



JUVENILE JUSTICE

Deinstitutionalizing Status Offenders: A Record of Progress

Also

- ◆ The JJDP Act: A Second Look
 - ◆ Birth of a Partnership
 - ◆ Beyond the Mandates

OJJDP

A Journal of the
Office of Juvenile Justice and Delinquency Prevention

This issue of *Juvenile Justice* looks back at one of America's most significant landmarks: the Juvenile Justice and Delinquency Prevention Act of 1974. Fortunately, our contributors are well qualified to review this historic legislation and its aftermath and to help us look toward the future.

"Over the past two decades," **Gwen Holden and Robert Kapler** remind us in *Deinstitutionalizing Status Offenders: A Record of Progress*, "the JJDP Act has fundamentally changed the way our Nation deals with troubled youth."

As noted, the JJDP Act is a touchstone in the development of our juvenile justice system. **Gordon Raley's** overview, *The JJDP Act: A Second Look*, details the changes in the Act approved by Congress over the past two decades. The author offers his thought-provoking recommendations as we approach the dawn of the 21st century.

Additional insights into the history of the JJDP Act and the ensuing *Birth of a Partnership* are provided by **Michael Saucier**, while **James Brown** describes some of the significant accomplishments attained under the aegis of the Act—accomplishments that go well *Beyond the Mandates* it established.

As with our predecessors who established the juvenile justice system at the turn of the century, we are striving to better serve the Nation's children. Much has been accomplished, yet much remains to be done. We can be encouraged by our past, and, with your participation, we can look forward to the future.

Shay Bilchik
Administrator
Office of Juvenile Justice
and Delinquency Prevention

JUVENILE JUSTICE

Volume II • Number 2

Fall/Winter 1995

OJJDP

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Juvenile Justice and
Delinquency Prevention

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Juvenile Justice is published by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to advance its mandate to disseminate information regarding juvenile delinquency and prevention programs (42 U.S.C. 5652).

Points of view or opinions expressed in this publication are those of the authors and do not necessarily represent the official positions or policies of OJJDP or of the U.S. Department of Justice.

The Office of Juvenile Justice and Delinquency Prevention is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime.

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Deinstitutionalizing Status Offenders: A Record of Progress

by Gwen A. Holden and Robert A. Kapler

Over the past two decades, the Juvenile Justice and Delinquency Prevention (JJDP) Act has fundamentally changed the way our Nation deals with troubled youth. State juvenile justice systems that were previously regarded as intransigent, bureaucratic, and punitive now emphasize treatment and rehabilitation through community-based programs and services.

The key to this transformation can be found in the JJDP Act's central mandate: the deinstitutionalization of status offenders (DSO), which requires States to remove all status offenders from juvenile detention and correctional facilities. Status offenders are youth, such as run-aways and truants, who have committed offenses that would not be crimes had they been committed by adults.

Today, a majority of States comply with the DSO mandate and are committed to its purposes. Yet DSO faces new challenges as public concern over increases in juvenile violence spurs elected officials to act to reduce juvenile crime.

In this highly charged atmosphere, the principles of rehabilitation established by the JJDP Act may be at risk. Citizens and lawmakers are calling for more punitive measures against juvenile offenders,

especially those who commit serious or violent felonies. Implementing such measures, however, will most likely lead to a significant influx of new offenders into the juvenile justice system, creating pressure to expand and build more youth correctional facilities. With increased competition for limited funds, DSO programs may become underfunded or lose funding altogether.

Origins of DSO

A local precedent for the DSO mandate was established in 1972, when the Commonwealth of Massachusetts closed the last of its juvenile institutions after years of failed reforms had proven inadequate to Jerome Miller, commissioner of Massachusetts' Department of Youth Services (DYS).¹

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Miller knew that the success of Massachusetts' experiment with DSO would depend on his ability to transform an institution-centered juvenile justice pro-

Gerald Ford signed the Act into law on September 7, 1974.

The JJDP Act emphasized prevention much more than earlier Federal juvenile justice grant-in-aid initiatives had. Its focus on keeping juveniles out of the juvenile justice system contrasted sharply with the law enforcement orientation of the Omnibus Crime Control and Safe Streets Act of 1968,³ which established the Law Enforcement Assistance Administration (LEAA) grant program to help States enhance their crime control capacities.

Unlike previous Federal juvenile justice legislative initiatives, the JJDP Act promoted a strategy that would divert most juveniles from the justice system and place those youths requiring intervention in intensive, community-based programs.

The DSO provision was one of the Act's original mandates. As enacted in 1974, it required States to "provide within two years . . . that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities."⁴ The JJDP Act also mandated that juveniles be separated by sight and sound from adult offenders in detention and correctional facilities.⁵

In 1976, the DSO mandate was clarified through the formulation of a "substantial compliance standard," which required States to reduce the number of status offenders and nonoffenders confined in their detention and correctional institutions by 75 percent over a 2-year period.⁶

Congress amended the JJDP Act in 1977 to bring "nonoffenders" such as dependent and neglected youths under the DSO provision and to provide States with broader alternative placement

The JJDP Act promoted a strategy that would divert juveniles from the justice system.

gram into a community-based network of programs and services for troubled youth. Before closing the institutions, Miller decentralized DYS by creating seven regional offices and a program through which it could purchase beds, equipment, and services from private companies.²

Miller had hoped that dismantling the department's institutional structure would prompt growth in the services sector. With few private programs and services for youth available in the community, many juveniles affected by the DSO initiative were released without services or supervision.

The closing of Massachusetts' juvenile institutions stunned public policymakers and juvenile justice professionals across the country. While many of these officials shared Miller's frustration with a juvenile justice system that was resistant to reform, they had serious reservations about making such a sudden and momentous shift in the system.

In the same year that the last training school was closed in Massachusetts, U.S. Senator Birch Bayh, chairman of the Senate Judiciary Committee's Subcommittee on Juvenile Delinquency, introduced a bill—the JJDP Act—calling for DSO nationwide. The 92nd Congress concluded the following year with no final action on the measure. Bayh reintroduced the bill in the first session of the 93rd Congress. It passed, and President

options for status offenders and non-offenders, including nonplacement. The amendment accomplished this goal by removing the requirement that deinstitutionalized youths be placed in shelter facilities. The 1977 amendments also gave States an additional 3 years—up to a total of 5 years—in which to comply with the DSO mandate.

In 1980, Congress specified that status offenders and nonoffenders must be removed from “secure” juvenile detention and correctional facilities and added a third mandate that prohibited States from detaining juveniles in jails and local lockups.⁷

Congress made another major substantive change to the DSO mandate that year by approving an exception to the mandate for status offenders and nonoffenders who are found to have violated a valid court order (VCO).⁸ The VCO exception was enacted at the urging of juvenile court judges who believed that the DSO mandate unduly hampered juvenile courts’ ability to deal with certain juveniles, particularly chronic run-aways. Under the exception, status offenders or nonoffenders can be institutionalized upon a finding that they violated a VCO. The VCO procedure provides juveniles with a number of procedural due process rights such as court hearings, confrontation rights, and the right to notification of the charges against them.

In 1992, Congress added a fourth mandate requiring that States receiving JJDP Act formula grants provide assurances that they will develop and implement plans to reduce overrepresentation of minorities in the juvenile justice system.⁹ A State is subject to the JJDP Act’s disproportionate minority confinement (DMC) mandate if the proportion of minority juveniles confined in that State’s detention and correctional facilities exceeds

the aggregate proportion of minority groups in the general population.

Financial Incentive

To receive JJDP Act formula grant funds, States are required to comply with the Act’s mandates. States are also required to monitor their progress toward achieving these mandates and to provide annual progress reports to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), which administers the JJDP Act.

Should a State fail to make sufficient progress toward achieving the Act’s goals, it could become ineligible for continued formula grant funding.¹⁰

The majority of States are in compliance with the DSO mandate.

In 1992, Congress acted to accelerate States’ progress toward full compliance with the mandates by requiring that 25 percent of a State’s formula grant allotment be withheld annually for each mandate the State is not complying with.¹¹ Congress further required that a noncomplying State direct the remainder of its formula grant funds to achieving full compliance.¹²

DSO's Impact

The majority of the States and territories participating under the JJDP Act are in compliance with the DSO mandate. OJJDP’s preliminary analysis of December 1992 monitoring reports indicated that 5 States and 3 territories had achieved full compliance and 29 States were in full compliance with de minimis, or minimal, exceptions.¹³

Of the remaining States, the monitoring reports of 10 were under review by OJJDP and another 10 had not submitted a 1992 monitoring report as of OJJDP's release of its preliminary report. One State, South Dakota, was not due to make a 1992 compliance report, having begun its participation in the JJDP Act that year.

While the DSO mandate has been regarded as an inappropriate infringement on State prerogatives in some States, in many others it has served as a catalyst for reform.

The DSO mandate has served as a catalyst for reform.

The Alabama Department of Economic and Community Affairs' Law Enforcement Planning Section reports that DSO requirements were met in that State by creating alternatives to institutionalization for status offenders and nonoffenders and by enacting legislation that gave the State's DYS exclusive authority to license juvenile detention and correctional facilities. DYS will withhold licensing from any facility that houses status offenders or nonoffenders.¹⁴

In some States, the DSO mandate enhanced ongoing reform initiatives. The New Mexico legislature's 1972 children's code revisions included a DSO requirement that prohibited placement of status offenders in State juvenile institutions. The code gave counties until July 1, 1976, to achieve compliance with the requirement and provided an exception to the DSO requirement for a 60-day diagnostic period. Juvenile justice officials in New Mexico welcomed the JJDP Act as a source of funding to implement the State's own DSO strategy.¹⁵

In New York, the DSO mandate advanced efforts already under way to reform the State's juvenile justice system. The State used the mandate to focus its reform efforts and marshal criminal justice officials' support, and participation in the Act provided critical seed money for developing innovative DSO programs.

In Delaware, legislative change and JJDP Act funding were key factors leading to DSO compliance. The result was a DSO policy that impacted not only status offenders and nonoffenders, but the State's entire juvenile justice system. In 1988, Delaware closed its correctional facility for female juveniles after steadily reducing its population over the previous decade. Moreover, from 1978 to 1979, the State's incarcerated male juvenile population declined from 240 to 160. An average of 90 juvenile males currently are confined in Delaware facilities each year.¹⁶

In Louisiana, the DSO mandate was the impetus to undertake a major juvenile code reform initiative. A prohibition on institutionalizing status offenders became the foundation for the State's DSO accomplishments, and a decade after the JJDP Act's enactment, Louisiana was in full compliance.¹⁷

DSO and the Courts

Before States adopted legislation or took executive action to comply with the JJDP Act, a number of State courts took the matter into their own hands.

In 1977, the West Virginia Supreme Court of Appeals ruled that the secure detention of status offenders violated the State constitution. In *Harris v. Caledine*,¹⁸ Gilbert Harris, a juvenile, was determined to be a truant and placed in secure detention. At the time, State statutes treated status offenders in the same manner as they treated delinquents. The

Court ruled that secure detention of status offenders violated the due process and equal protection clauses of the State constitution as well as its prohibition of cruel and unusual punishment.

In 1988, the Tennessee Supreme Court ruled in *Doe v. Norris*¹⁹ that secure detention of status offenders violated the due process and equal protection clauses of the State and U.S. Constitutions. As of 1988, Tennessee law allowed the commingling of status offenders (encompassed under the State's definition of "unruly child") and delinquents. Doe brought a class-action lawsuit on behalf of all unruly children in the State who had been placed in secure detention with delinquents, arguing that secure detention of status offenders was unconstitutional.

The Tennessee Supreme Court ruled that the due process clauses of the State and U.S. Constitutions were violated because secure detention amounts to punishment of the plaintiffs without an adjudication of guilt. The court relied on the U.S. Supreme Court's 1984 decision in *Schall v. Martin*²⁰ that held that punishment imposed without a prior adjudication of guilt is *per se* illegitimate. Because status offenders are not found "guilty" of any crime, secure detention is an illegitimate punishment.

The Tennessee Supreme Court also ruled that State practice violated the State and Federal equal protection clauses. Secure detention of status offenders infringed upon the fundamental right to personal liberty. While the court ruled that the State had compelling interests in commingling delinquents with status offenders, it ruled that there were other ways to achieve those interests short of commingling.

Subsequently, both West Virginia and Tennessee adopted legislation requiring the deinstitutionalization of status offenders.

The Valid Court Order Exception

In its 1980 amendments to the JJDP Act, Congress enacted a provision intended to address concerns that the DSO mandate deprived juvenile court judges of a significant option in handling certain status offenders. The provision permits judges to confine status offenders in secure detention facilities for limited periods of time if they are found to have violated a VCO.

The provision allowed a State to authorize secure confinement for a status offender who violated a VCO, to adjudicate a status offender as a delinquent if the status offender acted in violation of a VCO, or to use the court's contempt power.

While the majority of States do not use the VCO exception in any form, some States' common laws or statutes allow the courts to use traditional contempt power to "bootstrap" or upgrade a status offender to a delinquent.

OJJDP has indicated that bootstrapping is not consistent with its policies.²¹ Although an adult can commit a criminal contempt of court, OJJDP considers the

The majority of States do not use the valid court order exception.

juvenile a status offender under the JJDP Act and, therefore, the procedural safeguards for a VCO violator continue to apply.²²

This position appears to follow the intent of Congress. In 1977, LEAA's Office of General Counsel issued Legal Opinion 77-25, which stated that a status offender who violates a court order remains a status offender unless the violation would itself

be criminal if committed by an adult and until the juvenile was charged with (or adjudicated for) committing the particular offense. This is the case even when a State code classifies the violation as a delinquent act.

When OJJDP published proposed guidelines regulating the new VCO amendment in 1982, it stated “[o]ne rationale for the amendment was to obviate the need for courts to use their criminal contempt power as a means of obtaining compliance with court orders. Further, OJJDP’s legal counsel has ruled that a violation of a court order by a status offender is an insufficient legal basis to categorize the juvenile as a criminal-type or delinquent offender, thus removing the juvenile from the deinstitutionalization requirement.”²³

The chronic status offender is one of the most difficult juvenile offenders to place.

This guideline indicates OJJDP’s intent that courts follow VCO procedures even when using their traditional contempt powers or a State’s delinquency classification as the authority to employ the VCO exception.

Many appellate courts have used a rationale similar to OJJDP’s in addressing the bootstrapping of status offenders by lower courts.

Chronic Status Offenders

One of the principal issues affecting States’ compliance with the DSO mandate concerns the handling of youth, such as runaways or juveniles with emotional and behavioral problems, on the periphery of the status offender classification.

The chronic status offender is one of the most difficult juvenile offenders to place and the least amenable to community-based intervention strategies. A 1992 report by the National Coalition for the Mentally Ill in the Criminal Justice System asserts that “status offenders and delinquents with emotional and behavior problems place great stress on the juvenile justice system” and that their needs have been largely ignored.

In 1980, the Illinois Law Enforcement Commission’s (ILEC’s) Juvenile Justice Division reviewed the State’s DSO statute. ILEC found that the chronic status offender’s environment is characterized by failure and rejection beginning with a total breakdown in the child’s relationship with his family and carrying forward into out-of-home placements and school. The ILEC report concluded that “without altering the history of rejection and stabilizing the lives of these youth, the outcome will be a return home followed by subsequent runaway episodes or a return to the streets.”²⁴

The ILEC report suggested that chronic runaways, more than any other status offenders, require “a continuum of services if their needs are to be adequately addressed.”²⁵

For some judges and juvenile justice officials, losing the option to hold these youth means losing an opportunity to help them. Placing them in inappropriate treatment settings or releasing them with the possibility that they will cause serious harm to themselves or others creates the risk that another major DSO exception will be created that may be unnecessarily applied to large numbers of status offenders.

As it stands, the problem of the chronic status offender, like issues concerning the VCO provision, raises the possibility that

these youth may be handled in ways that effectively undermine State DSO efforts.

Future Prospects

The JJDP Act has survived major changes in the structure and focus of Federal crime control grant-in-aid programs; the war on drugs of the 1980's, which featured Congress' creation of a Federal Office of National Drug Control Policy and enactment of two major anti-drug measures; dramatic increases in corrections spending in the States and by the Federal Government; and a host of changes in Federal and State laws to punish perpetrators of serious and violent crimes, including serious and violent juvenile offenders.

While the majority of States have achieved compliance with the DSO mandate and remain committed to its purposes, they face future challenges. Juvenile crime is a high priority. Virtually every Governor in the Nation has made reducing juvenile crime and improving the quality of preventive and correctional services for juveniles a top priority. The challenge to States will be to retain their focus on prevention despite the escalating pressures for more punitive approaches to resolving the violence problem.

The survival of a State's DSO policy likely will depend in large part on how firmly installed it has become in laws, policies, and practices. Practical and economic considerations associated with the Nation's correctional crowding problem,

however, will likely reinforce the development of noninstitutional approaches to dealing with the least violent and serious offenders.

Deinstitutionalization of status offenders remains a central theme in juvenile justice.

Moreover, DSO remains a central theme in the juvenile justice and related social services fields. For example, an \$800,000 grant from the Robert Wood Johnson Foundation has established a DSO project at the Robert F. Kennedy Memorial in Massachusetts.²⁶ This National Juvenile Justice Reform Project was created to help States reduce the use of juvenile detention and correctional facilities in handling juvenile offenders.²⁷ The project's goal is to provide incentives to States and local jurisdictions to expand community-based programs and services for juveniles as alternatives to institutional placements.²⁸

The JJDP Act has had a tremendous impact on this country's juvenile justice practices. Its mandates have spurred public policymakers and juvenile justice officials to reform for over two decades, weathering extraordinary shifts in the demographics of juvenile crime, public expectations, and social policy. Without this legislative bedrock, the Nation risks a wholesale return to policies that place youth who are not criminal offenders in jeopardy.

Notes

1. From 1970 to 1972, Miller closed the Institute for Juvenile Guidance in Bridgewater, Massachusetts, and then the Commonwealth's remaining training schools in Lyman, Shirely, Oakdale, and Lancaster. *Background DYS*, Massachusetts Department of Youth Services, October 15, 1993.
2. *Ibid.*
3. Pub. L. 90–351, codified as amended at 42 U.S.C. §§3711 et. seq. (1977 and Supp. 1994).
4. Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93–415, §223(a) (12).
5. The sight and sound separation mandate is codified at 42 U.S.C. §5633(a) (13) (Supp. 1994).
6. *Report to the National SPA Conference on the Status of the Juvenile Justice and Delinquency Prevention Act of 1974*, National Conference of State Criminal Justice Planning Administrators, July 31, 1976.
7. The jail removal mandate is codified at 42 U.S.C. §5633(a) (14) (Supp. 1994).
8. Pub. L. 96–509, codified as amended at 46 U.S.C. §5603(16) (Supp. 1994).
9. The overrepresentation of minorities mandate is codified at 42 U.S.C. §5633(a) (23) (Supp. 1994).
10. 42 U.S.C. §5633(c) (Supp. 1994).
11. 42 U.S.C. §5633(c) (3) (A) (Supp. 1994).
12. 42 U.S.C. §5633(c) (3) (B) (Supp. 1994).
13. The eight jurisdictions that have achieved full compliance are American Samoa, Minnesota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, the Virgin Islands, and West Virginia. Kentucky and Wyoming currently are not participating in the JJDP Act. *1992 Compliance Monitoring Data, Summary of State Compliance with the Juvenile Justice and Delinquency Prevention Act of 1974*, as amended (Preliminary Report). Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1994.
14. *Deinstitutionalization of Status Offenders in Alabama*, Alabama Department of Economic and Community Affairs, Law Enforcement Planning Section, 1994.
15. Response of John C. Patterson, former juvenile justice specialist for the State of New Mexico, to the NCJA DSO Implementation Survey, May 12, 1994.
16. Telephone conversation with James Kane, deputy director, Delaware Criminal Justice Council.
17. Response of Dolores Kozloski, former juvenile justice specialist for the State of Louisiana, to the NCJA DSO Implementation Survey, June 28, 1994.
18. 160 W. Va. 172 (1977).
19. 751 S.W.2d 834 (1988).
20. 467 U.S. 253 (1984).
21. 47 *Federal Register* 21226 (1982).
22. John J. Wilson, "The Valid Court Order Exception—Meeting the Need for the Enforcement of Court Orders," *Children's Legal Rights Journal* 10, 1982.
23. 47 *Federal Register* 21226 (1982).
24. *Criminal Justice Newsletter*, "Project Aims to Replicate Massachusetts Experiment," June 15, 1994.
25. *Ibid.*
26. *Ibid.*
27. *Ibid.*
28. *Ibid.*

The JJDP Act: A Second Look

by Gordon A. Raley

In 1985, I collaborated with John Dean, Republican counsel and my staff counterpart on the U.S. House Education and Labor Committee, on an article reviewing the progress of the Juvenile Justice and Delinquency Prevention (JJDP) Act. At the time, there was opposition that challenged the Act's relevance. While John and I attempted to refute the critics,¹ observing the Act's 20th anniversary is the best rebuttal. It is also a good time to take stock of the progress that has occurred as a result of the JJDP Act and the challenges still ahead for the juvenile justice system.

Background

The JJDP Act was the first Federal law to address juvenile delinquency in a comprehensive manner, combining Federal leadership, State planning, and community-based services to promote systemic improvement. The Act has enjoyed two decades of bipartisan support. Democratic Senator Birch Bayh of Indiana and Republican Senator Roman Hruska of Nebraska were the primary sponsors of the law in the Senate. In the House of Representatives, bipartisan support came from Representatives Augustus Hawkins, a California Democrat, and Tom Railsback, a Republican from Illinois. They relied, in part, upon the findings and recommendations of the Presidential Commission on Law Enforcement and the Administration of Justice, which pro-

duced its report *The Challenge of Crime in a Free Society* in 1967. In so doing, they successfully merged three Federal strategies into one comprehensive approach: formula funds to States to promote national objectives; categorical funds to sponsor innovation; and research funds to provide evaluation and accountability and to fuel further innovation.

Retrospect (1912–1974)

The JJDP Act was not the first Federal juvenile delinquency law. In 1912, Congress charged the Children's Bureau with investigating the operations and practices of juvenile courts. However, between 1912 and the end of World War II, little happened at the Federal level.

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In 1948, President Truman convened the Mid-Century Conference on Children and Youth to determine methods for strengthening juvenile courts, improving police services affecting juveniles, and examining the prevention and treatment capabilities of social service providers. Although the Conference recommended an increased Federal role in juvenile justice matters, Congress enacted no new legislation. Voters viewed juvenile delinquency as a State and local problem.

By 1960, however, the “Sharks” and the “Jets” of the play *West Side Story* hit the streets of Broadway, while real gangs hit the streets of our large cities. Public perceptions began to change, and juvenile delinquency became a national issue. In 1961, at President John F. Kennedy’s urging, Congress enacted the Juvenile Delinquency and Youth Offenses Control Act. Under this Act, the Department of Health, Education and Welfare (HEW) provided funds to State, local, and private nonprofit agencies to conduct demonstration projects on improved methods of preventing and controlling juvenile crime. This marked the first time that the Federal Government encouraged State and local innovation with targeted financial assistance.

The JJDP Act was not the first juvenile delinquency law.

These projects were concentrated in the Nation’s inner cities, which had the highest juvenile delinquency rates. They mobilized community resources to attack conditions thought to cause delinquency. Many of the projects served as models for later programs under President Lyndon B. Johnson’s War on Poverty. The Neighborhood Youth Corps, the Legal Services Corporation, and even Head

Start evolved from early projects supported by Federal delinquency funding.

In 1966, public concern about crime escalated. President Johnson established the Commission on Law Enforcement and the Administration of Justice. The Commission’s Task Force on Juvenile Delinquency proposed six major strategies to reduce juvenile crime:²

- ◆ Decriminalization of status offenses (acts that would not be offenses if committed by an adult, such as running away from home, truancy, or being in need of supervision).
- ◆ Diversion of youth from the court system into alternate public and private treatment programs.
- ◆ Extension of due-process rights to juveniles.
- ◆ Deinstitutionalization (the use of community group homes or nonresidential treatment facilities rather than large, secure training schools).
- ◆ Diversification of services.
- ◆ Decentralization of control.

The Juvenile Delinquency Prevention and Control Act of 1968 provided assistance to State and local governments and provided training to juvenile justice personnel. HEW Secretary John Gardner testified before Congress that youth “teetering on the brink of delinquency” were too often placed in the correctional system, and he contended that youth, once exposed to the juvenile justice system, were likely to return.³ In 1968, Congress passed the Omnibus Crime Control and Safe Streets Act, which involved the U.S. Department of Justice in juvenile justice for the first time through its Law Enforcement Assistance Administration (LEAA).

Besides Justice and HEW, the U.S. Departments of Labor and Housing and Urban Development became involved in matters concerning juvenile delinquency. By 1971, a consensus had emerged that Federal juvenile justice programs were unfocused, underfunded, and, as a result, ineffective. Senator Bayh began work almost immediately on new legislation to coordinate Federal programs.⁴

There were two main themes in the 1972 amendments that set the stage for the JJDP Act in 1974. First, financial aid and technical assistance alone were inadequate to combat delinquency effectively—comprehensive planning and coordination were needed. Second, some practices such as incarcerating status offenders and confining delinquents with convicted adults were counterproductive—thus, systemic reform was required.

Reform (1974)

By 1974, juvenile crime was widely viewed as a national problem. A presidential commission had suggested strategies to improve the juvenile justice system, and Congress was dissatisfied with Federal laws designed to facilitate State and local action on juvenile justice. As a result of such considerations, the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 was conceived.

In 1974, the seriousness of juvenile crime was reflected in the ominous statistics. The arrests of juveniles under the age of 18 for violent crimes such as murder, rape, and robbery increased 216 percent from 1960 to 1974. During this same period, juvenile arrests for property crime, such as burglary and auto theft, increased 91 percent. Juveniles under age 18 were responsible for 51 percent of the total arrests for property crimes, 23 percent of violent crimes, and 45 percent of all seri-

ous crimes. Nearly 40 percent of juveniles incarcerated committed no criminal act. According to Senator Hruska “The figure is staggering in recognition of the detrimental effects that incarceration has been shown to produce with first offenders and juveniles.”⁵

Financial support alone was inadequate. Systemic reform was required.

From such reflections, three goals for Federal involvement emerged:

- ◆ Reducing juvenile crime.
- ◆ Decreasing the proportion of crime committed by juveniles.
- ◆ Improving methods for handling juveniles.

Senator Bayh forged a partnership with Senator Hruska, the father of LEAA, agreeing to assign responsibility for the Act to LEAA. The Senate and House approved the bill by overwhelming majorities. President Gerald A. Ford signed it into law on September 7, 1974.

The goals of the new legislation were even more moderate than the strategies recommended by the Commission on Law Enforcement 7 years earlier. The new law did not decriminalize status offenses, as the Commission had recommended, but encouraged the use of nonsecure treatment alternatives for status offenders.

The Act provided Federal funds to divert juveniles from correctional settings into restitution projects, neighborhood courts, and other community programs. It authorized spending to encourage the juvenile justice system “to conform to standards of due process.”

The JJDP Act was most innovative requiring the removal of status offenders

from secure incarceration. While many other Federal programs provided formula or discretionary funds to support projects, the JJDP Act required that States change specific practices to meet national norms as a condition for participation. In particular, Section 223(a)(12) and (13) of the Act required States to remove status offenders from secure confinement and to separate adult and juvenile offenders as a condition of receiving Federal juvenile justice funds.

To encourage diversification of services, the Act required that States dedicate 75 percent of the Federal funds they received to community-based programs, including nonprofit programs. To decentralize services the Act suggested that when juveniles had to be placed in residential facilities, they be the “least restrictive alternative” appropriate to the needs of the child and that they be in “reasonable proximity” to families and home communities. The Act promoted small, community-based facilities instead of large, warehouse institutions.

The legislation reaffirmed congressional support for removing status offenders from institutions.

Reauthorization (1977)

With strong bipartisan support, appropriations rose from \$25 million in 1975 to \$75 million in 1977, when the Act was reauthorized. President Jimmy Carter requested additional funding, named a new OJJDP administrator, and proposed legislation to extend the program for an additional 3 years.

The 1977 reauthorization reaffirmed congressional support for removing status offenders from secure settings and separating juveniles from convicted adults in

confinement but, noting difficulties reported by some States, extended compliance dates by a year. By 1978, the OJJDP budget had increased to more than \$100 million.

Revision (1980)

The 1980 amendments to the JJDP Act involved modest fine-tuning, reflecting overall congressional satisfaction with the legislation and its implementation. Testifying before the House Education and Labor Committee, OJJDP Administrator, Ira M. Schwartz, cited the Act’s accomplishments:⁶

- ◆ In the first 3 years following passage of the JJDP Act (1975–1977), the total number of cases referred to juvenile courts decreased by 3.6 percent.
- ◆ The number of status offenders referred to juvenile courts decreased by 21.3 percent during the same period.
- ◆ The rate of detention of status offenders decreased by nearly 50 percent.

However, the National Council of Juvenile and Family Court Judges, while supporting continuation of the Act, asked Congress to repeal the provision requiring the removal of status offenders from secure incarceration. Congress approved a compromise that allowed incarceration of juveniles who violated valid court orders. Many national organizations viewed adoption of the valid court order amendment as a retreat from the goals of the Act.

The 1980 amendments included a major initiative that required the removal of all juveniles from adult jails and lockups within 5 years. The Carter Administration supported the initiative, noting that the most recent census of jails found that more than 12,000 juveniles were in jails on any given day. Representative Railsback noted that the suicide rate of

juveniles held in adult jails was approximately seven times that of juveniles held in juvenile detention facilities.⁷

Reductions (1981)

Each year from 1981 to 1989, the total allocation to OJJDP decreased. By 1989, the OJJDP budget was approximately \$66 million.

Reaffirmation (1984)

During the 1980's, the Federal focus shifted from delinquency prevention to criminal justice, emphasizing:

- ◆ Prosecution of serious juvenile offenders.
- ◆ The plight of missing children.
- ◆ Mandatory and tougher sentencing laws.
- ◆ Programs to prevent school violence.
- ◆ National efforts against drugs and pornography.

A number of criminologists questioned this approach.⁸

The 1984 amendments to the JJDP Act created Title IV, the Missing Children's Assistance Act, intended to locate and treat abducted youngsters. The initiative had considerable support and was heavily promoted by the media.

The 1984 amendments were significant for many reasons. By rejecting requests to abolish the State Formula Grant Program and to repeal the status offender mandates, Congress enacted several amendments designed to prevent potential abuses of grant-making authority by requiring a competitive grant process.

Review (1988)

In 1988, the JJDP Act was extended as part of the Omnibus Crime Control Act. All titles were reauthorized for an additional 4 years with renewed focus on improving State practices and secure facilities. The overrepresentation of minorities in secure correctional settings was a particular concern. The new amendments required the OJJDP Administrator to submit to Congress an annual report detailing the number of juveniles in custody, the types of offenses for which they were charged, their race and gender, and the number who died while in custody and their cause of death.

Congress reestablished the importance of prevention.

Renovation (1992)

The 1992 amendments to the JJDP Act were more extensive because Congress added constructive initiatives addressing juvenile gangs, youth development, mentoring, and prevention.

The definition of valid court order was revised to ensure due process and to prevent possible abuses by those seeking to skirt the congressional mandate to remove status offenders from secure incarceration.

Following the completion of reports required by the 1988 amendments, a new mandate required State assurance that youth in their juvenile justice systems would be treated equitably on the basis of gender, race, family income, and mental, emotional, or physical disabilities.

Congress reestablished the importance of prevention. It added positive youth development activities as a purpose of the

Act and made them eligible for State formula grants. It created national initiatives as well: Part D—Gang-free Schools and Communities and Part E—State Challenge Activities. Part E provided funding opportunities for States willing to embark on innovative activities such as improving health services in correctional settings; improving secure, community-based correctional alternatives for violent juveniles; removing gender bias from system services; creating State ombudsman offices; and developing alternatives to suspensions and expulsions to keep more youth in school. Congress authorized new spending for mentoring and the treatment of offenders victimized by child abuse or neglect.

Title V established incentive grants for local delinquency prevention programs. These grants covered a broad range of activities, including recreation, tutoring, remedial education, work skills enhancement, substance abuse prevention, and leadership development. The 1992 amendments authorized the President to convene a White House Conference on Juvenile Justice.

After 20 years of amendments, the JJDP Act endures.

Recommitment (1995)

The Administration has made crime one of its national priorities, and OJJDP has seen its appropriation nearly doubled to \$144 million for 1995. However, this increase has been dwarfed by the \$5 billion appropriated for crime prevention over the next 5 years under the Violent Crime Control and Law Enforcement Act of 1994. For prevention professionals, starved for resources to serve more youth with dwindling State, local, and private dollars, the prospect of such Federal

money could easily obscure the significance of the JJDP Act and its mandates for juvenile justice reform.

Yet the JJDP Act still endures. After 20 years of legislation and amendments, through changing political climates and leadership, it has continued to balance efforts between justice system reform and prevention.

Record

Currently, 49 States are in full compliance with requirements for removing status offenders and nonoffenders from secure incarceration, while 40 States are in full compliance with the mandates to separate juveniles from convicted adults and to remove youth from adult jails. From 1980 to 1992, the average daily population of youth in adult jails fell from 12,000 to slightly more than 2,000.⁹

While juveniles are responsible for one in three arrests for property crime, 17 percent of violent crime, and 29 percent of serious crime, the situation is better than before the enactment of the JJDP Act.¹⁰

Recommendations

The question that remains to be answered is what should happen to the JJDP Act in the future. First, the U.S. Department of Justice should extend the mandates to cover appropriate funding under the Violent Crime Control and Law Enforcement Act. In its conference report, Congress provided the following guidance:

It is the intent of the Conferees that, with the exception of Subtitle B of Title II (which provides for correctional programming for offenders up to the age of 22), all programs and activities for juvenile offenders funded under this legisla-

tion shall be carried out in a manner consistent with the mandates of the Juvenile Justice and Delinquency Prevention Act (42 U.S.C. 5600 *et seq.*).¹¹

Thus, States receiving assistance under any section of the Violent Crime Control and Law Enforcement Act of 1994 (except subtitle B of Title II) should, before receiving that assistance, agree to the following:

- ◆ Remove status offenders and nonoffenders from secure incarceration.
- ◆ Separate juveniles from convicted adults in correctional settings.
- ◆ Remove juveniles from adult jails.
- ◆ Carefully examine biases in correctional placement based on race and income.

This will encourage State reform and should pay real dividends in juvenile crime reduction.

Second, President Bill Clinton should convene a White House Conference on Juvenile Justice. It has been nearly a quarter century since professionals and experts have been called together to review the Nation's juvenile justice system. A White House Conference is needed to examine which programs sponsored by the JJDP Act have worked and which have not.

The conference should examine recent trends of binding juveniles over to adult court at younger and younger ages. Should such trends continue, maybe it is time to reexamine decriminalization of status offenses. If we bind youngsters as young as age 12 to adult courts (some States are considering bind-over provisions for youth age 7), perhaps the need for a separate juvenile court is past. Per-

haps it is time to give all youth who commit criminal offenses the full due-process protections of adult court, with age appropriate treatment and correctional alternatives, and place those who have not committed criminal offenses under the jurisdiction of social service agencies,

The President should convene a White House Conference on Juvenile Justice.

where their needs will be more reliably met.

The Act should continue its strong emphasis on prevention. It remains the most cost-effective way to control crime. Among preventive approaches, it should stress those with a specific focus on positive youth development, which seeks to produce positive outcomes for young people, beyond the simple cessation of "bad" behaviors.

Lastly, the JJDP Act should be reauthorized in 1996. It has proven itself and has more to offer in encouraging State and local innovations. New reforms should focus on secure juvenile correctional facilities. We need to find alternative treatments for young people who do not belong in secure settings, but after doing so, we need to invest heavily to make correctional settings places where correction can truly occur. If we do not invest in serious delinquents before the age of adulthood, we will surely invest in our own victimization and their long-term incarceration afterwards. Juvenile correctional facilities are not their last chance but ours, as a Nation.

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Birth of a Partnership

by Michael E. Saucier

James Reston called 1974 “a time of testing for the American system of constitutional government.” During that year of testing, Congress created a unique and effective partnership among Federal, State, and local governments. Yet, the birth of this partnership went virtually unnoticed in the shadow of Watergate and ensuing events. Even *The New York Times* failed to mention the proposed law—the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974—during congressional debate and voting or when it was signed by President Ford on September 7, 1974.

Two decades later, in September 1994, the Coalition for Juvenile Justice celebrated the 20th anniversary of the JJDP Act and reflected on the circumstances surrounding its entry into the Nation’s legal heritage. The legislative history of what was to become the JJDP Act of 1974 actually began 2 years earlier on February 8, 1972, when Democratic Senator Birch Bayh of Indiana introduced the Juvenile Justice and Delinquency Prevention Act of 1972 (S. 3148). During 4 days of hearings, 43 witnesses testified; however, the 92d Congress adjourned without taking final action.

Senator Bayh and Republican Senator Marlow W. Cook of Kentucky jointly reintroduced the legislation with modifications (S. 821) on February 8, 1973. Five days of congressional hearings followed, during which 36 witnesses presented testimony on the bill and the adequacy of Federal response in the pre-

vention and control of juvenile delinquency.

Establishment of a fully coordinated Federal effort was a critical component of the JJDP Act. The lack of coordination had been a key point raised during the hearings. Milton Rector, president of the National Council on Crime and Delinquency, advised the Senate Subcommittee to Investigate Juvenile Delinquency that:

A major weakness [in the Federal effort] is the lack of a structure present where Federal juvenile and criminal justice planning can be coordinated with other human resource agencies. Such a structural linkage is recommended as essential if the Federal Government is to help prevent as well as to help control crime and delinquency.

When Rector testified, there were 116 separate Federal juvenile justice and de-

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linquency prevention programs conducted by six Cabinet-level departments responsible for administering some 120,000 different grants. The JJDP Act was a badly needed effort to develop a coherent national planning process, establish priorities, and focus Federal leadership efforts.

The JJDP Act was a badly needed effort to develop a national planning process.

The debate over which Federal agency would lead the “concerted, effective, national attack on the prevention and treatment of juvenile delinquency” was significant. Although Senator Bayh had proposed the creation of an Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the executive branch, the subcommittee placed the new agency in the Department of Health, Education and Welfare (HEW).

On May 8, 1974, the Senate Committee on the Judiciary amended the subcommittee bill to locate the new program in the Justice Department’s Law Enforcement Assistance Administration (LEAA). Committee members concluded that HEW had not fulfilled expectations in its national leadership role in developing new approaches to address juvenile delinquency through the Juvenile Delinquency Prevention and Control Act of 1968. A number of reasons were cited for this failure, including the LEAA’s dominance in criminal justice planning, weak administration, and inadequate funding.

LEAA had already established a network of 50 State planning agencies, and the committee believed that the LEAA

could avoid duplication of Federal and State efforts without delaying development of needed programs. The committee noted LEAA’s exemplary efforts in prevention and diversion through financial support of the Youth Service Bureaus in local law enforcement agencies. LEAA Associate Administrator Richard W. Velde reported to the Senate Committee on the Judiciary that in FY 1972 the agency awarded nearly \$140 million for a wide range of juvenile services, including prevention (\$21 million), diversion (\$16 million), and rehabilitation (\$41 million). Citing comments by Dr. Jerome Miller, then Commissioner of Youth Services for Massachusetts, the committee concluded that LEAA would be highly effective in dealing with serious offenders through its efforts with police, courts, and corrections agencies.

In separate remarks accompanying the bill, Senator Bayh expressed “mixed feelings” about giving LEAA primary responsibility for Federal leadership in juvenile justice and delinquency prevention. He said that one of the major inadequacies of the juvenile justice system was that it was “geared primarily to react to youthful offenders rather than prevent the youthful offense.” He worried about the consequences “to the youth of this country who may have to be identified in a law enforcement context in order to receive services.” Over the years, youth workers and police officers have echoed Senator Bayh’s concern about youth having to commit crimes before they can get help. Senator Bayh urged his colleagues to provide a one-word description of the JJDP Act—“prevention.” The need, Senator Bayh wrote, “is to prevent young people from coming into contact with the juvenile justice system.”

Unquestionably, the political events of Watergate overshadowed the remainder of congressional activity on the JJDP Act. The overwhelming, bipartisan vote for the bill in the Senate (88 to 1) can be credited to the efforts of Senator Bayh and his Republican colleague on the Judiciary Committee, Senator Roman Hruska of Nebraska, who received little public acknowledgment at the time. The bill also received strong bipartisan support in the House of Representatives, where it was approved 329 to 20 on July 31. Final approval of the JJDP Act occurred on August 19 in the Senate and on August 21 in the House following

President Nixon's resignation in the wake of the Watergate affair. In signing the bill, President Ford called the Act "a

Senator Bayh urged a one-word description of the Act: "prevention."

national commitment of partnership with State and local governments" that represented a consolidation of policy and a restructuring and coordination of Federal programs to better assist "State and local governments to carry out the responsibilities [in juvenile justice] which should remain with them."

Beyond the Mandates

by James W. Brown

The effects of the Juvenile Justice and Delinquency Prevention (JJDP) Act have been enormous and far-reaching. Today, 55 States and territories, hundreds of juvenile justice planners and practitioners, and more than 1,000 State Advisory Group members pursue the Act's goals and objectives.

The impact of the JJDP Act goes far beyond its primary mandates: deinstitutionalization of juvenile status offenders, separation of juveniles and adults in confinement, removal of juveniles from jails and lockups, and addressing the problems of disproportionate minority confinement. Indeed the Act's greatest contribution has been to establish the foundation for a wide array of improvements in the juvenile justice system that have come about during the 1980's and 1990's. Among its accomplishments, the JJDP Act has led to:

- ◆ Increased public awareness of juvenile justice and delinquency prevention issues.
- ◆ Creation of forums for discussing juvenile justice issues.
- ◆ Establishment of a clear, accurate data base on which to base policy decisions.
- ◆ Initiation of a cooperative planning process.
- ◆ Adoption of legislation and policies enhancing the quality of juvenile justice.

- ◆ Development of flexible networks of community services to address the changing needs of youth.

Public Awareness

Opinion surveys demonstrate public support for delinquency prevention and rehabilitation. Increased public awareness of juvenile justice and delinquency prevention issues have moved concerns higher on State and local agendas. Not long ago, the only way to assure the enactment of juvenile justice legislation was to include its provisions as a rider on a "must pass" bill. Today, State legislatures regularly pass such bills on their own merits.

States are willing to review and reassess program goals and objectives and to consider new ways of doing things. After a 1-day judicial training program, the number of juveniles placed in adult jails decreased by 40 percent in one State. Incarceration of juveniles was virtually eliminated in another State after public officials became aware of the State's potential legal liability for youth in custody.

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New Forums

During the past two decades, forums have been created for discussing juvenile justice issues that were unavailable prior to enactment of the JJDP Act. State Advisory Groups address such issues as disproportionate minority confinement. Regional youth councils hold public hearings, help establish local priorities, and seek long-term commitments from public officials to pursue specific improvements in juvenile justice and delinquency prevention. A number of States hold annual youth conferences to allow for exchange of ideas among practitioners and interested individuals. Several States have replicated the State Advisory Group model at the local level.

Accurate Data

Today's policymakers have access to clear, accurate data regarding youth in the justice system; effective programs, practices, and policies; and resources. The availability of sound data has led to sound solutions for such difficult and complex issues as disproportionate minority confinement, removal of juveniles from adult facilities, and waiver of juvenile cases to adult criminal court.

States use community and statewide needs assessments and other measurement tools to amass vital information on juvenile justice issues. Many States have established commissions to obtain and provide this information and to conduct regular and unannounced inspections of youth facilities. The commissions examine records and budgets, subpoena witnesses, hold public hearings, and issue reports on their findings. Many States have gone beyond initial Federal or State monitoring requirements to develop comprehensive, ongoing data collection programs to provide information for

policymakers in determining program effectiveness and cost-benefit analysis.

Cooperative Planning

Effective juvenile justice and delinquency prevention programs are developed through a statewide planning process that promotes cooperation and collaboration between State and local governments and among different agencies and organizations. State and local officials work with public and private agencies, including the police, courts, and corrections, to prevent and combat juvenile crime and to improve the juvenile justice system.

Cooperative planning helps to focus State and Federal funds at the community level, where juvenile justice programs have the greatest chance of success. Such planning facilitates efficient statewide training and promotes development of consistent standards. The Juvenile Services Commissions in Oregon, the Local Crisis Units in Illinois, and the Community and Family Crisis Programs in New Jersey are examples of successful State-local efforts derived from implementation of the JJDP Act.

The availability of sound data has led to sound solutions.

Juvenile Justice Legislation

Virtually every State has enacted laws implementing such JJDP Act mandates as deinstitutionalization of status offenders and removal of juveniles from adult facilities. State juvenile justice legislation and policies, however, have gone well beyond the mandates in many States to

address such important issues as conditions of confinement, quality of care, and program effectiveness. Today, States look not only at programming, but at classification, health, access, and staff training, and the myriad issues involved in the development of an effective juvenile justice system. While there has been occasional backsliding, States have made considerable progress in meeting and transcending beyond the JJDP Act mandates.

The steps taken since enactment of the JJDP Act are a good beginning.

A review of State plans for the Formula Grants Programs in 1991 found that 51 percent of these funds were used to gain compliance with the JJDP Act mandates. However, funds were also earmarked for a variety of other programs and services, including prevention (16 percent), addressing the problem of serious and violent youth crime (7 percent), combating the use and sale of illegal drugs (4 percent), and a range of other programs (22 percent).

Service Networks

The past two decades have seen great advances in the development of networks of effective community services. In 1974 the juvenile courts were virtually the only agencies that delivered effective services to youth in trouble. While juvenile courts continue to play an important

role, other youth services agencies provide a wide array of effective services. For example, service networks now provide immediate, round-the-clock screening, referral, and crisis intervention for youth taken into custody by police.

The expanding range of residential and nonresidential services addresses the problems of youth in rural communities as well as those in urban neighborhoods.

Successful Programs

A number of key characteristics are found in practically all successful juvenile justice programs. Effective programs:

- ◆ Facilitate mutual respect and affection between youth and their parents.
- ◆ Provide frequent and accurate feedback to positive and negative behavior.
- ◆ Require youth to recognize when they are making excuses for negative behavior.
- ◆ Create opportunities for juveniles to discuss important issues in an open atmosphere.
- ◆ Offer a wide range of effective after-care programs.

Many miles remain to be traveled to reduce youth crime and improve the juvenile justice system. But if a journey of a thousand miles begins with a single step, the thousands of steps taken since enactment of the JJDP Act 20 years ago are a good beginning to our journey beyond the mandates.

JUSTICE MATTERS

Meeting the Mandates

Need for the Mandates

Bobby Nestor was sent to Camp Hill correctional facility, an adult prison, to “learn a lesson.” After more than 4 months of incarceration, he hung himself after being sexually assaulted by adult inmates.

Bobby Nestor was sent to Camp Hill for incorrigibility. He was not unlike most juveniles confined with adults at the time. In 1980, only 12 percent of juveniles in confinement with adults were charged with serious offenses against persons. A review of family and social backgrounds of confined juveniles revealed that most had experienced extensive family problems. The most likely candidate for confinement was a juvenile like Bobby, who had been in trouble at school, with parents, or with police for minor delinquent or status offenses, acts that would not be a crime if committed by an adult.

Tragic stories, such as that of Bobby Nestor, combined with compelling statistics on confinement of status offenders, provided the impetus for Congress to enact the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, Public Law 93-415, 42 U.S.C. 5601 et seq., requiring the deinstitutionalization of status offenders and separation of juvenile and adult offenders in institutional settings.

Passage of the JJDP Act was aided by the strong consensus of three groups assembled, in part, to examine the juvenile justice system—the

President’s Commission on Law Enforcement and the Administration of Justice, the National Council on Crime and Delinquency (NCCD), and the National Advisory Commission on Criminal Justice Standards and Goals. In 1967, the President’s Commission recommended that “serious consideration . . . should be given to complete elimination of the court’s power over children for noncriminal conduct.” In 1966, at the request of the President’s Commission, NCCD surveyed State and local correctional agencies and institutions across the United States. The survey documented extensive use of detention facilities to house juveniles accused of noncriminal conduct. In 1974, the National Advisory Commission on Criminal Justice Standards and Goals observed that at least 50 percent of detention populations were status offenders who had committed no crime and who were often held under deplorable conditions.

In 1980, Congress found that among the adverse effects of detaining juveniles in adult jails and lockups were a high suicide rate among the juveniles (more than five times the rate of suicides in juvenile detention facilities); physical, mental, and sexual assault; inadequate care and programming; negative labeling; and exposure to serious offenders and mental patients. As a result of a jail or lockup experience, juveniles often learned antisocial behavior from habitual criminals and had to fight for survival in an inmate culture characterized by rigid rules

and psychological and physical terror. Congress responded by amending the JJDP Act in 1980 to require removal of juveniles from adult jails and lockups.

In 1988 and 1992, Congress focused attention on the disproportionately high number of minority juveniles arrested and confined in secure detention and correctional facilities. Data demonstrated that incarceration rates for minorities in many States were two to four times that of whites. The 1988 and 1992 reauthorizations of the JJDP Act include provisions requiring States to gather additional data, analyze the issue, and provide appropriate programmatic responses where minority overrepresentation was found to exist.

The Mandates

The following summarizes the four system mandates of the JJDP Act. These mandates, which primarily address custody issues, are essential to creating a fair and consistent juvenile justice infrastructure that advances a key goal of the JJDP Act: to increase the effectiveness of juvenile delinquency prevention and control.

Deinstitutionalization of Status Offenders

The Deinstitutionalization of Status Offenders (DSO) mandate, Section 223(a)(12)(A), provides, as a general rule, that no status offender or nonoffender may be held in secure detention or confinement.

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The Formula Grants Program regulation issued by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), 28 CFR Part 31, creates an exception for accused status offenders and nonoffenders in juvenile detention centers. Status offenders or nonoffenders may be held for 24 hours, excluding weekends and holidays, for purposes of identification, investigation, release to parents, or transfer to a nonsecure facility or to court.

The 24-hour exception only applies to accused status offenders, and begins when the juvenile enters a secure custody status in a detention facility. A second 24-hour grace period may follow an initial court contact.

Another statutory exception provides that a status offender accused of violating a valid court order may be held in a juvenile detention facility for longer than 24 hours. In order for a State to invoke this exception, the juvenile must have received all constitutional due process protections at the initial hearing and must be afforded a detention hearing within 24 hours. In addition, prior to a dispositional commitment to secure placement, a public agency, other than a court or law enforcement agency, must have reviewed the juvenile's behavior and possible alternatives to secure placement, and submitted a written report to the court.

Finally, the 1994 Crime Act provides an exception for juveniles who violate the Federal Youth Handgun Safety Act or a similar State law

prohibiting juvenile handgun possession.

Separation of Juvenile and Adult Offenders

The separation mandate, Section 223(a) (13), provides that juveniles shall not be detained in a secure institution in which they have contact with incarcerated adults, including inmate trustees. This requires complete separation so that there is no sight or sound contact with adult offenders in the facility. Separation must be provided in all secure areas of the facility, including sallyports; entry/booking areas; hallways; and sleeping, dining, recreation, educational, vocational, and health care areas.

Jail and Lockup Removal

The jail and lockup removal mandate, Section 223(a) (14), establishes as a general rule that all juveniles who may be subject to the original jurisdiction of the juvenile court based on age and offense criteria cannot be held in jails and law enforcement lockups in which adults may be detained or confined.

The OJJDP Formula Grants Program regulations provide a 6-hour hold exception for accused delinquent offenders, for the limited purposes of identification, processing, interrogation, transfer to a juvenile facility or court, or detention pending release to parents. The 6-hour hold exception does not apply to status offenders, nonoffenders, or adjudicated delinquents. Sight and

sound separation from adults during the 6 hours is required.

The statute and regulations provide a rural exception for jails and lockups outside a Standard Metropolitan Statistical Area (SMSA). Facilities outside an SMSA may hold an accused delinquent for up to 24 hours, excluding weekends and holidays, while awaiting an initial court appearance, if State law requires such a detention hearing within 24 hours, and provided no existing alternative facility is available. If weather or road conditions do not allow for reasonably safe travel, the facility may detain the juvenile until conditions allow for safe travel, up to an additional 24-hour period. If conditions of distance or lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, a brief delay (not to exceed 48 hours) is authorized. Again, separation from adult offenders must be maintained at all times.

A final regulatory exception concerns juveniles under the jurisdiction of a criminal court for a felony offense. It applies only after such jurisdiction has been invoked through the official, direct filing of criminal felony charges or after a juvenile has been officially waived to adult court through a judicial waiver process.

The International Association of Chiefs of Police (IACP) has endorsed jail removal and developed a model policy and training key that addresses the custody of juveniles.

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Nonsecure custody criteria. To accommodate the needs of law enforcement, OJJDP policy guidance allows juveniles, including criminal-type offenders, status offenders, and nonoffenders to be held *nonsecurely* in an adult jail or lockup facility, 53 *Federal Register* 44366 (1988). OJJDP has established criteria to guide law enforcement officers in providing nonsecure custody for juveniles in their custody. These criteria include:

- ◆ The juvenile is held in an unlocked multipurpose area not normally used as a secure area or, if it is a secure area, used only for processing purposes (fingerprinting and photographing).
- ◆ The juvenile is not physically secured to a stationary object.
- ◆ The use of the area is limited to providing nonsecure custody only long enough for the purposes of identification, processing, release to parents, or transfer to an appropriate juvenile facility or court.
- ◆ The area is not designed or intended to be used for residential purposes.
- ◆ Continuous visual supervision is provided by a law enforcement officer or facility staff during the period of nonsecure custody.

Disproportionate Minority Confinement

The disproportionate minority confinement (DMC) mandate, Section 223(a) (23), requires States to address efforts to reduce the number of minority youth in secure facilities

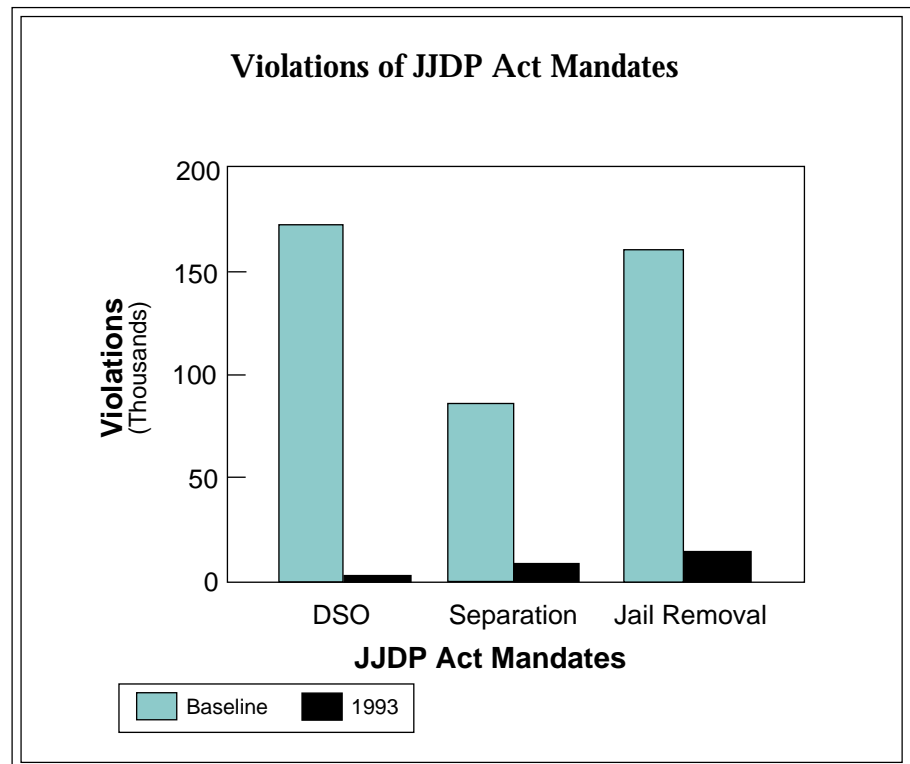
where the proportion of minority youth in confinement exceeds the proportion those groups represent in the general population. To meet the DMC mandate, States must go through stages of data gathering, analysis and problem identification, assessment, program development, and systems improvement initiatives.

Compliance

A State's participation in the JJDP Act Formula Grants Program is voluntary. To be eligible for the program, a State must submit a comprehensive 3-year plan setting forth the State's proposal for meeting the mandates and goals outlined in the JJDP Act. Each State deter-

mines its strategy and program priorities based on the characteristics of its particular juvenile justice system. The State's plan is amended annually to reflect new programming and initiatives to be undertaken by the State and local units of government.

Of the 57 eligible States and territories, 55 are currently participating in the JJDP Act Formula Grants Program. Each State submits an annual compliance monitoring report, which details its progress toward implementing its plan and achieving or maintaining compliance with the mandates of the JJDP Act. The level of compliance determines the State's eligibility for continuing participation in the program. Data for



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the annual monitoring report are collected by the State from secure juvenile and adult facilities. All State agencies administering the Formula Grants Program are required to verify data reported by facilities and data provided from other State agencies.

Eligibility for Fiscal Year 1995 Formula Grant funds was determined by each State's 1993 monitoring report. Data gleaned from the reports show an overwhelming majority of the States and territories in full compliance with the first three major mandates. As the figure on page 27 illustrates, a substantial reduction in the number of violations was achieved. It should be noted that the States' baseline years range from 1975 to 1992 for DSO and separation, and from 1980 to 1992 for jail and lockup removal. DSO violations were reduced from a baseline total of 171,872 to a level of 3,214, a reduction of approximately 98 percent. The number of separation violations were reduced from 85,002 to

879 (99 percent), and jail removal violations decreased 96 percent, from a baseline total of 159,516 to 6,878 violations.

The trend toward fewer violations in all areas is expected to continue as more States and territories achieve higher levels of compliance with the mandates of the JJDP Act. In coming months, OJJDP will continue to closely monitor the progress of the States, especially as they direct their attention to the disproportionate minority confinement mandate. Pilot programs to address the causes of disproportionate minority confinement have been established in five States. As these programs are evaluated, information and strategies will emerge that will enable other States to benefit from the experience of the pilot programs.

The States and territories are to be congratulated on their continued commitment to youth as evidenced

by their compliance with the JJDP Act mandates.

Resources

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The IACP policy model is available from the International Association of Chiefs of Police. Telephone: (703) 836-6767.

For further information on the disproportionate minority confinement mandate, see OJJDP Fact Sheet #11, *Disproportionate Minority Confinement*; and "Disproportionate Minority Representation: First Steps to a Solution," and "Disproportionate Minority Representation," Eugene Rhoden, both in OJJDP's *Juvenile Justice*, Spring/Summer 1994 edition.



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