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Bringing  
Balance to  
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### INTRODUCTION

Since its inception in the late 1800s, the juvenile justice system has been an amalgam of contradictions and competing concerns. On some level, society believes that crime should result in punishment, and that children must experience swift, certain and negative consequences for their crimes to deter them from future delinquency. Society also wants rehabilitation of wayward youth, but it wants to be protected from them while the rehabilitation takes place. The needs of crime victims must be central to the justice system. They need compensation for damages, contrition from offenders and a sense of justice restored. Since crime diminishes the quality of life in communities, communities too, are stakeholders in the juvenile justice system.

The well-intentioned “best interest of the child” theory that guided the early courts lingers in the purpose clauses of juvenile codes throughout the country, but it fails to address the concerns raised by victims or communities about the juvenile justice system. The therapeutic intervention and punishment models of justice also appear to be incomplete. If these two models coexist in a jurisdiction, they are in constant conflict. If either one exists by itself, it fails to serve all stakeholders in the system.

There is a better approach. Balanced consideration of **community protection, offender accountability and competency development** brings clarity and reason to juvenile justice issues. This comprehensive philosophy speaks to every aspect of delinquency, punishment, treatment and prevention. These three principles, fully implemented, create a juvenile justice system that truly operates in the best interest of the child and the community.

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## WHERE DO THESE THREE PRINCIPLES COME FROM?<sup>1</sup>

Ensuring community safety, insisting on offender accountability to victims, and equipping offenders in the system with skills so they are able to pursue non-criminal paths after release are the core principles of the Balanced and Restorative Justice (BARJ) model. The restorative justice aspect of the model derives from the ancient notion that when a crime is committed, the offender incurs a debt, an obligation to restore the victim, and by extension the community, to the state that existed before the offense.<sup>2</sup> The “balance” in the model proposes that the justice system should give equal weight to each principle.<sup>3</sup>

As the BARJ model gained momentum in the 1990s, many, including prosecutors, focused on specific “restorative” programs such as victim mediation and other innovative, community-oriented diversion programs. The popularity of individual programs often overshadowed the core principles that guided them, and BARJ became identified by many prosecutors as a community-driven series of diversion programs, only appropriate for first-time or low-level offenders.<sup>4</sup> This unfortunate misidentification has sidetracked an otherwise viable ideology and kept it from mainstream acceptance as a juvenile justice philosophy. It is important to note that the BARJ model is justice-system driven, or initiated, as opposed to community driven. The system is the prime mover in seeking implementation of the model, although it requires and actively solicits community leadership and cooperation in the venture.

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<sup>1</sup>Peter Freivalds, *Balanced and Restorative Justice Project*, OJJDP 2002.

<sup>2</sup>H. Zehr, *Changing Lenses* (Scottsdale, Pennsylvania: Herald Press, 1990)

<sup>3</sup>D. Maloney, D. Romig, T. Armstrong “Juvenile Probation: The “Balanced Approach,” *Juvenile and Family Court Journal* 39 (3) (1988).

<sup>4</sup>Caren Harp, John Delaney, Vol. 5 No. 1 In Re APRI (2002).

### WHAT MAKES THESE THREE PRINCIPLES SUPERIOR TO TRADITIONAL JUSTICE SYSTEM APPROACHES?<sup>5</sup>

Balanced consideration of community safety, offender accountability and competency development, as a philosophy, offers a number of advantages over the traditional justice system models of therapeutic intervention or retribution. These conventional models are irreconcilably in conflict with one another, and disserve other stakeholders in the system. Those who support the therapeutic intervention model seek new and improved treatment of offenders while minimizing responsibility for their conduct. Victims and community safety issues are sometimes overlooked. Those supporting retributive schemes demand stricter punishment of offenders, juvenile or adult, with little attention to skill development or productive life after they are released from system restraints. Offenders often re-enter the community with no heightened awareness of or empathy for victims, no skills to support themselves along non-criminal paths, and no vision of themselves as contributing members of society.

Community safety, offender accountability and competency development as guiding principles not only complement each other, they tend to reinforce one another. Becoming accountable to victims engages offenders in competency-enhancing work to repair the harm they caused (earning money for restitution, fixing damaged property, learning skills through community service). Such activities translate into community safety because young offenders earning restitution or performing community service under the supervision of responsible adults are not out committing more crimes.

Additionally, as a system-wide effort to improve juvenile justice, these guiding principles exert influence on most or all aspects of the work of police, courts, corrections, aftercare and youth services,

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<sup>5</sup> Freivalds, supra.

and on many endeavors of community groups and organizations. They guide not only the goals and purposes of the juvenile justice system and its affiliates, but also the actions of every administrator, manager and practitioner pertaining to every individual young person in the purview of the system.

Balanced consideration of these three principles in the resolution of cases is also readily understandable and acceptable to the public. Operating in the best interest of someone who has committed a criminal offense, even a juvenile, makes no sense to communities. Balanced consideration of public safety, accountability and skill development is a common sense approach to justice that may help restore the public's trust in the juvenile justice system—trust apparently shaken by the system's performance under either the treatment or retributive model.

### WHY DO PROSECUTORS AND THE SYSTEM NEED A PHILOSOPHY FOR JUVENILE COURT?

When prosecutors talk about their approaches to prosecuting juvenile delinquency, most usually speak about the ethical obligations to seek justice, the duty to secure restitution for victims, the desire to be fair, the duty to protect the community and the desire to rehabilitate the offender. Most prosecutors also indicate that their systems are reactive, i.e., the system develops a new strategy or set of goals for each new crime trend or behavior problem that presents itself. Few articulate a comprehensive approach to juvenile justice.<sup>6</sup>

For prosecutors, adopting a juvenile justice philosophy can have a number of advantages. Clearly defined values and principles can:

- Guide decision-making by prosecutors and other system participants;

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<sup>6</sup> Harp, Delaney; supra.

- Enhance consistency and fairness in the system;
- Be readily measured;
- Inform communities about system successes; and
- Help prosecutors explain how they exercise their considerable discretionary powers.<sup>7</sup>

Whether through general attrition or by design, most prosecutors' offices experience a fairly high turnover rate in their juvenile divisions. This turnover complicates case management. For example, since many juvenile offenders filter through the system more than once, new and inexperienced prosecutors may exercise their discretion inappropriately. Clearly defined goals for prosecution can assist newer prosecutors with decision-making and enhance consistency and fairness across the caseload.

Unlike the amorphous "best interest of the child" concept, these three restorative principles are easily measured. Community safety can be objectively assessed through crime rates, transfers to adult court and re-offense rates. Offender accountability to victims and communities can be established by restitution and community service hours. Competency development can be measured by resistance to drugs and alcohol, academic advancement and/or employment.

Another critically important feature of this philosophy is that it holds the system accountable. The system has a responsibility to serve crime victims. Through victim surveys, the system measures victims' overall treatment and experience in the system and attempts to gauge their satisfaction. This philosophy also encourages communities to take responsibility for crime prevention and safety by participating in the system. This can be measured through the number of volunteers fielded and the service hours they contribute.

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<sup>7</sup> Id.

Finally, this philosophy and measurement of its successes are easily communicated to communities. Communities can more readily understand prosecutorial discretion if they understand the framework within which it is exercised. Communities informed about successes and trends are more likely to trust the system and become involved with it, thus fostering further success.

### MOVING THE PHILOSOPHY INTO ACTION

The basic framework for implementing this philosophy already exists. Legislatures around the country are beginning to incorporate one or more of these principles into their juvenile codes.<sup>8</sup> Even without legislative action or formal training, many jurisdictions incorporate restorative principles into their decision-making simply because they make sense. However, jurisdictions implementing only certain restorative programs or portions of the philosophy are not as effective as they could be with a comprehensive, system-wide implementation of these principles as goals for juvenile justice.

The justice system is the prime mover in this philosophy, and prosecutors are the gatekeepers for the system, hence their leadership is critical. Prosecutors have long embraced the need to protect the community and hold offenders accountable. In the past decade, prosecutors have taken leadership roles outside the courtroom to develop innovative community supported diversion programs, sentencing alternatives and prevention strategies. In July 2002, the NDAA amended its Resource Manual and Policy Positions on Juvenile Crime Issues to reflect that "...balanced consideration of community protection, offender accountability and competency development is the recom-

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<sup>8</sup> Forty-one states articulate restorative principles in one or more policy documents. See Sandra Pavelka O'Brien, Ph.D. Restorative Juvenile Justice in the States: A National Assessment of Policy Development and Implementation Draft Monograph, unpublished OJJDP, October 2000. See, e.g., 42 Pa.C.S. Section 6301(b)(2).

mended philosophical approach to juvenile justice.”<sup>9</sup> These three guiding principles, the NDAA policies supporting them and committed leadership by prosecutors provide the foundation for implementing a balanced approach to juvenile justice.

### GOAL 1: COMMUNITY SAFETY

The juvenile justice system has an obligation to protect the community, especially from those juveniles subject to its jurisdiction. This burden weighs most heavily on prosecutors and law enforcement. However, communities can contribute to their own safety by being actively engaged in the justice system.

Community safety is best served by offender programs that include accountability and competency development features, including cases where offenders must be incarcerated. The prosecutor should use his authority as chief legal officer of his jurisdiction to ensure that programs with these features are developed in institutions, in probation and aftercare supervision, in diversion arrangements, and in community delinquency prevention efforts.

Each of the community-safety related policies set forth in the NDAA Juvenile Policy Manual should be operationalized to reflect the above balanced and restorative justice goals. The policies relating to serious juvenile offender transfer to criminal court, and prosecutor sentencing recommendations, already stipulate these objectives.

#### Strategies:

- Prosecutors should make all charging decisions in cases involving juvenile offenders.<sup>10</sup>

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<sup>9</sup> NDAA Resource Manual p. 13 Commentary to Sentences section.

<sup>10</sup> Id.

- There should be adequate detention space to protect the public from serious, violent or habitual offenders.<sup>11</sup> Communities must see the system responding appropriately to chronic and/or violent behavior. Swift response centered on the protection of the public enhances trust in the system.
- For serious, violent or habitual offenders, where factually appropriate, prosecutors should be given the discretion to file such cases in adult court without judicial intervention.<sup>12</sup>
- There should be a continuum of graduated sanctions available in the system.<sup>13</sup>
- Prosecutors should work with their communities to develop the community's capacity to control and prevent crime. Examples include mentoring, faith-based initiatives, neighborhood watches, group conferencing and conflict resolution programs.<sup>14</sup>

### Success Measures<sup>15</sup>

- Juvenile crime as measured by per capita rate of juvenile offenders who are adjudicated delinquent by the juvenile court or who commit crimes that warrant a waiver to adult court.
- Law-abiding behavior as demonstrated by the percentage of offenders completing plea agreements<sup>16</sup> that had no charges filed against them for a new criminal offense within one year of completing the order.

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<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Gordon Bazemore, Guide for Implementing the Balanced and Restorative Justice Model, OJJDP December 1998.

<sup>14</sup> Id.

<sup>15</sup> Taken from the Juvenile Justice System Report Card to Stakeholders originally developed by Dennis Maloney, BARJ Project, Florida Atlantic University.

<sup>16</sup> Prosecutors should consider use of the term Accountability Agreements in place of plea agreements with juvenile offenders. This term helps diminish the “game” or “bargain” connotation of plea agreements and reinforces the accountability message to offenders.

- The percentage of juvenile offenders who completed accountability agreements that have no adult criminal convictions as young adults (ages 18 to 21).

### GOAL 2: OFFENDER ACCOUNTABILITY

When crime occurs, a debt incurs. An offender incurs an obligation to individual victims and the community to repair the harm caused by the crime. The juvenile justice system must see to it that a sense of justice is restored to both the victim and the community. Punishment—consequences for conduct—is part of holding offenders accountable. It can run the gamut from probation and work service to incarceration, but whatever its form, it should include restorative practices that prepare offenders to leave system restraints more appreciative of their role in the community and better equipped to pursue productive, non-criminal paths.

#### Strategies:

- Prosecutors should make efforts to fast track cases involving juvenile offenders.<sup>17</sup> Delinquent behavior must be addressed as soon after the occurrence as possible within legal and practical limits.
- Crime victims should have the same rights in juvenile court that they have in adult criminal court.<sup>18</sup> Victims should be allowed to participate in the juvenile justice system, be informed about case status and given the opportunity for an apology, restitution and in appropriate cases, victim-offender conferencing.

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<sup>17</sup> Id.

<sup>18</sup> Id.

- Restitution should be sought in every appropriate case.<sup>19</sup> Offenders must restore victims to the economic condition they were in prior to the crime.
- Prosecutors should request that community work-service hours be performed by the juvenile offender. Work service engaging offenders in skill development and empathy building should be encouraged. Examples include Habitat for Humanity construction, crime repair crews, humane society animal training and veterinarian services.
- Prosecutors should consider diversion programs for appropriate first-time or low-level offenders.<sup>20</sup> Programs emphasizing personal responsibility, self-discipline, citizenship, victim empathy and contrition should be encouraged.
- Detention space should be available for those juveniles who violate conditions of their probation.<sup>21</sup> Community perceptions of safety depend on confidence in the system to respond to breaches of safety.<sup>22</sup> Failure to adhere to probation requirements conveys a sense of unruliness in offenders that makes communities uncomfortable. Timely response to probation violations by the system reinforces the need for accountability in offenders and reassures the community.

### Success Measures<sup>23</sup>

- Orders for restitution to crime victims measured against what was actually paid by offenders. For restitution orders remaining open, the percentage being paid back on schedule.
- Work-service hours ordered by the court versus the number of hours actually worked. The value of those hours to the community is calculated at minimum wage.

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<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Bazemore, *supra* at p. 32.

<sup>23</sup> Maloney, Report card, *supra*.

### GOAL 3: COMPETENCY DEVELOPMENT

Juvenile offenders released from the system should live crime-free, productive lives. Beyond lowering re-offense rates, the juvenile justice system should help youth obey the law and be responsible, contributing members of the community.

#### Strategies:

- Prosecutors' offices should coordinate juvenile justice programs, or in the alternative, have input in establishing the eligibility criteria and other guidelines for such programs.<sup>24</sup> Programs involving adult-supervised community service, mentoring, crime repair crews, and service work to victims should be developed.
- Prosecutors should identify diversion and sentencing programs that work and implement them. Again, programs that involve the community and emphasize good citizenship, personal responsibility, self-discipline and skill development are encouraged.
- Effective truancy programs are critical to keeping juveniles in school and developing skills. Prosecutors should be involved in truancy prevention efforts whenever possible.<sup>25</sup>

#### Success Measures<sup>26</sup>

- Resistance to drug and alcohol use measured by the percentage of juvenile offenders testing positive for drug and alcohol use at the time of probation intake compared to the percentage of offenders testing positive at the time of case closure.

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<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Maloney, Report card, *supra*.

- School participation and academic achievement measured by juvenile offenders actively involved in school, alternative education program or vocational training.
- For those youth not involved in an educational or vocational program at case closure, percent employed.

### SYSTEM ACCOUNTABILITY

System accountability flows naturally from a justice system focused on these three principles and their success measures. Traditionally, victims in juvenile court are little more than an afterthought. This leaves them feeling powerless and re-victimized. The accountability principle in a restorative philosophy brings victims' concerns front and center. Before being released from system restraint, offenders must restore victims to the state they were in before the crime. Victims must feel that justice was served. The system is responsible for making sure that this happens. The system can verify its progress with victims by measuring victim satisfaction with all the actors in the system.

Similarly, offenders must accept responsibility and consequences for their crimes in a way that gives the community a sense that justice has been restored. Regular reporting on the success measures outlined above can help communities evaluate if the system is serving their need for safety and justice. Unlike the treatment or retributive models, however, a restorative model enlists the community as a contributor to its own safety. By becoming actively involved with the system and the juveniles subject to its jurisdiction, citizens are empowered to report crime, participate in neighborhood watch groups, and invest time and resources in neighborhood youth. In this way, communities create a climate unfriendly to delinquent conduct and supportive of law-abiding behavior.

The community also plays a critical role in the competency development principle. Diversion programs such as merchant accountability boards, youth aid panels or other programs designed to teach empathy and responsible citizenship are heavily dependent on community volunteers. Crime repair crews, Habitat for Humanity, and other innovative types of community service only work if communities invest themselves in the programs. Such “competency development” in communities can be measured by the number of volunteers fielded and the number of hours served.

### Success Measures<sup>27</sup>

- Justice system accountability to victims determined by a victim satisfaction survey.
- Community competency measured by the number of volunteers fielded by the juvenile justice system, the number of hours contributed and the dollar value of those hours.

## CONCLUSION

“Children are our most precious resource.”<sup>28</sup> In many jurisdictions, juvenile justice systems focus heavily on either punishment or treatment of juvenile offenders, and neither one by itself is effective. Punishment, without a restorative component, can make criminal conduct a risk management game for some offenders. In the absence of empathy and self-control, there is little to deter criminal behavior if the perceived risk of being caught is relatively low while the perceived reward is sufficiently high.

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<sup>27</sup> Id.

<sup>28</sup> Ronald Reagan, Proclamation 5194—Missing Children Day, 1984.

Treatment which tends to focus offenders' attention on themselves often labels them with disabilities and provides them with excuses for their criminal behavior. This approach teaches them no responsibility for their actions and gives them little incentive to improve.

It is critically important that the juvenile justice system, and prosecutors in particular, adopt a comprehensive approach to delinquency, one that protects communities, restores victims and communities, and teaches offenders empathy for others, self control and marketable skills. Changing how juvenile offenders think, what motivates them to act and their perceptions of their role in society is necessary for sustained changes in behavior and long-term reductions in recidivism. A balanced approach to juvenile justice truly operates in the best interest of children.

### RESOURCES

**Life Skills Training Program**  
Blueprints for Violence Prevention  
Book 5  
and

**Promoting Alternative Thinking Strategies (PATHS)**  
Blueprints for Violence Prevention  
Book 10  
Center for the Study and Prevention of Violence  
University of Colorado, Boulder  
Campus Box 445  
Boulder, CO 80309-0442

**Strengthening America's Families: Model Family Programs for Substance Abuse and Delinquency Prevention**  
Rose Alvarado, et al.  
Department of Health Promotion and Education  
University of Utah  
Center for Substance Abuse Prevention  
OJJDP  
April 2000

**Guide for Implementing the Balanced and Restorative Justice Model**  
Gordon Bazemore  
OJJDP December 1998

**Restorative Justice Inventory: An Organizational Assessment for Juvenile Justice Agencies**  
Mark Carey  
BARJ Project-Florida Atlantic University  
OJJDP September 2000

**The BARJ Reader (forthcoming)**

- Restorative Juvenile Justice in the States: A National Assessment of Policy Development and Implementation
- Energizing Communities in Response to Youth Crime; A Restorative Justice Approach
- Victim Involvement in Juvenile Court
- Community Boards and Juvenile Justice in Vermont

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