

# **NATIONAL DISTRICT ATTORNEYS ASSOCIATION**

## **RESOURCE MANUAL AND POLICY POSITIONS ON JUVENILE CRIME ISSUES**

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### **BACKGROUND**

In the late 1800's, juvenile courts were established as an alternative to the adult criminal justice system. The juvenile justice system was designed specifically to meet the needs of non-violent, juvenile offenders and children at risk of becoming juvenile delinquents. Historically, juvenile crimes were considered "youthful indiscretions," warranting lenient treatment and rehabilitative responses. Unlike the offense-based adult system, the juvenile justice system is offender based, focusing on rehabilitation rather than punishment. In the first half of the 1990's a sharp increase in serious and violent juvenile crime occurred throughout the United States. A parallel increase in juveniles taken into custody ensued, as well as an increase in the number of juveniles waived or transferred to the adult criminal justice system. By the late 1990's, the rate of juvenile crime had returned to traditional levels. Recently, many states have attempted to strike a balance among system and offender accountability, offender competency development and community protection.

The purpose of this document is to provide assistance to local prosecutors throughout our nation by identifying and discussing important policy issues affecting juvenile crime with special emphasis on dealing with serious, violent and habitual offenders. This document is intended as a resource manual for prosecutors. Materials here can be used to suggest legislative changes affecting juvenile crime. It delineates general policies for consideration on a variety of topics. Prioritization of current resources, identification of new approaches to the juvenile crime problem and education of the public regarding prosecutors' perspectives is an ongoing task for all local prosecutors in America.

Many of the policies set forth in this document involve the serious, violent or habitual offender. The National District Attorneys Association (NDAA) considers the following as appropriate definitions for these categories:

- a serious offender is one who is caught for the first time having committed multiple felony offenses, a major economic crime, repeated misdemeanor crimes of violence, or other offenses defined by a local jurisdiction as serious;
- a violent offender is one who was involved in the commission of a felony crime of violence;
- an habitual felony offender is one who was found guilty of at least two prior felonies.

None of these categories is mutually exclusive.

This resource manual contains policy positions which have been adopted by the National District Attorneys Association in the following areas:

| <b><u>Topic</u></b>                 | <b><u>Page #</u></b> |
|-------------------------------------|----------------------|
| Organization Priorities .....       | 4                    |
| Decision to Prosecute.....          | 6                    |
| Adult vs. Juvenile Prosecution..... | 8                    |
| Detention.....                      | 10                   |
| Sentences.....                      | 12                   |
| Terminology.....                    | 15                   |
| Statements by Juveniles .....       | 15                   |
| Parental Responsibility .....       | 17                   |
| Information Access .....            | 19                   |
| Victims’ Rights .....               | 21                   |
| Crime Prevention .....              | 22                   |
| Guns and Dangerous Weapons .....    | 23                   |
| Gangs .....                         | 24                   |
| Federal Responsibility.....         | 26                   |

We would like to acknowledge and thank the efforts of the Advisory Group on Serious, Violent and Habitual Juvenile Offenders established in June of 1995 whose work forms the basis of this document<sup>1</sup> and the efforts of the National District Attorneys Association’s Juvenile Justice Advisory Committee which finalized this resource manual and compilation of policy positions.

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<sup>1</sup> The group consisted of the Honorable James Backstrom, County Attorney, Dakota County, Minnesota; Susana Foster, Assistant District Attorney, Orleans Parish, New Orleans, Louisiana; the Honorable Steven Hilbig, Criminal District Attorney, San Antonio, Texas; Mark McDonnell, Assistant District Attorney, Multnomah County, Oregon; Jay Plotkin, Assistant State Attorney, Jacksonville, Florida; Robert Scott, Assistant County Attorney, Anoka County, Minnesota; George West, Assistant District Attorney, Dallas, Texas; Diana Burleson and Merri Hankins, members of APRI staff; Charles “Bud” Hollis, Bureau of Justice Assistance (BJA); and Ann Taylor, National Institute of Justice (NIJ). Members of the original group were joined by the Honorable Gus Sandstrom, District Attorney, Pueblo, Colorado, in October, 1995, to review the initial recommendations and finalize a manual.

Additionally, we would like to acknowledge and thank the efforts of the group which drafted the first revision in 2002.<sup>2</sup>

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<sup>2</sup> Members of the group included the Honorable James Backstrom, County Attorney, Dakota County, Minnesota; the Honorable Gary Walker, Prosecuting Attorney of Marquette County, Michigan; the Honorable James Fox, District Attorney of San Matteo County, the Honorable Gus Sandstrom, District Attorney, Pueblo, Colorado; and Teresa Miranda, Policy Attorney, NDAA. Special thanks to Caren Harp, Director and Senior Attorney, APRI, National Center for Juvenile Justice for her comments and suggestions.

## ORGANIZATION PRIORITIES

The impact of crime on a victim and society are not related to the age of the defendant. Juveniles can scar victims physically, emotionally and mentally and endanger the bonds and values of the community to the same degree as adults. It is generally believed that a juvenile defendant may have a better chance to be rehabilitated than an adult offender. However, there is also the risk that the juvenile will become an habitual offender if not stopped early in his/her criminal career. Such risks and rewards require the expertise of an experienced prosecutor, the use of vertical prosecution where possible, and fast tracking of the serious, violent, or habitual offender.

*Policy:* Juvenile prosecution is a priority requiring experienced prosecutors.

*Policy:* The prosecutor should appear as an attorney for the state in all hearings concerning a juvenile accused of an act where the prosecutor would appear if the same act were committed by an adult, including but not limited to hearings for detention, speedy trial, dismissal, entry of pleas, trial, waiver, disposition, revocation of probation or parole status, and any appeal from or collateral attacks upon the decisions in each of these proceedings.<sup>3</sup>

*Policy:* To the extent possible, vertical prosecution should be used in processing cases involving serious, violent, or habitual juvenile offenders.

*Policy:* Efforts should be made to fast track cases involving juvenile offenders.

*Commentary:* Juvenile court cases have historically been assigned to entry-level prosecutors. In some prosecutors offices the juvenile court assignments have been looked upon as assignments for those with social service goals and those not tough enough on “real” criminals. These ideas, if they continue, are in need of change.

Juvenile crime is a serious problem in the United States. In 2000, law enforcement agencies made an estimated 2.4 million arrests of persons under the age of 18.<sup>4</sup> In 2000, there were an estimated 1200 juvenile arrests for murder.<sup>5</sup> Juvenile prosecution is clearly as important as adult prosecution, especially given the rapid rise in levels of violent juvenile crime which must be dealt with quickly and effectively. Juvenile cases are difficult technically. The presentation of evidence and dispositional alternatives require expertise that the new, the under trained, or the less experienced prosecutor cannot provide. Chief prosecutors should select prosecutors for juvenile court on the basis of their skill and competence, including knowledge of juvenile law, interest in children and youth, education and experience. The prosecutor for juvenile cases should have adequate staff support to the extent possible, given office resources including: clerical and paralegal personnel, interns, investigators, and victim/witness coordinators.<sup>6</sup>

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<sup>3</sup> National District Attorneys Association, National Prosecution Standards (Second Edition) (1991), p. 249.

<sup>4</sup> United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention [hereinafter OJJDP], Statistical Briefing Book, <http://ojjdp.ncjrs.org/ojstatbb/html/qa250.html>. (January 20, 2002).

<sup>5</sup> OJJDP, Statistical Briefing Book, *supra*.

<sup>6</sup> National Prosecution Standards, p. 249.

Prioritizing juvenile crime not only requires experienced prosecutors with adequate resources; it also requires the attendance of the prosecutor at all stages of the proceedings. By attending all stages of the proceedings, the prosecutor maintains a focus on the safety and well being of the community at each decision-making level. The juvenile system is increasingly adversarial therefore, the prosecutor fulfills an important role in addressing the arguments of juvenile and social service advocates. The prosecutor's presence guarantees the opportunity to exercise continuous monitoring at each stage and broad discretion to ensure fair and just results.<sup>7</sup>

Juveniles who commit criminal offenses require special attention. To the extent possible, vertical prosecution should be used in processing cases involving serious, violent, or habitual offenders. The ability of a child to manipulate adult reactions is formidable. Additionally, the chances of successful rehabilitation may be greater than with most adult offenders. Without vertical prosecution and continuity in handling a juvenile case, the impact of the system will diminish. The lack of continuity resulting from using different prosecutors may reduce the ability to have meaningful consequences and rehabilitative success. Vertical prosecution provides a message that the prosecution will stand firm and expects to have a court impose sanctions for a specific incident. It is a benefit to have one person who will see to it that a juvenile will be expected to answer for his or her behavior. Continuity may be accomplished by assigning all probation violations and future cases to one prosecutor. Vertical prosecution may not be possible in those cases waived or transferred to adult court. However, when a case remains in juvenile court, it is vital to have a single, trained, experienced deputy who can evaluate the case, the juvenile's criminal and social history and the alternatives that might result in justice.

Finally, efforts must be made to fast track cases involving juvenile offenders. Time is a major consideration in handling juvenile cases. Children often fail to remember what action they took yesterday, let alone several months earlier. In addition, since court consequences often take months to impose, the longer it takes, the more likely the juvenile wonders if anyone cares. The long-term message is lost on the child. Those "at risk" and especially those who fit the definition of "serious, violent or habitual" offenders need to experience a system that responds rapidly to the juvenile's actions. These offenders serve as an example to others. Therefore, the system needs to demonstrate that the community has expectations of behavior, will not tolerate violations of those expectations and will swiftly sanction any violations. When the incident is far removed from the process, no such demonstration can be successful. To the extent possible, prosecutors should cooperate with others in the juvenile justice system to promote speedy trials and efficient case processing.<sup>8</sup>

When the prosecutor decides to seek a formal adjudication of a complaint against a juvenile, he should proceed to an adjudicatory hearing as quickly as possible. Detention cases should receive priority treatment. An adjudicatory hearing should be held within 30 days if the juvenile is held

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<sup>7</sup> National Prosecution Standards, Comments, p. 258.

<sup>8</sup> National Prosecution Standards, p. 251.

in detention pending trial or within 60 days if the juvenile is arrested and released. A dispositional hearing should be held within 30 days after the adjudicatory hearing.<sup>9</sup>

### **DECISION TO PROSECUTE**

The authority to charge or not charge is profound. Such discretionary decisions require legal expertise, consistency of purpose and accountability.

*Policy:* A prosecutor should make all charging decisions in cases involving juvenile offenders.

*Policy:* Prosecutors should consider diversion programs for appropriate first-time or low-level juvenile offenders.

*Policy:* In the event an agency other than the prosecutor's office coordinates a juvenile diversion program, the prosecutor should have input in establishing the eligibility criteria and other guidelines for such a program.

Commentary: The discretionary decision to charge or not charge is the heart of the prosecutorial function.<sup>10</sup> The prosecutor is the appropriate person to review charging decisions.

- Prosecutors have a responsibility to represent the state in court on juvenile cases and therefore, should have the right to determine what cases are filed in that court.
- Prosecutors are unable to utilize an effective prosecution policy or effectively implement prosecution standards without control over the charging decision.
- Prosecutors are trained on the legal aspects of the charging process.
- Prosecutors give public safety a high priority in their decision making process.
- Prosecutors take into consideration the interests of the victim and have a process for giving and receiving information from victims.
- Prosecutors have access to both the criminal and social background of the juvenile.
- Prosecutors are more easily accountable to the public than are other individuals in the juvenile justice system.

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<sup>9</sup> National Prosecution Standards, p. 256.

<sup>10</sup> See Brown v. Dayton Hudson, 314 N.W.2d 210 (Minn. 1981).

In those jurisdictions where another agency, such as a police department, makes initial charging decisions through issuing a citation or other petition, the prosecutor should retain the authority to modify or dismiss this initial decision where appropriate. The prosecutor should have the exclusive right to screen facts obtained from the police and other sources to determine whether those facts are legally sufficient for prosecution. If it is determined that the facts are legally sufficient<sup>11</sup>, the prosecutor should determine whether a juvenile is to be transferred to adult court, charged in juvenile court or diverted from formal adjudication.<sup>12</sup> Formal charging documents for all cases referred to juvenile court should be prepared or reviewed by a prosecutor.<sup>13</sup>

Those systems in which the court, probation or screening officers determine what violations of law should be charged creates the appearance that the court is not a neutral fact-finder. To remedy the appearance of a conflict of interest, the court should avoid direct involvement or supervision over the charging decision. Having prosecutors handle this function, as they are trained to do in all adult cases, creates greater accountability to the victim and to the public.

Where probation or screening officers are under the supervision of an entity different from the court, the conflict of interest argument is nullified. However, accountability remains difficult. A prosecutor is elected or appointed with the chief responsibility to prosecute crime. Determining who should be charged with a criminal offense has long been the domain of prosecutors acting within the executive branch of government. Prosecutors are trained in the law and have experience in implementing prosecutorial policies and making discretionary decisions concerning charging that reflect statutory mandates and legitimate community goals. Prosecutors are directly accountable to the electorate or the appointing authority. Probation or screening officers are not elected and usually are not directly responsible to an appointing authority for charging decisions.

The decision to divert a case is a charging decision because it is a determination that sufficient evidence exists to file a charge in court but that the goals of prosecution can be reasonably reached through diversion. Prosecutors should consider establishing diversion programs for appropriate first-time or low-level juvenile offenders. Diversion programs should contain criteria to insure that the diverted juvenile offender is held accountable for his/her actions and that restitution is made to the victim of the crime where appropriate. Diversion programs can also play an important role in education and prevention efforts which are critical to efforts to reduce rising levels of juvenile crime in this country. In the event an agency other than the prosecutor's office coordinates a juvenile diversion program, the prosecutor should be involved in establishing the eligibility criteria and other guidelines for the program. Any diversion program should contain provisions to insure that diverted juveniles who do not successfully complete the program are referred back to the prosecutor's office for prosecution

Prosecutors should take steps to insure that the juvenile system treats all offenders fairly and without discrimination. Prosecutors should take steps to insure that the juvenile system treats all

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<sup>11</sup> Legally sufficient cases are those in which the prosecutor believes that he can reasonably substantiate delinquency charges against the juvenile by admissible evidence at trial. National Prosecution Standards, p. 251.

<sup>12</sup> National Prosecution Standards, p. 251.

<sup>13</sup> National Prosecution Standards, p. 254.

offenders fairly and without discrimination. Prosecutorial decisions should not be based upon race or any other impermissible factor.

### **ADULT vs. JUVENILE PROSECUTION (Waiver/Transfer)<sup>14</sup>**

In a poll conducted in 1993, 73 percent of those surveyed across the United States said that “violent juveniles should be treated as adults rather than as defendants in lenient juvenile courts.”<sup>15</sup> This poll is evidence of a rapidly changing philosophy in our society concerning the need to hold serious, violent and habitual offenders appropriately accountable for their crimes. In many cases, doing so involves the need to prosecute such offenders as adults.

*Policy:* 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.

*Policy:* The primary factors affecting decisions to transfer the juvenile to the adult system include, but are not limited to, the seriousness of the crime, the threat to public safety, the offender’s criminal history, the certainty of appropriate punishment, and the age and maturity of the offender.

*Policy:* Once a juvenile proceeding is filed in adult court, and there is a finding of probable cause in adult court for the offense, all further prosecutions of the same youth should occur in adult court.

*Policy:* Serious, violent or habitual juvenile offenders not transferred or waived to adult court for prosecution should be prosecuted under a “blended sentencing” approach providing additional sanctions and/or longer supervision than juvenile court prosecution.

**Commentary:** In 2000, juveniles were involved in sixteen percent of all Violent Crime Index arrests and thirty-two percent of all Property Crime Index arrests.<sup>16</sup> “Between 1988 and 1994, the juvenile Violent Crime Index arrest rate grew by more than sixty percent.”<sup>17</sup> “This unsettling and rapid growth [1988-1994] triggered speculation about changes in the nature of juvenile

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<sup>14</sup> Note: the Standards state, “To the extent that the prosecutor is permitted by law to use discretion to decide whether a juvenile delinquency case should be transferred to the adult court, prosecutors should seek transfer only if the gravity of the current alleged offense or the record of previous delinquent behavior reasonably indicates that the treatment services and dispositional alternatives available in the juvenile court are: (1) inadequate for dealing with the youth’s delinquent behavior; or (2) inadequate to protect the safety and welfare of the community.” pp. 252 – 253. Additionally, the standards require the prosecutor to review legally sufficient cases to determine whether they should be diverted for treatment, services or probation. pp. 253, 254 – 255.

<sup>15</sup> Sam Vincent Meddis, Poll: Treat Juveniles the Same as Adult Offenders, USA Today, Oct. 29, 1993, at 1A.

<sup>16</sup> OJJDP, Juvenile Offenders and Victims: 1999 National Report (December 2001), p. 13.

<sup>17</sup> OJJDP, Juvenile Offenders and Victims: 1999 National Report, *supra*, p. 13.

offenders – concerns that spurred State legislators to pass laws that facilitated an increase in the flow of these youth into the adult justice system.”<sup>18</sup>

Juveniles who commit crimes are usually subject to the jurisdiction of juvenile court. In certain situations, depending upon the seriousness of the crime, the threat to public safety, the age of the juvenile, the juvenile’s criminal history and other relevant factors, the juvenile offender may be tried in adult criminal court. The process by which this is accomplished is commonly referred to as transfer, waiver, or certification depending upon the jurisdiction. Whether or not a juvenile offender should be prosecuted in adult court is one of the most critical decisions facing the juvenile justice system.

Generally, there are three methods by which a juvenile case may be transferred to adult court (a state may have one or may use a combination):

- the legislature mandates the transfer of a juvenile case to adult court (for example, by setting the minimum age at which a juvenile may be transferred to adult court or by specifying that if a juvenile commits a certain crime, the case will be tried in adult court)<sup>19</sup>;
- the prosecutor is vested with the discretion to determine whether to transfer a juvenile case to adult court<sup>20</sup>; or
- the juvenile court judge is vested with the discretion to determine whether a juvenile case should be transferred to adult court<sup>21</sup>.

Given the large increase in violent crime among juvenile offenders and the importance of holding these offenders appropriately accountable for their actions, the NDAA believes that prosecutors should be vested with the discretion to determine without court interference whether juveniles committing crimes of violence should be transferred to adult court for prosecution. The same should be true for other serious, violent or habitual offenders. The prosecutor should retain the ability to evaluate the facts, as well as the impact upon the victim and the community, and determine whether it is appropriate to file charges in adult or juvenile court. Without prosecutorial discretion, the system may result in inequity. The prosecutor is in the best position to decide when and if a juvenile should be transferred to adult court.

Juvenile offenders who commit multiple prior felonies obviously show by their own actions that the juvenile court sanctions previously imposed did not rehabilitate them. There must come a

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<sup>18</sup> OJJDP, Juvenile Offenders and Victims: 1999 National Report, *supra*, p. 13.

<sup>19</sup> In 1997, twenty-eight states automatically excluded cases from juvenile court that met specific age and offense criteria. OJJDP, Delinquency Cases Waived to Criminal Court, 1988 – 1997, Fact Sheet #02 (February 2000).

<sup>20</sup> In 1997, fifteen states allowed prosecutors the discretion to file certain juvenile cases directly in adult court. Delinquency Cases Waived to Criminal Court, 1988 – 1997, *supra*.

<sup>21</sup> As of 1997, all but four states authorized a juvenile court judge to waive the juvenile court’s original jurisdiction over cases that met certain criteria and refer them to criminal court for prosecution. Delinquency Cases Waived to Criminal Court, 1988 – 1997, *supra*.

point when their behavior will no longer be tolerated. Punishment, as imposed through the form of incarceration in an adult sentence, becomes appropriate for a juvenile offender with multiple prior juvenile convictions.

Prosecutors should evaluate which system best furthers public safety; holds the offender accountable to victims and to the community; and develops the offender's skills as a way of reducing future delinquency or criminal behavior. Specific factors which should be considered in the waiver decision include the seriousness of the alleged offense; the role of the juvenile in that offense; the nature and number of previous cases against the juvenile and the disposition of those cases; the juvenile's age and maturity; the availability of appropriate treatment or services potentially available in each court; and the dangerousness or threat posed by a juvenile to the person or property of others.

Once a juvenile case has been transferred to adult court for prosecution, prosecutions for all further crimes committed by the youth also should occur in adult court regardless of the seriousness of the offense. The notion of "probable cause" is added to the policy concerning this issue to address those situations in which a juvenile who is prosecuted as an adult is acquitted for the most serious crime but convicted of a lesser offense. In such a case, the acquittal on the more serious charge should not be grounds to keep future offenses involving the youth out of adult court, because a finding of probable cause concerning the commission of the more serious offense previously was made by a court or grand jury. Obviously, if evidence is brought forth resulting in the dismissal of such charge before trial, or if evidence brought forth at trial leads a judge to conclude that probable cause no longer exists as to the more serious offense in question, this same logic would not hold. Thus, no automatic presumption of adult prosecution in future cases should apply under those circumstances. In those situations where a prior case in which a juvenile is being tried as an adult has not been completed, additional charges filed against this juvenile in unrelated cases should also be dealt with in adult court.

In those instances where serious, violent or habitual juvenile offenders are not transferred or waived to adult court, consideration should be given to prosecution of such offenders under a "blended sentencing" approach<sup>22</sup>. A number of states have enacted laws in recent years expanding juvenile court disposition and available sanction alternatives. These laws are designed for these youth who have committed a serious offense which does not initially warrant adult prosecution, but which requires greater sanctions and/or longer supervision by the juvenile courts than is provided in a traditional juvenile system. Commonly referred to as "blended sentencing" these laws may combine some juvenile and adult sanctions, provide for stayed adult sanctions to be imposed at a later date should the offender not conform to the conditions of the juvenile court disposition, provide incentives for such youth to remain law abiding in the future and/or lengthen the period of supervision over the youth by the juvenile court. Blended sentencing models are appropriate and necessary in the continuum of sanctions available for more serious, violent or habitual juvenile offenders, especially for younger youth committing very serious crimes. Prosecutors should advocate for the passage of appropriate blended

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<sup>22</sup> See footnote 48 for a definition of "blended sentencing".

sentencing options within their states and consider the utilization of such options if adult court sanctions are not initially warranted for serious, violent or habitual juvenile offenders.

## **DETENTION**

The need to provide adequate funding to ensure available detention facilities for serious, violent and habitual offenders is an important issue in juvenile justice. Detention facilities are needed to protect the community, provide safety for the victim, assure the offender's appearance at trial and provide appropriate punishment for serious, violent or habitual juvenile offenders. The dramatic increase in the number of juvenile offenders coupled with the increasingly violent nature of their crimes demands that prosecutors, legislators and other public officials bring issues such as punishment and public safety to the forefront. If we are to provide appropriate punishment for serious, violent or habitual juvenile offenders and maximize public protection, we must address the issue of detention for juveniles and juveniles prosecuted as adults both before and after adjudication. Federal regulations concerning detention of juveniles have a negative effect on local resources and public safety and need to be amended.

*Policy:* There should be adequate detention space to protect the public from serious, violent or habitual juvenile offenders.

*Policy:* Secure detention should be an available punishment option for serious, violent or habitual juvenile offenders.

*Policy:* Federal restrictions governing the detention of juvenile offenders should be eliminated or revised.

*Commentary:* In 2000, juveniles were involved in 16 percent of all Violent Crime Index arrests.<sup>23</sup> The number of delinquency cases involving detention increased 25 percent between 1989 and 1998.<sup>24</sup> In 1996, 320,900 cases involved detention.<sup>25</sup> It is clear that there is a dramatic need for more beds in order to assure the protection of the public. Furthermore, the detention issue is a concern both pretrial and after disposition.

Once a serious, violent or habitual offender is found guilty, we must have both the mechanism and the resources available to place this juvenile in a secure facility whether the offender is treated as a juvenile or as an adult. The ability to do so is often hampered by the custody requirements established by the Juvenile Justice and Delinquency Prevention Act.<sup>26</sup> Specifically, the Act initially required the following: (1) that juvenile status offenders and nonoffenders be deinstitutionalized; (2) "sight and sound separation" of juveniles and adults in a detention

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<sup>23</sup> The Violent Crime Index includes the offenses of murder and nonnegligent manslaughter, forcible rape, robbery and aggravated assault. OJJDP, Statistical Briefing Book, *supra*.

<sup>24</sup> OJJDP, Statistical Briefing Book, *supra*.

<sup>25</sup> OJJDP, Juvenile Offenders and Victims: 1999 National Report, *supra*, p. 152.

<sup>26</sup> 42 U.S. C. § 5633 et seq.

facility; (3) “jail lockup and removal”, which states that juveniles shall not be detained or confined in adult jails or lockups with several exceptions; and (4) that states determine the extent of disproportionate minority confinement and demonstrate efforts to reduce it where it exists. The Act was modified by regulations effective December 10, 1996 . The “sight and sound separation” requirement was amended to provide that brief accidental contact is not a reportable violation.<sup>27</sup> Additionally, time-phased use of nonresidential areas for both juveniles and adults in co-located facilities is now allowed. The NDAA supports reauthorization of the Act, provided the following changes are made to the Act and its implementing regulations:

- \* Elimination of the prohibition of the use of shared staff in both juvenile and adult detention facilities;
- \* State and local governments are allowed to establish locally appropriate guidelines for the initial detention of juvenile offenders based upon the proximity of the nearest juvenile detention facility and the availability of space in such facility;
- \* Greater flexibility be given to state and local governments to deal with juvenile status offenders, without violating the Act’s implementing regulations, including simplifying the process for obtaining a valid court order authorizing detention of such offenders; and
- \* Modification of funding penalties for violating the core requirements of the Act to allow funding to continue unabated in all core areas which are in compliance.

The NDAA also believes that the Act should:

- \* Provide greater emphasis on funding programs to deal with serious and violent juvenile offenders;
- \* Continue funding for training of juvenile justice professionals and for the establishment of state and local juvenile justice and delinquency prevention programs which are best suited to meet the needs of the individual communities; and
- \* Streamline the flow of funds authorized under the Act.

There is a legitimate need to keep young offenders separate from older offenders. However, this need can be met by state-wide housing regulations. Federal limitations should not be a barrier. The present regulations increase the costs of operation for both the juvenile and adult systems resulting in higher taxes without providing tangible benefits to the public. With the recognition that detaining serious, violent or habitual offenders is in the best interest of society comes the responsibility that society supply the resources and eliminate the hindrances necessary to accomplish this goal.<sup>28</sup>

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<sup>27</sup> OJJDP, Juvenile Offenders and Victims: 1999 National Report, *supra*, p. 88.

<sup>28</sup> For sample legislation in this area, see:

Juvenile Justice Act Requirements, 28 C.F.R. 31.303 (1995).

Colo. Rev. Stat. § 19-2-203 (1994).

Fla. Stat. ch. 39-042 (1994).

## SENTENCES

An important aspect of any juvenile justice system is the sanction component for delinquent conduct. Flexibility must be present in any sentencing structure, matching the appropriate sanction to the criminal conduct and offender. If a goal of the juvenile justice system is to change behavior, then consequences for criminal conduct must be predictable and enforced uniformly. This fact is true whether the sanction is a diversion program whose aim is to rehabilitate or treat the offender, or a correctional program setting whose primary objective is to protect the public.

In 2000, an estimated 2.4 million juveniles were arrested for delinquency offenses.<sup>29</sup> Of that number, 996,000 were handled formally, meaning that a petition was filed requesting an adjudication or waiver hearing.<sup>30</sup> Less than one percent were waived to criminal court (approximately 8,400 cases).<sup>31</sup>

*Policy:* The primary factors affecting a juvenile's sentence should be the seriousness of the crime, the protection of the community from harm, and accountability to the victim and the public for the juvenile's behavior.

*Policy:* Prosecutors should make recommendations at the time of sentencing as to appropriate dispositional alternatives to juvenile offenders, which should include age appropriate rehabilitative efforts for re-entry.

*Policy:* A juvenile's sentence should emphasize provisions for community safety, offender accountability, and competency development so that offenders can re-enter the community capable of pursuing non-criminal paths

*Policy:* There should be assured consequences, including the use of detention space, for those juveniles who violate conditions of probation.

*Policy:* If a sentence of a juvenile is subject to modification under a state's statutory scheme, no modification of the sentence should take place without the input of the prosecutor.

*Commentary:* Regardless of whether the juvenile or adult justice system is used to adjudicate serious, violent, or habitual juvenile offenders, meaningful sanctions should apply. Unfortunately, many states do not have sufficient resources to ensure that serious, violent or habitual offenders are placed in a correctional setting. Such resources are needed. Many juvenile codes current set the best interest of the child as the primary consideration of sentencing. The best interest of the child concept, as practiced, is not working. Balancing community protection, offender accountability and competency development in offenders is the recommended

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<sup>29</sup> OJJDP, *Statistical Briefing Book*, supra.

<sup>30</sup> *Delinquency Cases Waived to Criminal Court, 1988 – 1997*, supra.

<sup>31</sup> *Id.*

philosophical approach to juvenile justice. Age alone should not be a mitigating factor in the prosecutor's recommended disposition or the court's sentencing order for these types of offenders. Probation alone is not an appropriate sanction for serious, violent or habitual offenders. The primary factors affecting a juvenile's sentence are those set forth in the policy.

As to less serious offenders, while there is a need to rehabilitate the juveniles, an important aspect of rehabilitation includes punishment. There needs to be adequate resources for the court to impose punishment through the use of appropriate and effective sanctions. Failure to provide consequences for noncompliance of parole or probation conditions endangers the public, creates the image that the system is "soft", and increases the likelihood that "at risk" youth will become more violent or habitual in their behavior.<sup>32</sup>

The prosecutor should take an active role in the dispositional hearing and make a recommendation to the court after reviewing reports prepared by the prosecutor, probation department and others.<sup>33</sup> The prosecutor should ensure that the court is aware of the impact of the juvenile's conduct on the victim and community and should further report to the court concerning restitution and community service.<sup>34</sup> The recommendations should include age appropriate rehabilitative competency development efforts for re-entry. This requires knowledge of available dispositional alternatives in the community. The prosecutor's dispositional recommendation in the final analysis should focus upon the prosecutor's primary role of protecting the public safety, while at the same time meeting the needs and interests of the juvenile offender.<sup>35</sup> The juvenile should be equipped with the skills necessary to be a productive citizen. Whether the juvenile is incarcerated or placed on probation, the juvenile court system should provide juveniles with programs for responsible living, learning and working skills. Any modification of a sentence after the initial disposition should not occur without prosecutor input.

The NDAA is in favor of "blended" sentencing structures for serious, violent or habitual juvenile offenders who are not prosecuted as adults.<sup>36</sup> "Blended" sentencing provides expanded sentencing authority that may allow criminal and juvenile courts to impose either juvenile or adult sentences or both, in cases involving juveniles. "One type of blended sentence allows juvenile courts to levy both juvenile and adult sanctions or dispositions simultaneously, while suspending the adult sanction. If the youth follows the conditions of the juvenile sentence and commits no further violation, the adult sentence is revoked."<sup>37</sup> Another type of "blended" sentence allows the imposition of strict adult sanctions on juveniles while maintaining a

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<sup>32</sup> For sample legislation in this area see:

Fla. Stat. Ch. 39.054 (1994 & Supp. 1995).

Minn. Stat. § 260.193 (1994 & Supp. 1995).

Tex. Fam. Code Ann. § 54.04 (1995).

<sup>33</sup> National Prosecution Standards, p. 256.

<sup>34</sup> National Prosecution Standards, pp. 256 – 257.

<sup>35</sup> See, National Prosecution Standards, p. 257.

<sup>36</sup> "Blended sentencing" is defined for the purposes of this document as the imposition of juvenile and/or adult correctional sanctions to cases involving serious, violent or habitual offenders who have been adjudicated in juvenile court or convicted in criminal court.

<sup>37</sup> National Criminal Justice Association, Juvenile Justice Reform Initiatives in the States, 1994-1996 (October 1997), p. 46. This type of sentencing is popular in Connecticut, Kentucky and Minnesota. Id.

rehabilitative focus.<sup>38</sup> When using blended sentencing options, prosecutors must insure that the results are logical, fair and consistent.

If the prosecutor becomes aware that the sanctions imposed by the court are not being administered by an agency to which the court assigned the juvenile or that the manner in which the sanctions are being carried out is inappropriate, the prosecutor should take all reasonable steps to ensure agency supervisors are informed and appropriate measures are taken.<sup>39</sup>

## TERMINOLOGY

The juvenile justice system historically has used its own terminology, ignoring parallel terminology in the adult criminal justice system. This practice, coupled with confidentiality requirements, protected the juvenile from public scrutiny. However, incompatible terminology unduly complicates juvenile proceedings for the juvenile and other members of the public, including witnesses and victims. It also lends to the belief that the system is a lesser system that does not provide the same accountability as the adult system does.

*Policy:* The juvenile criminal justice system should use terms consistent with the adult criminal justice system.

*Commentary:* The use of euphemisms in the juvenile justice system minimizes the seriousness of the juvenile's conduct, misleads offenders and confuses the public. The use of consistent terms between the juvenile and adult criminal systems will make the juvenile system easier to understand for the juvenile, the victim, and the general public. Different terminology is appropriate in child protection cases (*e.g.* dependency or neglect) and non-criminal status offense cases (*e.g.* truancy or curfew violations) to describe and promote the goals of those cases and to distinguish them from criminal violations.

Today, the social welfare philosophy has radically changed legal practice. Criminal acts by juveniles are no longer crimes, but rather, euphemistic "causes of action." Juveniles caught in the act of crime cannot be jailed, but only momentarily detained. Instead, juveniles demand "services" and receive "treatment." Even the petition's traditional style is altered from the normal "State versus Defendant" to the *parens patriae* form of, "In the matter of (juvenile's name)." The juvenile is not considered an accused, but merely a "child" . . . . Criminal charges are presented merely by filing a "petition" rather than by indictment or information. The hearing is not considered a trial, but an "adjudicatory hearing." Juveniles are thus "adjudicated" rather than convicted of crimes. Courts are thus unable to impose judgment and sentence, but only "disposition." Most importantly, punishment is forbidden.<sup>40</sup>

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<sup>38</sup> Juvenile Justice Reform Initiatives in the States, 1994-1996, *supra*, p. 47.

<sup>39</sup> National Prosecution Standards, p. 257.

<sup>40</sup> Edward L. Thompson, Juvenile Delinquency: A Judge's View of our Past, Present, and Future, 46 Okla. L. Rev. 655, 657-58 (1993).

## STATEMENTS BY JUVENILES

Statements, admissions and confessions of juveniles, as is the case with adults, are vital evidence. Juveniles have the same constitutional protections as adults and should be subject to the same procedural protections as are adults in the taking of statements or admissions and confessions. The totality of the circumstances test affords sufficient protections by allowing individualized protection of the *right* without bestowing additional protections to an entire class in which certain individuals may not warrant protection.

*Policy:* There should not be procedural differences between the taking of statements from a juvenile and an adult. Admissibility of such statements in court should be based on the totality of the circumstances.

*Commentary:* Both juveniles and adults are entitled to the same constitutional rights as set out in *Miranda v. Arizona*.<sup>41</sup> The *Miranda* advisory, limited to statements of custodial interrogation by police, assures that suspects in custody give statements voluntarily with knowledge of the right to remain silent and the right to counsel. *Miranda* rights can be waived if the waiver is made knowingly, voluntarily and intelligently. A juvenile's age alone should not create a presumption that the youth being questioned did not understand and thus, involuntarily waived his or her *Miranda* rights. Nor should a juvenile's age alone result in the need for the existence for additional criteria to determine whether the youth's *Miranda* rights were properly waived.

The totality of the circumstances test is the appropriate test to determine if the waiver and the statement were voluntary and also if that waiver was made knowingly and intelligently. The totality of the circumstances test looks at "the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused."<sup>42</sup> The test was applied to juveniles in *Fare v. Michael C.*<sup>43</sup> In *Fare*, the Court explained:

The totality-of-the-circumstances approach is adequate to determine whether there has been a waiver even where the interrogation of juveniles is involved. We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so. The totality approach permits - indeed it mandates - inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights . . . . Where the age and experience of a juvenile indicate that his request for his probation officer or his parents is, in fact, an invocation of his right to remain silent, the totality approach will allow the court the necessary flexibility to take

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<sup>41</sup> 384 U.S. 1 (1967).

<sup>42</sup> *Edwards v. Arizona*, 451 U.S. 477, 482 (1981).

<sup>43</sup> 442 U.S. 707, 725 (1979).

this into account in making a waiver determination. At the same time, that approach refrains from imposing rigid restraints on police and courts in dealing with an experienced older juvenile with an extensive prior record who knowingly and intelligently waives his Fifth Amendment rights and voluntarily consents to interrogation.<sup>44</sup>

Presence of a parent or guardian during the custodial interrogation should be but one factor considered in the totality of the circumstances test.<sup>45</sup> A juvenile's relationship with his or her parent or guardian may be tenuous at best. Many youths are living independently. A parent may not be a "friendly advisor" to his or her child. The totality of the circumstances test takes into consideration all factors in determining whether the child voluntarily gave the statement and whether a waiver was made knowingly and intelligently.

The exclusionary rule, as established by case law, should be similar for an adult and juvenile. Concepts such as "doctrine of the fruit of the poisonous tree," "purging the taint," "good faith exception," and "impeachment," should apply to both juveniles and adults in similar circumstances. Statutes and court rules concerning the admissibility of statements of a juvenile should be consistent with those applicable to adults.

## **PARENTAL RESPONSIBILITY**

Lawmakers concerned with the effect of juvenile crime on public safety continue to search for a means to reduce it. Some have proposed the idea of penalizing the parents of child offenders.<sup>46</sup> The traditional common law rule is that no one is responsible for the negligent acts of another.<sup>47</sup> "However, an exception is made when a special relationship, such as that of parent and child, exists between the parties. When this relationship is present, the common law imposes an affirmative duty on parents to supervise and control their children."<sup>48</sup>

*Policy:* Parental responsibility laws should strike a proper balance between using parental liability to force parents to control their children, making victims whole, and holding juveniles personally accountable for their actions.

*Policy:* Recognizing that juveniles are accountable for their actions, parents or legal guardians should be required to participate in the judicial process and the consequences imposed in juvenile cases.

*Policy:* Without diminishing the responsibility of the juvenile, parents should be held financially accountable, within appropriate limits, for damages caused

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<sup>44</sup> *Id.* at 725-26.

<sup>45</sup> See generally, *Id.*

<sup>46</sup> Michelle L. Maute, Note, New Jersey Takes Aim at Gun Violence by Minors: Parental Criminal Liability, 26 Rutgers L.J. 431, 433 (1995).

<sup>47</sup> *Id.* at 438-39.

<sup>48</sup> *Id.* at 439.

by their children and for the costs associated with the prosecution, placement and treatment of their children.

Commentary: Laws penalizing parents of child offenders are, in part, designed to shift the burden of controlling such behavior from state government to parents.<sup>49</sup> These laws take various forms. Some states impose parental responsibility in situations where there is notice and an opportunity to control.<sup>50</sup> Other states limit parental liability to those situations where parents take some direct action that contributes to the delinquency of their children.<sup>51</sup>

The NDAA recognizes the merit in the trend towards parental liability. However, it is important to recognize that children are individuals and control their own decisions and actions.<sup>52</sup> Many parents, despite their best efforts, simply cannot control their children. Each state should work toward a proper balance between using parental liability as a means to force parents to control their children, making victims whole and holding juveniles personally accountable for their actions.

Effective parental responsibility laws should include the parent in the judicial process in addition to forcing parents to fulfill their parental obligations. Specifically, parents should be responsible for:

- attending all court proceedings, provided that their employers allow such attendance;
- participating in rehabilitative programs with their children;
- paying costs associated with the prosecution, placement and treatment of their children, within appropriate limits, and subject to the ability to pay;
- participating in court ordered programs that require parental involvement;
- participating in parenting skills classes when appropriate; and
- taking responsibility at some level, for restitution to victims.

In order to assure that parental responsibilities can, in fact, be mandated, courts must have the ability to hold parents in contempt for non-compliance. Any statutory scheme must clearly delineate who in the system will be responsible to insure parental compliance. In the final analysis, all actions taken against parents should be in addition to appropriate actions taken against the juveniles and not in place of such sanctions. Parental responsibility is only one of several means necessary to control serious, violent, or habitual juvenile offenders.<sup>53</sup>

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<sup>49</sup> *Id.* at 434.

<sup>50</sup> *Id.* at 440.

<sup>51</sup> *Id.* at 464.

<sup>52</sup> *Id.* at 446.

<sup>53</sup> For sample legislation in this area, see:

Fla. Stat. Ch. 790 (Supp. 1995).  
Ky. Rev. Stat. Ann. § 530.060(1)

The ultimate parental responsibility is protecting their child. Several studies have found that the rates of child abuse and neglect are higher for juvenile delinquents than the general population. For example, one study found that youth who had been victims of child abuse or neglect were significantly more likely than nonvictims to have an official record of delinquency (45 percent versus 32 percent).<sup>54</sup> The ability to reduce rates of juvenile delinquency by preventing family violence should be explored.

## INFORMATION ACCESS

Access to all relevant data concerning a juvenile offender is critical to a prosecutor in making decisions at all stages of the prosecutorial function. Charging decisions, for example, are influenced by a juvenile's prior criminal history. A juvenile's history of treatment, school misbehavior and record of truancy also may affect a prosecutor's decision and ultimate disposition recommendation made after a youth is found guilty of committing the crime. Statutes, rules, or common practice make it difficult for information concerning juveniles to be exchanged easily. The closing of juvenile court proceedings to the public and the corresponding classification of juvenile court records as confidential information are two examples of practices that inhibit free exchange of data concerning juvenile offenders. Prosecutors need national standards to develop a uniform record keeping system pertaining to juvenile offenders.

- Policy:* Juvenile prosecutions should be open to the public, in the same manner as in adult proceedings.
- Policy:* A national uniform record keeping system for juvenile offenders should be established.
- Policy:* Legislation should be implemented mandating inter-agency sharing of relevant information pertaining to juveniles.
- Policy:* To properly perform their prosecutorial duties, prosecutors should have complete access to, and use in court of, information and records from other agencies.

**Commentary:** In most jurisdictions, juvenile court proceedings are closed to the public. The reasons for this relate to the historical underpinnings of the juvenile court that began in Chicago

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(Michie/Bobbs-Merrill 1990).  
N.Y. Penal Law § 260.10(2) (McKinney 1989).  
Tex. Fam. Code § 54.041 (1995).

<sup>54</sup> OJJDP, Juvenile Justice Bulletin, "Preventing Delinquency Through Improved Child Protection Services" (July 2001).

in 1899. Juvenile courts historically were designed to provide a more therapeutic approach to juvenile offenders, focusing on what is in their best interests rather than the interests of protecting the public. Rehabilitation, rather than punishment, was, and in most jurisdictions still is, the primary focus of the juvenile justice system.

Because of this primary focus, privacy of juvenile court proceedings evolved. Criminal justice professionals viewed public access as having a negative impact on the efforts to rehabilitate the youthful offender. Today, however, there is a growing view that juvenile court proceedings should focus more on punishment and protection of the public than on rehabilitation and the child's best interests, especially in the case of the serious, violent and habitual offender.

Simply, the public has the right to know who commits crimes within the community. Consequently, legislation or court rules need to be modified to open juvenile court proceedings to the public. The opening of juvenile court proceedings will insure greater accountability for the juvenile offender and the process as a whole. It will also insure greater access to juvenile court information for other agencies in the criminal justice system.<sup>55</sup>

One of the unfortunate results of the long-standing practice of closing most juvenile court proceedings to the public is that the quality of juvenile records is very poor. According to a 1988 study, "very few juvenile justice agencies conduct regular audits of the accuracy of their juvenile records or have any quality control policies in place. In addition, very few states have statutory procedures which permit an individual to review his/her own record to correct inaccuracies."<sup>56</sup> These problems must be corrected. Although juvenile courtrooms should be open to the public, steps should be taken to protect minor victims, particularly in cases of sexual assault.

The development of a national uniform record keeping system for juvenile offenders is essential to insuring that prosecutors and representatives from other agencies can obtain accurate and comprehensive data to assist them in carrying out their responsibilities. For example, a database for maintaining fingerprints and photographs of juvenile offenders does not exist on the state or national levels. In addition, a database does not exist for maintaining DNA samples of juvenile sex offenders in most jurisdictions. However, many states have such systems for adult sex offenders. These types of data are essential for law enforcement agencies that deal with serious, violent and habitual juvenile offenders.

Restrictions on access to relevant information on a juvenile's background are a detriment not only to a prosecutor but to many other agencies as well. For example, a police officer needs information about a juvenile's history of violence, possession of dangerous weapons, or gang related activities to insure that, when attempting to make an arrest of the youth, he or she can take proper safety precautions. A juvenile court judge or detention officer needs to know the juvenile's prior record of runaway behavior, history of violence or prior suicide attempts. This

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<sup>55</sup> It is important to note that while proceedings for serious, violent and habitual offenders should be open to the public, this should not be viewed as an endorsement by the NDAA of the use of cameras in the courtroom.

<sup>56</sup> Tamryn J. Etten & Robert F. Petrone, Sharing Data and Information in Juvenile Justice: Legal, Ethical, and Practical Considerations, Juv. & Fam. Ct. J., note 21 at 78 (1994).

information will help to determine the youth's risk of flight, or risk of harm to others or himself, when considering whether the youth should be detained prior to trial. A juvenile court judge or probation/corrections officer should know a juvenile's prior record, prior placement history, record of success or failure in prior treatment programs and record of progress in the current placement program. This information will help the officer to determine where a juvenile should be placed following conviction and whether or not the juvenile is ready to be discharged from the current placement program.<sup>57</sup>

Many juvenile justice agencies, schools and juvenile treatment and prevention programs have goals and information needs that overlap. Without the mutual exchange of comprehensive and mandatory information concerning juvenile offenders, there may exist duplicative efforts or ignorance about other agencies' actions pertaining to a particular youth.<sup>58</sup>

Legislation should be enacted that mandates inter-agency sharing of relevant information pertaining to juveniles. Prosecutors need complete access to this information to carry out their prosecutorial responsibilities. Relevant information pertaining to juveniles should be available to all agencies that come into contact with the juvenile which have "a need-to-know" the data for case management purpose and administration of their respective programs. Persons with "a need-to-know" should include agencies or individuals who care for, treat, supervise, sanction or protect a child or have a legal responsibility to investigate allegations of abuse or criminal conduct. This includes police, prosecutors, schools, social services, child protection, courts and corrections agencies. The Serious Habitual Offender Comprehensive Action Program (SHOCAP) is an example of a program designed to share relevant data concerning juveniles between these various entities.<sup>59</sup>

## VICTIMS' RIGHTS

Society today is demanding that victims be afforded a more meaningful role in the adjudication of adult and juvenile offenders. Victims deserve access to the juvenile justice system, and prosecutors are ready to fulfill their role in insuring this access.

*Policy:* Crime victims should have the same rights in juvenile court that they have in adult criminal court.

*Policy:* Restitution should be sought in every appropriate case.

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<sup>57</sup> Etten and Petrone article, *supra* at 65.

<sup>58</sup> *Id.*, at 79.

<sup>59</sup> For example of SHOCAP Legislation, see:

Fla. Stat. Ch. 39.058 (1994).

Ill. Rev. Stat. Ch. 405 para. 1-8.2 (Supp. 1995).

Okla. Stat. Ann. tit. 100 § 1160.1 (West 1987 & Supp. 1995).

Va. Code. Ann. § 16.1-330.1 (Michie 1988 & Supp. 1995).

*Policy:* Victims should not be mandated to participate in mediation with the offender.

Commentary: Prosecutors are the logical group to incorporate victim involvement into the juvenile justice system. However, many states place restrictions on the type and amount of information that may be released to the public, including victims. Some states bar the public, including the victims, from juvenile proceedings. These practices further diminish the value and effectiveness of the juvenile justice system in the eyes of the public. As Paul G. Cassell writes in a recent law review article “[e]xcluding victims from any serious juvenile proceedings seems hard to justify. The effect of crime on a victim does not depend on the age of the criminal. Moreover, while one can understand the need to allow juveniles to hide their errors from the general public, concealment from the victim is impossible.”<sup>60</sup>

Victims in sexual assault cases should be entitled to request that their names not be disclosed. Additionally, juvenile court hearings should be closed when necessary to protect young victims.

Prosecutors should meet their obligations to victims by seeking restitution in appropriate cases and involving the victim in the judicial process. Additionally, prosecutors should work to remove legislative barriers that inhibit their ability to allow the victim access to judicial proceedings. This is especially true with regard to laws prohibiting the right of a victim to provide an impact statement to the judge prior to imposition of sanctions.<sup>61</sup>

While many appropriate programs involving concepts of restorative justice have been implemented throughout the United States, victims should not be required to participate in such programs which require mediation between the offender and victim. Many crime victims do not desire any further contact with the offender who has victimized them and their rights in this regard need to be respected.

## CRIME PREVENTION

The prosecutor can serve a valuable role in educating the public concerning juvenile justice issues and in coordinating or participating in crime prevention initiatives. Education and prevention go hand in hand with effective law enforcement and prosecution efforts, especially in the area of juvenile crime.

*Policy:* Prosecutors should take an active role in juvenile crime prevention efforts.

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<sup>60</sup> Paul G. Cassell, Balancing the Scales of Justice: The Case For and The Effects of Utah’s Victims’ Rights Amendment, 1994 Utah L. Rev. 1373, 1415 (1994).

<sup>61</sup> For sample legislation in this area, see: Tex. Code Crim. Proc. Ann. art. 56.01 (1995).  
Utah Code Ann. § 77-38-1 (1995) *et seq.*

*Policy:* Prosecutors should work with other community leaders to ensure community involvement in crime prevention efforts.

*Policy:* Prosecutors should be involved in truancy prevention efforts whenever possible.

Commentary: Efforts aimed at education, prevention and early intervention are a critical part of any community's war on crime. Young people at early ages must be taught the dangers of using illegal drugs and abusing alcohol. Youth must also learn to confront their problems in non-violent ways. Prosecutors can coordinate or participate in such crime prevention efforts.

While there will never be a complete consensus concerning all of the reasons for the growing juvenile crime problem in our society, few would disagree that the reasons are varied and complex. This is precisely why the response to this problem must be multifaceted. One important way to formulate these types of multiple responses is the development of community coalitions and partnerships to address this widespread problem. Such coalitions can play an important role in helping to curb youth violence and crime. Everyone in the community needs to be involved in these efforts, including parents, teachers, school administrators, faith communities, civic and business leaders, law enforcement officials, prosecutors, local elected officials and youth themselves. Coupled with effective enforcement and prosecution efforts, crime prevention initiatives are important and necessary.

Prosecutors have taken on truancy intervention efforts in a number of different jurisdictions. "Truancy, or unexcused absence from school, has been linked to serious delinquent activity in youth and to significant negative behavior and characteristics in adults."<sup>62</sup> "As a risk factor for delinquent behavior in youth, truancy has been found to be related to substance abuse, gang activity, and involvement in criminal activities such as burglary, auto theft and vandalism."<sup>63</sup> Reducing truancy will reduce crime.

## **GUNS AND DANGEROUS WEAPONS**

The availability, distribution and use of guns by juveniles in the commission of crimes has escalated to epic proportions. Because of this crisis, the public has demanded that the criminal justice system take a stronger stand on offenders who possess or use dangerous weapons.

*Policy:* Serious, violent, or habitual juvenile offenders who illegally use or possess firearms or dangerous weapons should face enhanced penalties similar to adult offenders.

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<sup>62</sup> OJJDP, Baker, Myriam L., Jane Nady Sigmon and M. Elaine Nugent, Truancy Reduction: Keeping Students in School (September 2001).

<sup>63</sup> Truancy Reduction: Keeping Students in School, *supra*.

Commentary: The issue of guns and juveniles is a politically charged and controversial topic. The discussion is often presented as an effort of gun control when the real issue is one of safety in the community. Individual prosecutors have varying views on gun control, but there should be no dispute that individuals who illegally use dangerous weapons should face serious consequences in the criminal and juvenile justice systems.

Juveniles increasingly are using guns in the commission of crimes, illegally possessing guns and are victims of gun-related violence. Between 1980 and 1997, 73 % of male juvenile homicide offenders used a firearm in committing homicide.<sup>64</sup> Of all juveniles murdered in 1997, 56% were killed with a firearm.<sup>65</sup> The annual number of juveniles killed with a firearm increased 65% between 1987 and 1993, while other types of homicide remained constant.<sup>66</sup> Thirty-three percent of juvenile arrestees who owned a gun had used one in a crime.<sup>67</sup>

Several states already have new laws relating to the illegal possession and criminal use of weapons by juveniles. One component of this legislation is enhanced penalties for gun use. These penalties involve longer juvenile sentences or trial in adult court. Some legislation also attaches criminal responsibility on adults who provide the juvenile with a weapon or with access to a weapon.<sup>68</sup>

## GANGS

Obviously, the impact of organized criminal activity by juveniles requires the criminal justice system to address the problem. The following policy statements are designed as an overview of major factors that should be considered when developing a response to gang-related activity within a prosecutor's jurisdiction.

*Policy:* Prosecutors should establish as priorities the identification, prosecution and punishment of gangs and gang behavior.

*Policy:* Individuals who commit crimes for the benefit of a gang should be subject to enhanced penalties.

*Policy:* Adequate resources should be provided to prosecutors to assist in the prosecution of gang-related crimes and the protection of witnesses.

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<sup>64</sup> OJJDP, Juvenile Offenders and Victims: 1999 National Report, *supra*, p. 55.

<sup>65</sup> OJJDP, Juvenile Offenders and Victims: 1999 National Report, *supra*, p. 17.

<sup>66</sup> OJJDP, Juvenile Offenders and Victims: 1999 National Report, *supra*, p. 19.

<sup>67</sup> OJJDP, Juvenile Offenders and Victims: 1999 National Report, *supra*, p. 69, citing an NIJ study during the first 6 months of 1995.

<sup>68</sup> For sample legislation in this area see:

Colo. Rev. Stat. § 18-12-108.5 (1995) *et seq.*

Fla. Stat. Ch. 790.22 (1994 & Supp. 1995).

Minn. Stat. §624.713 (1994 & Supp. 1995).

Tex. Educ. Code Ann. § 21.3011 (1995).

*Policy:* Specialized prosecution is necessary to assist in the effective prosecution and punishment of crimes committed for the benefit of gangs. Prosecutors should be encouraged to share information and provide technical assistance regarding gang prosecution with small jurisdictions.

Commentary: Prosecutors need to set a high priority within their offices concerning gang issues. Depending on the size of the jurisdiction and the gang problems in existence, community programs may vary. The error most often made by the prosecutor and other law enforcement officials in a community is to ignore the developmental stages of gang activity. According to the National Youth Gang Survey, in 1995, an estimated 31,000 gangs were operating in 4,800 U.S. cities with more than 846,000 members, half of whom were under age 18.<sup>69</sup> Gangs exist in all types of jurisdictions, from rural to urban.<sup>70</sup>

Gang activity is not mere delinquency. Gang exploits have become increasingly more criminal in nature. Crimes that are designated “gang-related” tend to be overwhelmingly violent.<sup>71</sup> It is important that the consequences imposed reflect the serious level of behavior. Prosecutors must recognize the need for public safety and the goal of deterrence. As a gang becomes organized to commit crimes for profit, control and reputation, its members and “wannabe’s” likely are directed to perform criminal acts. The gang itself then reaps the profits. This harms the victim and society as a whole.

Even if prosecutors give the gang issue a high priority, little can be accomplished unless adequate resources are provided to assist them. This can be done by providing sufficient detention space, appropriate prevention programs and human resources to enable all personnel within the juvenile justice system to do their jobs efficiently and effectively. The success of preventive programs in curtailing gang activity within a community must be able to rely on the prosecutor taking action against those who, in spite of preventive intervention, continue their gang involvement. There are those individuals who must be isolated from their peers by institutional detention. Only those prosecutors with adequate staff, court support and placement opportunities have achieved some success.

One issue often overlooked is the ability to protect witnesses who testify against gang members from retribution by the gang. Whether real or imagined, a witness must feel that taking the witness stand will not result in retaliation by the gang members on themselves or their family. The ability of the prosecutor to provide protection, move a witness, or otherwise arrange for relocation and similar services can go a long way in promoting the cooperation of a frightened witness. This is one area in which the federal government can provide both technical and financial resource assistance to local prosecutors.

Current studies indicate that specialized task force units composed of prosecutors and law enforcement agents have the greatest chance of successfully proceeding against gangs and gang

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<sup>69</sup> OJJDP, Juvenile Offenders and Victims: 1999 National Report, *supra*, p. 77.

<sup>70</sup> OJJDP, Juvenile Offenders and Victims: 1999 National Report, *supra*, p. 78.

<sup>71</sup> OJJDP, Juvenile Offenders and Victims: 1999 National Report, *supra*, p. 78.

members. Small and medium size jurisdictions (the majority of offices) do not have the staff and resources to create such units. To provide the most reasonable alternatives for these offices, it is hoped that larger offices can provide assistance. The experience and information available to the larger office, if shared, could allow smaller offices to avoid re-inventing the wheel when trying to address gang-related issues. Some of the specific areas in which such aid can be made available include the following:

- evidentiary matters--briefs, experts, demonstrative models;
- charging--forms, history, approaches;
- restrictions on ability to gather intelligence--access; and
- other technical assistance.<sup>72</sup>

### FEDERAL RESPONSIBILITY

Recently, prosecutors have witnessed the federal government's involvement in what was historically denoted as local crimes. For example, armed robberies of occupants of a vehicle became the federal crime of carjacking. As evidenced in the Supreme Court's recent decision in *U.S. v. Lopez*,<sup>73</sup> the courts may be signaling the end of this federal expansion in the prosecution of local crimes. In this environment, it is important to define the role of the federal government in the area of juvenile prosecution.

*Policy:* Responsibility for juvenile prosecution should remain with the states.

*Commentary:* A review of current legislation reveals that many states take varied, interesting approaches to juvenile crime. This diverse legislation is important, since the effectiveness of responses to juvenile crime may vary from jurisdiction to jurisdiction. Prosecution of juveniles should be left to local prosecutors who are able to implement programs and policies needed to respond to local problems. However, it is recognized that there are some crimes which historically and appropriately are left to the federal government for prosecution. These crimes include those on federal reservations and those regarding immigration matters.

The federal government should play a larger role in those juvenile activities that cross state lines by sharing relevant information with local prosecutors. Finally, the laws that prevent federal agencies or agencies that receive federal monies to share information regarding juveniles should be amended or repealed.<sup>74</sup>

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<sup>72</sup> For examples of legislation concerning gangs, see:  
Cal. Penal Code § 186.20 (Deering 1995).  
Fla. Stat. Ch. 874.01 (1994).  
Minn. Stat. §609.229 (1994).

<sup>73</sup> 115 S. Ct. 1624 (1994).

<sup>74</sup> For sample federal legislation in this area, see:  
18 U.S.C.S. § 5032 (1995).  
28 C.F.R. 0.57 (1995).

## CONCLUSION

Society faces a new breed of juvenile delinquent--the serious, violent and habitual juvenile offender. The current juvenile justice system was created to handle non-violent and at risk youth and is ill equipped to handle the new breed of delinquents. Changes to the juvenile justice system must be made in order to more effectively address the juvenile offender problem. Prosecutors must have the discretion to waive juvenile cases to adult court, law enforcement, social services and other agencies must share information, and juvenile proceedings should be open to the public. Also, juvenile sentencing practices should progress toward more adult-like sanctions, while maintaining case-by-case flexibility and using alternative treatment and diversion programs when appropriate.

Ultimately, society must play a larger role in addressing the juvenile offender epidemic. Prosecutors are in the unique position of acting as society's voice in the juvenile justice system and are entrusted with protecting society. Prosecutors must continue to adopt new policies and institute new programs to educate communities on how to increase public safety and assist in protecting their citizens from the serious, violent and habitual juvenile offender. The policy positions contained in this document reflect the recognition by the NDAA of the importance of balancing resources and new ideas with quick and effective prosecution to address one of the most serious problems facing us today - rising levels of juvenile crime.