

**CHAPTER 8**

**JUVENILE JUSTICE**

## THE ISSUE

The juvenile justice system in the United States is in urgent need of reform. Nationwide each year, police make 2.1 million juvenile arrests;<sup>1</sup> 1.7 million cases are referred to juvenile courts;<sup>2</sup> and over 200,000 youth are prosecuted in the adult criminal justice system.<sup>3</sup> The United States incarcerates more youth than any other country in the world such that on any given night, approximately 81,000 youth are confined in juvenile facilities,<sup>4</sup> and 10,000 children are held in adult jails and prisons.<sup>5</sup> Wherever they are held, incarcerated youth are particularly vulnerable to victimization and abuse.<sup>6</sup> The United States is also alone in imposing the sentence of life without parole for crimes committed as children. Recent estimates find that 2,589 people are currently serving a juvenile life without parole sentence.<sup>7</sup>

Over the past 20 years, however, scientific research has vastly increased our understanding of how to best approach juvenile delinquency and system reform. Promising reforms are being implemented in many jurisdictions, and there is an increasingly clear path for moving from counterproductive, dangerous, and wasteful practices toward more effective and just approaches to addressing adolescent crime. Leaders in the Executive and Legislative branches have the opportunity and the obligation to help establish a meaningful system of justice for all of our youth, and should begin by focusing on (i) restoring the federal leadership role in juvenile justice policy, (ii) preventing crime and diverting youth from the justice system, (iii) keeping court-involved youth safe, (iv) removing youth from the adult criminal justice system, and (v) helping youth return to their communities.

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<sup>1</sup> CHARLES PUZZANCHERA, U.S. DEPT. OF JUST., OFFICE OF JUV. JUST. AND DELINQ. PREVENTION, JUVENILE ARRESTS, 2008, (2009), available at <http://www.ncjrs.gov/pdffiles1/ojdp/228479.pdf>.

<sup>2</sup> CRYSTAL KNOLL & MELISSA SICKMUND, U.S. DEPT. OF JUST., OFFICE OF JUV. JUST. AND DELINQ. PREVENTION, DELINQUENCY CASES IN JUVENILE COURT, 2007 (2010), available at <http://ncjrs.gov/pdffiles1/ojdp/230168.pdf>.

<sup>3</sup> J. Woolard, *Juveniles within adult correctional settings: legal pathways and developmental considerations*, 4 INT'L J. OF FORENSIC MENTAL HEALTH. 18 (2005); COALITION FOR JUVENILE JUSTICE, CHILDHOOD ON TRIAL: THE FAILURE OF TRYING AND SENTENCING YOUTH IN ADULT CRIMINAL COURT (2005).

<sup>4</sup> MELISSA SICKMUND, JUVENILES IN RESIDENTIAL PLACEMENT, 1997-20008, U.S. DEPT. OF JUST., OFFICE OF JUV. JUST. AND DELINQ. PREVENTION (2010), available at <http://www.ncjrs.gov/pdffiles1/ojdp/229379.pdf>.

<sup>5</sup> TODD D. MINTON, U.S. DEPT. OF JUST., BUREAU OF JUST. STAT., JAIL INMATES AT MIDYEAR 2009 (2010); HEATHER C. WEST U.S. DEPT. OF JUST., BUREAU OF JUST. STAT., PRISON INMATES AT MIDYEAR 2009 (2010).

<sup>6</sup> Campaign for Youth Justice, *Jailing Juveniles*, <http://www.campaignforyouthjustice.org/key-research/national-reports.html#jailingjuveniles> (last visited Jan. 17, 2011). See also A.J. BECK ET. AL., U.S. DEPT. OF JUST., BUREAU OF JUST. STAT., SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2008-09 (2010).

<sup>7</sup> Human Rights Watch, *State distribution of youth offenders serving juvenile life without parole*, <http://www.hrw.org/en/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole> (last visited Jan. 17, 2011).

## HISTORY OF THE PROBLEM

Greater federal assistance is needed for key juvenile justice programs. Since FY2002, the operational budget for Office of Juvenile Justice and Delinquency Prevention (OJJDP) has plummeted 90%. In that time period, funding for the Juvenile Justice and Delinquency Prevention Act (JJDP) Title II State Formula Grants Program has declined 16%; Title V funding for incentive grants to local delinquency prevention programs has declined 34%, with between 53% and 97% of the limited dollars appropriated for the Title V program earmarked for non-JJDP programs.<sup>8</sup> Title II funds provide essential support for state and local agencies to develop and strengthen juvenile justice systems to reduce youth offending, meet vital standards for care and custody of juvenile offenders, and ensure community safety. Equally importantly, 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 such evidence-based programs can yield up to \$13 in cost savings.<sup>9</sup> Furthermore, each child prevented from engaging in repeat criminal offenses can save the community \$2.6 to \$4.4 million.<sup>10</sup>

Current juvenile justice practices too often ignore children's age and amenability to rehabilitation, 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. Our justice system is riddled with racial and ethnic disparities, a lack of mental health and drug treatment services, and disproportionate sanctions for minor and nonviolent adolescent misbehavior.

### 1. Overincarceration and Non-treatment of Vulnerable Youth

Misguided policies that purport to be “tough on crime” increase incarceration rates, disproportionately impact poor youth and youth of color, exacerbate the problem of gang-related crime, funnel a disproportionate number of youth who have a cognizable mental health and/or substance abuse disorder into the justice system, and often make our communities vulnerable to crime. Research from top scholars in a variety of fields including economics, educational psychology, and public health reveals that public dollars spent on effective prevention and education programs are far more effective at reducing crime than broadening prosecutorial powers

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<sup>8</sup> COALITION FOR JUVENILE JUSTICE, UNLOCKING THE FUTURE OF JUVENILE JUSTICE: A POLICY AGENDA FOR THE 111TH CONGRESS (2009), available at [http://www.juvjustice.org/media/resources/public/resource\\_240.pdf](http://www.juvjustice.org/media/resources/public/resource_240.pdf).

<sup>9</sup> ANNIE E. CASEY FOUNDATION, JUVENILE DETENTION ALTERNATIVES INITIATIVE, DETENTION REFORM BRIEF 1: DETENTION REFORM: A COST-SAVING APPROACH (2007), available at [http://www.aecf.org/upload/PublicationFiles/jdai\\_facts1.pdf](http://www.aecf.org/upload/PublicationFiles/jdai_facts1.pdf).

<sup>10</sup> Mark A. Cohen & Alex R. Piquero, *New Evidence on the Monetary Value of Saving a High Risk Youth*, (Vanderbilt Law and Economics Research Paper No. 08-07, 2007), available at <http://ssrn.com/abstract=1077214>.

or stiffening criminal penalties for young people.<sup>11</sup> Public opinion polls similarly reveal that taxpayers overwhelmingly favor paying for prevention, education, and rehabilitation programs over prosecution and incarceration of youthful offenders.<sup>12</sup>

Far too many youth in the juvenile justice system are in desperate need of mental health treatment. Recent studies indicate that up to 70% of youth in the juvenile justice system may have a diagnosable mental health disorder, and 60% may also meet the criteria for a substance use disorder, and 27% may experience disorders so severe that their ability to function is significantly impaired.<sup>13</sup> Moreover, according to recent data released by OJJDP, 44% of youth in custody say they were under the influence of alcohol or drugs during the commission of their offense.<sup>14</sup> These youth should be provided treatment and alternatives to incarceration.

Academic success plays a crucial role in preventing delinquent behavior and promoting positive outcomes for youth and safer communities. Youth who drop out or are pushed out of school find themselves with fewer opportunities for gainful employment and are more likely than youth who remain in school to commit delinquent acts. Nearly 10% of young male high school dropouts were institutionalized on a given day in 2006-2007 compared to only 3% of high school graduates and less than .1% of college graduates.<sup>15</sup> In addition, out-of-school suspension and expulsion are being overused and disproportionately affect youth of color and students with disabilities. According to the Dignity in Schools campaign, each year more than three million students are suspended and over 100,000 are expelled nationally.<sup>16</sup> More than 5.2 million young people between the ages of 18 and 24 (17%) do not have a high school diploma. Approximately 4.4 million young people within the same age span are neither in school, working, nor have a degree

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<sup>11</sup> In recent years, a range of organizations have commissioned or conducted related research and reached similar conclusions, including the American Psychological Association, the Washington State Institute for Public Policy, the Social Development Research Group of Seattle, Washington, and the Office of Juvenile Justice and Delinquency Prevention. For more information, see

[http://chhi.podconsulting.com/assets/documents/publications/NO MORE CHILDREN LEFT BEHIND.pdf](http://chhi.podconsulting.com/assets/documents/publications/NO_MORE_CHILDREN_LEFT_BEHIND.pdf)

<sup>12</sup> ALEX PIQUERO & LAURENCE STEINBERG, *MODELS FOR CHANGE, SYSTEMS REFORM IN JUVENILE JUSTICE, REHABILITATION VERSUS INCARCERATION OF JUVENILE OFFENDERS: PUBLIC PREFERENCES IN FOUR MODELS FOR CHANGE STATES (2007)*, available at <http://www.modelsforchange.net/publications/186>; CENTER ON CHILDREN'S LAW AND POLICY, *POTENTIAL FOR CHANGE: PUBLIC ATTITUDES AND POLICY PREFERENCES FOR JUVENILE JUSTICE SYSTEMS REFORM, MODELS FOR CHANGE, SYSTEMS REFORM IN JUVENILE JUSTICE (2007)*, available at <http://www.modelsforchange.net/publications/121>.

<sup>13</sup> JOSEPH CONCOZZA, J. ET AL, *ADDRESSING THE MENTAL HEALTH NEEDS OF YOUTH IN CONTACT WITH THE JUVENILE JUSTICE SYSTEM IN SYSTEM OF CARE COMMUNITIES: AN OVERVIEW AND SUMMARY OF KEY ISSUES (2010)*, available at [http://www.tapartnership.org/docs/jjResource\\_overview.pdf](http://www.tapartnership.org/docs/jjResource_overview.pdf).

<sup>14</sup> ANDREA J. SEDLAK, & C. BRUCE, U.S. DEPT. OF JUST., OFFICE OF JUV. JUST. AND DELINQ. PREVENTION, *YOUTH'S CHARACTERISTICS AND BACKGROUNDS (2010)*.

<sup>15</sup> ANDREW SUM ET. AL, *THE CONSEQUENCES OF DROPPING OUT OF HIGH SCHOOL: JOBLESSNESS AND JAILING FOR HIGH SCHOOL DROPOUTS AND THE HIGH COST FOR TAXPAYERS (2009)*, available at [http://www.clms.neu.edu/publication/documents/The\\_Consequences\\_of\\_Dropping\\_Out\\_of\\_High\\_School.pdf](http://www.clms.neu.edu/publication/documents/The_Consequences_of_Dropping_Out_of_High_School.pdf).

<sup>16</sup> National Center for Education Statistics, *Contexts of Elementary and Secondary Education*, <http://nces.ed.gov/programs/coe/2009/section4/indicator28.asp> (last visited Jan. 17, 2011).

beyond high school.<sup>17</sup> Individually, each of these young people are at risk of long-term unemployment, living in poverty, and engaging in criminal activity. Collectively, these disconnected youth represent a generation of lost potential. African-American students (nearly three times as likely to be suspended and 3.5 times as likely to be expelled as white students) and Latino students (1.5 times as likely to be suspended and twice as likely to be expelled as white students) bear a disproportionate burden of these punishments when compared to their white peers,<sup>18</sup> while students with disabilities also experience disciplinary removal from the classroom at rates that are disproportionate to their overall representation in the K-12 population.<sup>19</sup>

Lesbian, gay, bisexual, or transgender (LGBT) youth encounter the juvenile justice system at a disproportionately high rate, creating a need for greater sensitivity toward the issues faced by LGBT youth in the system. Recent research shows that up to 13% of youth in juvenile detention identify as (LGBT).<sup>20</sup> In their homes, schools, and communities, LGBT youth face challenges related to their sexual orientation and/or gender identity that can increase their risk of coming into contact with the juvenile justice system. A recent study in *Pediatrics* found that adolescents who self-identified as LGBT were about 50 percent more likely to be stopped by the police than other teenagers. In particular, girls who labeled themselves as lesbian or bisexual reported about twice as many arrests and convictions as other girls who had engaged in similar behavior.<sup>21</sup>

## 2. Dangerous Conditions in the Juvenile Justice System

Far too often, incarcerated youth endure abusive conditions. In a recent study by the Bureau of Justice Statistics (BJS), a shocking one in eight youth in juvenile facilities reported experiencing sexual abuse at their current facility in the past year alone.<sup>22</sup> An earlier BJS survey, which focused solely sexual violence reports filed with prison officials, confirmed that young inmates are also more likely to be victimized when in adult facilities.<sup>23</sup> Reports of widespread abuses in juvenile institutions in California,<sup>24</sup> Indiana,<sup>25</sup> Mississippi,<sup>26</sup> Ohio,<sup>27</sup> Texas,<sup>28</sup> and other

<sup>17</sup> PHILLIP LOVELL & JACQUE MINOW, FIRST FOCUS, RECLAIMING OUR NATION'S YOUTH (2009), available at <http://www.firstfocus.net/sites/default/files/r.2009-8.6.lovell.pdf>

<sup>18</sup> US Department of Education Office of Civil Rights, 2006 Data Collection, [http://ocrdata.ed.gov/Projections\\_2006.aspx](http://ocrdata.ed.gov/Projections_2006.aspx) (last visited Jan. 20, 2011).

<sup>19</sup> American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63(9) AM. PSYCHOL., 852-862, available at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>

<sup>20</sup> THE EQUITY PROJECT, LEGAL SERVICES FOR CHILDREN, NATIONAL JUVENILE DEFENDER CENTER, & NATIONAL CENTER FOR LESBIAN RIGHTS, *HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS* (2009), available at [http://www.equityproject.org/pdfs/hidden\\_injustice.pdf](http://www.equityproject.org/pdfs/hidden_injustice.pdf).

<sup>21</sup> Kathryn E.W. Himmelstein & Hannah Bruckner, *Criminal Justice and School Sanctions against Nonheterosexual Youth: A National Longitudinal Study*, PEDIATRICS (2011), available at <http://pediatrics.aappublications.org/cgi/reprint/peds.2009-2306v1>.

<sup>22</sup> A.J. BECK ET. AL., *supra* note 6.

<sup>23</sup> A.J. BECK & P.M. HARRISON, U.S. DEPT. OF JUST., BUREAU OF JUST. STAT., *SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES*, 2005 (2006).

<sup>24</sup> In California, authorities failed to provide adequate medical and mental health treatment and facility staff regularly used pepper spray on youth. Michael Rothfeld, *Juvenile Prison System Needs Reform Lawyers Say*, Los

states demonstrate the importance of using federal laws 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. Youth who commit crimes must be held accountable, but no court disposition, regardless of the offense, should ever include abuse, mental health deterioration, or death in prison. Currently, there are no national standards in federal rule or law regulating conditions of confinement in facilities in the juvenile justice system, and there is little or no federal monitoring or oversight to hold these facilities accountable for how they care for and supervise youth.<sup>29</sup>

In the original JJDP, Congress recognized that status offenses (truancy, curfew violations, runaways, disobeying parents) are non-delinquent and non-criminal and, therefore, detention was

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ANGELES TIMES, Feb., 18, 2008 available at <http://www.latimes.com/news/local/la-me-youth18feb18,0,5845357.story>; Ralph Boyd, *Investigative Findings Letter*, U.S. DEPT. OF JUSTICE, CIV. RTS. DIVISION, April 9, 2003, available at [http://www.justice.gov/crt/about/spl/documents/la\\_county\\_juvenile\\_findlet.pdf](http://www.justice.gov/crt/about/spl/documents/la_county_juvenile_findlet.pdf).

<sup>25</sup> In Indiana, staff sexually assaulted youth in one facility, and failed to protect youth from violence in several juvenile facilities. Wan Kim, *Investigative Findings Letter*, U.S. DEPT. OF JUSTICE, CIV. RTS. DIVISION, Aug. 6, 2007, available at [http://www.justice.gov/crt/about/spl/documents/marion\\_findlet\\_5-9-07.pdf](http://www.justice.gov/crt/about/spl/documents/marion_findlet_5-9-07.pdf); *Justice Department Reaches Settlement Regarding Conditions at Two Indiana Juvenile Justice Facilities*, U.S. DEPT. OF JUSTICE, Feb. 8, 2006, available at [http://www.usdoj.gov/opa/pr/2006/February/06\\_crt\\_066.html](http://www.usdoj.gov/opa/pr/2006/February/06_crt_066.html); Bradley Schlozman, *Investigative Findings Letter*, U.S. DEPT. OF JUSTICE, CIV. RTS. DIVISION, Sept., 9, 2005, available at [http://www.justice.gov/crt/about/spl/documents/split\\_indiana\\_logansport\\_juv\\_findlet\\_9-9-05.pdf](http://www.justice.gov/crt/about/spl/documents/split_indiana_logansport_juv_findlet_9-9-05.pdf).

<sup>26</sup> 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 for up to one month at a time. Adam Nossiter, *Lawsuit Filed Over Treatment of Girls at State Reform School in Mississippi*, N.Y. TIMES, July 12, 2007, available at <http://www.nytimes.com/2007/07/12/us/12prison.html>; *Mississippi Center Accused of Abuse*, USA TODAY, July 12, 2007, available at [http://www.usatoday.com/news/nation/2007-07-12-mississippi\\_N.htm](http://www.usatoday.com/news/nation/2007-07-12-mississippi_N.htm) (July 12, 2007).

<sup>27</sup> In Ohio, girls in a state facility were sexually assaulted by male staff. *Ohio Settles Suit Over Juvenile Jails*, CNN, April 4, 2008; *Investigative Findings Letter*, U.S. DEPT. OF JUSTICE, CIV. RTS. DIVISION, May 9, 2007, available at [http://www.justice.gov/crt/about/spl/documents/marion\\_findlet\\_5-9-07.pdf](http://www.justice.gov/crt/about/spl/documents/marion_findlet_5-9-07.pdf).

<sup>28</sup> In Texas, youth filed hundreds of complaints over physical and sexual abuse and repeated use of pepper spray by staff in juvenile facilities. Doug Swanson, *Officials Indicted in Abuse at TYC*, THE DALLAS MORNING NEWS, April 10, 2007, available at

<http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/041107dntextyc.be59c6b.html>; Emily Ramshaw, *Complaints Pour In to TYC Abuse Inquiry*, DALLAS MORNING NEWS, March 13, 2007, available at [http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/DN-](http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/DN-tyc_13tex.ART.State.Edition1.44911b8.html)

[tyc\\_13tex.ART.State.Edition1.44911b8.html](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, available at

<http://webcache.googleusercontent.com/search?q=cache:SVNMM3EVCHEJ:www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/100307dntextyc.35bdf47.html+Young+Inmates+Endured+%E2%80%98Deplorable+Conditions%E2%80%99,+Dallas+Morning+News,+Oct.+3,+2007&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a>.

<sup>29</sup> Beginning in 1995, OJJDP funded the Council of Juvenile Correctional Administrators (CJCA) to develop national performance-based standards (now called the PbS program) and more than 100 outcome measures reported twice a year to monitor conditions of confinement and the practices and services in juvenile institutions. For more information, go to <http://cjca.net/initiatives/performance-based-standards-pbs>. While more than 200 facilities voluntarily participate with the program, participation is not mandatory, so there is no federal oversight or enforcement for the remaining – more than 2,000 – juvenile detention and correctional facilities that do not participate with the program. See NATIONAL EVALUATION AND TECHNICAL ASSISTANCE CENTER, FACT SHEET ON JUVENILE FACILITIES (January 2010). Available at [http://www.neglected-delinquent.org/nd/docs/factSheet\\_facilities.pdf](http://www.neglected-delinquent.org/nd/docs/factSheet_facilities.pdf).

not appropriate. Rather than resolve the factors that lead to a status offense, detention often aggravates them because children held in secure facilities are often exposed to abusive conditions and youth with more serious delinquency histories.<sup>30</sup> The Deinstitutionalization of Status Offenders (DSO) provision was designed to ensure that status offenders receive the services they need through the appropriate human services agency rather than the justice system.<sup>31</sup> 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 a court order not to commit another status offense. Girls are disproportionately affected as they are 170% more likely than boys to be arrested for status offenses and to receive more severe punishment.<sup>32</sup> Many states no longer allow the incarceration of status offenders under the VCO exception.

Further, the Prison Litigation Reform Act (PLRA)<sup>33</sup> has kept countless juveniles from protecting their constitutional rights in courts. PLRA was enacted to curb frivolous lawsuits brought by adult prisoners; however, the law applies to all inmates, regardless of age or status. Whether housed in a juvenile facility or with adults, detained youth are among the most vulnerable to constitutional violations, but they rarely file lawsuits.<sup>34</sup> Youth generally lack the literacy skills, knowledge of the court system, and access to legal materials that would be needed to bring about litigation.<sup>35</sup> Moreover, youth under age 18 cannot file lawsuits on their own under federal law. As youth are not similarly situated to adults, the PLRA provisions should not apply to them. Rather than benefiting the public, the PLRA's application to youth actually reduces public safety by allowing serious abuses to occur without the availability of judicial recourse. Youth are sent to the juvenile justice system for rehabilitation, and these systems should be held accountable for improving youths' lives, and ensuring that they do not cause more harm.

The Sex Offender Registration and Notification Act (SORNA)<sup>36</sup> is also inappropriate to address the needs of incarcerated youth. SORNA, as currently applied to youth, is contraindicated by research that shows that youth who commit sex-based offenses are more amenable to

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<sup>30</sup> BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INSTITUTE, THE DANGERS OF DETENTION; THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES at 9 (2006), available at [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf).

<sup>31</sup> S. REP. NO. 93-1011, at 5287-88 (1974).

<sup>32</sup> SUSANNA ZAWACKI, GIRLS INVOLVEMENT IN PENNSYLVANIA'S JUVENILE JUSTICE SYSTEM, PENN. JUV. JUST. STAT. BULL. (2005) at 1.

<sup>33</sup> 18 U.S.C. §3626(e)(2).

<sup>34</sup> As of 1998, there were fewer than a dozen reported opinions directly involving challenges to conditions in juvenile detention centers, and around two dozen cases with unreported opinions or settlements. Michael J. Dale, *Lawsuits and Public Policy: The Role of Litigation in Correcting Conditions in Juvenile Detention Centers*, 32 U.S.F. L. Rev. 675, 681-98 (1998). This figure contrasts strongly with the much larger number of reported and unreported opinions arising from challenges to adult prison conditions. The authors of this report are generally familiar with institutional litigation and can confirm that this large disparity persists.

<sup>35</sup> See *Alexander S. v. Boyd*, 876 F. Supp. 773, 790 (D.S.C. 1995) (holding that juvenile detainees had no constitutional right to a law library because, in light of their limited capacity, they "would not benefit in any significant respect from a law library, and the provision of such would be a foolish expenditure of funds"); accord, *Shookoff v. Adams*, 750 F.Supp. 288 (M.D.Tenn. 1990), *aff'd in pertinent part, reversed in part on other grounds sub nom.* *John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992).

<sup>36</sup> 42 U.S.C. §16913.

treatment and have significantly lower recidivism rates than adults. SORNA also fails to recognize that if a youth is being adjudicated within the juvenile court, the youth's offense is not serious enough to warrant criminal prosecution. SORNA has great potential to disrupt families and communities across the nation because public registration and notification does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. Finally, SORNA has a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. Instead of seeking appropriate treatment for their child, parents may be inclined to hide their child's problem when they learn that their child may be required to register for life as a sex offender.

### 3. Youth Tried and Incarcerated in the Adult Criminal Justice System

An estimated 200,000 youth are tried, sentenced, or incarcerated in the adult criminal justice system every year across the United States.<sup>37</sup> Trying youth as adults is bad for public safety and for youth. Youth incarcerated in the adult system are more likely to reoffend than similarly situated youth who are retained in the juvenile system, and these offenses tend to be more violent. According to the Centers for Disease Control and Prevention, youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime.<sup>38</sup>

Youth are at greater risk of sexual abuse and suicide when housed in adult jails and prisons. The National Prison Rape Elimination Commission found that "more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse."<sup>39</sup> Youth are also often placed in isolation and locked down 23 hours a day in small cells with no natural light, conditions which cause anxiety and paranoia, exacerbate existing mental disorders, and heighten the risk of suicide. In fact, youth housed in adult jails are 36 times more likely to commit suicide than are youth housed in juvenile detention facilities.<sup>40</sup>

The most youth tried in the adult system are charged with non-violent offenses,<sup>41</sup> and yet still suffer the lifelong consequences from an adult criminal conviction. Youth are often denied employment and educational opportunities,<sup>42</sup> which makes transitioning to adulthood difficult. If

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<sup>37</sup> J. Woolard, *Juveniles within adult correctional settings: legal pathways and developmental considerations*, 4 (1) INT'L J. OF FORENSIC MENTAL HEALTH. 18 (2005); COALITION FOR JUVENILE JUSTICE, CHILDHOOD ON TRIAL, *supra* note 3.

<sup>38</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT JUSTICE SYSTEM: A REPORT ON RECOMMENDATIONS OF THE TASK FORCE ON COMMUNITY PREVENTIVE SERVICES (2007), available at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.

<sup>39</sup> NATIONAL PRISON RAPE ELIMINATION COMMISSION, REPORT (2009) at 18, available at <http://www.ncjrs.gov/pdffiles1/226680.pdf>.

<sup>40</sup> Campaign for Youth Justice, *Jailing Juveniles*, *supra* note 6.

<sup>41</sup> Campaign for Youth Justice, *The Consequences Aren't Minor: the Impact of Trying Youth as Adults and Strategies for Reform* (2007), available at [http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/JPI014-Consequences\\_exec.pdf](http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/JPI014-Consequences_exec.pdf).

<sup>42</sup> *Id.*

sentenced to an adult prison, approximately 80 percent of youth convicted as adults will be released from prison before their 21st birthday, and 95 percent will be released before their 25th birthday.<sup>43</sup> At the other extreme, however, some young people will spend the rest of their lifetimes behind bars. Human Rights Watch reported in 2009 that an estimated 2,589 people were serving life without parole for crimes they committed while under age 18.<sup>44</sup>

#### 4. Youth Reentry

Approximately 100,000 young people under age 18 leave secure juvenile facilities and return to their communities each year.<sup>45</sup> Youth are often discharged from care back to families struggling with domestic violence, drug and alcohol abuse, and unresolved mental health disabilities. Many youth are placed back into neighborhoods with few youth support programs, high crime rates, poverty, and poor performing schools. Public safety is compromised when youth leaving out-of-home placement are not afforded necessary supportive services upon reentering their communities and are therefore at great risk to recidivate into delinquency.

Reentry services and aftercare for youth exiting juvenile justice facilities reduce recidivism and support their successful reintegration back into families and communities. By fostering improved family relationships, reintegration into school, and mastery of independent life skills, reentry services help youth build resiliency and positive development to divert them from harm and delinquent behaviors. In order to reduce recidivism, we must establish a national policy agenda which supports reentry services to connect youth with meaningful opportunities for self-sufficiency and community integration that is grounded in evidence-based practices and stresses cooperation among existing federal and state agencies, local stakeholders, juvenile justice experts, and reform advocates.

Youth coming out of secure placement face serious barriers to education. Attendance at school is a strong protective factor against delinquency; youth who are engaged in school are much less likely to commit crime in the short-term and also in the long-term. Yet, more than half of youth in secure placements have not completed the eighth grade and two-thirds of those leaving formal custody do not return to school.<sup>46</sup> Emphasis on returning to school upon exit from out-of-home placement should be a high priority for any reentry initiative because of the strong connection between school engagement and delinquency. Despite the strong association between school truancy, dropouts, and delinquency, reenrollment in school for youth exiting detention is sometimes challenging. Some schools place obstacles to reenrollment for formerly incarcerated youth because these youth are considered difficult to manage. In the absence of federal policy

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<sup>43</sup> RICHARD E. REDDING, U.S. DEPT. OF JUST., OFFICE OF JUV. JUST. AND DELINQ. PREVENTION, *JUVENILE TRANSFER LAWS: AN EFFECTIVE DETERRENT TO DELINQUENCY?* (2008), available at: <http://www.ncjrs.gov/pdffiles1/ojdp/220595.pdf>.

<sup>44</sup> *Human Rights Watch, State distribution of youth offenders serving juvenile life without parole*, supra note 7.

<sup>45</sup> H. Snyder, *An Empirical Analysis of the Youth Reentry Population* 2(1) *YOUTH VIOLENCE AND JUV. JUST.* 39-55 (2004).

<sup>46</sup> C. ROY-STEVENS, U.S. DEPT. OF JUST., OFFICE OF JUV. JUST. AND DELINQ. PREVENTION, *OVERCOMING BARRIERS TO SCHOOL REENTRY* (2004).

disallowing it, states have enacted laws that create clear obstacles for youth attempting to re-enroll in high school upon reentry.

As discussed above, youth in the justice system often have serious health and mental health needs. Prior to their incarceration many youth have access to health services through Medicaid or the State Children's Health Insurance Program (SCHIP), but youth are terminated from these services upon entering a secure detention or correctional facility. These youth are forced to reapply for benefits upon their release, a process which may take up to 90 days to complete.<sup>47</sup> This delay seriously threatens successful reintegration to the community, and often results in long delays in obtaining vital treatment, medication, and services at a time when they are most needed. Gaps in services significantly increase the risk of reoffending and recommitment to an institution.<sup>48</sup>

## RECOMMENDATIONS

### 1. Restore the Federal Leadership Role in Juvenile Justice Policy

#### A. *Federal Abdication of Responsibility for Juvenile Justice*

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is the federal agency responsible for juvenile justice and delinquency prevention issues, and is tasked with assisting state and local governments in addressing juvenile delinquency. Over the past decade, OJJDP suffered a drastic depletion of funding and support, and the agency's commitment to the most important issues confronting youth steadily waned.<sup>49</sup> Making matters worse, the Juvenile Justice and Delinquency Prevention Act (JJDP) is long overdue for reauthorization.

#### B. *Meeting Federal Juvenile Justice Obligations*

##### *Legislative*

Congress should reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDP). Congress should use the reauthorization of the JJDP as an opportunity to restore the federal government's leadership role on these issues, and ensure that states have the necessary guidance and resources to create and sustain cost-effective juvenile systems that both enhance public safety and treat court-involved youth age appropriately. Congress should pass a JJDP reauthorization bill

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<sup>47</sup> C. Brown, *Jailing the Mentally Ill*, 44(4) ST. GOV'T NEWS 28 (2001); S. EIKEN & S. GALANTOWICZ, U.S. DEPT. OF HUMAN SERVICES, CENTERS FOR MEDICAID AND MEDICAID SERVICES, DISABLED AND ELDERLY HEALTH PROGRAM DIVISION, IMPROVING MEDICAID ACCESS FOR PEOPLE EXPERIENCING CHRONIC HOMELESSNESS: STATE EXAMPLE (2004).

<sup>48</sup> BAZELON CENTER FOR MENTAL HEALTH LAW, CREATING NEW OPTIONS: TRAINING FOR CORRECTIONS ADMINISTRATORS AND STAFF ON ACCESS TO FEDERAL BENEFITS FOR PEOPLE WITH MENTAL ILLNESS LEAVING JAIL OR PRISON (2007), *available at*: <http://www.bazelon.org/LinkClick.aspx?fileticket=b7UagW8enCw%3D&tabid=104>.

<sup>49</sup> For more information, see *Hearing on the Department of Justice, Office of Justice Programs Oversight Before the H. Comm on the Judiciary Subcomm. on Crime Terrorism and Homeland Security*, 100<sup>th</sup> Cong. (2008) (statement of Shay Bilchik, former OJJDP Administrator), *available at* <http://judiciary.house.gov/hearings/pdf/Bilchik080918.pdf>.

that will:

- Extend the *jail removal* and *sight and sound separation* core protections to all youth under the age of 18 held pre-trial, whether charged in juvenile or adult court;
- Modify the definition of “adult inmate,” and thereby codify current state flexibility for housing youth convicted in adult court in juvenile facilities rather than adult prisons;
- 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. The JJDP’s currently requirement that states “address” DMC with the juvenile justice system is vague and lacks clear guidance on how to reduce racial and ethnic disparities. By strengthening the DMC core protection, Congress would allow states to: (i) establish coordinating bodies to oversee efforts to reduce disparities; (ii) identify key decision points in the system and the criteria by which decisions are made; (iii) create 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; (iv) develop and implement plans to address disparities that include measurable objectives for change; (v) publicly report findings; and (vi) evaluate progress toward reducing disparities.
- Strengthen the *Deinstitutionalization of Status Offenders* (DSO) core protection, which prohibits the locked detention of status offenders, by removing the Valid Court Order (VCO) and Interstate Compact exceptions;
- Provide safe and humane conditions of confinement for youth in state and local custody by restricting the use of JJDP funds for dangerous practices, thereby encouraging states to adopt best practices for confinement;
- Provide a research-based continuum of mental health and substance abuse services to meet unmet needs of court-involved youth and their families, including diversion and reentry services;
- Assist states in complying with JJDP, and establish Incentive Grants to encourage states to adopt evidence-based or promising best practices that improve outcomes for youth and their communities. For states out of compliance with any of the core requirements, Congress should require that JJDP funds that would have been withheld for non-compliance be used as improvement grants to bring states into compliance;
- Enhance the partnership between states and OJJDP by expanding training, technical assistance, research, and evaluations. Enhance the partnership between OJJDP and Congress by encouraging transparency, timeliness, public notice, and communication;

- Incentivize juvenile justice systems to ensure that all policies, practices, and programs recognize the unique needs of girls by: (i) adding an accountability mechanism for states to meet the needs of female offenders; (ii) ensuring expertise about girls on state advisory groups by increasing research and information dissemination; and (iii) providing direct funding to gender-specific prevention and treatment programs under Title V Delinquency Prevention grants.

Congress should also restore and increase funding for JJDPA. Successful support of state efforts to reduce juvenile delinquency and protect youth in the system requires adequate federal assistance. Federal appropriations for key federal juvenile justice programs have suffered in the last decade. Congress should restore federal investments in state and local juvenile justice reform efforts to their FY 2002 levels, adjusted for inflation, and increase these investments over the next five years.

#### *Executive*

The Administration must move quickly to appoint an experienced and competent OJJDP Administrator. The OJJDP has been without permanent leadership since 2008. Strong, new leadership will provide the voice and commitment necessary to move important system reforms forward.

The Administration should also encourage Congress to fully fund the OJJDP. The Administration must request and advocate for sufficient appropriations for OJJDP and the juvenile justice programs it administers. The Administration's budget should restore juvenile justice funding to their FY 2002 levels, adjusted for inflation, and increase these investments over the next five years.

The time is ripe for OJJDP, as a national leader with access to and command of national resources, to restore and increase funding for research driven reforms. With increased funding, OJJDP could focus on identifying, developing and promoting what works to reduce delinquency and to advance youth, family and community success. OJJDP should continue to support Blueprints for Violence Prevention and other research to evaluate the evidence base for other promising programs; support increased research to find new evidence-based programs that work; and discontinue federal funding for programs that are ineffective, such as boot camps and Scared Straight programs.

The Department of Justice (DOJ) should strengthen partnerships between OJJDP and the states. The partnership between states and OJJDP should be strengthened by expanding training, technical assistance, research, and evaluation. Further, there should be greater transparency and accountability by making state plans and reports on compliance with the core protections publicly available on the OJJDP website. The OJJDP Administrator should be required to investigate and make a public report available when a state is out of compliance with any of the core protections.

OJJDP should increase family and youth involvement in policy decisions. Consistent with its 2011 Program Plan, OJJDP should continue to maintain an intentional focus on increasing family

and youth involvement in all its program planning and grant making activities. At a minimum, these activities should include focus groups to hear the concerns of families, information and resources online to assist families understand and navigate the justice system, and funding of parent resource, support, and training centers to provide direct services to families.

DOJ should also strengthen OJJDP reporting requirements. Few states and localities are able to achieve meaningful changes in their juvenile justice systems without adequate data, particularly data disaggregated by race and ethnicity, so communities are able to develop culturally and linguistically appropriate services for youth and their families. OJJDP should further its existing efforts by solidifying the requirement that states report disaggregated race and ethnicity data to OJJDP through policy guidance or regulations. Data on youth prosecuted in the adult criminal justice system via judicial, statutory, or prosecutorial waiver mechanisms, and age of jurisdiction laws are also lacking. The Administration has made progress on collecting this information at the federal level by funding the Survey of Juveniles Charged in Criminal Courts through the Bureau of Justice Statistics. The Administration should further its efforts by assisting states in collecting these data at the state and local levels to track and evaluate the impact of prosecuting youth as adults. Finally, there must be better data collection on the consequences of school discipline (e.g., in- and out-of school suspensions, expulsions, instances of corporal punishment, referrals to disciplinary alternative schools and court referrals). The Administration should require that measures of school discipline and climate are used in assessments of school success as part of the Elementary and Secondary Education Act. Signs of poor school climate, high disciplinary rates and subgroup disparities in particular, should trigger required assistance and support from local, state and federal educational agencies.

The Administration should increase involvement of the Federal Coordinating Council on Juvenile Justice Commissioners. The Federal Coordinating Council on Juvenile Justice and Delinquency Prevention (the Council) plays an important role in ensuring that all federal agencies effectively serve youth at risk of entering the system, youth in the system and youth transitioning back into their community. As members of this Council, the agency directors should personally attend these meetings to assess the effectiveness of current programming, and determine where systems and agency practices can be improved. The Council should regularly hold “listening sessions” to hear directly from current or formerly court-involved youth and their families. Further, the Council should be expanded to include two new positions for family members and youth who have been directly affected by the justice system.

## **2. Prevent Crime and Divert Youth from the Justice System**

### ***A. Overincarceration and Non-treatment of Vulnerable Youth***

Misguided policies that purport to be “tough on crime” increase incarceration rates, disproportionately impact poor youth and youth of color, exacerbate gang-related crime, funnel a disproportionate number of youth who have a cognizable mental health and/or substance abuse

disorder into the justice system, and often make our communities vulnerable to crime. Research from top scholars in a variety of fields including economics, educational psychology, and public health reveals that public dollars spent on effective prevention and education programs are far more effective at reducing crime than broadening prosecutorial powers or stiffening criminal penalties for young people.<sup>50</sup>

## **B. Reduce Youth Crime and Incarceration**

### *Legislative*

In addition to reauthorizing and adequately funding the JJDPA, as discussed above, Congress should take the following steps to reduce the number of children in the justice system.

Congress should pass the Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education (PROMISE) Act<sup>51</sup> to implement and fund evidence-based practices to prevent delinquency and gang involvement. Under the Act, local communities form PROMISE councils with representatives from schools, social services, health and mental health providers, community-based and faith-based organizations, court services, and law enforcement. Each council assesses the community's needs and strengths, evaluates current funding priorities – including local jail and prison expenditures – and then develops a comprehensive plan for implementing evidence-based and promising prevention and intervention strategies.

Congress should create incentives, such as grants administered by the Department of Justice, and requirements that would meet the needs of particularly vulnerable youth, including youth with disabilities and LGBT youth involved in the justice system. Juvenile justice agencies are ill-equipped to manage the mental health and substance abuse needs of youth effectively. Congress should work to address the barriers to service identified by juvenile justice agencies, including: insufficient resources, inadequate administrative capacity, lack of appropriate staffing, and lack of training for staff.<sup>52</sup> Also, Congress should pass federal protections against discrimination in juvenile justice systems based on actual or perceived sexual orientation or gender identity.

Congress should also create incentives for states to reduce the inappropriate detention of youth with mental health disabilities. Congress should encourage states to : (i) identify vulnerable youth through consistent use of screening and assessments; (ii) divert youth with mental health disorders from detention and incarceration into home- and community-based treatment; (iii) make

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<sup>50</sup> In recent years, a range of organizations have commissioned or conducted related research and reached similar conclusions, including the American Psychological Association, the Washington State Institute for Public Policy, the Social Development Research Group of Seattle, Washington, and the Office of Juvenile Justice and Delinquency Prevention. For more information, see

<http://chhi.podconsulting.com/assets/documents/publications/NO MORE CHILDREN LEFT BEHIND.pdf>

<sup>51</sup> H.R. 1064, 111th Cong. (2009); S.435, 111th Cong. (2009).

<sup>52</sup> Federal Advisory Committee on Juvenile Justice, *Annual Report* (2006), available at <http://www.ncjrs.gov/pdffiles1/ojdp/218367.pdf>

training and technical assistance available for law enforcement officers, judges, probation officers, and other decision makers; and (iv) require individualized discharge plans to link youth to appropriate aftercare services, including mental health and substance abuse services and supports for the youth and his/her family.

Congress should pass the RAISE UP Act (Reengaging Americans in Serious Education by Uniting Programs)<sup>53</sup>, which challenges every high school dropout to attain a high school diploma, a postsecondary credential, and a family supporting career – and provides them with the support to succeed.

#### *Executive*

OJJDP should do more to support community-based alternatives to incarceration. OJJDP has a vital role to play in helping states and localities prevent and reduce the use of out of home placements. For example, the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI)<sup>54</sup>, which is aimed at reducing pre-adjudication detention through a variety of tools and principles, such as objective risk assessment tools, has been replicated in more than 100 jurisdictions across the country. OJJDP has begun to partner with the Annie E. Casey Foundation to replicate JDAI in additional jurisdictions and should continue to use its discretionary budget to support efforts to reduce the use of incarceration and other residential facilities.

The Administration should grant technical assistance to improve school safety and reduce exclusionary disciplinary practices through. To this end, the Administration should provide schools with training and technical assistance on the use of alternatives to suspension and expulsion, family and tutoring supports, social and emotional learning, positive youth development programming, bullying prevention, threat assessment, positive behavior supports, and restorative justice practices.

OJJDP, in coordination with the Substance Abuse and Mental Health Services Administration, should conduct a major study regarding the prevalence of mental health and substance abuse disorders among juvenile justice populations served by all states and territories. Additionally, OJJDP should increase training and technical assistance related to mental health and substance abuse, including best practices for law enforcement and probation officers, detention/corrections and community corrections personnel, and court services personnel.

The Administration should promote LGBT cultural competence in Safe Schools/Healthy Students (SS/HS)<sup>55</sup>, a program widely recognized as a model for achieving effective collaboration

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<sup>53</sup> H.R. 3982, 111<sup>th</sup> Cong. (2009).

<sup>54</sup> See Annie E. Casey Foundation, Juvenile Detention Alternatives Initiative, <http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx> (last visited Jan. 17, 2011).

<sup>55</sup> Substance Abuse and Mental Health Services, Safe Schools/ Healthy Students, <http://www.sshs.samhsa.gov/> (last visited Jan. 17, 2011).

across public education, local mental health, and the juvenile justice system. SS/HS evaluations should reflect efforts to meet the needs of LGBT students, including decreasing the rate of arrest and referral to the juvenile court of LGBT youth.

### 3. Keep Court-Involved Youth Safe

#### A. *Dangerous Conditions in the Juvenile Justice System.*

The JJDPAs and other relevant legislation do not address abusive conditions and practices, as well as other age-inappropriate settings in juvenile facilities. To address the recent and well-documented abuses in juvenile facilities nationwide, juvenile justice facility staff need to be trained on effective behavior-management techniques to respond to dangerous or threatening situations. Additionally, PLRA keeps countless uses from addressing these conditions and other constitutional violations in court.

#### B. *Ensure Safe Conditions for Youth*

##### *Legislative*

Congress should remove the VCO and Interstate Compact exceptions from the DSO provision of the JJDPAs. This will ensure that status offenders are served in more appropriate settings, and will allow the juvenile justice system to focus on youth charged with delinquent offenses.

Congress should work to improve conditions of confinement for youth in juvenile facilities. Congress should restrict the use of federal funds for the most dangerous practices such as hog-tying, fixed restraints, psychotropic medications, and pepper spray, which create an unreasonable risk of physical injury, pain, or psychological harm. Congress should also fund training and technical assistance to help jurisdictions reduce unnecessary use of isolation and restraint, require increased collection of data on isolation and restraint, and allow states to use JJDPAs funds to develop independent monitoring bodies (e.g., creating ombudsmen programs, creating family monitoring panels, or partnering with Protection and Advocacy organizations) and to institute programs to reduce unnecessary isolation and restraint.

Congress should pass the Family Justice Act<sup>56</sup>. The Family Justice Act of 2010 would provide grants to non-profits to establish monitoring panels that involve youth, families, and other community members in developing better policies and practices to protect youth, support their rehabilitation and reduce recidivism. This would increase both oversight of and family engagement with juvenile justice systems.

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<sup>56</sup> H.R. 6361, 111<sup>th</sup> Cong. (2010).

Congress should also ensure that Prison Rape Elimination Act of 2003 (PREA)<sup>57</sup> implementation addresses the needs of detained youth. PREA was passed in recognition of the serious crisis of rampant sexual abuse in corrections and detention facilities nationwide. Youth are especially vulnerable to this abuse, but the bulk of attention and resources devoted to PREA have focused on adult prisons and jails. PREA appropriations have never reached the levels approved by Congress when the law passed. As a result of limited funding, the state grant program – a key component in the statute – has been defunct since FY2006, and focused on state prison systems. Congress should provide sufficient appropriations to implement PREA, including funds dedicated to reducing the sexual abuse of youth in all types of facilities and in community corrections.

Congress should amend the PLRA to define ‘prisoner’ as an adult, and exclude youth from the law’s application. Also, Congress should amend Title I of the Adam Walsh Child Protection and Safety Act of 2006 – the Sex Offender Registration and Notification Act (SORNA)<sup>58</sup> – to exclude youth adjudicated for certain sex-based offenses within the juvenile court from mandatory registration on a public offender registration.

#### *Executive*

DOJ should enact and enforce national standards protecting youth from sexual abuse. In accordance with PREA, which required the Attorney General to ratify binding national standards addressing sexual abuse in detention within one year from receiving the June 2009 recommended standards from the bipartisan National Prison Rape Elimination Commission (NPREC), the Attorney General should ratify binding standards. The standards enacted by the Attorney General should ensure that:

- Responsible, professional adults trained in adolescent behavior and development provide continuous, direct supervision of youth, and do not rely on video surveillance;
- The Adult and Lockup Standards prohibits holding youth in adult facilities to protect youth from sexual abuse and dangers associated with isolation;
- Youth are protected from harmful cross-gender interactions, recognizing that a large percentage of sexual abuse of young people in facilities is perpetrated by staff members of the opposite sex. The standards should prohibit one-on-one cross-gender supervision and provide additional guidance on how these prohibitions apply to transgender residents;
- Specific guidance is available on how to use individual safety plans to keep vulnerable youth safe without resorting to blanket policies for certain groups, such as LGBT youth;

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<sup>57</sup> 45 U.S.C. §15601.

<sup>58</sup> 42 U.S.C. §16913.

- The Juvenile Standards do not treat voluntary consensual sexual activity as sexual abuse, even if facilities prohibit voluntary consensual sexual activity among residents by rule. Conflating abuse and voluntary consensual sexual activity often leads to overly harsh responses that misuse limited resources and have a disproportionately negative impact on certain groups, such as LGBT youth;
- The Juvenile Standards include a clear statement of the dangers associated with isolation in order to reinforce a facility's responsibility to keep children safe without resorting to that practice. Additionally, youth who engage in sexual abuse should not be subjected to prolonged disciplinary isolation as punishment for that behavior;
- Employees, volunteers, and contractors working in all facilities that house youth receive training on adolescent development, the prevalence of trauma and abuse, mandatory reporting requirements, and the agency's zero tolerance policy on sexual abuse of incarcerated persons;
- The caretaking relationship between medical and mental health professionals and youth is preserved, by eliminating inquiries into prior offending behavior and obtaining informed consent before sharing sensitive information;
- Medical and mental health programs engage in quality assurance activities, including monitoring with the standards;
- Access to prophylactic HIV treatment and emergency contraception and pregnancy-related services is available;
- Limited English Proficient (LEP) children not only understand sexual misconduct policies and reporting procedures, but are also able to communicate with staff during other important phases, including investigation, medical and mental health care, and other supportive services; and
- Agencies only hire, retain, and promote staff members who are qualified by experience, education, and background to protect children by considering information from civil protection orders and annual criminal background checks.

The Attorney General should move quickly to ratify the standards after addressing the unique concerns and development needs of youth in juvenile and adult facilities. DOJ must ensure that agencies comply with these standards, including by providing the needed training and technical assistance.

OJJDP should work to improve the conditions of incarceration for youth. In recognition of its national role in ensuring that incarcerated youth are held in safe conditions, OJJDP recently

initiated a new Center on Youth in Custody. This new entity should have an advisory board that includes youth and family voices. This new entity should also make best practices and standards available nationwide, and help states to provide necessary training for facility staff to adopt best practices in programming, behavior management, and security while eliminating dangerous practices and unnecessary isolation. In conjunction with this new effort, OJJDP should also encourage states to establish community advisory boards or other independent monitoring structures to monitor conditions in juvenile facilities and support their improvement.

DOJ should encourage states to keep youth off public sex offender registries. In the absence of Congressional action on SORNA, the Attorney General should refrain from promulgating policies or promoting practices that unnecessarily stigmatize youth. The Attorney General should maintain a policy that allows states to exercise discretion in establishing or maintaining a separate juvenile registry that is accessible to the relevant authorities but not the general public, and allow for the courts or designated agency to determine whether community notification is required.

#### **4. Remove Youth from the Adult Criminal Justice System**

##### **A. *Youth Tried, Sentenced, and/or Incarcerated as Adults***

An estimated 200,000 youth are tried, sentenced, or incarcerated in the adult criminal justice system every year across the United States.<sup>59</sup> Trying youth as adults is bad for public safety and for youth. Youth incarcerated in the adult system are more likely to reoffend, are at greater risk of sexual abuse and suicide, and more likely suffer lifelong employment and education consequences than similarly situated youth who are retained in the juvenile system.

##### **B. *Treat Youth as Youth***

###### *Legislative*

Congress should extend JJDPA protections to keep youth out of adult facilities and 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 JJDPA where youth can be held in adult facilities, they should have no sight or sound contact with adult inmates. Congress should also revise the definition of “adult inmate” to codify the recent guidance issued by OJJDP by excluding youth who, at the time of the offense, are under the age of 18 and are below the maximum age for youth held at a juvenile facility under state law.

Congress should raise the age of juvenile court jurisdiction. In accordance with the recommendations of the Federal Advisory Council on Juvenile Justice and Coordinating Council, Congress should both encourage states to set the age of adulthood to 18 at the time of the

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<sup>59</sup> J. Woolard, *Juveniles within adult correctional settings: legal pathways and developmental considerations*, *supra* note 3; COALITION FOR JUVENILE JUSTICE, *CHILDHOOD ON TRIAL*, *supra* note 3.

commission of the crime and to provide financial incentives for states to do so. Further, Congress should encourage states to raise the extended age of juvenile court jurisdiction to at least the age of 21.

Congress should end the practice of sentencing youth tried and convicted in federal court to life without parole, and instead require review after ten years for any person incarcerated in federal prison for a crime committed when they were under the age of 18. Just this past year, in *Graham v. Florida*<sup>60</sup> the United States Supreme Court reiterated that youth are fundamentally different than adults by declaring it unconstitutional to sentence youth to life without parole for a non-homicide crime. Although we know that young people have a greater capacity to be rehabilitated, the United States alone continues to sentence youth to die in prison.

### *Executive*

In accordance with PREA, the Attorney General must enact standards to protect youth from sexual abuse. In light of the overwhelming evidence that youth cannot be kept safe in adult facilities and the research demonstrating that keeping youth in adult facilities is harmful to the youth and to public safety, these PREA standards should be modified to require removal of youth from adult jails and prisons altogether. This change would be consistent with existing laws and policies used by the Federal Bureau of Prisons that prohibit the placement of youth in adult jails and prisons in federal custody.

DOJ should help states remove youth from adult facilities. Roughly one in four incarcerated youth are held in adult jails or prisons instead of juvenile facilities. Several jurisdictions including Virginia, Colorado, and Multnomah County, Oregon have recently changed their state laws to allow youth tried in the adult system to be housed in juvenile facilities. OJJDP should fund a demonstration program to help these jurisdictions remove youth from adult jails and prisons.

## **5. Reentry of Youth into their Communities**

### ***A. Lack of Reentry and Treatment Assistance for Youth***

Approximately 100,000 young people under age 18 leave secure juvenile facilities and return to their communities each year.<sup>61</sup> Youth are often discharged from care back to families struggling with domestic violence, drug and alcohol abuse, and unresolved mental health disabilities. Many youth are placed back into neighborhoods with few youth support programs, high crime rates, poverty, and poor performing schools. Public safety is compromised when youth leaving out-of-home placement are not afforded necessary supportive services, including access to education and physical and mental health care, upon reentering their communities and are therefore at great risk to recidivate into delinquency.

<sup>60</sup> *Graham v. Florida*, 130 S. Ct. 2011.

<sup>61</sup> H. Snyder, *supra* note 44 at 39-55.

## ***B. Provide Support for Youth After Incarceration***

### *Legislative*

Congress should increase its focus on youth in the reauthorization of the Second Chance Act by increasing funding dedicated to youth.<sup>62</sup> Federal commitment to improving reentry is evident in the passage of the Second Chance Act in 2008, which authorized \$165 million in federal spending on reentry, including competitive grants to government agencies and nonprofit organizations to provide employment assistance, substance abuse treatment, housing, family services, mentoring, victims support, and other services that help reduce recidivism. While the Second Chance Act is a vehicle for improved reentry programs and services, its focus on young people must be strengthened.

Congress should work to improve the education of incarcerated youth. Congress should use the Elementary and Secondary Education Act of 1965 (ESEA)<sup>63</sup> reauthorization as an opportunity to begin addressing some of the education barriers that returning youth face. Specifically, Congress should support the inclusion of incentives for jurisdictions to appropriately handle the educational needs of these vulnerable youth.<sup>64</sup>

Congress should suspend and/or restore Medicaid and other health benefits for incarcerated youth. Congress should end the practice of terminating Medicaid, and State Children's Health Insurance Program (SCHIP) coverage for youth who enter secure detention or correctional facilities. Instead, the law should be amended to only suspend coverage so that it can be immediately reinstated upon exit from the facility.

### *Executive*

The Administration should ask Congress to increase funding for youth reentry by requesting that funding be specifically allocated for youth under the Second Chance Act. In addition, all youth-serving federal agencies, including the U.S. Departments of Labor, Education, and Health and Human Services, should work together to educate states and localities on the availability of federal funds that support youth reentry.

DOJ should increase federal coordination on youth reentry. The Attorney General should oversee and coordinate youth reentry issues with other reentry programming administered by

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<sup>62</sup> For more information, see The Sentencing Project and National Network for Youth, Memo to Senate and House Judiciary Committee Staff from Robert F. Kennedy Juvenile Justice Collaborative, [http://www.ceanational.org/phorum/file.php?9,file=126,filename=Juv.Second\\_Chance\\_Act.doc](http://www.ceanational.org/phorum/file.php?9,file=126,filename=Juv.Second_Chance_Act.doc). (last visited Jan. 20, 2011).

<sup>63</sup> 20 U.S.C. § 6301 et. seq.

<sup>64</sup> For more information on the educational barriers that youth face upon exit from secure placement, see J. Feerman et al, The School to Prison Pipeline...and Back: Obstacles and Remedies for the Re-enrollment of Adjudicated Youth, 54 N.Y.L. SCH. L. REV. 1115 (2009).

other federal agencies through DOJ's new Inter-agency Reentry Working Group, announced by Attorney General Holder in July 2010. The Inter-agency Reentry Working Group also should coordinate its work on youth reentry with DOJ's Federal Coordinating Council on Juvenile Justice and Delinquency Prevention Subcommittees on Youth Reentry and Education.

The Administration should promote a continuum of education for delinquent youth. The Administration should incentivize state departments of education to focus on vulnerable school populations to ensure youth experience no interruptions in their education during out-of-home placement, and are assisted with reenrollment in school upon exit from placement. The Administration should also call for the inclusion of an individualized education assessment as a part of each youth's reentry planning.

The Administration should actively educate states and support efforts to suspend, rather than terminate, Medicaid or other health coverage for incarcerated youth.

## APPENDICES

## Experts

Nick Alexander, Federal Policy Director, Fight Crime Invest in Kids  
(<http://www.fightcrime.org/state/usa/staff-list>).

Tara Andrews, Deputy Executive Director, Policy and Programs, Coalition for Juvenile Justice  
([http://www.juvjustice.org/about\\_staff.html](http://www.juvjustice.org/about_staff.html)).

Neelum Arya, Research and Policy Director, Campaign for Youth Justice  
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