

## Juvenile Justice 1987

### Statement of the Problem

1. There exists a hard core group of juveniles who repeatedly commit violent, assaultive crimes against their peers and the elderly in particular, and against society in general. The target population is 15-17 years of age who come within the jurisdiction of the Probate Court, Juvenile Division. 50% of the deaths of black males aged 13-15 living in the City of Detroit were declared to be a homicide. Offenders older than 17 are subject to the jurisdiction of a court of general criminal jurisdiction. While juveniles under 15 do commit crimes, it is not with the frequency and severity of the target population. See attached Report of the Bureau of Substance Abuse, Detroit Health Department.
2. A distinction in terminology should be drawn. This is a distinction with a difference! A "juvenile" offender is a minor of an age to come within the Probate Court jurisdiction who commits a violent, assaultive offense which if committed by an adult would be a serious felony, such as murder, rape. A "child" is a minor who comes within the probate jurisdiction who is the subject of a petition alleging abuse, neglect or dependency or one who commits an anti-social or criminal offense which is not violent or assaultive. While this distinction is not presently made in the law, it is submitted it is borne out by the reality of the nature of the offender. See the Proposed Rules of Procedure, Juvenile Division of the Probate Court, 422B Mich \_\_ (1985), MCR 5.903(C)((J). Attached.
3. A daily tally of the juvenile murders and crimes in any urban newspaper drives home the conclusion that the juvenile system of justice has not effectively addressed this group of offenders. While the crisis has been caused in some part by lack of resources, the focal point of the "Systemic Failure" is the antiquated notions of juvenile justice as codified in the court rules and statutes dealing with the juvenile offender.
4. Juveniles who have come in contact with the Juvenile Court system have learned an important lesson: the system does not work - if you get caught for the first time - you will be warned and released, if you get caught a second time - you will be warned and released, until at some point you may enter into the turnstile of juvenile court, only to be warned and placed on probation - a type of release. Only after you have accrued a list of contacts, will the system seek corrective measures, such as incarceration. The time spent in camps or

placement centers is minimal, and finally if you commit a serious offense, having amassed an extensive record - you may be subject to incarceration up to your nineteenth birthday. An example of this ironic lesson is the program entitled Maximum Benefit Release - which permits the release of the incorrigible or unmanageable offender within the juvenile system under the concept that the maximum benefit has been obtained by the system from the offender. This program legitimatizes the failure of the system.

### **The Answer**

1. Finite resources are a fact of life in any criminal justice system; thus, the immediate answer must be found within existing resources, with a commitment to secure future resources and programs.
2. The criminal justice system, through legislation must identify and incapacitate that hard core group of juveniles who repeatedly commit violent and serious assaultive crimes, and
3. The juvenile justice system, through the legislature and other programs, must identify and facilitate the rehabilitative process for the child offender, including secured and segregated facilities, and rehabilitative and prevention programs where appropriate.
4. The City of Detroit is at a crisis state. Lest we fear that this call to the legislature to act is a knee jerk reaction, let me recall a series of articles and an appropriate legislative response in 1967. June Brown of the Detroit News endorsed legislation sponsored by Rep. Ted Stopczynski of Detroit which would have restored power to the juvenile courts to deal with the "hard-core juvenile, a thug under 17 who carries a gun and will use it". Rep. John Maynard was a co-sponsor to that legislation. That call to action was not accepted. Today there is a greater imperative to the call - it comes not only from the law enforcement community, the civic groups and the public at large - the call for action comes from the children. In a high school essay contest on gun control sponsored by the Michigan Psychiatric Society, a Detroit teenager lamented her inability to behave like a normal teenager for fear of the crime and guns on the streets.

### **The Solution**

1. Mandatory waiver to a court of general criminal jurisdiction for violent assaultive repeat juvenile offenders. Last session H.B. 4992-4993, and H.B. 4902-06 were introduced without any action by the legislature. By targeting a specific class of offenders, this legislation will remove the dangerous juvenile from the probate system and call for the accountability by the "adult" system which permits the long term incarceration

of the violent, repeat offender. This proposal does not remove judicial discretion, rather it implements a legislative determination of the appropriateness of the mandatory waiver, and the judicial determination that there exists sufficient evidence to support the waiver determination.

A review of the dispositional data provided in the memorandum distributed at the Task Force Hearing demonstrates that the adult system does address the serious juvenile offender who is waived by the probate system.

2. For that class of child offenders who has not demonstrated a serious repetitive course of conduct, the juvenile court will have some "breathing room" to address the issues of rehabilitation or incarceration where warranted. The answer lies in the legislative proposals which provided for dispositional power to the probate judge, ie. the power of a court to sentence to a time and place certain rather than a commitment to DSS, the extension of jurisdiction over the child within the probate system until the age of at least 21 years, and supplemental orders of disposition. See H.B. 4992, 4993. Additionally, the information regarding the offender's drug or alcohol usage, through drug testing and screening warrants serious consideration in legislative proposals.

The legislative proposals of Rep. Bill Van Regenmorter also warrant attention in that they codify the information that correctional experts have supplied. Secure juvenile facilities are necessary. Additionally the targeting of serious offense, which if committed by a "child" of the age of 15 or older would warrant waiver to the court of general criminal jurisdiction unless the "child" can show by a preponderance of the evidence that waiver should not occur, is a sound alternative. For those offenders who are retained within the probate jurisdiction, there exists a sliding scale of seriousness of the offender. For that class of offender who was not the subject of Presumptive waiver, ie. a first offender or nonenumerated offense juvenile, the traditional permissive waiver provisions apply. Additionally probate judges who retain the offender within the juvenile system must have the sentencing power to address the juvenile at the front end of a sentence by placement in a secured, segregated juvenile facility.

## Conclusion

Opponents to juvenile justice reform argue that the proposals such as those advocated today are a punitive response to the overall juvenile problem, and that they fail to reach out and address the root problem of the juvenile in society. I concur with the Statements of the Detroit Free Press Editor, Joe Stroud that the children are a "generation worth saving". I do not discount the legitimate attempts by the juvenile justice system, the legislature and law enforcement to reach the youth of today and the generation of tomorrow. As the Prosecuting Attorney for the County of Wayne, I pledge my support to those efforts.



I continue to support any legislative proposals which embody the mandatory waiver concept. The Hunter bills of last session, H.B. 4992-3, most closely track my "Wish List" for mandatory waiver, with the inclusion of the enumerated offense of Breaking and Entering an Occupied Dwelling. Anyone who has experienced such a criminal invasion can advise that it is an assaultive, personally disruptive offense which should be considered as an enumerated offense for mandatory waiver consideration.

The Wayne County Prosecutor's Office would also continue to support legislation which would extend the jurisdiction of the probate Court, Juvenile Division to the age of 21 years, the legislative grant of sentencing power to the Probate Judges, to sentence offender to a time and place certain, not simply a commitment to DSS.

I would gladly respond, on behalf of John O'Hair, to any proposals put forth by this Task Force. Let me close in noting that the composition of the Task Force is certainly demonstrative of a legislative commitment to capitalize on the most dedicated and committed within its community. The criminal Justice Community should be encouraged by the formation of the Task Force and your efforts to effect Juvenile Justice.