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# **Juvenile Justice Reform**

## **Governor Engler's Action Plan For Michigan**



July 27, 1995



**STATE OF MICHIGAN**

OFFICE OF THE GOVERNOR  
LANSING

To the Citizens of Michigan:

Michigan faces enormous challenges as we work to make our streets and homes safer for our families. While we have made great progress reforming our criminal justice system and reducing the overall rate of violent crime, there is no greater challenge before us than the need to control and reduce juvenile crime.

Crimes perpetrated by teenagers that were unthinkable in the past have become today's tragic reality as juvenile offenders terrorize communities with random acts of violence, including murder, armed robberies, arsons and assaults.

With the help of prosecutors, judges, legislators and other experts, I have crafted a comprehensive reform plan to combat and prevent youth violence. This plan creates a "seamless web" between the adult and juvenile systems and gives schools, police and courts the tools they need to respond immediately and to stem the rising tide of youth violence.

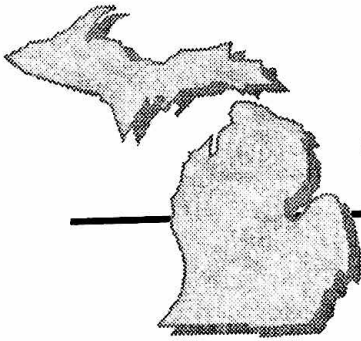
Most importantly, my plan mandates that juveniles who commit adult crimes will face adult time. The message this reform sends is absolutely clear and unmistakable: No more excuses, no more slaps on the wrist -- young violent offenders will be held accountable for their crimes.

While these reforms are vitally important, it is equally important to remember that nothing can replace the role of the family, churches, schools and communities in providing moral leadership to the next generation. Stopping youth violence begins with the restoration and instillation of basic values: respect for authority, responsibility for one's actions, and the ability to differentiate between right and wrong.

Children make up only 25 percent of Michigan's population, but they represent 100 percent of our future. We must work and act together to make that future better, safer and healthier for all our families.

Sincerely,

A handwritten signature in black ink, appearing to read "John Engler".



## **The Problem of Youth Violence**

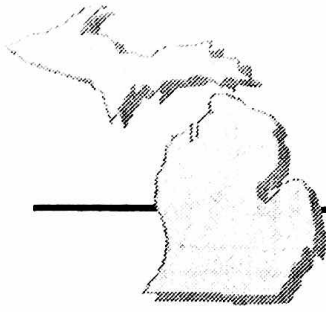
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The statistical profile for juvenile arrests during the last decade points to a disturbing trend. Between 1983 and 1993, the juvenile arrest rate for serious, violent index crimes in Michigan has increased 36%. During that period, the juvenile murder rate increased 160.6%; the aggravated assault rate 71.4%; and the arson rate 56.1% -- rates much higher than for adult perpetrators. <sup>1</sup>

The frightening images behind these statistics are all too familiar. In Kalamazoo, a 15-year-old plunged a screwdriver into the head of a Western Michigan University college student who 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>2</sup>

In Saginaw, another 15-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>3</sup> The first victim was shot in the head in a bar parking lot after refusing the youth's demand for a carton of cigarettes the victim was carrying. Seven months later, the same incorrigible and violent young man killed two brothers in an upstairs apartment. The victims' offense? Playing their stereo too loudly.

In Newaygo, a 16-year-old girl accused of murdering her parents was adjudicated and sentenced as a juvenile. 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. <sup>4</sup> The result? She probably will be released within 36 months before age 19.



## **An Outdated System**

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Our ways of dealing with violent youth offenders have not kept pace with the times. Michigan's current juvenile justice system was designed to respond to 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 literally to get away with murder. Reform is a necessity.

Our challenge as we redesign the juvenile system is to create a bridge with the adult system that prevents dangerous youthful offenders from slipping through the cracks. We 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 would:**

- Create a "seamless web" to hold juvenile offenders accountable for their crimes.
- Streamline the juvenile waiver process to adult court for serious and dangerous offenders.
- Assign "adult crime" for "adult time."
- Expand the sentencing options for judges in cases involving juveniles.
- Remove procedural obstacles that have, in the past, prevented effective investigation of juvenile crime.
- Continue the process of making schools safe havens through partnerships with local law enforcement agencies.
- Enhance parental responsibility for young offenders.

## **Brief Description of the Adult System**

A comparison with the adult justice system illuminates some of the problems with the current juvenile 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, halfway houses, boot camp, jail, or a combination of these. 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. The report includes 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 sentencing guidelines often fail to account adequately for the offender's prior juvenile record. Rarely are prior juvenile adjudications afforded the same weight as prior adult convictions in fashioning an appropriate sentencing guideline range.<sup>5</sup>

## **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 16 and under. Although proceedings in the juvenile court are not criminal,<sup>6</sup> 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.<sup>7</sup> Nonetheless, several contrasts remain in both the terminology and treatment of juvenile offenders.

The difference in the sometimes confusing terminology is the result of 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.

## Sentencing (“dispositional”) Alternatives

Unlike the adult system, there is no direct nexus between the seriousness of the offense and the consequences the court may impose.

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, adult 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 young 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 committing a youth to the State and conduct periodic review hearings to monitor the juvenile's progress.

State laws designed to make Michigan eligible to receive federal funding assistance prohibit 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 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, and from locating witnesses, weapons and other evidence. It also 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 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; while these are in part individualized to the juvenile in question, they are generally generic to all cases, and are therefore 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, the Michigan Legislature in 1988 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 have the option, following a hearing, 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 80 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>8</sup>

In Wayne County, only about 20% of the youths waived and convicted in the adult system are sentenced as adults.<sup>9</sup> As a result, most capital offenders are released from confinement at age 19. 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.

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The deficiencies in the present system are not limited to investigative procedural obstacles, waiver-process deficiencies and the failure to hold juveniles accountable for murder and other capital offenses.

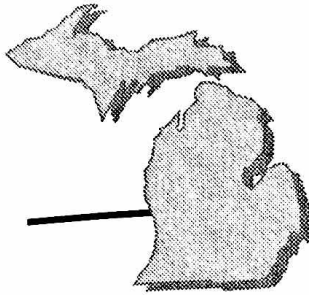
The dichotomy between the juvenile and adult systems allows offenders age 17 and over to avoid responsibility for crimes committed before their 17th birthday. For example, "first-time" adult offenders with encyclopedic juvenile rap sheets are immune from Michigan's habitual offender law which provides 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.]

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

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. Scarce public funds are better spent on younger kids who can be saved."*



## The Need For Action

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

- Construction and operation by the Department of Corrections of a youth prison for perpetrators aged 14 through 19 who have been tried as adults. This privatized facility will give judges an additional sentencing option, keep young offenders segregated from the adult prison population and send a strong message to gang members and other young offenders about the consequences of violent activities.
- “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 one 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 a 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 to 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 extremely limited choices in sentencing those convicted of first degree/felony murder or a major drug offense: either sentence a juvenile to life in prison without the possibility of parole or sentence the offender to the juvenile system for release on his or her 19th or 21st birthday. The latter option usually results in the juvenile spending no more than two or three years in secure confinement. Under the third option proposal, judges would have the additional option of sentencing 14 to 16-year-old capital offenders to a minimum term of 25 years, at which time they would be eligible for parole. For a 15-year-old capital offender it would mean “life begins at 40.” Studies have shown that offenders at this age are much less likely to engage in violent or repetitive criminal conduct.<sup>11</sup>

- 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. <sup>12</sup> Studies have shown that acts of violence by youthful offenders begin occurring with significant frequency at age 14. <sup>13</sup>

- Create 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>14</sup>

- Modify the criteria the juvenile court must consider in deciding whether to waive a youth to the adult system. The current waiver criteria are confusing, redundant and place too much emphasis on the potential rehabilitation of the offender and not enough focus on the seriousness of the offense and public safety. This provision also will exclude from juvenile court jurisdiction any youth who was previously waived for adult prosecution. This will save the state the useless expense involved in repeating the waiver process for these offenders. <sup>15</sup>

- Provide that perpetrators ages 14-16 who are automatically or traditionally waived to the adult system be held in the juvenile portion of the county jail with the sheriff’s consent unless compelling reason is brought by motion in circuit or recorder 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>16</sup>

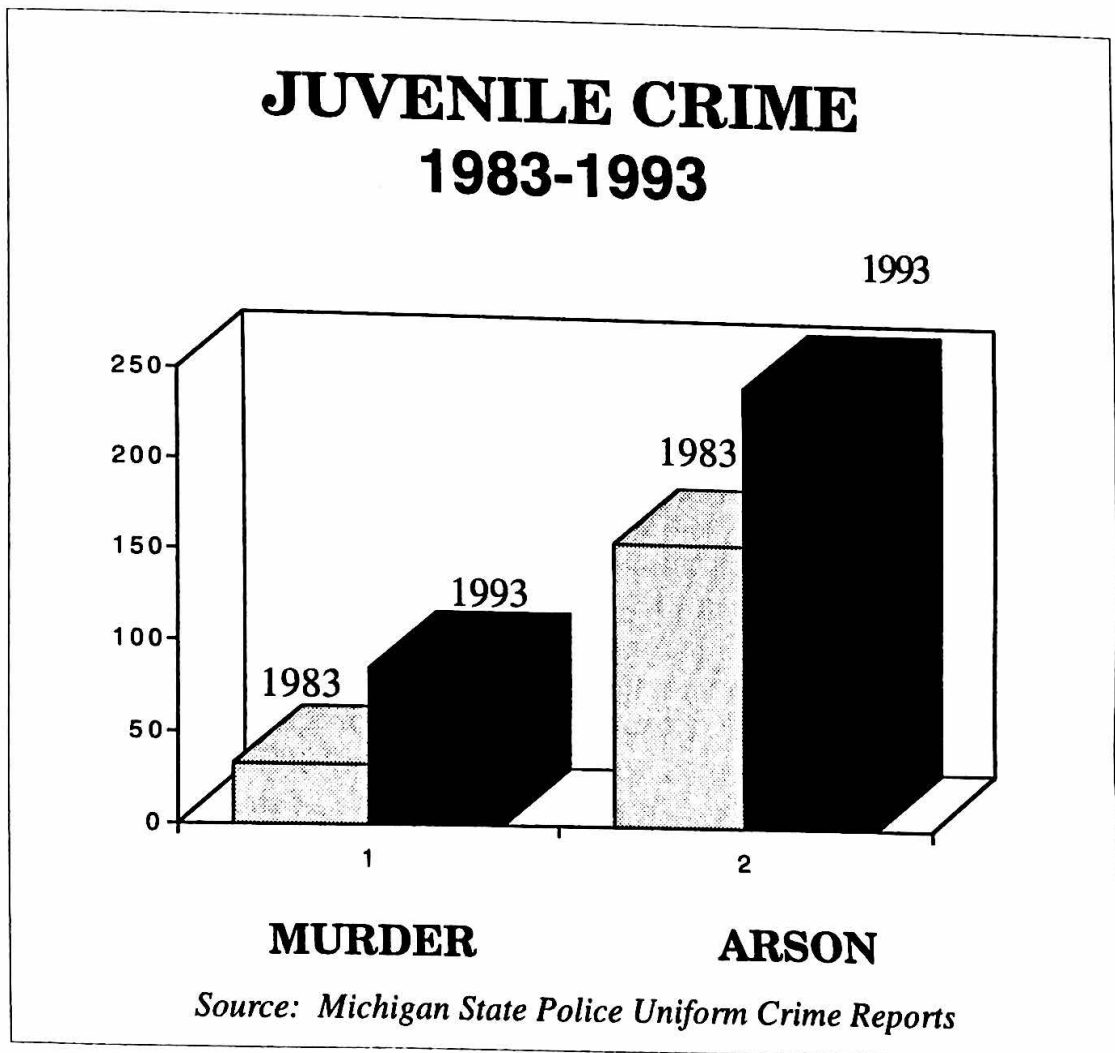
- Authorize boot camps as a dispositional alternative. Governor Engler envisions a privatized program that will put qualified youth through tough physical drills in a militaristic setting. This regimen may be supplemented by education and substance abuse counseling. The goal of these cost effective “shock incarceration” programs and after-care programs is to instill discipline and responsibility as well as hard time accountability.

- Expand probate judges' sentencing options for youth who commit crimes as juveniles and are sentenced at age 17 and beyond. Under this 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 16-and one-half-year-old burglar. Juvenile offenders that age likely won't be convicted and sentenced until sometime after their 17th birthday. In dealing with youths in that age range, 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/she can be prosecuted in the adult system. This reform will help to ensure accountability for this class of offenders. <sup>17</sup>

- Expand family-based intensive day treatment programs for delinquent youth. Under Governor Engler's leadership, the Department of Social Services has provided direct grants to several local programs to pilot several day reporting treatment projects. Day treatment programs are a proven cost effective alternative to residential placement for some of the over 4,000 youth currently under supervision by the Michigan Department of Social Services. One funded pilot project that began in March of 1993, Kent County Juvenile Court's Day Treatment/Night Watch Program, now serves as a model for the nation. Operating out of that county's juvenile detention center, this program has demonstrated results in dealing with high risk felony offenders that formerly may have been placed with the State at the Maxey Training School. <sup>18</sup>

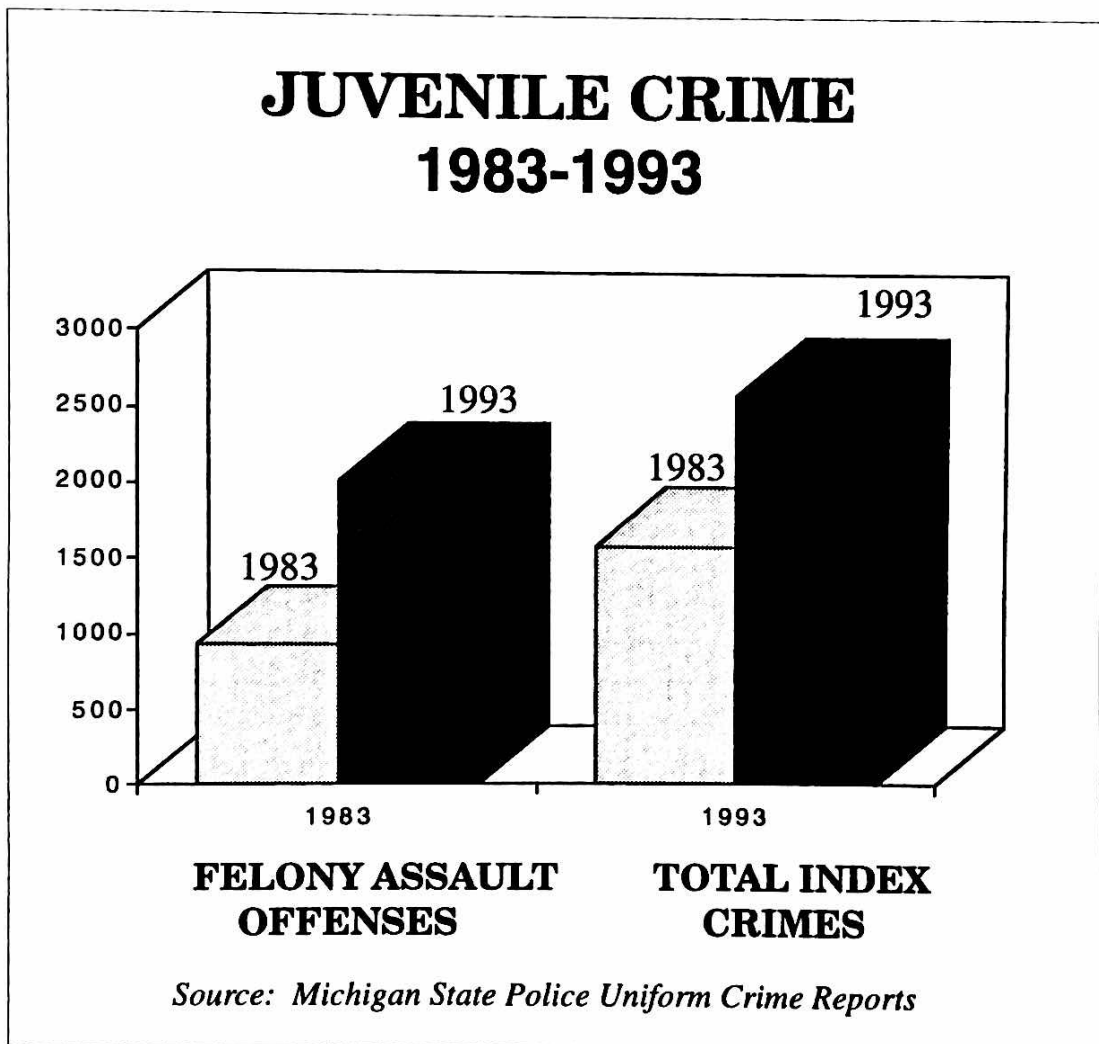
- Authorize home detention with electronic surveillance for juvenile offenders. Extending this proven alternate sentence to juvenile delinquents will save critical juvenile detention bed space and ensure that juveniles are home or at school and not running the streets. <sup>19</sup>

- Restore the authority to securely detain truants, runaways, incorrigible youth, curfew violators and other “status offenders.” <sup>20</sup>
- 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 ensure a formal adjudication and criminal record instead of a “slap on the wrist” for these serious offenses. <sup>21</sup>
- Prevent judges from dismissing felony petitions or assaultive misdemeanors over the objection of the prosecutor. <sup>22</sup>



- Provide for adult felony charging and sentencing enhancements based on prior juvenile convictions. Adult recidivists face charges and sentencing enhancements predicated upon an earlier conviction.<sup>23</sup> Under present law, prior juvenile adjudications cannot be used for this purpose. Juvenile offenders who turn 17 start with a relatively clean slate. This proposal will help bridge the jurisdictional dichotomy 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>24</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.<sup>25</sup>
- 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.<sup>26</sup>

- Introduce legislation 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 end 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>27</sup>





- Grant probate court judges and referees authority to sign warrants for search and seizure. <sup>28</sup>
- Extend 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.
- Authorize juvenile line-ups. <sup>29</sup>
- 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 with the consent of the local prosecutor. The appearance ticket system that now pertains to adult minor offenses will be extended to the juvenile system. The proposed change will save investigators countless hours of time and expense by eliminating the procedural hurdle of formally drafting and getting a prosecutor's approval of formal petitions. Require the State Court Administrative Office to design forms for this purpose. <sup>30</sup>
- Create and implement a violence-free school zone model certification program. This 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 and encourage 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 mandatory expulsion law Governor Engler recently signed 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. <sup>31</sup>
- Create a civil infraction for the parents or guardians of repeated curfew violators. <sup>32</sup>