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**Memorandum re: Proposed Cook County Gun Court**

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To: Violence Prevention, Intervention and Reduction Advisory Committee  
From: Stephanie Kollmann, Children and Family Justice Center  
Dominique Nong, Kenneth & Harle Montgomery Foundation Fellow  
Date: October 1, 2013

Gun violence in Chicago is a grave problem. It deserves serious solutions that carry reliable indicia of positive safety outcomes. There is no evidence that a specialty court for gun possession cases can help to reduce gun violence. One popular gun court model conflicts with Illinois law; the other ignores deterrence research and challenges the separation of powers principle. Both models face immense administration and evaluation obstacles and would squander resources better directed toward evidence-based approaches to violence reduction.

**Two different types of gun court – with contradictory goals – are under consideration.**

As this committee is aware, specialty gun courts have been attempted and then abandoned in several major cities, including New York, Philadelphia, and Chicago.<sup>1</sup> Two distinct models exist. Research based on both models has been presented to the committee. It can be unclear during debate and discussion which of the two models is being considered. We find it helpful to distinguish them:

**“Community” Court:** The first model, usually used in juvenile court, focuses on community-based services and supervision as alternatives to incarceration for gun possession charges. The primary goal of community courts is rehabilitation. The most prominent example is the juvenile gun court in Jefferson County, Alabama. Some cities (e.g. Philadelphia) have tried a similar approach to handle adult criminal gun offenses for which incarceration is not a required sanction.

**“Processing” Court:** The second model, used in adult criminal courts, focuses on case processing, with a strong emphasis on faster convictions and longer sentences for gun possession. The primary goal of processing courts is deterrence through swift, certain and serious consequences. The most prominent example is the program in New York City.

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<sup>1</sup> See “Draft Report: Court Based Violence Reduction Strategies,” Cook County Violence Prevention, Intervention and Reduction Advisory Committee (undated) (discussed at committee meeting on May 6, 2013).

## **I. A community model gun court is not feasible in Cook County due to Illinois sentencing laws and the projected gun court budget.**

Cook County has several specialty criminal court programs, each focusing on a singular issue (drug treatment, mental health) or offender profile (veterans' court, felony prostitution court). While the community court approach for gun possession cases initially appears to replicate existing problem-solving courts, there is a significant difference: the rehabilitation approach envisioned by the community court model requires intensive probation surveillance with service provision as a sentencing option.<sup>2</sup> However, the Illinois criminal code bars such sentencing options.

In 2011, Illinois instituted a mandatory minimum sentencing regime for unlicensed possession of a loaded weapon, even for a first offense.<sup>3</sup> Probation is also unavailable as a sentencing option for many less-serious gun possession offenses, including unlicensed possession of an unloaded gun.<sup>4</sup>

Even if Illinois laws were changed to provide more sentencing alternatives for gun possessors, the rehabilitative gun court model would face significant administrative burdens. The quoted price of gun court (\$300,000)<sup>5</sup> appears limited to certain courtroom personnel and is insufficient to fund the intensive supervision and services needed for a successful community model gun court.

## **II. A processing model gun court focused on swift, certain and serious consequences would be improper and ineffective.**

*A. It is inappropriate for a judicial system to adopt a "swift, certain and serious consequences" approach to one discrete subset of cases (gun possession cases).*

The swift, certain, and serious consequences approach can be useful and appropriate in carrying out executive branch functions (i.e. arrests) and post-conviction compliance checks (such as responses to probation and parole violations);<sup>6</sup> however, it is ill-suited for a well-functioning judicial system. The decision to hasten the adjudication of certain charges should be left to the discretion of prosecutors, not neutral judges charged with upholding the Sixth Amendment right to a speedy trial held by *all* defendants. The mandate for "serious" consequences undermines the discretion afforded to judges to impose individualized sentences based on the gravity of offenses, the degree of culpability, and relevant personal characteristics of particular defendants.

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<sup>2</sup> Ellen Kurtz, et al., "Philadelphia's Gun Court: Process and Outcome Evaluation Executive Summary," Philadelphia Adult Probation and Parole Department (Jan. 3, 2007).

<sup>3</sup> Pub. Act 096-1107 (eff. Jan. 1, 2011).

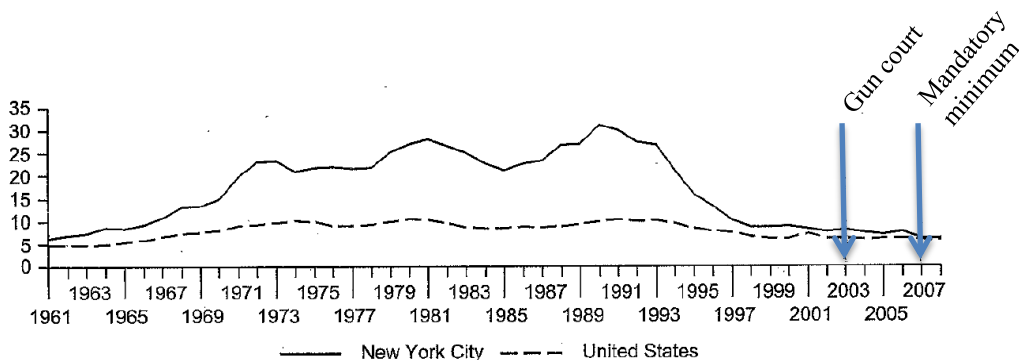
<sup>4</sup> 730 ILCS 5/5-5-3(c)(2)(F-5).

<sup>5</sup> David Ormsby, *Commissioner John Fritchey Pushes Alternative to New Cook County Gun and Ammunition Tax*, THE ILLINOIS OBSERVER (Oct. 29, 2012), <http://www.illinoisobserver.net/2012/10/29/commissioner-john-fritchey-pushes-alternative-to-new-cook-county-gun-and-ammunition-tax/> (noting that "[t]he court would carry an initial price tag of approximately \$300,000").

<sup>6</sup> See, e.g., Angela Hawken and Mark Kleimen, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE*, NAT'L INST. JUST. (December 2, 2009), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>

*B. New York's gun court was not the cause of the city's reduction in violent crime.*

Some gun court proponents incorrectly assume that the creation of gun courts contributed to New York City's violent crime reduction. New York's homicide rate had been declining for thirteen straight years before its gun courts were implemented in 2003.<sup>7</sup> The rate of decline in homicide after the institution of the gun courts was consistent with the rate of decline of the previous thirteen years, implying that the creation of the gun courts had no effect on the city's homicide rate.<sup>8</sup>



**FIGURE 6.1** United States and New York City Homicide Rate, 1961–2008.  
Source: National Center for Health Statistics, National Vital Statistics Report & Bureau of Vital Statistics, New York City Department of Health and Mental Hygiene.

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*C. New York's gun court did not provide swift and certain consequences.*

Gun courts do not result in the conviction of the majority of people arrested on gun charges. In fact, upon review of its Brooklyn pilot program, New York found that the gun court had the opposite of its intended effect. Fewer gun cases were prosecuted as the number of gun cases dismissed before indictment rose exponentially: weapons-only cases experienced a 21% higher dismissal rate; the weapons-plus dismissal rate increased by 47%.<sup>10</sup> Meanwhile, the conviction rate remained quite low, between 4-7%.<sup>11</sup> New York's high dismissal rates and low prosecution and conviction rates undercut the assumption that processing model gun courts brings about swift, certain and serious consequences.<sup>12</sup>

*D. "Serious" consequences do not deter potential criminals, particularly those with profiles of the most common gun charge defendants.*

Multiple studies confirm that increasing the severity of punishment for an offense does not deter crime.<sup>13</sup> To the degree that adults are deterred from crime, it is the likelihood of arrest that deters, not

<sup>7</sup> Franklin E. Zimring, *THE CITY THAT BECAME SAFE: NEW YORK'S LESSONS FOR URBAN CRIME AND ITS CONTROL* 165 (2012).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 161 (Fig. 6.1).

<sup>10</sup> Freda F. Solomon, *New York City's Gun Court Initiative: The Brooklyn Pilot Program, Final Report* NYC CRIM. JUST. AGENCY 23-24 (November 2005) at 24-25.

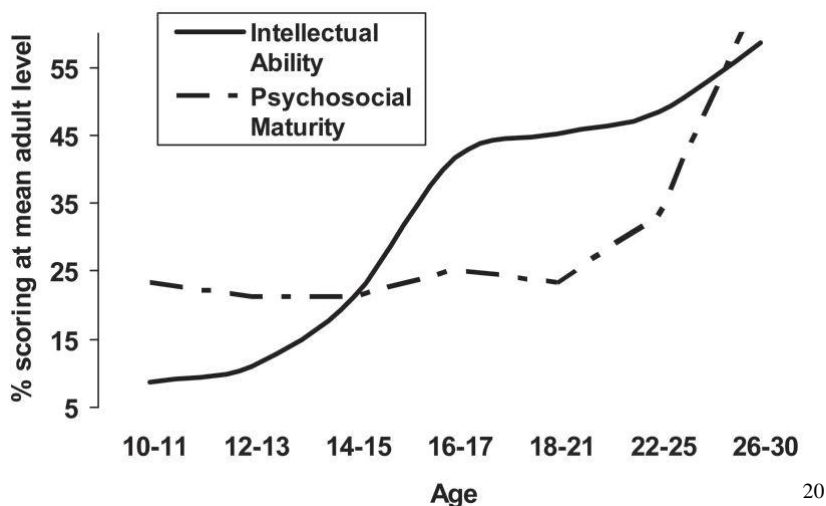
<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 28.

<sup>13</sup> Phillip J. Cook & Jens Ludwig, *Principles for Effective Gun Policy*, 73 *FORDHAM L. REV.* 589, 604 (2004-2005) (arguing that the real deterrent is not the severity of punishment, but the perceived likelihood of getting caught) (citing to Philip J.

the extent of punishment (i.e. sentencing). While “swift and certain” consequences may deter, “serious” consequences have not been shown to alter behavior.

The lack of deterrence potential of a processing model gun court is even more pronounced given the typical gun charge defendant—a young man under the age of 25.<sup>14</sup> Here in Cook County, 40-48% of people admitted to the county jail for gun possession are 21 and under—a rate more than twice as high as for other offenses (19%).<sup>15</sup> Studies indicate that young people are *especially* unlikely to be deterred by the enactment of harsher criminal penalties.<sup>16</sup> Younger people engage in riskier behavior than adults because their psychosocial maturity—measured by impulsivity, risk perception, sensation-seeking, future orientation, and resistance to peer influence—develops later than basic intellectual ability.<sup>17</sup> While intellectual capacity begins to peak at the age of 16-17, psychosocial maturity remains relatively low and does not begin to even rise substantially until the age of 22-25.<sup>18</sup> Research on reducing youth gun violence therefore discusses the efficacy of focusing on swift and certain – yet less severe – penalties for gun carrying behavior by young people.<sup>19</sup>



Cook, *Reducing Injury and Death Rates in Robbery*, POLICY ANALYSIS, Winter 1980, at 21, 26-28; Daniel S. Nagin, *Criminal Deterrence Research at the Outset of the Twenty-First Century*, in 23 CRIME AND JUSTICE: A REVIEW OF RESEARCH 1, 33-36 (Michael Tonry ed., 1998).

<sup>14</sup> FRED A. SOLOMON, NYC CRIM. JUST. AGENCY, NEW YORK CITY’S GUN COURT INITIATIVE: THE BROOKLYN PILOT PROGRAM 9-10 (Nov. 2005), available at <http://www.cjareports.org/reports/guncourt.pdf> (noting that over sixty percent of defendants in New York City’s gun court in Brooklyn were between the ages of 14 – 24).

<sup>15</sup> Draft Report, *supra* n. 1 at 3.

<sup>16</sup> Anna Aizer and Joseph Doyle, *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-assigned Judges* 28 (June 2013) (working paper), available at [http://www.mit.edu/~jdoyle/aizer\\_doyle\\_judges\\_06242013.pdf](http://www.mit.edu/~jdoyle/aizer_doyle_judges_06242013.pdf) (citing David Lee and Justin McCrary. 2005. “Crime Punishment and Myopia.” NBER Working Paper 11491).

<sup>17</sup> Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, DEV. REV. 78-106, 28 (2008).

<sup>18</sup> *Id.*

<sup>19</sup> Roseanna Ander, et al., *Gun Violence among School-age Youth in Chicago*, UNIV. CHI. CRIME LAB (2009). “Research suggests people are more responsive to swifter and more certain punishment than to more severe punishment. Our existing criminal justice practices too often run exactly counter to this principle. . . . We would do society as a whole and the youth themselves a favor by making far greater use of swifter, less severe punishments for infractions like gun carrying, including intermediate sanctions like community service or more stringent probation conditions.” *Id.* at 12 (emphasis added).

<sup>20</sup> Steinberg, *supra* n. 17 at 28.

*E. Imposing “serious” consequences will decrease, not increase, community safety.*

Individuals facing more “serious consequences” in gun court would likely be incarcerated in minimum-security facilities with largely inaccessible educational and other programming. An additional influx of inmates would overburden the already-overcrowded state prison system<sup>21</sup> and further dilute resources required for positive change. Studies suggest that overcrowding and lack of programming “make[] prisoners worse and more likely to re-offend when they are released.”<sup>22</sup> The negative effects of incarceration are even more pronounced for younger offenders.<sup>23</sup> Neighborhoods around Cook County would be negatively impacted by incarceration-related increased recidivism.

**III. Major changes to Illinois gun laws and regulations have created insurmountable obstacles to the administration and evaluation of any gun court.**

The occasion for creating an experimental gun court could hardly be less promising given the unprecedented state of flux of Illinois gun possession laws. Several cases recently finished making their way through federal court,<sup>24</sup> and responsive “concealed carry” legislation<sup>25</sup> was just enacted this summer. Administration of the resulting brand-new gun licensing program will begin in earnest in January 2014. Just over two weeks ago, the Illinois Supreme Court took the unusual step of striking down significant portions of the current gun possession statute.<sup>26</sup> Much of the law regarding public unlicensed gun possession (“aggravated unlawful use of a weapon”) was declared facially unconstitutional.

A new gun court program would be nearly impossible to administer at the same time judges throughout Illinois are interpreting brand new statutes, case law, and licensing rules. Moreover, due to shifts in the legal requirements, data generated by a newly-instituted gun court could not be compared to previous outcomes and would tell us nothing about gun court’s usefulness, or lack thereof. Under these circumstances, even the wisest gun court proposal would be impossible to implement and assess.

**IV. Targeted intervention and evidence-based programming are more promising solutions to gun violence than gun courts.**

Policymakers need not accept the current rate of gun violence as a tragic inevitability. As an alternative to the flawed and costly option of a gun court, several evidence-based programs could be implemented or expanded as a means of decreasing gun violence.

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<sup>21</sup> John Howard Association of Illinois, <http://www.thejha.org/sb2621> (noting that Illinois houses over 48,000 inmates in a system designed to support only 34,000) (cited IDOC population data still current as of 7/15/2013).

<sup>22</sup> John Howard Association of Illinois, MONITORING VISIT TO VIENNA CORRECTIONAL FACILITY 7-8 (Sept. 27, 2011), available at [www.illinoistimes.com/Springfield/file-123-.pdf](http://www.illinoistimes.com/Springfield/file-123-.pdf) (citing to M. Keith Chang, Yale University and Cowles Foundation, Jesse M. Sapiro, University of Chicago and NBER, *Do Harsh Prison Conditions Reduce Recidivism? A Discontinuity Based Approach*, available at [http://faculty.som.yale.edu/keithchen/papers/Final\\_ALER07.pdf](http://faculty.som.yale.edu/keithchen/papers/Final_ALER07.pdf)).

<sup>23</sup> See generally, Aizer, supra n. 16.

<sup>24</sup> *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), *reh’g en banc denied*, 708 F.3d 901 (7th Cir. 2013); *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010); *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

<sup>25</sup> Pub. Act 098-0063 (eff. July 9, 2013).

<sup>26</sup> *People v. Aguilar*, 2013 IL 112116 (Sept. 12, 2013).

*Problem-oriented policing and prosecution* may be an effective means for reducing gun violence. The executive branch of government (mainly the police and the State's Attorney's Office) would be jointly responsible for implementation, independent of any specialized gun court. One promising approach would be to target gun traffickers for stronger enforcement while developing alternatives to prosecution for ordinary gun possession charges. In the 1990s, a coalition in Boston comprised of community organizations, the police department, and Harvard researchers created an evidence-based, problem-oriented policing program that aimed to reduce youth homicide and youth firearms violence.<sup>27</sup> The initiative placed strong and targeted enforcement pressure on illicit firearms traffickers and created a set of community-based police intervention actions<sup>28</sup> geared toward deterring gang members from committing acts of gun violence, in part by offering alternatives to prosecution<sup>29</sup> for gun possession. According to the National Institute of Justice, the Boston program had remarkable results, reducing firearm violence by an astounding 68% in one year.<sup>30</sup>

#### *Existing, locally run, replicable intervention initiatives*

Intervention initiatives show strong potential to reduce gun violence. One such program in Chicago that has shown great promise is One Summer Plus (OSP), a summer employment program designed and implemented by the city's Department of Family and Support Services.<sup>31</sup> As part of the OSP program, three non-profit organizations placed youth from high-violence neighborhoods in part-time jobs for seven weeks during the summer. After studying the 2012 program, the University of Chicago Crime Lab found "convincing evidence that OSP was highly successful in reducing violence among adolescents;" violent crime arrests were cut in half.<sup>32</sup> While evaluation of the 2013 program is still underway, it is important to note that the program eligibility was expanded in such a way that it specifically targets potential gun possessors: high-risk, formerly justice-involved young men under 25.

Another local intervention program with proven results is Becoming a Man (BAM), developed and directed by Youth Guidance and World Sport Chicago.<sup>33</sup> BAM uses group counseling, mentoring, and nontraditional sports activities to strengthen young people's impulse control, personal responsibility, and capacity for conflict resolution.<sup>34</sup> The Crime Lab found that not only did the program "generate[] massive declines in violent crimes by at-risk youth," but it also increased the degree to which the children were engaged at school.<sup>35</sup> Just last week, the Illinois Criminal Justice Information Authority

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<sup>27</sup> Anthony A. Braga, et al., *Problem-Oriented Policing, Deterrence, and Youth Violence: An Evaluation of Boston's Operation Ceasefire*, 38 J. RES. CRIME & DELINQUENCY 195 (2001).

<sup>28</sup> *Id.*

<sup>29</sup> *Gun Violence Programs: Operation Ceasefire*, NAT'L INST. JUST. (June 25, 2008), <http://www.nij.gov/nij/topics/crime/gun-violence/prevention/ceasefire.htm>.

<sup>30</sup> *Id.*

<sup>31</sup> *Short Term Results of the One Summer Plus 2012 Evaluation*, UNIV. CHI. CRIME LAB, (2013), available at <http://crimelab.uchicago.edu/sites/crimelab.uchicago.edu/files/uploads/Plus%20results%20brief%20FINAL%2020130802.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> *Becoming a Man (BAM) - Sports Edition Findings*, UNIV. CHI. CRIME LAB, <http://crimelab.uchicago.edu/page/becoming-man-bam-sports-edition-findings>.

<sup>34</sup> Press Release, The University of Chicago Crime Lab, *Randomized Trial Finds Counseling and Mentoring Program in Chicago Reduces Youth Violence and Improves School Engagement* (July 13, 2012, 10:30 AM), available at [http://crimelab.uchicago.edu/sites/crimelab.uchicago.edu/files/uploads/BAM\\_FINAL%20Press%20Release\\_20120712.pdf](http://crimelab.uchicago.edu/sites/crimelab.uchicago.edu/files/uploads/BAM_FINAL%20Press%20Release_20120712.pdf).

<sup>35</sup> *Becoming a Man (BAM) - Sports Edition Findings*, *supra* n. 33.

Board’s Budget Committee voted to allocate \$3.1 million to expand the BAM program in Chicago Public Schools.<sup>36</sup>

## **Conclusion**

Evidence-based programs—not experimental gun courts—are the appropriate solution to gun violence. A processing model gun court is unlikely to deter illegal gun possession or improve public safety, but other promising interventions and responses do exist. Public funds should not be spent to repeat failed and abandoned judicial programs, nor to experiment with “new” criminal court structuring ideas that cannot be implemented or measured.

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<sup>36</sup> Additional information on the proposed funding can be found at [http://www.icjia.state.il.us/public/pdf/budget/Materials\\_092513.PDF](http://www.icjia.state.il.us/public/pdf/budget/Materials_092513.PDF).