

# Coalition for Juvenile Justice Reform

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## Response to Governor Engler's Action Plan for Michigan September 20, 1995

### **Recommendations included in Governor Engler's Action Plan for Michigan juvenile justice are listed below followed by CJJR positions.**

1. **Recommendation:** Construction of a privatized youth prison operated by the Michigan Department of Corrections for perpetrators ages 14-19 who have been tried as adults.

*CJJR position: Oppose. We question the need for construction and operation of an entirely new prison facility for this age group. It appears that fewer than 20 youths a year are currently waived and sentenced to prison, and are still under the age of 17 at the time of commitment and intake. Therefore, it is not necessary to segregate these few youths from other young offenders already incarcerated in our prisons. Also, private corrections facilities have not been shown to save taxpayer dollars and have resulted in scandals such as that recently uncovered in New York City. All juvenile offenders currently incarcerated in Michigan prisons should be provided with comprehensive programming for rehabilitation in age appropriate facilities as per current policy.*

*A recent opinion poll indicates that almost 75% of the Michigan public feel that putting juvenile offenders in prison will only make them worse when they are released. This opinion is strongly supported by professional research and experience. Other options are available and should be considered such as implementing the Department of Justice, Office of Juvenile Justice Comprehensive Strategy for serious and chronic juvenile offenders; and, expanding current Michigan programming such as the Kent County Juvenile Court's Day Treatment program.*

2. **Recommendation:** "Adult crime, adult time." This legislation provides for mandatory adult sentencing of juveniles who are automatically charged as adults by prosecutors and waived to the adult system for certain serious and dangerous crimes.

*CJJR position: Oppose. Automatic waiver without judicial overview has not been shown to be effective in reducing crime and recidivism. It is for this reason that the Coalition believes automatic prosecutorial waiver should be repealed. Without repeal of the prosecutor's waiver statute, we oppose eliminating the option of remanding children to the Michigan Department of Social Services (MDSS) who are automatically waived to adult court under the current statute. We believe that Circuit Court judges should continue to assess each case and have discretion to remand children back to MDSS. Because of the current lack of rehabilitative programming in Michigan prisons, sentencing youth to mandatory prison sentences will result in greater long-term negative costs to society in terms of public safety, financial costs, and recidivism rates typical of adults released from Michigan prisons.*

*MDSS appears to be doing a good job of reducing recidivism and providing for public safety. Recent data suggests of state wards released in 1989, 25% committed further crimes resulting in prison sentences during a four year follow-up period. Approximately 45% of adults released from Michigan prisons during the same year committed new crimes resulting in another prison sentence during the four year follow-up period.*

3. **Recommendation:** "Third option" which would give sentencing judges the discretion of making 14 to 16 year-old offenders convicted of first degree/felony murder or major drug offenses eligible for parole after 25 years.

*CJJR position: Oppose. As discussed above, it is the CJJR position that the prosecutorial waiver statute should be repealed. Problems with, and ineffectiveness of this statute cannot be remedied by further amendment. Michigan should return to the traditional judicial system of waiver and/or develop an alternative transfer of jurisdiction policy.*

4. **Recommendation:** Lower the jurisdictional age to 14 years for "automatic waivers".

*CJJR position: Oppose. We oppose lowering the age of waiver from the current age of 15. There is no available evidence to support the notion that waiver of jurisdiction or lowering the waiver age will have any impact on the extent of criminal behavior and violent acts on the part of this age group. Placing children in prison at younger ages with little or no chance for*

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rehabilitation is not the answer to current problems. We believe that Michigan should focus greater resources on early intervention and prevention for at-risk youth. MDSS is currently doing a good job of reducing recidivism and providing for public safety. Recent data suggests that four years after release, 75% of state wards do not commit further crimes resulting in prison sentences. In this regard, MDSS is doing a better job than the Michigan Department of Corrections in reducing recidivism among released offenders.

Evaluations from other states have shown automatic waiver to be ineffective in reducing juvenile crime and violence. It is for this reason that the Coalition believes automatic prosecutorial waiver should be repealed. Without repeal, however, safeguards contained in the existing prosecutorial discretionary waiver statute provide appropriate checks and balances between the prosecutor who presents allegations and the trial judge who is responsible for weighing the facts, circumstances and the law to render a decision regarding findings of guilt and the appropriate disposition of each case.

5. **Recommendation:** Create an expanded list of automatic waivable offenses.

*CJJR position: Oppose. CJJR is opposed to expanding the list of offenses for which a child can be waived to adult court. The current list includes all life offenses and should not be expanded to others. There is currently a greater likelihood of successful rehabilitation in the juvenile system.*

6. **Recommendation:** Modify the criteria the juvenile court must consider in deciding whether to waive a youth. Place more emphasis on the severity of the crime and public safety and less on the potential rehabilitation of the offender.

*CJJR position: Oppose. A change in the statute is not necessary as current criteria provide adequate guidance in considering protection of society and rehabilitative potential. In fact, five of six current criteria include prior record, severity of the offense, and protection of the public. Rehabilitation should remain an equal concern in that most youthful offenders will one day be released back to the community after incarceration and should therefore be provided opportunities for rehabilitation.*

7. **Recommendation:** Provide that perpetrators ages 14-16 who are automatically waived or traditionally waived to the adult system be held in the juvenile portion of county jail with the sheriff's consent unless compelling reason is brought by motion in circuit or recorder's court to allow juvenile to be held in juvenile facility while awaiting trial or disposition. Requires segregation of juveniles from adult offenders.

*CJJR position: Oppose. Detention of children in adult jails was discontinued for good reason. Current policy already provides for detention of children in adult jails in extreme circumstances where the juvenile is unmanageable in a juvenile detention facility. This recommendation will only exacerbate Michigan's jail overcrowding problem. Complete sight and sound segregation is difficult if not impossible to achieve in most county jails. Corrections staff in county jails are not trained to work with juveniles as required in juvenile detention facilities. Many children waived to adult court are remanded back to the juvenile justice system and therefore should not be subjected to the negative effects of being detained in a county jail with adult criminals.*

8. **Recommendation:** Authorize privatized juvenile boot camps as a dispositional alternative.

*CJJR position: Oppose. Michigan already provides Work & Learn Camps which are similar to this approach. National evaluations of the boot camp approach indicate that it is ineffective in reducing recidivism rates, and in some cases may result in more violent offenses when offenders do recidivate after release from the boot camp regime.*

9. **Recommendation:** Expand probate judges' sentencing options for youth who commit crimes as juveniles and are sentenced at age 17 and beyond. Grant probate judges the authority to sentence youths subject to its jurisdiction (age 17 and over) to the county jail for up to one year.

*CJJR position: Oppose. This recommendation will require comprehensive revision of the juvenile code in Michigan. Juveniles under the jurisdiction of the probate court should not be subjected to incarceration with adult offenders. The practice of jailing children with adults was discontinued many years ago because youth were raped and assaulted by adults in jail and prison.*



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settings. An appropriate continuum of security is available to juvenile judges in considering public safety. Unfortunately, it is options other than incarceration that are in need of development.

10. **Recommendation:** Expand family-based intensive day treatment programs for delinquent youth.

*CJJR position: Support. A number of these programs are already in place in Michigan counties and should be disseminated and fully funded by the state. We applaud this proposal as one necessary component of a comprehensive strategy to implement a continuum of sanctions and services in the juvenile justice system.*

11. **Recommendation:** Authorize home detention with electronic surveillance for juvenile offenders.

*CJJR position: Support. The Coalition supports the use of electronic surveillance home detention for juvenile offenders, but only in lieu of detention. However, this policy is already in practice in some Michigan Probate Courts. A comprehensive continuum of sanctions and alternatives should be developed and implemented in Michigan.*

12. **Recommendation:** Restore the authority to securely detain truants, runaways, incorrigible youth, curfew violators and other "status offenders."

*CJJR position: Oppose. Michigan history has shown that status offenses are not appropriately dealt with as criminal offenses. Behaviors such as truancy and running away from home are family management problems. The practice of detaining status offenders was discontinued over 20 years ago for good reason. Research showed that contact with the juvenile justice system has a negative impact on status offenders. Family conflict and management issues are best addressed with adequate counseling, training and education for parents in child development and parenting skills. Michigan will lose current federal monies for prevention and early intervention programming if we return to the old practice of locking up runaways, truants, and curfew violators.*

13. **Recommendation:** 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.

*CJJR position: Oppose. Current court rules govern and provide for motions and objections by prosecutors and this should not be changed to provide prosecutors the means of controlling the court process. This is the responsibility of judges and a separation of powers issue.*

14. **Recommendation:** Prevent judges from dismissing felony petitions or assaultive misdemeanors over the objection of the prosecutor.

*CJJR position: Oppose. This is also a separation of powers issue. The prerogative of dismissing petitions should remain with judges. Prosecutors have the benefit of court rules which govern and provide for motions and objections. This legislation would give prosecutors a means of controlling the court process and this discretion rightfully remains the responsibility of judges.*

15. **Recommendation:** Provide for adult felony charging and sentencing enhancements based upon prior juvenile adjudication.

*CJJR position: Oppose. Felony charging and sentencing enhancements are already a part of current sentencing guidelines and are included in recent sentencing guidelines legislation signed into law last year. Charging enhancements and sentencing in juvenile court requires comprehensive revision of Michigan's juvenile code.*

16. **Recommendation:** 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.

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*CJJR position: Support. The Coalition agrees that a juvenile should be prohibited from possession of firearms for a specified period when convicted of a felony involving possession of a firearm.*

17. **Recommendation:** 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.

*CJJR position: Support.*

18. **Recommendation:** Amend the law to facilitate investigations of juvenile crime including locating critical evidence or suspects and taking statements from juvenile offenders.

*CJJR position: Oppose. Current law contains a number of provisions to protect rights of the accused as well as the integrity of the juvenile and criminal justice process. For instance, children are not to be interrogated without an attorney and/or parent present. These provisions evolved over time as a result of instances in which rights were violated and because society came to realize the limited capacity of children to understand the implications of waiving their constitutional rights. Returning to archaic modes of investigation will not expedite justice, but may encourage abuse.*

19. **Recommendation:** Permit DNA profiling for juveniles convicted of criminal sexual conduct.

*CJJR position: Support. If an individual has been convicted of criminal sexual conduct, this is a logical public safety protection tool.*

20. **Recommendation:** Extend fingerprinting requirements for all "reportable offenses" committed by juveniles and end the automatic expungement of fingerprint records where there has been no formal adjudication.

*CJJR position: Oppose. Local police departments are already fingerprinting juveniles according to the law and some have already extended fingerprinting to all alleged offenses involving juveniles. Current law provides for maintenance of fingerprints in active cases. Persons who have not been adjudicated should not have a permanent record of their fingerprints kept on file. Historically, automatic expungement came about to save time and costs associated with petitioning the courts for expungement and maintenance of needless records.*

21. **Recommendation:** Grant probate court judges and referees authority to sign warrants for search and seizure.

*CJJR position: Oppose. While CJJR respects probate court judges and the role they currently serve in the juvenile justice system, we believe further expansion of search and seizure rights and authority to grant search and seizure warrants is unnecessary. The authority to review and grant search and seizure should be centralized as much as possible to prevent inappropriate use and protect the integrity of the criminal justice system.*

22. **Recommendation:** Extend reciprocal discovery rules to juvenile proceedings.

*CJJR position: Oppose. Although already a part of the adult system, extension to juvenile justice and probate courts will require comprehensive revision of the juvenile code.*

23. **Recommendation:** Authorize juvenile line-ups.

*CJJR position: Oppose. While juvenile line-ups are already common practice in many jurisdictions, the Coalition is concerned about a number of issues not addressed in this proposal including notification and permission of parents of non-suspect children*



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being brought to line-up from detention or other out of home situations.

24. **Recommendation:** Permit police and store security personnel to file a misdemeanor-level juvenile court case by means of an appearance ticket (i.e., citation) instead of seeking the prosecutor's authorization to file a petition.

*CJJR position:* Store security personnel should not be provided law enforcement authority in any case, and the Coalition adamantly opposes extending this authority to private security employees. In regard to the police issuing appearance tickets for juveniles, more information is needed on what offenses are being considered and how this is currently working in local jurisdictions. If officially incorporated into the juvenile system, a duplicate of the ticket should be mailed to parents.

25. **Recommendation:** Create a violent-free safe-school zones model certification program.

*CJJR position:* Oppose. Cooperative efforts to make schools safe are important. The Coalition supports safe and violence free schools and there are currently many weapon-free and drug-free programs in place which could be designated as model programs without the need for further legislation.

26. **Recommendation:** Authorize and encourage the placement of juvenile probation workers in schools.

*CJJR position:* Oppose. The Coalition believes that placing juvenile probation officers in schools is disruptive to education and school operations. Further, this recommendation may be in violation of privacy rights of children and families.

27. **Recommendation:** Require school officials to promptly report confiscation of weapons and incidents of violence on campus or at school functions and to maintain a separate file for public inspection.

*CJJR position:* Oppose. Current law already requires schools to report such incidents although many school districts suggest that they do not have the resources to comply. All violations of city, state and federal laws should be reported as required by law. CJJR opposes maintaining files for public inspection as this violates privacy laws. Several Supreme Court decisions address this issue. Records should be closed to the public and any release of information should be accomplished on an informed consent or "need to know" basis with strict guidelines established.

28. **Recommendation:** 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 prohibiting disruption of school operations.

*CJJR position:* Support. It is a good concept to ask those with no business on school premises to leave. There are, however, current laws which address trespassing. Current laws should be strictly enforced.

29. **Recommendation:** Create a civil infraction against parent or guardian of youth with repeated curfew or truancy violations.

*CJJR position:* Oppose. This recommendation is ill-advised in that it may be unconstitutional. These issues cannot be eliminated by calling them civil infractions. Problems involving parental responsibilities can currently be adjudicated under neglect/abuse statutes.