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Before the U.S. Senate Judiciary Committee

**“The Juvenile Justice and Delinquency Prevention Act:
Protecting Our Children and Our Communities”**

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Today, I am here to present testimony on “The Juvenile Justice and Delinquency Prevention Act: Protecting Our Children and Our Communities.” I am Shay Bilchik, founder and Director of the Center for Juvenile Justice Reform at the Georgetown University Public Policy Institute. Prior to my current position, I served as President and CEO of the Child Welfare League of America, the oldest and largest association of agencies that directly help abused, neglected, and otherwise vulnerable children and their families. Prior to my tenure at CWLA, I served as the Administrator of the Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) at the U.S. Department of Justice. OJJDP is the agency established by the JJDP Act to lead the effort to address the public safety issues of juvenile crime and youth victimization. Thank you Mr. Chairman and Members of the Senate Judiciary Committee for the opportunity to speak to you about this important piece of legislation and the critical issues it addresses.

Let me begin by noting that the focus of my testimony today will be on those youth¹ whose behavior has brought them to the attention of the justice system and not on children and youth who are victims of abuse, neglect, or exploitation. While OJJDP has a significant role in preventing and ameliorating child and youth victimization, and has maintained an effective focus on this area, that focus has not been maintained on youth whose behavior may lead to dysfunctional development and adult criminality.

¹ The term “youth” is used in this testimony to describe an individual under the chronological age of 18 years.

OVERVIEW OF JUVENILE OFFENDING

Therefore, I would like to begin my testimony with an overview of the juvenile offending landscape since the last reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDP A) in 2002 -- and in the previous decade. It is a landscape that has dramatically changed.

First, juvenile crime has decreased substantially over this time period. Today, youth crime and delinquency in the United States remain near the lowest levels seen in the past three decades. The recent data show a dramatic reduction in the rate and seriousness of juvenile delinquency over the past ten to twelve years, contrary to the dire predictions of many “experts,” whose ominous warnings of a coming generation of “super-predators” shocked many state legislators into abandoning the core principles that have guided this nation’s juvenile justice system(s) for the last century. Those principles, separating delinquent juveniles from hardened criminals, treating youth as developmentally different from adults, and viewing young people as being inherently malleable and subject to positive change in a rehabilitative setting, are still fundamentally sound.

Although some reports show a slight upswing in reported arrests of youth for violent crime recently, it was not a uniform increase across all categories of offending (and it may be aberrational rather than the beginning of a trend). However, youth crime and delinquency in the United States still remain at record low levels, with current juvenile arrest rates lower than any level recorded since the 1980s. Nationwide, law enforcement agencies arrest approximately 2.2 million persons under the age of 18 each year, yet in nearly half of all cases the most serious charges are larceny-theft, simple assault, a drug abuse/liquor law violation, or disorderly conduct. According to Federal Bureau of Investigation (FBI) crime statistics, juvenile arrests for serious offenses such as rape and murder comprise just 5% of all juvenile arrests. Yet we should

see the recent uptick in juvenile arrests as a possible warning that we cannot safely continue to reduce our commitment to effective programming for at-risk and system involved juveniles if we are to sustain our progress and provide services at a level needed to give every youth the chance to succeed and become a productive and law-aiding citizen.

CHALLENGES TO THE JUVENILE JUSTICE SYSTEM

Second, we continue to face challenges in juvenile justice such as the over-reliance on detention and incarceration as a response to juvenile crime; the continued detention of status offenders despite federal prohibitions; pervasive racial disparities in the justice system; and the increased placement of children at risk of abuse, sexual assault and suicide in adult jails despite the JJDPA's original intentions.

Every year, juvenile courts handle an estimated 1.6 million delinquency cases and adjudicate youth delinquent in nearly 7 of every 10 petitioned cases. The daily census of youth under age 18 who are incarcerated is 97,000. Many youth who are confined have committed non-violent offenses and are highly amenable to the benefits of rehabilitative services and supports provided in non-institutional home and community-based settings. Juveniles coming before the courts have been shown to suffer from a higher than average incidence of mental or behavioral health problems, learning disabilities, and school failure and to have inadequately addressed family intervention and support needs. Moreover, for more than two decades, state-level data have shown that youth of color have been overrepresented at every stage of the juvenile justice system. In fact, research indicates that youth of color are detained more often and for longer periods of time than their white counterparts even when charged with similar offenses.

Additionally, some researchers estimate as many as 200,000 youth have their cases processed in adult criminal court each year as a result of prosecutorial or judicial waiver, statutory exclusion for certain offense categories, or because they reside in one of 13 states with a lower age of criminal jurisdiction than age 18 (age 16 in 3 states and age 17 in 10 states). As a result of increased prosecution of youth in adult criminal courts in the states, the number of youth in adult jails has increased so that, on any given day, an estimated 7,500 youth under the age of 18 are inmates in adult jails. Most of these youth are not under the jurisdiction of the juvenile court, so they are not covered by the federal protections of the JJDP A.²

NEW KNOWLEDGE ABOUT WHAT WORKS

Third, since the last reauthorization of the Juvenile Justice and Delinquency Prevention Act, we have learned a tremendous amount about what works to prevent and reduce juvenile delinquency. From the growing body of research on child and youth development, the development of the adolescent brain, and effective programs and practice, we now have more evidence about what works in turning these young lives around and correcting their behavior than we did a decade ago. Additionally, we have increasingly recognized the importance of evaluating programs in order to enhance their effectiveness and foster replication. Reauthorizing the JJDP A at this time affords us the opportunity to use and build on this knowledge to create greater justice for youth, and to make our communities safer and healthier.

² While the term youth is synonymous with the term juvenile (under age 18) when discussing arrest statistics, the separation of juveniles from adult offenders provision of the JJDP A does not apply to juveniles under the jurisdiction of the adult criminal court and the adult jail and lock-up removal provision of the JJDP A does not apply to individuals who are not juveniles under state law, i.e. individuals who may not be subjected to original juvenile court delinquency jurisdiction based on age and offense limitations established by state law. Thus, 16 and 17 year olds who are classified as “adults “ in the 13 states that have an original juvenile court jurisdictional age that is less than 18 do not receive the protection of the adult jail and lock-up removal provisions of the Act.

In October of 2004, the National Institutes of Health (NIH) convened an independent “state-of-the-science” panel to address the important issues of preventing violence and related health-risking social behaviors in adolescents. The panel, which consisted of thirteen distinguished experts from a variety of disciplines and was charged with assessing the available evidence on preventing violence and other risky behaviors on the part of adolescents, released a report that same month summarizing its assessment of the current research. The report is of significant importance to all those who make policy governing juvenile programs. It concluded that “a number of intervention programs have been demonstrated to be effective through randomized controlled trials” and it spotlighted two particular programs that it found are clearly effective in reducing arrests and out-of-home placements: Functional Family Therapy and Multisystemic Therapy. Among the significant characteristics that these two programs have in common are a focus on developing social competency skills, a long-term approach rather than a “simple” short-term “fix,” and the involvement of the family as well as the youth in the program. The two programs maintained positive results for nearly four years after the treatment ended. Several other programs were identified that were classified as “effective with reservation,” meaning that they had only internal rather than external randomized controlled trials: Big Brothers Big Sisters (reductions in hitting), Multidimensional Treatment Foster Care, Nurse Family Partnership (reduction in incarceration), Project Towards No Drug Abuse (reduction in weapon carrying), Promoting Alternative Thinking Strategies (reduction in peer aggression), and Brief Strategic Family Therapy (reduction in conduct disorder, socialized aggression). The Evidence Report/Technology Assessment accompanying the panel’s conclusions contained the most extensive bibliography as of October, 2004, of the existing literature on violence prevention and treatment along with a useful analysis of the studies and programs.

The work of the NIH panel complemented and reinforced the Blueprint Series on effective programs developed by Dr. Delbert Elliott, in which he and a team of researchers identified 11 “gold standard” delinquency prevention and intervention programs.

Programs that connect children to caring adults and provide constructive activities, especially during the after-school hours of 3:00pm to 6:00pm—the “prime time for juvenile crime” on school days— are among our most powerful tools for preventing crime. For example, a study compared five housing projects without Boys & Girls Clubs to five receiving new clubs. At the beginning, drug activity and vandalism were the same. But by the time the study ended, the projects without the programs had 50 percent more vandalism and scored 37 percent worse on drug activity. Similarly, a study of another quality youth development program, Big Brothers Big Sisters, found that young people who were randomly assigned to a Big Brother or Big Sister mentor were about half as likely to begin illegal drug use and nearly one third less likely to hit someone compared to those who were assigned to a waiting list.

FEDERAL SUPPORT FOR EFFECTIVE PROGRAMS IS LACKING

These effective programs work with our young people to strengthen them individually and in the places in their lives that they “nest” – their families, schools, communities and peer group.

Unfortunately, the programs and approaches that we know work to prevent and reduce juvenile delinquency lack adequate federal, state, and local support needed to fully demonstrate their worth and develop fully. The Title V Incentive Grants for Local Delinquency Prevention Programs, commonly known as the Community Prevention Grants program, is the only federal funding source dedicated solely to the prevention of youth delinquency, crime, and violence.

Established by the 1992 amendments to the JJDPa and reauthorized in 2002, Title V is a grant program designed to fund collaborative, comprehensive, community-based delinquency prevention efforts to reach young people before they make a choice that puts them on the wrong path in life. The grants can be used to fund a wide range of programs, including after-school activities, mentoring, and tutoring, as well as drop-out, gang, and substance abuse prevention. In order for communities to qualify for funding they must engage in a data driven process, led by community stakeholders, to determine the nature of the delinquency problem (risk factors) facing their community and the most effective strategies (reducing risk – enhancing protective factors) to attack those problems. Those communities must also match the federal investment in support of their strategy, thereby creating a stronger commitment to their work and a higher level of investment.

Prevention activities, such as those supported by Title V, have been so woefully underfunded in recent years that they can reach only a fraction of the youth who would benefit from them. For example, because of lack of funding for after-school programs, more than 14 million children and teens go home from school to an empty house each week. Research shows that these children are much more likely to drink, smoke, use drugs, commit a crime, and become a victim of a crime.

As recently as Fiscal Year 2002, Title V was funded at \$95 million. In FY07, Title V received \$64 million, part of an alarming downward trend in congressional support for prevention. For FY08, the Administration's budget proposes to eliminate Title V funding and create a new "Child Safety and Juvenile Justice Block Grant," with 25% less funding than the set of programs it replaces. I suggest an alternative strategy: as an evidence-based approach to preventing delinquency, the Title V program should be reauthorized and enhanced as a federal,

state, and local partnership. And I would urge the members of this committee to work with appropriators to substantially invest in new, unearmarked resources into this program at a minimum level of \$100 million annually.

NEW KNOWLEDGE ABOUT WHAT DOESN'T WORK

In addition to gleaning new knowledge about what works, we have also learned a great deal since the last JJDPA Reauthorization about what does not work. The NIH independent panel I mentioned earlier concluded that “get tough” programs that rely on “scare tactics” for the purpose of preventing children and adolescents from engaging in violent behavior are not only ineffective, but may actually make the problem worse.

The panel found that many residential “get tough” programs, including group detention centers, boot camps and other similar residential programs, often exacerbate existing problems among adolescent youth by grouping together those with delinquent tendencies, where “the more sophisticated instruct the more naïve.” Similarly, it concluded that the practice of transferring increasing numbers of juveniles to the adult criminal justice system also can be counterproductive, resulting in greater violence among incarcerated youth and increased recidivism when they are ultimately released. I would urge the committee to bar the use of federal funds for boot camps and other types of programs that have been proven to be ineffective at reducing juvenile crime under the JJDPA.

WORKFORCE DEVELOPMENT AND TRAINING FOR JUVENILE JUSTICE PERSONNEL

There is another area of focus that has yet to receive sufficient attention within the JJDPA: the juvenile justice workforce. It is this workforce that carries out the intent of the

JJDPA and the work undertaken each day with our youth in the system. It is a group of dedicated, but too frequently poorly supported workers – intake, caseworker, court, probation and parole, detention and correctional facility, legal, and judicial staff. This workforce is spread across public and private agencies (the private agencies being ones that contract with states and localities to carry out the state and local public agencies’ responsibilities). We have seen a poor track record in the recruitment and retention of this staff, similar to what we have seen in other child serving areas, e.g. child welfare. They too often are paid too little, inadequately trained, given too few of the tools they need to do their work, poorly supervised and given extraordinarily high workloads. Efforts need to be made through the JJDPA to further professionalize this workforce. This can be done through adoption of a provision that requires OJJDP to develop programming that supports workforce development in partnership with the states, as is done in child welfare through Title IV-E. This would allow for the development of State Agency/university partnerships to be partially federally supported in providing entry level and in service training for juvenile justice staff. It would also allow for recruitment partnerships between state agencies and universities to help identify and support the development of a career track for students interested in working with youth and families involved in the juvenile justice system. This career track would include internship experience and tuition subsidies for any student who commits to work in a juvenile justice agency within the state for a minimum period of time. Time and again we hear from young people in the juvenile justice system who succeed in turning away from crime, that what made the difference was a connection to a person in the system – a caseworker, probation officer, lawyer, or judge, who had a profound impact on their life. It is this workforce, plagued by heavy workloads and high turnover rates, that needs to be better supported to do its life changing work. When we think of the severe problems plaguing

the juvenile correctional system, e.g. in Texas, California and Indiana, we can better understand how strengthening the workforce is a key strategy to safeguarding our youth.

In sum, much progress has been made and much work remains to be done. It is my belief that the continuing success of effective juvenile crime prevention and control depends in part on Congress strengthening the provisions of the JJDPA as well as enhancing the funding resources needed to implement these provisions to the greatest possible extent.

STRENGTHENING THE ACT'S KEY PROVISIONS

Next, I'd like to discuss the JJDPA's main components. Established in 1974 and most recently authorized in 2002 with bipartisan support, the Act provides (1) a nationwide juvenile justice planning and advisory system spanning all states, territories, and the District of Columbia; (2) federal funding for delinquency prevention, control, and improvements in state, local, and tribal juvenile justice programs and practices; and (3) operation of a federal agency - the Office of Juvenile Justice and Delinquency Prevention - dedicated to providing training and technical assistance, information resources, developing and replicating model programs, and conducting research and evaluation to support state, local, and tribal efforts.

The JJDPA has contributed greatly to the prevention of delinquency, to early intervention and graduated sanctions to treat delinquent behavior and rehabilitate delinquent youth so as to prevent further delinquency, and to ensuring humane treatment of these young people in the justice system. Based on a broad consensus that children, youth, and families involved with the juvenile and criminal justice systems should be protected by federal standards for care and custody, while also upholding the interests of community safety and the prevention of

victimization, the Act remains the best possible federal vehicle for protecting society from antisocial behavior by children and adolescents and for enabling these youth to become good citizens and successful adults.

STRENGTHENING THE CORE PROTECTIONS

In exchange for the receipt of federal funding under the JJDPa, states must comply with four “core protections” under the Act: 1) Deinstitutionalization of Status Offenders (DSO); 2) Removal of juvenile offenders and non-offenders from Adult Jails and Lock-Ups; 3) Sight and Sound Separation of juveniles from adults in institutions; and 4) Addressing Disproportionate Minority Contact (DMC).

Deinstitutionalization

Under the JJDPa, status offenses are defined as offenses that only apply to minors whose actions would not be considered offenses for adults, such as skipping school, running away, curfew violations, beyond parental control, and possession or use of tobacco or alcohol. The JJDPa’s “Deinstitutionalization of Status Offenders” (DSO) protection provides that status offenders may not be held in secure detention or confinement. There are, however, several exceptions to this rule, including allowing status offenders to be detained for up to 24 hours, exclusive of non-judicial days in certain circumstances. The DSO provision seeks to ensure that status offenders, because they have not committed a criminal offense, are not held in secure juvenile detention or correctional facilities for extended periods of time or in secure adult facilities for any length of time. These youth, instead, should receive community-based services, such as day treatment or residential home treatment, counseling, mentoring, family support and alternative education.

The valid court order exception (VCO) to the DSO protection was added to the JJDPA in the 1980 reauthorization and allows judges to detain status offenders who violate a valid court order. A one day snapshot of juveniles in detention found that roughly 5% were status offenders.³ Despite the DSO protection, status offenders continue to be detained in secure facilities under the 24 hour exception -- and many more are now detained under the VCO exception.⁴ While done with the intention to protect children who are experiencing periods of crisis in their lives, the detention of these young people has the effect of criminalizing their behavior and can actually cause them great harm. Further complicating their experience with the juvenile justice system is that status offenders often do not have access to the due process protections provided to other offenders, including the right to counsel, written notice of charges, cross examination, privilege against self-incrimination, and appellate review⁵, and they may lack access to needed services. In addition, girls are disproportionately affected by the DSO exceptions. Girls are 170% more likely to be arrested for status offenses than boys and receive more severe punishment than boys. Criminalization of status offenses through the VCO and 24-hour exceptions may contribute to the increasing numbers of girls in the criminal justice system.⁶

In establishing the DSO protection, Congress recognized that status offenses are non-delinquent and non-criminal and, therefore, merit a non-punitive response. While we have drifted from this stated purpose through the routine use of the VCO exception in some states, many states no longer allow or have never exercised the VCO exception. Judges in these states are able to effectively and proactively manage status offenders. They recognize that detaining

³ Office of Juvenile Justice and Delinquency Prevention. U.S. Department of Justice, *Juvenile Offenders and Victims: 2006 National Report*, Washington, DC, 2006.

⁴ 42 U.S.C. § 5633 (a)(11)(A) 2006.

⁵ Humphrey, *supra* note 4 at 168.

⁶ Susanna Zawacki, "Girls Involvement in Pennsylvania's Juvenile Justice System," *Pennsylvania Juvenile Justice Statistical Bulletin*, Oct. 2005 at 1.

status offenders is more costly and less effective than home and community-based responses and has severe consequences. Placing youth who have committed status offenses in secure detention and confinement is stigmatizing, exposes them to negative influences, and counters the goal of rehabilitation. The practice interrupts educational progress, relationships with positive peers, family, caring adults, and often undercuts job training and employment opportunities. Feelings of social isolation and a sense of hopelessness are exacerbated, not reduced during detention and confinement -- in essence making it more likely that a young person will feel alienated.

Common sense and research tells us that detention and confinement are not positive approaches to status offending behavior. Status offenses are most often committed in response to underlying problems. It is those issues that need to be addressed and they are best addressed with services delivered within the child's home or in a community-based program that maintains as much stability in a child's life as possible. I recommend that in the reauthorization of the JJDP Act Congress takes steps to reduce the unnecessary and inappropriate detention of status offenders by eliminating the VCO exception so that status offenders are no longer detained and confined. This provision could be phased in over two years. The Act should also limit, where possible, the over use of the 24-hour detention exception by promoting effective approaches such as the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative.

Adult Jail and Lock-up Removal

Another critical issue that Congress needs to address in reauthorizing the JJDP Act is the increasing number of youth in adult jails and lock-ups. The original intent of the JJDP Act was to shield children from the dangers of adult jails and lock-ups by separating them from adults. Because this often resulted in juveniles being placed in isolation cells and drunk tanks, Congress ultimately mandated removing them from adult jails and lock-ups altogether in the 1980

amendments to the Act. Under the “Adult Jail and Lock-up Removal” protection of the Act, juveniles cannot be detained in adult jails except in limited situations, and in those narrow circumstances the “Sight and Sound Separation” protection prohibits contact with adult offenders.

While the “Jail Removal” protection has worked to keep youth out of jails for almost 30 years, this JJDPa protection does not apply to youth under the jurisdiction of the adult criminal court. Currently, forty states have laws that allow youth prosecuted in adult criminal courts to be detained in adult jails and lock-ups.⁷

As a result, thousands of youth are in adult jails on any given day who are not covered by federal protections originally designed to keep youth out of adult jails and lock-ups.⁸ Specifically, the statistics reveal that every day in America, an average of 7,500 youth are detained in adult jails alone. In fact, the number of youth who are placed in adult jails every year could be even higher – tens of thousands of young people according to some researchers – to account for the ‘turnover’ in adult jail populations. As many as one-half of these youth, will be sent back to the juvenile justice system or not be convicted. Yet, most of these youth will have spent at least one month in an adult jail and one in five of these youth will have spent over six months in an adult jail. And we know that it is extremely difficult to keep youth safe in adult jails.

When youth are placed with adults in adult jails, they are at high risk of physical and sexual assault. According to the Bureau of Justice Statistics, 21% and 13% of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005 and 2006, respectively, were youth under the age of 18 (surprisingly high since only 1% of jail inmates are juveniles).

⁷ National Center for Juvenile Justice. October 2005. Vol. 8, No. 10, pp. 3.

⁸ For the full report, please visit http://www.campaignforyouthjustice.org/national_reports.html

Some jail administrators will separate youth from adults in jails and lock-ups, but this practice is inadequate. While separating children from adults in adult jails and lock-ups will reduce contact with adults that could result in physical or emotional harm to children, as I noted, these children are then often placed in isolation and frequently locked down 23 hours a day in small cells with no natural light. These conditions can cause anxiety, paranoia, and exacerbate existing mental disorders, thereby putting youth at high risk of suicide. Youth have the highest suicide rates of all inmates in jails. Youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility, and 19 times more likely to commit suicide in an adult jail than youth in the general population.

Jail officials, as well meaning and caring as they might be, are simply not equipped to protect youth from the dangers of adult jails and lock-ups. Nor do jails and lock-ups have the capacity to provide necessary educational or other services.

New scientific evidence underscores the need to return to the original intent of the JJDP A by ensuring that children are not placed in adult jails. This evidence is detailed in a new report, “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” released just last week from the Centers for Disease Control and Prevention (“CDC”) revealing that youth are 34% more likely to reoffend when transferred to the adult criminal court than youth in the juvenile justice system. The CDC scientists who conducted this study reported that violent outcomes associated with the transfer of youth to the adult system include (1) an increase in pretrial violence, (2) victimization of juveniles in adult facilities, and (3) elevated suicide rates for juveniles incarcerated in adult facilities.

While the original intent of the JJDPa and subsequent reauthorizations was to keep children away from the dangers of adult jails and lock-ups, the protection does not apply to youth under age 18 who are not subject to a state's juvenile delinquency court jurisdiction (they are classified as adults) or to juveniles who are subject to delinquency court jurisdiction but are under the jurisdiction of the adult criminal court. When the JJDPa was originally authorized in 1974 and reauthorized in 1980, Congress did not contemplate the increases in the numbers of youth prosecuted in the adult criminal justice system and their resulting placement in adult jails and lockups outside the protections of the JJDPa. Congress can redress this problem by extending the protections of the JJDPa to prohibit the placement of all individuals under the age of 18 in adult jails and lock-ups during the pendency of their adult criminal court cases. Such a prohibition would recognize the fact that nearly half of the youth who are prosecuted in adult criminal courts by state transfer or waiver statutes are neither convicted nor sentenced as adult offenders and would better provide for their safety and future rehabilitation if convicted.

Disproportionate Minority Contact

A fourth core protection is the "Disproportionate Minority Contact" (DMC) protection. In the late 1980s, research showing that youth of color come into disproportionate contact with the juvenile justice system led to the development of a core protection designed to reduce disproportionate contact of youth of color with the justice system.

Under the JJDPa's current language, states are required to assess and address the disproportionate contact of youth of color at all points in the juvenile justice system- from the moment of arrest to detention to confinement.

Unfortunately, this language has proven inadequate to reduce racial and ethnic disparities in a meaningful way because it does not require states to take specific steps to reduce racial and

ethnic disparities, nor does it require oversight of such reduction efforts, mapping of critical decision points, accurate collection of relevant data, development of work plans with measurable objectives, or regular monitoring, evaluation, and reporting. The vague requirement that states “address” efforts to reduce DMC has left state and local officials without a clear mandate or guidance for reducing racial and ethnic disparities.

And yet, the data are compelling and demonstrate that youth of color are treated more harshly than similarly situated White youth, even when charged with the same category of offense. While White youth represented 73% of youth adjudicated delinquent for drug offenses, they represented only 58% of youth sent away to residential placement, while African Americans, who represented 25% of the youth adjudicated delinquent for drug offenses, were 40% of the youth sent away from their families to residential placement.⁹ Meanwhile, White youth represented 75% of the youth on probation for drug offenses, while African American youth were 22% of those on probation.¹⁰ Of juvenile males in residential custody in 2003, African Americans were incarcerated at a rate of 1,278 per 100,000 in the general population, Latinos were incarcerated at a rate of 600 per 100,000 in the population, and Native Americans were incarcerated at a rate of 774 per 100,000. The rate for White male juveniles was 305 per 100,000.¹¹ These disparities remain when the studies control for prior histories.

When racial or ethnic differences are found, they tend to accumulate as youth are processed through the system. For example, in a recently released report, “And Justice For Some” by the National Council on Crime and Delinquency, the findings show that African American youth face an “accumulated disadvantage.” African American youth represent 16% of the youth population, 28% of juvenile arrests, 30% of referrals to juvenile court, 37% of detained

⁹ National Council on Crime and Delinquency, *And Justice for Some*, January 2007, p. 21.

¹⁰ *Id.*

¹¹ *Id.* at 25.

youth, 34% of youth formally processed in juvenile court, 30% of adjudicated youth, 35% of youth judicially waived to adult court, 38% of youth in residential placement, and 58% of youth admitted to state adult prison.

Moreover, while most states have been able to collect reasonably uniform and accurate information about youth who are held in detention and secure confinement, the same cannot be said for data at earlier points in the process, such as the initial contact that youth have with law enforcement.¹² In many states and jurisdictions there are no accurate data to track Hispanic or Latino youth in the juvenile justice system. Many public officials and agency administrators cannot gauge the extent of overrepresentation of Latino youth because their data systems do not count them accurately. Many jurisdictions ask one question about youths' race and ethnicity: whether someone is White, African American, Latino, Native American, Asian or Other. Some ask only whether someone is White, Black or Other. Latino youth and their families, faced with the choice between reporting their race or their ethnicity, often choose to report their race. Consequently, Latino youth become an undercounted "invisible minority," and disparities appear smaller than they really are.¹³ Such discrepancies and "invisibility" also pertain to youth who may be of mixed race/ethnicity.

Jurisdictions can, however, more effectively reduce disparities with focused, informed, data-driven strategies.¹⁴ At present there are several major national initiatives that are assisting states in making progress in reducing racial disparities: the Burns Institute, the MacArthur Foundation's Models for Change Initiative; the Center for Children's Law and Policy; and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI). The Annie E.

¹² *Id.*

¹³ Francisco A. Villarruel, Nancy Walker, et al., ¿Dónde Está la Justicia? A call to action on behalf of Latino and Latina youth in the U.S. justice system, July 2002, p. 5-7.

¹⁴ W. Haywood Burns Institute, <http://www.burnsinstitute.org/reducing.html>.

Casey Foundation has worked with several states and many localities to reduce the use of secure placements through the judicious use of objective assessment instruments to determine which juveniles need to be detained while awaiting an adjudicatory hearing, either because they are high risks for flight or for re-offending if they remain in the community. Because youth of color tend to be detained in disproportionate numbers, these new strategies also help to address DMC issues.

I recommend that the JJDPa be strengthened in this reauthorization to enhance both the requirements within the DMC provision and the level of support provided by the Office of Juvenile Justice and Delinquency Prevention to assist states in addressing DMC.

A NEW FOCUS ON MENTAL HEALTH SERVICES AND CHILD VICTIMIZATION

In addition to focusing on the four core protections of the JJDPa, another issue Congress should address in this Reauthorization of the JJDPa is the provision of mental health services for youth in the juvenile justice system. Studies have shown that as many as 70 percent of youth in the juvenile justice system have a diagnosable mental health disorder. Of those, up to 60 percent have a co-occurring substance abuse disorder. The problems of juvenile mental illness and associated problems of juvenile delinquency and crime are mutually reinforcing. Combating the underlying issues of mental illness and substance abuse among juvenile offenders will result in reduced recidivism and, ultimately, safer communities.

Research has shown that providing youth who suffer from mental health and/or substance abuse disorders with effective mental health services reduces arrest rates and yields significant savings by preventing future criminal justice costs. The provision of community-based mental

health services for youth suffering from mental health disorders has also been shown to lead to a significant reduction of youth placements in juvenile detention and other secure facilities.

I recommend not only a greater emphasis on this issue with the JJDP, but that a requirement be added that mandates a stronger collaborative working relationship between the Office of Juvenile Justice and Delinquency Prevention and the Substance Abuse and Mental Health Services Administration (SAMHSA) within the U.S. Department of Health and Human Services.

Although the evidence does not suggest that any single factor accounts for the development of criminal behavior, the importance of childhood victimization as a risk factor for subsequent delinquency and violence has become increasingly recognized. Victims of childhood maltreatment often enter the juvenile justice system and become tomorrow's serious and violent offenders. Children who are abused and neglected are not only more likely than other children to commit delinquent acts as adolescents and crimes as adults, but they are also more likely to experience a range of mental health, substance abuse, occupational, and educational deficiencies during adolescence and adulthood.

To improve the well-being of our nation's most disadvantaged and traumatized children and youth and see sustained reductions in child maltreatment and delinquency, we must improve the coordination and integration of the child welfare and juvenile justice systems.

Such improvements include developing coordinated systems plans, compiling data on dual jurisdiction youths, and providing necessary services for the prevention and treatment for victims of child maltreatment who have entered the juvenile justice system, and their families. When these factors are in place, improved outcomes for the children, youth, and families served by the child welfare and juvenile justice systems can be achieved.

In order to reduce the likelihood that juvenile offenders will commit subsequent violations of law, I urge Congress to add several provisions to the state plan requirements in the JJDP Act that provide that states will 1) Provide for training, technical assistance and consultation to develop coordination between dependency and delinquency systems, including plans for early intervention and treatment of victims of child abuse or neglect and their families; 2) Provide a compilation of data reflecting information on juveniles entering the juvenile justice system with a prior reported history of child maltreatment (abuse or neglect) through arrest, court intake, probation and parole, juvenile detention, and corrections; and 3) Provide an analysis of necessary prevention and treatment services for victims of child maltreatment; and a plan for providing such services for the treatment of victims of child maltreatment and their families who have entered the juvenile justice system.

STRENGTHENING OJJDP

The JJDP Act has created a unique partnership between agencies of the federal government and leaders in the juvenile justice field in the states and localities as an integral part of the structure of the Act. Strengthening this partnership will require Congress and Executive Branch agencies to work cooperatively with the Governors, the Governor-appointed State Advisory Groups on juvenile justice, state juvenile services agencies, local communities, and tribal organizations to enter into a meaningful dialogue and respond to state, local, and tribal concerns.

OJJDP is uniquely positioned to provide national leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization. Indeed, OJJDP serves all of the various stakeholders in the juvenile and criminal justice systems in the tribes, localities and states. Charged with supporting and working in partnership with states and communities in their efforts to develop and implement effective and coordinated prevention and intervention

programs and to improve the juvenile justice system so that it protects public safety, holds offenders accountable, and provides treatment and rehabilitative services tailored to the needs of juveniles and their families, OJJDP is the one place where the courts, prosecutors, defenders, probation, community-based organizations, law enforcement, and state and local leaders in the field can turn for support.

It is the intent of the JJDPA that OJJDP be in a position to sponsor numerous research, program, and training initiatives; develop priorities and goals and sets policies to guide federal juvenile justice issues; disseminate information about juvenile justice issues; and award funds to states to support local programming nationwide through its five organizational components: the Office of the Administrator (under which fall two Offices of the Deputy Administrator), the State Relations and Assistance Division, the Child Protection Division, the Demonstration Programs Division, and the Office of Policy Development.

To fulfill this role, the Administrator of OJJDP is responsible for identifying effective strategies for addressing juvenile crime through research; coordinating, implementing, and supporting effective programs and encouraging innovative approaches to deal with existing and emerging juvenile justice issues; developing priorities and goals and setting policies to guide Federal juvenile justice issues; providing technical assistance and training to essential components of the juvenile justice system; and disseminating information on juvenile justice trends, programs, and new approaches.

Given that there are in effect, 56 different juvenile justice systems in the states, the District of Columbia, and the territories, not to mention tribal juvenile courts, it is critical that juvenile justice have a dedicated focus and a “home” within the federal government for purposes

of developing national policies, objectives, priorities and plans, and for providing guidance, support and oversight to states/territories in implementing the JJDPA. The importance of dedicating adequate resources to support the functions of this Office cannot be overstated. As a former Administrator of the OJJDP, I urge you to ensure that juvenile justice retains an active “home” that is focused on delinquency prevention and control, rehabilitation, and child protection within the U.S. Department of Justice at OJJDP-- with an administration guided by experts and whose actions are both timely and transparent to the public.

As the unique partnership between the federal government and the states relates to research on best or promising practices, I urge the Congress to strengthen the federal partnership with state, local, and tribal governments. Specifically, Congress should strengthen the federal role in supporting state, local, and tribal needs by providing sufficient resources and appropriations for jurisdictions to effectively implement the JJDPA, to fully comply with its core protections for children and to ensure state and local adherence to high standards of performance.

Congress should consider ways to provide resources for field-based and field-strengthening research and evaluation that will refine and expand the array of promising and evidence-based practices in delinquency prevention, intervention and treatment. Among the issues that states are eager to address are the following: (1) ways to reduce school referrals to law enforcement; (2) proactive approaches to truancy prevention; (3) proven approaches to community and school reintegration for youth who have been recruited into criminal street gangs; (4) analyses of what youth are being sent to adult criminal court and what happens to them in that system; (5) innovations to guard against bias and racial/ethnic disparities; (6) effective approaches for diverse cultural and linguistic groups, as well as rural populations; and (7) effective approaches for positive family engagement.

Congress should also strengthen the implementation of Section 243 of the JJDPA, which addresses research, demonstration and evaluation and authorizes the OJJDP Administrator to “conduct, encourage, and coordinate research and evaluation into any aspect of juvenile delinquency, particularly with regard to new programs and methods which seek to strengthen and preserve families or which show promise of making a contribution toward the prevention and treatment of juvenile delinquency.” Although explicit language currently exists in the statute, most of the functions in this section remain unaddressed. Further, much of the capacity that existed within OJJDP to carry out this work has been dismantled in recent years and assigned, at least on paper, to other agencies within the Office of Justice Programs. This diffusion of focus has greatly reduced OJJDP’s capacity and role as a national leader on these issues.

Therefore, I urge you to adopt simple language changes in the JJDPA to provide that the OJJDP Administrator “shall” rather than “may” provide support for research, replication and high fidelity adaptation of evidenced-based practice models, across a wide range of racial, ethnic, geographic and societal circumstances—urban and rural, both in and outside of institutional settings for applications with many populations, girls, Native American youth, Youth in the U.S. territories, Latino youth, African American youth, and others. Congress should make clear that these functions within the Department of Justice are to be carried out by OJJDP and not be transferred elsewhere within the Office of Justice Programs. Congress should also insist that the research and findings be made widely available to the public and backed-up with training and technical assistance to the parties principally charged with JJDPA implementation—state advisory group members, state administering agencies, and state juvenile justice specialists.

ACCOUNTABILITY AND TRANSPARENCY FOR A REFOCUSED OJJDP

Additionally, the Congress should strengthen accountability and transparency of the OJJDP by providing vigorous oversight of the JJDPA's implementation in the states. For example, the JJDPA could require OJJDP and states to publicly report compliance with the JJDPA, a function that is not currently required.

The dismantling that is discussed above in reference to research and evaluation, has also taken place in OJJDP's training and technical assistance function. What in the 1990's had become a vital office function, providing valued guidance and information to states, tribes, territories, communities and individuals across the country through targeted training and technical assistance provided by national organizations with subject matter expertise, has been dismantled because of budget limitations. The combination of budget reductions, transferred functions, and a narrowing of focus has harmed an essential "player" in this country's efforts to reduce juvenile delinquency, address the victimization of our children, and ensure safer communities. The JJDPA and the OJJDP need to be restored to their strong and essential role in helping to lead the fight against juvenile crime in this country.

SUMMARY OF RECOMMENDATIONS

In sum, I urge Congress to strengthen the JJDPA by adopting the following recommendations:

- 1) Strengthen the Deinstitutionalization of Status Offenders (DSO) core protection for children. Congress should sunset the Valid Court Order exception to the DSO over a two year period. OJJDP should be instructed to identify the best practices across the country utilized to eliminate the use of VCO and assist states in reaching this goal.

2) Strengthen the Adult Jail and Lock-up Removal and the Sight and Sound Separation core protections for children: Congress should extend these core protection to youth held pretrial no matter what court they are in, juvenile or adult. I urge Congress to require states, within four years after enactment of the reauthorized JJDP, to cease placing youth who are prosecuted as adult criminals in an adult facility while awaiting trial on a criminal charge. Additionally, when youth are placed in an adult jail or lock up under limited exceptions, I urge Congress to clarify that the JJDP expressly prohibits any contact with adults in adult jails and lock-ups. Congress must clarify the definition of “contact” to ensure that there is no sight or sound interaction whatsoever between juveniles and adults placed in the same facility.

3) Strengthen the Disproportionate Minority Contact (DMC) core protection for children: Congress has the opportunity to rectify the problems of racial and ethnic disparity in reauthorizing the JJDP by developing more effective guidance and measures of accountability in the core protection addressing racial and ethnic disparities, and disproportionate minority contact for youth who come into contact with the juvenile and criminal justice systems.

Specifically, Congress should require states to take concrete steps to reduce racial disparities in the juvenile justice system and strengthen this core protection in the JJDP by replacing the current language to “assess and address DMC” with the following language:

- Engage in policy, practice, and system improvement strategies at the local and state levels that are expressly designed to reduce racial and ethnic disparities throughout the juvenile justice system. Strategies shall include:

(A) coordinating bodies of governing structures at the state and local levels of juvenile justice stakeholders, including leaders of communities in which youth of color are disproportionately represented in the juvenile justice system, to oversee and monitor local and state efforts to reduce racial and ethnic disparities;

(B) mapping state and local juvenile justice systems to identify key decision points, system personnel who make the decisions at those points, and the criteria those personnel use to make such decisions;

(C) developing and implementing state and local data systems that identify where racial and ethnic disparities exist in the juvenile justice system and track and analyze such disparities, using descriptors disaggregated as appropriate by race, ethnicity, gender, geography, offense, delinquency history and age;

(D) notwithstanding efforts to improve data collection systems, use available information to develop and implement a work plan to reduce racial and ethnic disparities that includes measurable objectives for system change and/or policy and practice change based on the needs identified in the data collection and analysis under (B) and designed to reduce any forms of bias, differential treatment of youth of color or disparity found to be associated with race and ethnicity;

(E) reporting publicly the progress made in implementing (B), (C), and (D); and

(F) monitoring and evaluating progress annually toward the measurable objectives in (D).

4) Clarify the role that OJJDP is expected to have in the full range of services to be provided in support of the JJDPA, including research and evaluation, training and technical

assistance, dissemination of research and evaluation findings, and demonstration of new programs. It should be made clear in the Act that it is the expectation of Congress that these functions are to be carried out by OJJDP and not delegated to other agencies within OJP.

5) Strengthen the JJDP's support for the identification of, and provision of services to juveniles with mental health or substance abuse disorders. Congress should encourage comprehensive collaborations to address mental health or substance abuse disorders among youth in, or at-risk of involvement in, the juvenile justice system. Specific language should be developed within the JJDP that requires close coordination and collaboration between OJJDP and SAMHSA.

6) Focus on the link between child victimization and juvenile justice by adding several provisions to the state plan requirements in the JJDP that provide that states will 1) Provide for training, technical assistance and consultation to develop coordination between dependency and delinquency systems, including plans for early intervention and treatment of victims of child abuse or neglect and their families; 2) Provide a compilation of data reflecting information on juveniles entering the juvenile justice system with a prior reported history of child maltreatment (abuse or neglect) through arrest, court intake, probation and parole, juvenile detention, and corrections; and 3) Provide an analysis of necessary prevention and treatment services for victims of child maltreatment; and a plan for providing such services for the treatment of victims of child maltreatment and their families who have entered the juvenile justice system.

7) Strengthen the support for the juvenile justice workforce in the JJDP through enhanced supports for recruitment and retention strategies. These should include a matching funding program for pre-service and in-service training, as well as the development of state

agency/university partnerships designed to develop a career path for undergraduate and graduate students similar to the one authorized under Title IV-E and used to support the child welfare workforce.

8) Enhance the role of OJJDP and the Federal-State Partnership: I urge Congress to (1) require OJJDP and the states to make reports public and timely, and increase accountability and transparency at the federal level regarding all aspects of JJDPA implementation; (2) prioritize OJJDP's research and technical assistance functions that support states' efforts to comply with the core protections in the JJDPA and engage in best practices more broadly in reducing juvenile delinquency and victimization; and (3) ensure technical and financial support for a national nonprofit association to represent the nation's State Advisory Groups.

9) Funding: I urge the committee to work with appropriators to substantially increase funding for Title V Prevention and Title II Formula Grants to states. Additionally, I urge the committee to include funding incentives such as performance bonuses in the JJDPA to encourage states to adopt best practices based on research on programs that work to reduce juvenile delinquency.

In strengthening these core protections for our youth and in reauthorizing the JJDPA, I urge Congress to keep children and youth out of the justice system whenever possible by addressing their needs and those of their families early and effectively. In this JJDPA Reauthorization, Congress should also ensure that responses are appropriate to a young person's age and stage of development. States should be required to do everything possible to ensure that children and youth in the justice system are treated in an age-appropriate manner and provided

with developmentally appropriate, evidenced-based services and supports, and ensure, when needed, that sanctions are appropriate to a youth's age and offense.

Thank you for your consideration.