


# Promoting Safe Communities



Recommendations for  
the 113<sup>th</sup> Congress



# Promoting Safe Communities: Recommendations for the 113<sup>th</sup> Congress

**OPPORTUNITIES FOR JUVENILE JUSTICE & DELINQUENCY PREVENTION  
REFORM**

**National Juvenile Justice and Delinquency Prevention Coalition  
2013-2014**

Juvenile justice systems across the United States are in urgent need of reform, and federal leadership is necessary to advance the pace of change. Despite a steady drop in juvenile detention and out-of-home placements over the past decade, there are still far too many young people securely detained and placed away from home who could be handled more effectively in their own communities. Although the number of juvenile arrests accounts for a small portion of the nation's crime and has been on the decline for the past decade, each year, police still make approximately 1 million juvenile arrests;<sup>1</sup> juvenile courts handle roughly 1.5 million cases;<sup>2</sup> and more than 250,000 youth are prosecuted in the adult criminal justice system.<sup>3</sup> On any given night, approximately 70,000 youth are placed in secure confinement,<sup>4</sup> and 10,000 children are held in adult jails and prisons.<sup>5</sup>

Current juvenile justice policies and practices too often ignore children's age and amenability to rehabilitation, cause long-term collateral consequences, waste taxpayer dollars, and violate our deepest held principles about equal justice under the law and the role of the juvenile justice system. Many state systems exhibit racial and ethnic disparities, lack sound mental health and drug treatment services, and apply excessively harsh sanctions for minor and nonviolent adolescent misbehavior. Too often, community safety is jeopardized when states and localities adopt costly and overly punitive approaches that are shown repeatedly to produce the worst outcomes for children, their families, and public safety, including high rates of re-offense and higher severity of offending due to justice system contact.<sup>6</sup>

These practices and policies continue despite the fact that the United States Supreme Court has held three times in the last three years that children are different from adults. In its 2010 ruling in *Graham v. Florida*, the Court struck down life-without-parole sentences for youth convicted of non-homicide offenses. Two years later, the Court decided in *Miller v. Alabama* that mandatory life-without-parole sentences imposed on youth violate the 8<sup>th</sup> amendment ban on cruel and unusual punishment. In 2011, the Court ruled in *J.D.B. v. North Carolina* that law enforcement officials must consider the age of a suspect in determining whether Miranda warnings should be issued. These rulings followed the Court's reasoning in *Roper v. Simmons*, which outlawed the death penalty for children in 2005, and relied on growing bodies of adolescent development research proving the unique characteristics of children – their lessened culpability, their unique vulnerability to peer pressure, their lack of understanding of the consequences of their actions and impulse control, and their particular capacity for rehabilitation – that led the Court to conclude that children are categorically less culpable than adults. As a result, the parameters for how we treat children in the U.S. justice system are forever changed and require this Administration and Congress to reexamine policies and practices that ignore the fundamental differences between children and adults and provide leadership to states that is consistent with these rulings.

With strong federal leadership, the pace of juvenile justice reforms can be accelerated. Research over the past 20 years has increased our understanding of what works and how to best approach juvenile delinquency and system reform. Many jurisdictions

across the country are implementing promising reforms, and there is an increasingly clear path for moving toward community and evidence-based approaches to reducing adolescent crime. In August 2012, led by a bipartisan group of state lawmakers and governors, the National Conference of State Legislatures released a report highlighting successful efforts from around the country.<sup>7</sup> The 113<sup>th</sup> Congress has the opportunity and responsibility to support effective systems of justice for our youth and should begin by focusing on the following five priority areas:

- 1) Restore Federal Leadership in Juvenile Justice Policy
- 2) Support and Prioritize Prevention, Early Intervention, and Diversion Strategies
- 3) Ensure Safety and Fairness for Court-Involved Youth
- 4) Remove Youth from the Adult Criminal Justice System
- 5) Support Youth Reentry

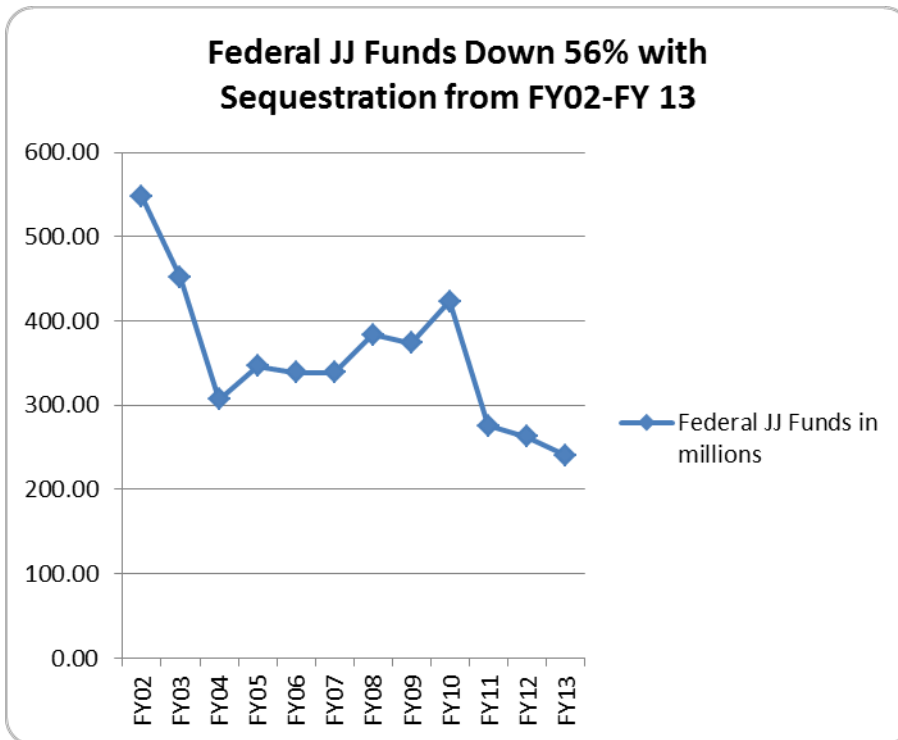
## I. Restore Federal Leadership in Juvenile Justice Policy

Over the past decade, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has suffered a drastic depletion of funding and support, and the agency's commitment to both current and core concerns in juvenile justice has steadily waned.<sup>8</sup> Funding levels for OJJDP have declined more than 90 percent since 2002. In addition, the Juvenile Justice and Delinquency Prevention Act (JJDPA), authorizing legislation for OJJDP, is more than six years overdue for reauthorization. The National Academy of Sciences recently released a report detailing the important federal role in supporting state juvenile justice systems.<sup>9</sup> Going forward, Congress must provide the clear direction and resources needed to facilitate true and impactful reforms in all States, territories and the District of Columbia, building on innovative and evidence-based approaches to create and sustain juvenile systems that cost less in terms of both human suffering and financing, enhance public safety, prevent delinquency and court contact in the first place, and give court-involved youth the best possible opportunities to live safe, healthy, and fulfilling lives.

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#### **Restore and Increase Funding for the JJDPA and Other Research-Driven Reforms**

Successful support of state efforts to reduce juvenile delinquency and protect youth in the system requires adequate federal assistance. Despite a universally recognized need to further reduce delinquency and improve juvenile justice systems, federal appropriations for key federal juvenile justice programs have suffered in the last decade. Federal funding available to support implementation of the JJDPA and other state and local reforms has steadily declined by 83 percent from 1999 to 2010,<sup>10</sup> and the appropriations caps contained in the Budget Control Act of 2011 have only accelerated the scope of the cuts.



Congress has the unique opportunity to reverse this trend and promote and support evidence-based practices and policies that prevent delinquency, reduce recidivism, promote positive youth development, keep children and communities safe and save money in the long-run.

We supported the Administration’s FY 2013 budget, which proposed \$140 million for three critical juvenile justice programs: \$70 million for Title II of the JJDP; \$40 million with no earmarks for Title V of the JJDP, and \$30 million for the Juvenile Accountability Block Grant (JABG). Given the critical nature of this modest federal investment, we were disappointed that the House Commerce, Justice, and Science FY13 Appropriations bill proposed to drastically cut Title II funds and totally eliminate Title V and JABG funding. The Senate Appropriations Committee approved stronger legislation, but neither proposal came close to the \$175 million we recommended for these programs or the \$140 million put forward by the Administration. While we recognize the challenges that come with the discretionary spending caps and the sequestration provision contained in the Budget Control Act of 2011, we also know how essential federal investments in state juvenile justice efforts are for youth and community safety. In these tight economic times, it is even more critical to invest scarce federal resources wisely. These are relatively modest, targeted federal investments in state and local juvenile justice programs that can pay huge dividends in the form of public safety, reduced recidivism, and better outcomes for youth, all of which would result in cost savings. Congress should restore juvenile justice funding to its FY 2002 levels, adjusted for inflation, and increase these investments over the next five years.

## **Reauthorize and Strengthen the JJDP**

Reauthorization of the JJDP is currently more than six years overdue. Congress can and should use the reauthorization of the JJDP as an opportunity to strengthen accountability for federal spending, help states protect public safety, hold delinquent youth accountable, protect our children from harm, and provide rehabilitation services to prevent future delinquency. This landmark law was last reauthorized in 2002, but few substantive changes were made at that time. Since the last major reauthorization of the JJDP nearly two decades ago, much more is known about what works and does not work to keep our communities safe and put youth on a better path.

The most recent, broadly supported, bipartisan proposal to reauthorize the JJDP introduced in 2009<sup>11</sup> includes specific new provisions to this long-standing law designed to increase evidence-based screening and assessment for children and youth who come into contact with the courts, as well as to improve family and community supports and services for mental health and behavioral health. These and other reforms contained within the law aim to reach youth and families who are isolated and disconnected from stable environments, supportive adults, and systems of care. The law also provides federal support for a comprehensive range of state and local delinquency prevention and intervention strategies, including those aimed at preventing illegal gun possession and use by youth. Moreover, the JJDP and its reauthorization legislation support OJJDP, the federal home for preventing delinquency and addressing the needs of court-involved youth.

Congress should hold hearings and pass a JJDP reauthorization bill that will:

- 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.
- 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.”
- 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.
- 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.
- Provide safe and humane conditions of confinement for youth in State or local custody by prohibiting use of JJDP funds for dangerous practices and encouraging States to adopt best practices and standards to eliminate dangerous practices and unnecessary isolation.
- 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 re-entry services.
- Assist States in compliance with the JJDP by establishing incentive grants to encourage States to adopt evidence-based and/or promising practices that improve outcomes for youth and their communities. For States that are deemed

to be out of compliance with any of the core protections, Congress should require any JJDP funds withheld for non-compliance to be set aside and made available to those States as improvement grants to help them with those particular protections.

- Enhance the partnership between States and OJJDP by expanding training, technical assistance, research and evaluation. 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.

### **Reauthorize the Juvenile Accountability Block Grant (JABG)**

The JABG program, authorized under the Omnibus Crime Control and Safe Streets Act of 2002, is designed to help reduce juvenile offending by supporting accountability-based programs that focus on offenders and state and local juvenile justice systems. The basic premise underlying the JABG program is that both the juvenile offender and the juvenile justice system must be held accountable. In implementing the program, OJJDP works to support state efforts that reduce juvenile offending through both offender-focused and system-focused activities that promote accountability. We encourage Congress to reauthorize this important grant program.

### **Set and meet national benchmarks to prevent and reduce youth violence and delinquency, and to increase healing and well-being**

The report of the Attorney General's National Task Force on Children Exposed to Violence, *Defending Childhood*, released in December 2012, provided a series of comprehensive recommendations to help prevent and reduce child victimization from all forms of violence. The recommendations are designed to help children and youth heal from violence by elevating federal leadership, launching a national initiative, investing in national data collection, and funding trauma-informed services for children and youth. Congress should work with the Administration to make sure the report's recommendations are realized.

## **II. Support Prevention, Early Intervention, and Diversion Strategies**

Decades of empirical studies of juvenile delinquency by scholars in the fields of criminology, child psychology, mental health, substance abuse, economics, and public health reveal that public dollars spent on effective prevention and early intervention programs reduce delinquency and strengthen families and communities. Research also shows that broadening prosecutorial powers and stiffening criminal penalties for young people do not work to lower delinquency or prevent reoffending.<sup>12</sup> Similarly, public opinion polls find that taxpayers overwhelmingly favor paying for prevention, education, and rehabilitation over prosecution and incarceration of juveniles who are adjudicated delinquent.<sup>13</sup>

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### **Pass the Youth PROMISE Act**

The bipartisan Youth Prison Reduction through Opportunity, Mentoring, Support and Education (Youth PROMISE) Act aims to reduce violence in communities that have a high concentration of youth at risk of school disengagement, social disconnection and/or delinquent behavior, by providing targeted federal investments in empirically based prevention and intervention strategies, such as family strengthening programs, academic and school supports, positive youth development, and other evidence-based interventions such as those identified in “Blueprints for Violence Prevention.”<sup>14</sup> Congress should take up and pass the Youth PROMISE Act without delay.

### **Eliminate the Valid Court Order (VCO) Exception from the JJDP**

While the JJDP currently prohibits detaining youth for status offenses, like truancy and running away from home, there is a valid court order (VCO) exception to the Deinstitutionalization of Status Offenders (DSO) core requirement.<sup>15</sup> The VCO exception allows judges and other court personnel to detain youth adjudicated as status offenders if they violate a valid court order or a direct order from the court, such as “stop running away from home” or “attend school regularly.”<sup>16</sup> Detaining and incarcerating non-delinquent, status-offending youth is counter-productive: it is more costly and less effective than home and community-based responses. It interrupts education, pulls children away from family and community, and stigmatizes youth.<sup>17</sup> Research clearly shows that once detained, youth are also more likely to commit unlawful acts, potentially leading to “deeper” involvement in the system.<sup>18</sup> Girls are disproportionately affected by the VCO exception – they are more likely to be arrested for status offenses and to receive more severe punishment than boys.<sup>19</sup> Many girls, already traumatized before entering the justice system, are re-traumatized by violent and abusive experiences in detention.<sup>20</sup> Although judges, court personnel, and advocates are working hard to effectively address the VCO exception on the state level, its mere existence in the JJDP undermines the DSO core requirement and harms youth. We call on Congress to eliminate the VCO exception.

### **Reauthorize and Increase Investment in the Runaway and Homeless Youth Act (RHYA)**

The RHYA, originally passed as part of the JJDP and last reauthorized in 2008,<sup>21</sup> provides vital services to runaway, homeless, and disconnected youth. This modest investment has laid the foundation for a national system of services for our most vulnerable young people, including: emergency shelters, family reunification work when safe, aftercare, outreach, education and employment, health care, behavioral and mental health, transitional housing, and independent housing options. These services help to prevent youth from involvement in the criminal justice system, trafficking and commercial exploitation, and chronic homelessness, and to ensure successful outcomes such as a safe exit from homelessness, family reunification, and/or establishment of permanent connections in their communities. We call on Congress to reauthorize this important law, increase funding for its three pillar programs (Street Outreach, Basic Centers and Transitional Living), and provide additional resources to address the needs of exploited and trafficked children.



## **Support Community-Based Alternatives to Reduce Over-Reliance on Incarceration of Youth**

States as diverse as New York, Illinois, California, Arkansas, Ohio, Texas, and the District of Columbia have undertaken initiatives to reduce their over-reliance on the wasteful, unnecessary, and often dangerous incarceration of children.<sup>22</sup> Instead these states are investing in more effective community-based approaches that address important public safety concerns and the well-being of youth and their families. We support the continuation of efforts like the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) to reduce the use of detention and incarceration. Congress should invest in a plan to cut youth incarceration and out-of-home placements in half by the end of 2017. To help achieve this goal, we encourage Congress to focus federal support on community-based programs that provide intensive, individualized wraparound and advocacy services to the highest risk youth most likely to be incarcerated.

## **Improve School Safety and Reduce Exclusionary Disciplinary Practices**

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 have fewer opportunities for gainful employment and are more likely to commit delinquent acts than youth who remain in school.

Over the past two decades, expanded "zero tolerance" school disciplinary policies have too often led to suspensions, expulsions and push-out of students for a broad range of student behaviors that are not violent or a threat to school safety, but rather typical of normal adolescent development. Beginning in the 1990s, schools across the nation created mandatory punishments for a long list of student behaviors, many of which are now required to be reported to the police. For example, in Pennsylvania, school-based arrests nearly tripled between 1999- 2007; yet nearly all school-based referrals were misdemeanor offenses or non-delinquent.<sup>23</sup> The result of "zero tolerance" has too often been the disconnection from school and criminalization of youth - particularly youth of color, LGBTQ youth, and youth with disabilities - for behaviors and infractions that can and should be addressed within schools, without pushing youth out of school or involving law enforcement and justice system referrals. A wave of recent school discipline reforms, which move away from zero tolerance and toward more supportive responses and services, underscore the ineffectiveness of a punitive, exclusionary approach toward students.<sup>24</sup>

Additionally, excessive reliance on law enforcement in schools to maintain discipline can send youth into the juvenile and criminal justice systems for matters more appropriately handled by school personnel. When law enforcement officers are present in schools, there is often an increase in arrests for typical adolescent, nonviolent behavior, rather than for incidents that threaten the safety of other students or school personnel.<sup>25</sup> Without strong leadership and rules about the role of law enforcement, police are sometimes relied on to enforce rules that should be managed by school personnel, such as fistfights without injury, graffiti, disorderly conduct, and similar behaviors. Sending youth into the justice system for these minor offenses can result in a lifetime of negative collateral consequences, including significant barriers to education and employment.

In many school districts, an arrest or referral to the justice system also means suspension and expulsion from school and blocked reentry into school. Arrests, suspensions, expulsions, and barriers to school re-entry cut students off from positive interactions with adults in supportive settings such as school and cause a variety of negative life outcomes. As the presence of law enforcement and school resource officers (SROs) in schools has increased, arrests and referrals to the juvenile justice system from schools, generally, have also increased.<sup>26</sup> The presence of law enforcement in schools has effects that transform the school from an academic environment to a site of criminal law enforcement. Issues that might otherwise be seen as mental health or social problems become policing matters once an officer is stationed in a school. This comes at the expense of students' rights and their education. Youth of color are especially vulnerable to over-policing in schools, which increase both the racial-academic divide and racially skewed arrest rates.<sup>27</sup> Schools should instead be encouraged to invest more resources in school counselors, school social workers, and other mental health clinicians who can strengthen school-wide positive behavioral interventions, identify and treat problems that might contribute to youth violence, and improve coordination with community mental health and prevention services.

Congress should advance legislation that effectively addresses the “school-to-prison pipeline” and the disciplinary policies and practices that can push students out of school and into the justice system. We also encourage Congress to reject proposals that would increase law enforcement presence in schools and/or unnecessarily and inappropriately increase the number of youth who come in contact with the justice system.

### **Improve Access to and Quality of Mental Health and Behavioral Health Services and Substance Abuse Services**

Congress should advance proposals to help identify mental/behavioral health needs early, including exposure to adverse childhood experiences, mental illness and substance abuse; to expand access to innovative, culturally competent, and evidence-based services and treatment; and to improve the quality of those services. Recent studies indicate that up to 70 percent of youth in the juvenile justice system have a diagnosable mental health disorder; 60 percent may also meet the criteria for a substance use disorder; and 27 percent experience disorders so severe that their ability to function is significantly impaired.<sup>28</sup> Juvenile justice agencies are often ill-equipped to manage the mental/behavioral health and substance abuse needs of youth effectively. The agencies themselves identify the following as barriers to their success: insufficient resources, inadequate administrative capacity, lack of appropriate staffing, and lack of training for staff.<sup>29</sup>

Congress should create incentives for States to reduce the inappropriate detention of youth with mental or behavioral health needs by: 1) identifying vulnerable youth through consistent use of screening and assessments; 2) diverting youth with mental health needs from detention and incarceration into home- and community-based placements and residential treatment where appropriate; 3) making training and technical assistance available for law enforcement officers, judges, probation officers, and other decision makers; and 4) requiring individualized discharge plans to link youth

to appropriate reentry services, including mental health and substance abuse services and supports for the youth and his/her family. Legislation, ripe for expanded support, includes: the Mental Health in Schools Act (S. 195/ H.R. 628), which would help strengthen coordination and service delivery between schools and community mental health agencies; the Children's Mental Health Accessibility Act of 2012, which expands home and community-based service waivers to include youth in or at risk of placement in psychiatric residential treatment facilities, and the Successful, Safe and Healthy Students Act of 2011, which assists states in developing and implementing comprehensive programs and strategies to expand school-based counseling and mental health services (prevention, intervention, appropriate diagnosis and referral) as well as mental health training for school personnel and mental health professionals.

We also encourage Congress to fund effective implementation of the mental health and criminal justice collaboration grant.<sup>30</sup> This law, administered by the Department of Justice, authorizes grants to assist with diversion, treatment, and transition services for youth and adults with mental illness who come in contact with law enforcement.

### **Address the Specific Needs of Girls**

Girls are the fastest growing segment of the juvenile justice population and their pathway into the system is often very different from that of boys. For girls, physical, psychological, and sexual abuse is an overwhelming predictor for juvenile justice involvement. Once in the system, girls often fail to receive the services and support needed to heal from trauma and address destructive behaviors, and are instead re-traumatized and derailed from educational achievement.<sup>31</sup>

In addition to eliminating the VCO exception from the JJDP, we recommend that Congress establish a \$10 million grant program for girls in juvenile justice programs to provide specific, targeted support for state efforts to implement best practices with respect to at-risk and system-involved girls. This could be coordinated with any girls' work already taking place as part of the state's 3-year plan required by Title II of the JJDP. We also encourage Congress to amend Title V of the JJDP to include gender-responsive programming as a priority area for states and localities applying for funding under this title. Title V focuses on reducing risks and enhancing protective factors to prevent at-risk youth from entering the juvenile justice system and to intervene with first-time, non-serious offenders to keep them out of the system. Because girls often enter the system for non-violent, status offenses, directing resources for gender-specific prevention and early intervention would be impactful.

Finally, Congress should ban shackling of pregnant girls. Use of restraints during pregnancy, labor, and delivery is a health risk. Absent a total ban, Congress should require states to document the number of pregnant girls detained, incarcerated, or in out-of-home placements in the justice system and the frequency of the use of restraints on them, and the Department of Justice should compile the results in a report to Congress.

### **Promote Cultural Competence Regarding Lesbian, Gay, Bisexual, Transgender, Questioning and Intersex (LGBTQI) Youth**

Congress should pass federal protections against discrimination in all settings based on actual or perceived sexual orientation and gender identity and create incentives for States to appropriately and effectively respond to LGBTQI youth involved in the justice system. Recent research shows that up to 13 percent of youth in juvenile detention identify as LGBT.<sup>32</sup> In their homes, schools, and communities, LGBTQI 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. Many LGBTQI youth enter the juvenile justice system as a direct result of family rejection. In addition, a recent study in *Pediatrics* found that adolescents who self-identified as LGB were about 50 percent more likely to be stopped by the police than other teenagers. In particular, girls who identified themselves as lesbian or bisexual reported about twice as many arrests and convictions as other girls who had engaged in similar behavior.<sup>33</sup> Congress should create incentives for States to reduce the inappropriate detention of LGBTQI youth and address decision makers' lack of understanding of this population by: 1) ensuring that JJDP State Advisory Groups (SAGs) include experts on LGBT youth; 2) increasing research and information dissemination on this topic; 3) making training and technical assistance available for juvenile justice agencies, law enforcement officers, judges, probation officers, and other decision makers; and 4) requiring all programs funded under JJDP and other OJJDP incentive grants to adopt policies prohibiting discrimination based on actual or perceived sexual orientation and gender identity.

## **III. Ensure Safety and Fairness for Court-Involved Youth**

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, with more than one in five non-heterosexual youth reporting such abuse.<sup>34</sup> An earlier BJS survey, which focused solely on sexual violence reports filed with prison officials, confirmed that young inmates are also more likely to be victimized when in adult facilities.<sup>35</sup> Reports of abuses in institutions in Indiana,<sup>36</sup> Mississippi,<sup>37</sup> Ohio,<sup>38</sup> New Jersey,<sup>39</sup> Louisiana,<sup>40</sup> and other states demonstrate the importance of using federal laws to ensure the safety of children in custody. Abuses have included use of pepper spray, sexual assaults by staff, hog-tying, shackling, and isolation. 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 a juvenile facility, adult jail, or prison.

In addition, youth of color are significantly over-represented in the juvenile justice system. Latino youth are incarcerated in local detention and state correctional facilities nearly twice as often as White youth. African-American youth are 16 percent of the adolescents in this country, but are 38 percent of the youth incarcerated in local detention and state correctional facilities.<sup>41</sup> Research also demonstrates that youth of color are treated more harshly than White youth, even when charged with the same category of offense, including being more frequently transferred to adult court.

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### **Strengthen JJDPA Jail Removal Core Protection**

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 and lockups. 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 lockups 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. Congress should pass a JJDPA reauthorization that would extend the jail removal and sight and sound protections to all youth under age 18, 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.

### **Strengthen the Disproportionate Minority Contact (DMC) Core Protection**

Currently, states must “address” racial and ethnic disparities within their juvenile justice systems. 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. Through JJDPA reauthorization, Congress should improve the DMC core protection to ensure States: 1) establish coordinating bodies to oversee efforts to reduce disparities; 2) identify key decision points in the system and the criteria by which decisions are made; 3) 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; 4) develop and implement plans to address disparities that include measurable objectives for change; 5) publicly report findings; and 6) evaluate progress toward reducing disparities.

### **Support Family Engagement**

Recognizing the integral role families can play in holding facilities accountable for how they care for and supervise youth, and in assisting in a young person’s rehabilitation and successful return to the community, Congress can do more to support families and keep them connected with system-involved youth. We call on Congress to authorize the establishment of an independent National Technical Assistance Center on Family Engagement to provide support to state and local justice and child-serving agencies interested in starting or expanding family engagement programs. Congress should also create incentives for state and regional Parental Information Resource Centers to integrate support services for families involved in the justice system. These centers would provide information to families and should be co-located or coordinated with existing parent centers already funded by other child-serving agencies. Finally, we recommend that Congress explicitly call for the inclusion of “family members” on JJDPA State Advisory Groups (SAGs).

### **Improve Conditions of Confinement for Youth 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. Staffing and programming in facilities must be sufficient to reduce the likelihood of youth misconduct. 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, fixed restraints, and psychotropic medications for purposes of coercion, punishment or convenience of staff.

Congress should disallow the use of federal funds for the most dangerous practices, which create an unreasonable risk of physical injury, pain, or psychological harm to youth, such as solitary confinement. Congress should also fund training and technical assistance to help jurisdictions reduce the unnecessary use of isolation and restraint, require increased collection of data on use of isolation and restraint, and allow States to use JJDP funds to develop independent monitoring bodies (e.g., creating ombudsmen programs, developing community monitoring panels, or partnering with Protection and Advocacy organizations) and other programs to improve conditions of confinement, including reducing unnecessary isolation and use of restraints.<sup>42</sup>

### **Ensure Fair Treatment and Adequate Representation of System-Involved Youth**

Congress should allocate more support to expand the Department of Justice's efforts to ensure that states are meeting constitutional requirements to provide access to quality legal counsel for children in the justice system.

### **Encourage States to Keep Youth off Sex Offender Registries**

The Sex Offender Registration and Notification Act (SORNA), as currently applied to youth, contradicts research that shows that youth who commit sex-based offenses have significantly lower recidivism rates than adults and that sex offender registration for youth has no impact on sexual offense recidivism or any deterrence effect.<sup>43</sup> Youth are also exceedingly amenable to treatment.<sup>44</sup> SORNA also 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. Congress should amend the SORNA Title of the Adam Walsh Child Protection and Safety Act of 2006 to allow states to exclude adjudicated youth from sex offender registries and community notification practices.

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

Across the United States, an estimated 250,000 youth are tried, sentenced, or incarcerated in the adult criminal justice system every year.<sup>45</sup> Trying youth as adults is bad for public safety and for youth. Youth prosecuted in the adult criminal justice

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.

In December 2012, after a year-long exhaustive study, the Attorney General's Task Force on Children Exposed to Violence issued comprehensive recommendations to the Attorney General on reducing children's exposure to violence, including a recommendation to abandon policies that prosecute, incarcerate, or sentence youth under 18 in adult criminal court. According to the report, "We should stop treating juvenile offenders as if they were adults, prosecuting them in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore their capacity to grow."<sup>46</sup>

The Task Force's recommendation reflects the policies of major professional associations representing juvenile and adult criminal justice system stakeholders such as the American Correctional Association, the American Jail Association, the Council of Juvenile Correctional Administrators, the National Partnership for Juvenile Services, and the National Association of Counties that highlight the harm youth are subjected to in the adult criminal justice system. And the Task Force's recommendation is consistent with the latest state law reforms according to an August 2012 report, "Trends in Juvenile Justice State Legislation 2001 – 2011," released by the National Conference of State Legislatures (NCSL), showing that numerous states have undertaken policy reforms in the last decade to remove youth from the adult criminal justice system and from adult jails and prisons.

Additionally, youth in the adult system are also at great 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>47</sup> Youth are also often placed in isolation, locked down 23 hours a day in small cells with no natural light, and these conditions cause anxiety, paranoia, and exacerbate existing mental disorders and heighten the risk of suicide. The ACLU and Human Rights Watch recently issued a report, "Growing Up Locked Down," which estimates that nearly 10,000 youth are in adult jails or prisons on any given day.<sup>48</sup> In addition, youth housed in adult jails are 36 times more likely to commit suicide than are youth housed in juvenile detention facilities.<sup>49</sup>

Youth tried as adults suffer lifelong consequences from their experience with adult court.<sup>50</sup> Youth are often denied employment and educational opportunities,<sup>51</sup> which significantly restricts their life chances. If 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>52</sup> Many of these youth will not have been provided with the education and services they need to make a successful transition to productive adulthood, and they will have an adult record, which will make access to jobs or educational opportunities incredibly difficult. Congress should provide strong leadership for states to reduce, and eventually eliminate, their harmful and dangerous reliance on trying youth as adults.

Finally, in light of *Graham, Miller, and JDB*, establishing that youth status must be a consideration in matters of justice, youth justice policies that ignore the differences between youth and adults must be reexamined.

## *Recommendations for the 113<sup>th</sup> Congress*

### **Extend JJDPa Protections to Keep Youth Out of Adult Facilities**

Congress should amend the JJDPa to extend the Jail Removal and Sight and Sound protections of the Act to all youth, including those 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 an “adult inmate” to codify the recent guidance issued by OJJDP. This guidance recommends excluding youth who, at the time of the offense, were younger than age 18 and who have not yet reached the allowable age to be held at a juvenile facility under State law.

### **Raise the Age of Juvenile Court Jurisdiction**

In accordance with the recommendations of the Federal Advisory Council on Juvenile Justice and the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention, Congress should encourage States that have not set the age of adulthood at 18 at the time of the commission of a crime to do so, and provide financial incentives to achieve this policy goal. Congress should also encourage States to raise the extended age of juvenile court jurisdiction to at least the age of 21.

### **Assist States in Removing Youth from Adult Criminal Court**

Consistent with the Attorney General’s *Defending Childhood* report recommendation, the Congress should provide incentives for states to remove youth from the adult criminal justice system. Congress should encourage federal agencies to leverage resources and coordinate efforts through the Bureau of Justice Assistance, the National Institute of Corrections, and OJJDP to effectively invest in programs and strategies that reduce the prosecution of youth in adult court.

### **Help States Implement the Prison Rape Elimination Act (PREA) to Remove Youth from Adult Facilities**

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, all efforts should be made to remove youth from adult facilities. To that end, the Prison Rape Elimination Act of 2003 (PREA) regulations must be fully implemented in all the states, and should serve as a floor, not a ceiling, especially with respect to youth in the adult system. Adult facilities are simply not equipped to safely detain youth and, consistent with Congress’ intent in passing PREA, the removal of all youth from adult jails and prisons should be touted as a best practice in implementing the law’s regulations. We encourage Congress to exercise its oversight authority to make certain that states’ implementation of the law is consistent with its intent to keep individuals in custody safe from sexual victimization and related harms.



## V. Support Youth Reentry

Approximately 100,000 young people under age 18 leave secure juvenile facilities and return to their communities each year.<sup>53</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 supportive programs, high crime rates, poverty, and poor performing schools. Public safety is compromised when youth leaving out-of-home placement are not afforded necessary planning and supportive services upon reentering their communities, increasing the likelihood of recidivism.

Effective reentry services and aftercare for youth exiting juvenile justice facilities reduce recidivism and support their successful reintegration into families and communities. By fostering improved family relationships and functioning, reintegration into school, and mastery of independent life skills, reentry services built around each individual youth and his or her unique needs will help young people build the resiliency and positive development to divert them from harm and delinquent behaviors. Also, reentry preparation for youth who have been incarcerated for longer periods of time for serious felonies, or youth serving life without parole sentences that no longer legally are permitted, should be prepared for reentry during these longer periods of incarceration through access to education, job training, and other health and social programs.

If our nation expects to reduce recidivism, it must establish a national policy agenda that supports reentry services to connect youth with meaningful opportunities for self-sufficiency and community integration. Planning should begin prior to release and support services should follow the youth home. Policy and practice must be grounded in promising or evidence-based practices and involve cooperation among existing federal and State agencies, local stakeholders, juvenile justice experts, and reform advocates.

### *Recommendations for the 113<sup>th</sup> Congress*

#### **Reauthorize and Increase Funding for the Second Chance Act**

Congress should reauthorize and increase funding for the Second Chance Act. An increase over the \$67 million appropriated in FY 2012 would help provide necessary resources to support youth reentry services. Over the past couple of years, the percentage of funding dedicated to youth reentry services from the Second Chance Act has decreased. It is critical to maintain and continue these investments as a way to support youth access to reentry services at the local level, as well as to help ensure the successful reentry of youth, who otherwise could return to the juvenile justice or adult criminal justice system at great cost to themselves, their families, and taxpayers. Targeted resources and supports help to ensure reentering youth are afforded the opportunity to have positive life outcomes and are equipped with important and necessary skills.

### **Increase Access to Education for Youth upon Reentry through Reauthorization of the Elementary and Secondary Education Act (ESEA)**

An increasing number of researchers and policy makers have identified access to education as one of the most important factors in determining successful youth reentry back into the community from the juvenile justice system. Unfortunately, a majority of these youth are not able to return to school or continue their education upon reentry. Reauthorization of the Elementary and Secondary Education Act (ESEA) could help increase access to education for youth upon reentry by:

- Requiring that states establish a procedure for assessment and identification of the learning needs of youth upon entry into juvenile justice system;
- Requiring that states establish procedures for the prompt reenrollment of youth in schools upon return from juvenile justice placement;
- Requiring that states establish procedures for the prompt transfer of educational records, as well as credits earned during placement in the juvenile justice system;
- Encouraging states to consult with stakeholders on the issue of youth access to education upon reentry;
- Authorizing federal funding for innovative practices aimed at ensuring the educational success of students reentering school from the juvenile justice system;
- Requiring local education agencies to allocate a portion of Title I, Part D funding for youth reentry;
- Authorizing alternatives to the Title I, Part D “seat time” requirement;
- Implementing sanctions or loss of preferential status for funding or other benefits for states and/or local education agencies that do not provide the required or appropriate educational services upon reentry or remove barriers to school reentry;
- Holding schools more accountable for graduation rates and including juvenile justice-involved youth in state accountability systems.

## Endnotes

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- <sup>10</sup> Id. page 10-16.
- <sup>11</sup> See S. 678, Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009, introduced March 24, 2009.
- <sup>12</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>.
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- <sup>21</sup> See P.L. 110-378, The Reconnecting Homeless Youth Act of 2008.

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- <sup>22</sup> See Juvenile Detention Alternatives Initiative, available at: <http://www.jdaihelpdesk.org>.
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