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The Honorable Patrick Leahy
Chair
Committee on the Judiciary
U.S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Senator Leahy,

Thank you for the opportunity to testify before the Committee on the Judiciary on December 5, 2007. The following provides my response to questions submitted to me from members of the committee.

Questions from Senator Leahy:

1. We have heard much about states that are out of compliance with the Juvenile Justice and Delinquency Prevention Act and therefore receive inadequate funding to keep their programs running. We have also heard that many of these states do not know how they can get back into compliance. Would you recommend an approach to states that are out of compliance with the Act different from the approach currently being used?

State compliance with the four core protections is fundamental to achieving the overarching and essential goals of the JJDPA of prevention and rehabilitation. The JJDPA reauthorization must focus states' attention on the core protections in order to make these primary goals achievable.

According to the latest compliance report from the Office of Juvenile Justice & Delinquency Prevention, "FY 2006 DETERMINATION OF STATE COMPLIANCE WITH THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 2002" prepared in November, 2006, most states are in compliance with the basic requirements of the JJDPA. [*See attached report*].

However, in recent years, achieving these goals have become increasingly difficult, given diminished federal resources and simultaneous increased purposes. It is imperative the newly reauthorized Act refocus a more significant portion of juvenile justice programming

and activities on the core protections and that the Office of Juvenile Justice and Delinquency Prevention take a more proactive and constructive role in supporting states in achieving and maintaining compliance with the Act.

Additionally, compliance determinations should not be used as a way to exclude states from positive and effective juvenile justice reforms. Rather, the compliance process should support states in being forthright about their compliance challenges, and should provide states with the accountability and assistance they need to overcome them and facilitate the continuous improvement of their juvenile justice systems. To accomplish this, we need increased transparency on how states are complying with the act. Currently, OJJDP and states are not required to publicly report compliance with the JJDPA.

As most states are in compliance with the minimum requirements, I would recommend that the current compliance structure be maintained. However, I would recommend the following ways to strengthen the compliance process:

(1) The JJDPA emphasize compliance with the core protections as a top priority in the state plan requirements and require all states to designate a specific individual as a compliance monitor for that state.

(2) Language in the JJDPA should make the compliance process more transparent by making certain information publicly available. OJJDP and the states should make reports public and timely in order to increase accountability and transparency at the federal level regarding all aspects of JJDPA implementation.

(3) OJJDP should be required to provide intensive training and technical assistance to the states to assist them in achieving and maintaining compliance with the core protections.

2. You referred in your testimony to the recent Centers for Disease Control and Prevention report on the effects of the transfer of children to the adult correctional system in your testimony. What does the CDC report say about the correlation between jailing juveniles in adult prisons and recidivism rates?

On November 30, 2007, the Centers for Disease Control and Prevention (CDC) released the Task Force on Community Preventive Services findings that transferring youth to the adult criminal system causes harm to juveniles. These findings were contained in the Morbidity and Mortality Weekly Report (MMWR). The Task Force on Community Preventive Services is a 15-member non-Federal task force supported by the Centers for Disease Control and Prevention (CDC). CDC scientists review the effectiveness of health care interventions for the Task Force and then make recommendations to the public health community and health care delivery organizations. The recommendations generated by the Task Force are combined to form the *Guide to Community Preventive Services*, which includes a section on violence.

Overall, the Task Force recommends against laws or policies facilitating the transfer of juveniles from the juvenile justice to the adult judicial system for the purpose of reducing violence. Key findings in the report show the following:

(1) Transferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence: The Task Force found strong evidence that youth who have been previously tried as adults are more likely to commit additional violent crimes. The weight of evidence shows that youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime.

(2) There is insufficient evidence that transferring youth to the adult criminal system prevents youth crime: The Task Force found insufficient evidence to justify assertions that trying youth as adults prevents youth from committing crimes in the first place.

(3) Strengthened transfer policies may be harmful for those juveniles who experience transfer: The review notes that other violent outcomes may result from the transfer of youth to the adult system. These violent outcomes include an increase in pretrial violence, victimization of juveniles in adult facilities, and elevated suicide rates for juveniles incarcerated in adult facilities. Specific estimates of suicide rates in the report are: 2041 per 100,000 for youth held in adult detention facilities; 57 per 100,000 for youth held in juvenile detention centers; and 12.4 per 100,000 for all those aged 12 to 24 in the U.S. population.

(4) The costs/benefits are unknown: The review notes a rarity of studies that compare the costs of transferring youth to the adult system against the costs of retaining youth in the juvenile justice system. While the review questions the motive for evaluating harmful interventions (transfer laws and policies), it suggests that a cost-benefit comparison of the adult and juvenile justice systems may foster a constructive debate over the economic consequences of reform.

I must add one caveat: that this research did not include consideration of the most serious and violent offenders, some of whom may be beyond the reach of the rehabilitative programs of the juvenile justice system. Public safety concerns require that this limited number of offenders, a very small percentage of the juveniles now being prosecuted as adult offenders, be prosecuted in the criminal justice system where longer sentences are available.

3. How would the federal-state workforce development partnership work? Why do you see this as an important addition to the Juvenile Justice and Delinquency Prevention Act?

The juvenile justice workforce carries out the intent of the JJDPA and the work undertaken each day with our youth in the juvenile justice system. This workforce is comprised of a group of dedicated, but too frequently poorly supported workers – intake, caseworker, court, probation and parole, detention and correctional facility, legal, and judicial staff. It 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 effectively do their work, poorly supervised and given extraordinarily high workloads.

Efforts need to be made through the JJDPa to further support and professionalize this workforce. This can be done through adoption of a new provision within the Act 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, this area of focus has not been adequately addressed in the JJDPa up to this point in time. This reauthorization, therefore, provides Congress with the opportunity to strengthen the juvenile justice field in a critically important manner. I look forward to working with the committee in any way possible to shape this new concept.

4. In light of the extensive research we now have on adolescent brain development, racial and ethnic disparities in the juvenile justice system, and the implications of transferring youth into the criminal justice system, what principles should Congress use to guide the reauthorization of the Juvenile Justice and Delinquency Prevention Act?

As a guide to the reauthorization of the JJDPa, the Congress should consider the principles embodied in the “Statement of Principles” document signed by more than 250 national, state and local organizations throughout the country. The statement recommends four principles for the reauthorization:

- (1) Keep children and youth out of the justice system;
- (2) Ensure equity and competence in juvenile justice programs;
- (3) Ensure responses appropriate to a young person’s age and stage of development; and
- (4) Strengthen the federal partnership with the states.

I’ve attached the statement for your consideration.

Questions from Senator Kennedy:

1. There is a loophole in the JJDPa that allows youth charged as adults to be confined in adult jails. Do you advocate closing this loophole?

Yes, I support closing this loophole as the original intent of the JJDPa was to shield children from the dangers of adult jails and lock-ups by separating them from adults. Under the “Adult Jail and Lock-up Removal” protection of the Act, youth 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 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 due to their “transfer” through state statutory provisions. 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.

2. What would be the impact of closing this loophole?

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. Implementation of this provision would require planning within the states and should be adopted by providing the states a two year window to achieve compliance. It should also be supported by significant technical assistance through OJJDP.

3. What alternatives can be put into place to keep youth out of the adult criminal justice system?

The current juvenile justice system found in states is a much more viable alternative than the adult criminal justice system in treating children in conflict with the law. Federal, state and local policymakers should redirect public investments into the juvenile justice system as a more effective investment than treating them in the adult criminal justice system. While the research we now have in hand clearly establishes the more effective outcomes of the juvenile justice system, there is still much to be done to strengthen and empower it to better serve the youth in its care.

In addition, however, states should consider adopting policies and statutory provisions that allow for the extended jurisdiction of the juvenile court for serious offenders who may require extended supervision and/or treatment. This is particularly important for juvenile offenders who commit their offenses close to the age of adult criminal responsibility in the state where the offense took place. This is often cited as the reason for transfer by prosecutors and judges and can be addressed by introducing this flexibility in sentencing.

I also encourage the committee to review the following material that highlights promising juvenile justice initiatives – those that have been shown to be effective in promoting public safety and helping young people:

- (1) The evidence and theory based practices and promising programs featured in “Blueprints for Violence Prevention” released by the Center for the Study of Violence Prevention in Denver Colorado;
- (2) The Washington State Public Policy Institute evaluation of juvenile justice programs;
- (3) The Annie E. Casey Foundation’s Juvenile Detention Alternative Initiative (JDAI);
- (4) “Return Them to Juvenile Court” publication by former state legislator and juvenile court judge Ted Rubin referenced just three examples of programs that have effectively worked to treat children in conflict with the law as an alternative to the adult criminal justice system.

Attached are copies of all of these materials.

4. What is the significance of the research released by the CDC for the reauthorization of the JJDP?

On November 30, 2007, the Centers for Disease Control and Prevention (CDC) released the Task Force on Community Preventive Services findings that transferring youth to the adult criminal system causes harm to juveniles. These findings were contained in the Morbidity and Mortality Weekly Report (MMWR). The Task Force on Community Preventive Services is a 15-member non-Federal task force supported by the Centers for Disease Control and Prevention (CDC). CDC scientists review the effectiveness of health care interventions for the Task Force and then make recommendations to the public health community and health care delivery organizations. The recommendations generated by the Task Force are combined to form the *Guide to Community Preventive Services*, which includes a section on violence.

Overall, the Task Force recommends against laws or policies facilitating the transfer of juveniles from the juvenile justice to the adult judicial system for the purpose of reducing violence. Key findings in the report show the following:

- (1) Transferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence: The Task Force found strong evidence that youth who have been previously tried as adults are more likely to commit additional violent crimes. The weight of evidence shows that youth who are transferred from the juvenile court system to

the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime.

(2) There is insufficient evidence that transferring youth to the adult criminal system prevents youth crime: The Task Force found insufficient evidence to justify assertions that trying youth as adults prevents youth from committing crimes in the first place.

(3) Strengthened transfer policies may be harmful for those juveniles who experience transfer: The review notes that other violent outcomes may result from the transfer of youth to the adult system. These violent outcomes include an increase in pretrial violence, victimization of juveniles in adult facilities, and elevated suicide rates for juveniles incarcerated in adult facilities. Specific estimates of suicide rates in the report are: 2041 per 100,000 for youth held in adult detention facilities; 57 per 100,000 for youth held in juvenile detention centers; and 12.4 per 100,000 for all those aged 12 to 24 in the U.S. population.

(4) The costs/benefits are unknown: The review notes a rarity of studies that compare the costs of transferring youth to the adult system against the costs of retaining youth in the juvenile justice system. While the review questions the motive for evaluating harmful interventions (transfer laws and policies), it suggests that a cost-benefit comparison of the adult and juvenile justice systems may foster a constructive debate over the economic consequences of reform.

I must add one caveat: that this research did not include consideration of the most serious and violent offenders, some of whom may be beyond the reach of the rehabilitative programs of the juvenile justice system. Public safety concerns require that this limited number of offenders, a very small percentage of the juveniles now being prosecuted as adult offenders, be prosecuted in the criminal justice system where longer sentences are available.

Questions from Senator Feingold:

1. During the time that you were the Administrator of OJJDP, there was a significant and consistent decline in the rate of serious juvenile crime. What factors do you think accounted for this decline?

There has been much written about the reasons for the decline in juvenile crime that began in the mid to late 1990's. To date, however, there has been an absence of rigorous research around this question.

In the articles that have been written about the decline it has been attributed to a variety of factors. These include the increased investment made in strengthening the juvenile justice system, providing both greater accountability and efforts at rehabilitation; the development of additional prevention programs seeking to stem the flow of vulnerable young people into patterns of delinquency; reduced poverty rates and an improving economy creating more economic opportunities for both youth and their families, thereby providing more hope for the future; reduced drug usage and trade activity, drawing less young people into this harmful lifestyle; and the short term benefit of incapacitation through the incarceration of youth in both the juvenile and criminal justice systems. While the short term benefit of

incapacitation in the adult system appears at first blush to be an attractive option, we need to remind ourselves of the most recent research showing that incapacitation in the adult system leads in the long term to more recidivism and more serious offending.

It is likely that all of the above factors are inter-related and will continually interact with one another. It is for this reason that we need to do our best to continue our efforts at the federal, state and local levels to strengthen the juvenile justice system, use a smart balance of prevention, accountability and rehabilitation in our efforts to attack juvenile crime, and do our best in providing opportunities for the positive development of our most challenged and challenging young people.

2. Why is federal investment and involvement in state and local juvenile justice efforts important?

Federal investment and involvement in state and local juvenile justice efforts is absolutely crucial to improving state juvenile delinquency prevention and intervention efforts. 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. This partnership and the efforts that have resulted at the state and local level have led to better outcomes for our young people.

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.

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 the juvenile justice field 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 JJDP Act. In a sense, the JJDP Act provides the juvenile justice field and those 56 different juvenile justice systems a set of standards that is otherwise missing.

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. It should also be made clear that it is the intent of Congress that these functions of the OJJDP are to be under the control of, and performed by that office

and not delegated to other departments within the Department of Justice. This splintering and fragmentation of OJJDP has been taking place in recent years and has undermined the ability of the office to fulfill its leadership role. The rich body of work that OJJDP developed and from which the field benefited in the 1990's through demonstration programs, research, evaluation, publications, and training has been diminished in recent years. This reauthorization must ensure that it is restored.

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.

3. Is the evidence regarding the ineffectiveness of boot camps and other “get tough” programs sufficient at this time for Congress to prohibit the use of JJDPA funds for such programs?

Research evidence is conclusive at this time that “get tough” programs do not reduce recidivism or deter crime. The JJDPA should bar the use of federal JJDPA funds for “Scared Straight,” boot camps and other such programs.

The “Scared Straight” program, created by inmates at a New Jersey state prison in the 1970's, helped popularize this style of intervention. However, when “Scared Straight” was evaluated in 1982, juveniles who had been through the program were actually *more* likely to be arrested afterwards than a control group (Finckenauer, 1982). This finding was corroborated in 2003 by a meta-analysis of the entire body of research on “Scared Straight” (Petrosino et al., 2003).

Boot camp programs, which share the confrontational style of “Scared Straight,” have also failed to reduce recidivism or deter crime. In 1992, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) developed three boot camps designed to address juvenile offenders (in Cleveland, Ohio; Mobile, Alabama; and Denver, Colorado). When the OJJDP undertook an evaluation of these programs, it was found that youth who passed through the Cleveland program were significantly *more* likely to recidivate than the control group. The Mobile and Denver boot camps had no significant effect on recidivism (Peters, Thomas & Zamberlin, 1997).

A report released by the U.S. Department of Justice also identified recidivism reduction as the “unmet goal” of boot camps (Parent, 2003). The hearing held in front of the U.S. House Judiciary Subcommittee on December 13, 2007 reflected the concern of citizens and legislators in regards to boot camps, especially in response to tragedies such as the January 2006 death of a youth at a Panama City, Florida camp.

What makes these popular “get tough” programs ineffective, although they have been appealing to so many politicians and lawmakers? Frank Bindhammer, founder of the

“Scared Straight” program later admitted, “The program in no way attacks poverty, a poor education, family difficulties, unemployment or racial discrimination as the real causes of juvenile crime.” We should not focus government resources on programs that produce negligible results and deleterious side effects. Instead we should fund those programs that have been proven effective by scientific research and provide youth with comprehensive treatment and support.

Questions from Senator Durbin:

1. What does the scientific research now available reveal about the consequences of incarcerating youth with adults in adult jails and prisons? What are the implications for the reauthorization of the JJDP?

The scientific research now available shows that prosecuting youth in the adult criminal justice system, including incarcerating youth with adults in adult jails and prisons, does not reduce crime. For example, the Centers for Disease Control and Prevention (CDC) released the Task Force on Community Preventive Services findings in November, 2007 that showed that transferring youth to the adult criminal system causes harm to juveniles and that youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime.

The JJDP reauthorization should take this new research into account in the following ways:

- (1) The JJDP should extend the “Jail Removal” provision to youth who are awaiting trial in adult court.
- (2) The JJDP should require OJJDP to provide intensive Technical Assistance (TA) to states and counties to comply with the above provision.
- (3) Since one of the original intents of the JJDP was to prohibit the placement of youth in adult correctional facilities, the JJDP should revise the definition of an adult inmate.

Under the JJDP of 2002, a definition of “adult inmate” was added and the Office of Juvenile Justice and Delinquency Prevention sent out guidance to states on this in several memos that advised states that their laws or state practices would need to change so that youth prosecuted as adults would be separated from other youth in juvenile correctional facilities. This guidance had a direct impact on those states that permitted juveniles who were transferred for adult prosecution to remain in a juvenile facility pending the resolution of their case in the adult criminal justice system.

The effect of the new federal policy has penalized states who have sought to implement more humane approaches to serving youth in the justice system. This includes sentencing juveniles who have been prosecuted in the criminal justice system to juvenile correctional facilities. For example, states such as Oregon, that provide that youth sentenced as adults

who need to be incarcerated be placed in juvenile facilities rather than adult prisons, would now need to change their state statute and practice. [*See attached letter from the OR, WA and ID state advisory groups*].

The result could mean that some states would put more youth into adult prisons or be forced to construct new correctional facilities to house youth as well as hire new staff. OJJDP needs to reconsider this guidance and provide that states that choose to place offenders who are under the age of 18 and have been convicted as adult offenders in juvenile facilities, may do so with proper classification that ensures the safety of all inmates in those facilities.

(4) The JJDPA should require OJJDP to work with states and counties to collect data on an on-going basis on youth in the adult criminal justice system, including age, race, ethnicity, gender, offense, pre-trial detention, transfer mechanism, sentencing outcome, placement pre and post trial in jails, prisons or juvenile facilities.

(5) The JJDPA should require OJJDP to conduct research on the effectiveness of the practice of filing on juveniles as adults in criminal courts, i.e. increased or decreased public safety and violence, and the status of the facility conditions as well as developmentally appropriate services and programs for youth in adult jails and prisons.

2. Is there a correlation between transferring youth to the adult criminal justice system and recidivism rates? Please explain.

Studies by researchers throughout the country show that sending children to the adult criminal justice system increases recidivism.

For example, in one study conducted by Dr. Donna Bishop of Northeastern University comparing the recidivism of children waived to criminal court with those retained in juvenile court, the research found that the “adultified” group was more likely to be re-arrested and to commit more serious new offenses; they also re-offended more quickly. Another study conducted by Dr. Jeffrey Fagan of Columbia University compared the recidivism rates of children in two states (New York and New Jersey) that differed only by the age at which they prosecuted youthful offenders in the adult system. The research results provide overwhelming evidence that trying children as adults is counterproductive as a crime fighting strategy. A summary of this research is attached.

And, the most recent study issued by the Centers for Disease Control in November, 2007, found strong evidence that youth who have been previously treated as adult offenders are more likely to commit additional violent crimes. The weight of evidence shows that youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime.

Please let me know if you have questions or need additional information. I can be reached at (202) 687-7656.

Sincerely,

Shay Bilchik
Director
Center for Juvenile Justice Reform
Georgetown University

Attachments

- JJJPA State Compliance 2007 [attached]

- Act 4 Juvenile Justice campaign 'Statement of Principles'

http://www.act4jj.org/media/factsheets/factsheet_11.pdf

- Blueprints for Change resources

<http://www.colorado.edu/cspv/blueprints/>

- Washington State Institute for Public Policy *Evidence Based Juvenile Offender Programs: Program Description, Quality Assurance, and Cost.* <http://www.wsipp.wa.gov/rptfiles/07-06-1201.pdf>

- Annie E. Casey Foundation Juvenile Detention Alternatives Initiative resources

<http://www.aecf.org/Home/MajorInitiatives/JuvenileDetentionAlternativesInitiative/Resources.aspx>

- "Return Them to Juvenile Court" publication

<http://www.campaignforyouthjustice.org/Downloads/KeyResearch/MoreKeyResearch/AdultificationPolicyBriefVol1.pdf>

- MacArthur Foundation Research Network on Adolescent Development policy brief on transfer

http://www.adjj.org/downloads/3582issue_brief_5.pdf

- Letter from the OR, WA and ID state advisory groups on the "adult inmate" exception [attached]

- Correctional Bootcamps: Lessons from a Decade of Research.

<http://www.ncjrs.gov/pdffiles1/nij/197018.pdf>

- Boot Camps for Juvenile Offenders

<http://www.ncjrs.gov/pdffiles/164258.pdf>

- Petrosino, A., Turpin-Petorsino, C., and Buehler, J. (2003). "Scared Straight" and other juvenile awareness programs for preventing juvenile delinquency

(Updated C2 Review). In: *The Campbell Collaborative Reviews Of Intervention and Policy Evaluations* (C2-RIPE). Philadelphia, Penn: Campell Collaboration.

<http://www.campbellcollaboration.org/doc-pdf/ssp.pdf>

- Recent Testimony:

<http://judiciary.house.gov/media/pdfs/MacKenzie071213.pdf>

<http://judiciary.house.gov/media/pdfs/Gibson071213.pdf>

http://www.house.gov/list/press/fl03_brown/pr_071217.html

- National Institute for Alternatives to Incarceration Fact Sheet "Scared Straight: A Second Look?"

<http://66.165.94.98/stories/scareds.html>

- "Effects of Correctional Boot Camps on Offending"

http://www.campbellcollaboration.org/doc-pdf/Wilson_bootcamps_rev.pdf

**FY 2006 DETERMINATION OF STATE COMPLIANCE
WITH
THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF
2002***

(The 2006 status of compliance determines a state's eligibility for funding in FY 2007)

Prepared November 2006

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has determined that 55 jurisdictions (states and territories), defined as states in Section 103(7) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 2002, were eligible to receive fiscal year (FY) 2007 allocations under the JJDP Act Formula Grants Program. One state, Wyoming, does not participate in the JJDP Act Formula Grants Program and, therefore, will not apply for Formula Grants Program funds in FY 2007.

What follows is a summary of compliance by the states and territories (henceforth referred to as states) with Sections 223(a)(11),(12), (13), and (22), of the JJDP Act of 2002. OJJDP based its FY 2006 compliance decisions regarding Sections 223(a)(11),(12), and (13), in most cases, on 2004 monitoring reports to determine whether the states met compliance levels for these three core requirements to qualify for FY 2007 Formula Grant funds. Each state's annual monitoring report is based on data the state collected from secure juvenile and adult facilities. State data collection involves facilities self-reporting to a state agency, state agencies collecting data onsite, or a combination of these methods. OJJDP requires all state agencies administering the JJDP Formula Grants Program to verify self-reported data they receive from facilities and data they receive from other state agencies.

OJJDP's FY 2006 compliance decision regarding the fourth core requirement—Section 223(a)(22) (reduction of disproportionate minority contact-DMC)—of the JJDP Act of 2002 is based on information each state provides in its FY 2006 Formula Grants applications. Each state's Formula Grant application each year includes a DMC Compliance Plan which describes the progress made in the area of DMC-reduction in the prior fiscal year and outlines plans for the next (as in a Plan Update) or the next three years (as in a Comprehensive three-Year Plan). All states, except for Puerto Rico, which has been exempted by the U.S. Census Bureau from reporting racial statistics must update their *DMC Identification Spreadsheets* at least once every three years when the three-year Plans are due with the most recent available data statewide and at least three counties with the highest minority concentration or, preferably, the localities with focused DMC-reduction efforts. OJJDP annual determination of state compliance with the DMC core requirement is based on the completeness of their DMC Compliance Plans, the demonstration of actual, systematic, continuing, and good-faith implementation of their planned activities, and the progress reported each year.

* The Juvenile Justice and Delinquency Prevention Act of 2002 was enacted on November 2, 2002. The provisions of the JJDP Act of 2002 became effective on October 1, 2003, and OJJDP will apply these provisions to determine eligibility for awards in FY 2007.

Section 223(a)(11)
Deinstitutionalization of Status and Nonoffenders (DSO)

Two states are in full compliance with the DSO provision, based on zero reported violations of Section 223(a)(11) of the JJDP Act of 2002:

American Samoa
Maine

Forty-eight states are in compliance with *de minimis* exceptions to Section 223(a)(11) of the JJDP Act of 2002:

| | | |
|----------------------|----------------|------------------|
| Alabama* | Kansas | Ohio |
| Alaska* | Kentucky | Oklahoma |
| Arizona | Louisiana | Oregon |
| Arkansas | Maryland | Pennsylvania |
| California | Massachusetts | Puerto Rico |
| Colorado | Michigan | Rhode Island |
| Connecticut | Minnesota | South Carolina * |
| Delaware | Missouri* | South Dakota |
| District of Columbia | Montana | Tennessee |
| Florida * | Nebraska | Texas |
| Georgia | Nevada | Utah |
| Guam | New Hampshire | Vermont |
| Hawaii | New Jersey | Virginia |
| Idaho | New Mexico | West Virginia |
| Illinois | New York | |
| Indiana | North Carolina | |
| Iowa | North Dakota | |

Five states are out of compliance with Section 223(a)(11) of the JJDP Act of 2002:

| | | |
|-------------|--------------------------|----------------|
| Washington* | Mississippi * | Virgin Islands |
| Wisconsin* | Northern Mariana Islands | |

* Compliance for these states is based on 2005 compliance monitoring data.

Section 223(a)(12)
Separation of Juveniles and Adult Offenders

Forty-one states are in full compliance with the separation provision, Section 223(a)(12) of the JJDP Act of 2002, based on zero reported violations:

| | | |
|----------------------|---------------|-----------------|
| Alabama* | Indiana | Oklahoma |
| Alaska* | Iowa | Pennsylvania |
| American Samoa | Kansas | Rhode Island |
| Arkansas | Kentucky | South Carolina* |
| Arizona | Maine | Tennessee |
| California | Massachusetts | Texas |
| Colorado | Minnesota | Utah |
| Connecticut | Mississippi* | Vermont |
| Delaware | Montana | Washington* |
| District of Columbia | Nebraska | West Virginia |
| Florida* | Nevada | Wisconsin* |
| Georgia | New Hampshire | |
| Hawaii | New Mexico | |
| Idaho | North Dakota | |
| Illinois | Ohio | |

Eleven states are in compliance with the separation provision, based on the regulatory criteria set forth in Section 31.303(f)(6)(ii) of the OJJDP Formula Grants Regulations (28 CFR 31), published in *The Federal Register* on June 20, 1985:

| | |
|---------------|----------------|
| Guam | New York |
| Kansas | North Carolina |
| Louisiana | Oregon** |
| Michigan** | South Dakota |
| Missouri*, ** | Virginia** |
| New Jersey | |

Three states were out of compliance with Section 223(a)(12) of the JJDP Act of 2002:

Northern Mariana Islands
Puerto Rico
Virgin Islands

* Compliance for these states is based on 2005 compliance monitoring data.

** These states currently allow juveniles and young adult inmates to commingle in their juvenile correctional facilities and training schools. These states must submit and implement an acceptable plan to eliminate the noncompliant incidents. OJJDP is currently working with these states to develop and implement their plans.

Section 223(a)(13)
Jail and Lockup Removal

Seven states are in full compliance with the jail and lockup removal provision, based on zero reported violations of Section 223(a)(13) of the JJDP Act of 2002:

| | | |
|----------------------|----------|------------|
| Alabama* | Idaho | New Mexico |
| American Samoa | Illinois | |
| District of Columbia | Kentucky | |

Forty-two states are in compliance with the jail and lockup removal provision with either the numerical *de minimis* or substantive *de minimis* exceptions to Section 223(a)(13) of the JJDP Act of 2002:

| | | |
|-------------|----------------|---------------|
| Alaska* | Maine | Oklahoma |
| Arizona | Maryland | Pennsylvania |
| Arkansas | Massachusetts | Rhode Island |
| California | Michigan | South Dakota |
| Colorado | Minnesota | Tennessee |
| Connecticut | Missouri* | Texas |
| Delaware | Montana | Utah |
| Florida* | Nebraska | Vermont |
| Georgia | New Hampshire | Virginia |
| Guam | New Jersey | Washington* |
| Hawaii | New York | West Virginia |
| Indiana | Nevada | Wisconsin* |
| Iowa | North Carolina | |
| Kansas | North Dakota | |
| Louisiana | Ohio | |

Six states are out of compliance with Section 223(a)(13) of the JJDP Act of 2002:

| | | |
|--------------------------|-------------|-----------------|
| Mississippi* | Oregon | South Carolina* |
| Northern Mariana Islands | Puerto Rico | Virgin Islands |

* Compliance for these states is based on 2005 compliance monitoring data.

Section 223(a)(22)
Reduction of Disproportionate Minority Contact (DMC)

(Based on FY 2006 Formula Grants Applications, as of September 21, 2006)

Fifty-one states are in compliance:

| | | |
|-------------|----------------|----------------|
| Alabama | Louisiana | Oklahoma |
| Alaska | Maine | Oregon |
| Arkansas | Maryland | Pennsylvania |
| Arizona | Massachusetts | Rhode Island |
| California | Michigan | South Carolina |
| Colorado | Minnesota | South Dakota |
| Connecticut | Missouri | Tennessee |
| Delaware | Montana | Texas |
| Florida | Nebraska | Utah |
| Georgia | Nevada | Vermont |
| Hawaii | New Hampshire | Virginia |
| Idaho | New Jersey | Washington |
| Illinois | New Mexico | West Virginia |
| Indiana | New York | Wisconsin |
| Iowa | North Carolina | American Samoa |
| Kansas | North Dakota | Guam |
| Kentucky | Ohio | Virgin Islands |

Two states are out of compliance.

| | |
|-------------|--------------------------|
| Mississippi | Northern Mariana Islands |
|-------------|--------------------------|

One state is under review:

District of Columbia

One territory is exempt from complying with the DMC requirement (the U.S. Census Bureau has exempted this territory from reporting racial statistics due to the homogeneity of the population):

Puerto Rico

One state did not participate in the FY 2006 Formula Grants Program:

Wyoming

FY 2006 DETERMINATION OF STATE COMPLIANCE TOTALS - 55 STATES

Deinstitutionalization of Status Offenders

| | |
|---|----|
| Full Compliance: Zero violations | 2 |
| In Compliance: <i>De minimis</i> exceptions | 48 |
| Out of Compliance with Section 223(a)(11) | 5 |

Separation of Adults and Juveniles

| | |
|---|----|
| Full Compliance: Zero violations | 41 |
| In Compliance: Exception provision | 11 |
| Out of Compliance with Section 223(a)(13) | 3 |

Removal of Juveniles from Adult Jails and Lockups

| | |
|--|----|
| Full Compliance: Zero violations | 7 |
| In Compliance <i>De minimis</i> exceptions | 42 |
| Out of Compliance with Section 223(a)(14) | 6 |

Reduction of Disproportionate Minority Contact

| | |
|---|----|
| In Compliance | 51 |
| Out of Compliance with Section 223(a)(22) | 2 |
| Under Review | 1 |
| Exempt from this requirement | 1 |

◆ One state did not participate in the FY 2006 Formula Grants Program:

Wyoming

For further information regarding state compliance with Section 223(a)(11), (12), and (13) of the JJDP Act of 2002, contact:

Elissa Rumsey
Compliance Monitoring Coordinator
State Relations and Assistance Division, OJJDP
810 7th Street, N.W.
Washington, DC 20531
(202) 616-9279

For further information regarding state compliance with Section 223(a)(22) of the JJDP Act of 2002, contact:

Heidi Hsia
Disproportionate Minority Contact Coordinator
State Relations and Assistance Division, OJJDP
810 7th Street, N.W.
Washington, D.C. 20531
(202) 616-3667

J GOVERNOR'S
JUVENILE JUSTICE
ADVISORY COMMITTEE

October 18, 2007

J. Robert Flores, Administrator
Office of Juvenile Justice and Delinquency Prevention
U.S. Department of Justice
810 7th Street NW
Washington, DC 20531

SUBJECT: Recommendations and comments regarding juveniles who have been transferred to adult court jurisdiction.

Dear Mr. Flores:

I am writing on behalf of the State Advisory Groups in Washington, Idaho, and Oregon to express our sincere concerns, comments and recommendations with regard to the JJDP Act separation requirement and the housing of juveniles who have been transferred or waived to adult court jurisdiction (including recommending that language be incorporated in the regulations and amended in the Reauthorized Act).

With the addition of the definition for "adult inmate" per the JJDP Act of 2002, and the subsequent interpretation by OJJDP which was published in the OJJDP Compliance *Guidance Manual for Monitoring Facilities* (and further clarified in the October 30, 2003, memorandum to the states from William Woodruff), states were informed their laws and/or practice must conform to these new policy guidelines regarding the separation of juvenile delinquent offenders from young adult offenders who are confined in secure juvenile detention and correctional facilities. Historically, federal policies (#89-1301) defined juveniles who were waived or transferred to criminal court as "a swing group of individuals who can be placed with whomever the legislature or courts deem appropriate."

In the October 30, 2003, memorandum it was stated: "Furthermore, several states permit juveniles tried as adults to be sanctioned in the juvenile rather than the criminal justice system." The number of states potentially impacted by this policy guideline and revision to the JJDP Act is significantly greater than referenced in the memo—in a recent (April 2007) communication from the OJJDP Compliance Monitoring Specialist to the states, there were 40 states listed "*who have laws that allowed for kids convicted as adults to be sentenced back to a juvenile facility or who have facilities that reported they did hold such kids (kids with adult convictions).*"

Our states have made every effort to diligently follow the OJJDP *Guidance Manual for Monitoring Facilities* under the JJDP Act, which was recently revised, and interpretation and guidance

regarding the 2002 revisions, even though the regulations per the reauthorized JJDP Act of 2002 have not yet been published or posted for public comment. We are asking for consideration of the following recommendation which we believe is supported by recent research findings on adolescent brain development and effective approaches to criminal behavior by adolescents. The proposed change would give youthful offenders the greatest opportunity for rehabilitation while maintaining public safety, and not jeopardizing the safety of other juveniles in these facilities.

It is our proposal that the following language be incorporated through OJJDP regulations and recommended as an amendment to the JJDP Act. The JJDP Act of 2002 (section 42 USC 5603(26)) defines an adult inmate as an individual who "has reached the age of full criminal responsibility under applicable state law; and ... is convicted of a criminal charge offense." The suggested language, below, would recognize the individual needs of youthful offenders and the strides made in assessment, programming (evidence-based practices), and other re-entry and rehabilitative services available in the juvenile system that have been recognized and, hence, taken into account within current state laws.

The proposed recommendation would re-define an adult inmate through the following language:

"For purposes of 42 USC 5633(12)(A), the term "adult inmate" does not include any individual who:

(1) is younger than the maximum age for juvenile jurisdiction and placement under state law; and

(2) has been determined by the state to be appropriate for continued placement in a facility/program for juveniles."

Under this interpretation, juveniles who have been transferred to adult criminal court would not qualify as adult inmates when they have reached six months beyond the state's age of majority under federal law, and thus their presence would not violate the separation requirement of the JJDP Act. Juveniles meeting the terms of this definition would not be transferred to an adult jail while awaiting trial nor would they be transferred to an adult correctional facility to serve their sentence unless such transfer was deemed necessary for safety and security reasons. The federal compliance Guidance Manual states: *"Note that waiver or transfer and the filing of criminal felony charges does not transform a juvenile into an adult; ..."*

The above exception would continue the intent of federal laws and Formula Grant funding to the states in recognizing systems improvement, research and evaluation, evidence-based practices and programming, and in addressing disproportionate minority contact. It would require that the states appropriately assess each individual youthful offender for continued placement in a juvenile facility, which would be consistent with the original intent of the separation requirement – to protect the other younger residents at the juvenile facility – while recognizing the intent of state laws based on research and best practice in meeting the needs of youthful offenders and providing rehabilitation,

within the allowable ages of placement for these youthful offenders in juvenile facilities per state laws (up to ages 21 and 25 in our respective states).

The National Council on Crime and Delinquency summarized in a recent (June 06) Fact Sheet: youth convicted in the adult system receive little or no rehabilitative programming; they are at greater risk of victimization and death in adult jails and prisons than in juvenile facilities; they are more likely to recidivate than similar offenders remaining in the juvenile system; and the practice of sentencing youth as adults most seriously impacts African-American, Latino and Native American youth.¹ In Washington State, data on race/ethnicity for juveniles sentenced to the adult system who were transferred to juvenile institutions per the Youthful Offender Program, showed a range of 62 to 76 percent minority youth from one-day snapshots of the population. In Oregon, 329 (29 percent) of youth in Oregon Youth Authority close custody facilities on July 1 2007 were under the legal jurisdiction of the adult Department of Corrections. Of those, 144 (44 percent) were minority youth between the ages of 15 and 24. In Idaho, 16 (4 percent) of youth in Idaho Department of Juvenile Corrections' custody on August 15, 2007 were blended sentences or District Court commitments; 6 of the 16 were over 18.5 years of age. The 2005 report from the Coalition for Juvenile Justice, *Childhood on Trial*, reports "three out of four youth admitted to state prisons are racial/ethnic minority youth."

Additionally, other considerations for these youthful offenders include needed age-appropriate services (including special education) that are available in the juvenile system; further, from the CJJ *Childhood on Trial* report, one state study found "more than half of the youth sent into the adult system had no prior offenses and, therefore, had never received any juvenile court services. Many had serious abuse and neglect in their backgrounds." Also, it was noted/summarized by the Director of the Juvenile Law Center in the report: "Strong rehabilitative programs will bear more fruit during adolescence than later in life. Thus, the way corrections supervises teens—the way they counsel, educate, and teach skills—will have a long term effect on their behavior."²

Further, one must take into account that federal law does not require juveniles who were sentenced on juvenile charges be transferred from a juvenile facility when they have reached the state's age of majority; i.e., it could not be assumed that a remanded 18-1/2 year-old is more dangerous to the other residents than a 20 year old also in the juvenile training school/institution, but who was sentenced on juvenile charges (particularly if the remanded juvenile has been assessed and has been determined to be appropriate for continued placement). Additionally, in states that do not have transfer or waiver laws, youth convicted of more serious offenses would remain in the juvenile system, and be housed with other juveniles.

¹ "Youth Under Age 18 in the Adult Criminal Justice System," Views from the National Council on Crime and Delinquency, June 2006.

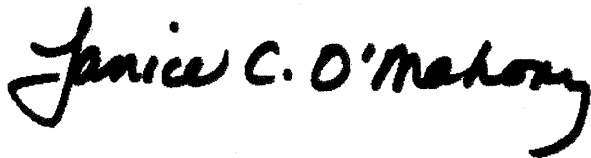
² "Childhood on Trial – The Failure of Trying & Sentencing Youth in Adult Criminal Court," Coalition for Juvenile Justice, 2005, quote from Marsha Levick, Legal Director, Juvenile Law Center.

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In conclusion, a recent research publication from the John D. and Catherine T. MacArthur Foundation summarizes: "Far from being "scared straight," some studies have found that youths transferred to the criminal system are *more* likely to commit new offenses, especially if they've spent time in jail or prison. They also re-offend more quickly and more often." The report also notes the need for policies "to address issues such as diminished responsibility and reduced levels of punishment, as well as the development of age-appropriate institutions, programs, and protections."

We respectfully submit these recommendations to you in the best interests of youth in our states, and are hopeful of their adoption.

Sincerely,

A handwritten signature in black ink that reads "Janice C. O'Mahony". The signature is written in a cursive, flowing style.

Janice C. O'Mahony, Chairman
Washington State Governor's Juvenile Justice Advisory Committee

cc: Mary E. Williams, Washington State Juvenile Justice Specialist
Alan Miller, Idaho Juvenile Justice Specialist
Lana Holman, Oregon Juvenile Justice Specialist
Billy Wasson, Oregon SAG Chair
John F. Varin, Idaho SAG Chair