Chapter 4

Administrative and Legislative Approaches to Reform

The Legislative Subcommittee of the Commission guided the work reflected in this chapter. Focused on the translation of best practices into legislative and administrative proposals, the Subcommittee reviewed legislative hearings and juvenile statutes from other states engaged in reform, surveyed legal and policy literature centered on public safety and youth, and drafted proposed language and themes for inclusion into new proposals for adoption by the Council of the District of Columbia and the Mayor. Members came to consensus about the need to conduct a thorough review of the DC Code on a section-by-section basis. Comparisons were also made with other jurisdictions to determine prevailing trends in juvenile court activities.

In addition to its survey and analysis of the different strategies that states adopted to address needs in the juvenile justice system, the Subcommittee's members visited several jurisdictions where best practices have been observed in relation to dispositional processes, the use of individual treatment plans, and general treatment-based rehabilitation strategies. Site visit protocol criteria included several factors: demographics, history of legislative and/or judicial reform, documentation of best practices, recidivism experience, and history with community-based collaboration. Site visits were conducted with colleagues in Boston (MA), Tarrant County (TX), Jefferson City (MO.), and New York City (NY). These visits reflected a diversity of state

experiences in relation to the role of the judiciary, state legislatures, and local government initiatives.

The Subcommittee consulted a number of stakeholders, including youth, as it considered the best options to build an effective system. Established in 1906, the District's juvenile code has undergone only five substantial revisions in the last 95 years; it has only been reviewed in a comprehensive manner twice in the past 30 years. The following areas were outlined as critical themes for the improvement of the juvenile justice system in the District of Columbia:

Establishment of a Purpose Clause

Legislative Subcommittee members voted to recommend that a purpose clause be created for Title 16 of the D.C. Code. The purpose clause would establish the tone for the juvenile delinquency provisions of the Code, and would include language that expresses the goals of the Mayor in creating a juvenile justice system capable of dealing with the problem of juvenile delinquency, while treating children as children and protecting the needs of communities and victims alike.

The purpose clause will consist of twelve declarations outlining principles to ensure:

1. A guarantee of due process for juveniles;

2. A reduction of recidivism with proactive intervention to stem youth violence;
3. The development of meaningful prevention strategies to address delinquent behavior;
4. The preservation and strengthening of families, whenever possible;
5. Delinquent youth are held responsible for their actions;
6. A commitment to the rehabilitation of children;
7. Recognition of the ability to promote rehabilitation of children who are substance abusers;
8. A commitment to provide services in neighborhoods whenever possible and appropriate;
9. Achievement of all goals in the least restrictive settings possible;
10. Governmental accountability for the provision of reasonable rehabilitation;
11. A guarantee to provide for the safety of the public, at large;
12. Recognition of the need to provide services to victims of juvenile crimes.

Subcommittee members affirmed that prevention of crime and rehabilitation of children and youth is a goal established in other state statutes, including Massachusetts, Missouri, Texas, and California. Given the magnitude of drug use, mental health issues, and co-occurring disorders among committed juvenile offenders and the documented effective strategies to address these problems, it is critical that the DC Code be amended to reflect these goals for the juvenile justice system.[1] Incorporation of a Purpose Clause

[1] Please consult the following for information on framing a continuum to address substance abuse and mental health issues, in particular: U.S. Department of Health, *Underage Drinking Prevention: Action Guide for Planner*. Washington, DC: Substance Abuse and Mental Health Services Administration, 2001; Simpson, J., Jivanjee, P., Koroloff, N., Dorfler, A., and Garcia, M. (2001). *Systems of Care: Promising Practices in Children's Mental Health, 2001 Series, Volume III*. Washington, DC: Center for Effective Collaboration and Practice, American Institutes for Research.

also establishes a framework to treat "children as children," at the same time that it promotes goals for public safety.

Separate the Persons- in-Need-of-Supervision (PINS), Abuse and Neglect, and Juvenile Delinquency Provisions of the DC Code

The Legislative Subcommittee approved a recommendation that the Persons In Need of Supervision, Abuse and Neglect and Juvenile Delinquency provisions of Title 16 of the D.C. Code be separated into three separate sections, consistent with the *Family Court Act*. Separation of the Code sections will ensure a measure of clarity for professionals working in both the juvenile justice and child welfare systems.

Amend the Persons-in-Need-of-Supervision (PINS) Provisions of the DC Code

The Legislative Subcommittee advances a recommendation that the D.C. Code Section 2320 be amended to ensure that children who have been charged with PINS, truancy and minor offenses are not detained in secure settings designed for youth charged with more serious offenses. A presumption should be created in the statute which ensures that children taken into custody for PINS, truancy, or a violation of a juvenile curfew order or other status offenses, will be released to the child's parent, guardian or custodian, unless the return of that child will result in placement in, or return to, an abusive situation, or the child's parent, guardian or custodian is unwilling or unable to care for or supervise the child.

In its review of PINS cases in 1999 and 2000 currently monitored in the Office of the Deputy Mayor for Public Safety and Justice under regulations in the *Juvenile Justice Prevention Act*, Subcommittee members found that youth were often detained by a judge's court order at the Oak Hill Youth Center- sometimes beyond 24 hours (a violation of the *Juvenile Justice Prevention Act*). With this legislative safeguard and more centralized Executive branch monitoring and planning for juvenile justice programs and strategies under the Office of the Deputy Mayor for Children, Youth, and Families, programming for PINS cases and status offenses can be more sharply demarcated from other offenses.

Establishment of a District of Columbia Youth Services Coordinating Commission

Discussed in greater detail in Chapter 6, the Youth Services Coordinating Commission is conceived as a structure to create an Executive level coordinating body to bring together all relevant public entities (federal and local) and community stakeholders as part of process to build a coherent policy vision for youth services and juvenile justice.

The Legislative Subcommittee adopted a motion to encourage the government of the District of Columbia to establish a District of Columbia Youth Coordinating Commission. The Commission's responsibility would be to oversee, monitor and coordinate a policy vision for youth services and the juvenile justice system. It would

also ensure that the recommendations from the Blue Ribbon Commission are implemented seamlessly by the different governmental agencies.

The Commission should consist of twenty members appointed by the Mayor with the consent of the City Council. The Commission should be of diverse composition, with representatives from government agencies, victims' rights advocates, children's advocates, and other pertinent community stakeholders with a demonstrated commitment to youth and juvenile justice issues. This will ensure that the Commission is not composed entirely of government officials, and involves the greater D.C. community in the administration of youth safety and juvenile justice. Each member will serve staggered terms of six years, with two member positions expiring every two years. Each Commission member should undergo training to ensure a thorough understanding of the premise, operations, and role of the Commission in the larger context of the District of Columbia's administration of youth safety and juvenile justice issues.

During their site visits to Missouri and Texas, Commission members engaged local officials in conversations about centralized oversight of youth services and juvenile justice planning. In Texas, for example, the Texas Youth Commission (TYC) is composed of individuals from a diverse set of professional and public service backgrounds who are appointed by the Governor and help guide strategic planning, set targets for detention and commitment, review program evaluation data and recidivism trends, and provide general advice and oversight for the state's efforts to implement and measure effective treatment-based strategies. TYC Commission members also oversee

design, renovation, and construction of new facilities. Finally, they provide guidance relative to student life (i.e., allegations of mistreatment, medical needs, etc...) and any special initiatives related to juvenile justice and youth safety established by the Governor.

Amend Jurisdiction of the Youth Services Administration after Commitment

The Legislative Subcommittee recommends that the D.C. Code Section 16-2323 be amended to establish that YSA should conduct periodic evaluations of the committed child to determine if the services provided to the child have been effective. This will enable the agency to better determine if the level of services is appropriate, and will confer an authority for the agency to modify a commitment, where warranted. YSA will work in conjunction *with the child, the child's attorney* and the judge who originally committed the child to determine what the next steps should be for the welfare of the committed child and the safety of the public.

If, after commitment, YSA determines that it is unable to provide the appropriate services and level of care, -or the child is unwilling to accept the services offered-- YSA may petition the Superior Court to modify the commitment and place the child in a setting where the appropriate services and level of care can be provided. A child who has been committed to the custody of YSA or another institution or agency, or the parent or guardian of the child, may petition the Superior Court for modification of the commitment placement or termination of the commitment order on the grounds that the

custodial agency or institution is not providing or cannot provide the appropriate services or level of care. A party can file such motions only once every six months.

Establishment of Individual Treatment Plans

Individual treatment plans (ITP) establish effective strategies to address the needs of youth who come in contact with the juvenile justice system. Commission members reviewed ITPs and, in partnership with the Commission's Programming Subcommittee, discussed their importance as a guidepost for service delivery with clinical and policy officials in various jurisdictions. Further discussion of the need for ITPs (described as Individualized Service Plans at YSA) is contained in Chapter 3, but the crucial point is that the use of ITPs strengthens case management and enables a more seamless delivery of services for children and youth.

In this context, the Legislative Subcommittee recommends that the City Council and Mayor amend D.C. Code Section 16-2319 to require the YSA to conduct an evaluation of each child taken into custody to determine the appropriate services and *to develop an Individual Treatment Plan for the child.* In so doing, YSA must examine the child and investigate all pertinent circumstances in the child's background that will contribute to the recommendation of the treatment plan. YSA should complete an initial assessment of the child within two weeks of taking custody of the child and should develop the Individual Treatment Plan within 30 days of completing the initial assessment. If YSA fails to complete either the initial assessment or the Individual

Treatment Plan within the time limits, the Superior Court may, in its discretion, remove the child from YSA's custody or take other appropriate measures. It is the stated purpose of the District to provide the most effective social services and care for dependent neglected and abused children. It should be the responsibility of YSA to ensure that each child has access to that care and, if it is unable to provide for the appropriate level of care, to petition the Superior Court to remove the child from YSA custody and place him or her in the most appropriate setting where care can be provided. YSA will use the guidelines set forth in the *Jerry M. v. D.C.* Consent Decree in its processes for evaluation.

Confidentiality

In recent years, a number of states have moved to change their confidentiality provisions in light of shifts in the complexity of needs among youth- both inside and outside of the juvenile justice system. Several jurisdictions have recently established more open communication channels among agencies to serve children and youth who come into contact with some of the entities with special needs. According to OJJDP's *Juvenile Offenders and Victims: 1999 National Report*, by the end of 1997, 47 states and the District of Columbia enabled information from the juvenile justice system to be shared with at least one of the following: prosecutors, law enforcement, social agencies, schools, victim(s), or the public.

In its deliberations, the Legislative Subcommittee underscored the sanctity of information about juveniles and the importance of protecting them from abuse of

privileges in the sharing of information. This will ensure that a more seamless network of services and opportunities is provided to a child and family once identified.

Recognizing that contemporary best practices in some states, such as Delaware, where the implementation of a FACES information system enables various levels of security clearance for youth serving entities, provide for safeguards against improper access and misuse of information, the Office of the Deputy Mayor for Children, Youth, and Families has also begun implementation of a *Safe Passages Information System* to create a more unified network of service delivery. Collaborative efforts garnered from implementation of *Safe Passages* could also enhance family-based therapy options, such as multisystemic therapy (MST). MST, a form of intensive home-based therapy utilizing counselors to work with authority figures, has had documented successes in the reduction of re-arrest rates, truancy, and out-of-home placements. During a site visit to New York City, a Legislative Subcommittee member observed therapy discussions in action and engaged staff at two licensed MST programs.[2]

Given the historical bifurcation of the juvenile justice system in the District of Columbia, new attention to information sharing opportunities will enable more collaborative work on ITPs and other strategies to meet the needs of youth in a more timely fashion. The Subcommittee, in this context, recommends that the confidentiality statute of the D.C. Code Section 4-105.08 be amended to include language that permits

[2] Center for the Study and Prevention, University of Colorado, Boulder and Medical University of South Carolina, MST Program, Miscellaneous materials; Schoenwald, S. K., Ward, D. M., Henggeler, S. W., Pickrel, S. G., & Patel, H. (1996). MST treatment of substance abusing or dependent adolescent offenders:

the juvenile justice system to provide cooperative and comprehensive solutions and a continuum of services to delinquent youth, while protecting the rights to confidentiality alike.

In order to augment the provision of full treatment for a child, the records of the juvenile court, as well as all information obtained and social records prepared for children who have been adjudicated delinquent may be shared without court order by the Youth Services Administration (YSA) representative to the treatment team, with other members of the treatment team, including a representative from the District of Columbia Public Schools, or any agency providing or proposing to provide treatment to the child.

Victims may learn about release or detention status of the offender pre-adjudication and post-adjudication and may learn whether the child was found involved or not involved. The victim may not learn about details of the disposition, or social records information, or mental health information of the child. Other than this specific and enumerated exception, this information is not to be used other than for the treatment and rehabilitation of the child and especially not to be included in school records. If violated, it will be considered a criminal offense.

Costs of reducing incarceration, inpatient, and residential placement. *Journal of Child and Family Studies* 5, 431-444.

Establishment of Inter-Agency Task Force

The establishment and operation of an Inter-Agency Task Force will enable assessment of youth needs earlier in the judicial process. With a range of stakeholders invited to participate, including human service agencies, police and other law enforcement[3] officials, and private children and family service organizations.

The Legislative Subcommittee recommends that the government of the District of Columbia establish, by statute, a community based juvenile justice program task force to provide cooperative and comprehensive solutions and a continuum of services to delinquent youth. The task force should include representatives from all agencies dealing with court involved youth or identified at-risk youth. The task force goals should include:

- Ensure the availability of programs to serve court-involved youth and at risk youth who volunteer for diversion and who upon successful completion of the program will have their cases dismissed without undergoing any further adjudicatory proceedings and/or custodial sentencing proceedings.

[3] The Public Defender Service objects to the inclusion of law enforcement officials on the inter-agency task force because of its concerns about the use of confidential information to target 'problem' children for 'enhanced law enforcement attention."

- Provide a continuum of District-wide services that comprehensively rehabilitates court-involved and at-risk youth that volunteer to participate in programs.

- Provide for the sharing of information of the school, social and treatment records of a child, between task force members, to allow for the development of comprehensive diversion alternatives for children.

Establishment of Blended Sentencing[4]

Blended sentencing- adopted in 20 states by the end of 1997- provides judges with the option to exercise flexibility in the sentencing of a juvenile who is charged as an adult. Instead of imposition of a straight adult sentence, the juvenile would receive a commutation of the adult sentence after a juvenile commitment if rehabilitation is achieved. Prosecution as an adult must involve the determination that safety and security of the community are compromised and that the juvenile cannot be rehabilitated. It is estimated that blended sentencing would reduce by 50% the number of juveniles ultimately incarcerated after age 21 as adults.

During a site visit with officials and youth at the Missouri Department of Youth Services, Commission members garnered a perspective from the state with the lowest juvenile recidivism in the United States (11%). Called "dual jurisdiction," youth through the age of 17 are allowed to spend time in juvenile facilities after conviction under adult

sentencing guidelines. If they do not demonstrate that they have been rehabilitated, their adult sentences are reinstated. During a visit in May 2001 to Montgomery City, Missouri, Commission members spoke with youth about the experience. The average length of stay for "traditional" confinement was 8-10 months; for youth sentenced under dual jurisdiction, 2.5-3.0 years. Youth relayed positive and negative experiences, as they spoke in terms of victim empathy and relayed that "people are willing to work with you." The program at Montgomery City, they shared, "establishes values, morals, decision-making." "One on one time really helps," a 19 year old convicted of murder indicated to Commission members. Youth who were not sentenced under dual jurisdiction criteria relayed that the curriculum in general provided them with possibilities to deal with anger, family tensions, and drugs.

The Legislative Subcommittee recommends that the government of the District of Columbia amend the adult criminal code to allow for the blended sentencing of juvenile offenders. The establishment of a blended sentence for a juvenile offender would allow the court, once a child has been transferred to the adult system, upon conviction, the option of returning the youth to the juvenile system for rehabilitation.[5] Under a blended sentence, the adult sentence would be suspended and then rescinded if the juvenile completes his treatment/rehabilitation plan successfully. If not, the adult sentence may be imposed. The amendment should also include a provision which allows the court the discretion to detain a youth in a juvenile facility, regardless of their transfer to the adult system, if the safety of the child and the facts and circumstances of the case warrant it.

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[4] The United States Attorney voted no during approval of this motion in full Commission.

As of August 2, 2001, there were 46 persons who were incarcerated in the District of Columbia Department of Corrections as adults who were 16 or 17 years of age. Please see Table 6 and Table 7 for breakdown of current ages and minimum sentences.

A body of research indicates that these new state options open up possibilities to rehabilitate offenders and create new options for treatment. In addition, recent studies from the RAND Corporation and other researchers document the extent to which incarceration of juveniles as adults only contributes to the release of more violent ex-juvenile offenders who commit crimes of a greater severity. Rand's 1996 study in particular found that there were also extensive social and economic cost savings associated with investments in prevention programs. The California study documented that investment of $1million in graduation incentives for poor youth would help to prevent 258 serious crimes.

Amend the Direct File Provisions of the DC Code[6]

Juveniles in the District of Columbia currently do not have the due process associated with a judicial hearing afforded youth in other jurisdictions prior to their transfer to the United States Attorney for prosecution as adults.[7] Prior to 1970, the law of the District of Columbia did not permit direct filing of adult charges against juveniles. D.

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[5]States have had varied experiences with blended sentencing. Also, see Torbert et. al (2000) and Griffin (1998).

[6] The United States Attorney voted no during approval of this motion in full Commission meeting.

TABLE 6

Current Ages and Number of Juveniles Prosecuted as Adults and Incarcerated, as of August 2, 2001

Current Age in Years	16	17	18	19	20	21	22	23	24	25	Total
Number	4	10	13	4	4	4	4	2	1	0	46

SOURCE: D. C. Department of Corrections

TABLE 7

Minimum Sentences and Number of Juveniles Prosecuted as Adults, as of August 2, 2001

Sentence Range in Years	Less than 5	5-10	11-15	16-20	21-30	31-40	40+	Unsentenced	Total
Number	4	7	3	0	1	0	5	26	46

SOURCE: D. C. Department of Corrections

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[6] The United States Attorney voted no during approval of this motion in full Commission meeting.

C. Code, 1967 Edition Supplement IV 1971, p. 310, which provides in relevant part, as follows:

> Sec. 121(a) of Act July 29, 1970, Pub. L. 91-350, amended chapter 23 of title 16 of the D. C. Code to read as hereinafter set out. The original chapter 23, which this section revises and amends generally, was a part of section 1, of the Act of Dec. 23, 1963, Pub. L. 88-241; 77 Stat. 478, et seq., the original chapter was entitled "Juvenile Court Proceeding" and consisted of sections 16-2301 to 16-2316, 16-2341 to 16-2356 and 16-2381 to 16-2384, whereas the amended and revised chapter is entitled "Family Division Proceedings" and consists of section 16-2301 to 16-2337 and 16-2341 to 16-2348. For the provisions of the original chapter as the same may have been previously amended, see the 1967 edition of the code, together with Supplement III thereto.

A decision to direct file is based neither upon a determination that prosecution as an adult is necessary because the juvenile is not likely to be rehabilitated by age 21 nor on the determination that such prosecution is necessary to protect the community. Instead, such direct file is simply based on the fact that one of the named offenses is charged. Discretionary transfer is the only way to determine with a reasonable degree of accuracy whether the juvenile is likely to be rehabilitated and whether the incarceration of the juvenile is necessary for the protection of the community.

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[7] Griffin, P., Torbet, P., Szymanski, L., *Trying Juveniles as Adults in Criminal Court: An Analysis of State*

Amend the Juvenile Transfer Provisions of the DC Code

Commission members also expressed concern about the *presumption of guilt* against younger offenders who could be transferred without a hearing.

The Legislative Subcommittee, therefore, supports the recommendation that the transfer provisions of the D.C. Code Section 16-2307 (e-1) and (e-2) be deleted to remove the presumption of guilt from the court's transfer proceedings.

Amend Criteria for Detention and Commitment

The Commission is very concerned about the diverse manner in which youth in the city are treated before the Courts of the District of Columbia. It is not unusual to have youth charged with similar offenses but to find themselves with radically different dispositions and sentences. There is also indication from review of offense files and social histories that treatment is sometimes arbitrary and based on stereotypical assumptions about youth and their families or geographic locations.

The Legislative Subcommittee, therefore, supports a recommendation that the criteria for detention and commitment (Sup. Ct. Juv. R.106) be amended to include the guidelines ordered by the court for the *Jerry M.* Decree for detention of youth. An

effective continuum of care for the District of Columbia's juvenile justice system should be developed, with the creation of alternatives to secure detentions for pre-adjudicated youth.

The following guiding principles for use of detention should be incorporated into the amended statute:

- For alternatives to detention to be effective, agreement is needed on the purpose of secured detention and alternatives.
- Detention alternatives should be planned, implemented, managed, and monitored using accurate data.
- A detention system should include a continuum of detention alternatives, with various programs and degrees of supervision matched to the risks of detained youth.
- Detention alternatives should be culturally competent, relevant and accessible to the youth they serve.
- Detention alternatives should be designed and operated on the principle of using the lease restrictive placement consistent with public safety.
- Detention alternatives should reduce overuse of secure detention.