

### *Symposium on Juvenile Crime: Policy Proposals on Guns & Violence, Gangs, & Drugs*

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Stephen J. Schulhofer

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## **YOUTH CRIME— AND WHAT *NOT* TO DO ABOUT IT**

**STEPHEN J. SCHULHOFER\***

In this comment, after briefly noting the key features of the existing juvenile justice system, I will describe the radical proposals for change that the current media attention to juvenile crime is producing. Then I will examine the picture of juvenile crime that underlies these policy initiatives and identify several serious misimpressions that are distorting the public debate. Finally, I will suggest some policies for dealing with youth crime in constructive rather than destructive ways.

### **I. EXISTING INSTITUTIONS AND POLICIES**

To place in perspective the current crop of high-visibility political attacks on juvenile justice, we must take a moment to sketch the main outlines of the system that now governs our treatment of young offenders. Because state systems differ from each other in many particulars, my sketch will necessarily generalize. I omit detailed discussion of qualifications and exceptions. For present purposes the variations are relatively unimportant because nearly all state systems share the same central features that recent proposals have targeted for change.

The current juvenile justice system traces its roots to a reform movement of the late nineteenth century, when lawyers and social workers recognized the multiple failures of a legal system that was prosecuting all youthful offenders in the same criminal court system designed primarily for adults.<sup>1</sup> The upshot of these reforms, first enacted in Illinois in 1899 and soon thereafter copied throughout the country,<sup>2</sup> is a system of criminal justice in three tiers defined by the offender's age.

In every state, the juvenile court is the only corrections agency authorized to deal with offenses committed by minors younger than a certain threshold age, often twelve or thirteen years old. The ordinary criminal court is the only

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\* Julius Kreeger Professor of Law & Criminology, and Director of the Center for Studies in Criminal Justice, University of Chicago. I am grateful for the comments of Herschella Conyers, Tracey Meares and Albert Alschuler, and for the research assistance of David Gossett.

1. See Steven L. Schlossman, *Juvenile Justice: History and Philosophy*, in *ENCYCLOPEDIA OF CRIME AND JUSTICE* 961, 962-65 (Sanford Kadish ed., 1983).

2. *Id.* at 961-64.

corrections agency authorized to deal with offenders who are over eighteen. For youths who are between the threshold age and eighteen, juvenile court and adult court typically exercise *concurrent* jurisdiction: the alleged offender may be tried in either juvenile or adult court depending on a variety of circumstances. The usual approach is to begin with an assumption that the juvenile court is the proper forum but permit the juvenile court to “waive” its jurisdiction and thus permit trial in an ordinary criminal court.

The effect of the waiver decision is, first, to replace the somewhat less formal procedures of juvenile court with the full due process formalities of a criminal trial. Many of the important due process rights apply in juvenile court anyway,<sup>3</sup> but there is no constitutional right to jury trial, no matter how serious the charge,<sup>4</sup> and other trial procedures may be more streamlined than in comparable criminal trials.

The procedural effects of waiver into adult court almost always benefit the alleged young offender, but the substantive effects do not. In *juvenile court*, after conviction (technically called a determination of “delinquency”), the offender faces the possibility of probation, other nominally rehabilitative sanctions, or confinement (also in theory a rehabilitative sanction) in a “reform school,” “training school,” or other secure custodial institution. Confinement may be ordered for a brief or more lengthy period, but at most, convicted juvenile offenders typically can be confined only until they reach the age of majority. They are then released from the custodial institution, and typically their record of misconduct as juveniles remains confidential.

In contrast, when a minor is convicted of a criminal offense in *adult court*, he can incur the same sanctions that apply to adults convicted of the same offense. He not only faces fines or probation for an extended period, but he may also be incarcerated in an adult prison for any period up to the maximum authorized for the offense committed. In a murder prosecution, a juvenile also faces the death penalty, under the same circumstances as an adult.<sup>5</sup>

In cases of concurrent jurisdiction, a decision to proceed in adult rather than juvenile court often requires, in theory or in practice, a prosecutor’s motion for “waiver.” But the ultimate decision is typically left to the discretion of the juvenile court. Statutes and cases provide the juvenile judge few standards for

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3. In re Winship, 397 U.S. 358, 374-75 (1970); In re Gault, 387 U.S. 1, 65 (1967).

4. McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971).

5. The juvenile offender must be permitted to argue that his youth is a mitigating circumstance, but there is no constitutional barrier to executing a murderer who was a minor at the time of the offense. Penry v. Lynaugh, 492 U.S. 302, 303 (1989); Eddings v. Oklahoma, 455 U.S. 104, 108-09 (1982).

making the decision, other than an obligation to consider an open-ended checklist of factors such as the seriousness of the crime, the maturity of the offender, his prospects for rehabilitation, and so forth.<sup>6</sup> Although the “waiver” decision is entirely discretionary, it carries such serious substantive consequences for the alleged offender that due process rights are implicated. In *Kent v. United States*,<sup>7</sup> the Supreme Court indicated that there is a constitutionally protected right to a hearing on the decision whether to waive the juvenile into adult court.<sup>8</sup>

Though the potential adverse consequence of waiver for the young offender—the possibility of a much more severe sentence—is relatively obvious, it is less widely recognized that waiver sometimes has the opposite effect. When a juvenile is found to have engaged in serious misconduct, the juvenile court can order him committed to the custody of the juvenile authorities for as long as that agency deems necessary—until he reaches the age of eighteen or twenty-one. Juveniles therefore face an essentially indeterminate term, while a person convicted of the same misconduct in criminal court would often be sentenced (with or without sentencing guidelines) to a largely determinate period of confinement. And especially in the case of the youngest among them, juveniles who stand trial in juvenile court may face *longer* confinement than offenders who are tried for identical conduct in adult court. A thirteen-year-old juvenile convicted of burglary in juvenile court could be held in custody for as long as eight years, while the typical offender convicted of a similar offense in adult court might receive a sentence of only two to three years incarceration.

Constitutional imperatives aside, these juvenile and adult court processes are entirely creatures of state law, and their structure is entirely a matter for policy determination by the states. Nonetheless, federal law shapes state policy from behind the scenes. The Juvenile Justice and Delinquency Prevention Act of 1974<sup>9</sup> established in the Department of Justice an Office of Juvenile Justice and Delinquency Prevention (OJJDP) with a charge “to develop a coherent national planning process, establish priorities, and focus Federal leadership efforts.”<sup>10</sup> In addition, the Act established four “mandates” that state systems must respect as a condition of receiving federal funds: states must avoid institutionalization of “status” offenders (those charged with conduct that is not criminal when committed by adults); they must insure “sight and sound”

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6. See *Kent v. United States*, 383 U.S. 541, 566-67 (1966).

7. 383 U.S. 541 (1966).

8. Technically, *Kent* held only that such a right should be read into a provision of District of Columbia law, as a matter of statutory interpretation, but the Court's reasoning rested heavily on constitutional principles of procedural due process. *Id.* at 557.

9. 42 U.S.C. § 5601 (1996).

10. Michael E. Saucier, *Birth of a Partnership*, JUV. JUST. BULL., Fall/Winter 1995, at 19, 20.

separation of juvenile and adult offenders when they are confined in the same custodial facility; they must remove juveniles from adult jails and lock-ups; and they must reduce disproportionate confinement of minority youth.<sup>11</sup>

## II. THE FOUR-PRONGED ATTACK ON THE JUVENILE JUSTICE SYSTEM

The current system is now under a four-pronged attack designed to change the character of criminal justice responses to youth crime. Prong one is a movement throughout the states to lower the minimum age at which offenders are eligible to be tried in adult court. Prong one has the effect of expanding the concurrent jurisdiction of juvenile and adult courts, but it is partly offset by prong two, a movement to mandate waiver and thus require prosecution as an adult, in the case of juveniles charged with certain serious crimes. In the past four years, thirty states have moved to expand the reach of the adult court system by reducing the minimum age for prosecution in criminal court and by excluding certain crimes from the jurisdiction of the juvenile court.<sup>12</sup>

The first two prongs are largely steps being taken at the state level. Prong three seeks to attack the perceived problem through federal legislation. The proposed Violent Youth Predator Act of 1996,<sup>13</sup> though not enacted in the last Congress, is likely to be reintroduced in 1997. Under the banner of leaving states free to set their own policies, it would abolish the four federal mandates. A particular target here is the federal requirement of segregation of adults from young offenders who have been adjudicated delinquent in juvenile court. Many state officials consider "sight and sound" separation expensive in short-run (and short-sighted) budgetary terms. At a time when both the juvenile and adult offender populations are rapidly growing (and projected to grow even faster), the flexibility to mix juveniles with the ordinary offender population in adult prison offers the prospect of quick out-of-pocket savings for hard-pressed corrections administrators.

Prong four, embodied in another section of the proposed Violent Youth Predator Act, would abolish the Office of Juvenile Justice and Delinquency Prevention and replace it with an Office of Juvenile Crime Control.<sup>14</sup> The shift in emphasis from *justice* to *crime control* nicely captures the prevailing political mind-set, but it is more than purely symbolic. Though OJJDP is currently funded at \$150 million, Congress would provide \$500 million to the new Office

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11. Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. § 5601 (1996). See *supra* note 9. For discussion of the mandates and their implementation, see generally Note, *Meeting the Mandates*, 2 JUV. JUST. BULL. 25 (1995).

12. See Lisa Stansky, *Age of Innocence*, A.B.A. J. Nov. 1996, at 60, 61.

13. H.R. 3565, 104th Cong. (1996).

14. See *id.* § 403.

of Juvenile Crime Control. Half the funds would be earmarked as incentive grants for states that require automatic prosecution in adult court, without a waiver hearing, for juveniles as young as fourteen who are charged with "serious violent crimes."<sup>15</sup> In order to receive any federal grant money under the proposed Act, states would have to assure the Department of Justice that all juveniles aged fourteen and over who commit a serious violent crime will be prosecuted as adults.<sup>16</sup> The "serious violent crime" category is broadly defined to include, among other offenses, manslaughter committed under provocation (such as, for example, a case in which a sexually abused teenaged girl kills her abusive father<sup>17</sup>) and all robberies.<sup>18</sup> Other provisions of the bill would encourage states to impose mandatory minimum sentences for gun-related crimes and to end confidentiality of juvenile records and proceedings.<sup>19</sup>

Though the proposed federal provisions are structured as a grant rather than as a mandate—a carrot rather than a stick—the content of the new policy plainly undercuts the pretense that "state autonomy" is the driving philosophical commitment of the reforms. The goal of the legislation is emphatically *not* to eliminate the federal role in shaping policy toward young offenders. Rather, its goal is to shift the direction of federal efforts from "justice" and "delinquency prevention" to an avowedly punitive response.

### III. THE UNDERLYING PROBLEMS (AND WHY YOUTH IS NOT ONE OF THEM)

In this Section, I want to examine the accuracy of the picture of juvenile crime that underlies these policy initiatives. The principal assumption driving the shift toward dramatically more punitive approaches is the view that juvenile crime, already out of control, is destined to get even worse. Newspapers, magazines and television stories prominently feature the claim, most often associated with Princeton Professor John DiIulio, that a tidal wave of "super-predators"—270,000 more in the year 2010 than there were in 1990—is about to overwhelm our inner cities and our justice system resources.<sup>20</sup> A *U.S. News*

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15. *Id.* § 243. See also Rhonda McMillion, *Squaring Off Against Delinquency*, A.B.A. J., Sept. 1996, at 99.

16. Violent Youth Predator Act of 1996, H.R. 3565, § 408 (adding § 242(a)).

17. For an account of such a case, and the tragic consequences of the Indiana provision that required the 14-year-old girl to be tried and sentenced as an adult, see Fox Butterfield, *A Fatal Fire, a Girl in Prison, and a Tangle of Justice Issues*, N.Y. TIMES, Dec. 3, 1996, at A1.

18. Violent Youth Predator Act of 1996, H.R. 3565, 104th Cong. § 402.

19. Violent Youth Predator Act of 1996, H.R. 3565, 104th Cong. § 408 (adding § 242(c)(3),(4),(5)).

20. See James Traub, *The Criminals of Tomorrow*, NEW YORKER, Nov. 4, 1996, at 50, 52 (noting that DiIulio warns of a coming wave of juvenile "super-predators").

and *World Report* story, for example, warned of a “ticking demographic time bomb.”<sup>21</sup>

Despite the media-hype about an oncoming “tidal wave” of youth violence, the expected increase in the number of high-risk youths is at worst a small ripple in the demographic pond. Between 1996 and the year 2010, the number of boys under the age of eighteen is expected to grow by only 14%.<sup>22</sup>

More important, our problems—now and in the future—do not stem from the fact that these individuals are young. Hard as it is to believe, raging male hormones are not the problem. America assuredly has serious problems that are fueling our high levels of crime, but the size of our youth population is not one of them.

Consider that in 1993, Japan’s ten million youth aged fifteen to twenty-four committed forty-three homicides.<sup>23</sup> In 1991 (the most recent year for which comparable data are available), the United States had nineteen million youth in the crime-prone fifteen to twenty-four age bracket, but the young Americans committed 6852 homicides.<sup>24</sup> With twice as many youth, we had almost 160 times as many homicides. Clearly something serious is going on in the United States; but whatever it may be, it is not simply a result of our having a large number of naturally aggressive males.

Because Japan is often viewed as a special case, an unusually well-ordered society, we can gain further perspective by considering data from other countries as well. Our youth homicide rate, at 36.8 per 100,000,<sup>25</sup> is not only ninety-two times higher than that of Japan,<sup>26</sup> but twenty-three times higher than that of Germany,<sup>27</sup> twenty times higher than that of France,<sup>28</sup> sixteen times higher than that of Australia,<sup>29</sup> and—closest to home—is still more than eleven times higher than that of Canada.<sup>30</sup> Again, there is something distinctive, and

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21. Mortimer B. Zuckerman, *Scary Kids Around the Corner*, U.S. NEWS & WORLD REP., Dec. 4, 1995, at 96.

22. See Franklin E. Zimring, *Crying Wolf over Teen Demons*, L.A. TIMES, Aug. 16, 1996, at B5.

23. 1994 WHO, WORLD HEALTH STATISTICS ANNOTATED B-341 (1995). For purposes of this discussion, I use the age-specific victimization rates reported by WHO as a rough surrogate for age-specific rates of offending.

24. *Id.* at B-33.

25. *Id.* at B-17.

26. *Id.* at B-33.

27. *Id.* at B-143.

28. *Id.* at B-135.

29. *Id.* at B-321.

30. *Id.* at B-17.

distinctively serious, about the American crime problem, but it is not a problem that we can sensibly blame on demographics.

The problems that America does have, its distinctive problems, are three—a gun problem, a violence problem, and, above all, a poverty problem. These three points are far from original. They have been made over and over, but they are not for that reason less important than the demographic “news” that has attracted so much sensationalistic media attention.

Our first problem is guns. In no other Western nation are handguns so widely distributed in the general population and so readily available to young people. Our second problem is violence. Our overall crime rates, even for offenses like theft, burglary, robbery, and assault, are not markedly different from those of countries like Canada and Australia.<sup>31</sup> But our rates for the most violent offenses—gun robberies, rapes and homicides—are radically different and orders of magnitude higher.<sup>32</sup> Finally, our third and most serious problem is poverty. The United States, one of the wealthiest nations in the world, lives with levels of poverty that dwarf those of other Western nations. Twenty-two percent of our children are raised in poverty, a figure that is the highest in the developed world.<sup>33</sup> The proportion of our population raised in poverty is two to nine times higher than in the other seventeen major industrial nations.<sup>34</sup>

#### IV. MISGUIDED POLICY RESPONSES

A more nuanced understanding of the *causes* of America's crime predicament is not necessarily decisive for the policy debate. Whether our high-risk kids are violent because they are young or because they are poor, it is still true that too many of them are unmanageable and violent. Whatever the cause, we still have to do something about their behavior. And in some cases, the only appropriate response is custodial confinement for an extended period. That obvious point has always been accepted in juvenile justice administration, and must be stressed at the outset. But the across-the-board, categorically punitive

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31. See generally JAN J.M. VAN DIJK ET AL., *EXPERIENCES OF CRIME ACROSS THE WORLD* (1990).

32. *Id.* See also Franklin E. Zimring & Gordon Hawkins, *Violence Is Not a Crime Problem*, Jan. 12, 1994 (unpublished paper, on file with the *Valparaiso University Law Review*).

33. LEE RAINWATER & TIMOTHY M. SMEEDLING, *DOING POORLY: THE REAL INCOME OF AMERICAN CHILDREN IN A COMPARATIVE PERSPECTIVE* 10-13, fig.4 & tbl.3 (Lux. Income Stud. Working Paper No. 127, 1995).

34. *Id.* Compounding the effects of high poverty levels are the high levels of social disorganization that contribute to high crime rates in many inner city neighborhoods. See Robert J. Sampson & W. Byron Groves, *Community Structure and Crime: Testing Social Disorganization Theory*, 94 AM. J. SOC. 774 (1989).



approach favored in the current climate of public opinion suffers from two major problems.

First, if the goal is a more punitive response—or just the more modest, uncontroversial goal of assuring that problem children get attention rather than slipping through the cracks—then shifting young offenders from juvenile to adult court is an illusory solution. It is certainly true that too many juvenile-court systems are understaffed, underfinanced, poorly managed, and overwhelmed by daunting caseloads. But reformers who believe they can escape these problems by moving cases into adult court cannot have looked very closely at the alternative they are proposing.

The criminal courts have exactly the same weaknesses as the juvenile-court system that reformers want to displace. In many jurisdictions overload and administrative problems of the criminal-court system dwarf those of the juvenile-court counterparts. What is worse, adult-court personnel are understandably absorbed in processing seriously violent, repeat offenders. Older teenagers who commit murder or rape are rarely ignored, and they will indeed get a harsher sentence in criminal court than they would face in a juvenile proceeding. But many teens charged with fighting (“assault”) or lower-level robberies will get even less attention in adult court than they would in juvenile court.

The second problem arises when the shift from juvenile to adult court succeeds in producing more severe punishment. Sometimes that is the right approach. A long period of custodial confinement is the only prudent or tolerable response to some of the violent offenses that teenagers commit. It is precisely the point of the traditional system’s waiver hearing to identify such cases by careful examination of the circumstances, and then to direct such cases to criminal court. But when blanket policies mandate automatic adult-court prosecution for whole categories of criminal conduct defined broadly in advance, the mandates divert enormous numbers of new cases into the criminal-court system. That step, combined with the strict sentencing policies applicable in adult court, means sweeping large numbers of new inmates into our adult prison system. Thus, the second major problem with current policy proposals is that huge costs will attend this hoped-for addition to our already burgeoning prison population.

The numbers are daunting. In 1994 juveniles aged ten to seventeen accounted for 150,000 arrests for violent crime.<sup>35</sup> Only 6% of these arrests were for murder or rape, the offenses most often directed to adult court when

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35. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP’T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 1996 UPDATE ON VIOLENCE 10 (1996).

waiver is selective.<sup>36</sup> There were over 140,000 arrests for the other major crimes of violence (robbery and aggravated assault) and an additional 63,000 arrests for weapons-law violations not included in the "violent crime" category.<sup>37</sup> Juveniles currently account for 16% of all arrests for aggravated assault, 24% of all arrests for weapons-law violations, and 32% of all robbery arrests.<sup>38</sup> Yet less than 2% of the juvenile arrestees are currently waived into adult court—just 5000 juveniles charged with violent crimes and less than 7000 juveniles for all other offenses combined.<sup>39</sup> The remaining 97-98% of the cases, including more than 145,000 cases in the violent-crime category and 62,000 weapons cases each year, are currently tried in juvenile court and are subject only to the sanctions of the juvenile corrections process. To shift all these cases, or any significant sub-sets of them, into adult court, where sentencing standards are often both severe and inflexible (and getting more so) will mean very sizable, very costly increases in prison populations and in the number of years of time served.

Of course, it is precisely the intent of the new punitive policies to produce just this growth in the use of custodial confinement. The added expense is intended, and many taxpayers seem almost willing to foot the huge (though rarely well-specified) bill. Problem number two is not simply that the number of offenses affected is near-astronomical and that the associated costs are appallingly high. Our crime problem is serious, and it will not be solved cheaply. The relevant objection to the current wave of categorically punitive proposals is not just that their costs will be enormous but that most of the expenditure will be utterly wasted.

Broad, automatically punitive responses are wasteful for two reasons—lumping and aging. The lumping problem is that "violent crime" is an extremely wide, heterogeneous category. To say that is not to condone violent crime of any sort. All violent crime is serious and deserves a serious response. But murders account for only 2% of the violent crimes committed by juveniles; the drive-by shootings and other brutal crimes featured on the nightly news are a very small portion of the violent-crime totals. The lower-level cases—kids caught with knives, kids involved in serious fist fights ("aggravated assault"), kids who snatch purses, gold chains or athletic jackets from other kids ("robbery")—certainly need a serious response, often the measured, constructive response that the juvenile court system at its best can give. Offenders of this sort do not necessarily need to spend several years in state prison.

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36. *Id.*

37. *Id.*

38. *Id.* at 13.

39. *Id.* at 28.

Aging is the second reason why automatically punitive responses can be wasteful and unnecessary. Misbehavior by adolescents and pre-adolescents often simply disappears as the kids grow up. The aging phenomenon applies even to much of the misbehavior that we properly treat as "violent crime"—again, the purse-snatchings, fist fights, and so on. A good deal of this misbehavior will not be deterred by the prospect of criminal punishment (adolescents are known for disregarding—and even seeking out—far more serious risks), and often the misbehavior will not be repeated even if adult authorities decline to respond in the harshest possible way. Yet thousands of such situations will fall subject to the automatically punitive policies now proposed for broad violent crime categories like "robbery." For most of these cases, expensive custodial sentences are an utter waste of scarce resources.

And not just a waste. The categorically punitive proposals are not only needlessly expensive but dangerously counterproductive. Give a twenty-six-year-old robber a ten-year sentence, and he returns to the streets at age thirty-six, well past his prime years for predatory offending. But sentence a fourteen-year-old to ten years in state prison for a purse snatching, and you are almost guaranteeing that he will spend his formative years in an environment with no affection, no positive role models, and no useful education other than an intense immersion in the ways of crime and brutality. At the end of his sentence, you will be sending back to the streets a twenty-four-year-old hardened criminal at the peak of his potential for predatory violence. An enterprise that is destined to produce these sorts of results does not seem the best possible use of scarce public resources.

## V. SENSIBLE RESPONSES

A constructive and efficient approach to youth crime should include three elements—targeting, diverting and a front-end focus. Targeting means that within the justice and correctional systems, severely punitive sanctions must be used sparingly and selectively. Brutal murderers need secure custodial confinement. Some juveniles are offenders of just this sort, but there are not many of them. And despite sensationalistic media coverage of these dangerous youths, the court systems are not now ignoring them or setting them free with just a slap on the wrist. Long incarceration, however necessary for some cases, must not be reflexively inflicted across-the-board on the tens of thousands of young people whose crimes of violence and weapons offenses consist of no more than fighting, petty robbery, or bringing a knife or a gun to school for self-protection.

Diverting means that whenever possible, serious offenders are channeled to constructive programs of preventive education and treatment rather than to custodial confinement. A recent OJJPD Report notes that "[d]iversion and

treatment programs provide some of the most promising examples of violence prevention techniques that work with youth involved in gun violence."<sup>40</sup> Successful (though rarely publicized) diversion programs now exist throughout the country. In Arizona and Indiana, youths caught carrying a gun can, if they are not hard-core delinquents, avoid prosecution by agreeing to take a carefully structured firearms-prevention course run by educators and state prosecutors.<sup>41</sup> In Boston, students found carrying weapons on school grounds are referred for academic, psychological and social evaluation to a counseling center run by the public school system.<sup>42</sup> In Missouri and Kansas, school systems that have a zero-tolerance policy for gun possession have set up alternative schools so that teenagers caught carrying weapons are swiftly sanctioned with suspension, combined with a transfer for continued schooling at a location away from their home school.<sup>43</sup> Unfortunately, programs like these remain few in number and small in scale. They urgently need the resources that increasingly are being drained away to support massive increases in incarceration.

The third major idea is front-end focus, an emphasis on prevention programs that target high-risk youth *before* they commit crimes. The largest pay-offs typically come from prevention efforts directed upstream, at the early stages of youth development—the earlier the better. This means graduation incentives for high-school and middle-school students, smaller classrooms in the upper grades and in primary school, as well as generous expansion of successful pre-school programs like Head Start. All these are familiar, old ideas, and supposedly “everyone knows” that we cannot afford them. At an average cost of \$4500 per pupil per year,<sup>44</sup> Head Start is not cheap. But the data show with reasonable confidence that such programs easily pay for themselves in improved educational outcomes along with their crime prevention benefits.<sup>45</sup>

Assessments of pre-school programs for disadvantaged children sometimes conclude that their early gains disappear by the third or fourth grade,<sup>46</sup> and

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40. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, REDUCING YOUTH GUN VIOLENCE: AN OVERVIEW OF PROGRAMS AND INITIATIVES 17 (1996) [hereinafter OVERVIEW]. For notes of caution about the implementation of diversion programs, see Paul Nejelski, *Diversion: Unleashing the Hound of Heaven?*, in PURSUING JUSTICE FOR THE CHILD 94-118 (Margaret K. Rosenheim ed., 1976).

41. OVERVIEW, *supra* note 40, at 17-18.

42. *Id.* at 18.

43. *Id.* at 19.

44. *Head Start Statistical Fact Sheet* (visited May 10, 1996) <<http://www.acf.dhhs.gov/programs/hsb/statfact.htm>> (average cost per child for fiscal year 1995 was \$4534). See also LISBETH B. SCHORR, WITHIN OUR REACH 272 (1988) (reporting that the Perry Preschool program cost \$5000 per pupil per year).

45. See, e.g., SCHORR, *supra* note 44, at 195-97, 272.

46. *Id.* at 195-96, 336.

these findings have often been used to discredit such programs. But assessments over longer periods have consistently found enduring positive effects. An evaluation of the Perry Preschool program found that “at the age of nineteen, twice as many program participants as control children were employed, attending college, or receiving further training. Their high school graduation rate was one third higher, their arrest rates 40% lower, and their teen pregnancy rates 42% lower.”<sup>47</sup> “In the most extensive investigation ever undertaken of the long-term effects of preschool education,”<sup>48</sup> the Consortium for Longitudinal Studies, a combined evaluation effort by a number of research universities, likewise found that the achievement slump at the third and fourth grades was temporary and that long-term positive effects were substantial.<sup>49</sup> Yet a society that is willing to pay from \$25,000 to \$50,000 per juvenile per year for custodial confinement cannot—so we are told—afford a mere \$4500 per pupil per year for Head Start.

The front-end focus should turn our attention even further upstream, to nutrition and health care programs for youngsters and even to pre-natal care for pregnant women in high-risk poverty environments. The data again are reasonably clear that inadequate health care during pregnancy and early childhood are associated with low birth weight and a variety of health problems in infancy.<sup>50</sup> Increased incidence of such simple problems as ear infection lead in short order to increased incidence of mild hearing loss, followed in turn by early frustration in school and, as early as the third or fourth grade, signs of attention deficit, learning difficulty, aggression and delinquency.<sup>51</sup>

The bottom line is that talk of waging “war” on crime focuses attention in the wrong way on the wrong part of the problem. If the “war” metaphor is appropriate at all, we should not be throwing all our troops and all our resources into a near-futile effort to respond to the symptoms of the last stages of delinquency—a part of the battlefield where our “enemy” is already deeply entrenched on ground that we can take only by a costly uphill struggle. What we need instead is an all-out assault on the front-end, a new “war on poverty,” one that this time will be sustained through long-term efforts to improve job opportunity, education, and health care.

Even further upstream, and probably even more important than pre-natal care, is the concentrated housing that breeds violence and other social

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47. *Id.* at 195.

48. *Id.*

49. *Id.* at 195-96.

50. *Id.* at 64-110.

51. *Id.* at 66-67, 86.

pathologies for the urban poor.<sup>52</sup> A vigorous program of decentralized housing for low-income families might even emphasize vouchers for rental in the private market, rather than “scattered sites” for smaller-scale public projects that continue to house underclass residents exclusively. A thoroughly decentralized program could bring rates of offending for young underclass males down to those of middle-class whites within the brief span of a single generation.<sup>53</sup> Such a step could have more impact on overall crime rates than all the expensive new deterrence and incapacitation programs combined.

My time-frame may not be fast enough to suit political leaders focused on the next election cycle. But targeting, diverting, and a front-end focus offer proportionate, just sanctions and the prospect of tangible crime-control solutions within our lifetimes. That is more than can be said for the current crop of categorically punitive proposals that are politically appealing but needlessly harsh and dangerously counterproductive.

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52. See Douglas S. Massey, *Getting Away With Murder: Segregation and Violent Crime in Urban America*, 143 U. PA. L. REV. 1203 (1995); Sampson & Groves, *supra* note 34.

53. For a discussion of generally successful outcomes from efforts to deconcentrate the urban poor, see James E. Rosenbaum & Susan J. Popkin, *Employment and Earnings of Low-Income Blacks Who Move to Middle-Class Suburbs*, in *THE URBAN UNDERCLASS* (Christopher Jencks & Paul E. Peterson eds., 1991); James E. Rosenbaum et al., *Social Integration of Low-Income Black Adults in Middle-Class White Suburbs*, 38 SOC. PROBS. 448 (1991) (reporting that after moving many low-income blacks still faced discrimination, but it diminished over time).

