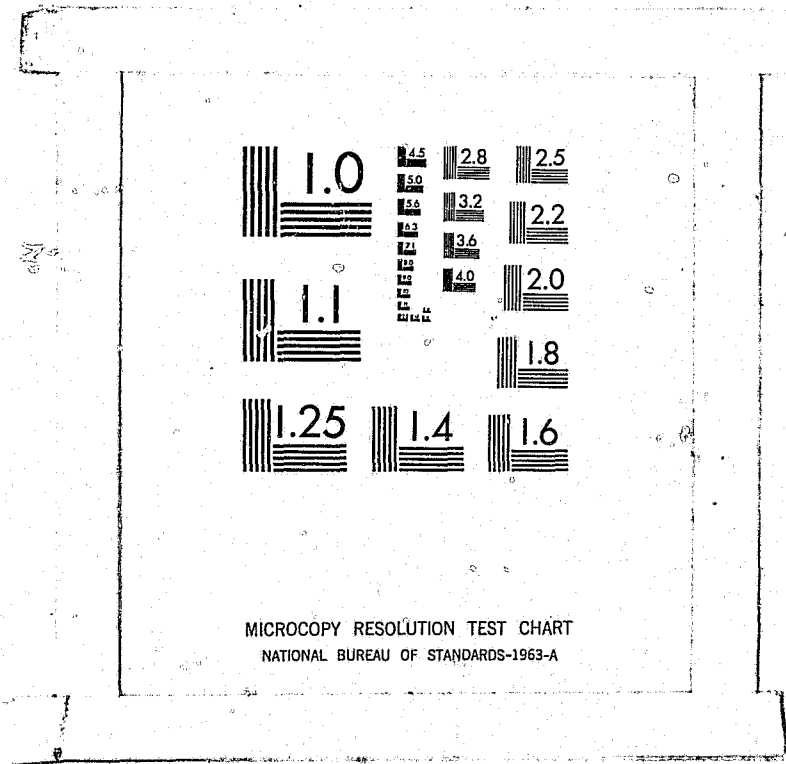


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A PROPOSED APPROACH FOR JUSTICE SYSTEM PROCESSING OF MINORS
WHO ARE ACCUSED OR CONVICTED OF COMMITTING VIOLENT CRIMES

by
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of the Arizona Legislature
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Abstract

This paper describes the problem and proposes an approach for justice system processing of minors who are accused or convicted of committing violent crimes. The paper indicates that, although violent crimes by minors comprise a relatively small proportion of all offenses committed, their cost and increasing frequency requires a more concentrated effort involving the justice system, the public, and policymakers. The paper points out that some rehabilitation strategies do work for minors convicted of violent crimes. The paper then suggests a restructuring of justice system priorities, organization, and procedures to accomplish the task. The paper also suggests strategies (e.g., reallocation of existing funds) that can be used to overcome constraints impeding problem solution.

The solution proposed in the paper essentially involves increasing the secure confinement and formal justice system handling of minors who are accused or convicted of violent crimes and decreasing the secure confinement and formal justice system handling of minors involved in less-serious crimes or non-criminal acts.

INTRODUCTION

This paper was prepared primarily as a result of findings from the work of the National Juvenile Justice System Assessment Center, operated by the American Justice Institute (AJI) for the U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP). The paper also reflects the insight of the author as gained through 20 years of work with the justice system in all levels, branches, and units of government as a practitioner, researcher, and manager. The contents of the paper do not necessarily represent an official position of OJJDP or AJI.

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Serious crimes committed by minors may include both violent personal offenses (e.g., aggravated assault) or serious property crimes (e.g., burglary). Minors who are considered as serious offenders may either have committed a single serious crime or have developed a pattern of repeat offenses which may be serious or less-serious.

This paper focuses on those offenses committed by minors that are considered violent personal crimes since these events are generally considered the most severe. However, the paper considers the extent and possible solution to the problem of violent offenses in the context of all offenses or offenders handled by the justice system.

The paper describes the problem of such violent offenses, including constraints in problem identification; the characteristics of offenses and offenders; and responses to the problem. In addition, the paper identifies some constraints that inhibit problem solution and makes a number of recommendations.

The term "minor" is used in this paper rather than the more frequently used term "juvenile" in order to focus attention on that group who, under the U.S. Constitution, generally are not expected throughout the nation to have the privileges or capabilities of being an adult.

CONSTRAINTS IN PROBLEM IDENTIFICATION

There are a number of constraints that make it difficult to clearly identify the problems associated with violent crime committed by minors. These constraints include:

- disagreement over the definition of what is a violent offense and who is a violent offender,
- lack of current, accurate, and readily available information on who is involved in violent offenses, particularly in relation to repeat offenders, and
- difficulty in predicting the likelihood that any individual will commit an initial or subsequent violent crime and what prevention or treatment strategies will work.

These constraints are due, in part, to factors such as the:

- considerable variation among States and the Federal government as to the jurisdiction and organization of courts that handle such offenses, and
- confidentiality of some records and hearings.

CHARACTERISTICS OF OFFENSES AND OFFENDERS

In spite of the limitations in available information, a preliminary picture can be assembled on the characteristics of minors involved in violent criminal offenses. In general, information for the year 1977 was used in this paper

since that is the most recent year where comparable national data is available on activities of the police, juvenile court, and the corrections system. Where appropriate, data from other years is used for comparison purposes.

Characteristics of violent offenses and offenders include:

- Minors probably commit a relatively small proportion of the violent crimes committed by all ages. For example, only 21.0 percent of the total arrests for all ages for violent crimes in 1977 were of persons under 18 (1, p. 45).*
- Minors who commit violent crimes are probably a small proportion of those persons who commit all types of offenses. For example, in 1977, only 1.0 percent of total arrests of persons of all ages was of a person under 18 for a violent crime; and only 3.7 percent of total arrests of persons under 18 were for violent crimes (1, pp. 5-6).
- The number of violent crimes committed by minors is probably increasing. For example, the rates of persons under 18 arrested for violent crimes increased by 80.1 percent from 1967 to 1979 and by 5.4 percent from 1977 to 1979 (1, p. 41; 13, p. 196).
- Persons almost at the age of adulthood probably commit most of the violent crimes committed by minors. For example, the peak age in 1977 for arrests of persons under 18 for violent crimes was 17 (1, p. 6).
- Males probably commit most of the violent crimes committed by minors. For example, in 1977, 89.7 percent of those persons under 18 arrested for a violent crime were male (1, p. 7).
- Minority groups probably commit a disproportionate share of the violent crimes committed by minors. For example, in 1977, 51.8 percent of the persons under 18 arrested for violent crimes were classified as non-white (1, p. 8).
- More violent crimes are probably committed by minors in cities. For example, in 1977, 73.8 percent of the arrests of persons under 18 for violent crimes were made in cities, as compared to 23.0 percent in suburbs and 3.3 percent in rural areas (1, p. 9).
- A relatively large proportion of minors handled by the juvenile court for violent crimes probably have a history of delinquency. For example, in 1977, 35.9 percent of those persons referred to juvenile court for a violent crime had one or more prior delinquency referrals (1, p. 53).

*Included in the category of violent crimes are the Federal Bureau of Investigation Uniform Crime Report offense classifications of murder and non-negligent manslaughter; forcible rape; robbery; and aggravated assault.

- Victims of violent crimes committed by minors are probably more likely to be other minors who are from households with limited economic means. For example, the National Crime Survey indicated that over 60 percent of the victims of violent crimes committed by juveniles in 1977 were other juveniles; and that over 60 percent of all victims of violent crimes in 1975 were from households with an annual income of less than \$10,000 (1, p. 11).
- Weapons are probably used relatively rarely by minors who commit violent crimes. For example, national victimization surveys concerning crimes against persons for the period 1973 through 1977 showed that weapons were used by only 27.0 percent of those persons under 18 (1, p. 11).
- Alcohol abuse is probably more likely than drug abuse to contribute to the commission of a violent crime by a minor (1, p. 12).
- A relatively large proportion of violent crime committed by minors in cities is probably committed by organized gangs. For example, from 1973 to 1974, gang member arrests for violence in Los Angeles, New York City, and Chicago amounted to 31.4 percent of all juvenile arrests for violent crimes (1, pp. 10-11).

RESPONSES TO THE PROBLEM OF VIOLENT CRIME

Responses to the problems of violent crime include:

- (increasing personal precautions) For example, in a 1980 representative survey, 70.0 percent of the respondents said that they kept their car doors locked while they were in the car in order to keep out intruders; and 52.0 percent stated that they owned a gun to protect their home (6, pp. 83-84).
- (establishing national policy) or programs. For example, the Juvenile Justice and Delinquency Prevention Act of 1974 (as amended) states in the section on findings that serious crimes are a major problem in the United States (12). Further, amendments to this legislation currently pending in Congress provide that the justice system should give additional attention to violent crimes committed by juveniles (7). In addition, the U.S. Office of Juvenile Justice and Delinquency Prevention is currently implementing a \$7 million Violent Juvenile Offender Research and Development Program that seeks to identify and test strategies that work on (a) preventing violent crime in the community and (b) reintegration of the violent offender into the community (14, p. 31544).
- (establishing standards) For example, a comparative analysis of standards suggested by several recent groups found that all or most of the standards groups propose:

- use of criteria for placement in a secure facility

- legislatively-determined maximum dispositions for different categories of offenses
- that the court should select the "least restrictive alternative" disposition appropriate (5, p. 4).

- Passing State legislation that emphasizes the control of violent crime. For example, at least six States (California, Florida, New York, Colorado, Delaware, and Washington) have recently legislated changes to their statutes to now provide for more punitive procedures in dealing with the serious juvenile offender (1, p. 25).
- change the proportion of referrals to the justice system for violent crimes. For example, from 1975 to 1977, there was a decrease of 16.7 percent in the proportion of persons under 18 referred to juvenile courts for violent offenses (1, p. 43)--a trend consistent with arrest patterns.*
- change the proportion of persons placed in secure confinement for violent crimes. For example, from 1975 to 1977 in the juvenile court system, there was a decrease of 41.9 percent in the proportion of persons under 18 committed to a delinquent institution for a violent offense (1, pp. 55, 61, 63)--a trend inconsistent with policies to deinstitutionalize less-serious offenders and nonoffenders.
- change the rules of evidence for dealing with violent crimes. For example, from 1975 to 1977 in the juvenile court system, there was a 194.0 percent increase in cases involving violent crimes which were dismissed as unproven (1, pp. 61, 63).

COSTS OF VIOLENT CRIMES

The juvenile and criminal justice system is spending a disproportionately small amount of money to deal with violent crimes committed by persons under 18 in comparison to the cost to society for such crimes. For example:

- Of the estimated \$10.7 billion in direct loss during 1977 due to all crimes committed by persons under 18, 53.3 percent (or \$5.7 billion) can be attributed to violent crimes (2, p. 11).
- Of the estimated \$2.1 billion spent during 1977 by law enforcement agencies and courts to process persons under 18 accused or convicted of all types of offenses, only 4.4 percent (or \$92 million) was expended to handle violent crimes (2, pp. 11, 13, 73, 79).

*A change in proportion could result from either a reduction in the number of offenses or offenders handled or a policy change in what type of disposition is provided for particular types of offenses or offenders.

IMPACT AND COST OF PROGRAMS TO DEAL WITH VIOLENT OFFENDERS 9

Although there is not adequate data available specifically dealing with the impact of programs to deal with minors who commit violent offenses, the following tentative conclusions can be drawn:

- secure confinement of violent offenders without effective programs may not deter them from committing further crimes after their release. For example, two separate research reports published in 1972 by Wolfgang et al. and in 1978 by Hamparian et al. concluded that punitive treatment (e.g., secure confinement) may cause the offenders to commit more serious crimes with greater rapidity than those who receive a less constraining contact with the justice system (4, p. 101; 15)
- some treatment programs, including some involving secure confinement, may work with violent offenders if certain elements are involved in the program. For example, various studies (e.g., Mann et al.; Ohlin et al.; Feld; Murray et al.) have identified elements that seemed to work for serious offenders including:
 - maximum client choice
 - conditions that enable successful learning and job placement
 - availability of a wide range of programs
 - problem solving, trial and error attitude
 - continuous involvement of the same case manager, and
 - a mixture of secure confinement and community treatment (1, pp. 22-25, 34-35)
- different types of institutions may have different results either due to the type of program carried out in the institution or the type of person placed in the institution. For example, a study by Coates et al. in Massachusetts found the following variations in recidivism (based on receipt of a new probation sentence or a recommitment) among several different types of institutions:

• jail	71 percent
• State secure care	67 percent
• group homes	46 percent
• foster care	41 percent (3, p. 2)
- different types of institutions are likely to involve different costs.* For example, various studies show that the average costs per day in 1977 dollars for several different forms of juvenile care and custody were:

• secure correctional institution	\$68
• secure detention	\$61
• jail	\$24

*Since factors such as extent of security or programs effect cost, the least restrictive alternative is not necessarily the lowest in cost.

- small group home \$18
- home detention \$10
(10, pp. 107, 110, 127, 136)

- secure custody is likely to have some negative impact on those placed in confinement. For example, studies show that such confinement:
 - increases the suicide rate
 - increases the likelihood of physical or mental assault
 - decreases access to adequate food, sanitation facilities, medical care, privacy, quiet, light, space, air, bedding, clothing, warmth, or fire protection
 - decreases the availability of adequate counseling, visitation opportunities, education, recreation, vocational guidance, religious services, or companionship
 - increases the likelihood of obtaining a label and self-image that impedes growth and independence
 - increases opportunity to learn techniques of crime and abuse (9, pp. 3-4)

LIKELY SECURE PLACEMENTS NEEDED

Although serious offenders (including those who commit serious offenses or who are chronic offenders) constitute a small part of all juvenile offenders, they are responsible for a disproportionate share of juvenile crime. In the classic research carried out by Wolfgang and his colleagues, it was found that 6 percent of the total cohort was responsible for 52 percent of the total number of offenses, 53 percent of the personal injury offenses, and 71 percent of all the robberies committed by the cohort. In another study, Strasburg found that juveniles with five or more arrests "...were charged with 85 percent of all offenses committed by the sample...including 82 percent of all violent offenses." Further, as the Task Force on Crime of the Violence Commission observed in 1969, "When all offenders are compared, the number of hard-core offenders is small relative to the number of one-time offenders, yet the former group has a much higher rate of violence and inflicts considerably more serious injury." Finally, Vachss and Bakal observe that, "No more than 6 percent of young people charged with delinquency can be called 'violent,' yet, despite their small percentage, these deeply disturbed young people are responsible for as much as two-thirds of the total of serious offenses committed by persons under the age of seventeen" (1, pp. 28-29).

Based upon the above findings, as well as information from the 1977 Massachusetts Task Force on Secure Facilities, the National Council on Crime and Delinquency, the Children's Defense Fund, and the U.S. Children's Bureau, it is estimated that 10 percent of those juveniles alleged or adjudicated to have committed all offenses would require secure detention or correctional commitment (8, p. 8).

COMPARATIVE COST ANALYSIS

In a recent report, an analysis was made of the cost (using 1977 figures) of placing juveniles in adult jails (with the required separation from adults) as compared to some alternative strategies. Table 1 (p. 9) reflects relevant variables (e.g., length of stay, cost per day, recidivism percentage) that impact on juveniles handled in five different custody alternatives, not including adult lockups.

The computation shows that continuing present jailing practices would cost \$24,132,109 over a two-year period as compared to \$28,882,633 for removing all juveniles from jail and placing 10 percent in secure detention and the balance in small group homes.

The above comparison is intended to show how one policy option might cost 50 percent more than another. The above formula does not account for possible costs that may be due to factors such as transportation, regionalization, return to parents, delay in court processing, and availability of bail. However, these (and other) factors could be included into a local computation of relative costs and benefits--including a modification of any of the variables in the above computation if desired (8, pp. 9-10).

In addition, a similar analysis could be made of alternatives for long-term correctional custody (secure and non-secure) for minors convicted of committing violent crimes.

CONSTRAINTS INHIBITING PROBLEM SOLUTION

Constraints inhibiting solution to the problem of violent offenses committed by minors include:

- inadequate clearance rate of violent offenses by law enforcement agencies (2, pp. 57, 67)
- disagreement over whether the same disposition should be given to minors who commit violent offenses, but are from different groups (e.g., age, sex, race, economic status, family status, physical and mental capacity)
- inadequate decision policies and procedures for justice system processing of minors who are accused or convicted of committing a violent offense (11, pp. xi-xx)
- unwillingness of the public and justice system personnel to accept the concepts that rehabilitation can work; that shorter sentences may be more effective; and that relatively few persons need secure custody before or after adjudication
- exhaustion of staff who work in concentrated rehabilitation programs
- inadequate job opportunities and assistance for those violent offenders who are released back into society

TABLE 1

COMPARATIVE COST OF CUSTODY FOR JUVENILES, INCLUDING INITIAL RECIDIVISM*

	1. CONTINUE JAILING AS AT PRESENT WITH PARTIAL SEPARATION	2. CONTINUE JAILING AS AT PRESENT WITH COMPLETE SEPARATION	3. PUT ALL NOW JAILED INTO SECURE DETENTION	4. PUT ALL NOW JAILED INTO SMALL GROUP HOMES	5. REMOVE ALL NOW JAILED AND DIVIDE ACCORDING TO RISK/Need	
					90 PERCENT INTO SMALL GROUP HOME	10 PERCENT INTO SECURE DETENTION
JUVENILES JAILED PER YEAR	122,503	122,503	122,503	122,503	110,253	12,250
AVERAGE DAYS LENGTH OF STAY	X 4.8	X 4.8	X 12	X 4.8	X 4.8	X 12
PERSON DAYS	588,014	588,014	1,470,036	588,015	529,214	147,000
COST PER DAY	X \$24	X \$36**	X \$61	X \$18	X \$18	X \$61
INITIAL ANNUAL COST	\$14,112,345	\$21,168,504	\$89,672,196	\$10,584,270	\$9,525,852	\$8,967,000
RECIDIVISM PERCENTAGE***	X .71	X .71	X .67	X .46	X .46	X .67
SUBSEQUENT ANNUAL COST	\$10,019,764	\$15,029,637	\$60,080,371	\$4,868,764	\$4,381,891	\$6,007,890
TOTAL TWO YEAR COST	\$24,132,109	\$36,198,141	\$149,752,567	\$15,453,034	\$13,907,743 +	\$14,974,890 = \$28,882,633

* Does not include adult lockups.

** Assumes that 50 percent of juveniles are currently placed in jail that do not meet separation criteria. Thus, the capital outlay costs to meet the separation criteria are estimated to add an additional \$12 per day (based on the following computation: \$41,600 per bed cost ÷ 5 years amortization = \$8,320 annual cost ÷ 365 days per year = \$24 per day cost ÷ .50 percent for those additional persons who need separation = \$12 per day).

*** Although the purpose of pre-adjudication custody is not to prevent further crime, the placement may in fact have a negative effect and contribute to recidivism where an offense has been committed.

(8, p. 10)

- the budgetary structure that enables administrators of some custodial facilities to possibly gain personal or staff benefits from savings obtained from reduction in the quality of prisoner services
- concern by present justice system personnel that their jobs may be eliminated by major changes in custodial or program practices for violent offenders
- conflict over goals and priorities within the justice system and in relation to other national and local needs and purposes
- distortion of the extent of the problem and its solutions by the media, political figures, and special interest groups.

RECOMMENDATIONS

A number of recommendations can be made on how to deal with the problem of violent criminal offenses committed by minors in the United States. In some cases, jurisdictions already conform to a recommendation. In other cases, action would have to be taken by various branches, levels, or units of government.

Based upon the analysis undertaken for this paper, the following actions are recommended:

- Declare that prevention and control of violent crime is the highest priority of the justice system.
- Establish a court of general jurisdiction in each State government with appropriate population districts and divisions for:
 - minors and adults
 - criminal and non-criminal matters
 - hearings, trials, and appeals.
- Provide that original jurisdiction for all criminal matters involving persons under 18 (or minors) rests with the minor division of the criminal court, except that any minor accused of a violent criminal offense after their sixteenth birthday shall be prosecuted in the adult division of the criminal court.
- Eliminate all provisions for transfer of jurisdiction over minors accused or convicted of violent crimes from one criminal court division to another.
- Provide for complete due process for any minor accused or convicted of a violent crime.
- Provide that all minors convicted in either the minor or adult criminal court of a violent crime shall be given both secure confinement

and community supervision through a determinate sentence established on the basis of such factors as:

- nature of offense,
- prior conviction record of the minor, and
- needs of the minor.
- Provide that minors convicted of a violent crime in the minor division of the criminal court be kept in the correctional system for minors until their eighteenth birthday and then transferred to the adult correctional system if the determinate sentence exceeds their eighteenth birthday.
- Establish an offense classification system for criminal matters that includes the categories of violent and non-violent offenses.
- Include in the offense category of violent offenses at least:
 - homicide and voluntary manslaughter
 - forcible sexual intercourse
 - robbery
 - aggravated assault.
- Release as many minors as possible who are currently being held in secure confinement as a result of being accused or convicted of a non-violent criminal offense or a non-criminal act.
- Provide that no minor accused or convicted of a violent crime be placed in custodial facilities with an adult unless the minor is processed for the offense in adult court.
- Provide adequate care and protection for those minors placed in secure confinement as a result of being accused or convicted of a violent crime.
- Provide for a wide range of family-oriented programs in secure confinement or in the community for minors convicted of committing violent crimes.
- Meet the special needs of providing secure confinement for minors accused or convicted of serious crimes in areas with limited population through creative solutions (e.g., use of fire stations or motels; hiring of private security personnel).
- Implement an improved decision-making process for the classification and disposition of minors accused or convicted of a violent crime.
- Eliminate inappropriate financial benefits that may accrue to persons responsible for implementing the above recommendations.
- Provide employment opportunities to maximum extent possible for justice system personnel displaced by the implementation of the above recommendations.

- Provide for the effective selection, training, assignment, and performance evaluation of required staff to implement the above recommendations, including the establishment of practices that enable rotation or refreshment for staff working in a concentrated rehabilitation program.
- Provide for a program of public education on the extent of the problem and possible solutions to the problem.
- Establish a method to evaluate the efficiency and effectiveness of the implementation of the above recommendations.
- Develop and implement a system for rapid collection and dissemination of comparable statistics that enable analysis of how minors are involved in violent crime and are processed by law enforcement, court, and correctional elements of the minor and adult justice system.
- Reallocate the existing resources of the present criminal and juvenile justice system to accomplish the above recommendations.

Each State should bring together a group of elected officials, researchers, practitioners, and citizens to draft proposed revisions to their Constitution, statutes, or procedures to accomplish the above recommendations.

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