Facts About

Children and the Law

"Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence."

— John Adams, December 1770

American Bar Association
Division for Media Relations and Public Affairs

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Table of Contents

Page

Children's Rights

Question 1 How many children are involved with the legal system? 1

Question 2 What is a guardian *ad litem?* 1

Question 3 When is a child considered an adult? 2

Question 4 Can minors consent to medical treatment without parental permission? 2

Question 5 Do minors have a legal right to an abortion? 4

Question 6 Are curfews legal? 5

Question 7 Are students allowed to pray at a public school? 5

Question 8 Do students have a constitutional right to "free speech" in the context of public schools? 6

Question 9 Can officials legally search a student's person, property and locker at a public school? 6

Question 10 Are children with disabilities entitled to a public education? 7

Juvenile Justice

Question 11 Are juveniles entitled to any due process protections in juvenile delinquency hearings? 8

Question 12 Do juveniles adequately receive due process protections in juvenile delinquency hearings? 8

Question 13 Is the rate of juvenile crime exploding ? 8

Question 14 How and why are children sent to adult criminal court? 9

Question 15 Are minorities over-represented in the juvenile justice system? 10

Question 16 Do prevention programs work? 11

Question 17 How are America's children affected by guns and gun violence? 11

Question 18 How does the risk of harm from gun violence compare between children in the United States and children elsewhere? 13

Question 19 What are the current trends in substance abuse among young people? 14

Family Related Issues

Question 20 Are mothers still favored for custody in marital dissolution? 15

Question 21 How many states allow divorcing parents to have joint legal custody of their children? How many states have a presumption in favor of joint legal custody? 15

Question 22 Are the guidelines for determining custody different if the child involved is eligible to be or is a member of a Native American tribe? 17

Question 23 How is child support determined in a divorce or paternity case? 17

Question 24 What happens if a parent does not pay court-ordered child support? 18

Question 25 Must the rights of both biological parents be terminated in order for a child to be legally free for adoption? 18

Question 26 How many children are abused and neglected in this country? 19

Question 27 How many children are in America's foster care system? 20

Question 28 How does domestic violence impact children? 21

Question 29 How many children live in poverty in the U.S.? 21

Question 30 How do poor children get legal assistance when they need it? 22

Sources & Bibliography 23–25

Graphs

		Page
Graph 1	**State Laws Regarding a Minor's Right to Consent to Abortion**	4
Graph 2	**Juvenile Arrests for Index and Non-Index Offenses, 1994**	9
Graph 3	**1990 Juvenile Population**	10
Graph 4	**Populations in Public Juvenile Facilities**	10
Graph 5	**Rates of Firearm-Related Death Among Children Aged <15 Years**	13

Tables

		Page
Table 1	**State Laws Allowing a Minor to Consent to Medical Treatment**	3
Table 2	**Firearm Deaths of Children, 1993**	12
Table 3	**Percentage of 12- to 17-year olds who reported drug use at least one time during the month preceding the survey**	14
Table 4	**State Laws Regarding Joint Custody**	16

Children's Rights

Question 1 How many children are involved with the legal system?

Answer Overall, the number of children involved in the legal system is staggering when taking into account children in the juvenile justice system, in dependency courts because of abuse or neglect, and in family law courts because of divorce, custody, or child support determinations. State trial courts reported 4.7 million cases involving domestic relations in 1994. They comprised divorce (39 percent); adoption, paternity, URESA and miscellaneous (27 percent); child custody and support (18 percent); domestic violence (16 percent); and 1.9 million juvenile petitions.

State courts are overwhelmed by cases involving children and families because of, among other things, rapid rises in reported cases of abuse and neglect, and federal legislation that placed burdens on state courts without additional funds. Between 1984 and 1994, there was a 65 percent increase in domestic relations cases and a 59 percent increase in juvenile cases. In particular, one survey of 35 states found 1.29 million new divorce filings in 1992, an increase of almost 100,000 from 1988. Another recent study noted that in New York state the caseload for child abuse increased by more than 300 percent between 1984 and 1989. In Michigan, the number of cases increased by nearly 300 percent between 1984 and 1988. Judges in Chicago hear on average 1,700 juvenile delinquency cases per month, while in Los Angeles juvenile court judges have about ten minutes to devote to each case.

Source: ABA, *An Agenda for Justice: ABA Perspectives on Criminal and Civil Justice Issues* 111-112 (1996).

Question 2 What is a guardian *ad litem*?

Answer In general, because a minor in most cases cannot initiate or defend lawsuits without adult assistance, a court will appoint a guardian *ad litem* for a minor appearing in court in order to ensure that the minor's interests are adequately represented. While parents usually serve as the guardian, a guardian *ad litem* may be appointed if a parent or general guardian is unavailable, incompetent, or has conflicting interests. Any person, including non-lawyers, may be appointed to serve in the capacity of a guardian *ad litem*. Some states have mandatory training in order to qualify as a guardian *ad litem*, while other states have no training or standards. Various terms exist for guardians *ad litem*, including Court Appointed Special Advocate, law guardian, or next friend.

Guardians *ad litem* perform various functions depending upon the state and type of court. In general, they serve one of three purposes: (1) to protect a child's "best interests"; (2) to be an independent fact-finder for the judge; or (3) to follow and advocate the child's wishes. The appointment of guardians *ad litem* are generally considered to be within the discretionary powers of the court. They are often appointed in adoption, child custody, child support, paternity, visitation rights, and child abuse cases. Guardians *ad litem* have also been appointed to represent the interests of unborn heirs who are beneficiaries to a trust, in cases involving wills and trusts, and when a child has an interest in an insurance policy or some other benefit.

Source: Donald Kramer, *Legal Rights of Children* vol 1, 530-543 (2nd edition, 1994).

Question 3 When is a child considered an adult?

Answer In most states, minors reach the age of majority at 18, at which time they are legally able to make their own decisions free from parental authority and control. Many states, however, have established circumstances under which a youth may become "emancipated" before the age of 18. Roughly half the states provide for automatic emancipation if the minor enters a valid marriage or joins the armed services. In addition, roughly half of the states have enacted legislation that allows a court to declare a minor emancipated upon the filing of a petition by the minor and/or his or her parents. While state statutes vary, there are certain similarities such as that the youth must: (1) be a minimum age (usually 16); (2) live apart from his or her parents; and (3) be economically self-sufficient.

Source: American Bar Association, Center on Children and the Law, *Runaway and Homeless Youth: A Survey of State Law* 13 (1994).

Question 4 Can minors consent to medical treatment without parental permission?

Answer Yes, in some instances. States have traditionally required parental consent before a minor receives medical treatment. Exceptions have long existed, however, including authorization for doctors to treat a minor involved in an emergency. In recent years, states have given teenagers greater authority to make decisions for themselves. Some states have adopted the "mature minor" rule, which allows a minor who is sufficiently intelligent and mature to understand the nature and consequences of the treatment to consent without consulting his or her parents or obtaining their permission. States have also passed laws that specifically authorize minors to consent to medical treatment for health care related to substance abuse, mental health, and sexual activity.

Source: The Alan Guttmacher Institute, *Lawmakers Grapple with Parent's Role in Teen Access to Reproductive Health Care*, Issues in Brief (November 1995).

See Table 1 on following page.

Table 1 / **State Laws Allowing a Minor to Consent to Medical Treatment**

State	Contraceptive services	Prenatal care	STD-HIV/AIDS services	Alcohol and/or drug abuse treatment	Outpatient mental health services
Alabama		•	•	•	•
Alaska	•	•	•		
Arizona			•	•	
Arkansas	•	•	•		
California	•	•	•	•	•
Colorado	•		•	•	•
Connecticut			•	•	•
Delaware	•	•	•	•	
District of Columbia	•	•	•	•	•
Florida	•	•	•	•	•
Georgia	•	•	•	•	
Hawaii	•	•	•	•	
Idaho	•		•	•	
Illinois	•	•	•	•	•
Indiana			•	•	
Iowa			•	•	
Kansas		•	•	•	
Kentucky	•	•	•	•	•
Louisiana			•	•	
Maine	•		•	•	•
Maryland	•	•	•	•	•
Massachusetts		•	•	•	•
Michigan		•	•	•	•
Minnesota		•	•	•	
Mississippi	•	•	•	•	
Missouri		•	•	•	
Montana	•	•	•	•	•
Nebraska			•	•	
Nevada			•	•	
New Hampshire			•	•	
New Jersey		•	•	•	
New Mexico	•		•	•	•
New York	•	•	•	•	•
North Carolina	•	•	•	•	•
North Dakota			•	•	
Ohio			•	•	•
Oklahoma	•	•	•	•	
Oregon	•		•	•	•
Pennsylvania		•	•	•	
Rhode Island			•	•	
South Carolina					
South Dakota			•	•	
Tennessee	•	•	•	•	•
Texas		•	•	•	•
Utah		•	•		
Vermont			•	•	
Virginia	•	•	•	•	•
Washington			•	•	•
West Virginia			•	•	
Wisconsin			•	•	
Wyoming	•		•		

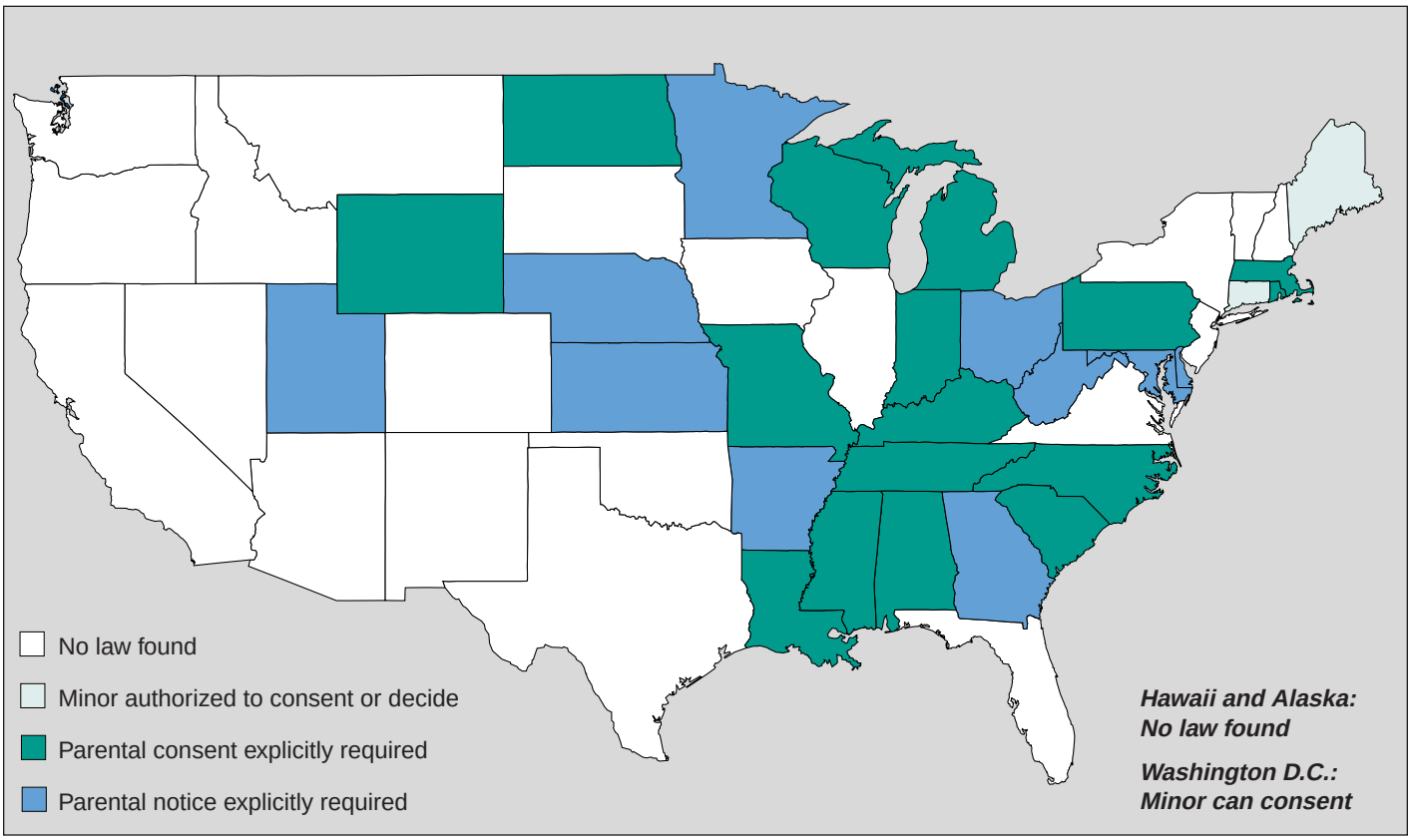
Question 5 Do minors have a legal right to an abortion?

Answer Yes; The U.S. Supreme Court held in *Roe v. Wade* that a woman has a legal right to an abortion. Although the case dealt with adult women, later Supreme Court decisions held that this right extends to minors. A minor's right to consent to an abortion, however, varies from state to state, with some requiring parental notification and/or consent. As the map shows, 26 states have laws in effect mandating the involvement of at least one parent in the decision making process. In 16 of these states, a minor must have the consent of one or both parents, and in the other 10, one or both parents must be notified prior to the abortion. However, while a state may require parental consent or notification in order for a minor to terminate a pregnancy, a state may only do so if it gives the minor a confidential alternative to parental involvement. Under this alternative procedure — commonly referred to as a judicial by-pass — a minor may obtain authorization for an abortion from a judge (or administrative agency) without notifying the minor's parents if the minor can show she is mature enough to make her own decisions or that the abortion is in her best interests.

Source: The Alan Guttmacher Institute, *Lawmakers Grapple with Parent's Role in Teen Access to Reproductive Health Care*, Issues in Brief (November 1995).

Bellotti v. Baird, 443 U.S. 622 (1979).

Graph 1 / **State Laws Regarding a Minor's Right to Consent to Abortion**



Question 6 Are curfews legal?

Answer Narrowly crafted ordinances designed to address specifically identified problems appear able to withstand legal challenges, especially if they provide exceptions for children who are out after curfew with their parents' consent or for legitimate purposes. In recent years, teen curfews have become increasingly popular with localities as a means of combating increased juvenile delinquency, decreased parental supervision, and other social trends. A study published in the *American Journal of Police* of curfew ordinances in the 200 largest U.S. cities (population of 100,000 or greater) found a dramatic surge in curfews in the first half of the 1990s, with 73 percent having curfews in effect.

However, teen curfews have increasingly come under legal scrutiny on a variety of constitutional grounds including freedom of speech, freedom of association, freedom of movement, and equal protection. Curfew laws are often attacked as being too vague or too broad and, thus, are sometimes held unenforceable because they forbid legal acts. Of particular importance is whether statistical evidence indicates that youths commit more crimes or become crime victims more often during the hours of the curfew. The effectiveness of teen curfews in reducing juvenile crime is currently being studied.

Source: W. Ruefle and K.M. Reynolds, *Keep Them at Home: Juvenile Curfew Ordinances in 200 American Cities*, American Journal of Police (1996); U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, *Curfew: An Answer to Juvenile Delinquency and Victimization*, Juvenile Justice Bulletin (April 1996).

Qutb v. Strauss, 11 F.3rd 488 (5th Cir. 1993).

Question 7 Are students allowed to pray at a public school?

Answer Individual students are free to pray, express religious viewpoints, read the Bible, and have religious discussions with other students, so long as they are not disruptive or disrespectful of the rights of other students. Students may also meet as a group for religious purposes. Under the federal Equal Access Act, if a secondary school permits extra-curricular student groups to meet during non-instructional time, religious groups must be given equal treatment. However, the Act does not allow teachers or other adults to lead the meetings, and courts have ruled that students may not deliver a sermon to a captive audience in a classroom or at a school-sponsored event.

In addition, the U.S. Supreme Court has repeatedly held that prayers, including devotional Bible readings, organized or sponsored by a public school, whether over the public-address system, in the classroom, or during graduation ceremonies, violate the First Amendment of the U.S. Constitution. Moments of silence, if used to promote prayer, have been struck down by the courts. A "neutral" moment of silence that does not encourage prayer over any other quiet time has been upheld even though some students may use it as a religious moment.

Source: Charles Haynes & Oliver Thomas, *Finding Common Ground: A First Amendment Guide to Religion and Public Education* (Rev. ed. 1996).

Engel v. Vitale, 370 U.S. 421 (1962); *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963); *Lee v. Weisman*, 505 U.S. (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985).

Question 8 Do students have a constitutional right to "free speech" in the context of public schools?

Answer Students in public school (as opposed to a parochial or private school) have the right to free speech and expression, so long as the exercise of those rights would not materially and substantially disrupt the work and discipline of the school. However, courts have recognized that a school may impose reasonable regulations with respect to the time, place, and manner in which students and student organizations may conduct their speech-related activities. In addition, the First Amendment does not protect student speech that is vulgar, lewd, obscene, or plainly offensive. However, while school officials may, under certain circumstances, constitutionally limit a student's expression, they may not compel other expression. For example, a school requirement that students salute the flag and recite the Pledge of Allegiance was held unconstitutional by the U.S. Supreme Court.

A student's right to free speech includes the right to communicate his or her views by means of written materials, such as newspapers or pamphlets. The distribution of written materials may be prohibited only if it materially and substantially interferes with school activities. However, a public school may set high standards for student speech that is disseminated under its auspices. A school may take into account the emotional maturity of a school newspaper's intended audience, and may refuse to sponsor student speech that advocates conduct inconsistent with the shared values or civilized social order, or which associates the school with any position other than strict neutrality on politically controversial matters. For example, the Court ruled that a high school principal was justified in excising two pages from a school newspaper on the ground that some articles located in those pages unfairly invaded the privacy of a certain pregnant student and a divorced parent.

Source: Donald Kramer, *Legal Rights of Children* vol 2, 509-513 (2nd edition, 1994).

Question 9 Can officials legally search a student's person, property and locker at a public school?

Answer A public school student's person, property, and locker may be searched by law enforcement officers, but they are governed by many of the same limitations as any other police searches, including the Fourth Amendment which guarantees a student a limited right to be free from unreasonable searches and seizures. Thus, searches conducted by school officials which are based on "reasonable suspicion" that a particular regulation or law has been violated will most likely be held valid by the courts. The search may be for items that violate school rules as well as illegal items. However, as the level of intrusiveness of the search increases, the reasons that justify the search must increase in strength as well, until they are almost indistinguishable from probable cause. For example, strip searches are generally not approved by the courts except in the most serious of situations, while the use of metal detectors through which students must pass in order to enter the school building are permissible.

In addition, while mass searches of students themselves are generally not legal because under the "reasonable suspicion" test suspicion must always relate to a particular individual, courts have approved the use of specially trained police dogs to sniff out contraband in a generalized patrol of all student lockers, even where there is no reasonable cause to suspect contraband in any particular locker. The use of "sniffer dogs" has been permitted based on the theory that "sniffing" out contraband in a locker is non-intrusive and, therefore, not a search.

School officials may also question a student without giving the Miranda warning — that is, a student has no constitutional right to be advised that he or she has a right to remain silent or to have his or her parents, or another advisor, present during questioning by school authorities. However, state statutes may require school officials to advise a student of such rights.

Source: Donald Kramer, *Legal Rights of Children* vol 2, 548-559 (2nd edition, 1994); Robert Shepherd, Jr. & Anthony DeMarco, *Weapons in School and Zero Tolerance*, 11 Criminal Justice 46, 46-47 (Summer 1996).

New Jersey v. T.L.O., 469 U.S. 325 (1985).

Question 10 Are children with disabilities entitled to a public education?

Answer Federal law requires free, appropriate, and public education for all children with disabilities which include mental illnesses, mental retardation and other developmental disabilities, learning disabilities, chronic health problems, physical impairments, hearing impairments and deafness, speech impairments, and visual impairments and blindness. Under the federal Individuals with Disabilities Education Act (IDEA), disabled children are entitled to a range of services including early identification and assessment of disabilities, psychological services, medical services for diagnostic or evaluative purposes, special transportation to school and activities, and parent counseling. Regulations mandate that, to the greatest extent possible, disabled children be "mainstreamed" — that is, allowed to attend class with children who are not disabled — to help decrease the stigma attached to children placed in "special" education programs.

In addition, the IDEA requires schools to develop an Individualized Education Program (IEP) for each child found to be disabled and that the plan must be reviewed annually. After the child's abilities and educational needs have been evaluated by the school, it must work with the child's parents to create an IEP that establishes which special education services are necessary.

Source: American Bar Association, Commission on Mental and Physical Disability Law, *Mental Disability Law: A Primer* (5th edition) 40 (1995).

Juvenile Justice

Question 11 Are juveniles entitled to any due process protections in juvenile delinquency hearings?

Answer In 1967, the U.S. Supreme Court held for the first time that children were persons under the 14th Amendment Due Process Clause and entitled to certain constitutional rights. In the case of *In re Gault*, the Court held that juveniles are entitled to notice of the charges against them, legal counsel, questioning of witnesses, and protection against self-incrimination in hearings that could result in commitment to an institution. The Supreme Court further established in *In re Winship*, that the reasonable doubt standard should be required in all delinquency adjudications. However, unlike adults, juveniles do not have the constitutional right to be released pending trial or to a jury trial in most states.

In re Gault, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970).

Question 12 Do juveniles adequately receive due process protections in juvenile delinquency hearings?

Answer Studies have indicated that many juveniles do not receive the due process protections to which they are entitled. More importantly, they frequently do not receive effective assistance of legal counsel. For example, in many instances, juveniles are urged to waive their right to counsel. In other cases where juveniles receive counsel, that counsel is often deprived of the resources to provide effective legal representation — lawyers who represent juveniles often labor under enormous caseloads with little training or support staff. One recent nationwide study found that public defenders who represent juveniles have, on average, more than 500 cases per year, with more than 300 of those cases being juvenile cases. Public defenders often lack specialized training in representing juveniles: approximately one-half of public defender offices do not even have a section devoted to juvenile delinquency practice in the office training manual while about one-third do not include juvenile delinquency in the general training program.

Sources: Barry C. Feld, *In re Gault Revisited: A Cross-State Comparison of the Right to Counsel in Juvenile Court*, 34 Crime & Delinq. 393 (1988); Barry C. Feld, *The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make*, 79 J.Crim. L. & Criminology 1185 (1989); Barry C. Feld, *Punitive Juvenile Court and the Quality of Procedural Justice: Disjunctions Between Rhetoric and Reality*, 36 Crime & Delinq. 443 (1990); Barry C. Feld, *Justice By Geography: Urban, Suburban, and Rural Variations in Juvenile Justice Administration*, 82 J. Crim L. & Criminology 156 (1991); Barry C. Feld, *Justice for Children: The Right to Counsel and the Juvenile Courts* (1993); John M. Stuart, *Right to Counsel, The Unkept Promise to Our Juvenile Accused*, 48 Bench & B. Minn. 27 (Aug. 1991).

Patricia Puritz et al., *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation* (American Bar Association 1996).

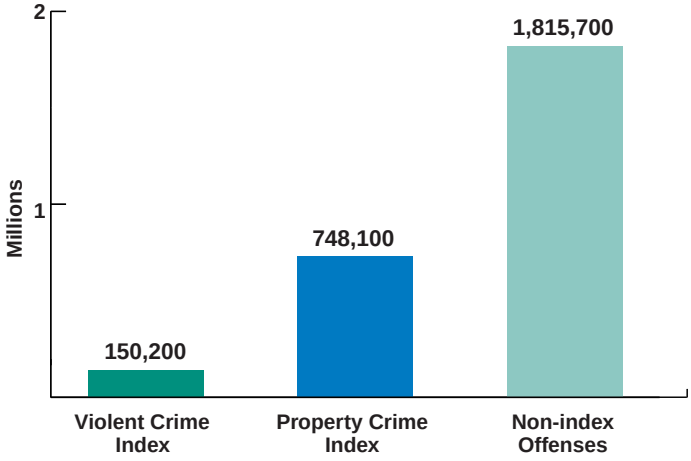
Question 13 Is the rate of juvenile crime exploding ?

Answer Ninety-four percent of American juveniles are arrest-free. Of the six percent who were arrested in 1994, only about seven percent (i.e., less than one-half of one percent of juveniles in the U.S.) were arrested for a Violent Crime Index offense in 1994. Although there was a sharp increase in recent years in the homicide arrest rate for juveniles — which has been largely attributed to the increased availability of handguns — the homicide arrest rate for youth has fallen 22.8 percent since 1993, according to the most recent figures from the Federal Bureau of Investigation. The overwhelming majority of juvenile arrests have nothing to do with violence. Most violent crimes (86 percent in 1994) are committed by adults, and adults are responsible for three-fourths of the increase in violent crimes.

Source: Howard N. Snyder, Melissa Sickmund and Eileen Poe-Yamagata, *Juvenile Offenders and Victims: 1996 Update on Violence*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (1996).

See Graph 2 on following page.

Graph 2 / **Juvenile Arrests for Index and Non-Index Offenses, 1994**



Index offenses

Violent
- Murder/non-negligent manslaughter
- Forcible rape
- Robbery
- Aggravated assault

Property
- Burglary
- Larceny-theft
- Motor vehicle theft
- Arson

Non-Index offenses
- Other assaults
- Forgery and counterfeiting
- Fraud
- Embezzlement
- Stolen property; buying, receiving, possessing
- Vandalism
- Weapons; carrying, possessing, etc.
- Prostitution and commercialized vice
- Sex offenses (except forcible rape and prostitution)
- Drug abuse violations
- Gambling
- Offenses against the family and children
- Driving under the influence
- Liquor law violations
- Drunkenness
- Disorderly conduct
- Vagrancy
- All other offenses (except traffic)
- Curfew and loitering law violations
- Runaways

Question 14 How and why are children sent to adult criminal court?

Answer All states have some type of provision for sending children to adult criminal court on the premise that some children have committed crimes so violent or are so unreceptive to rehabilitation in the juvenile justice system that they should be treated as adults. There are three main avenues for children to be sent to adult court. Children can be *judicially waived*, which means that the juvenile court judge holds a hearing to determine whether the juvenile court should waive its jurisdiction over the child. Most state statutes specify what factors the juvenile court judge should consider, such as seriousness of the offense, the age of the child at the time of the offense, and amenability to treatment. From 1992 to 1995, several states lowered the age limit and/or added crimes for which children may be tried as adults. In 1993, 11,800 children were judicially waived to adult court, representing a 41 percent increase over the number of children waived in 1989.

A few states allow children of a certain age or charged with certain offenses to be tried as adults by *prosecutorial discretion*. In 1995, 10 states and the District of Columbia provided transfer by prosecutorial discretion. *Statutory exclusion* accounts for the largest number of juveniles tried in adult court. Under this scheme, state laws specify the circumstances under which children will be automatically tried as adults. As of 1995, 36 states and the District of Columbia automatically remove certain categories of juveniles from juvenile court jurisdiction. Many states have expanded the categories of crime and/or lowered the age limit to make juveniles eligible for automatic waiver to adult court. Twelve states do not set any minimum age for prosecution as an adult.

Some states have also created "blended sentencing" models, whereby juvenile or criminal court judges can sentence juveniles to a mix of adult and juvenile sanctions.

Recent studies have shown that trying juveniles as adults has serious adverse consequences for public safety; juveniles who are tried as adults are more likely upon release to commit new, more serious crimes. Juveniles who are tried as adults — who today may be 13, 14, or even younger — are frequently housed with adult prisoners where they are more likely to be assaulted and mistreated and receive no educational or vocational training, significantly reducing the likelihood that they will successfully return to society.

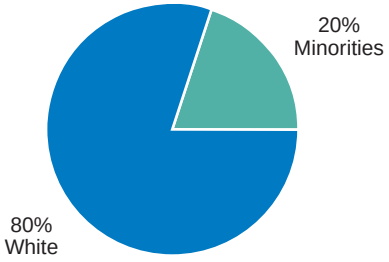
Source: Donna M. Bishop, Charles E. Frazier et al., *The Transfer of Juveniles to Criminal Court: Does It Make a Difference?*, Crime & Delinq. 171 (1996); Jeffrey Fagan, *The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders*, National Institute of Justice (1991); Howard Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: A National Report*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (1995); Patrica Torbet, et al., *State Responses to Serious and Violent Juvenile Crime*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (1996); Catherine J. Ross, *Disposition in a Discretionary Regime: Punishment and Rehabilitation in the Juvenile Justice System*, 36 Boston College L.Rev. 1037 (1995).

Question 15 Are minorities over-represented in the juvenile justice system?

Answer In the United States, there is a strong disproportionate minority confinement. African-American and Latino youth are over-represented at every level of the juvenile justice system. State studies have shown that minority youth are less likely to be released pending trial, less likely to be represented by a lawyer, more likely to be convicted, and more likely to be sentenced to secure detention than their white counterparts who commit the same kind of offense. Nonwhite youth are more likely to be placed in public secure facilities, while white youth are more likely to be housed in private facilities or diverted from the juvenile justice system.

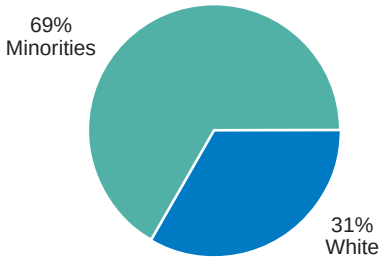
Source: American Bar Association, *America's Children at Risk: A National Agenda for Legal Action* (1993).

Graph 3 / **1990 Juvenile Population**
(Breakdown by Race)



Source: Howard N. Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: A National Report*, Office of Juvenile Justice and Delinquency Prevention (1995).

Graph 4 / **Populations in Public Juvenile Facilities**
(Long-term Facilities)



Source: Howard N. Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: A National Report*, Office of Juvenile Justice and Delinquency Prevention (1995).

Question 16 Do prevention programs work?

Answer Although it would be inaccurate to say that all prevention programs work, there is strong evidence that many programs have kept children who are at-risk of committing crimes from becoming involved with the courts, and have successfully diverted children already in the juvenile justice system from further unlawful activity. For example, a Columbia University study of Boys & Girls Clubs in public housing projects found that housing projects with a Boys & Girls Club had 13 percent less crime than housing projects without a club. Another program for youth ages 13 to 18 with criminal behavior and mental and emotional problems, reports that 82 percent of youth participants remain uninvolved with the juvenile justice system for a five-year period following treatment.

In addition, a recent RAND study found that graduation incentive programs were among some of the most cost-effective crime-fighting programs available. Arrests for students participating in graduation incentive programs were 70 percent lower than that of control students.

Many states have also begun to emphasize balanced and restorative justice programs in the juvenile courts. The model of balanced and restorative justice calls for (1) holding offenders accountable to victims and communities for their actions; (2) helping offenders develop the competencies necessary to function as productive, responsible citizens; (3) ensuring community protection while the offender is under the supervision of the juvenile justice system; and (4) balancing the attention given to the community, victim and offender. Balanced and restorative justice programs may include: offender reparations to victims and communities through community service or restitution; victim offender mediation; victim awareness programs; structured work experiences; service to surrogate victims; dispute resolution training; cognitive and decision-making skills training.

Sources: Richard Mendel, *Prevention or Pork? A Hard-headed Look at Youth-Oriented Anti-Crime Programs*, Washington, D.C. American Youth Policy Forum 13 (1995); Senator Herb Kohl, *Promises Made, Promises Broken: The Failure to Fund Crime Prevention Programs That Work* (September 1996); and Peter Greenwood, et al., *Diverting Children from a Life of Crime, Measuring Costs and Benefits*, RAND Corporation, 1996.

Question 17 How are America's children affected by guns and gun violence?

Answer In 1993, the most recent year for which there are complete statistics, 5,751 children and youth died from firearms, the highest yearly total since child deaths have been reported. Approximately 34,000 adults died from firearms in the U.S. in the same year. Of the 5,751 child and youth guns deaths, 3,661 were homicides, 1,460 were suicides, and 526 were accidents. In addition, according to the Centers for Disease Control, a far greater number of children are *injured* each year by firearms — an estimated five times the number of reported firearm deaths of children.

While gun violence is not a problem limited to one race or class — more than half (2,935) of the children killed in 1993 were Caucasian — it is especially severe among African-American teens. Gun violence is now the leading cause of death among African-American males 15-19 years old, who are more than five times more likely than white males to be gun victims.

Source: National Center for Health Statistics, Office of Analysis, Epidemiology and Health.

See Table 2 on following page.

Table 2 / **Firearm Deaths of Children, 1993**

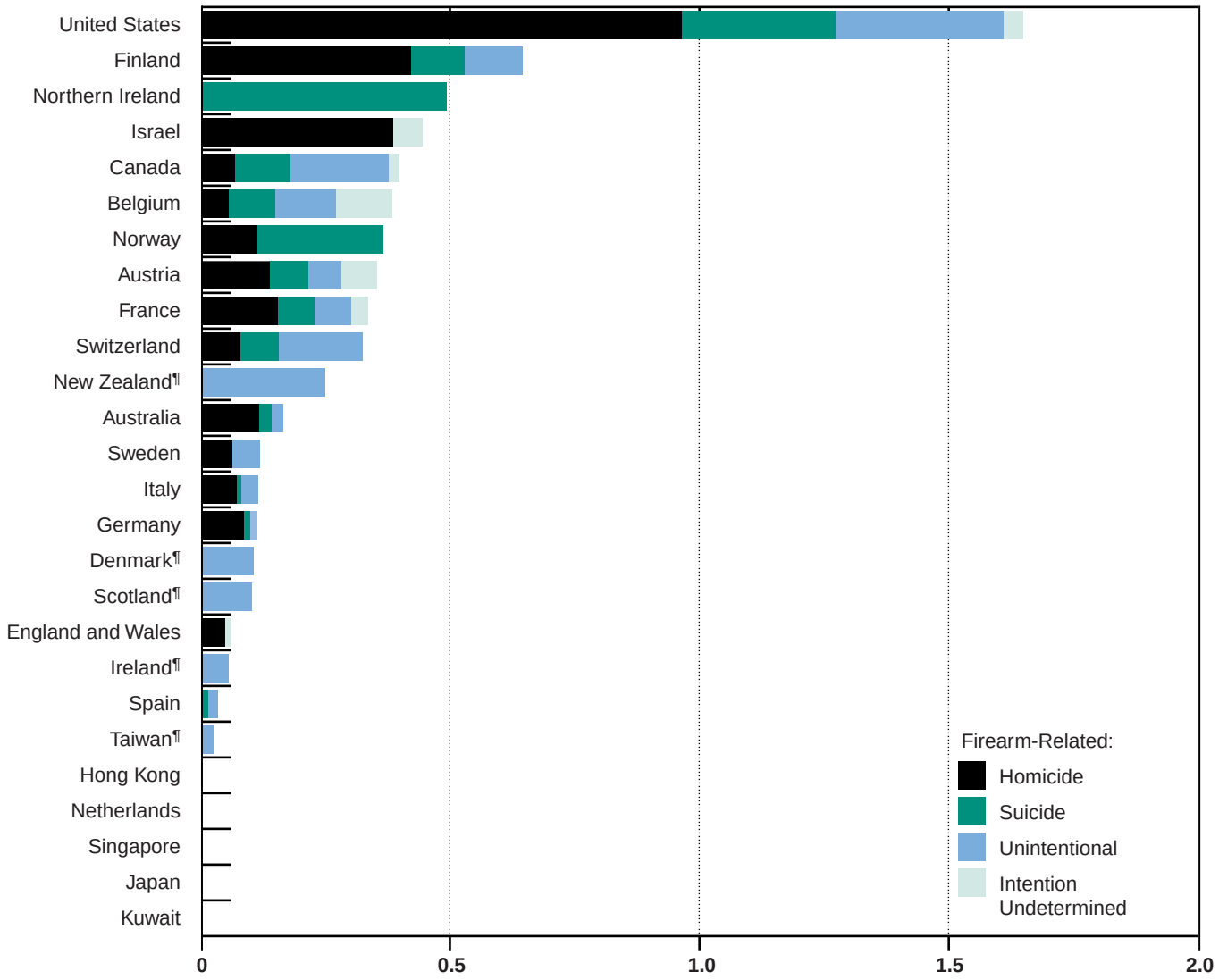
State	Total Firearm deaths	Homicide	Suicide	Accident	Intent Unknown
Alabama	135	71	34	26	4
Alaska	22	3	16	3	0
Arizona	127	53	50	19	5
Arkansas	69	39	24	5	1
California	904	711	141	44	8
Colorado	65	28	28	7	2
Connecticut	47	39	6	2	0
Delaware	5	3	2	0	0
District of Columbia	100	98	1	1	0
Florida	237	154	64	17	2
Georgia	165	92	41	25	7
Hawaii	3	0	1	1	1
Idaho	21	4	12	5	0
Illinois	363	297	45	15	6
Indiana	95	44	31	18	2
Iowa	26	8	15	3	0
Kansas	61	32	22	5	2
Kentucky	56	20	17	18	1
Louisiana	232	166	46	18	2
Maine	10	2	7	1	0
Maryland	110	91	15	1	3
Massachusetts	44	32	10	0	2
Michigan	235	158	58	15	4
Minnesota	39	22	15	2	0
Mississippi	106	52	31	22	1
Missouri	177	127	31	17	2
Montana	30	6	18	5	1
Nebraska	17	9	5	3	0
Nevada	33	13	13	4	3
New Hampshire	8	2	6	0	0
New Jersey	60	39	18	2	1
New Mexico	40	18	17	4	1
New York	344	288	44	8	4
North Carolina	161	93	38	30	0
North Dakota	7	2	4	0	1
Ohio	175	98	50	25	2
Oklahoma	82	34	35	9	4
Oregon	45	16	20	8	1
Pennsylvania	174	107	53	11	3
Rhode Island	10	7	3	0	0
South Carolina	89	47	28	12	2
South Dakota	17	5	10	1	1
Tennessee	114	48	43	23	0
Texas	515	317	125	53	20
Utah	37	7	26	4	0
Vermont	8	0	7	1	0
Virginia	122	64	42	16	0
Washington	82	45	25	8	4
West Virginia	31	13	15	2	1
Wisconsin	82	37	41	4	0
Wyoming	14	0	11	3	0
Total	**5,751**	**3,661**	**1,460**	**526**	**104**

Question 18 How does the risk of harm from gun violence compare between children in the United States and children elsewhere?

Answer A recent United Nation's Report noted that the United States leads the world in rankings for murders of young people. Nine out of 10 killings of young people in the industrialized world happen in the U.S. Since 1979, more children (60,008) have died from firearms in the United States than all of the American soldiers killed during the Vietnam and Gulf Wars, and in U.S. engagements in Haiti, Somalia, and Bosnia combined.

Source: National Center for Health Statistics, Office of Analysis, Epidemiology and Health.

Graph 5 / **Rates* of firearm-related death† among children aged <15 years** — 26 industrialized countries§



* Per 100,000 children aged <15 years and for 1 year during 1990–1995.

† Homicides by firearm (International Classification of Diseases, Ninth Revision, codes (965.0–E965.4), suicides by firearm (E955.0–E955.4), unintentional deaths caused by firearm (E922.0–E922.9), and firearm-related deaths for which intention was undetermined (E985.0–E985.4).

§ All countries classified in the high-income group with populations ≥ 1 million (*5*) that provided complete data. In this analysis, Hong Kong, Northern Ireland, and Taiwan are considered as countries.

¶ Reported only unintentional firearm-related deaths.

Source: Centers for Disease Control, Morbidity and Mortality Weekly Report, Feb. 7, 1997

Question 19 What are the current trends in substance abuse among young people?

Answer According to the National Household Survey on Drug Abuse released by the U.S. Department of Health and Human Services in August 1996, drug use among teenagers has risen substantially over the past four years after a 13-year decline. Marijuana use rose the most dramatically, increasing by more than 4.8 percent from 1992–95. There has also been an increase in inhalant abuse, which refers to the inhaling of common household products. A variety of studies have shown that nearly 12 percent of eighth grade students have experimented with inhalants, and more teens have tried them than have tried cocaine, LSD, and other illicit drugs.

In addition, many types of substance abuse pose a danger to the health and well-being of children, including not only illegal drugs but alcohol and tobacco as well. While alcohol and tobacco are legal products for purchase and consumption by adults, it is illegal for children to purchase them.

Alcohol use has increased among eighth, 10th, and 12th graders. Between 1995 and 1996, the percentage of eighth graders reporting daily use of alcohol increased from 0.7 percent to 1 percent, while the percentage of eighth graders reporting having "been drunk" in the past month increased from 8.3 percent to 9.6 percent. Twenty-one percent of 10th graders and 31.3 percent of 12th graders report having been drunk in the past month. A related concern is the first increase in the number of drunk driving deaths in the U.S. in more than a decade. According to a study released by the National Highway Traffic Safety Administration, alcohol-related traffic accidents killed nearly 17,300 people in 1995, a 4 percent increase from 1994.

In addition, cigarette smoking continues to rise among eighth and 10th graders, and remains at high levels among 12th graders. Between 1995 and 1996, use of cigarettes in the past month increased from 19.1 percent to 21 percent among eighth graders and from 27.9 percent to 30.4 percent among 10th graders. About one-third of 12th graders reported using cigarettes in the past month. The percentage of 10th graders who smoked a half pack of cigarettes or more daily increased from 8.3 percent in 1995 to 9.4 percent in 1996.

Source: U.S. Department of Health and Human Services, *Monitoring the Future* (December 1996).

Table 3 / **Percentage of 12- to 17-year olds who reported drug use at least one time during the month preceding the survey**

Drug	1992	1994	1995	Percent increase 1992–1995	Percent increase 1994–1995
Any illegal drug	5.3%	8.2%	10.9%	105%	33%
Marijuana	3.4	6.0	8.2	141	37
Cocaine	0.3	0.3	0.8	166	166
Hallucinogens	0.6	1.1	1.7	183	54

Source: National Household Survey on Drug Abuse

Family Related Issues

Question 20 Are mothers still favored for custody in marital dissolution?

Answer Under law in at least 44 states, courts should not favor one parent over the other on the basis of the parent's sex. The old Tender Years Doctrine, which was common in many states until the 1970s, provided that upon divorce, the mother should receive custody as long as she was minimally fit. The Tender Years Doctrine has been abolished by statute or case law in almost all states. Today only a few states — all in the South — apply a watered down version of the Tender Years Doctrine. In those states, the maternal preference takes the form of either (1) a tiebreaker that gives custody to the mother when evidence is considered to be equal or (2) an indirect preference for the mother by consideration of the child's age and sex as factors in deciding custody. In the states that apply some form of the Tender Years Doctrine, fathers can obtain custody without showing the mother is unfit, but some legal preference for the mother remains.

Source: Jeff Atkinson, *Modern Child Custody Practice*, sec. 4.05 (Michie/Butterworth Supp. 1996).

Question 21 How many states allow divorcing parents to have joint legal custody of their children? How many states have a presumption in favor of joint legal custody?

Answer All states permit parents to have joint legal custody of their children after a divorce. As of 1996, 43 states and the District of Columbia have statutes that specifically authorize the courts to order joint custody. (In some states, joint custody is referred to as shared custody.) In the 43 states with joint legal custody statutes, 11 states and the District of Columbia declare a presumption in favor of joint custody, which means that courts are supposed to grant joint custody unless there is proof that joint custody is not in the child's best interest. In addition, eight states declare a presumption in favor of joint custody if both parents agree to it. The remaining 24 states with joint custody statutes make joint custody an explicit option without any presumption for or against joint custody. Seven states do not have joint custody statutes, but courts in those states can use their equitable powers to order joint custody in appropriate circumstances. Joint custody usually is considered appropriate when the parents appear willing to cooperate in raising their children.

Source: Jeff Atkinson, *Modern Child Custody Practice*, sec. 6.01 (Michie/Butterworth Supp. 1996).

See Table 4 on following page.

Table 4 / **State Laws Regarding Joint Custody**

State	Joint Custody Authorized	Presumption in Favor of Joint Custody	Presumption in Favor of Joint Custody if Both Parents Agree	Joint Custody Not Specifically Authorized
Alabama				•
Alaska	•			
Arizona	•			
Arkansas				•
California	•		•	
Colorado	•			
Connecticut	•		•	
Delaware	•			
District of Columbia	•	•		
Florida	•	•		
Georgia				•
Hawaii	•			
Idaho	•	•		
Illinois	•			
Indiana	•			
Iowa	•	•		
Kansas	•	•		
Kentucky	•			
Louisiana	•	•		
Maine	•		•	
Maryland	•			
Massachusetts	•			
Michigan	•		•	
Minnesota	•	•		
Mississippi	•		•	
Missouri	•	•		
Montana	•	•		
Nebraska	•			
Nevada	•		•	
New Hampshire	•	•		
New Jersey	•			
New Mexico	•	•		
New York				•
North Carolina	•			
North Dakota				•
Ohio	•			
Oklahoma	•			
Oregon	•			
Pennsylvania	•			
Rhode Island	•			
South Carolina	•			
South Dakota				•
Tennessee	•			
Texas	•	•		
Utah	•			
Vermont	•		•	
Virginia	•			
Washington	•		•	
West Virginia				•
Wisconsin	•			
Wyoming	•			

Question 22 Are the guidelines for determining custody different if the child involved is eligible to be or is a member of a Native American tribe?

Answer Native Americans retain a special status different from non-Native Americans based on the historical relationship between the United States and a sovereign indigenous people as well as from the legislative goals of the Indian Child Welfare Act of 1978. The Indian Child Welfare Act, 25 U.S.C. 1901, *et seq*., contains procedural and substantive provisions for custody proceedings where custody is being sought by a third party, and is intended to protect the best interests of an Indian child and to promote the stability and security of Indian tribes. A court must abide by the following statutory presumptions which are viewed as being in the best interests of an Indian child: (1) a tribal court to decide the child's future; (2) the relationship between the child and the child's tribe be supported and retained; and (3) the child must be placed in a home, either temporarily or permanently, where the child's racial and cultural identity will be secured. The Act does not apply to custody matters between parents.

Source: 25 U.S.C. §1901 *et seq.*

Question 23 How is child support determined in a divorce or paternity case?

Answer All 50 states have adopted child support percentage guidelines. While the percentages differ from state to state, the guidelines apply a percentage to the payor's income. The child support can be expressed as a floating percentage of income or as a fixed dollar amount. Usually, the parent without the child the majority of the time will pay support, but if both parents share time with the child equally, the parent with the greater income usually pays support. The support may be reduced based upon the amount of time the payor spends with the child. Some states also cap support at a certain income level. If a parent is intentionally not working, or is working at less than he or she is capable of earning, the court can "impute income," which means setting support based upon what the parent is capable of earning rather than actual earnings. States vary on what expenses are included in child support. For example, some states include medical expenses and day care, while others states add those costs on top of the child support.

Source: Linda Elrod & Robert Spector, *A Review of the Year in Family Law: Children's Issues Take Spotlight*, 29 Family Law Quarterly 741, 772 (Winter 1996).

Question 24 What happens if a parent does not pay court-ordered child support?

Answer In 1994, 5.4 million women with children were due child support (far below the number eligible for such orders). However, of the 5.4 million, only slightly more than half received the full amount, while a quarter received partial payment and a quarter received nothing at all. Various enforcement mechanisms exist against these so-called "dead-beat parents." Perhaps the most effective is the power of the court to hold a party in contempt for violating a court order. The contemnor must be allowed an opportunity to "purge" the contempt, meaning to comply with the order. If the contemnor does not purge the contempt, the court has the power of incarceration, although usually for a limited amount of time, such as six months per contempt citation. In addition, many states have criminal penalties for failing to pay child support. Recently, many new enforcement mechanisms have been enacted, creating greater collaboration between federal and state governments. These include suspension of driver's licenses and professional licenses, seizure of tax refunds, and even publishing the name and picture of the "dead-beat parent" on posters and in newspapers. The new law also improves interstate enforcement by bolstering federal services to locate parents across state lines and by requiring all states to have common paternity procedures in interstate cases.

Source: Children's Defense Fund, *The State of America's Children: Yearbook 1997* 16 (1997).

Question 25 Must the rights of both biological parents be terminated in order for a child to be legally free for adoption?

Answer In order for a child to be legally free for adoption, the rights of both biological parents must be either voluntarily relinquished or terminated by court order. Biological parents may voluntarily consent to the termination of their parental rights. While it is common for biological parents to sign a consent form before the child is born, this initial consent is not binding. Biological parents in some states have a right to revoke their consent after the child is born for a certain time period. In most states, the time period is relatively short, such as 48–72 hours. The Uniform Adoption Act, which has been adopted by some states and is being considered by others, allows biological parents eight days to revoke their initial consent. If the biological parents consent to adoption after the birth of the child, the consent is much harder to revoke — usually only if it can be shown there was fraud or duress.

High standards must be met for a state to terminate parental rights by a court order. While the laws vary from state to state, one or more of the following circumstances must usually be shown to exist, demonstrating that a child cannot be safely returned home: (1) the parent has failed to make the necessary improvements for the child's safe return; (2) longstanding pattern of abandonment or extreme parental disinterest; (3) projected long-term incapacity to care for the child, based upon mental or emotional illness, mental retardation, or physical incapacity; (4) drug or alcohol-related incapacity or unwillingness to care for the child, with past history of unsuccessful efforts at treatment; (5) prior abuse or neglect of child, a sibling, or other children in the home; (6) neglect or abuse of the child was so extreme that returning the child home presents an unacceptable risk; (7) child has developed deep aversion or fear of parent because of prior abuse or neglect; and/or (8) parent is sentenced to prolonged imprisonment.

Source: American Bar Association, Guide to Family Law 45-48 (1996); American Bar Association Center on Children and the Law, *Early Termination of Parental Rights: Developing Appropriate Statutory Grounds* 9-11 (1996).

Question 26 How many children are abused and neglected in this country?

Answer In 1995, 3.1 million children were reported to child protection agencies as being abused or neglected — about double the number reported in 1984. Of these, 996,000 children were confirmed after investigation to be abused or neglected. Among the 1 million children suffering from substantiated maltreatment, nearly half (49 percent) were neglected, 24 percent were physically abused, 14 percent were sexually abused, and 2 percent suffered medical neglect.

A study released in 1996 by the U.S. Department of Health and Human (HHS) Services, however, suggests that these totals may understate the extent of child abuse and neglect. The National Incidence Study (NIS) of Child Abuse and Neglect, which included interviews with staff of child protective services, police, schools, hospitals, health and mental health agencies, and child care centers, found that 2.8 million children were believed to have been actually abused or neglected in 1993 — triple the number reported by public agencies to HHS for that year to have been substantiated. In addition, the study found that the number of children seriously injured nearly quadrupled between 1986 and 1993 from 141,700 to 565,000.

Girls were sexually abused about three times more often than boys. However, boys were at a greater risk of serious injury (24 percent higher than girls risk) and were more likely to be emotionally neglected (18 percent greater than girls). There is a disproportionate increase in the incidence of maltreatment for children under 12 years of age. Children are consistently vulnerable to sexual abuse from age three on.

While the number of children reported to be abused or neglected has increased each year, the number of reports investigated has stayed about the same for each year. Thus, the percentage of allegations of abuse and neglect that were officially investigated decreased from 44 percent in 1986 to 28 percent in 1993. The study did not determine why so many children's cases were not investigated — some may have never been investigated or were screened out before being investigated.

Source: *Third National Incidence Study of Child Abuse and Neglect*, Executive Summary, U.S. Department of Health and Human Services, September 1996 and the report, *Child Maltreatment 1994: Reports from the States to the National Center on Child Abuse and Neglect*, U.S. Department of Health and Human Services, 1996.

Question 27 How many children are in America's foster care system?

Answer As of the end of 1995, an estimated 494,000 children were in foster care, a considerable rise from the estimated 280,000 children in such care at the end of 1986. Most of these children are in foster care because of abuse, neglect, or abandonment by their parents, some are placed through a court order in a child protection case, while others are voluntarily placed by parents unable to provide for them. Placement in foster care, however, does not necessarily guarantee the safety and well-being of children. Foster care systems in many states are currently facing litigation or are under court orders to improve the care of the children in their custody.

Many children needing foster care live with grandparents and other relatives. The U.S. Census Bureau recently reported that in 1995, 1,466,000 children (who may or may not be officially in the foster care system) lived in households headed by a grandparent with no parent present — a 44 percent increase since 1993, and a 66 percent increase since 1989. In addition, the Multistate Foster Care Data Archive reports that in 1993, kinship placements constituted approximately 35 percent of the state foster care caseload in New York, more than 40 percent in California, and more than 50 percent in Illinois.

Federal law requires that a permanency plan be developed for children in foster care, which frequently contains steps toward reunification with the parent(s). Family preservation services are usually provided to build on family strengths in an effort to protect children, keep families together, and reduce the need for out-of-home placements. Review of the plan generally occurs within six months of the placement and on a continuous basis thereafter. If family re-unification does not occur within a reasonable time period, the child welfare agency may seek termination of parental rights and place the child for adoption. Parents may voluntarily relinquish their rights or they may be terminated by a court order. Once parental rights have been terminated, the child is eligible for adoption.

In 1990 (the latest year with reliable statistics available), approximately 69,000 children in foster care had a child welfare agency-specified goal of adoption. Of that number, approximately 17,000 had adoptions finalized, while an additional 20,000 children were legally freed for adoption.

Source: *Foster Care and Adoption Statistics*, a Congressional Research Service Report for Congress, #97-111 EPW, January 15, 1997; Children's Defense Fund, *The State of America's Children: Yearbook 1997* (1997).

Question 28 How does domestic violence impact children?

Answer Each year, anywhere from 3 to 10 million children will be harmed by domestic violence as unwilling witnesses to battering incidents, secondary targets of the batterer's rage, or injured when trying to stop abusers from hurting victims. Children who live in homes with domestic violence may be victims of violence themselves. Some estimates suggest that in 70 percent of homes where there is domestic violence, there is also child abuse. In addition, children who witness domestic violence can also develop posttraumatic stress disorder, low self-esteem, anxiety, depression and eating disorders. Young children also have shown self-destructive behavior. These effects can last through adulthood, limiting an individual's ability to achieve academically, socially, and on the job. Early intervention and education can help prevent further danger to children.

In addition, because violence is a learned behavior, growing up in a violent home can contribute to someone potentially becoming abusive. Of all batterers, two-thirds witnessed domestic violence while growing up. (Government and academic studies consistently demonstrate that the majority of victims of domestic violence are females and that batterers are overwhelmingly male.) However, many males who witnessed violence in their childhood homes have gone on to have healthy family relationships. The same is true for girls who grow up in violent homes. Although some do become victims of abuse, others develop healthy interpersonal relationships. It is still unclear why some people are able to develop healthy relationships while others continue to repeat the cycle of violence.

Sources: Straus, M.A. *Children as Witnesses to Marital Violence: A Risk Factor for Lifelong Problems Among Nationally Representative Sample of American Men and Women. Paper presented at the Ross Round table on Children and Violence.* (Washington, D.C., September 1991) (estimates 10 million children a year impacted by domestic violence); B.E. Carlson, *Children's Observations of Interparental Violence*, in Battered Women and Their Families 147-167 (A.R. Roberts ed., 1984) (estimates 3 million children a year impacted by domestic violence); Ending the Cycle of Violence: Community Responses to Children of Battered Women 3-4 (Einat Peled et al. eds.) (1995); E. Stark & A. Flitcraft, *Women-Battering, Child Abuse, and Social Heredity: What is the Relationship?*, in Marital Violence 147-171 (N. Johnson ed., 1985) (children experiencing domestic violence in their homes are at increased risk of being abused themselves); and American Psychological Association, Report of the American Psychological Association Presidential Task Force on Violence and the Family 23 (1996).

Question 29 How many children live in poverty in the U.S.?

Answer The percentage of children living in poverty is one of the most global and widely used indicators of child well-being. This is due, in part, to the fact that poverty is linked to numerous undesirable outcomes such as low birth weight, inadequate education and health care, poor emotional well-being, as well as delinquency.

The child poverty rate in the United States is among the highest in the developed world. In 1995, 20 percent of children lived below the poverty line ($15,569 for a family of four.) One study that examined child poverty rates in 17 developed countries indicates that the child poverty rate in the United States was 50 percent higher than the next highest rate.

Source: Annie E. Casey Foundation, *Kids Count Data Book 1997*, 16-17 (1997).

Question 30 How do poor children get legal assistance when they need it?

Answer Children and families who live in poverty are generally eligible for free legal services through their local legal aid. Before 1996, nearly three-quarters of Legal Services cases involved children's basic legal needs: 33 percent were family law cases including such issues as custody, visitation, protection from domestic violence, and child support; 22 percent were housing cases involving eviction or inhabitable living conditions; and 16 percent were related to the collection of benefits such as welfare and SSI benefits for children or parents with disabilities. However, it is not clear at this time how Legal Services will serve children in the future. Funding for the Legal Services Corporation was reduced by Congress from $400 million in 1995 to $278 million for 1996, and restrictions were placed on the type of case and type of client legal services lawyers can accept, causing a substantial decrease in the number of children and families who receive legal services.

Source: Catherine J. Ross, *Chair's Column: Children are the Real Victims of the Attack on Legal Services*, 1:2 The Catalyst 1 (Summer 1996).

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