

# Juvenile Justice Reform

Governor Engler's action plan for Michigan

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### The Problem of Youth Violence

The statistical profile for juvenile arrests during the last decade paints a disturbing trend. Between 1983 to 1993, the juvenile arrest rate for serious, violent index crimes in Michigan has increased 36%. In that period, the murder rate for juveniles has increased 160.6%. Aggravated assault, 71.4%, arson, 56.1% -- rates much higher than for adult perpetrators.

The images behind these statistics are all too familiar. In Kalamazoo, a 15 year-old plunged a screwdriver into the side of the head of a Western Michigan University college student after that student had confronted the youth breaking into automobiles in a church parking lot. The youth, "who had fantasized about committing murder," was convicted of second degree murder but was sentenced to the juvenile system. <sup>1</sup>

In Saginaw, another fifteen-year-old offender killed three people in two separate incidents in what the judge called "the most callous and cold-blooded" murders of three people "I had ever seen." <sup>2</sup> The first victim was shot in the head by the youth in a bar parking lot when he refused the youth's demand for a carton of cigarettes the victim was carrying. Seven months later, the youth killed two brothers in an upstairs apartment over a dispute over the victims playing their stereo too loudly.

In Newago, a 16 year-old girl accused of murdering her parents will face trial in the juvenile, not adult system. The Probate judge made the decision after being faced with the extreme choices of either keeping the youth in the juvenile system or waiving the youth to the adult system for the possibility of life imprisonment without parole.

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<sup>1</sup> Kalamazoo Gazette, Monday, December 19, 1994.

<sup>2</sup> Saginaw News December 14, 1994

## An Outdated System

Our ways of dealing with violent youth offenders have not kept pace with the times. Michigan's current juvenile justice system was designed to deal with hubcap-stealing juvenile delinquents of the 1950's, not the murderers, rapists, armed robbers and drive-by-shooters of the 90's. The problem is that many of these youthful perpetrators have learned to take advantage of the leniency of the juvenile system. Some juveniles understand clearly that the system allows them to get away with serious crimes, even murder.

Our challenge is to redesign the juvenile system. It must bridge with the adult system to prevent dangerous youthful offenders from slipping through the cracks. It must also effectively balance deterrence and public safety concerns with a young offender's potential for rehabilitation.

Governor Engler's comprehensive plan to reform the juvenile justice system includes the following:

- Creates a "seamless web" to hold juvenile offenders accountable for their crimes.
- Streamlines the juvenile waiver process to adult court for serious and dangerous offenders.
- Expands the sentencing options for judges in cases involving juveniles.
- Removes procedural obstacles that prevent effective investigation of juvenile crime.
- Combats youth gang violence with stiff new penalties for gang-related activity.
- Makes schools safe-havens through partnerships with local law enforcement.
- Enhances parental responsibility for young offenders.

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A comparison with the adult justice system illuminates some of the problems of the current juvenile system.

### *Brief Description of the Adult System*

In Michigan, adult criminal responsibility begins at age 17. Offenders age 17 and over are considered adults for the purposes of prosecuting and sentencing. Michigan's criminal courts -the district, circuit and recorders courts - have jurisdiction over adult offenders. Short of sending a convict to prison, judges have several sentencing options for the adult felony offender. These include fines, supervised probation, community service, drug treatment programs, half-way houses, boot camp, jail, prison or a combination. If an offender is sentenced to a term of probation, the sentencing court continues to oversee his or her rehabilitation and treatment. However, if an offender is sentenced to the Michigan Department of Corrections, the sentencing court does not retain jurisdiction.

In the adult system, judges base felony sentences on a pre-sentence investigation report, containing a description of the offense, along with the personal criminal history and background of the offender. The perpetrator's criminal history, along with the severity of the offense, are factors weighed in fashioning a sentencing guideline range used by judges to determine a convict's minimum sentence. The recommended minimum sentencing guideline ranges many times operate as a judicial straightjacket. Sentencing departures increase the probability of reversal by the Court of Appeals. The sentencing guidelines often fail to adequately account for the offender's prior juvenile record. Rarely do past juvenile convictions result in a more severe sentence in the adult system. For example, consider an adult felon sentenced for breaking and entering a home whose prior record contains the following juvenile convictions: burglary of a business, delivery of cocaine and possession of a firearm. This individual's juvenile record would account for a mere 5 points out of a potential 50 points in the "prior record variable category." Over 24 points in the prior juvenile offense category are needed to enhance the defendant's sentence as an adult.

### *Brief Description of the Juvenile System*

The juvenile system allows most juveniles to avoid criminal responsibility for crimes committed before their 17th birthdays. A brief description of the juvenile system offers an explanation.

The juvenile division of the probate courts ("juvenile courts") exercise jurisdiction over delinquents ages 17 and under. The adjudicative (trial or



plea) phase of the juvenile system affords substantially similar due process and procedural rights to those found in the adult system. However, several contrasts remain in the terminology and treatment of juvenile offenders. The sometimes confusing terminology is different due to juvenile courts operating under the legal fiction that juveniles who commit crimes are not criminals. Instead they are labeled "delinquents," which brings them within the jurisdiction of the court for purposes of treatment and rehabilitation. At trial, jurors are not asked to find a juvenile "respondent" guilty or not guilty, but "whether the child comes within the jurisdiction of the court" or "whether allegations in the petition are true." This terminology, unique to the juvenile system, is confusing to many and further reinforces the non-criminal lenient aspects of the juvenile system.

Dispositional (sentencing) alternatives Unlike the adult system, there is no direct nexus between the seriousness of the offense and the consequences the court may imposed. The system downplays the seriousness of the offense and instead focuses primarily on the potential rehabilitation of the offender. The juvenile system operates under the philosophy that all attempts should be made to rehabilitate juvenile offenders before they reach the age of majority. While the court does consider the severity of the offense, the disposition is primarily tailored to the needs of the offender. This practice of individualized sentencing usually results in a wide disparity between juvenile dispositions (sentences) for like offenses. This focus on the needs of the juvenile rather than the seriousness of the offense can result in juvenile sentences that are more severe than those facing adult offenders for minor offenses. Conversely, rarely are juvenile sentences as severe as those facing adult offenders for serious offenses. As a result, gang members and other adult perpetrators have learned to recruit younger foot soldiers for narcotic trafficking and other illegal activities to take advantage of the leniency afforded by the juvenile system. The perpetrators themselves are fully aware of the lack of accountability in the juvenile system. The sentencing or "disposition" of an offender can range from local court-ordered probation, removing the child from his or her home for placement in foster care or a residential treatment program, or sending the youth to a secure facility. Juvenile courts retain supervisory jurisdiction after sentencing and conduct periodic review hearings to monitor the juveniles progress.

The disposition (sentence) imposed typically is dictated not by the most appropriate sanction but on the availability of bed space and the funding

sources.<sup>3</sup> The juvenile offenders may be turned over to the DSS for treatment pursuant to Public Act 150, the Youth Rehabilitation Services Act.<sup>4</sup> Under this law, the youth is made a state ward (the state becomes the youth's surrogate parent) for purposes of placement or detention up to age 19 or, for the most serious offenses, age 21. In the case of the most serious offense, at the youth's 19th birthday, a mandatory review hearing is held, if the youth has not already been released, to consider whether the youth's rehabilitative potential and whether he or she should be kept until age 21. Due to local funding constraints, approximately eight out of ten offenders are released from a secure placement at that time. Upon the youth's 21st birthday, regardless of rehabilitative success, the youth must be released.

Juveniles committed to the state most often remain at home or in secure local or State juvenile detention facilities until a placement is available. In our state urban areas, there currently is a backlog of juveniles taking up space in county detention facilities who are awaiting a DSS placement. Judges may recommend the most appropriate facility but the Department of Social Services has the ultimate authority to decide the youth's placement. Few options for secure confinement currently exist. The Maxey Boys Training School ("BTS") near Whitmore Lake currently is reserved for the most serious offenders committed under Act 150. Maxey includes 5 separate treatment facilities -- Huron Center for younger offenders, Green Oaks Center, a psychiatric facility, Olympic Center, Sequoyah Center and Summit Center. Only Green Oaks with 100 beds and the reception center with 68 beds are locked-physically secure facilities. The remainder of the BTS is "staff-secure," but not a physically secure facility. There also are two other state-run facilities offering staff-secure placements: the Flint Regional

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<sup>3</sup> Only 20 counties of the 83 counties in Michigan operate local short-term detention facilities which are chronically overcrowded. They are used primarily for pretrial detention and post-sentencing holding until placed by DSS in a treatment program.

<sup>4</sup> Decisions by judges to commit a youth under Act 150 are not devoid of financial incentives or disincentives. Due to local funding incentives, delinquent offenders are who are AFDC eligible frequently become State wards. Unless AFDC eligible, counties must share in 50% of the cost for its Act 150 wards. If a youth is placed in the training school for example, the county is charged approximately \$42,705 per year or \$117 a day for the youth's rehabilitation. If a youth is eligible for AFDC and placed in a facility other than BTS, the county pays nothing. In other words, if a juvenile's family is receiving or eligible to receive AFDC, and the court believes the juvenile should not remain in his or her own home, there is an extremely powerful incentive to place him in a non-secure facility, regardless of the seriousness of the offense. If the juvenile is placed in a secure facility, the county must pay half the cost of placement (counties share: 42,705 or \$117 per day); if a juvenile is placed in foster care in the community or in a non-secure institution, the county pays nothing (the federal government pays the county share - it becomes a 50/50 split with the State and federal governments.)

Detention Center, Genesee Valley Training School in Flint and two facilities at Adrian. Other non-secure state operated treatment facilities include the Burton Center, the 68 bed short term detention facility in Detroit and two "medium secure" northern Michigan facilities, the Shawano Center in Crawford County and Bay Pines Juvenile Center in Delta County. The state also has the option of placing youths in one of 142 private facilities or foster care.<sup>5</sup> Owing to higher staff to offender ratios in these facilities and educational and psychiatric needs involved in a juvenile's rehabilitation, housing offenders in the juvenile system is considerably more expensive than locking up offenders in jail or prison. (It costs over \$75,000 per year to house a juvenile in the boys training school @ \$206 per day verses \$20,786 per year to lock up an offender of the same age at the Michigan Reformatory at Ionia)

Several factors contribute to the disparity of costs. Juvenile state wards are afforded 1 to 10 teacher/student ratio educational services and state taxpayer-funded tuition for college credits. Treatment modality includes family involvement in counseling and treatment programs.

As of January 1995, there were approximately 4,000 delinquent state and court wards under the jurisdiction of the Michigan Department of Social Services. 742 youths are in long-term treatment at state run facilities. Approximately 400 of these individuals are court wards from smaller counties being supervised by DSS under an agreement. Another 140 state wards are in short term detention facilities. The remaining 1200 youths have been placed in private residential treatment facilities under contract and licensed by DSS. These private facilities include Boysville - (which is comprised of six separate facilities), Eagle Village, Camp Highfields, Spectrum Human Services, Starr Commonwealth, Wedgwood Acres and Wolverine. Others have been placed on independent living status. The balance are in non-residential after-care treatment programs in the community.

The lack of offender accountability, disparate sentencing, high treatment cost and limited detention and secure bed space are not the only deficiencies commonplace in our juvenile system. State law designed to make Michigan eligible to receive federal funding assistance prohibits truants, runaways, curfew violators and other "status offenders" from being placed in secure detention. Federal regulations and current state law further dictate that curfew violators and youthful offenders cannot be held for more than six hours.

Crimes committed by juveniles are difficult to investigate and even more troublesome to prosecute. Only juveniles who commit certain crimes

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<sup>5</sup> Few P.A. 150 wards are placed in foster care. Due to their ages and histories, many foster care families are unable or unwilling to accept these offenders into their homes.

must submit to fingerprinting and other normal booking procedures. This substantially lessens the chance that juvenile crime will be detected from fingerprint identification. Moreover, upon taking a juvenile into custody, the police must immediately transport the juvenile to the juvenile court or a youth detention facility. This often prevents the police from obtaining a statement from the juvenile, locating witnesses, weapons and other evidence, and impedes further investigation of the circumstances surrounding the crime.

**Waiver provisions** There currently are two methods for placing a serious juvenile offender in the adult court system. The first is typically referred to as "traditional" or "judicial" waiver. Under the traditional waiver process, the prosecutor files a motion with the juvenile court asking the court to waive its jurisdiction over a juvenile who is alleged to have committed a felony while he or she was 15 or 16 years old. The waiver hearing consists of two phases. In the initial phase, the court determines whether there is probable cause to believe the youth committed the offense(s). If probable cause is found, the second phase of the hearing is held to determine whether the youth should be tried as a juvenile or an adult. During phase two, expert testimony may be elicited about the results of a court-ordered psychological evaluation of the juvenile. Waiver hearings are a costly and time consuming process which is usually funded at taxpayer expense. The court reviews evidence about the juvenile's history, rehabilitative potential, and dangerousness. The services available in both the adult and juvenile systems are presented which while in part are individualized to the juvenile in question, are generally generic to all cases, redundant and unnecessary. Once a juvenile court waives its jurisdiction over a youth, the youth is considered an adult for all purposes concerning that offense but not for any subsequent offenses. Under present law, should a youth who has previously been waived commit a subsequent offense, the prosecutor still is required to conduct a separate waiver hearing to hold that juvenile accountable as an adult for the new offense. Should a juvenile court decide not to waive its jurisdiction over an offender, the offender will remain in the juvenile system for "adjudication" (plea or trial) and "disposition" (sentencing).

Recognizing the increasingly violent trend in juvenile crime, in 1988 the Michigan legislature enacted an automatic waiver process for young perpetrators who commit specified capital offenses (1988 PA 17). Under this law, the prosecutor can bypass juvenile court and directly file charges in the adult criminal court for youths ages 15 and 16. Even if the youth is convicted as an adult, sentencing judges, following a hearing, have the option of either sentencing the youth to the Department of Corrections or remanding the offender to the Department of Social Services for treatment as a juvenile. Approximately eighty percent of those remanded to the juvenile system are



released on their 19th birthday.

In deciding whether the juvenile should be sentenced to the adult or juvenile system, the adult court judge must conduct an evidentiary hearing to consider the identical statutory list of factors the juvenile courts consider under the "phase two" traditional waiver hearings. Under this process, more than one-third of all offenders successfully waived, charged and convicted in the adult system are sentenced as juveniles.<sup>6</sup> In Wayne County, only about 20% of the youths waived and convicted in the adult system are sentenced as adults.<sup>7</sup> As a result, most capital offenders, including murderers serve no more than eighteen months in confinement before being released. Under both the traditional and automatic waiver provisions, judges -- confronted with extreme choices -- retain sole discretion as to whether to sentence a youth to the adult or juvenile systems.

The deficiencies in the present system are not limited to the procedural obstacles in investigation, deficiencies in the waiver process and failing to hold juveniles accountable for murder and other capital offenses. The dichotomy between the juvenile and adult systems allows offenders age 17 and over to avoid responsibility for their crimes committed before their 17th birthday. For example, "first-time" adult offenders with encyclopedic juvenile rap sheets are immune from Michigan's habitual offender law which provides for sentencing enhancement for repeat offenders. Once reaching their 17th birthday juvenile offenders also are not subject to adult crimes and sentencing enhancements that are predicated upon an earlier conviction. Under present law, prior juvenile adjudications (convictions) cannot be used for these purposes. [ e.g. retail fraud, felon in possession of a firearm and repetitive drug convictions. ]

This, coupled with the lack of uniformity in fingerprinting and reporting of prior juvenile offenses, allows offenders with extensive juvenile criminal histories to start with a virtually clean slate upon reaching the age 17.

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<sup>6</sup> Statewide, approximately 62% of youth waived and convicted in the adult system are sentenced to the Department of Corrections. The remaining 38% in this category are sentenced to DSS.

<sup>7</sup> In Wayne County, forty-two percent (42%) of the 15 and 16 year old life offenders are successfully waived to the adult system. Judges send about 28% of them to adult prison. The anomalous result is less than 12% of the most dangerous juveniles are punished as adults. Source: Michigan Department of Social Services - Detroit News 11/94

Many observers have come to realize the limited prognosis for rehabilitating murderers and other violent offenders in the juvenile system before their 21st birthday. In this regard, Oakland County Probate Judge Eugene Arthur Moore offers the following assessment:

**"The juvenile system cannot solve every problem. We have limited resources, and we have to decide those types of problems we can solve. We may have reached the point where the juvenile justice system no longer can do anything for the very violent juvenile offenders under age 17. Scare public funds are better spent on younger kids who can be saved."**

Comment: It makes little sense to offer solutions without first discussing the problems associated with the jurisdictional dichotomy between the adult and juvenile systems.

With the exception of DSS, all advisors agree that the prefatory language in the document represents a fair and accurate discretion of the juvenile system.

DSS agrees that murders by juvenile perpetrators has increased over 160% over a ten year period, but based on its interpretation of the crime statistics, DSS maintains that the juvenile arrest rate has not significantly increased and is not disproportionate for that of adults. DSS further maintains that the recidivism rate for those treated in its system is substantially lower than for the adult system, and therefore may be more cost effective in the long run. Specifically, DSS objects to the statements that the "juvenile system allows juveniles to avoid criminal responsibility for crimes committed before their 17th birthday" and that "many of the young perpetrators have learned to take advantage of the leniency of the juvenile system." DSS maintains there is accountability in the juvenile justice system.

# The need for Action

Governor Engler's plan for reforming the juvenile justice system involves the following initiatives

## *Simplify and expand the juvenile waiver process for serious and dangerous offenders.*

- Governor Engler Supports legislation that lowers the jurisdictional age to 14 years for "automatic waivers." Under an automatic waiver, the prosecutor can bypass the juvenile system and directly file charges in the criminal court for specified capital offenses including murder, armed robbery and first degree criminal sexual assault. Fourteen years is the most prevalent waiver age in other states and one that is recommended by the National Governors' Association. The new federal crime bill lowers the age to "13" for violent federal crimes. Studies have shown that acts of violence by youthful offenders becomes statistically significant at age fourteen.<sup>8</sup>
- The age for "traditional" waivers will remain at age 15. The traditional waiver process often is associated with repetitive offenders committing non-capital, less serious offenses. Very few 14- year-old offenders have had the opportunity to build the criminal history to justify waiver at that age. Traditional waiver to the adult court system will remain an option once these youth reach age 15.

Comment: For simplicity, some have suggested lowering the jurisdictional age to 14 years for both automatic and traditional waivers. In addition to the stated reasons, lowering the jurisdictional age to 14 for capital offenders (automatic waivers) only is consistent with our goal of reserving beds at the new juvenile correctional facility for the most serious and violent youth.

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<sup>8</sup> A number of States have lowered the age at which juveniles may be tried as adults. Currently, the most common age for waiver is fourteen, which has been adopted in seventeen States: (Ala. Ark. Colo. Conn. Idaho Iowa Kan, Ky. Mass. Minn. Mo. N.D. Pa. Utah Va. Wis.) Among the remaining 33 States, there are three permitting transfer at age sixteen, five at fifteen, four at thirteen, one at twelve, and two at ten. Three States, Nebraska, New Mexico and have no system for waiver and New York and the District of Columbia allow for waiver at any age for certain offenses.



- Creates an expanded list of automatic waivable offenses to include arson of a dwelling, kidnapping, bank robbery, assault with intent to maim, using a firearm in commission of a specified felony and conspiracy or solicitation to commit any of these offenses. <sup>9</sup>

Comment: This legislation also will confer jurisdiction on the circuit and recorders courts to try juvenile offenders for nonenumerated and lesser offenses arising out of the same criminal transaction as the enumerated offense in the same trial, thereby codifying the rule enunciated in *People v Veling*, 443 Mich 23 (1993).

- Support passage of "adult crime, adult time." This legislation provides for mandatory adult sentencing of juveniles who are automatically charged as adults by prosecutors and waived into the adult system for certain serious and dangerous crimes. Adult sentencing judges now send approximately two out of every three serious and dangerous young offenders back to the juvenile system for release on their 19th or 21st birthdays. This takes the discretion of whether to sentence a capital offender as juvenile from the adult court judge and places it with the Legislature and locally elected prosecutor.
- Governor Engler supports Senator VanRegenmorter's "third option," which would give sentencing judges the discretion of making 14-16 year-old offenders convicted of first degree/felony murder or major drug offenses eligible for parole after 25 years.<sup>10</sup> Under current law, circuit and recorders court judges are faced with two extreme limited choices in sentencing those convicted of first degree/felony murder or a major drug offense: either sentence an juvenile to life in prison without the possibility of parole or sentence the offender to the juvenile system for release on his 19th or 21st birthday. The second option usually results in the juvenile spending no more than one year in secure confinement. Under the third option proposal, judges would have the additional option of sentencing 14 -16 year-old capital offenders to a minimum term of 25 years, at which time they would be eligible for

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<sup>9</sup> The current list of automatic waivable offenses includes first and second degree murder; attempted murder; assault with intent to commit murder; armed robbery; assault with intent to rob while armed; carjacking; first degree criminal sexual conduct, and major drug possession or delivery over 650g. MCL 764.1f

<sup>10</sup> Should Senator VanRegenmorter's "adult crime-adult time" proposal be enacted, this would effectively eliminate the "third option." In such case, this proposal may more appropriately be labeled a "second option."

parole. For a 15-year-old capital offender it would mean "life begins at 40." Studies have shown that those offenders at this age are much less likely to engage in violent or repetitive criminal conduct.

Note: Senator VanRegenmorters proposal does not require that all 14 to 16 year-old murderers will be eligible for parole after 25 years. The proposal simply gives judges that option.  
Comment: Former Ingham County APA Carol Simon writes: "The current system has hardened, non-treatable waived juveniles intermixed in juvenile treatment facilities with juveniles who may be amenable to treatment. This intermingling severely impairs the ability of the juvenile facilities to treat those individuals who may be more likely to benefit from treatment and is a very costly alternative. Abrogating the circuit court judge's discretion to sentence back to the juvenile system would eliminate the current problem of judges sentencing to DSS when the other alternative is life in prison without the possibility of parole."

- Provide that perpetrators ages 14-16 who are automatically or traditionally waived to the adult system be held in the county jail unless compelling reason is brought by motion in circuit or recorders court to allow the youth to be held in a juvenile facility while awaiting trial or other disposition. This will require physical segregation of younger offenders from the adult jail population to prevent youthful offenders from being subject to the predatory behavior of older inmates.<sup>11</sup>

Comment: The issue is whether 14-16 year old offenders who are waived to the adult system and are awaiting trial on murder and other serious charges should temporarily be incarcerated in the county jail instead of a county juvenile detention facility.

Probate judges strongly advocate this position. It is the existing practice in some jurisdictions, which may violate existing law.<sup>12</sup>

Given Michigan's blanket statutory prohibition against juveniles being placed "sight or sound" of incarcerated adults, many counties are reluctant to send a waived youth to the county jail.

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<sup>11</sup> MCL 764.27a

<sup>12</sup> MCL 764.27a(1) provides: "If a juvenile is taken into custody or detained, the juvenile shall not be confined in a police station, prison, jail, lock-up, or reformatory, or be transported with, or compelled or permitted to associate or mingle with, criminal persons while awaiting trial. However, a juvenile whose habits or conduct are considered to be a menace to other children, or who may not otherwise be safely detained, may be ordered by a court to be placed in a jail or other place of detention for adults, but in a room or ward out of sight and sound from adults."

Recommendation: Juvenile court judges should not have the authority to sentence young offenders to the youth prison under any circumstances. Only Circuit or Recorder's Court judges should have this authority, after juvenile court jurisdiction has been waived.

Reasons: (1) If probate judges have this option, the proposed 460 bed facility would be overcrowded within a very short period of time. Giving probate judges authority to sentence juveniles to the facility would simply transfer overcrowding problems from one system (DSS) to another (DOC). (2) Enactment of our proposed reforms of the waiver process already are designed to divert most of the same target population now being sent to BTS and other DSS facilities. (3) There would not be any chargeback cost to the counties for placement in corrections (as their now exists for 150 wards - approximately \$35,000 per offender per year) and therefore, there would be a strong financial incentive for judges to pursue this route for cost saving purposes. (4) Granting probate judges direct access to the prison would circumvent the waiver process and otherwise create an incentive for prosecutors and judges to formally waive youth into the adult court. Predictably, prosecutors and judges will follow the path of least resistance. Youth who commit serious and violent crime should be dealt with in the adult system and carry adult criminal records upon conviction. (5) Permitting less serious juvenile offenders to be sent to this facility would detract from our goal of prioritizing the space for those formally waived to the adult system, individuals who typically are the most dangerous and violent.

The best course is to defer this decision for one or two year trial period to see what the impact of the proposed changes in the waiver process will have on the population of Act 150 wards now being sent to BTS. It is my guess that most of these wards will be diverted due to changes in the waiver law without expanding the probate court's sentencing jurisdiction.

- **Create boot camps.**

Comment: This was placed in our agenda at the suggestion of Representative Nye. The big question is how to pay for them? Monies may be available in the federal crime bill for this purpose. We may want to apply for the same as long as it does not compete with money for prison construction or another higher priority. Boot camps may be set up in conjunction with the alternative charter school proposed by the Governor for less serious delinquents.

- **Expand probate judges' sentencing options for youth who commit crimes as juveniles and are sentenced beyond age 17. Under this**

**Class of offenders eligible for youth prison.** Directors Miller and McGinnis request that the following additional option concerning the youth prison be considered by the Governor.

DSS and not the DOC operate the facility. Under this scenario, both PA 150 youths sentenced by the juvenile courts and those youths waived and sentenced in the adult criminal courts would be sent to the prison. [If DOC operates the facility, the punk prison could not be a sentencing option for those youths convicted and sentenced as juveniles except under the Minnesota model, as described above.]

Permitting the facility to operate under the auspices of DSS would give both probate, circuit and recorders court judges access to the facility. Those youth sentenced to the prison from the juvenile system would serve an indeterminate sentence in the discretion of the court. Those youth sentenced to the prison from the adult system (circuit or recorder's court) would serve their formative years in the juvenile prison and automatically be transferred to the adult system at age 19 or before to complete the remainder of the determinate term of their sentences.

Recommendation: This is a viable policy option, especially if the facility is run by a private vendor. The current cost differential between DOC and DSS is due in part to extensive DSS licensing standards. There needs to be a commitment from DSS that the facility could be operated under the same cost containment structure now found in the adult correctional system.

proposal, probate judges will have the authority to sentence youths ages 17 and over subject to juvenile court jurisdiction to the county jail for up to one year. This will create a system of accountability for youths who commit serious crimes as juveniles but are sentenced after reaching age 17 and for those offenders age 17 and over who violate the terms of a juvenile probation order. Under the present system, for example, there is little a court can do with a sixteen and one-half-year-old burglar. Juvenile offenders that age likely won't be convicted and sentenced until sometime after their seventeenth birthday. Then the juvenile court is confronted with the limited options of placing the youth on probation or sentencing the youth to a juvenile facility with younger offenders. Even the strictest of probate judges faced with this scenario are tempted to "wash their hands" of the 17 year-old and wait until he or she commits another crime so that he can be prosecuted in the adult system. This reform will help to insure accountability for this class of offenders.<sup>15</sup>

Comment: Under present law, juvenile court jurisdiction over offenders ages 17 and over is limited to juveniles convicted of specified offenses including first degree murder, arson, assault with intent to murder, armed robbery, kidnapping, rape and major drug offenses. (MCL 612A.2a) In all cases, juvenile court jurisdiction terminates at age 19 or 21.

The above proposal is a solution to a major problem. There is an apparent loss of enthusiasm to deal with those at or near 17, and this could be interpreted to be some shirking of duty which creates risk. The minor is turned loose rather than spend scarce resources, time, effort and budget. Some juvenile judges have even refused to allow a petition to be filed against youth nearing their 17 birthdays for a lack of sentencing alternatives.

There are no sight and sound implications with this proposal because all offenders sentenced by probate judges to jail will be 17 or over. The offenders age, not that he or she has been convicted as a juvenile, should be controlling. The proposal also should back up juvenile probation officers and stiffen the resolve of offenders age 17 and over to comply with the terms of their juvenile probation or face a jail term. The one year limitation is designed to prevent probate judges from sentencing youth to prison without the benefit of the waiver process.

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<sup>15</sup> MCL 712A.5 provides in relevant part: "The juvenile division of the probate court shall not have jurisdiction over a child after he or she attains the age of 18 years, except as provided in section 2a. A commitment of a child to a private or public institution or agency shall not be valid after the child has reached the age beyond which the juvenile division does not have continuing jurisdiction pursuant to section 2a. . ."



- **Authorizes home detention with electronic surveillance for juvenile offenders. Extending this proven alternate sentence to juvenile delinquents will save critical juvenile detention bed space and insure that juveniles are home or at school and not running the streets.**

Comment: Some counties already have extended the use of electronic tethering to juvenile offenders. However, in the absence of specific statutory authority, other jurisdictions are reluctant to do so. Express statutory authorization for this cost effective house arrest system will encourage its widespread use and greatly help to alleviate detention overcrowding problems.

- **Restores the authority to securely detain truants, runaways, incorrigible youth, curfew violators and other "status offenders."**

Comment: Probate judges must have their authority restored to lock up status offenders if necessary to encourage youth to obey its orders. Judge Owens says that several probate courts have adopted a policy not to accept the filing of petitions on status offenders because there is no way the court can enforce its orders. Judge Barsamian writes: "[J]uvenile judges have always fought efforts to curtail their ability to detain status offenders. Detention is necessary in many instances to protect the offender and provide critical temporary treatment. These offenders are often the most troubled youth in our system. The only probation officer killed in Wayne County was killed by a status offender."

Saginaw and other jurisdictions recently have undertaken aggressive campaigns to enforce truancy laws in an attempt at delinquency prevention. Currently, the inability to detain status offenders is sending the wrong message. For these enforcement programs to work, we must remove this judicial straight jacket and restore the authority of probate judges to detain or credibly threaten to detain youth who willfully refuse to obey the court's orders. It is better to identify and effectively deal with a troubled youth early in the system rather than when his or her anti-social conduct escalates. We need to draw a line in the sand with OJJDP on this requirement. We cannot allow OJJDP and other federal agencies to continue to impose this and other senseless regulations designed to micro-manage Michigan's and other State's juvenile justice systems. We must stop changing State law or policy just to qualify for federal grant funds when such changes increase the risk to Michigan citizens and when the federal requirements are not in the best interest of the juvenile offenders.

Note: Wisconsin recently has amended its law to provide for the detention of status offenders and has successfully obtained a waiver of the federal regulations for this purpose.

DSS commentary: "This recommendation is counter to both State and federal initiatives and has substantial fiscal implications. We are already suffering from a shortage of detention beds for serious offenders and the addition of status offenders would further strain the system. The development of new detention beds to accommodate status offenders would be quite expensive. In addition, the federal funding received through OJJDP would be jeopardized if we were to begin incarcerating status offenders. This recommendation warrants serious reconsideration in light of these concerns.

- **Prohibit probate judges from placing juveniles on consent calendar dispositions or to a diversion program over a prosecutor's objection if the youth is charged with a felony or assaultive misdemeanor. This will insure a formal adjudication and criminal record instead of a "slap on the wrist" for these serious offenses. Also prohibits a judge from refusing to hear a petition filed by the prosecutor or unilaterally dismissing a petition before a formal adjudication over the prosecutor's objections.**

Comment: Consent calendar is an express route to disposition where there is no readily apparent need for more than probation. This proposal will end the practice of several Detroit juvenile judges from routinely placing serious offenders on consent calendar status without consulting the prosecutor, police or victim.

- **Modify consent calendar procedure to provide sanctions for probation violation. Currently, if a offender on the consent calendar violates his or her probation, the court ignores the juveniles earlier in-court admissions and requires the prosecutor to present evidence and witnesses.**

Comment: Accountability for violation of the dispositional order on the Consent Calendar (probation) is presently either impossible or possible but complicated and difficult. The Consent Calendar is useful, but violations should be dealt with directly as other violations of probation. The Consent Calendar is not in the statute and resides in the Court rules. There ought to be a statute.

- **Prevents judges from dismissing felony petitions or assaultive misdemeanors over the objection of the prosecutor.<sup>16</sup>**

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<sup>16</sup> See MCL 712A.18(a)



between the juvenile and adult systems that allows many youthful offenders to fall between the cracks.

- Provide that a juvenile who is convicted of a felony is not eligible to possess a firearm for the "disabling period" for that offense as specified in the adult felon in possession of a firearm law.<sup>18</sup> Juveniles likewise should give up their right to carry firearms and ammunition for a specified time period following a juvenile or adult felony conviction.
- Provide that the district court, rather than the juvenile court, has jurisdiction over juveniles who are alleged to have committed a misdemeanor criminal traffic offense. A juvenile who is convicted of an adult court traffic offense in district court shall be treated as an adult for sentencing purposes, except that the court may order the juvenile placed out of the home only in a residential treatment facility or in a juvenile detention facility. Many times a traffic offense is the juvenile's first contact with the criminal justice system. Going to the district court and not the juvenile court to answer for these offenses should send a message that driving is an adult privilege that comes with adult responsibilities and consequences. District Courts will be required to report all misdemeanor traffic dispositions to the Probate Court.

Comment: One court should have jurisdiction for both civil infractions and traffic misdemeanors. The current bifurcation is confusing and time consuming.

### *Remove procedural obstacles for effective investigation of juvenile crime.*

- Amend the law to facilitate investigations of juvenile crime including locating critical evidence or suspects and taking statements from juvenile offenders. Current law impedes the ability of police investigators to detain a juvenile at a police station, police car or other convenient place, even temporarily, for the purposes of obtaining a statement from the juvenile, further investigation of the circumstances surrounding a crime, fingerprinting and photographing the juvenile, or in locating additional suspects or evidence. Under this proposal, a reasonable attempt will be made to notify immediately the parents or guardian of a detained juvenile to inform them of the place of temporary detention.

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<sup>18</sup> MCL 750.224f (1992 PA 217)

Comment: Prosecuting juvenile crime presents unique challenges to law enforcement. It is an unfortunate reality that sometime the only witnesses to the crime are other juveniles or juvenile gang members who generally are not viewed as credible as adult witnesses. As a result, statements by juvenile perpetrators to police are critically important. A current statute (MCL 764.27) which requires that police immediately take a juvenile to the juvenile court or youth home, effectively prevents the police from obtaining statements necessary to solve crimes and to seek additional physical evidence, suspects and witnesses. The statutory prohibition against temporarily detaining a youth at the police station for the purposes of taking a statement or obtaining fingerprints has made its way into the policy manuals of most police departments.

In *People v. Good*, 186 Mich App 180 (1990), the prosecutor appealed from a Recorder's Court ruling that suppressed 16 year-old Jonathan Good's confession to murder because the defendant was not immediately taken to the youth home as required by MCL 764.27. (Defendant, accompanied by his mother, spent the afternoon talking to detectives at the Northville State Police Post.) The Court of Appeals, resolving a conflict between several other appellate courts on this issue, ruled that violation of the above-statute no longer required automatic suppression of the statement, but compliance of the statute was one of four critical factors to be considered in applying the totality of the circumstances test to determine the voluntariness of the juvenile's confession. (Other factors include whether the requirements of *Miranda* were met; the presence of the youth's parent or surrogate parent; and the defendant's personal background. 186 MA at 189)

Note: MCL 767.24 was amended by 1988 PA 67. As amended, the statute does not apply to those juveniles later charged as adults under the "automatic waiver." Thus, the voluntary statement of a juvenile who is not immediately taken upon arrest to the juvenile detention facility is admissible under the amended statute if the prosecutor subsequently decides to charge the youth as an adult. Conversely, if the youth is charged in the juvenile system or as an adult system by traditional waiver, the above statute still applies.

- Legislation will be introduced that extends DNA profiling to juveniles convicted of criminal sexual conduct. Michigan's recently enacted DNA profiling law as applied to adult sexual offenders helps eliminate hundreds of hours of traditional investigation by quickly identifying or eliminating suspects previously convicted of sexual assault.
- Extend fingerprinting requirements for all "reportable offenses" committed by juveniles and ending the automatic expungement of the fingerprint records where there has been no formal adjudication.

**Extending the adult fingerprinting law to juveniles will help investigators in identifying and eliminating suspects, including the use of the State Police Automated Fingerprint Identification System, known as "AFIS," which helps locate suspects with the speed of a computer. Juvenile criminals who leave latent prints on a weapon or at a crime scene should not be able to continue to avoid detection. <sup>19</sup>**

Comment: The current list is both incomplete and irrational. For example, larceny in a building, a four year felony, is reportable, but carrying a concealed weapon, felonious assault, larceny from a person and other serious felonies are not included.

- **Expressly gives probate courts (judges and referees) authority to sign warrants for search and seizure.**

Comment: Under a court rule a probate judge may order photos and fingerprinting of a minor in custody. However, there is nothing in the Juvenile Code or Michigan Court Rules which clearly gives power to the juvenile court to order a search and seizure of anything during the investigation of a crime or prior to a juvenile being subject to the court's jurisdiction (a minor under the court's delinquency or child protection powers.) Probate judges have been known to order some minors who are not in custody to submit to give fingerprints and body samples, but the power to do so is conspicuously absent. Other requests for search and seizure as to delinquents go to the adult courts and confusion reigns.

- **Extends reciprocal discovery rules to juvenile proceedings. This law, recently enacted for adult criminal proceedings places the same burden on defense attorneys as prosecutors to timely disclose certain evidence that will be used at trial.**

Comment: This is another example of recently enacted procedural changes that have yet to be extended to the juvenile system.

- **Authorizes juvenile line-ups.**

Comment: While some counties do authorize line-ups for juveniles, there is no specific statutory authority.

- **Permit police officers and retail store personnel to file misdemeanor-level juvenile court cases by means of an appearance ticket (i.e. citation) instead of a formal petition. The appearance ticket system that now**

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<sup>19</sup> MCL 28.241(f); MCR 5.903(B)(6)

## *Make Schools a Safe Haven*

- Create and implement a violence free school zone model certification program. The plan will set forth guidelines and create incentives to encourage a collaborative approach in working with school officials, law enforcement and community leaders in building coalitions to eliminate drugs, guns and violence in and around school property.
- Authorize the placement of juvenile probation officers in schools.
- Require school officials to promptly report to the police confiscation of drugs, weapons and incidents of violence on campus or at school functions and to maintain a separate file containing the number and nature of reported incidents for public inspection. This proposal will complement the recently enacted mandatory expulsion law for minors who bring guns to school.
- Protect the integrity of our school campuses by enacting a school trespassing law providing punishment for individuals who refuse to leave school property when asked and by prohibiting the disruption of school operations.

Comment: While the general trespassing law may apply to these situations, it is difficult to enforce. This law will be targeted specifically to preserve the integrity of school campuses. It will prohibit expelled students and other troublemakers from returning or entering onto school campuses.

## *Enhance Parental Responsibility*

- Provide for contempt proceedings against custodial parents or guardians who do not accompany their children to juvenile court.
- Create a civil infraction for the parents or guardians of repeated truants or curfew violators.

Comment: This proposal is designed to address the frustration of police who repeatedly pick up young children from the streets late at night to turn them over to indifferent parents.

- Enable the juvenile court to require a parent or guardian to participate in educational or treatment programs as part of a probation plan for a juvenile offender. 20

Comment: There is implied authority for this now [See MCL 712A.18(1)(b)] which provides for "reasonable rules for the conduct of parents" for children that are returned to their care. This proposal will strengthen this law and apply equally to custodial and noncustodial parents.

- Strengthen the law that makes parents liable for the cost of their juvenile's confinement, treatment or legal costs when supervised by the court, placed in a county detention facility, committed to the Department of Social Services or Department of Corrections, based on ability to pay. Require the respective departments and counties to establish a cost schedule for this purpose. Allow a court to order a child's parents to provide a statement of income, assets, debts and living expenses for this purpose. Allow the court to extend restitution payment plans up to 5 years after the minor is age 18 if restitution is not made prior to that age. Allow the minor to be under the court's jurisdiction until age 23 for this purpose.
- Require that any support payments made on behalf of detained juveniles shall be applied to offset the costs to be imposed upon the county wherein the juvenile was ordered to be detained.
- Enable parents to directly petition the probate court to exercise its jurisdiction over their youth(s) for curfew, truancy, incorrigibility and other status offenses. Provides that parent initiated petitions be placed on the consent calendar.

Comment: Juvenile courts should be user friendly. Parents must be able to come to the juvenile court to be assisted with additional powers to carry out parental responsibilities before behavior escalates into criminal activity. Courts are in the best position to supervise youth and to make referrals to community agencies.