



A Call to Action for Juvenile Justice
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November 6, 2008
2:00 pm – 4:00 pm

Location:

Georgetown Law School Gewirz Student Center
120 F Street NW
Washington, DC 20001

Panelists:

Georgetown Law Professor Kristin Henning
Honorable Jay Blitzman
Representative Stewart Greenleaf
Attorney General Patrick Lynch
Juvenile Justice Reporter Chris Jenkins from the Washington Post

Moderator: Professor Charles Ogletree

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The views expressed herein in various written documents represent the views of the authors and editors and the numerous organizations participating in the November 6, 2008 "Town Hall Meeting: A Call to Action For Juvenile Justice" hosted by the American Bar Association (ABA), which forwards these documents as the product of the meeting and not as the views of the ABA. These various documents have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, unless where specifically indicated otherwise.

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October 30, 2008

Dear Juvenile Justice Colleagues:

Thank you for joining the American Bar Association Criminal Justice Section Juvenile Justice Committee's Town Hall Meeting *A Call to Action for Juvenile Justice*. We are proud to serve the role of convener of this important event and to provide a forum for dialogue and expression of ideas concerning how the next administration should approach juvenile justice issues. We have invited representatives from both campaigns to identify someone from their transition teams to attend and listen to the discussion.

We express our gratitude to Juvenile Justice Committee Co-chair Professor Charles Ogletree from Harvard Law School who will moderate the discussion, to Professor Wally Mlyniec our Georgetown University Law Center Juvenile Justice Clinic host and to the ABA President Tommy Wells who will welcome participants on our behalf. The ABA Criminal Justice Section encourages its members, as well as members of the juvenile justice community, citizens, students and the media to take full advantage of this opportunity to contribute to the discussion of juvenile justice priorities for the new administration.

As Chair of the Criminal Justice Section, I believe that what happens after this event is even more important than what occurs during the event. We stand with you in calling for action to save our at risk youth from being ensnared in the criminal justice system. To quote our ABA Executive Director Hank White, "Like the justice system itself, the ABA is concerned most of all with process. We're a forum for lawyers to air opposing views. We believe that if the rules of those debates are fair – both in the justice system and in our own association – the outcomes will almost always be the right ones."

Good luck with the call to action and may the outcomes be the right ones.

Very truly yours,



Anthony Joseph



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Town Hall Panelist

CHARLES J. OGLETREE, JR.

Charles Ogletree, the Harvard Law School Jesse Climenko Professor of Law, and Founding and Executive Director of the Charles Hamilton Houston Institute for Race and Justice, is a prominent legal theorist who has made an international reputation by taking a hard look at complex issues of law and by working to secure the rights guaranteed by the Constitution for everyone equally under the law. The Charles Hamilton Houston Institute for Race and Justice (<http://www.charleshamiltonhouston.org>), named in honor of the visionary lawyer who spearheaded the litigation in *Brown v. Board of Education*, opened in September 2005, and focuses on a variety of issues relating to race and justice, and will sponsor research, hold conferences, and provide policy analysis.

Professor Ogletree's most recent book, co-edited with Professor Austin Sarat of Amherst college is **From Lynch Mobs to the Killing State: Race and the Death Penalty in America**, was published by New York University Press in May 2006. His historical memoir, **All Deliberate Speed: Reflections on the First Half-Century of *Brown v. Board of Education*** (<http://www.alldeliberatespeed.com>), was published by W.W. Norton & Company in April 2004.

Professor Ogletree is a native of Merced, California, where he attended public schools. Professor Ogletree earned an M.A. and B.A. (with distinction) in Political Science from Stanford University, where he was Phi Beta Kappa. He also holds a J.D. from Harvard Law School.

In 2008, the National Law Journal named Professor Ogletree one of the 50 Most Influential Minority Lawyers in America. In 2006, Professor Ogletree was named by **Ebony Magazine** as one of the 100+ Most Influential Black Americans. He was presented with the Lifetime Achievement Award when he was inducted into the Hall of Fame for the National Black Law Students Association, where he served as National President from 1977-1978. Professor Ogletree also received the first ever Rosa Parks Civil Rights Award given by the City of Boston, the Hugo A. Bedau Award given by the Massachusetts Anti-Death Penalty Coalition, and Morehouse College's Gandhi, King, Ikeda Community Builders Prize.

Professor Ogletree has been married to his fellow Stanford graduate, Pamela Barnes, since 1975. They are the proud parents of two children, Charles Ogletree III and Rashida Ogletree. The Ogletrees live in Cambridge and are members of St. Paul African Methodist Episcopal Church.

Pennsylvania State Senator Stewart Greenleaf

12th District

Senator Greenleaf has been a member of the Pennsylvania Senate since 1978. He was a member of the Pennsylvania House of Representatives from 1977 to 1978, serving on the House Labor Relations and Judiciary Committees as well as the Subcommittee on Crime and Corrections. During his early career, he served as an Assistant District Attorney, Chief of the Appeals Division for the Montgomery County District Attorney's Office and as an Assistant Public Defender in Bucks County.

Senator Greenleaf has chaired the Pennsylvania Senate Judiciary Committee since 1985, conducting numerous hearings on the corrections system in Pennsylvania and achieved passage of legislation to reduce overcrowding in state prisons and county jails through intermediate punishment programs. Most recently, Senator Greenleaf conducted a hearing on inmates serving life sentences without parole for crimes committed as juveniles.

Rhode Island Attorney General Patrick Lynch

Sworn into a second term of office on January 2, 2007, Patrick C. Lynch, 43, became the 72nd person to hold the office of Rhode Island Attorney General since its inception in 1650. A former State prosecutor, he has made reducing juvenile crime the centerpiece of his administration, believing that the career criminals of tomorrow start off as the youth offenders of today. “No serious discussion about Rhode Island’s quality of life or economic health can exclude issues such as bullying, truancy, school violence, and the accessibility of guns in our communities,” he says.

Since taking office, Attorney General Lynch has had a strong voice in the shaping of legislation aimed at toughening the state’s criminal justice system, advancing the rights of victims, and affording additional protections to consumers.

Attorney General Lynch has visited at least a school a week — making hundreds of such visits since first taking office in January 2003 — to speak to children about making good choices in their lives. “Talking to kids in their classrooms is much better than prosecuting them in our courtrooms,” he tells parent and teacher groups. He has also been an unwavering advocate for the Rhode Island Judiciary’s anti-truancy and anti-drug initiatives, the Truancy and Drug Courts. In August 2004, the New England Association of Drug Court Professionals presented Attorney General Lynch with its President’s Award for his “support of drug courts and their graduates.”

Through his “Toy Gun Bash” program, Lynch has stressed the importance of gun-safety awareness throughout Rhode Island. He has emphasized community prosecution, pairing a State prosecutor with the Rhode Island State Police and each of Rhode Island’s 38 municipal police departments, as well as with the personnel of each of the Providence Police Department’s nine precincts, to ensure timely and effective prosecution of “quality of life” crimes such as breaking and entering, larceny, assault, robbery, and drug-related offenses.

In response to an increase in the number of crimes committed against senior citizens in Rhode Island, which has one of the nation’s highest concentrations of the elderly, Lynch established, in 2005, a specialized Elder Abuse Unit within the Department of Attorney General. The Unit’s primary functions are investigating reports of alleged exploitation of seniors and prosecuting crimes involving elderly victims of abuse, neglect, and financial exploitation.

Committed to championing the civil liberties of all Rhode Islanders, Lynch created, with legislative approval, the Attorney General’s Office of Civil Rights Advocate in 2005. This specialized unit empowers the Attorney General to be more proactive in protecting the rights of Rhode Islanders from civil rights violations involving race, ethnicity, sexual orientation, religion, and age.

Lynch took the lead in defeating efforts to site an LNG facility in Providence and has joined with anti-LNG forces in nearby Fall River, Massachusetts, where another facility — also requiring marine transport of LNG through Rhode Island waters and along its coastal communities — has been proposed. Stating that safety and security measures are inadequate to protect the public, the infrastructure, and the environment, he continues to advocate for the sovereign rights of states against the unwanted introduction of LNG terminals.

A 1987 graduate of Brown University, Attorney General Lynch earned his law degree from Suffolk University Law School. As a Special Assistant Attorney General from 1994 to 1999, he prosecuted cases at every level of Rhode Island’s criminal justice system and led the State’s prosecution of gang-related offenses. Lynch worked for one of Rhode Island’s top law firms until the 2002 election, which capped his first campaign for public office.

Attorney General Lynch’s leadership on important legal and social issues has earned him the respect of his peers throughout the nation. It was while hosting the National Association of Attorneys General’s (NAAG) 2008 Summer Meeting in Rhode Island that Lynch was inducted as President of NAAG. His election marks the first time a Rhode Island Attorney General has been chosen by his national peers to serve in NAAG’s top leadership position.

Honorable Jay D. Blitzman

*First Justice, Juvenile Court Department
Middlesex Division, Massachusetts*

Judge Blitzman was appointed to the juvenile court bench in June of 1996. Prior to his appointment, he was a founder and the first director of the Youth Advocacy Project (YAP), a community based interdisciplinary legal services organization based in Roxbury, MA. YAP is a 2008 MacArthur Foundation grant recipient. Judge Blitzman has served as a member of the Supreme Judicial Court (SJC) Study Committee on the Code of Judicial Conduct and is a member of Supreme Judicial Court Standing Committee on the Rules of Criminal Procedure. In 2000, he was appointed to the SJC Committee on Judicial Ethics. He has also been appointed to the SJC Advisory Committee studying the scope of permissible judicial comment.

Since joining the bench, Judge Blitzman has continued to participate regularly in continuing judicial and legal education programs sponsored by MCLE, Suffolk Law School's Juvenile Justice Center, and the Flaschner and Judicial Institutes. He has been active in professional and bar association programs and presented at a variety of criminal and juvenile justice forums. He has served as the chair of the M.B.A.'s Juvenile Practice Committee as a member of the Criminal Justice Section and as a member of the MBA Individual Rights and Responsibilities Section and helped found the newly created Juvenile Justice and Child Welfare Section. Jay was also a member of the MBA-sponsored Governor's Task Force on the Unmet Needs of Children. Boston Bar Association (BBA) service has included committee representation on the BBA's Juvenile Justice Task Force Study (1990-1992) and the BBA CHINS Truancy study group (1997-1999). The Juvenile Justice Task Force report was published in the New England Law School Journal on Criminal and Civil Confinement. He is currently a member of the BBA Access To Justice committee. In 1994, he received the BBA's John G. Brooks Public Service Award, in 2007, he received the Juvenile Bar Association's Leo Lydon Award, and CPCS awards a Jay D. Blitzman youth advocacy award annually.

Judge Blitzman writes frequently for MCLE publications (e.g. "Juvenile Law Basics" 1995-1999, "Delinquency Practice: Recent Developments in Juvenile Law" prepared for the annual MBA conferences, 2003-Present). He contributed to, and edited, Vol. I of the Massachusetts Juvenile Court Bench Book (MCLE 1998, 2000), prior to being named editor-in-chief of the latest edition which was published by MCLE in 2003; the next edition is scheduled for publication in 2009. Other publications include: "Delinquency Procedure" (Chapter 49, Massachusetts Criminal Practice, Blumenson, Ed., Lexis, 1998, 2000, 2003), "The Theory and Scope of Juvenile Court" (a paper presented to the National Academy of Sciences, National Research Council, January 1999, Washington D.C.), "Gault's Promise", Barry Law Review 2008, and coauthored "Children's Attorneys-Should They Be Advocates or Champions-The Role of Counsel For Children In Massachusetts" (MSL, Winter 2004).

Conference presentations include participation in a Department of Justice National Defender Conference debating the future of the juvenile court (Washington, D.C., 2000), and keynotes for the annual Connecticut Juvenile Court Conference (Are We Re-criminalizing Status Based Conduct? 2004), the annual Massachusetts school-law conference (School-Court Communication, MCLE, 2008), and Moritz Law School (Ohio State University; Issues in Child Welfare Cases, and School-To-Prison Pipeline, 2008). Keynote speaker for Stop the Silence: Stop Child Sexual Abuse, Inc., (University of Maryland, 2008). In June of 2006, he testified before the Prison Rape Enforcement Act (PREA) Presidential Commission chaired by Justice R. Walton on juvenile justice detention practices. His testimony before the Massachusetts Access to Justice Commission (Supreme Judicial Court committee) has become the subject of a law review article to be published in 2008 (Massachusetts Law Review). Judge Blitzman has also consulted with the Justice Department's Bureau of Justice Assistance regarding the administration of technical grants and with the MacArthur Foundation Adolescent Resource Network project studying children in the legal system. Judge Blitzman has served as a clinical supervisor for Boston College and Harvard Law School and has supervised co-op students from Northeastern Law School. Since 1986, the judge has been a regular participant at Harvard Law School's Trial Advocacy Workshop program. He also teaches juvenile law at Northeastern University School of Law.

Georgetown Law Professor Kristin Henning

Professor Henning joined the faculty of the Georgetown Law Center in 1995 as a Stuart-Stiller Fellow in the Criminal and Juvenile Justice Clinics. As a Fellow she represented adults and children in the D.C. Superior Court, while supervising law students in the Juvenile Justice Clinic. In 1997, Professor Henning joined the staff of the Public Defender Service (PDS) for the District of Columbia where she continued to represent clients and helped to organize a Juvenile Unit designed to meet the multi-disciplinary needs of children in the juvenile justice system. Professor Henning served as Lead Attorney for the Juvenile Unit from 1998 until she left the Public Defender Service to return to Georgetown in 2001. As lead attorney, she represented juveniles in serious cases, supervised and trained new PDS attorneys, and coordinated and conducted training for court-appointed attorneys representing juveniles.

Professor Henning has been active in local, regional and national juvenile justice reform, serving on the Board of the Mid-Atlantic Juvenile Defender Center, the D.C. Department of Youth Rehabilitation Services Advisory Board and Oversight Committee, and on local D.C. Superior Court committees such as the Delinquency Working Group and the Family Court Training Committee. She has published a number of law review articles on the role of child's counsel, the role of parents in delinquency cases, confidentiality in juvenile courts, and therapeutic jurisprudence in the juvenile justice system. She is currently writing about victims' rights in juvenile court, parental consent in the Fourth Amendment context, and sexual abuse of juveniles in detention facilities among other projects. She is also a lead contributor to the *Juvenile Law and Practice* chapter of the District of Columbia Bar Practice Manual and has participated as an investigator in eight state assessments of the access to counsel and quality of representation for juveniles.

In 2005, Kris was selected as a Fellow in the Emerging Leaders Program of the Duke University Terry Sanford Institute of Public Policy and the Graduate School of Business at the University of Cape Town, South Africa. Professor Henning also traveled to Liberia in 2006 and 2007 to aid the country in juvenile justice reform and was awarded the 2008 Shanara Gilbert Award by the Clinical Section of the Association of American Law Schools in May for her commitment to social justice on behalf of children, service to the cause of clinical legal education, and an interest in international legal education.

Washington Post staff writer Chris L. Jenkins

Mr Jenkins is a staff writer at The Washington Post. He has covered state and local politics, including a three year stint in Richmond, where he covered the administrations of governors Mark R. Warner and Tim Kaine. Currently, he is a social services reporter for the Metro section. His work has touched a broad array of topics, including healthcare, juvenile justice and the impact of the recent economic downturn on the working poor. He earned a bachelor's degree in History from Oberlin College and a master's degree in Journalism from UC Berkeley. He also worked as a foster care caseworker and program director in the Bronx, NY from 1993 to 1998.

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**A CALL TO ACTION FOR
JUVENILE JUSTICE**

November 6, 2008

**Policy Statement of
DLA Piper LLP (US)**

“For At-risk Court-involved Children”

A WISH LIST FOR THE FIRST HUNDRED DAYS

**Based on DLA Piper’s Signature Juvenile Justice Project
In Cook County, Illinois**

“The First Hundred Days”

Lessons Learned From The Cook County, Illinois Juvenile Justice Signature Program DLA Piper LLP (US)

In 2004, the Chicago office of DLA Piper LLP (US) (“DLA Piper”) commenced a three-year plus pro bono project in Cook County, Illinois. With the support of the Chief Judge of the Juvenile Court and the assistance of the Bluhm Legal Clinic of Northwestern University School of Law, DLA Piper lawyers represented children facing charges in juvenile court and assisted court-involved children in their efforts to expunge their delinquency records.

As a result of our representation of these court-involved children and our interaction with their parents and guardians, we discovered that these children faced unwarranted obstacles when they were released from detention and attempted to return to school. In response to these experiences, we investigated the source of these obstacles and in February 2008 issued a policy report with its recommendations for improving the transition of at-risk court-involved children from detention to the classroom. The executive summary of the project, and our policy report and recommendations is appended to this Policy Statement.

In essence, what we found in Cook County is that, for the most part, parents or guardians of court-involved children are ill equipped to serve as effective advocates for their children in navigating the bureaucratic barriers to a return to the classroom. Moreover, neither the probation department nor the Chicago Public Schools were providing these parents and guardians with the necessary information and resources to help them get their children back in school. That said, we encountered probation officers and Chicago Public School officials who, on an individual basis, saw the need and went out of their way to advocate for the children. However, their efforts need to become part of the missions and job descriptions of their respective organizations.

But, apart from our recommended improvements to the transition process from detention to school, this Policy Statement reflects the additional issues we identified during our project as to the focus and purpose of the juvenile justice system. During the project we kept asking the various constituencies “why” or “why not” when confronted with policies and procedures that impeded the chances for success for our young clients. Unfortunately, many of these inquiries were never answered. Thus, we respectfully suggest these are questions that the new administration should focus on immediately.

How Many Children Are Lost In The Process?

We discovered there was no reliable data available regarding the magnitude of the problem. We asked a simple question – how many children who become involved in the juvenile justice system never return to school when they are released from detention. None of the constituents in the process – the courts, the probation office, or Chicago Public Schools – could provide the answer. However, there is little doubt that collectively they would have the

data and numbers. This lack of transparency both masks the scope of the issue, and frustrates any attempt to effectively evaluate any remedial and rehabilitative programs.

Without reliable data there are only anecdotal experiences to rely upon in urging the community to expend the resources necessary to improve the chances for success for court-involved at-risk children.

When A Child Fails to Return To The Classroom, What Is The Cost?

Because we do not know the number of children who fail to return to school after their release from detention, it is not possible to estimate the cost. Nevertheless, in Illinois we have information which we can use as a proxy to provide an order of magnitude estimate of the cost. In September 2008, the Illinois Task Force on Re-enrolling Students Who Dropped out of School released its final report.¹ In that report they state:

- of the 101,000 high school drop outs (ages 17-20), only 8,300 re-enroll (about 25,000 drop out each year)
- the 101,000 drop outs cost Illinois \$470 million each year
- each drop out who re-enrolls and graduates high school will increase her or his lifetime earnings by \$355,000, and save Illinois taxpayers \$208,000
- 64% of out-of-school students are minorities (one out of every six African American students, and one out of every seven Hispanic students)
- Illinois statewide jobless rate for drop outs is 47%
- drop outs are 3.5 times more likely than high school graduates to be arrested (70% of the men in prison are high school drop outs)

As noted, these findings are based on all high school drop outs and one would expect that the chances for the successful re-enrollment of a court-involved at-risk child that drops out of school after being released from detention is significantly less. But again, the numbers are not available to permit the calculations.

Why Do We Waste The Time We Have?

In Cook County, detained children, except those awaiting transfer to adult facilities upon majority, spend a couple of days, a couple of weeks, or a couple of months at the detention

¹ The Illinois Task Force on Re-enrolling Students Who Dropped out of School was created by Illinois Governor Blagojevich and the Illinois General Assembly (House Joint Resolution 87) in October 2005 to examine policies, programs and other issues to develop a variety of successful approaches using best practices to re-enroll, teach and graduate students who left school before earning a high school diploma.

center. Nevertheless, despite this limited time period, the Chicago Public Schools attempt to operate a traditional school at the detention center. As one can imagine, because of the disparate educational experiences of these children, the relatively short periods of their detention, and the lack of information from their home schools, it is next to impossible to provide these children a meaningful educational experience while in detention.

In light of these challenges, we ask – why not use the time to evaluate each child. Many of these children have special needs and their encounter with the juvenile criminal justice system underscores their cry for help. In detention, with a literal captive audience, why not use the time to evaluate the child, assess his or her needs, develop an individualized education plan, and thus, let the child be released from detention with a concrete strategy for increasing the child's successful transition back to the appropriate educational setting.

Time Better Used – Jobs For Youth?

According to the September 15, 2008 report of the Center for Labor Market Studies, Northeastern University,² the 32.7% teen employment rate this summer represented a *60 year historical low*. While the teenage employment rate fell to 36% for all teens, the rate for Hispanics fell to 27%, and the rate for African Americans declined to 21%. Even more alarming, is the fact that this report points out this decline in teenage employment manifested itself during 2004-2007 time period despite strong national wage and salary job growth. Today, with our economic woes and bank and corporate bail-outs, one might question whether this issue of teen under employment is even on the radar screens of our community leaders. However, without access to jobs, what alternatives are available to our youth for advancing their economic status. The question suggests a vacuum that gang or other unproductive activity will fill.

Expungement – Does Society Care?

In working with court-involved children, we learned that the expungement process for children in Illinois is fatally flawed. Not only is the juvenile expungement process longer and more expensive than the adult system, but in the end, it does not work. Employers find ways to learn the expunged information, and as a result, often a court-involved child is denied a job and never told why. Although both employers and their agents violate the law in accessing such information, in many respects, the real culprit is the electronic record. The County shares the record with the State Police, who, in turn, share it with the FBI and Homeland Security. By the time a child succeeds in getting a delinquency finding expunged, that record is on the computers of law enforcement agencies across the country, effectively making deletion impossible.

In light of these issues, some states, like Oregon, have taken steps to provide a child with a right of action if an employer uses expunged information to deny the child a job. But, perhaps,

² “The Historically Low Summer and Year Round 2008 Teen Employment Rate: The Case for An Immediate National Public Policy Response to Create Jobs for the Nation’s Youth,” Center for Labor Market Studies Northeastern University, Boston, Massachusetts.

the more fundamental question is why do we force children to go through the process in the first place. Why do we care – why not have juvenile records, with some exceptions, automatically expunged. And, why not limit the dissemination of the records to a need-to-know basis rather than a routine broadcast email to law enforcement agencies.

What Is The Goal Of Juvenile Justice?

On March 1, 2005, the United States Supreme Court ruled in *Roper v. Simmons* that the imposition of the death penalty on those who had committed their crimes before turning 18 years of age constituted cruel and unusual punishment and therefore, was barred by the Constitution. Writing for the majority, Justice Kennedy pointed out that:

“Retribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.”

Despite this recognition that a child is less culpable and more capable of change, over 2,300 children in the United States are serving sentences of life without parole. No other developed country denies a child offender the hope of parole. Moreover, the get-tough with crime approach of the 1990s included juveniles and resulted in States enacting laws that encourage prosecutors to try minors as adults. After conviction such young people end up incarcerated with adults where they learn criminal behaviors and are denied the counseling and family support they so badly need. And when they are released they carry the stigma of a felony conviction when they look for a job.

Has the switch from rehabilitation to retribution resulted in a safer society? Has it resulted in fewer juveniles in detention? The available information suggests not. In Illinois, the recidivism rate is 48% for court-involved children within three years of their release from detention. With the annual estimated cost of incarcerating a child in Illinois at \$70,000, alternative rehabilitative programs are not only more effective, they are fiscally attractive.

Is the public ready for a change? Indications are that it is. Earlier this year the MacArthur Foundation announced the result of a four state survey on juvenile justice. Respondents were asked if they would be willing to pay more taxes for either juvenile rehabilitation programs, or for longer periods of incarceration for juveniles assuming either option would reduce juvenile crime by 30%. This survey concluded that in Illinois the public is willing to pay 36% more in taxes for rehabilitation than more taxes for punishment. Based on studies to date, we know rehabilitation is likely more effective than incarceration. Where should our tax dollars be spent? As a society, the question is not whether we can afford the necessary changes to our juvenile justice system, it is whether we can afford to do nothing. We must act.

Lisa R. Dewey
DLA Piper LLP (US)
U.S. Pro Bono Partner
Washington, D.C.

Lawrence A. Wojcik
DLA Piper LLP (US)
Partner
Chicago, IL



**SIGNATURE PROJECT IN JUVENILE JUSTICE
FROM JUVENILE COURT BACK TO THE CLASSROOM:
THE NEED FOR EFFECTIVE CHILD ADVOCACY**

**DLA PIPER LLP (US)
FEBRUARY 2008**

EXECUTIVE SUMMARY

In the summer of 2004, with the enthusiastic support of Judge Curtis Heaston, the Chief Judge of the Juvenile Court, attorneys in the Chicago office of DLA Piper LLP (US) (“DLA Piper”), in conjunction with the Bluhm Legal Clinic of Northwestern University School of Law, launched a Signature Project in Juvenile Justice (the “Project”), a large-scale *pro bono* initiative through which lawyers in the Firm represented children facing charges in juvenile court and handled efforts to expunge delinquency records. The Project exemplified DLA Piper’s culture and policies that have long encouraged *pro bono* service, volunteerism and charitable giving. During the three year period of the Project, attorneys and others in the Firm contributed 23,000 hours.

In the course of representing these children, however, DLA Piper attorneys encountered an unexpected obstacle. Many children, upon their release from the Cook County Juvenile Temporary Detention Center (“Detention Center”), were unable to re-enroll in their home schools or obtain services critical to their education. Many children simply were denied re-enrollment by principals, leaving them and their parents or guardians unsure of how to proceed. Many others were denied re-enrollment because no one had told them what paperwork was required or provided them with that paperwork, or because officials in Nancy B. Jefferson Alternative School (the Chicago Public School serving children held in the Detention Center) failed to release children from its roster following their discharge.

These obstacles not only denied children their right to a free public education, but they dramatically increased the likelihood that these children would never return to the classroom. Children who do not stay in school are far more likely to become involved in criminal activity as adults, and the success or failure of children in school often plays a critical role in their ability to become productive citizens. Moreover, it costs taxpayers far more to incarcerate children than to educate them.

DLA Piper decided to make this issue the focus of the public policy component of the Project. In this study, the Firm lawyers examined how court-involved children in the Detention Center are transitioned back to school, the obstacles they encounter in doing so, the best transition and child advocacy programs and practices in Chicago and around the country, and how the lessons of those programs can be applied in Chicago to improve the educational opportunities for court-involved children. Recognizing that difficulties arise in any effort to create and then adopt systemic change, the resulting policy report, “*From Juvenile Court Back to the Classroom: the Need for Effective Child Advocacy*,” makes two sets of recommendations.

The first two address what DLA Piper attorneys identified as modest, achievable modifications to improve the present system. Implementing them would allow the Firm's two more long-term and systemic recommendations to be examined in depth, debated by the various stakeholders and, hopefully, implemented.

FINDING NO. 1: Administrative hurdles, such as delays in the release of Jefferson School records or a principal's refusal to re-enroll court-involved children, prevent the timely and necessary transition of children back into an appropriate school.

RECOMMENDATIONS:

(1) The Chicago Public Schools ("CPS") should ensure that Jefferson School officials immediately remove children from its roster when they are released and that children and their parents or guardians are provided documentation reflecting that release and instructions on how to re-enroll in school.

(2) CPS should permit court-involved children to re-enroll in their respective home schools, on a temporary basis, pending submission of the necessary paperwork and their formal release from Jefferson School.

(3) Principals refusing to re-enroll children should be required to immediately advise the CPS representative charged with facilitating the appropriate school placements for them.

(4) The CPS Information Office, particularly the CPS Re-Enrollment Facilitator, should be supported with additional resources and, at the very least, should be exempt from across-the-board budget cuts and cost-saving measures.

FINDING NO. 2: Most parents and guardians of court-involved children are uninformed concerning re-enrollment procedures, their children's re-enrollment rights, and alternative educational opportunities and resources available to assist them.

RECOMMENDATIONS:

(1) Prior to a child's release from the Detention Center, someone within the Juvenile Court system, be it a judge, probation officer, or CPS official, should be required to provide information about re-enrollment to the child and his or her parent or guardian. More specifically, they should be informed that:

- a parent or guardian must accompany the child on his or her return to school and should bring with them certain documentation, such as proof of residency and paperwork identifying the school that the child is to attend;
- if the child encounters any difficulty enrolling or re-enrolling in school, the child's parent or guardian should immediately call the CPS Re-Enrollment Hotline or visit the CPS Information Office located within the Juvenile Court building;

- the child has a right to request an Individualized Education Plan (IEP) if his or her parent or guardian believes special education services may be necessary; and
- there may be various trade, vocational, special education, tutoring and mentoring services available to the child.

(2) Probation officers should play a central role in the transition process by advocating for all children under their charge, as well as educating parents and guardians about available educational resources. The Probation Department should provide specialized training to fulfill that role.

FINDING NO. 3: Current transition efforts frequently are disparate, uncoordinated or inadequate, and do not reach enough court-involved children. The constituencies currently involved in the transition process (school officials, probation officers, and the children and their parents or guardians) rarely collaborate or communicate effectively, and sometimes work at cross-purposes.

RECOMMENDATIONS: CPS, the Probation Department and other Juvenile Court personnel should create formal or informal transition teams to strengthen efforts to successfully transition children back to school. Those teams should:

- meet with court-involved children in the Detention Center prior to discharge to evaluate their current educational status, make recommendations for school placement, and identify any additional support programs needed;
- advise the appropriate CPS principal when a child expects to re-enroll; and
- meet regularly to discuss resources, experiences, and issues they encounter in the transition process.

FINDING NO. 4: Court-involved children lack advocates to help them re-enroll and obtain additional educational resources where necessary.

RECOMMENDATIONS: Just as children involved in child protection (abuse and neglect) proceedings are assigned advocates, when needed, to ensure that their interests are protected, so too should children in delinquency proceedings. These advocates can ensure coordination among the various entities with whom the children will interact (school, probation, and court) and access special education opportunities, alternative schools or appropriate community-based enrichment programs. Paid professionals or trained volunteers from the private sector can fulfill this role as they do in the Child Protection Division through, for example, the Court Appointed Special Advocates (“CASA”) program.

* * *

DLA Piper attorneys hope that this report is just the start of a dialogue about making education more accessible to court-involved children in Cook County and that it serves as a reminder of the promise that this State made to such children in 1899 when it established the

nation's first juvenile court. Judge Julian Mack, one of the first judges to preside over that court, captured the essence of that promise in his 1909 article *The Juvenile Court*, when he asked:

Why is it not just and proper to treat these juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities? Why is it not the duty of the state, instead of asking merely whether a boy or a girl has committed a specific offense, to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.*

DLA Piper hopes that the stakeholders involved consider our recommendations as they explore avenues for improving our systems for court-involved children so that our juvenile justice system can return to the original ideal presented by Judge Mack. Of course, the report does not portend to have all the answers to the questions posed and Firm attorneys are ever mindful that there are costs to implement their recommendations. Nevertheless, DLA Piper is confident that the goals set forth in this report are attainable and that they will improve the chance that court-involved, at-risk children will choose the path toward becoming worthy citizens. The first step in that journey is a return to the classroom.

Lawrence A. Wojcik, Kenneth L. Schmetterer, and Sonya D. Naar**

Senior Editors, and Partners in DLA Piper US LLP's Chicago office

For copies of the DLA Piper US LLP Juvenile Justice Policy Report please contact Anne H. Geraghty, Chicago Pro Bono Manager at anne.geraghty@dlapiper.com or 312-368-3966.

* 23 Harv. L. Rev. 104, 107 (1909-1910)

** Now, counsel with Attorneys' Liability Assurance Society, Inc.

Juvenile Justice Litigation in New Orleans

Morgan v. Nagin, et. al.

Holland & Knight established its Community Services Team (CST) in 1990 to more effectively marshal its resources to provide legal representation to those who cannot afford it. The CST is a structured, institutionalized department within the firm, drawing on all of the firm's resources and staffed by full-time lawyers with extensive knowledge and experience in their fields of practice. For almost 40 years, Chesterfield Smith, the founder and chairman emeritus (1917-2003) of Holland & Knight, instilled in our lawyers a sense of community purpose and recognition that we have a professional duty to provide needy people and groups with free legal services. Today, that charge remains woven into the fabric of our firm as reflected in our most recent juvenile justice case.

Holland & Knight LLP and the Juvenile Justice Project of Louisiana filed a class action lawsuit on behalf of minors detained at a juvenile detention center in New Orleans, Louisiana. Plaintiffs assert that the conditions of confinement and treatment while at the pre-trial detention facility, the Youth Study Center, is substandard and violates their constitutional rights. The suit alleges that the unconstitutional conditions of confinement include grossly unsanitary conditions, inadequate medical care, cruel psychological and verbal harassment and abuse, improper and excessive use of lockdown, inadequate education, and other unconscionable conditions. Plaintiffs seek declaratory and injunctive relief against defendants because of the deprivation of their rights under the First, Sixth, Eighth and Fourteenth Amendments, as well as the Individuals with Disabilities Education Act and the Americans with Disabilities Act. The lawsuit also addresses access to counsel and access to courts issues, as the defendants have placed unreasonable limitations upon the ability of putative class members to meet with attorneys. The access issues deteriorated even further after the suit was filed. Specifically, as retaliation for the filing of the suit, city officials have outright banned the plaintiffs' lawyers from the facility until the district court entered an order prohibiting the ban. Plaintiffs survived a motion to dismiss and are now actively engaged in discovery and preparing for the class certification hearing.

Washington, D.C. CST partner **Steve Hanlon**, senior counsel **Sharon Y. Eubanks** and Chesterfield Smith Fellow **LaKeytria W. Felder** partnered with the Juvenile Justice Project of Louisiana (JJPL) in New Orleans to represent the children at the Youth Study Center in this civil rights action. JJPL, a law and advocacy center, was founded with support from the Southern Poverty Law Center to provide representation and resources for young people in Louisiana's juvenile justice system.

"Conversations with Cornelia"

Raleigh, NC Radio Station WAUG

Submitted by Radio Personality Cornelia McDonald

My personal experience growing up in the rural South has exposed me to abject poverty that often breeds the type of sociological stress resulting in domestic chaos. As a child I often wondered when the pain would end of being verbally and abused under the guise of religious chastisement. My father, a minister, was esteemed in the community but secretly I hated him. He was never compassionate or loving toward me. It was my inability to articulate his impact on my psyche that almost cost me my freedom. For you see, I was willing to harm another co-worker over some minor disagreement because my anger had overtaken my interest in logic and reason.

Thousands of children suffer with these same challenges and our penal system is bursting at its seams with the products of men and women who were not shown love and affection in an appropriate way. I have taken my childhood despair that grew into anger then exploded and channeled it to help others. I have worked with domestic violence victims, those living in public housing, rural communities, and the homeless - some of societies forgotten populations.

Solutions are only as near as those who are willing to speak truth to a dismal situation compounded by layers of blame and denial. Justice for me is defined as mutual respect. We can have no justice where respect and human dignity are absent. In my family my father felt he was just and used the same tactics again and again beating and ranting. The problem with his justice was that it hurt so much I wanted to leave my body. Children are resilient but the emotional scars left behind years of neglect and abuse heal only with holistic and communal treatment.

Trained professionals can not and must not do it all alone. I considered myself part of the treatment team for the children living in the Few Gardens Housing Community where poverty was rampant. Though I am a nurse by training my expertise went well beyond the physical monitoring of children -- I attempted to see into their soul. Knocking on doors and imploring mothers to allow their children to come to a writing workshop at the community center. These mothers were oftentimes not interested and told me so! But when the children did come their lives were opened up to the possibility that Few Gardens would not be their universe forever.

True justice is equitable and not based on your economic status. Too often our justice system ignores truth in search of easy answers and legal aid is tied to financial access. These systems create a gross over-representation of Blacks and low-income people in the penal system. The only way to reverse these trends is to start earlier with the creation of "Triage Teams" to not only intervene but provide access to networks and resources that dissuade questionable behavior before it starts. My simple prescription -- provide children in poverty with a map of the world and someone to share it with them in an ongoing dialog about goals and plans. The map exposes children to a place beyond their circumstances and opens up the discussion with a mentor, relative or friend who cares. The school, place of worship and home must either be aligned or the plan will unravel. I invite those who set policy to fund and support programs that align these three components under an umbrella of justice that promotes mutual respect of self and others as well as highlights the importance of human dignity found in the enduring spirit of those in poverty.

Materials for:

A Call to Action for Juvenile Justice

Nov. 7, 2008 Program Sponsored by the ABA Criminal Justice Section

American Bar Association Policy on Juvenile Status Offenders

August 2007

Resolved, That the American Bar Association urges state, local, territorial, and tribal jurisdictions to pass laws and support policies and programs that divert alleged juvenile status offenders from court jurisdiction that:

1. Mandate the development and implementation of targeted evidence-based programs that provide juvenile, family-focused, and strength-based early intervention and pre-court prevention services and treatment to alleged juvenile status offenders and their families; and
2. Promote the development of gender-responsive programs, treatment, and services for alleged juvenile status offenders.

Further Resolved, that the American Bar Association urges Congress to make the availability of federal funds contingent on compliance with the following requirements related to juvenile status offenders:

1. Articulate minimum guidelines with which states, territories, and tribal jurisdictions must comply in implementing early intervention and diversion programs for alleged juvenile status offenders. These programs should be evidence-based, gender-responsive, family and youth-focused and attempt to exhaust voluntary treatment and services to avoid court involvement and out-of-home placement;
2. Expand and support the ability of state, local, territorial, and tribal youth-serving social service agencies to be a timely first responder to situations involving juvenile status offenders and provide effective services and treatment to both alleged and adjudicated juvenile status offenders; and
3. Promote community-based services to alleged and adjudicated status offenders and families in their homes, communities, or in respite, foster, group, or staff-secure settings, if necessary for the protection and safety of the juvenile.

February 1992

* * *

Be it Further Resolved, that in the event Congress decides to reauthorize the (Juvenile Justice and Delinquency Prevention) Act, any such reauthorization should include:

* * *

- A prohibition on secure confinement of status offenders

EXTRACT FROM THE REPORT ACCOMPANYING THE AUGUST 2007 POLICY

In August 2006, American Bar Association (ABA) President Karen Mathis launched the ABA Youth at Risk Initiative geared towards youth ages 13 to 19 who are at risk of entering juvenile and criminal justice systems. The initiative has focused on, among other things, better ways to serve juvenile status offenders, meet the needs of youth aging out of foster care, and assure meaningful participation by youth in court proceedings.

For example, the President's ABA Commission on Youth at Risk (Commission) and other ABA entities have sponsored several CLE events relating to juvenile status offense legislative and policy reform. In August 2006, the ABA Criminal Justice Section sponsored a CLE on truancy prevention. In January 2007, the Commission, with the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention and the U.S. Department of Health and Human Services, Family and Youth Services Bureau sponsored the first ever videoconference on addressing the needs of juvenile status offenders and their families.

In February 2007, the Commission sponsored an ABA Presidential Showcase CLE program at the ABA midyear meeting entitled "Juvenile Status Offenders: What's the Right Approach?" In each of these programs the Commission and other entities, through panels of experts, explored the salient legal, judicial, and social service issues facing juvenile status offenders as well as promising policies, programs, and legislative approaches.

The ABA has long supported laws that encourage the enhancement of services to youth and families and promoted the use of community-based alternatives to court intervention. Beginning with the IJA/ABA *Juvenile Justice Standards* of the 1970s, the Association has frequently been on record in supporting progressive reforms aimed at children and youth.

For example, in 1979, the *Standards Relating to Youth Service Agencies* called for "delivery of needed services to juveniles in the community and their families," including juveniles diverted from the courts. They called for "developing . . . needed resources to provide effective services" within a comprehensive, coordinated services system (Standard 2.1). In February 1984, the ABA House of Delegates urged "members of the legal profession, as well as state and local bar associations, to respond to the needs of children by directing attention to issues affecting children including . . . the needs of children who have no effective voice of their own in government . . . [and] implementation of statutory and programmatic resources to meet the health and welfare needs of children." In August 1995, the House called for state legislatures and courts to "assist in the formation and expansion of diversion programs," such as youth courts. And in August 1996, the House encouraged courts to "ensure that counseling, treatment, advocacy and other assistance are made available to child victims of abuse and domestic violence through all available means."

More recently, in August 2006, the House of Delegates approved a recommendation urging state, territorial, and tribal governments to ensure that "community mental health systems serving youth are reinvigorated and significantly expanded to provide greater access to troubled youth and their caretakers." This resolution also urged governments to assure that adequate services are made readily available to at-risk youth by ensuring that treatment and services are provided by "appropriate juvenile justice and child welfare intervention systems without the necessity or requirement of courts exercising jurisdiction over or adjudicating them."

The ABA has also long spoken out on the importance of reauthorizing the federal Juvenile Justice and Delinquency Prevention Act (JJDP Act), making recommendations specific to the Act's treatment of juvenile status offenders. In February of 1992 and again in August of 1995, the House of Delegates supported the reauthorization of the JJDP Act, so long as the reauthorization included, among other things, an "elimination of waivers for States which did not comply with the Act's objectives" and "a prohibition on the secure confinement of status offenders."

A juvenile status offense is conduct by a minor that is unlawful because of the minor's age. An adult may legally engage in the same acts that are considered a public offense if performed by a minor. Common examples of status offenses include running away from home, chronic truancy, alleged out-of-control or incorrigible behavior, alcohol possession, or curfew violations.

In 2004, over 400,000 youth were arrested or held in limited custody by police because of a status offense. This number represented approximately 18% of all juvenile arrests that year.¹ The most recent

¹ *OJJDP Statistical Briefing Book*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2006. <<http://ojjdp.ncjrs.gov/ojstatbb/crime/qa05101.asp?qaDate=2004>>.

national estimates regarding all status offense court petitions were collected in the mid-1990s. In 1996, 162,000 status offense cases were formally processed.² From 1987 to 1996, the total number of court petitioned juvenile status offense cases increased 101%.³

Until the mid-1970's, the juvenile delinquency system was responsible for youth who committed status offenses. As a consequence, this population was subject to all dispositional or probationary options applied to delinquents. A court could place a chronically truant youth in the same secure detention facility as a violent repeat juvenile offender. Concerned about the short and long-term effects of placing youth engaged in noncriminal status behaviors into secure detention, several states enacted legislation replacing the status offender label with more innocuous terms like "child in need of services" and implementing initial social service responses. Other states, such as Pennsylvania, altered their definitions of child neglect or dependency to include youth who engage in status offenses.

In 1974, Congress reacted to and further encouraged the states' trend of decriminalizing status offenses by enacting the Juvenile Justice and Delinquency Prevention Act (JJDP Act). Under the Act, to receive federal money, states were prohibited from, among other things: (1) placing noncriminal status offenders in secure facilities; and (2) allowing contact between juvenile and adult criminal offenders. In 1980, the Act was amended to allow courts to place status offenders in secure confinement if they violated a valid order of the court. This amendment is commonly referred to as the "Valid Court Order Exception."

About 30 years have passed since the JJDP Act was first enacted. Today, surveying the national landscape of status offense systems is not easy.⁴ Approximately two-thirds of the states have a separate legislative category for status offenders or children or juveniles in need of supervision, services, or care. There are, however, significant variations in how states approach status offense cases, despite a commonly expressed state goal – to preserve families, ensure the safety of the public, and prevent youth from entering the delinquency or criminal system.

Some state legislatures have *increased* the upper age by which youth may be brought into the status offense system, others have *increased* the use of residential placements for alleged status offenders, while several states have *restricted* access to a more formal court process by emphasizing the provision of community-based and in-home services for families and youth prior to any court involvement.

Juvenile status offenders are at high risk to enter the juvenile and criminal justice systems and research has clearly linked involvement in the juvenile status offense system with later delinquency.⁵ Many of these youth are faced with a myriad of complex problems: abuse, neglect, high family conflict and domestic violence; desperately poor and violent neighborhoods; serious mental health needs, learning disabilities, emotional or behavioral problems; gangs; bad peer group choices; and poor educational and employment options.

² Snyder, Howard N. and Melissa Sickmund. Chapter 6 in *Juvenile Offenders and Victims: 1999 National Report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 1999. <<http://www.ncjrs.gov/html/ojjdp/nationalreport99/toc.html>> (The U.S. Department of Justice issued a new version of *Juvenile Offender and Victims* in 2006. It did not include new national estimates on the number of petitioned status offense cases).

³ *Ibid.* On January 16, 2007, the National Center for Juvenile Justice released an OJJDP briefing paper that found that the number of court petitioned juvenile status offenses cases more than doubled between 1985 and 2004. The briefing paper did not include an estimate of the total number of court cases petitioned for any year after 1996. Puzzanchera, Charles. *Trends in Justice System's Response to Status Offending: OJJDP Briefing Paper*. Pittsburg, PA: National Center for Juvenile Justice, 2007 (prepared for the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention).

⁴ See generally, Maxson, Cheryl L. and Malcolm W. Klein. Chapter 4 in *Responding to Troubled Youth*. New York, NY: Oxford University Press, 1997. (conducting a legislative analysis of state juvenile codes as of 1987 to determine whether state status offense laws were treatment, deterrence, or normalization oriented).

⁵ See, e.g., Henry, K. and Huizinga, D. "Effect of Truancy on Onset of Drug Use and Delinquency." Presented at Annual Meeting of American Society of Criminology, November, 2005.

Often they are brought before the court by their parents, not because they committed an act of delinquency but because their troubles include such things as chronically running away from home, being allegedly out of control or repeatedly missing school. These behaviors may signal that a youth is in critical need of assistance, and that appropriate service-focused interventions may significantly help curtail future delinquency and involvement in the criminal justice system.

In 2007, Congress will begin to consider reauthorizing the JJDP Act. With reauthorization comes the opportunity to strengthen the Act's goals of deinstitutionalizing and increasing prevention and diversion service for status offenders.



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July 14, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Republican
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

I write on behalf of the American Bar Association (ABA) and its more than 400,000 members nationwide to express our support for S. 3155, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008. While we support the legislation as introduced, we urge that the bill be amended to provide for a phase-out of the statutory authority to confine youth status offenders in juvenile facilities.

S. 3155 meaningfully updates and improves many of the federal Juvenile Justice and Delinquency Prevention Act (JJDP Act) core requirements, research and training resources and other key areas of the law. We are pleased to see such positive movement to reauthorize the JJDP Act, which, for more than 30 years, has provided states and localities with federal standards and support for improving juvenile justice and delinquency prevention practices and has instituted safeguards for youth, families and communities.

We specifically applaud the progress represented by the following amendments in S. 3155 that strengthen the Act's core requirements:

* * *

- Strengthens the deinstitutionalization of status offenders (DSO) core requirement: While S. 3155 requires judicial findings and establishes a ceiling of 7 days for secure detention, we strongly support an amendment to phase-out the VCO exception (see attached) to protect status offenders from being locked up, where they are vulnerable to victimization and at risk of developing delinquent behaviors.

The DSO core requirement has existed since the original JJDP Act in 1974. The DSO core requirement prohibits the incarceration of status offenders—youth whose offenses would not be criminal but for their status as minors (e.g., truants, runaways, and youth who violate curfew). This requirement is in place to protect youth with non-criminal offenses from being locked up, where they are vulnerable to unsafe conditions and victimization and at risk of developing delinquent behaviors.

Under current law, non-delinquent status offenders, such as children who are truant, runaway or violate curfew, alcohol and tobacco laws, may be held in juvenile lock-ups under the Valid Court Order (VCO) exception, which allows judges to issue detention orders. The practice persists despite evidence that securely detaining status offenders is harmful to pro-social development and costly, especially compared to more effective responses including shelter care, crisis counseling, family support, and community and school based interventions.

Unfortunately, the VCO exception, which allows for the secure detention of youth with non-criminal offenses for a violation of a valid court order, has significantly undermined the DSO requirement. This exception has become the rule, with the total number of court petitioned juvenile status offense cases doubling between 1985-1994. On any given day in 2006, 4,700 youth were placed in juvenile facilities for a status offense. In 2004, 400,000 juvenile arrests were made for status offenses, not including truancy.

One out of every three youth with status offense cases before a court are truant. According to the Office of Juvenile Justice and Delinquency Prevention, between 1995 and 2004, there has been a 69% increase in truancy court cases. Research demonstrates that school-based services such as Positive Behavioral Interventions and Supports (PBIS) are effective in addressing the educational and social needs of youth who are chronically truant. Placing children with truant behavior in juvenile facilities has been shown to be bad practice and greatly reduces their chances of school engagement and academic achievement. A Department of Education study showed that 43 percent of incarcerated youth receiving remedial education services in confinement did not return to school after release, while another 16 percent returned to school but dropped out after only 5 months.

Girls representing 14% of delinquent youth in custody, but 40% of status offenders in custody, are also disproportionately affected by the DSO exceptions. Girls often runaway because of an unstable or even abusive home environment, making incarceration a particularly cruel and illogical response. Community-based alternatives that provide family counseling, crisis intervention, and gender-specific programming are more appropriate responses to meeting the needs of girls and their families. Because the proportion of girls in the juvenile justice system has been on the rise over the last few decades, locked juvenile facilities are still ill-equipped to provide facilities and services to meet their most basic needs and to protect their safety.

In addition to girls and truants, runaway and homeless youth are also criminalized by the VCO exception, often ending up languishing in juvenile facilities as long as youth with offenses involving weapons, auto theft, burglary, and theft. Runaway and homeless youth consistently report family conflict as the main reason for leaving home. Studies of runaway and homeless youth reflect rates of sexual abuse ranging from 17 to 53 percent, and physical abuse from 40 to 60 percent. Community-based alternatives to detention, such as runaway shelters, family reunification programs, family counseling, and respite care have produced positive outcomes for runaways, including family strengthening, school engagement, employment, and delinquency prevention.

For these reasons, the ABA joins with many education, homeless services, youth services, and juvenile justice organizations in urging your support for the attached amendment to eliminate the VCO exception. The amendment would phase out the exception over a period of several years, giving States time to shore up alternatives to confinement for status offenders.

The ABA believes that youth with non-criminal behaviors can most effectively be served by community-based and school-based interventions, which have demonstrated positive outcomes around school engagement, family strengthening and delinquency prevention. Indeed, a third of states have already eliminated the VCO, and other states across the country have severely limited its use beyond what the current language in S. 3155 requires. Eliminating the VCO exception will advance best practices in the remaining states, and reduce the public costs associated with the over reliance on incarceration for non-criminal youth.

The ABA applauds the introduction of S. 3155, a strong bill to reauthorize the JJDP. Nonetheless, we also urge the Judiciary Committee to act to further strengthen this reauthorization bill by adopting the attached amendment to eliminate the VCO exception and thereby to fulfill the Act's longstanding DSO requirement.

Sincerely,



Thomas M. Susman
Director

Bold text is the additional language that the ABA supports to the JJDP A core requirement on “Deinstitutionalization of Status Offenders” to phase-out use of the Valid Court Order exception:

42 U.S.C. 5633 [Sec. 223.] State plans

(11) in accordance with rules issued by the Administrator, provide that –

(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding -

(i) juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar State law; shall not be placed in secure detention facilities or secure correctional facilities; and

...

(B) juveniles --

(i) who are nonoffenders or not charged with any offense; and

(ii) who are -

(I) aliens; or

(II) alleged to be dependent, neglected, or abused;

shall not be placed in secure detention facilities or secure correctional facilities.

(C) within two years of the date of enactment of this subparagraph, or sooner if possible, no exceptions to this paragraph shall be permissible in relation to—

(i) juveniles who are charged with or who have committed a violation of a valid court order; and

(ii) juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State; and

(D) States and local units of government or combinations thereof shall encourage the use of community-based alternatives to secure detention, including the federal Runaway and Homeless Youth Act (RHYA) programs administered by the Family and Youth Services Bureau of the U.S. Department of Health and Human Services’ Administration for Children and Families (42 U.S.C. 5701)

(E) States may apply for a one-year extension to comply with this paragraph. To apply, States must submit an application to the Administrator describing:

(1) The State’s measurable progress and good faith effort to reduce the number of status offenders who are placed in secure detention or correctional facilities; and

(2) The State’s plan to come into compliance within one year.



Forthcoming ABA Article Series and Current Project on Representing Juvenile Status Offenders

The American Bar Association Center on Children and the Law (ABA) is currently developing an online article series and resource center on how attorneys can best represent juvenile status offenders.

This series builds upon the ABA's ongoing efforts to improve outcomes for this population of at-risk youth, through its publications, conferences and policy resolutions. There will be six articles drafted by expert legal consultants identified by the ABA. Articles will cover issues ranging from the applicability of the Juvenile Justice and Delinquency Prevention Act (JJDP) to how to access early intervention and diversion services for juvenile status offenders.

The topics for the series include:

- **Overview of the JJDP and What the Act Means for Practitioners Appointed by the Court to Represent Juvenile Status Offenders**
- **Who are Status Offenders and How to Work with Them**
- **Accessing Intervention Services and Avoiding Their Deeper Involvement in the Court System**
- **Preparing for Trial and Possible Contempt Proceedings**
- **Transferring Cases between Status Offense, Abuse/Neglect and Delinquency Dockets**
- **Special Education and Disability Rights of Juvenile Status Offenders**

In addition, the ABA's new online resource center will offer information about different state approaches and laws as well as video interviews of experts from multiple disciplines discusses legal advocacy for this youth population.

For more information about this project contact:

Jessica Kendall, Esq.
ABA Center on Children and the Law
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**Appropriations Task Force of the
National Juvenile Justice and Delinquency Prevention Coalition
Recommendations for the New Administration**

The New Administration Should Restore Juvenile Justice Funding to at Least the FY 2002 Levels

Overview:

There are several critical funding streams that support state and local prevention and intervention programs for children and youth and critical improvements to state and local juvenile justice systems. The Juvenile Accountability Block Grant (JABG) Program provides states and units of local government with funds to develop programs to promote greater accountability in the juvenile justice system. The Juvenile Justice and Delinquency Prevention Act (JJDP) Title V Incentive Grants for Local Delinquency Prevention Program, commonly known as the Community Prevention Grants Program, funds collaborative, community-based delinquency prevention efforts to reach youth in high-risk situations before they make poor choices. The JJDP Title II Formula Grants Program supports state and local delinquency prevention and intervention efforts and juvenile justice system improvements. Finally, the Juvenile Mentoring Program supports interventions for children and their families that lead children away from a life of crime.

What is the current state of federal juvenile justice funding?

Unfortunately, effective prevention and intervention activities, such as those supported by Title V Local Delinquency Prevention grants, Juvenile Mentoring grants, Title II State Formula Grants and JABG, remain so woefully underfunded that they reach only a fraction of the kids who could benefit from them. For example, because of lack of funding for after-school programs, more than 14 million children and teens go home from school to an empty house each week. Similarly, given that at least half of the 144,000 delinquents placed out of home nationwide in 2002, and a significant proportion (the more serious ones) of the 385,000 youth placed on probation each year, could be more wisely served by programs like Functional Family Therapy, Multi-Systemic Therapy, or Multidimensional Treatment Foster Care (which are funded by JABG and Title II State Formula Grants), it is easy to see that together these programs could increase their coverage by a factor of ten or more before they would begin to run out of eligible youth.

Why is an increase in federal appropriations for juvenile justice needed?

Focusing on Prevention: Title V and Juvenile Mentoring Program

To keep all children and youth safe and out of trouble, sufficient funds must be provided to continue to support youth development and prevention efforts. A growing volume of research clearly establishes that early investment in youth development and prevention programs can dramatically reduce youth crime and violence. Estimates for cost savings range from \$4-\$7 for every one dollar invested in

prevention and intervention efforts. There must be a strong commitment to keep children and youth safe from harm and to help children and youth realize their full potential by increasing investment in Title V Incentive Grants for Local Delinquency Prevention Program and maintaining the increased funding for the Juvenile Mentoring Program. The new administration should restore the Title V Incentive Grants for Local Delinquency Prevention program to its FY02 level of **\$95 million**, with few or no earmarks. The new administration should also continue to fund the Juvenile Mentoring program at the current level of **\$70 million**.

Supporting State Juvenile Justice Activities: Title II State Formula Grants

Title II State Formula grants provide essential support for public agencies to develop and strengthen juvenile justice systems to prevent delinquency, reduce youth crime, meet vital protection requirements, and keep our communities safe. In addition, these grants have funded programs to provide follow-up post placement services, counseling, and training opportunities for youth, and to expand the use of probation officers to allow nonviolent offenders to remain in the community. The new administration should restore funding for the Formula grants to the FY02 level of **\$89 million**.

Promoting Greater Accountability and Flexibility for Court-Involved Youth: JABG

JABG provides states and units of local government with funds to develop programs to promote greater accountability in the juvenile justice system. Program purpose areas were expanded in 2002 and again in 2005 with the JABG reauthorization for a total of six additional program purposes, including re-entry and gang prevention and intervention. The JABG reauthorization also articulated the critical importance of funding evidence-based strategies for delinquency prevention and intervention. By supporting these additional purposes, JABG will provide needed resources to implement proven strategies for rehabilitating adjudicated youth, and thus reducing juvenile recidivism rates. The new administration should fund JABG at the FY02 level of **\$250 million**.

For more information, please contact the Co-Chairs of the Appropriations Task Force of the National Juvenile Justice and Delinquency Prevention Coalition:

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Juvenile Justice Funding (In Millions)	Final FY 02	Final FY 03 ^a	Final FY 04	Final FY 05	Final FY06 ^b	FY 07/ Cont. Res ^b	FY08 Omnibus ^c	President's FY09 Proposal ^d	Senate Approps Comm.	House Approps Comm. FY09
	OJJDP	\$6.8	\$6.8	\$3.6	\$3.0	\$0.7	\$0.7	\$0.7	--	\$0.5
Title II State Formula Grant	\$88.8	\$83.3	\$83.2	\$83.3	\$79.2	\$79.2	\$74.3	--	\$74.5	\$75
Research, Eval, T&TA	--	--	\$2.5	\$9.9	--	--	--	--	--	--
Demonstration Projects	--	--	\$78.8	\$101.4	\$105.0	\$105.0	\$93.8	--	\$65	
Title V Local Del. Prev.	\$94.3	\$46.1	\$79.2	\$79.4	\$64.4	\$64.4	\$61.1	--	65 ^g	\$40 ^f
Juvenile Delinquency Prev.	--	--	--	--	--	--	--	--	--	--
JABG	\$249.5	\$188.8	\$59.4	\$54.6	\$49.5	\$49.5	\$51.7	--	\$80	\$55
National Programs	\$58.5	\$88.7	--	--	--	--	--	--	--	--
Gang Prevention	\$12.0	\$11.9	--	--	--	--	--	--	--	--
State Challenge Grants	\$10.0	\$9.9	--	--	--	--	--	--	--	--
Mentoring Programs	\$16.0	\$15.9	--	\$14.9	\$9.9	\$9.9	\$70.0	--	\$80	\$100
Drug Prevention	\$11.0	--	--	--	--	--	--	--	--	--
TOTAL	\$546.9	\$451.4	\$306.7	\$346.5	\$308.7	\$308.7	\$351.6	--	\$365.5	
Child Safety Initiatives					\$30	\$30	\$32	--	\$25	
Admn. Prop. for "Child Safety and Juvenile Justice" Block Grant								\$164 ^e		
TOTAL					\$338.7	\$338.7	\$383.6	\$164 ^e	\$390.50	

^aIn November 2002, Congress reauthorized and revised the Juvenile Accountability Block Grant (JABG) and the Juvenile Justice and Delinquency Prevention Act. The new law resulted in different funding categories beginning in FY 2004.

^bThe \$64.4 million for Title V in FY06 and FY07 includes \$60 million in earmarks: \$10 million for the tribal youth program, \$25 million for gang resistance education and training program, and \$25 million for grants to enforce State laws prohibiting the sale of alcoholic beverages to minors. million for grants to enforce State law prohibiting the sale of alcoholic beverages to minors.

^cThe \$61.1 million for Title V in the Omnibus in FY08 includes \$57.9 million in earmarks: \$14.1 million for the tribal youth program, \$18.8 million for gang prevention and \$25 million for grants to enforce State law prohibiting the sale of alcoholic beverages to minors.

^dNo FY09 funding levels were proposed by the Administration for any of the current Juvenile Justice and Delinquency Prevention programs. Instead Administration has proposed a single, new "Child Safety and Juvenile Justice" block grant at a level that is 57% lower than the total FY08 funding for programs eliminated.

^eIn addition, the President's budget proposes \$21 million for administrative costs (above the \$164 million), to be transferred to and merged with the "Justice Assistance" account.

^fThe \$40 million for Title V includes \$25 million for the tribal youth program and \$15 million for gang prevention.

**Gang Task Force of the
National Juvenile Justice and Delinquency Prevention Coalition
Recommendations for the New Administration**

The New Administration Should Prioritize Prevention and Early Intervention Programming to Prevent and Address Youth Violence, Delinquency and Gang-Related Crime

Background

Concerned about gang-related violence and crime, some Congressional lawmakers have pursued deeply flawed policies that have led to the increased incarceration of our nation's most vulnerable children, especially youth who are living in our most challenged communities. This misguided approach has contributed to the widening racial and ethnic disparities in our juvenile and criminal justice systems, it is stunningly expensive, and simply doesn't work.

Despite widespread recognition among juvenile and criminal justice stakeholders that we "cannot arrest our way out of the problem," and despite a growing body of evidence that suppression policies and expansion of law enforcement power have not proven effective in stemming youth crime associated with gangs and may even strengthen gang affiliations, politicians continue to promote "tough on crime" policies that translate into expanded police and prosecutorial power, resulting in more arrests and more incarceration of our nation's youth – particularly our poor youth and our youth of color. These misguided, overly punitive and poorly conceived strategies often increase crime, endanger young people, damage their future prospects, waste billions of taxpayer dollars, and violate our deepest held principles about equal justice under the law.

While this country suffers a financial crisis, we spend \$65 billion per year on incarceration. The United States now records the highest incarceration rates in the world.¹ We are the world's leading incarcerator, with 2.2 million people in US prisons and jails – up 500% from 30 years ago. African-American men are incarcerated at 6.5 times the rate of Caucasian men. Nearly 12% of all African-American males age 25 to 29 are in prison or jail. Meanwhile, increasing incarceration of our young people has not been proven to either prevent or curtail crime. As the National Center on Education, Disability and Juvenile Justice's concluded after an exhaustive review of empirical studies: "Incarceration is a spectacularly unsuccessful treatment."²

¹ <http://www.hrw.org/english/docs/2008/06/06/usdom19035.htm>

² See Charles Hamilton Houston Institute for Race and Justice, Harvard Law School, *No Child Left Behind Bars: A Briefing on Youth Gang Violence and Juvenile Crime Prevention* (March 2008)
<http://chhi.podconsulting.com/assets/documents/publications/NO%20MORE%20CHILDREN%20LEFT%20BEHIND.pdf>

There is growing support, however, for a more effective approach that will direct federal support to the prevention and reduction crime. This positive approach is consistent with a growing body of research from top scholars in a variety of fields, including economics, educational psychology and public health, that reveals public dollars spent on effective prevention and education programs are far more effective in stemming violence, curtailing crime and delinquency and discouraging gang affiliation than are broadening prosecutorial powers or stiffening criminal penalties for young people accused of crimes.³ Public opinion polling studies also reveal that taxpayers overwhelmingly favor paying for prevention, education and rehabilitation programs rather than prosecution and incarceration of youthful offenders.⁴

The new administration should support the approaches articulated in H.R. 3846, the Youth PROMISE Act. Introduced the 110th Congress by Rep. Robert C. “Bobby” Scott (D-VA), the Youth PROMISE Act will prevent violence and delinquency among youth by supporting children and adolescents in their schools and communities. Specifically, the legislation will provide resources to communities to engage in comprehensive prevention and intervention strategies to decrease juvenile delinquency and criminal street gang activity. Under the Youth PROMISE Act, communities come together via local councils, including representatives from law enforcement, court services, schools, social service organizations, health and mental health providers and community-based and faith-based organizations, and develop a comprehensive plan for implementing evidence-based prevention and intervention strategies. These strategies will target young people who are at-risk of becoming involved, or who are already involved in, gangs or the criminal justice system to redirect them toward productive and law-abiding alternatives.⁵

³ In recent years, a wide range of reputable organizations have commissioned or conducted related research and reached similar conclusions. These include the American Psychological Association, the Washington State Institute for Public Policy, the Social Development Research Group of Seattle, Washington, and the U.S. Government’s own Office of Juvenile Justice and Delinquency Prevention. For more information, see <http://chhi.podconsulting.com/assets/documents/publications/NO%20MORE%20CHILDREN%20LEFT%20BEHIND.pdf>

⁴ Models for Change, Systems Reform In Juvenile Justice, Rehabilitation Versus Incarceration of Juvenile Offenders: Public Preferences in Four Models for Change States www.modelsforchange.net/pdfs/WillingnesstoPayFINAL.pdf

⁵ For more information about the Youth PROMISE Act, see http://www.house.gov/scott/hotissues_youthpromiseact.shtml

Recommendation for the New Administration

- Urge Congress to enact the Youth PROMISE Act.⁶
- Prioritize America's youth by increasing investments in prevention, early intervention, treatment and aftercare for children and youth.
- Establish a priority at the cabinet and sub-cabinet levels to support programs and activities that prevent youth from becoming involved in the juvenile justice system and provide opportunities for early intervention and aftercare following juvenile justice system involvement.
- Task federal agencies including the Departments of Justice, Education, Labor, Housing and Urban Development, Defense, Health and Human Services and SAMHSA with prioritizing juvenile justice prevention and intervention.
- Refuse to sign legislation that will ensnare more youth in the juvenile and adult criminal justice systems, over-criminalize and increase federal penalties for minor and predictable adolescent misbehavior, exacerbate racial and ethnic disparities in the juvenile and criminal justice systems, and increase the already staggering incarceration rates in the United States. Specifically, the President should refuse to sign legislation that adopts that punitive policies and approaches of S. 456, the Gang Abatement and Prevention Act – legislation introduced in the 110th Congress.
- Require the Office of Juvenile Justice and Delinquency Prevention to work with Congress, states and localities to coordinate gang prevention and intervention programs, and ensure effective use of federal funds for evidence-based and promising programs to prevent and intervene in gang involvement.
- Require the Department of Education to help reduce referrals to the juvenile justice system by establishing programs to encourage and support school-based discipline and reverse the trend of criminalization of predictable adolescent misconduct in schools.

For more information, please contact the Co-Chairs of the Gang Task Force of the National Juvenile Justice and Delinquency Prevention Coalition:

⁶ For more information on the Youth PROMISE Act, please see:
http://www.house.gov/scott/pdf/HRW_supportypa_opphr3547.pdf

ACT 4

JUVENILE JUSTICE

A CAMPAIGN OF THE JUVENILE JUSTICE & DELINQUENCY PREVENTION COALITION
www.act4jj.org

Juvenile Justice and Delinquency Prevention Act (JJDP) Recommendations and Background

The Act 4 Juvenile Justice campaign of the National Juvenile Justice and Delinquency Prevention Coalition believes that the time is right for Congress to reauthorize and strengthen the JJDP. In recent years, events across the nation have highlighted the need for juvenile justice system reform. Congress can take steps now to assist states to improve conditions many juveniles endure while detained in youth correctional institutions, boot camps and other facilities; to eliminate the placement of youth in adult jails and prisons; and to reduce racial and ethnic disparities in the justice system.

We believe JJDP reauthorization should be grounded in recent research conducted by the Department of Justice, the Centers for Disease Control and Prevention and other national and state organizations. We also believe that any JJDP reauthorization should include the following recommendations, which address the most timely and critical juvenile justice reform issues:

1. Extend the *jail removal* and *sight and sound separation* core protections to all youth under the age of 18 held pretrial, whether charged in juvenile or adult court.
2. Codify current State flexibility for housing youth convicted in adult court in juvenile facilities rather than adult prisons by modifying the definition of “adult inmate.”
3. Strengthen the *Disproportionate Minority Contact* (DMC) core protection by requiring States to take concrete steps to reduce racial and ethnic disparities in the juvenile justice system.
4. Strengthen the *Deinstitutionalization of Status Offenders* (DSO) core protection, which prohibits the locked detention of status offenders, by removing the Valid Court Order and Interstate Compact exceptions.
5. Provide safe and humane conditions of confinement for youth in state and/or local custody by restricting use of JJDP funds for dangerous practices and encouraging States to promote adoption of best practices and standards while eliminating dangerous practices and unnecessary isolation.
6. Assist States in coming into compliance with the JJDP and establish Incentive Grants to encourage States to adopt evidence-based or promising best practices that improve outcomes for youth and their communities.
7. Enhance the partnership between States and the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) by expanding training, technical assistance, research, and evaluation and the partnership between OJJDP and Congress by encouraging transparency, timeliness, public notice, and communication.
8. Expand juvenile crime prevention efforts by reauthorizing and increasing funding for JJDP Title V and Mentoring.

JJDPA Background: The Juvenile Justice and Delinquency Prevention Act (JJDPa) is a major vehicle for juvenile justice reform at the federal level. The JJDPa was first passed in 1974 and most recently reauthorized in 2002.¹

The JJDPa provides grants to States to assist with juvenile crime prevention and intervention programs. In order to be eligible for these grants, States must comply with the four core protections, which are discussed below. JJDPa grants are administered by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP), which is based within the Department of Justice and coordinates and administers federal juvenile justice efforts.

Recommendations – Core Protections:

- 1. Extend the *jail removal* and *sight and sound separation* core protections to all youth under the age of 18 held pretrial, whether charged in juvenile or adult court.**

Why these protections should be expanded:

- The original intent of the JJDPa was to recognize the unique needs of youth in the criminal justice system and establish a separate system to specifically address these needs. One of these unique needs for youth is protection from the dangers of adult jails. Placing youth in adult jails has dire consequences:
 - Youth placed in adult jails are at great risk of physical assault. According to the U.S. Department of Justice Bureau of Justice Statistics, in 2005 and 2006, 21 percent and 13 percent (respectively) of the victims of inmate-on-inmate sexual violence in jails were youth under the age of 18, despite the fact that only one percent of all jail inmates are juveniles.²
 - Youth have the highest suicide rates of all inmates in jails. Youth are 19 times more likely to commit suicide in jail than youth in the general population and 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility.³
 - Adult jails do not offer age appropriate services for youth, such as access to education. The most recent survey of educational programs in adult jails found that 40 percent of jails provided no educational services at all, only 11 percent provided special education services, and just 7 percent provided vocational training.⁴
 - Many children held in adult jails are ultimately transferred back to juvenile court or have their cases dismissed.⁵ Yet, their experience in adult jail is likely to have long lasting negative consequences.
 - Youth involved in the adult criminal justice system are more likely to reoffend. Youth who have been previously prosecuted as adults are, on average, 34 percent more likely to commit crimes than youth retained in the juvenile justice system.⁶
- The jail removal core protection currently protects youth who are under the jurisdiction of the juvenile justice system by prohibiting these youth from being held in adult jails and lock-ups except in very limited circumstances, such as while waiting for transport to appropriate juvenile facilities. In these limited circumstances where youth are placed in adult jails and

lock-ups, the sight and sound core protection limits the contact these youth have with adult inmates.

- While these core protections have worked to keep most children out of adult jails for 30 years, the JJDP Act does not apply to youth under the jurisdiction of the adult criminal court. In fact, on any given day, 7,500 children are locked up in adult jails before they are tried.⁷ Nearly 40 States have laws that allow children prosecuted in adult courts to be placed in adult jails, prior to their first court hearing.⁸

Request: Congress should amend the JJDP Act to extend the jail removal and sight and sound protections of the Act to all youth, regardless of whether they are awaiting trial in juvenile or adult court. In the limited exceptions allowed under the JJDP Act where youth can be held in adult facilities, they should have no sight or sound contact with adult inmates.

2. Codify State flexibility for housing youth convicted in adult court in juvenile facilities rather than adult prisons by modifying the definition of “adult inmate.”

Why this definition should be changed:

- Many States, approximately 40 States, follow best practice and allow youth who are convicted in adult court to serve their sentence in juvenile facilities rather than adult prison. States that had chosen the more humane option of keeping youth out of adult prisons had been threatened with the withholding of federal JJDP Act funds for non-compliance with the JJDP Act based on the initial interpretation of the term “adult inmate” by the OJJDP. Recognizing that OJJDP guidance led to the penalization of States for employing developmentally appropriate placements for youth, OJJDP Administrator J. Robert Flores recently reversed the decision and issued new guidance on August 18, 2008 consistent with best practice.
- States should be allowed the flexibility to retain youth in the juvenile system for as long as the State deems appropriate. Given the significantly higher rate of re-offending by youth held in adult jails and prisons, this flexibility also addresses public safety concerns.
- On any given day, more than 2,600 youth are locked up in adult prisons following their conviction in adult court.⁹ Adult prisons do not offer age appropriate services for youth, limiting their educational opportunities and preventing them from receiving the rehabilitative services that may keep them from re-offending. In fact, despite high rates of mental illness, children in adult facilities are less likely to receive counseling or therapy.¹⁰
- According to a 2007 nationwide poll commissioned by the National Council on Crime and Delinquency, 89 percent of Americans believe that rehabilitative services and treatment for incarcerated youth can help prevent future crime.¹¹ Youth who are detained in the juvenile system are more likely to receive the rehabilitative services necessary to help them turn their lives around and are not subject to the risks involved in being held with adult inmates discussed above.

Request: Revise the definition of “adult inmate” to codify the recent guidance issued by OJJDP by excluding youth who, at the time of the offense, were younger than 18 and who are younger than the maximum age a youth can be held at a juvenile facility under state law.

3. Strengthen the *Disproportionate Minority Contact (DMC)* core protection by requiring States to take concrete steps to reduce racial and ethnic disparities in the juvenile justice system.

Why this core protection should be strengthened:

- The JJDPa currently requires States to “address” disproportionate minority contact (DMC) with the juvenile justice system. This vague requirement has left state and local officials without clear guidance on how to reduce racial and ethnic disparities. Jurisdictions need to approach this work with focused, informed, and data-driven strategies.¹²
- Youth of Color are significantly over-represented in the juvenile justice system:
 - Latino youth are incarcerated in local detention and state correctional facilities nearly 2 times more frequently than White youth.¹³
 - African-American youth represent 16 percent of the adolescents in this country¹⁴, but are 40 percent of the youth incarcerated in local detention and state correctional facilities.¹⁵
- Research demonstrates that Youth of Color are treated more harshly than White youth, even when charged with the same category of offense:
 - For drug offenses, White youth are much more likely than African-American youth to be placed on probation for drug-offenses and African-American youth are twice as likely as White youth to be sent to locked facilities.¹⁶
 - Latino youth are incarcerated for twice as long as White youth for drug offenses and are one and a half times more likely to be admitted to adult prison.¹⁷
- In many parts of the country there are no accurate data on the number of Latino youth in the juvenile justice system. Instead, Latino youth are counted as “White” or “Black,” resulting in significant undercounting of Latino youth involved in the juvenile justice system.¹⁸ Although some data on Latino youth are available, they may not represent the full extent of disparate treatment for Latino youth in the juvenile justice system.¹⁹ Without accurate data, disaggregated by ethnicity as well as by race, it is difficult for communities to plan and coordinate culturally- and linguistically- appropriate services that are effective for youth and their families.²⁰
- It has been established that jurisdictions can achieve measurable reductions in racial and ethnic disparities when they have implemented data-driven strategies that are guided by collaborative groups of traditional and non-traditional juvenile justice stakeholders. Peoria County, Illinois reduced disproportionate referrals of Youth of Color to the juvenile justice system by working with the school system to strengthen school-based conflict resolution protocols.²¹ Travis County, Texas reduced its disproportionate incarceration of Youth of Color who violated probation by establishing a Sanction Supervision Program, which provides more intensive case management and probation services to youth and their families.²² Pennsylvania has recently implemented a system of statewide juvenile justice data collection that captures ethnicity separately from race. Santa Cruz County, California reduced disproportionate admissions to detention of Latino youth by focusing on reducing

admissions for youth who were initially detained by Probation but released by the Judge at first appearance.

Request: Strengthen the requirement that States reduce racial and ethnic disparities in the juvenile justice system by 1) establishing coordinating bodies to oversee efforts to reduce disparities; 2) identifying key decision points in the system and the criteria by which decisions are made; 3) creating systems to collect local data at every point of contact youth have with the juvenile justice system (disaggregated by descriptors such as race, ethnicity and offense) to identify where disparities exist and the causes of those disparities; 4) developing and implementing plans to address disparities that include measurable objectives for change; 5) publicly reporting findings; and 6) evaluating progress toward reducing disparities.

4. Strengthen the *Deinstitutionalization of Status Offenders (DSO)* core protection, which prohibits the locked detention of status offenders, by removing the Valid Court Order and Interstate Compact exceptions.

Why this core protection should be strengthened:

- In establishing that status offenders (truants, curfew violators, runaways, youth who disobey their parents) should not be detained in the original 1974 JJDP, Congress recognized that status offenses are non-delinquent and non-criminal and, therefore, detention was not appropriate for the following reasons:
 - Detention does not resolve the factors that lead to a status offense. Instead, detention often aggravates these factors because children held in secure facilities are exposed to negative influences and subjected to social stigmatization. The detention of status offenders (DSO) provision was designed to ensure that status offenders, who often have unmet mental health or education needs, receive the services they need through the appropriate human services agency rather than the justice system.²³ This also allows the juvenile justice system to focus more on children who are charged with delinquent offenses.
 - Detention of status offenders is also more costly and less effective than home and community-based responses. It interrupts education and detained youth often fail to return to school after release – which can lead to further status offenses.²⁴
 - Girls are disproportionately affected by the DSO exceptions – they are 170 percent more likely to be arrested for status offenses than boys and receive more severe punishment than boys.²⁵
- However, the Valid Court Order (VCO) exception allows status offenders to be locked up for their second and subsequent status offenses, i.e., for violating the court’s order not to commit another status offense.
- Many States no longer allow the incarceration of status offenders under the Valid Court Order (VCO) exception. In those States, judges are able to effectively and proactively manage status offenders without resorting to detention.

Request: Remove the Valid Court Order and Interstate Compact exceptions from the detention of status offenders core requirement.

Recommendations – Conditions of Confinement:

- 5. Provide safe and humane conditions of confinement for youth in state and/or local custody by restricting use of JJDPA funds for dangerous practices and encouraging States to promote adoption of best practices and standards while eliminating dangerous practices and unnecessary isolation.**

Why this provision should be added to the current law:

- The JJDPA currently does not address abusive conditions and practices in juvenile facilities. Traditionally, States have been responsible for conditions of confinement for youth incarcerated in state and local juvenile facilities.
- Reports of widespread abuses in institutions in California,²⁶ Indiana,²⁷ Mississippi,²⁸ Ohio,²⁹ Texas,³⁰ and other states since the last reauthorization of the JJDPA demonstrate the importance of updating the law to ensure the safety of children in custody. Abuses have included frequent use of pepper spray, sexual assaults by staff, hog-tying, and shackling youth.
- Juvenile justice facility staff should be trained on effective behavior-management techniques to respond to dangerous or threatening situations. Activities that create an unreasonable risk of physical injury, pain or psychological harm to juveniles should not be used in juvenile facilities. These activities include using chemical agents, restraints to fixed objects, choking, and psychotropic medications for purposes of coercion, punishment or convenience of staff.

Request: Restrict the use of federal funds for dangerous practices such as hog-tying, fixed restraints, and pepper spray that create an unreasonable risk of physical injury, pain, or psychological harm. Make best practices and standards available nationwide through the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP). Encourage States to provide necessary training for facility staff and to adopt best practices in programming, behavior management, and security while eliminating dangerous practices and unnecessary isolation.

Recommendations – Assisting Compliance and Promoting Evidence-Based or Promising Best Practices:

- 6. Assist States in coming into compliance with the JJDPA and establish Incentive Grants to encourage States to adopt evidence-based or promising best practices that improve outcomes for youth and their communities.**

Why best practices in juvenile justice should be promoted:

- Reauthorization of the JJDPA is an opportunity to strengthen accountability for federal spending on juvenile justice systems and measure state systems' effectiveness in protecting

the public, holding delinquent youth accountable and providing rehabilitation services that prevent future crime.

- States need additional guidance and resources to ensure that they are adhering to the core protections and utilizing best practices. Adoption of best practices will also strengthen accountability for federal spending and result in a greater ability to assess and potentially replicate effective programs.
- Compliance determinations should not be used as a way to exclude States from positive and effective juvenile justice reforms. Rather, the compliance process should support States in being forthright about their compliance challenges, and should provide States with the accountability and assistance they need to overcome those challenges.
- States should also be given incentives for demonstrating progress toward adopting best practices. Incentive grants would encourage States to adopt best practices in juvenile justice reform and develop outcome data on program effectiveness.
- According to a 2007 nationwide poll commissioned by the National Council on Crime and Delinquency, 89 percent of Americans believe that rehabilitative services and treatment for incarcerated youth can help prevent future crime.³¹

Request: For States out of compliance with any of the core requirements, require any JJDP funds that would have been withheld for non-compliance with the core requirement(s) to be set-aside and used by the States as improvement grants to regain compliance with those particular requirements. Establish an Incentive Grant program to be awarded to States that: 1) adopt evidence-based or promising approaches to juvenile justice reform and 2) can demonstrate results or show progress toward implementing best practices, such as effective community-based alternatives to incarceration.

Recommendations – Improve State and Federal Relationships:

- 7. Enhance the partnership between States and the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) by expanding training, technical assistance, research, and evaluation and the partnership between OJJDP and Congress by encouraging transparency, timeliness, public notice, and communication.**

Why the Federal/State partnership should be strengthened:

- It is critical that juvenile justice have a dedicated focus and a “home” within the federal government for purposes of developing national policies, objectives, priorities and plans, and for providing guidance, support and oversight to States and territories implementing the JJDP.
- OJJDP is the agency charged with responsibility for juvenile justice at the U.S. Department of Justice. OJJDP carries out its purposes through research, policies and grants to States and localities to assist them in planning, establishing, operating, and evaluating effective projects. OJJDP is also tasked with the development of more effective education, research, prevention, treatment, and rehabilitation programs for the juvenile justice systems.

- Similarly, it is imperative that the States remain in contact with the federal government to coordinate effective strategies, meet local needs and learn about the best and most promising practices for children, youth and communities across the nation. The 56 State Advisory Groups on Juvenile Justice (SAGs) fulfill this role, individually and collectively, by: 1) supporting models for collaborative systems change; 2) providing real-world advice and counsel to their respective Governors, state legislatures, and the federal government; and 3) serving as incubators for cost-effective innovations that create optimal outcomes for the prevention of delinquency.

Request: Require the OJJDP Administrator to conduct research and provide training and technical assistance to States, which are currently discretionary functions. Require greater transparency and accountability by making State plans and reports on compliance with the core protections publicly available. Require the OJJDP Administrator to investigate, issue a report, and make the report publicly available upon receipt of information that a State may be out of compliance with the core protections. Ensure technical and financial support for a national nonprofit association to represent the nation’s 56 SAGs.

Recommendations – Strengthen Prevention Efforts:

8. Expand juvenile crime prevention efforts by reauthorizing and increasing funding for JJDP Title V Grants and Mentoring.

Why this recommendation should be enacted:

- Created in 1992 and reauthorized in 2002 as part of the JJDP, the Title V grant program funds collaborative, comprehensive, community-based delinquency prevention efforts.
- The Title V Incentive Grants for Local Delinquency Prevention Programs are the only federal funding source dedicated solely to the prevention of youth crime and violence. These small grants fund a range of innovative and effective programs - from home visitation by nurses and preschool/parent training programs to youth development initiatives involving the use of mentoring, after-school activities, tutoring, truancy prevention, and dropout reduction strategies.
- Research has shown that every dollar spent on evidence-based programs can yield up to \$13 in cost savings.³²
- Each child prevented from engaging in repeat criminal offenses can save the community \$2.6 to \$4.4 million.³³
- Model programs funded by Title V include after school programs that connect children to caring adults and provide constructive activities during the “prime time for juvenile crime.”

Request: Increase authorization levels for prevention programs. Create an incentive grant program to encourage States to use more evidence-based prevention programs.

Endnotes

- ¹ The JJDPa was most recently authorized by the 21st Century Department of Justice Appropriations Authorization Act through FY2007 (P.L. 107-273).
- ² *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, Campaign for Youth Justice, p. 4, available at http://www.campaign4youthjustice.com/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf. (November 2007)
- ³ *Id.* at p. 10.
- ⁴ Harlow, Caroline Wolf, *Education and Correctional Populations*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Special Report, Table 3 on p. 4, available at <http://www.ojp.gov/bjs/pub/pdf/ecp.pdf>. (January 2003)
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**Juvenile Justice Re-Entry Task Force of the
National Juvenile Justice and Delinquency Prevention Coalition
Recommendations for the New Administration**

November 6, 2008

Call to Action:

The new Administration should invest in evidence-based community-oriented services and initiatives that support healthy family and community reintegration through life skills development. In addition, the new Administration should support the elimination of barriers to success among youth exiting formal custody.

Each year, approximately 100,000 youth exit the juvenile justice system, and many have spent the better part of their teenage years in secure confinement.¹ A large part of the reason that youth exiting the system face a high risk of reoffending is because adequate structures are not in place to support their successful reintegration. For example, many youth between the ages of 16 and 24 exit juvenile justice placement only to become homeless because their only alternative is a return to unstable families and communities. They need healthy alternatives to destructive environments. Leadership from the Administration and an enhanced federal focus on supportive reentry initiatives for youth translates to improved public safety for all. We cannot abandon our children at this critical stage of their lives.

After their release from secure placement, youth frequently return to communities marked by poverty, dysfunctional home lives and elevated crime. To keep them from reengaging in delinquency, youth transitioning from juvenile and criminal justice systems should be immersed in aftercare programming that offers healthy alternatives and positive role models who will promote the necessary skills for youth to reclaim their lives.

The importance of successful reintegration of offenders back into their communities has risen to the level of political action through the passage of the Second Chance Act (P.L. 110-199) by the 110th U.S. Congress, which, when funded will significantly expand assistance for people currently incarcerated as well as those who are returning to their communities upon release. While this legislation offers some support for youth, it does not go nearly far enough. The momentum for this critical post-detention phase should be extended to youth through targeting strategies that both support positive development and remove existing barriers to success. To this end, we offer two categories of reform.

¹ Snyder, H. (2004). An empirical portrait of the youth reentry population. *Youth Violence and Juvenile Justice* 2(1), 39-55.

1. **Eliminate Policies that Allow Termination of Public Benefits Regarding Post-Detention Medicaid, Housing, and Education.**

Reinstate Medicaid Benefits. Many youth who are released from secure confinement are eligible for Medicaid but their membership has been terminated due of their incarceration, despite pleas from the Centers for Medicare and Medicaid to temporarily suspend rather than terminate these enrollments.²

Ensure Adequate Housing. Youths in the juvenile justice system commonly come from abusive and/or neglectful home environments. There is a presumed high risk of release to these same homes after incarceration, which threatens their chances for staying on track. Juvenile justice systems rarely prepare or advise on post-release housing arrangements for youth exiting the system, and virtually nothing is known about their living arrangements upon release.

Remove Barriers to Education. Youth who are over 18 years old upon release may lose their entitlement to public services such as education. Additionally, youth may encounter additional difficulties in school reenrollment because they are likely to be viewed as having discipline problems.³

2. **Invest in Policies and Programs that Support Youth Reentry**

Provide Post-Release Substance Abuse and Mental Health Programming. A study of 1,800 arrested and detained youth found that nearly 66% of males and 75% of females met diagnostic criteria for one or more major mental health disabilities.⁴ These youth require substantial mental health care upon release if reoffending is to be avoided. Additionally, many youth have substance abuse problems: approximately two thirds of youth exiting the system acknowledge regular drug use.⁵ More than half of incarcerated youth did not complete the 8th grade, and many have unaddressed learning disabilities.

Support Evidence-Based Interventions. Require the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to highlight evidence-based practices for community-based programs offering juvenile justice reentry supportive services, such as long-term one-on-one mentoring with a prosocial adult.

Fund the Second Chance Act. Encourage Congress to fully fund the Second Chance Act (P.L. 110-199). Although youth-centered aftercare provisions are minimal in this Act, it does authorize pilot projects to be established which support reentering youth through services.

² Gupta, R. A., Kelleher, K. J., Pajer, K., Stevens, J., and Cuellar, A. (2005). Delinquent youth in corrections: Medicaid and reentry into the community *Pediatrics* (115), 1077-1083.

³ Sullivan, M (2004). Youth perspectives on the experience of reentry. *Youth Violence and Juvenile Justice* 2(1).

⁴ Teplin, L.A., Abram, K.M., McClelland, G.M., Dulcan, M. K., and Mericle, A. A. (2002). Prevalence of Psychiatric Disorders in Youth in Juvenile Detention. *Archives of General Psychiatry* 59: 1133-1143.

⁵ Snyder, H. (2004). An empirical portrait of the youth reentry population. *Youth Violence and Juvenile Justice* 2(1), 39-55.

Pass Federal Legislation that Enhances Opportunities for Reentering Youth. Encourage Congress to pass federal legislation that strengthens case planning and discharge planning for youth, and establishes a formula grant program to states to assist them in offering pre- and post-release services to youth exiting the system. Federal legislation should also require that states suspend, rather than terminate, Medicaid and SCHIP for enrolled youth offenders during their periods of confinement in public institutions.

For more information, please contact the Chair of the Juvenile Justice Reentry Task Force of the National Juvenile Justice and Delinquency Prevention Coalition:

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Statement of the Children's Defense Fund on Priorities for Children for the New Administration

American Bar Association
Criminal Justice Section
Juvenile Justice Committee
Town Hall Meeting
November 6, 2008



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The Children's Defense Fund (CDF) would like to thank the Juvenile Justice Committee of the American Bar Association - Criminal Justice Section for convening this important Town Hall Meeting and giving interested organizations the opportunity to submit a statement regarding juvenile justice priorities for the incoming administration. There are no doubt many issues that the new administration must face; however, it is critical that the needs of children and youth and the government entities that serve them are made a high priority in 2009 and for the years to come.

CDF is a non-profit child advocacy organization that has worked relentlessly for 35 years to ensure a level playing field for all children. We champion policies and programs that lift children out of poverty; protect them from abuse and neglect; and ensure their access to health care, quality education, and a moral and spiritual foundation. Supported by foundation and corporate grants and individual donations, CDF advocates nationwide on behalf of children to ensure that they are always a priority. In furtherance of these goals, CDF is focused on advancing six key child policy priorities to secure their and our country's future. They include:

1. Priority: End Child Poverty.

Today, 13.3 million children in America, or 1 in 6, are poor, the majority living in working families. The burden of poverty falls disproportionately on minority children, with 1 in 3 Black children and more than 1 in 4 Latino children affected compared to 1 in 10 White children. Poor children lag behind their peers in many ways beyond income; they are less healthy, trail in emotional and intellectual development, and do not perform as well in school. The challenges that poor children face accumulate and interact, casting long shadows throughout their lives. Every year that we keep children in poverty costs our nation half a trillion dollars in lost productivity, poorer health and increased crime.

Legislative Solutions:

- Expand the Earned Income Tax Credit (EITC) for low and moderate income families with 3 or more children.
- Make the Child Tax Credit fully refundable and index it for inflation.
- Extend Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp program) eligibility to more struggling low income families, including legal migrant families, and revise the formula for SNAP benefits to more realistically measure what poor families need for an adequate diet.

2. Priority: Ensure Every Child and Pregnant Woman Access to Affordable, Seamless, Comprehensive Health and Mental Health Coverage and Services.

Today, nearly 9 million children are uninsured. Considerably more than 500,000 pregnant women are uninsured and lack timely access to essential health services. People who are uninsured live sicker and die sooner. The United States is the wealthiest nation in the world, yet children's health status in our country as measured by selected indicators is among the worst in the industrialized world.

Legislative Solution:

Enact comprehensive, affordable child health and mental health legislation that includes critical core elements such as covering all children and pregnant women and provides enrollment simplification, benefits that will cover all medically necessary services, and adequate provider reimbursement to help ensure access to timely health care.

3. Priority: Provide High Quality Early Childhood Development Programs for All.

Today, only 3 percent of eligible infants and young children (0-3) are enrolled in Early Head Start and only some half to two-thirds of children eligible for Head Start are enrolled. Access to quality child care and preschool programs is crucial to level the playing field and ensure every child entering school is ready to learn. Studies reveal that those enrolled in high quality early childhood education programs are subsequently more likely to complete higher levels of education, have higher earnings, be in better health and be in stable relationships, and are less likely to commit a crime or be incarcerated.

Legislative Solutions:

- Pass legislation that would ensure child care services for families below 200 percent of poverty and encourage states to improve the quality of child care services.
- Make the Dependent Care Tax Credit refundable, increase the sliding fee scale, and index the credit for inflation.
- Increase funding for Early Head Start and Head Start and provide access to more children, including quadrupling the number of children receiving Early Head Start services, as well as measures to improve the quality of both Head Start and Early Head Start programs.
- Enact legislation to assist states in establishing an early childhood development system from birth to age 5, including increasing access to high quality preschool programs for 3 and 4 year olds.

4. Priority: Ensure Every Child Can Read at Grade Level by Fourth Grade and Guarantee Quality Education through High School Graduation.

Today, more than 8 out of every 10 Black and Latino fourth graders and almost 6 out of every 10 White fourth graders in our public schools cannot read at grade level. Those unable to read well are at high risk of grade repetition and dropping out of school. Attainment of a high school diploma is among the most effective preventive strategies against adult poverty. Yet the U.S. has the sixth lowest high school graduation rate among the 30 industrialized market economies.

Legislative Solutions:

- Enact educational reform measures to ensure the resources needed to help all children achieve and close the achievement gap between poor and minority children and their peers by establishing effective individualized measures for assessing children's abilities and strengths and following up with the extra help they need, ensuring smaller class sizes and higher quality teachers, and repairing crumbling school buildings.
- Take steps to encourage more young people, especially more youths of color, to see teaching and educational administration as urgent callings.
- Support quality after-school and summer enrichment programs to retain and bolster academic gains during out of school time, including doubling funding for 21st Century Learning Centers, to serve one million more children.

5. Priority: Protect Children from Abuse and Neglect and Connect Them to Caring Permanent Families.

Almost 900,000 children each year in America are abused or neglected, one every 36 seconds. Forty percent of these children get no services at all after the initial investigation. Each year, more than 800,000 children spend time in foster care. On any given night, 200,000 children are homeless—1 in every 4 of the homeless population. The annual total direct and indirect costs of child maltreatment are estimated to be nearly \$104 billion. Children left with no permanent family connections or a connection with a caring adult have no one to whom they can turn for social, emotional or financial support and face numerous barriers as they struggle to become self-sufficient adults.

Legislative Solutions:

- Expand quality parent-child home visiting programs.
- Enact legislation to increase federal investments in prevention, early intervention, specialized treatment, and post-permanency services for children at risk of maltreatment or who have been abused or neglected and their families by modifying federal funding streams.
- Create incentives to promote permanent family or other adult connections for older youth who are in group care or institutional settings and need these connections as they leave foster care.
- Improve the quality of the child welfare workforce, including public and private agency and court staff, attorneys and other representing children to improve outcome for children through enhanced training, comprehensive workforce demonstrations, loan forgiveness and improvements in tracking and monitoring.

- Increase accountability for improved outcomes for children who are at risk of placement or already in foster care.

6. Priority: Stop the Criminalization of Children at Increasingly Younger Ages and Invest in Prevention and Early Intervention.

A Black boy born in 2001 has a 1 in 3 chance, a Latino boy a 1 in 6 chance and a White boy a 1 in 17 chance of going to prison in his lifetime. In 2003, almost 15,000 girls were incarcerated—1 in every 7 juveniles in residential placement. States spend about three times as much money per prisoner as per public school pupil. In order to stop the criminalization of children at increasingly younger ages and invest in prevention and early intervention, we must accelerate reforms of juvenile justice policy at the federal, state and local levels to ensure that children and youth get the integrated services necessary to put them on a sustained path to a successful adulthood.

Legislative Solutions:

- **Restore Appropriations for Juvenile Justice Programs** - The Juvenile Justice and Delinquency Prevention Act (JJJPA) Title II State Formula Grants Program, JJJPA Title V and Juvenile Accountability Block Grants (JABG) have suffered a dramatic 36 percent decrease in funding since FY 2002. We respectfully request that the new administration restore funding for these programs to at least the FY 2002 levels - \$89 million for JJJPA Title II State Formula Grants Program, \$95 million for the JJJPA Title V funding, and \$250 million for JABG. We also ask that the new administration maintain Juvenile Mentoring funding of \$70 million in the next fiscal year.
- **Reauthorize the Juvenile Justice and Delinquency Prevention Act** - We encourage the new administration to make adoption of a strong JJJPA reauthorization bill a key priority. Specifically, we urge the new administration to: support key improvements made in S. 3155, the *Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008*; support policies that close loopholes that allow some youth to be detained in adult facilities; encourage adoption of clearer language that would require elimination of dangerous practices, unreasonable restraints and isolation; and require states to ensure that facilities establish safe staffing levels and effective programming in addition to effective behavior management, since these are all essential elements in ensuring safety of youth and reducing use of harmful practices.
- **Prioritize Investments in Prevention, Intervention and Rehabilitation** - The new administration must reject any measures that contain overly severe penalties for youth or create new definitions of crimes. The new administration should support legislation that emphasize prevention and intervention like H.R. 3846, the Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education Act ("Youth PROMISE Act"), introduced by Congressman Robert C. "Bobby" Scott (D-VA). Using the role of the Office of Juvenile Justice and Delinquency Prevention in disseminating information regarding best practices, the new administration should also call attention to the need to reform or revise state and local juvenile justice systems from their currently most prevalent punitive approach to systems that focus on the rehabilitation of youth.

In sum, it is critical that the new administration take affirmative steps to address the needs of children. Each step that improves the lives of children impacts not just tomorrow but today. Specific to juvenile justice, the new administration must restore funding for state and local government juvenile justice programs and support services for youth. Likewise, the new administration should make reauthorization of a stronger JJJPA a high priority in its first 100 days. Finally, the new administration should reject any measures that emphasize punishment and incarceration or create new categories of crimes for youth and instead promote investment in evidence-based prevention and intervention programs and programs that successfully rehabilitate youth already in the juvenile justice system. The beginning of this new administration brings great opportunity to reverse the trend of criminalization of youth at younger and younger ages and renew our focus on sustained investment in prevention and intervention strategies. We look forward to working with the administration on creating and implementing such policies.



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

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**Statement Regarding Diversified Funding Support for Juvenile and Family Courts
October 24, 2008**

The National Council of Juvenile and Family Court Judges (NCJFCJ) is the nation's oldest judicial membership organization, and is devoted to improving outcomes for youth who come into contact with the judicial system. As a leader for over 70 years in developing meaningful policy and effective practice to positively impact youth experiencing abuse and neglect, family violence, delinquency, and divorce in our nation, the NCJFCJ is the preeminent source for training, technical assistance, and research for judicial officers and others working in juvenile and family courts and allied systems.

Children, youth and families are the focus of our work, regardless of why or when they come before the court. Throughout the distinguished history of the NCJFCJ, judicial leadership and collaboration have been at the forefront of our court improvement efforts. These basic tenets of leadership and collaboration, coupled with numerous principles and recommendations developed to guide practice in all cases involving children, youth, and families have set the framework for an effective and responsive juvenile and family court system in our nation. The NCJFCJ demonstrates our dedication to moving this framework from aspiration to reality every day through our policy and practice work. As result of this work, the NCJFCJ recognizes the need for robust funding support that is child-, youth- and family-focused rather than issue-driven.

There is little debate that children and youth experiencing abuse and neglect, family violence, divorce, or delinquency share common characteristics that put them at risk for system involvement. The pathways by which children and youth come before and move through the court might differ, but the underlying risk factors and lack of protective factors are often more universal than the organization of our justice system would reflect. Specifically, labels such as "dependent" and "delinquent" are largely artificial categories that minimize an important commonality that underlies the very existence of our juvenile and family court system: children and youth are not adults and require a compassionate, specialized, and personalized response from society.

Regardless of experiences or behaviors that bring children and youth before our courts, a coordinated and thoughtful response is essential for improved outcomes at an individual, family, and community level. The NCJFCJ and allied organizations have developed the framework for this response. What is needed now is support to continue to move this framework to the field to better the handling of all cases involving youth. **Critical to achieving this goal is funding that allows courts to respond to the individual needs of children and youth regardless of the point at which they contact the system or how they move through the system.** This child- and youth-focused rather than category- or issue-driven approach to funding reflects our understanding of child and adolescent development, helps improve coordinated responses, and supports efforts to effectively intervene with youth to prevent future human suffering and associated costs.

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Reauthorization of the Juvenile Justice and Delinquency Prevention Act

POLICY GUIDANCE: REAUTHORIZATION OF THE JJDP IS CRITICAL TO A CONTINUED FOCUS ON CHILDREN AND YOUTH IN THE JUSTICE SYSTEM AND SHOULD BE SUPPORTED

Since its passage in 1974, the **Juvenile Justice and Delinquency Prevention Act** has provided support to states and national juvenile delinquency prevention programs to address issues related to at risk youth and juvenile offenders. The Act established landmark requirements around the handling of youth in the system. Establishment and support of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) have been critical in ensuring that states are making efforts to comply with the requirements of the Act and that juveniles are provided due process and fair treatment under the law.

OJJDP has provided since its inception national leadership, coordination, and resources to prevent and respond to at risk youth, juvenile delinquency and victimization. OJJDP supports states, communities and national organizations in their efforts to develop and implement effective prevention and intervention programs. OJJDP is focused on improving the juvenile justice system so that it protects public safety, holds offenders accountable, and provides treatment and rehabilitative services tailored to the needs of juveniles and their families. Programs, research and statistics which have resulted under OJJDP's purview have provided specific resources critical to the field.

The Act continues to ensure that juvenile justice issues remain separate and are not considered as another component of an already overburdened justice system. Reauthorization of the bill as introduced by Senator Patrick Leahy of Vermont (S.3155) and as passed by the U.S. Senate demonstrates a recommitment to the tenets of the Act and to juvenile delinquency prevention programs through 2013. With one exception (repeal of the Valid Court Order exception), the NCJFCJ heartily supports reauthorization of the Act.

Prevention – Child Abuse and Neglect

POLICY GUIDANCE: CONTINUED AND EXPANDED SUPPORT FOR PREVENTION PROGRAMS THROUGH THE CHILD PROTECTION DIVISION OF OJJDP

The full spectrum of practice issues in dealing with youth in the juvenile justice system deservedly includes a focus on prevention. It has long been acknowledged that there is a correlation between child abuse and neglect and later delinquent behavior. As a result, through the Office of Juvenile Justice and Delinquency Prevention, the U.S. Department of Justice has provided support for programs focused on prevention, acknowledging that early efforts in the life of a maltreated child can result in positive outcomes. Judicial education, interdisciplinary training, research and systemic change efforts have all resulted from this prevention-based approach; these programs should be maintained for the long term, and additional resources applied in order to allow for expansion of necessary resources.

Judicial Education and Interdisciplinary Training, Technical Assistance, Research, Publications – Child Abuse and Neglect and Juvenile Delinquency

POLICY GUIDANCE: CONTINUED AND EXPANDED SUPPORT FOR JUDICIAL AND INTERDISCIPLINARY TRAINING, TECHNICAL ASSISTANCE, RESEARCH, STATISTICS AND PUBLICATIONS

NCJFCJ has long recognized that high-quality education and other resources for judges who hear juvenile and family court cases are critical in ensuring better outcomes for children and their families. Limited funding from OJJDP has been available over time to provide judges and others who deal with the nation's most vulnerable families with the education and training needed to make better decisions, to oversee the work in their child dependency and juvenile justice systems, and to serve as change agents and leaders in their communities.

Training on Federal laws and regulations and on juvenile and family case law are underpinning the work, but this topic matter must be coupled with topic areas which broaden a judge's understanding of the cases before him/her. Adolescent brain development, effects of substance abuse on the brain and behavior, and the need to provide for the educational, physical, and psychological needs of children and youth in the system are just a few of the issues critical to educating judicial and other decision-makers. Related issues include innovative practices in the handling of cases related to children and youth, the leadership role of the juvenile court judge, and collaboration across systems to provide better outcomes for children and families. Educated judges are key to a high performing child dependency or juvenile justice system, but without experienced and well trained stakeholders – attorneys, juvenile probation staff, court appointed special advocates, child welfare professionals, and others – the system cannot work at optimum levels. Resources provided by OJJDP have bridged an important learning gap which cannot be filled by state or local providers. By continuing to fund critical programs for judges and other system professionals, OJJDP can continue to support professionals as they seek to provide the highest quality service and oversight for the cases under their watch.

Additional resources provided by the NCJFCJ for judges and others in the field, including technical assistance, research, statistics and publications have been critical to informing the field and inspiring professionals to improve practice in terms of handling their daily caseloads. The technical assistance and research provided by the NCJFCJ and its research division – the National Center for Juvenile Justice (NCJJ) – are providing critical and easily accessible information to practitioners in the field. The statistics on juvenile justice provided by the National Center for Juvenile Justice are unique; NCJJ is the nation's repository and has provided this service for over 30 years. Publications developed by NCJFCJ are cutting-edge resources in continuing to drive the field toward new approaches to handling cases related to children and families.

RESOURCE GUIDELINES AND JUVENILE DELINQUENCY GUIDELINES

POLICY GUIDANCE: CONTINUED FUNDING FOR DEPENDENCY MODEL COURTS INITIATIVE AND NEW FUNDING FOR MODEL COURT AND COURT IMPROVEMENT WORK IN JUVENILE DELINQUENCY CASES

Dependency *RESOURCE GUIDELINES* and Model Courts

In 1995, the NCJFCJ published the *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases*. This publication was endorsed by the American Bar Association and the Conference of Chief Justices. As a practical manual for best case processing of child abuse and neglect cases, this document became recognized nationally as a blueprint for systems change in jurisdictions across the country. The publication of this document provided aspirational goals for best practices and case processing, and its application in courts nationwide through NCJFCJ's Victims Act Model Courts Project has resulted in significant systemic change in courts as large as Los Angeles County Juvenile Court, New York City Family Court and Cook County Juvenile Court, Child Protection Division. Midsized courts (for example, Des Moines and Omaha) and jurisdictions as small as Alexandria, VA have also benefited from this national model court improvement effort. This national initiative has focused on several key components over the long term, focusing on:

- **Judicial Leadership and Collaboration** – A pivotal key in this work has been the commitment of judicial leaders and stakeholders in the system who are committed to conducting the daily business of the court while focusing on future systemic change.
- **Implementation of Best Practices** – Improving practice in the courtroom and systemically is guided by assessing practice, setting benchmarks for change and provision of resources – training, technical assistance, publications, strategic planning and research – to ensure that jurisdictions, once challenges are identified, have the resources needed to implement change effectively.
- **Cross-Site Collaboration** – Through peer learning and sharing of lessons learned across jurisdictions this national initiative has driven change in courts within and outside of the Model Courts Project which are focused on implementation of the *RESOURCE GUIDELINES*.
- **Resources** – As provided by OJJDP and other private and public funders, the Model Courts are breaking new ground in terms of identifying and creating resources necessary to improve the handling of cases, and are calling upon the NCJFCJ to help guide their systems change process. As a result of this work, new programs which were effective in a single jurisdiction have now become nationwide efforts. Samples of these include:
 - Adoption Saturdays - initiated in the Los Angeles Model Court
 - Mediation in Dependency Cases - initiated in the Santa Clara County Model Court
 - Family Group Conferencing - initiated in the Hawaii Model Court and later in the Santa Clara County Model Court

- Benchmark Hearings for children aging out of foster care - initiated in the Cook County Model Court
- Substantive initial hearings - initiated in the Hamilton County Model Court, Cincinnati

These are just a few of the representative examples of accomplishments in Model Courts across the country.

As a result of this cross-system interdisciplinary approach to systemic change, some of the nation's largest jurisdictions have experienced significant reductions in foster care caseloads over the past ten years. These include:

Cook County Juvenile Court, Child Protection Division:

- 1996 – 58,000 children in out-of-home care
- 2007 – Under 8,000 children in out-of-home care

New York City, NY:

- 1998 – 43,000 children in foster care
- 2007 – 16,000 children in foster care

JUVENILE DELINQUENCY GUIDELINES and Model Courts

In 2005, the NCJFCJ published the *JUVENILE DELINQUENCY GUIDELINES: Improving Court Practice in Juvenile Delinquency Cases*. This document, similar to the *RESOURCE GUIDELINES*, was developed over a three year period by a committee of judges and other system professionals tasked with setting out best practices in the handling of juvenile delinquency cases. Endorsed by the Conference of Chief Justices and various other national organizations, this document is being heralded as a blueprint for change in handling juvenile delinquency cases. Similar to work in the dependency system, until the development of the *JUVENILE DELINQUENCY GUIDELINES*, the juvenile delinquency system had little basis for overall comparison across communities in assessing current practice. With this document in hand, numerous jurisdictions are in the process of examining practice, identifying areas in need of improvement, planning for change and implementing new practices and procedures in order to better serve the needs of youth and their communities. Training and dissemination of the document are critical to widespread systemic improvement, but resources are currently not available to ensure that this document and the lessons provided in its implementation are available to those in the field who would benefit from this information.

A Juvenile Delinquency Model Court Project is in operation, but has not been able to realize its potential because there is currently no significant funding from OJJDP to drive this project forward at a national level. Work is currently focused in a small number of jurisdictions (8) nationwide, and these jurisdictions are participating in the program through direct state- or county-supported contracts. Due to a lack of resources, there has been no opportunity to take the knowledge gained in the jurisdictions applying the *JUVENILE DELINQUENCY GUIDELINES* to a larger, national audience. Without significant funding to move this from a jurisdiction-based project to a national initiative, the future of systemic improvement in the handling of juvenile delinquency cases is limited.

Juvenile Delinquency State Court Improvement Program

POLICY GUIDANCE: DEVELOPMENT OF A NATIONAL PROGRAM FOR JUVENILE DELINQUENCY PRACTICE REFORM FOCUSED AT THE STATE LEVEL

For over a decade, practice improvement in the handling of dependency cases has been at the forefront of court and agency practice. With the development of the *RESOURCE GUIDELINES*, the commitment of judges and stakeholders to improve practice through Model Courts in jurisdictions nationwide, and implementation at the state level through the Federally-funded State Court Improvement Program, dependency court improvement has gained significant momentum throughout the nation. Since the mid-1990s this confluence of efforts has resulted in significant improvements in dependency practice nationwide. The positive impact of this work has been experienced by thousands of at-risk children who have been removed from their families less often, moved more quickly and effectively through the foster care system, and placed in permanent homes more quickly and effectively through reunification or adoption.

There is potential for this same level of success to be reached in improving juvenile delinquency system practice with adequate Federal funding and support. A juvenile delinquency state court improvement program whereby funds would flow from Federal resources to State Supreme Courts nationwide with the intent that practice be examined and improved on a statewide basis, would drive practice and policy throughout a state. This funding structure, combined with work in specific jurisdictions through model courts or other jurisdiction-specific initiatives, would ensure a systemic approach to improvement efforts nationwide.



WASHINGTON LEGISLATIVE OFFICE
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October 21, 2008

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with hundreds of thousands of activists and members and 54 affiliates nationwide, we are recommending actions that the new president and the next Congress must take to reform the nation's broken juvenile justice system.

Youth coming into contact with our juvenile justice system can follow one of two paths - one leading to successful integration into our society and the other leading to the adult justice system. Removed from their communities and kept out of sight, people in the criminal justice system can easily become victims of government abuses of power. Within this group, juvenile suspects, defendants, offenders and prisoners are among the most vulnerable. Limited life experience and ignorance of their basic rights can make it difficult for youthful offenders to protect their own interests, and too often, juveniles forgo their rights without realizing that they have done so.

The ACLU has prioritized juvenile justice issues for many years. We have worked with our coalition partners to increase support for the Positive Behavior for Effective Schools Act, legislation sponsored by Senator Obama and Representative Hare that would enable schools to use Title I funds to implement proven evidence-based programs, such as Positive Behavioral Interventions and Supports, conflict resolution, mediation, and restorative practices to replace counterproductive "zero-tolerance" discipline policies in schools. We have been actively involved in challenging the "school to prison pipeline" and ensuring the adequacy of counsel for juveniles. Most recently, the ACLU and the ACLU of Massachusetts released a report written by Racial Justice Program senior staff attorney Robin Dahlberg on the overuse of pre-adjudication detention of children in Massachusetts entitled, "Locking Up Our Children."

The new president must support, and Congress must undertake, a legislative program to address the needs of youth coming into contact with our juvenile justice system. Sound public policy demands that any approach must be comprehensive in nature. Indeed, rather than relying on punitive measures, we must employ a broad-based approach that includes a commitment to prevention efforts, early intervention initiatives and community-based programs. As their guiding premise, these efforts must assume that our nation's children are worth saving and it is in the best interest of both children and society not to expose young offenders to the harsh realities of the adult criminal justice system.

The ACLU's recommendations for reforming our juvenile justice system can be viewed in three segments:

- Keeping children out of the criminal justice system;
- Protecting the rights of incarcerated children; and
- Reintegrating children into communities.

The new president and the next Congress have enormous power to establish and implement sound policies that will both rehabilitate our troubled youth while making our communities safer. It is time to abandon the "tough on crime" rhetoric in exchange for a crime policy that is "smart on crime." We must move youth onto paths toward successful adulthood and avoid the simplistic counter-productive push to put more and more young people into prisons and jails across the country.

The recommendations highlighted in this document, while important, are not meant to be a comprehensive picture of our juvenile justice work. Rather, we have attempted to highlight issues critical to our goals in this area.

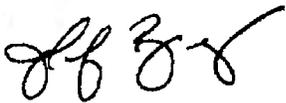
Please do not hesitate to contact Jennifer Bellamy if you have questions regarding this matter at (202) 715-0828 or jbellamy@dcacju.org.

As always, thank you for your time and attention.

Sincerely,



Caroline Fredrickson
Director, Washington Legislative Office



Jennifer Bellamy
Legislative Counsel

Keeping Children Out of the Criminal Justice System

Youth coming into contact with our juvenile justice system can follow one of two paths - one leading to successful integration into our society and the other leading to the adult system. The Juvenile Justice Delinquency Prevention Act (JJDPA) has been a force for the former. In the coming year, the JJDPA will require strengthening and reauthorization to help keep youth from entering the system, to ensure young people receive age-appropriate treatment, and to guard against racial and ethnic disparities within the system.

End the disparity in punitive sentences given to youth of color (including transfers into the adult system)

A significant body of social science research has shown both that youth of color are overrepresented in our juvenile and criminal justice systems *and* that the two systems treat youth of color more harshly than similarly situated white youth. African American youth constitute 17 % of the national youth population, but represent an estimated 30% of all youth arrested, 43% of all youth detained in juvenile detention centers, 35% of all youth adjudicated delinquent, 40% of all youth committed to juvenile correctional facilities; and 62% of all youth prosecuted as adults.

Juvenile arrest statistics show that most African-American youth are arrested for non-violent crimes, such as disorderly conduct, drug abuse violations, violations of curfew and loitering laws and non-aggravated assaults. While white youth charged with similar offenses are frequently diverted from the justice system and referred to community-based service programs, African-American youth are almost twice as likely to be referred to juvenile court for prosecution as a delinquent.

For the last 20 years, the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) has required states to address the disproportionate treatment of youth of color. The Act, however, is underfunded and ineffectively enforced. As a result, many states have failed to implement its mandates.

Recommendations:

- Amend the Juvenile Justice Delinquency Prevention Act to give states specific guidance on action steps to reduce racial disparities.
- Fully fund the JJDPA so that states can effectively implement these steps.
- Empower the federal Office of Juvenile Justice and Delinquency Prevention to monitor, in a meaningful manner, state compliance with the JJDPA.
- Support legislation like the Youth PROMISE Act to keep the focus on preventing gang membership and reject other gang-oriented legislation taking a more punitive approach.

Support evidence-based programs

Most American high schools do not offer effective drug education tailored to the needs of experienced teenagers, nor do they provide interventions to assist students struggling with abuse of alcohol and other drugs. Instead, they rely primarily on deterrent punishment for students who are caught violating the rules. Proponents of the “big four” consequences — exclusion from extracurricular activities, transfer to another school, suspension, and expulsion — believe that harsh consequences for those who are caught will deter other students from committing similar offenses. These “big four” school punishments too often constitute the entirety of “drug prevention.”

However, research has shown that these punishments coupled with ineffective drug education are not likely to change students’ behavior and increase students’ likelihood of involvement with the criminal justice system.

Rather than serving as an effective deterrent, the weak drug education and punitive school system often fosters resentment and oppositional behavior.

Current “science-based” programs are more sophisticated than earlier “just say no” programs, but are still based on questionable assumptions about the reasons so many teens experiment with drugs. Effective drug policies in our nation’s schools are needed to halt what has come to be known as the “school-to-prison pipeline.” (The “school-to-prison pipeline” refers to the policies and practices that push our nation’s schoolchildren, especially our most at-risk children, out of classrooms and into the juvenile and criminal justice systems. This pipeline reflects the prioritization of incarceration over education.)

Recommendations:

- Support passage of legislation along the lines of the proposed Positive Behavior for Effective Schools Act (S. 2111/ HR. 3407, sponsored by Senator Obama and Representative Hare) and enable schools to use Title I funds to implement proven evidence-based programs, such as Positive Behavioral Interventions and Supports, conflict resolution, mediation, and restorative practices to replace counterproductive “zero-tolerance” discipline policies in schools. Zero-tolerance and other ineffective disciplinary practices negatively and disproportionately impact students of color and students with disabilities. We also urge support for quality cultural competency training for teachers.
- Eliminate ineffective programs sponsored by the White House Office of National Drug Control Policy (ONDCP), especially ONDCP’s Youth Media Campaign and student drug testing grants.

Protecting the Rights of Incarcerated Children

Ensure equal access to economically valuable prison education for girls

Girls – a disproportionate number of whom are African American or Latina, and most of whom are poor – represent a small but growing proportion of children entering the juvenile justice system. Children suffer interruptions in schooling during court processing and incarceration. Once incarcerated, children are deprived of adequate educational resources and are frequently steered away from achieving a high school diploma and toward the General Education Diploma (GED), which is easier and cheaper for juvenile justice agencies to provide.

Girls bear additional burdens because the numbers of incarcerated girls are smaller, girls in a particular institution may be of different ages, grade levels and aptitudes. Girls of varying levels and ages are often crowded into a single classroom, where grade level-appropriate instruction is abandoned in favor of “self-directed” study or a lowest-common-denominator approach (*See AMERICAN CIVIL LIBERTIES UNION & HUMAN RIGHTS WATCH, CUSTODY AND CONTROL: CONDITIONS OF CONFINEMENT IN NEW YORK’S JUVENILE PRISONS FOR GIRLS 81-82, 2006*). In addition, course offerings for girls embody archaic gender stereotypes and do not prepare girls to earn a living once released. Commonly offered courses include cooking, hairdressing and clerical work, or even crocheting and other economically valueless crafts. Boys, in contrast, may be offered classes in automobile repair, building trades such as carpentry and plumbing, and other fields that are both stereotypically male and far more lucrative than traditionally female vocations.

Recommendations:

- Require independent audits of educational offerings in youth prisons by educational experts with authority to issue reports and recommendations for adequate schooling.
- Require youth prisons to provide an education comparable to the standard required for public school.

- Require youth prisons receiving federal funds to undertake Title IX compliance reviews to ensure equal schooling is offered for girls and boys in their custody.
- Require that vocational programs for girls offer the same courses as those offered to boys.

Ensure access to counsel and the courts

Youth are especially vulnerable to abuse in institutions, and so the need for court oversight if abuse occurs is particularly important. The recent revelation of widespread sexual abuse within the Texas juvenile system, in which boys and girls were sexually and physically abused by staff, is just one example of the potential for child abuse in unmonitored correctional institutions. Unfortunately the Texas scandal in which staff shackled their youth targets and threw them in isolation cells if they complained about abuse is not an unusual occurrence. Staff sexual and physical abuse and harassment of youth in custody has been an issue from New York to Hawaii. Because incarcerated youth are uniquely at risk for abuse and have never been a source of frivolous litigation, none of the restrictions in the Prison Litigation Reform Act should apply to these youth.

Recommendations:

- Support passage of legislation exempting youth from the litigation restrictions in the Prison Litigation Reform Act.
- Require youth prisons to provide competent attorney and paralegal advisors for children in custody. Such advisors must be independent of the institution and truly representative of the children's interests and sufficient in number so as to be reasonably available to any child wishing consultation.
- Require monitoring of all juvenile justice systems by independent, preferably non-governmental, legal watchdog agencies empowered to enter youth prisons and speak privately with incarcerated children.
- Require juvenile justice systems to implement regular know-your-rights sessions for incarcerated children, conducted by competent and independent legal advisors.

Finalize the Prison Rape Elimination Act (PREA) Standards for Juvenile Facilities

Finalizing the Prison Rape Elimination Act (PREA) standards would bring added protections to all youth in the juvenile justice system. The standards would also play a critical role in ensuring the safety and protection of children who are or are perceived to be lesbian, gay, bisexual or transgender (LGBT) in particular. These children are especially vulnerable to sexual harassment and abuse, both from staff and other children in the facility. As the PREA standards are finalized, the unique needs of this vulnerable population should be given very close scrutiny by, among other recommendations, ensuring cultural competence training for staff with respect to residents who are LGBT.

Recommendations:

- The administration should work with the National Prison Rape Elimination Commission to ensure that the juvenile facility standards are finalized, as well as inclusive of the unique needs of LGBT children in particular.

- PREA should be specifically funded in the next budget request in order to fully support implementation of the PREA standards in the states.
- The Attorney General should issue the national PREA standards as soon as practicable and the administration should ensure that states' implementation of the standards is closely monitored and penalties for non-compliance are enforced.

Reintegrating Children into Communities

Youth reentering society after incarceration may find that they are barred from working in certain professions or unable to obtain licensing in certain professions because of their juvenile justice records. In some cases, children receive training in a particular field while incarcerated only to learn upon release that they are barred from being licensed in that field. Moreover, juvenile adjudications can follow children for decades, hampering their ability to obtain employment and raising the likelihood that they will reenter the juvenile or adult criminal justice systems. The federal government can positively impact state juvenile justice systems by providing states with financial incentives to invest in good prevention and intervention programs, and by avoiding mandates that have an adverse impact on juveniles interacting with the system.

Recommendations:

- The federal government should provide financial incentives to states to enact measures to enable children to ensure that their adjudications are expunged from their records once they have been rehabilitated.
- The federal government should provide financial incentives to states to enact measures which forbid employers from asking about or considering juvenile offenses in making employment decisions, and states should change licensing regulations and statutes to ensure that juvenile adjudications do not bar an individual from working in a particular profession.
- State and federal law should hold companies accountable that sell background checks or records reflecting expunged or sealed juvenile adjudications.



National Juvenile Justice Network

YOUTH WHO COMMIT SEX OFFENSES

The New Administration Should Improve Our Response to Youth Who Commit Sex Offenses by

- a) Working with Congress to Repeal the Portions of the Adam Walsh Child Protection and Safety Act of 2006 that Place Juveniles Adjudicated Delinquent on Public Sex Offender Registries, and
- b) Signing an Executive Order Stating that No Child Under the Age of 18 Be Placed on a Sex Offender Registry.

Background

The National Juvenile Justice Network (NJJN) believes that youth who commit sex offenses should not be placed on public registries, nor should they be subject to requirements for community notification. Publicizing the names of children who commit sex offenses contravenes public safety by placing enormous barriers in the way of the treatment and rehabilitation of these youth. Unfortunately, the Adam Walsh Child Protection and Safety Act of 2006, HR 4472 that was signed into law on July 27, 2006, places youth as young as 14 on public registries for the rest of their lives. NJJN holds that public safety will be better served by repealing the Act's provisions that relate to adjudicated youth.

States are mandated to comply with the Adam Walsh Act by July 2009, or lose 10% of their Byrne Grant Funding. Nevertheless, many states have yet to implement the Act because of their concerns about the constitutionality of its being retroactive, the immense cost for its implementation -- which exceeds by millions the amount of money states would lose for not implementing the Act--, and the administrative complexities of overwriting existing, functional state-based sex-offender registration systems.

But states are perhaps even more concerned by the placement of youth who have been adjudicated delinquent on public sex offender registries. Placing youth on public sex offender registries does several things that are contrary to sound public policy.

- It will hamper youth's ability to access developmentally appropriate treatment;
- It will make it exceptionally difficult for these youth, whose likelihood of recidivating is extremely low, to stay connected to society in a healthy manner;
- It will clog the public registry with individuals who are unlikely to recidivate, making the registry less useful and more difficult to manage;
- It will expose these youth to potential exploitation by predators;
- And it will negate their juvenile court adjudication that is designed to guard public safety by holding youth accountable through a confidential process.

Research Supports Treating Youth Sex Offenders Differently From Adults

New findings in the field of neuroscience that have shown that youth's brains are different from those of adults. Youths' brains during adolescence are still developing in ways that make them more likely to engage in risk-seeking behavior, and have poor problem-solving and decision-making processes. While this makes youth more prone to engage in inappropriate activities, it also makes them more receptive to treatment. In fact, research on youth who commit sex offenses indicates that they are very unlikely to recidivate and are extremely amenable to treatment. According to the National Center of Sexual Behavior of Youth, a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the Center on Child Abuse and Neglect, University of

Oklahoma Health Sciences Center, the recidivism rate among juvenile sex offenders is substantially lower than that of other delinquent behavior (5-14% vs. 8- 58%).¹ This Center, the Center for Sex Offender Management (an institute created by the Office of Justice Programs, the National Institute of Corrections and the State Justice Institute) and OJJDP have all found that youth sexual offenders are highly responsive to treatment.²

Moreover, juveniles are not fixed in their sexual offending behavior. Juvenile offenders who act out sexually do not tend to eroticize aggression, nor are they aroused by child sex stimuli.³ Mental health professionals regard this juvenile behavior as much less dangerous. When applying the American Psychiatric Association diagnostic criteria for pedophilia (abusive sexual uses of children) to the juvenile arrests included in the National Incident Based Reporting System, only 8% of these incidents would even be *considered* as evidence of a pedophilia disorder.⁴ More than nine out of ten times the arrest of a juvenile for a sex offense is a one-time event, even though the juvenile may be apprehended for non-sex offenses typical of other juvenile delinquents.⁵

The Adam Walsh Act Will Decrease Youth's Access to Treatment and Hamper their Connection to Society

By placing juveniles on public registries, parents may be less willing to help their children who exhibit inappropriate sexual behavior. As opposed to holding their child accountable and seeking treatment, parents will be more inclined to hide their child's problem and not seek help when they learn that their child may be required to register for life as a sex offender. Thus more children may continue to be harmed as families hide from public eye their "private" family business.

Moreover, many group homes, foster homes and community placements will not accept children with sex offenses in their histories. Children on a public registry with community notification requirements will be nearly impossible to place for or after treatment. As a result, many juvenile sex offenders will be kept in juvenile correctional facilities far beyond the time it takes them to complete treatment. Children will be incarcerated not because they need further treatment or pose a risk to public safety, but only because public policy will prevent them from going anywhere else.

Ensuring that youth stay connected to healthy families and positive community supports is critical to reducing recidivism. Yet, placing youth on public registries will actually serve to undermine this basic tenet of rehabilitation of youth. In some states, youth who are placed on public sex offender registries have found it impossible to carry on their normal lives and be productive citizens. They can be denied fair opportunities for housing, employment and education. They are routinely harassed and assaulted; many have had to be removed from their school for their own safety.⁶ Community notification requirements can complicate the rehabilitation and treatment of these youth. This stigma that arises from community notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess⁷ destroying the social networks necessary for rehabilitation.⁸

Families also may find that in many states their "registered sex offender" child who lives with them makes their residence illegal, as registered sex offenders cannot live within certain distances from schools and parks. Thus SORNA stigmatizes and negatively affects the entire family, including the parents and other children in the home.

Putting Low-Risk Offenders on the Registry Decreases its Efficacy

¹ National Center on Sexual Behavior of Youth (NCSBY)

² NCSBY, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report*; available at <http://www.ojjdp.ncjrs.org/>.

³ NCSBY

⁴ Zimring, F.E. (2004). *An American Tragedy*. University of Chicago Press, p. 8.

⁵ *Ibid*, p. 66.

⁶ Freeman-Longo, R.E. (2000). *Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem*. American Probation and Parole Association, p. 9.

⁷ Earl-Hubbard cited in Garfinkle, E., Comment, 2003. Coming of Age in America: The Misapplication of Sex-Offender Registration and Community Notification Laws to Juveniles. 91 California Law Review 163.

⁸ Rasmussen, cited in Garfinkle.

Because children convicted of sex offenses pose an extremely low threat to public safety, the onerous and difficult task of tracking these youth on public registries and publicly notifying relevant agencies for a minimum of 25 years will only serve to waste public dollars and destroy children's lives. NJJN agrees with the National Alliance to End Sexual Violence (NAESV), which states that "over-inclusive public notification can actually be harmful to public safety by diluting the ability to identify the most dangerous offenders and by disrupting the stability of low-risk offenders in ways that may increase their risk of re-offense. Therefore, NAESV believes that internet disclosure and community notification should be limited to those offenders who pose the highest risk of re-offense."⁹ Given that the recidivism rate for juvenile sex offenders is 8-14%, this means that at least 86% of those youth placed on the public registry pose no risk to public safety, and will only serve to overwhelm the registry with useless and distracting data.

Placing Youth on a Public Registry will Expose them to Predators

Because youth's home addresses are made public, they and their families become potential targets for vigilante acts of violence. Moreover, because pedophiles can easily access through the registry youth's names, pictures, home addresses, schools, license plate numbers and other identifying information, the registry sets these youth up to be victims of pedophilic interest. Thus, placing children on public registries might ultimately re-victimize them, many of whom already suffered from childhood sexual abuse.

Youth Adjudicated within the Juvenile Court Should Receive its Protections of Confidentiality

Although the National Center on Sexual Behavior of Youth recommends that youth sex offenders remain within the jurisdiction of the juvenile court, SORNA would abrogate the primary juvenile court tenet of confidentiality. The confidentiality of the juvenile court system helps form the basis of effective intervention and treatment for youthful offenders. This stripping away of confidentiality as it applies to children under the age of 18 cannot be taken lightly. It cannot be too strongly emphasized that the children implicated by this provision have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

Children charged with sexual offenses are different from adult sex offenders. Sexually inappropriate behavior by children is wrong – but it requires a response that takes differences between youth and adults into account in order to best serve both the interests of the child and the protection of the community. Children and adolescents are constantly changing, developing and learning. They are receptive to rehabilitation and treatment and dependent on adults to guide them in understanding the complexities of the world and appropriate sexual and social behaviors. The legal response to children who exhibit sexually inappropriate behavior should take into account youth's developmental status and should not subject them to registry and community-notification requirements that will essentially prohibit them from ever leading a normal life again.

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⁹ The NAESV position paper on the Adam Walsh Act can be found online at: http://naesv.org/Polycypapers/Adam_Walsh_SumMarch07.pdf



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The Adam Walsh Act Will Decrease Youth's Access to Treatment and Hamper their Connection to Society

By placing juveniles on public registries, parents may be less willing to help their children who exhibit inappropriate sexual behavior. As opposed to holding their child accountable and seeking treatment, parents will be more inclined to hide their child's problem and not seek help when they learn that their child may be required to register for life as a sex offender. Thus more children may continue to be harmed as families hide from public eye their "private" family business.

Moreover, many group homes, foster homes and community placements will not accept children with sex offenses in their histories. Children on a public registry with community notification requirements will be nearly impossible to place for or after treatment. As a result, many juvenile sex offenders will be kept in juvenile correctional facilities far beyond the time it takes them to complete treatment. Children will be incarcerated not because they need further treatment or pose a risk to public safety, but only because public policy will prevent them from going anywhere else.

Ensuring that youth stay connected to healthy families and positive community supports is critical to reducing recidivism. Yet, placing youth on public registries will actually serve to undermine this basic tenet of rehabilitation of youth. In some states, youth who are placed on public sex offender registries have found it impossible to carry on their normal lives and be productive citizens. They can be denied fair opportunities for housing, employment and education. They are routinely harassed and assaulted; many have had to be removed from their school for their own safety.⁶ Community notification requirements can complicate the rehabilitation and treatment of these youth. This stigma that arises from community notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess⁷ destroying the social networks necessary for rehabilitation.⁸

Families also may find that in many states their "registered sex offender" child who lives with them makes their residence illegal, as registered sex offenders cannot live within certain distances from schools and parks. Thus SORNA stigmatizes and negatively affects the entire family, including the parents and other children in the home.

Putting Low-Risk Offenders on the Registry Decreases its Efficacy

¹ National Center on Sexual Behavior of Youth (NCSBY)

² NCSBY, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report*; available at <http://www.ojjdp.ncjrs.org/>.

³ NCSBY

⁴ Zimring, F.E. (2004). *An American Tragedy*. University of Chicago Press, p. 8.

⁵ *Ibid*, p. 66.

⁶ Freeman-Longo, R.E. (2000). *Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem*. American Probation and Parole Association, p. 9.

⁷ Earl-Hubbard cited in Garfinkle, E., Comment, 2003. Coming of Age in America: The Misapplication of Sex-Offender Registration and Community Notification Laws to Juveniles. 91 California Law Review 163.

⁸ Rasmussen, cited in Garfinkle.

Because children convicted of sex offenses pose an extremely low threat to public safety, the onerous and difficult task of tracking these youth on public registries and publicly notifying relevant agencies for a minimum of 25 years will only serve to waste public dollars and destroy children's lives. NJJN agrees with the National Alliance to End Sexual Violence (NAESV), which states that "over-inclusive public notification can actually be harmful to public safety by diluting the ability to identify the most dangerous offenders and by disrupting the stability of low-risk offenders in ways that may increase their risk of re-offense. Therefore, NAESV believes that internet disclosure and community notification should be limited to those offenders who pose the highest risk of re-offense."⁹ Given that the recidivism rate for juvenile sex offenders is 8-14%, this means that at least 86% of those youth placed on the public registry pose no risk to public safety, and will only serve to overwhelm the registry with useless and distracting data.

Placing Youth on a Public Registry will Expose them to Predators

Because youth's home addresses are made public, they and their families become potential targets for vigilante acts of violence. Moreover, because pedophiles can easily access through the registry youth's names, pictures, home addresses, schools, license plate numbers and other identifying information, the registry sets these youth up to be victims of pedophilic interest. Thus, placing children on public registries might ultimately re-victimize them, many of whom already suffered from childhood sexual abuse.

Youth Adjudicated within the Juvenile Court Should Receive its Protections of Confidentiality

Although the National Center on Sexual Behavior of Youth recommends that youth sex offenders remain within the jurisdiction of the juvenile court, SORNA would abrogate the primary juvenile court tenet of confidentiality. The confidentiality of the juvenile court system helps form the basis of effective intervention and treatment for youthful offenders. This stripping away of confidentiality as it applies to children under the age of 18 cannot be taken lightly. It cannot be too strongly emphasized that the children implicated by this provision have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

Children charged with sexual offenses are different from adult sex offenders. Sexually inappropriate behavior by children is wrong – but it requires a response that takes differences between youth and adults into account in order to best serve both the interests of the child and the protection of the community. Children and adolescents are constantly changing, developing and learning. They are receptive to rehabilitation and treatment and dependent on adults to guide them in understanding the complexities of the world and appropriate sexual and social behaviors. The legal response to children who exhibit sexually inappropriate behavior should take into account youth's developmental status and should not subject them to registry and community-notification requirements that will essentially prohibit them from ever leading a normal life again.

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⁹ The NAESV position paper on the Adam Walsh Act can be found online at: http://naesv.org/Policypapers/Adam_Walsh_SumMarch07.pdf

MEMO

To: Presidential Transition Team

Re: Mental Health and Substance Use Disorders for Juvenile Justice Involved Adolescents

From: Alexa Eggleston, Director of Public Policy, National Council for Community Behavioral Healthcare

Date: October 20th, 2008

Thank you for the opportunity to comment on policy priorities for the next administration related to positive youth development in the context of reform of the juvenile justice system. The National Council for Community Behavioral Healthcare is the nation's largest not-for-profit association of organizations dedicated to treating, rehabilitating, and caring for people with mental illnesses and addiction disorders. The National Council represents more than 1,500 member organizations in 46 States who reach nearly 6 million people every year. The following recommendations focus specifically on the importance of expanding community-based mental health and drug treatment services for adolescents, particularly those who have had contact with the juvenile justice system. For more information about the National Council and information contained in this document, please contact Alexa Eggleston, Director of Public Policy at alexae@thenationalcouncil.org or 301-986-6200, ext 243.

Background:

- Among youth in various types of juvenile justice settings—for example, pretrial detention centers where youth are taken soon after arrest—about one-half to two-thirds meet criteria for one or more mental disorders. The prevalence of mental disorders is much higher in juvenile justice settings than it is among youth in the U.S. general population, which is about 15 to 25 percent.ⁱ
- According to one study, half of males, and almost half of females, in juvenile detention had a substance use disorder (SUD). Another study estimated that two-thirds of adolescents entering the Illinois juvenile corrections system met clinical diagnostic criteria for substance use disorder. With rates varying from 25 percent to 67 percent, the prevalence of substance abuse disorder is substantial, suggesting significant treatment need.ⁱⁱ

Recommendations:

The Administration should direct the Substance Abuse and Mental Health Services Administration (SAMHSA) to create and prioritize within the agency overall, and within the discretionary portfolios of the Center for Substance Abuse Treatment and the Center for Mental Health Services, a focus on creating and sustaining collaborations between local community behavioral health providers and juvenile justice systems to ensure that community-based mental health and addiction treatment services are provided for youth in contact with, or in the custody of, the juvenile justice system.ⁱⁱⁱ

- (1) SAMHSA should provide grants to community-based behavioral health providers to partner with local juvenile justice systems to:
 - Screen for and assess youth who have come into contact with the juvenile justice system to determine need for mental health and addiction treatment services;

- Coordinate dispositions as well as aftercare with juvenile justice services for youth with serious mental and/or addiction disorders who are adjudicated delinquent.
 - Increase the use of standardized screening methods and ensure the screening takes place early enough in the process to allow juveniles to be diverted out of the justice system into community-based programs when appropriate;^{iv}
 - Increase the availability of community-based, high-quality, evidence-based treatment for juveniles with substance use disorders;
 - Encourage wider use of empirically validated therapies and of "best practices" within existing programs by offering technical assistance and training opportunities targeted at behavioral healthcare and juvenile justice workers, including cross-training of each profession;
 - Develop a continuum of community-based aftercare services to ensure coordination between the juvenile justice system and mental health and addiction treatment providers.
- (2) The Administration should propose a budget for SAMHSA that will allocate the resources necessary to restore the funding that has been cut from SAMHSA's budget since 2002 and increase resources for priority areas, including adolescent treatment. Specific funding increases should be targeted to the Substance Abuse Prevention and Treatment Block Grant (SAPTBG), which serves as the backbone of the publicly funded addiction treatment system, and in combination with Medicaid, provides the bulk of federal funding for addiction treatment for women, children and individuals involved in the criminal justice system.
- (3) SAMHSA should collect and report on the number of youth receiving mental health and addiction services through the federal Mental Health Block Grant, the federal Substance Abuse Prevention and Treatment Block Grant, and other grants administered by the state mental health and substance abuse authorities; the data would serve as a basis for estimating the need for such services and to identify those who are in need of but are not receiving services, i.e. the "treatment gap".

ⁱ Linda Teplin and others, "Psychiatric Disorders in Youth in Juvenile Detention," *Archives of General Psychiatry* 59 (2002): 1133–43; Gail Wasserman and others, "The Voice DISC-IV with Incarcerated Male Youths: Prevalence of Disorder," *Journal of the American Academy of Child and Adolescent Psychiatry* 41 (2002): 314–21; Lanette Atkins and others, "Mental Health and Incarcerated Youth: I, Prevalence and Nature of Psychopathology," *Journal of Child and Family Studies* 8 (1999): 193–204; Kathy Skowrya and Joseph Cocozza, *Blueprint for Change — A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System. Appendix B: Youth with Mental Disorders in the Juvenile Justice System—Results from a Multi-State, Multi-System Study*, at www.ncmhjj.com/Blueprint/pdfs/Blueprint.pdf (visited September 1, 2007); and Alan Kazdin, "Adolescent Development, Mental Disorders, and Decision Making of Delinquent Youths," in *Youth on Trial: A Developmental Perspective on Juvenile Justice*, edited by Thomas Grisso and Robert Schwartz (University of Chicago Press, 2000), pp. 33–65.

ⁱⁱ Laurie Chassin, *Juvenile Justice and Substance Use, The Future of Children, Princeton-Brookings, Juvenile Justice, Volume 18, Number 2, Fall 2008.*

ⁱⁱⁱ For additional discussion see Thomas Grisso, *Adolescent Offenders with Mental Disorders, The Future of Children, Princeton-Brookings, Juvenile Justice, Volume 18, Number 2, Fall 2008.*

^{iv} For additional discussion on substance use disorder policy recommendations see Laurie Chassin, *Juvenile Justice and Substance Use, The Future of Children, Princeton-Brookings, Juvenile Justice, Volume 18, Number 2, Fall 2008.*



APA Public Interest & Science Government Relations Offices

Statement on Juvenile Justice

November 6, 2008

Comprising researchers, educators, clinicians, consultants, and graduate students, the American Psychological Association (APA) is the largest scientific and professional organization representing psychology in the United States and is the world's largest association of psychologists. APA works to advance psychology as a science, profession, and as a means of promoting health and human welfare. APA members are involved with the nation's juvenile justice systems in critical ways that foster the positive development of justice-involved youth and protect American communities, including:

- providing crucial mental health services;
- performing prevalence studies of mental health problems among the juvenile justice population;
- developing, delivering, evaluating, and disseminating evidence-based practices, such as the *Blueprints for Violence Prevention*;
- training juvenile justice employees on the appropriate identification of mental health problems among delinquent youth; and
- conducting research and intervening with special populations that have specific needs within the juvenile justice system, including racial and ethnic minorities, youth with disabilities, females, and lesbian, gay, bisexual, and transgender (LGBT) youth.

From this perspective, APA is pleased to share the following recommendations regarding future directions for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the federal stake in juvenile justice.

1. Build on current momentum regarding mental health and substance use issues.

Juvenile justice systems stand on the front line in addressing the unmet mental health needs of America's youth cited by the last two Administrations.^{1,2} Research has shown conclusively that mental health problems exist among the juvenile justice population at rates 3-4 times that of the overall U.S. population under the age of 18.^{3,4} While juvenile justice systems alone cannot be expected to develop the capacity to intervene in all such cases, OJJDP must foster the linkages and collaborations necessary to deliver critical mental health and substance use services. In addition, the Administration and OJJDP should act on the findings and recommendations found in the *Blueprints for Change* report, including prioritizing and funding critical new research areas identified by the report.⁵

2. Move toward evaluating the mental health of all individuals who come into contact with the juvenile justice system and diversion to home and community-base services, when appropriate.

Ideally, no young person would end up in the juvenile justice system due to an unidentified, untreated mental health or substance use problem.⁶ However, the prevalence of these problems among the juvenile justice population justifies implementing voluntary mental health evaluations for all youth who come into contact with law enforcement. Additionally, in cases where public safety concerns allow, youth should be diverted to proven, cost-effective home- and community-based services.

3. Increase the promotion, dissemination, and implementation of evidence-based practices.⁷

The Department of Justice should encourage development and funding of model programs shown in well-designed randomized trials to produce sizable, sustained effects on juvenile delinquency outcomes. Emphasis also should be placed on strengthening the evaluation component of programs, requiring programs to measure and demonstrate their effectiveness and meet quality standards in order to ensure that research with high evidentiary standards is being used. Furthermore, it is imperative that additional research to develop new evidence-based practices be conducted to strengthen the knowledge base.

4. Use grant-making to address juvenile justice and mental health and substance use.

- Prioritize mental health and substance use issues in grants administered by OJJDP;
- Prioritize crime and violence prevention and interventions for those in the juvenile justice system, in grants administered by the Substance Abuse and Mental Health Services Administration (including Systems of Care grants), the Department of Health and Human Services (including Safe Schools/Healthy Students); and
- Prioritize the reduction of school referrals to the juvenile and criminal justice systems and the elimination of zero tolerance policies in grants administered by the Office of Safe and Drug-Free Schools and Communities at the Department of Education.

5. Place OJJDP in a clear leadership role.

While OJJDP should not take responsibility for providing all needed mental health and substance use services to youth at-risk and in contact with the juvenile justice system, it should act as the primary provider of critical technical assistance to promote the effective delivery of these services. OJJDP should coordinate with the Center for Medicare and Medicaid Services, the Substance Abuse and Mental Health Services Administration, the Administration for Children and Families, the Department of Education, and other federal agencies to develop guidance for state and local governments on efficient and innovative models for mental health funding and service delivery and interagency collaboration.

6. Ensure quality in mental health capacity building and service provision.

The *Report of the APA Working Group on Psychotropic Medications for Children and Adolescents* advises practitioners to act cautiously in using psychotropic medications to treat mental health disorders in children.⁸ Significant gaps exist in the knowledge base regarding such medications' efficacy and safety, and drug regimens of this nature should be monitored closely when used with justice-involved and at-risk youth. Whenever possible, psychosocial interventions should be used in treating individuals in this population. However, even traditional therapies carry risks, such as the potential for the verbal exploration of past traumatic episodes to exacerbate symptoms of trauma.⁹ Federal agencies must provide appropriate guidance and technical assistance in these critical areas.

7. Prioritize the needs of special populations in the juvenile justice system.

- Foster the development of cultural and linguistic competencies within juvenile justice systems and allow such activities to count toward states' efforts to reduce disproportionate contact of the system with minority individuals;¹⁰

- Provide guidance and technical assistance to help juvenile justice systems meet the needs and protect the rights of youth with disabilities;
- Continue OJJDP's research priorities on risk factors and effective prevention programs and interventions for justice-involved and at-risk girls, including OJJDP's Girls Study Group; and
- Develop priorities related to the specific needs of lesbian, gay, bisexual, and transgender youth involved in the justice system.

8. Increase the use of expert panels in the peer review process.

Funding decisions for competitive research grants should be based primarily on the recommendations of expert panels in the peer review process. The Administration should embrace this to protect the integrity of the peer review process and ensure that it is fair and free of political interference.

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**Recommendations for Juvenile Justice Reform for the
New Presidential Administration
National Association of School Psychologists
October 20, 2008**

The National Association of School Psychologists is committed to increasing academic, social, and emotional health of all children and youth. Mentally healthy children and adolescents function well at home, in school, and in their communities; and are free of disabling symptoms of psychopathology.

The number of youth that are incarcerated is steadily on the rise, and the common factor among these youth is their pervasive mental health problems. In fact, the number of youth under age 18 serving time in adult jails on any given day increased by 208% between 1990 and 2004 (Hartney, 2006).

As the Surgeon General noted, “.mental health is inexorably linked with general health, child care, and success in the classroom and inversely related to involvement with the juvenile justice system,” and a high proportion of young people with a diagnosable mental disorder do not receive any mental health services at all. (U.S. Department of Health and Human Services, 1999)

Indeed, 70% or more of youth in the juvenile justice system have a diagnosable mental disorder (Otto et al., 1992; Weirson, Forehand, and Frame, 1992). In fact, more than 9,000 children per year are placed in the juvenile justice systems solely to receive mental health care (U.S. General Accounting Office, 2003), though these services are often unavailable in the juvenile justice systems (Sage, 2006). Furthermore, there are very few existing programs that effectively transition youth out of detention facilities and into schools and communities with the support that their mental health issues warrant (Odgers, Burnette, Chauhan, Moretti, & Reppucci, 2005).

Additionally, zero tolerance policies (in which any infraction of existing laws and regulations, regardless of mistakes, ignorance, or even extenuating circumstances, are met with specific prescribed punishments) in schools are an important contributor to the problem of juvenile justice detention facilities holding youth with mental health difficulties who have committed only minor and non-violent offenses (Sage, 2006). Incarcerated youth, without appropriate treatment, connections, and support systems, are more likely to re-offend and be re-arrested. Numerous studies point to deplorable recidivism rates of between 50 and 80 percent (The Annie E. Casey Foundation, 2008). In fact, prior confinement is the strongest predictor of future incarceration.

Schools are the optimal place to develop psychological competence and to teach children about making informed and appropriate choices concerning their health and behavior, and many other aspects of their lives because schools are the only organization in our society in which all children and adolescents are exposed for extended periods of time. A collaborative and coordinated effort is needed among schools, families, and communities in order to ensure that all children and adolescents achieve positive academic and

behavioral outcomes. Schools are the best place to integrate and coordinate these collaborative efforts of teachers, families, mental health service providers, and administrators to foster the mental health services of students.

NASP requests that the new administration support current and new legislation that:

1. Provides ***comprehensive mental health services*** and evidence-based ***prevention and early intervention*** programs (that are culturally and developmentally appropriate) through schools to at-risk children and youth.
2. Provides comprehensive mental health services and evidence-based ***intervention*** programs (that are culturally and developmentally appropriate) to incarcerated children and youth.
3. Provides effective ***transition*** programs between schools and juvenile detention facilities that includes appropriate academic programming and supports and continuity of mental health services for incarcerated youth.

NASP requests that the new administration provide support for the passage and funding of the following proposed legislation:

1. Mental Health in Schools Act of 2007 (HR 3430/S 1332)
2. Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education (PROMISE) Act (HR 3846)
3. Positive Behavior for Effective Schools Act (S 2111/HR 3407)

NASP requests that the new administration provide support:

1. Reforming and reauthorizing the Elementary and Secondary Education Act (ESEA). As part of this Act, NASP seeks increased appropriations for the Elementary and Secondary School Counseling Program, the only federal program dedicated to establishing and expanding school counseling programs.
2. Amending the Safe and Drug- Free Schools and Communities Act to include a broader range of mental health supports and a specific focus on bullying and harassment prevention programs as proposed through the Safe Schools Improvement Act of 2007 (HR 3132).

In conclusion, research findings indicate that we can largely prevent youth from acts of delinquency and can effectively intervene once youth are in the juvenile justice system through mental health services and proven programs. Now is the time to support the drafting, passing, and full funding of legislation that will provide evidence-based, and culturally and developmentally appropriate prevention and intervention programs for our at-risk and incarcerated youth, as well as effective transition programs back into the community and schools post-incarceration.

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AMERICAN HUMANE

Protecting Children & Animals Since 1877

The Need for Restorative Justice Practices in the Juvenile Justice System

With the Juvenile Justice Delinquency and Prevention Act (JJDPA) scheduled for reauthorization in 2009, the American Humane Association hopes the new Administration will embrace several new initiatives and concepts to better serve juvenile offenders and communities. One such initiative should be the inclusion of restorative justice practices in the JJDPA.

The needs and interests of our children and youth must be given primary attention by this new administration.

- The national average of reoffending rate for youth offenders who are handled through the conventional juvenile justice system is over 40% (54% in Arizona in 2004 and 47% in Illinois in 2006).
- According to the W. Burns Institute in California, children and youth of color are disproportionately represented across all aspects of the juvenile justice system and subjected to court sentencing and incarceration more often than the predominant culture.
- Across the nation, the U.S. Department of Justice estimates there were close to 5,500 juveniles being held in adult prisons in the late 1990s. In 2007, this number has escalated by 208%, according to a report released during a national press club by the Campaign for Youth Justice.
- Those youth transferred to the adult justice system are 34% more likely to reoffend.
- The JJDPA must protect youth under 18 from incarceration in adult facilities and mandate the use of restorative justice practices that hold youth accountable for offenses and provide pro-social development from early intervention to post detention efforts.

Through its membership on the National Juvenile Justice Coalition, American Humane is committed to changing the juvenile justice systems through the Restorative Justice for Youth Initiative. **Restorative justice principles state: when a crime is committed, the person who offended incurs an obligation to repair the harms done to those most impacted including the community; to resolve the underlying causes of the offending behavior including abuse and neglect, poverty, and trauma; and to develop a comprehensive agreement that meets both the physical and emotional needs of the key parties involved.** American Humane supports restorative justice practices for these reasons:

- Restorative justice processes carry a consistent reoffending rate of 10% or less, both nationally and internationally in youth crime.
- Victim satisfaction is high for those victims given the opportunity to be involved in a restorative process - over 90% are satisfied.
- Family and community engagement in restorative processes significantly contribute to these successful outcomes.
- Restorative processes are culturally respectful and are supported and implemented in rural and urban communities throughout the U.S.
- Restorative Justice practices are replicable and can become an integral part of the juvenile justice system.

- This integration will reduce reoffending rates, reintegrate offending youth into their communities, increase education outcomes and healthy behavior, improve family relations and provide communities with a genuine sense of safety and wellness.

To achieve this objective, the Juvenile Justice Delinquency Prevention Act (JJDP A) must be reauthorized with a clear emphasis on promoting restorative justice practices. Support of the incoming Administration is crucial to achieving the goals as outlined by the National Juvenile Justice Coalition partners.

About American Humane

For over 130 years, the American Humane Association has worked to prevent cruelty, abuse, neglect, and exploitation of children and animals and to assure that their interests and well-being are fully, effectively, and humanely guaranteed by an aware and caring society. American Humane has 3 primary divisions which primary goals include:

- ***Child Welfare:*** As a recognized leader in professional education and training, research and evaluation, advocacy, and information dissemination, American Humane works to prevent child abuse and neglect while strengthening families and communities and improving and enhancing the capacity of social service systems. American Humane seeks to assist and improve the child welfare and other child and family serving agencies through the use of such programs and initiatives as family group decision making, differential or alternative response, restorative justice for youth, the Breakthrough Series Collaborative on Safety and Risk Assessments, chronic neglect, and the migration and child welfare initiatives. We also produce publications and materials to assist professionals in the field through our curriculum, issue briefs, and our quarterly blind-peer-reviewed journal, *Protecting Children*. Through our research and evaluation on case worker workloads, substance abuse and child welfare, father's engagement in the child welfare system, and disproportionality, American Humane also advances the evidence necessary for future improvements in social service systems.
- ***Animal Welfare:*** Through cooperation and coalition building, American Humane works with animal shelters and allied professionals to promote best practices through shelter services training, grants, evaluation and advocacy to protect animals, primarily companion animals, from abuse or neglect. Campaigns to end cruelty, animal fighting, as well as working with communities to stop pet over-population issues and raise adoptions, are at the core of our animal welfare services. American Humane produces publications and host conferences to assist professionals in best practices in animal welfare. We also provide assistance to communities and their animals when disasters strikes, and created the first humane welfare certification program in the United States to ensure the humane treatment of farm animals.
- ***Human-Animal Bond:*** American Humane's core concern is to create a more humane society. Through our joint mission of protecting children and animals, American Humane is bridging communities through education, research and community awareness. This is accomplished through animal-assisted intervention programs for patients, students and crime victims, programs that provide education and prevention of The Link® between animal cruelty and human violence, and humane education efforts to create more compassionate and caring communities for all.

Safe Horizon Mediation Program

Recommendation: Restorative Justice processes for Juvenile Delinquents and Offenders

Restorative Justice processes (RJ) and Victim-Offender Mediations (VOM) are victim-centered approaches to justice that involve individuals directly impacted by a crime in a collaborative decision making process concerning punitive measures, restitution, and/or emotional impact. RJ practitioners typically arrange private meetings between victims, offenders, and their communities, facilitated by a highly trained mediator. Officially endorsed by the United Nations in 2000, and practiced in most nations around the world, including the U.S., VOM and RJ dramatically reduce the burden on the judicial system, decrease recidivism among juvenile and first-time offenders, and help restore a sense of safety and well-being for victims.¹ These practices represent a shift from traditional discipline and punishment toward a system designed to repair relationships, creating stronger, safer and in some ways self-regulating communities. As RJ and VOM practitioners at the Safe Horizon Mediation Program, we have found that RJ and VOM are particularly effective interventions for youth. We have also found that adults involved in these cases (parents, affected community members, legal professionals) are attracted to the restorative elements of the process: repairing harm, including the harmer in the process, and reintegrating the harmer into her/his community.

The Safe Horizon Mediation Program recommends:

- States, including the ones which already mention VOM and RJ in their legislation, create similarly progressive laws as Colorado's Restorative Justice law, passed in March 2008, for Juvenile Delinquents/Offenders of crimes that involve criminal mischief, burglary, truancy, and, in certain cases, assault.
- Police, probation, criminal court, family court, and corrections refer Juvenile Offenders and Delinquents, deemed eligible, for RJ or VOM processes in order to unburden the system and save valuable time and resources. Cases can be referred pre-sentencing, post-sentencing, or in adjustment. Since preparation time for these cases are much shorter than court processes, conflicts involving youth can even immediately be mediated at the school in which they occur or can be almost directly transferred from the street and into a mediation room, occasionally allowing an arrest to be avoided altogether. Volunteer mediators and staff follow-up and monitor these youths for compliance to their agreements.
- RJ reentry meetings for youth transitioning out of secure and non-secure detention and into their communities in order to construct realistic and individualized plans to help prevent youth from re-offending.
- Pilot projects introducing Restorative Discipline (RD) into at-risk schools. RD, like RJ, seeks to affect the entire school community by involving all stakeholders, individualizing punishment, and working with the offender to make amends. RD is both preventative and restorative; preventive measures include conflict resolution

¹ Sherman, Lawrence W and Heather Strang. *Restorative Justice: The Evidence*. London: The Smith Institute, 2007.

trainings for administration, teachers, security guards, other staff, and students; restorative approaches such as mediations, suspension reentries, and restorative circles take place after an offense has occurred. The goals of RD are not only to repair harm, but also to reintegrate harmers into a carefully established community of care and inclusion.

- Special Education Mediation for juveniles who have special education needs in addition to their RJ or VOM processes. Special Education Mediation helps schools work out disagreements with parents who are reluctant to accept a Special Ed. classification for their children and helps parents work out disputes with schools who may not be appropriately servicing the needs of students with special needs.
- The development of more youth courts such as the one run by the Harlem Community Justice Center in NYC, in order to involve youth in regulating and settling their own disputes.
- National standardized best practices for RJ and VOM initiatives, including screening protocols for cases and suggested minimum training standards for VOM and RJ mediators.

The Safe Horizon Mediation Program (SHMP) is part of the nation's leading non-profit victim assistance, advocacy, and violence prevention organization. The SHMP has worked on RJ Conferences and VOMs involving assault, criminal mischief, burglary, homicide and sexual assault and runs two RD pilot programs in public schools in Brooklyn, NY. The program uses a cadre of experienced staff and volunteer mediators and receives referrals from Kings and New York County Probation Departments, Family Court, Corporation Counsel, and the Red Hook Community Justice Center. A premier training institute, the SHMP mediation team routinely trains groups such as international conflict resolution professionals at the United Nations, school guidance counselors, child protection workers, sheltered housing staff and residents, community organizations and many more.

**ABA Juvenile Justice Town Hall
Center for Children's Law and Policy (CCLP) Statement Summary
November 6, 2008**

CCLP is a nonprofit public interest law and policy organization that works to reform juvenile justice and other systems that affect troubled and at-risk children, and to protect the rights of children in those systems. Our projects involve technical assistance to collaborative groups of juvenile justice stakeholders in jurisdictions around the country, training, legislative and administrative advocacy, and occasionally litigation. Our primary areas of focus are in improving conditions of confinement in juvenile facilities and reducing disproportionate minority contact with the juvenile justice system.

Protecting Youth in Juvenile Justice Facilities

Members of our staff have been actively involved in investigation and litigation remedying conditions in juvenile facilities across the country over the last 30 years. We believe that the new administration should focus additional resources on improving the plight of children who are incarcerated in dangerous facilities. Many facilities in the United States have come to use abusive practices that stray far from the rehabilitative goals of juvenile justice, and that carry with them pain, humiliation, injury to youth and staff and sometimes death.

For example:

- In California, authorities failed to provide adequate medical and mental health treatment, and facility staff regularly used pepper spray on youth.¹
- In Indiana, staff sexually assaulted youth in one facility, and failed to protect youth from violence in several juvenile facilities.²
- In Mississippi, staff in state facilities hog-tied youth, put them in shackles, and stripped youth and put them in dark rooms for 12 hours a day.³
- In Ohio, girls in a state facility were sexually assaulted by male staff.⁴
- In Texas, youth filed hundreds of complaints over physical and sexual abuse and repeated use of pepper spray by staff in juvenile facilities.⁵
- In Maryland and Tennessee, youth were restrained on the ground by staff using dangerous methods; three youth died at two facilities in such restraints.⁶

We encourage the new administration to:

- Establish a priority in the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to provide training and technical assistance to states in order to eliminate use of dangerous practices such as those listed above.
- Increase resources devoted to investigating and remedying conditions in juvenile facilities in the Department of Justice Civil Rights Division's Disability Rights, Educational Opportunities, and Special Litigation Sections.
- Although the Centers for Medicare and Medicaid Services (CMS) in the Department of Health and Human Services (HHS) have established clear guidelines for use of seclusion and restraint in psychiatric residential treatment facilities for young people, no such guidelines exist for use in juvenile justice facilities. Establish a commission to develop nationally mandated standards for conditions in juvenile justice facilities. A good model is the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) standards for conducting assessments of juvenile detention facilities.⁷
- Increase the involvement of the U.S. Department of Education in promoting excellence in education programs inside juvenile justice facilities.
- Seek increased funding for the programs above and support reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDP) with funding restored to 2002 levels or higher. Support inclusion of provisions in the JJDP aimed at reducing dangerous practices in juvenile facilities:

- Data collection regarding use of restraints and isolation in juvenile justice facilities;
- Ensuring that federal funds are not used for dangerous practices;
- Requiring states to develop and implement policies and practices to eliminate use of dangerous practices, including establishing safe staffing levels, ensuring that youth are engaged in meaningful programming, instituting behavior management systems that include positive behavior incentives and use force only as a last resort, and prohibiting the use of dangerous practices; and
- Tasking OJJDP with providing technical assistance to help states eliminate use of dangerous practices and unreasonable restraint and isolation.

Reducing Racial and Ethnic Disparities

Youth of color are disproportionately represented in juvenile justice systems across the country, and the rates of overrepresentation increase as youth go through the system.⁸ Youth of color are one third of the U.S. youth population but two thirds of the youth in detention and secure placement.⁹ In many parts of the country there are no accurate data on the number of Latino youth in the juvenile justice system. Instead, Latino youth are counted as "white" or "black." Without accurate data, it is difficult for communities to plan and coordinate effective culturally and linguistically appropriate services for youth and their families.¹⁰

As part of the John D. and Catherine T. MacArthur Foundation's Models for Change Initiative, CCLP coordinates a Disproportionate Minority Contact (DMC) Action Network and provides technical assistance to 12 counties and parishes across the United States that are working to reduce racial and ethnic disparities in their juvenile justice systems. We and our colleagues who work in their field, including JDAI and the W. Haywood Burns Institute, know that jurisdictions have achieved measurable reductions in racial and ethnic disparities when they have implemented data-driven strategies that are guided by collaborative groups of stakeholders.

For example:

- Multnomah County, Oregon, reduced its disproportionate confinement of youth of color by establishing alternatives to detention such as shelter care, foster homes, home detention and a day reporting center.¹¹
- Peoria County, Illinois, reduced disproportionate referrals of youth of color to the juvenile justice system by working with the school system to strengthen school-based conflict resolution protocols.¹²
- Travis County, Texas, reduced its disproportionate incarceration of youth who violated probation by establishing a Sanction Supervision Program, which provides more intensive case management and probation services to youth and their families.¹³
- Berks County, Pennsylvania, reduced its detentions of youth of color by establishing a race and ethnicity-neutral screening instrument for youth referred for detention.¹⁴

Although one of the core protections of the JJDP Act requires states to "address" racial and ethnic disparities, or DMC, this vague requirement has left state and local officials without clear guidance on how to achieve measurable reductions in racial and ethnic disparities. Jurisdictions need to approach this work with focused, informed, and data-driven strategies,¹⁵ and they need leadership and technical assistance to bring these strategies to scale in the United States. We encourage the new administration to:

- Establish a priority in the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to increase training and on-site technical assistance to states in reducing racial and ethnic disparities.
- Through OJJDP or other appropriate federal agencies, encourage collaboration between juvenile justice and other child-serving systems such as mental health, child welfare and education to reduce racial and ethnic disparities that affect all these systems.
- Support inclusion of provisions in the JJDP Act that provide better guidance to states to further meaningful efforts at racial and ethnic disparity reduction. These include:

Implementing policy, practice, and system improvement strategies by:

- Establishing coordinating bodies made up of a wide range of stakeholders including parents, youth and community organizations, who are often left out of governing bodies;
- Identifying key decision points in the system and the criteria by which decisions are made;
- Creating systems to collect local data at every point of contact youth have with the juvenile justice system (disaggregated by descriptors such as race, ethnicity and offense) to identify where disparities exist;
- Developing and implementing plans to address disparities that include measurable objectives for change; and
- Publicly reporting findings and evaluating progress toward reducing disparities.

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¹ Rothfeld, Michael, "Juvenile Prison System Needs Reform Lawyers Say," *Los Angeles Times*, Feb. 18, 2008, <http://www.latimes.com/news/local/la-me-youth18feb18.0.5845357.story>; Boyd, Ralph, Investigative Findings Letter, U.S. Department of Justice, Civil Rights Division, April 9, 2003, http://www.usdoj.gov/crt/split/documents/la_county_juvenile_findlet.pdf.

² Kim, Wan, Investigative Findings Letter, U.S. Department of Justice, Civil Rights Division, Aug. 6, 2007, http://www.usdoj.gov/crt/split/documents/marion_juve_ind_findlet_8-6-07.pdf; "Justice Department Reaches Settlement Regarding Conditions at Two Indiana Juvenile Justice Facilities," *U.S. Fed. News Service*, Feb. 8, 2006, http://www.usdoj.gov/opa/pr/2006/February/06_crt_066.html; Schlozman, Bradley, Investigative Findings Letter, U.S. Department of Justice, Civil Rights Division, Sept. 9, 2005, http://www.usdoj.gov/crt/split/documents/split_indiana_plainfield_juv_findlet_9-9-05.pdf.

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⁴ Associated Press, "Ohio Settles Suit Over Juvenile Jails," April 4, 2008, <http://www.cnn.com/2008/CRIME/04/04/ohio.youth.prisons.ap>; Investigative Findings Letter, U.S. Department of Justice, Civil Rights Division, May 9, 2007, http://www.usdoj.gov/crt/split/documents/scioto_findlet_5-9-07.pdf.

⁵ Swanson, Doug, "Officials Indicted in Abuse at TYC", The Dallas Morning News, April 10, 2007, <http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/041107dntextyc.be59c6b.html>; Ramshaw, Emily, "Complaints Pour In to TYC Abuse Inquiry," Dallas Morning News, March 13, 2007, http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/DN-tyc_13tex.ART.State.Edition1.44911b8.html; Becka, Holly, et al., "Young Inmates Endured 'Deplorable Conditions,'" Dallas Morning News, Oct. 3, 2007, <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/100307dntextyc.35bdf47.html>.

⁶ Garland, Greg and Linskey, Annie, Restraint Called Common at School Youths Describe Practices at Facility Where Boy Died, Baltimore Sun, Feb. 2, 2007; Amons, Nancy, Youth Center on CDS' Radar Before Deaths, June 27, 2007, <http://www.wsmv.com/news/13583136/detail.html>.

⁷ See *Detention Facility Self-Assessment: A Practice Guide to Juvenile Detention Reform*, published by the Annie E. Casey Foundation and available at <http://www.jdaihelpdesk.org/Docs/Documents/Conditions%20of%20Confinement%20In%20Detention%20Facilities/JDAI%20Conditions%20of%20Confinement%20Self-Assessment%20Tools%20and%20Guidelines/JDAIDetentionFacilitySelfAssessment.pdf>.

⁸ National Council on Crime and Delinquency, *And Justice for Some: Differential Treatment of Youth of Color in the Justice System*, January 2007, pp. 2-3.

⁹ *Id.*

¹⁰ Francisco A. Villarruel, Nancy Walker, et al., *¿Dónde Está la Justicia? A call to action on behalf of Latino and Latina youth in the U.S. justice system*, July 2002, p. 5-7.

¹¹ Eleanor Hinton Hoytt, Vincent Schiraldi, et al., *Pathways to Juvenile Detention Reform: Reducing Racial Disparities in Juvenile Detention*, pp. 54-62.

¹² Conversation with Lori Brown, Peoria County Site Coordinator, August 6, 2007.

¹³ Conversation with Britt Canary, Travis County Juvenile Probation Department, April 8, 2008.

¹⁴ Data from Berks County Youth Center on file with CCLP, October 2008.

¹⁵ W. Haywood Burns Institute, <http://www.burnsinstitute.org/reducing.html>.



The Council of Juvenile Correctional Administrators (CJCA) is the national organization of state agencies responsible for youths in contact with the juvenile justice system – estimated last year to be more than 225,000 youths, nearly 100,000 in secure confinement – overseeing budgets totaling more than \$10 billion. The state agencies are mandated to ensure public safety, hold youths accountable and rehabilitate juvenile offenders. CJCA represents state juvenile leaders who believe time in state care should be a positive experience that increases youths’ life chances by providing education, vocational training, medical and mental health services that recognize young people are fundamentally different from adults.

CJCA’s mission is to improve juvenile justice services and programs for delinquent and at-risk youths across the country by:

- Developing the leadership capabilities of state administrators;
- Expanding adoption of Performance-based Standards (PbS) and other tools for the field to improve conditions of confinement;
- Providing education, training and technical assistance to advance and implement best practices; and
- Generating public support for and understanding of juvenile justice and corrections with an emphasis on effective treatment and rehabilitation as demonstrated by research to most effectively reduce criminal behavior. (Please go to www.cjca.net for more information.)

CJCA has worked closely with the US Department of Justice’s Office of Juvenile Justice and Delinquency Prevention (OJJDP) since incorporating 15 years ago and offers the following three recommendations for setting national juvenile justice policy and strategy:

1. **Appoint an experienced juvenile justice leader as administrator of OJJDP to work with the field and national organizations such as CJCA to bridge the gap between the federal government and state juvenile justice work.** A field leader is needed for many reasons:
 - All 50 states, the District of Columbia and the numerous county juvenile systems are different and look to the federal government to set direction based on federal law, to establish public credibility and confidence through enforcement of the core requirements of the Juvenile Justice and Delinquency Prevention Act (JJDP) and to identify and promote effective juvenile justice initiatives and practices;
 - A leader with experience in juvenile justice policy and practice will create a strong and credible relationship with state leaders, experts, researchers and others with the shared goal of improving juvenile justice to better serve youths, families and communities;
 - An experienced leader will be able to restore expertise to OJJDP and professionalism of the staff to allow for monitoring of state adherence to the law, to effectively allocate funds and grants and to expand research and identify more best practices; and
 - An experienced leader will be able to set a direction for the nation based on knowledge of the laws, best practices and evidence-based research that has demonstrated effectiveness in rehabilitating youths and increasing public safety.

For a safer tomorrow, invest in our youths today.

2. **Increase and strengthen funding and support for programs that work, such as CJCA's Performance-based Standards (PbS) program, and the evidence-based programs (EBPs) established by The Blueprints for Violence Prevention, OJJDP and other research.**
 - Many programs have demonstrated effectiveness in reducing the onset and continuation of delinquent behavior when implemented with fidelity but have yet to reach the field in a comprehensive or systematic way.
 - Research has consistently proven that investing in the juvenile justice system will reduce subsequent numbers of adult prisoners and costs of incarceration.
 - The PbS program was launched by OJJDP to address problems reported in the 1994 Congressionally-mandated Conditions of Confinement Study, which found facilities were dangerous, overcrowded and failing to provide adequate services and quality of life for youths and staff. PbS won the 2004 Innovations in American Government Award from Harvard University's Ash Institute for Democratic Governance and Innovation for addressing conditions of confinement and currently is being implemented in nearly 200 volunteer facilities in 26 states. (Please see www.pbstandards.org for more information.)
 - Evidence-based programs include a growing body of published findings clearly demonstrating that when properly funded and implemented, certain programs and interventions can significantly reduce both the human and financial costs associated with juvenile crime and delinquency. It is estimated that only 7% of the target population of at-risk and delinquent youths nationally receive the benefit of these proven, cost-effective programs.

3. **Support a strong reauthorization bill for the Juvenile Justice and Delinquency Prevention Act (JJDP) and ensure OJJDP has the staff and support to monitor compliance with the act, enforce the act's core requirements and promote evidence-based programs through incentive grants and other support.**
 - CJCA is a member of the National Juvenile Justice and Delinquency Prevention Coalition (NJJJPC) and supports a reauthorization bill that strengthens the core protections to youths and supports states through funding, training and technical assistance to improve conditions of confinement, eliminate the placement of youths in adult jails and prisons, reduce racial and ethnic disparities and increase screening, assessment and treatment services for youths who have mental health and/or substance abuse disorders.

CJCA looks forward to working with the new White House administration and offers its services to help return the juvenile justice system to its founding principals recognizing the unique needs and strengths of young people in trouble and responding with effective, fair and individualized treatment and services.

Submitted by Edward J. Loughran, Executive Director, Council of Juvenile Correctional Administrators

For a safer tomorrow, invest in our youths today.

Youth with Disabilities in Juvenile Justice Detention & Correctional Facilities

October 2008

Disproportional representation of youth with disabilities in JJ facilities

- Each day some 100,000 children and youth are locked up in juvenile detention centers and correctional facilities, and more are incarcerated in jails and prisons.
- About 70 – 80% of these youth have a mental health, cognitive, developmental, physical, learning, or other disability, including youth with IQs in the low 40s.

JJ facilities are not safe places for youth with disabilities¹

- Many JJ facilities are overcrowded, unsanitary, unsafe, understaffed, and use inadequately trained staff who work with minimal supervision.
- Children and youth in these facilities are exposed to serious dangers, including:
 - physical assaults and sexual abuse by other residents and staff,
 - serious injuries, suicide and death,
 - death or injury during restraints, and
 - denial of necessary medication, treatment, and services.
- Youth with disabilities are more vulnerable to being exploited and harmed in JJ facilities.
- Incarceration has a profoundly negative impact on their mental and physical well-being.

The need for accountability and transparency in JJ facilities

- Juvenile justice facilities are largely unregulated and free from independent, third-party monitoring and oversight.
- Current reporting requirements regarding deaths, serious injuries, and critical incidents in JJ facilities are inadequate, and monitoring and oversight systems are ineffectual to non-existent.

The existing Protection & Advocacy System can help

- The National Disability Rights Network (NDRN) is the membership association for the 57 Protection & Advocacy (P&A) Systems mandated by Congress to provide legally-based advocacy services on behalf of persons with disabilities in facilities and community settings.
- There is an independent P&A system in each state, the District of Columbia, and five U.S. Territories. A list of each P&A system is available on NDRN's website: www.ndrn.org.
- P&As have a record of success in advocating on behalf of youth with disabilities in child-serving systems (e.g., youth in foster care, special education students, youth in psychiatric facilities). Among other things, P&As monitor conditions in facilities to identify dangerous practices, and advocate to correct them.

¹ See generally, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*. A Justice Policy Institute Report (2007), www.justicepolicy.org/reports_jl/11-28-06_dangers/dangers_of_detention_report.pdf; "Sexual Assault in Juvenile Corrections: A Preventable Tragedy," in *Corrections Today* (Oct. 2007) <http://www.juvenile.state.az.us/PREA/PREA/Asbridge-Juvenile-PREA-Article.pdf>; "13,000 claims of abuse in juvenile detention since 2004," Associated Press (3/02/2008), http://www.usatoday.com/news/nation/2008-03-02-juvenile-detention_N.htm

A *JJ P&A Program* is needed to identify and correct dangerous conditions

- There are eight (8) federal funding streams that support P&A advocacy -- but none is dedicated to protecting and advocating for children and youth in the JJ system.
- All P&As have an interest in and commitment to doing this work – but lack funding and resources. Creating formula grants for a *JJ P&A Program* will meet this need.
- A *JJ P&A Program* will promote the use of effective practices in the JJ system that are cost effective and increase public safety by holding youth accountable while helping them become productive adults.

Creating a *JJ P&A Program* is cost effective

- It is cost effective to identify dangerous conditions and practices as early as possible in order to correct them before they result in costly liabilities.
- A *JJ P&A Program* taps into the national P&A System -- a well-established, federally-mandated network in every state with a proven track record for more than 30 years.
- P&As have unique federally-mandated authority to access JJ facilities, jails and prisons in order to monitor and investigate conditions and practices, including violations of the Juvenile Justice and Delinquency Prevention Act (JJDPA).
- The largest cross-disability network in the nation, the P&A System brings independence, disability expertise, experience, and knowledge of evidence-based practices.
- P&As are ready to begin immediately as soon as funding becomes available.

What a *JJ P&A System* can do

P&As tailor their advocacy activities to the unique needs and issues in their jurisdictions. The range of potential P&A activities includes:

- **Community-based advocacy.** Promoting inter-agency collaborative approaches to reducing the disproportionate contact of youth with disabilities with the JJ system.
- **Diversion advocacy.** Training for and consulting with judges, probation officers, and others about disability issues and resources in order to divert youth from confinement, as appropriate.
- **Facility-based advocacy.** Identifying dangerous conditions and practices that place confined youth at risk of harm. Advocating for special education and mental health services that promote positive youth development.
- **Discharge planning advocacy:** Promoting reintegration of youth back into their communities via aftercare services that reduce recidivism (e.g., education, employment, mental health care).

Recommendation to the President of the United States

- ❖ Create a cabinet-level priority for cross-agency collaboration (e.g., Education, Justice, Health & Human Services) to promote effective practices for handling youth with disabilities in the JJ system that hold youth accountable while helping them become productive and successful citizens, and protect youth from abuse and harm while under state supervision.

Recommendation to policymakers

- ❖ Provide funding for the P&A System to bring its expertise to the JJ system.
- ❖ Promote cost-effective accountability and transparency in JJ facilities by creating a *JJ P&A Program* in connection with the JJDPA Reauthorization in 2009.



*4,000 Police Chiefs, Sheriffs,
Prosecutors, other Law Enforcement
Leaders, and Violence Survivors
Preventing Crime and Violence*

FIGHT CRIME: INVEST IN KIDS is a national, bipartisan anti-crime group led by 4,000 police chiefs, sheriffs, prosecutors, and victims of violence. As leaders on the front-line in the battle against crime, our mission is to take a hard-nosed look at the research about what works to keep kids from becoming criminals. Research and experience show that targeted investments in quality programs that give kids a good start in life will prevent them from engaging in later crime and violence. These investments include quality early education and care, home visiting to prevent child abuse and neglect, after-school and mentoring programs, and programs that help troubled kids get back on track.

Government's most fundamental responsibility is to protect public safety. Our nation is far short of the investment needed to keep kids from becoming criminals. This significant investment shortfall is our nation's crime-prevention gap, leaving every American at needless risk of becoming a victim. As a first step toward closing this gap, Congress should:

1) Expand and Improve Quality Early Childhood Care and Education

Quality early childhood care and education not only helps close the achievement gap and increased graduation rates, but also prevents crime and saves money. Nationally, Head Start only serves about half of the poor three- and four-year-olds eligible for the program, while Early Head Start serves less than five percent of the eligible babies and toddlers. Fewer than one in seven eligible children in low-income, working families receives support for child care through the Child Care and Development Block Grant. FIGHT CRIME: INVEST IN KIDS recommends that the new President and Congress make a federal commitment to at least \$10 billion in new dollars in Fiscal Year 2010 in order to:

- Substantially increase funding for **Head Start** and **Early Head Start** so that these high-quality programs can be even better and serve more eligible children. Funding is needed to provide access for all poor three- and four-year-olds whose parents want them to participate in Head Start and to serve more infants and toddlers in Early Head Start. Funding is also needed to strengthen the quality of Head Start through research proven approaches like increasing teacher qualifications (50% BA degree lead teachers in five years), as provided in the recent reauthorization legislation.
- Significantly increase discretionary funding for the **Child Care and Development Block Grant** and increase the percentage of CCDBG funds set aside for quality improvement from 4% to 10%. CCDBG provides vouchers to eligible low-income, working families to use for a licensed child care provider or after-school program.

2) Expand Efforts to Prevent Child Abuse and Neglect

Each year an estimated 2.7 million children in America are abused or neglected, including 900,000 cases that are actually investigated and verified by state child protection systems. Child abuse and neglect increases by 29 percent the likelihood that an at-risk child will commit a violent crime when he or she grows up. Fortunately, high-quality, voluntary home visiting program can help stop this cycle of violence. FIGHT CRIME: INVEST IN KIDS recommends that the new President and Congress:

- Enact and fund the **Education Begins at Home Act** to expand and improve evidence-based home visiting programs for at-risk families.
- Reauthorize and appropriate \$200 million (the authorized level) for the **Child Abuse Prevention and Treatment Act** to improve state child protective services and community-based prevention services.
- Appropriate \$2.8 billion for the **Social Services Block Grant (SSBG)**, restoring it to its previously authorized level.

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- Appropriate \$545 million (the combined mandatory and discretionary authorization level) for the **Promoting Safe and Stable Families** program to help communities run parenting-education programs, family-strengthening services for troubled families, adoption services, and other child abuse prevention programs.

3) Expand and Improve After-School Programs

Quality after-school programs that connect children to caring adults and provide constructive activities during the peak hours of juvenile crime are among our most powerful tools for preventing crime. However, funding for after-school programs is so limited that more than 14 million children and teens are unsupervised in the after-school hours. FIGHT CRIME: INVEST IN KIDS recommends that the new President and Congress:

- Reauthorize and substantially increase funding for the **21st Century Community Learning Centers** to improve quality and expand access to after-school programs during the “prime time for juvenile crime” from 3 to 6 PM. In particular, reauthorization should address the largely unmet after-school needs of middle and high school youth.

4) Help Troubled Kids Get Back on Track

When children are disruptive and troubled, it is a warning signal that it is time to provide interventions such as social skills training, counseling or other help for children and their families that can lead children away from a life of crime. With research-based interventions, schools and communities can identify warning signals and respond effectively. FIGHT CRIME: INVEST IN KIDS recommends that the new President and Congress:

- Reauthorize the **State Children’s Health Insurance Program (SCHIP)**, currently set to expire March 31st, and ensure adequate funding to serve uninsured kids in low and moderate-income families. Also, Congress should encourage states to expand coverage for mental health services that help troubled kids get back on track.
- Enact **bullying prevention legislation** to help schools implement evidence-based solutions like the Olweus bullying-prevention program.
- Fully fund the **Second Chance Act** to help states and localities to develop and implement strategic juvenile offender reentry plans.
- Reauthorize **Title II Formula Grants** and restore their funding to help state and local jurisdictions implement comprehensive state juvenile justice plans based on detailed studies of needs in their area. Reauthorization legislation should direct federal funds toward proven-effective intervention approaches.
- Reauthorize and restore funding for the **Title V Community Prevention Grants** to support prevention activities like early childhood development, home visiting, after-school activities, mentoring, tutoring, and drop-out, gang, and substance abuse prevention, and authorize and maintain funding for the **Juvenile Mentoring Program**.
- Reauthorize and restore funding for the **Juvenile Accountability Block Grant (JABG)** to help reduce recidivism and turn adjudicated youth away from further crime.
- Enact and fund the **Youth PROMISE Act**, to expand and improve evidence-based prevention and intervention programs for at-risk children and families.



Policy Memorandum

ECONOMIC POLICY INSTITUTE • OCTOBER 24, 2008 • POLICY MEMORANDUM #131

Why crime prevention is better than incarceration

BY ALGERNON AUSTIN

Incarceration is a necessary part of criminal justice, but the most effective criminal justice policies are those that prevent individuals from ever engaging in criminal activity. Below are six reasons why actively preventing crime is better than reactively responding to crime with incarceration.

1. An ounce of prevention is worth a pound of cure.

The old adage about disease prevention being better than treatment applies equally well to the issue of crime. It is better to prevent a criminal career from ever beginning than to try to stop it with incarceration.

Incarceration requires a crime to occur. The average criminal commits several crimes before being arrested. There would be much less crime if we prevent individuals from becoming criminals in the first place.

There is also a high recidivism rate for the formerly incarcerated. Incarceration prevents individuals from committing crime while they are in prison, but it does not prevent them from resuming criminal careers after release. Again, any policy that prevents people from starting criminal careers results in much more crime prevention than incarceration.

2. Incarceration does little to prevent crime.

Even if we ignore the crime that incarceration does not prevent before a person is incarcerated and after a person is released, it is still a highly ineffective method of crime prevention. Since 1993, the United States has experienced a tremendous drop in crime. Violent crime and property crime rates have declined by more than 50%.

How much of the crime drop was due to incarceration? Estimates range from 10% to 40%, but the evidence for a weaker effect—around 10%—appears to be stronger.¹

Nonetheless, the consensus is that most of the crime drop since 1993 was not due to incarceration. We can invest in policies that yield large reductions in crime without the collateral damage of incarceration.

3. Evidence suggests that some policies actually foster higher crime rates.

There is evidence to suggest that tough-on-crime policies may actually increase crime in the long-term. Researchers have found that treating juveniles as adults in the criminal justice system increases their likelihood of recidivism. There is evidence suggesting that the harsher punishment of adults in prison also increases their likelihood of recidivism.² In a more general sense, the limited opportunities for legal employment among ex-offenders may be an additional factor in their high recidivism rate.

4. Incarceration is very expensive.

In 1970, the United States had a relatively average incarceration rate among its peers in Western industrialized countries. Since America began its tough-on-crime and war-on-drugs approach, the incarceration rate has climbed to about seven times the Western industrialized average—and it is still climbing.

Putting so many people in jail and prison is incredibly expensive. We currently spend over \$200 billion a year on policing, the judiciary, and corrections to process and hold all of these people. And the financial cost is still rising.

5. Ex-offenders are not very economically productive citizens.

When released from prison, an individual's ability to participate in the economy tends to be below his or her potential. It is often difficult for ex-offenders to find work. Felons are legally restricted from certain occupations. One survey of four urban areas found that only 13% of employers said that they definitely would consider hiring an ex-offender.³ Audit studies have found that, in the low-wage labor market, male ex-offenders are much less likely to be offered a job than males without a criminal record. Black male ex-offenders, especially, had very low rates of job interviews and offers.

The economic losses of ex-offenders are not distributed evenly by race and class; they are heavily concentrated in poor black communities. The communities that have the least dollars to spare are the ones that lose the most from mass incarceration.

6. High incarceration rates for blacks come with collateral damage.

In addition to the economic losses of poor black communities, the mass incarceration of blacks yields other forms of collateral damage. Black political power is reduced by felon disenfranchisement laws. Also, the population eligible in calculations of political representation is diminished by those removed due to incarceration. Incarcerated populations are often added to white communities where prisons are located, thus increasing their political power.

Incarceration reduces the likelihood of marriage among blacks.⁴ It also leads to an imbalance in the sex-ratio in poor black communities due to the high incarceration rate of poor black males. This imbalance may distort male-female romantic relations by giving males additional power in relationships that they may abuse. Research is necessary to see if this is, in fact, the case.⁵

A high incarceration rate has the potential to weaken incarceration as a deterrent. If a high proportion of the population has been incarcerated, then there is likely to be less social stigma attached to being incarcerated. Negative cultural values from prison life may be transmitted into communities with high proportions of ex-offenders. There needs to be more work done in examining the cultural consequences of mass incarceration.

Overall, incarceration is an ineffective, expensive, and socially harmful way of fighting crime. A smart-on-crime strategy would invest more in socially constructive crime-prevention policies (see **Table 1**) to minimize the need for the destructive crime prevention of incarceration.

TABLE 1

High-quality pre-kindergarten vs. incarceration

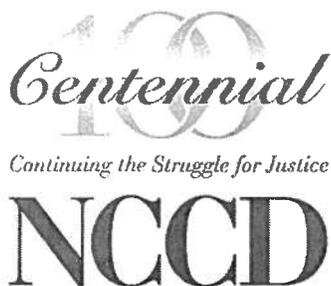
On all measures, high-quality pre-kindergarten is a better crime prevention policy than incarceration.

Does the policy ...	Policy options		Which is the best policy on this issue?
	High-quality pre-k	Incarceration	
Prevent individuals from becoming criminals?	Yes	No	High-quality pre-k
Prevent crime in the short term?	Yes	Only after one or more crimes have been committed—usually more than one	High-quality pre-k
Cause crime in the long term?	No	Yes, under some circumstances	High-quality pre-k
Decrease individuals' job prospects and earnings?	No, increases job prospects and earnings	Yes	High-quality pre-k
Weaken black communities economically, politically, and socially?	No, strengthens black communities	Yes	High-quality pre-k
Cost per student/inmate per year	\$10,000	\$25,000	High-quality pre-k

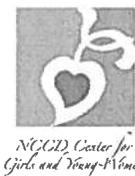
Endnotes

1. Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006), 168-188; Michael Jacobson, *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration* (New York: New York University Press, 2005), 106-130.
2. Angela McGowan, Robert Hahn, Akiva Liberman et al., "Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from Juvenile Justice System to Adult Justice System: A Systematic Review," *American Journal of Preventive Medicine* 32(4S), April 2007, pp. S7-S28, <http://www.thecommunityguide.org/violence/mcgowanarticle4.pdf>; and M. Keith Chen and Jesse M. Shapiro, "Does Prison Harden Inmates? A Discontinuity-Based Approach," Cowles Foundation for Research in Economics, Yale University, January 2004, <http://cowles.econ.yale.edu/P/cd/d14b/d1450.pdf>.
3. Harry J. Holzer, Steven Raphael and Michael A. Stoll, "Will Employers Hire Former Offenders? Employer Preferences, Background Checks, and Their Determinants," in *Imprisoning America: The Social Effects of Mass Incarceration*, eds. Mary Pattillo, David Weiman, and Bruce Western (New York: Russell Sage Foundation, 2004), 209-210.
4. Western, *Punishment and Inequality*, 130-167.
5. This dynamic has been suggested by Sandra D. Lane et al. in "Structural Violence and Racial Disparity in HIV Transmission," *Journal of Health Care for the Poor and Underserved* 15 (2004): 328-329.

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NCCD Center for Girls and Young Women's Call to Action for Girls in Juvenile Justice

About the NCCD Center for Girls and Young Women

In 2006, the National Council on Crime and Delinquency (NCCD) celebrated its 100 year history in promoting effective, humane, fair, and economically sound solutions to criminal justice problems. The Center for Girls and Young Women is an expansion of current NCCD programs to address juvenile justice and child welfare systems that are designed for boys and ill equipped to meet the gender-specific needs of girls. The Center focuses on research, assessment services, staff training and evaluation that are grounded in the life experiences of girls and young women.

Why should girls in juvenile justice be a priority?

Girls are the fastest growing juvenile justice population. The national picture shows that crime rates are decreasing for both girls and boys, but the rate of decrease has been slower for girls. Nationally, since 1997, there has been an 18% decrease for boys who are incarcerated compared to only an 8% decrease for girls. However, there are 14 states where the female juvenile rate of incarceration has increased more than 30% since 1997¹. Nationally, girls represent 15% of the incarcerated population and as high as 34% in some states.

Implication: States and local jurisdictions are in need of gender responsive interventions to reverse the escalating trends of girls into the system.

Girls are young. In 2007, there were 2.5 million arrests for females of all ages. 25% of these were for girls under the age of 18². Of all youth incarcerations, 42% of girls are 15 and younger, compared to 31% of boys 15 and younger.

Implication: Gender responsive and age appropriate services are urgently needed.

The types of offenses that girls are arrested and incarcerated for are less serious than boys. Contrary to popular belief that girls are becoming more violent, the highest percentage of girls are

¹ The rate of increase is calculated per 100,000 juveniles ages 10-17 in each state. The rate change from 1997 to 2006 is divided by the rate in 1997. States include: Alabama, Arkansas, Florida, Hawaii, Idaho, Iowa, Kentucky, Mississippi, Montana, Nebraska, South Dakota, Texas, Utah, and West Virginia.

² In 2007, there were 8.1 million arrests for males. In comparison, only 18% were for boys under 18. Of all youth incarcerations, 31% are boys 15 and younger.

incarcerated for status offenses³ (18%), technical violations (15%), and simple assault (15%). In the last 5 years, the arrest rate of violent crimes has increased 6% for males and decreased 1% for girls⁴.

Implication: Since most detained girls do not pose a public safety risk, less expensive community based services would be a better investment of resources than more costly residential commitment programs.

The pathways into the system are different for girls. Like women, girls have different motivations for drug use, property theft, and violence. They are more likely to use drugs to self medicate for depression and other mental health issues and have patterns of victimization and trauma that are different. Girls present with higher rates of serious mental health conditions including post traumatic stress disorder, psychiatric disorders⁵, attempts of self harm and suicide.⁶ It is estimated that 10% of incarcerated girls are pregnant and that 30% have children.

Implication: Unaddressed trauma and victimization drive behaviors and can contribute to fast tracking girls deeper into a system that is not equipped to appropriately respond to their needs thus further victimizing girls.

NCCD's National Center for Girls and Young Women Recommendations

State and local juvenile justice systems are increasingly called upon to address the needs of juvenile female offenders and at-risk girls. Based on our research and expertise in the field, NCCD's Center for Girls and Young Women recommends a review of current legislation, policies and practices in order to improve outcomes for girls and young women.

1. Convene a Congressional hearing that identifies solutions to address the following critical issues facing girls in juvenile justice:

a. Escalating Trends: The continued escalating trends of girls' arrest and incarceration rates in the juvenile justice system.

b. Criminalization of Girls' Behavior: Criminalization of girls behavior that does not pose a public safety threat yet results in incarceration or institutionalization (i.e., status offenses, domestic violence, violation of probation, violation of court orders).

c. Institutional Abuse: While the rates of abuse for girls outside facilities are higher than 50%, the rates of abuse for girls *inside* facilities are unacceptable and demand immediate correction. The US Justice Department has sued nine states and two territories alleging abuse, inadequate mental and medical care and dangerous use of restraints.

³ Status offenses include *truancy, runaway, curfew violations*

⁴ UCR: Five year arrest trends by sex, 2003-2007, Table 35

⁵ As high as 3 in 4 girls who are detained have a diagnosed mental health disorder (74%) compared to 66% for boys. Teplin et.al , 2002. Psychiatric disorders in youth in detention.

⁶ National Center for Mental Health and Juvenile Justice Programs, Policy Research Associates, NY, www.ncmhjj.com/pdfs/Adol-girls.pdf

d. Examination of Legislation, Policies and Practices that Negatively Impact Girls: Identify and re-examine policies such as the impact of violations of probation or conditional release in the context of public safety, charging girls with assault against family members, response to domestic violence; additional charges obtained during residential placement to ensure equity and reduction of criminalization of girls' behavior.

e. Review of Allocation of Resources: Although the JJDP Act of 1992 requires gender-specific services for girls, funding for these services has been woefully inadequate at the state and national level.

2. Allocate a designated funding appropriation aimed at improving outcomes for girls involved in the juvenile justice system.

For more information, please contact:
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The *NCCD Center for Girls and Young Women* is guided by the courageous life experiences of girls and young women in the juvenile and child welfare systems. The Center is the passionate voice for activism to ensure equitable, humane, and gender-appropriate responses to improve outcomes for girls and young women.

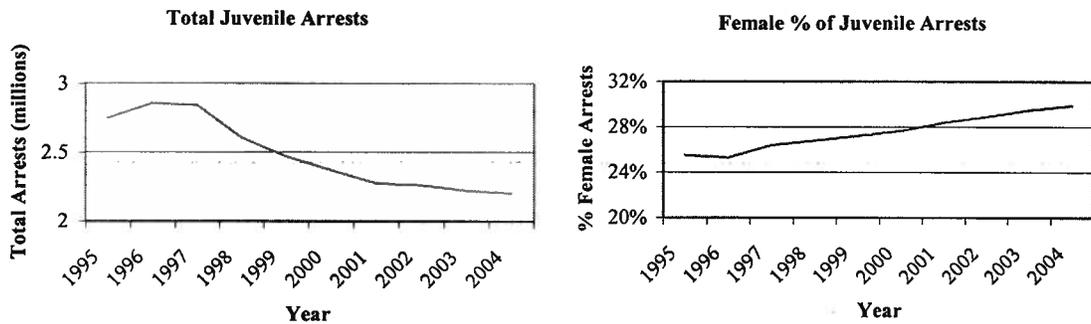
GIRLS AND JUVENILE JUSTICE

Girls Inc. believes that a strong federal role in juvenile justice administration is essential to protecting girls in the system, and to stemming the increase in female juvenile arrests. Nearly 70 local Girls Inc. affiliates serve girls on referral from the juvenile justice system, offering research-based programs to reduce violence and substance abuse among girls, and informing our advocacy in this critical area.



Inspiring all girls
to be strong,
smart, and boldSM

Overall juvenile offending has decreased over the past decade, but the proportion of female juvenile offenders has steadily increased, continuing a 20-year trend. (Source for graph: FBI Uniform Crime Reports for the US, 1995-2004)



The proportional increase in female juvenile offending holds across almost all offense categories. Girls' arrests have either increased more or decreased less than boys' in 24 out of 28 offense categories.¹

The juvenile justice system remains under-equipped to handle the increased presence of girls. Because boys still dominate in the juvenile justice system, a system that evolved largely to respond to offenses committed by boys, juvenile facilities, staffing, and policies have been slow to respond to the girl population.

- **Girls rarely commit violent offenses.** Of the offenses girls commit, only 15% involve physical violence. Many more offenses committed by girls are property crimes (23%) and status offenses (25%) (e.g., truancy, running away, liquor laws, curfew violations).
- **Girls are disproportionately arrested for running away from home.** Though girls represent 29% of total juvenile arrests made in 2005, they accounted for 58% of the runaway arrests.² Girls often run away to flee violence or other abuse in the home, and are known to "self-medicate"

through alcohol and other illegal substances if they are depressed or being abused. Under current law, runaways and other status offenders who violate parole can be, and frequently are, incarcerated.

- **Girls often enter the juvenile justice system with a history of emotional, physical, and sexual abuse, and have a high prevalence of mental and substance abuse disorders.** Of girls in juvenile correctional facilities, 61% had been physically abused, and 54% had been sexually abused.³ One federally funded study found that nearly three quarters of girls in juvenile detention have at least one psychiatric disorder (compared with two thirds of detained boys and 15% of youth in the general population).⁴
- **Girls are often re-traumatized once incarcerated.** Girls are more likely than boys to be sexually victimized while in a facility.⁵ Many girls are subjected to excessive physical force by staff in response to minor rules violations that pose no threat to security or safety. They are often denied mental health, educational, and other rehabilitative services they need.⁶
- **Like boys of color, girls of color are overrepresented in all stages of the juvenile justice system.** Seven of every 10 cases involving white girls are dismissed, compared with only three of every 10 cases involving African American girls.⁷

Recommendations

Girls Inc. calls on Congress and the Administration to work together to reauthorize the Juvenile Justice and Delinquency Prevention Act in the 111th Congress with an increased emphasis on prevention; specific funding for programs to address girls' needs; deinstitutionalization of status offenders; improvements in education, health (including mental health), and safety for incarcerated youth; and monitoring and staff training for facilities.

¹ *Ibid.*

² *Ibid.*

³ Cook County Commission on Women's Issues. (Aug 2006). *Girl Violence and Aggression: Problems and Solutions*. Chicago, IL: Cook County Commission on Women's Issues.

⁴ National Institutes of Health (December 9, 2002). *Psychiatric Disorders Common Among Detained Youth*. National Institutes of Health.

⁵ Snyder and Sickmund.

⁶ Lewis, Mie (2006). *Custody and Control: Conditions of Confinement in New York's Juvenile Prisons for Girls*, New York, NY: American Civil Liberties Union and Human Rights Watch; other references available from Girls Inc.

⁷ American Bar Association and National Bar Association (2001). *Justice by Gender: The Lack of Appropriate Prevention, Diversion and Treatment Alternatives for Girls in the Justice System*. Washington, DC: ABA and NBA.



THE REBECCA PROJECT FOR HUMAN RIGHTS

Health Safety and Dignity for Vulnerable Families

RECOMMENDATION: THE IMPLEMENTATION OF ALTERNATIVE SENTENCING EFFORTS FOR GIRLS IN THE JUVENILE JUSTICE SYSTEM TO GIRL STRENGTH-BASED AND THERAPEUTIC PROGRAMS.

I BACKGROUND

A. Gendered Violence and the Juvenile Justice System

Girls behind bars share narratives of repeated physical and sexual violence. In a study conducted by the Oregon Social Learning Center, chronically delinquent girls reported their first sexual encounter at the age of 6.¹ Another study on delinquent girls revealed that in California, 81 percent of chronically delinquent girls reported being physically abused and 56 percent were sexually abused.²

Sexual or physical violence is more central to girls' pathways to detention than it is for boys. For example, the Oregon Social Learning Study found that while 3 percent of delinquent boys experienced physical abuse, 77.8 percent of the girls were abused.³ The prevalence of girls' experiences of sexual and physical trauma plays out in their mental health status. Girls are more likely than boys to be diagnosed with more than one mental health disorder and suffer from higher rates of psychiatric disorders and depression.⁴

B. Detained for Gendered and Non-violent Crimes

During the years 1990-2000, girls' detention jumped by 50 percent, compared to a 4 percent increase for boys.⁵ While the rate of incarceration for girls outpaces that of boys, girls are not being arrested for violent crimes. The overriding reasons for girls' arrests are for the gendered offenses of running away or prostitution.⁶ Many girls charged with runaway offenses are escaping from homes where there is sexual and or physical violence directed at them. Girls engaged in prostitution are often already victims of violence, and they comprise the majority of youth detained for prostitution.

Girls are also disproportionately detained for technical violations and status offenses. In 2001, girls were twice as likely as boys to be detained on the basis of technical violations and status offenses.⁷ Generally, girls are detained for non-serious reasons such as probation violation, warrants, or minor offenses. Another emerging trend is that girls are being detained due to domestic violence in the home. Domestic violence in the home is increasingly given as the reason for overriding a girl's release from detention.⁸

C. Girls in Detention Centers Built for Boys

Girls are placed in detention centers originally structured and operated for boys. The traditional methods of asserting authority and order, isolation approaches, and severe discipline characterizing juvenile detention are inappropriate for girls given their distinct pathways into the juvenile justice system. Often, girls in

¹ Chamberlain, P. (January 24-26, 2002), *The Multidimensional Treatment Foster Care Model: Research and Community-Based Services*. Presented at 2nd National Training Conference on Juvenile Detention Reform. Portland, Oregon: Annie E. Casey Foundation.

² Acoca L., and Dedel, K., *No Place to Hide: Understanding and Meeting the Needs of Girls in the California Juvenile Justice System*, San Francisco, Ca.: National Council on Crime and Delinquency, 1998.

³ Chamberlain, 2002.

⁴ National Child Traumatic Stress Network Juvenile Justice Working Group. *Trauma Among Girls in the Juvenile Justice System*. 2004

⁵ Sickmund, M. Sladky, T.J., and Kang, W., *Census of Juveniles in Residential Placement Datebook*, 2004.

⁶ Snyder, H. (2004). *Juvenile Arrests 2002*. Washington, DC Office of Juvenile Justice and Delinquency Prevention. OJJDP Statistical Briefing Book.

⁷ Sickmund, Sladky, and Kang, 2004.

⁸ Francine T. Sherman. *Pathways to Juvenile Justice Reform: Detention Reform and Girls, Challenges and Solutions*. Baltimore, Md. Annie E. Casey Foundation, 2005.



THE REBECCA PROJECT FOR HUMAN RIGHTS

Health Safety and Dignity for Vulnerable Families

detention are subject to isolation and restraints—practices which are especially injurious to victims of sexual and physical trauma.⁹ Detention units are also riddled with problems of overcrowding and a dearth in basic services such that girls receive minimal access to mental health screening and treatment. Moreover, detention is not safe. Girls in detention report being physically and sexually assaulted by male staff.

Girls involved in the juvenile justice system require opportunities to heal from the profound trauma that has disfigured their lives and their hopes. Rather than be placed in detention for running away or prostitution, they require a safe place to heal. Unfortunately, there are few community-based, therapeutic, gender-specific programs for girls in detention. Girls are rarely afforded the opportunity to be alternatively sentenced or referred to community-based and gender-specific programs, since few exist. Only a handful of cities are developing alternatives to detention for girls, with an emphasis on healing from violence and trauma.¹⁰

II. ALTERNATIVES TO DETENTION FOR GIRLS

Gender-specific and effective programs honor the relational identities of girls and provide therapeutic, safe, and strength-based interventions to address the imprint of gendered violence on their development. Cities such as Philadelphia, San Francisco, and Boston have stitched together either collaborative relationships to provide girls gender-responsive programs or assembled a continuum of care. Each city has revamped its approach to girls in detention to be gender-responsive, comprehensive, safe, and both community and family-based. In Boston and San Francisco, the juvenile justice systems have formed collaborative relationships with community-based organizations to provide individual plans for girl offenders as an alternative to detention which recognizes the sacred ties to community, and addresses the girls' needs from a strength-based assessment. In Philadelphia, the Department of Human Services spearheaded an across systems continuum of home-based alternatives to detention, reducing the number of girls in detention to fewer than ten. The continuum includes the critical response to girls' mental health needs and braids together the justice and dependency systems as points of entry for vulnerable girls to receive comprehensive services.

It is imperative that next administration address the specific condition of girls behind bars and create opportunities for health, healing and wholeness for vulnerable girls through alternative sentencing to strength-based, therapeutic, and trauma-sensitive programs.

⁹ Id.

¹⁰ Id.



Victimization and the Juvenile Justice System

A position paper by the National Center for Victims of Crime
for the American Bar Association's Town Hall Meeting on Juvenile Justice
Georgetown Law School, Washington, DC
November 6, 2008

Many juvenile offenders have histories of victimization. Many offenses committed by juveniles also have victims. Yet attention to victimization and its impact is sorely lacking on both sides of the juvenile justice equation. The victimization-related needs of both juvenile offenders and those they have harmed are often completely overlooked by the system into which both are thrust after a juvenile commits a crime.

Victimization History among Youth in the System

Research shows that child abuse or neglect, as well as other forms of victimization, significantly increases youths' risk for delinquency, especially when victimization occurs during adolescence.¹ A retrospective study of girls in detention in California found that 81 percent had been physically abused, and 56 percent had been sexually assaulted.² Another study of victimization and delinquency among American youth ages 10 to 17 found that 42 percent of boys had committed delinquent acts, and of these, 63 percent also had histories of victimization (defined as three or more incidents).³ Not every child or teen who is victimized goes on to commit crimes, nor has every juvenile in the justice system been a victim in the past. Nonetheless, the link is unmistakable.

In addition to increasing the risk for delinquency, victimization also increases the risk of a number of other negative outcomes that are frequently seen among youth in the system, such as substance abuse problems, depression, anxiety, posttraumatic stress disorder, truancy, homelessness, self-harm, and other risky behavior.⁴ Indeed, in the case of status offenders, such behaviors are often the very reason for contact with the system. And yet, youth entering the

¹ Carolyn A. Smith, Terrence P. Thornberry, and Timothy O. Ireland, "Adolescent Maltreatment and Its Impact: Timing Matters," *The Prevention Researcher*, 11, no. 1 (2004): 7-11.

² Leslie Acoca and Kelly Dedel, *No place to hide: understanding and meeting the needs of girls in the California juvenile justice system* (San Francisco, CA: National Council on Crime and Delinquency, 1998).

³ Carlos A. Cuevas et al, "Juvenile Delinquency and Victimization: A Theoretical Typology," *Journal of Interpersonal Violence* 22, no. 12: 1591.

⁴ Madeline Wordes and Michelle Nunez, *Our Vulnerable Teenagers: Their Victimization, Its Consequences, and Directions for Prevention and Intervention*, (Oakland, CA: National Council on Crime and Delinquency, 2002), 13-14.

juvenile justice system are not routinely screened for histories of abuse and victimization, histories that could help explain their current behavior and point toward positive, proactive steps that could help the youth recover and get back on track.

Youth with such histories need options for services. Juvenile justice systems are currently making strides in providing mental health and substance abuse services to youth in custody, but such services are not always available, and when they are they are not always trauma-informed. Mental health and substance abuse programs are most helpful for youth with histories of victimization when therapists or counselors ask about prior victimization and incorporate this information into their treatment plans.

Furthermore, victim advocacy services are notably absent from the juvenile justice system. Victim advocacy is different from—and complementary to—mental health treatment. Victim advocates know and educate victims about their rights, the legal definitions of different types of crime and abuse, and their options for increasing their safety and recovering from the abuse. Specialized children’s advocates have extensive knowledge of child and adolescent development and the intersection of victims’ rights and children’s rights, and these advocates can help youth victims navigate such critical issues as confidentiality, obtaining services, and securing protection from abuse. On these particular needs and rights, victimized youth entering the juvenile justice system are not different from other youth victims. They should be afforded their rights as victims.

Action Step #1

Because of the large numbers of youthful offenders—and status offenders in particular—with histories of victimization, we urge juvenile justice stakeholders to immediately begin screening for victimization history when youth enter the system. Questions about victimization history can be integrated into screening tools that are already in use.⁵

Action Step #2

Because identifying problems is only useful if resources are available to address them, we urge juvenile justice stakeholders to ensure that all adjudicated youth have access to quality, professional victim advocacy services, as well as trauma-informed mental health and substance abuse treatment when needed.

Victimization within the System

Despite the best efforts of those who operate youth detention facilities, we know that victimization and abuse does happen inside these facilities.⁶ Incarcerated youth are victimized both by facility staff and by other youth. The Prison Rape Elimination Act (PREA) has mandated important procedures for encouraging the reporting of sexual victimization within detention facilities and providing help to those who are sexually assaulted. However, there are still many gaps in the system’s response to juvenile offenders who are victimized while in custody. For

⁵ For examples of potential screening questions, see David Finkelhor, et al, “The Victimization of Children and Youth: A Comprehensive National Survey,” *Child Maltreatment* 10, no. 1 (2005): 5-25.

⁶ Allen J. Beck, Devon B. Adams, and Paul Guerino, “Sexual Violence Reported by Juvenile Correctional Authorities, 2005-2006,” (Washington, DC: Bureau of Justice Statistics, 2008), www.ojp.usdoj.gov/bjs/pub/pdf/svrjca0506.pdf (accessed October 23, 2008).

example, PREA covers only sexual victimization and not other types of abuse, such as beatings by staff or by other detained youth. In addition, current protocols for responding to victimization occurring within detention facilities do not generally include the participation of a victim advocate, who can help the victim understand his or her rights and options, make a safety plan, and help activate the victim's support network both within and outside of the facility.

Action Step #3

Because of the continued occurrence of both sexual and physical violence within juvenile detention facilities, we urge juvenile justice stakeholders to immediately revise incident response protocols to include the involvement of a trained victim advocate to provide support, safety planning, and options counseling to victims of crimes committed within detention facilities.

Victimization after Re-entry into the Community

Re-entry into the community or "step-down" to a less secure facility is a crucial point in the trajectory of a youthful offender. At these periods of transition, youth have opportunities to turn away from delinquency and pursue positive actions and productive lives. For this reason it is necessary and appropriate to dedicate significant resources to re-entry planning and to pay careful attention to the risks of the environment into which the youthful offender will be placed or released. The risks are not all related to the youth's potential for re-offending. Some are related to the potential for victimization or re-victimization of the youth being released or transferred.

For some youth, re-entering the community means trading in a relatively safe environment of structure and supervision for one of unrelenting family or community violence. And yet many youth are never asked about the risks to their personal safety involved in returning to their families or their neighborhoods. If we knew that a juvenile offender was about to be released to a parent who had raped that youth in the past, what would we do differently? If we don't ask about past victimization, we won't know the risks for repeat victimization.

Some youthful offenders decide to cooperate with the system and provide information that leads to the arrest or prosecution of other offenders they know. There are many good reasons for the system to encourage this cooperation. And yet, if we encourage youthful offenders to testify against their friends or enemies, but do not ask them whether they may face consequences for doing so, we are putting their lives at risk when we release them from detention. Of course, it is not possible to guarantee the safety of a youth who agrees to testify against another offender. However, the system is not absolved from taking any responsibility for that youth's safety and protection.

Action Step #4

Because of the risks related to family and community violence that many incarcerated youth face upon re-entry, we urge juvenile justice stakeholders to immediately incorporate safety assessment and planning into re-entry preparations for youth leaving custody or transferring between facilities. Trained victim advocates should be involved in the safety assessment and planning.

Victims of Juvenile Offenders

The juvenile justice system also has an obligation to those who have been harmed—physically, emotionally, or financially—by youthful offenders. Victims of juvenile offenders may be children themselves, or they may be adults. In either case, these victims have the same needs for information, services, and justice as do victims of adult offenders.

Over the past 25 years, the victims' rights movement has secured statutory rights for crime victims in all 50 states, and victims' rights constitutional amendments in 32 states. Common rights for victims include the right to be notified of judicial proceedings and other important events in the case, the right to be present and heard in the courtroom, the right to restitution, and the right to be treated with fairness, dignity, and respect. However, the application of victims' statutory and constitutional rights to juvenile justice proceedings has been unclear and uneven.

For example, because juvenile proceedings are generally closed to the public, victims are often denied the right to be present at such proceedings. Victims of juvenile offenders frequently do not receive notice when their offenders are released back into the community, and therefore, have no opportunity to comment on the conditions of release, including the need for no-contact orders if the victim believes there is an ongoing threat. Judges may be reluctant to order juveniles with few prospects for income to pay restitution to their victims. And finally, states that do accord victims' rights to victims of juvenile offenders often do so only in cases where the offense committed is equivalent to a felony. However, many quite serious crimes may be classified as misdemeanors, including stalking, dating violence, and even some sexual assaults. Under "felony equivalency" practices, victims of such crimes, when committed by juveniles, have no rights at all.

While it is vital to protect the rights of adjudicated youth and consider their needs, it is also necessary to balance those rights and needs with those of the victims or communities that have been harmed. Treating victims with respect and fairness during the criminal justice process enhances the legitimacy of the justice system; it is in everyone's interest to ensure that victims of juvenile offenders have legal rights.

Action Step #5

Because of the complexity and ongoing uncertainty of applying statutory and constitutional crime victims' rights in the juvenile justice system, we urge the new Administration to convene a task force on victims of juvenile offenders, similar to President Reagan's Task Force on Victims of Crime. Such a task force should include representatives from juvenile courts, advocates for adjudicated youth, victims' rights groups, and other stakeholders, and should work to identify points in the juvenile justice system where victims can be more fully included without violating the rights of adjudicated youth. The task force should work to balance the rehabilitative mission of juvenile justice and the dignity of the adjudicated youth with the dignity, safety, and restoration of the victims of their crimes.

The National Center for Victims of Crime is pleased and honored to have the opportunity to present this position paper and is eager to offer its services in fulfillment of the Call to Action resulting from today's meeting.

Recommendations from the National Child Traumatic Stress Network: Addressing Trauma in Juvenile Justice and Residential Facilities

1. Trauma screening, assessment and treatment for juvenile offenders is essential.

A number of approaches and instruments are available for conducting trauma screening and assessment with children and adolescents in juvenile justice settings and their caregivers and for treating adolescents who have experienced trauma. Yet despite the availability of these tools and resources, very few juvenile courts, juvenile justice agencies, facilities or programs are routinely screening for trauma, offering or referring for trauma-specific treatment for the youth in their care, and very few actually provide trauma-informed care. States that have made good progress along these lines recently include Pennsylvania, Ohio, Florida, Delaware and Connecticut.

Screening and assessment for trauma are essential to enhancing the juvenile justice system's capacity for triage, case-finding, and decision-making regarding diversion, dispositions and service-planning for these youth. They can allow juvenile justice professionals to divert youth from situations where their trauma symptoms are not addressed, or where they are re-traumatized, and instead provide them with dispositions and service plans that more appropriately meet their needs. The potential result of diverting youth to appropriate trauma specific services is traumatic stress symptom reduction as well as a decrease in the risk of re-offending. Screening and assessment are important because youth who have PTSD symptoms, in the juvenile justice system and elsewhere, are at risk of being misdiagnosed with ADHD, major depression, oppositional defiant disorder, conduct disorder, specific phobias, and learning disorders. This can lead to ineffective and mismanaged use of mental health and education resources within the justice setting.

- A standardized mental health screening, which includes standardized screening for trauma and victimization, should be required for all youth entering juvenile justice systems and substance abuse treatment programs. Adequate screening and assessment for trauma should be done prior to initiating treatment.

- Screening and assessment procedures should be used to collect trauma information; including, trauma history, traumatic stress symptoms, triggers, and trauma reminders. Screening for trauma history and traumatic stress should be performed by appropriately trained staff. In-depth assessments should be done by mental health professionals with specialized training and experience in child trauma.

- Since children and adolescents in the justice system are on average two years behind expected grade level (Wasserman et al., 2002), cognitive and developmental delays should also be considered in the assessment process.

- Effective, evidence-based treatment should be made available to youth in the justice system, including those on probation and parole. Research shows that the most effective programs with this population are highly structured, emphasize the development of basic skills, and provide individual counseling that directly addresses behavior, attitudes, and perceptions (Altschuler, 1998). Cognitive behavioral approaches are particularly effective for youth in the juvenile justice system as well as for youth with more general anger and disruptive behavior.

- Special efforts should be made to involve family members in treatment, as well as the youth. Evidence suggests it is important to involve family members in the treatment and rehabilitation of their traumatized children for reasons related both to child and family functioning and to delinquency (Sherman et al., 1998).

- Given the growing number of girls in the juvenile justice system, high rates of exposure to violence among girls, and higher rates of PTSD among incarcerated girls than boys, gender-specific

programming is essential to meet the specific needs of girls and to prevent their retraumatization while in the system.

- Trauma treatment with youth, particularly discussion of painful emotional experiences, should be undertaken only by qualified professionals, in safe environments, with sufficient time to assist the youth in developing coping skills.
- Youth with significant levels of trauma exposure should not be combined in treatment groups with children who have little or no exposure.
- Rehabilitation and educational programs are not a substitute for treatment. They are helpful but not sufficient for healing young people with mental health and substance abuse disorders.

2. Juvenile justice settings must be trauma-informed.

Unfortunately, many detention and residential facilities simply aren't equipped to care for young people who have special needs or trauma histories. They may even inadvertently make things worse for these youth by triggering traumatic stress reactions or re-traumatizing the youth. Safety is paramount for children who have experienced trauma; they must not only be free of risk for further trauma exposure, but they must have sufficient supports available and be able to seek help without fear of negative repercussions, ridicule, or loss of self esteem. A youth must feel personally safe and trust other people in order to benefit from programming that requires exploring emotionally painful and difficult experiences or symptoms. By providing a safe environment for youth, aggressive and oppositional responses can be reduced, making the environment safer for other youth as well as staff.

Arrest, detention, juvenile processing, and eventual placement of a child can be frightening and confusing for the child and for his or her family. Some detention facilities are overcrowded, which increases the risk of injury, victimization, and suicide attempts. Detention and placement may trigger separation anxiety for many youth. Detention and residential settings may expose children to verbal or physical aggression from other children or staff and exacerbate fears or trauma symptoms that a child is already experiencing such as anxiety, avoidance, or hyperarousal. Finally, use of seclusion and restraint may trigger reactions and memories of prior traumatic experiences, especially among sexually-abused girls.

- Use of seclusion and restraint on young people is humiliating and traumatizing, and should only be used as a last resort. Prior abuse victims should not be restrained.
- Juvenile and residential facilities should take steps to reduce the likelihood of triggering traumatic reactions in youth who have already experienced trauma or, worse still, re-traumatizing them.
- Juvenile justice and residential staff should avoid power assertion whenever possible to reduce the experience of threat.
- Interventions should be focused on reducing the perception of provocation and undermining the legitimacy of aggression as a response.
- Youth should not be punished for thought processes and behavioral responses that are either immature or reactive to trauma; such as; inability to anticipate consequences, tendency to see limited choices, overreaction to perceived threat, or minimization of danger.
- Juvenile facilities and programs should forego some of the traditional methods of preserving order and asserting authority, especially tough, military-style physically confrontational approaches. These may cause children with PTSD to re-experience a previous trauma or trigger an aggressive, self-protective reaction that then initiates more physical contact and a situation spiraling out of control.
- The detention and residential environment should create and model healthy and supportive relationships between individuals and develop an atmosphere of hope and nonviolence. It should encourage pro-social connections with peers.

- Psychoeducation and cognitive-behavioral techniques should be used to teach delinquent youth how to develop empathy with others, reduce anxiety, identify and manage feelings, reduce aggression, accurately process information, and solve problems.

3. All front-line Juvenile Justice staff should receive training on child trauma.

Staff who interact daily with traumatized youth, including probation and parole officers and judges and court staff, must be trained about child trauma and child development. Eruptions of aggressive or avoidant behavior can leave residential staff feeling frustrated or in danger, either leading them to distance themselves from the residents or call for stricter controls (Abramovitz & Bloom, 2003). Trauma-informed residential and probation staff understand that traumatized children have psychological injuries resulting from exposure to overwhelming life events rather than assuming the children are intentionally aggressive and angry.

- Juvenile justice administrators, judges and clinical staff should be knowledgeable about the effective, evidence-based trauma interventions that have been designed or adapted for adolescents.
- Staff should be trained and demonstrate competence in nonphysical control techniques and de-escalation techniques to manage crises in order to maintain the safety of youth and staff.
- All staff, including 24 hour non-professional staff in residential settings, should be trained to identify trauma symptoms and triggers.

Background Information:

Trauma is prevalent among youth in the Juvenile Justice System.

For youth entering today's juvenile justice systems, the rates of trauma exposure are very high. Frequent traumatic experiences include physical and or sexual abuse or assault, neglect, community violence, domestic violence, death of a loved one or close friend, school violence, and serious accidents. In particular, rates of child maltreatment and community violence are significantly higher in the juvenile justice populations compared to the general population. Often these children not only witness or personally experience traumatic events they are chronically exposed to traumatic events. Therefore, trauma in adolescence is often compounded with earlier life trauma.

- Some studies show PTSD rates among youth in the justice system may be up to eight times as high as rates of other similar age peers – perhaps as high as 50 percent --similar to the rates seen in youth in the mental health and substance abuse systems. (Saigh et al, 1999).
- Studies show that at least three in four youth in the JJ system have been exposed to severe victimization (Arroyo, 2001).
- A recent study in the Cook County Juvenile Detention Center (Abram et al., 2004) revealed that over 92% of youth had experienced at least one traumatic event, such as witnessing violence or being threatened with a weapon.

- Generally, girls report higher levels of prior physical punishment and sexual abuse and current levels of psychological distress than boys (Wood et al., 2002). One California study found that girls were 50 percent more likely to be experiencing PTSD than boys. (Steiner et al., 1997);
- A study of youth in California detention facilities found rates of current PTSD in 32 percent of the incarcerated males and 49 percent of the females (Cauffman et al., 1998).

Effects of trauma can be long lasting and affect subsequent delinquency.

Exposure to trauma, including witnessing violent events, can have a number of deleterious and long-lasting effects on how teenagers see the world and the way they function socially, interpersonally, and academically. Trauma can affect their behavior, their problem-solving skills, their ability to modulate their emotions, and can eventually give rise to patterns of conflict and aggression towards others. Histories of victimization, in particular, have been linked to subsequent substance abuse, involvement in victimizing or violent activity, subsequent victimization, delinquency and adult offending, and recidivism.

- Trauma can affect a youth's ability to respond to rehabilitative programming and to interact positively with peers and staff.
- Youth who have experienced chronic or repeated trauma may remain in a chronic state of fear and anxiety, characterized by high arousal and hypervigilance. They stay "on alert," and may have trouble sleeping, paying attention, and concentrating.
- For youth who have been victimized, self-protection is prominent. They may have a heightened awareness of threat and misperceptions of provocation. Traumatized youth often misinterpret the behavior of others as hostile when it is not, and respond with aggression.
- Trauma also makes it difficult for children and adolescents to modulate their behavioral reactions and regulate their emotions. They may feel physically and emotionally numb or, alternately, they may be flooded with overwhelming emotions.
- Fears or memories of traumatic events may intrude and trigger angry or avoidant responses to staff or other youth.
- Youth who have been traumatized may lack the skills and trust to establish healthy, supportive relationships.
- Trauma may leave a child or adolescent feeling isolated, alienated, and damaged. The young person may feel out of control and helpless. Some children may injure themselves in an attempt to gain some control over their overwhelming emotions. Use of alcohol and drugs by a youth can be an effort to mask intolerable post-trauma emotions and physiological responses.
- Adolescents often experience feelings of shame and guilt about the traumatic event and may express fantasies about revenge and retribution. Alternately, they may respond to their experience through dangerous re-enactment behavior or recklessness.
- A traumatic event may foster a radical shift in the way children and adolescents think about the world. Trauma experiences can create the sense that things can go horribly wrong at a moment's notice, that no one can really provide protection, and that laws don't really work. Youth can develop a distrust of others, particularly adults. Because many times their own victimizer has not been held accountable, many youth fail to develop a sense of legal or moral responsibility for their own behaviors.

The National Child Traumatic Stress Network (NCTSN) has 53 grant-funded centers across the country working to advance effective interventions and services to address the impact of traumatic stress on children and adolescents. Network centers are working with their child welfare and juvenile justice systems to bring these practices and services to local communities. For more information on the NCTSN, visit www.nctsnet.org.

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Recommended Steps for the New Administration on the Issue of Juvenile Justice

Submitted to the American Bar Association

by

The Sentencing Project

November 6, 2008

Introduction

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is charged with supporting the states, localities, and tribal jurisdictions in their work to develop and implement effective interventions for youth at risk of involvement in the justice system. The OJJDP is well-positioned to disseminate research findings to professionals in the field and to educate practitioners through training and technical assistance, reports, conferences, and its website. When these tools are available, juvenile justice systems can work in a coordinated way to implement effective programming for at-risk youth to make our communities safer.

The Sentencing Project views the work of the OJJDP as critical in the administration of juvenile justice that is fair and serves children and their families in balance with protecting the welfare of the community. We recognize that this is a very difficult undertaking. In this document we offer two steps that the next Administration should take immediately for children, families, and their communities.

1. Strengthen the Administration's Focus on Reducing Racial and Ethnic Disparities in the Juvenile Justice System

The overrepresentation of youth of color in our juvenile justice system is shameful. Racial and ethnic disparities are present among youth in the system at each decision point, from referral to secure placement. Despite the elevation of the federal focus on this to a core requirement within the Juvenile Justice and Delinquency Prevention Act (JJDPA), the overrepresentation of youth of color has not been reduced in 20 years in most states and localities; in some, it is worse than ever.

The states need as much assistance as possible in meeting the mandates of this core requirement. In the 2007 Federal Advisory Committee on Juvenile Justice's (FACJJ) annual report to the Administrator of OJJDP, the Committee reported that 38 states mentioned DMC as the most critical issue confronting their juvenile justice systems.¹ States have also frequently expressed their concerns to OJJDP about the lack of guidance they have been given on reducing DMC. Although there is language in the JJDPA about addressing DMC, regulatory guidance has not been offered, leaving states with little knowledge about how to address this problem. Regulatory guidance is critical in achieving success with this core requirement.

¹ OJJDP (2008). *Responses to the 2007 Federal Advisory Committee on Juvenile Justice Annual Report to the Administrator of the Office of Juvenile Justice and Delinquency Prevention*. Washington, D.C.: OJJDP.

Current policy initiatives are lacking in three key areas that should be addressed in the new Administration: personnel, dissemination of current information, and accountability.

Personnel. One full-time position for a national-level DMC Coordinator was created within OJJDP to circulate news and information about DMC initiatives in the states, including innovative programs and strategies that are working to reduce it. The position was also established to offer ongoing technical assistance to the states and to facilitate communication among the many DMC Coordinators around the country. While this position was filled for several years, it has now been vacant for nearly a year. It should be filled immediately by a competent and dedicated professional with expertise in both juvenile justice and racial disparity who can devote full-time work to this important area of juvenile justice reform.

Disseminating Current Information. The most recent publication addressing DMC was only produced in 2004, reporting on research findings as of 2002. And, while OJJDP contracted with a private firm to produce a web-based *DMC-Reduction Best Practices Database*, this has turned out to be a misnomer; the information contained on this website is merely a broad discussion of various topics related to DMC, but does not contain a database.

Lack of Accountability. Although states are supposed to have their funds withheld if they are found to be out of compliance with this core requirement, this has not happened in any state, despite the fact that youth of color continue to penetrate the juvenile justice system at alarmingly higher rates than their white counterparts. States need to be more closely monitored and held accountable by having their federal funds withheld when they are found to be out of compliance with this core requirement.

2. Dedicate More Time and Resources to Exploring and Advancing What Works (and What Doesn't) in Juvenile Justice

States and localities rely on OJJDP to become informed about effective programming, and it is one of the primary responsibilities of the Administration to be a resource for this information. OJJDP produces various types of bulletins and reports: a bi-monthly issue of *News at a Glance*, 13 categories of bulletins that examine an assortment of juvenile justice-related sub-topics, and various reports that are comprehensive reviews of empirical studies or of innovative interventions. Finally, the OJJDP produces shorter fact sheets and longer research reports as appropriate.

We reviewed the volume and content of the publications released by the OJJDP since 2000 and noticed a considerable drop in both quantity and substance of the publications released. To demonstrate, OJJDP released 97 different reports, factsheets, bulletins, or guides in 2000, but this number has declined each year since then; in 2007, OJJDP released only 15 publications. What is even more worrisome is the complete absence of *any* issues of its main substantive research publication, *Juvenile Justice*, since 2004. As stated by OJJDP, the purpose of this journal is to “advance its mandate to disseminate information regarding juvenile delinquency and prevention programs” in accordance with 42 U.S.C. 5652.

Unfortunately, it appears that research studies coming from OJJDP, usually produced through contracts with experts in academia and/or the juvenile justice field, have been largely abandoned during the current Administration, despite many unanswered questions about what makes youth engage in and desist from risky behavior. One exception is a report released in 2008 in which OJJDP confirms research findings elsewhere: transferring youth to the adult court is, at best, ineffective.² At worst, it is counterproductive, raising risks of sexual and physical abuse, suicides, and increased reoffending rates. This information is critical to the field, as it suggests that large-scale reforms in court processing of youth are needed.

In addition to deficiencies in the overall quantity of publications, we also observe a decline in the focus on juvenile justice over the past several years. OJJDP is the only agency within the Department of Justice that is tasked with examining the predictors and patterns of juvenile delinquency, so it is of utmost importance that it remains focused on this area. There has been an increased focus on juvenile victimization concerns, and, while these concerns are important, this enhanced focus comes at the expense of disseminating information on effective practices for reducing delinquency. In short, it seems that OJJDP has minimized its focus from what happens *by* children and youth and enlarged its focus on what happens *to* children and youth. For instance, now it is not uncommon to see bulletins or fact sheets about child prostitution, missing and exploited children, sexually assaulted children, child pornography, and other forms of victimization of children. These are important issues, to be sure, but presumably other agencies are already addressing such topics, such as the Department of Justice's Office of Victims of Crime (OVC). Under the next Administration, OJJDP should sharpen its focus to juvenile justice issues. To do this, we recommend turning to the experts in the field for guidance, and establishing grants and contracts with nonprofit organizations to conduct much of the work.

Conclusion

The next Administration at OJJDP should investigate, offer assistance with, and promote innovative and effective juvenile justice policies and practices. To accomplish these objectives, there needs to be experienced and competent leadership within OJJDP that is truly devoted to providing evidence-based solutions for youth, their families, and their communities. In this document, we offer two immediate steps to take: enlarge OJJDP's focus on helping states reduce minority overrepresentation, and improve the frequency and content of juvenile justice research produced by OJJDP. With a focus on these two action steps, OJJDP will go a long way toward improving juvenile justice.

We are pleased to discuss these recommendations in further detail. Please contact:

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² Redding, R. E. (2008). *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* Washington, D.C. OJJDP.



**Juvenile Justice Recommendations for the New Administration
American Bar Association, Criminal Justice Section
Town Hall Meeting: A Call to Action for Juvenile Justice
November 6, 2008**

**1. Prioritize Prevention and Intervention As Effective Juvenile Justice
Delinquency Prevention and Crime Reduction Policy.**

Background

(See separate factsheet from the Gang Task Force of the National Juvenile Justice and Delinquency Prevention Coalition.)

Recommendation for the New Administration

- Urge Congress to enact the Youth PROMISE Act, H.R. 3846.
- Reject costly and misguided gang legislation that would over-federalize state and local crime, subject an increasing number of poor youth and youth of color to federal prosecution and incarceration, increase incarceration rates, subject youth to enhanced penalties for nonviolent conduct, strengthen gang affiliations, and emphasize suppression and incarceration over prevention and intervention.

For more information contrasting these federal approaches to youth gang crime and violence, please see:

http://www.house.gov/scott/pdf/HRW_supportypa_opphr3547.pdf.

2. Strengthen and Reauthorize the Juvenile Justice and Delinquency Prevention Act and Increase Support for the Office of Juvenile Justice and Delinquency Prevention.

Background

(See separate fact sheet and information from the National Juvenile Justice and Delinquency Prevention Coalition.) For more information on the Juvenile Justice and Delinquency Prevention Act (JJDP) and its core protections, please see http://www.act4ji.org/media/factsheets/factsheet_56.pdf.

Recommendations for the New Administration

- Order the Department of Justice (DOJ) to work with Congress to strengthen and reauthorize the JJDP, and prioritize the following protections for children: (1) improving conditions of confinement in youth

correctional institutions, boot camps, and other detention facilities; (2) eliminating the placement of youth in adult jails and prisons; (3) reducing racial and ethnic disparities in the justice system; (4) increasing protections, screening, assessment, data collection, treatment, and services for youth who suffer mental health and/or substance abuse disorders; and (5) prohibiting the locked detention of status offenders by removing the Valid Court Order and Interstate Compact exceptions to the Deinstitutionalization of Status Offenders (DSO) core protection.

- Ensure that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the states have the necessary resources to comply with their obligations and goals and under the JJDPA.
- Refuse to sign reauthorization legislation that (1) includes penalty provisions, and (2) fails to focus solely on prevention and intervention efforts and advancement of the JJDPA's core requirements.

3. Eliminate Life Without Parole Sentences for Juveniles.

Background

- The sentence of life without parole was created for the worst criminal offenders. While the crimes they commit may cause undeniable suffering, juvenile offenders are not the "worst of the worst."
- In *Roper v. Simmons*, 543 U.S. 551, 561 (2005), the US Supreme Court found that inherent differences between juveniles and adults render suspect any conclusion that a juvenile falls among the worst offenders. Neuroscience reveals that the process of brain development, including the formation of impulse control and decision-making skills, continues into early adulthood, well beyond age 18. The fact that juveniles are still developing their identities and abilities to think and plan ahead means that even a heinous crime committed by a juvenile is not "evidence of an irretrievably depraved character."¹
- Human Rights Watch estimates that 59 percent of the youth serving life without parole in the United States received this sentence for their very first offense; they had no juvenile or adult criminal record whatsoever prior to the offense that resulted in their life sentence.
- The United States is the world's worst human rights violator in terms of sentencing youthful offenders to life without parole. There are currently 2,484 persons serving the sentence of life without parole in the United States for crimes committed when they were under 18. As of February 2008, to our knowledge, not a single youth is serving this sentence anywhere else in the world.

¹ *Roper v. Simmons*, 543 U.S. 551, 561 (2005).

- International human rights law prohibits life without parole sentences for those who commit their crimes before the age of 18, a prohibition that is universally applied outside of the United States. The United Nations Convention on the Rights of the Child (CRC) explicitly addresses the contradiction between the particular rights and needs of children, and life without parole sentences.² Underpinning several of the treaty's provisions is the fundamental recognition of a child's potential for rehabilitation. Article 37(a) of the CRC flatly prohibits sentencing children to life without the possibility of parole.³ The Human Rights Committee (the oversight and enforcement body for the International Covenant on Civil and Political Rights) has said that "[t]he Committee is of the view that sentencing children to life sentences without parole is of itself not in compliance with article 24(1) of the Covenant."⁴ The Committee Against Torture (the oversight and enforcement body for the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) has stated that juvenile life without parole (JLWOP) for youth "could constitute cruel, inhuman or degrading treatment or punishment" in violation of the treaty.⁵
- Human rights experts have expressed grave concern that racial discrimination enters into the determination of which youth serve life without possibility of parole sentences, and which youth enjoy the possibility of release. Nationwide, African-American youth serve life without parole sentences at a rate that is ten times higher than that of Caucasian youth.⁶ In March 2008, the Committee on the Elimination of Racial Discrimination (the oversight and enforcement body for the International Convention on the Elimination of All Forms of Racial Discrimination) found that, in light of the racial disparities in the imposition of JLWOP sentencing, "the persistence of such [youth LWOP] sentencing is incompatible with article 5(a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against [youth offenders], and review the situation of persons already serving such sentences."⁷

² Convention on the Rights of the Child (CRC), adopted November 20, 1989, , G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, available at: <http://www2.ohchr.org/english/law/crc.htm>.

³ Although the United States has not ratified the Convention on the Rights of the Child, it is a signatory. As such, it has the obligation to refrain from actions that would defeat the treaty's object and purpose.

⁴ See Human Rights Watch, *US –The Rest of Their Lives: Life without Parole for Youth Offenders in the United States in 2008*, May 2008, <http://www.hrw.org/backgrounder/2008/us1005/us1005execsum.pdf>, p.5-7.

⁵ *Ibid.*

⁶ See Human Rights Watch, *Submission to the Committee on the Elimination of all Forms of Racial Discrimination: During its Consideration of the Fourth, Fifth, and Sixth Periodic Reports of the United States of America: CERD 72nd Session, Volume 20, No. 2(G)*, February 2008, <http://www.hrw.org/reports/2008/us0208>, p. 19-26.

⁷ See Human Rights Watch, *US –The Rest of Their Lives: Life without Parole for Youth Offenders in the United States in 2008*, May 2008, <http://www.hrw.org/backgrounder/2008/us1005/us1005execsum.pdf>, p.5-7.

Recommendation for the New Administration

- DOJ should work with Congress on legislative language to abolish life without parole sentences for juveniles.
- Federal Agencies and Officials who fund and administer corrections programs should ensure that all incarcerated child offenders have access to all prison programs offered – educational, vocational, occupational, and other rehabilitative programs – regardless of the length of their sentence.
- Federal Agencies and Officials should provide mental health screening, assessment and services to assist youth offenders in adjusting to prison conditions and in coping with the length of their sentences.

For more information, please see Human Rights Watch, *The Rest of Their Lives: Life without Parole for Youth Offenders in the United States in 2008* <http://www.hrw.org/background/2008/us1005/us1005execsum.pdf> and the full 2005 report: <http://www.hrw.org/reports/2005/us1005/>.

4. Send the UN Convention on the Rights of the Child (CRC) to the Senate for Ratification Without Reservation.

Background

- The CRC provides minimal standards in the area of juvenile justice, and can inform the development and implementation of sound policies and practices in this critical area of law.
- Although the United States was an active and prominent participant in the decade-long drafting process of this treaty, the United States and Somalia remain the only two UN member states that have not ratified this treaty.

Recommendation for the New Administration

- Send the UN Convention on the Rights of the Child to the United States Senate for ratification without reservation.

For more information about the recommendations from Human Rights Watch, please contact:

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CAMPAIGN FOR
YOUTH JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR

Recommendations for 2008 Administration Transition
Prepared for "A Call to Action for Juvenile Justice"
November 6, 2008

Each year, an estimated 200,000 youth in the U.S. are tried, sentenced, or incarcerated as adults, many of whom are charged with non-violent offenses. On any given day, nearly 7,500 young people are locked in adult jails and more than 2,600 young people are locked in adult prisons.

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Evidence Against Trying Youth as Adults - Trying youth as adults:

- ***Harms public safety:*** Research shows that youth transferred to the adult criminal justice system are more likely to reoffend. Reports released by the U.S. Centers for Disease Control and Prevention and the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) found that youth prosecuted in the adult criminal justice system are much more likely to commit additional crimes when compared to youth who committed similar crimes, but were retained in the juvenile justice system.
- ***Causes long-lasting harm for youth:*** Youth housed in adult jails are at a higher risk of violence and suicide than those in the juvenile justice system. For example, youth housed in adult jails are 36 times more likely to commit suicide than are youth housed in juvenile detention facilities. Additionally, up to one-half of youth detained in adult jails pre-trial are not convicted as adults, but will have spent between 1-6 months in an adult jail.
- ***Is inconsistent with the latest scientific evidence on the adolescent brain:*** Adolescent brain research shows that children's brains develop well into their early 20's and that youth do not have the same capacities as adults. Indeed, the final area of the human brain to mature is the prefrontal cortex, which governs the "executive functions" of reasoning, advanced thought and impulse control.

Recommendations for the New Administration

- ***Show support and willingness to sign a strong reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDP):*** The JJDP - one of the main vehicles for juvenile justice reform at the federal level - is currently due for reauthorization. CFYJ supports a strong JJDP reauthorization that includes the recommendations of the National Juvenile Justice and Delinquency Prevention Coalition's Act4JJ Working Group, which has been working on JJDP reauthorization for the past two years. CFYJ strongly supports these recommendations, including expanding the JJDP's jail removal and sight and sound core requirements to include youth no matter what court they are in - juvenile or adult.

- ***Oppose/veto any legislation or amendment that increases the number of youth transferred to the adult criminal justice system:*** Given the harmful effects of transferring youth to the adult system, CFYJ strongly recommends that the new Administration veto any bill that allows more youth to be transferred to adult courts at either the State or federal levels.
- ***Collect data on transfer policies in States and at the Federal level:*** Data on the transfer of youth to the adult criminal justice system is lacking in States and in the Federal criminal justice system. CFYJ recommends that the new Administration initiate a data collection effort by providing resources to States to track and evaluate the impact of transfer laws.

For each State and the federal system, collected data should include 1) the number of youth transferred into the adult system, 2) in each jurisdiction, how youth are transferred to the adult system; 3) where and how long youth transferred are held pre-trial; 4) where and how long youth who are transferred are held post-conviction; and 5) the nature and length of post-release activities for transferred youth, such as probation. For each category, the data should be disaggregated by race, ethnicity, gender, and age.

- ***Conduct research on the effects of transferring youth to the adult criminal justice system:*** CFYJ recommends that the new Administration undertake additional research efforts on the impact of transferring youth to the adult criminal justice system. This research should include 1) recidivism and 2) collateral consequences of transfer to the adult system, such as educational attainment, employment, and access to federal programs (such as Medicaid).
- ***Provide technical assistance and financial support to States to comply with the jail removal and sight and sound core requirements:*** The current JJDP law's "jail removal" core requirement prohibits youth who are charged as juveniles from being held in adult detention facilities before their adjudication hearing except in very limited circumstances. In these limited circumstances, the "sight and sound separation" core requirement ensures that youth are be sight and sound separated from adult inmates.

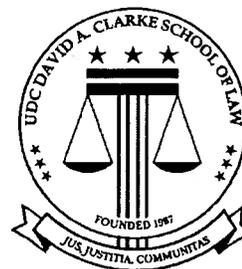
With regard to the jail removal and sight and sound core protections, CFYJ recommends that the new Administration provide support and technical assistance to 1) ensure that States are in compliance with current law; 2) for States not in compliance with current law, help States to become fully compliant; 3) for States already in compliance with current law, encourage the development of best practices; and 4) assist States come into compliance with any new jail removal and sight and sound separation requirements included by Congress in the forthcoming JJDP reauthorization bill.

- ***Strengthen OJJDP:*** CFYJ strongly supports strengthening OJJDP by 1) refocusing OJJDP on the JJDP and its core requirements; 2) improving the provision of technical assistance to states, 3) updating JJDP regulations to reflect current priorities and core protections; 4) restoring the comprehensive nature of the agency including conducting research and gathering data, identifying and disseminating best practices and relevant information, leading demonstration projects, providing training and technical assistance, and promoting the expansion of effective practices in the field; and 5) increasing transparency.
- ***Increase engagement of youth and families affected by the juvenile and criminal justice systems:*** CFYJ recommends that the new Administration make strong efforts to engage with a wide variety of stakeholders in the juvenile and criminal justice fields, particularly with youth and families who have been involved in these systems.

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Position Paper of Joseph B. Tulman
Town Hall Meeting for Juvenile Justice

A need to establish competency and independence is both developmentally appropriate and essentially necessary for people in the teen years and early twenties. The overwhelming majority of young people in the school-to-prison pipeline are failing to achieve sufficiently in school. In reaction, they seek validation and they strive to develop competency by engaging in deviant or delinquent conduct. The overwhelming majority of detained and incarcerated youth have unmet – and, in many cases, undiagnosed – special education needs.

The federal special education law -- adopted by every state and applicable in every school district in the country -- requires appropriate, individualized services for students with education-related disabilities. The rights to individualized instruction, related services, and transition services are remarkably good. They include the right to comprehensive evaluations, an individualized education program, and an array of supportive services. Related services include virtually anything that supports the student's ability to benefit from instruction (e.g., counseling, transportation, recreation). Transition services include preparation for post-secondary education, preparation for entering the work world, and preparation for living independently. When available (as required by law) to young people in the delinquency system, these services often make the difference between dropping out and graduating, and between incarceration and community-based placement.

The special education law also includes strong protections for the procedural rights of the student and the student's parent. These procedural rights include an award of reasonable attorneys' fees for a parent who prevails against the school system in a special education matter.

Young people in the delinquency and criminal systems – a wildly disproportionate number of whom are people of color and come from low-income or indigent families – are not getting the special education services to which they are entitled. Attorneys and advocates for children can help parents and young people use the procedural and substantive rights in the special education law to keep kids out of trouble and, for those children who are already enmeshed in the delinquency system, to extricate the children from the delinquency system or to increase dramatically the opportunities for avoiding detention and incarceration. In addition, the availability of attorneys' fees provides a basis for augmenting substantially the availability of advocacy for children and families who drop out of school, who are pushed out of school, and who end up in the delinquency and criminal prisons.



TO: The President-elect

FROM: Coalition for Juvenile Justice Executive Board
Robin Jenkins, National Chair 2007-2008

DATE: TBD

RE: Recommendations for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and its Administrator

The Executive Board of the Coalition for Juvenile Justice appreciates this opportunity to share our thoughts and recommendations regarding a strong and focused federal role in juvenile justice and delinquency prevention guided by your Administration. More specifically, we wish to include our thoughts and recommendations, and those of our members nationwide, regarding the administration and priorities of the federal Office of Juvenile Justice and Delinquency Prevention.

The Coalition for Juvenile Justice (CJJ)

CJJ was founded in 1984 by citizen volunteers and juvenile justice practitioners appointed by Governors to serve as state advisors and charged to fulfill the purposes and spirit of the federal Juvenile Justice and Delinquency Prevention Act (JJDPA).

CJJ's nationwide scope includes more than 2,000 members from many walks of life and professional disciplines who share the mission of improving the life circumstances and future opportunities of vulnerable and troubled youth involved with the courts—thereby building safe communities for all.

CJJ's principal aims are:

- To ensure voice and credibility are given to state-identified concerns and needs in juvenile justice and delinquency prevention by representing the governor-appointed State Advisory Groups operating under the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) and allies, spanning the nation and its territories;
- To advance policy and practice recommendations to the President, the Congress, the U.S. Supreme Court, and the Administrator of the federal Office of Juvenile Justice and Delinquency Prevention, as well as our nation's Governors and state legislators;
- To generate collegial support and the lively exchange of information among its nationwide membership.

CJJ's key initiatives include:

- Conferences and training programs promoting empirically-supported best practices;
- Government relations to inform the work of Congress, the White House, the Supreme Court and federal agencies addressing the needs of children, youth, families, community safety and the justice system;
- Leadership development activities addressing the needs and interests of the nation's State Advisory Groups (SAGs) that serve under the federal Juvenile Justice and Delinquency Prevention Act (JJDP);
- State and local system-improvement efforts, including multi-year partnerships with two leading reforms—the Juvenile Detention Alternatives Initiative of the Annie E. Casey Foundation and Models for Change, an initiative of the John D. and Catherine T. MacArthur Foundation.

CJJ promotes collaboration.

- CJJ is host and fiscal partner for the National Juvenile Justice Network (NJJN) spanning child advocacy organizations in 35 states that strive to improve state policy and practice in the area of juvenile justice;
- CJJ also co-chairs the National Juvenile Justice and Delinquency Prevention Coalition, involving more than 200 organizations in a coordinated effort to inform federal juvenile justice policy, and, as part of the larger effort, is a lead convener of the Act-4-JJ Campaign for Reauthorization of the JJDP.

The Federal-State Partnership and the Statutory Role of JJDP State Advisory Groups

Given that there is no national, centralized juvenile justice system, but instead 56 distinct systems of juvenile justice in the states, U.S. Territories and the District of Columbia, for almost thirty-five years the JJDP has supported a partnership between the federal government and the states whereby each supports the other in addressing the needs of youth and responding effectively to delinquent behavior.

Via the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the federal government makes grants to states under the JJDP, monitors states for their compliance with the core requirements of the JJDP and assists states in identifying, developing and adopting best practices in juvenile justice.

In turn, the SAGs administer and make optimal use of funds authorized under the JJDP, work closely with the state juvenile justice authorities to develop and implement a long-range plan for systemic improvements and ensure that their respective jurisdictions comply with the JJDP core requirements.

Also within the JJDP, a national association of the SAGs is charged with analyzing, informing and advancing a national agenda on delinquency prevention and juvenile justice and the work of OJJDP. Specifically, under Section 223(f) of the JJDP, the OJJDP Administrator is charged with providing technical and financial assistance to an eligible representative organization of SAG members for the purpose of assisting the SAGs in fulfilling a number of functions, including: (1) reviewing federal juvenile justice and delinquency prevention policies; (2)

advising the OJJDP Administrator with respect to particular functions or aspects of the work of the federal Office; and (3) advising the President and the U.S. Congress with regard to state perspectives on the operation of the federal Office and federal legislation pertaining to juvenile justice and delinquency prevention. Other functions include provision of training and technical assistance and dissemination of best practice information to the SAGs. Sec. 299A(d) of the JJDP Act also directs the OJJDP Administrator to seek consultation from the states when establishing rules, regulations and procedures that affect OJJDP and the requirements of the JJDP Act.

With all of this in mind, CJJ was founded in 1984 by the members of several SAGs, “to give voice to state-identified concerns and urgent needs in juvenile justice, advise state and federal policy makers and [OJJDP] and generate collegial support and information exchange,” and for more than 20 years was universally recognized as the eligible representative organization of SAGs under Sec. 223(f) of the JJDP Act.

The Critical Role of the Federal Government in Juvenile Justice and Delinquency Prevention

In order for the federal government to function as a responsive and responsible partner with the states, we see it as critical that juvenile justice continue to have a dedicated focus and a “home” within the federal government, distinct from the larger focus on criminal justice, for the purposes of (1) developing national policies, priorities and plans, (2) advancing research to ensure comprehensive knowledge of delinquency and its prevention and reduction, and (3) providing guidance, support and oversight to states in implementing the JJDP Act. OJJDP is the only federal agency charged solely with these responsibilities, and therefore is uniquely positioned to help the federal government fulfill these critical roles.

For example, where individual states are often limited by their own budget constraints, OJJDP is uniquely positioned to help states leverage the precious few federal funding streams available for delinquency prevention and juvenile justice reform to generate investments of state and local resources. In addition, because it operates away from the furious, day-to-day operations of state systems, OJJDP is well-positioned to provide national leadership and coordination among diverse prevention and intervention programs. Furthermore, where individual states are necessarily focused on improving systems within their own borders, OJJDP has the ability to monitor challenges and opportunities on a national, even global, scale.

Consequently, OJJDP is uniquely positioned to launch and support timely and groundbreaking research and evaluation projects to identify best practices in delinquency prevention and the administration of juvenile justice. When coupled with adequate information dissemination capabilities, and adequate capacity for intensive training and technical assistance to the states, OJJDP can take effective public safety improvements to scale by helping states replicate and integrate best practices into existing systems.

The Qualities and Characteristics of the OJJDP Administrator

As with most Presidential appointments, the roles and responsibilities of the OJJDP Administrator are varied, as are the opportunities. Thus, we recommend a choice for the OJJDP Administrator be premised on a belief in the value and effectiveness of working in partnership with the states and the SAGs, and who will seek to maximize the impact of the federal role in juvenile justice and delinquency prevention. Given the unique relationship our members have with OJJDP and the Administrator, coupled with our members' experiences working in close collaboration with every OJJDP Administrator appointed since 1975, we firmly believe that the next successful OJJDP Administrator will need to possess and demonstrate six (6) core qualifications and characteristics:

Commitment to prevention and fair, effective interventions. Foremost, the ideal candidate will have a deep commitment to preventing juvenile delinquency in the first instance, and to responding to juvenile delinquency and related public safety concerns in equitable, empirically-supported and age-appropriate ways, as evidenced by a solid track record. S/he will also be aware of, and preferably well-versed in, the contemporary findings and debates that inform how we address delinquent behavior when it occurs, from to the science of adolescent brain development to community-based alternatives to cultural and linguistic competency.

First-hand knowledge of juvenile justice practice. Next, the ideal candidate will have and effectively demonstrate knowledge and experience in both the discipline and the systems of juvenile justice. S/he will be familiar with the varied forms juvenile justice systems take at the state and local levels (e.g., centralized vs. county-based, rural vs. urban), and how changes in policy and practice can impact those systems. S/he will also have first-hand knowledge of the practice of juvenile justice as distinguished from criminal justice.

Commitment to serving as a strong champion for OJJDP and federal investment. In addition, the ideal candidate will understand and be an assertive champion for the federal role in juvenile justice and delinquency prevention, including federal/congressional appropriations and other forms of investments, including seminal research and evaluation and training and technical assistance. In recent years, dwindling resources and a loss of focus at the federal level have hampered the ability of both OJJDP and the states to fulfill their roles in the federal-state partnership. The next OJJDP Administrator must be vigorous and vocal in seeking restored and increased capacity at the federal levels both within the executive branch and the legislative branch.

Willingness to embrace and support the statutory roles of the SAGs. Moreover, the ideal candidate will acknowledge, value and preserve the statutory roles of the SAGs under the JJDPAs as written and intended, including restoring the status of the eligible representative organization of SAGs. Sadly, the voice of the SAGs has been largely muffled over the past few years, and the eligible representative organization of SAGs has not received the support it is due under the JJDPAs in order to adequately fulfill its training and technical assistance functions. The next OJJDP Administrator will value the unique voice of the SAGs and welcome a collegial and collaborative approach to juvenile justice reform.

Desire and ability to foster cross-disciplinary and interagency collaborations. The ideal candidate will have ability and eagerness to work with other federal agencies and generate synergy between departments and agencies that address children, youth and families. Sustainable reforms in juvenile justice reform are jeopardized by compartmentalization and failure to recognize how the child welfare, behavioral health and education systems, among others, contribute to both the challenges and the solutions. The next OJJDP Administrator will make innovative use of existing structures, like the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention, and maximize opportunities to create new structures where fruitful and necessary.

Proven management and leadership skills. Finally, the ideal candidate will be an excellent manager and internal leader, with demonstrated ability to strategically build and maintain OJJDP infrastructure over time, including the ability to attract and retain an experienced and motivated team of professional staff. While operational changes are inevitable, in recent years OJJDP has seen more programmatic and staffing shake-ups than usual, resulting in disruptions to federal and state compliance and reform efforts. The next OJJDP Administrator will project an air of consistency and dependability, and will ensure that state actors are able to develop good working relationships with OJJDP staff for long-term reform.

In addition to these core qualities, the next OJJDP Administrator will be a good communicator, one who is quick to hear and to speak confidently and persuasively on behalf of our nation's youth. S/he will be inclusive of a variety of federal, state and local partners, able to receive and synthesize diverse opinions and work in a bipartisan manner. Finally, the next OJJDP Administrator will have a natural curiosity about juvenile justice and delinquency prevention, realizing that our discipline is dynamic and will model the drive to assimilate and advance new information that leads to more effective policies, systems and investments for the short and the long-term.

Priorities of OJJDP for the Next Four Years

When it has operated at an optimal level, OJJDP has served a vital function, providing valued guidance and information to states, tribes, territories, communities and individuals across the country through research, targeted training and technical assistance provided by national organizations with subject matter expertise. In recent years, however, the combination of budget reductions, transferred functions, and a narrowing of focus has harmed OJJDP and diminished the status of a once-essential player in this country's efforts to reduce juvenile delinquency.

Based on the unique relationship our members have with OJJDP and its Administrator, and our experiences with every OJJDP Administrator appointed since 1975, we firmly believe that OJJDP will need to prioritize four (4) foci to move our nation forward:

Passage and full implementation of a strong reauthorization of the federal Juvenile Justice and Delinquency Prevention Act. The JJDPA is the landmark federal statute that defines much of the approach to juvenile justice and delinquency prevention taken by Congress and the federal government; establishing the OJJDP and articulating the federal-state partnership. Currently

active legislation (S. 3155) to reauthorize the JJDP has been introduced by the Chairman of the Senate Judiciary Committee, Senator Patrick Leahy, with original co-sponsors Senator Arlen Specter and Senator Herb Kohl. In late July, their bill was amended and passed with strong bipartisan support in the Senate Judiciary Committee. Enclosed with this memorandum is the CJJ Platform regarding the pending reauthorization of the JJDP, which contains thirteen planks or positions addressing: 1) federal supports and resources needed to fulfill the spirit and intent of the JJDP; 2) safeguards for youth, families and communities; and 3) the central value of prevention. The Platform was developed by CJJ members who serve as voluntary citizen advisors on juvenile justice with the governors or chief executives across the states, territories and the District of Columbia.

Restoration and effective use of federal investments in delinquency prevention and juvenile justice reform. Since 2000, federal investments in juvenile justice reform under the JJDP have decreased by upwards of 60%, and OJJDP itself has lost 90% of its direct operational budget. In addition, the administration of funds by OJJDP has come under investigation, with members of Congress questioning whether available funds are being scored and distributed in a manner that is fair and transparent, and to grantees that focus on delinquency prevention and improvements in the juvenile justice system. Worse still, there has been steady erosion of leadership from OJJDP to ensure restoration of what has been lost. The federal-state partnership cannot produce good outcomes for our nation's youth and communities without adequate investment and leadership.

Reclaiming the federal focus on research, demonstration, evaluation, training and technical assistance. It is critical that OJJDP provide support for research, replication and high fidelity adaptation of evidenced-based and empirically-supported practice and policy models, across a wide range of racial, ethnic, geographic and societal circumstances. It is likewise essential that the research and findings be made widely available to the public and backed-up with training and technical assistance to the parties principally charged with JJDP implementation—state advisory group (SAG) members, state planning/administering agencies, and state juvenile justice specialists.

Effective oversight, transparency and accountability to the President, the Congress, the states and the public. It is critical to an effective federal-state partnership that there be clear regulatory guidance from OJJDP and, foremost, that states have confidence in OJJDP's rule making and regulatory functions. In recent years, OJJDP has not utilized formal administrative procedures when setting compliance rules and providing guidance to the states, which at times has created confusion. The partnership between OJJDP and the states can be enhanced by dialogue with states, together with greater transparency and accountability.

Meaningful consideration and advancement of policy and practice reforms at the federal level as informed by the states. As aforementioned, under the JJDP, a national organization representing the SAGs is charged with informing, influencing and advancing a national agenda on delinquency prevention and juvenile justice and the work of OJJDP. In recent years, however, OJJDP has largely disregarded the independent voice of the SAGs through a national organization. In 2003, OJJDP removed its support for CJJ as the eligible representative

organization of SAGs and transferred chartered another entity, under its own control, the Federal Advisory Committee on Juvenile Justice (FACJJ). The powers of the FACJJ, however, are restricted, including its ability to directly and effectively communicate its more than 50 recommendations to the President and the Congress. In keeping with the mandates of the JJDP, and for the benefit of our nation as a whole, it is imperative that OJJDP honor the wisdom and the ingenuity of Congress when it gave an explicit role and enumerated functions within JJDP to a free-standing organization of the SAGs, serving as a third-party partner to the legislative and executive branches and serving to represent the views and needs of the states, rather than those of OJJDP..

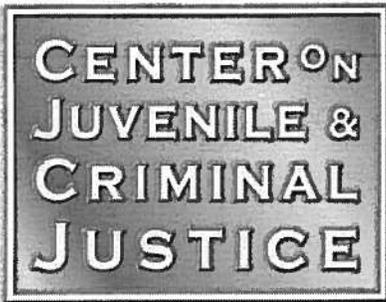
Conclusion

More than thirty years after its enactment, the JJDP stands as one of the most successful standard-setting statutes at the federal level, and at its heart recognizes the value of citizen-driven efforts to prevent and stem delinquency. The success of the JJDP has been supported in significant part by the national agenda-setting, research, evaluation, oversight and technical assistance functions of OJJDP. Through our collaborative efforts, CJJ and its member SAGs, have partnered with OJJDP, to demonstrate the effectiveness of timely, fair and productive prevention and intervention efforts. Moreover, the research, evaluation, oversight and technical assistance functions of OJJDP have contributed to expertise in the field as well as the discovery and replication of evidence-based and promising practices across the nation.

Our continuing success depends in good part on OJJDP advocating for a strengthened, forward-thinking JJDP; making the case for federal investments; and providing the leadership needed to develop the federal-state partnership for delinquency prevention to the greatest possible extent.

In closing, the CJJ Executive Board and our broad nationwide membership wish to thank you for your consideration of our thoughts and recommendations, and we look forward to hearing from you soon. If you have any questions, please feel free to contact CJJ's Executive Director, Nancy Gannon Hornberger, at 202-467-0864, ext. 111 or nancy@juvjustice.org

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**Does more imprisonment reduce juvenile crime?
Lessons from California and Texas**

By Mike Males, Ph.D., Christina Stahlkopf, Ph.D., and Daniel Macallair, MPA

The popular theory that incarcerating more juveniles reduces youth crime rests in seemingly logical assumptions. First, locking up youth offenders reduces their presence in public and reduces any crimes they might commit. Second, strong punishment is thought to serve as a deterrent to the individual youth and to other youth contemplating similar crimes.

The example of Texas and California, the nation's two most populous states and home to 22% of America's youth can be instructive on the effectiveness of harsh sentencing policies. For a decade, these two states took diametrically opposite approaches to locking up juveniles. From 1995 to 2005, Texas increased the number of incarcerated youth under the age of 18 by 73%. This was done through harsh sentencing practices that targeted non-violent property and drug offenders. In contrast, during the same period, California drastically reduced the total number of juveniles incarcerated in state facilities by 65%—an unprecedented decline—by imprisoning only the most violent offenders (**Table 1 and Table 2**). Just-released 2008 figures show that California's juvenile prison population dropped to 1,808, the lowest number recorded since figures first became available in 1959.

Texas has 1.8 million fewer juveniles than California, and imprisons more than twice as many youth as does California. These two radically different practices allow for a stark analysis of a long and hotly debated issue: Do higher incarceration rates reduce juvenile crime? This paper explores this crucial question.

Imprisonment Trends

The contrasting youth imprisonment practices in Texas and California are striking. Figure 1 illustrates the results of the differing state policies with regard to juvenile incarceration between 1995 and 2005. In 1995, the youth incarceration rate in California was 2.2 times higher than in Texas. However, by 2005, the situation was reversed, and the Texas juvenile incarceration rate was 2.4 times higher than in California (**Table 1**) and is projected to be four times higher by yearend 2008. After 2005, juvenile incarcerations declined substantially in both states.

These substantial changes in the youth incarceration rate call for a closer examination of the corresponding changes in the population of incarcerated youth in both states. Specifically, who goes to prison and how has this changed over the last decade?

FIGURE 1: Youth Incarceration totals and rates, Texas vs. California (1995-2005).

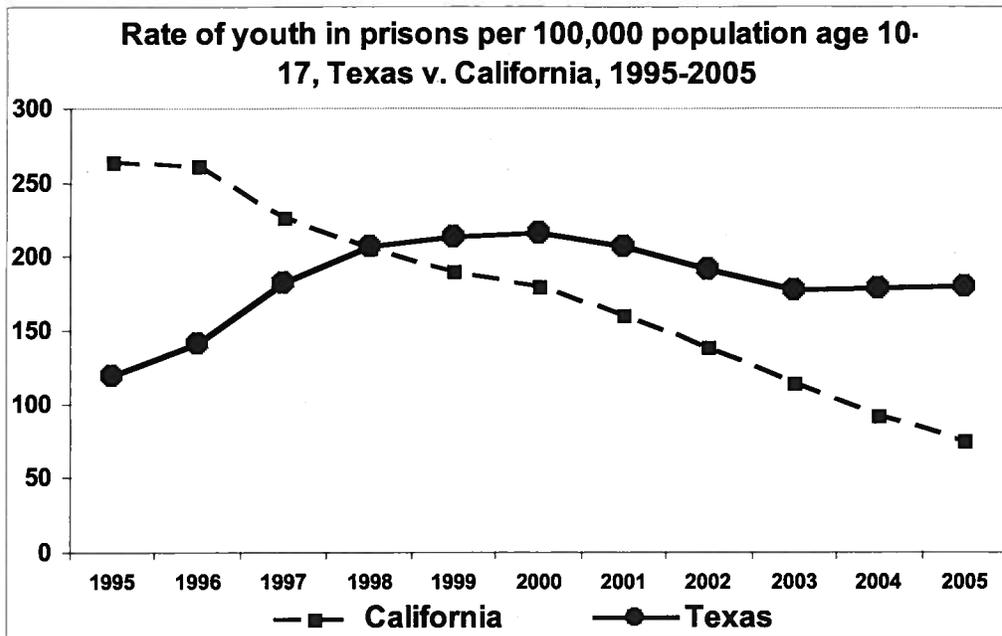


TABLE 1: Youth Incarceration, Texas vs. California (1995-2005).

Year	Average Daily Population Incarcerated		Population Ages 10-17			
	Rate/100,000	Total Imprisoned	California	Texas		
	<u>California</u>	<u>Texas</u>	<u>California</u>	<u>Texas</u>	<u>California</u>	<u>Texas</u>
1995	263.5	118.5	9,674	2,823	3,671.7	2,381.8
1996	261.2	141.4	9,772	3,467	3,741.8	2,452.5
1997	226.1	182.0	8,655	4,561	3,828.3	2,505.8
1998	205.2	206.7	7,991	5,267	3,894.9	2,548.3
1999	190.7	213.9	7,556	5,524	3,962.0	2,582.7
2000	179.7	216.5	7,303	5,646	4,065.0	2,607.9
2001	160.6	207.3	6,727	5,524	4,188.1	2,665.0
2002	138.5	190.8	5,954	5,170	4,299.7	2,710.2
2003	114.3	176.8	5,024	4,825	4,394.2	2,728.6
2004	91.4	178.1	4,067	4,883	4,450.6	2,742.3
2005	74.5	179.1	3,348	4,875	4,493.4	2,721.5
2005 v 1995	-72%	+51%	-65%	+73%		

The data reveal several notable disparities and changes. To begin with, there are fundamental differences in the ages of the juveniles incarcerated in both states. In Texas, 18% of the youth incarcerated in state prisons are younger than 15 years old, compared to four-tenths of 1% in California. Moreover, there are 152 juveniles younger than 18 years of age being held in adult prisons in Texas, whereas there are none in California.

Additionally, key proportional inequalities exist between the juvenile populations imprisoned for violent and non-violent offenses. In 2005, nearly two-thirds of young offenders imprisoned in California were held for violent offenses compared to a little more than a quarter of the youth population in Texas jails. This means that Texas imprisons larger numbers of younger offenders for less serious crimes, while California incarcerates older offenders for more serious crimes.

When evaluating current trends in both California and Texas while comparing data from a decade ago, persistent patterns are revealed. The profile of incarcerated youth from 1995 has evolved from violent offenders who were generally male toward higher proportions of younger juveniles, including girls, arrested for property or drug offenses that exist in Texas today (Table 2). In comparison, the profile of those juveniles imprisoned in California during the decade studied has changed little, except for the fact that there has been a sharp decline in the number of youths jailed for property and drug offenses.

TABLE 2: Trends in Percentages of Incarcerated Offenders.

Characteristics:	State	1995	2005	Change
Percentage of Youth Incarcerated For:				
Murder	California	5.0%	4.0%	-20%
	Texas	5.0%	1.0%	-80%
Violent crime	California	65.0%	63.8%	-2%
	Texas	32.0%	27.0%	-16%
Property crime	California	23.0%	18.0%	-22%
	Texas	35.0%	39.0%	+11%
Drug offenses	California	6.3%	3.0%	-52%
	Texas	9.0%	11.0%	+22%
Percent of Wards That Are:				
White	California	16.4%	13.0%	-21%
	Texas	18.0%	22.0%	+22%
Latino	California	47.1%	51.0%	+8%
	Texas	42.0%	44.0%	+5%
Black	California	27.4%	31.0%	+13%
	Texas	39.0%	34.0%	-13%
Female	California	4.1%	5.0%	+22%
	Texas	7.0%	11.0%	+57%

Effects on Crime

What is the effect of the two states' sharply contrasting juvenile incarceration policies? Interestingly, the trends over the last decade in Texas and California are *identical*. Youth crime rates in both states began a steady and consistent decline beginning in 1995 and continued through 2005. Texas' massive increase in youth incarceration produced no changes in youth crime rates relative to California (Figure 2 and Table 3). One can pick particular years or offenses to compare and find slight differences, but this exercise only multiplies the ironies. It is clear that Texas' policy of incarcerating both violent and non-violent juvenile offenders were followed by similar declines in violent crimes overall. Meanwhile, by reducing the proportion of nonviolent juvenile offenders sent to jail for property and drug offenses, as well as the number of imprisoned youth overall, California experienced larger declines in rape, burglary, robbery, car theft and arson.

FIGURE 2

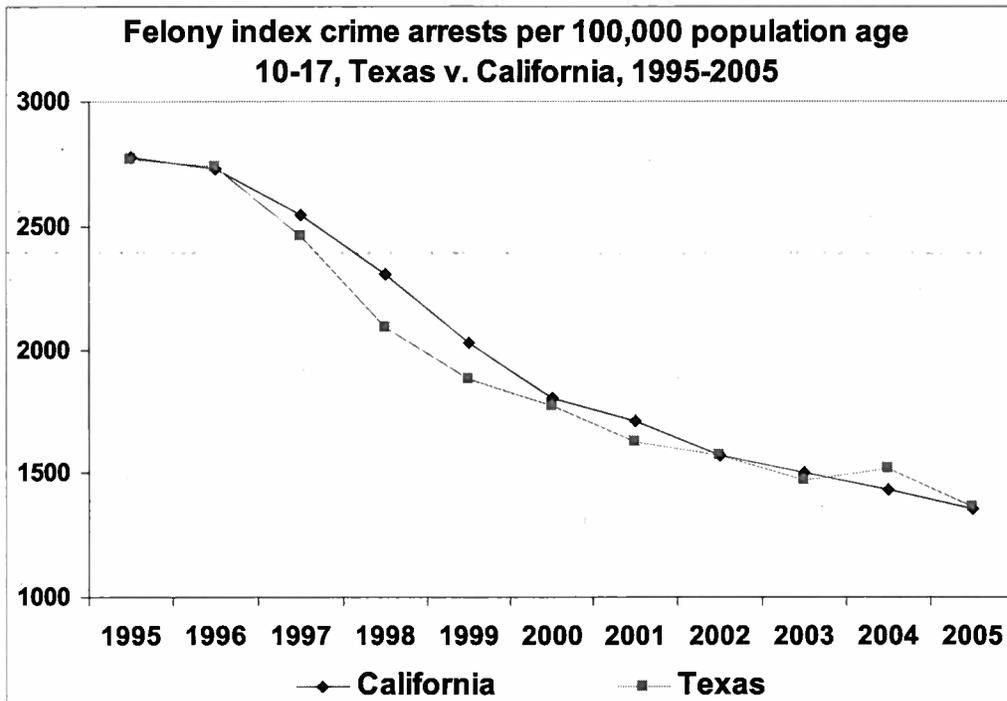


TABLE 3: Index Crime Trends (1995-2005).

Year	Arrest Rates/100,000 Age 10-17		Arrests	
	California	Texas	California	Texas
1995	2,773.8	2,767.8	101,847	65,923
1996	2,727.5	2,735.1	102,058	67,079
1997	2,545.0	2,462.5	97,431	61,706
1998	2,304.4	2,086.5	89,754	53,170
1999	2,026.0	1,883.1	80,271	48,635
2000	1,804.1	1,768.6	73,338	46,123
2001	1,710.8	1,625.0	71,649	43,307
2002	1,567.8	1,573.0	67,409	42,630
2003	1,502.6	1,472.2	66,028	40,172
2004	1,429.9	1,516.9	63,641	41,598
2005	1,357.1	1,365.6	60,980	37,166
2005 v 1995	-51%	-51%		

Extending the trend further back in time does not change these findings. From 1982 to 1994, juvenile offenders were arrested at higher rates for serious felonies in California than in Texas. However, the modest increase in California's youth incarceration rate that occurred during this period was accompanied by only a modest decline in youth crime. During the same years, the increased incarceration of juveniles in Texas was accompanied by a slight increase in the rates of index offenses committed by youth. Whether examined by crime, year, or historical context, higher incarceration rates are not associated with declines in juvenile crime.

California's long-term trends

Long-term California youth crime and imprisonment trends show similarly dramatic patterns. The rate of youths incarcerated in state juvenile prisons in 2008 was only one-sixth of the rate during the early 1960s. At 39 imprisonments per 100,000 youth as of September 30, 2008, California has emptied its state juvenile prisons at a record pace over the last dozen years. California county juvenile detention centers (whose populations include youths in need of supervision and temporary holds as well as delinquents) also show a 15% decline in the rate of juveniles incarcerated over the last decade.

Figure 3 shows California's rate of youth imprisonment by sentencing court. Not only did juvenile imprisonment rates decline to record low levels in the 2000s, after rising to a peak in the late 1980s, the rates of sentencing by both juvenile and adult criminal courts plunged. Though much debated and exaggerated, the numbers of youths sentenced by adult courts, now totaling 100 to 150 per year, have now reached their lowest levels ever recorded.

If more juveniles including those who committed offenses that would have led to their incarceration just 15 to 45 years ago, California should be suffering an unprecedented youth crime wave in the 2000's. Yet, the juvenile felony and homicide rates are at their lowest levels in

at least half a century and violent crime is lower than at any time in the last 35 years, despite new laws leading to greater policing of assault offenses.

FIGURE 3. California youth imprisonment rate, 1960-2008, by court of sentencing

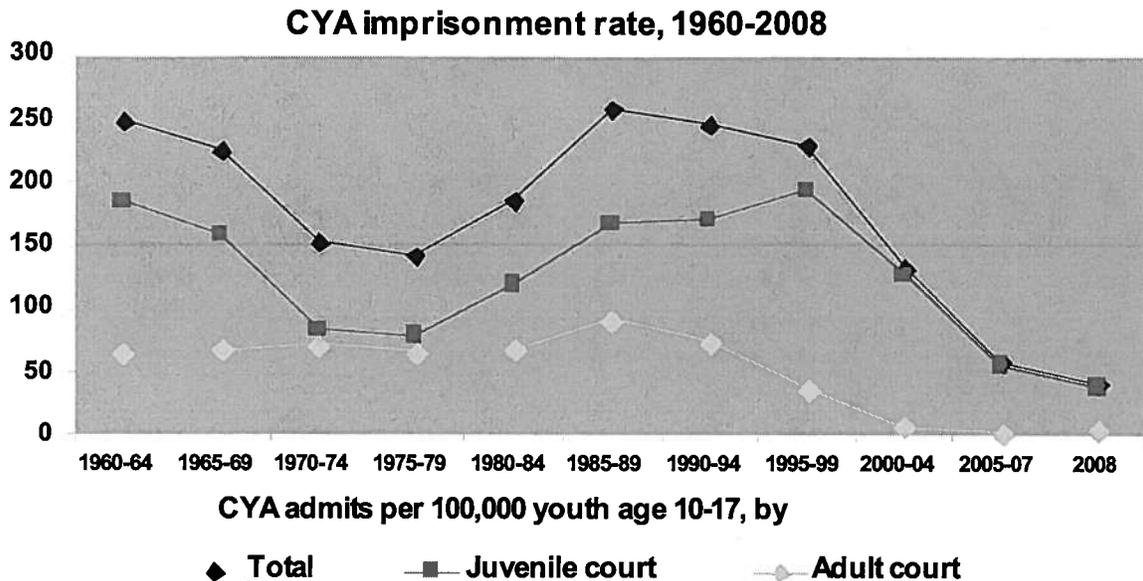


Table 4

Average annual imprisonments and crimes per 100,000 California youths, 1960-2007/08				
Average annual rate by year	Juvenile imprisonment	Juvenile crime rate		
		Felony	Violent	Murder
1960-64	248.4	1,649.6	184.7	5.1
1965-69	224.8	2,643.9	245.5	6.2
1970-74	152.5	3,548.0	420.0	9.0
1975-79	142.5	3,403.4	525.7	10.7
1980-84	184.8	2,683.7	460.3	12.9
1985-89	257.6	2,533.8	438.6	11.7
1990-94	244.3	2,701.7	627.6	18.5
1995-99	229.3	2,089.9	543.1	9.2
2000-04	136.9	1,437.8	377.3	4.2
2005-07	58.6	1,381.2	363.8	4.7
2008	39.2	na	na	na

Conclusion

Exhaustive analysis by CJCJ has failed to establish any relationship between juvenile incarceration rates and juvenile crime rates, either by era or by locale, as in this comparison of California and Texas trends. In particular, boosting the juvenile incarceration rates by locking up more property, drug, and other low-level offenders may be counterproductive. Juvenile incarceration seems most effective, both in lower costs and in correlation with lower crime rates, when prison space is reserved only for the worst of the worst— that is, youths convicted of felony violence and those whose records clearly demonstrate their continued danger to society after alternative treatments have failed.

The starkly different youth incarceration policies of Texas and California offer a rare opportunity to test theoretical assertions that tougher sentencing policies and higher incarceration reduces crime. Seldom do two major jurisdictions implement such radically different criminal justice policies over the same time period. Texas' youth sentencing policies over the past ten years emphasized increased imprisonment for younger offenders for less serious crimes. In contrast, California increased the overall age of young offenders committed to youth correctional facilities and diverted many juveniles who formerly would have been imprisoned. California's county-level juvenile detention rates also show substantial declines.

Under incapacitation theory, the significantly higher rates of youth incarceration in Texas should have produced an accelerated decrease in the crime rate relative to California. However, this study has clearly shown that no such differential effect occurred in the crime rates of the two states. This result suggests that juvenile crime control policies that emphasize incarceration and similar punitive measures need to be reconsidered, and that Texas' current youth incarceration policy is unjustified and unnecessary. Given the recent human rights abuses occurring in Texas and California youth correctional facilities, crime control policies that emphasize non-incarcerative options should be given greater priority. The savings achieved by reduced incarceration, estimated at \$163 per youth per day in Texas in 2006, could be reinvested in a range of community-based interventions.

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Research Assistants Margaret Dagovich and Michelle Thomas assisted in the development of this report.

The Center on Juvenile and Criminal Justice is a nonprofit, nonpartisan organization that offers policy analysis, program development, and technical assistance in the criminal justice field. For more information, please visit www.cjcj.org.

Juvenile Justice Priorities for the President and the 111th Congress

The new President and the 111th Congress will have an early opportunity to act on significant reforms to the nation's juvenile justice system. That system is severely overburdened after years of federal neglect and overly reliant on punitive sanctions and incarceration. Key legislative reform initiatives developed in the 110th Congress are primed for action.

1. Enact legislation to reauthorize and strengthen the JJDPA

Enacted in 1974 and most recently authorized in 2002 with bi-partisan support, the Juvenile Justice and Delinquency Prevention Act (JJDPA) provides for a nationwide juvenile justice planning and advisory system spanning all states and territories; federal funding for delinquency prevention and improvements in state and local juvenile justice programs and practices; and operation of a federal agency (OJJDP) dedicated to training, technical assistance, model programs, and research and evaluation, to support state and local efforts. The JJDPA was due to be reauthorized in 2007. The House and Senate held hearings on JJDPA reauthorization in the 110th Congress and the Senate Judiciary Committee approved reauthorizing legislation in July 2008.

The ABA urges early action to strengthen and reauthorize the JJDPA and for authorization and appropriation of sufficient federal funding to enable state compliance with the Act. States must be required to provide prompt access to qualified counsel for all youth in the juvenile justice system. Reauthorization legislation should strengthen the Act's four core protections for youth that states must implement: (1) to fully phase-out and eliminate the use of court orders that place non-criminal status offenders in "lock-ups;" (2) to remove youth from adult jails; (3) to maintain "sight and sound separation" of youth from adults in adult facilities; and (4) to require states to take concrete steps to reduce racial and ethnic disparities in the juvenile justice system. The new administration should also move promptly to restore and strengthen the Office of Juvenile Justice and Delinquency Prevention (OJJDP) which administers the JJDPA and has been severely under funded and understaffed in recent years.

The ABA also supports expansion of the Act to support state efforts to provide assessment, treatment, diversion, family engagement, and other services for youth whose principal needs are substance abuse and mental health needs. Children with mental health and developmental disabilities are overrepresented in the juvenile justice system, and studies have reported that as many as three-fourths of incarcerated youth have mental health disorders and about 1 in 5 has a severe disorder.

2. Enact legislation to support positive youth development community-based alternatives to gang activity

The ABA also supports passage of legislation targeted at preventing youth gang formation and gang violence. Legislation introduced in the House of Representatives in the 110th Congress as the Youth Promise Act would increase federal support and incentives for states to afford home and community-based care, services and interventions for the vast number of juveniles under court supervision who do not need to be and should not be in institutional or residential placements. This legislation would strengthen under funded prevention programs as an alternative to duplicative and overly punitive legislative proposals that would inappropriately sweep more youth into the federal juvenile and criminal justice systems. The Youth Promise Act would require training at the local level nationwide that complies with the ABA Juvenile Justice Standards for the representation and care of youth in the juvenile justice system.

The ABA believes that the Youth Promise Act takes the right approach to reducing gang violence. It focuses on assisting states and communities to undertake and implement comprehensive, evidence-based strategies to prevent and reduce youth violence while helping at-risk youth avoid gang activity and become productive members of their communities. Several of the other bills that address gang violence introduced in the 110th Congress would federalize ordinary street crime that should be handled at the state level and provide for new and enhanced federal penalties that we strongly oppose, such as mandatory minimum sentences or life without parole. Rather than focusing resources on bringing more youth into the juvenile and criminal justice systems, the Youth Promise Act is based on supporting community-based efforts to prevent youth from entering the justice system through implementation of evidence-based methods proven to reduce youth violence and delinquency.

3. Enact legislation to end life sentences without parole for youth

In addition, the ABA urges the new administration to work with Congress to abolish the sentence of life without parole for youth convicted of federal crimes. While only a dozen youth are serving such sentences in the rest of the world, research indicates that there are at least 2,200 youth offenders serving life without parole in the United States. The ABA approved a policy recommendation last year reiterating the fundamental principle that sentences for youthful offenders should generally be less punitive than sentences for those age 18 and older who have committed comparable offenses. We urge Congress and the states to enact legislation to provide that youthful offenders will generally be eligible for parole or other early release at a reasonable point during their sentence; and, if denied, should be reconsidered for parole or early release of the offense.

We urge the new administration and Congress to push for reauthorization of the JJDPa that is poised for early passage in 2009, to support the Youth Promise Act and legislation to abolish life sentences without parole, and push for their enactment in the 111th Congress.