

# Juvenile Justice Update

Background  
Material



**THE LEAGUE OF WOMEN VOTERS  
OF OHIO**

November 2002

# The Juvenile Courts in Ohio, Where We've Been, Where We are Today, and the League Agenda

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## **THE JUVENILE COURTS IN OHIO, WHERE WE'VE BEEN, WHERE WE ARE TODAY, AND THE LEAGUE AGENDA**

### **WHERE WE'VE BEEN**

Throughout the late 18th century, "infants" below the age of reason (traditionally age 7) were presumed to be incapable of criminal intent and were, therefore, exempt from prosecution and punishment. Children as young as seven, however, could stand trial in criminal court for offenses committed and, if found guilty, could be sentenced to prison or even to death. By 1825 the Society for the Prevention of Juvenile Delinquency was advocating the separation of children from adult offenders. As early as 1869 the Ohio Supreme Court recognized the state's authority to commit children to reform schools. According to the Court, the "authority of the state, as *parens patriae*, to assume the guardianship and education of neglected homeless children, as well as neglected orphans, is unquestioned." (*Cope v. Campbell*).

In 1882, John Altgeld, a Chicago lawyer who would later become governor of Illinois, toured the House of Corrections in Chicago and discovered that hundreds of children, some as young as eight, were jailed with adults. Jane Addams and other Chicago reformers advocated for a separate justice system for children, leading to the creation of the first juvenile court in 1899.

In Cleveland urban children often worked in the street hustling for a few pennies in any way they could – selling papers, shining shoes, stealing. The "child savers" of that time were concerned about how poor urban children were treated by the judicial systems. They found that very young boys were confined in jails with adults, and girls were jailed with prostitutes. This environment led to the movement for courts for juveniles, and in 1902 the Cuyahoga County Juvenile Court was established. The first case, a fourteen-year old boy charged with stealing a pair of shoes, was settled when Newton D. Baker, who would later serve as mayor of Cleveland, took the boy under his supervision.

By 1906 the legislature had extended the juvenile system statewide. In 1937 Ohio adopted the Standard Juvenile Court Act. The right to counsel, to the privilege against self-incrimination, to trial by jury, and to bail were all held inapplicable to juvenile proceedings. The doctrine of *parens patriae*, which justifies those procedures that seem to conflict with the constitutional liberties of the person, requires that the court act as a wise and kindly parent toward those children who are brought before it.

The juvenile justice system is founded on the concept that youth are different from adults. Juvenile courts were established to provide youth a chance to make a better choice than delinquency. More than simply providing another chance, juvenile justice professionals work to enable youth to make the kinds of decisions that will ensure a better future for themselves and their communities. (J. Wilson, OJJDP).

The Gault decision in 1967 changed the nature of juvenile court delinquency proceedings by requiring certain rights for children – the right to be notified of the charges, to be represented by counsel, to confront witnesses, and to not incriminate oneself. In the 1970 Winship decision, the Court held that the "beyond a reasonable doubt" standard was applicable in delinquency cases when a child's liberty was at issue.

There remains a fine balance between the need for criminal due process safeguards and maintaining the beneficial aspects of the juvenile system.

## League of Women Voters

The League of Women Voters of Ohio was one of the first groups to study children and their rights in the juvenile justice system. The position it adopted in 1973 supported the philosophy of the 1969 revision of Section 2151.01 of the Ohio Revised Code:

- *To provide for the care, protection, and mental and physical development of children...*
- *To protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute therefore a program of supervision, care, and rehabilitation;*
- *To achieve the foregoing purposes, whenever possible, in a family environment, separating the child from its parents only when necessary for his welfare or in the interests of public safety;*
- *To provide judicial procedures through which Chapter 2151...is enforced, and in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced.*

The League supported local treatment as a desirable alternative to large centralized institutions and the development and use of local social service programs to provide appropriate treatment for unruly and delinquent children and their families.

In 1974 the League added to its position – support for:

- Including in the Revised Code: a) the responsibility of juvenile courts and the Department of Youth Services to provide positive, individualized, humane treatment, and b) the right to: bodily safety and integrity; freedom from physical and mental abuse; mental and physical health care; drug and alcohol treatment; education appropriate to a child's intellectual, emotional, and physical capacities; access to the courts for enforcement of rights; and periodic review of placement and treatment.
- Statewide uniform standards for maintaining, disseminating, and/or inspecting juvenile records. Standards should protect the offender, as child and as adult, from unnecessary consequences of criminal behavior and the taint of criminality.
- Expungement (sealing) of all juvenile records, and state mandated written notification of eligibility for expungement review.

(See Appendix 1: *Department of Youth Services.*)

The 1977 Convention decided to study and develop standards for all juvenile facilities. The League soon saw a need to determine, first of all, who should be placed in secure facilities. The 1979 positions reflect member interest in limiting use of secure facilities and developing community services and non-secure facilities as alternatives – support for:

- Individual evaluation of each case before the court.
- "Least restrictive" concept in determining placement of children awaiting court action as well as after adjudication...
- Development of...alternatives to secure facilities within a child's own community...
- Minimum standards for secure facilities that provide for:
  - a) Right to personal possessions, privacy, freedom of and from religion, personal communications, limitations and procedural requirements for discipline, grievance and appeal mechanisms, periodic review of placement, bodily safety.
  - b) Program: initial physical, mental, psychological evaluation; medical and dental care; recreation and exercise; education for individual needs; vocational training; psychiatric and psychological services; work-release and school release programs; follow up after release.

c) Staff: ratio of staff to youth, qualifications, supervision, and accountability.

Opposition to:

- Placing unruly children in secure facilities (defined as those with architectural barriers).
- Holding any children in adult jails.

## **The Superpredator**

In the 1980s, juvenile violent crime trends led to the prediction that the nature of juvenile violence had changed and a new breed of youth – the *superpredator* – would emerge as a threat. For these youth violence would be a way of life – the new delinquents were unlike the youth of the past. Fears were heightened in the 1990s by the prediction that the youth population was increasing. As a result nearly every state, including Ohio, passed laws to handle more youth as adult criminals.

## **But Did a More Threatening Delinquent Youth Emerge?**

- Curfew violations doubled between 1993 and 1996. Communities believed curfew enforcement would reduce juvenile violence.
- Drug arrests nearly doubled, but rates from self-report studies (national youth surveys) did not change.
- Assault arrest rates increased in all age groups as a result of new legislation requiring arrests for domestic violence. Family problems previously classified as status offenses now resulted in arrests for assaults.
- Homicide and robbery arrests declined.
- The juvenile population did increase, but crime did not. By 1997 the juvenile violent crime arrest rate dropped to the lowest level of the 1990s. In 1999 the serious violent juvenile crime rate was 26 crimes per 1000 juveniles, ages 12 - 17, totaling 610,000 such crimes involving juveniles – a 50 percent drop from the 1993 high and the lowest level recorded since the National Victimization Survey began in 1973. (*U.S. Department of Justice, Juvenile Justice and Delinquency Prevention, 1999 National Report Series. Challenging the Myths*).
- The 2001 National Crime Victimization Survey continues to show declines – a 10 percent decrease in the violent crime rate for whites and an 11.6 percent decrease for blacks between 2000 and 2001. Teenagers seemed less likely to be victims of violent crime; the rate against those between 16 and 19 years fell 13.2 percent. (*The Plain Dealer, September 9, 2002*).

These data from the U.S. Department of Justice indicate that *superpredators* are more myth than reality, but this myth caused a panic that changed the juvenile justice system.

## WHERE WE ARE TODAY

**How did Ohio respond?** The General Assembly recently passed a series of laws relating to juvenile offenders, including:

- 1) S.B. 179, effective January 1, 2002 that changed the purpose clause of the Ohio Revised code from rehabilitation to a focus on offender accountability and protection of public safety. It also permits the commitment of 10 and 11 year olds to the Department of Youth Services (DYS), blended youth and adult sentences, and jury trials.
- 2) Am. Sub. SB 181: Truancy, effective June 2000, defines truancy as delinquency in some cases and permits criminal charges to be brought against a truant's parent or guardian.
- 3) S.B. 3: Registration, effective January 1, 2002, defines sexual predator, habitual sexual offender, and juvenile sex offender. It requires that sexual predators and habitual sexual offenders be officially registered and the community notified.  
(See Appendix 2 for more complete legislative information.)

## THE LEAGUE AGENDA

The League's position over the years has referred to principles enumerated in the purpose clause of Ohio Revised Code 2151.01. Since this section has been changed and no longer conforms with the current League position, it is appropriate, therefore, that the League state the principles that it supports and delete any reference to the code.

Leagues should discuss and answer the following questions:

**Do we wish to underscore the League's commitment to the following principles in our current position by reaffirming them?**

- **Children are not adults and should not be held in adult jails.**

Scientists researching the brain have found major changes occurring in the brain during the teen years. The brain tissue changes are found to be in the frontal lobe areas that control impulses, risk-taking, and self-control behavior. These parts of the brain, which inhibit violent passions and rash actions and which regulate emotions, are vastly immature and restructure themselves throughout the teenage years. The efforts of the child-savers of a century ago who advocated the basic concept that children are children whether they are good or bad and thus, by definition, cannot be held accountable to adult standards for their actions, may be vindicated by science. (See Appendix 3: *Brain Changes May Explain – Not Excuse – Lack of Impulse Control.*)

Transfer to the adult justice system increases criminality. Youth offenders transferred to criminal court re-offend more often, and with more serious offenses, than those retained under juvenile jurisdiction according to studies in Florida, Minnesota, New York, and Pennsylvania. Confining youths with adults is dangerous. Youth in adult institutions are more likely to commit suicide, be sexually assaulted, be

attacked with a weapon, and are in excellent places to learn tricks of the crime trade from veteran criminals. (*"Less Hype, More Help: Reducing Juvenile Crime, What Works – and What Doesn't."* Richard Mendel. *American Youth Policy Forum et al*).

- **The purpose of the juvenile system is rehabilitation.**

Rehabilitation means providing the treatment and services youth need to become productive law-abiding adults. The study by the American Youth Policy Forum, *Less Hype, More Help*, makes the following recommendations for successful rehabilitation programs:

- a) End reliance on out-of-home placements. Local juvenile courts have strong financial incentives to commit youth to state institutions instead of treating them locally. In Ohio *Reclaim Ohio* is a state financial incentive program to counties to reverse that trend and provide community-based programs.
- b) Invest in research-driven interventions for juvenile offenders. Programs should be evaluated and those that are effective replicated.
- c) Results should be measured and funds cut for programs shown not to work.
- d) Engage community partners. Delinquent youth often lack attachment to caring adults and involvement in positive activities. Juvenile courts should partner with residents and community-based organizations.
- e) Communities should undertake comprehensive planning and action to address juvenile crime.

The Governor's *2002 Ohio Juvenile Justice Needs Assessment* recommends implementing broad-based delinquency prevention programs in Ohio communities.

- **Children's legal rights, including expungement of records, should be enforced.**

From its inception, the juvenile court was considered a civil – not a criminal – court. Thus children remained free of the stigma of a criminal conviction. Juvenile records were considered confidential, and the court's proceedings were closed to the public. Procedural safe-guards, such as due process, right to legal representation, reasonable doubt, etc., were not recognized.

In *Kent v. United States* in 1966, Supreme Court Justice Fortas wrote: "...there is evidence that there may be grounds for concern that the child receives the worst of both worlds: he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." (*Paul C. Giannelli, Ohio Juvenile Law. Baldwin's Ohio Handbook Series. 2001*).

Children now have the right to have their juvenile records sealed or expunged except in certain cases: homicide and certain types of sexual offenses. (See Appendix 5: *Expungement and Sealing of Records*).

- **State standards for detention facilities should be enforced.**

"Detention Services shall provide for the temporary care and safety of juveniles in our custody, while protecting their rights and attending to their cultural and developmental needs." (*Cuyahoga Detention Services mission statement*). Local detention facilities should conform to the standards in the Ohio Department of Youth Service *Standards for Detention Centers* and the American Correctional

Association *Standards for Juvenile Detention Facilities*. The Governor's 2002 *Ohio Juvenile Justice Needs Assessment* recommends hiring and retaining qualified and well-trained staff as a key to program success.

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In the following five sections the LWVO Juvenile Justice Committee has summarized its findings for potential areas of expansion presented to local Leagues through the consensus questions:

**1. Shall we support the development of a comprehensive system of children's services within each county or multi-county region that utilizes the resources of the extended community to give each individual child a continuum of care?**

For the individual child this would mean a continuum of care so that the child has the best opportunity possible for positive growth and development and rehabilitation. The system would focus on preventing youth from becoming delinquent by focusing prevention programs on at-risk youth and improving the response of the juvenile justice system to delinquent offenders through a system of graduated sanctions and a continuum of treatment alternatives that includes immediate intervention, sanctions, and community-based corrections sanctions. Risk factors may include the family, school, peer group, community, and characteristics of juveniles themselves. The more risk factors present, the greater the likelihood of problems as children are exposed to those factors.

The system would also support the strengthening of families and the core social institutions of the community – the schools and other community organizations – in their roles of developing capable, mature, and responsible youth. Each of these societal institutions works to ensure that children have the opportunity and support to mature into productive law-abiding citizens. A nurturing community environment requires that these core institutions be actively and collectively involved in the lives of youth. Community organizations include public and private youth-serving organizations, neighborhood groups, and business organizations providing employment and training for youth.

When the family and community fail the youth, they find themselves in the juvenile or family court. Juvenile courts play key roles in responding to the needs of troubled youth and their families by protecting children and families when other institutions are unable or fail to meet their obligations. The Court is society's official means of holding itself accountable for the well-being of its children by providing treatment services that will rehabilitate the juvenile. These services as part of a continuum of services available in the community are likely to be more effective. (See Appendix 10: *Juvenile Justice System*.)

**2. Shall we support the provision of public innovative alternative educational services to address the specific and individual needs of children who do not perform successfully in the traditional public school setting?**

*"...We should rightfully have the power to arrest all these little beggars, loafers, and vagabonds that infest our city, take them from the streets and place them in schools where they are compelled to receive education and learn moral principles."* (Chicago Board of Education, 1898)

Today a new priority has emerged for schools. Schools are being asked to shoulder the dual responsibility of preventing juvenile crime and developing a responsible citizenry. The public believes that school is the right place for young people to be if they are to stay away from trouble and focus on learning and personal development...Communities must improve their ability to identify and address the risk factors that cause troubled youth and their families to drift away from mainstream education. (*U.S. Department of Justice, OJJDP, February 2000*).

Young people who do poorly in school or who drop out are likely to find themselves in juvenile court or in an adult jail. Findings are that one-third of the children in the juvenile justice system read at a fourth-grade level; between 70 - 87 percent of incarcerated youth suffer from learning or emotional disabilities; and 82 percent of adult prison inmates are high school drop-outs. School failure is one of the earliest and best predictors for future delinquent and criminal behavior. (*"Abandoned in the Back Row: New Lessons in Education and Delinquency Prevention," Coalition for Juvenile Justice, 2001*).

The Governor's *2002 Ohio Juvenile Justice Needs Assessment* recommends the development of better methods of identifying at-risk youth at earlier ages. The school is one, if not *the*, primary core social institution in the community. School has the ability to identify learning problems very early in the child's life. The National Institutes of Health reports that approximately 15 percent of the U.S. population is affected by a learning difference, and these differences impede the ability to thrive in traditional classroom settings. Even with the special education programs offered in public schools, success is limited: the drop-out rate for students with learning disabilities is 35 percent; and despite the fact that many students with learning disabilities are above average in intelligence, only two percent who graduate from high school attend a four-year college. Further, studies show that learning-disabled teens account for over half the adolescents in treatment for substance abuse. (*National Longitudinal Transition Study*).

However, while the state requires (H.B. 282) that all Ohio school districts identify students who have met the state-established criteria in areas of gifted potential, the state conducts only a "campaign for identifying, locating, and evaluating children with disabilities," including learning disabilities. The definition of criteria for identification and assessment of children with disabilities is important because it is these children that our traditional education system fails.

Current law permits children to be expelled without referral to another school. Alternative education in alternative settings is not now widely available for youth who are disruptive and unsuccessful learners in the traditional setting. Data show that these youth, without an opportunity to experience a different learning approach based on their individual needs and in which they can progress at their own pace, often find their way to the juvenile or adult correctional system. Ohio's Department of Education has not funded a system of education that meets the needs of all learners. School districts in Massachusetts, Minnesota, New Jersey, Arizona, and Kentucky provide these educational services.

The country's economy can no longer afford an uneducated population. Dropping out of school as a youth is a factor closely related to being a prisoner as an adult. States spend roughly \$22,000 annually on each adult in prison. In contrast, the average cost to educate one student for one year is about \$7,000. (*Harold Hodgkinson, "A Demographer's View"*). It makes economic sense for communities to emphasize education over incarceration. (See Appendix 6: *Model Alternative School--Taylor Academy*.)

### **3. Shall we support a restorative rather than a retributive system of juvenile justice – a system based on mediation for the victim, offender, and the community?**

Retributive justice defines crime as an offense in need of punishment; success is determined by what happens to the offender. Restorative justice defines crime as an injury in need of repair; both the victim and the offender actively participate in a restorative mediation process; and success is determined by what happens to both victim and offender.

Traditionally the underpinning of the juvenile justice system has been a philosophy of rehabilitation by treatment. In recent years the trend has been toward a retributive model that gives priority to punishment. Proponents of restorative justice maintain that both the punitive approach and the traditional treatment approach to juvenile rehabilitation fail to meet the basic needs of the victims, the community, and the offenders themselves.

Restorative justice requires the voluntary participation of the three stakeholders – the offender, the victim, and the community. Key components include 1) restitution to the victim; 2) restitution to the community through voluntary service; 3) self-improvement on the part of the offender; and 4) face to face mediation with the victim. Both the traditional treatment and the retributive models place the offender in a passive role; i.e., the object of treatment services designed by others and/or the object of punishment controlled by the state. In the restorative model the juvenile offender becomes an active participant. It offers offenders a chance to hear their victims' stories, an opportunity to become productive rather than dependent on the community, and a way to step out of the cycle of delinquency. Proceedings in a retributive system are always adversarial; mediation is the norm in a restorative system. Accountability in retributive justice is achieved by ensuring that the offender "takes his punishment" as opposed to his assuming responsibility and taking action to repair the damage caused by the crime.

The Center for Restorative Justice, used by the courts of Holmes and Wayne Counties, is seen to be particularly effective with juveniles. Acceptance of the model will require community support, redirection of resources, and retraining of juvenile justice professionals. It offers juvenile judges a meaningful alternative to incarceration for appropriate cases, and promotes a positive attitude toward the justice system by the victim, offender, and community. Juvenile offender studies in Texas, California, and Minnesota found that victims were less fearful of being revictimized, offenders were more likely to successfully complete their restitution obligation, and considerably fewer and less serious crimes were committed by offenders who participated in victim offender mediation than those who did not meet with their victims. These findings are consistent with other studies in Canada and England (*Center for Restorative Justice, University of Minnesota, 1997*). Although relatively new in Ohio, restorative justice practices appear to have promising potential. (See Appendix 7: *Restorative Justice*.)

### **4. Shall we support the development of gender-specific services that offer effective treatment modalities for girls?**

The Federal Bureau of Investigation 1999 report found that girls are the fastest growing population in the juvenile justice system. Both the 2001 meta-analysis by Meda Chesney-Lind and Scott K. Okamoto and the *Justice By Gender Report* address the reasons for this societal change. The primary reason is that female aggression was largely ignored in the past because the violent behavior took place in the home, was family centered, and was not considered or treated as a cause for detention. Today, that attitude has changed – any type of aggression is considered an assault, and police make arrests.

Girls are more likely than boys to be victims of child sexual abuse. (*Justice by Gender*). A Florida study found that "girls' problem behavior commonly relates to an abusive and traumatizing home life, whereas boys' law violating behavior reflects their involvement in a delinquent life style." (*Justice by Gender: Dembo, 1995*). Girls' reactions include low self-esteem, depression, school failure, and a tendency to drop out of school. Girls' "offense of choice" is running away, which often leads to substance abuse, petty theft, and prostitution.

The two studies state that sexism and gender bias pervade the juvenile justice system and account for the manner in which girls are treated. Courts have historically used detention as a means of social control over behavior that is considered dangerous and self-destructive to the girls themselves and to society in general; i.e., substance abuse, prostitution, children out of wedlock. Further, statistics support the conclusion that in order to "protect young women from themselves" girls are consistently found by the court to have violated parole and returned to detention without having committed a new crime.

Just as females' offenses and the reasons for them are different from males', so too are the girls' reactions to the treatment of the juvenile justice system – a system designed from the beginning by men for male delinquents. Youth workers routinely stress the "difficulty" of working with girls. Girls are construed as "hysterical, manipulative, verbally aggressive, and untrusting," while boys are described as "honest, open and less complex." (*Gender Matters*). Girls' aggression is often relational. While boys need structure and discipline; girls need to learn to develop open effective relationships.

Programs that treat the psychological and physical characteristics of females in a continuum of care approach should start with access to quality legal representation and progress through programs that cross systems, are integrated, collaborative, and involve the family. Multisystemic therapy (MST) fits this description. The Ophelia and Empower Projects are promising and innovative programs that help girls confront relational aggression. (*Odd Girl Out*). (See Appendix 8: *Gender-Specific Programming*).

## **5. Shall we support the right of juveniles to equal and unbiased treatment regardless of race or ethnicity?**

A prerequisite of an effective juvenile justice system is that every offender is treated as an individual and the services needed are provided without bias. Indications are that the system is not meeting this standard. The percentage of minority juveniles in confinement is more than double their representation in the general population, both nationally and in Ohio.

In Ohio minority juveniles are more likely to be detained than white juveniles even though their offenses are no more serious than the offenses of white juveniles. Minority youth are more likely to be sent to the Ohio Department of Youth Services while white youth are committed to local facilities. Data suggest that differences in delinquent behavior are insufficient to account for disparities in detention and confinement.

A study by Bowling Green State University found that in proportion to prevalence in the population:

- Minority youth are referred to court twice as often as white youth.
- Minority youth are more likely to be detained than white youth.
- Minority youth who are detained are three times more likely than white youth to be incarcerated.

- Minority youth's offenses are no more serious than those of white youth.
- Delinquent behavior differences are insufficient to account for the disparities in confinement.
- Minority youth are more likely to be sent to state facilities while white youth are sent to local facilities.

(See Appendix 9: *Disproportionate Minority Confinement*.)

Appendix 10 *Juvenile Justice System Terminology* provides general background information useful in understanding the court procedures and juvenile justice vocabulary.

## Appendix 1

### **Department of Youth Services** 51 N. High St., Columbus 43215 614-466-9318

The mission of the Ohio Department of Youth Services (DYS), a department of the state government, is to ensure public safety by providing and supporting a range of effective and cost effective services that hold youthful offenders accountable for their actions and gives them the skills and competencies they need to live crime free.

In 2001 1,933 juveniles were committed to DYS; the average daily institutional population was 2,177; and the average per diem cost to house, care for, and treat a juvenile was \$140. The largest numbers of admissions are youth who are 15, 16, and 17 years old. African American youth comprise 46.7 percent of the commitments. Major types of offenses were: property - 44.8 %; person - 24.8%; sex - 11.5%; and drugs - 10.6%.

The DYS RECLAIM Ohio program is a nationally recognized funding alternative that encourages courts to develop or purchase a range of community based options to meet the needs of juvenile offenders. RECLAIM allocates funds to each county and allows that county to choose whether youths should be treated locally or sent to state institutions. A county must pay the state for the youth it sends to DYS from the allocation it receives.

The Ohio Department of Youth Services operates the following institutions:

Circleville Correctional Facility, maximum security, serves males (treats sex offenders).  
Cuyahoga Hills Juvenile Correctional Facility, medium security, serves males.  
Freedom Center, drug and alcohol treatment and transitional living for older youth.  
Indian River Juvenile Correctional Facility, maximum security.  
Marion Juvenile Correctional Facility, maximum security with super max unit, serves males.  
Mohican Juvenile Correctional Facility, medium security, males, substance abuse treatment.  
Ohio River Valley Correctional Facility, high security, males from southern Ohio.  
Opportunity Center, males with MR/DD and medical conditions.  
Riverview Juvenile Correctional Facility, maximum security, females.  
Scioto Juvenile Correctional Facility, assessment center for males.

## Legislation

### U.S. Juvenile Justice and Delinquency Prevention Act

The Juvenile Justice and Delinquency Prevention Act (JJDP) was first authorized into law in 1974. It created the Formula Grants Program for the states, established the separation requirement, and established the deinstitutionalization of status offender requirement. Additional amendments established the jail removal requirement (1980), addressed disproportionate minority confinement (1988), and established new programs to address gender bias (1992). Since 1998 the JJDP Act has been under reauthorization.

In order for states to receive federal funds for juvenile justice programs, states must be in compliance with four mandates of the JJDP act:

1. Sight and sound separation: accused or adjudicated delinquent, status offender, and non-offender juveniles shall have no contact with incarcerated adults.
2. Deinstitutionalization of status offenders (DSO): status offenders and non-offenders may not be detained or confined in secure detention or correctional facilities.
3. Jail removal: juveniles cannot be detained in any jail or lockup.
4. Disproportionate minority confinement (DMC): any state with disproportionate confinement of minority youth must remedy any aspect of its system that results in DMC.

Currently (May 2002) Ohio has been determined to be out of compliance with #2 and #3 and was in compliance with #4 only because on Ohio's previous efforts. As a result of being out of compliance on two requirements, 50 percent of federal juvenile justice funding is being withheld, and the remaining 50 percent must be directed exclusively to remedying DSO and jail removal.

In July 2001, the administration of all federal juvenile justice funds was transferred from Ohio's Office of Criminal Justice Services to the Ohio Department of Youth Services, which began to take measures to remedy compliance with #2 and #3.

Recently a newly constituted Governor's Council on Juvenile Justice has established three committees to bring the state into compliance on all core mandates.

#### **Ohio SENATE BILL 179. Effective January 1, 2002. Provisions include:**

1. A new purpose section for the juvenile code that includes care and protection of youth, protection of public safety, offender accountability, restoration of the victim, and rehabilitation of the offender.

2. Commitment of 10 and 11 year olds to the Department of Youth Services (DYS) for murder, violent felonies, and arson. This age group must be kept separate from older offenders.
3. Blended sentences, which allow juvenile courts to impose an adult sentence, hold the adult sentence in abeyance providing the youth successfully completes a juvenile disposition.
4. Specifies that the trigger for the adult part of a blended sentence can be invoked for a felony offense, a violent M1 offense, or for conduct that "creates a substantial risk to the safety or security of the institution, community, or victim."
5. Establishes jury trials for blended sentences to be held in juvenile court.
6. Retains mandatory and discretionary transfers for juveniles bound over to adult court as established in current law.
7. Gun specification levels are modified from current law and a range of time (1-3 years) is established for a mandatory sentence. This time must be served consecutively (not concurrently) with the underlying offense.
8. Minimum length of commitment to DYS for felony offenses is retained as established by current law (F1 and F2: one year/ F3, F4, and F5: six months).
9. The right to counsel may not be waived and allows defendants to raise competency issues during the sentencing phase for blended sentences.
10. Instructs the Governor's Council on Juvenile Justice to study the racial impact.

**The newly created purpose section (Section 2152.01) of the Ohio Revised Code:**

(A) The overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes shall be achieved by a system of graduated sanctions and services.

(B) Dispositions under this chapter shall be reasonably calculated to achieve the overriding purposes set forth in this section, commensurate with and not demeaning to the seriousness of the delinquent child's or the juvenile traffic offender's conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children and juvenile traffic offenders. The court shall not base the disposition on the race, ethnic background, gender, or religion of the delinquent child or juvenile traffic offender.

**Ohio Am. Sub. Senate Bill 181: Truancy, effective June 2000.**

1. Habitual Truant: absence of five or more consecutive school days, seven or more days in one month, or twelve or more days in a school year.
2. Chronic Truant: absence of seven or more consecutive school days, ten or more days in one month, or fifteen or more days in a school year.

3. The definition of a delinquent child now includes any habitual truant, who was previously adjudicated an unruly child for habitual truancy, and any child who is a chronic truant.
4. Expands the definition of unruly child to include a habitual truant.
5. Criminal charges may be brought against parents and guardians.
6. School districts must provide truancy intervention strategies.

**Ohio Senate Bill 3: Registration, effective January 2002.**

Most of the basic provisions of the bill mirror current adult law.

1. Sexual Predator: An individual who has been convicted of or pleaded guilty to committing a sexually oriented offense and is likely to engage in similar behavior in the future. Mandatory community notification and registration for life is required.
2. Habitual Sexual Offender: An individual who has been convicted of or pleaded guilty to committing multiple sexually oriented offenses. Offenders are subject to community notification based on the court's decision. They must register for life.
3. Juvenile Sex Offender Registrant: An individual who has been convicted of or pleaded guilty to a sexually oriented offense but is not determined by the court to be a habitual offender or sexual predator. No community notification is required and registration must last for ten years.
4. Treatment is mandatory for children committed to the DYS and encouraged for others.
5. Youths receive primary sex offender classification status at their disposition, but are reviewed for a final determination at the conclusion of treatment.

## Appendix 3

### **“Brain Changes May Explain – Not Excuse – Lack of Impulse Control”**

Paul Thompson

Emotions ran high at the trial of Nathaniel Brazill in West Palm Beach, Florida, in 2001. Friends of slain teacher Barry Grunow called for the death penalty, while a growing crowd of demonstrators outside the courthouse wielded hastily written placards reading, "A child is not a man." Jurors returned with their verdict: Fourteen-year-old Brazill, charged in last May's shooting of middle-school teacher Grunow, was found guilty of second-degree murder.

A Florida grand jury had previously ruled that Brazill, who frequently looked dazed during the trial, would be tried as an adult, and if he had been convicted of first-degree murder, he would have faced life in prison without hope of parole. But Brazill's immaturity was evident throughout this incident – from the act itself of Brazill's shooting a teacher he considered one of his favorites, to his subsequent inability to give a reason for doing so, to the various quizzical looks that came across his face as the verdicts were read. In terms of cognitive development, as research on the human brain has shown, Brazill – and any other young teen – is far from adulthood.

Over the last several years, as school shootings have seemed to occur with disturbing frequency, startling discoveries have emerged about the teenage brain. The White House held a televised conference on adolescent development in May of last year, and a flurry of papers on the teen brain has appeared in top science journals. Reporters and teen advocates ask: Do the studies help explain the impulsive, erratic behavior of teens?

The biggest surprise in recent teen-brain research is the finding that a massive loss of brain tissue occurs in the teen years. Specifically, my own research group at the University of California, Los Angeles, and our colleagues at the National Institutes of Health have developed technology to map the patterns of brain growth in individual children and teenagers. With repeated brain scans of kids from three to twenty, we pieced together "movies" showing how brains grow and change.

Some changes make perfect sense: Language systems grow furiously until age 12 and then stop, coinciding with the time when children learn foreign languages fastest. Mathematical brain systems grow little until puberty, corresponding with the observation that kids have difficulty with abstract concepts before then. Basically, the brain is like a puzzle, and growth is fastest in the exact parts the kids need to learn skills at different times. So far, all well and good.

But what really caught our eye was a massive loss of brain tissue that occurs in the teenage years. The loss was like a wildfire, and you could see it in every teenager. Gray matter, which brain researchers believe supports all our thinking and emotions, is purged at a rate of one to two percent a year during this period. Stranger still, brain cells and connections are only being lost in the areas controlling impulses, risk-taking and self-control. These frontal lobes, which inhibit our violent passions, rash actions and regulate our emotions, are vastly immature throughout the teenage years.

The extraordinary physical changes in the teenage brain hint that it is not well equipped to suppress risky impulses well into the late teens. The implications are tantalizing. Brazill was only 13 when he committed his crime. He said he made a "stupid mistake," but prosecutors argued that by bringing a gun

to school he planned the crime. Does "planning" mean the same thing for a 13-year old, with his diminished capacity for controlling erratic behavior, as it means for an adult?

The verdict, in this case, seems to line up with the research. The jurors, by returning a verdict of second-degree murder instead of first, indicated that they believe Brazill's actions, while not accidental, were not fully thought-out either.

Linking this maelstrom of normal brain change with legal or moral accountability is tough. Even though normal teens are experiencing a wildfire of tissue loss in their brains, that does not remove their accountability. What is clear from the research is that the parts of the frontal lobes that inhibit reckless actions restructure themselves with startling speed in the teen years. Given this delicate and drastic reshaping of the brain, teens need all the help they can get to steer their development onto the right path.

While research on brain-tissue loss can help us to understand teens better, it cannot be used to excuse their violent or homicidal behavior. But it can be used as evidence that teenagers are not yet adults, and the legal system shouldn't treat them as such.

Thompson is an assistant professor of neurology at the University of California, Los Angeles School of Medicine. (*Newsday/Los Angeles Times/Washington Post/Cleveland Plain Dealer. May 2001*).

### **RECLAIM Ohio: Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors**

Historically, juvenile court dispositions were based on children's "best interests." Thus sentences were indeterminate because the length of time required for rehabilitation varied. In the past twenty years juvenile justice policy has become more conservative. The implementation of "get tough" strategies has contributed to an increasing juvenile correctional population. States have adopted determinate and mandatory sentencing laws, changed their purpose clauses from the children's best interests to public safety, punishment, and accountability, and transferred children to adult prisons based on age and offense rather than individual circumstances. Ohio also is following national trends in sentencing statutes, transfers to adult court, and incarceration.

The Ohio Department of Youth Services (DYS) operates the state's juvenile institutions. The facilities have become so overcrowded that the ability of DYS to provide quality programming has been compromised. Ohio in 1994 implemented a unique policy, RECLAIM Ohio (Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors). This program seeks to reduce commitments to institutions and to increase local program options. It supports community-based interventions for nonviolent offenders in lieu of committing them to state institutions. It also supports rehabilitating serious offenders in state institutions. The RECLAIM program reaffirms one of the original goals of the juvenile court – to permit judges a great deal of discretion in determining what types of services would best meet each offender's needs.

RECLAIM allocates money to each county and allows that county to choose whether youths should be treated locally or sent to state institutions. The county is required to pay for the state incarceration from the allocation it receives from the state. For each day a youth is kept in the secure care of a DYS institution, the county is charged 75 percent of the per diem cost. The counties may use the remaining funds for community-based programs. The first goal of RECLAIM is to enable DYS to provide better care for incarcerated juveniles by decreasing the number of youth served. The second goal is to help counties increase the number of community-based options available. (Any juvenile adjudicated for murder, aggravated murder, or rape is viewed as an exceptional threat to public safety and may be committed free of charge)

The financial incentives provided by the RECLAIM program allow the state to meet its goals and counties to address their self-interest. Counties can use the money to create new programs to treat less serious felony offenders in their communities while retaining the option of sentencing serious, violent offenders to DYS institutions to ensure public safety. These qualities of the RECLAIM program – the ability to merge liberal ideology with conservative ideology through and the provision of monetary supplements – may be the key to its success in Ohio and elsewhere.

Excerpted from Crime & Delinquency, vol. 43, No. 4, October 1997. RECLAIM Ohio: A Politically Viable Alternative to Treating Youthful Felony Offenders. Melissa M. Moon, Brandon K. Applegate, Edward J. Latessa.

**Summary of Major Points of Sealing and Expungement of Records**

(For wording of law, see Ohio Revised Code Juvenile Court Section 2151.358.)

**Record.** A written account of all the acts, proceedings and testimony in a court action.

**Seal a record.** A court order to remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records and that is accessible only to the juvenile court. A record that is sealed shall be destroyed by all persons and governmental bodies except the juvenile court. Proceedings of the case deemed never to have occurred. (Exception: footnote 1,2.) [See O.R.C. 2151.358]

Offense charged	Initiation of sealing proceedings	Notification		Records / Index	Inspection / Use of Sealed Records
		to prosecuting attorney, public office, agency that may have a record of prior adjudication or arrest	to person who is subject of record		
<b>Two years after termination of any order made by the court or two years after the unconditional discharge of a person from the department of youth services or another institution or facility to which the person may have been committed:</b>					
Adjudicated <b>Unruly child</b>	Court <u>shall</u> order record sealed without application of person.	Court shall send notice of the order to seal.	Notice must state: the right to apply for an order to seal; explain what sealing is; and the possible consequences of not having record sealed.	If court orders adjudicated record sealed, all index references to the case and the person shall be deleted.	Inspection of records may be made only: a) by person subject of the record, upon application; b) if records in question pertain to an offense of violence that would be a felony if committed by an adult, by any law enforcement officer or prosecutor (or assistants thereof) for law enforcement or prosecutorial purpose. (See footnote 3.)
Adjudicated <b>Delinquent child</b>	Person may apply to court for an order to seal (exception: footnote 2). Court that issued the order, or committed the person, shall either: a) order record sealed; or, b) send person notice of right to have that	Court shall give notice to prosecuting attorney, and any other public office/agency that may have record, of <u>hearing</u> on the application to seal. Court shall send notice of the order to seal. (Order does not apply to footnote 1.) If the court finds that satisfactory rehabilitation has	If a notice of right to have record sealed is sent to the person, must state: the right to apply for an order to seal; explain what sealing is; and the possible consequences of not having record sealed.	Person/agency/office that maintains sealed record may maintain index to sealed record which can contain name of person, but <u>not</u> name of delinquent act committed. A board of education is permitted to maintain records, under certain conditions, regarding an adjudication that the individual is a delinquent child that was used as the basis	The person who has custody of the sealed records may make the index available only: a) by person who is subject of the record, upon application; b) if records in question pertain to an offense of violence that would be a felony if committed by an adult, by any law enforcement officer or prosecutor (or assistants thereof) for law enforcement or

	record sealed. (Exception: footnote 2.)	been attained, court may order the record of the person sealed. (Exception: footnote 2.)		for the individual's permanent exclusion (see footnote 1).	prosecutorial purpose; and c) for admission of judgment in other proceedings (see footnote 3).
Adjudicated <b>Juvenile traffic offender</b>	Person may apply to court for an order to seal. The Court that issued the order or committed the person shall either: a) order record sealed; Or, b) send person notice of right to have that record sealed.	Court shall give notice to prosecuting attorney and public office/ agency known to have a record of <u>hearing</u> on the application to seal. Court shall send notice of the order to seal. If the court finds that satisfactory rehabilitation has been attained, court may order the record of the person sealed.	If notice sent by court to the person, must state: the right to apply for an order to seal; explain what sealing is; and the possible consequences of not having record sealed.	If court orders the adjudicated record sealed, all index references to the case and the person shall be deleted.	Inspection of records may be made only: a) by person subject of the record, upon application; b) if records in question pertain to an offense of violence that would be a felony if committed by an adult, by any law enforcement officer or prosecutor (or assistants thereof) for law enforcement or prosecutorial purpose. (See footnote 3.)

1. Board of education under certain conditions regarding an adjudicated delinquent child. [See O.R.C. 2151.358 (K) ]
2. Adjudicated delinquent child if committed violation of section: O.R.C. 2903.01, .02; 2907.02, .03, .05 (certain types of homicide and sexual offense).
3. See separate section of this summary entitled "Admission of Judgment in Other Proceedings." For complete wording, see O.R.C.2151.358 (H).

**Expunge a record.** A court order to destroy, delete or erase any court records of the case. [See O.R.C. 2151.358]

After expungement order has been issued, a court shall, and the person may, properly reply that no record of the case with respect to the person exists.

Offense charged	Initiation of expungement proceedings	Notification to public office/ agency that may have a record of prior adjudication or arrest	Records / Index
<p>Person adjudicated <b>not guilty or charges dismissed.</b></p>	<p>Any time after being adjudicated not guilty or charges dismissed, the person may apply for expungement of record or court shall order expungement on its own motion.            If charged as unruly child, person may apply for expungement of record; court <u>shall</u> initiate expungement proceedings if application is not filed.            If charged as delinquent child or juvenile traffic offender, court <u>may</u> initiate expungement proceedings on its own motion.            When expungement order has been issued, court orders records be expunged and that the proceedings in case deemed never to have occurred.</p>	<p>For persons charged as delinquent child or juvenile traffic offender, court shall give notice to prosecuting attorney of <u>hearing</u> on the application to expunge record. Court shall send notice of an order to expunge to public office/agency.            Person whose record has been expunged may present written request and copy of order to expunge to any public office/ agency that may have record. Public office/agency shall destroy its record, except for a record maintained for statistical data that does not refer to name of the person. (Exception: order does not apply to footnote 1.)</p>	<p><b>If person waives right</b> to bring any civil action based on the arrest for which the order is applied, the court shall order appropriate persons and governmental agencies to delete all index references to the case; destroy, delete or erase court records of the case; destroy copies of any pictures and fingerprints taken of the person pursuant to the expunged arrest; destroy, erase, or delete any reference to the arrest that is maintained by the state or political subdivision of the state, except a record of arrest maintained for compiling statistical data and that does not contain any reference to the person.</p> <p><b>If person does not waive right</b> to bring any civil action based on the arrest, court orders deletion, destruction, or erasure of all index references and court records of the case and all references to the arrest that are maintained by state or any political subdivision of state. The court shall order that a copy of all records of the case, except fingerprints held by the court or a law enforcement agency, be delivered to the court. <u>The court shall seal</u> all the records delivered to the court in a separate file in which only sealed records are maintained until statute of limitations expires for any civil action based on the arrest, or termination of any pending litigation, or the applicant files a written waiver of the right to bring a civil action based on the arrest; after which, court shall destroy</p>

1. Board of education under certain conditions regarding an adjudicated delinquent child. [See O.R.C. 2151.358 (K) ]
2. Adjudicated delinquent child if committed violation of section: O.R.C. 2903.01, .02; 2907.02, .03, .05 (certain types of homicide and sexual offense).
3. See separate section of this summary entitled “Admission of Judgment in Other Proceedings.” For complete wording, see O.R.C.2151.358 (H).

**ADMISSION OF JUDGMENT IN OTHER PROCEEDINGS** [See O.R.C. 2151.358 (H) ]

“The judgment rendered by the court under this chapter [O.R.C. 2151.358] shall not impose any of the civil disabilities ordinarily imposed by conviction of a crime in that the child is not a criminal by reason of the adjudication...” [See O.R.C. 2151.358, section H for specific examples.]

[Code section H continues:] “**Otherwise**, the disposition of a child under the judgment rendered or any evidence given in court is admissible as evidence for or against the child in any action or proceeding in any court in accordance with the Rules of Evidence and also may be considered as to the matter of sentence or to granting of probation, and a court may consider the judgment rendered and the disposition of a child under that judgment for purposes of determining whether the child, for a future criminal conviction or guilty plea, is a repeat violent offender, as defined in section 2929.01 of the Revised Code.”

### **Taylor Academy – an Alternative High School**

Taylor Academy is a transitional alternative high school operated by the Cleveland Heights – University Heights City School District. It provides a one year program of education for students who are off-target for graduation and may have difficulty adjusting to high school culture. Freshmen and sophomore students who have earned insufficient credits for promotion to the next grade level comprise the student body of approximately 200 students. Students attend Taylor Academy during the year of transition from one grade level to the next. The purpose of Taylor Academy is to reclaim student interest, make up past losses, and provide effective survival skills for academic success in the future.

Students who enroll directly from the Middle School are assigned to the Interdisciplinary Team of five subject area teachers, who build learning experiences around provocative themes. Content is integrated to facilitate understanding. Students who have attended high school but were unsuccessful are placed in the Traditional Team and enrolled in six classes. Both teams provide high interest motivational learning opportunities, remediation, and individualization.

After reviewing the results of a battery of diagnostic tests, a personalized instructional plan is developed for each student. The plan is structured around those areas where a student would benefit most in relation to individual learning styles and special needs. Students are enrolled in five or six credit courses each semester. The Academy provides instruction based on an outcome-based, systematic, mastery learning model. The teaching-learning process is comprised of four basic steps: 1) teaching a concept, 2) supervised practice, 3) independent practice, and 4) continuous practice. Students must successfully complete all steps in the cycle before they may advance to a new lesson. Students are not penalized for the pace at which they learn or left to fill in the teaching-learning gaps in new lessons without assistance. Students are evaluated in terms of their own progress without comparison to other learners.

The Academy encourages parents to be actively involved in the progress of the students and considers them as partners in the education process. Parents are members the Parent Advisory Board/School Improvement Council, which develops strategies to support and assist the activities and programs of the school. The students participate in school decision-making through an elected Student Governance Board that meets weekly to develop position papers on matters of interest to students and the community and to make formal recommendations to the Academy principal and teachers.

The Academy holds a Citizens' Forum weekly where it presents commendations to students – Student of the Week, Student of the Month, and Home Group of the Week. Teachers also announce special awards. The ultimate recognition of student achievement is the Honor Card Program. Honor Cards may be earned quarterly by students who maintain a B average and demonstrate leadership potential and evidence of service to the community. Honor Cards entitle bearers to free admission to events at the main high school campus and discounts on purchases at neighborhood stores.

Student performance is evaluated regularly with feedback furnished weekly and monthly. Students keep journals that provide daily self-assessments of performance. Evaluation of program effectiveness is a continuous activity at the Taylor Academy.

## Retributive vs. Restorative Justice

Traditionally the underpinning of the juvenile justice system has been a philosophy of rehabilitation by treatment – reforming youthful offenders through individual treatment/education programs available in either the community or separate juvenile detention facilities. However, in recent years observers have noted a growing trend in legislation reflecting a retributive philosophy of juvenile justice that gives priority to punishment. The public's fear of violent crime and frustration with the traditional system's perceived ineffectiveness has increasingly favored the retributive model.

The Ohio legislature has followed this trend in amending the Revised Code provisions regarding juveniles. In its Fiscal Note and Local Impact Statement for Sub. SB179 (LSC 123 1310-1), the Legislative Budget Office described the "purposes" of the amendments this way:

*"Existing juvenile delinquency law charges the juvenile justice system to 'remove the taint of criminality' from the offender. The bill emphasizes the following: protecting the public interest and safety, holding the offender accountable, restoring the victim, and rehabilitating the juvenile. The bill removes references to care, protection, mental and physical development as purposes to be addressed by the juvenile justice system in delinquency cases."*

Proponents of restorative justice complain that both the punitive approach of retributive justice and the traditional "treatment" approach to juvenile rehabilitation have failed to meet the basic needs of victims, the community, and the offenders themselves. Their expressed fear is that we may be losing a system of justice unique to the needs of juveniles. They put forth the model of restorative justice as the best means of preserving and revitalizing a separate, unique juvenile justice system.

The philosophy of restorative justice represents an international movement that is not restricted to juvenile justice. It serves as an umbrella label for many victim-offender encounter programs around the world and offers a model of conflict resolution that is not restricted to the criminal justice setting. The United Nations Working Party on Restorative Justice offers a concise definition. "Restorative Justice is a process whereby all parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future." Repairing the harm and rebuilding relationships in the community is the primary goal of restorative justice.

As it related to juvenile offenses, restorative justice demands the voluntary participation of three essential "stakeholders" – the offender, the victim (or a representative), and the community. Key components of a restorative program include 1) restitution to the victim; 2) restitution to the community through voluntary service; 3) self-improvement on the part of the offender to increase personal competencies; and 4) possible face-to-face mediation with victim.

In the restorative justice model, a typical case might proceed as follows. Participants – victims and offenders – prepare for a face-to-face meeting in separate session with a trained mediator. At the meeting, victims express their reactions to the crime and its consequences in their lives. The victim's perspective is central to deciding how to repair the harm done by the crime. The offender becomes accountable, not through punishment extraneous to the crime, but by accepting responsibility and acting to repair the harm done. Repair might include payment to the victim or work for the victim or others in the community. Community service or education designed to increase the offender's competencies may

also be included in a restorative contract that is signed by the offender and enforced through the juvenile justice system.

The restorative justice model balances three equally vital components – accountability, competency development, and community safety. As it relates to victims, the model's goal is accountability – the offender's fulfillment of the obligation of restitution to the individual victim and the community. The goal for the offender is increased personal competencies that will permit him to be restored to and succeed in the community. The third component recognizes the responsibility of the juvenile justice system to protect the public from juveniles in the system. All three components must be in balance for restoration to succeed.

Restorative justice proponents cite the role of the juvenile offender as an active participant in the process as a major factor in distinguishing their model and increasing chances for rehabilitation. Both the traditional treatment and retributive models place the offender in a passive role (i.e., the object of treatment services designed by others or the object of punishment/surveillance controlled by the state). Neither requires positive or constructive activity on the part of the offender.

Retributive and restorative justice philosophies contrast in other ways as well. In retributive philosophy, a crime constitutes an act against the state – a violation of the law (an abstract concept). Restorative justice regards the crime as an act against another person and the community. Even so-called “victimless crimes” are regarded as acts negatively impacting family members, the community, or the offender himself.

Proceedings in a retributive justice system are always adversarial. Mediation is the norm in restorative justice.

Accountability in retributive justice is achieved by ensuring that the offender "takes his punishment" as opposed to his assuming responsibility and taking action to repair the damage caused by the crime.

Despite the inclusion of victim impact statements in retributive justice proceedings, they remain peripheral to a process that focuses on the relationship between the offender and the state. Victims are central to the process of resolving crime under the restorative justice model.

Widespread acceptance and use of the restorative justice model would require community support, redirection of resources, and retraining of juvenile justice professionals. Proponents contend that while there may be additional costs to establish local programs, these may be offset by decreased caseloads still requiring handling in the traditional system. They also cite fewer investments in punishment modalities and the gains to the victims and communities in terms of restitution.

Some restoration justice adherents, particularly those in the faith-based community, maintain that the process should be separated from law enforcement entirely. Most others advocate gradual adoption of the restorative justice model through pilot projects that will spread among local communities rather than a "top down" grafting onto the juvenile justice system.

Principles of restorative justice have been endorsed by the American Bar Association, and the federal Office of Juvenile Justice and Delinquency Prevention has funded work in this area including the Balanced and Restorative Justice Projects.

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<b>Retributive Justice</b>	<b>Restorative Justice</b>
<b>Problem</b>	
Defined narrowly, abstractly, a legal infraction	Defined relationally as a violation of people
Only legal variable relevant	Overall context relevant
State as victim	People as victims
<b>Actors</b>	
State (active) and offender (passive)	Victim and offender primary along with state and community
<b>Process</b>	
Adversarial, authoritarian, technical impersonal	Participatory, maximizing information, dialogue and mutual agreement
Focus = guilt/blame	Focus = needs and obligations
Neutralizing strategies encouraged	Empathy and responsibility encouraged
<b>Outcomes</b>	
Pain, suffering	Making things right by identifying needs and obligations: healing, problem-solving.
Harm by offender balanced by harm	Harm by offender balanced by making right
Oriented to past	Oriented to future

*Victim Offender Conferencing in Pennsylvania's Juvenile Justice System*  
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## Gender-Specific Services

Girls are the fastest growing population in the juvenile justice system. Not only are arrests increasing but placements in detention facilities, jails, and prisons are also rising exponentially. (*Justice by Gender Report, 2000, American and National Bar Associations*). The federal Bureau of Investigation reported in 1999 that from 1989-1998 girls' arrests increased 50.3% compared to only 16.5% for boys and that arrests of girls for violent offenses increased 64.3% within that same time period. (*Chesney-Lind, Okamoto, 2001*).

There is debate as to the reasons for such a spectacular rise, and especially the rise in violent offenses, by young females. One theory posed is that "girls' capacity for aggression and violence has historically been ignored" (*Chesney-Lind, Okamoto 2001*), and what appears to be a new cultural phenomenon has, in fact, always been the case. In the past, "girls' family conflicts were handled by mediation within the family structure" (*Justice by Gender Report, 2001*), or treated as status offenses for which no court or incarceration was required.

Today there has been a "relabeling" of behaviors that were once categorized as status offenses (non-criminal offenses like "runaway and person in need of supervision") into violent offenses. (*Chesney-Lind, Okamoto*). It may well be caused by changes in the way police treat domestic violence cases. What once would have been treated by the police as a minor domestic dispute, where an on-the-spot mediation to cool tempers and a stern warning would have sufficed, now results in an arrest for assault. This change by law enforcement may be the result of a mandate to make an arrest when police are called out to settle a domestic dispute. Therefore, what in the past would have been considered non-serious, mutual combat situations with parents by an unruly or incorrigible child now moves from status offense to assault. It is not the girls' behavior but society's response to their behavior that has changed.

Sometimes too the failure to understand the unique social and developmental issues of adolescent females contributes to this growth in the numbers. Although girls' delinquency is often different from boys, girls are "treated" with a model designed primarily for males and largely enforced and administered by males. Studies reveal that young female offenders "have histories of physical, emotional, and sexual abuse" (*Justice by Gender Report*) and that runaways classified as status offenders, usually have been sexually and/or physically abused. (*Chesney-Lind, Okamoto*).

Running away is the offense of choice for girls. Research referenced by *Chesney-Lind and Okamoto* makes a definite connection between abuse and running away when they cite that 73% of the female runaways in a Toronto, Canada, shelter had been sexually abused. Violence, both sexual and physical, results in substance abuse, petty theft, and prostitution.

In addition, girls in the juvenile justice system often come from fragmented families, have serious physical and mental health disorders, are separated from their young children, have been suspended, expelled, or failed at school, experience low self-esteem and/or body image, succumb more easily to the domination of older males, and unlike their male counterparts, "react negatively to outside controls...although their aggression is often a self-defense mechanism against past abuse." (*Justice by Gender Report*).

Gender bias and sexism also play a part in the ever growing numbers of young female offenders. *Chesney-Lind and Okamoto* noted the long standing paternalism of the courts that incarcerate girls for

their own protection: "While girls have long been invisible to those who crafted theories of delinquency, concerns about girls' immoral conduct were at the center, rather than at the periphery, of the movement that established the juvenile court (Platt, 1969; Odem, 1995; Kunzel, 1993). As a result, in the earliest years of the court, girls were frequently institutionalized for such offenses as 'sexual immorality'...[and such] status offenses...as runaway [which] often functioned as 'buffer charges' for the court's concern about the sexual behavior of girls." (p.11).

Furthermore, use of detention for protection has been increasing for girls in the last ten years. The *Justice by Gender Report* states that "girls are not only more likely to be detained, but to be sent back to detention after release...[with] the use of contempt proceedings and probation and parole violations...[making] it more likely that, without committing a new crime, girls [particularly minority girls] will return to detention." (p. 20) Further emphasizing the point and quoting again from the *Justice By Gender Report*, detention is used "as a means of social control of girls' behavior considered dangerous to themselves." (p. 20).

There is also evidence of gender disparity within the juvenile justice system. Recent detention and incarceration statistics indicate that girls are disproportionately charged with status offenses. Statistics document ethnic bias: African American girls make up nearly half of all those in secure detention, and Latinas constitute 13 percent. (*Justice by GenderReport*).

Despite assumed equality under the law, there is a difference between girls and boys. "Relationships and [the] connections they [girls] develop with others" is a much more important factor with girls than with boys. (*Justice by Gender, p. 9*). Three characteristics appear consistent in female juvenile offenders. They are: "1) girls are much more emotional than boys in the treatment setting, 2) girls have distinctly different needs than boys in the areas of life skills training and education, and 3) girls elicit unique countertransference reactions from practitioners." (*Chesney-Lind, Okamoto, p. 18*).

But generally speaking, "most institutional and community based programs are not developmentally sound, culturally competent, or responsive to the special need of girls" [and most programs] "focus on control rather than the provision of effective support for girls to...[move]...beyond the trauma that...drives their runaway behavior." Juvenile treatment programs...are designed for and successful with male offenders. Even those especially aimed at girls are "modeled after programs that serve males" (*Justice by Gender Report, pp 13 and 23*).

This dearth of specific methods and programs that meet the unique needs of the young women in the juvenile court system is noted both by the *Justice by Gender Report* and the *Chesney-Lind, Okamoto* analysis. Programs can treat the unique characteristics of female juvenile offenders and be organized around a continuum of care starting with access to quality legal representation and progressing through a "cross-systems and integrated, collaborative approach to programs and services provided by all branches of government..." The PACE Center for Girls in Florida and Multisystemic Therapy (MST) can instill "in girls a sense of fairness within the system and provide...remedial interventions, life skills training, safe housing, protection from intrafamily violence and abuse, treatment for substance abuse, and techniques to overcome physical/psychological stress..." (*Justice by Gender Report*).

## Disproportionate Minority Confinement

A prerequisite of an effective juvenile justice system is to treat every offender as an individual and provide needed services to all. There are troubling indications that the system is not meeting this standard. As one reflection of this problem, the percentage of minority youth in secure confinement is more than double their representation in the general population – comprising nearly seven out of ten juveniles in such environments. (*Shay Bilchik, OJJDP Juvenile Justice Bulletin. September 1998.*)

In 1988 the Juvenile Justice and Delinquency Prevention Act (JJDP) was amended to require that states address disproportionate minority confinement in their State Plans. Disproportionate minority confinement (DMC), as defined by the JJDP, refers to a situation in which the minority proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups exceeds the proportion of such groups in the general population. The Act required states to assess the level of minority youth confinement by identifying the overrepresentation at each decision point in the process: arrest, intake, detention, adjudication, and disposition.

Findings are that African American juveniles are over-represented with respect to their proportion in the population at every decision point in the process. (*Eileen Poe-Yamagata and Michael A. Jones, Building Blocks for Youth. And Justice for Some. April 2000.*) African Americans were:

- 15% of youth under age 18 nationally.
- 26% of juvenile arrests.
- 31% of referrals to juvenile court.
- 44% of the detained population.
- 34% of youth formally processed by the juvenile court.
- 32% of youth adjudicated delinquent.
- 46% of youth judicially waived to criminal court.
- 40% of youth in residential placement.
- 58% of youth admitted to state adult prison.

In 1993 researchers at Bowling Green State University released a study of disproportionate confinement of minority juveniles in Ohio. (*Dun, C., Cernkovich, Perry, R., Wicks, J. Race and Justice in Ohio. Bowling Green State University. 1993.*) Findings were:

- Minority juveniles are referred to Court in nearly twice the proportion as their prevalence in the population suggests they should be.
- Minority juveniles are more likely to be detained than white juveniles, and this difference persists even when the effects of other legal and social characteristics on detention risk are accounted for.
- Youth who are detained are three times more likely to be incarcerated than youth who are not detained. Detention has a major impact on the subsequent overrepresentation of minorities in later stages of the juvenile system.
- Preadjudicatory detention is the second strongest risk factor for a confinement disposition, exceeded only by being confined previously for delinquency.
- Minority juveniles' offenses are no more serious on average than offenses of white juveniles nor are their prior record of referrals to count more lengthy.

- Ohio data suggest that differences in delinquent behavior are insufficient to account for disparities in detention and confinement.
- Minority youth are sent to the Ohio Department of Youth Services (ODYS) while white youth are committed to local facilities.

The researchers suggested that the following action should be taken:

- 1) Police referral patterns should be studied. Police data on arrest or release of youth need to be made available and patrol observation studies should be developed.
- 2) Ohio needs a uniform policy with respect to records of informal sanction processes – from school discipline to unofficial handling of referrals by the police and juvenile court.
- 3) Guidelines should be developed for detention.
- 4) A range of community based alternatives should be increased to reduce the number of nonviolent, non-chronic offenders sent to ODYS.
- 5) Juvenile justice agencies should take the lead in developing training programs for staff who work with youth to deal with anger constructively.
- 6) Juvenile justice agencies should take the lead in cooperating with schools to develop effective legal education programs that focus on conflict and dispute resolution and on the positive power of legal institutions.

Of the Ohio DYS commitments in 2001, white youth were 48.4%, African American youth were 46.7%, and other youth were 4.8%. Of the Cuyahoga County commitments in 2001 white youth were 18.8%. African American youth were 73.9% and other youth were 7.2%.

## The Juvenile Justice System

A juvenile court has exclusive jurisdiction to hear cases involving children under the age of 18 alleged to be delinquent, unruly, abused, neglected, or dependent. This court also determines issues of paternity, custody, and child support in cases involving children who have been born out of wedlock, or if no action for divorce has been filed in the domestic relations court.

### **Juvenile Court cases involve the following types of children:**

*Delinquent child* – a child who has committed an act which, if committed by an adult, would be considered a crime (for example, murder, rape, assault, and theft).

*Unruly Child* – a child who has committed an act that is illegal for children, but which would not be considered illegal if committed by an adult (for example, truancy, incorrigibility).

*Abused Child* – a child who has been intentionally harmed by the caretaker.

*Neglected Child* – a child who has not received proper care, due to the caretaker's neglect.

*Dependent Child* – a child who has been harmed, through no fault of the caretaker.

*Juvenile Traffic Offender* – a child who has violated a traffic law, other than parking violations.

### **Delinquency and Unruly Cases:**

*Initiation* – Police or other persons present information about possible delinquent or unruly children to the court. If the information is sufficient, and alternatives, such as diversion or mediation are not appropriate, an official complaint is filed.

*Arraignment* – If an official complaint is filed, a hearing is held to read the complaint to the child, explain the purposes and consequences of the proceedings, and inform the child of his/her rights. If the child is indigent, the child is assigned legal counsel. In some situations, the child may be transferred to a criminal court for prosecution as an adult.

*Adjudication* – The court holds a hearing to determine if the child is delinquent or unruly.

*Disposition* – Following adjudication, the court decides what action will be taken; e.g., the child may be released under parental supervision, placed on probation, or committed to a residential facility. If there is insufficient evidence of delinquent or unruly behavior, the case is dismissed.

*Sealing/Expungement* – Court records must be destroyed if the complaint against the child is dismissed. If the complaint is not dismissed, two years after the end of the proceedings, the child may petition to have certain court records sealed. (See Appendix 5: Expungement)

## **Abuse, Neglect, and Dependency Cases:**

*Initiation* – A child welfare agency, police, or others may present information about possible abuse, neglect, and dependency cases to the court. If a complaint is filed, the court may, in an emergency, order the Department of Children and Family Services to care for the child.

*Preliminary Hearing* – Soon after the case is initiated, the court holds a preliminary hearing to explain the rights of the parents and to appoint a *Guardian ad Litem* to represent the child's interests. Parents who cannot afford an attorney may be referred to the Public Defender's Office.

*Adjudication* – The court holds a hearing to determine abuse, neglect, or dependency.

*Disposition* – Following adjudication, the court decides what action will be taken. If there is insufficient evidence of abuse, neglect, or dependency, the court will dismiss the case.

## **Traffic Cases:**

*Initiation* – The Traffic Unit receives and reviews a child's traffic citation.

*Arraignment* – If the traffic offense is serious enough, a hearing is held to read the citation to the child and explain the purposes and consequences of the proceedings. The child may waive a hearing for a less serious offense if it is the first offense within a twelve-month period. If there is a waiver, the child is ordered to pay fines and costs, and the case ends.

*Adjudication* – If there is no waiver, a hearing is held to determine if the child is a traffic offender.

*Disposition* – Following adjudication, the court decides what action will be taken. If the child is found to be a juvenile traffic offender, the court may assess fines and costs, order probation, restrict driving privileges, and/or require attendance at driving classes. If there is insufficient evidence the child has violated a traffic law, the court will dismiss the case.

## **Services provided by the Juvenile Court:**

*Judicial Services* – Judges and magistrates conduct hearings and decide the outcome of cases.

*Detention Services* – Detention service professionals supervise children who are awaiting a hearing or placement in a residential facility. Services may include shelter care, home detention, electronic monitoring, and secure detention.

*Probation and Community Services* – Probation service staff provide information to assist judges and magistrates in disposing of cases. Probation and community service staff may supervise children who are found delinquent or unruly but not placed in residential facilities.

*Legal Services* – Legal service professionals including, lawyers, *Guardians ad Litem*, and public defenders are appointed by the court to advise children and their parents and guardians.

Excerpted from Cuyahoga County Court User's Guide. Cleveland State University, June 2002.

## Appendix 11

### Juvenile Justice Glossary

**ABUSED CHILD:** A child who has been intentionally harmed by the child's caretaker.

**ADJUDICATION:** A hearing where evidence is presented by the prosecution and defense. Guilt or innocence is established.

**AFTERCARE:** Supervision after institutionalization to aid youth in re-establishing ties with community.

**APPEAL:** Decision of the Juvenile Court may be appealed to the Court of Appeals where the ruling may be upheld or overturned.

**ARRAIGNMENT:** A hearing where the complaint is read, the purpose and possible consequences of the proceedings are explained, and the child is informed of his/her rights.

**BINDOVER:** Process of transferring a juvenile to an adult criminal court for prosecution for a serious offense. Also known as waiver or transfer to adult court.

**CHILD:** Under Ohio law, a person under 18 years of age.

**COMMITMENT:** Transfer of the physical and legal custody of a child from court to the Ohio Department of Youth Services (DYS); children may also be committed to another youth-serving agency.

**COMMUNITY CONTROL – formerly probation:** The juvenile receives a statement of the conditions of probation and the probation department keeps informed of the conduct and condition of the juvenile.

**COMPREHENSIVE AND COORDINATED SYSTEM OF SERVICES:** A system that A) ensures that services are consistent with the goals of preserving families and providing services in the least restrictive environment; B) intervenes early with children at risk of developing emotional or behavioral problems; C) increases interagency collaboration with the family; and D) encourages public/private partnerships.

**CONTINUUM OF CARE:** A continuum of care includes the full range of services for a specified population from services in the home and community to services in a residential or institutional setting.

**CRIME:** A crime is a wrongful act that violates a federal, state, or municipal law and causes injury or harm to persons or society as a whole; in Ohio, a felony or misdemeanor offense.

**DELINQUENCY:** Acts committed by a child that would be criminal if committed by an adult; also habitual truancy and chronic truancy of an unruly child.

**DEPENDENT CHILD:** A child, dependent on the state, who has been harmed through no fault of the caretaker.

**DETENTION:** Temporary care in residential facilities pending court adjudication and disposition.

**DISMISSAL:** Finding that the crime has not been proven.

**DISPOSITION:** The determination a judge makes after adjudication, as to what is to be done with and to the child; disposition may be only a warning or it may be a commitment to the Department of Youth Services.

**DIVERSION:** Use of alternatives; e.g., counseling, treatment. Diversion efforts must be undertaken before adjudication, but after probable cause has been determined.

**EXPUNGEMENT:** An order issued by juvenile court that officially eliminates part of a record. A public office or agency shall destroy its record of the prior adjudication or arrest, except for a record maintained for compiling statistical data that does not contain any reference to the person who is the subject of the order to expunge. After expungement the person may

properly reply that no record of the case with respect to the person exists. Exception: a violation of certain types of homicide and sexual offenses.

**FELONY:** An adult criminal court term used in determining length of commitment to the DYS.

**FINDING OF INVOLVEMENT:** Court states the youth did commit the act of which he/she is accused.

**FOSTER HOME:** A surrogate family home that accepts a youth who has no home or whose home is found by the court to be an inappropriate place.

**GAULT DECISION:** A major 1967 Supreme Court that mandates certain due-process rights not previously extended to juveniles: courts are required to advise juveniles 1) of the specific charges; 2) of the right to counsel; 3) of the right not to testify; and 4) of the right to cross-examine an accuser.

**GENDER-SPECIFIC SERVICES** Designed to address needs unique to the gender of the individual.

**GROUP HOME:** A small non secure residential unit that provides shelter care, detention, or treatment.

**GUARDIAN AD LITEM (GAL):** Officers of the court who advocate for the best interest of the children involved in juvenile court proceedings. The GAL fulfills the multi-disciplinary role of investigator, advocate, facilitator, case monitor, and referral source for children and families in crisis.

**HOUSE BILL 440 (1981 legislation):** States that only felons may be committed to the DYS; status offenders and misdemeanants are the responsibility of the counties.

**INTAKE HEARING:** Held to determine whether a juvenile should be held in detention before an adjudication hearing. Detention is required to protect the person or property of others or those of the child, if the child is likely to run away or be removed from the court's jurisdiction, or if the child has no parent or guardian to provide supervision and return him/her to court when required.

**JUVENILE COURT:** A court of record that acts in place of parents and hears cases dealing with delinquent, unruly, dependent, neglected, abused children.

**JUVENILE TRAFFIC OFFENDER:** A child who has violated a traffic law, other than parking violations.

**JUVENILE JUSTICE and DELINQUENCY PREVENTION ACT:** 1974 federal law that provides funding for action and research in juvenile justice and delinquency. State eligibility for funding is contingent on assurance that juveniles are not held in institutions where they have regular contact with adult prisoners and that status offenders are not held in juvenile detention or correction facilities.

**KENT DECISION:** A 1966 Supreme Court decision that held that a juvenile must have safeguards in hearings to transfer a child's case for trial as an adult; the right to counsel, counsel's right to social case records; a judicial statement of the reasons for considering transfer of the case.

**MAGISTRATE:** An official empowered to conduct hearings; decisions are approved by the judge.

**MINIMUM SENTENCE:** The amount of time a juvenile must spend in the DYS if committed. Felony 3 and 4 require 6 months; felony 1 and 2 require one year; murder and aggravated murder to age 21. All committed youth may stay in DYS until age 21.

**MISDEMEANOR:** A classification for crimes that are punished less seriously than a felony.

**MULTISYSTEMIC THERAPY:** A community-based treatment model that addresses the multiple needs of serious juvenile offenders at high risk for out-of-home placement and the needs of the family.

**NEGLECTED CHILD:** A child who has not received proper care, due to caretaker's neglect.

**OFFICIAL HEARING:** Held after official complaint is filed. Procedural rules are followed.

**OHIO REVISED CODE (ORC):** Ohio law. Portions of the ORC relating to juvenile justice, together with the Rules of Judicial Procedure of the Ohio Supreme Court, govern the operations of the juvenile justice system.

**OHIO DEPARTMENT OF YOUTH SERVICES:** The department of state government that operates correctional institutions for children.

**PARENS PATRIAE:** Similar to "in loco parentis"--the basic philosophy of juvenile court, in which the state invests in the court the power to act as a parent in the best interests of the child.

**PROBATION:** The supervision of delinquent or unruly children who are not placed in residential facilities.

**RECIDIVISM:** A repeated offense, or the return to the police and court system of an adjudicated offender, who has completed his/her program of rehabilitation and been released from custody.

**RECLAIM OHIO:** A funding strategy to reduce overcrowding in institutions by giving local governments the fiscal means and fiscal incentives to use alternative sanctions for non-chronic, low-level offenders.

**RECORD:** A written account of all acts, proceedings, and testimony in a lawsuit.

**REHABILITATE:** Reforming youthful offenders through individual treatment and educational programs.

**RESIDENTIAL FACILITY:** A place where youth live to receive, care, treatment, or shelter.

**RESTITUTION:** The act of restoring something to its rightful owner – giving an equivalent for an injury.

**RESTORATIVE JUSTICE:** The philosophy that crime is a violation of trust and relationships between the victim, the victimized community, and the offender. Priority is on repairing the damage done.

**RETRIBUTIVE JUSTICE:** The philosophy that a crime constitutes an action against the state, which exacts punishment.

**SEALING OF A RECORD:** On order of juvenile court, the removal of adjudication records to a separate file accessible only to the court. The child may petition to have court records sealed two years after the termination of proceedings. Exception: certain homicides and sexual offenses.

**SHELTER CARE:** Temporary care of children in physically unrestricted facilities pending court adjudication or disposition. May be public or private.

**TREATMENT:** A program for rehabilitation; may include counseling, behavior modification, etc.

**UNRULY CHILD or status offender:** A child who has committed an act that is illegal for children, but which would not be considered illegal if committed by an adult.

**WINSHIP DECISION:** 1970 Supreme Court decision – the allegations of the juvenile court petition must meet the same standard of proof as that used in adult criminal matters – proof beyond a reasonable doubt.

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