a tough bill will stop these gangs and protect innocent victims from the hard pain of these vicious crimes.

We are saying that the following is not acceptable in America: gangs that fuel their activity with narcotics trafficking, carjacking, and illegal gun trafficking; gangs that engage in human trafficking, rape, and prostitution; gangs that use firearms and other deadly weapons in the commission of crimes; and gangs that brutally rape, kill, and maim.

This bill, when enacted, will bring a new force to bear on gang activity in our country. It will provide increased Federal effort to assist local law enforcement in targeting and federally prosecuting violent criminals who are associated with criminal gangs. The bill will encourage partnerships across all levels of government and ensure the success of these partnerships through the expansion of resources and intelligence.

I want to take a moment to recognize Congressman Frank Wolf, who has been a leader in Congress in the war against gangs and gang violence. We owe him a great debt of gratitude for his com-

mitment to raising awareness of this problem and laying out solutions.

I also want to thank Chairman Coble for agreeing to hold this hearing and offer my sincerest condolences to him and his family on the passing of his mother.

Finally, I want to recognize those on the front lines of the gang wars, our law enforcement officers who are out there day in and day out. They are the foot soldiers of this battle, and to them we are very grateful.

I am anxious to hear from our distinguished panel of witnesses and now yield to the Ranking minority Member of this Subcommittee, the gentleman from Virginia, Mr. Bobby Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I'm pleased to join you in convening the hearing on H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005." I also join you in expressing our heartfelt sympathy for our Chairman and friend, Chairman Howard Coble, and his family in their hour of bereavement.

Now, I just want to start off by saying, Mr. Chairman, that we are going to work together against base closings, funding aircraft carriers, NASA research, and other programs, but we must part company on this bill due to my concern that we not waste money and increase crime.

This bill is chock-full of new mandatory minimum sentences, ranging from a mandatory minimum of 10 years to mandatory life or death and other provisions, which have been solidly proven to be counterproductive in the fight against crime. They are not criticized because they are harsh. They are criticized because they are counterproductive. We have known that mandatory minimum sentences disrupt order and proportionality in sentencing. They discriminate against minorities and waste taxpayers' money, compared to sentencing schemes where the court can look at the seriousness of the crime and the offender's role in the crime and background.

The Judicial Conference of the United States, which sees the impact of mandatory minimum sentences on individual cases, as well as the criminal justice system as a whole, has told us time and time again that mandatory minimum sentences create more harm than good from any kind of rational evaluation. In its recent letter to Members of the Subcommittee on Crime regarding this bill, the Conference noted that mandatory minimum sentences create, quote, "the opposite of their intended effect." Continuing to quote, "Far from fostering certainty in punishment, mandatory minimums result in unwarranted sentencing disparities. They treat dissimilar offenders in a similar manner although those offenders can be quite different with respect to the seriousness of their conduct or their danger to society." And they finally say that "they require the sentencing court to impose the same sentence on offenders when sound policy and common sense call for reasonable differences in punishment."

Both the Federal Judicial Center in its report entitled, "The General Effects of Mandatory Minimum Prison Terms: A Longitudinal Study of Federal Sentences Imposed," and the United States Sentencing Commission in its study entitled, "Mandatory Minimum Penalties in the Federal Criminal Justice System," found that mi-

norities were substantially more likely than whites under comparable circumstances to receive mandatory minimum sentences. A Rand Corporation study entitled, "Mandatory Drug Sentences: Throwing Away the Key or the Taxpayers' Money?" showed that mandatory minimum sentences are far less effective than either discretionary sentences or drug treatment in reducing drug-related crime and, thus, far costlier than either.

Just how costly this bill will be is yet to be seen, but, in response to an inquiry by my office, the U.S. Sentencing Commission estimated that the prison impact of H.R. 1279 would require an additional 23,600 prison beds over the next 10 years. At $75,000 a cell, that amounts to prison construction costs of almost $2 billion, in addition to annual upkeep of about $750 million based on $30,000 per inmate per year. That is over and above what we are already scheduled to spend on prison construction and prison inkeep in a country where the prison population per person is higher than anywhere else in the world. For proven juvenile crime prevention and intervention programs, we are spending about half, about $400 million, of the annual inmate upkeep this bill will cost.

The worst problem with this bill is it provides for far more juveniles being tried as adults. For years now, every study of juveniles tried as adults has shown that juveniles commit more crimes, more violent crimes in particular, when they are released, if they are treated as adults. This is easy to understand when you consider that juveniles who go to prison will have as their role models hardcore murderers, rapists, and robbers, whereas in the juvenile detention system they will receive education and training, counseling, drug treatment, and other assistance.

On March 14 of this year, coincidentally the same day that H.R. 1279 was introduced, the Coalition for Juvenile Justice released its study, "Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Criminal Court," showing that even more definitively that trying—showed even more definitively that trying juveniles as adults increased rather than decreased the prospects that they would reoffend when released and that with more serious offenses, as compared with the youth tried in juvenile court. The study revealed that over 250,000 youth are charged as adults every year. Just as with the application of mandatory minimums, the application of adult court to juveniles falls heaviest amongst minorities, about 82 percent of youths tried as adults are youth of color.

For years, we have known that a continuum of services geared toward the needs of at-risk youths prevents crime from occurring in the first place. Many such proven crime prevention programs have saved more money than they cost. Head Start and other quality early childhood education programs, Boys and Girls Clubs, and after-school recreational programs, Job Corps and other intensive job training programs, all prevent crime and save more money than they cost.

At a meeting I had with students at Monument High School in South Boston, Massachusetts, last month, I told them about this upcoming hearing and asked them what was needed to prevent gang crime. They said kids join gangs for reputation, protection, to feel wanted, to have friends, and to get money, and what is needed to prevent them from joining gangs was ample recreation for boys

as well as girls, jobs and internships for training and money, and assistance to allow their families to live in a decent home.

Interestingly, I asked the same question to a group of law enforcement officials I met in my district yesterday, and they had very similar advice. Neither group said anything about the need for more mandatory minimums or trying more juveniles as adults.

So we know what works to prevent crime. Unfortunately, we also know how to play politics. H.R. 1279 has been nicknamed "Gangbusters." It reflects the politics of crimes where you come up with a good slogan and try to codify it. It doesn't matter whether it does anything to reduce crime or is counterproductive, but, if it sounds good, it must work.

We have had the greatest success by putting aside the politics of crime in favor of sound policy in the area of juvenile justice, until this bill. Three years ago, we passed a bipartisan juvenile crime prevention and bipartisan juvenile early intervention bill. These bills were based on the advice of judges, administrators, researchers, advocates, and law enforcement officials, representing the entire political spectrum. They all said the same thing, that the best way to reduce and prevent juvenile crime and ultimately adult crime is through prevention and early intervention programs geared at at-risk youth. None of them said that we need more mandatory minimum sentences nor that we need to treat more juveniles as adults.

Both bills passed virtually unanimously in both the House and the Senate, and yet the funding in these bills has been cut in half since they passed, including the gang resistance funding, and now we wonder why we have increases in gang violence after we've cut all the funds to prevent it. We must get back to the bipartisan, evidence-based, universally agreed-upon approach to preventing juvenile crime and gang violence and abandon the sound bite-based, politically-charged approaches which cost billions of dollars and actually increased crime and violence.

Thank you, Mr. Chairman.

Mr. FORBES. Thank you, Congressman Scott.

Now, I would like to recognize Mr. Conyers of Michigan for an opening statement.

Mr. CONYERS. Thank you, Mr. Chairman. I appreciate this opportunity and note that this is your bill that we're hearing here today, right?

Mr. FORBES. Yes, sir, Mr. Chairman.

Mr. CONYERS. Yes, sir. Thank you, sir.

Well, obviously, there are two schools of thought in criminal justice. One is that mandatory minimums have not been discredited and the other is that mandatory minimums sentencing, where they have been studied extensively, have been proven to be ineffective in preventing crime, proven to distort the sentencing process and proven to be a considerable waste of taxpayers' money.

And so I'm asking at least three of the witnesses who may feel inclined to respond to this part of my observation, something's gone wrong in America. What we do is incarcerate more people for longer periods of time than anybody else in the world, 14 times that of Japan, eight times the rate of France, six times the rate of Canada. $40 billion to go into imprisoned offenders who could be

at Yale University, where I'm going to be Friday, at less cost and I'm sure a greater benefit to them.

So in a way, the die has been cast. Those who still believe in locking them up and throwing away the key in the face of any evidence to the contrary are going to advocate the ideas that are found in the measure that is being examined before us today. The costs keep going through the roof, and I'm struck by the fact that now, in our State and Federal prisons, a tenth of all of those incarcerated are serving life terms. In New York and California, it's really almost 20 percent of those incarcerated are serving life terms.

It seems to me that we're neglecting what the gentleman from Virginia, Mr. Scott, has pleaded in his opening statement. What about prevention? Is prevention so minimized that it doesn't require us to give it any consideration here and that we come up with a bill that is hugely distorted one way?

We lost, and tomorrow he will be memorialized, the late Johnny Cochran, perhaps the most widely known trial lawyer in this country at this moment. The interesting thing about Johnny Cochran is that he was once a prosecuting attorney. In L.A. he had the job of prosecution. He later became a defense attorney. I had the privilege of having him before this Committee many times.

So we'll be comparing your comments—and I urge that you stretch for reasonableness and thoroughness. Is there something about advocating mandatory minimums that would lead you not to want to do that? I hope that you will.

I thank you, Mr. Chairman, and return the time.

Mr. FORBES. Thank you, Mr. Conyers.

Before I swear in the witnesses, I'd like to also introduce a Member of the full Committee but not a Member of the Subcommittee, Mr. Adam Schiff, who has done a lot of work in the gang area both before he got to Congress and also here, and we are glad to have him with us this afternoon.

Mr. CONYERS. Mr. Chairman, might I inquire, Mr. Schiff is a former U.S. Attorney, and I would ask for your consideration of unanimous consent that he be permitted to make a few brief remarks.

Mr. FORBES. Mr. Conyers, I'd love to do that, except as you know, I'm a substitute Chairman. I'm not the full Chairman. And the rules that I was given under which Mr. Schiff was allowed to sit here was that he could be a part of the Subcommittee, but that the rules of the Committee were that if you're not a Member of the Subcommittee, you cannot address questions. They have to come through the Members. And I'd love to do it, but they're not the marching orders that I've been given, so Adam, I'm sure you'll be able to say whatever you want at the full Committee meeting when we go at that particular point in time.

So it's the practice of the Subcommittee to swear in all witnesses appearing before it, and I'd, at this time, ask the witnesses if you would please stand and raise your right hand.

Do each of you solemnly swear that the testimony you are about to give this Subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. FITZGERALD. I do.

Mr. LOGLI. I do.

Ms. GUESS. I do.

Mr. SHEPHERD. I do.

Mr. FORBES. Let the record show that each of the witnesses answered in the affirmative, and please be seated.

We have with us today four distinguished witnesses. Our first witness is Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois. As U.S. Attorney, Mr. Fitzgerald serves as the District's top Federal law enforcement official. He manages a staff of approximately 300 people, including 149 Assistant U.S. Attorneys who handle civil litigation, criminal investigations, prosecutions involving public corruption, white collar fraud, narcotics trafficking, violent crime, money laundering, and other matters. Prior to this position, Mr. Fitzgerald served as an Assistant U.S. Attorney in the United States Attorney's Office for the Southern District of New York, where he participated in the prosecution of *United States* v. *Osama bin Laden and others.* He is also a recipient of the Attorney General's Award for Distinguished Service in 2002. Mr. Fitzgerald is a graduate of Amherst College and Harvard Law School.

Our second witness is Paul A. Logli, President Elect of the National District Attorneys Association. Mr. Logli is currently serving as an elected State Attorney in Winnebago County, Illinois, where he also serves as Vice President of the Winnebago County Bar Association. Previously, he served as an Associate Judge for the 17th Judicial Circuit in Illinois. Additionally, he is a faculty member of the National College of District Attorneys and Northwestern University's Center for Public Safety. Mr. Logli previously served as a member of the Governor's Commission on Gangs in Illinois. He is a graduate of Loras College and the University of Illinois College of Law.

Our third witness is Michelle Guess. Ms. Guess is the mother of nine children and lives in Maryland. Three years ago, she moved with her late husband to Maryland from Philadelphia in order to escape the crime and gang-infested neighborhood of Philadelphia in which they lived. Ms. Guess and her family suffered firsthand a horrible tragedy when her husband was murdered by a gang member in Maryland. Ms. Guess works now as a single mom supporting her nine children in the home restoration business. She is also an advocate for law enforcement and community efforts to eliminate gangs and the threats they pose to our children and communities.

Our final witness is Mr. Robert E. Shepherd, Jr., Professor Emeritus of Law at the University of Richmond. For his introduction, I turn to the distinguished gentleman from Virginia, Mr. Scott, to make a few remarks. Bobby?

Mr. SCOTT. Thank you, Mr. Chairman. I appreciate you giving me the opportunity to introduce Professor Shepherd. I've known him a long time and we've worked on a number of issues going back to my days in the Virginia General Assembly.

Professor Shepherd received his B.A. and L.L.B. at Washington and Lee University. He served in the JAG Corps from 1962 to 1964 and was in private practice of law in Richmond from 1964 to 1971. He was an Assistant Attorney General from 1971 to 1975, an Associate Professor of Law and Director of the Juvenile Court Clinic at

the University of Richmond from 1975 to 1978, and a full professor from 1978 to 2001, directing the Youth Advocacy Clinic from 1978 to 1990. He is presently Emeritus Professor of Law at the University of Richmond.

He has served in leadership positions in juvenile justice issues with the Virginia Bar Association, the American Bar Association, the National Center for Juvenile Justice, the Virginia Commission on Youth, and the Federal Advisory Committee on Juvenile Justice. Let me just—he's received all kinds of awards. We'd be here all day if I were to list them all, but let me just say that he is the number one recognized leader in juvenile justice policy in the Commonwealth of Virginia, and we are welcomed and honored to have him here today.

Mr. FORBES. Thank you, Mr. Scott, and I thank all the witnesses for being here.

I also want to recognize two Members that have joined us, Representative Lungren from California and Representative Feeney from Florida and we are glad to have them with us.

And now, I'd like to recognize Mr. Fitzgerald for 5 minutes. And, as you know, based on the little indicators in front of you, you'll get a warning light when you've got about a minute left, and then the red light goes on. If you could try to wrap it up after that time, as close as you can, we'd appreciate it.

Mr. Fitzgerald, thank you for being here.

TESTIMONY OF PATRICK J. FITZGERALD, UNITED STATES ATTORNEY, NORTHERN DISTRICT OF ILLINOIS, U.S. DEPARTMENT OF JUSTICE

Mr. FITZGERALD. Thank you, Congressman Forbes, Ranking Member Scott, the Members of the Subcommittee and the Committee.

To give you a sense of the scope of the gang problem in Chicago, it's estimated that there are approximately 70,000 to 100,000 gang members in Chicago. That compares with a police force of roughly 13,000 police officers. So a multiple size of the Chicago Police Department would give you an approximation of the size of the gang problem in Chicago.

Two examples bring it home to me. In 1995, a list was seized by the FBI from a Gangster Disciples. The list was a list of the number of workers who sold drugs in Chicago. The Gangster Disciples were highly organized. They had a board of directors for inside prison, a board of directors for outside prison. Under the directors, they had governors. Under the governors, they had regents, and the lowest level was soldiers. This list of people selling drugs was 39 pages long and had 7,700 members on it. So this Gangster Disciples drug organization was larger than half the size of the Chicago Police Department.

The other thing to bear in mind about gangs, another example is the Black Disciples, who we recently arrested in 2004. They took over a housing project, and I mean that very literally. They put up a fence, an iron fence around the project. They put barriers to block people from entering. They frisked everyone who came into the building to make sure that they weren't wearing bulletproof vests and therefore might be police. They put snipers on the roof. The

snipers on the roof had night vision goggles and had police scanners. And basically, they took over a building.

At one point, we obtained probable cause to obtain search warrants for 47 of 134 apartments in that public building. That meant that more than one-third of that building could be searched because there was reason to believe that there were drugs or drug proceeds there. When we think about that building, we think not of the third of the apartments that were occupied by people dealing drugs, but the two-thirds of the apartments where the people lived there were basically imprisoned—a fence around their building, snipers on the roof, night vision goggles, and being frisked if they wanted to go into their home.

The Black Disciples also took over a Christian radio station and pirated it so that someone listening to the radio station driving through the neighborhood would hear gang messages broadcast over the radio as to law enforcement activity.

When we arrested the Gangster Disciples last year, we arrested 47 members, the highest ranks in the Black Disciples, and followed 2 weeks later, by the arrest of the Mafia Insane Vice Lords, who operated 47 separate open air drug markets in Chicago. At the same time we charged the 48 Federal defendants in the Mafia Insane Vice Lords, 57 defendants were charged with the State. I think that gives you a sense of what we are talking about when you think about gangs that almost rival the size of a police department and effectively take occupied territory, which is federally-funded public housing projects in Chicago, and make them off limits and effectively jail the people who are not committing crimes.

Let me tell you about the Chicago approach. The first approach has been to focus on Project Safe Neighborhoods, which my colleague, Paul Logli, will talk some about, which is to jointly have ATF, CPD, and the State's Attorney's Offices work on guns. We next take gang strategy teams, which use the local police departments, which have the best intelligence as to where the gang problems are, to tell us where the most violent and dangerous offenders are in the areas and form a joint Federal-local strategy to attack those targets.

In the four most crime-ridden areas in Chicago, there are monthly meetings involving Federal, State, and local officials, and from that, a "Top 20" list is formed in Chicago where we sit down with the Chicago Police Department, the Federal law enforcement agencies, and make sure we go after the 20 most dangerous and most violent gangs in Chicago, and already in 1 year, we have arrested and detained ten of the top 20 targets.

There is also another aspect of it which involves marketing deterrence. We, too, believe we would rather have people not commit crimes than incarcerate them, and one of the things we do is send letters from Project Safe Neighborhoods to each felon who is released in the State of Illinois. Every single one receives a personalized letter that lets them know that the Federal Government is watching, that they face heavy penalties should they pick up a gun.

Secondly, we conduct parolee forums in the four most dangerous areas inside Chicago. Thirty parolees at a time are brought to a forum. They're randomly selected. They have no choice but to go. And they face a carrot and stick approach. They meet people from

the U.S. Attorney's Office, from the State's Attorney's Office, from the Federal law enforcement and local police agencies who let them know the heavy penalties they are facing if they mess up and carry a gun and commit a crime. At the same time, in the same meeting, they meet people who offer detox counseling, job training, employment, education. At the end, they're told, you have a choice. You can meet with the law enforcement again and go to jail for a long time, or we can try something different.

And we found some remarkable results to date in two of the districts where the recidivism rate was 23 percent with people who didn't attend the forums. It's 4 percent for those who do. For gun offenses, it goes from 3 percent to 1 percent. In two other districts, the numbers are even better.

In addition to that, we're focusing on juvenile education in the hot zones, where each of the children going to junior high school are put through an 8-week program to educate them about the dangers of drugs, and with that, I'll just end by noting that the homicide rate in Chicago has paid dividends. It was 666 in 2001. Just a few years later, 2003, it was under 599, which was the first time it went under 600 since I was 7 years old. And a year later, the homicide rate dropped—I'm sorry?

Mr. SCOTT. What are those numbers?

Mr. FITZGERALD. In 2001, there were 666 homicides. In 2003, there were 599, which was the first time in 36 years it went under 600. And last year, in 2004, it went past 500 all the way down to 448, which was a 25 percent drop in a single year. So it's gone from 666 to 448 in 3 years.

And with that, I would simply say that it's not a problem that's limited to Chicago. Gangs are a problem that affect various regions of the country, and we seek to work together to do our best to take down the rate of violence as a result of gangs. Thank you.

Mr. FORBES. Thank you, Mr. Fitzgerald.

[The prepared statement of Mr. Fitzgerald follows:]

PREPARED STATEMENT OF PATRICK J. FITZGERALD

Chairman Coble, Ranking Member Scott, and Members of the Subcommittee, I am Patrick Fitzgerald, the United States Attorney for the Northern District of Illinois. It is an honor to appear before you today to discuss the terrible problem of gangs that grips the nation's third largest city, Chicago, as well as other areas in our nation, and to discuss how the Department of Justice is partnering with other law enforcement and the community to address this problem.

THE NATURE OF THE PROBLEM

It is easy to underestimate the grip that gangs have on some or our cities. But the sad reality is that their grip on urban life is lethal. First, the sheer number of gang members is staggering. In Chicago alone, there are estimated to be 70,000 to 100,000 gang members—compared with about 13,000 Chicago police officers. Several "super gangs" dominate: the Gangster Disciples, the Black Disciples, the Vice Lords, the Black P Stones, the Mickey Cobras, the Latin Kings, the Spanish Cobras, the Maniac Latin Disciples, and the Satan Disciples. Each of these gangs controls large amounts of territory, engages in large-scale drug trafficking, and uses gun violence to control its territory and drug trade.

One may get a rough sense of the magnitude of the gang problem by looking at the Gangster Disciples (GD's). The GD's have been the target of a series of cases brought by the United States Attorney's Office in Chicago beginning in the mid-1990's and continuing to today. Over two hundred high ranking members, including its chairman, have been convicted, with many receiving life sentences. The undis-

puted leader of the gang was Larry Hoover, who is serving a life sentence after a federal conviction.

Under Hoover, the GD's had a very sophisticated structure and hierarchy. There were two Boards of Directors: one for gang members in prison and one for those outside. (The existence of a separate board in prison speaks powerfully both to the control that gangs can exert even within a prison and to the fact that gang members anticipate incarceration, but are not deterred by it.) Serving under the out-of-prison Board of Directors were 14 "governors." Each governor had a geographic area assigned to him, and in turn, between 5 to 16 "regents" who were assigned a smaller geographic area within his governor's area. Then, under the regents were "coordinators," who controlled even smaller geographic areas within a regent's area; and finally, the "soldiers." Other ranks included the Chief of Security, who was responsible for obtaining firearms for the soldiers and making sure that armed soldiers guarded each drug selling location, to protect against both rival gangs and the police.

This sophisticated hierarchy was used to sell drugs and control drug trafficking. Each soldier participated in the sale of illegal drugs and was required to pay a portion of his profits to the gang's leadership. In return, the gang provided its members with a source for illegal drugs; assured the members of a monopoly in drug sales in GD-controlled territory; provided bail, attorney fees, and commissary money for arrested or jailed members; and used gang discipline to prevent arrested members from cooperating with law enforcement. Under the gang's rules, cooperation with law enforcement was punishable by death.

In 1995, FBI agents recovered in a search a computer-generated organizational chart for the GD's. The chart went on for 39 pages. It listed all governors and regents by street name and the number of soldiers who were "on count" to each regent and therefore reporting to the gang's hierarchy. Each of the governors and many of the regents have been convicted. There were over 7,700 soldiers. Thus, the GD's alone were half as big as the Chicago Police Department.

The GDs also had a political action committee which contributed to favored political candidates and, on occasion, sponsored its own political candidates—they achieved genuine political access and influence.

There should be no mistake that gangs are violent. It is conservatively estimated that 60% of the 448 homicides in Chicago in 2004 were gang-related. In any given year, gangs in Chicago are responsible for far more murders than traditional organized crime in Chicago (known as the "Outfit") has committed over the course of decades. And if raw violence is not enough, the gang problem poses unique threats of corruption. The gangs that control drug trafficking in Chicago have at times corrupted police and other law enforcement—some members actually have become police officers and corrections officers. Those gang members who corrupt law enforcement undo the hard and honest work of the overwhelming majority of law enforcement officers.

Perhaps a better way to measure the harm gangs cause is to appreciate what one gang did to a housing project in Chicago—and people who tried to live there. The Black Disciples (BD's) a violent, well-organized street gang, controlled buildings at certain public housing projects. They actually put an iron fence around the buildings, barricading the rear alley entrance, posted snipers on the roof, and used police scanners and night-vision goggles to monitor police activity. Persons entering the building were searched to make sure that they were not law enforcement. Drug sellers wore ski-masks to prevent being identified by undercover officers. At one point, law enforcement obtained probable cause to search 47 of 134 occupied apartments in the project building, and many other apartments were searched with the consent of the tenants and housing authority. I recall being struck that at the very time that American military forces fought valiantly to establish a presence in Tora Bora, Afghanistan, a public housing project in the city of Chicago was largely off limits because it was occupied by a gang. The non-gang members were effectively jailed by the gang.

A near fatal example of the lengths the BDs went to protect their drug selling occurred in May 2001. An undercover Chicago Police Officer approached a public housing building controlled by the BDs for drug selling purposes. A BD member protecting the drug operation began to search the officer and felt his safety vest. The BD pulled a gun, fought with the officer, then shot the officer twice in the back. Miraculously, one of the bullets lodged in the officer's vest, but the other shot hit him, resulting in extensive medical treatment.

The BD gang even operated a pirate radio station to broadcast information relating to gang activities—using a frequency belonging to a Christian radio station. One defendant paid Donnell Jehan, one of the BD "kings" and a federal fugitive, $80,000 per month for the heroin franchise at one of the public housing buildings.

WHAT LAW ENFORCEMENT IS DOING: THE CHICAGO EXAMPLE

The Chicago story is not one without hope. Law enforcement in Chicago—federal, state, and local—recognized the severity of the problem and has fought back. We are making strides, though there is much more to do.

PROJECT SAFE NEIGHBORHOODS IN CHICAGO

The first step was to focus on guns as part of Project Safe Neighborhoods (PSN), a national enforcement program, discussed further below, whose greatest strength is that it is adapted to the needs of each individual district. Through PSN in Chicago, we have substantially increased federal prosecution of convicted felons caught carrying a gun and have placed a special emphasis on areas of high violence and on offenders who are gang members. There is an unprecedented partnership between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Chicago Police Department (CPD), the U.S. Attorney's Office, the Cook County State's Attorney's Office, the Illinois Department of Corrections, and local grass roots organizations serving their communities. Whenever a convicted felon with a gun is arrested by Chicago police in targeted police districts, state and federal prosecutors and ATF agents sit down together and decide in which court to prosecute cases. We tap every federal and local law enforcement agency that has relevant knowledge in order to coordinate our attacks on the gangs to which the offenders belong.

The second step was to organize ourselves to address the gang problem. In my own office, we reorganized to recognize the reality that gangs are the drug distribution network for the Chicago area. The Narcotics and Gang section is split in half between prosecutors investigating national and international narcotics rings and those prosecuting the gangs dealing drugs in the Chicago area. We have found that the wiretaps on the gangs have led to wiretaps on members of Mexican cartels who use the gangs to distribute their drugs, and that the wiretaps on international drug traffickers regularly lead to their street gangs who control the wholesale and resale distribution of their drugs in the region. Similarly, ATF, FBI, and DEA have dedicated squads to combat gangs and the Chicago Police Department has formed a gang intelligence section. ATF alone has dedicated two full-time groups that focus exclusively on long term investigations of gangs in Chicago. Working side-by-side with the Chicago Police Department officers assigned to these groups, they utilize a variety of investigative techniques to pursue RICO and complex conspiracy cases.

GANG STRATEGY TEAMS

A third step was the formation of neighborhood-based Gang Strategy Teams made up of all the law enforcement units—state and federal—that investigate and prosecute gangs. Their mandate is to share more gang intelligence on a regular basis, make greater use of technology, and make coordinated, strategic decisions about how and where to use our limited resources. Law enforcement partners who might otherwise be tempted to compete instead put some of their crown jewels—key informants—on the table to share in this battle.

Once a month, gang experts from CPD and each of the federal agencies meet at the headquarters of the four gang-plagued police regions (called "Areas") in Chicago to build a consensus about the top gang targets in each Area, based on shared, filtered intelligence, and to strategize about how to attack these targets (including what resources are available to do so). Each Area has a separate Gang Strategy Team. Since one of the primary goals of the Teams is to establish trust and relationships so that the maximum amount of intelligence is shared, each agency typically has the same participants come to each monthly meeting for a particular Area. Our office has assigned two Assistant United States Attorneys in the Gang Unit to each Area, and we work closely with the Cook County State's Attorney's office. There is also an analyst from HIDTA (High Intensity Drug Trafficking Area) assigned to each Team. The analysts work with CPD analysts to map the gang territories, to do research on the top gang targets, and to look for connections to other gang investigations.

The Gang Strategy Team's consensus on top gang targets usually takes the form of a "Top 10 Gang Target" list, showing the worst gang leaders in the Area, along with a determination as to the top 3 organizational gang threats in the Area. If individuals on the Top-10 list or gangs in the top 3 threat list are not being investigated by anyone, the Team discusses which of the agencies at the table can begin investigating the target. An investigation usually begins with CPD dedicating a team to gather additional intelligence. The Team discusses whether the target can be taken down by a simple investigation (*e.g.,* an ATF or CPD confidential informant can buy guns or drugs from the target, who would qualify for a mandatory minimum sen-

tence under federal drug or firearms laws), or whether a more sophisticated investigation is required (e.g., the organization is sophisticated and a wiretap is probably necessary). The top targets from the Gang Strategy Teams serve as a type of "minor league" for the citywide "Top Twenty Gang Target," discussed next.

THE TOP TWENTY LIST

A fourth step was the creation roughly one year ago of a "Top Twenty" list of violent gang offenders. In January 2004, the U.S. Attorney's Office, FBI-Chicago, DEA-Chicago, ATF-Chicago, IRS-Chicago, the Cook County State's Attorney's Office, and CPD formed a "Top 20 Gang Target" list for Chicago. The list was based on a consensus from the Gang Strategy Teams and the various agencies as to the worst gang leaders in Chicago. The group meets once a month to discuss the investigations against the top 20 targets. Each of the federal agencies takes turns taking responsibility for the federal part of a joint investigation into each target. At times, there are cases in state court that can be adopted and proved in federal court which will incapacitate that gang member for a long stretch of incarceration. Other times we must start from scratch and develop a case based upon informants, undercover officers, and wiretaps.

The Top Twenty Gang Target list and the regular meetings around it have proven very helpful in several respects. They help to focus everyone's efforts on the worst gang leaders. They add urgency and purpose to investigations because of the acknowledged importance of the targets and the attention paid to the investigations. And they foster an atmosphere of cooperation and partnership among all the agencies that work on attacking gangs—an invaluable resource when problems or disputes arise in gang-related investigations. Since the list started a little more than one year ago, 10 of the top targets have been charged federally and detained (including the heads of the Black Disciples and the Mafia Insane Vice Lords, two investigations discussed below). The tenth was detained last week. They are then removed from the list. When a target is removed, the group votes on a replacement based on shared intelligence as to the top gang leaders.

MARKETING DETERRENCE

An equally important part of our strategy for ending the violence caused by street gangs is to focus directly on our ultimate goal, which is not merely sending people to jail but deterring young men from joining gangs and carrying guns. For many gang members, their affiliation draws attention that passes for respect on the street. We are letting them know that being in a gang will get attention in the police station and the federal courthouse and, then, far less attention in a federal prison in a state far away from their gang. If the word spreads that we are targeting gang members on parole who carry guns in the neighborhoods where people fear going out at night, we can make a difference in the futures of these neighborhoods.

To that end, the Illinois Department of Corrections mails personalized letters to every parolee in the state upon their release from prison, advising them that they are being watched, and if arrested with a gun that they face strict federal sentences. Additionally, the Chicago Police Department's community service arm, Community Alternative Police Strategy (CAPS), has placed thousands of posters in targeted neighborhoods warning felons: "Don't Let This Happen To You!" In stark terms, the posters provide details about specific felons from their neighborhoods who were caught carrying guns and are now serving long federal prison sentences. Our PSN team has placed ads on billboards and buses. Indeed, we have undercover recordings of gang members discussing the ads—genuinely wrestling with the risks they face by carrying guns. Given that gang members live in an environment in which their instinct is to fear walking the streets without a gun, we are successful when they start thinking of a gun as risk, not safety.

In addition, in four designated police districts, the PSN partners regularly conduct "parolee forums." Some 30 felons at a time, each convicted of a gun crime and recently paroled into these districts, sit at the same table with law enforcement representatives and community leaders. For many of these parolees, when they leave prison, they return to the only things that they know—their neighborhoods, their gangs, their drug dealing. But at the parolee forums, they are presented with a straightforward message that they have a choice in life: They can return to the gun-toting criminal life, or they can turn to a constructive, non-criminal life. They hear from the law enforcement community—the local police, state prosecutors, federal agents, and federal prosecutors—who explain that we are focusing on felons with guns, and that they face a lengthy sentence in a federal prison if they pick up a gun. And they are given examples of PSN defendants in their neighborhoods who are serving lengthy sentences. Not infrequently, there are loud groans when they

hear of a neighborhood felon serving 20 years in a federal prison in Kansas for the crime of possessing a gun. The idea of law enforcement telling each person directly that if he returns to that way of life, the whole law enforcement community will be watching is a direct and difficult message.

At the same time, they hear community leaders speak about ex-offender job programs, educational opportunities, and substance abuse programs that are available to them. They also hear from a convicted felon, someone who has stood in their shoes, who reiterates the message that felons can succeed in turning their lives around, showing them by his example that success is an option. These presentations are often met with keen interest and follow-up questions from the parolees about who they should call and what they should do.

A final, but important, part of our PSN program in Chicago has been the involvement of researchers from the University of Chicago and Columbia University, who are studying the program's effectiveness. Law enforcement policies often are driven more by instinct and experience than rigorous, statistically-based analysis. Because the stakes in combating gang and drug violence are literally lives and neighborhoods, we want to know everything we can about the effectiveness of our efforts so that we can understand which strategies work and which do not, and then adapt our tactics to use our limited resources as effectively as possible. The researchers brief the PSN partners regularly on their statistical analyses of homicide, gun violence, and recidivism rates in the targeted PSN neighborhoods.

One startling result of the research to date concerns the effectiveness of the parolee forums. The persons who are summoned to attend the forums are randomly selected from the group of felons paroled into the districts, and they all attend. Yet, when comparing the recidivism rates of felons attending the forums with those who do not, the results so far are staggering: 23% of those released between 2001 and 2004 who did not attend the forums were convicted of another crime, while only 4% of those who attended the forums were convicted. The rate of recidivism was thus less than a fifth of what it would have been. As to recidivism rates for gun crimes, the numbers are as follows: 3% of those who did not attend the forums were convicted of another gun crime, while fewer than 1% of those who attended the forums were convicted. The rate of gun crime recidivism was thus less than one third of what it otherwise would have been. The key to the forums is the synergy between the "stick" of citing specific examples to the felons of persons who have been prosecuted for firearms offenses and offering the "carrots" of alternatives to a life of crime. We recently recorded a gang member in jail speaking to a gang member outside jail about the crackdown on gang members and guns in Chicago; both gang members agreed that the bottom line was that the member outside of jail needed to go get a job.

We have learned that gang involvement begins at an early age and the more work we can do with the juveniles in our community to intervene when they make poor choices, the more likely we are in successfully preventing their involvement in gangs. As such, we have started a comprehensive juvenile education program in our "hot zones" where literally every junior high and high school student participates in an eight-week program designed to increase their awareness about the risks of gang involvement, encourage independent decision-making, and enhance one's self image in order to increase the likelihood that they will reject the lure of the gangs.

If one of the juveniles makes that first bad judgment call, we have partnered with the Chicago Police Department and the Juvenile Justice System in Chicago to create a program that will replace "station adjustments" for first-time offenders who commit violent or gang-like crimes. Rather than allowing them to slip through the cracks with a slap on the wrist, a behavior that later escalates into more egregious offenses, we have implemented a program in the new Juvenile Intervention and Assessment Center that will require that each juvenile who commits an offense indicative of violence or gang involvement to enter a 90-day program designed to come down hard on the first offense and enlighten the juvenile regarding the harmful impact that his or her decision will have not only on his own life but on the lives of his family and community. Each juvenile must sign a contract of commitment to the anti-violence program that includes private counseling groups, public participation in anti-gang presentations at schools, and acknowledgment of the harm that they have inflicted upon their victims. Failure to successfully complete the program results in prosecution in the Juvenile Court System.

For adult offenders who may have committed their first gun offense and have received a sentence of merely probation, we have also expanded our parolee forums to probationers. Here the probationers hear the same message as the parolees: "if you pick up a gun, you will be prosecuted." But again, we offer them opportunity for development. Our commitment to combating the problem at the earliest glimpse of potential gang involvement and escalating our attack as gang behavior increases

reflects our commitment not simply to incarcerate those who offend but to actually decrease the number of offenders.

In talking about the effect law enforcement is having, let me return to discuss the reign of terror at the public housing buildings occupied by the Black Disciples. That reign ended in spring 2004 with a 47-defendant takedown, that included the arrest of the gang's entire top leadership. The case was jointly investigated by the FBI, CPD, and IRS. Our office worked closely with the Cook County State's Attorney's Office on the investigation and prosecutions, with an Assistant State's Attorney being designated as a SAUSA for the investigation and cases.

Less than two weeks later, we also charged the Mafia Insane Vice Lords (MIVLs) street gang, one of the three most powerful factions of the Vice Lords street gang. The MIVLs controlled 47 open-air drug markets on the west side of Chicago, selling primarily heroin but also powder and crack cocaine. Each drug spot earned $5–8,000 per day. A total of 48 defendants were charged in the federal case, including the "King" of the gang, Troy Martin, and most of the remaining top leadership. An additional 57 defendants were charged by the state at the same time in closely coordinated prosecutions. This case was investigated by DEA, CPD, and IRS.

THE EFFECT ON THE HOMICIDE RATE

One of the best measures of the work being done in Chicago to attack gangs, guns, and drugs—the homicide rate—shows very positive results: in 2001, there were 666 homicides in Chicago. Two years later, in 2003, there were 599 homicides, the first time in 36 years that there were fewer than 600 murders in Chicago. A year later, in 2004, there were 448 murders in Chicago a staggering 25% drop in one year, though as noted, 60% of these were gang-related. After taking nearly four decades to break the 600 mark, it took one more year to reduce homicides to well below 500. And thus far in 2005, homicide numbers have decreased another 25%. Something is clearly working. But law enforcement in Chicago is not satisfied: gangs and guns still pose a lethal threat to Chicago and most starkly to the honest people who live in the neighborhoods where gang members vastly outnumber police and who are the real victims of gang violence.

On that note, the fight against gang violence in Chicago has not been a partisan effort. Persons of different party, ethnic, and governmental backgrounds have been setting aside parochial interests to address this problem. Our city and its law-abiding residents are safer for that.

THE DEPARTMENT OF JUSTICE'S RESPONSE TO GANGS

Chicago is not alone in taking on the problem of gangs. I know from my colleague United States Attorneys that gangs threaten many other cities and many other districts and that nationwide, the gang problem is growing. Accordingly, federal, state, and local law enforcement have been teaming up with community partners to take action in the way that best suits each district. The Department of Justice (DOJ) is taking notice of the threat posed by gangs and by encouraging these collaborative efforts.

DOJ is constructing a national infrastructure that will continue to enable reductions in violent crime. In October 2004, the Deputy Attorney General established the Subcommittee on Violent Crime and Gangs of the Department's Strategic Management Council to ensure that DOJ is fully coordinating its efforts to fight violent crime and gangs. The Subcommittee consists of heads of key offices within DOJ, as well as each of its component law enforcement agencies. Just last month, at the direction of the Attorney General, a symposium on gangs was held at the Department of Justice attended by United States Attorneys, officials from ATF, DEA, the Marshals Service, FBI, the Bureau of Prisons and, most importantly, police chiefs and sheriffs from different cities around the country plagued with gang problems. In preparation for that conference, I had an opportunity to review materials submitted by those various districts and was struck by the extent to which areas not commonly associated with gangs—such as Phoenix and Northern Virginia—are experiencing the gang problem, normally associated with Los Angeles, Chicago, and other large cities. At the symposium, best practices were shared, and the gathered officials discussed what worked and what did not work in different regions of the country.

Two things were clear from the symposium: the gang problem is affecting many different regions of the country and there is no one way to do it right that applies to every district. Fighting the Black Disciples in Chicago is different than dealing with the Hells Angels and the Outlaws motorcycle gangs in Arizona, the Bloods and Crips in Los Angeles, or the MS–13 in Northern Virginia. One constant that did emerge is the need for good intelligence and teamwork between federal, state, and local partners.

No single initiative, no single investigative technique, no single statute, and no single preventative measure will always be the most effective. Therefore, the Department is taking a multi-disciplined approach that allows each component agency to utilize the investigative strategies and statutes to which a particular criminal organization is vulnerable, as adapted for the local conditions in the relevant district.

As a first step, the Subcommittee amassed a comprehensive catalogue of DOJ's gang initiatives and enforcement efforts throughout the country, so that the Department can ensure that all of those efforts are operating in a coordinated, consolidated, and integrated fashion. The Department recognizes the need to partner with state and local law enforcement and prosecutors, as well as with community organizations and leaders. State and local law enforcement officers, and the communities they serve, will always be the first to detect when gangs take root and when gang violence threatens the safety of a neighborhood. The U.S. Attorney's Office (USAO) in each judicial district is frequently the conduit to facilitate different agencies coming together, coordinating their enforcement efforts by attacking the gang problem from different sides, allowing each agency to use its investigative expertise and legal authority to leverage the gang's vulnerabilities to various statutes: firearms, narcotics, fugitive, and immigration violations.

Project Safe Neighborhoods (PSN) is a great example of the Department's success in partnering with state and local law enforcement, prosecutors, and community organizations. PSN was based upon the concept of creating a task force in each judicial district that focused on identifying the unique violent crime problems of that region and then directing the available law enforcement and community resources toward eradicating those problems through a data-driven strategic plan. The PSN task force coordinates strategy and resources to focus on 1) dismantling violent organizations, 2) stopping illegal gun traffickers, and 3) enforcing the law against prohibited persons possessing firearms. PSN, from its inception, recognized that violent criminal organizations, such as gangs, are frequently the most disruptive force in many neighborhoods, and that responses to gangs among various law enforcement agencies need to be coordinated and proactive.

The PSN strategy used by a number of districts to reduce gang violence is to identify and prosecute the gang members who pose the greatest threat to the community. In some districts, the strategy involves prosecutions of the individual gang member on firearms and drug charges. Other districts use the PSN infrastructure to focus on the entire street gang, bringing Racketeer Influenced Corrupt Organization (RICO) Act and drug conspiracy charges. The PSN Task Forces regularly apprize the Department's leadership of their activities. In July 2004, 54 of the teams considered gangs to be one of the key elements of their gun violence problem, 25 considered gangs to be one of the two most important elements of the problem, and 37 reported a focus on gangs and criminal organizations. PSN has served as a catalyst to develop localized strategies through the vigorous enforcement of existing firearms laws.

During the spring of 2004, the Department of Justice identified 15 cities where homicide rates remained at unacceptable levels. ATF responded with the creation of a Violent Crime Impact Team (VCIT) concept, customized to mitigate the causes of each city's entrenched level of violence. In the majority of the cities, gangs were identified as a key component of the communities' violence problems. ATF leads these teams, joined by other DOJ components. The U.S. Marshals Service's participation allows these teams to leverage the fugitive status of gang members. The DEA's participation allows the teams to capitalize on the DEA's investigative expertise and statutory authority when investigating gangs whose primary focus in drug distribution.

The VCIT concept was modeled on the collaborative successes of PSN through the efforts of ATF and other federal, state, and local law enforcement, with additional resources redirected from across the United States. The VCITs target specific individuals and specific locations for law enforcement operations, empowered through use of technologies, such as the National Integrated Ballistic Identification Network (NIBIN)—an ATF championed initiative, which matches shell cases from unsolved shootings—and crime mapping from synthesized firearms trace results. The use of additional resources and new technologies are producing results: during the six-month pilot period of operation, VCITs have recovered more than 3,000 firearms and arrested more than 500 of the 900 identified as serious offenders. Collateral to these focused efforts have been the seizure of over $2 million, the arrest of more than 2,500 other offenders, and the apprehension of nearly 400 felony fugitives.

Based on preliminary results, the VCIT pilot program may be contributing to a decrease in homicides. Firearms homicides in the targeted areas dropped in 11 of the 15 cities when compared to the same six-month period the prior year. And in total, overall homicides with firearms for targeted areas in all fifteen cities dropped

to 9%. In specific cities, the results in targeted areas were even more dramatic: 77% drop in Greensboro; 67% drop in Chattanooga; 61% drop in Pittsburgh; 59% drop in Tulsa; 50% drop in Albuquerque; and 46% drop in Tampa.

As a result of the success of the six-month pilot program, the VCIT program has been expanded and is now employed in a total of 20 cities. ATF participates in task forces nation-wide that investigate gangs as their primary focus, as well as those ATF groups dedicated exclusively to gang investigations.

Firearms trafficking, the illegal diversion of firearms out of lawful commerce and into the hands of prohibited persons (such as convicted felons, drug dealers, and juvenile gang members), is often the method by which gangs arm themselves. By using "straw purchasers," who are individuals not prohibited from legally purchasing weapons, gang members acquire firearms from federally licensed dealers. ATF's firearms trafficking investigation efforts prevent gang violence by investigating and prosecuting individuals who are illegally supplying firearms to the criminal gang organizations committing firearms-related crimes.

The Safe Streets Violent Crimes Initiative (SSVCI) is another collaborative drive to combat gangs. Initiated in 1992, it is a FBI-sponsored, long-term, proactive task force program focused on investigation of gangs acting as criminal enterprises crossing state and international borders. The SSVCI encompasses 144 Safe Streets Task Forces (SSTFs) across the nation charged with bringing the resources of all participating agencies, federal and local, to bear on the respective area's violent crime and gang problems. While local and state law enforcement can obtain assistance in making an arrest across state lines, the FBI has the ability to instantaneously cover a lead anywhere in the country. SSTFs across the country enhance state, local, and other federal law enforcement agencies by utilizing the FBI's developed Enterprise Theory of Investigation (ETI). The ETI is an approach supported by technology, which facilitates multi-subject investigations of significant enterprises involved in patterns of criminal activity, rather than concentrating resources on individuals or separate acts.

Of the current 144 SSTFs, 108 of them are Violent Gang Task Forces (VGTFs) located in 33 states, the District of Columbia, and Puerto Rico, which focus exclusively on FBI National Gang Strategy targets. The VGTFs utilize a variety of investigative methods to identify and attack a gang's hierarchy, including undercover operations, surveillances, wiretaps, and controlled purchases of drugs, guns, and other contraband. Wiretaps are frequently used by VGTFs in an effort to capture criminal conversations, which can later be used as evidence to prosecute the gang members for their criminal activities. In addition to obtaining evidence for prosecution, wiretaps have proven to be effective in preventing violent acts, including murders, from being committed. VGTFs are effective at building federal and state cases against gang members by applying the same methods used in the FBI's successful war on traditional organized crime. VGTFs are developing racketeering and continuing criminal enterprise cases to remove the leadership and the most dangerous members of violent street gangs and seize their assets. This investigative approach has been successful around the nation, and it has had long-term, positive impact on communities plagued by gangs.

The United States Marshals Service (USMS) is involved in numerous gang-related law enforcement efforts as well, including sponsorship of 83 District Fugitive Task Forces throughout the country, plus five regional fugitive task forces. These task forces include representatives from hundreds of federal, state, and local agencies. Violent fugitives with ties to gangs receive priority attention for investigation. From 2003 to the present, the USMS has arrested more than 600 gang members and associates. Of those arrested, approximately 37 percent were Hispanic gang members, 23 percent were members of Crips and Bloods gangs, and 11 percent were members of outlaw motorcycle organizations. In Chicago alone in 2004, U.S. Marshals arrested 353 gang fugitives. The USMS coordinates with federal, state, and local agencies to focus on specific gang-related fugitives that are a high priority because of their history of violence, threat to the community, or risk of flight.

In an effort to prevent gang-related crimes within Bureau of Prison (BOP) facilities, the Department participates with federal, state, and local law enforcement agencies in support of task forces and intelligence units. Through the Central Office Intelligence Section, BOP oversees and supervises multiple intelligence teams assigned to FBI task forces throughout the United States, as well as conducts other intelligence-related functions. The BOP also provides indirect support and shared resources through its Special Investigative Staff, members of which are assigned to each prison facility. The staff conducts or manages complex criminal investigations involving gang-related activities, such as homicides, assaults, and drug trafficking. The BOP's primary focus on gangs revolves around threats to the safety of inmates and BOP personnel, and the suppression of illegal activity within BOP facilities.

I state my general support for the goals of this bill. I would also note that it is important to maintain heavy penalties on gang members—particularly higher echelon members and those engaging in violence—to deter violent activity and to leverage cooperation from gang members who are already conditioned to understand they will do some prison time but often cooperate when faced with heavier prison time. Cases against gangs proceed most effectively when the heavy penalties cause key members of the gang to work with authorities to dismantle the organization. Ultimately, severe sentencing of gang members results more quickly in greater freedom for the community victimized by gangs.

As an example, during the BD investigation, several BD members and associates were arrested on state drug or gun charges. When informed that they would be prosecuted in the federal system for that conduct, they agreed to cooperate, and provided extensive assistance in gathering evidence against BD leaders, many times recording meetings and conversations at great personal risk to themselves. This phenomenon continued following the arrest and indictment of the BD leadership. A large number of those indicted, including some of the highest ranking members, have cooperated in the hopes of receiving a lesser sentence. This cooperation has resulted in additional evidence against both charged and as yet uncharged BD leaders, their drug suppliers, gun suppliers, and money launderers. It also produced safer neighborhoods for some of Chicago's most vulnerable residents. As I noted, much of our work in Chicago depends on our ability to scare offenders into going straight with the threat of mandatory sentences for drug and gun crimes.

Along with my colleagues at the Department of Justice, I look forward to working with you in the future on this legislation and its particulars.

CONCLUSION

I applaud this Subcommittee's efforts to address the war waged against our communities by gangs. Thank you for your time and attention. I appreciate the opportunity to speak on this important and timely matter. I would be pleased to answer any questions the members might have.

Mr. FORBES. Mr. Logli, you are recognized for 5 minutes.

TESTIMONY OF PAUL A. LOGLI, STATE'S ATTORNEY, WINNEBAGO COUNTY, ILLINOIS, AND PRESIDENT ELECT, NATIONAL DISTRICT ATTORNEYS ASSOCIATION

Mr. LOGLI. Congressman Forbes and Congressman Scott, thank you for this opportunity, and Congressman Forbes, thank you for sponsoring the Gang Deterrence and Community Protection Act of 2005.

Since the 1980's, the National District Attorneys Association has endorsed the concept of Federal and State law enforcement agencies and prosecutors working together to address threats such as we are now facing with gangs. We believe that what you've begun here, Mr. Forbes, would establish a bedrock upon which to build a united effort to end gang violence across the United States.

As with every problem, we've had our successes and failures and we've learned in our dealings with gangs that plague our communities that what works in one community may not necessarily work in another community, but we know that working together with our Federal partners, and I have the privilege of being a local elected State's Attorney within the jurisdiction of the Northern District of Illinois. Mr. Fitzgerald is the U.S. Attorney for the Northern District of Illinois. And we have, in fact, worked together on Project Safe Neighborhood and other initiatives to stem violence and gang activity in my jurisdiction.

We know that we have come to look at stateless terrorists as our enemy and we're developing ways to stymie those attacks. And I would advance to you the theory that we are facing about the same

challenge and threats with the transnational gangs that are almost freely operating within our borders. In my jurisdiction, we have recently seen an increase of Hispanic or Latino gangs that are now engaging in the typical turf wars and war for drug dealing in our community. As a result of this type of conflict, we've had firebombings and murders that are scarring my community.

Now, the problem would have been worse in Rockford, Winnebago County, Illinois, but were it not for the fact that my local jurisdiction worked in unison with Federal authorities in the mid-1990's and we took on a task of going after the leadership of the Vice Lords and the Gangster Disciples and the Latin Kings. We have eviscerated the leadership of those gangs. And now, even 10 years later, our community is safer because many of those leaders were rounded up in a joint operation and we turned many of them over to the Federal authorities and they were sentenced then under very tough sentencing guidelines. Many of them went away for very long periods of time. And that message that went out to the people in our community, that the leaders were rounded up and sent away for very long periods of time, lives on today as a positive anti-gang message in our community.

We note—and nothing I say is to take away our support for this bill, Mr. Forbes. We strongly recommend, however, that the bill specifically contain language that would suggest to U.S. Attorneys that they coordinate their efforts with local prosecutors so that there is no left hand not knowing what the right hand is doing. We would like to see language in there that would reduce the possibility of conflict by not clearly delineating a process to resolve Federal and local responsibilities as we combat gangs together.

We also note that the Act calls for the establishment of High Intensity Interstate Gang Activity Areas. I think that's a good idea. I also believe, however, that many of those areas would probably be the same areas as what we currently have under High Intensity Drug Trafficking Areas, that gangs and drugs go hand in hand, and we would suggest that the bill allow perhaps the Attorney General to say that this gang, this High Intensity Gang Activity Area, could be contiguous with the High Intensity Drug Trafficking Area so that we could combine resources. Our local prosecutors' offices are already spread thin. Instead of having two separate groups, we think that there should be some mechanism that they could be combined, since gangs and drugs operate hand in hand.

We've recently seen a spate of attacks on judges and prosecutors and witnesses. We believe that this has been going on for years as another form of trying to destabilize the criminal justice system, and that deals with witness intimidation. We note that your Act acknowledges the need to provide funds to prosecutors for witness protection and efforts to end gang violence, and we applaud that and look to the possibility of providing funds not only to Federal prosecutors, but also to local prosecutors to afford witness protection. There's too much intimidation going on that is really jeopardizing our prosecution of gang activity.

Finally, I do want to lend my support for the continuation of funding on Project Safe Neighborhoods. I know that's not part of this particular Act, but it goes hand in hand as we fight gangs. We recently concluded a joint operation with the U.S. Attorney's Office,

Mr. Fitzgerald and my jurisdiction. We rounded up over 30 people who were in possession or trafficking in guns. We took nearly 100 very dangerous firearms off the streets of my community, working in conjunction with Federal authorities, much of the same type of cooperation that I believe you envision under your Act, Mr. Forbes.

We believe, and in conclusion, we want to be proactive in our communities to identify gang threats early. We want to respond decisively. And I can tell you that we look forward to working with our partners in the U.S. Attorney's Office to combat the problems of gangs in our communities.

[The prepared statement of Mr. Logli follows:]

PREPARED STATEMENT OF PAUL A. LOGLI

My name is Paul Logli and I am the elected State's Attorney in Winnebago County, Illinois. I am now the President Elect of the National District Attorneys Association and will become President this July.

At the outset I want to thank Mr. Forbes for sponsoring The Gang Deterrence and Community Prosecution Act of 2005 and you, Mr Chairman, on behalf of the National District Attorneys Association, for the opportunity to present our concerns about gang violence and share some thoughts on the what we, and you the Congress, can do to counter this threat to public safety. The views that I express today represent the views of that Association and the beliefs of thousands of local prosecutors across this country.

Since the late 1980's our Association has endorsed the concept of Federal and state law enforcement agencies and prosecutors working in unison to address threats such as we are now facing. I view the task begun by Mr. Forbes as establishing the bedrock upon which to build our united effort to end gang violence across the United States.

To place my remarks in context—let me briefly tell you about my jurisdiction. Winnebago County is located about 70 miles west of Chicago. It has a population of nearly 300,000 people living in a diverse community. The county seat is Rockford—the second largest city in the state. I have been a prosecutor for 18 years and am honored to have served in my current position for 16 years, having been elected to office 4 times. I previously served as a judge of the local circuit court for nearly 6 years. I currently supervise a staff that includes 38 assistant state's attorneys. Annually, my office handles over 4000 felony cases.

LOCAL GANG PROBLEMS

Excluding adult gangs, motorcycle gangs, hate groups and other "adult" gangs the problem presented just by juvenile gangs is staggering in and of itself. The 2002 National Youth Gang Survey, published by the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice depicts the gang problems we face in stark reality.

It is was estimated that approximately 731,500 gang members and 21,500 gangs were active in the United States in 2002.

As with every problem we have our successes and our failures and I want to illustrate the impact of gang violence, and what we can do about it, by painting the picture as I have seen it in Winnebago County during my tenure as State's Attorney.

My jurisdiction is situated within 75 miles of two major urban centers, Chicago and Milwaukee. Like most jurisdictions of our size and location, it has been combating the problem of street gangs for the last several decades. More recently, Hispanic or Latino gangs have become major players in drug and criminal activity. Inter-gang warfare between several Hispanic gangs has resulted in fire-bombings and murders. The gangs have become increasingly sophisticated and have connections not only within this nation, but also with other nations in our hemisphere. To reflect the increased sophistication and organization of these gangs, the Rockford Police Department has changed the name of its task force to the "Organized Crime Unit," replacing the previous title of "Gang Unit".

On a positive note, the gang activity would have been greater if it had not been for large joint federal and state operations in the mid 90's that were effective in eviscerating the leadership of the most active gangs during that period. The Gangster Disciples, Vice Lords and Latin King gangs were the subjects of operations that involved numerous arrests of those persons who had been identified as leaders of their respective gangs. The major operations followed the most violent years in the

recent history of our community. 1993 and 1994 will go down as the most violent years in regard to the number of homicides within our jurisdiction. Fortunately, after the major joint federal and state operations that took place in 1993 and 1996, the level of violence dropped considerably and has leveled off over the last several years. The large-scale operations were effective because they involved law enforcement at all levels and concentrated on those individuals who had been identified as leaders of dangerous criminal organizations.

Realize that this is my perspective from a single county in Illinois. I think it important for you to understand that in addressing this problem there is no single remedy just like there is no single template for a gang. Gangs come from all ethnic persuasions and communities and have grown transnational in scope. What works in Winnebago County may not have equal success in Chicago only 70 miles away. Our strategy must reflect flexibility and durability.

After 9/11 we have come to look at stateless terrorists as our enemy and are developing ways to stymie their attacks and defeat them on an international scale in a new mode of conflict that does not lie in battling sovereign nations. I would advance to you the theory that we are facing the same challenges and threats by the transnational gangs that almost freely operate within our borders.

We also know that gang members are not dumb, inept or technologically challenged. In one instance we know of gangs arranging a confrontation by email and their use of cell phones and other state of the art electronic gear is commonplace in their trans national dealings. They even brag of their strength on DVDs and CDs.

Here are some of the problems we've been facing:

In northern Wisconsin, for instance, the Sovereign Nation Warriors (SWN) are active on the Reservation. The professed leader was from the Potowatamie tribe while the gang affiliation was associated with the Chippewa band—basically an attempt to create a gang that was multi-tribal in nature. The SWN has been tied into drug trafficking, arson, burglary and gang related beatings. Many of those crimes are unsolved because of the gang relationship and the refusal of individuals to provide information on gang activity. Wisconsin is a state in which most of the tribes have contracted away criminal jurisdiction. The gang leader was to be prosecuted for arson and burglary of a home on the reservation and the tribal police attempted to have the matter brought federally because of the gang connection. The U.S. Attorney declined prosecution and the Vilas County District Attorney, Al Moustakis, prosecuted and convicted the leader.

Last year in Philadelphia the tragic death Faheem Thomas-Childs provides another dimension to the problem. He was a third grader at and on his way to school when he was caught in the crossfire of two rival drug gangs as they fired dozens of shots at each other. Hit in the head by a single shot he died five days later. A Crossing guard was also injured in the shoot-out. The community surrounding the school had been concerned about gunfire at night and the violence had come to a crescendo the nights immediately preceding the killing but the community refused to cooperate with police to end the gunfire. On the day the Thomas-Childs was shot there were dozens of witnesses but few came forward to help identify the killers.

In April, 2003 Charlotte, North Carolina, police investigated a shooting at a public park in Mecklenburg County. One man was killed and there were several men injured. The investigation revealed these men and the men who shot them were part of a gang called Mara Salvatrucha or "MS–13" and that these men were from Honduras and El Salvador. Police issued eight warrants for individuals charging them with the murder in the park; four of those men have been arrested but the others are still at large.

After this incident, police charged other MS–13 members with three other murders. Six (6) MS–13 members were charged with the murders of two Hispanic males that happened one week prior to the shootings at Copperhead Island Park. A number of those charged were either shot or shot at the following week at Copperhead Island Park.

In New York City last week 80 Bloods and Crips showed up at the International Auto Show and a fight broke out requiring police intervention. No one was hurt in this very public melee but patrons of the show had to flee to safety. Even a public forum couldn't abate their violence.

Mara Salvatrucha (MS–13) leaves the body of a woman in the beautiful Shenandoah River and the severed fingers of a boy in the parking lot of a convenience store in Fairfax County. A Crip from St. Louis, Missouri, comes to Virginia to recruit new members into the gang. Hits carried out in Virginia by MS–13 have been "greenlighted" by leadership in California and a key witness was then intimidated when his family members were threatened in El Salvador.

In Massachusetts an assistant state attorney general, Paul McLaughlin was detailed to the Boston District Attorney's Office on special assignment. He was one of just a handful of prosecutors on the city's first anti-gang violence unit.

In the early autumn of 1995, he was prosecuting a defendant named Jeffrey Bly. Nicknamed "Black," Bly was the leader of what was perhaps the city's most cold-blooded street gang, the Theodore Street Posse, whose members were suspected in several murders. McLaughlin was prosecuting him on a carjacking case, and after a couple of setbacks, the case was finally ready for trial.

On the night of Sept. 25, 1995, after another day spent preparing to hold Bly accountable for his crime, McLaughlin got off a commuter train on his way home and walked to his car. As he reached the car and was about to get in, a hooded figure approached, pointed a gun at Paul's head, and fired several times. Paul, who was 42, died that night, and a new line had been crossed in the annals of Boston's war against gang violence.

A tireless investigation eventually led police and prosecutors to Jeffrey "Black" Bly. As the investigation proceeded, chilling details began to emerge about Bly's targeting of McLaughlin. In the days before the murder, Bly had recruited another gang member to follow McLaughlin, to learn his habits and his route home. One night, another Theodore Street Posse member drove Bly to the train station. Little by little, the evidence revealed a planned execution, designed and carried out in an attempt by Bly to avoid prosecution. Evidence suggested that months earlier Bly had decided to kill the prosecutor and a key witness in the carjacking case. When the attempted murder of the witness was botched, Bly turned his sights on McLaughlin.

In February 1998, a Suffolk Superior Court grand jury returned indictments charging Bly with Paul's murder, and in May 1999, a jury convicted Bly of first-degree murder. He is serving mandatory life imprisonment.

In Rockford, Illinois my own jurisdiction— a simmering gang dispute erupted into gunfire in which gang members fired repeated rounds into a home in which they thought a rival gang member had fled. The result was the death of 8-year-old DeMarcus Hanson, shot in the head and killed while sleeping in his own bed. The 3 gang members are currently serving 50 year prison sentences after an aggressive and effective prosecution by prosecutors from my office and the office of the Illinois Attorney General. And in Illinois, 50 years for murder means 50 years—not a day less.

THE GANG DETERRENCE AND COMMUNITY PROTECTION ACT

Before looking several aspects of The Gang Deterrence and Community Protection Act I want to most wholeheartedly indicate my support for what this bill accomplishes. My comments on the legislation are meant to enhance its impact and are not to in any manner to detract from what has been started by Mr. Forbes and the other cosponsors of the bill. What you do here will serve as the foundation for all our efforts.

Unity of Purpose and Effort

One of out biggest concerns with this, or any, federal legislation is to prevent conflict with local investigation and prosecution efforts. Our concerns in this regard are centered on the proper allocation of all too scarce resources at both the national and local levels of law enforcement.

Local prosecutors are successful in prosecuting crime because they have the expertise, experience and connection to the community that is needed to combat the types of crimes that most affect the American people, and, under consideration here, in combating gang violence. Murder, drug dealing, sexual assault, robbery, auto theft, assault, and juvenile delinquency are the kinds of offenses that we deal with on the streets and in the court every day—over 95% of all violent crime is prosecuted by local prosecutors.

That is not to say we do not need assistance from Federal law enforcement. Federal law enforcement agencies and Federal law are extremely useful when it comes to long-term, multi-jurisdictional investigations and prosecutions. They have the resources and technical capabilities many local agencies do not have or need only on rare occasions.

Electronic surveillance, for instance, is beyond the capability of many local law enforcement agencies and Federal support in this sensitive area is extremely valuable to our mutual efforts. Another example is the ability of the Federal system to impose stricter sentences in some instances then can state criminal justice systems. Federal mandatory minimum sentences have been successfully used to gain leverage in taking apart otherwise close knit gangs. We have mandatory minimums in Illi-

nois and I know the impact they can have in developing cooperation from an otherwise recalcitrant witness.

It is the ability to bring the respective talents and resources of the local and federal authorities together at the appropriate times that result in the successes we are all looking for in the fight against gangs. I would urge that this become the hallmark of your efforts in ending gang violence.

We have, over the course of the past 6 or more years seen effective models of coordination in both PROJECT SAFE NEIGHBORHOOD (PSN) and the High Intensity Drug Trafficking Area (HIDTA). These are prime examples of team work between federal and local prosecution to achieve the best results in any given case, dependent upon the strengths and weaknesses of the respective systems.

To that end, however, the Gang Deterrence and Community Protection Act does not contain any mandate to consult or coordinate with local prosecutors prior to the assumption of jurisdiction by federal authorities. This sets up the possibility of conflict by not clearly delineating a process to resolve federal and local responsibilities

A provision requiring Federal agencies to "consult and coordinate" with state and local prosecutors, would better serve to ensure that federal and local efforts are complementary rather then potentially adversarial. I would most strongly recommend that this requirement be adopted as the standard in all the areas of your gang suppression initiative that involve both federal and local efforts.

High Intensity Interstate Gang Activity Areas

In Title II, Section 201 the idea of a "High Intensity Interstate Gang Activity" Area (HIIGA), the concept pioneered by the "High Intensity Drug Trafficking Area" (HIDTA), is developed as part of the gang strategy. Cross designation of local prosecutors, sharing of intelligence and cross-jurisdictional efforts have made the HIDTA a very strong model upon which to base other efforts.

This approach has much to commend it but, I would suggest, needs to be reexamined in light of the existing drug program.

A majority of gang enterprise centers on the drug trade, and while there may be occasions where drug trafficking does not play a predominate role in the economic enterprise of a gang; it is inevitable that most HIIGA and HIDTA will be in large degree the same geographical areas. Given the scarcity of resources it can be anticipated that there will be a *de facto** merger of HIIGA and HIDTA efforts as staff for each wear more then one "hat." To be very honest most of us don't have the resources available to staff two over-lapping efforts of this nature.

I would suggest that the Community Protection Act should recognize this overlap and provide for an existing HIDTA to assume the additional role or responsibilities of a HIIGA, with additional resources as appropriate. The Attorney General should be given the latitude to merge the efforts when there is substantial overlap of effort.

We have seen what can occur when different agencies work the same problem on a competitive basis. Much has been made of the failure of the intelligence efforts by the various Federal intelligence and law enforcement agencies after 9/11. This is the opportunity to prevent this from occurring in fighting gang violence and drug dealing.

Attacks On Our Criminal Justice System

We've recently seen a spate of attacks on judges and new concerns about the safety of those participating in our justice system. Judges, prosecutors and even defense counsel have been the subject of threats and attacks for years but I would offer to you the premise that these attacks on our system of criminal justice have also been ongoing for many years through witness intimidation.

Unlike many of our South American allies we have not yet seen the systemic attack on court officials by organized gangs but we have seen their efforts at intimidate and eliminate those who would witness against them. It is not much of a stretch from murdering a witness to the assassination of Paul McLaughlin.

The Gang Deterrence and Community Protection Act acknowledges the need to provide funds to prosecutors for witness protection and efforts to end gang violence. We understand that other efforts are being considered to the crisis we are experiencing in protecting our system of criminal justice and we want to work with you to ensure the sanctity of our justice system.

PROJECT SAFE NEIGHBORHOOD (PSN)

While outside the scope of consideration of the Gang Deterrence and Community Protection Act I want to endorse the continuation of Project Safe neighborhood as a very vital ancillary effort to what you are trying to do today. As noted previously PSN is a collative effort between federal and local law enforcement. It has become a very important part of community crime fighting strategies in many part of our

nation. I would advance that it can become a keystone of your efforts to fight gang violence but it must be noted that during the last budget cycle the amounts made available for local efforts were severely curtailed. If this is to truly be a keystone in the gang violence effort then you need to provide resources to keep pace with those available to the federal system.

Funding for Local Prosecution Efforts

We need to be proactive in our communities to identify gang threat early and respond decisively. I can tell you that the resources of every local prosecutor in the United States are stretched thin now.

To be very honest we need financial assistance to place local prosecutors with the HIIGA; to get the computers to track gang efforts, to conduct authorized electronic surveillance of gang members and to train our line prosecutors in the dynamics of this threat.

To support what you envision with the "Gang Deterrence and Community Protection Act" we will very desperately need the funding assistance you offer.

On behalf of America's prosecutors I, and the National District Attorneys Association, urge you to take steps to provide federal assistance to state efforts to fight our gang problems and to provide us with the resources to effectively protect those brave enough to confront the gang criminals. As President next year I plan to make this a priority issue for our members.

We look forward to continuing to work with you on addressing this growing problem.

Mr. FORBES. Michelle Guess.

TESTIMONY OF MICHELLE GUESS, EDGEWOOD, MD

Ms. GUESS. Good afternoon. My name is Michelle Guess. I am here to tell you about the devastating impact of gang violence in our community. My family and I have, and still continue, to suffer from gang violence. We are, and always have been, law-abiding people and rely on our faith to help guide us.

Three years ago, my family and I moved from Philadelphia here to the State of Maryland in the suburbs. In Philadelphia, we enrolled our children in charter schools because of the poor education and the dangerous environment in the Philadelphia public schools. We moved to the suburbs because we thought we could get away from the dangers of life in Philadelphia. How wrong we were.

My husband and I enrolled our children here in Maryland schools. I have nine children, and my husband and I were together for 22 years. My husband was a minister and was planning to start our church just before he was killed. We lived in a nice community, and, we thought, a safe one. Yet I soon learned about the growing problems of gangs.

Just before this Christmas, a gang member killed my husband, and he just happened to be a friend of my daughter, went to school with her. These gangs in the community where I live at, they don't look like the normal gangs, or dress like normal gang people. They live in good homes, I mean, very good homes. And their parents don't even know that a lot of them are a part of these gangs. They're not even allowed to tell their parents. And it is very hard in raising my nine children and knowing I can't even allow my kids to go to any of their friends' homes because I don't know who lives in their household.

We had an incident where my daughter was over at a friend's of hers home, and it was very hard for me to allow her to be there. I literally went and dragged her out of their home because we found out that the gentleman that was visiting is from another State and he was a Blood, and, when I found out that he was in

that home, I went and dragged my daughter out of there. I can't even allow my kids to go in any of my neighbors' homes because I don't know who lives in there. You will not recognize them just by looking at them.

My 10-year-old son's here with me. That last year, a friend of his, they had reported that he'd possibly gotten shot or whatever. He's 10 years old. And he told my son that he was a part of a gang. He was like a runner, drug run for these—because they don't expect the children. And when my son told me that, that is very fearful for a mother, for any parent, that in our community we can't even tell who's who. That's scary.

And we as parents and as authority figures have to protect our children. We have to protect our community. We can't put a price on the life of a child, the life of our children. We can't.

When someone does something wrong, they must pay for what they have done, regardless. Yes, I agree that we need to do prevention, but we need to give them the opportunity. They must make the decision, just like they made the decision to shoot my husband. They made that decision, and, whatever decision they make, there are consequences and we must understand that we cannot put a price on our children. Our children are our tomorrow.

They go to these gangs because these gangs promise to protect them. Why don't our children come to us? Because we turn our face from them and we put our hands under the table and we let these gangs run the life of our children, our own life, when we can't even live, we can't even enjoy life because we allow them, because we want to put a price on the life. We can't put a price on a life. When that life is taken from you, you can never put a price on life.

We must do whatever. We have to, to protect our children, our community, our neighbor. We have to. We have to. Thank you. Thank you.

[The prepared statement of Ms. Guess follows:]

PREPARED STATEMENT OF MICHELLE GUESS

Good morning. My name is Michelle Guess. I am here to tell you about the devastating impact of gang violence in our communities. My family and I have, and still continue, to suffer from gang violence. We are, and always have been, law-abiding people, and we rely on our faith to help guide us.

Three years ago, my family and I moved from Philadelphia here to the Maryland suburbs. In Philadelphia we enrolled our children in charter schools because of the poor education and dangerous environment in the Philadelphia public schools. Our neighborhood was controlled by gangs and gang violence. Our schools were filled with gang members. We moved to the Maryland suburbs because we thought we could get away from the dangers of life in Philadelphia. How wrong we were.

My husband and I enrolled our children here in Maryland public schools. I have nine children and I was married to my husband for 22 years. My husband was a minister and was planning to start his own church in Maryland just before he was killed. We lived in a nice community—we thought a safe one. Yet, I soon learned about the growing problem of gangs. My children were threatened in school. They were bullied and threatened to join a gang or suffer the violent consequences. My children lived in fear—gang members made it clear that if kids reported the gang's efforts to recruit new members, their parents would be threatened.

Just before Christmas, a gang member killed my husband by shooting him in the head for no reason other than complying with a gang initiation requirement—murder of an innocent civilian. My husband was working late driving a taxi and was lured by gang members to a neighboring street to our home, where he was shot and killed—nothing more than a random gang initiation ritual. My husband did nothing wrong. He loved his family and all of his children. He was simply a random and convenient victim of this violent gang.

I am here today because I believe so strongly that we need to stop gangs now—and stop them dead in their tracks. My husband would be alive today if the gang that killed him was in jail. We have to stop gang behavior and the evil spread of gangs. Nothing we can do will bring my husband back. But we can do something to stop gangs now. To make sure that families like mine do not go through such a horrible event, I am here today to tell you that the gang problem is real and that we must do everything in our power to stop it so that our communities can be safe.

Mr. FORBES. Professor Shepherd, you have 5 minutes.

TESTIMONY OF ROBERT E. SHEPHERD, JR., EMERITUS PROFESSOR OF LAW, UNIVERSITY OF RICHMOND SCHOOL OF LAW, RICHMOND, VA

Mr. SHEPHERD. Chairman Forbes, Congressman Scott, Members of the Committee, I thank you for this opportunity to be with you. I feel very much at home with Congressman Forbes and Congressman Scott, being two highly distinguished alumni of the Virginia General Assembly, where I have appeared for many years.

First, like Chairman Forbes, I would like to thank Congressman Frank Wolf of Virginia for his successful efforts in 2004 as part of the appropriation process to fund anti-gang activities which had been cut in the budget presented by the President. These funds have helped to contribute to efforts to suppress gangs in Virginia, especially in the Northern part of the State.

I also want to thank Congressman Bobby Scott of Virginia for his successful contributions through the years to bipartisan efforts in support of the Juvenile Justice and Delinquency Prevention Act, which has been the best possible vehicle for protecting society from anti-social behavior by children and adolescents, and for enabling these youth to become good citizens.

Second, I urge this Subcommittee and Congress to reject the approaches taken in H.R. 1279 regarding juveniles, particularly section 115, as being counterproductive to protecting the safety of the community and as contrary to the best evidence of what works well with youth who may engage in serious and violent delinquent behavior.

My first concern is about the continued federalization of the substantive criminal law, historically the domain of the States. I share the concerns of the Judicial Conference of the United States expressed in its letter of April 1 regarding the specific problems presented by federalizing behavior by juveniles. Federal courts are not really equipped to address the particular issues and needs of adolescents, and Federal correctional institutions do not have the programs suited to young people, as the Judicial Conference readily acknowledges. In fact, most youth tried and convicted in Federal courts end up in State facilities because there is no Federal juvenile justice facility.

Second, addressing specifically section 115, the increased use of transfer to adult court of juveniles is unwise and contrary to evidence regarding the implications of transfer or certification. Every recent study by researchers in Florida, Minnesota, New York, New Jersey, and Pennsylvania are consistent in showing that youth transferred to adult court and tried as adults had higher recidivism rates. They reoffended sooner after release from adult institutions. And their repeat offenses were more serious than similar youth re-

tained in juvenile court for the same offenses in the same or comparable jurisdictions.

I would also point out that in the context of this particular issue, sending a juvenile convicted of gang activity into an adult institution dominated perhaps by gangs may be entirely counterproductive. Juveniles incarcerated in adult institutions are also at greater risk of assaults, and the research clearly shows that policies that increase the transfer of juveniles to adult court have a disproportionate impact on children of color.

Making the decision whether to transfer a youth charged with gang-related violent behavior to the Federal court solely a prosecutorial decision which is not reviewable by a court is also unwise. I would note that that unreviewability might even prevent an examination of whether the juvenile is competent to stand trial.

The mandatory minimum provisions are also problematic. Juveniles involved in gang activity may not be equally culpable. They may have been lookouts rather than trigger men. As Bob Schwarts of the Juvenile Law Center in Philadelphia is fond of saying, Oliver Twist, the "Artful Dodger," Bill Sikes, and Fagin were not equally culpable in their criminal activity in Dickens' London, but they would be under this bill.

A report released last year by Fight Crime: Invest in Kids gives a good blueprint of what should be done from the perspective of law enforcement about dealing with young people in gangs, and I recommend it to the attention of the Committee.

In wrapping up, I would like to say to the Committee that the best way of dealing with a lot of these issues, as many of the other speakers have indicated, is through an effective partnership between local prosecutors and Federal prosecutors, supported by technical assistance and resources from the Federal Government, especially through the Federal Juvenile Justice and Delinquency Prevention Act. Thank you.

[The prepared statement of Mr. Shepherd follows:]

PREPARED STATEMENT OF ROBERT E. SHEPHERD, JR.

Mr. Chairman, Members of the Committee, I am Robert E. Shepherd, Jr., Emeritus Professor of Law at the University of Richmond Law School in Virginia, and a former Chair of the Juvenile Justice Committee of the American Bar Association. I am here to present testimony on H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005," and I thank you for the opportunity to speak to you about this bill.

First, I would like to thank Congressman Frank Wolf of Virginia for his successful efforts in 2004 as part of the appropriation process to fund anti-gang activities, which has contributed greatly to efforts to suppress gangs in Virginia, especially in the northern part of the state. I also want to thank Congressman Bobby Scott of Virginia for his successful contributions through the years to bipartisan efforts in support of the Juvenile Justice and Delinquency Prevention Act (JJDPA). That Act, originally enacted more than thirty years ago, has contributed greatly to the prevention of delinquency, to early intervention in the suppression of delinquency, to treating delinquent behavior and rehabilitating delinquent youth so as to prevent future delinquency, and to ensuring humane treatment of these young people in the juvenile justice system. The Act, and its programs, is still the best possible vehicle for protecting society from antisocial behavior by children and adolescents and for enabling these youth to become good citizens and successful adults.

Second, I urge the subcommittee and the Congress to reject the approaches taken in H.R. 1279 regarding juveniles, particularly in Section 115 concerning juveniles, as being counter-productive in protecting the safety of the community and as contrary to the best evidence of what works well with youth who may engage in serious and violent delinquent behavior. My first concern is about the continued federaliza-

tion of the substantive criminal law, historically the domain of the states. State and local governments are best informed about what would be successful in addressing a crime problem locally or within a state, although there may be an important federal role in providing technical assistance and intelligence about unique problems. Virginia, for example, has enacted a number of laws in recent years to address gang-related criminal activity, including a gang registry, most of which apply to juveniles as well as adults. I share the concerns of the Judicial Conference of the United States, expressed in its letter of April 1, 2005, regarding the specific problems presented by federalizing criminal behavior by juveniles. Federal courts are really not equipped to address the particular issues and needs of adolescents, and federal correctional institutions do not have the programs suited to young people, as the Judicial Conference readily acknowledges. Indeed, most youth tried and convicted as juveniles in federal courts are placed in state juvenile correctional facilities because there is no federal counterpart.

Third, addressing specifically Section 115, the increased use of transfer to adult court of juveniles, even sixteen- and seventeen-year-olds, is unwise and contrary to much evidence regarding the implications of transfer or certification. Several recent studies, by researchers in Florida, Minnesota, New York and New Jersey, and Pennsylvania, are consistent in showing that youth transferred to adult court and tried as adults had higher recidivism rates, they re-offended sooner after release from adult institutions, and their repeat offenses were more serious than similar youth retained in juvenile court for the same offenses in the same or comparable jurisdictions. (Lanza-Kaduce, Frazier, Lane & Bishop; Greene & Dougherty; Fagan; Mayers; Podkopacz & Feld; Coalition for Juvenile Justice) Thus, treatment as an adult created a greater risk for community safety in the long term than did juvenile treatment. A *Miami Herald* study of the Florida experience in 2001 concluded that "[s]ending a juvenile to prison increased by 35 percent the odds he'll re-offend within a year of release." (Greene & Dougherty) Although there are no studies I know of on this particular point, it seems logical that sending a juvenile tried as an adult for gang-related offenses to an adult facility dominated by gangs would intensify that reported effect.

Juveniles incarcerated in adult correctional institutions are also at greater risk of assaults, both sexual and physical. Studies show that such youth are five times as likely to report being a victim of rape, twice as likely to be beaten by staff, and 50% more likely to be assaulted with a weapon than youth in juvenile facilities and they are eight times more likely to commit suicide. (Audi; Forst, Fagan & Vivona) Would not the fear of such assaults drive the youth even further into the arms of adult gang members in the same institution for protection?

Policies that increase the transfer of juveniles to adult court also have a disproportionate impact on children of color. Recent studies have shown that more than seven out of every ten youth admitted to adult facilities across the country were youth of color, and minority youth are more likely to be treated as adults that white youth charged with the same offenses. (Poe-Yamagata; Ziedenberg; Males & Macallair; Coalition for Juvenile Justice)

Making the decision whether to transfer a youth charged with gang-related violent behavior to the federal court for trial as an adult solely a prosecutorial decision which is not reviewable by a court is also unwise, and violates our basic concepts of due process and fair play. The legislation also allows any other offenses committed that are not covered by the Act to be tried as adult offenses, including lesser included offenses, thus putting some perhaps trivial charges in federal district courts as well. The bill provides no exception to non-reviewability for jurisdictional issues such as non-age—a fifteen-year-old mistakenly identified as being older—or for young people who may not be competent to stand trial as an adult, a high risk scenario as many youth who engage in risky behaviors have mental health problems. The Virginia statute that allows a prosecutor to seek adult handling provides that the juvenile court still has to find the presence of probable cause and that the juvenile is competent to stand trial. And the adult court can reconsider the prosecutor's decision and treat the youth as a juvenile in making sentencing decisions.

Fourth, the mandatory minimum provisions in HR 1279 are also problematic, especially for adolescents. Judges should have broad discretion in sentencing adolescents, even when they are tried and treated as adults. As noted above, Virginia does this as part of its statutory framework for transfer. Juveniles involved in gang-related activity frequently have less culpability than the adults they associate with in antisocial behavior, they may be a lookout rather than a triggerman, and yet the legislation denies the court the power to discriminate among different levels of involvement and different kinds of behavior. As Bob Schwarts of the Juvenile Law Center in Philadelphia is fond of saying, Oliver Twist, the "Artful Dodger," Bill Sikes, and Fagin were not equally culpable in their criminal activity in Dickensian

London, but they would be under this bill. Also, longer sentences are not necessarily better and more protective of society, especially where juveniles are concerned.

Fifth, although juveniles charged as adults with capital offenses cannot be sentenced to death under the federal death penalty statute or *Roper v. Simmons,* does this legislation still expose them to a "death-qualified jury," especially if they are tried jointly with adults? That question seems to linger in the air, without any clear answer provided in the bill.

Recent data show a stark reduction in the rate and seriousness of juvenile delinquency in the past nine or ten years, contrary to the dire predictions of many "experts" whose ominous writings shocked legislators into abandoning the core principles of the juvenile system. Those principles, separating delinquent youth from hardened criminals, treating youth as developmentally different from adults, and viewing young people as being inherently malleable and subject to change in a rehabilitative setting, are still fundamentally sound. Indeed, as we have learned more from the developmental and brain research in recent years, we know better what does work in turning around these young lives and correcting their behavior. Several treatment programs for juvenile offenders, even those charged with serious and violent offenses, have been thoroughly evaluated and work well in reducing recidivism. (E.g., Functional Family Therapy, Multidimensional Treatment Foster Care, and Multisystemic Therapy—all are community-based and deal with the youth in several different dimensions of his or her life.) And we know that trying them as adults is destructive and counter-productive, especially with mandatory minimum sentences.

A report released last year by Fight Crime: Invest in Kids, a law enforcement-based group, points to the effectiveness of many current programs in preventing gangs—at the local and state level—and in interdicting violent gang activity. That report, CAUGHT IN THE CROSSFIRE: ARRESTING GANG VIOLENCE BY INVESTING IN KIDS, offers much useful advice about programs that work with the help of federal investment in anti-gang programs through the JJDPA and other entities.

I respectfully urge you to continue your historical focus on funding delinquency prevention and intervention programs through the Juvenile Justice and Delinquency Prevention Act, supplemented by further technical assistance to, and collaboration with, local authorities by the Justice Department and its entities, rather than increasing federal district court jurisdiction over young people with their different perspectives and characteristics. The Office of Juvenile Justice and Delinquency Prevention, utilizing JJDPA funds, is assisting in the sponsorship of the National Youth Gang Symposium in early June in Orlando, Florida to focus on effective anti-gang strategies with juveniles, and this is an example of the more effective federal role in addressing gangs.

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Mr. FORBES. We want to thank all of the witnesses for their testimony.

Now we're going to enter another round where we're going to be able to ask you some questions, if you don't mind responding to those questions. We'll each only have 5 minutes to ask the questions, so if you can, keep your answers as concise as possible because we've got a short period of time. And all of your written statements will be admitted to the record, without objection.

I'm also going to admit to the record, without objection, a letter from the Fraternal Order of Police with their endorsement of this bill.

[The letter from the Fraternal Order of Police follows in the Appendix]

Mr. FORBES. Now I recognize myself for 5 minutes.

Mr. Fitzgerald, I want to come back to you. You heard what Mr. Conyers said regarding heavy and mandatory sentences as they relate to breaking up gang activities. You've been where the rubber meets the road. Can you tell us your feeling about heavy and mandatory sentences and the effect they have on breaking up this kind of violent gang activity?

Mr. FITZGERALD. Yes, Congressman. One of the problems we face is if you look at the statistics of the people who actually commit murders, I believe 80 percent of the people who commit homicides in Chicago have been arrested something like seven or eight times before. Also, the victims, I think, have been arrested almost as many times. And you have people who have gone through a revolving door of being arrested and going back out to the street and remaining are predators on the street and posing a risk to others.

And if you identify those persons most likely to kill, those are the people we seek to prosecute both by incapacitating them, removing them from that housing project where the other residents are held captive, and secondly, using them to leverage, frankly, the deterrence value: to tell other people in the community, you saw what happened to so-and-so who had a reputation on the street. That person has now gone away to Federal prison and he is serving time.

And, in fact, Johnny Cochran was one of the people that participated in one of the Project Safe Neighborhood ads showing people that if you carry a gun, these people are serious. You're going away. I think he saw the value in advertising and deterring what it is that we do by selecting the most violent offenders, leveraging their penalties, and using that to get them to cooperate and give up information which lets us go up the food chain and get the gang leaders.

Mr. FORBES. Can you also tell us the Department of Justice's opinion or their position regarding authorized direct filing by prosecutors against 16- and 17-year-old juveniles who are alleged to have committed criminal gang acts of violence and what role, if any, that plays in dismantling violent gangs?

Mr. FITZGERALD. I'll start with the latter. I think the Department of Justice is still working on the official positions on the markup.

I can tell you that if there were direct file of juveniles, the volume of juveniles that would be prosecuted would still be rather small. We are looking at 70,000 to 100,000 gang members in Chicago. In a good year, where everyone works very hard, we're going to prosecute hundreds of gang members, not thousands, not tens of thousands. We do triage to pick out the worst offenders.

To prosecute a juvenile is still difficult, very difficult now because of all the different procedures and the housing issues. We would select out, certainly in my office, only those offenders who merited the prosecution. If someone is committing murders and they're at 17, compared to an 18-year-old, that's an option we'd like to have to take out the most violent offenders. We're not looking to make prosecution of juveniles a volume business in the Federal Government. We can't, just by the sheer numbers of gang offenders and the violence going on.

Mr. FORBES. Ms. Guess, can you tell us, the gang member that shot your husband, can you tell us, the individual that pulled the trigger, how old he was, and did he even know your husband?

Ms. GUESS. He was 17 years old and we believe he did know who my husband was because he knew my daughter.

Mr. FORBES. Do you have any idea of the motive, why he killed your husband?

Ms. GUESS. Gang initiation.

Mr. FORBES. Mr. Shepherd, you talked about in your written statement and also in your verbal statements about prevention programs. I know you've studied many of the prevention programs in the United States Congress and the funding for those programs, have you not, in your relationship as a juvenile justice expert? And I certainly recognize what Mr. Scott said. Can you tell us how much funding we should be spending for the prevention programs for criminal gang activity at this particular point in time?

Mr. SHEPHERD. Well, I think funding the authorization would be a good place to start. What is authorized——

Mr. FORBES. Can you give me a dollar figure?

Mr. SHEPHERD. I don't know the exact figure. I'm——

Mr. FORBES. Can you give me a ballpark?

Mr. SHEPHERD. I can't. I'm sorry.

Mr. FORBES. So then right now, you really don't know how much we're funding?

Mr. SHEPHERD. Well, I know that it's less than what is authorized in the Act.

Mr. FORBES. Do you know how much is authorized?

Mr. SHEPHERD. The amount that's authorized in the Act would be about $300, $400 million.

Mr. FORBES. If they were spending $300 or $400 million on prevention programs, do you think that would be adequate?

Mr. SHEPHERD. Well, not adequate, but keep in mind that the way that Federal money is used is with matching funds from the State through the various State Advisory Groups, which I'm a member of in Virginia, and we get matching funds from the localities as well as from the State. So the Federal money is basically seed money that helps to generate additional funds throughout the Commonwealth of Virginia for a whole variety of programs, including some of the Boys and Girls Clubs programs and some of those

programs are also earmarked under the Federal Act directly, so the money comes into Virginia directly from the Federal Government. But the programs basically are generated by the Federal Government through the State to the localities to target programs.

Mr. FORBES. Thank you. My time has expired.

I would like to now recognize Congressman Scott for 5 minutes.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman.

Mr. Logli, Ms. Guess has described a cold-blooded murder. You don't need any new Federal legislation to prosecute such a crime, do you?

Mr. LOGLI. Assuming it didn't happen on a military base, something of that nature, we would handle it as a local matter. In Illinois, we have mandatory minimum sentences and that——

Mr. SCOTT. For a cold-blooded murder like that, if a person is caught and prosecuted, what would present law provide for them?

Mr. LOGLI. He would face a mandatory minimum sentence of 20 years.

Mr. SCOTT. Without—and what would they usually get? Somebody just shoots somebody in cold-blooded murder.

Mr. LOGLI. I think we'd be looking at 30 or 40 years, 50 years, perhaps. And in Illinois, we have truth in sentencing, so with murder, they serve every day. There is no good time.

Mr. SCOTT. So what difference would this bill make?

Mr. LOGLI. I believe this bill may not make a difference in that type of street murder——

Mr. SCOTT. Okay. I only have 5 minutes.

Mr. LOGLI. Okay.

Mr. SCOTT. Mr. Shepherd, are you aware of any peer-reviewed studies that would suggest that the provisions of this bill would actually reduce crime?

Mr. SHEPHERD. The techniques that are incorporated in this bill have pretty well been proven not to reduce crime, especially where juveniles are concerned, who are not specifically deterred. I mean, they act, as the Supreme Court noted in the death penalty case, on the basis of impulse.

Mr. SCOTT. Thank you. And Mr. Fitzgerald, are you aware of best practices to actually reduce crime and whether or not those provisions are in this bill or could be found elsewhere?

Mr. FITZGERALD. Best practices? We found that the best practice is, for example, to go after the worst offenders, if I give the example of the "Top 20" list——

Mr. SCOTT. Have you seen any published studies of best practices, how to reduce juvenile crime?

Mr. FITZGERALD. We don't read published studies. We sit down with the people enforcing the law and exchange ideas that have been tried——

Mr. SCOTT. Does the Department of Justice have a website that outlines best practices?

Mr. FITZGERALD. I know we had a conference which I helped organize last month about best practices for gangs. As far as juveniles, I'd have to get back to you on that, since——

Mr. SCOTT. Are those best practices reflected in this legislation?

Mr. FITZGERALD. I'd have to get back to you on that, on whether or not—what publications it might be, how it corresponds to the bill.

Mr. SCOTT. Okay. Mr. Shepherd—well, let me ask, there's a provision in here that provides for gang crimes and it appears to suggest that if you belong to the gang, therefore, you would be guilty. Everybody in the gang would be guilty. Do you read it that way?

Mr. FITZGERALD. I don't believe so. I think that that provision of section 521, and the Department of Justice is doing a review of the bill, requiring, I think, that there be three or more persons that have to participate in a crime. I don't——

Mr. SCOTT. That to be found guilty, you would actually have to have some participation in the crime?

Mr. FITZGERALD. In a crime or conspiracy, mere membership alone would not be a crime, is my understanding.

Mr. SCOTT. Okay. Well, how is that different from the conspiracy law now?

Mr. FITZGERALD. It depends on the offense you commit. In conspiracy law, if there's a drug offense, you could be guilty of a drug offense now, where if there's a non-drug offense, the predicate offenses in the proposed bill would depend on the violation you commit.

Mr. SCOTT. What kind of situation would exist where you could prosecute somebody under the bill that you could not prosecute them under normal conspiracy law?

Mr. FITZGERALD. Most likely, it would be where gangs are not involved in drug trafficking. In Chicago, for example, gangs are heavily involved in drug trafficking, but at that conference I——

Mr. SCOTT. Help me out here. Let's talk about a specific defendant. Let's talk about a specific defendant. If you can't get them for conspiracy now, how could you get them under the bill?

Mr. FITZGERALD. If the conspiracy to commit an offense—conspiracy is a way to commit another offense—if the offense that they're committing is not now punished under the drug statutes, if it were a violent crime that's not directly related to drug trafficking, that's my understanding. I haven't——

Mr. SCOTT. So if a person has no involvement in a particular crime that you can't get them for conspiracy, you can get them roped in because they are a member of the gang?

Mr. FITZGERALD. No. What I meant to say was, if the gang is not involved in drug trafficking or you can't prove the gang is not involved in drug trafficking, you would not be able to charge them with a drug conspiracy. But if they got involved in extortions and robberies and assaults and attempted murders, you would use—you could use that statute to charge that.

Mr. SCOTT. Even if the defendant had no role in the crime?

Mr. FITZGERALD. If the——

Mr. SCOTT. For which you could not get them for a conspiracy.

Mr. FITZGERALD. No. I think I confused you. I meant, if you couldn't charge them with drug conspiracy——

Mr. SCOTT. No, if a person—if you can't get a person for conspiracy, can you get them under the bill for a crime for which they could not be charged—but, I mean, you can jump around and say,

well, you might have charged them for this or that, but if they're involved in a conspiracy, you've got them, right?

Mr. FITZGERALD. A conspiracy is always tied to a specific offense. We have to prove it to a jury.

Mr. SCOTT. Okay.

Mr. FITZGERALD. So if the conspiracy was for a crime that isn't now a Federal crime for which there's Federal jurisdiction, this would make a difference, and my example for drugs is if you have a drug conspiracy, you could charge someone now with a drug conspiracy. But if there're conspiracies to get robberies and assaults carried out by an enterprise of three or more members as part of a gang, that would not violate the drug conspiracy laws because the assaults may be unrelated to drugs.

Mr. SCOTT. That's right, but you could get them for violating the robbery laws, couldn't you now?

Mr. FITZGERALD. But to get a Federal violation of robbery, you need an interstate commerce element. So robberies are not a Federal crime in and of themselves.

Mr. FORBES. The gentleman's time has expired.

I would now recognize Representative Lungren for 5 minutes.

Mr. LUNGREN. Thank you very much, Mr. Chairman. I am very interested in this subject. I think it does have issues of Federalism. It does have issues of effective law enforcement. As Attorney General of California, I was very much involved with writing legislation in California dealing with violent laws, or violent crimes. Actually, we utilized a number of the things that are suggested in this bill at the State level. Over an 8-year period of time, we saw the lessening of violent crimes by about 35 percent and a drop in the homicide rate of 50 percent in 8 years utilizing many of the same things that are in this bill, or that approach, at least, at the State level.

I still am concerned sometimes about federalization of all crimes, but I note also we've been extremely successful in allowing participation of Federal prosecutors in those appropriate places where oftentimes the penalties were greater than they were on the State level going after the worst malefactors involved.

Professor Shepherd, I wondered, in your written submitted testimony, you assert that the objective of handling violent and delinquent juveniles is a question of dealing with anti-social behavior, and I'm always interested in that because that suggests that a juvenile is involved in anti-social behavior but an adult is involved in criminal behavior. Do you distinguish between a 17-year-old, 6 months who commits a murder like Ms. Guess's husband was the victim of and if he were 18 years old and a day?

Mr. SHEPHERD. Well, we certainly make distinctions about that in every other aspect of the law. When it comes to contracts and now the death penalty and a lot of other things, we draw arbitrary bright lines and every State does in its jurisdiction. Obviously, States do have mechanisms for transferring some juveniles to adult court for particular types of behavior, and I don't find that inappropriate if it's used judiciously. I think California does a better job of that than, say, Florida does and some other States where it is, indeed, a last resort rather than being almost automatic based on the nature of the offense.

Mr. LUNGREN. As I understand here, this section 115 of this proposed legislation would authorize the Attorney General to charge as an adult in Federal court a juvenile who is 16 years or older and commits a crime of violence, but not mandate it.

Mr. SHEPHERD. That's correct.

Mr. LUNGREN. So that would be judicious application, you would hope, by the Attorney General. You wouldn't object to giving him that authority, would you?

Mr. SHEPHERD. I have some concerns about it because of the broad implications of what may be gang activity where the juvenile's involvement may be far less than it would be if he were being charged with the specific offense the person engaged in.

Mr. LUNGREN. Even though, under section 115, it requires the commission of a crime of violence.

Mr. SHEPHERD. Yes, it does, but he could be a lookout for a crime of violence, and, in most States, that could be weeded out through the judicial transfer process.

Mr. LUNGREN. In California, actually—you said positive things about California—we allow, for certain violent crimes, juveniles as young as 14 to be considered for adult court. Initially, when I became Attorney General, I didn't support that, but over the course of the period of time that I was Attorney General, I saw the violence that was visited upon our communities by gang members who were ever and ever younger, and, actually, I championed and actually wrote the legislation to allow that to occur.

And I think we're confronted with something that Ms. Guess talks about, which is it makes very little difference to the victim whether the perpetrator is 16 or 17 or 18. They're just as damaged or just as dead. And I'm not trying to suggest it's an easy question, but it is something that I have mulled over in my mind as we had to deal with the tremendous violent problem that we had, and I must say that, contrary to what you suggest that this approach doesn't work, at least the facts bear up in California where you have a 50 percent drop in homicide rate among adults and among juveniles that I think there were lives saved and there were people that were much safer as a result.

Thank you, Mr. Chairman.

Mr. FORBES. Thank you, Congressman.

Now we'd like to recognize for 5 minutes Mr. Conyers.

Mr. CONYERS. Thank you very much.

See, the problem that we're having is that while we're talking about transferring more punitive legislation to the Federal level, we're cutting Federal funding for juvenile justice, and I don't think that is going to work out too well.

We've found that this kind of a problem is going to lead us into the two schools of thought, the one that an enlightened former Member, Congressman Lungren, had which descended into a very narrow, restricted, punitive type attitude which I hope he is now reconsidering in coming back into the fold of those of us who support bringing some sense to this problem, not just punishment. As Mr. Fitzgerald pointed out, you can't get at all of them through the courts. It's just too many. We've got to begin to look more at some of these other problems that cause it.

Mr. Paul Logli, did you know former Police Chief of Los Angeles, Mr. William Bratton?

Mr. LOGLI. I'm certainly familiar with the name and his reputation, sir.

Mr. CONYERS. Sure. Right. What about the late Johnny Cochran, the lawyer?

Mr. LOGLI. I'm certainly familiar with him, as well.

Mr. CONYERS. Well, they're all recommending reports that I'd like to commend to my colleagues on the Committee as well as the witnesses, a report from Fight Crime: Invest in Kids, and another, "Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Criminal Court."

Mr. Fitzgerald, you would prefer, I assume, to keep most of these trials, wherever practical, in the State courts?

Mr. FITZGERALD. I would presume that we would select out those juveniles that we think merit particular attention for Federal prosecution. That's why, as I think Congressman Lungren pointed out, the bill talks about authorizing the transfer to Federal court, not mandating it, because it would be for the prosecutors to select those cases that are most egregious that warrant Federal prosecution, such as a murder by a 17-year-old.

Mr. CONYERS. Congressman Robert Scott has let me look at a letter from the Judicial Conference of the United States dated April 1 of this year to the Chairman of the Subcommittee, and they make a point that I'd like to see if you'd agree with.

As you know, the primary responsibility for prosecuting juveniles has traditionally been reserved for the States. The Federal criminal justice system has little experience and few resources to deal with more than the handful of juveniles that currently are in the Federal system. The Judicial Conference has maintained a longstanding position that criminal prosecution should be limited to those offenses that cannot or should not be prosecuted in State courts. At its September 1997 meeting, after similar legislation had been proposed by conference, the Judicial Conference affirmed that this policy is particularly applicable to the prosecution of juveniles. Does that comport with your general view on the subject?

Mr. FITZGERALD. No, but I would say this, Congressman. Here's what I have in mind. In the situation where there's a housing project taken over by a gang and requires a Federal prosecution to dislodge the gang from the project so that everyone else who lives there can be sort of free, in that circumstance, if we arrested 15 members who were involved in murders and attempted murders and one was a 17-year-old, to take the system and prosecute 14 people in the Federal system——

Mr. CONYERS. Okay. Let me ask Professor Shepherd, what do you think of the judges pleading with the Congress not to do any more juvenile justice specialties out of judiciary because they don't want it, they can't handle it, and it's more appropriate at the State level?

Mr. FORBES. Mr. Shepherd, if you would respond to that question—the gentleman's time has expired—we will put that document in the record, without objection.

Mr. CONYERS. Thank you.

Mr. SHEPHERD. I think that's been a consistent position, Congressman Conyers.

Mr. FORBES. Now we recognize Congressman Delahunt from Massachusetts for 5 minutes.

Mr. DELAHUNT. Mr. Chairman, I hope we have another round here. This has been very informative.

I have a question for my colleague from California, Dan Lungren, because he speaks to the issue of transfer from juvenile to adult, my understanding is that in California, it's not the prosecutor's call. There is judicial intervention in the juvenile justice system that allows for transfer to the adult system. I think that's the case in most States.

I served 22 years as the District Attorney and I certainly, on the right kind of occasions, and I think that's what you're referring to, Mr. Fitzgerald, aggressively pursue transfer to the adult correctional facility because there are situations where they are 17 or under, but given the right criteria, they deserve to be prosecuted in the adult system.

So I think we've got to be very, very precise here. District Attorney, is it Logli?

Mr. LOGLI. Logli.

Mr. DELAHUNT. Logli. I tend to agree with the former Attorney General of the United States, who also was from California, Mr. Meese, about the federalization of State crimes. I mean, what's the position? You represent the National District Association, the NDA here, and——

Mr. LOGLI. Thank you, Congressman. First off, we believe we can handle the typical juvenile type of crime that we've been discussing. But I looked at this legislation as more importantly dealing with these transnational gangs, the adult gangs, the violent gangs that are not only in this nation but also come out of other nations in this hemisphere. And when I looked at this bill from the standpoint of a local prosecutor, I looked at the resources that Federal authorities, if they have jurisdiction on certain crimes committed by these transnational adult violent crimes, they can bring their technical resources to bear that many States—our technical resources are not as great as the Federal resources—wire taps, eavesdrops, that type of thing.

Mr. DELAHUNT. I understand that, and that makes good sense.

Mr. LOGLI. Thank you.

Mr. DELAHUNT. But I mean, that can happen now. I mean, we all, I'm sure in your experience and the U.S. Attorney's experience, we've all worked with task forces. You know, I don't know whether this adds anything to a particular task force. We have a task force on gangs in the Boston area. We have a task force on drugs. We have a task force on serious things where we bring to bear, if you will, Federal resources and where there are violations of criminal statutes and violations of State criminal codes, we sit around the table and talk and figure out where it goes.

I don't know what this really adds, particularly when you give—I think in response to a question by Mr. Scott, we're cutting juvenile justice funding. I mean, is this kind of a way to paper over the fact that we're not committing the resources that are necessary for local and State prosecutors, working with U.S. Attorneys, to go out

and to make sure these gangs are disassembled? I mean, we can talk about mandatory sentences. We can talk about a lot of different things. But the reality is, what we're trying to do is reduce crime, and again, given the observations made by my friend and colleague from California, the former Attorney General in that State, I dare say, we don't have a lot of mandatory crimes in the Commonwealth of Massachusetts, but we did one, I think, outstanding job in terms of reducing the incidence of homicide and all kinds of violent crime to a point that was historical in nature because we funded a comprehensive approach to juvenile justice.

Mr. Fitzgerald, do you have any comments?

Mr. FITZGERALD. I guess——

Mr. DELAHUNT. By the way, does RICO apply?

Mr. FITZGERALD. We can——

Mr. DELAHUNT. What about using—don't we have a RICO statute? I mean, we're talking about gangs. Where's the utilization of the RICO statute in terms of gangs?

Mr. FITZGERALD. I'll answer the two questions. The first question, the reason why we'd need the option, for example, for prosecuting a juvenile would be in the situation if there were multiple murders or a murder with multiple perpetrators. If there were five people who committed the murder and one was a juvenile, it wouldn't make sense, if this was a Federal prosecution at that housing project, to say, okay, we're going to try this twice and put the victims and the witnesses through the pain of two——

Mr. DELAHUNT. With all due respect, let me tell you something, okay. If you come into my jurisdiction, when I was the District Attorney in the greater Boston area and there were five murders, you're not going to prosecute murders. You're going to be part of a task force and I'm going to prosecute the adults and the juveniles and most likely will prosecute the juvenile in the adult system. So we don't need any Federal statute to tell local prosecutors that they can't try murder cases because, believe me, with all due respect to U.S. Attorneys, they do a far superior job in prosecuting crimes of violence than most U.S. Attorneys.

Mr. FITZGERALD. And I'll give you an example. What we do, when we have prosecuted RICOs for drug offenses and murders included, we often do that jointly with the State, bringing in Assistant State's Attorneys as specials.

Mr. DELAHUNT. Cross-designations.

Mr. FITZGERALD. Cross-designation, and we decide which is the most appropriate forum. When we took down the Mafia Insane Vice Lords, we took 47 Federal and 58 State. My point is to say that if we decide with the State's Attorney's Office, perhaps with them joining our team in court to prosecute in Federal court a RICO that involves drugs and murders, if there's one juvenile in there and there are eight adults, it would put everyone, the court system as well as the victims and witnesses, through double the pain and the cost and the time if we had to separate the juvenile out.

Mr. DELAHUNT. But there is concurrent jurisdiction, Mr. Fitzgerald.

Mr. FITZGERALD. Yes.

Mr. DELAHUNT. And oftentimes, in my experience working with the U.S. Attorney's Office in Boston, there would be concurrent

prosecutions. We would sequence them so that the State would proceed first in cases where there was traditional State jurisdiction, and if there were Federal violations thereafterward, we'd have them incarcerated, and then if the Feds wanted to prosecute them so that they can secure and on and after sentence, that's what they would do.

Mr. FORBES. And with that closing statement, the gentleman's time has expired.

I'd like to thank the witnesses for their testimony. The Subcommittee very much appreciates your contribution.

In order to ensure a full record and adequate consideration of this important issue, the record will be left open for additional submissions for 7 days. Also, any written questions that a Member wants to submit should be submitted within the same 7-day period.

This concludes the legislative hearing of H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005." Thank you for your cooperation. The Subcommittee——

Mr. SCOTT. Mr. Chairman, we have letters——

Mr. FORBES. Oh, I'm sorry. All the letters will be submitted, without objection, and will be recognized in the record, and you have 7 days for any additional ones that you'd like to put in.

The hearing is adjourned.

[Whereupon, at 3:21 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND RANKING MEMBER, COMMITTEE ON THE JUDICIARY

Statement of John Conyers, Jr.
on HR 1279, the "Gang Deterrence and Community Protection Act of 2005"
April 5, 2005

Random acts of gang violence occur far too often, affecting many of our communities across the nation.

To solve this problem we should adopt a two-fold approach. First, we should emphasize prevention programs which discourage youth from joining gangs. Second, we should make it harder for gang members to gain access to their 'tools of the trade', namely dangerous firearms. In the past, these two strategies have been proven extremely successful. Unfortunately the bill before us takes a different approach.

First, it unwisely relies on the use of mandatory minimums. Even though, mandatory minimum sentences have been studied extensively and have been proven to be ineffective in preventing crime; proven to distort the sentencing process; and proven to be a considerable waste of taxpayers money.

With more than 2.1 million Americans currently in jail or prison - roughly quadruple the number of individuals incarcerated in 1985 - it's hard to see how anyone can continue with such a deeply flawed strategy.

Today, this country incarcerates its citizens at a rate 14 times that of Japan, 8 times the rate of France and 6 times the rate of Canada.

We spend an estimated $40 billion a year to imprison criminal offenders, we choose to build prisons over schools and we fail to provide inmates released from prison with the necessary tools and assistance for a successful re-entry into society.

Thanks to mandatory minimum sentences, almost 10 percent of all inmates in state and federal prisons are serving life sentences, an increase of 83 percent from 1992. In two states alone, New York and California, almost 20 percent of inmates are serving life sentences.

The truth of the matter is we know what works to prevent gang-related violence. Research indicates the effectiveness of focused family interventions, including functional family therapy. Youth whose families received family therapy, for example, were half as likely to be re-arrested as the youths whose families did not receive family therapy.

Unfortunately, instead of investing in commonsense program such as this, this bill adopts a 'lock 'em up and throw away the key' strategy to deal with the problem.

The bill also unwisely advocates for transferring a greater number of juveniles to adult court to be tried for youth-related crimes. Even though, research indicates that prosecuting young people as adults does not reduce youth crime. In fact, it's been proven to have the opposite effect.

Jails and prisons are crime schools. Research shows that young people prosecuted as adults, in comparison to youth held in juvenile facilities are more likely to recidivate sooner upon their release and in a more violent manner.

In the past, we've tried to use increased criminal penalties and excessive incarceration as a means for dealing with the war on drugs with no avail. It's time to learn from those mistakes.

RESPONSES TO QUESTIONS FOR THE RECORD SUBMITTED BY THE HONORABLE PATRICK FITZGERALD, U.S. ATTORNEY FOR THE NORTHERN DISTRICT OF ILLINOIS, U.S. DEPARTMENT OF JUSTICE

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 12, 2005

The Honorable Howard Coble
Chairman
Subcommittee on Crime, Terrorism,
and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find the response to the question you posed to Patrick Fitzgerald, U.S. Attorney for the Northern District of Illinois, following his appearance before the Subcommittee on April 5, 2005. The subject of the Subcommittee's hearing was H.R. 1279, the "Gang Deterrence and Community Protection Act."

We hope that this information is helpful to you. Please feel free to call upon us if we may be of additional assistance in connection with this or any other matter.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

Hearing Before the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security On H.R. 1279, the "GANG DETERRENCE AND COMMUNITY PROTECTION ACT"
April 5, 2005

Follow up Question from Chairman Coble

1. **Do you have any information to contradict the estimate of the U.S. Sentencing Commission that the proposed legislation would require 23,600 new prison beds over the next 10 years?**

ANSWER:

Although Mr. Fitzgerald personally is unaware of any such information, the Department of Justice believes that the original estimate of the impact of the Gang Deterrence and Community Protection Act (H.R. 1279) prepared by the U.S. Sentencing Commission is overstated and that the Commission made some assumptions that it now recognizes likely are overly inclusive. Based on conversations with the Commission and congressional staff, we understand that the original estimate is being further refined by the Sentencing Commission to include only criteria that fall within the bill's definition of "gangs".

We will provide the new estimates of the impact of H.R. 1279 to you when the Sentencing Commission completes its analysis.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

STATEMENT OF
Congresswoman Sheila Jackson Lee

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON CRIME, TERRORISM AND
HOMELAND SECURITY

H.R. 1279 the "Gang Deterrence and Community
Protection Act of 2005"

March 5, 2005
2:00 p.m.
2141 Rayburn House Office Building

I speak today in strong support of H.R. 1279, the Gang Deterrence and Community Protection Act of 2005. This bill authorizes increased federal funding to support federal, state and local law enforcement efforts against violent gangs, to coordinate law enforcement agencies' efforts to share intelligence and to jointly investigate violent gangs. The Act also creates new criminal gang prosecution offenses, enhances existing gang and violent crime penalties to deter and punish illegal street gangs. According to the U.S. Justice Department, there are currently over 25,000 gangs and over 750,000 gang members who are active in more than 3,000 jurisdictions across the United States. Gang activity has been directly linked to the narcotics trade, human trafficking, identification document falsification, violent maiming and

assault, and the use of firearms to commit deadly shootings. All of these activities destroy our communities and often prevent positive growth within our youth.

Over all, the purpose of the bill can be summed up in two goals.

1. Designate "High-intensity Gang Areas" and authorizes funds to combat gang activity in those areas and other areas of need.

2. Defines a gang crime in federal code and specifies punishments for gang-related crimes and other violent crimes.

In closing, I strongly support this bill and encourage my colleagues to do the same.

LETTER FROM JAMES D. FOX, CHIEF OF THE NEWPORT NEWS POLICE DEPARTMENT TO THE HONORABLE J. RANDY FORBES (MARCH 29, 2005)

RECEIVED
APR 11 2005
J. Randy Forbes, M.C.
Washington, DC

NEWPORT NEWS POLICE DEPARTMENT
An Internationally Accredited Agency
James D. Fox, Chief of Police

March 29, 2005

Congressman J. Randy Forbes
307 Cannon House Office Building
Washington, D.C. 20515-4604

Dear Congressman Forbes:

As Chief of the Newport News Police Department, I read with great interest the recent article in ***The Daily Press*** (Forbes Proposes Anti-Gang Funds, March 17, 2005) detailing the "gangbusters" bill that you will be introducing shortly before Congress.

The City of Newport News has growing gang problem. To date we have identified 15 gangs with approximately 170 known gang members and numerous other affiliates or "wannabes" in Newport News. These gangs include members of the nationally known Mara Salvatrucha or MS-13 gang and The Bloods. In addition, we also have a growing population of "homegrown" gangs to include: the Newsome Park Boyz; Squad Up; Young Mafia; 33rd & Gunsmoke; Old Courthouse Way; Gangster Disciples; Garden Boyz; and Disciples Mafia Crips. All of these gangsters are fostering fear and commiting an ever-increasing number of violent crimes within our community.

As evidence of this growing problem, just earlier this month we arrested three juveniles on charges that they were among a dozen boys and girls - wearing red with red bandannas in their back pockets - who attacked an 18-year-old male and a 16-year-old female, hitting and kicking them near a Popeye's restaurant in the Denbigh area of the city.

I am very concerned that unless we get the resources to combat this increasing menace, we will find ourselves with the types of citizen intimidation and gang violence that we see on the nightly news in places such as California.

While long-term remedies and prevention efforts must be a part of the ultimate solution, we need immediate help in terms of personnel, technology and equipment that will allow us to combat this nuisance where it is occurring: the streets and neighborhoods of Newport News.

Should the "gangbuster" bill pass Congress, please know that I will be contacting both Representative Jo Ann Davis and Robert C. Scott in hopes of securing a large share of the funds available to assist us in developing the tools we need to put and end to the gangs and protect our citizens. In the interim, if your schedule permits I would be glad to meet with you to discuss our needs and have members of our Gang Unit present a more detailed overview of the gang problems we are facing in Newport News to you and members of your staff.

I appreciate your shared concern in this serious issue. Should I be able to assist you in any manner in moving this important piece of legislation forward, please contact me at (757) 926-8252.

Sincerely,

James D Fox
Chief of Police

JDF/MSC/msc
GANGLETTER0329.05.DOC

LETTER FROM KENNETH C. BAUMAN, MEMBER OF THE BOARD OF DIRECTORS FOR THE NATIONAL ASSOCIATION OF ASSISTANT UNITED STATES ATTORNEYS TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (APRIL 29, 2005)

KENNETH C. BAUMAN
MEMBER, BOARD OF DIRECTORS
NATIONAL ASSOCIATION OF ASSISTANT UNITED STATES ATTORNEYS
REGION 17 REPRESENTATIVE
DISTRICT OF OREGON
MARK O. HATFIELD UNITED STATES COURTHOUSE
1000 S.W. THIRD AVENUE, SUITE 600
PORTLAND, OREGON 97204
PH. (503) 727-1025
FAX: (503) 727-1117
KEN.BAUMAN@USDOJ.GOV

April 29, 2005

Chairman F. James Sensenbrenner, Jr.
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

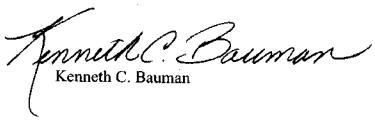
Re: HR 1279, The Gang Deterrence and Community Protection Act of 2005

Dear Chairman Sensenbrenner,

I am writing you as the Chairman of the House Committee on the Judiciary because I am a member of the Board of Directors for the National Association of Assistant United States Attorneys (NAAUSA). NAAUSA's membership is composed of Assistant United States Attorneys (AUSA) from across this country. NAAUSA is the a professional organization that represents the interests of the more than 5,000 AUSAs who are the legal representatives of the United States in the federal courts across this great nation.

HR 1279, The Gang Deterrence and Community Protection Act of 2005 is designed to address the problems presented by gang violence. HR 1279 would create stiffer sentences, improve coordination of intelligence among law enforcement agencies, and promote a more aggressive prosecution of gang related violence. HR 1279 is a tool that will help AUSAs protect the public.

NAAUSA's Board of Directors has made a decision to take a more vocal position on issues that effect the members of our organization. The passage of HR 1279 will certainly help AUSAs to perform their duty of protecting the citizens of this nation. NAAUSA strongly supports HR 1279. We ask you to do everything you can to see that HR 1279 is enacted into law.



Kenneth C. Bauman

cc: Senator Ron Wyden
516 Hart Senate Office Building
Washington, D.C. 20510-3703

Senator Gordon Smith
404 Russell Building
Washington, DC 20510-3704

Congressman David Wu
1023 Longworth House Office Building
Washington, D.C. 20515

Congressman Greg Walden
1404 Longworth House Office Building
Washington, DC 20515

Congressman Peter DeFazio
2134 Rayburn H.O.B.
Washington DC, 20515

LETTER FROM MICHAEL A. FRY, GENERAL COUNSEL, MAJOR CITIES CHIEFS ASSOCIATION TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (APRIL 15, 2005)

BALTIMORE POLICE DEPARTMENT

MARTIN O'MALLEY
Mayor

LEONARD D. HAMM
Police Commissioner

Office of Legal Affairs
Chief Legal Counsel
(410) 396-2495

Associate Legal Counsel
(410) 396-2495
(410) 396-2126 Facsimile

Chief Legal Counsel
Michael A. Fry

Associate Counsel
Ira J. Fine
Kim Y. Johnson
Jordan V. Watts, Jr.

April 15, 2005

Chairman F. James Sensenbrenner, Jr.
United States House of Represenatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington. D.C. 20515

Re: Support for HR 1279, The Gang Deterrence and Community Protection Act of 2005, and HR 1528, Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005

Dear Chairman Sensenbrenner:

I write to you on behalf of President Harold Hurtt of the Houston Police Department. and the 63 members of the Major Cities Chiefs Association to express our support for HR 1279 and HR 1528.

Our members represent the chief executive officers of the 63 largest police departments in the United States and Canada and each is faced with the daunting task of policing an ever violent and treacherous landscape made even worse by the scourge of gang and drug violence. Some of our members, Los Angeles and New York are prime examples. have serious gang problems that require the most aggressive law enforcement measures imaginable. We are proud to support HR 1279 and its goals of imposing stiff mandatory sentences for gang violence. establishing task forces made up of all branches of law enforcement. insuring that gang intelligence is shared among all of the partners in this fight. and insuring aggressive prosecution of gang members who commit violent acts.

While emphasizing our fight against gang violence and our ever-present vigilance for terrorists. we cannot lose sight of the fight to rid our neighborhoods of drugs and to protect the most vulnerable clients—the children of our cities who represent our only hope for the future. HR 1528 is an important piece of legislation directed at imposing stiffer penalties for drug dealers who use children to ply their evil trade, or maintain a drug-involved premises affecting children.

c/o 242 W. 29th Street • Baltimore, Maryland 21211

Chairman F. James Sensenbrenner, Jr.
April 15, 2005
Page 2.

The Major Cities Chiefs strongly support HR 1279 and HR 1528. As we have in the past on these same issues and other strong law-enforcement bills, we stand ready to lend whatever support we can to insure the passage of these important bills. All of American law enforcement should support these efforts. We are proud to lend our name to this cause.

Again, on behalf of our President, Harold Hurtt, Chief of Police of the Houston Police Department, and the chiefs of police of the largest law enforcement agencies in America, we thank you for considering our interest.

Sincerely,

Michael A. Fry
General Counsel
Major Cities Chiefs Association

cc: Chief Harold Hurtt, President
Chief Darryl Stevens, First Vice President
Chief Gil Kerlikowske.

LETTER FROM ROY L. BURNS, PRESIDENT, ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (APRIL 20, 2005)

ASSOCIATION
FOR
LOS ANGELES DEPUTY SHERIFFS, INC.

828 W. WASHINGTON BLVD.
LOS ANGELES, CALIFORNIA 90015-3310
(213) 749-1020
FAX (213) 747-2705

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ROBERT CONNOR
GEORGE HOFSTETTER
BRIAN ROGGE

April 20, 2005

VIA FACSIMILE – (202) 225-3737

The Honorable F. James Sensenbrenner, Jr.
Chairman
House Judiciary Committee
Washington, DC 20515

RE: HR 1279 – SUPPORT; HR 1528 – SUPPORT

Dear Chairman Sensenbrenner:

On behalf of the members of the Association for Los Angeles Deputy Sheriffs (ALADS), which represents over 7,000 deputy sheriffs and district attorney investigators in Los Angeles County, I am writing in support of HR 1279, The Gang Deterrence and Community Protection Act of 2005, and HR 1528, Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005.

HR 1279, The Gang Deterrence and Community Protection Act of 2005 not only designates high intensity gang areas and authorizes funds to combat gang activity, it creates a new gang prosecution statute; increases penalties for violent gang crimes; and limits a criminal street gang to a group or association of three or more individuals that commit two or more gang crimes.

HR 1528, Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005, provides for sound statutory reforms of ineffective anti-drug laws designed to protect children.

ALADS strongly supports both HR 1279, and HR 1528.

Sincerely,

Roy L. Burns
President

RB:ka

An Affiliate of the Marine Engineers Beneficial Association
AFL-CIO

LETTER FROM WESLEY D. MCBRIDE, PRESIDENT, CALIFORNIA GANG INVESTIGATORS ASSOCIATION TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (APRIL 25, 2005)

California Gang Investigators Association
PMB 331
5942 Edinger St., STE #113
Huntington Beach, CA 92649
Telephone 888 229 2442 Fax 714 846 6547
www.cgiaonline.org
wmcbride@socal.rr.com

Representative F. James Sensenbrenner
2449 Rayburn House Office Building
Washington, D.C. 20515-4905

April 25, 2005

Dear Representative Sensenbrenner

Mr. Chairman, as President of the California Gang Investigators Association (CGIA) I writing to offer the support of the Association for HR 1279, The Gang Deterrence and Community Protection Act of 2005 and HR 1528, Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005. The Association supports the legislative effort to curb gang violence and the associated criminal drug networks that goes hand-in-hand with street gang activity. We have supported the efforts of Senators Hatch and Feinstein in their anti-gang efforts and stand ready to be of any assistance we can be in your committee's efforts to obtain the same goals.

Street gangs continue to spread their unique brand of urban terrorism across our nation. Not only have they become prevalent in most urban inner cities, but have become a scourge in our rural communities as well, presenting a threat to this nation's bread basket. As I travel around this country lecturing to these communities it seems their primary concern for their personal safety is not from some foreign terrorist but their greatest fear is of the local street gangs. Hundreds upon hundreds of Americans are slain every year by street gangs, and thousands more injured.

This legislation provides new law which will aid in this struggle, not only attacking the gangs but with its companion bill, begins to focus on their drug business as well.
If our association can be of any further assistance to you please feel free to contact me.

Sincerely yours,

Wesley D. McBride

Wesley D. McBride
President

LETTER FROM EDDIE J. JORDAN, JR., DISTRICT ATTORNEY OF NEW ORLEANS TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (APRIL 18, 2005)

Eddie J. Jordan, Jr.
District Attorney of New Orleans ~ State of Louisiana

GAYNELL WILLIAMS
EXECUTIVE FIRST ASSISTANT DISTRICT ATTORNEY

619 SOUTH WHITE STREET
NEW ORLEANS, LOUISIANA 70119
(504)822-2414

April 18, 2005

Honorable F. James Sensenbrenner, Jr.
Chairman, House Committee on the Judiciary
Congress of the United States
2138 Rayburn House Office Building
Washington, DC 20515

RE: HR 1279 and HR 1528

Dear Chairman Sensenbrenner:

I am pleased to offer my support and encouragement for the passage of HR 1279, The Gang Deterrence and Community Protection Act of 2005, and HR 1528, Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005. As the current elected district attorney of New Orleans, and former United States Attorney for the Eastern District of Louisiana, I know firsthand the problems associated with gangs and drugs. I agree that more aggressive action from the Congress and federal law enforcement agencies is necessary to reduce gang related violence and to curb the spread of drug related criminal activity in our communities.

Thank you for sponsoring these important bills. I look forward to their passage in the coming months.

Sincerely,

Eddie J. Jordan, Jr.

ADM:VMS

LETTER FROM DONALD BALDWIN, WASHINGTON DIRECTOR, FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (APRIL 22, 2005)

Federal Criminal Investigators Association

Donald Baldwin, FCIA Washington Director
1620 Eye Street, NW Suite 210, Washington, D.C. 20006
Phone 202-331-1275, Fax 202-785-8949

April 22, 2005

The Honorable F. James Sensenbrenner
Chairman, House Judiciary Committee
2139 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

The Federal Investigators Association (FCIA), representing both active and retired federal investigators throughout our country, endorse HR 1275 and HR 1528.

The 25,000 gangs and estimated more than 750,000 gang members active in over 3,000 communities across our country must be stopped. HR 1275 provides the tools necessary to fight this crime so prevalent in our cities. "The Gang Deterrent and Community Protection Act of 2005" addresses the enforcement and protection needs for the battle against gang violence. HR 1528, "Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005" specifically addresses the dire need for protecting children from drug traffickers. The bill will enhance the law for punishing traffickers with penalities and will implement truth in sentensing.

We believe HR 1275 and HR 1528 will be strong deterrents against victimization of our children and help put a stop to gang violence in our country.

Sincerely yours,

Donald Baldwin
Washington Director

DB/aah

"Dedicated to Recognition of Criminal Investigation as a Profession"

LETTER FROM CHUCK CANTERBURY, NATIONAL PRESIDENT, FRATERNAL ORDER OF POLICE TO THE HONORABLE J. RANDY FORBES (APRIL 4, 2005)

GRAND LODGE
FRATERNAL ORDER OF POLICE®
309 Massachusetts Ave., N. E.
Washington, DC 20002
Phone 202-547-8189 • FAX 202-547-8190

CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

4 April 2005

RECEIVED
APR 12 2005
J. Randy Forbes, M.C.
Washington, DC

The Honorable J. Randy Forbes
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Forbes,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our strong support for H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005."

This legislation will attack the growing problem of criminal gang activity by providing increased Federal funding, almost $390 million, to support Federal, State and local law enforcement efforts to combat gang activity. The bill aims to facilitate greater cooperation between law enforcement officers and prosecutors at every level of government by providing for the designation of certain locations as "high intensity interstate gang activity areas." This strategy, modeled after the High Intensity Drug Trafficking Area (HIDTA) program, will enable law enforcement in these designated areas to build successful multijurisdictional efforts targeting criminal street gangs using Federal funds. Law enforcement agencies in these designated areas will be able to call on Federal resources to hire additional State and local prosecutors and purchase technology to increase their ability to identify and prosecute violent offenders.

The legislation also creates new criminal gang prosecution offenses and enhances existing gang and violent crime penalties to deter and punish illegal gang activity. The bill would also allow 16-year olds to be charged as adults in Federal court for crimes of violence.

We believe that our nation's law enforcement officers can be more effective at fighting the menace of criminal gangs if they have the necessary resources that this legislation provides. I want to commend you for your leadership on this issue. If I can be of any further help on this or any other issue, please do not hesitate to contact me or Executive Director Jim Pasco through my Washington office.

Sincerely,

Chuck Canterbury
National President

LETTER FROM DENNIS SLOCUMB, INTERNATIONAL EXECUTIVE VICE PRESIDENT, INTERNATIONAL UNION OF POLICE ASSOCIATIONS TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (ARPIL 26, 2005)

INTERNATIONAL UNION OF POLICE ASSOCIATIONS AFL-CIO

THE ONLY UNION FOR LAW ENFORCEMENT OFFICERS

SAM A. CABRAL
International President

DENNIS J. SLOCUMB
International Executive Vice President
Legislative Liaison

RICHARD A. ESTES
International Secretary-Treasurer

April 26, 2005

Chairman F. James Sensenbrenner, Jr.
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

Dear Mr. Sensenbrenner

On behalf of the International Union of Police Associations (I.U.P.A.), I am writing to express our support for the **Gang Deterrence and Community Protection Act of 2005.**

This needed legislation provides $20 million dollars per year over a five- year period to help states hire prosecutors, purchase technology and provide training for gang enforcement. It will also designate High Intensity Gang Areas and establish task forces combining local, state and federal officers working cooperatively to address this growing threat to our communities.

Law enforcement professionals estimate that there are currently more than 750,000 active gang members preying on our communities across the nation. This act will enhance our police officers' ability to effectively stem this growing threat.

I urge you to give aid to our nations law enforcement officers in these efforts and support H.R. 1279.

Thank you in advance for your consideration.

Very respectfully,

Dennis Slocumb
International Executive Vice President

RECEIVED
MAY 04 2005
Committee on the Judiciary

International Headquarters • 1421 Prince Street • Suite 400 • Alexandria, Virginia 22314-2805 • (703) 549-7473

LETTER FROM JAMES J. FOTIS, EXECUTIVE DIRECTOR, THE LAW ENFORCEMENT ALLIANCE OF AMERICA TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (APRIL 19, 2005)

THE LAW ENFORCEMENT ALLIANCE OF AMERICA

President
han W. Chapman
ormer Juvenile Investigator,
illsun, Texas Police Department
nd FOP Lodge President

irst Vice President
ryant G. Jennings
ergeant, Memphis, Tennessee
Police Department, and
Past President,
Memphis Police Association

Second Vice President
Carl T. Rowan, Jr.
Attorney, Washington D.C.,
Former FBI Special Agent and
U.S. Deputy Marshal

Treasurer
William F. Sassano, Jr.
Captain, Trenton, New Jersey
Police Department and
President, Trenton Police
Superior Officers Association

ecretary
udith E. Sacher
Miami, Florida
Police Legal Advisor and
former Prosecutor

ergeant-at-Arms
Gerald V.P. Blandford
Upper Marlboro, Maryland
Chaplain and
former Federal Police Lieutenant

Director
Richard Beckman
ergeant, Cloverdale, California
Police Department (Ret.)

Director
e Constance
Newton, New Jersey
state Parole Board,
Deputy Chief of Police (Ret.)

Director
oseph P. DeBergalis, Jr.
Ausiczowaga, New York
ergeant / Police Investigator

Director
ff Doyle
Lakeport, California
state Parole Agent,
California Department
f Corrections

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ollin A. Kiser
former Chief of Police,
Marysville, Ohio
ergeant, Columbus Police
epartment (Ret.)

Director
avid G. Thompson
ieutenant, Midland, Michigan
olice Department

Executive Staff

Executive Director
James J. Fotis
Lynbrook, New York
Police Department (Ret.

Chief Operating Officer
Ted Deeds

The Honorable James Sensenbrenner
Chairman
House Judiciary Committee
United States House of Representatives
Washington DC 20515

April 19, 2005

Dear Chairman Sensenbrenner,

On behalf of the more than 75,000 Members and Supporters of the Law Enforcement Alliance of America (LEAA), I am writing to express our strong support for the ***Gang Deterrence and Community Protection Act of 2005 (H.R. 1279).*** This legislation provides law enforcement and prosecutors with much needed tools to combat the growing organized threat of violence from criminal street gangs.

Today's gang violence problem is not one of neighborhoods, but increasingly an interstate and even international operation involving highly structured and extremely violent criminal enterprises. H.R. 1279 recognizes this growing menace and provides a much needed response.

By providing state and local law enforcement with the additional resources to pursue such criminals and giving prosecutors additional tools to punish such criminals, H.R. 1279 offers a significant opportunity to make an impact in the fight against violent crime. I respectfully ask for your support for this much needed federal initiative. If you have any questions about LEAA's position on H.R. 1279 or any other matter, feel free to have your staff contact our Legislative Director, Kevin Watson at (703) 847-2677.

Sincerely,

James J. Fotis
Executive Director

7700 Leesburg Pike • Suite 421 • Falls Church, VA 22043 • (703) 847-COPS • (800) 766-8578 Fax: (703) 556-6485 • www.leaa.org
The Law Enforcement Alliance of America (LEAA) is recognized by the United States Treasury Department as a non-profit organization under IRS Code Section 501 (c) (4).
Due to LEAA's legislative activities, contributions and gifts to LEAA are not tax-deductible.

LETTER FROM SHERIFF MICHAEL J. BOUCHARD, VICE PRESIDENT, LEGISLATIVE AFFAIRS, AND SHERIFF JAMES A. KARNES, PRESIDENT, MAJOR COUNTY SHERIFFS' ASSOCIATION TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (APRIL 20, 2005)

Major County Sheriffs' Association

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Treasurer
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joe.wolfinger@mpsi.1-3com.com

April 20, 2005

The Honorable James Sensenbrenner
U.S. House of Representative
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

On behalf of the Major County Sheriffs' Association, I am writing to express our support for H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005." This much needed legislation takes a necessary step toward addressing the growing epidemic of gang violence that is affecting our entire nation and has even stretched into some of our most rural communities.

The Department of Justice estimates there are currently over 25,000 gangs and over 750,000 gang members who are active in more than 3,000 jurisdictions across the United States. Gang activity has been directly linked to the narcotics trade, human trafficking, identification documentation falsification and the use of firearms to commit deadly shootings.

H.R.1279 would address the growing problem of gang violence by creating a rational strategy to identify, apprehend and prosecute gangs across the nation. Specifically, the bill would provide for the designation of High Intensity Gang Areas (HIGAs) to identify, target and eliminate violent gangs in areas where gang activity is particularly prevalent.

The bill would also create a statute to prosecute criminal gangs similar to the Racketeer Influenced and Corrupt Organizations statute (RICO) that has proven so effective against organized crime, and would provide more than $385 million over the next five years in grants to support Federal, State, and local law enforcement efforts against violent gangs, and to coordinate law enforcement agencies' efforts to share intelligence and jointly prosecute violent gangs.

Finally, under H.R.1279, several categories of gang-related offense would be subject to mandatory minimum sentences of at least 30 years in prison for cases of kidnapping, aggravated sexual assault or maiming.

The "Gang Deterrence and Community Protection Act of 2005" is a comprehensive piece of legislation that addresses both the enforcement and prosecution aspects of the battle against gang violence.

Thank you for your time and attention, as well as your continued support of law enforcement.

Sincerely,

Michael J. Bouchard
Sheriff Michael J. Bouchard
MCSA VICE PRESIDENT – LEGISLATIVE AFFAIRS

James A. Karnes
Sheriff James A. Karnes
MCSA PRESIDENT

LETTER FROM RICHARD DELONIS, PRESIDENT, NATIONAL ASSOCIATION OF ASSISTANT UNITED STATES ATTORNEYS TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (MAY 2, 2005)

National Association of Assistant United States Attorneys
9001 Braddock Rd. Ste. 380 • Springfield, VA • 22151
Tel: (800) 456-6861 • Fax: (800) 528-3492 • Web: www.naausa.org

May 2, 2005

Chairman F. James Sensenbrenner, Jr.
Committee on the Judiciary
House of Representatives
Washington, DC 20515

Re: HR 1279, The Gang Deterrence and Community Protection Act of 2005

Dear Chairman Sensenbrenner:

I write to extend the endorsement of the National Association of Assistant United States Attorneys of HR 1279, The Gang Deterrence and Community Protection Act of 2005.

NAAUSA, which represents the interests of the more than 5,000 Assistant United States Attorneys, employed by the Department of Justice – recognizes and appreciates the tools provided by HR 1279 to address the increasing problems of gang violence throughout the nation. The legislation's approaches toward stiffer sentencing, improved coordination of intelligence by law enforcement agencies, and more aggressive prosecution of gang violence represent measures that will assist federal prosecutors.

We offer our strong support of this legislation, and I personally thank you for your continued support of our nation's Assistant United States Attorneys.

Sincerely yours,

Richard L. Delonis

Richard Delonis
President

President:	Vice President:	Treasurer:	Secretary:
Richard L. Delonis	Steven H. Cook	Robert E. Mydans	William I. Shockley
ED of Michigan	ED of Tennessee	District of Colorado	ND of California

LETTER FROM WILLIAM J. JOHNSON, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (APRIL 15, 2005)

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

750 First Street, N.E., Suite 920 • Washington, D.C. 20002-4241

(202) 842-4420 • (800) 322-NAPO • (202) 842-4396 FAX

www.napo.org – E-mail: napo@erols.com

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Los Angeles Police Protective League

SANDRA J. GRACE
Executive Secretary
New Bedford (MA) Police Union

NATIONAL HEADQUARTERS

WILLIAM J. JOHNSON
Executive Director

April 15, 2005

The Honorable F. James Sensenbrenner, Jr.
Chairman, Judiciary Committee
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Sensenbrenner:

On behalf of the National Association of Police Organizations (NAPO), representing 236,000 rank-and-file police officers from across the United States, I would like to thank you for introducing the "Gang Deterrence and Community Protection Act of 2005," and advise you of our support for the legislation. If enacted, this legislation will greatly assist state and local law enforcement in their efforts against gang expansion and violence.

Recent studies on gangs have estimated that over 25,000 different gangs, comprising over 750,000 members are active across the United States. 100 percent of all cities larger than 250,000 have reported gang activity. Compounding this problem, gangs have been directly linked to narcotics trade, human trafficking, identification document falsification, violent maiming, assault and murder, and the use of firearms to commit deadly shootings. The "Gang Deterrence and Community Protection Act" works to reduce gang violence by designating High Intensity Gang Areas (HIGAs) and authorizing $20 million per year over five years to combat gang activity. It also creates a new gang prosecution statute focusing on street gangs and increases the penalties for violent gang crimes, strengthening prosecutors' ability to combat gang activities.

NAPO looks forward to fighting for this legislation's passage and I thank you for your continued support of law enforcement. If you have any questions, please feel free to contact me, or NAPO's Legislative Assistant, Andrea Mournighan, at (202) 842-4420.

Sincerely,

William J. Johnson
Executive Director

The National Association of Police Organizations (NAPO) is a coalition of police unions and associations from across the United States that serves to advance the interests of America's law enforcement through legislative and legal advocacy, political action and education. Founded in 1978, NAPO now represents more than 2,000 police unions and associations, 236,000 sworn law enforcement officers, 11,000 retired officers and more than 100,000 citizens who share a common dedication to fair and effective crime control and law enforcement.

LETTER FROM FELIPE A. ORTIZ, NATIONAL PRESIDENT, NATIONAL LATINO PEACE OFFICERS ASSOCIATION TO THE HONORALE F. JAMES SENSENBRENNER, JR. (APRIL 18, 2005)

April 18, 2005

Honorable F. James Sensenbrenner, Jr., Chair
House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

RE: Gang Deterrence and Community Protection Act H.R. 1279

Dear Representative Sensenbrenner:

As the House Judiciary Committee continues its work on Gang Violence in America, on behalf of the National Latino Peace Officers Association (NLPOA), we support all of the provisions contained in H.R. 1279 and ***urge the Committee to adopt all of the provisions*** to strengthen federal law enforcement's capabilities on combating the growing gang violence in America:

- 18 U.S.C. 521 Criminal Street Gang Prosecutions, increasing the penalty for such criminal acts on behalf of a criminal gang;
- Defining Gang Crime for federal prosecution;
- Increased Penalties for Racketeering Crimes on behalf of the criminal gangs;
- Modification of the Definition of a Crime of Violence; and
- Increasing Resources and Appropriations in the newly defined High Intensity Interstate Gang Activity Areas.

NLPOA members have dealt with gang crimes and gang violence for the last 32 years and are experts in this arena; with respect to gang investigations, deterrence, and prevention. ***The NLPOA recognizes that many gangs are more sophisticated and have more resources than local police departments. Designating federal resources through increase penalties and federal task forces will help Keep America Safe!***

Sincerely,
Felipe A. Ortiz
NLPOA National President
www.nlpoa.com

NATIONAL LATINO PEACE OFFICERS ASSOCIATION ORGANIZATIONAL INFORMATION

Today, the *National Latino Peace Officers Association* is the largest Latino Law Enforcement Organization in the United States, with local chapters in many cities throughout the country. Its membership includes Chiefs of Police, Sheriffs, Police Officers, Parole Agents, and Federal Officers, all of whom are employed at the local, state, and federal levels.

NLPOA is a Public Benefit Association recognized as a Non-Profit Organization, IRS 501 (c) (3) Number 94-3165929. *NLPOA* does not discriminate against any individual because of race, color, sex, or religion and membership is open to all.

NLPOA was founded to create a fraternal/professional association that provides its members with training, promotional development, and mentoring. The specific purposes of the organization are to promote equality and develop professionalism in the criminal justice system, particularly Law Enforcement; to reduce community juvenile delinquency and to lessen citizen tension in predominantly Latino communities.

Law Enforcement Officers are faced with a variety of issues on a daily basis that impact their ability to effectively protect, serve and support their communities. These issues impact the perceptions of citizens whom bestow great power and authority upon their law enforcement organizations. Citizens expect and deserve accountability from their law enforcement public servants and demand that these organizations display a high degree of institutional integrity.

Law Enforcement Officers face new challenges in this decade. New issues are now being presented to Law Enforcement Officers that continually impact this organization's ability to serve its communities. In particular, the areas of terrorism, anti-terrorism measures, gang violence, and racial profiling. Law Enforcement Officers are also faced with difficulties of inter-agency communications in a more global society. Solutions to inter-agency communications are necessary to assist Law Enforcement Officers to carry out there appointed duties. *NLPOA* members are prepared to face these new challenges and are prepared to find solutions.

LETTER FROM THOMAS N. FAUST, EXECUTIVE DIRECTOR, NATIONAL SHERIFFS' ASSOCIATION TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (APRIL 19, 2005)

NATIONAL SHERIFFS' ASSOCIATION

1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314-3490
Telephone (703) 836-7827 • Fax (703) 683-6541
nsamail@sheriffs.org • www.sheriffs.org

Sheriff Aaron D. Kennard
President
Salt Lake City, Utah

Thomas N. Faust
Executive Director
Alexandria, Virginia

Sheriff Ted Sexton
1st Vice President
Tuscaloosa, Alabama

Sheriff Ted G. Kamatchus
2nd Vice President
Marshalltown, Iowa

Sheriff Craig Webre
3rd Vice President
Thibodaux, Louisiana

Sheriff F. DeWayne Segee
4th Vice President
Norman, Oklahoma

Sheriff Dan L. Corsentino
5th Vice President
Pueblo, Colorado

Sheriff David A. Goad
Sergeant-at-Arms
Cumberland, Maryland

Sheriff Dan Smith
Secretary
Belton, Texas

Sheriff Jerry "Peanuts" Gaines
Treasurer
Bowling Green, Kentucky

Sheriff John Cary Bittick
Immediate Past President
Forsyth, Georgia

Sheriff Wayne V. Gay
Immediate Past President
Wilson, North Carolina

Richard M. Weintraub
NSA General Counsel
Washington, D.C.

Sheriff Dwight E. Radcliff
NSA Corporate Representative
Circleville, Ohio

April 19, 2005

The Honorable James Sensenbrenner
U.S. House of Representative
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

I am writing on behalf of the National Sheriffs' Association and the 3,087 sheriffs across the country to express our full support for H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005." This much needed legislation takes a necessary step toward addressing the growing epidemic of gang violence that is affecting our entire nation and has even stretched into some of our most rural communities.

The Department of Justice estimates there are currently over 25,000 gangs and over 750,000 gang members who are active in more than 3,000 jurisdictions across the United States. Gang activity has been directly linked to the narcotics trade, human trafficking, identification documentation falsification and the use of firearms to commit deadly shootings.

H.R.1279 would effectively address the growing problem of gang violence by creating a rational strategy to identify, apprehend, and prosecute gangs across the nation. Specifically, the bill would provide for the designation of High Intensity Gang Areas (HIGAs) to identify, target and eliminate violent gangs in areas where gang activity is particularly prevalent.

The bill would also create a statute to prosecute criminal gangs similar to the Racketeer Influenced and Corrupt Organizations statute (RICO) that has proven so effective against organized crime, and would provide more than $385 million over the next five years in grants to support Federal, State, and local law enforcement efforts against violent gangs, and to coordinate law enforcement agencies' efforts to share intelligence and jointly prosecute violent gangs.

Finally, under H.R.1279, several categories of gang-related offense would be subject to mandatory minimum sentences of at least 30 years in prison for cases of kidnapping, aggravated sexual assault or maiming.

The "Gang Deterrence and Community Protection Act of 2005" is a comprehensive piece of legislation that addresses both the enforcement and prosecution aspects of the battle against gang violence.

The National Sheriffs' Association and its member sheriffs fully endorse H.R.1279 and thank you for your continued support of law enforcement.

Sincerely,

Thomas N. Faust
Executive Director

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*Sheriff Donald F. Eslinger, Sanford, Florida
Sheriff Paul Fitzgerald, Nevada, Iowa
*Sheriff Stanley Glanz, Tulsa, Oklahoma
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All Past Presidents

*Member of the Executive Committee

LETTER FROM CASEY L. PERRY, CHAIRMAN, NATIONAL TROOPERS COALITION TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (APRIL 19, 2005)

NATIONAL TROOPERS COALITION

Casey Perry, *Chairman*
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VIA FACSIMILE : 202-225-3190

Honorable F. James Sensenbrenner, Jr., Chair
House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

RE: H.R. 1279 – Gang Deterrence and Community Protection Act of 2005

Dear Chairman Sensenbrenner:

As Chairman of the National Troopers Coalition, (NTC) I am writing to express our support for H.R. 1279, Gang Deterrence and Community Protection Act of 2005. The NTC represents over 40,000 state troopers and highway patrolmen throughout the United States.

We urge you to continue your work on fighting Gang Violence in America; we support all of the provisions contained in H.R. 1279.

Our members continue to deal with increased gang crimes and violence, as we have for years. The provisions of H.R. 1279, that in part deal with increased penalties, clarification of definitions, and increased resources and appropriations will greatly aid us and our law enforcement counterparts with gang investigations, deterrence and prevention.

Accordingly, on behalf of our members, we fully support and urge passage of H.R. 1279.

Sincerely,

Casey L. Perry
Chairman, National Troopers Coalition

SUPPORT YOUR STATE TROOPERS
REPRESENTING OVER 40,000 TROOPERS SERVING 230 MILLION AMERICANS

LETTER FROM TYRONE PARKER, LAURA W. MURPHY, ET AL. TO THE HONORABLE HOWARD COBLE AND THE HONORABLE ROBERT C. SCOTT (APRIL 11, 2005)

April 11, 2005

VIA FACSIMILE

The Honorable Howard Coble
Chair, Judiciary Committee
Crime, Terrorism, and Homeland Security Subcommittee
House of Representatives
Washington, DC 20515

The Honorable Robert C. Scott
Ranking Member, Judiciary Committee
Crime, Terrorism, and Homeland Security Subcommittee
House of Representatives
Washington, DC 20515

Sign-on Letter regarding Mandatory Minimum Sentences in H.R. 1279, The Gang Deterrence and Community Protection Act of 2005, scheduled for markup by the House Judiciary, Crime, Terrorism and Homeland Security Subcommittee on April 12.

Dear Representatives Coble and Scott:

The undersigned organizations write to oppose the numerous mandatory minimum sentences in H.R. 1279, Gang Deterrence and Community Protection Act of 2005, which is scheduled for markup on April 12. H.R. 1279 includes various mandatory minimums sentences for a broad category of offenses that are labeled "gang crimes" and numerous other offenses. Under this bill, the mandatory minimum sentences for these crimes will range from 5 to 30 years. Although the offenses are serious and individuals who are convicted should be properly held accountable, mandatory sentences often prevent judges from determining the appropriate punishment. When judges are restricted by mandatory sentences, they cannot assess an individual's culpability during the crime or other factors that have bearing on recidivism, thus resulting in inappropriate sentences.

Although mandatory minimums were intended to reduce the racial disparities that were associated with indeterminate sentencing, in practice they exacerbate and mask such disparities by shifting discretion from the judge to the prosecutor. Prosecutors retain the power to plea bargain by offering defendants plea agreements that avoid the mandatory penalty. Studies have shown that this discretion results in a disparity in sentencing outcomes based largely on race and quality of defense attorney. In 1999, 39 percent of those receiving mandatory sentences were Hispanic, 38 percent were African American, and 23 percent were white. Hispanics comprised 44 percent of those subject to five-year mandatory sentences in 1999, 37 percent of the 10-year mandatory sentences, 20 percent of the 20-year mandatory sentences and 8 percent of the mandatory life sentences. African

American defendants made up 30 percent of those subject to five-year mandatory sentences in 1999, 43 percent of the 10-year mandatory sentences, 60 percent of the 20-year mandatory sentences and 80 percent of the mandatory life sentences.

Respected members of the judiciary have also expressed concerns about limiting the sentencing discretion of federal judges. On March 17, 2004, Supreme Court Justice Anthony Kennedy testified before the House Appropriations, Commerce, Justice, State and Judiciary Subcommittee that "the mandatory minimum sentences enacted by Congress are, in my view unfair, unjust, and unwise." In an August 2003 speech to the American Bar Association Justice Kennedy stated he "can accept neither the necessity nor the wisdom of federal mandatory minimum sentences." Justice Kennedy is appropriately concerned about the path we are going down in the context of sentencing discretion in federal courts.

While many organizations around the country are disturbed that the popularity of gangs may be resurging in this country, we do not believe the way to address the reasons young people join gangs is to enact a slew of new mandatory minimum sentences. We call on Congress to eliminate the mandatory minimum sentences in H.R. 1279 and to support effective efforts to prevent youth from getting involved with gangs. Please feel free to contact any of the undersigned organizations; we look forward to working with you on this matter.

Respectfully Submitted,

Tyrone Parker
Executive Director
Alliance of Concerned Men

Laura W. Murphy
Director
American Civil Liberties Union Washington Legislative Office

Troy M. Dayton
Associate Director
Interfaith Drug Policy Initiative

Wade Henderson
Executive Director
Leadership Conference on Civil Rights

Alexa Eggleston
Director of National Policy
Legal Action Center

Steve Fox
Director of Government Relations
Marijuana Policy Project

Barry Scheck
President
National Association of Criminal Defense Lawyers

Angela Maria Arboleda
Civil Rights Policy Analyst
National Council of La Raza

Charlie Sullivan
Executive Director
National CURE (Citizens United for Rehabilitation of Errants)

Eddie Ellis
President
NuLeadership Policy Group

Rob Keithan
Director of Washington Office for Advocacy
Unitarian Universalist Association of Congregations

Charles Thomas
Executive Director
Unitarian Universalists for Drug Policy Reform

cc: House Judiciary Committee

LETTER FROM NATIONAL HISPANIC ORGANIZATIONS TO THE HONORABLE F. JAMES SENSENBRENNER, JR. AND THE HONORABLE JOHN CONYERS (APRIL 20, 2005 AND MAY 10, 2005)

April 20, 2005

VIA FACSIMILE

The Honorable James Sensenbrenner
Chair, Judiciary Committee
House of Representatives
Washington, DC 20515

The Honorable John Conyers
Ranking Member, Judiciary Committee
House of Representatives
Washington, DC 20515

RE: Oppose provisions in H.R. 1279 that prosecute youth as adults and impose mandatory minimum sentences.

Dear Congressmen Sensenbrenner and Conyers:

On behalf of the undersigned Hispanic organizations, representing more than 40 million Hispanic Americans living in the U.S. we are writing to urge you to oppose provisions contained in the "Gang Deterrence and Community Protection Act of 2005" (H.R. 1279). The Latino community directly feels the effects of youth violence, it is for this reason that we believe that punitive measures designed to only punish and not reform youth violent behavior in fact exacerbates the problem. Instead, we call for a comprehensive research – based approach that gets at the root causes of youth violence – which includes but is not limited to prevention, treatment, and effective alternatives to incarceration.

H.R. 1279, if enacted into law, would have a disparate impact on Latino youth and their families. This bill would undermine overall public safety, given that it imposes excessively severe measures aimed at only punishing and not reforming youth violent behavior. Specifically, we strongly opposes two provisions – the prosecution and transfer of youth into the adult system and the inclusion of various mandatory minimum sentences for a broad category of offenses that are labeled "gang crimes" and numerous other offenses.

Section 115 of the bill allows for the prosecution and transfer of youth into the adult system. The latest research shows that transferring youth to adult status is a failed public policy approach, resulting in the opposite of what this bill is purporting to do. It will *increase* – not decrease – youth violence. The research shows that young people prosecuted as adults, compared to those prosecuted as juveniles, are more likely to: (a) commit a greater number of crimes upon release; (b) commit more violent crimes upon release; and (c) commit crimes sooner upon release. The research also shows that youth held in adult facilities, compared to youth held in juvenile facilities, are five times as likely to be sexually

assaulted by other inmates, twice as likely to be beaten by staff, 50% more likely to be assaulted with a weapon, and eight times as likely to commit suicide.

With these kinds of risks, it does not make sense for the House to pursue legislation that includes the power to prosecute juveniles as adults in federal court for activities that the states are already well-equipped – indeed, better-equipped – to handle than the federal system. Also, putting the transfer decision at the sole discretion of a prosecutor, not a judge as the law currently requires, violates the most basic principles of due process and fairness.

Section 103 of the bill includes and expands mandatory minimum sentences for a broad category of offenses that are deemed "gang crime." Under this bill, the mandatory minimum sentences for these crimes range from 5 to 30 years. Although the offenses are serious and individuals who are convicted should be properly held accountable, mandatory sentences often prevent judges from determining the appropriate punishment. When judges are restricted by mandatory sentences, they cannot assess an individual's culpability during the crime or other factors that have bearing on recidivism, thus resulting in inappropriate sentences.

Although mandatory minimums were intended to reduce the racial disparities that were associated with indeterminate sentencing, in practice they exacerbate and mask such disparities by shifting discretion from the judge to the prosecutor. Prosecutors retain the power to plea bargain by offering defendants plea agreements that avoid the mandatory penalty. Studies have shown that this discretion results in a disparity in sentencing outcomes based largely on race and quality of defense attorney. According to testimony from the U.S. Sentencing Commission, in 1999, 39% of those receiving mandatory sentences were Hispanic, 38% were African American, and 23% were White. Hispanics comprised 44% of those subject to five-year mandatory sentences in 1999, 37% of the ten-year mandatory sentences, 20% of the 20-year mandatory sentences, and 8% of the mandatory life sentences. The reality for African American defendants is even bleaker.

We respectfully ask you to oppose legislation that prosecutes and transfers youth into the adult system and that includes and expands mandatory minimum sentences. If you have any questions please contact Angela Arboleda, NCLR Civil Rights Policy Analyst, at (202) 776-1789.

Sincerely,

Alianza Dominicana, Inc
ASPIRA
Association for the Advancement of Mexican Americans (AAMA)
Hispanic Associations of Colleges & Universities
MANA, A National Latina Organization
National Council of La Raza
National Puerto Rican Coalition
National Puerto Rican Forum
William C. Velasquez Institute

cc: Members, House Subcommittee on Crime, Terrorism, and Homeland Security

NATIONAL HISPANIC ORGANIZATIONS OPPOSE "THE GANGBUSTER BILL" H.R. 1279.

May 10, 2005

VIA FACSIMILE

RE: Oppose provisions in H.R. 1279 that prosecute youth as adults and impose mandatory minimum sentences.

Dear Member of Congress:

On behalf of the undersigned Hispanic organizations, representing more than 40 million Hispanic Americans living in the U.S. we are writing to urge you to oppose provisions contained in the "Gang Deterrence and Community Protection Act of 2005" (H.R. 1279). Please be advised that as members of the National Hispanic Leadership Agenda (NHLA), we will recommend that votes relevant to the Latino community and final passage of the bill be included in NHLA's Congressional Scorecard.

The Latino community directly feels the effects of youth violence, it is for this reason that we believe that punitive measures designed to only punish and not reform youth violent behavior in fact exacerbates the problem. Instead, we call for a comprehensive research – based approach that gets at the root causes of youth violence – which includes but is not limited to prevention, treatment, and effective alternatives to incarceration.

H.R. 1279, if enacted into law, would have a disparate impact on Latino youth and their families. This bill would undermine overall public safety, given that it imposes excessively severe measures aimed at only punishing and not reforming youth violent behavior. Specifically, we strongly oppose two provisions – the prosecution and transfer of youth into the adult system and the inclusion of various mandatory minimum sentences for a broad category of offenses that are labeled "gang crimes" and numerous other offenses.

Section 115 of the bill allows for the prosecution and transfer of youth into the adult system. The latest research shows that transferring youth to adult status is a failed public policy approach, resulting in the opposite of what this bill is purporting to do. It will *increase* – not decrease – youth violence. The research shows that young people prosecuted as adults, compared to those prosecuted as juveniles, are more likely to: (a) commit a greater number of crimes upon release; (b) commit more violent crimes upon release; and (c) commit crimes sooner upon release. The research also shows that youth held in adult facilities, compared to youth held in juvenile facilities, are five times as likely to be sexually assaulted by other inmates, twice as likely to be beaten by staff, 50% more likely to be assaulted with a weapon, and eight times as likely to commit suicide.

With these kinds of risks, it does not make sense for the House to pursue legislation that includes the power to prosecute juveniles as adults in federal court for activities that the states are already well-equipped – indeed, better-equipped – to handle than the federal system. Also, putting the transfer decision at the sole discretion of a prosecutor, not a judge as the law currently requires, violates the most basic principles of due process and fairness.

Section 103 of the bill includes and expands mandatory minimum sentences for a broad category of offenses that are deemed "gang crime." Under this bill, the mandatory minimum sentences for these crimes range from five to 30 years. Although the offenses are serious and individuals who are convicted should be properly held accountable, mandatory sentences often prevent judges from determining the appropriate punishment. When judges are restricted by mandatory sentences, they cannot assess an individual's culpability during the crime or other factors that have bearing on recidivism, thus resulting in inappropriate sentences.

Although mandatory minimums were intended to reduce the racial disparities that were associated with indeterminate sentencing, in practice they exacerbate and mask such disparities by shifting discretion from the judge to the prosecutor. Prosecutors retain the power to plea bargain by offering defendants plea agreements that avoid the mandatory penalty. Studies have shown that this discretion results in a disparity in sentencing outcomes based largely on race and quality of defense attorney. According to testimony from the U.S. Sentencing Commission, in 1999, 39% of those receiving mandatory sentences were Hispanic, 38% were African American, and 23% were White. Hispanics comprised 44% of those subject to five-year mandatory sentences in 1999, 37% of the ten-year mandatory sentences, 20% of the 20-year mandatory sentences, and 8% of the mandatory life sentences. The reality for African American defendants is even bleaker.

We respectfully ask you to oppose legislation that prosecutes and transfers youth into the adult system and that includes and expands mandatory minimum sentences. If you have any questions please contact Angela Arboleda, NCLR Civil Rights Policy Analyst, at (202) 776-1789.

Sincerely,

Alianza Dominicana, Inc
American GI Forum
ASPIRA
Association for the Advancement of Mexican Americans (AAMA)
Hispanic Associations of Colleges & Universities
Labor Council for Latin American Advancement
League of United Latin American Citizens
MANA, A National Latina Organization
National Council of La Raza
National Puerto Rican Coalition
National Puerto Rican Forum
William C. Velasquez Institute

LETTER FROM THE ASSOCIATION OF OIL PIPE LINES, BUSINESS CIVIL LIBERTIES, INC., ET AL., TO THE HONORABLE HOWARD COBLE AND THE HONORABLE ROBERT C. SCOTT (APRIL 12, 2005)

The Honorable Howard Coble
Chairman
Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary
U. S. House of Representatives
Washington, D.C. 20515

The Honorable Robert Scott
Ranking Member of the Subcommittee
Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary
U. S. House of Representatives
Washington, D.C. 20515

April 12, 2005

Re: Gang Deterrence and Community Protection Act

Dear Mr. Chairman and Mr. Scott:

We are writing to express our strong opposition to Section 103(d) of H.R. 1279, the Gang Deterrence and Community Protection Act, which is scheduled for mark-up on April 5 before the Crime, Terrorism, and Homeland Security Subcommittee of the House Judiciary Committee. This section would quadruple the current term of imprisonment for a violation of 18 U.S.C. 371, the general federal conspiracy statute, from a maximum of five years to 20 years in prison.

This dramatic increase in the possible sentence under Section 371 would produce inconsistencies in the federal criminal code and unfairly expose defendants who are charged with misdemeanors or felony regulatory violations as substantive offenses to extraordinarily long prison terms. Although the undersigned organizations understand the need to address the problem of gangs and juvenile crime, we believe that the proposed increased penalty for conspiracy presents unduly severe consequences to the regulated community without significantly improving the mechanisms available to law enforcement officials.

As it is, a defendant who "conspire[s] to commit any offense against the United States" can be charged with conspiracy under Section 371. A prosecutor may prove a conspiracy case by presenting circumstantial evidence of an agreement to commit any offense, and by showing that *one* member of the conspiracy committed an act to further the conspiracy.

Because a violation of a misdemeanor, felony, or federal civil law can form the basis of a conspiracy, the undersigned organizations are extremely concerned that increasing the penalty for conspiracy from five to 20 years imprisonment would result in inequitably harsh sentences. Not infrequently, the substantive offense that the conspiracy defendant is charged with violating is a felony regulatory crime, or even a misdemeanor, that was committed with a negligent state of mind or "general intent"—as opposed to a willful intent or intent to defraud, which is more typically required for statutes with such harsh punishments. *Compare*, for example, the Lacey Act, which provides for a maximum one-year imprisonment for a "negligent" violation, and five years for certain "knowing" offenses (16 U.S.C. 3373(d)); the Endangered Species Act, punishable by six months or one year in prison for a "knowing" violation (16 U.S.C. 1538, 1540); the Clean Water Act, which is punishable by one-year imprisonment for a negligent violation and three years for a "knowing" violation (33 U.S.C. 1319); and the Internal Revenue

Code, which provides for one-year imprisonment for a negligent violation and five years for a "willful" violation (26 U.S.C. 7203); *with* mail fraud, which is punishable by a maximum 20 years in prison (18 U.S.C. 1341), and certain other provisions of the Clean Water Act that penalize "knowing endangerment," 33 U.S.C. 1319 (15 years in prison).[1]

Thus, by quadrupling the imprisonment penalty for conspiracy, Congress would transform Section 371 from one of a prosecutor's many tools for augmenting substantive offenses in appropriate cases to the most important charge in an indictment. Importantly, such a conspiracy charge would be available in cases in which Congress has otherwise provided for more measured and reasonable sentences for defendants who possess less than criminal intent for the substantive crime.

The proposed amendment to Section 371 could, in essence, result in a penalty of 20 years in prison for regulatory violations, and violations that require only negligent or general intent—while adding little to the range of penalties already available for gang- and drug-related conspiracies. Therefore, we respectfully ask that Congress remove Section 103(d) from the Gang Deterrence and Community Protection Act.

Sincerely,

Association of Oil Pipe Lines

Business Civil Liberties, Inc.

Chamber of Commerce of the United States

National Federation of Independent Business

cc: Members of the Subcommittee on Crime, Terrorism and Homeland Security

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[1] In fact, in several areas of law enforcement, federal prosecutors are specifically instructed to try to charge misdemeanor offenses as felonies by combining a misdemeanor offense with the federal statute prohibiting false statements (18 U.S.C. 1001) and the conspiracy statute. *See*, for example, U.S. Department of Justice Manual on Federal Prosecution of Election Offenses (encouraging the practice with respect to minor reporting violations of election laws). Section 371 does provide that if the underlying substantive offense of the conspiracy is a misdemeanor, then the conspiracy itself shall only be punishable as a misdemeanor. But using other federal statutes such as Section 1001 easily circumvents this requirement. *See* Abraham S. Goldstein, *Conspiracy To Defraud the United States*, 68 Yale L.J. 405, 409 (1959) ("'Conspiracy' has been a favorite of prosecutors for centuries.").

By way of example, a defendant who is charged with and convicted of negligently causing an oil pipeline to leak a small amount of oil (by accidentally bumping it with a piece of machinery) under the Clean Water Act (a misdemeanor), and sentenced to six months in jail, could *additionally* be charged with conspiracy if there were evidence that a co-worker or employee had tried to conceal the leak (a violation of Section 1001) and circumstantial evidence of an agreement—thus escalating the possible sentence to 20 years under the proposed legislation. *See Hanousek v. United States*, 176 F.3d 1116 (9th Cir. 1999).

The Honorable Howard Coble
Chairman
Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary
U. S. House of Representatives
Washington, D.C. 20515

The Honorable Robert Scott
Ranking Member of the Subcommittee
Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary
U. S. House of Representatives
Washington, D.C. 20515

April 5, 2005

Re: Gang Deterrence and Community Protection Act

Dear Mr. Chairman and Mr. Scott:

We are writing to express our strong opposition to Section 103(d) of H.R. 1279, the Gang Deterrence and Community Protection Act, which is scheduled for mark-up on April 5 before the Crime, Terrorism, and Homeland Security Subcommittee of the House Judiciary Committee. This section would quadruple the current term of imprisonment for a violation of 18 U.S.C. 371, the general federal conspiracy statute, from a maximum of five years to 20 years in prison.

This dramatic increase in the possible sentence under Section 371 would produce inconsistencies in the federal criminal code and unfairly expose defendants who are charged with misdemeanors or felony regulatory violations as substantive offenses to extraordinarily long prison terms. Although the undersigned organizations understand the need to address the problem of gangs and juvenile crime, we believe that the proposed increased penalty for conspiracy presents unduly severe consequences to the regulated community without significantly improving the mechanisms available to law enforcement officials.

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Because a violation of a misdemeanor, felony, or federal civil law can form the basis of a conspiracy, the undersigned organizations are extremely concerned that increasing the penalty for conspiracy from five to 20 years imprisonment would result in inequitably harsh sentences. Not infrequently, the substantive offense that the conspiracy defendant is charged with violating is a felony regulatory crime, or even a misdemeanor, that was committed with a negligent state of mind or "general intent"—as opposed to a willful intent or intent to defraud, which is more typically required for statutes with such harsh punishments. *Compare*, for example, the Lacey Act, which provides for a maximum one-year imprisonment for a "negligent" violation, and five years for certain "knowing"

offenses (16 U.S.C. 3373(d)); the Endangered Species Act, punishable by six months or one year in prison for a "knowing" violation (16 U.S.C. 1538, 1540); the Clean Water Act, which is punishable by one-year imprisonment for a negligent violation and three years for a "knowing" violation (33 U.S.C. 1319); and the Internal Revenue Code, which provides for one-year imprisonment for a negligent violation and five years for a "willful" violation (26 U.S.C. 7203); *with* mail fraud, which is punishable by a maximum 20 years in prison (18 U.S.C. 1341), and certain other provisions of the Clean Water Act that penalize "knowing endangerment," 33 U.S.C. 1319 (15 years in prison).[1]

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Sincerely,

Business Civil Liberties, Inc.

Chamber of Commerce of the United States

National Federation of Independent Business

cc: Members of the Subcommittee on Crime, Terrorism and Homeland Security

---

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LETTER FROM LAURA W. MURPHY, TONYA MCCLARY, ET AL., TO THE HONORABLE HOWARD COBLE AND THE HONORABLE ROBERT C. SCOTT (APRIL 4, 2005)

April 4, 2005

VIA FACSIMILE

The Honorable Howard Coble
Chair, Judiciary Committee
Crime, Terrorism, and Homeland Security Subcommittee
House of Representatives
Washington, DC 20515

The Honorable Robert C. Scott
Ranking Member, Judiciary Committee
Crime, Terrorism, and Homeland Security Subcommittee
House of Representatives
Washington, DC 20515

Re: House Judiciary, Crime, Terrorism and Homeland Security Subcommittee Hearing and Mark up on H.R. 1279, The Gang Deterrence and Community Protection Act of 2005.

Dear Representatives Coble and Scott:

The undersigned organizations write to oppose the capital sentencing provisions in the Gang Deterrence and Community Protection Act of 2005 (H.R. 1279), which is scheduled for a hearing and markup on April 5. This bill would unwisely create several new death-eligible offenses and increase the penalty for some existing crimes to death, at a time of growing concern regarding the fairness and reliability of our nation's capital punishment system. Further, it grossly expands venue in capital cases so that crimes need not be prosecuted in the jurisdiction where they occurred, raising troubling questions of whether accused persons would have a fair trial by a jury of his or her peers.

The increasing numbers of innocent people released from death row illustrates the fallibility of this system. Last year, a University of Michigan study identified 199 murder exonerations since 1989, 73 of them in capital cases. The same study found that death row inmates represent a quarter of 1 percent of the prison population but 22 percent of the exonerated. Since 1973, 119 innocent people have been released from death row.

The death penalty is also racially and economically discriminatory. After its careful study of the death penalty in the United States, the United Nations' Human Rights Commission in 1998 issued a report which rightly concludes: "Race, ethnic origin and economic status appear to be key determinants of who will, and who will not, receive a sentence of death." These problems are not confined to state systems; a recent Department of Justice survey documents racial, ethnic and geographic disparity in the charging of federal capital cases. Indeed, the review found that in 75 percent of the cases in which a federal prosecutor sought the death penalty, the defendant was a member of a minority group. The

explanation for these extremely troubling disparities is unclear, but the possibility of discrimination and bias cannot be ruled out.

We are also concerned that, in creating new federal death-eligible offenses out of traditional state crimes, the law will flout evolving community standards regarding the appropriateness of the death penalty for certain offenses. In contrast to the trend in many states, federal prosecutors appear to be seeking the death penalty more often than they did in the past.

The expansive language of H.R. 1279 will only exacerbate these problems. This bill is so broadly drawn as to create death-eligible offenses in a wide range of crimes in which death occurs. This runs counter to Supreme Court jurisprudence that requires death penalty statutes to be narrowly drawn so that only the "worst of the worst" offenders are sentenced to death.

H.R. 1279 also expands venue in capital cases, making any location even tangentially related to the crime a possible site for the trial. This change in law will increase the inequities that already exist in the federal death penalty system, giving prosecutors tremendous discretion to "forum shop" for the most death-friendly jurisdiction in which to try their case. The ability of federal prosecutors to choose their venue, across a wide range of possible states and jurisdictions, will lead to an increase in the racial and geographic disparities already at play in the federal death penalty system.

For these reasons, we urge you to amend H.R. 1279 to eliminate the federal death-eligible offenses and to eliminate Section 110 that expands venue in capital cases. Thank you very much for your attention to this important matter.

Respectfully Submitted,

Laura W. Murphy
Director
American Civil Liberties Union Washington Legislative Office

Tonya McClary
Director of the Criminal Justice Program
American Friends Service Committee

Alexandra Arriaga
Director of Governmental Relations
Amnesty International USA

Rabbi Marla Feldman
Director
Commission on Social Action of Reform Judaism

Mike Farrell

President
Death Penalty Focus

Shari Silberstein
Co-Director
Equal Justice USA/Quixote Center

Jamie Fellner, Esq.
Director, U.S. Program
Human Rights Watch

Wade Henderson
Executive Director
Leadership Conference on Civil Rights

Renny Cushing
Executive Director
Murder Victims' Families for Human Rights

Hilary Shelton
Director
NAACP Washington Bureau

Barry C. Scheck
President
National Association of Criminal Defense Lawyers

Diann Rust-Tierney
Executive Director
National Coalition to Abolish the Death Penalty

Jenni Gainsborough
Director, Washington Office
Penal Reform International

Steve Hall
Director
StandDown Texas Project

cc: House Judiciary Committee

LETTER FROM LAURA W. MURPHY, DIRECTOR, AND JESSELYN MCCURDY, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION TO THE HONORABLE HOWARD COBLE AND THE HONORABLE ROBERT C. SCOTT (APRIL 15, 2005)

WASHINGTON LEGISLATIVE OFFICE
Laura W. Murphy
Director

915 15th Street, NW Washington, D.C. 20005

(202) 544-1681 Fax (202) 546-0738

April 15, 2005

The Honorable Howard Coble
Chair, Judiciary Committee
Crime, Terrorism, and Homeland Security Subcommittee
House of Representatives
Washington, DC 20515

The Honorable Robert C. Scott
Ranking Member, Judiciary Committee
Crime, Terrorism, and Homeland Security Subcommittee
House of Representatives
Washington, DC 20515

Oppose the Ineffective Policies Proposed in H.R.1279,
The Gang Deterrence and Community Protection Act of 2005

Representative Randy Forbes (R-VA) has introduced H.R.1279, the Gang Deterrence and Community Protection Act of 2005 ("Gang bill"). The Gang bill could subject innocent people to the death penalty, creates numerous discriminatory mandatory minimum sentences, could result in wrongfully convictions based on unreliable evidence, and creates more serious juvenile offenders by incarcerating children in adult prisons. **The House Judiciary Committee is scheduled to continue marking up this bill during the week of April 18th; we strongly urge you to oppose this legislation.**

Congress Should Not Expand The Federal Death Penalty Until It Ensures Innocent People Are Not On Death Row.

Expansion of the federal death penalty undermines the very reforms that were enacted in last year's Justice for All Act (P.L. 108-405), which addressed some systemic problems with the federal death penalty. H.R.1279 would create several new offenses and make them

punishable by the death penalty as well as increase the penalty for several existing federal offenses to the possibility of a death sentence.[1]

The death penalty is in need of reform, not expansion. According to the Death Penalty Information Center, 119 prisoners on death row have now been exonerated. Chronic problems, including inadequate defense counsel and racial disparities, plague the death penalty system in the United States. The expansion of the death penalty potential for gang crimes creates an opportunity for more arbitrary application of the death penalty. States continue to address the systemic problems with the administration of the death penalty by implementing reform and moratorium efforts, while the federal government, in H.R.1279, is moving to expand the death penalty in lieu of enacting or implementing reforms on the federal level.

In addition to expanding the number of federal death penalty crimes, Section 110 of the bill expands venue in capital cases to the point that any location even tangentially related to the crime could be the site of a trial. Studies of the federal death penalty show that a person prosecuted in Texas is much more likely to be charged, tried and sentenced to death in a capital case than a person who is prosecuted for the same crime in Massachusetts. This bill will exacerbate these geographic inequities that exist in the federal death penalty system. The wide range of discretion in both what to charge and where to bring the charge will give prosecutors tremendous latitude to forum shop. This broad discretion will increase the racial and geographic disparities already at play in the federal death penalty.

People Could Be Convicted Of A "Gang" Crime Even If They Are Not Members Of A Gang.

This bill would impose severe penalties for a collective group of three or more people who commit "gang" crimes. Even more disconcerting is that a person could receive the death penalty for the illegal participation in what would be considered a "criminal street gang" while having no idea or intention of being a part of a so-called "gang."[2] H.R.1279 revises the already broad definition of "criminal street gang" to an even more ambiguous standard of a formal or informal group or association of three (3) or more people who commit two (2) or more "gang" crimes. The number of people required to form a gang decreases from five (5) people in an ongoing group under current law to three (3) people who could just be associates or casual acquaintances under this proposed legislation.

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[1] The offenses under this legislation that could be punishable with the death penalty are 18 U.S.C. Sec. 521 Criminal Street Gang Prosecutions; 18 U.S.C. Sec. 1952 Interstate or Foreign Commerce-related Aid to Racketeering; 21 U.S.C. 841 et. seq. Murder and Other Violent Crimes Committed During and In Relation to a Drug Trafficking Crime; 18 U.S.C 1958 Use of Interstate Commerce Facilities in the Commission of Murder For Hire and other Felony Crimes of Violence and 18 U.S.C. Sec. 1111 et. al. Use of Interstate Commerce Facilities in the Commission of Multiple Murder.

[2] If the predicate gang crime involved murder or conspiracy to commit murder.

Under the Gang bill a "continuing series" of crimes does not have to be established to charge a person with a gang crime. Presently, the government has to establish that criminal street gangs engaged "within the past five (5) years in a continuing series of offenses."[3] The continuing series of offenses under current law is essential to preserving the concept of gang activity that the law is trying to target, i.e. criminal activity that has some type of connection to a tight knit group of people. This broader definition of gang crime in H.R.1279 would result in people being convicted of "gang" crimes that are neither ongoing in nature nor connected to each other, and could occur 10, 15 or 20 years apart.

H.R.1279 Further Erodes Federal Judges' Sentencing Discretion By Proposing Harsher Mandatory Minimum Sentences.

This legislation further erodes the sentencing discretion of judges by imposing mandatory minimums that would result in unfair and discriminatory prison sentences. Many of the enhanced gang penalties in this bill are mandatory minimum sentences or death. Mandatory minimum sentences deprive judges of the ability to impose sentences that fit the particular offense and offender. Although in theory mandatory minimums were created to address disparate sentences that resulted from indeterminate sentencing systems, in reality they shift discretion from the judge to the prosecutor. Prosecutors hold all the power over whether a defendant gets a plea bargain in order for that defendant to avoid the mandatory sentence. It is not clear what standards (if any) prosecutors use to offer plea bargains, therefore only a few defendants get the benefit of avoiding the mandatory sentence. This creates unfair and inequitable sentences for people who commit similar crimes, thus contributing to the very problem mandatory minimums were created to address.

H.R.1279 Jeopardizes A Person's Right To A Fair Trial And Creates The Possibility That Innocent People Would Be Held For Long Periods Of Time Prior To A Trial.

Innocent people could be convicted of crimes they did not commit if the statute of limitations is extended as proposed in this legislation. The Gang bill proposes to extend the statute of limitations for non-capital crimes of violence. Generally, the statute of limitations for non-capital federal crimes is five (5) years after the offense is committed.[4] This bill would extend that limitation for crimes of violence to 15 years after the offense was committed or the continuing offense was completed. For example, if a violent crime was committed in 2005, but a person was not indicted until 2020, that individual could be charged with a crime 15 years later. In 2020, 15 years after the crime, alibi witnesses could have disappeared or died, other witnesses' memories would have faded and evidence may be unreliable. The use of questionable evidence could affect a person's ability to defend themselves against charges and to receive a fair trial.

[3] 18 U.S.C. 521(a)(B).

[4] 18 U.S.C. 3282 (See the exception for Chapter 109A offenses involving DNA evidence).

Shifting the burden of proof for pretrial detention in some cases involving guns could result in serious injustices and interfere with an accused person's defense. This legislation would create a rebuttal presumption against bail for people accused of certain firearms offenses during the commission of serious drug crimes. A person who is presumed innocent and has not been found guilty of any crime could be held for months or years without the government having made any showing that he or she is dangerous or a flight risk. Making it more difficult for an accused person to be released on bail prior to trial hinders a defendant's ability to assist their defense lawyer with investigating the facts of the case and preparing their defense.

Children Would Be Put In Federal Prison With Little Opportunity For Education Or Rehabilitation.

Under the Gangs bill, more children will become hardened criminals after being tried in federal court and incarcerated in adult prisons. Currently under federal law, when the government recommends trying a juvenile as an adult in federal court various factors must be considered by the court before deciding whether the criminal prosecution of a young person is in the interest of justice. These factors include the age, social background, and the intellectual development and psychological maturity of the child.[5] H.R.1279 would give the prosecutor the discretion to determine when to try a young person in federal court as an adult, if the juvenile is 16 years of age or older and commits a crime of violence.

The decision by a prosecutor to try a juvenile as an adult cannot be reviewed by a judge under this legislation. This unreviewable process of transferring youth to adult federal court is particularly troubling when juveniles are not routinely prosecuted in the federal system and there are no resources or facilities to address the needs of youth. The federal government should continue to let states deal with juveniles in their family court systems that were created to address the needs and provide services to young people. Furthermore, a 1996 study showed that youth transferred to adult court in Florida were a third more likely to reoffend than those sent to the juvenile justice system for the same crime and with similar prior records. Of the youth in this study who committed new crimes, those sent to adult court reoffended at twice the rate of those sent to juvenile court.[6] This research emphasizes the need for juveniles to be held accountable in the juvenile justice system, which has more resources to address the problems that cause children to come to the attention of the court system.

While efforts to address gang crime are very important to maintaining public safety, this legislation proposes to confront crime at the expense of the right to a fair trial, at the risk of

[5] See 18 U.S.C. 5032 Delinquency proceedings in district court; transfer for criminal prosecution. This provision also indicates that the court will consider the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the nature of past treatment efforts and the juvenile's response to those efforts; and the availability of programs designed to treat the juvenile's behavior problems.

[6] Bishop, Donna M. et al. "The Transfer of Juveniles to Criminal Court: Does it make a difference?" *Crime and Delinquency*, Vol. 42, No. 2, April 1996.

convicting innocent people and unnecessary exposure to the death penalty. **H.R.1279 will not solve the problem of gang crime in this country, thus members should oppose this bill when it is considered by the House Judiciary Committee.**

Sincerely,

Laura W. Murphy
Director

Jesselyn McCurdy
Legislative Counsel

cc: House Judiciary Committee
House Majority Leader Tom DeLay
House Minority Leader Nancy Pelosi

LETTER FROM JULIE STEWART, PRESIDENT, AND MARY PRICE, GENERAL COUNSEL, FAMILIES AGAINST MANDATORY MINIMUMS TO THE HONORABLE HOWARD COBLE AND THE HONORABLE ROBERT C. SCOTT (APRIL 8, 2005)

April 8, 2005

The Honorable Howard Coble
United States House of Representatives
Crime, Terrorism and Homeland Security Subcommittee
House Judiciary Committee
Washington, D.C. 20515

The Honorable Bobby Scott
United States House of Representatives
Crime, Terrorism and Homeland Security Subcommittee
Judiciary Committee
Washington, D.C. 20515

Re: Gang Prevention and Community Protection Act of 2005 (H.R. 1279)

Dear Chairman Coble and Representative Scott:

We write on behalf of the board and members of Families Against Mandatory Minimums (FAMM) to oppose the Gang Prevention and Community Protection Act of 2005 (H.R. 1279), which is scheduled for a hearing today in the Crime Subcommittee of the House Judiciary Committee. This bill would, among other things:

- add significant new mandatory minimum penalties to the criminal street gangs statute;
- broaden the definition of street gang, and change the statutory definition of crime of violence to include drug trafficking crimes that involve no violence whatsoever;
- amend 18 U.S.C. § 924 (c) to increase from five to seven years the mandatory consecutive sentence for carrying or possessing a firearm in connection with a predicate drug trafficking offense or violent felony;
- increase from ten to fifteen years the mandatory consecutive penalty for discharging a firearm;
- make defendants convicted of conspiracy to commit the underlying offenses eligible for the mandatory consecutive penalties provided for in § 924 (c) if a firearm is involved even if the defendant did not possess or use the firearm.

Existing law carries sharp penalties for these offenses. For example, sentences for underlying drug offenses are routinely very high. Mandatory minimum provisions anchor sentence determinations under the United States Sentencing Guidelines. Guideline sentences then increase based on larger drug quantities. FAMM's files are filled with the stories of first-time or otherwise low-level drug offenders serving 10, 15, even 20 years or more in prison

because of quantity-driven sentencing. And defendants convicted under 18 U.S.C. § 924 (c) who simply possess a firearm already receive an additional five-year sentence on top of the lengthy sentence for the underlying offense, while those who discharge a weapon serve an additional mandatory ten years in federal prison. This is because sentences for violations of 18 U.S.C. § 924 (c) must be imposed consecutively to the underlying offense. We know of no complaints that such defendants receive unjustly short sentences.

At a time when the entire federal sentencing system is undergoing significant scrutiny following the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738 (2005), we urge you to exercise restraint in legislating new mandatory minimum sentences. Particularly in light of the fact that the Sentencing Commission reports that judges are abiding by the federal sentencing guidelines at a rate comparable to that experienced prior to the Supreme Court's decision, and review of other sentences is proceeding, there is no reason to disrupt sentencing in such a dramatic fashion, or impose additional mandatory sentences.

It is well documented that mandatory sentencing leads to unjust punishment and racial disparity. U.S. Sentencing Commission, *Mandatory Minimum Penalties in the Federal Criminal Justice System* (1991); Federal Judicial Center, *The Consequences of Mandatory Prison Terms* (1994); Leadership Conference on Civil Rights, *Justice on Trial* (2000). For these reasons, Chief Justice William Rehnquist has called mandatory sentencing "a good example of the law of unintended consequences" and all 12 federal judicial circuits have urged the repeal of mandatory minimum sentences. Justice Anthony Kennedy has spoken out sharply against mandatory sentencing more than once.

Given the widespread and growing criticisms leveled against mandatory sentencing, increasing the length and reach of mandatory and mandatory consecutive sentencing is ill advised. We urge you, in the strongest possible terms, to oppose this legislation.

Thank you for considering our views.

Sincerely,

Julie Stewart
President

Mary Price
General Counsel

cc: Members of the Crime, Terrorism and Homeland Security Subcommittee

LETTER FROM THE THOMAS W. HILLER, II, FEDERAL PUBLIC DEFENDER, AND CHAIR, LEGISLATIVE EXPERT PANEL, FEDERAL PUBLIC AND COMMUNITY DEFENDERS TO THE HONORABLE F. JAMES SENSENBRENNER, JR. AND THE HONORABLE JOHN CONYERS (APRIL 21, 2005)

FEDERAL PUBLIC DEFENDER
Western District of Washington

Thomas W. Hillier, II
Federal Public Defender

April 21, 2005

The Honorable F. James Sensenbrenner, Jr.
Chairman
Judiciary Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable John Conyers
Ranking Member
Judiciary Committee
United States House of Representatives
Washington, D.C. 20515

Re: Gang Deterrence and Community Protection Act of 2005 (H.R. 1279)

Dear Chairman Sensenbrenner and Representative Conyers:

I wrote early last week on behalf of the Federal Public and Community Defenders to strongly urge the House Judiciary Committee's Subcommittee on Crime, Terrorism and Homeland Security to oppose H.R. 1279 for a number of constitutional and policy reasons.

I am writing now to alert you that this legislation seems to exceed Congress' authority under the Commerce Clause by making federal crimes of a host of traditional state offenses that have no substantial effect on interstate commerce.

In United States v. Lopez, 514 U.S. 549 (1995), the Supreme Court held that a statute making it a federal crime to possess a firearm within 1000 feet of a school exceeded Congress' authority to regulate commerce, emphasizing that this was an area of traditional state concern and criminalized conduct already denounced as criminal by the States, and that neither the actors nor their conduct had a commercial character. Id. at 561 n.3, 567, 560-62, 580.

In United States v. Morrison, 529 U.S. 598 (2000), the Supreme Court struck down the Violence Against Women Act, which provided a civil remedy in federal court for victims of gender-motivated violence. The Court made clear that the federal government does not have Commerce Clause jurisdiction over violent crime merely because it has an effect on the national economy. Id. at 612-16. Otherwise, the

Commerce Clause could be used "to completely obliterate the Constitution's distinction between national and local authority." Id. at 615.

In Jones v. United States, 529 U.S. 848 (2000), the Court limited the reach of the federal arson statute, in part to avoid constitutional doubts under its commerce jurisprudence. The government argued that arson of a private home could be reached under the statute, as "property used in interstate or foreign commerce or in an[] activity affecting interstate or foreign commerce," because the home received out-of-state utilities, and was covered by an out-of-state mortgage and insurance policy. The Court rejected this argument, ruling that the "used in" language of the statute required active employment in interstate commerce, not mere passive receipt of interstate services. Id. at 855-56. The Court added that if it adopted the government's theory, it would make "virtually every arson in the country a federal offense." Id. at 859. The Court refused to read the statute to reach this "traditionally local criminal conduct." Id. at 858.

H.R. 1279 has substantial Commerce Clause problems under Lopez, Morrison and Jones. It prohibits "gang crimes" by "criminal street gangs." Gang crimes include any state crime of violence punishable by imprisonment of more than one year. This cannot be a basis for Commerce Clause jurisdiction, as Morrison makes clear. See 529 U.S. at 612-15.

"Criminal street gang" is defined to include any group of three or more who commit gang crimes, "if any of the activities of the criminal street gang affects interstate or foreign commerce." This seems to raise issues under Lopez and Jones. The activity is noncommercial (i.e., violent crime), and so is being prosecuted on the basis that the gang has some other connection to commerce. In such a circumstance, a gang's minimal connection to commerce would not suffice. Avoiding a constitutional problem would require that the criminal street gang itself be an economic enterprise, or at least that its activities "substantially" affect commerce. Otherwise, virtually all local activity that could be characterized as "gang activity" would be federalized, upsetting the federal-state balance in criminal prosecution.

In Waucaush v. United States, 380 F.3d 251 (6th Cir. 2004), the Sixth Circuit followed similar reasoning to conclude that a gang prosecution under RICO exceeded Congress' authority under the Commerce Clause where the putative gang's activities were intrastate, non-economic, and without substantial effect on interstate commerce. Id. at 255-58.

On behalf of the Federal Public and Community Defenders, I respectfully urge you to oppose this legislation for this additional reason.

Very truly yours,

Thomas W. Hiller II

Federal Public Defender
Chair, Legislative Expert Panel, Federal Public and
Community Defenders

cc: Members of the House Judiciary Committee

LETTER FROM MEMBERS OF CONGRESS TO THE HONORABLE F. JAMES SENSENBRENNER, JR. AND THE HONORABLE JOHN CONYERS, JR. (APRIL 19, 2005)

Congress of the United States
Washington, DC 20515

April 19, 2005

The Honorable F. James Sensenbrenner, Jr.
Chairman
Judiciary Committee
U.S. House of Representatives
2138 Rayburn Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
Judiciary Committee
U.S. House of Representatives
2142 Rayburn Building
Washington, DC 20515

Dear Chairman Sensenbrenner and Ranking Member Conyers:

As Hispanic Members of Congress, we write to express our support for effective measures to combat gang-related crime. Recent gang violence is creating fear in our communities and must be addressed. Unfortunately, several provisions in H.R. 1279, which is under consideration by the House Judiciary Committee, are counterproductive to reducing gang violence.

If H.R. 1279 is enacted into law in its current form, it will have negative unintended consequences, such as increased crime, higher recidivism, and fewer opportunities to rehabilitate juveniles involved with gangs. This legislation would particularly have a negative impact on Latino youth and their families, given that it imposes punitive measures aimed at punishing, not reforming, youth behavior. Specifically, we are concerned about provisions in the legislation that would 1) move more cases involving youth to the federal system and prosecute youth as adults, 2) impose various mandatory minimum sentences for a broad category of offenses that are labeled "gang crimes" and numerous other offenses, and 3) create several new death-eligible offenses and increase the penalty for some existing crimes to death.

Transferring Youth into the Adult Federal Justice System

Section 115 of the bill allows for the transfer of youth into the adult system. However, the latest research demonstrates that such transfers are counterproductive. It will increase, not decrease youth violence. Research shows that young people prosecuted as adults, in comparison to those prosecuted as juveniles, are more likely to: (a) commit a greater number of crimes upon release; (b) commit more violent crimes upon release; and (c) commit crimes sooner upon release. The research also shows that youth held in adult facilities, compared to youth held in juvenile facilities, are five times as likely to be sexually assaulted by other inmates; twice as likely to be beaten by staff; 50 percent more likely to be assaulted with a weapon; and eight times as likely to commit suicide.

Taking these risks into consideration, the House should not pursue legislation that includes the power to prosecute juveniles as adults in federal court for activities that the states are better equipped to handle. Also, putting the transfer decision in the sole discretion of a prosecutor, not a judge as the law currently requires, violates the basic principles of due process and fairness.

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Mandatory Minimum Sentences

Section 103 of the bill includes mandatory minimum sentences for acts deemed "gang crime." Under this bill, the mandatory minimum sentences for these crimes will range from five to 30 years. Although the offenses are serious and individuals who are convicted should be properly held accountable, mandatory sentences often prevent judges from determining the appropriate punishment. When judges are restricted by mandatory sentences, they cannot assess an individual's culpability during the crime or other factors that have bearing on recidivism, thus resulting in inappropriate sentences.

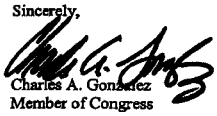
Although mandatory minimum sentences were intended to reduce the racial disparities that were associated with indeterminate sentencing, in practice they exacerbate and mask such disparities by shifting discretion from the judge to the prosecutor. Prosecutors retain the power to plea bargain by offering defendants plea agreements that avoid the mandatory penalty. This discretion can result in a disparity in sentencing outcomes based on race and the quality of the assigned defense attorney. According to data collected by the U.S. Sentencing Commission, in 1999, 39 percent of those receiving mandatory sentences were Hispanic, 38 percent were African American, and 23 percent were white. Hispanics comprised 44 percent of those subject to five-year mandatory sentences in 1999, 37 percent of the 10-year mandatory sentences, and 20 percent of the 20-year mandatory sentences.

Expansion of the Death Penalty

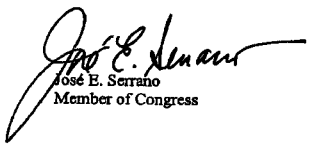
Finally, Section 101 of the bill would create several new death-eligible offenses and increase the penalty for some existing crimes to death, at a time of growing concern regarding the fairness and reliability of our nation's capital punishment system. Further, it grossly expands venue in capital cases so that crimes need not be prosecuted in the jurisdiction where they occurred, raising troubling questions of whether accused persons would have a fair trial by a jury of his or her peers.

We urge you to oppose these provisions and support amendments to remove or significantly modify them. As the House Judiciary Committee continues to take on the important issue of reducing youth violence and gang-related activity, we ask that you consider research-based approaches that attack the root causes of youth violence, including prevention, treatment, and, when appropriate, effective alternatives to incarceration.

Sincerely,



Charles A. Gonzalez
Member of Congress



José E. Serrano
Member of Congress

Luis V. Gutierrez
Member of Congress

Raúl M. Grijalva
Member of Congress

Xavier Becerra
Member of Congress

Hilda L. Solis
Member of Congress

Lucille Roybal-Allard
Member of Congress

Cc: Members of the House Judiciary Committee

LETTER FROM LEONIDAS RALPH MECHAM, SECRETARY, JUDICIAL CONFERENCE OF THE UNITED STATES TO THE HONORABLE HOWARD COBLE (APRIL 1, 2005)

JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

LEONIDAS RALPH MECHAM
Secretary

April 1, 2005

Honorable Howard Coble
Chairman
Subcommittee on Crime, Terrorism
and Homeland Security
Committee on the Judiciary
United States House of Representatives
207 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to provide the views of the Judicial Conference of the United States with regard to H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005," as introduced on March 15, 2005.

The bill would amend title 18, United States Code, to allow a significant increase in the prosecution of members of criminal street gangs and facilitate the prosecution of juvenile members. The bill would also authorize appropriations for the hiring of federal prosecutors to prosecute gangs.

In particular, section 115 of the bill would amend 18 U.S.C. § 5032 to allow a juvenile who is prosecuted for one of the specified crimes of violence or firearms offenses to "be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted as an adult of any lesser included offense." Given that joinder of offenses is liberally allowed under the Rules, and that this section of the bill further provides that the determination of the Attorney General to prosecute a juvenile as an adult "is not subject to judicial review in any court," this provision could result in the federal prosecution of juveniles for myriad offenses if they are also prosecuted for a felony crime of violence or firearms offense.

As you know, the primary responsibility for prosecuting juveniles has traditionally been reserved for the states. The federal criminal justice system has little experience and few resources to deal with more than the handful of juveniles that currently are in the federal system. The Judicial Conference has maintained a long-standing position that criminal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts. At its September 1997 meeting, after similar legislation had been proposed by Congress, the Judicial Conference affirmed that this policy is particularly applicable to the prosecution of juveniles.[1]

In his *Year-End Report on the Federal Judiciary* (Dec. 30, 1993) (emphasis added) the Chief Justice discussed the federalization provisions in a previous omnibus crime bill, specifically noting the juvenile provisions:

> Recent actions on a crime bill also reflect a natural response to growing concerns about crime. Unfortunately proposed legislative responses have expanded – unwisely in my view – the role of the federal courts in the administration of criminal justice. The federal courts have an important role to play in the war against crime, but I urge Congress to review carefully the impact on the federal courts, and on the traditional balance between state and federal jurisdiction, before adopting the more expansive proposals in the crime bill. Serious consideration should be given to the state courts in handling their traditional jurisdiction, rather than sweeping many newly created crimes, *such as those involving juveniles*, and handgun murders, into a federal court system that is ill-equipped to deal with those problems and will increasingly lack the resources in this era of austerity.

Juvenile defendants present unique problems that the federal judicial system is not prepared to deal with at the present time. When prosecuted as juveniles, the many procedural safeguards built into the juvenile statutes make these cases difficult to prosecute and adjudicate. Furthermore, whether prosecuted as juveniles or as adults, juveniles present unique behavioral and adjustment problems that must be addressed by probation and pretrial services officers. There are few federal probation officers who have training or experience to handle difficult juvenile offenders. Thus, in the event this

[1] JCUS-SEP 97, p. 65.

legislation goes forward, the Conference urges that sufficient appropriations be authorized to provide this necessary training.

Further, we would note that juvenile offenders require different and perhaps more extensive correctional and rehabilitative programs than adults and that there is not a single, federal correctional facility to meet these needs.

The Conference recognizes that the federal judiciary fulfills an important role in the adjudication of offenses committed by juveniles when the unique resources of the federal government can be effectively and efficiently utilized. Such offenses include juvenile criminal activity with substantial multi-state or international aspects or involving complex enterprises most effectively prosecuted using federal resources or expertise. However, the states should continue their traditional role of prosecuting the vast majority of juvenile cases in which there is no significant interstate or national interest. Any expansion of the federal role in this area should be carefully considered in light of this appropriate allocation of responsibilities.

H.R. 1279 also includes a variety of new, mandatory minimum sentencing provisions. Since 1953, the Judicial Conference has maintained opposition to mandatory minimum sentences.[2] The reason is manifest: Mandatory minimums severely distort and damage the federal sentencing system. Mandatory minimums undermine the Sentencing Guideline regime Congress so carefully established in the Sentencing Reform Act of 1984 by preventing the rational development of guidelines that reduce unwarranted disparity and provide proportionality and fairness.[3] Mandatory minimums also destroy honesty in sentencing by encouraging "charge and fact" plea bargains. In fact, the U.S. Sentencing Commission has documented that mandatory minimums have the opposite of their

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[2]JCUS-SEP 53, p. 28.

[3]Although the Sentencing Guidelines are advisory in light of the Supreme Court's recent decision in *United States v. Booker*, ___ U.S. ___, 125 S.Ct. 738 (2005), sentencing courts still must consider the Guidelines in determining an appropriate sentence, which on appeal would be subject to review for "reasonableness" in consideration of the Guidelines and other factors set forth in 18 U.S.C. § 3553(a).

intended effect.[4] Far from fostering certainty in punishment, mandatory minimums result in unwarranted sentencing disparity. Mandatory minimums also treat dissimilar offenders in a similar manner, although these offenders can be quite different with respect to the seriousness of their conduct or their danger to society. Finally, mandatory minimums require the sentencing court to impose the same sentence on offenders when sound policy and common sense call for reasonable differences in punishment.

Accordingly, we respectfully request that the expansion of the federal criminal justice system over juvenile offenders be seriously reconsidered and that the mandatory minimum sentencing provisions be removed from the bill.

We appreciate the opportunity to comment on this significant legislation. If you have any questions, please have your staff contact Michael W. Blommer, Assistant Director, Office of Legislative Affairs, at (202) 502-1700.

Sincerely,

Leonidas Ralph Mecham
Secretary

cc: Honorable Bobby Scott
Ranking Democrat

Members
House Judiciary Subcommittee
on Crime, Terrorism and Homeland Security

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[4]*See* U.S. Sentencing Commission, *Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (August 1991). *See also Federal Mandatory Minimum Sentencing: Hearing Before the Subcommittee on Crime and Criminal Justice of the House Judiciary Committee*, 103rd Cong., 1st Sess. 64-80 (1995) (statement of Judge William W. Wilkins, Jr., Chairman, U.S. Sentencing Commission).

LETTER FROM JANET MURGUIA, PRESIDENT AND CEO, NATIONAL COUNCIL OF LA RAZA TO THE HONORABLE F. JAMES SENSENBRENNER, JR. AND THE HONORABLE JOHN CONYERS (APRIL 13, 2005 AND MAY 9, 2005)

NCLR
NATIONAL COUNCIL OF LA RAZA
Janet Murguia, President

National Office
Raul Yzaguirre Building
1126 16th Street, N.W.
Washington, DC 20036
Phone: 202.785.1670
Fax: 202.776.1792
www.nclr.org

April 13, 2005

VIA FACSIMILE

The Honorable James Sensenbrenner
Chair, Judiciary Committee
House of Representatives
Washington, DC 20515

The Honorable John Conyers
Ranking Member, Judiciary Committee
House of Representatives
Washington, DC 20515

RE: Oppose provisions in H.R. 1279 that prosecute youth as adults and impose mandatory minimum sentences.

Dear Congressmen Coble and Scott:

On behalf of the National Council of La Raza (NCLR), the largest national Latino civil rights organization in the U.S., I urge you to oppose provisions contained in the "Gang Deterrence and Community Protection Act of 2005" (H.R. 1279) which is scheduled for markup today, April 13 in the full committee. Please be advised that NCLR will recommend that votes relevant to the Latino community and final passage of the bill be included in the National Hispanic Leadership Agenda Congressional Scorecard.

H.R. 1279, if enacted into law, would have a disparate impact on Latino youth and their families. This bill would undermine overall public safety, given that it imposes excessively severe measures aimed at only punishing and not reforming youth violent behavior. Specifically, NCLR strongly opposes two provisions – the prosecution and transfer of youth into the adult system and the inclusion of various mandatory minimum sentences for a broad category of offenses that are labeled "gang crimes" and numerous other offenses.

Section 115 of the bill allows for the prosecution and transfer of youth into the adult system. The latest research shows that transferring youth to adult status is a failed public policy approach, resulting in the opposite of what this bill is purporting to do. It will *increase* – not decrease – youth violence. The research shows that young people prosecuted as adults, compared to those prosecuted as juveniles, are more likely to: (a) commit a greater number of crimes upon release; (b) commit more violent crimes upon release; and (c) commit crimes sooner upon release. The research also shows that youth held in adult facilities, compared to youth held in juvenile facilities, are five times as likely to be sexually

assaulted by other inmates, twice as likely to be beaten by staff, 50% more likely to be assaulted with a weapon, and eight times as likely to commit suicide.

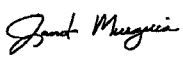
With these kinds of risks, it does not make sense for the House to pursue legislation that includes the power to prosecute juveniles as adults in federal court for activities that the states are already well-equipped – indeed, better-equipped – to handle than the federal system. Also, putting the transfer decision at the sole discretion of a prosecutor, not a judge as the law currently requires, violates the most basic principles of due process and fairness.

Section 103 of the bill includes and expands mandatory minimum sentences for a broad category of offenses that are deemed "gang crime." Under this bill, the mandatory minimum sentences for these crimes range from 5 to 30 years. Although the offenses are serious and individuals who are convicted should be properly held accountable, mandatory sentences often prevent judges from determining the appropriate punishment. When judges are restricted by mandatory sentences, they cannot assess an individual's culpability during the crime or other factors that have bearing on recidivism, thus resulting in inappropriate sentences.

Although mandatory minimums were intended to reduce the racial disparities that were associated with indeterminate sentencing, in practice they exacerbate and mask such disparities by shifting discretion from the judge to the prosecutor. Prosecutors retain the power to plea bargain by offering defendants plea agreements that avoid the mandatory penalty. Studies have shown that this discretion results in a disparity in sentencing outcomes based largely on race and quality of defense attorney. According to testimony from the U.S. Sentencing Commission, in 1999, 39% of those receiving mandatory sentences were Hispanic, 38% were African American, and 23% were White. Hispanics comprised 44% of those subject to five-year mandatory sentences in 1999, 37% of the ten-year mandatory sentences, 20% of the 20-year mandatory sentences, and 8% of the mandatory life sentences. The reality for African American defendants is even bleaker.

NCLR respectfully asks you to oppose legislation that prosecutes and transfers youth into the adult system and that includes and expands mandatory minimum sentences. These provisions will only exacerbate youth violent behavior. Instead, NCLR calls for a comprehensive research – based approach that gets at the root causes of youth violence – which includes but is not limited to prevention, treatment, and effective alternatives to incarceration. If you have any questions please contact Angela Arboleda, NCLR Civil Rights Policy Analyst, at (202) 776-1789.

Sincerely,



Janet Murguia
President and CEO

cc: Members, House Subcommittee on Crime, Terrorism, and Homeland Security

NCLR
NATIONAL COUNCIL OF LA RAZA
Janet Murguia, President

National Office
Raul Yzaguirre Building
1126 16th Street, N.W.
Washington, DC 20036
Phone: 202.785.1670
Fax: 202.776.1792
www.nclr.org

May 9, 2005

VIA FACSIMILE

RE: Oppose provisions in the "gang buster bill" H.R. 1279 that prosecute youth as adults and impose mandatory minimum sentences.

Dear Member of Congress:

On behalf of the National Council of La Raza (NCLR), the largest national Latino civil rights organization in the U.S., I urge you to oppose provisions contained in the "Gang Deterrence and Community Protection Act of 2005" (H.R. 1279) which is on the suspension calendar this week. Please be advised that NCLR will recommend that votes relevant to the Latino community and final passage of the bill be included in the National Hispanic Leadership Agenda Congressional Scorecard.

The Latino community is directly affected by gang violence, consequently NCLR is committed to finding a solution to combat it; however, the approach in H.R. 1279 is ineffective, irresponsible and simplistic, given that it does nothing to get to the root causes of the problem, and it further exacerbate youth violent behavior. H.R. 1279 will if enacted into law, would have a disparate impact on Latino youth and their families. This bill would undermine overall public safety, given that it imposes excessively severe measures aimed at only punishing and not reforming youth violent behavior. Specifically, NCLR strongly opposes two provisions – the prosecution and transfer of youth into the adult system and the inclusion of various mandatory minimum sentences for a broad category of offenses that are labeled "gang crimes" and numerous other offenses.

Section 115 of the bill allows for the prosecution and transfer of youth into the adult system. The latest research shows that transferring youth to adult status is a failed public policy approach, resulting in the opposite of what this bill is purporting to do. It will *increase* – not decrease – youth violence. The research shows that young people prosecuted as adults, compared to those prosecuted as juveniles, are more likely to: (a) commit a greater number of crimes upon release; (b) commit more violent crimes upon release; and (c) commit crimes sooner upon release. The research also shows that youth held in adult facilities, compared to youth held in juvenile facilities, are five times as likely to be sexually assaulted by other inmates, twice as likely to be beaten by staff, 50% more likely to be assaulted with a weapon, and eight times as likely to commit suicide.

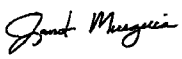
With these kinds of risks, it does not make sense for the House to pursue legislation that includes the power to prosecute juveniles as adults in federal court for activities that the states are already well-equipped – indeed, better-equipped – to handle than the federal system. Also, putting the transfer decision at the sole discretion of a prosecutor, not a judge as the law currently requires, violates the most basic principles of due process and fairness.

Section 103 of the bill includes and expands mandatory minimum sentences for a broad category of offenses that are deemed "gang crime." Under this bill, the mandatory minimum sentences for these crimes range from 5 to 30 years. Although the offenses are serious and individuals who are convicted should be properly held accountable, mandatory sentences often prevent judges from determining the appropriate punishment. When judges are restricted by mandatory sentences, they cannot assess an individual's culpability during the crime or other factors that have bearing on recidivism, thus resulting in inappropriate sentences.

Although mandatory minimums were intended to reduce the racial disparities that were associated with indeterminate sentencing, in practice they exacerbate and mask such disparities by shifting discretion from the judge to the prosecutor. Prosecutors retain the power to plea bargain by offering defendants plea agreements that avoid the mandatory penalty. Studies have shown that this discretion results in a disparity in sentencing outcomes based largely on race and quality of defense attorney. According to testimony from the U.S. Sentencing Commission, in 1999, 39% of those receiving mandatory sentences were Hispanic, 38% were African American, and 23% were White. Hispanics comprised 44% of those subject to five-year mandatory sentences in 1999, 37% of the ten-year mandatory sentences, 20% of the 20-year mandatory sentences, and 8% of the mandatory life sentences. The reality for African American defendants is even bleaker.

NCLR respectfully asks you to oppose legislation that prosecutes and transfers youth into the adult system and that includes and expands mandatory minimum sentences. These provisions will only exacerbate youth violent behavior, at a time when data from the FBI's Uniform Crime reporting program that breaks down the age of people arrested for serious offenses in 2003 showed that the number of people under 18 arrested declined by 30%. Instead, NCLR calls for a comprehensive research – based approach that gets at the root causes of youth violence – which includes but is not limited to prevention, treatment, and effective alternatives to incarceration. If you have any questions please contact Angela Arboleda, NCLR Civil Rights Policy Analyst, at (202) 776-1789.

Sincerely,



Janet Murguia
President and CEO

LETTER FROM VIRGINIA COALITION FOR JUVENILE JUSTICE TO THE HONORABLE J. RANDY FORBES (APRIL 4, 2005)

VIRGINIA COALITION FOR JUVENILE JUSTICE
c/o JustChildren, Legal Aid Justice Center
1000 Preston Avenue, Suite A
Charlottesville, VA 22903
434-977-0553

April 4, 2005

The Honorable J. Randy Forbes
307 Cannon House Office Building
Washington, DC 20515

Dear Congressman Forbes:

It is with great concern that we, as Virginia residents and organizations, write to you regarding your recently introduced bill H.R. 1279, the Gang Deterrence and Community Protection Act of 2005. As residents of Virginia, we are clearly concerned about our public safety and appreciate the intention of the bill to reduce gang crime. However, we know that transferring more youth into the federal criminal justice system is not the answer to achieving this important goal.

Numerous studies have consistently found that youth transferred to the adult criminal justice system are more likely to re-offend and commit more serious crimes upon their release than similarly situated youth who remained in the juvenile justice system. It is an unsubstantiated theory that an increase in the possibility of incarceration of youth in prisons may reduce the incidence of crime. Indeed, studies have shown that youth incarcerated with adults are significantly more likely to be victims of physical and sexual abuse and attempted suicide, experiences which unarguably further handicap them in their efforts to become contributing members of society. By seeking to prosecute more youth in the adult system, this bill would aggravate public safety problems in the longer term and waste precious financial and personal capital. Given the limited resources at the national, state and local level, it is fiscally irresponsible to pursue "solutions" which have been rejected by years of research.

We also find the lack of judicial review of the transfer decision in Sec. 115 to be a particular affront to constitutional guarantees of due process. In making the transfer decision "not subject to judicial review in any court," the fate of the individual youth and, therefore, public safety will depend upon the sole, unfettered discretion of the prosecutor. The adversarial nature of our legal system has endured because we know it is the best way of discerning the truth and that judges are uniquely situated to make more objective and, therefore, more appropriate decisions. We are aware that certain youth in extraordinary factual situations may need to be transferred to criminal court, but this should be done only in accordance with maximum procedural protections to the youth, including a hearing by the juvenile court judge, on the record, at which the youth is represented by counsel. To do otherwise ignores principles of due process and the established vulnerabilities of youth.

We thank you for your consideration of these important matters. If you have any questions or would like more information, please contact Melissa Goemann of the Mid-Atlantic Juvenile Defender Center at the University of Richmond School of Law at mgoemann@richmond.edu or 804.287.6468.

Sincerely,

Mid-Atlantic Juvenile Defender Center
JustChildren Program, Legal Aid Justice Center
Citizens United for Rehabilitation of Errants-Virginia, Inc.
Advocare, Inc.
American Civil Liberties Union of Virginia
Patricia Puritz, McLean
Robert Shepherd, Professor Emeritus University of Richmond School of Law
Adrienne Volenik, Children's Law Center, University of Richmond School of Law
Karl Doss, Training and Human Resources Director, Virginia Indigent Defense Commission
Ashley Tunner, Esq., Richmond
Lori Butts Miller, Esq., Virginia Beach
Gerylee M. Baron, Esq., Alexandria
Kelley Bartges, Esq., University of Richmond School of Law
Charles Martin, Juvenile Justice Advisory Committee of Virginia
Gina Wood, Alexandria
Kevin Keenan, Esq., Charlottesville
Andrew Block, Esq., Albemarle County
Lisa E. Reid, L.C.S.W., Chesterfield
Aimee Perron Seibert, M.S.W., Richmond
Jerry Tracy, Cross Junction
Tom Dunne, Fairfax
Annie Johnson, Alexandria
Jimmy Benton, Fairfax
Kimberly Muse, Fairfax
Dorothy Edwards, Alexandria
Bridgett Alexander, Herndon
Dwight Alexander, Herndon
Nicole Coleman, Alexandria
Latina Lindsey Christmas, Fairfax
Lois Jones, Woodbridge
Kina Pitt, Woodbridge
Keith Draper, Alexandria
Jermaine Porter, Alexandria
Dana Thomas, Dale City
Alberta Wilson, Alexandria
Alana Thomas, Alexandria
Alvin Witcher, Alexandria

Annette Wilson, Alexandria
Michael Evan, Lakeridge
Chelia Martinez, Annandale
Anna Riviera, Alexandria
Cynthia Davis, Annandale
Denise Edwards, Alexandria
Gloria Lindsey, Alexandria
Emma Rayford, Alexandria
Edward Porter, Stafford
Greg Kwak, Sterling
Joseph Porter, Alexandria
Kim Lacks, Alexandria
Rondie Benton, Alexandria
Linda Addison, Alexandria
Lise Adams, Arlington
Rhonda Thomas, Alexandria
Roy Sherman, Lorton
Tia Saunders, Woodbridge
Tommy Kelly, Annandale
Myra Matthews, Alexandria
Yevette Rayford Jackson, Alexandria
Freddie White, Dale City
Angela Muse, Alexandria
Machiya Muse, Alexandria
Edward Muse, Alexandria
Liz Ryan, Arlington
J.P. Reali, Arlington
Eileen Grey, Alexandria
Marilyn Di Paolo, Annandale
Forrest Christian, Arlington
Lise Adams, Arlington

cc: Representative Rick Boucher
Representative Eric I. Cantor
Representative Jo Ann S. Davis
Representative Thomas M. Davis III
Representative Thelma D. Drake
Representative Virgil H. Goode, Jr.
Representative Bob Goodlatte
Representative James P. Moran
Representative Bobby Scott
Representative Frank R. Wolf
Representative James Sensenbrenner
Representative John Conyers

LETTER FROM COALITION OF NATIONAL AND REGIONAL ORGANIZATIONS TO THE HONORABLE F. JAMES SENSENBRENNER, JR. AND THE HONORABLE JOHN CONYERS (APRIL 8, 2005)

April 8, 2005

The Honorable James Sensenbrenner
House of Representatives
Washington, DC 20515

The Honorable John Conyers
House of Representatives
Washington, DC 20515

Dear Chairman Sensenbrenner and Representative Conyers:

On behalf of the undersigned organizations and the National Juvenile Justice and Delinquency Prevention Coalition, we are writing at this time to express our deep concern about recently introduced "gang prevention" legislation (H.R. 1279). Specifically, we strongly oppose provisions in this legislation that would result in more youth prosecuted as adults in the federal system.

We urge you to eliminate any provisions in this legislation that would result in the expanded "transfer" or "waiver" of youth to the adult criminal system and/or placing an additional number of youth in adult correctional facilities. Comprehensive national research on the practice of prosecuting youth in the adult system has conclusively shown that transferring youth to the adult criminal justice system does nothing to reduce crime and actually has the opposite effect. Study after study has shown that youth transferred to the adult criminal justice system are more likely to re-offend and to commit more serious crimes upon release than youth who were charged with similar offenses and had similar offense histories but remained in the juvenile justice system.

Moreover, national data shows that, in comparison to youth held in juvenile facilities, young people incarcerated with adults are:

- five times as likely to report being a victim of rape;
- twice as likely to be beaten by staff; and
- 50% more likely to be assaulted with a weapon.

A recent Justice Department report also found that youth confined in adult facilities are nearly 8 times more likely to commit suicide than youth in juvenile facilities.

Further, minority youth will be disproportionately affected by this policy. Recent studies by the Department of Justice have shown that more than 7 out of 10 youth admitted to state prisons across the country were youth of color. Youth of color sent to adult court are also over-represented in charges filed, especially for drug offenses, and are more likely to receive a sentence of incarceration than White youth even when charged with the same types of offenses. Finally, most youth currently prosecuted in the federal system are Native American: presently, among the 225 juvenile offenders under federal jurisdiction, 167 are Native American, 20 Black, 19 White, 18 Hispanic, and 1 Asian.

Also, putting the transfer decision in the sole discretion of a prosecutor, not a judge as the law currently requires, violates the most basic principles of due process and fairness.

While there is no question that violent and dangerous youth need to be securely confined for our safety and theirs, incarcerating youth with more sophisticated adult prisoners renders them vulnerable to attack and more damaged when they return to society. This is tantamount to giving up on them – something we should never do.

Our challenge as responsible adults is to create a fairer and more effective youth justice system, where there is a balance between prevention, treatment and intervention that gives young people a chance to make a better choice. Unfortunately, H.R. 1279 does not meet this goal in its current form.

We appreciate your consideration of our concerns. If you have questions please feel free to contact Morna Murray, co-chair of the National Juvenile Justice and Delinquency Prevention Coalition, at the Children's Defense Fund, 202-662-3577 or Tim Briceland-Betts, Child Welfare League of America, 202-942-0256.

Sincerely,

National Organizations

Alliance for Children and Families
American Academy of Child & Adolescent Psychiatry
American Civil Liberties Union
American Correctional Association
Campaign 4 Youth Justice
Catholic Charities USA
Child Welfare League of America
Children and Adults with Attention-Deficit/Hyperactivity Disorder (CHADD)
Children's Defense Fund
Church Women United
Coalition for Juvenile Justice
Council of Juvenile Correctional Administrators
Democracy Project
Federation of Families for Children's Mental Health
Girls Incorporated.
Justice Policy Institute
Juvenile Law Center
Legal Action Center
Mennonite Central Committee US, Washington Office
National Alliance for the Mentally Ill (NAMI)
National Association of Criminal Defense Lawyers
National Association of School Psychologists
National Collaboration for Youth
National Council of La Raza
National H.I.R.E. Network

National Juvenile Defender Center
National Mental Health Association
National Network for Youth
Physicians for Human Rights
Presbyterian Church (USA) Washington Office
School Social Work Association of America
Society for Research in Child Development
United Church Of Christ
Volunteers of America
Women of Reform Judaism
Youth Law Center

Regional Organizations

Chester & Vestal, P.A. (Portland, Maine)
Children's Law Center of Massachusetts
Children's Law Center of the University of Richmond School of Law
Citizens United for Rehabilitation of Errants-Virginia, Inc.
Edwin F. Mandel Legal Aid Clinic, University of Chicago Law School
Franklin County, Ohio Public Defender Office
JustChildren Project of Virginia
Juvenile Justice Center of Suffolk University Law School
Juvenile Justice Coalition of Ohio
Juvenile Justice Project of Louisiana
The Legal Aid Society of the City of New York
Loyola Law School, Center for Juvenile Law and Policy
Loyola University Chicago Civitas ChildLaw Center
Mid-Atlantic Juvenile Defender Center
Southern Poverty Law Center

cc: House Judiciary Committee

LETTER FROM MORNA A. MURRAY, CO-CHAIR, NATIONAL JUVENILE JUSTICE AND DELINQUENCY PREVENTION COALITION TO THE HONORABLE F. JAMES SENSENBRENNER, JR. AND THE HONORABLE JOHN CONYERS (APRIL 8, 2005)

April 8, 2005

The Honorable James Sensenbrenner
House of Representatives
Washington, DC 20515

The Honorable John Conyers
House of Representatives
Washington, DC 20515

Dear Chairman Sensenbrenner and Representative Conyers:

Attached is a letter on behalf of the National Juvenile Justice and Delinquency Prevention Coalition and other national and state organizations urging you to oppose H.R. 1279 because of its draconian and punitive youth transfer provisions. As set forth in detail in our letter and as presented to the House Subcommittee on Crime, Terrorism and Homeland Security on April 5, 2005, the research clearly shows that prosecuting juveniles as adults is extremely dangerous and harmful for youth and is not effective in reducing and preventing youth violence.

Moreover, testimony and questioning of witnesses before the House Subcommittee on April 5th also made it clear that this bill is an unnecessary intrusion into the very strong presumption in favor of state prosecution of juvenile crime. States are already well equipped – indeed, better equipped, to handle juvenile matters than is the federal system.

The President recently has made numerous public statements on behalf of his administration's new anti-gang initiative that endorse the strengthening of local and community-based prevention and intervention efforts as the key to fighting youth gang violence.

We urge you to carefully consider these factors and oppose any legislation that will increase the prosecution of juveniles as adults in the federal system.

Sincerely,

Morna A. Murray
Co-chair
National Juvenile Justice and Delinquency Prevention Coalition

"CAUGHT IN THE CROSSFIRE: ARRESTING GANG VIOLENCE BY INVESTING IN KIDS," A REPORT SUBMITTED BY FIGHT CRIME: INVEST IN KIDS

Caught in the Crossfire: Arresting Gang Violence By Investing in Kids

A Report from
FIGHT CRIME: INVEST IN KIDS

ACKNOWLEDGEMENTS

FIGHT CRIME: INVEST IN KIDS, is a national, bipartisan, nonprofit anti-crime organization. The national organization has a membership of more than 2,000 police chiefs, sheriffs, prosecutors and victims of violence. The members take a hard-nosed look at what works—and what doesn't work—to prevent crime and violence. They then recommend effective strategies to state and national policymakers.

FIGHT CRIME: INVEST IN KIDS is supported by tax-deductible contributions from foundations, individuals, and corporations. FIGHT CRIME: INVEST IN KIDS receives no funds from federal, state or local governments.

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Report authored by William Christeson, M.H.S. and Sanford Newman, J.D.

The following staff members of FIGHT CRIME: INVEST IN KIDS contributed to production of this report: David Kass, Michael Kharfen, Jeff Kirsch, Miriam Rollin, Rita Shah, Louise van der Does and Jason Ziedenberg.

Publication design by Elizabeth Kuehl.

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FIGHT CRIME: INVEST IN KIDS • 2000 P Street NW, Suite 240 • Washington, DC 20036 • 202.776.0027 • fax 202.776.0110

A Call for Action From Law Enforcement

The images are haunting, fathers and mothers grieving as they bury their sons and daughters because of gang violence. Mourning relatives at funerals and candlelight community vigils fill our television screens and newspaper front pages. Gang violence in America is once again on the rise. Nationwide gang homicides are up an alarming 50 percent since 1999. Serious violent criminals need to be arrested, convicted and locked up. But in order to curb gang violence we must find ways to intervene and offer alternatives to the gang lifestyle in order to save at-risk children before it's too late.

The police chiefs, sheriffs, prosecutors and crime survivors who make up FIGHT CRIME: INVEST IN KIDS are committed to taking the most dangerous criminals off our streets; however, we also know that we can't simply arrest our way out of the crime problem. This report proves that the "one-two punch" of targeted police enforcement and intensive intervention with children yields dramatic results in cutting gang crime.

Research shows there are proven strategies to cut gang-related homicides almost immediately and shut off the pipeline that delivers new children into gangs. Successful model programs, such as ones in Philadelphia and Boston, start by locating youth gang members. The programs combine close supervision and swift consequences for violence with collaborative community services to help children get off drugs, stay in school, or find a job. In Philadelphia, statistics show that when their model program was instituted in two police districts in 1999, youth homicides dropped nearly in half for the following four years.

Another effective strategy steers kids from crime by equipping parents with tools to better manage their children's behavior and keep them on the right track. Other strategies focus on getting a head start by offering quality pre-kindergarten and home visitation/parent coaching programs.

The inner cities are no longer the exclusive domain of gangs and their violence. They have moved into many suburbs and small towns. To deal with this growing problem, communities throughout the nation are rallying to stem the tide with support across the political spectrum and from law enforcement, religious, social service and other civic leaders. However, funding to replicate successful intervention programs is not nearly adequate. Worse, the federal dollars we have relied on in the past continue to be threatened.

Since 2002, Congress has reduced juvenile justice funding by 44 percent. As I write this introduction, our lawmakers are considering another 40 percent cut. If they continue down this path, many successful anti-gang programs will be forced to discontinue services, raising the risk of more violence and higher taxes to pay for criminal justice and prison costs. And sadly, more children will be caught in the crossfire.

Let's not sacrifice another life or another neighborhood. America's law enforcement leaders call on policy makers to invest in successful gang prevention strategies, so we can stop this deadly menace and bring peace and safety to back to our communities.

William Bratton
Los Angeles Police Chief

Executive Summary

Caught in the Crossfire: Arresting Gang Violence By Investing in Kids

Youth gang-related homicides in the United States are up 50 percent since 1999. Gangs and their violence are also spreading out to many suburbs, smaller cities and rural towns.

The law enforcement leaders and crime victim members of FIGHT CRIME: INVEST IN KIDS are committed to taking dangerous criminals off the streets. But filling our jails with every gang member who can be identified will not solve the problem of gang violence.

There are three proven steps that can reduce gang-related homicides, violence and crime. The first step is to build on the successful model followed in at least three cities. These cities created collaborative efforts of law enforcement, street mentors, and community leaders to intervene and steer their most dangerous youths away from violence and back into school or a job. The next step is to provide proven programs that help families keep other seriously delinquent youths from joining gangs and ending up in prison. Finally, it is crucial to reach at-risk kids as early as possible to ensure they never become criminals in the first place.

Step 1. What works with gangs now

Boston, Philadelphia, and Baton Rouge have rapidly reduced violent crime by gang members and other troubled youths. After Boston adopted its collaborative anti-gang effort citywide, youth homicides dropped by two-thirds. In the two Philadelphia police districts where the Philadelphia collaborative approach was first implemented, youth homicides dropped twice as fast as in the rest of Philadelphia. And in Baton Rouge, youths in the program had one-fifth as many new violent offenses as similar youths not yet served by the program.

How did they do it? These successful programs start by identifying the few gang members and other youths in their neighborhoods most likely to kill someone or to be killed themselves. Each of these programs creates a collaborative effort to intervene with these high-risk youths and:

Send a clear message that violence will no longer be tolerated: Police, probation officers, religious leaders and other community leaders work together to maintain intensive supervision of these high-risk youths and ensure that any future gang violence is met with swift and sure consequences.

Provide intensive support and services to keep these high-risk youths out of trouble: High-risk youths and their families are required to connect with services that will help these youths keep away from drugs, stay in school, or get a job. Street-wise mentors do the intensive

outreach to ensure that these youths get the support and services they need to stay out of gangs and trouble.

The goal is not just to lock these youths up. In Boston, David Kennedy, who helped design that city's Operation Ceasefire, explained that they "used enforcement as sparingly as possible, and combined it with services and the moral voice of the community."

Shutting off the pipeline that delivers new kids into gangs

Communities also need to employ the effective programs that keep kids from either committing more gang-related crimes, or from ever turning to crime in the first place:

Step 2. Help for already troubled youths:

Three well-researched programs work with serious and violent juvenile offenders who may not yet be identified as gang members. The programs systematically provide the parents or foster parents of these youths with effective tools to better control their children's behaviors. Research shows that new arrests of youths in these programs have been cut by as much as half compared to youths not receiving this help. Because of the sharp drops in new crimes, net savings to taxpayers ranged from $14,000 to $31,000 for every youth placed in these programs.

Step 3. Start early to help at-risk kids succeed and stay away from crime:

After-school programs and anti-bullying programs can protect kids from gang violence and remove some of the pressures they face to join gangs. Voluntary high-quality home visitation programs for new parents and high-quality pre-kindergarten programs for at-risk kids have also been shown to help kids succeed in school and to cut future crime in half or more. The high-quality home visitation and pre-kindergarten programs save taxpayers three to four times what the programs cost.

A message from law enforcement leaders and crime victims

Instead of cutting funding for approaches proven to prevent crime and reduce gang violence, the over 2,000 law enforcement and crime victim members of FIGHT CRIME: INVEST IN KIDS urge policy makers to fully fund these comprehensive anti-gang solutions. These wise investments are needed now to protect our communities from gang violence.

When Boston provided gang members with greater supervision, support, and services, youth homicides in that city dropped by two-thirds. Now, Philadelphia and Baton Rouge are proving this approach also saves lives in their cities.

Gang Homicides Are Up Over 50 Percent

Youth-gang related homicides have risen by more than 50 percent according to Professor James Alan Fox, a leading criminologist at Northeastern University. Gang homicides have climbed from 692 in 1999 to over 1,100 in 2002, the latest year for which data is available.[1] Gang-related homicides account for approximately half of all homicides in Chicago,[2] the city that had the highest total number of homicides of any city in the country in 2003.[3] Gang-related homicides also account for approximately half of all homicides in Los Angeles, which led the nation in total homicides the year before (2002).[4]

Gangs are also responsible for the lion's share of juvenile delinquency in smaller cities. A study of troubled youth in Rochester, New York showed that gang members accounted for 68 percent of all the violent acts of delinquency among the youths studied in that city. In Denver, a similar study showed that gang members were responsible for 79 percent of the serious violence committed by that city's youths.[5]

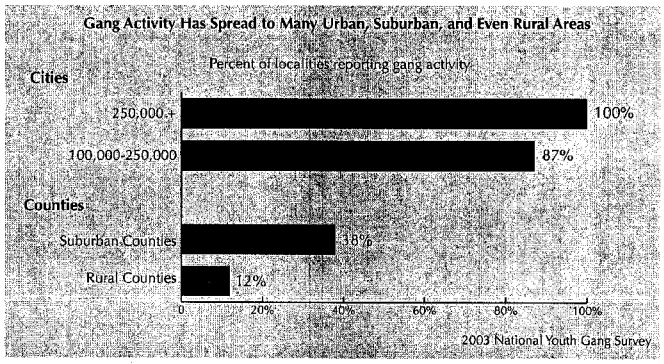
The spread of gangs

Los Angeles and Chicago have long been infamous for their traditional gangs: the Crips and Bloods in LA and the Black Gangster Disciples, Latin Kings and Vice Lords in Chicago. But gangs are spreading rapidly throughout the country. According to criminologist Terrence Thornberry, "in the space of about 10 years, gangs have spread from a relatively small number of cities to being a regular feature of the urban landscape."[6] The latest Department of Justice funded National Youth Gang Survey in 2003 confirms that all large cities with populations over 250,000 report having gang activity, as do 87 percent of cities with between 100,000 and 250,000 people. However, gangs are not just in cities: 38 percent of suburban counties and 12 percent of rural counties report gang activity as well.[7]

Former Commander Wayne Wiberg of Chicago's narcotics unit explained that gang members are now appearing in smaller cities and towns throughout Illinois. These towns have "not just people living there who are using drugs, but people living there that are selling."[8]

The development and types of gangs

Youth gangs have been around for a long time. In the early 19th century, youth gangs were primarily Irish, Jewish, and Italian when many members of those immigrant groups lived in economically deprived neighborhoods and endured ethnic or religious discrimination.[9] According to the most recent National Youth Gang Survey, nearly half of all gang members are Hispanic and a third are African American.[10] The most recent gangs forming in smaller cities and suburbs in the 1990s, however, are more likely to be mixed ethnically, and involve female, white, and middle-class youths.[11] Gangs vary tremendously, but it is helpful to think in terms



of three different categories: traditional gangs; more recent crews, cliques, or posses; and gangs forming in smaller cities, rural areas, and suburbs during the 1990s.

Traditional gangs

The gangs forming before the mid-1980s tended to fit the traditional definition of gangs. They began defending turf but often evolved into very large organizations that became more involved in drug sales and other criminal activity. Automatic weapons and drive-by shootings replaced the fists, chains and knives used in earlier gang violence. While the average size of traditional gangs is about 180 members,[12] a few of these gangs number in the thousand and even tens of thousands[13] and have formed very elaborate structures and rules similar in many ways to the Mafia. Some gangs, such as the Crips and the Bloods from Los Angeles attempted to set up chapters in other cities.[14] However, most expansion of gangs was homegrown or due to members simply moving to other cities, rather than a more concerted franchising effort.[15]

More recent crews, cliques, or posses

Many cities, like Washington D.C. and Philadelphia, have relatively few of the larger, more traditional gangs, and instead have more loosely structured neighborhood "crews", "cliques", or "posses".[16] These small drug or neighborhood gangs often number only 25 members,[17] and there is less gang graffiti, hand signs, and "colors" associated with these groups. Still "Live by the neighborhood, die by the neighborhood"[18] is a common sentiment for these smaller gangs. These neighborhood gangs that often formed during the early 1980s are the most likely of any of the three categories of gangs to be involved in drug sales.

Gangs forming in smaller cities, rural areas, and the suburbs during the 1990s

Compared to the more traditional gangs and the crews, cliques, or posses that formed in the 1980s, the newer gangs forming in smaller cities, rural areas, and the suburbs beginning in the 1990s tend to be less involved in both drug sales and violence.[21] As mentioned above, these newer gangs are often more diverse, and more likely to have white, female, and even middle-class members. Some of these gangs are small collections of youths that take on ominous names similar to traditional gangs

Damian Corrente

"My son was not in a gang... He was a pre-med student with a bright future living on Long Island when a gang member murdered him. If you think we can afford to ignore gang violence, look at me, look at the picture of my beautiful son ... and think again."

Pamela Corrente

during his lifetime, a Hispanic male would have a 1 in 6 chance and a black male would have a 1 in 3 chance of going to prison.[31] However one looks at it – the more than 16,000 homicides a year, the millions of young men and women who will be imprisoned, or the shattered lives of the survivors of crime – crime and violence continue to challenge the very soul of America.

Real hope for reducing the toll of gang violence

After years of contentious debate about whether to be tougher or more compassionate with criminals, a consensus is beginning to emerge in some communities. The consensus is based on a combination of research, hard experience gained from those in closest contact with these troubled youths, and a willingness by policy-makers to leave ideological suppositions behind to adopt tested, proven solutions. Law enforcement leaders are often leading this change. The real solutions are to be found in becoming smarter about crime, which requires new policies that are both tough and compassionate. If the right policies are followed, the huge costs and the lives lost because of violent crime can be sharply reduced.

Drug Gangs Near the Capitol

National attention was drawn recently to another outbreak of drug-gang violence in Washington D.C. when a young girl, Princess Hansen, was murdered because she had witnessed one of the frequent murders in her neighborhood. Back in the 1960s, the Catholic Church helped found the Sursum Corda low-income community where Princess lived. Sursum Corda is Latin for "lift up your hearts." But the community has become so violent that the last nuns living and working in the neighborhood moved out years ago.[19] The Washington Post reports that "the illicit drug trade at Sursum Corda is controlled by two or three loosely knit gangs primarily made up of dealers ranging in age from 14 to 17, many of whom live in the complex, according to D.C. police."[20] Sursum Corda is a few blocks from the Capitol building and though most Washingtonians have no idea exactly where it is, thousands of government and Congressional employees drive right by it on their way home at night.

and are involved in graffiti, etc., but may not be especially violent or heavily involved in drug sales. Nevertheless the difference between some of these newer gangs and other earlier gangs may not be that great, and parents, the police, and communities need to be vigilant. These newer gangs may become more dangerous over time. There are also very violent inner-city drug gangs or more traditional-style gangs, such as the El Salvadoran dominated MS-13,[22] whose members are moving into the older, close-in suburbs near many cities.[23]

Gangs, Crime Trends, and Costs

From a peak in the early 1990s, violent crime and homicide rates have dropped dramatically. But there is no room for Americans to become complacent. Violent crime in America is still at unacceptable levels: in 2001 over 16,000 Americans lost their lives to violence.[24] And in 2002, homicides were up over two percent and then again another one percent for the first six months of 2003 (the latest available national figures).[25] When crime last began to spike upwards in the late 1980s and early 1990s cities with more than one million people were the first cities to see crime go up and then the first to see it come down. So it is alarming that homicides were heading up almost six percent in those largest cities for the first six months of 2003.[26] And certainly the sharp increase in youth-gang related homicides is a related and especially ominous trend.

Crime costs Americans $655 billion a year. Most of that cost is borne by the millions of victims, but Americans also pay $90 billion a year in taxes for criminal justice system expenses and an additional $65 billion a year in total private security costs.[27] The taxes and private security payments alone average $535 dollars a year for every man, woman and child in America.[28] That is over $2,000 for a family of four even if no one in that family becomes a victim of the more than 23 million crimes committed each year in the United States.[29] In a 1998 study, Professor Mark A. Cohen of Vanderbilt University looked at the cost issue from another perspective. He found that preventing one teen from adopting a life of crime would save the country between $1.7 million and $2.3 million.[30] The Department of Justice reports that "if the 2001 rates of incarceration were to continue indefinitely" a white male in the United States would have a 1 in 17 chance of going to state or federal prison

"each high risk juvenile prevented from adopting a life of crime could save the country between $1.7 million and 2.3 million"

Step One: New Learning on What Works With Gangs Now

The National Youth Gang Center, funded by the Department of Justice, did a national assessment of youth gang problems and programs. The Center developed a flexible approach for responding to gang problems at the community level based on what is working in many places to reduce gang violence. It calls for forming a collaborative effort providing closer supervision with swift sanctions if necessary, increased services, and greater community support for the most troubled youths in each community.[32]

What does this mean in practice? Three cities – Boston, Philadelphia, and Baton Rouge – have shown that this collaborative approach can work.

A Tale of Three Cities

The "Boston Miracle"

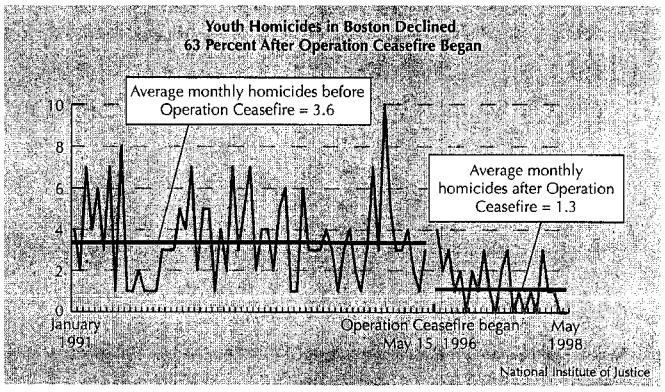
When David Kennedy and his colleagues at Harvard's Kennedy School of Government carefully studied violence in Boston they discovered that:

> Even in dangerous neighborhoods, only a tiny minority fewer than one percent of the juveniles and young adults were caught up in the violence. They were largely chronic offenders with robust criminal histories: Seventy-five percent of victims and offenders had prior arrests (on average, 10). ... They were involved in drug dealing street groups and enmeshed in shooting disputes with other chronic offenders. Most of the violence was not about the drug business, but about respect, boy/girl matters and standing vendettas, the origins of which were unclear even to the participants.[33]

With initial help from Department of Justice funding, Boston developed a collaborative approach called Operation Ceasefire. The collaborative effort used street mentors and probation officers who knew the gangs well to bring gang members together for meetings. At these meetings, religious leaders, local and federal law enforcement leaders, the street mentors and community groups delivered two clear messages to the gang members:

> First: "The streets are going to be made safe again: the violence stops today; if someone in your group commits a violent crime, sanctions – from strict probation supervision up to federal drug enforcement – will be focused [not only on that person, but also] on the group's other members."[34]
>
> Second: "If you want help job training, drug treatment and so on we're offering it."[35]

By building a comprehensive team made up of police, prosecutors, probation officers, street-mentors, religious leaders, social service agencies, and the broader community, Operation Ceasefire was able to keep a very



close watch on these few high-risk youths to ensure they did not engage in gang violence. The street mentors and community leaders also urged the gang members to take advantage of the services offered them. Unlike wide sweeps of gangs or drug markets, which have often been ineffective,[36] the goal was not to lock up as many gang members as possible for as long as possible. Operation Ceasefire made strategic use of sanctions. As noted earlier, David Kennedy explained that Operation Ceasefire "used enforcement as sparingly as possible, and combined it with services and the moral voice of the community."[37]

Did it work? Boston's youth homicide rate was high from 1992 until the summer of 1996 when Operation Ceasefire began. Then, Kennedy report, the homicide rate:

> ... plummeted, light-switch style: by the beginning of 1997, it was a new world on the streets. After adjusting for existing trends, youth homicide (victims ages 24 and under) went down by two-thirds; youth gun assaults by half; the city's overall homicide rate went down by half.

Kennedy further explained that the reductions in Boston were unprecedented. While other cities saw extraordinary crime reductions over a number of years, "Boston's took only a couple of months."[38]

An analysis published by the Justice Department concluded that other possible explanations of efforts underway in Boston were not likely to have caused the dramatic changes. Those other efforts had been in place before Operation Ceasefire without producing such sharp results, and "youth homicide reduction associated with Operation Ceasefire was distinct when compared with youth homicide trends in most major U.S. and New England cities."[39] Similar efforts citywide in Minneapolis, Stockton, California, and Greensboro, North Carolina also appear to have been successful.[40]

Unfortunately, youth homicides rose again in Boston when, because of budget cuts and other organizational challenges, Operation Ceasefire died out– further evidence that it was the collaborative effort to respond to gang violence that was responsible for the sharp drop in homicides in 1997.[41] These collaborative and intensive efforts require regular meetings,

increased funding and organizational staying power. As Northeastern University criminologist James Alan Fox said, "Some cities might think when crime is going down that it's OK to cut these things. I know it takes money. But you can pay for the programs now or pray for the victims later."[42]

The Philadelphia Story

Philadelphia further confirms that this collaborative approach really works because it is being adopted in one police district at a time instead of citywide and is producing dramatic results in those districts. The collaborative effort of Philadelphia youth-service agencies and criminal justice agencies, known as the Youth Violence Reduction Partnership, launched in June of 1999. It is taking advantage of the lessons learned in Boston and other cities. A new report, Alive at 25, written by evaluator Wendy McClanahan of Public/Private Ventures (PPV), documents the collaboration's goal to "steer youth, ages 14 to 24 years old and at greatest risk of killing or being killed, toward productive lives."[43]

Philadelphia's program is succeeding. Youth homicides plummeted after this approach was rolled out in the first two Philadelphia police districts to adopt the approach. Looking at ten years of data, youth homicides per month are down 46 percent in the 24th district. When the program was expanded to the 25th police district, youth homicides there dropped by 41 percent as well. These decreases were more than twice the rate at which youth homicides were falling citywide.[44] McClanahan's analysis shows it is unlikely that other crime prevention programs underway citywide, or other possible explanations such as unemployment trends, could account for the much greater decline in youth homicides in these two districts.[45] McClanahan believes the coordinated Philadelphia program is already saving lives.[46]

The troubled youths in Philadelphia who typically are members of local drug gangs certainly had multiple risk factors in their lives and "more than two-thirds had been incarcerated at some point."[47] When the evaluators interviewed 18 of these high-risk youths about violence in their lives, 15 told stories of violence perpetrated against them or friends and family, including:

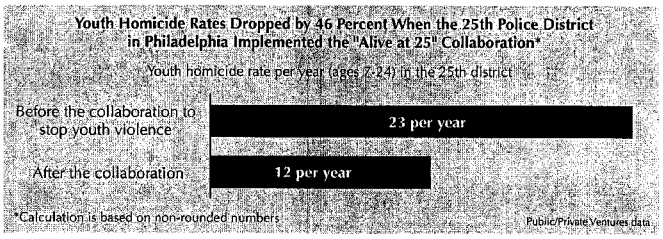
- An uncle, who was a drug lord, was killed and his friends then retaliated by killing those responsible
- A father was killed after he stole a bag of marijuana
- A friend who got caught in the middle of someone else's fight was fatally shot
- A friend who got drunk at a parade, tried to steal someone's gold chain, and was shot and killed
- A grandfather who was shot and killed in his car
- A friend who was fatally shot in an alley for his leather jacket.

Some had themselves been shot at and seven admitted having carried guns, while:

- One participant told of finding his brother dead in the basement
- Another saw his father stab someone to death.

The evaluator of the program, McClanahan, explained, "under more traditional systems, young people can easily fall through the cracks because probation officers, police officers, community workers and other service providers rarely work together."[48] Too often the system ignores the continued involvement of these youths in neighborhood drug gangs and simply waits until someone is severely injured or killed. The youths are either the ones seriously injured or killed, or they end up spending increasingly longer periods of their lives imprisoned.

In Philadelphia, in the police districts where the collaboration is underway, drug gang members and other troubled youths fall through the cracks much less often than before the collaborative effort began. Probation



officers travel with police officers to make sure the probation officers are safe when they meet with these high-risk youths in their homes or in the community. The police and the probation officers both check drug corners to make sure the participants in the program are not returning to their old drug gangs. McClanahan notes, "When participants break rules, probation officers can initiate an 'expedited punishment' process with swift and certain consequences."[49] This creates a situation where the youths are often no longer welcome by their neighborhood gangs on their old drug corners because of the increased attention they will generate – probably helping to save their lives.[50]

Another critical link in this effort to keep the high-risk participants in the program safe is the street mentors. The street mentors are typically in their twenties or early thirties and usually grew up in the same police district. Many have credibility with the youths because they themselves have struggled with neighborhood gangs, drugs, crime and violence. As McLanahan reports, the street mentors:

> visit and bond with the young people, serving as a friend and role model. They provide transportation to job interviews, organize trips and recreation, help with family problems and lend an ear when someone needs to talk. They know and reinforce the rules of each participant's probation but also serve as trusted friends and confidantes. Street workers represent a critical bridge between the community and mainstream society – a support mechanism missing from many programs targeting high-risk youth.[51]

The street mentors attempt to meet with each youth in the program at least 24 times each month. The probation officers not only have formal meetings with each of the youths every week, but they try to see these youths three more times a week at their homes or out in the community. Due to the efforts of the probation officers and the street mentors "typically, 56 to 84 percent of participants are involved in some kind of positive support," according to McClanahan.[52]

Turning around the lives of these gang youths at their age and with their criminal experiences is no easy task. The program's success can be measured not just in lower homicide statistics in these Philadelphia neighborhoods – as impressive as those are – but also in the daily struggle to build better lives. As one youth explained:

> Working this [regular] job, I'm not making no money the way I used to make money hustling. On the corner I made five hundred a day ... a good day I could see a thousand to two thousand dollars, just standing there. Now, I'm making like two-something a week, you know, so I'm not living the way I used to live. But, it's kinda like a good feeling though, 'cause I know I'm not stealing

> from nobody. I ain't gotta watch my back for the cops, other people that might wanna rob me...somebody might wanna drive by and shoot up the corner, stuff like that. So it's a good feeling knowing that I'm working a regular nine-to-five, earning money off the sweat of my brow. I feel like a regular citizen.[53]

Baton Rouge, Keeping Gangs Away and Troubled Youths Alive

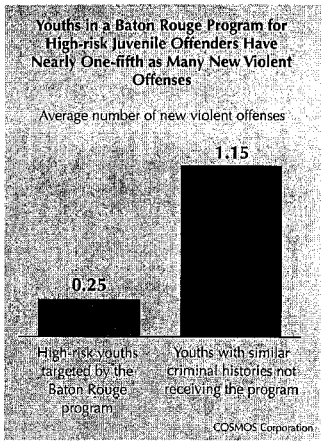
Thanks to Baton Rouge's collaborative effort to supervise and support youths in trouble – named Operation Eiger after a mountain that is difficult to climb – Baton Rouge will continue to be able to keep gangs from becoming established there. With initial Justice Department start-up funding, Baton Rouge began its collaborative process in 1997 by initially targeting youths with multiple offenses in the two zip codes in the city that accounted for more than two-thirds of the city's homicides.

The on-going efforts in Baton Rouge are similar in many ways to the efforts in Boston and Philadelphia. The Baton Rouge collaborative effort increases supervision and provides more certain and swifter consequences for further violence coupled with support and services that will help these troubled youths to turn their lives around.

Baton Rouge's effort to surround its troubled, gang-prone youths with supports and services is even more intense than in Boston or Philadelphia. The project targets each youth with a rigorous evaluation and develops a service plan. The plan also brings in the youth's parents and younger siblings so the cycle of crime between older and younger siblings can be disrupted.[54] Project staff coach parents on more effective parenting practices. The program also provides a number of services and support for the often-troubled families. For example, according to Yvonne Lewis Day, the program director, "If a mother's car isn't running, we find a church member who can help her get to work so she can keep her job."[55] The program also focuses on providing adult mentors and tutors for the youths, and on ensuring the youths get involved in after-school activities and other positive practices. Not only has the program now expanded city-wide, but instead of intervening only with the most troubled youths – those who in the past averaged 5.5 offenses – the program now intervenes with youths after only their first offense.[56]

An outside evaluation conducted by the COSMOS Corporation, an applied research and evaluation firm, compared youths in the program with a sample of youths with similar criminal histories who were not in the program. The evaluation showed that the youths in the program had about one-fifth as many new violent offenses (0.25 new violent offenses on average for those in the program vs. 1.15 for similar youths not in the program).[57]

Because the program is so successful, Lewis Day reports that judges in Baton Rouge are



now more willing to rely on probation coupled with the program rather than sending youthful offenders to secure facilities. The judges know that the whole community will surround these youths and their families with the close supervision, support, and services they need to avoid recidivism.[58]

Will this work in the cities confronting large gangs?

Can the approaches developed in Boston, Philadelphia, and Baton Rouge also be part of the solution for reducing gang homicides in large cities facing traditional gangs like Chicago and Los Angeles? There is sufficient reason to believe that the collaborative approach of combining tough enforcement with services and support for gang members can be very effective at reducing gang violence in those cities.

In 2003, new Los Angeles Police Chief William Bratton was able to rally police and community efforts in Los Angeles to reduce gang-related homicides in Los Angeles by 30 percent.[59] The tactics used included employing the COMPSTAT data-collection and mapping system to encourage more pro-active policing. That system allows the police to track gang activity and other crime sources more accurately and respond with closely targeted enforcement efforts. John Mack, the president of the Los Angeles Urban League said that this will "be surgical and not a return to ... profiling every African-American guy on the street."[60] Chief Bratton is also experimenting with using surveillance cameras in high-risk areas,[61] and more intensive supervision of new parolees.[62] Finally Chief Bratton is attacking large gangs with racketeering investigations as was done with the Mafia when he was commissioner in New York.[63]

In Chicago, the new Police Superintendent Philip J. Cline is also achieving initial success in reducing homicides by focusing on gangs using many similar law enforcement tactics as those employed in Los Angeles. Cline has developed a high-tech deployment operations center that allows his department to integrate intelligence from the field with computer mapping and deployment decisions. Cline is getting administrators out from behind desks part-time to help increase patrols in drug gang areas, and he is also deploying very-high-tech cameras in more-dangerous neighborhoods that can detect a gun-shot and zoom in to collect valuable information. Anecdotal reports are coming in that gang members are either giving up or moving elsewhere.[64]

Boston, Philadelphia, and Baton Rouge also certainly relied on better tracking of high-risk violent youths with increased supervision and sanctions when necessary. But those city programs also developed extensive collaborative approaches ensuring that, along with the heightened supervision, the youths received the increased support and services they needed to turn away from crime. Wendy McClanahan, the evaluator of the program in Philadelphia, is convinced this collaborative approach can help cut gang violence in other cities too. After all, she points out, Philadelphia is a large city with overall homicide rates similar to or higher than Chicago and Los Angeles.[65]

In fact, an initial effort to develop and study the collaborative approach between law enforcement and social services was implemented in Chicago in the Little Villages program. Administered by the Chicago Police Department, the initiative utilized street mentors and other strategies similar to the previously discussed models. It produced impressive results, including a 60 percent greater reduction in arrests among the most seriously violent targeted youth in the Little Villages neighborhood compared to similar youth who did not receive the program. However, the project faced formidable budget and organizational challenges, reinforcing the point that the emerging approach can be difficult to sustain.[66]

In Los Angeles the RAND corporation replicated and studied the Boston model in the Hollenbeck area of Los Angeles for six months.

Their replication also highlighted the need for regular budget support and sufficient time to develop all the components of the intervention to be fully successful. Nevertheless, a report by RAND concluded that "in the aftermath of the intervention, violent and gang crime did decrease in the targeted area."[67]

Similarly, Gary Slutkin of the Chicago Project for Violence Prevention runs an ongoing program in Chicago, titled CeaseFire. The program pays close attention to the Boston experience as it focuses on reducing gang-related homicides in Chicago. In West Garfield Park, where CeaseFire has operated the longest, the program has helped reduce homicides by 67 percent in two years. However, in general, the overall initiative's collaboration between law enforcement and communities is less intense than in the three cities profiled.[68]

Each of these programs in Chicago and Los Angeles met with important successes, and each provide important lessons for implementing comprehensive and sustainable efforts in the future. McClanahan in Philadelphia, Lewis-Day in Baton Rouge, and Kennedy in Boston are convinced the collaborative approach as it has evolved in their three cities can be an important part of anti-gang efforts in large and small cities alike. The experience with collaboration in these three cities also shows that, if the collaborative approach cannot be adopted citywide as it was in Boston, it can be successfully phased in as Philadelphia is doing and Baton Rouge has already done.[69]

"The street mentors in Philadelphia are currently funded by JABG [Juvenile Accountability Block Grant] funds, but the JABG funding stream is once again under attack in Washington and may even be eliminated."

Funding is crucial

Many law enforcement and social service agencies are facing budget cutbacks and law enforcement is stretched thin by the need to allocate increased resources to Homeland Security. To implement these successful new anti-gang measures will require a greater show of political will at the federal, state and local levels. The federal government, in particular, has a critical role to play in disseminating more information to cities on how they can adopt successful programs and in assisting them with critical funding. Yet, even the administrators of the proven collaborative program in Philadelphia are currently holding up expansion plans of the $4.7 million program until funding from the Department of Justice's Juvenile Accountability Block Grant (JABG) is more secure.[70] The street mentors in Philadelphia are currently funded by JABG funds,[71] but the JABG funding stream is once again under attack in Washington and may even be eliminated.[72]

Step Two: Keeping Troubled Youths Out of Gangs

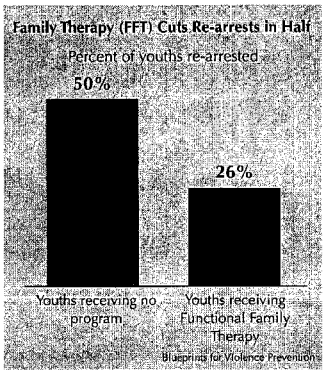
James Howell, a leading researcher and author on gangs at the National Gang Center, reports that communities "can control and reduce gang problems by targeting serious, violent, and chronic juvenile offenders who may not necessarily be known gang members."[73]

Most states and localities are desperate for better options on how to respond to youths in gangs. Currently, many communities may have only two real options: locking up youths in juvenile facilities or putting these troubled youths back on the street with little or no close supervision. That often ensures that the local police and judges will see these same youth again – after more people are hurt. In other localities, while there may be a range of intermediate sanctions that offer both increased supervision and services to these youths, too often those local sanctions are not designed using solid theory or evidence about what practices are proven most effective. Therefore, they are frequently much less successful than they could be in preventing recidivism. Here are three approaches that have been shown to effectively reduce recidivism by turning youths away from a life of gang violence and crime. Because they work to keep the public safe from gangs and violence and they keep these youths out of prison, the programs also save a lot of money.

A short, effective intervention for the families of chronic juvenile offenders

Functional Family Therapy (FFT) is a short family-focused intervention of as little as eight hours and as long as 30 hours that teaches families to better control their children's behaviors. Convincing families that change is both necessary and possible, professionals start with a number of concrete techniques for the whole family to communicate their needs and wishes more effectively. They then coach parents on proven ways to monitor and control their children's behaviors. Next, the staff members guide families to practice these new family management tools. Finally, the staff move to connect these troubled families with other resources in their communities – friends, family, government agencies and community or faith-based organizations – to support them as they make continued progress.

In Salt Lake City, families with troubled youths were randomly assigned to one group that received this intervention and one that did not. The youths whose families received family therapy were half as likely to be re-arrested as the youths whose families did not receive family therapy (26 percent vs. 50 percent). In a later study conducted in Sweden, those who were randomly assigned to receive family therapy were 37.5 percent less likely to be re-arrested than those who were randomly assigned to receive the usual social work assistance (50 percent vs. 80 percent). Another study, also conducted in Salt Lake City with random assignment, proved that the youths who received family therapy were one-fourth



as likely to be either incarcerated, in a psychiatric placement, or placed in foster care than those who received alternative therapeutic treatment (18 percent vs. 72 percent).[74]

By reducing recidivism among juvenile offenders, family therapy easily pays for itself many times over. The Washington State Legislature asked its agency, the Washington State Institute for Public Policy, to examine the costs and benefits of various programs that prevented crime. The Institute team led by Steve Aos estimates that the average cost of the program is $2,161 per participant, and family therapy produces a net return to taxpayers of $14,149 for every participant by reducing crime and incarceration costs. When savings to crime victims are added in, the net savings climb to an amazing $59,067 per participant. The total savings amount to over $29 for every dollar spent.[75]

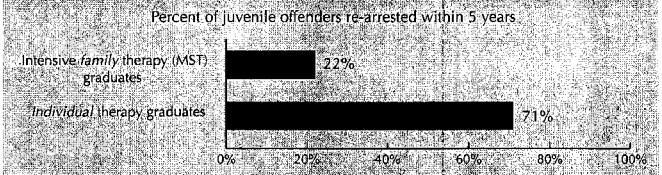
For chronic, violent, or substance-abusing offenders, a more extensive program

Typically, Multi-Systemic Therapy (MST) is not available in the same areas as the family therapy program described above but where possible they both should be provided because MST's more intensive family therapy is advisable for youths who have more severe and chronic problems with criminality. This intensive family therapy provides 60 hours of professional interventions over four months with the families of chronic juvenile offenders. The staff members are available 24 hours a day, seven days a week. Though that is more intensive than the FFT family therapy described above, either of the programs can be used successfully for many of the same troubled youths.

The intensive family therapy professionals begin by determining the specific risk factors in each youth's environment such as associating with delinquent peers, drug or alcohol abuse, school failure, and ineffective parenting practices. Then the professionals strengthen the families directly by teaching parents more effective practices for controlling their children's behaviors. Next the program staff seek to develop a network of positive ties for the families with their school, recreation programs, other extended-family members and friends providing positive influences to further reinforce the new behaviors these troubled youths are learning.[76]

Studies of the program have reported sharp reductions in re-arrests. One study in Simpsonville, South Carolina compared intensive family therapy to usual services (e.g., court ordered curfew, school attendance, referral to other community agencies) and found that intensive family therapy produced a 43 percent greater reduction in re-arrests. Another study in Columbia, Missouri, which compared graduates of intensive family therapy with graduates of more typical individual therapy for troubled youths, saw a 70 percent greater reduction in re-arrests for those in intensive family therapy.[77] However, research reveals that programs that are not carefully implemented and supervised will not produce significant, or even positive results. Because of that, intensive family therapy has become one of the most carefully replicated programs in

Intensive Family Therapy (MST) Graduates are One-third as Likely to be Re-arrested
Chronic juvenile offenders who graduated from intensive *family* therapy (MST) were one-third as likely to be re-arrested within four years as the graduates of *individual* therapy*



*The data on juvenile offenders re-arrested within five years that was reported in the *Blueprints for Violence Prevention* series are: MST graduates (n=77) 22% re-arrested; MST dropouts (n=15) 47%; Individual Therapy graduates (n=63) 71%; Individual Therapy dropouts (n=21) also 71%; those who refused any treatment (n=24) 88%.

Blueprints for Violence Prevention.

social services.[78]

Based on the results of three evaluations of intensive family therapy, all with randomized samples, the Washington State Institute for Public Policy team estimated that the average cost of the program is $4,743 per participant, with a net return to taxpayers of $31,661 per participant. When the savings to crime victims are added in, the net savings climb to $131,918 per participant. The total adds up to $28 for every dollar spent.[79] Once again, it clearly pays to keep these youths from becoming career criminals.

What about serious offenders who cannot yet go back to their families?

Multidimensional Treatment Foster Care (MTFC or simply treatment foster care) can take the place of group residential placement for many high-risk and chronic juvenile offenders. One or at most two youths are placed with special foster parents for six to 12 months. The treatment foster care professionals carefully recruit, train, and closely supervise foster families to ensure that they can manage and fundamentally alter the behaviors of these troubled youths. Along with close supervision at home, the program arranges for teachers to quickly record the youths' behavior in their class each day on cards the students carry with them. Clear and consistent limits with meaningful consequences, such as removal of privileges, and positive reinforcement for appropriate behavior are provided. Initially the youths are constantly supervised. By demonstrating positive behaviors, however, the youths can gradually earn more rights to participate with acceptable peers and without constant supervision. The youths also receive individual therapy from the treatment foster care staff on how they can develop more positive ways to deal with their problems.[80]

Meanwhile, the program trains the youths' biological parents or caretakers to maintain effective supervision of their children when they return home. After the youths are back home, staff members provide support to parents or caretakers as they establish clear limits on their children's behavior.[81]

One randomized evaluation that compared boys in a group home to boys in treatment foster care showed that the boys in foster care averaged half as many new arrests as the boys in group homes (2.6 arrests vs. 5.4 arrests). And six times as many boys in treatment foster care as boys in the group homes had successfully

Parent Training to Control the Behaviors of Troubled Youths Prevents Future Crime and Saves Money

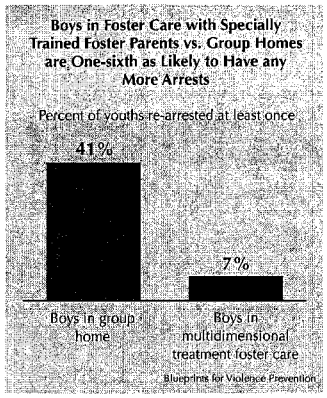
	Cost of the program per participant	What the program saves taxpayers (from less crime) minus the costs per participant	What the program saves taxpayers & crime victims minus the costs per participant	Dollars saved by taxpayers and crime victims for every dollar invested
Functional Family Therapy	[redacted]	[redacted]	[redacted]	[redacted]
Multisystemic Therapy	[redacted]	[redacted]	[redacted]	[redacted]
Multidimensional Treatment Foster Care	[redacted]	[redacted]	[redacted]	[redacted]

*This is above the cost of the alternative, care in a group home, because foster care youths cannot be returned to their homes at this time.

Washington State Institute for Public Policy

avoided any new arrests (41 percent vs. 7 percent).[82]

Such dramatic reductions in crime will easily pay for the program. Aos of the Washington State Institute for Public Policy analyzed the evaluations of treatment foster care and found great savings. Treatment foster care costs $2,052 more per youth than placement in a regular group home, yet the net savings to taxpayers from reduced crime equaled $21,836. Adding in savings to crime victims brought the total savings to $87,622. The total amounts to almost $44 for every extra dollar spent compared to placing delinquents in typical group homes.[83]



All three of these programs and the collaborative efforts to stop gang violence discussed earlier share a common commitment to strengthen the parenting of these troubled kids. Many, though by no means all, parents of troubled kids are themselves troubled. Being a parent is a hard job, especially today. So when given the right tools for the job, even parents who may not have made very good choices for themselves will better guide their children to make wise choices. The evidence is clear: coaching parents to be better parents can be an important part of the solution in helping troubled youths to change their ways.

Step Three: What Else Works to Shut-Off the Pipeline Delivering Kids Into Gangs?

Staying away from gangs in the after-school hours

The after-school hours (3 to 6 PM) are the prime time for juvenile crime[84] and gang-related crime[85] on school days. Moreover, unsupervised time spent with friends has also been shown to be a leading risk factor for joining gangs.[86]

It is crucial for troubled and not-yet-troubled teens to secure adult mentoring relationships and to develop ties with more positive peers if they are going to stay out of trouble. That is why all these troubled youth programs discussed earlier in this report try to connect youths to supportive programs or activities during the after-school hours.

The Boys and Girls Clubs have proven that they can succeed in attracting and keeping troubled kids in their programs,[87] and the clubs can reduce vandalism by 50 percent and drug activity by 30 percent in the housing projects with clubs compared to those without.[88] An intensive after-school program for low-income high school students, called Quantum Opportunities, also dramatically cut crime. The program combined academics, personal development, community service, and monetary incentives to keep at-risk young people on a path leading to high school graduation and adult productivity. Six years later, compared to those in the program, boys left out averaged six times more criminal convictions.[89]

But too often good quality programs simply do not exist. Or if they do exist, the charges for the after-school program or the lesson fees for music and sports activities may be too expensive. Also, transportation to the programs may not be available. After-school programs often compete with the neighborhood corners that all too frequently offer excitement and money to disadvantaged teens. If the parents or other adults in the lives of at-risk youths are not available to supervise them, communities must make sure that there are high-quality programs available for youths during the after-school hours.

Bullying prevention programs can prevent gang violence too

Severe bullying at school can cause youths to turn to ethnic or other gangs for protection. Preventing bullying at schools becomes another important tool for preventing gangs. Successful anti-bullying programs also change the climate at schools, encouraging young people to report to school authorities that gang violence is about to occur – either at school or in the neighborhood. This early warning system allows school and other authorities to intervene before someone is hurt. FIGHT CRIME: INVEST IN KIDS has addressed this important issue for preventing gangs in its 2003 publication of a report titled Bullying Prevention Is Crime Prevention.[90] A nationally

representative survey cited in that report found that bullying is uniformly widespread throughout urban, suburban, or rural schools.[91]

Children most commonly respond to bullying in one of two ways. Some internalize the torment – bullied boys are four times more likely to be suicidal than other boys, and bullied girls are eight times more likely to be suicidal.[92] Others become bullies themselves. A national survey of America's youth reports that six percent of youths in the sixth through tenth grades are both victims and bullies, which amounts to 2.2 million youths.[93] The survey also found that compared to those who were neither victims nor bullies, active bullies who torment others at least once a week and continue their bullying away from school are seven times more likely to report having carried a weapon to school in the last month.[94]

The FIGHT CRIME: INVEST IN KIDS report on bullying documents effective, relatively inexpensive programs that schools can adopt to reduce bullying and thus reduce student compulsion to join gangs for protection. These programs, which teach youths to reject being a bystander, increase the chances that at least one student will report imminent gang and other school violence to authorities so that youths can be protected.[95] Anti-bullying programs typically suggest that schools set up a suggestion-style box or phone number where students can anonymously report incidents of bullying, threats, or weapon-carrying by other students. As Ken Slaby, the developer of one of the promising anti-bullying programs said, "The best metal detector in any school is another kid!"[96]

Begin at the Beginning

In a column in The Washington Post, Marc Fisher discussed the gang-related killing of a young girl at the Sursum Corda housing project [see box above on page 6], and he reported that most of the younger brothers and sisters of the gang members as well as other neighborhood children are already far behind on their reading and math skills.[97] When these younger children grow up with few marketable skills and the lure of the drug trade beckons, will they be able to resist joining a gang? And should society wait to prevent gang violence until these children have already become heavily involved in criminal violence?

Effect of Neglect on Brain Development

These images are from studies conducted by a team of researchers from the ChildTrauma Academy in Houston, Texas led by Bruce D. Perry, M.D., Ph.D.

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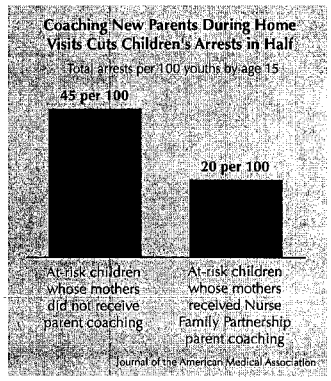
When a woman is pregnant, exposure to high levels of toxins such as alcohol can do permanent harm to the unborn child and even predispose a child to violence later in life.[98] Prenatal coaching of new mothers can reduce drug, alcohol, or even cigarette usage during pregnancy.[99] If an infant or toddler is severely neglected or abused, the bonds that will last a lifetime are not established and may never be fully established.[100] Research shows abused and neglected

children are much more likely to become criminals.[101] Coaching for first-time parents can teach them effective techniques for coping with a crying child in ways that can prevent abuse. Almost all children learn from older siblings or peers how to violently take a toy from another child. But if young children do not learn by Kindergarten to use means other than violence to get what they want, they are at high risk of becoming involved in serious delinquency.[102] Quality pre-kindergarten programs not only teach kids their ABC's and to count to ten, they carefully teach young children the means to get along with others and how to make friends – lessons that can last a lifetime.[101]

The most effective, most fiscally sound, and most humane time to prevent a child from becoming a gang member is at the beginning of a child's life. High-quality parent coaching through home visitation programs beginning prenatally, followed by high-quality pre-kindergarten programs, will help ensure that young children begin life heading in the right direction. With the right start, children can enter kindergarten well on their way to becoming happy, productive members of society, instead of starting kindergarten already troubled and behind and at risk of becoming the next generation's gang members.

The Nurse Family Partnership

The Nurse Family Partnership (NFP) randomly assigned half of a group of at-risk families to receive visits beginning during pregnancy and continuing until the child's second birthday by specially trained nurses. The nurses provided coaching in parenting skills and other advice and support. Rigorous studies then tracked the families until their children were age 15. The results proved that the mothers who were not in the program were three times more likely to have been arrested, and their children were almost five times more likely to have been victims of abuse or neglect. In addition, the children not in the program were twice as likely to have been arrested by age 15. [104]



The RAND Corporation concluded that the NFP program serving new parents and their infants saves more than it costs by the time the children are just three years old. The program ultimately saves the government four dollars for every dollar invested. The figure does not even attempt to include the savings from reduced welfare costs and increased tax revenues when these children become productive adults, much less the benefits to the children themselves.[105]

The Chicago Child-Parent Centers

Chicago's federally-funded Child-Parent Centers are high-quality pre-kindergarten programs that have served over 100,000 three- and four-year-olds since 1967. A study of 989 program children and 550 comparable non-program children shows that children from low-income neighborhoods who were excluded from the program were 70 percent more likely to be arrested for a violent crime by age 18 than the children who attended the program. [106] The program will prevent an estimated 33,000 crimes by the time the children who have attended the program reach age 18.[107]

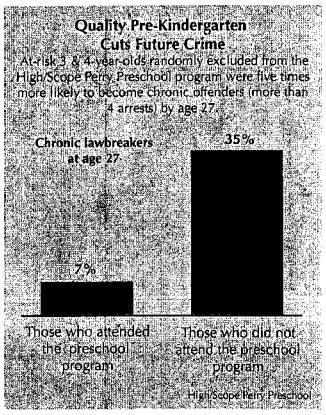
A cost-benefit study of the Chicago Child-Parent Center program showed it saved taxpayers, victims, and participants more than $7 for every $1 invested. For the children already served, the calculation translates into a savings of approximately $2.6 billion.[108]

The High Scope/Perry Preschool Program

Michigan's High/Scope Perry Preschool program served three- and four-year-old children from low-income families. Rigorous research has found that children who were not in the program were five times more likely to become chronic lawbreakers as adults than those who were in the program.[109]

The High/Scope Perry Preschool Program cut crime, welfare, and other costs so much that it saved more than $7 (including more than $6 in crime savings) for every $1 invested. These savings counted only the benefits to the public at large – in taxes paid when the preschoolers became adult workers and in reduced costs of crime, welfare, and remedial education. The figures do not take into account participants' increased earnings or the increased contribution to economic development those earnings represent.[110]

Dr. Steven Barnett, Director of the National



Institute for Early Education Research, estimated that the High/Scope Perry Preschool Program produced savings that exceeded $70,000 per participant in crime-related savings alone, and $88,000 once welfare, tax and other savings were included.[111]

Conclusion

The more than 2,000 law enforcement leaders and crime survivor members of FIGHT CRIME: INVEST IN KIDS know that America will never fully address its terrible crime and gang problems unless it becomes more proactive about stopping juvenile gang violence and preventing kids from growing up to be gang members in the first place.

When Mason-Dixon Polling and Research asked police chiefs, sheriffs and prosecutors nationwide which one of four strategies would have the greatest impact in reducing youth violence and crime, 71 percent chose providing more pre-kindergarten programs for pre-school age children and after-school programs for school-age children as the most effective strategy. A majority also favored hiring more police officers (15 percent picked hiring more police officers as the most effective strategy and 52 percent picked it as the second more effective strategy). However, the chiefs picked the investments in after-school and pre-kindergarten programs as "most effective" by a more than a four-to one margin even over hiring more police officers. Twelve percent chose prosecuting more juveniles as adults and two percent chose installing more metal detectors and surveillance cameras in schools as their top choice for the most effective way to prevent youth violence.[112]

Police Chiefs, Sheriffs and District Attorneys are well aware that law enforcement cannot solve the juvenile crime or gang violence problems by themselves. The Major Cities Chiefs' Organization, the Fraternal Order of Police, the International Association of Chiefs of Police, the National District Attorneys Association and the National Organization for Victim Assistance have all endorsed the call by FIGHT CRIME: INVEST IN KIDS to invest now in what works to help at-risk kids avoid crime.

To stem growing gang violence, this report has shown that it is crucial to:

Invest in collaborative approaches that unite the efforts of street mentors, the broader community, probation officers and law enforcement officers. In Boston, Philadelphia, and Baton Rouge, these collaborative efforts have demonstrated they can reach the most at-risk, gang-prone juveniles before they are either killed or kill someone else. By increasing supervision, applying prompt sanctions if necessary, and also ensuring that these most at-risk youths have the support and services they need to change their lives, these programs have shown that committed communities can reduce gang violence.

Catch kids in trouble before they become full-fledged gang members. Well-tested interventions for the parents or foster parents of these troubled youths strengthen these families so the parents can effectively control the behaviors of their children and keep them from becoming life-long criminals.

Start early giving parents the support they need. In addition to effective after-school and anti-bullying programs, children need help as soon as possible to avoid gangs. With the assistance of parent coaches in home visitation programs for new parents and high-quality pre-kindergarten programs, young at-risk children can develop the social and cognitive skills they need to succeed in life and avoid prison.

There is no need to surrender more of our neighborhoods and children to gang violence. But it will take strong public will and adequate funding in order to reap the tax savings and cascading benefits that come from safer communities. It is like dealing with a leaking roof on a house. We can repair water damage, or we can find the money to really deal with the problem and fix the hole in the roof. The law enforcement leaders and crime victims who make up FIGHT CRIME: INVEST IN KIDS are committed to seeing that America adopts a successful, comprehensive approach to gang violence. Anything less will not adequately protect America's families.

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Swenson is the Manager of Program Development for MST Services.). The problem with fidelity to the model issue is not just for MST. Functional Family Therapy (FFT) has shown clearly in a study done by Barnoski that, for those recipients served by counselors in FFT who did not score high on quality of services, the intervention, on average, actually increases recidivism compared to an alternative program for these youths in Washington State that was used for comparison with FFT. However, those in FFT receiving treatment from practitioners who carefully follow the protocol achieved very strong results in terms of reduced recidivism compared to those receiving alternative services. Careful replication is therefore essential for all these programs to be effective, a conclusion that has been reached routinely in social services. MST still appears to be effective in reducing recidivism among serious juvenile offenders if it is replicated faithfully. For the symposium presentation, see: Farrington, D. P. (2004, February 23). *What have we learned from experiments in criminology? An update.* Paper presented at the Jerry Lee Symposium, Washington, DC. For the Barnoski study, see: Barnoski, R. (2004). *Outcome evaluation of Washington State's research-based programs for juvenile offenders.* Olympia, WA: Washington State Institute for Policy.

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JASON ZIEDENBERG, "WHAT WORKS TO DETER GANGS?" *The Detroit Free Press*, April 12, 2005

The Detroit Free Press
COMMENT: What works to deter gangs?

April 12, 2005

BY JASON ZIEDENBERG

In 1997, U.S. Rep. Bill McCollum, R-Fla., then chairman of the House Subcommittee on Crime, said that the nation's young people were "the most dangerous criminals on the face of the Earth." Citing hysterical predictions of a wave of crime from a generation of "super-predators," he led Republicans to introduce "The Violent and Repeat Youth Offender Act," legislation designed to try, and imprison, more youth in the adult criminal justice system.

Thankfully, those politically charged predictions of "super-predators" turned out to be super-wrong. In fact, a crime survey shows that adolescent and teen violence has fallen by more than 64 percent since 1975, making violent crime the lowest it has been in decades. Legislators at the time had the good sense to not pass the anti-youth legislation.

Eight years later, the anti-youth advocates are back, this time under a different guise -- the "Gang Deterrence and Community Protection Act of 2005." In this strategy, members of Congress have subtly reintroduced the "super-predator" threat of the '90s, conveniently replacing the word super predator with "gang."

The Gang Deterrence Act is designed to punish young people by lowering the age at which youth can be tried as adults, funding more prosecutors, and expanding ways for the federal government to arrest, detain and imprison young people. Ironically, a conservative Congress that promotes the idea of getting government out of our lives is expanding federal jurisdiction on youth crime -- something traditionally left up to states and local communities.

They were wrong about "super-predators" then, and they are wrong about what they are calling "super-gangs" now. Research shows young people who are prosecuted as adults are more likely to commit a greater number of crimes upon release than youth who go to the juvenile justice system. Unlike a stream of proven community-based interventions that treat and meet young people's needs close to their homes and families, locking young people up in adult prisons actually compromises public safety.

While we know that trying youth as adults aggravates crime, we know very little about the amorphous category of gang "related" crime. The National Crime Information Center casts a wide net over America's youth, defining gangs as three or more people engaged in criminal or delinquent conduct -- something so broad that three young people misbehaving in the way many of their parents did would today be classified as gang activity.

An analysis of the known circumstances in which homicides occurs shows that four times as many people were killed in relation to an "argument" than were killed in relation to a "gang," and less than 10 percent of homicides in which the circumstances were known were "gang" related.

Still, communities that suffer high rates of crime deserve to have action taken to make their neighborhoods healthy and safe. But federalizing youth crime, and targeting gang crime in this way will not solve the real problems that create social instability.

Rather than dumping resources into policies that have been proven to harm youth and communities, legislators should examine the impact of deteriorating schools and reduced spending on youth interventions and services, and they should expand employment programs.

As Father Gregory Boyle, the founder of Homeboy Ministries, a ministry that serves gang members in East Los Angeles, says, "Nothing stops a bullet like a job."

Rather than pass a highly punitive youth crime bill that throws away the key to many young people's future, Congress should prevent the Bush administration from pressing ahead with budgetary plans to cut funding to prevent youth crime, and cut health and human service programs that assist youth development. Instead of promoting the latest hysterical anti-youth threat, Congress should work to fund programs that are proven to reduce crime and build communities.

JASON ZIEDENBERG is executive director of the Justice Policy Institute, a nonprofit research and public policy organization dedicated to ending society's reliance on incarceration and promoting effective and just solutions to social problems. Write to him at the Justice Policy Institute, 4455 Connecticut Ave. NW, Suite B-500, Washington, D.C. 20008.

"DOJ YOUTH VIOLENCE AND YOUTH GANG PREVENTION BEST PRACTICES PROTOCOLS BY AGE"

DOJ Youth Violence and Youth Gang Prevention Best Practices Protocols By Age

Best Practices by Age Range

Ages 6-11

Prevention

Provide family strengthening/effectiveness training to improve parenting skills, build life skills in youth, and strengthen family bonds.
Promote emotional and social competencies in elementary school-age children, while simultaneously enhancing the educational process in the classroom.
Increase prosocial peer bonds, and strengthen students' attachment and commitment to schools.
Increase teachers' classroom management, interactive teaching, and cooperative learning skills.
Develop gender-specific programs.
Improve parents' involvement in and support for their children's academic progress.
Steer at-risk youth from delinquent peers to prosocial groups and provide positive peer modeling.
Engage community groups, individuals, and institutions to respond to the multiple needs of youth and their families through case management for the highest-risk youth and their families; provide an array of services, after-school activities, and community activities to strengthen families.
Mobilize community leaders and Boys & Girls Club staff to recruit at-risk and gang-involved youth into club programs in a nonstigmatizing way through direct outreach efforts to discuss local gang issues, and design a strategy to offer youth alternatives to the gang lifestyle.
Educate youth to modify their perception that gang membership is beneficial.
Involve grassroots organizations in the creation of violence-free zones.
Provide social support for disadvantaged and at-risk youth from helping teachers, responsible adults, parents, and peers.
Provide after-school programs.

Intervention

Build a comprehensive framework for the integration of child and adolescent services programming that links the juvenile justice system with human service and other related agencies, including schools, child welfare services, mental health agencies, and social services.
Create an infrastructure consisting of client information exchange, cross-agency client referrals, a networking protocol, interagency councils, and service integration.
Establish a wraparound service delivery process for children and their families.
Integrate the wraparound service delivery process within a "system of care."
Create a system of graduated sanctions to control offenders and protect the public.
Create a continuum of immediate intervention, intermediate sanctions, community confinement, and secure confinement options for offenders.
Develop gender-specific programs.

Suppression

Develop a Comprehensive Gang Prevention, Intervention, and Suppression Strategy.
a) Acknowledge the gang problem.
b) Form an agreement among stakeholders to work together in addressing the gang problem.
c) Set goals and objectives.
d) Develop and integrate relevant services, strategies, and graduated sanctions.
e) Form an Interagency Intervention Team that targets gang members for interagency services

and sanctions and provides case management.
f) Create a one-stop youth center that addresses gang involvement and general delinquency involvement with individual problem assessment, services, service referral, and recreational activities.
g) Implement an evaluation of outcomes.

Ages 12-17
Prevention
Provide family strengthening/effectiveness training to improve parenting skills, build life skills in youth, and strengthen family bonds.
Promote emotional and social competencies in elementary school-age children, while simultaneously enhancing the educational process in the classroom.
Increase prosocial peer bonds, and strengthen students' attachment and commitment to schools.
Increase teachers' classroom management, interactive teaching, and cooperative learning skills.
Develop gender-specific programs.
Improve parents' involvement in and support for their children's academic progress.
Steer at-risk youth from delinquent peers to prosocial groups and provide positive peer modeling.
Engage community groups, individuals, and institutions to respond to the multiple needs of youth and their families through case management for the highest-risk youth and their families; provide an array of services, after-school activities, and community activities to strengthen families.
Mobilize community leaders and Boys & Girls Club staff to recruit at-risk and gang-involved youth into club programs in a nonstigmatizing way through direct outreach efforts to discuss local gang issues, and design a strategy to offer youth alternatives to the gang lifestyle.
Educate youth to modify their perception that gang membership is beneficial.
Involve grassroots organizations in the creation of violence-free zones.
Provide social support for disadvantaged and at-risk youth from helping teachers, responsible adults, parents, and peers.
Provide after-school programs.
Intervention
Build a comprehensive framework for the integration of child and adolescent services programming that links the juvenile justice system with human service and other related agencies, including schools, child welfare services, mental health agencies, and social services.
Create an infrastructure consisting of client information exchange, cross-agency client referrals, a networking protocol, interagency councils, and service integration.
Target potential and current serious, violent, chronic gang-involved juvenile offenders for resource priority.
Provide case management by a particular agency for case conferencing and to coordinate services to offenders and the families of gang youth.
Provide mentoring of at-risk and gang youths, counseling, referral services, gang conflict mediation, and anti-gang programs at schools in the community.
Provide close supervision and monitoring of gang-involved youth by agencies of the juvenile/criminal justice system and also by community-based agencies, schools, and grassroots groups.
Provide intensive probation supervision linked with more structured behavioral and/or skill-building and multimodal interventions.

Provide direct placement and referral of youth for employment, training, education, and supervision.
Provide alternatives to gang involvement, including remedial and enriched educational programs for gang youths with academic problems and vocational and apprentice training.
Intervene with victims in the community or in hospital emergency rooms to break the cycle of violence.
Provide rehabilitation services in prisons and in youthful offender facilities.
Provide stepped-down control and support services for reentry of confined offenders by linking them with court-based services.
Suppression
Form or modify existing gang units that perform four primary functions: intelligence, enforcement/suppression, investigations, and prevention activities; ensure that these functions are integrated with core policing units.
Sponsor Police Athletic Leagues that provide recreation and mentoring.
Serve as teachers in school-based educational programs, such as Gang Resistance Education And Training that, among other things, educate youth on the consequences of gang involvement.
Provide mentoring, grief counseling, referral for social services, gang conflict mediation, and case conferencing on individual youths for at-risk and gang-involved youths.
Conduct anti-gang programs in the community.
Provide community policing that enlists community support, shifts police focus from individual gangs and crimes to the neighborhoods, and recognizes the importance of strategies and tactics other than what the police can provide.
Simultaneously enforce curfew and truancy laws and regulations.
Develop a Comprehensive Gang Prevention, Intervention, and Suppression Strategy.
a) Acknowledge the gang problem.
b) Form an agreement among stakeholders to work together in addressing the gang problem.
c) Set goals and objectives.
d) Develop and integrate relevant services, strategies, and graduated sanctions.
e) Form an Interagency Intervention Team that targets gang members for interagency services and sanctions and provides case management.
f) Create a one-stop youth center that addresses gang involvement and general delinquency involvement with individual problem assessment, services, service referral, and recreational activities.
g) Implement an evaluation of outcomes.

Ages 18-22
Suppression
Provide support for state and local crime control agencies (e.g., police, prosecutors, courts) that work in teams focused on selective incarceration of the most violent and repeat older gang offenders in the most violent gangs; enforcement of probation controls (graduated sanctions and intensive supervision) on younger, less violent gang offenders; and arrests of gang leaders in "hot spots" of gang activity.
Provide support for federal, state, and local law enforcement collaboration across jurisdictional boundaries.
Employ a variety of gang suppression strategies and tactics:

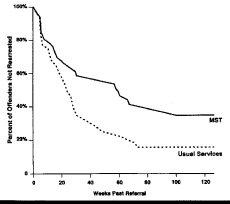
a) Confidential informants and undercover officers.
b) Surveillance/arrest, buy/bust, and reverse-sting operations.
c) Interdiction, barriers, and warrant execution.
d) Other investigative approaches, such as surveillance, follow-up investigations, and multijurisdictional task forces.
e) Suppression through patrol, including directed patrol and community-oriented policing.
f) Suppression through enforcement of health, building, and zoning codes and nuisance/civil abatement ordinances.
g) Enforcement of curfew and truancy laws and regulations in gang areas.
h) Consent to search and seize firearms.
i) Use of traffic barriers to block gang mobility and reduce criminal activity.
j) Vertical prosecution.
Develop a Comprehensive Gang Prevention, Intervention, and Suppression Strategy.
a) Acknowledge the gang problem.
b) Form an agreement among stakeholders to work together in addressing the gang problem.
c) Set goals and objectives.
d) Develop and integrate relevant services, strategies, and graduated sanctions.
e) Form an Interagency Intervention Team that targets gang members for interagency services and sanctions and provides case management.
f) Create a one-stop youth center that addresses gang involvement and general delinquency involvement with individual problem assessment, services, service referral, and recreational activities.
g) Implement an evaluation of outcomes.

QUICKTIME PRESENTATION, "ADOLESCENT BRAIN DEVELOPMENT"

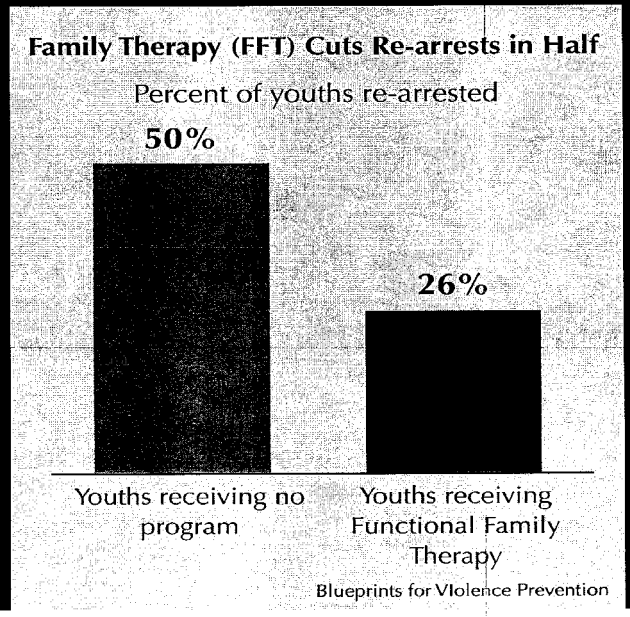
QuickTime™ and a
TIFF (Uncompressed) decompressor
are needed to see this picture.

Intensive Programs Prevent Further Crime

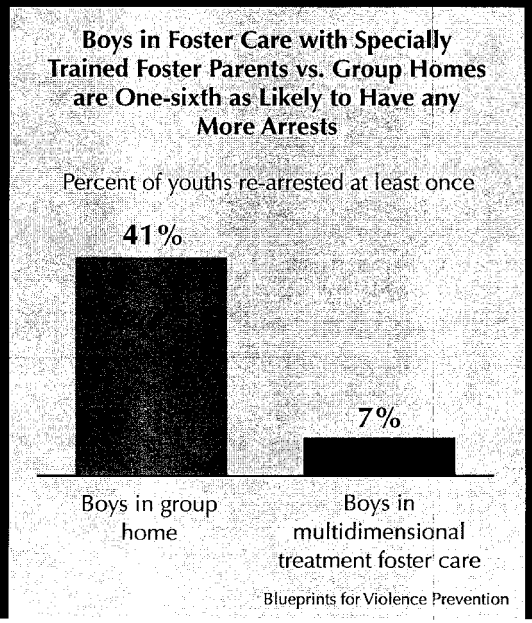
Comparing Re-arrest Rates:



Functional Family Therapy



Treatment Foster Care



Interventions Save Money

Parent Training to Control the Behaviors of Troubled Youths Prevents Future Crime and Saves Money

	Cost of the program per participant	What the program saves taxpayers (from less crime) minus the costs per participant	What the program saves taxpayers & crime victims minus the costs per participant	Dollars saved by taxpayers and crime victims for every dollar invested
Functional Family Therapy	$2,161	$14,149	$59,067	$29 for every $1 invested
Multisystemic Therapy	$4,743	$31,061	$131,918	$28 for every $1 invested
Multidimensional Treatment Foster Care	$2,052*	$24,836	$87,622	$44 for every $1 invested

*This is above the cost of the alternative, care in a group home, because foster care youths cannot be returned to their homes at this time.

Washington State Institute for Public Policy

Functional Family Therapy
(FFT)

Description
FFT is a short intervention of up to 30 hours of family therapy. It typically lasts for three months and serves the families of delinquent 11-18 year-olds. Professionals, ranging from nurses to PhD's, are carefully trained to deliver the FFT program. The therapist teaches families new ways to communicate with each other and effective tools to better monitor and control their children's behaviors, and the therapists help families practice these approaches and connect the families with others in their communities – friends, family, government agencies, etc.- who can help them continue to make progress.

Key Finding
Youths whose families received family therapy (FFT) were half as likely to be re-arrested as the youths whose families did not receive family therapy (26 percent vs. 50 percent).

Multidimensional Treatment Foster Care
(MTFC)

Description
Foster parents are recruited and trained to provide a very closely supervised environment for a youth with a history of chronic and severe criminal behavior at risk of incarceration. The system relies heavily on a point system to reward positive behaviors and discourage negative behaviors. The youths' behavior in school and beyond are also closely monitored and controlled. The youths receive individual therapy on how to develop positive behaviors while their biological or adoptive parents are trained to take over this system of close supervision when the youths return home.

Key Findings
The boys randomly assigned to treatment foster care averaged half as many new arrests as the boys placed in group-homes (2.6 arrests vs. 5.4 arrests). And six times as many boys in treatment foster care as boys in the group homes had successfully avoided any new arrests (41 percent vs. 7 percent).

Multisystemic Therapy
(MST)

Description
Typically MST provides 60 hours of intensive work, on a 24-7 basis over 4 months, with the families of 12-17 year old youths who are chronic, violent, and/or substance abusing youths at risk of incarceration. MST targets whatever the specific risk factors are in each family's environment such as associating with delinquent peers, drug or alcohol abuse issues, school failure and/or ineffective parenting practices. MST uses proven approaches to overcome specific problems and strengthen the ability of parents to effectively control their children's behaviors. The therapist then helps the family reach out to the schools, to recreational programs and to extended family, neighbors and friends to build a support network that can help ensure that the family's children are developing more positive behavior.

Key Finding
Chronic juvenile offenders who graduated from intensive family multisystemic therapy (MST) were one-third as likely to be re-arrested within four years (22%) as the graduates of individual therapy (71%).

Estimates of Prison Impact Portions of H.R. 1279 [1]

Legislation Section		Number of Cases Affected	Current Sentence (in months)	Estimated New Sentence (in months)	Percent Increase to Sentence	Cumulative Number Additional Prison Beds in 5 Years	Cumulative Number Additional Prison Beds in 10 Years
521	Criminal Street Gang Prosecutions - Analysis limited to Drug Trafficking Cases only Note 1	4,525	45	122	171%	10,501	23,600
102	18 U.S.C 1952(a)(1) 18 U.S.C 1952(a)(3) Note 2	43	26	60	131%	104	102
	18 U.S.C 1952(a)(2) Note 3	2	53	120	126%	3	10
103	Carjacking Note 4	2	52	120	131%	3	10
	18 U.S.C. 924(g) Note 5	6	26	60	131%	14	14
	18 U.S.C. 371 Note 6	80	67	116	73%	66	223
114	18 U.S.C. 924(c)(1)(A) conviction during a drug trafficking offense Note 7	115	110	164	49%	25	148

[1] Source: U.S. Sentencing Commission Prison Impact Model. FY2003 and ISS2000 datasets.

Notes

1) The estimate is based on a 20 percent random sample of cases (U.S. citizens only) sentenced in FY2000. The ISS2000 was a Commission project to extract substantial additional information from the court submitted case documents that is beyond the Commission's standard coding practice. These additional variables are critical for this analysis. Analysis of the criminal street gang provision is limited to cases sentenced under guideline 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit these Offenses); Attempt or Conspiracy), the primary guideline for drug sentencing. Therefore, the analysis does not include the impact of the proposed legislation on defendants who were sentenced under other guidelines who may meet the proposed definition of "criminal street gang". Information is not available to definitively determine whether defendants meet the proposed definition for "criminal street gang". In an effort to satisfy the request for an impact analysis, the model assumes that all drug trafficking cases involving three or more defendants meet the criteria. This assumption most likely results in an overestimate of the impact; however, further refinement of the data is not possible. Lack of information further limits this analysis to application of section 521(a)(4), which modifies the statutory range in these cases to 10 years to life. Thus the analysis does not include the impact of proposed subsections 521(a)(1), (2), and (3). The model as described is estimated to affect 20.7% of drug trafficking cases sentenced under guideline 2D1.1.

2) This analysis included all cases (n=93) sentenced during FY2003 with a conviction under either 18 U.S.C §1952(a)(1) or (a)(3) . Of the available cases, 46.2% are estimated to be affected by this legislation. For this analysis, the statutory range was modified to 5 to 20 years resulting in the imposition of a five year mandatory minimum in cases with sentences below that level. Cases in which the guideline sentence is trumped by the current statutory maximum were resentenced to reflect the proposed higher maximum.

3) This analysis included all cases (n=93) sentenced during FY2003 with a conviction under18 U.S.C. § 1952(a)(2). Of the available cases, 40.0% are estimated to be affected by this legislation. For this analysis, the statutory range was modified to 10 to 30 years resulting in the imposition of a ten year mandatory minimum in cases with sentences below that level. Cases in which the guideline sentence is trumped by the current statutory maximum were resentenced to reflect the proposed higher maximum.

4) This analysis included all cases (n=14) sentenced during FY2003 under guideline 2B3.1 (Robbery, Extortion, and Blackmail) that had sentence enhancements under (b)(5) (Carjacking) and (b)(3) for serious or permanent or life threatening bodily injury. Of the available cases, 14.3% are estimated to be affected by this legislation. For this analysis, the statutory range was modified to 10 to 30 years resulting in the imposition of a ten year mandatory minimum in cases with sentences below that level. Cases in which the guideline sentence is trumped by the current statutory maximum were resentenced to reflect the proposed higher maximum.

5) This analysis included all cases (n=19) with a conviction under 18 U.S.C. § 925(g) in FY2003. Of the available cases, 31.6% are estimated to be affected by this legislation. For this analysis, the statutory range was modified to 5 to 20 years resulting in the imposition of a five year mandatory minimum in cases with sentences below that level. Cases in which the guideline

sentence is trumped by the current statutory maximum were resentenced to reflect the proposed higher maximum.

6) This analysis included all cases (n=3,886) with a conviction under 18 U.S.C. § 371 in FY2003. Of the available cases, 2.1% are estimated to be affected by this legislation. For this analysis, the statutory range was modified to reflect the new statutory maximum of 20 years. Cases in which the guideline sentence is trumped by the current statutory maximum were resentenced to reflect the proposed higher maximum.

7) The estimate is based on a 20 percent random sample of cases (U.S. citizens only) sentenced in FY2000. The ISS2000 was a Commission project to extract substantial additional information from the court submitted case documents that is beyond the Commission's standard coding practice. These additional variables are critical for this analysis. Analysis of the criminal street gang provision is limited to defendants sentenced under guideline 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit these Offenses); Attempt or Conspiracy), the primary guideline for drug sentencing, who also were convicted under the 18 U.S.C. 924(c)(1)(A). The model as described is estimated to affect 13.5% of drug trafficking cases sentenced under guideline 2D1.1. For this analysis, the statutory minima were modified to 7 years if the firearm was used, possessed or carried, 15 years if discharged, and 20 years if it is used to cause bodily injury.

CHILDHOOD ON TRIAL

The Failure of Trying & Sentencing Youth in Adult Criminal Court

Coalition for Juvenile Justice

This report and its release have been supported by a grant from the John D. and Catherine T. MacArthur Foundation.

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Dedication

With heartfelt remembrance and in gratitude for her inspiring work on behalf of children and families, the Coalition for Juvenile Justice dedicates this report to Jacque Steiner (1929-2003).

Acknowledgments

The Coalition for Juvenile Justice, its National Steering Committee and its member State Advisory Groups would like to thank the many individuals who contributed to this report. First and foremost among them are the many practitioners, court professionals and advocates, youth and families, researchers and journalists from all across the United States, who opened their homes and lives to us, who have raised tough questions and who have sparked active concern about our nation's widespread practice of sending young offenders into the adult criminal court. And, who have not given up hope.

The dedication and guidance of the report's advisory panel—setting the work in motion, meeting long distance by telephone, as well as reviewing and providing feedback on numerous drafts—was instrumental in shaping the work and in highlighting both the need for reform and examples of current reforms underway. The advisors were: Rodney Cook, Chair, and Lael Chester, Betsy Clarke, John Dewese, Mark Ferrante, Janet Garcia, Paul Kiltinen, Kathryn Landreth, Patricia Puritz and Marc Schindler.

The report was also enhanced by the review and commentary of expert researchers: Donna Bishop, Professor in the College of Criminal Justice at Northeastern University, Jeffrey A. Butts, Director of the Program on Youth Justice at the Urban Institute and Jeffrey Fagan, Professor of Law and Public Health at Columbia University.

Special recognition and thanks are given to Laurie Garduque, Program Director for Research at the John D. and Catherine T. MacArthur Foundation, for her ongoing support of critical analysis and discussion of juvenile justice policy and practice among researchers, advocates and stakeholders. This report would not have been possible without the generous support of the MacArthur Foundation.

Our principal author, Jill Wolfson, accomplished a tremendous amount in a relatively brief and engaging document—filled with poignant examples, well-informed analyses and a comprehensive survey of facts and statistics. We are indebted to her for such tremendous work. The report cover, as well as the text and inside graphics, were artfully designed by Michael A. Hurlocker. Nancy Gannon Hornberger was pleased to serve as the project director and editor. We also thank the other staff of the Coalition for Juvenile Justice for their invaluable assistance.

The conclusions reached are exclusively those of the Coalition for Juvenile Justice.

A Letter from CJJ Leaders

Dear Governors, state policy makers, justice professionals, youth advocates and fellow concerned citizens:

Today, following a decade of sweeping change in state laws regarding whether juvenile offenders shall be tried and sentenced in juvenile versus adult criminal court, there is a growing body of evidence pointing to the clear failure of "adult time for adult crime" policies and practices.

Turning the clock back to the 1970s and 80s, traditionally, a juvenile court judge would have made the life-altering decision to send a youth offender to adult court, after rehabilitative and public safety measures had been exhausted and following a full assessment of the young offender's circumstances and history. However, such judicial oversight has been dramatically stripped away in most states.

Each year now, a quarter million youth under the age of 18 years are tried and sentenced in adult criminal court—few of whom receive any individualized assessment before the decision is made to treat them as if they are adults. Some of them will be acquitted, many will languish without educational and counseling services, most will be subjected to harsh treatment and cruel conditions of confinement, and almost all will see their future prospects for school, employment and productive contributions to society completely squandered.

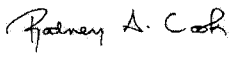
Thirteen states have discarded the traditional age of 18 as the beginning of adulthood and the end of juvenile court jurisdiction. In these states, approximately 218,000 youth under the age of 18 are charged as adults for any offense, even the most minor. In addition, youth are automatically excluded from juvenile court jurisdiction for certain crimes in 29 states. In 15 states, prosecutors hold sole discretion to move juvenile cases directly into adult court.

While intending to be "tough" on juvenile crime, these states have forgotten to be "smart" in their approach. Mounting evidence shows that public safety is harmed rather than helped by the widespread practice of sending teens into adult court. In fact, research—as cited in this report—demonstrates that prosecuting juveniles in the adult criminal system increases rather than decreases the likelihood that they will re-

offend, as compared with handling these same offenders in the juvenile system.

It is with great hope for change that we submit to you the Coalition for Juvenile Justice's report: *Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Criminal Court.* We strongly encourage you to examine this report, to use it to inform others and to strive for changes in state policies and practices regarding teens in adult court—so that a decade from now we will have significantly reduced the number of youth sent to adult criminal court, at the same time ensuring that young offenders are appropriately adjudicated in ways that enhance community safety and vitality.

Respectfully,



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Please note: Places of employment are listed for identification purposes only and are not meant as endorsements of this report or the Coalition for Juvenile Justice.

The Coalition for Juvenile Justice

The Coalition for Juvenile Justice (CJJ) is a national nonprofit association comprising governor-appointed advisory groups on juvenile justice from the U.S. states, territories and the District of Columbia. CJJ is based in Washington, D.C., yet has nationwide reach. Beginning in 2005, CJJ is also the proud host and sponsor of the growing National Network of State Juvenile Justice Collaborations.

CJJ's principal mission is to **build safe communities one child at a time** by ensuring that all children and families are treated fairly and given the resources and support to be positive and productive contributors to society.

- Promoting the best policies and practices in delinquency reduction and prevention.
- Educating the public and advising policy makers on urgent issues in juvenile justice.
- Assisting U.S. states and territories to meet the core requirements of the Federal Juvenile Justice and Delinquency Prevention Act.
- Instituting effective and needed system reforms to improve the quality, cultural sensitivity and scope of community- and court-based services for children, youth and families.
- Linking national, state and local advocates and organizations together, across many disciplines and circumstances, to pursue a common mission.

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INTRODUCTION: ONE TEEN'S STORY

Across the United States, headlines are made when youth are charged with murder and have their cases filed in the adult criminal court—leaving the public with the impression that most youth who are certified for trial in adult court are hardened and homicidal. Yet, in reality, the typical case is quite different: more than half the cases of youth sent into the adult criminal court are charged with nonviolent drug or property offenses.[1]

The story of Daniel Carter involves a death and is, therefore, not typical. Yet, it accentuates wrongful action taken against a teen and family already struggling to make sense of a violent act and tremendous loss, along with the long term ramifications of such injustice.

At age 15 and suffering from attention deficit hyperactivity disorder, Daniel Carter had been getting into scrapes that would test any mother's patience, especially a single mom who worked long hours as a respiratory therapist. Everything had become an issue between them: his poor grades, his staying out too late, his attitude and his friends. His mother, Cindy, was especially concerned when she discovered that Daniel and a friend were planning to sell marijuana. One night, exasperated with the boy's behavior and feeling like she was losing control over him, Cindy phoned her brother Jack and asked for help in disciplining the boy.

It was a call that would forever shatter life in the Carter home in Beulah, a rural area of the Florida panhandle.

Exactly what happened next will never be known for sure, but everyone seems to agree on some basic facts. On a Tuesday night, Daniel's uncle, Jack Carter, a six-foot tall bodybuilder and black belt in Kung fu, possibly inebriated, charged into the boy's bedroom. There was shouting and the crash of objects being hurled to the floor. Cindy said that she could hear a couple of slaps and "my brother was shouting at him very loudly, as brutal a tongue-lashing as I have ever heard." As Cindy approached the bedroom door, she heard her brother threaten to castrate Daniel, some scuffling and then a scream. It was Daniel's voice: "Mommy, mommy, Uncle Jack's dying."

Cindy Carter rushed into the bedroom and tried to stop the flow of blood coming from a four-inch knife wound in her brother's neck, but her hospital experience told her that the gash was fatal. Whispering comforting words to her brother, she held him as he bled to death.

Later, when Daniel Carter was arrested, he told police that he had picked up the antique knife to defend himself against a man in a rage. "I just wanted him to stop, but he kept coming."

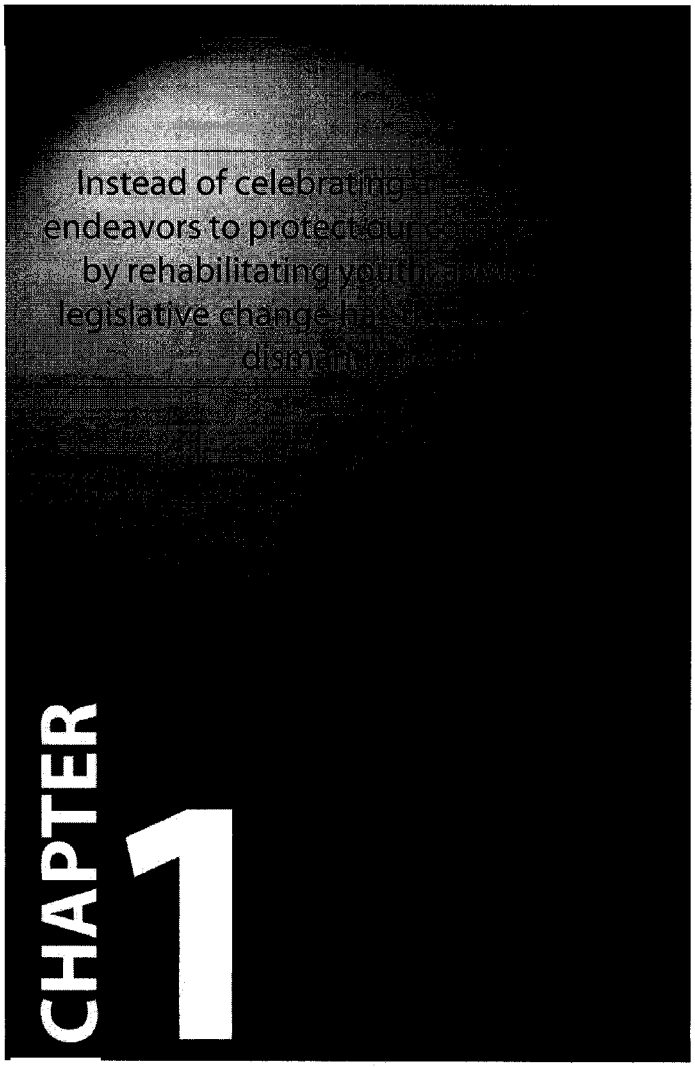
The prosecutor painted a different picture. He argued that the troubled teenager had planned to attack his uncle as soon as he had showed up at the home. And even if Daniel had initially picked up the knife to protect himself, he had taken his right of self-defense too far.

"He did not need to inflict that fatal blow," said assistant state attorney, David Rimmer. "After he had cuts on his arms and blood dripping down his face, Jack Carter was a vanquished foe. He was at the mercy of Daniel."[2]

In Florida, if a 15-year-old is charged with murder, the prosecutor can send him automatically into the adult system without judicial review. Rimmer had been involved previously in a highly publicized case when he prosecuted two other Panhandle boys, Alex and Derek King, for the murder of their father.[3] Now, he was going to prosecute Daniel Carter on the most serious charge possible: premeditated murder. According to Florida law, if convicted, the lanky, sandy-haired boy would receive a mandatory sentence of life without parole.

That devastating night, Cindy Carter lost her brother and was in danger of also losing her son. She discovered what so many other parents and youth have discovered: In America's justice system, a 15-year-

old can be a boy on Tuesday and suddenly, on Wednesday, be considered a fully grown man.


Instead of celebrating
endeavors to protect our
by rehabilitating youth,
legislative change has
dismant
CHAPTER
1

THE CHANGING JUSTICE SYSTEM

A little more than 100 years ago, the country's first juvenile court was created in Chicago. It represented an historic change: a judiciary based on the premise that public safety is best served by an emphasis on rehabilitation, rather than punishment and incarceration. The juvenile court recognized that youth are not finished products and could benefit greatly from education, health and mental health treatment, vocational direction and other pro-social interventions. It recognized that children and teens are malleable and easily influenced. As a result, the court developed youth-only facilities where youngsters would not mingle with adult prisoners.

A century later, instead of celebrating a court that endeavors to protect our communities by rehabilitating youth, a wave of legislative change has threatened to dismantle it. Since 1991, almost every state has eliminated important gateways that youth have had to pass through before being deemed adults in the eyes of the law.[4] The laws have different names: Georgia's SB440, California's Proposition 21, New York's Juvenile Offender Law, Oregon's Ballot Measure 11 and Massachusetts' Juvenile Justice Reform Act. Each law works in a slightly different way, yet the end result is essentially the same.

These laws redefine the boundary between childhood and adulthood in ways that have little parallel in other parts of international,

federal, state or local law. Around the world, age 18 is the most frequently drawn line of demarcation between child and adult.[5] Across the country, youth must be 18 to vote; in many states, they cannot

The pathways from the juvenile justice system to the adult criminal justice system have become wider, shorter and more prevalent.

drive until they are 16 and they must be 21 to purchase alcohol. Yet, legislation allows youth who are too young to drive, get married or join the military—as young as age ten in some cases—to be tried, convicted, sentenced and imprisoned as if they are adults.

Daniel Carter is just one example of the burgeoning number of youth experiencing the impact. The public has become increasingly more familiar with the most shocking and dramatic of the stories, where someone has unfortunately been killed. The media closely followed the case of 12-year-old Lionel Tate who was sentenced to life in prison without parole for killing another child. The country read about Nathaniel Brazill who was 13 years old when he fatally shot a teacher and was sentenced as an adult to spend the next 28 years in prison. But while highly-publicized and memorable, these cases only hint at the astounding frequency and myriad lesser crimes for which youth are being swept, without appropriate judicial review and individualized assessment, into the adult criminal justice system—youth that the public hears little or nothing about.

In Michigan, a 14-year-old girl named Christie Eve Clore, with braces on her teeth, was sentenced to a year in prison, surrounded by adult criminals, for setting a neighborhood fire in which no one was physically hurt.[6] In California, a 16-year-old named Michael Duc Ta—whose only previous contact with police was as a protective measure when he had suffered a beating by his father—is serving a sentence of 35 years to life for driving a car from which shots were fired, even though no one was hurt; this is a stiffer sentence than a adult might get for premeditated murder.[7]

Even more egregious, in New York, Vermont and other states, thousands upon thousands of 16 and 17-year-olds are being prosecuted in the adult system, not just for violent crimes like murder and rape, but also for nonviolent crimes, such as burglary and drug offenses. In these states, even a misdemeanor, such as possession of a small amount of marijuana, can mean that a youth winds up in adult court. Across the country, nearly one in five offenders under age 18—the vast majority of whom have committed nonviolent offenses—is prosecuted as an adult.[8]

- Each year, as many as 218,000 youth under age 18 are automatically excluded from the juvenile justice system—not because of the severity of their crimes and not because they are violent and habitual offenders—but solely because of their age.[9] Thirteen states have discarded the traditional age of 18 and established a lower age of adulthood for youth who commit *any* crime, major or minor, significant or insignificant.[10] The majorities of these 16- or 17-year-olds have committed nothing more serious than minor property or drug offenses, but are sent into the adult system simply because they are legally defined as adults under state law.
- Twenty-nine states automatically exclude certain youth and certain crimes (ranging from serious violent crimes to lesser offenses, such as drug charges) from juvenile court jurisdiction. Twenty-two states require or allow adult prosecution of juveniles accused of property offenses, such as burglary.[11]
- As in Florida, 15 states have *direct file*[12] laws, which give the prosecutor discretion to bypass the juvenile court judge and move juvenile cases directly into adult court.[13]
- Thirty-four states have enacted "*once an adult, always an adult*" statutes, meaning that a youth who is convicted in adult court will typically remain in adult court, no matter how small and insignificant the subsequent offense.[14]

THE HISTORICAL PERSPECTIVE

Daniel Carter, like so many other youth in the adult court, came to the attention of the law during a period of time when the pathways from the juvenile justice system to the adult criminal justice system have become wider, shorter and more prevalent. Several factors brought about this movement. Between 1984 and 1994, arrest rates for juve-

niles charged with violent offenses jumped 78 percent.[15] Particularly alarming to the public was a spike in two of the most heinous crimes: murder and aggravated assault. Media images of shocking offenses and seemingly unrepentant teenagers, along with alarming predictions by criminologists, convinced the public that violent juvenile crime would soon spiral out of control, infecting not just urban areas but small towns and suburbs.

Politicians—some motivated by elections and others genuinely concerned about preventing crime—acted promptly, introducing a raft of "*adult time for adult crime*" legislation. Some legislators promoted their bills by denouncing the rehabilitation in the juvenile court and deeming it a waste of resources on the new breed of *super predators* that were beyond help and hope.[16] Others faulted the juvenile system as being too lenient, lacking the legal muscle to hold teenagers accountable and unable to apply appropriately harsh sentences.

As it happened, the warnings about *super predators* were overstated. Between 1994 and 2000, the overall juvenile arrest rate declined 13 percent with even larger decreases in violent offenses. By 2000, murder

Youth in the Adult System: the Numbers

- **An estimated 7,500 cases are judicially waived to criminal court each year.***
- **27,000 are sent by direct file by a prosecutor.****
- **218,000 completely bypass the juvenile system and are sent via legislation that sets a lower age of adulthood than age 18.*****

*Source: Adapted from Puzzanchera, C., Stahl A., Finnegan T., Tierney. N. and Snyder H., Juvenile Court Statistics 1999. Washington DC: Office of Juvenile Justice and Delinquency Prevention, 2003 http://ncjj.servehttp.com/NCJJWebsite/faq/transfertocourt.htm

**Source: H. Snyder and M. Sickmund, Juvenile Offenders and Victims: 1999 National Report. Pittsburgh, PA: National Center for Juvenile Justice, 1999

***Source: H. Snyder and M. Sickmund, Juvenile Offenders and Victims: 1999 National Report. Pittsburgh, PA: National Center for Juvenile Justice, 1999

and robbery arrest rates for juveniles reached their lowest levels in 20 years.[17] Based on FBI statistics, 88 percent of U.S. counties reported no juvenile murderers in 1997; more than 25 percent of homicides by juveniles took place in just eight counties, mainly large urban areas.[18]

As criminologist, Alfred Blumstein, and others have pointed out, the large sudden spike in juvenile violence in the mid-1980s can be attributed to the development of drug markets, especially crack cocaine, in a handful of urban areas. At the same time, as more guns came onto the streets, the number of deaths soared.[19] The decline in youth violence has been frequently attributed to a combination of interwoven social forces and policy innovations: the influence of a stronger economy; growing intolerance for violent behavior; a declining illicit drug market, the growth of community policing and a concerted effort to keep guns out of the hands of juveniles; and the leadership of community groups that provide mediation between battling gangs.[20]

Despite these encouraging crime statistics, there has been little impact on legislation, policy and the treatment of young offenders across the country. Currently, more than 4,000 youth under the age of 18 are serving sentences in adult state prisons.[21] If the founders of the Juvenile Court were around today, what would they conclude about the system that they helped usher in?

They would hear this description of an adult jail where up to two dozen youth are housed every day:

> *For large parts of the day, youths are kept in their 6-foot by 9-foot cells or are confined to the cellblock and a small, dreary room...For a period, out of sheer desperation for attention, juveniles were nicking their wrists with the appearance of attempted suicide.*[22]

They would listen to the words of a community activist:

> *People think there must be some kind of education for these kids in prison. But the only thing they learn is how to fight, how to get raped, how to curse and use dope, how to spend time in isolation for talking back, how to lose their humanity, how to get more and more angry.*[23]

And hear the lament of Daniel Carter's mother:

> *He has been beaten by other inmates, and refused medical and dental care. If he expresses the desire to die, he is strapped to a chair with a lead apron. Why is this happening to a child who hasn't even been convicted of any crime?*

Hearing this choir of voices, we have to conclude that, in 21st Century America, the line that was established 100 years ago between youth who commit crimes and hardened adult criminals; between youth who can be pointed in the direction of becoming law-abiding citizens and youth that society has given up on, has become seriously blurred.

"Not every jurisdiction [illegible]
enlightened decision [illegible]
prosecutors who have [illegible]
experience to know [illegible]
truly unfit for [illegible]

CHAPTER 2

PATHWAYS TO ADULT COURT: A LEGAL PRIMER

There are three fundamental ways in which a youth can wind up in the adult legal system: judicial waiver; direct file, and statutory exclusion.

THE TRADITIONAL ROUTE: JUDICIAL WAIVER

There have always been legal provisions to send youth into adult court. Traditionally, this power has rested with the juvenile court judge who typically reserves the decision for the oldest and most hardened teenagers. A hearing is set to determine if the case warrants such a move. Bound by a Supreme Court ruling,[24] the judge takes many complex, interwoven issues into consideration: How old is the youth? What is the youth's previous record and history with the court? What is the juvenile's mental and physical maturity? How serious was the offense? Was it committed in an aggressive, violent, premeditated or willful manner? What current public safety risk does the youth present? What have been the previous attempts at rehabilitation and how did the youth respond? Is there a program or facility available that could assure public safety while also offering treatment?[25]

Types of Judicial Waiver

Discretionary Waiver: A juvenile court judge may waive jurisdiction and transfer the case to criminal court, typically based on factors outlined in the *Kent v. United States* 1996 Supreme Court decision.

Mandatory Waiver: A juvenile court judge must waive jurisdiction for the case to the adult criminal court if probable cause exists that the juvenile committed the alleged offense.

Presumptive Waiver: The burden of proof concerning a transfer decision is shifted from the state to the juvenile. This form of waiver requires that certain categories of juvenile offenders be waived to criminal court, unless they can prove that they are suited to juvenile rehabilitation.

Source: State Legislative Responses to Violent Juvenile Crime: 1996-97 Update. www.ojjdp.ncjrs.org/jjbulletin/9811/jurisdictional.html

Media accounts and tough-on-crime legislators have often charged that juvenile court judges are legally unable and resistant to sending youth into the adult system. However, this is not the case. Forty-six states allow judicial waiver of youth—as young as ten in some cases.[26] Prominent studies from South Carolina and Utah indicate that juvenile court judges do not reject appropriate requests, but rather approve eight of every ten transfer requests made by prosecutors.[27]

What has changed is that now the vast majority of youth who come into the adult system have been sent there *without* individualized judicial review and oversight. More often than not, legislation restricts or, in some cases, eliminates the role of the judge. An estimated 7,500 cases are judicially waived to criminal court each year,[28] representing only 15 percent of all decisions made to prosecute juveniles as adults.[29]

POWER TO THE PROSECUTOR RATHER THAN THE JUDGE: DIRECT FILE

In 1981, direct file legislation was initiated in Florida. Following in that state's footsteps, today in 15 states, the prosecutor—rather than the judge—has the primary power to decide whether a case will be

heard in juvenile or adult court.[30] In 1996, an estimated 27,000 juveniles, such as Daniel Carter, were proceeded against as adults as a result of prosecutors' decisions.[31] At its peak in 1995, Florida alone reported 5,350 such transfers, more than half of them for property offenses that involved no violence.[32] In 1999-2000, the number declined to 3,297 youth, but Florida still tries more juveniles as if they are adults than most other states with direct file.[33] Currently, there are numerous 17-year-olds serving upwards of two years in the state's adult correctional facilities for nonviolent crimes, such as selling marijuana and possession of cocaine.[34]

Under direct file, prosecutors generally are not required to follow the process and procedures called for in *Kent v. United States.* Proponents say that automatically sending certain youth into the adult system expedites justice by eliminating costly and time-consuming judicial hearings. Another rationale for bypassing the juvenile judge has been to ensure that serious, habitual offenders are given lengthier terms and more severe punishment than assumed to be available in the juvenile system. Some have argued that eliminating a lengthy hearing process can save both time and limited juvenile court resources—resources that could be better put to use for low-level and first-time offenders who stand a better chance of being rehabilitated.

A range of organizations, such as the National District Attorneys Association (NDAA), law enforcement and crime victims' groups, has supported relatively broad use of direct file.

However, critics, such as Human Rights Watch, caution that prosecutors can potentially misuse their power in order to portray themselves as servants of the public good by overcharging youth in order to secure automatic transfers to criminal court.[35] In one Texas study, for example, district attorneys in Harris County, where Houston is located, sent youth into the adult system in far greater numbers than any other urban county in the state.[36]

Even some prosecutors take heed. Deputy district attorney, Kurt Kumli, head of the juvenile division in Santa Clara County, California, agrees that the use of direct file can be a powerful mechanism to cut down on what he calls "the cottage industry" of attorneys, expert witnesses and psychologists that frequently surround hearings to determine if a youth is fit for transfer to adult court. This is especially true in jurisdictions where prosecutors and judges have an established history of concurring about which youth should be tried in adult court.

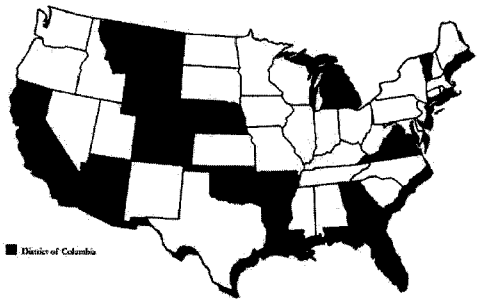
Yet, Kumli noted, the process is also fraught with potential for abuse, both unintended and intended. "Not every jurisdiction is filled with enlightened decision makers and prosecutors who have enough experience to know which youth are truly unfit for juvenile court," Kumli warned. "Direct file is very subject to political whim and overuse."

In Vermont, for example, statutes allow the state to direct file 16 and 17 year-olds on adult criminal charges, regardless of whether the alleged act is a misdemeanor or felony. In practice, approximately 80 percent of Vermont youth, aged 16 and older, have their cases charged and disposed of in adult courts. Vermont also employs a "reverse waiver" option that allows the court to transfer a criminal charge brought against a juvenile from the adult court's jurisdiction to that of the juvenile court. This occurs rarely—only about three percent of the time.[37]

"Under the juvenile system, a 16-year-old would have a ticket to services—a social worker, mental health treatment, a foster home, a range of home, school and community-based services," explained Chris-

States with Direct File Provisions

Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Louisiana, Michigan, Montana, Nebraska, Oklahoma, Vermont, Virginia and Wyoming.



Source: Griffin, Patrick, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws. Pittsburgh, PA: National Center for Juvenile Justice, Oct. 2003

tine Johnson of Vermont's newly created Juvenile Justice Commission. "In the adult system, this same 16-year-old gets sentenced to probation and becomes part of a 100-to-200 person caseload. Essentially, he or she may fall through the cracks, in an adult system not entirely equipped to meet the multi-faceted needs of 16-17 year olds."

Without objective oversight coupled with specialized training and guidelines, a prosecutor's decision to move a youth into adult court can be arbitrary and inconsistent within and across states, and even within individual counties. Yet only about one-third of prosecutors' offices report having a specialized unit or designated attorneys to handle juvenile transfer cases.[38] Fewer than 12 percent of prosecutors' offices report having written guidelines about proceeding against juveniles in adult criminal court.[39]

ELIMINATING INDIVIDUALIZED JUSTICE: STATUTORY EXCLUSION

Over the past decade, almost every state has enacted legislative provisions to require that certain youth are sent into adult court; and, if convicted, to have them serve mandatory sentences. These laws have different scopes and means of being enacted. However, they have one major point in common: individualized justice—based on the ability of a judge, jury and the prosecutor to consider the unique circumstances of a crime and tailor a sentence to the individual—is essentially eliminated.

Statutory exclusion laws[40] are by far most responsible for sending the largest number of youth into the adult system. According to a report by the National Center for Juvenile Justice, "When the effects of statutory exclusion and mandatory waiver provisions are considered together with those brought about by lowering the age of adult criminal responsibility, it becomes clear that state legislators are 'transferring' far more young people to criminal courts than either judges or prosecutors."[41]

Statutory exclusion laws fall into three basic categories:

1) Those that exclude youth from juvenile court, because the age of adulthood in the criminal code is set below age 18;

2) Laws that exclude juveniles based on categories of crimes; and

3) "Once an adult, always an adult" provisions.

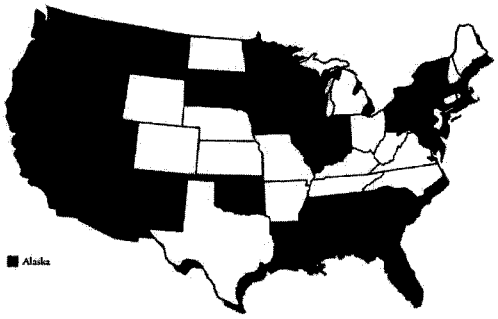
Each state can have one or a combination of these provisions.

In 13 states, youth who are charged with *any* act of delinquency—approximately 218,000 each year—find themselves in the adult system because legislation has set the age of adulthood at age 17 or even 16. For example, in New York State, at age 16, a youth who commits either a misdemeanor or a felony is prosecuted in the adult system. In the mid-1990s, in response to a highly publicized murder committed by a teenager, the New Hampshire legislature lowered the age from 18 to 17 years for a teen to be considered an adult in the eyes of the law.

However, if the purpose of sending youth into the adult system is to ensure stiffer sentences, the goal may not be met in the majority of juvenile cases transferred due to age exclusion laws. Adult court judges

States with Statutory Exclusion Provisions

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, Wisconsin.

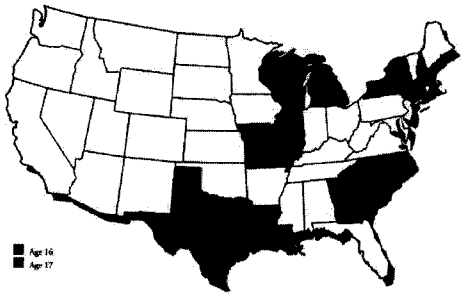


Source: Griffin, Patrick, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws. Pittsburgh, PA: National Center for Juvenile Justice, Oct. 2003

States with Under 18 as the Age of Adulthood

Age 16: Connecticut, New York and North Carolina

Age 17: Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, Wisconsin



Source: Bozynski, Melanie and Szymanski, Linda, National Overview: State Juvenile Justice Profiles. Pittsburgh, PA: National Center for Juvenile Justice, 2004. http://www.ncjj.org/stateprofiles/

receive many more juvenile cases for low-level crimes than for capitol crimes, and when comparing first-time, nonviolent juvenile offenders with the hardened adult criminals appearing before them, typically hand out light sentences of probation. Probation officers, burdened with overwhelmingly large caseloads, also do not regard such youth as serious offenders who need stringent supervision.

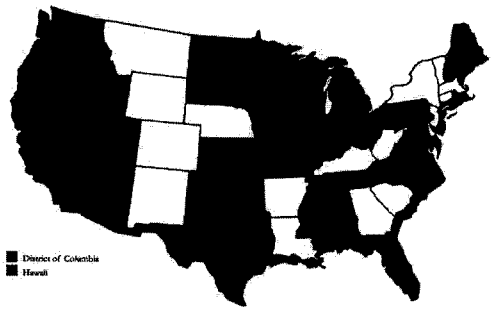
New Hampshire youth workers say that they repeatedly see the repercussions. In one case that rings familiar, a young man was becoming increasingly disruptive in his community. At home, he beat up his brother and put his fist through the walls of his room. At school, he assaulted a fellow student. Yet, those who knew the boy recognized that he was far from incorrigible. Rather, he suffered from mental health issues that needed attention before they got even worse. However, because he was age 17, he was sent to adult county jail for two weeks before being

released on probation. As a juvenile, this young man would have been eligible for counseling and medical treatment. But the adult system does not provide such help, and adult courts often cannot give attention to first-time and lower-level offenses. Cases are too often dismissed or the offenders receive minor sanctions.

The situation had the opposite of the desired effect. The boy "got the overkill of being with the adult population, and then he goes home with no accountability," says Emily Hacker, a case manager with New Hampshire's Child and Family Services. "It makes it really unhealthy for him, the family and the community. It makes the community unsafe."[42]

States with "Once an Adult/Always an Adult" Provisions

Alabama, Arizona, California, Delaware, 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, Wisconsin.



Source: Griffin, Patrick, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws. Pittsburgh, PA: National Center for Juvenile Justice, Oct. 2003

Using another form of statutory exclusion, 29 states have enacted laws that exclude certain crimes and offenders from juvenile court jurisdiction. For example, in Georgia, the law passed under Senate Bill 440 (SB440) requires that youth as young as 13 who are accused of one of the "seven deadly sins"— murder, voluntary manslaughter, rape, armed robbery, aggravated sodomy, aggravated child molestation and aggravated sexual battery—be charged, tried and sentenced as adults. If convicted, they serve a mandatory ten years in prison without the possibility of parole. No one is sure exactly how many youth across the country these laws impact each year.

Another statutory exclusion category has been created in 34 states for youth who have been prosecuted as adults and are subsequently accused of new offenses.[43] These "once an adult, always an adult" provisions frequently mean that a youth prosecuted in adult court will be excluded from future juvenile court jurisdiction, no matter how minor the subsequent offense.

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CHAPTER 3

THE IMPACT ON SOCIETY

Now that more youth and younger youth are entering adult courts, jails and prisons, it is imperative to analyze the repercussions. Many studies from around the country have emerged and are beginning to answer critical questions.

DOES THE PRACTICE OF PROSECUTING YOUTH AS ADULTS TRULY MAKE OUR NEIGHBORHOODS SAFER?

Studies indicate that sending youth into the adult system has little or no deterrent effect on juvenile crime. In fact, paradoxically, the policy puts the public at greater risk. An increasing body of research concludes that youth prosecuted in the adult system are more likely to re-offend—and to re-offend more quickly and by committing more serious offenses—than youth who are prosecuted through the juvenile system.

"It's counterintuitive to say that punishment backfires. It's hard to get the public to understand," said Jeffrey Fagan, professor of law and public health at Columbia University who has conducted several studies.[44]

This high re-offense rate has many intertwined explanations.[45] The adult system lacks the juvenile system's emphasis on individu-

alized and rehabilitative treatment, such as schooling, vocational training and mental health treatment. Without such supports, a youth is likely to return to the community uneducated and unskilled, and without a solid means to earn a living and become a productive member of society.

The toxic effects of transfer and waiver on youth development are most pronounced for those who are sent into the adult criminal system with no prior criminal history or record.

—Jeffrey Fagan, professor of law and public health, Columbia University

Vincent Cortez can speak from experience. At age 16, he was sent to an Arizona prison for getting high on carburetor cleaner. Because he already had two juvenile felony convictions—both of them for nonviolent offenses—his transfer into the adult system was automatic. When he was released, the young man, angry and hateful towards authority, was returned to society with no job skills and the same eighth-grade education with which he entered the system. As Cortez told a reporter for the *Arizona Republic* newspaper, "I tried to get a job, but when you've been locked up, there ain't nothing you can put down there," referring to a job application asking for past employment. Groomed for a life of crime, he lasted only two months in the community before committing an armed robbery. Now, at age 20, Cortez is serving a sentence of seven and a half years.[46]

Moreover, the social labeling and legal stigma of being tried in adult court—including losing the future right to vote and to serve on a jury—can cause youth to feel isolated from mainstream society. It can also weaken ties to family and support systems, such as teachers, community leaders and other positive role models. For a teenager in the adult justice system, "adult mentoring" can backfire. Rather than providing a positive model, an adult criminal may pass on "tricks of the trade" to a vulnerable youth. Researcher Donna Bishop, a professor of criminology at Northeastern University, interviewed youth in adult facilities in Florida and noted that they "spent much of their time talking to more

skilled and experienced offenders who taught them new techniques of committing crime and methods of avoiding detection."[47] The toxic effects of transfer and waiver on youth development are most pronounced for those who are sent into the adult criminal system with no prior criminal history or record.[48]

Josh B. is a 16-year-old Californian who addressed this issue on the most personal level. Incarcerated on drug and burglary charges, he admits his guilt and agrees that he deserves some punishment. But, he also wonders why someone who did not commit a violent crime and who is ready and eager to address his drug problems, is at risk of being incarcerated with adult career criminals. "I have to admit it. I'm scared.

A Boon to Public Safety?

Across the United States, research indicates that prosecuting youth in the adult system has little or no deterrent effect on the juvenile crime rate, and is harmful, rather than helpful, to public safety.

FLORIDA

Researchers in Florida looked at matched pairs of offenders. Youth transferred into the adult system were more likely than the juvenile cases to have indications of felony re-offending after the age of 18. When both the transferred and juvenile cases in a matched pair re-offended, the transferred youth was more likely to commit a more serious crime.

Source: Lanza-Kaduce, Lonn, Frazier, Charles E., Lane, Jodi and Bishop, Donna. Juvenile Transfer to Criminal Court Study: Final Report. Florida Department of Juvenile Justice, Office of Juvenile Justice and Delinquency Prevention, January 2002

In a comparable study, the *Miami Herald* matched teens with similar criminal records of the same age and race. One group was tried in Florida's adult courts; juvenile court judges sent the other group into various juvenile rehabilitative programs. The *Herald* found that "[s]ending a juvenile to prison increased by 35 percent the odds he'll re-offend within a year of release."

Source: Greene, Ronnie and Doughery, Geoff. "Kids in Prison: Tried as adults, they find trouble instead of help and rehabilitation," *Miami Herald.* 18 March 2001

Continued on next page

A Boon to Public Safety? continued

NEW JERSEY AND NEW YORK

A study compared 800 youth charged with burglary and robbery in New York, where all 15 and 16-year-olds were tried in adult court, with a similar group in New Jersey that went into juvenile court. There was not much difference in the re-offense rate of the nonviolent offenders. But, among the robbers—the more serious offenders—those sent to juvenile court were far less likely to commit a new crime, and when they did it was after a significantly longer period of time.

Source: Fagan, Jeffrey, "The Comparative Advantage of Juvenile Versus Criminal Sanctions on Recidivism Among Adolescent Felony Offenders," Law and Policy, Vol. 18, 1996, cited in The Changing Borders of Juvenile Justice: Transfer of Adolescents to Criminal Court, edited by Jeffrey Fagan and Franklin E. Zimring. University of Chicago Press, 2000.

PENNSYLVANIA

A criminology professor at Indiana University of Pennsylvania compared the recidivism of 557 Pennsylvania teens matched for age, past criminal record, type of weapon, type of weapon used in the crime and other pertinent factors. He found the re-offense rate to be consistently and substantially worse among the youth whose cases were tried in adult court. They were more likely to be re-arrested and more likely to be charged with violent felonies.

Source: Mayers, David L., Adult Crime, Adult Time: Punishing Violent Youth in the Adult Criminal Justice System. Sage Publications (2003), wwwsagepub.com. Also Stack, Barbara White, "Is This Justice? Punishment backfires under "adult time," *Pittsburgh Post-Gazette*, 20 March 2001.

MINNESOTA

In a Minnesota study, 24 months after being released, transferred youth were found more likely than non-transferred youth to re-offend: 58 percent versus 42 percent.

Source: Podkopacz, Marcy R. and Feld, Barry C., "The End of the Line: An empirical study of judicial waiver," Journal of Criminal Law and Criminology, 86 cited in Butts, Jeffrey A. and Mitchell, Ojmarrh, "Brick by brick: Dismantling the border between juvenile and adult justice." Criminal Justice 2000, Volume 2. Washington, DC: National Institute of Justice, U.S. Department of Justice, 2000.

GEORGIA AND IDAHO

According to researchers at the Urban Institute, a study in Georgia also failed to detect a significant difference in the rate of juvenile offending following the enactment of expanded transfer provisions. The same conclusion was reached by a research team who compared changes in juvenile violence in Idaho, which had recently expanded its transfer laws, to crime in Montana, which had not changed its laws.

Source: Butts, Jeffrey A. and Mitchell, Ojmarrh, "Brick by brick: Dismantling the border between juvenile and adult justice." Criminal Justice 2000, Volume 2. Washington, DC: National Institute of Justice, U.S. Department of Justice, 2000.

In a study of Idaho's mandatory transfer statute introduced in 1981, the arrest rates for the five-year period prior to the new law were compared to the rate five years following its implementation. Researchers found no evidence of general deterrent effects. Instead, arrests increased in Idaho, as compared to two comparison states without mandatory transfer.

Source: Jensen, Eric L. and Metsger, Linda K., "A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime," cited in The Changing Borders of Juvenile Justice: Transfer of Adolescents to Criminal Court, edited by Jeffrey Fagan and Franklin E. Zimring. University of Chicago Press, 2000.

I've heard how they jump you and teach you to steal and fight. I'm not a fighter. I've never hurt anyone in my life. So why are they doing this? In my opinion, if you send massive amounts of kids to prison and let the adult criminals be their teachers, it's going to come back to haunt everybody."[49]

John J. DiIulio, the Princeton University professor who coined the term *super predator*, has spoken out on the long-range repercussions of exposing youth to adult offenders. He told the *New York Times*, "Most juvenile offenders are not guilty of repeated or random acts of serious violence. Most kids who get into serious trouble with the law need adult guidance. And they won't find suitable role models in prison. Jailing youths with adult felons under Spartan conditions will merely produce more street gladiators."[50]

DO ONLY THE "WORST OF THE WORST" WIND UP IN ADULT COURT?

"Adult time for adult crime" legislation was originally enacted to address perceived increases in hard-core juvenile violence. The targets were to be youth who have committed violent crimes and repeat offenders who may have exhausted the resources of the juvenile system. Yet, the vast majority of youth under age 18 in the adult system are nonviolent property and drug offenders, many of them first-time offenders. This is particularly true in the 13 states that have lowered the age at which youth exit juvenile court jurisdiction.

In addition, statutory exclusion laws in at least 20 states authorize or mandate adult prosecution of juveniles accused of drug offenses. Twenty states require or allow adult prosecution of juveniles accused of property offenses, such as arson or burglary. Youth in 11 states who are charged with nonviolent crimes, such as soliciting a minor to join a street gang, perjury and treason, can also wind up in adult court.[51] One important study notes that more than half the cases in adult court were nonviolent drug or property offenses: 43 percent were person offenses; 37 percent property offenses; 14 percent drug offenses and six percent public order offenses.[52]

IS IT COST EFFECTIVE TO SEND YOUTH INTO THE ADULT CRIMINAL COURT?

Like most legislation drafted in response to fear, new transfer mechanisms were frequently hastily drafted and implemented. In many states, putting the mechanisms into practice has proven chaotic and costly. For example, in California, ballot measure Proposition 21 requires youth as young as 14 to be tried as adults for certain crimes and gives prosecutors expanded powers. The California Legislative Analyst's Office estimates that this measure, which is similar to other measures around the country, could cost the state's taxpayers $100 million per year in added operating costs, plus $200-$300 million for new jail construction.[53] In total, the estimate is that Proposition 21 could cost taxpayers about $5 billion over a ten-year period, with no evidence that it would enhance public safety.[54] But, such figures only hint at enormous long-term economic repercussions.

While it is true that providing treatment to youth in the juvenile justice system generates more immediate expense—whether it be for

out-of-home placement or home and community based services and supports—such up-front costs are less expensive in the end than the burdensome financial and public safety costs created by ineffective management of youth within the adult criminal justice system. The majority of youth in the adult system return to their communities within a short period of time. For youth under age 18 when admitted to state prison, eight percent are released before their 18th birthday; more than

The Worst of the Worst?

- The majority of youth convicted between 1995 and 1999 in Florida's adult courts committed nonviolent crimes such as burglary, theft and drug charges. Homicides comprise just two of every 100 of Florida's youthful adult court convictions.

  Source: Greene, Ronnie and Doughery, Geoff. "Kids in Prison: Tried as adults, they find trouble instead of help and rehabilitation," *Miami Herald*. 18 March 2001

- Nearly a third (32 percent) of all youth tried as adults in Florida had no prior convictions, and nearly half (49 percent) had just one or no-prior convictions. In the majority of cases, teens were sent into Florida's adult system without first being admitted to the state's most intensive juvenile programs, such as locked facilities.

  Source: Greene, Ronnie and Doughery, Geoff. "Kids in Prison: Tried as adults, they find trouble instead of help and rehabilitation," *Miami Herald*. 18 March 2001

- A comprehensive study of transfer prepared by the Pretrial Services Resource Center, entitled "Youth Crime, Adult Time," examined 2,584 cases in 18 jurisdictions across the country and concluded that a great many youth who come into the adult system via statutory exclusion have cases that are eventually dismissed, resolved without conviction, or transferred back to the juvenile system, because they are not significantly serious or strong.

  Source: Juszkiewicz, Jolanta, Youth Crime/Adult Time: Is Justice Served? Washington, DC: Building Blocks for Youth and Youth Law Center, 2000, www.buildingblocksforyouth.org/ycat/ycat.html

75 percent are released before the age of 22; overall, 93 percent of offenders will have served their minimum sentence before reaching age 28.[55] In another study, 40 percent of juveniles tried in adult court were released on probation—receiving neither the sanctions necessary for public safety, nor the rehabilitative support available in the juvenile system.[56]

Youth that have spent time incarcerated in the adult system are still in the prime of life—many still in their teens—when they return to their communities. Without a high school diploma, adequate vocational skills, medical and mental health treatment, these youth will likely join the ranks of the unemployed.[57] It is estimated that each year's class of high school dropouts alone costs the country more than $200 billion in future lost earnings.[58]

Having an adult criminal record—as opposed to a juvenile record, confidentially held, outside of public scrutiny—further compounds the difficulty of entering the job market. Research recently published in the *American Journal of Sociology* cites that people who have a criminal record are only one-half to one-third as likely as non-offenders to be considered by employers, suggesting that a criminal record does indeed present "a major barrier to employment."[59]

Josh B., a young man awaiting trial on drug and burglary charges, explains: "If I'm tried as an adult, it won't matter if I never use drugs again. It won't matter if I never commit another crime. I'll still have adult charges on my record, which means that a lot of my options will be terminated. All my life, I've had this dream to be a park ranger. I love being outdoors and the idea of helping other people appreciate nature. But, forget it!"[60]

The way corrections supervises teens—the way they counsel, educate, and teach skills—will have a long term effect on their behavior."

—Marsha Levick, legal director, Juvenile Law Center

Adolescence is the time when juvenile justice interventions like substance abuse and mental health treatment, education, vocational training and anger management are most likely to make an impact. Studies indicate that the influence of a mentor—even just one consistent and caring adult—can be the difference between a teenager who succumbs to drugs and gangs and a teenager who avoids such negative influences.

In previous annual reports, the Coalition for Juvenile Justice has highlighted a variety of cost-effective programs and initiatives that have rehabilitative impact with all levels of offenders, while continuing to maintain and enhance public safety. For example, for a broad range of young offenders whose principal needs center around mental and behavioral health issues, family-strengthening approaches to treatment, conducted in home, community and residential settings, demonstrate positive impacts by stabilizing the pro-social behavior of youth and re-integrating them back into family, school and community life. Some treatment efforts specifically demonstrate long-term reductions, ranging from declines of 25 to 75 percent in the rates of re-arrest, for juveniles identified as being in need of mental health services.[61] Within an institutional setting, the Texas Youth Commission (TYC) operates specialized treatment programs for serious violent offenders, sex offenders, chemically dependent youth and youth with severe emotional disturbances. And, again, the overall re-offense rate is consistently low.[62]

As Marsha Levick, legal director of the Juvenile Law Center, noted: "Strong rehabilitative programs will bear more fruit during adolescence than later in life. Thus, the way corrections supervises teens—the way they counsel, educate, and teach skills—will have a long term effect on their behavior."[63]

ARE YOUTH TREATED FAIRLY, WITHOUT DISCRIMINATION BASED ON RACE, CULTURE, OR ECONOMIC STANDING, WHEN SENT TO ADULT COURT?

When Georgia parent, Billie Ross, was asked if she believes that race was an issue in sending her son into the adult system, she said, "I hesitate to say it, but, yes. People see black males and they lump them together. They make assumptions. Because he's black, they never gave him the benefit of the doubt."[64]

Such personal anecdotes, coupled with an abundance of statistical

research, raise serious questions about the impartiality of the justice system. Within the juvenile system, disproportionately high numbers of youth of color are more often confined, receive harsher sentences, and are more frequently transferred from juvenile to adult court jurisdiction. Some claim that racial bias is not a factor, but rather the inevitable result of youth of color committing more crimes, and more serious crimes, than white youth. However, myriad studies indicate that differential, negative responses, based on race, take place at all stages of the juvenile justice process, and in particular when it comes to deciding which youth will be transferred to adult court.

As Daniel Macallair, executive director of the Center on Juvenile and Criminal Justice and co-author of a report on juvenile offenders of color,

Fair and Equal Treatment?

- Minority youth are more likely than white youth, who commit comparable crimes, to be referred to adult court, to be detained, to face trial as adults and to be jailed with adults.

  Source: Poe-Yamagata, E., et al. And Justice for Some Washington, DC: National Council on Crime and Delinquency, 2000

- Three out of four of youth admitted to state prisons are racial/ethnic minority youth.

  Source: Poe-Yamagata, E., et al. And Justice for Some Washington, DC: National Council on Crime and Delinquency, 2000

- The National Household Survey on Drug Abuse reports that white youth are more than a third more likely to have sold drugs than African American youth. The National Institute of Drug Abuse Survey of high school seniors found that white students use cocaine at a rate that is seven to eight times higher than the rate for African American students, and heroin at seven times the rate of African American students. Yet, more than 99 percent of the youth prosecuted as adults for drug offenses in Cook County (IL) were minority youth."

  Source: Ziedenberg, Jason, Drugs and Disparity: The Racial Impact of Illinois' Practice of Transferring Young Adult Offenders to Adult Court Washington, DC: Building Blocks for Youth, 2002. www.buildingblocksforyouth.org/Illinois/Illinois.html) Editor's Note: For a full picture of the Illinois state reform movement, see page 54.

has noted: "Discrimination against kids of color skyrockets when juveniles are tried as adults. There's a double standard: throw kids of color behind bars, but rehabilitate white kids who commit comparable crimes."[65]

Building Blocks for Youth, a project led by an alliance of children's advocates, researchers and law enforcement organizations, has studied the impact of transfer and exclusion statutes on youth across the country.[66] Among the findings:

- 82 percent of cases filed in adult court involved minority youth.
- In nine of the ten studied jurisdictions, minority youth were disproportionately charged in adult court. One dramatic example is an Alabama county where African American youth accounted for three out of ten felony arrests, but represented 80 percent of the felony cases filed in adult court.
- African American youth were overrepresented especially in nonviolent drug and public order cases sent to adult court.
- African American and Latino youth were more likely than white

- Compared with white youth, minority youth in California were nearly three times more likely to be arrested for violent crimes, more than six times more likely to be tried in adult court and seven times more likely to be sentenced to adult prison.

  Source: Males, M. and Macallair, D. The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California. Washington, DC: Building Blocks for Youth, 2000

- A study of the racial impact of Oregon's Ballot Measure 11 (BM11) which gave discretion to prosecutors to try juveniles as adults, and created automatic transfers in certain cases, found an over-representation of African American youth. While there has been a decrease in recent years, African American youth comprised more than one-quarter of BM11 cases, despite representing only ten percent of the youth population in the state's largest county, Multnomah County.

  Source: Nguyen, T., et al., Multnomah County Department of Community Justice Ballot Measure 11 Report, 1995-1999 April, 2000. www:co.multnomah.or.us/dcj/Bm11Report_final_all.doc

youth to receive a sentence of adult incarceration (as opposed to adult probation or other lesser sentences).

- White youth were twice as likely to be represented by private counsel as African American youth. Youth represented by private attorneys are less likely to be convicted and more likely to be transferred back to juvenile court.

THE IMPACT ON ONE YOUTH

Along with statistics and studies, it is valuable to consider the stories of those most impacted by the policy and practice of prosecuting youth in adult court. The case of Daniel Carter, the Florida boy accused of killing his uncle, is an unusual one in that the vast majority of youth in the adult system have not been accused of violent crimes. Yet, his story is an important one and serves as a warning. What happened to Daniel illustrates the long-term physical, mental and emotional damage of sending a youth into the adult system—a youth who has not even been convicted of any crime.

Immediately after arrest, Daniel was sent to a nearby juvenile detention facility, where he attended the on-site school and received age-appropriate medical and mental health services. But then, like many youth awaiting trial as adults, Daniel was moved into the local county jail. Around the country, one-third of youth in adult jails are confined with the general adult inmate population.[67] This is particularly disturbing since many of these youth have committed only minor offenses and will eventually receive probation or be transferred back to juvenile court.

Cindy Carter described the cell in which her son slept and was frequently locked down for days at a time. The tiny room was infested with ants and the ceiling leaked on his bed, perhaps from a toilet on the floor above. Instead of the six hours a day of schooling that Daniel had been getting in the juvenile facility, he received only one hour. But, even that proved worthless since Daniel was given so much medication for depression, anxiety, sleep deprivation, and paranoia that he could barely concentrate. There were mornings when Daniel said that he awoke with bloody knuckles from hitting the concrete wall in his sleep.

In one particularly unnerving episode, he was being moved between units. Daniel recalled that correctional officers had mistaken him as being older and ordered him to remove all of his clothes for a search.

The public disrobing took place in front of more than 50 taunting and jeering adult inmates. Such episodes are among the reasons why groups as diverse in purpose as the American Civil Liberties Union and the American Jail Association (AJA)[68] advocate against incarcerating youth in adult facilities. Teenagers in adult institutions are five times more likely to be sexually assaulted than those held in a juvenile facility, three times more likely to be beaten by prison staff than youth in a juvenile facility, and 50 percent more likely to be assaulted with a weapon than youth confined to a juveniles-only institution.[69]

There were times during Daniel's incarceration when he expressed the hope that he would die, not a surprising or uncommon occurrence for a youngster living in such traumatic circumstances. Many youth come into the justice system with undiagnosed and untreated mental health disorders that become exacerbated by the stress of being confined.[70] Even youth who enter the system with a relatively stable mental health status quickly become at risk, especially those housed in adult institutions. As one long-time adult correctional officer noted: "Children don't belong here. Adult criminals don't see children. They see fresh food for the sharks." [71] Given these conditions, it is understandable that the suicide rate for youth held in adult jails is five times the rate of the general jail population and eight times the rate for adolescents held in juvenile facilities.[72]

"Children don't belong here. Adult criminals don't see children. They see fresh food for the sharks."

—Adult corrections official, quoted in the *Detroit Free Press*, July 2000.

"The first time I met Daniel, he was a zombie," recalled Patrece Cashwell, the defense attorney who came on the case after Daniel had been jailed for a year. "It was like he was feeling invisible. This can happen to adults in jail, but it's especially true for teens that are just starting to find themselves. The staff didn't have any training about adolescence. They didn't have a clue about how to help him. So what did they do? They pumped him full of psychotropic drugs, some of which were not even medically approved for adolescents."

As his attorney and advocate, Cashwell's first step was to help Daniel wean himself off of all medication except for an appropriate and regulated dose of antidepressants. She began bringing in a multivitamin because the jail food did not satisfy the nutritional needs of a still-growing boy. Her next step was to involve Daniel in his own defense. She had to spend a lot of time visiting and talking with him, much more than she would have to spend with an adult client. For the first two months, she spent ten to15 hours a week, not only building a bond of trust with a traumatized teenager, but helping him to fully comprehend the nuances of his complicated legal situation.

"Adults can organize their thoughts and tell their story. They know what's important and can help their attorney mount a defense, but that's not true with kids," said Cashwell. Prior to becoming an attorney, she taught in a high school for at-risk youth. "Also, a teenager might know in his heart of hearts that he's innocent or acted in self-defense, but he also sees that he's in jail. He feels people treating him like he's guilty and that's the way Daniel came to see himself: guilty. Like most kids, he saw things in black and white. He didn't understand that in the law, there are many shades of gray."

FACTORING IN ADOLESCENT DEVELOPMENT

A large and important body of emerging research confirms what Cashwell observed in defending Daniel and other youth. Adolescents are not miniature grown-ups. They differ from adults in critical physiological and psychological ways. Certain parts of the brain—particularly the frontal lobe and the cable of nerves connecting both sides of the brain—are often not fully formed, which can limit cognitive ability. This is also the part of the brain that has to do with making good judgments, moral and ethical decisions, and reining in impulsive behavior. [73] New research increasingly demonstrates such differences. For instance, the way in which a common mental illness, depression, manifests in the brains of teenagers is entirely different from the way in which it manifests in adults, because throughout adolescence young people are developing new neurons and adults are not. The implications are legion—and include evidence that adult medications for depression may actually be harmful to youth, rather than helpful. [74]

Acknowledging this biological difference is not meant to excuse criminal behavior or to suggest that youth should not be held accountable

for their crimes. However, it means that youth can sometimes be considered less morally, ethically and cognitively developed in the same way that offenders with developmental delays and brain damage are sometimes seen by the court as less legally responsible for their actions. Researchers from the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice recently concluded that a

A significant number of young offenders do not possess the intellectual and emotional maturity to understand the judicial process and to contribute effectively to their own defense.

significant number of young offenders do not possess the intellectual and emotional maturity to understand the judicial process and to contribute effectively to their own defense. While every state allows youth under 16 to be tried as adults, many of these teens are no more able to grasp their legal situation than adults who have been ruled mentally incompetent to go to court.[75] The situation is compounded for youth of below-average intelligence.[76]

Lawrence Steinberg, director of the MacArthur Network and professor of psychology at Temple University, stated that these findings should cause policy makers to re-examine the age at which it is permissible to try juveniles as adults. Developmental differences, research indicates, can put youth at a distinct disadvantage at every step of the legal process. Youth lack an adult's sense of time and are sometimes unable to construct coherent narratives of the crime. When questioned by police, many adolescents misconstrue the "right to remain silent" as meaning that they should remain silent until they are told to talk.[77] At trial, youth have been known to ignore their own legal repercussions while trying to protect family members and other authority figures. Since their language is typically not fully developed, teens can have difficulty understanding legal terms and can become easily confused.

"These are kids who are often asked to accept or reject plea bargains that have very long-term consequences and no one else is allowed to make the decision for them," noted Thomas Grisso, a clinical psychologist and professor of Psychiatry at the University of Massachusetts Medical School, who directed the MacArthur Foundation research. "What we found wouldn't surprise any parent of a 13- or 14-year old. At that age, they are frequently not as equipped as the average adult to grasp the consequences of legal decisions that will seal their fate for the rest of their lives."

When Daniel Carter was offered a plea bargain—a promise of a prison term of no more than 12 years in return for a plea of manslaughter—there was a lot of expectation that he would accept it. Research by Grisso and others notes that youth can be quick to accept the deal that will get them home the most quickly, rather than weighing all of the long-term legal considerations, such as the negative impact that having an adult record can have on future employment.

"The attorney in any case has such power to convince a person to take a plea or go to trial. But it's ten times easier to manipulate a child," said Cashwell. "I tried hard not to push Daniel one way or another. It was a terrifying decision and I didn't want to be responsible for putting a 16-year-old behind bars for the rest of his life. But Daniel was determined to go to trial. He was a very brave boy."

After 19 months of incarceration, Daniel's case came to trial. Those who knew him when he was first arrested recall that he had the appearance of a handsome and healthy all-American boy. In the courtroom, they were shocked by the change. The months had made him taller and larger, but the bulk was all weight and no muscle tone. His eyes had a sunken look and his complexion was gray. According to his attorney, "People said he looked like the light had been sucked out of him."

Cashwell knew that the trial was going to be a big challenge. With any jury, the members make a decision based on the facts, but facts that are strongly colored by their perception of the defendant. With Daniel as her client and claiming self-defense, she had to counteract what she calls "The Children of the Corn" perception.

"The public image of teenage boys is that they are rowdy, out of control, that we're growing a nation of Children of the Corn," she explained. "I had to address that in many ways, from jury selection to what Daniel wore. For example, I recommended that he not be dressed in a suit and tie because the public already thinks of teenage boys as

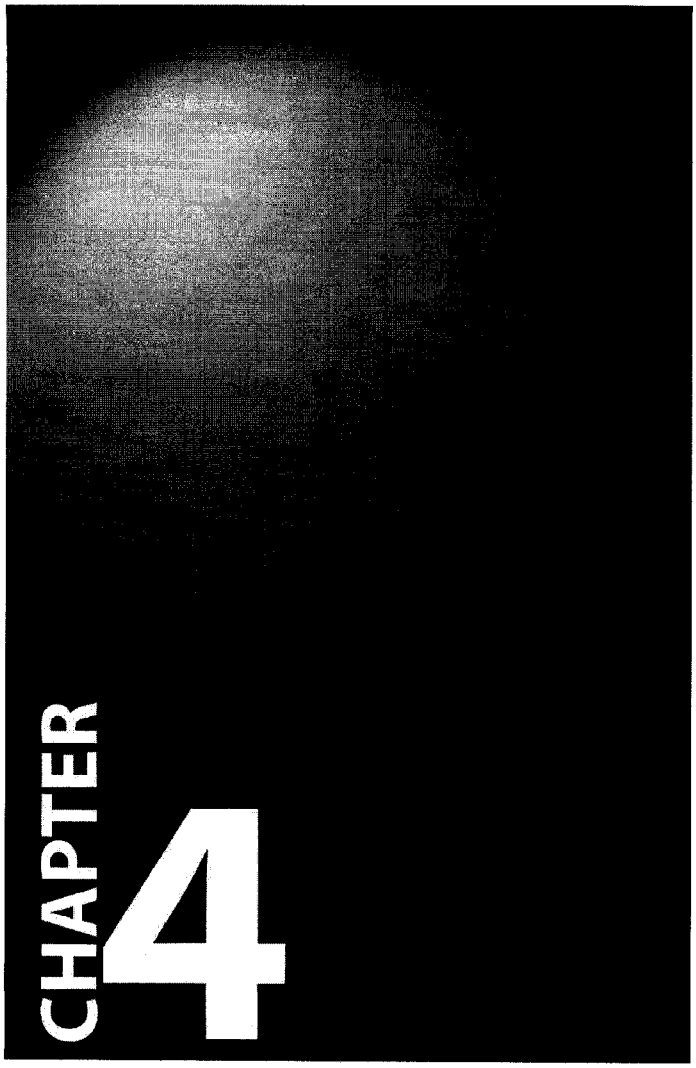
mini-adults. One thing we did have going for us is that Daniel is white. It's even harder to defend black teenagers—who are perceived not as children at all, but as smaller, dangerous adults."

During the trial, the jury was given standard instructions to base their verdict on the "reasonable man standard," a mainstay of self-defense law. While deliberating, they should ask themselves: Would a reasonable man, in the same circumstances, think his life was in danger and try to defend himself? Cashwell, drawing on contemporary research about the adolescent brain, pointed out to the jury that at age 15, Daniel was not a reasonable *man* when his uncle stormed into his bedroom. He was a boy and therefore should be judged under the reasonable *kid* standard. Would a *kid* think his life was in danger?

After three days of testimony, the six people on the jury deliberated for nearly three hours and reached a verdict. Daniel Carter was acquitted of first-degree murder and sent home.[78] In response, the prosecutor said that he respected the jury's decision and understood its reservations about the case.[79] Cashwell hypothesized on what was running through the minds of the jurors, "I think they were thinking: This is a valuable kid who doesn't need to be thrown away."

Since his release, Daniel has been trying to make up for lost time, time that might have been better spent in the juvenile system, going to school and getting other pro-social, age-appropriate interventions. As it is, Daniel is several years behind in his education and his social skills have really suffered. When he went to work part-time in Cashwell's law office, she had to "deprogram him from talking like a thug and walking that prison walk," she said. In jail, his physical and mental survival meant that he often had to fight back. Now, he has to relearn how to turn the other cheek.

"The jury found Daniel innocent, but because he was prosecuted as an adult, he received little education, improper nutrition, inadequate medical and mental health treatment for almost two years. That's a big chunk of time in the life of a teenager," Cashwell pointed out. "I'm just praying that the damage isn't irreversible."



CHAPTER 4

ATTEMPTS AT REFORM

Firsthand accounts such as Daniel's, reinforce the findings of a large and increasing body of research, which indicates that sending more youth and younger youth into the adult justice system has not fulfilled its public safety intentions. Such policies are costly in economic terms and dangerous in terms of community well being. In addition, there are serious questions of basic fairness, because the impact of adult court policies is felt disproportionally by youth of color and youth who have committed only minor violations. Sending youth into adult criminal court can result in long-term physical and emotional trauma to youth that have not been convicted of any crime.

In response, a growing number of people from across the political spectrum—youth advocates, correctional personnel, judges, families, lawmakers, and others—have begun to reconsider and revamp some of the toughest "adult time for adult crime" measures.

However, some of these remedial efforts, while enacted in the spirit of reform, should also be viewed with serious reservations.

BLENDED SENTENCING: INCARCERATION AS A LONG TERM SOLUTION

Currently, 32 states have enacted some form of *blended sentencing*.[80] This legal procedure allows judges faced with the task of sanctioning juvenile offenders to choose between juvenile and adult correctional sanctions—or sometimes to impose both at the same time—rather than restricting youth solely to one system or the other.[81] Blended sentencing has a variety of names and shades of meaning. In some states, the juvenile court can impose an adult sentence that is binding, just as if the youth had been transferred into the adult system. In other states, a judge can render an adult sentence that is suspended pending successful completion of a juvenile sentence. Or, a judge can sentence a youth who has committed an offense to a juvenile facility until he or she reaches

Questioning Voices

Florida Governor, Jeb Bush:

"There is a different standard for children. There should be sensitivity to the fact that a 14-year-old is not a little adult."
—Alan Elsner, "Tough Juvenile Sentencing Getting a Second Look," *Reuters*, May 18, 2001

Representative William Black, Deputy Republican leader of the Illinois House, who spoke in favor of a bill to raise the age of juvenile court jurisdiction from age 17 back to 18:

"For the life of me, I don't understand why anybody would be opposed to the bill. I think it's a good sense measure...I intend to vote 'Aye' and hope you will, as well."

Ric Nesbit, member of the North Texas chapter of Parents of Murdered Children, who participates in victim impact panels in Texas Youth Commission facilities:

"If we have an opportunity to reach kids when they are still kids, to keep them away from hardened career criminals, it makes sense to do it to best of our ability with everything we can muster. Because they *are* going to get out. Remember that. And I'd a lot sooner have someone who has been treated with respect and dignity move in next to me than a 26-year-old ex-con who has spent ten years in the general population of a hardcore prison."

the age of 19 or 21, when the youth is then transferred to an adult prison.

The results of blended sentencing in terms of rehabilitation and public study are little studied and little understood. Barry Feld, a University of Minnesota law professor, conducted a study of one county and found that prosecutors filed motions to transfer youth into adult court about three times more often after the state passed a blended sentencing provision into law in 1995. That year, Minnesota established Extended Juvenile Jurisdiction (EJJ), which functions as a kind of middle ground between the two systems. EJJ uses a stayed prison sentence as an incentive for teens to follow court rules.

Feld found that prosecutors use adult certifications as plea-bargaining chips. "[The blended sentencing law] was being used to impose heavier sanctions on juveniles, who previously the system would have treated as ordinary juveniles."[82]

Georgia Judge Peggy Walker:

"I understand these crimes are terrible for the victim, for the community, but we have to be realistic that we are, in fact, dealing with children. We cannot expect to hold children to adult standards."

Shay Bilchik, President and CEO, Child Welfare League of America, and former Administrator of the federal Office of Juvenile Justice and Delinquency Prevention:

"The implementation of transfer/waiver statutes and policies that lead to the prosecution of large numbers of juveniles as adult offenders are not best practice, do not reflect the best interest of the offenders or their rehabilitation, and do not improve public safety."

Florida State Senator, Walter Campbell, Jr.:

"Some people can't be swayed from the Biblical notion: *An eye for an eye* – no matter how young that eye is. I prefer another passage: *Forgive us our trespasses, as we forgive those who trespass against us.*"

Ken Kerle, Editor, *American Jails* magazine:

"I don't think we're doing the country any good by going back to square one, and chucking the whole idea of a separate system for juveniles...put 'em in adult facilities, and they come out worse than when they went in."

The verdict is still out about the effects of blended sentencing. Under a blended sentence, far too many teenagers—whose lives could be turned around—can still be written off as unreachable, unredeemable and be sentenced to years in prison. Michigan Judge Eugene Moore, a three-decade veteran of the juvenile court, spoke to this issue when sentencing 14-year-old Nathaniel Abraham for a crime the boy committed when he was 11. At the time, the judge had the power to impose a blended sentence that included sending Nathaniel to juvenile corrections until he was 21 and then holding a hearing to determine whether the young man was ready to be freed or should be moved to adult prison. Instead, he chose to send Abraham only to a juvenile facility.

In doing so, Moore called on society to support a justice system designed for youth. As he told the press, "If we were to impose a delayed sentence, we take everyone off the hook. The safety net of a delayed sentence removes too much of an urgency. We can't continue to see incarceration as a long-term solution."[83]

Blended sentencing is not the answer for the majority of offenders. As studies show:

- There is mounting evidence that youth who violate their juvenile sentences and in turn get sent to adult prison are being tripped up by small things, like smoking marijuana, quitting a job or not showing up for appointments.[84]
- There is the high potential for plea-bargain abuse by prosecutors. A report issued by OJJDP found that in some locations it is common practice "for prosecutors to file a motion for criminal certification [transfer] and then 'bargain down' to a blended sentence." As a result, first-time offenders in some states, "most of who were unlikely to be sent to adult court, are now being designated as EJJ [blended sentence] cases." [85]
- In another study, it was shown that the use of blended sentencing has not made a dent in the disproportionately high number of African American and Hispanic youth who receive extended jurisdiction designations (blended sentences) or who are subject to motions for criminal sanctions.[86]

JUVENILE SERVICES IN ADULT FACILITIES: A COSTLY AND INEFFECTIVE REPLICATION

In a few states, youth with adult sentences are housed in juvenile facilities unless they present a danger to the staff or other youth. However, that situation is relatively unique. Around the country, offenders younger than 18 years old are often sent to adult jails and prisons, where corrections officials find themselves ill prepared to deal with unique adolescent issues and behavior.

Youth in adult facilities are particularly vulnerable to depression, sexual exploitation and physical assault. By exposing them to older criminals, they are being taught how to be better criminals. There are also the more commonplace distinctions: Teenagers have different nutritional, sleep and exercise needs than adults. Experience has prompted the 135-year-old American Correctional Association, the largest national organization representing prison staff, to issue a resolution that favors strict limits on the transfer of juveniles to adult courts and faults lawmakers for not doing enough to prepare adult prisons for the arrival of these young offenders.[87] The volatility of youth, the lack of staff training and the high rate of assault and suicide create multiple problems for the youth and the staff. As one state director of corrections told a reporter for the *New York Times*, "Who wants to put a 14- 15- or 16-year-old into an adult population? It's not good for the juvenile or for the population."[88]

In response, a number of corrections officials around the country have begun to create special provisions for the teenagers under their roofs. In Nevada, for example, inmates aged 16 to 21 that have been convicted of mostly robbery and drug-related offenses occupy a separate building at the state prison.[89] At the Racine (Wisconsin) Youthful Offender Correctional facility, staff are trained regularly to enhance their communication skills with young offenders.[90] In Prince George's County, Maryland, a program has been implemented for youth in adult corrections that targets adolescent healthcare and rehabilitative needs, along with a nutritional program that goes beyond public school standards. Specially trained officers are assigned to the juvenile unit. Said Barry Stanton, director of the county's Department of Corrections: "It improved discipline. It improved control. It improved respect."[91]

Morality, economics and long-term public safety all demand that

youth incarcerated in adult facilities be provided with a safe and rehabilitative environment. Unfortunately, the reality is that the vast majority of youth who wind up in the adult system do not need to be there. Both public safety and the youth themselves would be better served in a system specifically designed for youth. However well intended, the attempt to duplicate juvenile justice-type settings and programs in adult institutions is all too often haphazard, uncoordinated, expensive and ineffective.

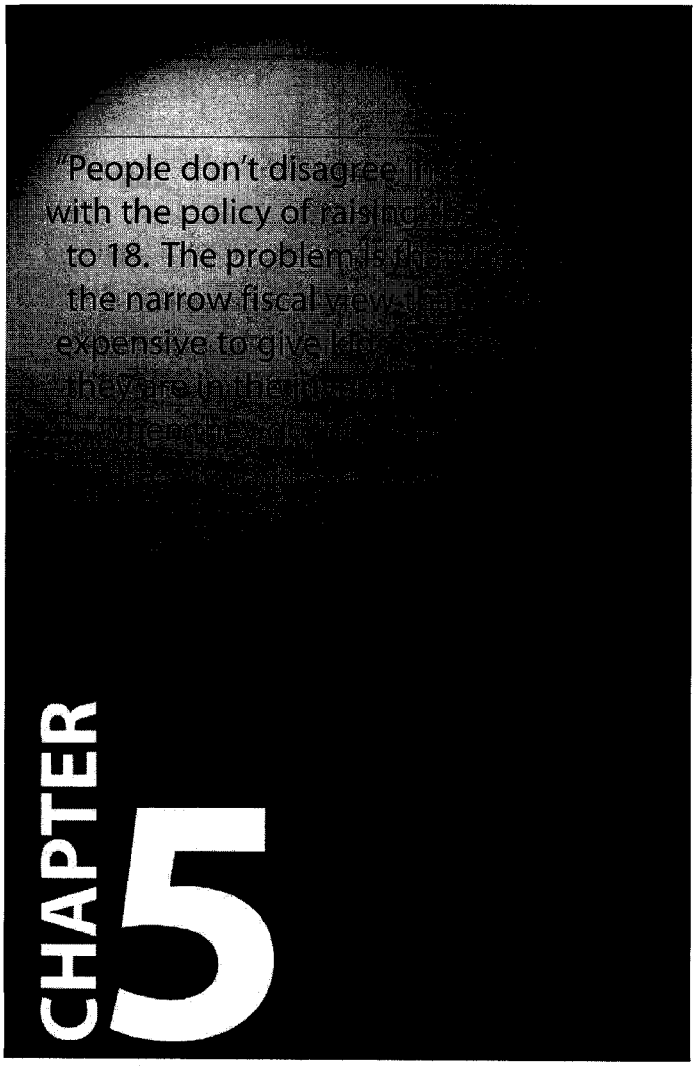
For example, an adult facility may take concrete steps to house teenage inmates in a separate wing. Yet, given the crowded conditions and day-to-day chaos that govern most jails and prisons, encounters like the humiliation and taunting of adult inmates experienced by Daniel Carter are often inevitable during meals, in the recreation yard, at the library. At a Georgia facility, because of chronic staffing shortages, some adult inmates are given the job of patrolling catwalks lined with cells housing juveniles. These young prisoners have described incidents where adult prisoners reach through their cell bars to grab them, throw things on them and spit or toss mop water onto their food before handing it over.[92]

Isolation is another practice commonly used to protect a teenage prisoner from the harm and influence of older criminals. Elijio H. is a 17-year-old who is awaiting trial for armed robbery in a California county jail. To protect him from the adult population, he spends 23 out of 24 hours a day in his small cell. Isolation, which experts say is particularly stressful to adolescents, can worsen a youth's mental state, along with denying him or her constitutional protections and access to programs and services. [93]

Before being transferred into the adult system, Elijio served time in the local juvenile hall, where he went to school six hours a day and was involved in a variety of programs. "I didn't appreciate it then, but at the Hall, there were all sorts of things," he said in hindsight. "I was close to getting my GED. There was a writing program and even yoga, which gave me a lot of calmness. People helped us work on our drug problems. I'd like to go back and tell all the guys in 'juvie' to really take advantage of that stuff, because here in County, they have nothing. All I do all day is sit in my cell."[94]

There will probably always be some youth—the older and most chronic, violent offenders—who are going to be incarcerated in an adult setting. Facilities should do their utmost to keep these youth safe and

to meet their physical, emotional and educational needs in an age appropriate way. Yet, most youth do not need to be in the adult system and would benefit greatly from measures to bolster and expand the rehabilitative resources already available within the juvenile system.


"People don't disagree
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CHAPTER
5

LESSONS IN REFORM

Around the country, reform is taking many shapes. In some cases, advocates have banded together to work directly toward legislative, judicial and institutional change. In other cases, reformers are gathering data and conducting research to look at specific repercussions of transfer and waiver policies in individual states. Some advocates are taking an educational approach, to generate greater media coverage and public awareness of declining juvenile crime rates and the latest studies on adolescent development that show the need for youth to be treated differently from adults.

Reform can be seen emerging from the top down and the bottom up, as researchers, court system professionals, families, child and juvenile justice advocates, policy makers and youth join forces to build an effective movement for change. Sometimes, reform means beginning at the very core, as advocates work to rebuild the effectiveness and credibility of the juvenile system so that it may serve as a viable, positive alternative for youth, in comparison with the adult criminal justice system.

In this section, we take a look at what is happening around the country to advocate for reform of policies and practices that send youth to adult criminal court. Each story is unique; each has important lessons to convey.

THE LEGISLATIVE ROUTE: REDEFINING THE APPROPRIATE AGE OF ADULTHOOD

By far, the largest numbers of youth who are prosecuted in the adult system are there because they live in a state where juvenile court jurisdiction ends at age 16 or 17, rather than the traditional age of 18—a more appropriate age considering legal precedent and the most up-to-date research on the teenage brain. Across the country, advocates are taking steps—and having slow but steady success—at beginning to raise the age of adulthood back to the age of 18. The goal is to guarantee that youth most in need of support are not denied the safety, rehabilitative promise and age appropriate services of the juvenile justice system.

CONNECTICUT

In Connecticut, one of three states where adult court jurisdiction begins at age 16, legislation was introduced to raise the age to 18 years. It passed the judiciary committee "on principle." But, after the fiscal committee gave it a $70-$80 million price tag, the notion died on the House floor. "That's been the pattern. No one says they are opposed to raising the age, but it's a question of money," said Fernando Muñiz, executive director of the Connecticut Juvenile Justice Alliance. "Right now, we're looking at our barriers to data collection and addressing the fiscal concerns. The idea is to get folks to see that when you factor in the savings to the adult system, it will be at least a wash."

Connecticut has several youth advocacy groups, which can sometimes work at cross-purposes with each other. The new strategy, said Muñiz, is coordination. "Rather than putting seven, eight, nine, ten bills before the legislature and maybe getting one hearing, we're going to pull all the groups together and introduce one or two bills." There are also plans for a pilot program in Hartford that keeps 16 and 17-year-olds within juvenile court jurisdiction.

NEW HAMPSHIRE

Like other states tightening their juvenile laws in the mid-1990s, New Hampshire lowered the age to 17 when a teen would be considered an adult. The reasons were all familiar ones: a highly-publicized murder committed by one teenager gave the impression that teens were out of control; the adult system was seen as the only way to impose adequate sanctions and ensure protection for citizens. At the time, there

was a crime spree along the New Hampshire and Massachusetts border, where New Hampshire 17-year-olds were being used by adults as drug couriers and car thieves who delivered their goods in Massachusetts. According to Joseph Diament, former director of New Hampshire's Division for Juvenile Justice Services (DJJS), the concern was that these 17-year-olds were easy to recruit because they did not fear prosecution under New Hampshire's less harsh legal system. Even if they were adjudicated delinquent, the youth figured they would be released from DJJS custody within a short period of time.[95]

For these reasons, New Hampshire began treating 17-year-olds who broke the law as adult criminals. Within a few years, however, those who witnessed the day-to-day repercussions of the policy—on the youth, on the systems and on the communities—were issuing alarms. The new law had disturbing unintended results. Youth were falling between the cracks of the juvenile and adult systems, receiving neither help nor appropriate sanctions. The adult system often failed to manage low-level offenders. Such cases were dismissed or the offender received a minor sanction.

The largest numbers of youth who are prosecuted in the adult system are there because they live in a state where juvenile court jurisdiction ends at age 16 or 17, rather than the traditional age of 18.

Peter Favreau, a retired police chief in Manchester and former commissioner of the New Hampshire Department of Youth Development Services, originally supported lowering the age, but then changed his stance. "I'm not a liberal. I'm a conservative kind of guy. I don't believe in molly-coddling these kids," he said. "But you had kids who are in adult jails but can't get medical attention without their parent's permission. They have no rights at all except to be prosecuted. It's a dichotomy that just doesn't work."

Youth workers and advocates began to see a distressing and recurring problem. There were many 16-year-olds who were being held in the state's juvenile facility on minor charges, like drug offenses. On midnight of their 17th birthday, law mandated that these youth be removed from juvenile confinement. "Many of them had no family, no one who was responsible for them. They were literally being dropped off on the street with nowhere to go in the middle of the night. Even if they had money, which they didn't, they weren't of age to sign a contract for a car or a lease for an apartment," explained Claire Ebel, director of the New Hampshire chapter of the American Civil Liberties Union. "We were seeing horror stories. Real horror stories of disposable children."

Faced with an increasing collection of anecdotal evidence, legislators began considering the possibility of reversing the law and putting 17-year-olds back under juvenile court jurisdiction. If they did so, it would make conservative New Hampshire the first state in more than ten years to buck the national trend. "There was definitely increasing interest. People started coming forward and telling our committee, 'This just doesn't work,'" stated Representative David Bickford, a Republican legislator from New Durham. In the 2001-2002 session, he sponsored a House bill to raise the age of majority back to age 18. "We were hearing stories of kids—high school juniors—sleeping under bridges. They weren't getting schooling. They were dropping out."

Peter Favreau tried to lobby support for the bill from his fellow police officers who were resisting the change. As a 32-year veteran of the force, he said that he understood their reluctance, but his perspective changed as he came to understand the importance of treatment, rather than "putting a kid in an adult jail where he sits at a table watching TV, playing cards and learning from the big guys." As Favreau explained to police organizations: "If you find a youth guilty at 16, then at 17, he's just back on the streets again. But if we change the law to 18, you get to keep him longer. He's off the streets *and* he's getting treatment. It's a win-win situation."

The bill passed in the House of the Representatives, only to become bogged down in the Senate, due primarily to resistance from a coalition of police, a county prosecutor and some county governments that were concerned about fiscal impact. There were administrative questions about how the juvenile system would be able to handle a sudden influx of 17-year-olds.

"People don't disagree in philosophy with the policy of raising the age back to 18," stated New Hampshire Judge, Paul Lawrence. "The problem is that they take the narrow fiscal view that it's more expensive to give kids services when they are in the juvenile system than when they go into adult court."

While the age of majority has not been raised in New Hampshire, those who pushed for change do not consider their hard work to be a failure. A compromise version of the bill passed during that legislative session. Rather than being abandoned to the streets, youth who are in the care and custody of the state's Division of Juvenile Justice Services may now remain there until their 18th birthday, if so deemed by the juvenile court.

In addition, a task force—made up of legislators, judges, prosecutors, public defenders, police department representatives—was formed to study the issues and potential repercussions. Many are optimistic that complete success is just a matter of time.

"Every year, the interest keeps growing," said Rep. Bickford, who plans to file the bill again during the upcoming legislative session. "Each time, we gain a little ground. We're educating the opposition and gaining new converts. There's just tremendous support from all arenas—health and human resources, the judges, youth advocates, the women's lobby. From everywhere!"

More than half of the youth sent into the adult system had no prior offenses and, therefore, had never received any juvenile court services. Many had serious abuse and neglect in their backgrounds.

—Report of the Cook County (IL) Public Defender's Office

REFORMING INEFFECTIVE, UNJUST AND DANGEROUS POLICIES

ILLINOIS

In 1989, the Illinois legislature enacted automatic transfer measures for anyone 15 years or older charged with selling drugs within 1,000 feet of a public housing project or a school. Almost immediately, families and youth advocates began to see an inequitable impact on African American youth who, in Illinois, frequently live in urban areas, nearby schools and public housing. There is a track record to consider. The first legislative proposal to change the law was attempted more than a decade ago, but did not make it out of committee. Yet, steadily over the years, research that went beyond the anecdotal began opening more eyes.

The Cook County Public Defender's Office put together a report with shocking findings.[96] More than half of the youth who were being sent into the adult system had no prior offenses and, therefore, had never received any juvenile court services. Many had serious abuse and neglect in their backgrounds. The report also noted that the vast majority of the cases involved only minor amounts of drugs and were either thrown out of adult court or settled by a sentence of probation. The State's Attorney could not refute the findings.

Another body of research—also viewed as extremely credible—took a hard look at the racial disparities brought about by the automatic transfer of youth involved in drug cases.[97] Such findings gained national attention and put the state under an uncomfortable spotlight. "There was a lot of fanfare with the media calling the law the most racially biased youth drug law in the nation. It was really an embarrassment for Illinois," stated Betsy Clarke, president of the Illinois Juvenile Justice Initiative, one of the groups that pushed for a change in the law. "All that attention helped our cause enormously."

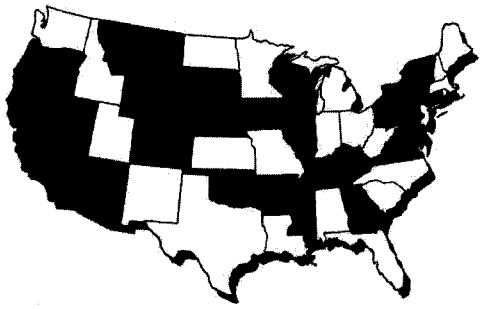
The next step was what Clarke described as "an insider's game." As the initial publicity died down, a large coalition of activists, youth advocates and law school representatives continued their largely behind-the-scenes push. Critical to their success, the coalition had the strong backing of the Illinois State Bar Association. At first, the coalition set out to lobby for repeal of the entire drug law, but decided against that strategy. "We reached a compromise on reverse waiver (designed to al-

low the adult court discretion to send youth back into the juvenile system) and it sailed out of the House," Clarke said. "I think there was a sense of relief among legislators. Compared to a complete rollback, this looked very moderate. They were asking themselves, 'How could I *not* vote for this?'"

To rally support in the Senate, the Illinois State Bar went to an unexpected source: one of the toughest law-and-order advocates in the state, Republican Senator Ed Petka, a former Will County State's Attorney who, according to an article in the *Chicago Sun-Times*, boasts of his record of placing the most men on death row of any prosecutor in Illinois history.[98] Petka examined the studies and statistics and came away convinced of the inequities. He accepted the challenge of taking the bill before the Senate. In his testimony, the senator explained the nuances of reverse waiver: certain juveniles who have been transferred to

States with Reverse Waiver Provisions

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.



Source: Griffin, Patrick, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws. Pittsburgh, PA: National Center for Juvenile Justice, Oct. 2003 *Note: Colorado only allows for reverse waiver in the case of a judicial transfer, but not in the case of direct file.

Pros and Cons on the Use of Reverse Transfer

Reverse transfer procedure offers an opportunity to mitigate injustices created by policies that inappropriately send thousands of youth into the adult system. However, blanket use of reverse waiver—in lieu of genuine policy change that stems the flow—is unsound.

For the youth themselves, most of them with limited economic and legal resources, the process can be boggling. The youth, typically represented by a public defender, must petition for a hearing within a strict timeframe or lose the right to petition. The youth, not the prosecutor, now has the difficult burden of establishing "clear and convincing" evidence that he or she should be transferred back to juvenile court.

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 or she should be prosecuted in juvenile court is very difficult. This is especially true if the child is not adequately represented by counsel, which sometimes happens, especially to poor children."

adult court under the drug law may petition for a hearing to be sent back to juvenile court. During the hearing, the judge would make a finding based upon several factors, including the age of the youth, previous criminal history and/or whether a deadly weapon was involved.

When Petka finished his testimony, he said, "I'll answer any questions that you may have." There were no questions and no discussion was held, only silence and then a call for a vote. The bill passed 43 to 11.

"For such a huge, polarizing issue, it was amazing that it just sailed through," said Clarke. "I attribute that to a combination of factors: the credible research, the compromise legislation, having the State Bar Association leading the charge and the fact that the toughest law and order legislator was sponsoring it." A few days after the bill passed, the *Chicago Tribune* praised lawmakers for doing "something unusual and remarkable. They corrected a mistake...Kudos to all for recognizing a stinker [law] when they see one, and for expending the political capital

needed to correct a mistake that has created its share of injustice."[99]

Flush with success, Illinois' advocates saw this achievement as an opening for future reform. Since the law went into effect, data have been gathered about the use of reverse waiver for drug cases. Elizabeth Kooy, of the Illinois Juvenile Justice Initiative, has said that in Cook County approximately 30-40 percent of the drug cases that are transferred to adult court get probation, because the cases are not seen as serious; and another 15 percent are sent back into the juvenile system. Given these figures, Kooy asked, "Since so many cases get dropped or are sent back, the question is: 'What's the purpose of sending these kids into the adult system in the first place?'"

A task force, established by a new Senate bill, will look into this question and other issues surrounding transfer and waiver and report its findings to legislators. Advocates hope to make progress in several areas: scaling back the large number of crimes that fall under statutory exclusion provisions, streamlining the state's cumbersome patchwork of transfer and waiver procedures, and extending the ability to use reverse waiver on all automatic transfer cases, not just those related to drug cases.

While there may be setbacks ahead, advocates have also been able to get a bill passed in the House to raise the upper age of juvenile court jurisdiction from 17 to 18. Currently, the bill is in the Senate, so Kooy and others are working to address the fiscal and bureaucratic concerns of such a move. "Getting the data was the turning point,"said Kooy. "People could see that the vast majority of youth are not in the adult system for violence. People can see it in their own children. They accept that kids can get into some trouble; they can wind up at the wrong party. Why should that mean they have a record that follows them for the rest of their life?"

WISCONSIN

In Wisconsin, legislative reform is being approached through the growing wealth of information about adolescent brain development. The Wisconsin Council for Children and Families had previously conducted research and promoted public education on brain development in children from newborns to three-year-olds. "We got a lot of positive feedback and media attention on that," said Council executive director Charity Eleson. Now, the Council was ready to bring new brain development science to bear on discussions about adolescence, as well. "Given all the new science around the adolescent brain, it's a logical progres-

sion to try and bring science-based policy to all areas of children's services. That's our signature issue."

Mark Wehrly, the Wisconsin Council's former senior policy analyst, indicated that fiscal issues are proving to be a stumbling block, particularly because Wisconsin has a decentralized, county-based system of

"Given all the new science around the adolescent brain, it's a logical progression to try and bring science-based policy to all areas of children's services."

— Charity Eleson, executive director of the Wisconsin Council for Children and Families

services. Counties typically oppose any change that puts a burden on them that is not adequately funded. The costs associated with youth waived into the adult system as 17-year-olds, including both treatment and incarceration, are borne by the state. The costs for youth who remain in the juvenile system are borne by counties. For a decade, state funding for community-based services has fallen further behind county costs. Changing the law to keep more youth in the juvenile system without changing the financing would be unacceptable to counties, as they would be unable to raise the millions of dollars necessary to finance the change, except through property taxes or cuts in other county services. Therefore any such change must include financing reform, as well.

"Our plan is to be prepared with a strong fiscal analysis and alternatives to address those concerns," said Eleson. She remains optimistic because of the timing. "When the get-tough legislation was enacted a decade ago, juvenile crime as an issue was front and center. Now, it's not such an issue with the public, so we have an opportunity to approach it in a different framework. We don't have to ask, 'What do we do with these *bad* kids?' We can ask, 'What does science tell us about what works for youth?'"

DISTRICT OF COLUMBIA

In 2003, a four-part series in the *Washington Post* raised major issues about the Washington, D.C.'s inadequate and unsafe juvenile justice services and programming. In its wake, the District's Mayor, Anthony Williams, and some of the city council members, drafted legislation to make it much easier for prosecutors to charge juveniles—as young as age 15—as adults, and using other punitive approaches to juvenile crime. Such proposals had been specifically rejected by the Mayor's own "Blue Ribbon Commission on Youth Violence and Juvenile Justice Reform."

Organizations such as Justice 4 DC Youth and the Youth Law Center helped to organize advocates and community members to rally against the punitive legislation and to call for support of more progressive approaches. Testimony was presented by national experts, local advocates, young people and parents with more than 100 people attending and rallying outside of City Hall. In response, the D.C. Council rejected the Mayor's proposal, and months later a larger victory followed when Mayor Williams reversed his position on increasing transfers into adult court for young offenders and signed the "Omnibus Juvenile Justice Act of 2004."

The bill will make dozens of changes throughout the city's juvenile justice system, including provisions to prohibit the locking up of truant and runaway children with delinquent youth, to require judges to determine within 90 days whether a juvenile may be transferred to adult court—a process that now takes as long as two years—and to close the District's troubled youth detention center within four years.

FLORIDA

In a previous legislative session, State Senator Walter G. Campbell, Jr., sponsored a bill that would revise the age at which an offender who is a minor may be prosecuted and sentenced as an adult. The bill, if passed, would require that an offender 16 years or younger who commits an offense punishable by death or imprisonment for life be committed to the Department of Juvenile Justice or to a maximum-risk juvenile facility until the age of 21, when another hearing would be held. While the bill did not progress far through the legislative process, it became a rallying point for a variety of grassroots groups, composed of attorneys, parents and clergy, who continue to organize, hold rallies and lobby for reform. One such group—Justice4Kids.org, Inc.—has

the stated purpose of "helping parents work with Florida's Department of Juvenile Justice to rescue troubled teens and children."

"The first time, the chairman of the committee refused to hear it and that was that," said Sen. Campbell. "But there was a lot of good press and editorial endorsements. Recently, the chair told me that if I file it again this year, he'll give it a hearing, so that's what I plan to do."

VERMONT

Current Vermont statutes allow the state to file a delinquency petition in juvenile court or a criminal charge in adult court, for 16 and 17-year-olds, for both misdemeanors and felonies. Dick Smith, chair of the Vermont State Advisory Group on Juvenile Justice, also known as the Vermont Children and Family Council for Prevention Programs, said that approximately 80 percent of these youth wind up in adult court and on probation within a department that primarily serves adults and is not best equipped to serve youth. They will also shoulder adult convictions for the rest of their lives.

Advocacy is emerging from two sources. The state agencies—the Department of Corrections and the Department of Children's and Family Services—are exploring an administrative approach to move toward treating 16 and 17-year-olds as juveniles. The Vermont Bar Association has also established a subcommittee to begin addressing the issue, legislatively. According to committee member Bob Sheil, who is also on the board of the advocacy group, Vermont's Children's Forum, "We are contemplating approaching the legislature this year to amend the statute; to have all cases (except for a set of 12 serious crimes, such as murder) for this age group begin by petition in juvenile court and place the burden on the state to convince the court why the case should be transferred up to adult court."

In its preliminary work, the subcommittee has targeted two legislators who are willing to provide support and a couple of judges sympathetic to the cause. Sheil anticipates that the biggest challenge will come from the prosecutors in individual counties. The game plan, he says, "is to try and pinpoint one or two prosecutors who may be willing to go on the record that they aren't adamantly opposed, but are at least willing to look into the issue."

GATHERING THE STAKEHOLDERS

The public frequently refers to the "justice system" as if it is a single, nationwide entity. This is not the case. Rather, each jurisdiction has its own assortment of judges, attorneys, community organizations, probation officers, youth advocates and legislators that comprise the "system." At times, this collection of government agencies, nonprofit organizations, system professionals and interested citizens can work at cross-purposes. To bring about effective change, it is critical to gather the stakeholders as a united voice for reform.

In one example—on the national level—the Coalition for Juvenile Justice recently set forth a resolution to work toward significantly reducing the number of youth that are sent to adult criminal court and to ensure that young offenders are appropriately adjudicated, in ways that enhance community safety and vitality. A wide range of national organizations with diverse philosophies and purposes—among them, the American Probation and Parole Association, the Children's Defense Fund, Church Women United, the National Mental Health Association, Physicians for Human Rights, and the Society for Adolescent Medicine—have added their support, attesting to the growing broad-based call for effective reform. (For the text of the National Resolution and a full list of the many signatory organizations, please see the supplement to this report: "Childhood on Trial: Resources for Raising Awareness"(CJJ, 2005).

ARIZONA

Five years after the Arizona state legislature expanded the number of crimes that automatically send a youth into the adult system, the Children's Action Alliance (CAA), a nonprofit advocacy organization, convened a statewide Juvenile Justice Advisory Committee. This group of stakeholders, including attorneys, probation officers, judges, child advocates, community leaders and administrators, set out to identify key issues surrounding the treatment of juvenile offenders as adults and to help set priorities for advocacy efforts.

A report was issued that summarized information about transfer and cited relevant state research and statistics. The committee explored the pros and cons of several options for future action, such as allowing reverse waiver and blended sentencing, improving transition services for youth under the age of 18 when leaving jails and prisons, and providing

statewide training to defense attorneys and prosecutors related to transfer issues. Several recommendations were made, such as to "study the criminal sentencing ranges and allow more flexibility to judges when sentencing juveniles convicted as adults" and "encouraging state and county authorities to improve the uniform tracking of the number of cases of juveniles prosecuted in the adult system, the sentences imposed and served and outcomes for youth."[100]

After this promising groundwork, the agenda shifted when the U.S. Department of Justice released a scathing report about conditions in Arizona's juvenile justice system. "The report was more negative than we had ever expected," said Beth Rosenberg, CAA's senior program associate. Because it unearthed serious concerns, she states that now, "We need to concentrate our efforts now on cleaning up the juvenile system before pushing for reform on waiver and transfer. Otherwise, it's hard to argue that the juvenile system is a viable alternative." CAA seeks to make the case for keeping youth in the juvenile justice system, by ensuring that an array of age appropriate services are in place to keep youth safe from harm and to treat them with dignity and respect—while holding them accountable for their wrongdoing.

The cleaning up is being done while also recognizing that it can be convenient to point to the shortcomings of the juvenile system—yet, youth in general stand a better chance at becoming law abiding and productive members of society following time in juvenile rehabilitation, as compared with the results of inadequate education, counseling, security, nutrition, health care, and the threat of abuse, generally suffered in adult corrections.

GEORGIA

In Georgia, as a result of legislation passed in 1994 (SB 440) youth as young as 13 who are accused of one of the "seven deadly sins"—murder, voluntary manslaughter, rape, armed robbery, aggravated sodomy, aggravated child molestation and aggravated sexual battery—are automatically charged, tried and sentenced as adults. If convicted under SB 440, youth serve a mandatory minimum of ten years in prison without possibility of parole. This year, as the first class of "graduates" are about to be released from prison, several human and civil rights groups are working to educate the public and policy makers in order to challenge and repeal the law.

The Georgia Public Defender Standards Council is collecting SB440 data, including arrest and dispositional information, such as whether a case went to trial, whether the case was a plea, etc. The Justice for Youth Coalition, composed of lawyers and other system professionals, and the grassroots Youth Task Force are advocating for rollbacks in the law. In addition, Mothers Advocating Juvenile Justice (MAJJ) was started by a small group of women whose children had been sentenced under SB440. They continue to lobby and to solicit public and media support.

"When you have a child in prison, you go through so many emotions," said Billie Ross, one of the founding members of MAJJ. "But once you get through the pain, hurt and embarrassment, you start feeling angry, talking and opening up about it. As more parents talk, more people are beginning to listen. It helps to be able to put names and faces to what has been a forgotten group of children."

MICHIGAN

The advocacy work in Michigan began by gathering data to demonstrate how a lot of youth, in particular youth of color from just a few geographic areas, were being sent into adult institutions for low-level crimes. When this came to light, advocates called for reform and a conservative senator seemed willing to hold hearings to rethink the state's transfer policies. Unfortunately, there was a setback when the senator changed his mind. Nevertheless, Elizabeth Arnovits of the Michigan Collaboration for Juvenile Justice Reform used the publicity to good advantage. "I knew that people's hearts were in the right place. I said, this isn't happening, legislatively, right now. So maybe we should hop on it, administratively."

As a result, representatives of the state's Department of Corrections and Juvenile Justice—two agencies that do not have a track record of collaborating—will be coming together for a series of meetings to look into the issue of why so many Michigan youth are winding up in adult facilities for relatively minor offenses, and what can be done about it. "It's the first time that anything like this has happened," Arnovits said. "We're lucky right now to have an administration that is letting people do what they've been wanting to do for a long time."

The group will tackle the tough issues, such as determining which youth are winding up in adult prisons and how economics play a part in such decisions. "For the counties, it costs them nothing to send a kid to prison. It costs them hundreds of dollars a day to keep them in a

juvenile training school. We don't know the answer yet, but together we want to figure out a way to level the economic playing field."

ADVOCATES AS WATCHDOGS

In the most recent years, while a few state legislatures have continued to expand the reach of transfer laws, for the most part the pace of punitive change has slowed considerably.[101] Some of that can be attributed to a natural reflection of the lowering crime rate. But a lot of credit must go to a wide and dedicated network of advocates who are doing their best to prevent even more punitive policies from becoming law. These reformers are also trying to ensure that legislation, which is already in place, is not used arbitrarily, for political gain, or in any other manner for which it is was not intended.

CALIFORNIA

When Ballot Proposition No. 21 (Prop. 21) passed in California, opponents issued predictions that a flood of youth would come inappropriately into the adult system. Four years later, some public defenders are complaining that under Prop. 21's direct file provisions, the charging authority of prosecutors lacks uniformity and that youth may be treated as either juveniles or adults "depending on whim."[102]

However, for the most part, proponents and critics agree that the provisions have been used only sparingly, keeping steady the number of youth being prosecuted as adults. Several reasons have been credited for this so-far better than expected, including falling youth crime rates and difficulty initiating new bureaucratic procedures. In some counties, including Los Angeles, San Francisco, Alameda and San Diego, it has been business as usual, with judges typically making the decisions about which youth should be transferred. Los Angeles County District Attorney, Steve Cooley, said that he has chosen to use his charging authority with discretion, allowing judges to make most of the determinations with input from probation officers, prosecutors and defense attorneys.[103]

Kurt Kumli, a California prosecutor, credits ongoing media scrutiny and the diligence of gatekeepers within the system, for the restrained use of direct file. Still, he expressed caution. "We aren't at the place yet where the long-term repercussions of Prop. 21 have been felt," he warned. "The test will come when there's a horrendous youth crime and someone wants to make political hay out of it. At some point, the gatekeepers

will no longer be around, but the law will still be there to be used."

Advocates acknowledge a recent set-back in another area when California Governor, Arnold Schwarzenegger, vetoed Senate Bill 1151, which sought to clarify for judges how to evaluate the circumstances and gravity of a crime before transferring a youth to adult court. Schwarzenegger said the bill would compromise public safety. Senator Sheila Kuehl, who sponsored the bill, was disappointed because her measure, which had extensive support, was designed to guide judges and to eliminate ambiguity in the law.[104]

MARYLAND

As in other states in the early 1990s, Maryland greatly expanded its transfer and waiver laws through legislation. Since then, the Maryland Juvenile Justice Coalition (MJJC), made up of more than 100 organizational partners and 400 individual members, has been working toward reducing the number of minors tried in adult court. "We set lofty goals," said Heather Ford, formerly of Advocates for Children and Youth, which staffs MJJC. "We don't think that anyone under 18 should be in adult court."

MJJC accomplishments include analyzing state data regarding which youth are most impacted by adult court legislation; spearheading an extensive informational campaign to publicize national data about the negative impact on youth who are incarcerated with adults; and drafting strong policy statements against the transfer of youth into the adult system. MJJC supported the introduction of state bills in the House and Senate from 2000-2001, aimed at restoring the juvenile court to its status before sweeping exclusionary offenses were added in 1993, as well as to encourage the adult court to consider use of reverse waiver to juvenile court. Both of these bills were reintroduced in 2002, 2003 and 2004.

In 2002, as one step, legislation passed both the House and the Senate to authorize the Criminal Justice Information System Central Repository, when a juvenile has been charged as an adult, to disseminate to the Maryland Justice Analysis Center unique identifiers relating to the child (except those prohibited by State law).

Ford acknowledged that it is unlikely that legislators will restore the juvenile court to its pre-1993 status, but she has strong belief that in 2005-2006, the Maryland General Assembly, will continue to re-evaluate

issues related to trying youth as if they are adults.

"We feel like we've reversed the tide away from *get tough* legislation," she noted. "Through an aggressive advocacy campaign that included national experts from Human Rights Watch, the Sentencing Project, the Youth Law Center, Columbia University and others, Maryland has seen a reduction in the number of bills being introduced to transfer authority to the adult court."

REBUILDING THE JUVENILE JUSTICE SYSTEM

The key argument for keeping youth in the juvenile system is that it is designed to meet their developmental needs and provide them with a safe environment, rehabilitative services and age-appropriate medical, mental health and educational support, so that youth may return to society as productive, law-abiding citizens. However, juvenile justice agencies have come under scrutiny in many states. Criticism and legal sanctions have been levied for a wide-range of serious and dangerous infractions. Often, advocates must work to improve conditions within juvenile facilities and to expand home and community-based alternatives to incarceration and confinement, so that the juvenile justice system can serve as a truly meaningful, educational and individualized alternative to the more chaotic and punishment-based adult criminal justice system.

PENNSYLVANIA

When the Juvenile Law Center issued a report that examined the state's juvenile justice system, it was found that excessive caseloads were preventing defenders from having meaningful contact with their clients. Legal representation was absent in 11 percent of all delinquency dispositions involving hearings, including some of the most critical proceedings affecting a child's liberty. In addition, youth were unrepresented or under-represented during judicial waiver hearings, where the juvenile court judge, after hearing evidence, transferred youth from a juvenile to adult criminal court. [105]

"This practice is particularly alarming because it can result in youths' criminal incarceration in the most restrictive circumstances—adult jails and prisons," explained Sandra Simpkins of the Northeast Juvenile Defender Center. The report proved to be an effective advocacy tool, since

"after the report came out, we saw a decrease in that practice. There's no way to know for sure, but I think it made people feel ashamed that this would be going on." The report also provided a push for more statewide training for public defenders.

In Philadelphia, there is a separate unit of public defenders who work solely on transfer cases. "They approach like it's a death penalty case, a special category," said Simpkins. "The attorneys really dig. They keep statistics. They visit the kids in custody and work with social workers. It's proven successful, with a 70 percent success rate in keeping kids in juvenile court."

NEW YORK

In this state, which has both a low age of adult court jurisdiction (age 16) and broad statutory exclusion legislation, there has not been a lot of direct reform work around the issue of transfer and waiver. Youth, ages 13 to 15, charged with certain serious crimes are automatically tried as an adult under the state's Juvenile Offender Law. Although they are tried in adult court, juvenile offenders are sentenced to juvenile facilities rather than adult facilities.

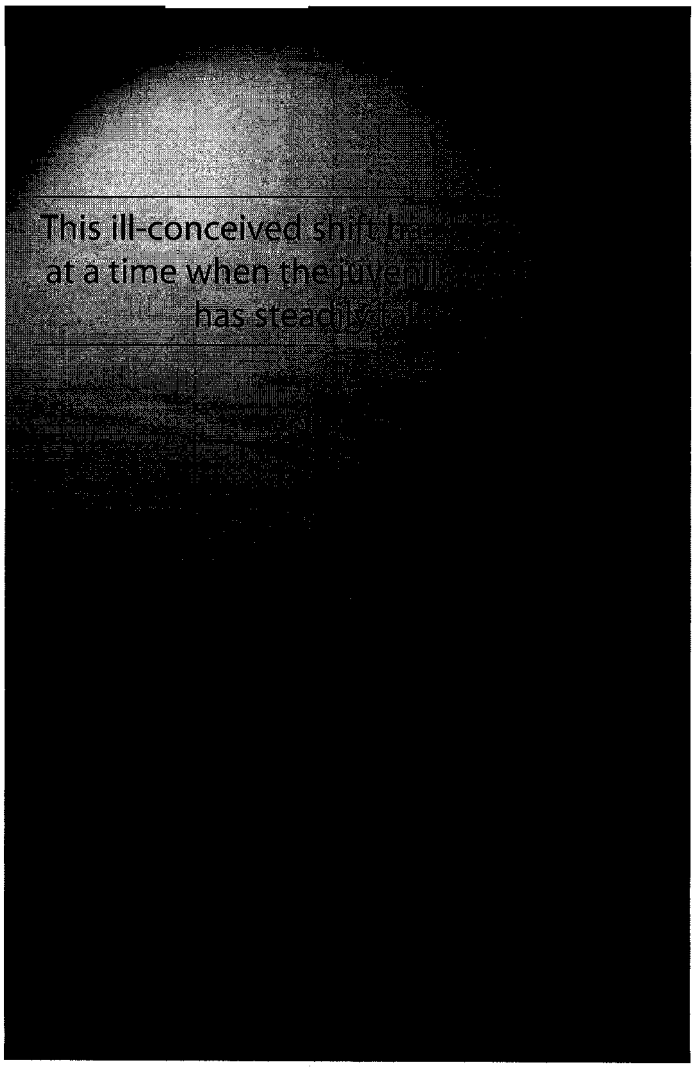
Advocates say that their focus on retaining youth in the juvenile system, and reducing transfers to the adult system, is indirect, as they strive to make the juvenile system a highly effective alternative. "Honestly, our juvenile justice system is so dysfunctional that we have to fix

Legal representation was absent in 11 percent of all delinquency dispositions involving hearings, including some of the most critical proceedings affecting a child's liberty.

— Juvenile Law Center, 2003

that before we can advocate to send more youth into this system," said Mishi Faruqee of the Correctional Association of New York. "Lawyers representing youth in adult court often don't advocate to remove a case to Family Court, because a young person often fares better in adult court, where judges are more willing to send a young person to an alternative-to-incarceration program." She explained that there are so many mandates that youth involved in the juvenile system must follow—go to school, get a job—but, there are very few services and supports to help that happen. Over the past year, there were more youth incarcerated in state placement facilities for misdemeanors than for felonies. "The juvenile system in New York is like quicksand," she noted. "Once you're in, you get pulled in deeper and deeper."

One major goal is to reduce pre-adjudicatory juvenile detention, as well as state placements, for youth under 16. As Faruqee explained, "The question always is, 'If we take 16 and 17-year-olds out of the adult system, where will they go if a judge remands them to a secure facility? We certainly don't want to build more youth jails and prisons. If we can reduce the juvenile detention rate, if we can divert more youth charged with nonviolent crimes out of juvenile jails and prisons to effective community-based alternatives, then there would be more capacity for kids over 16 to remain in the JJ system."


This ill-conceived shift
at a time when the juvenil
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CONCLUSION

Past predictions from criminologists and the media were that juvenile crime would soon be running amuck. The assumption was that the juvenile court, with its emphasis on rehabilitation, did not impose strong enough sanctions and, therefore, a new breed of young criminals would emerge and be beyond redemption. The rationale followed that offering them services would be throwing money into a black hole.

In response, during the 1990s, almost every state rushed to toughen its laws to make it easier to place young offenders into the more punitive adult criminal justice system. Since 1992, state after state has expanded the types of offenses that mandate or make youth eligible for transfer to adult court; many states have taken the decision to transfer youth to adult criminal court away from the juvenile court judge and have handed it to the prosecutor who often proceeds with few guidelines and limited formal or public review of decisions.

Most dramatic of all are the more than 218,000 youth ages 16 and 17-year-olds enter the adult criminal justice system each year—not because of the severity of their crimes or because they are violent and repeat offenders, or have exhausted the resources of the juvenile system, but solely because they happen to live in a state that has set a lower age of adulthood in the criminal code.

Ironically, this ill-conceived shift has taken place at a time when

the juvenile crime rate has steadily fallen. And, the shift continues despite evidence that such measures are extremely costly, often implemented in unsystematic fashion, have a disproportionately negative impact on youth of color, and have little or no effect on making our communities safer. In fact, the flood of youth who enter the adult system soon emerge back into society as young adults facing enormous barriers to becoming productive, law-abiding citizens.

Research also knocks down the notion that the juvenile court cannot impose adequate sanctions. Juvenile court judges have long had the ability to transfer youth with the most chronic criminal histories and those who commit the most egregious crimes into the adult system. They also have the ability to impose adequate sanctions within the juvenile system itself, sanctions that in many cases will exceed the sentences doled out by adult court judges.

An impressive body of research also discounts the notion that today's breed of young offenders are immune to rehabilitation. The teen years are a crucial time when a young person is most amenable to support. In fact, positive mentoring and programs that are well designed, properly implemented and carefully monitored *can and do* make a tremendous difference, even with serious and chronic offenders.

In his book "The Cycle of Juvenile Justice," Thomas J. Bernard, professor of criminal justice at Pennsylvania State University, describes the juvenile system as being in a continuous cyclical pattern, where it is seen as either too lenient or too harsh.[106] It moves in the direction of increased penalties and severe punishment when the public and policy makers are convinced that crime is higher than ever and can swing in the other direction when reformers attempt to "cure" juvenile delinquency with a Band-aid approach; a splattering of uncoordinated services and quick environmental fixes. Bernard stresses the importance of breaking this cycle of extremes and working toward stable juvenile justice policy.

As we look around the country, we see growing support for a shift toward middle ground as advocates work to reform ineffective policies. Except in the rare case of an older, chronic and violent offender, it makes no sense to try and sentence youth in adult criminal court. As we take notice of the failures and inequities of sending teenagers into the adult system, of denying them meaningful sanctions and treatment, we as a society face a set of important choices:

We can continue to react in fear. Or, we can take to heart overwhelming evidence and begin to act on it.

We can continue on the same, self-defeating path. Or, we can take a lesson from Michigan Judge Eugene Moore. As he went against the tide in declining to sentence a teenager to adult prison, he issued both a caution and a challenge:

> *"If we don't want to throw the baby out with the bath water and return to the days of the Industrial Revolution, we must do better with the thousands of juveniles we see every day in our courts."*[107]

ENDNOTES

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[3] Author's Note: In the King case, a jury rejected first-degree murder charges, but found the boys guilty of second-degree murder. A judge threw out the convictions and the boys pleaded guilty to third-degree murder. CNN.com Law Center, 14 November 2002. http://archives.cnn.com/2002/LAW/11/14/king.ruling/

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[9] Author's Note: Figure is based on an analysis of 1996 data and statement made in Juvenile Offenders and Victims, 1999 National Report, along with personal communication with Melissa Sickmund. "If the 1.8 million 16 and 17-year-olds in the 13 states with lower upper ages of juvenile jurisdiction are referred to criminal court at the same rate that 16-and 17-year olds are referred to juvenile court in other states, then as many as 218,000 cases involving youth under the age of 18 could have faced trial in criminal court in 1996, because the offenders were defined as adults under state law."

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REPORTS FROM THE COALITION FOR JUVENILE JUSTICE

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THE WRITER
JILL WOLFSON

Jill Wolfson, author of "Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Criminal Court" is an accomplished writer who specializes in child welfare and juvenile justice issues. Wolfson has won many state and national honors for her work, including awards from the National Press Club, The American Bar Association, The Western Society of Criminology and a Casey Foundation Fellowship. In 1997, Wolfson and her co-author, John Hubner, won the media award for an Outstanding Contribution in Communicating the Needs of Youth and Juvenile Courts, presented by the National Council of Juvenile and Family Court Judges, for the book, "Somebody Else's Children—The Courts, the Kids, the Struggle to Save America's Troubled Families" (hardcover, Crown 1997, paperback, Three Rivers Press, 1998). Wolfson also authored the 2003 Coalition for Juvenile Justice (CJJ) annual report, "Unlocking the Future: Detention Reform in the Juvenile Justice System," and was co-author of several additional past reports from CJJ—addressing topics such as mental health needs, education and delinquency and conditions of confinement.

LETTER FROM DAVID G. WILSON, EXECUTIVE DIRECTOR, ASSOCIATION OF FORMER FEDERAL NARCOTICS AGENTS TO THE HONORABLE F. JAMES SENSENBRENNER, JR. (JULY 23, 2005)

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Committee on the Judiciary

July 23, 2005

Dear Congressman Sensenbrenner:

I am writing at the suggestion of one of your staff members, Jennifer Gross. She provided me with copies of HR 1279 and HR 1528 and she asked that our organization consider supporting these bills.

After a review by our Board of Directors I am pleased to say that our association wholeheartedly supports these measures. As an association of retired law enforcement officers we are particularly concerned about the control of criminal behavior in this country. We feel that these bills will provide a great enhancement to the job of protecting Americans from the ravages of crime.

If I or our organization can be of any further assistance to you please feel free to call upon me.

Sincerely,

David G. Wilson
Executive Director

NANCY BARTLEY, "LAWMAKERS RETHINKING HARD LINE ON SENTENCING OF YOUNG OFFENDERS," *The Seattle Times*, April 14, 2005

Lawmakers rethinking hard line on sentencing of young offenders

Nancy Bartley
Seattle Times staff reporter
1,829 words
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The Seattle Times
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English
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First of two parts | Washington is weighing legislation that would give judges more discretion in how they deal with teens who commit violent crimes.

In today's story, lawmakers and others who oppose long prison terms for teens cite recent research on brain development.

Heather Opel was 13 and felt cooped up inside the Snohomish County juvenile-detention center. When a prosecutor told her that Echo Glen Children's Center has a big outdoor exercise area and that's where she'd be sent if she admitted she helped kill her mother's employer, pleading guilty didn't seem like a big deal.

Against the advice of her own attorney, Heather entered a plea of guilty to first-degree murder and was sentenced to 22 years -- the first seven at the Issaquah school for violent teens, the remainder in prison.

Her thinking: Going to prison wouldn't be so bad because she'd only be 35 when she got out -- still young enough to fulfill her dream of playing professional women's basketball.

Impulsive and immature thinking, typical of many teenagers, can be tragic for victims and -- some believe -- the young lawbreakers as well, who may find themselves growing up in prison.

While kids who do horrific crimes need to be dealt with, prison isn't the answer, believes forensic psychologist Kenneth Muscatel, who has evaluated many youthful offenders on behalf of their defense lawyers.

After a crackdown in the 1990s that saw many teenagers sent to adult prisons for violent crimes such as murder, lawmakers in this and other states are reconsidering their earlier hard line. Bolstered by ongoing and recent medical and scientific studies of early brain development, many in the criminal-justice system are taking the position that juveniles should not necessarily be doomed to long prison terms for crimes they committed when their brains were not yet fully wired -- when they may have been too young to control their impulses, make sound decisions or grasp the significance of their actions.

Two paths to adult court

In Washington state, there are two ways for teens to end up in adult court. One way is automatic, the other discretionary:

* Typically, when a teen 16 or older commits a serious crime such as murder, trial must be in adult court, where the teen faces the same punishments as adult offenders. Those punishments can include life in prison or, in rare cases, life without the possibility of parole.

* Younger teens charged with murder start out in Juvenile Court, but depending on the circumstances, a judge may decline to keep the case there, deciding instead that it belongs in adult court. If a case remains in Juvenile Court, any sentence ends when the offender turns 21.

Over the past 10 years, some 20 states have passed what are called "blended-sentencing" laws for teens convicted as adults of the most serious offenses. While the laws vary from state to state, many give sentencing judges the flexibility to consider juvenile- court sentencing options, adult-sentencing options or some blend of both.

In Washington, a measure proposed by Rep. Mary Lou Dickerson, D- Seattle -- House Bill 1187 -- would no longer require judges to impose certain adult prison terms for teens convicted in adult court of serious crimes such as murder.

The bill passed the House a month ago, with the Senate last week passing a version that would apply to fewer teens.

If the House agrees with the Senate version, the measure will be sent to Gov. Christine Gregoire for her signature. If the House does not agree, the two houses then will try to come to terms.

The House version has wide support, including from many prosecutors. Tom McBride, head of the state Prosecutors' Association, called the bill "an awesome remedy" for those relatively few cases in which a judge may not believe an adult prison sentence is appropriate for a young defendant.

Had the measure been in effect when Opel was sentenced, the judge could have elected to give her less than the mandatory 20-year- minimum sentence. Or he could have done exactly as he did, sentencing her to 22 years, still at the lower end of the range for first-degree murder.

"It takes us out of the position where it's all or nothing," McBride said. "It gives judges a little more discretion, especially with younger offenders."

But the measure is not without its detractors. Critics say juveniles tried in the adult system are already criminally savvy, and that subjecting them to adult sentences sends problem kids a strong message.

Teens who do horrific crimes should not be immune from adult- size punishment, believes Tami Perdue, a former King County deputy prosecutor who handled many murder cases -- including some by juveniles.

Had Dickerson's legislation been in place, most of Washington's 204 prisoners serving time for murders committed before they turned 18 may have been considered for more lenient sentences.

Giving judges more flexibility in such cases is a concept that retired King County Superior Court judge Terrence Carroll, who presided over many juvenile cases, lobbied for when he was on the bench in the early 1990s. "But no one would listen to me," he said.

Simmie Baer, a nationally prominent juvenile-defense attorney from Seattle, believes the legislation doesn't go far enough.

"Juveniles are drastically different than adults," she said. "We know they're not good decision makers. ... We shouldn't be patting ourselves on the back. They shouldn't be tried as adults at all."

Sandra Youngen, superintendent of Green Hill School in Chehalis, the state's maximum-security detention center for juveniles, agrees. She often finds 16- and 17-year-old residents believing they are going to be sports heroes or earn six-figure salaries without ever having an entry-level job.

"Kids are at an extremely different developmental level than adults," she said.

Brain development

Research into how the brain develops is ongoing at the University of Pennsylvania. In one study, a series of magnetic-resonance images on children shows that the brain has a growth spurt at the time of puberty, but the new connections don't solidify until a person is in his mid-20s, when the thinking process becomes fully adult. That research is continuing.

At Harvard, researchers studied the ability of young people to read facial expressions, recently finding that they are far less skilled than adults at understanding that form of communication and thus may be more likely to misread the intentions of others.

While some participating scientists caution the findings shouldn't be the sole factor in deciding whether to try a child as a juvenile or an adult, the research is being taken seriously. In its March 1 decision to ban the death penalty for all juveniles, the U.S. Supreme Court cited the brain-growth research being done in Pennsylvania.

The Pennsylvania study is also central to the Grant County case of Jake Eakin and Evan Savoie of Moses Lake, who were both 12 when they were charged with first-degree murder in the death of their 13- year-old playmate. Their trial in adult court is set for May 16.

Grant County Judge John Antosz ruled that the crime was so brutal -- the victim had been stabbed many times in the head -- that the boys should not be tried as juveniles despite their age.

Dickerson, a former program director at Echo Glen, disagrees; in fact, it was this case that prompted her to propose her measure.

Michele Shaw, Jake Eakin's new attorney, agrees with Dickerson. Both boys were special-education students with lower-than-average IQs, and not taking such factors into account is not serving justice, Shaw believes. When mistakes like that are made, "these children suffer horrifically."

Question of understanding

Another part of the recent brain research is a MacArthur Foundation study that showed teens tried in adult court are unlikely to understand that process or help with their own defense. The study showed that children 11 to 13 and 14 and 15 are, respectively, three and two times as likely to be "seriously impaired" in their ability to understand the justice system, and that children with a low IQ are at an even greater risk.

It concluded that states that transfer juveniles 15 and under to adult courts may be subjecting them to proceedings they can't possibly understand. When that happens with children 13 or younger, according to the study, many of them should be considered incompetent to stand trial.

Muscatel, the forensic psychologist who evaluated Heather Opel, has examined many children charged with murder, among them the Grant County boys, whom he described as almost "pre-adolescent" in their lack of maturity, with interests that ran more to video games than court procedures.

In Opel's case, Muscatel said, her life was chaotic before the 2001 murder of her mother's live-in employer in their Everett home. Her defense attorney said at the time of her sentencing that she had been abused since she was an infant, yet still managed to become a good student and athlete.

While even prosecutors said her mother had manipulated her into helping commit murder, they still charged the 13-year-old as an accomplice and tried her as an adult.

Of all the cases he's evaluated, Muscatel finds Opel's the most tragic. Lacking a secure, supportive home life, she often was unable to make decisions that would benefit herself, he said.

"I can guarantee you there is no child who had a well-socialized background and a supportive environment who goes out and commits offenses," he said.

When children are sent to prison, they miss out on a huge part of normal social development -- everything from establishing relationships with the opposite sex to reading facial expressions and determining appropriate behavior on the job.

Like most of the prisoners incarcerated in Washington state for committing murder when they were children, Opel will one day be released back into society. How she'll fare, Muscatel believes, will depend on the skills she'll learn in the maximum-security, razor- wire-enclosed "home" at the Washington Corrections Center for Women, near Gig Harbor in the town of Purdy, from which she'll be released in 2023.

photo; Caption: Ellen M. Banner / The Seattle Times : Heather Opel, 14, talks with defense attorney David Roberson at the start of her sentencing hearing in the Snohomish County Courthouse in 2002. Opel was sentenced to 22 years for first-degree murder. (0392370994); Caption: Dean Rutz / The Seattle Times : Defense attorney David Roberson and his client, 14-year-old Heather Opel, talk during a recess in her Snohomish County murder trial in 2002. She was later found guilty of helping kill her mother's employer in their Everett home. Opel was 13 at the time of the killing. (0392313543)

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