No More Children Left Behind Bars

A Briefing on Youth Gang Violence and Juvenile Crime Prevention

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From California, to Alaska, to Maryland, to Kansas and North Carolina, newspaper headlines trumpet a "gang crisis." Across the nation, residents of our most distressed, long-neglected communities express sadness and dismay over the violent crime that destroys too many young, promising lives and forces people to live in fear. In many high-poverty neighborhoods, makeshift memorials to young murder victims are an all-too-ordinary part of the urban backdrop.

This brief from The Charles Hamilton Houston Institute for Race and Justice[1] considers the question of how to respond most effectively to gang-related youth crime and delinquency. We weigh the most robust research and knowledge about gang activity and about various approaches employed in specific in legislation currently being considered in the US Congress.[2] We hope this document informs debate, discourse and policy making on these crucial matters, not merely this year but as our nation continues to grapple with these complicated issues in the years to come.

Despite drops in violent crime and in gang activity, gangs remain a serious problem in many communities, especially in cities that lack sufficient educational and economic opportunities.[3] We begin with the long-standing recognition that gang activity is a force in its own right and also a symptom of larger, entrenched social ills and conditions that have been decades in the making.

The men and women who work with gang-involved young people on the ground know better than anyone that the challenges associated with curbing the problem and stopping violence are enormous. However, there is plenty of good news, too. The research on youth violence, child development and education now provides more than enough evidence that well-tested education- and community-based "prevention" strategies can work to stem youth crime and redirect children and teens away from gang involvement and on to paths of productive membership and participation in society. Undoubtedly, actual violence requires effective enforcement. But, as a nation we have spent far more resources arresting and prosecuting young people who aren't violent than we have trying to eliminate the actual causes of gang involvement and youth crime.

For decades, though, we have moved away from prevention as elected officials have chosen crackdowns and "get tough" policies that translate into expanded police and prosecutorial power. This often results in more arrests, more trials and more incarceration. "Getting tough" may have seemed logical or at least politically expedient at the time, but research demonstrates that choosing enforcement over prevention produces flawed, costly policies that often inflict incalculable harm to the very communities elected leaders are trying to protect. Today in the United States, too many of our poorer, urban communities produce staggeringly low high school graduation rates, especially for male students of color. At the same time, our nation records the highest incarceration rates in the world.[4]

This brief is particularly timely as the United States Congress this term considers three pieces of legislation related to youth "gangs" and juvenile crime. Two seek to expand prosecution powers and would add more than one billion new dollars for enforcement. A third would bring together members in local communities to focus upon prevention.

As research suggests, federal dollars would most judiciously be spent on preventive measures shown to lead vulnerable children away from gang activity and into constructive activity. Currently, two bills before Congress would tie support for education-based prevention, which works, to arresting more youth and incarcerating them for longer periods, which research does not support. Such linked measures are often described as "balanced" approaches to gang violence. But devoting more than a billion new dollars to further ramp up arrests and lengthen sentences will only exacerbate a current imbalance. This is true even if some money for prevention is included in the legislative package. Further, more arrests and more incarceration will likely undermine education-based prevention programs by reinforcing youths' identification with gangs and removing from the community non-violent children and teens who would benefit from support and help.

In sum, a reading of the highest-quality scholarly research, a careful examination of trend data, cost-benefit studies and a common-sense understanding of the American experience with youth and crime policy lead us to the following conclusions. Each conclusion is discussed in detail later in this brief.

A) Many education-related and community based youth programs demonstrate effectiveness and promise in redirecting young people away from gangs, by preventing gang affiliation in the first place, and by assisting teens in completing high school, which translates into reduced crime and healthier communities.

B) In the short- and long-term economic analyses demonstrate that well-tested prevention programs are likely to be more cost effective than "suppression" policies that lead to more prosecution and incarceration.

C) Public opinion data strongly suggests that people who live in the United States are far more likely to support education and prevention strategies for youth rather than more prosecutions and jail time.

D) "Suppression" policies and expansion of law enforcement power have not proven effective in stemming youth crime associated with gangs and research suggests that such tactics may even strengthen gang affiliations.

E) "Suppression" and expanded law enforcement power will likely target children and teens of color, disproportionate shares of whom are economically disadvantaged and live in distressed communities that lack sufficient educational, recreational, and economic opportunities.

F) Data suggest that the number of communities with active youth gangs increased in the last three decades, peaked in the early 1990s and has recently declined. Youth gang prevalence declined in non-urban areas but gang violence remains a serious problem in some urban communities. This suggests that gang involvement is related to a lack of opportunity in certain communities and calls into question the need for expanded law enforcement power and the appropriation of even more federal dollars to jails and prisons for children and teens.

A) Many education-related and community-based youth programs demonstrate effectiveness and promise in redirecting young people away from gangs, by preventing gang affiliation in the first place, and by assisting teens in completing high school, which translates into reduced crime and healthier communities.

It is long past time to take serious account of the growing body of strong evidence demonstrating the effectiveness of school and community based programs and practices that decrease the likelihood of gang affiliation and increase the likelihood of high school graduation, which is linked to decreased crime.

The strongest research emerges from top scholars in a variety of fields including economics, educational psychology and public health. In recent years, a wide range of reputable organizations have commissioned or conducted related research and reached similar conclusions. These include the American Psychological Association, the Washington State Institute for Public Policy, the Social Development Research Group of Seattle, Washington, and the U.S. Government's own Office of Juvenile Justice and Delinquency Prevention.

An exhaustive review of such programs is far beyond the scope of this brief. However, experts identify common characteristics of particularly promising programs and practices. These include:

- Programs that are successful in reducing criminal involvement among low-income boys in particular begin in pre-school and are sustained over time, through middle and high school.[5]

- Successful programs include families, schools and communities, thereby providing a "web" of support and protection around children.[6]

- Successful programs focus both on individual development and on teaching children the social and cultural skills they need to successfully navigate within their schools and communities.[7]

Similarly, for more than 25 years, researchers from the Social Development Research Group of Seattle (SDRG) have been actively studying programs and strategies to prevent adolescents from developing behavior problems that often lead to delinquency, crime and gang involvement. SDRG stresses three vital components for preventive strategies.[8] These include:

- Young people must have clear and consistent opportunities for active participation in their families, schools and communities.
- Young people must have the opportunity to develop the skills necessary to succeed when provided these opportunities.

- Young people need consistent outside, positive recognition and reinforcement for their efforts and accomplishments. .

Prevention strategies require significant investments. Rigorous cost-analyses, however, clearly show that these strategies are more cost-effective in the long run than incarceration and continued detention. As noted economist James Heckman writes: "Private gains are a substantial benefit of such programs….However, it is the large social benefits for the general public—stemming from savings to taxpayers, victims of crime, and employers—that make the firmest case for these programs." [9]

Experts tend to agree that high-quality effective programs will provide clear, alternative, positive, "pro-social" constructive opportunities that lend emotional and practical support, give young people life skills and ultimately pave paths toward success for disadvantaged children and teens most vulnerable to the lure of gang involvement.[10] In the best cases, the "protective" programming and support begin in pre-school, continue through childhood and into adolescence and last at least until a young person earns a high school diploma.

Some particularly noteworthy examples of independently evaluated, effective programs are offered below:

Child-Parent Centers was founded in 1967 by Chicago educators to serve families in high-poverty neighborhoods not reached by other pre-school programs or Head Start. Sites near public elementary schools provide comprehensive education, health, and family-support services to children ages 3-9 living in disadvantaged communities. A 15-year longitudinal evaluation of these programs that followed 1,539 low-income African American and Latino children until they reached age 24 found, among other benefits, that participants were less likely to have been arrested (16.9 percent vs. 25.1 percent) and more likely to have completed high school (50 percent vs. 38.5 percent) than otherwise similar peers who had not participated in this program.[11] A related, 19-year follow up found strong associations between earlier participation in CPC and higher rates of school completion, attendance in 4-year colleges, and full time work, as well as lower rates of felony arrests and incarceration and lower rates of depressive symptoms.[12]

Family Integrated Transitions (FIT) was created at the direction of the Washington State Legislature in 2000 to provide evidence-based treatment to juvenile offenders. The program is an intensive intervention that engages the family, and promotes change in the home environment, while also emphasizing the benefits and positive qualities young people can derive from their families, friends, schools and communities. The program relies upon teams of mental health and substance abuse specialists to work with families and teens. The evaluation found that the program resulted in reduced recidivism for participants, and achieved $3.15 in added benefits from reduced criminal-related costs to every dollar spent.[13]

The School Transitional Environmental Program (STEP) is designed for children in large urban schools who are having difficulty making the transition from middle to high school. It redefines the role of homeroom teachers, having them serve as counselors and administrators, and connecting them more closely to the student's family. The program also helps students develop more stable peer relationships. Evaluations show that students

participating in STEP are less likely to be truant, have higher grade point averages, and have more positive feelings about school than their counterparts who did not participate in the program. In the long term, students report lower dropout rates (21 percent of STEP participants vs. 43 percent of a control group), higher grades, and fewer incidences of substance abuse, delinquency and depression, as compared with a control group.[14]

Multisystemic Therapy (MST) is a long-standing, thoroughly evaluated intensive family-based treatment that has demonstrated success even for the more serious juvenile offenders. Therapists design each MST treatment plan in collaboration with a young person's family, with the goal being to give family members and/or guardians the tools they need to effectively deal with the children and teens under their care. The therapy sessions are held in a child's home or school or in a comfortable community setting, in order to reinforce the need for the young person to learn how to cope and function in these environments. MST therapists provide counseling, training and therapy and continue to monitor families. The therapists require certain behaviors and accomplishments of the children and their families to encourage responsibility and reinforce constructive behavior. In rigorous evaluations, researchers found that after only 13 weeks of treatment, MST youth reported significantly less "peer aggression," lower alcohol use and more "cohesion" within their families than a control group. After little more than a year of MST treatment, "significantly" fewer MST participants had been arrested, compared to a control group (42 vs. 62 percent) and MST participants were less likely to be incarcerated than a control group (20 vs. 68 percent). A longer term study that examined youths four years after MST treatment found that "significantly" fewer MST youth had been arrested compared with a control group (26 vs. 71 percent) [15]

Gang Resistance Education and Training was founded by Phoenix-area police officers in 1991 and is now operating in early every state. The four components of the school-based G.R.E.A.T. program include an elementary school curriculum, a middle school curriculum, and a summertime program. Program founders consider the middle school curriculum the program's core component in reaching the overall aim of preventing gang affiliation by teaching students specific leadership skills and problem-solving techniques and helping younger children understand the consequences of gang involvement. Police officers teach the program in a school setting. The program is not as thoroughly evaluated as others previously mentioned. However, one rigorous evaluation demonstrates an association between reduced delinquency and program participation.[16]

A recent study by University of Chicago economist James J. Heckman underscores the importance of sustaining investments in such strategies through a student's teenage years.[17] He found that, with additional "skill-building" investments, such as mentoring, adolescent literacy, and meaningful participation in community service, boys from high-risk families were considerably less likely to commit crimes than boys who did not receive such treatments.

When the investments "were sustained into the teenage years," 90 percent of the boys in the study finished high school and 40 percent attended college, Heckman reported.[18] In a later article he concluded that " to put these numbers in perspective, sustained skill-building investments would go a long way toward shrinking, and in some cases eliminating, the

nation's worrisome racial disparities in academic achievement, drug use and college attendance."[19]

The U.S. Department of Justice notes research concluding that "delinquency generally precedes gang membership."[20] This leads the DOJ to recommend three tiers of intervention.

- "Primary prevention focuses on the entire population at risk and the identification of those conditions … that promote criminal behavior;

- Secondary prevention targets those individuals who have been identified as being at greater risk of becoming delinquent;

- Tertiary prevention targets those individuals who are already involved in criminal activity or who are gang members."[21]

In other words, the DOJ recommends focusing prevention efforts on children well before they become criminally involved.[22] Similarly, multi-state evaluations of school-based prevention show statistically significant relationships between school-based prevention programs, decreased likelihood of gang affiliation, increased levels of school commitment, and association to "pro-social," as opposed to "anti-social" peers.[23]

B) In the short- and long-term, economic analyses demonstrate that well-tested, education-related prevention programs are likely to be more cost effective than "suppression" policies that lead to more prosecution and incarceration.

Researchers point to a disturbing paradox: "the number of youths incarcerated and the attendant costs of this incarceration have increased at the same time that the National Research Council, the Institute of Medicine and the U.S. Surgeon General all publicly identified risks associated with punitive interventions and the promise of preventive ones."[24]

For example, one current proposal before Congress would spend more than $1 billion to arrest and incarcerate more young people, at the same time the federal government is dramatically reducing spending on dropout prevention programs. Those dropout prevention programs had been slated to receive $125 million annually, but were appropriated only $4.9 million in 2006 and nothing in 2007, or 2008.[25]

The suppression-type bills currently before Congress do anticipate growth in court costs mostly by accounting for new prosecutors and defenders. (Notably, one bill calls for 94 prosecutors but only 71 defense attorneys).[26] But "crackdown" bills such as these, which in these particular cases expand categories of gang-crimes and concomitant new and longer penalties, incur other costs not factored into the analysis.

To see the hidden costs of such approaches, we can compare the cost of increased prison sentences with savings derived from decreased incarceration rates that would plausibly result from improved graduation rates. Dollar for dollar, education-based

interventions are less expensive than law-enforcement tactics that would increase incarceration.

Nationally, only about 50 percent of Black, Latino and Native American students graduate from high school on-time with their peers.[27] In many of the nation's large urban districts, average rates drop into the 30 to 40 percent range.[28] Research demonstrates that increasing graduation rates would greatly reduce delinquency and cut crime costs over the long term. For example, a team of leading economists from Columbia, Princeton and Queens College predicts that increasing high school graduation rates would decrease violent crime by 20 percent and drug and property crimes by more than 10 percent.[29] The economists calculated that each additional high school graduate yielded an average of $26,500 in lifetime cost savings to the public. (This estimate accounts for the expense of trials, sentencing and incarceration.)These economists estimate that each Black male who graduates is associated with a savings of more than $55,000. By the same accounting, each Latino male graduate saves $38,500. The chart below details the findings.

LIFETIME COST-SAVINGS FROM REDUCED CRIMINAL ACTIVITY

Criminal justice system expenditures expressed as extra lifetime savings per expected high school graduate.

	MALE		FEMALE
White	$30,200		$8,300
Black	$55,500		$8,600
Hispanic	$38,300		$8,300
Other	$30,200		$8,300
Average		$26,500	

Source: Levin et al., *The Costs and Benefits of an Excellent Education for All of America's Children,* at 14, Table 9, Columbia Teachers College, January 2007.

The following two tables use the estimates above to calculate the savings of a 10 percentage point improvement in graduation rates. The first table shows savings accrued by improving male graduation rates in some of the nation's largest urban districts. The second table looks at statewide cost savings accrued by 10 percentage point graduation improvements in the 10 states with the largest enrollments in grade 9, without regard to race or gender.

PROJECTED CRIME COST SAVINGS FROM A 10 PERCENTAGE POINT INCREASE IN MALE GRADUATION RATES, CLASS OF 2009 IN SIX CITIES

6 Cities with large Grade 9 enrollments	# Grade 9 enrolled, 2005-2006	10% of grade 9	Lifetime Cost savings per male graduate	Total lifetime crime cost savings for improvement of 10 percentage points in the graduation rate for class of 2009	Projected savings by city of total of total male subgroups selected groups for the graduating class of 2009
Chicago					**$85,756,300**
Black	9,994	999	$55,500	$55,444,500	
Hispanic	6,697	670	$38,300	$25,661,000	
White	1,536	154	$30, 200	$4,650,800	
Detroit					$**43,859,200**
Black	7,675	768	$55,500	$42,624,000	
Hispanic	218	22	$38,300	$842,600	
White	130	13	$30, 200	$392,600	
Houston					**$37,399,400**
Black	2,806	281	$55,500	$15,595,500	
Hispanic	5,073	507	$38,300	$19, 418,100	
White	792	79	$30, 200	$2,385,800	
Los Angeles					**$133,890,800**
Black	4,235	424	$55,500	$23,532,000	
Hispanic	27,599	2,760	$38,300	$105,708,000	
White	1,536	154	$30,200	$4,650,800	
New York					**$200,973,000**
Black	18,238	1,824	$55,500	$101,232,000	
Hispanic	21,242	2,124	$38,300	$81,349,200	
White	6,086	609	$30, 200	$18,391,800	
Philadelphia					**$45,300,900**
Black	6,522	652	$55,500	$36,186,000	
Hispanic	1,405	141	$38,300	$5,400,300	
White	1,231	123	$30, 200	$3,714,600	

Sources: Common Core of Data, NCES and Levin et al., study cited above.

Since most teens arrested for gang crimes are male, the gender breakdown here provides a clear sense of the savings cities could expect if more dollars were directed to effective dropout prevention programs and programs associated with improving engagement with school. If savings from improved female graduation rates were added to the calculations, the savings, of course, would be even greater. The following state level table includes all students.

ESTIMATED STATE LEVEL SAVINGS FROM AVERTED CRIME COSTS RESULTING FROM 10 PERCENTAGE POINT INCREASE IN GRADUATION RATES FOR ALL STUDENTS

10 States with largest grade 9 enrollment	# Grade 9 enrolled in 2000-01	10% of grade 9	Lifetime Cost savings per graduate	Total lifetime crime cost savings for 10% grad rate improvement in one cohort	Estimated Graduation rate for Class of 2004	Goal that would produce savings
California	476,142	47,614	$26,500	$1,261,771,000	68.9	78.9
Florida	238,161	23,816		$631,124,000	53	63
Georgia	126,793	12,679		$335,993,500	55.5	65.5
Illinois	163,806	16,381		$434,096,500	75	85
Michigan	142,663	14,266		$378,049,000	74	84
New York	245,311	24,531		$650,071,500	61.4	71.4
North Carolina	111,745	11,175		$296,137,500	63.5	73.5
Ohio	159,724	15,972		$423,258,000	70.7	80.7
Pennsylvania	153,523	15,352		$406,828,000	75.5	85.5
Texas	355,019	35,502		$940,803,000	65	75

Graduation rate estimates from Christopher Swanson, "Projections of 2003-2004 High School Graduates, Source: Common Core of Data Local Educational Agency and School Surveys, National Center for Education Statistics.

The savings outlined in the previous tables lies in stark contrast to the steep costs of increased incarceration. Indeed, according to a 2003 report by the National Center on Education, Disability and Juvenile Justice, the costs associated with incarcerating juveniles range from $35,000 to $70,000 per bed per year in juvenile facilities.[30]
Under punitive measures that expand law enforcement power and increase incarceration, Black and Latino male youths are the most likely recipients of longer prison sentences. Given the link between dropping out of school, the federal government's failure to provide funding for dropout prevention programs in 2007 could increase the likelihood that more children and teens of color will end up behind bars.

We can only estimate the costs incurred if legislation that expands the scope of gang crimes and increases prosecution dollars succeeds. The following table displays a range of potential annual costs not covered by federal funds or by proposed legislation, but that municipalities would have to pay in order to put young people behind bars for another year. (The cost of incarcerating a juvenile varies depending upon the state or municipality. Thus, we provide three estimates for incarcerating one juvenile for a year.)

POTENTIAL COSTS TO STATES AND LOCALITIES OF LONGER JUVENILE SENTENCES

Various Costs of One Year of Incarceration	$35,000	$52,500	$70,000
Additional Juveniles Behind Bars			
1,000	35 Million	53 Million	70 Million
5,000	175 Million	263 Million	350 Million
10,000	350 Million	525 Million	700 Million
20,000	700 Million	1.05 Billion	1.4 Billion
40,000	1.4 Billion	2.1 Billion	2.8 Billion

For example, imagine just one extra year of incarceration for the some 96,000 young people currently in the juvenile justice system.[31] The math is straightforward. If we multiply the 96,000 by $35,000 (the lowest estimate of annual per bed per prisoner cost) an extra year would require states to spend an additional 3.36 *billion* dollars of state and local money that year. In one recent study, gang members accounted for slightly more than 50 percent of all arrests.[32] Using that framework, states would incur more than $1.5 billion in increased costs of incarceration if each arrested gang member received an additional year behind bars. However, we can make only rough estimates of the additional costs of expanded gang definitions, enforcement and sentencing put forth in the most recent proposals before Congress. The chart above demonstrates that even using the most conservative estimate of $35,000 per prison bed, for every 10,000 young people serving a year in jail, states would need to spend at least $350 million of their own (non-federal) dollars.

In comparison, if the hundreds of millions in enforcement costs were used for school-based interventions that have shown promise in improving graduation rates, research suggests that the investment would pay for itself. Meanwhile, several well-designed studies demonstrate that replicable school-based programmatic interventions, including high quality pre-school for disadvantaged youth, are more cost effective than punitive approaches. Over the long-term, monetary benefits of effective prevention programs likely far exceed their costs.[33]

For example, a longitudinal evaluation of the Chicago-based Child-Parent Centers, a program described in a previous section of this brief, estimated (in 2002 dollars) the savings to U.S. taxpayers that would result from the program. Researchers calculated that each year of the intensive CPC program cost about $4989 per child. Extending the program into the grade schools, researchers estimated, would cost $1,574 per child. Researchers then calculated savings associated with reductions in remedial services, fewer arrests and the increase in taxes on income of high school graduates. Overall, the U.S. government would save $22,897 per child. Comparably, the study shows that even if we were to provide the program to a child for six years, it would cost only $11,387, still resulting in an overall savings.[34]

Another study conducted by some of the nation's leading economists considers the effectiveness of youth-oriented interventions. The study highlights the significant cost savings for non-punitive programmatic interventions at different levels including: early interventions such as "Perry Preschool;" the "Seattle Social Development Project;"[35] and a host of therapeutic direct interventions for youth with high risk factors for delinquency, such as "Aggression Replacement Therapy," "Multi-systemic Therapy" and "Functional Family Therapy."[36]

C) Public opinion data strongly suggest that people who live in the United States are far more likely to support education and prevention strategies for youth rather than more prosecutions and jail time.

The Oakland-based National Council on Crime and Delinquency (NCCD) recently commissioned a national poll of likely voters.[37] It found that 9 out of 10 people surveyed agreed crime was a major problem in their communities. However, respondents rejected policies that would sentence more youth to adult courts and prisons. Nearly 91 percent of those polled favored strengthening rehabilitation programs within the juvenile justice system. More than two-thirds did not believe that harsher penalties for youth were effective deterrents against crime. The public endorsed increased job training and education and expanded substance abuse treatment as the most effective strategies to combat serious youth crime. By a two-to-one margin, those polled rated prevention services as more effective in reducing crime than harsher penalties or putting more youth in the adult penal system.

In a 2006 study, researchers from the University of Virginia Law School surveyed a sample of adults about their attitudes toward the rehabilitation and incarceration of juvenile offenders.[38] They found that "at a minimum….lawmakers who are concerned about public opinion should consider policies grounded in rehabilitation."[39] (Also, they caution that the political risk in resisting calls for tougher sentences is not as great as many political leaders might think.) The authors found that not only is the public willing to pay for measures to reduce juvenile crime, but they prefer to pay for rehabilitation and prevention over harsher, more punitive measures. The authors conclude: "The evidence that the public values rehabilitation more than increased incarceration should be important information to cost-conscious legislators considering how to allocate public funds."[40]

D) "Suppression" policies and expansion of law enforcement power has not proven effective in stemming youth crime associated with gangs and research suggests that such tactics may even strengthen gang affiliations.

For children and teens, gang affiliation is often transient and marginal, meaning that many children come into a gang for a short period and then leave, never really committing to the gang or committing serious crimes. This demonstrates the risk of non-violent, non-dangerous young people getting swept up in a criminal justice system when they might have easily been redirected to more constructive and less expensive alternatives.[41]

Research on gang formation and affiliation strongly suggests that expanded law enforcement, expanded prosecutorial power and longer sentences could produce the opposite of their intended effects. Specifically, a 2007 report from the Justice Policy Institute

details the way in which increased arrests and longer sentences actually create more cohesive and stronger gang identification.[42]

Research demonstrates that half to two-thirds of gang members are affiliated for one year or less and are not members "for life."[43] The weight of the research on gang formation suggests that policies that more strongly identify youth as "gang" members could backfire because the increase in arrests and longer sentences actually create more cohesive and stronger identification with gangs.[44] Research finds that the strongest predictors of sustained gang affiliation are a high level of interaction with antisocial peers and a low level of interaction with pro-social peers.[45]

Thus, for peripheral gang members who would otherwise be inclined to leave a gang after a short period, being publicly labeled as a "gang" member and spending time detained with more entrenched gang members would only solidify gang membership. This conclusion is echoed by Malcolm Klein, noted gang researcher and Professor Emeritus at the University of Southern California. Klein's research suggests that gang crackdowns actually make gang-related violence worse by strengthening the cohesiveness of these groups.[46]

The Office of Juvenile Justice Delinquency and Prevention's 2004 review on the causes and correlates of juvenile delinquency concluded that while arrest and sanctions can be justified based on the immediate need to protect public safety, "arrest and subsequent sanctions generally have not been a particularly viable strategy for the prevention of future delinquency..."[47] To the contrary, "The findings also suggest that the use of the least restrictive sanctions, within the limits of public safety, and enhanced reentry assistance, monitoring and support may reduce future delinquency."[48]

The inefficiency of arrest and sanctions in stemming youth crime and delinquency is well-established. For example, a 2007 report from the Federal Advisory Committee on Juvenile Justice states: "Research by criminologists over the past several years has shown that punitive consequences do not, in fact, reduce criminal behavior and in some cases actually increase it."[49] An exhaustive review by the National Center on Education, Disability and Juvenile Justice cites empirical studies and concludes: "*Incarceration is a spectacularly unsuccessful treatment...*"[50]

Similarly, a wealth of research specific to "gang crackdowns" in the 80s and 90s demonstrates that prosecution and punishment policies will likely prove ineffective at stemming crime. Research over the past 30 years has shown little or no crime control effects from attempts to increase suppression and prosecution of gang members.[51]

A study team from Mitre Corporation found that a tough arrest and prosecution program in Los Angeles, known as Operation Hardcore, did indeed net more arrests and prosecutions, but produced no evidence that the crackdown decreased gang activity in the targeted areas.[52]

E) "Suppression" and expanded law enforcement power will likely target children and teens of color, disproportionate shares of whom are economically disadvantaged and live in distressed communities that lack sufficient educational, recreational and economic opportunities.

Given the uneven distribution of education and job opportunities and the strong link between race and poverty in the United States as well as the lingering, well-documented racial bias within the criminal justice system, the victims of expanded punitive approaches to youth "gangs" will disproportionately be children and teens of color living in neighborhoods of concentrated disadvantage. Such approaches will likely exacerbate the huge racial disparities within our juvenile justice system.

Although ostensibly race-neutral, suppression tactics would almost certainly accelerate and intensify the glaring racial disparities that already permeate every phase of our nation's juvenile justice system. The largest increases in prison sentences would be meted out to Black and Latino males in middle and high school. We base this conclusion on current demographics on juvenile delinquency and estimates of gang membership. The Juvenile Offenders and Victims 2006 National Report provides the following estimated racial breakdown of gang membership.[53]

Estimated race/ethnicity of U.S. youth gang members, 2004[54]

Hispanic	49%
Black	37%
White	8%
Asian	5%
Other	1%
Total	100%

Dating back to the early 1990s, forty-five states passed laws making it easier to try juveniles as adults. Thirty-one states stiffened sanctions against youths for a variety of offenses. During the latter half of the 1990s, the number of formally processed cases increased, along with the number of youths held in secure facilities for non-violent offenses.[55] Black and Latino youths were most severely affected by these changes. In 1998, for example, Black youths with no prior criminal records were six times, and Latino youths three times, more likely to be incarcerated than whites for the same offenses.[56] Other data show that, while youth of color comprise one third of the nation's adolescent population, they represented two-thirds of all youths confined to detention and correctional placements.[57]

There is also growing evidence that racial bias—even implicit, unacknowledged, or unconscious—plays a large role in decisions and judgments made routinely by powerful actors within the criminal justice system.[58] One large-scale study from Florida, for example,

showed that judges were far less likely to "withhold adjudication" for Hispanic and Black males than they were for white males. (The withholding adjudication provision applied to people who had pled or had been found guilty of a felony and will be sentenced to probation. It allows the person on probation to retain their civil rights and to legally assert that they have never been convicted of a felony.) The racial association was strongest, researchers found, for blacks and for drug offenders.[59] Other research from the field of cognitive science demonstrates that people tend to make unconscious associations between African Americans and crime, among other negative characteristics.[60] An expansion of punitive policies, coupled with increased use of the loaded "gang" label, surely heightens the risk that bias, whether it is unconscious or not, will affect decisions – about parole, sentences and the like – that powerful actors in the juvenile justice system make about young people of color.

Racial disparities within the juvenile justice system have grown so large that the 2007 Federal Advisory Committee on Juvenile Justice recommended that "Congress offer concrete incentives to states that …begin implementing action steps that proactively address the [disproportionate minority contact] issue."[61]

Students with disabilities would likely face heightened risk of prosecution and lengthy incarceration for gang-related crime.[62] According to the Juvenile Offenders and Victims 2006 Report, pre-adolescents with learning disabilities are up to three times more likely to join gangs than their non-disabled peers.[63] Recent reports indicate that nearly 33 percent of incarcerated youths have learning disabilities. More than 70 percent suffer from mental illness.[64] This will likely exacerbate racial disparities even more. This is because Black students with disabilities are four times more likely than whites to be educated in a correctional facility.[65] Once they leave public schools, Blacks who had been identified as having a learning disability are far more likely than white students with learning disabilities to be arrested (40 percent compared to 27 percent).[66]

Similarly, under harsher arrest and prosecution policies, an increasing share of teenage girls, especially girls of color, could be prosecuted as gang members and spend their childhoods behind bars. According to the National 2006 Report on Juvenile Offenders and Victims, "Females account for a small proportion of the custody population, but their numbers have increased recently." Nationally, girls make up about 15 percent of incarcerated youth in 2003. This represents an increase of 2 percentage points since 1991.[67] Girls of color made up about 55 percent of all female juvenile offenders in 2003. The disproportions are most striking for African American girls. For example, about 54 percent of juveniles nationwide are white, 20 percent are Latino, 18 percent are African American and six percent are Asian. However, according to 2003 data, 35 percent of girls in custody were Black, while 45 percent were white.[68] While law enforcement surveys estimate that gang membership is 94 percent male,[69] 38 percent of 8th graders self-reporting as gang members are girls. This suggests that females actually constitute far more than 6 percent of gang members. [70]

In his 2006 book *Punishment and Inequality in America*[71] Harvard sociologist Bruce Western demonstrates that punitive policies that increase incarceration backfire and end up hurting the communities they are ostensibly designed to protect. Western documents the strong link between mass incarceration and inequality, particularly among African American men. Incarceration, he argues, is not merely a symptom of social inequality, but it itself *creates* and

exacerbates inequality by undermining families and further separating poor communities of color from American mainstream opportunities and life. Western's study, for example, shows that previous incarceration reduces a man's annual earnings by 40 percent. The risk of divorce is also heightened by incarceration. This is highly consequential because steady work and a stable emotional relationship are two variables strongly linked with a crime-free life. "Incarceration," Western writes, "undermines these steps to an honest living."[72]

Western's quantitative analysis demonstrates that incarceration was not merely an outgrowth of problems such as urban poverty. Incarceration was a conscious collection of policy responses that exact their own long-term, negative effects upon communities. Such policies not only fail to protect communities from crime, but widen the inequality gap and the psychological distance between people of color who live in distressed communities and everyone else, he argues.

"It is now time to reconsider our twenty-year experiment with imprisonment," Western writes. "By cleaving off poor black communities from the mainstream of American life, the prison boom has left us more divided as a nation. Incarceration rates are now so high that the stigma of criminality brands not only individuals, but a whole generation of young black men with little schooling. While our prisons and jails expanded to preserve public safety, they now risk undermining the civic consensus on which public safety is ultimately based."[73] Western's analysis considers the effect of adult criminal justice policies. However, the analysis is certainly relevant to punitive policies that focus upon juveniles.

F) Data suggest that the number of communities with active youth gangs increased in the last three decades, peaked in the early 1990s and has recently declined. Youth gang prevalence declined in non-urban areas but gang violence remains a serious urban problem. This suggests that gang involvement is related to a lack of opportunity and calls into question the need for expanded law enforcement power and the appropriation of even more federal dollars to jails and prisons for children and teens.

Several data sources suggest an overall decline in gang involvement.[74] However, in a 2004 national government survey, the drop in the number of localities reporting gang problems was nearly completely attributable to a decline in the number of small cities, suburbs and rural communities reporting problems. Almost 8 in 10 cities with populations of 50,000 or more continued to report problems with gangs. According to a 2006 National Report released by the U.S. Department of Justice, only about 1 percent of youth aged 10-17 are gang members[75] and, as stated previously, many of these youths' affiliations with gangs will be transient.

A growing collection of robust scholarly research in addition to cumulative on-the-ground experience of educators, mental health professionals, youth workers, lawyers, and others demonstrates the irrationality, and financial and human costs of harsh youth-crime policy that reached its peak, most recently, in the late 1990s. Policies such as these are often based on false ideas about the nature of gang involvement. Renewed proposals for expanded law enforcement to combat local problems that may not constitute a national "crisis" would repeat policy prescriptions we know have failed.

The best illustration of the overreaction that spawned so many ill-conceived harsh juvenile justice policies is the hyped warning of young "superpredators." The theory, first introduced at Harvard by John Walters and later rising to semi-fame in a book he co-authored with John DiIulio, of Princeton University, and William J. Bennett.[76] The authors predicted the emergence of a new population of "remorseless and morally impoverished" young people who would drastically increase the crime rate by the turn of the century.

This image captured America's popular imagination and, most disastrously, took control of the nation's ostensibly better-informed policy world, too. The "superpredator" theory provided the intellectual grist for harsh laws against juveniles enacted by nearly every state Legislature across the nation by the late 1990s.[77] It likely also provided the intellectual fuel that drove construction of the well-documented "school to prison pipeline" phenomenon in which unrelenting school-enacted "zero tolerance" policies funnel students into a harsh juvenile justice system often for minor offenses.[78]

In fact, when DiIulio issued his famous warning, youth crime was already waning. Later, he repudiated his earlier warning that "a new generation of street criminals is upon us – the youngest, biggest and baddest generation any society has ever known." After working with disadvantaged teens in Philadelphia, he announced a conclusion well-supported by non-partisan research: "If I knew then what I know now, I would have shouted for prevention of crimes."[79] Even the creator of the "superpredator" myth has come to conclude what the most dedicated educators in impoverished communities have long said: given opportunity and support, children otherwise vulnerable to gang involvement and crime possess vast potential for contributing to the larger society.

Conclusion

Current legislative proposals that would expand the definition of gangs and increase law enforcement power and prison sentences for youth will likely increase already high rates of incarceration when we have far better preventive tools at our disposal. The combination of more youth arrests combined with zero funds for dropout prevention programs will likely crowd an already overflowing school to prison pipeline even when we know about effective strategies that direct youth to more constructive lives. The most recent report from the Bureau of Justice Statistics shows that the United States is in its 33rd straight year of rising incarceration rates.[80] One in forty children in the United States has at least one incarcerated parent and some data suggest that up to 1 in14 African American children has at least one incarcerated parent.[81] The United States estimates that 7.3 million children have a parent in prison, jail, on probation or on parole.[82]

As we spend billions on incarceration, high school graduation rates for young men of color currently drop below 50 percent in many states. Access to high quality preschool continues to be unevenly distributed, with middle class parents still having far greater access to the strongest programs.[83]

Experience and research clearly demonstrate that, where children are concerned, federal crime-prevention and gang-prevention dollars would most judiciously be put toward larger investments in proven programs that equip young people with life skills and

alternative opportunities for engagement. Additionally, programs and policies that treat problems related to conditions of poverty, educational failure and isolation, all of which make gang membership attractive to youths living in communities of extreme disadvantage, have demonstrated their effectiveness and efficiency.

Meanwhile, policy prescriptions that combine two approaches – that is, that vastly increase police power and impose stiffer penalties while mixing in small doses of "prevention" – may appear politically palatable by offering a seemingly attractive, win-win "balanced" approach. However, research on the short- and long-term benefits of prevention and the damage wrought by increased incarceration caution against such a policy. This is because expanded law enforcement power and sanctions may very well backfire and ultimately undermine the school and community based programs that have been shown to be effective at redirecting young people at risk of gang involvement into crime-free lives.

As far as youth crime prevention goes, the nation knows enough about what works and what does not. Now, it is time to bring our policy and practice up to the level of our knowledge. In light of past mistakes and the current state of our knowledge, it is long past time we shifted the balance dramatically in a new, more positive, hopeful direction.

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[1] CHHIRJ is based at Harvard Law School. *See* http://www.charleshamiltonhouston.org.

[2] In 2008, two proposals, S. 456 (the "Feinstein" bill) and H.R. 3547 (The "Schiff" bill) are strikingly similar in their underlying justifications and orientations. Both bills have the potential to arrest and prosecute children and teens only marginally associated with gangs or gang members. A third bill, H.R. 3846 (The Promise Act, or "Scott Bill"), is qualitatively different. It seeks to reduce youth violence and delinquency by directing resources to communities that face a high risk of crime. A local council would be developed to implement a comprehensive plan of programs and services to help youth at risk of gang involvement and delinquency.

[3] Howard N. Snyder & Melissa Sickmund, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT (U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (2006), *available at* http://ojjdp.ncjrs.org/ojstatbb/nr2006/downloads/NR2006.pdf

[4] The U.S. per capita incarceration rate is 700 per 100,000 citizens, which is the world's highest rate and about 7 times the world average. International Centre for Prison Studies. School of Law. King's Collge Longon. *World Prison Brief – Highest to Lowest Rates.*

[5] James J. Heckman, POLICIES TO FOSTER HUMAN CAPITAL (1999) (paper presented at the Aaron Wildavsky Forum, Richard and Rhoda Goldman School of Public Policy at the University of California at Berkeley).

[6] David Osher, Mary Magee Quinn, Jeffrey Poirier & Robert Rutherford, *Deconstructing the pipeline: Using efficacy, effectiveness, and cost-benefit data to reduce minority youth incarceration, in* DECONSTRUCTING THE SCHOOL TO PRISON PIPELINE 92, FN9 (Johanna Wald and Dan Losen eds., Jossey Bass 2003). *See also* U.S. Department of Health and Human Services, YOUTH VIOLENCE: A REPORT OF THE SURGEON GENERAL, Chapter Five, Prevention and Intervention (2001), *available at* http://www.surgeongeneral.gov/library/youthviolence/default.htm. *See also* EMQ Children & Family Services, *The Case for Wraparound*, http://www.emq.org/press/faq/wrap_case.html.

[7] U.S. Department of Health and Human Services, YOUTH VIOLENCE: A REPORT OF THE SURGEON GENERAL, Chapter Five, Prevention and Intervention (2001), *available at* http://www.surgeongeneral.gov/library/youthviolence/default.htm.

[8] *See, e.g.*, Nebraska Department of Education, Federal Programs, Social Development Model, http://www.nde.state.ne.us/federalprograms/sdfs/sba/social_devel.htm.

[9] James Heckman & Dimitri Masterov, *The Productivity Argument for Investing in Young Children* (2004), *available at* http://www.ced.org/docs/summary/summary_heckman.pdf. *See also,* Beck A. Taylor, Eric Dearing & Kathleen McCartney, *Incomes and Outcomes in Early Childhood*, 39 J. HUM. RESOUR. 980-1007 (2004) (a fascinating consideration of this question).

[10] *See, e.g.*, David J. Hawkins, *Communities That Care Operating System and Building Developmental Assets: A Comparison of Two Approaches to Positive Youth Development,* National Prevention Leadership Conference (July 2002).

[11] Arthur Reynolds, Judy A. Temple, Dylan Robertson & Emily Mann, *Long-Term Effects of an Early Childhood Intervention on Educational Attainment and Juvenile Arrest*, 285 JAMA 2339-2346 (2001).

[12] Arthur J. Reynolds et al., *Effects of a School-Based, Early Childhood Intervention on Adult Health and Well-being: A 19-year Follow-up of Low-Income Families.* 161 ARCH. PEDIAT.ADOL. MED. 730-739 (2007).

[13] Washington State Institute for Public Policy, *Washington State's Family Integrated Transitions Program for Juvenile Offenders: Outcome Evaluation and Benefit-Cost Analysis* (2004), *available at* http://www.wsipp.wa.gov/rptfiles/04-12-1201.pdf.

[14] *See, e.g.*, R.D. Felner & A.M. Adan, *The School Transitional Environment Project: An Ecological Intervention and Evaluation, in* 14 OUNCES OF PREVENTION: A CASEBOOK FOR PRACTITIONERS 111-122 (R.H. Price, E.L. Cowen, R.P. Lorion & J. Ramos-McKay eds., American Psychological Association 1988); Robert D. Felner, Melanie Ginter & Judith Primavera, *Primary Prevention During School Transition: Social Support and Environmental Structure,* 10 AM. J. COMMUN. PSYCHOL. 277-290 (1982); Olga Reyes & Leonard A. Jason, *An Evaluation of a High School Dropout Prevention Program,* 19 J. COMMUNITY PSYCHOL. 221-230 (1991).

[15] Scott Henggeler et al., *Effects of Multisystemic Therapy on Drug Use and Abuse in Serious Juvenile Offenders: A Progress Report from Two Outcome Studies*, 1 FAM. DYNAM. ADDICTION Q. 40-51 (1991); Scott Henggeler et al., *Multisystemic Therapy with Violent and Chronic Juvenile Offenders and Their Families: The Role of Treatment Fidelity in Successful Dissemination*, 65 J. CONSULT. CLIN. PSYCHOL. 821-833 (1997); Scott Henggeler et al., *Home-Based Multisystemic Therapy as an Alternative to the Hospitalization of Youths in Psychiatric Crisis: Clinical Outcomes*, 38 J. AM. ACAD. CHILD ADOLESC. PSYCHIATRY 1331-1339 (1999). For an excellent synthesis of the research on MST, *see* the "Promising Practices Network" http://www.promisingpractices.net/program.asp?programid=81.

[16] Finn-Aage Esbensen et al., *How Great is G.R.E.A.T.? Results from a Longitudinal Quasi-Experimental Design*, 1 CRIMINOL. PUBL. POL. 87-118 (2001).

[17] James J. Heckman & Flavio Cunha, *Investing in Our Young People.* (Unpublished, funded by the National Institutes of Health, 2007).

[18] Heckman offered these comments in an article for *Education Week* magazine. James J. Heckman, *Beyond Pre-K,* EDUCATION WEEK (3/19/2007).

[19] *Id.*

[20] *See* Finn-Aage Esbensen, *Preventing Adolescent Gang Involvement*, in *Juvenile Justice Bulletin* 6 (U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, September 2000) [hereinafter *OJJDP Bulletin*].

[21] *Id.* at 6-7, 9.

[22] *Id.* at 9. The Bulletin concludes that there is a need for all three levels of intervention as part of a comprehensive strategy. While the Bulletin acknowledges that there is "no clear solution," it highlights the

importance of early primary prevention strategies, the need for prevention programs to consider gender as part of their efforts and the need to address the underlying causes rather than simply focusing on individual factors.

[23] *Id.* at 7. The Justice Department's Bulletin further concludes that strategies that rely upon "law enforcement suppression tactics" and produce more arrests have not been well evaluated and are not likely to reduce gang-related crime.

[24] David Osher, Mary Magee Quinn, Jeffrey Poirier & Robert Rutherford, *Deconstructing the pipeline: Using efficacy, effectiveness, and cost-benefit data to reduce minority youth incarceration, in* DECONSTRUCTING THE SCHOOL TO PRISON PIPELINE 92, FN7 (Johanna Wald and Dan Losen eds., Jossey Bass 2003).

[25] *See* U.S. Department of Education, *Funding Status – School Dropout Prevention Program*, http://www.ed.gov/programs/dropout/funding.html; and Section 1803 of Title I, Part H of the No Child Left Behind Act, *available at* http://www.ed.gov/policy/elsec/leg/esea02/pg15.html.

[26] *See* 301 (d) and (e) of S. 456.

[27] Gary Orfield et al., *Losing Our Future: How Minority Youth are Being Left Behind by the Graduation Rate Crisis* 1 (The Civil Rights Project at Harvard University 2004). *Available at* http://www.civilrightsproject.ucla.edu/research/dropouts/LosingOurFuture.pdf

[28] *Id.*

[29] Henry Levin, Clive Belfield, Peter Muennig & Cecilia Rouse, *The Costs and Benefits of an Excellent Education for America's Children,* Working Paper, Teachers College, Columbia University (2006). http://www.cbcse.org/pages/cost-benefit-studies.php. Crimes and arrests were considered in deriving the impact of education on the commission of specific crimes because crimes greatly exceed arrests. Data on specific crimes was taken from the annual Uniform Crime Report. *Id.* at 41.

[30] Peter E. Leone, Christine A. Christle, C. Michael Nelson, Russell Skiba, Andy Frey & Kristine Jolivette, *School Failure, Race, and Disability: Promoting Positive Outcomes, Decreasing Vulnerability for Involvement with the Juvenile Justice Delinquency System* (National Center of Education, Disability and Juvenile Justice, October 2003). This report cites several sources for this figure including: Coordinating Council on Juvenile Justice and Delinquency Prevention, *National Juvenile Justice Action Plan* (Office of Juvenile Justice and Delinquency Prevention 1995); Maryland Department of Legislative Services, *Juvenile court- Expansion of jurisdiction. Fiscal and Policy Note, HB 520* (Maryland General Assembly 2003).

[31] JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT at 201.

[32] *See* Terrence P. Thornberry, David Huizinga & Rolf Loeber, *The Causes and Correlates Studies: Findings and Policy Implications,* 9 JUVENILE JUSTICE 5 (2004). *Available at* http://www.ncjrs.gov/html/ojjdp/203555/jj2.html.

[33] David Osher, Mary Magee Quinn, Jeffrey Poirier & Robert Rutherford, *Deconstructing the pipeline: Using efficacy, effectiveness, and cost-benefit data to reduce minority youth incarceration, in* DECONSTRUCTING THE SCHOOL TO PRISON PIPELINE 92, FN9 (Johanna Wald and Dan Losen eds., Jossey Bass 2003).

[34] Arthur J. Reynolds, Judy A. Temple, Dylan Robertson & Emily Mann, *Long-Term Benefits of Participation in the Title I Chicago Child-Parent Centers*, Paper Presented at the Biennial Meeting of the Society for Research on Adolescence, Chicago, March 30, 2000. For more information on Child-Parent Centers and other "Promising Programs," *see* http://www.promisingpractices.net/program.asp?programid=98.

[35] Henry Levin, Clive Belfield, Peter Muennig & Cecilia Rouse, *The Costs and Benefits of an Excellent Education for America's Children,* Working Paper, Teachers College, Columbia University (2006). http://www.cbcse.org/pages/cost-benefit-studies.php.

[36] *See generally* David Osher, Mary Magee Quinn, Jeffrey Poirier & Robert Rutherford, *Deconstructing the pipeline: Using efficacy, effectiveness, and cost-benefit data to reduce minority youth incarceration, in* DECONSTRUCTING THE SCHOOL TO PRISON PIPELINE (Johanna Wald and Dan Losen eds., Jossey Bass 2003).

[37]Barry Krisberg & Susan Marchionna, *Attitudes of US Voters toward Youth Crime and the Justice System* (National Council on Crime and Delinquency 2007).

[38] Daniel Nagin, Alex Piquero, Elizabeth Scott & Laurence Steinberg, *Public Preferences for Rehabilitation versus Incarceration of Juvenile Offenders: Evidence from a Contingent Valuation Survey*, University of Virginia Legal Working Paper Series, University of Virginia John M. Olin Program in Law and Economics Working Paper Series, Working Paper 28, *available at* http://law.bepress.com/uvalwps/olin/art28.

[39] *Id.* at 27.

[40] *Id.* at 28.

[41] Judith Greene & Kevin Pranis, *Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies* 6 (Justice Policy Institute Report, July 2007), *available at* http://www.justicepolicy.org/images/upload/07-07_REp_GangWars_GC-PS-AC-JJ.pdf [hereinafter *JPI Report 2007*].

[42] *See generally JPI Report 2007*.

[43] *See OJJDP Bulletin* at 4.

[44] *See JPI Report 2007* at 6 ("Heavy-handed suppression efforts can increase gang cohesion.") and at 50 citing a Denver Youth Survey by Huizinga that gang members see incarceration as, "… a right of passage…." And some said "they learned things, especially while incarcerated, and made contacts." Furthermore, "Gang control policies that fix the gang label on youth do just the opposite: they keep former gang members from acquiring the social capital they need in order to survive in mainstream society." *Id.* at 51.

[45]*See OJJDP Bulletin* at 5 citing research by Battin-Pearson et al., 1997. While the terms pro and anti-social are not explicitly defined where they are referenced in the cited article, the term "delinquent" and "anti-social" tend to be used synonymously in the literature. "Pro-social" apparently refers to stronger school commitment, stronger attachment to parents and less impulsive, risk seeking and deviant behavior. *See* Battin-Pearson, et al., *Early predictors of sustained adolescent gang membership*, Paper presented at the American Society of Criminology Annual Meeting, San Diego, CA (1997).

[46] Malcolm W. Klein, THE AMERICAN STREET GANG: ITS NATURE, PREVALENCE, AND CONTROL (Oxford University Press 1995).

[47] *See* Terrence P. Thornberry, David Huizinga & Rolf Loeber, *The Causes and Correlates Studies: Findings and Policy Implications,* 9 JUVENILE JUSTICE (2004). *Available at* http://www.ncjrs.gov/html/ojjdp/203555/jj2.html.

[48] *Id.*

[49] *Federal Advisory Committee on Juvenile Justice Annual Recommendations Report to the President and Congress of the United States* 3 (Federal Advisory Committee on Juvenile Justice 2007), available at http://www.facjj.org/annualreports/ccFACJJ%20Report%20508.pdf.

[50] *See* Peter E. Leone, Christine A. Christle, C. Michael Nelson, Russell Skiba, Andy Frey & Kristine Jolivette, *School Failure, Race, and Disability: Promoting Positive Outcomes, Decreasing Vulnerability for Involvement with the Juvenile Justice Delinquency System* 3 (National Center of Education, Disability and Juvenile Justice, October 2003).

[51] *See generally JPI Report, 2007; Also s*ee Krisberg, B. Austin, J., and Steele, P.S. 1989. *Unlocking Juvenile Corrections.* San Francisco, CA: National Council on Crime and Delinquency; Klein, M. 1995. THE AMERICAN STREET

GANG: ITS NATURE, PREVALENCE AND CONTROL. New York: Oxford University Press.; Krisberg, B, Austin, J., Joe, K, and Steele, P.A. 1988. The Impact of Juvenile Court Sanctions. San Francisco, CA: National Council on Crime and Delinquency.;Krisberg, B., Currie, E., Onek, D., and Wiebush, R. 1995. Graduated sanctions for serious, violent, and chronic juvenile offenders. In SERIOUS, VIOLENT, AND CHRONIC JUVENILE OFFENDERS. Thousand Oaks, CA: Sage Publications.

[52] Dahmann, J. 1981. *Operation Hardcore, A Prosecutorial Response to Violent Gang Criminality: Interim Evaluation Report.* Washington, DC: Mitre Corporation. Reprinted in *The Modern Gang Reader,* edited by M.A. Klein, C.L. Maxson, and J. Miller, 1995. Los Angeles, CA: Roxbury Publishing Company, pp. 301–303.

[53] JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT at 83.

[54] JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT. Note that these estimates from enforcement agencies may under-count gang participation by whites and females; one large-scale 1995 survey of public school 8th graders found that 25% of self-reported gang members were white. One explanation for the difference between self-reports and enforcement estimates is that the enforcement estimates reflect the prevalence of racially discriminatory patterns of arrest and sanctions. For example, since 1995, African American boys and girls have consistently accounted for close to 60% of imprisoned children.

[55] DECONSTRUCTING THE SCHOOL TO PRISON PIPELINE (Johanna Wald and Dan Losen eds., Jossey Bass 2003).

[56] *Id.* at 10.

[57] *Id.* at 10.

[58] *See, e.g.*, Katherine Beckett, Kris Nyrop & Lori Pfingst, *Race Drugs, and Policing: Understanding Disparities in Drug Delivery Arrests*, 44 CRIMINOLOGY. 105-137 (2006). Researchers attempted to explain the racial disparities in Seattle's drug delivery arrests. The findings indicated that blacks were "significantly overrepresented among Seattle's drug delivery arrestees." This could be explained by several "organizational practices." Specifically, law enforcement focused on crack as opposed to powder cocaine offender and placed priority on outdoor drug venues and also concentrated on heavily black areas. The "available evidence further indicates that these practices are not determined by race-neutral factors such as crime rates or community complaints." In other words, the researchers conclude: "race shapes perceptions of who and what constitutes Seattle's drug problem, as well as the organizational response to that problem."

[59] Stephanie Bontrager, William Bales & Ted Chiricos, *Race, Ethnicity, Treatment and the Labeling of Convicted Felons*, 43 CRIMINOLOGY 589 (2005).

[60] *See, e.g.*, Ted Chiricos, Kelly Welch & Marc Gertz, *Racial Typification of Crime and Support for Punitive Measures,* 42 CRIMINOLOGY 358-390 (2004).In this study, researchers studied the extent to which people associate crime with African Americans. The "racism" that the authors noted in this study "eschews overt expressions of racial superiority and hostility but instead sponsors a broad anti-African American effect that equates African-Americans with a variety of negative traits of which crime is certainly one. Thus study demonstrates that the equation of race and crime is a significant sponsor of the punitive attitudes that are given material substance in the extraordinary rates of incarceration now found in the United States."

[61] *Federal Advisory Committee on Juvenile Justice Annual Recommendations Report to the President and Congress of the United States* ix (Federal Advisory Committee on Juvenile Justice 2007), available at http://www.facjj.org/annualreports/ccFACJJ%20Report%20508.pdf.

[62] *See* Joseph B. Tulman, *Disability and Delinquency: How Failures to Identify, Accommodate, and Serve Youth with Education-related Disabilities Leads to Their Disproportionate Representation in the Delinquency System*, 3 WHITTIER J. CHILD & FAM. ADVOC. 3 (2003).

[63] JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT at 83. (The report cites a study of youth living in high crime neighborhoods in Seattle).

[64] Peter E. Leone, Christine A. Christle, C. Michael Nelson, Russell Skiba, Andy Frey & Kristine Jolivette, *School Failure, Race, and Disability: Promoting Positive Outcomes, Decreasing Vulnerability for Involvement with the Juvenile Justice Delinquency System* (National Center of Education, Disability and Juvenile Justice, October 2003).

[65] David Osher et al., *Schools Make a Difference: The Overrepresentation of African American Youth in Special Education and the Juvenile Justice System, in* RACIAL INEQUITY IN SPECIAL EDUCATION 98 (Daniel J. Losen & Gary Orfield eds., 2002).

[66] *See* Donald P. Oswald et al., *Community and School Predictors of Overrepresentation of Minority Children in Special Education*, *in* RACIAL INEQUITY IN SPECIAL EDUCATION, *id.* at 1.

[67] *See* JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT at 206.

[68] *Id.*

[69] *Id.* at 83.

[70] *Id.*

[71] Bruce Western, PUNISHMENT AND INEQUALITY IN AMERICA (2006). *See also* Bruce Western & Becky Pettit, *Black-White Earnings Inequality, Employment Rates, and Incarceration,* 111 AM. J. SOCIOL. 553-578 (2005). *See also* Becky Pettit & Bruce Western, *Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration,* 69 AM. SOCIOL. REV. 151-69 (2004).

[72] Western comments upon his study in an article for the Nieman Foundation at Harvard University. *See Nieman Watchdog, Ask This, Does Mass Incarceration Make Us Safer?* (November 19, 2007). http://www.niemanwatchdog.org/index.cfm?fuseaction=ask_this.view&askthisid=301.

[73] *Id.*

[74] The U.S. Department of Justice's Office of Justice Programs reports that in 1996, 850,000 youth were members of gangs. By 2004, that number had dropped to 760,000.

[75] Justice Policy Institute, *Ganging Up on Communities? Putting Gang Crime in Context*, *available at* http://www.justicepolicy.org/images/upload/05-07_REP_GangingUp_GC-JJ-PS.pdf.

[76] William J. Bennett, John J. DiIulio & John P. Walters, BODY COUNT: MORAL POVERTY… AND HOW TO WIN AMERICA'S WAR AGAINST CRIME AND DRUGS (1996). The term "superpredator" was coined in this book.

[77] *Id.Also see,* DiIulio, J., Jr. 1996. They're coming: Florida's youth crime bomb. Impact (Spring):25–27.

[78] DECONSTRUCTING THE SCHOOL TO PRISON PIPELINE 92, FN9 (Johanna Wald and Dan Losen eds., Jossey Bass 2003.)

[79] Elizabeth Becker, *As Ex-Theorist on Young 'Superpredators,' Bush Aide Has Regrets*, N.Y. Times, February 9, 2001.

[80] According to the Bureau of Justice Statistics, the U.S. imprisonment rate in 2005 is 491 per 100,000 people. About 2.2 million are currently in prison or jail. About five million people are on probation or parole.

[81] A. Adalist-Estrin & J. Mustin, *Introduction to Children of Prisoners* (The Children of Prisoners Library 2003), *available at* http://www.fcnetwork.org/cpl/CPL101-IntroductiontoCPL.pdf.

[82] Christopher J. Mumola, *Incarcerated Parents and Their Children* (US Department of Justice, Bureau of Justice Statistics 2000). In 1999, 1.5 million children had a parent in prison-up 50 percent from the previous decade.

[83] Bruce Fuller & Annelie Strath, *The Child-Care and Preschool Workforce: Demographics, Earnings, and Unequal Distribution,* 23 EDUC. EVAL. AND POLICY AN. 37-55 (2001). For a discussion about the long-term benefits of early childhood education, *see* FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT (Jack Shonkoff & D. Phillips eds., National Academies Press 2000).