

CAMPAIGN FOR

# YOUTH JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR

## Campaign for Youth Justice Newsletter

January 2008

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### Greetings!

The Campaign for Youth Justice is a national campaign dedicated to ending the practice of trying, sentencing and incarcerating youth under the age of 18 in the adult criminal justice system.

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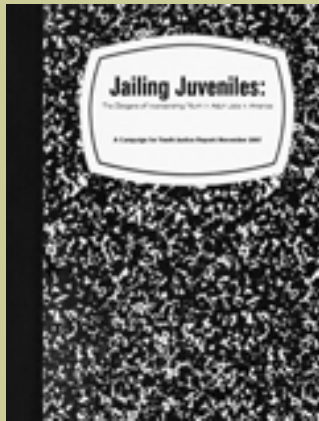
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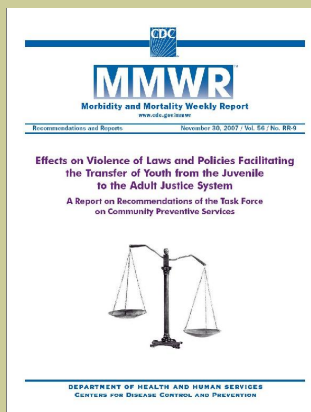
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## JJDPa Organizational Sign-on Letter Update

Thank you to all who have signed on to the organizational letter in support of the Juvenile Justice and Delinquency Prevention Act (JJDPa) reauthorization. The letter urges Congress to expand the jail-removal protection to all youth - no matter what court they are in, juvenile or adult. This would make the act more consistent with its original intent of ensuring that youth are not detained in adult jails. It is not too late to sign on! If your organization would like to sign on to the organizational letter (below), please contact Ian Augarten at (202) 558-3580 (Ext. 10) or at [iaugarten@campaign4youthjustice.org](mailto:iaugarten@campaign4youthjustice.org).

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Dear Majority Leader Reid / Speaker Pelosi,

On behalf of the undersigned organizations, we are writing to urge you to protect children in the justice system by ending the placement of children in adult jails as part of the reauthorization of the Juvenile Justice Delinquency and Prevention Act (JJDPa).

The Juvenile Justice and Delinquency Prevention Act (JJDPa) has protected children in the justice system for more than three decades. The original intent of the JJDPa was to protect children from the dangers of adult jails by separating them from adults and ultimately removing them from adult jails altogether. Under the "Jail Removal" core protection, youth cannot be detained in adult jails except in limited exceptions and in those narrow circumstances the "Sight and Sound Separation" core protection prohibits contact with adults.

On average, 7,500 youth are incarcerated in an adult jail every day in America. It is extremely difficult to keep children safe in adult jails. When youth are placed with adults in adult jails, youth are at risk of physical and sexual assault. According to BJS, 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, even though they make up only 1% of all jail inmates.

Separation of children from adults is not adequate either. While separating children from adults in adult jails will reduce contact with adults that could result in physical or emotional harm to children, children are then often placed in isolation and are at risk of suicide. Youth have the highest suicide rates of all inmates in jails and 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.

Despite these long-standing federal protections and documented dangers of placing children in adult jails, tens of thousands of youth incarcerated every year in adult jails are not protected by the JJDPa's protections.

We urge you to update the JJDPa to reflect the original intent of the law: to remove youth from adult jails altogether. The JJDPa should extend the protections to all children, no matter what court they are in - juvenile or adult.

Thank you for your consideration.

Sincerely,

## Art Exhibit Featuring Incarcerated Wisconsin Youth a Success

This month the Wisconsin Council on Children and Families hosted "Art from the Inside: Unlocking the Creativity of Incarcerated Youth" at the State Capitol rotunda in Madison, Wisconsin. The art exhibit featured works created by children incarcerated in the Wisconsin correctional system in response to the question, "What does it feel like to be incarcerated before 18?" The exhibit, which featured 25 pieces, brought attention to legislation sponsored by Senator Erpenbach (D-Middleton) that proposes the return of 17-year-olds to the juvenile justice system. Currently, all 17-year-olds in Wisconsin are prosecuted as adults regardless of the offense. The legislation proposes funding the change through a 1 percent sales tax on video games and machines. Congratulations to those involved in the coordination of this exhibit and thank you to the youth who made their art available. The art exhibit was featured in a January 17th story in *The Capital Times* which is available at: <http://www.madison.com/tct/news/267854>.

## National Sheriff's Association Features Article about the Prosecution of Youth as Adults

The Winter 2008 issue of *Sheriff*, the bimonthly publication of the National Sheriff's Association, included an article about the impact of trying, sentencing, and incarcerating youth in the adult system. The piece provides detailed information about how youth are prosecuted as adults and the negative consequences of this practice. The article makes a persuasive argument for reform in a publication that has a circulation of 20,500 sheriffs nationwide.

An online version of the article is not available but those interested in a PDF of the article can request one via email from Julie Kudrna at (202) 558-3580 ext. 29 or [jkudrna@campaign4youthjustice.org](mailto:jkudrna@campaign4youthjustice.org).

## Washington, D.C. Free Minds Book Club Featured on ABC News

On January 25th, WJLA/ABC 7 News featured a story about a local Washington-based organization, the Free Minds Book Club, which introduces youth charged as adults in the D.C. Jail to reading, poetry, and creative writing. Since it began in 2002, the program has reached over 230 youth through book clubs and writing workshops in the jail, providing support to those who have been transferred to federal facilities, and supporting those who are re-entering society after release.

Free Minds Book Club organizers, Kelli Taylor and Tara Libert, have encouraged the youth to realize their potential, set educational and career goals, and express themselves through creative writing rather than violence. Graduates of the program have gone on to earn GED's; return to public, charter, and vocational schools; obtain full-time employment; study for college entrance exams; and study at professional schools. Free Minds graduates have also strengthened family bonds and developed public speaking and communication skills.

Thank you Kelli and Tara for your work and positive influence in the lives of so many! To learn more about the Free Minds Book Club visit: <http://www.freemindsbookclub.org>. Additionally, a video of the newscast featuring Free Minds is available online at: <http://www.wjla.com/news/stories/0108/490965.html>.

## CFYJ Requests Stories of Youth Who Have Been Given a Second Chance

The Campaign for Youth Justice Case Profiles Project is gathering stories of individuals that have been rehabilitated by the juvenile justice system, rather than transferred to the adult criminal justice system. We hope to communicate to policymakers, the public, and the media these "successes" as a way to illustrate why youth should not be prosecuted as adults. We need your help collecting the stories of youth who have turned their lives around through the chance given to them by the juvenile justice system. If you know someone who has been given a second chance, please put them in touch with Julie Kudrna at (202) 558-3580 ext. 29 or [jkudrna@campaign4youthjustice.org](mailto:jkudrna@campaign4youthjustice.org). Please pass this request along to your contacts and networks. Thank you!

## CFYJ Requests Stories of Youth Held in Adult Jails

In light of the current movement to reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDP), a law that outlines federal standards for the protection of youth in the juvenile justice system, including the removal of children from adult jails, we are requesting stories to share with Congress that describe the experiences of youth (under 18) in adult jails. Through these case profiles, we hope to communicate to policymakers, the public and the media the experiences, perspectives, and concerns of those who are most affected by this issue. CFYJ will highlight youth, parent, and family voices through reports, policy briefs, publications, newsletters, and the CFYJ website.

We need your help collecting these stories! If you or someone you know has been held in an adult jail as a child, please pass their contact information on to us (see below) or encourage them to write their profile with attention to the questions provided below. Two example profiles have also been included to guide writing. Additionally, please forward this request to your personal contacts and networks. Due to the urgency of reauthorization, we request that case profiles be submitted to us by **February 10th, 2008**.

Thank you so much for your participation in this project. If you have questions please contact Julie Kudrna at (202) 558-3580 ext. 29 or [jkudrna@campaign4youthjustice.org](mailto:jkudrna@campaign4youthjustice.org).

For more information on the reauthorization of the Juvenile Justice and Delinquency Prevention Act, please visit the Act 4 Juvenile Justice website: <http://www.act4jj.org>.

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### Case Profiles Project Questions

For youth who have been held in adult jails, please address, in one or two paragraphs, the following:

1. Describe how your experience in an adult jail has negatively affected you.
2. Tell us about a typical day in an adult jail. What kind of services (such as education, health care, recreation, and other programs) did you receive? How were you treated?
3. How has or how will your future be affected by this experience?
4. If you could speak with members of Congress about laws that allow youth to be held in adult jails, what would you say?

For parents and family members of youth who have been held in adult jails, please address, in one or two paragraphs, the following:

1. Describe how having a child or family member under age 18 in an adult jail has negatively affected your family.
2. How has you or your child/family member's future been affected by this experience?
3. If you could speak with members of Congress about laws that allow youth to be held in adult jails, what would you say?

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### Example Case Profiles and Writing Tips

The following are example case profiles. Your story does not need to conform to this format or length but we include these to provide a sense of what kind of language and information we have found to be powerful in sharing these types of stories. Additionally, we suggest being honest, confident, concise, and serious in your writing. For privacy purposes, please do not include case numbers or the names of attorneys or judges but feel free to include information about crime(s) and/or sentence(s).

**Diana Gonzalez.** I know first hand the consequences of treating youth like adults. My son was David Burgos. David committed suicide last July 24 while he was incarcerated at Manson Youth Institution. He was 17-years-old. We are never going to get a good outcome when teenagers are put together with adults. Teenagers and adults are different from each other. You can't do it. It doesn't work. What's frustrating for me is that we know it doesn't work. We've known it doesn't work for a long time. This issue has already been in front of the legislature for several years. Why do we have to wait until there is a crisis? Why do we wait for a tragedy? Why does someone like my son have to die before we make a change we know is right? It's time for us to stop talking about making this change and do it. I'm tired of hearing that this is a problem and not seeing any changes being made. The way the system operates now doesn't work. My son is an example of that. Whose child is next? It could be my neighbor's child, it could be your neighbor's child, it could be your child. Put yourselves in these shoes. What decision would you make for your child? How would you want your child treated?

**Jane.** One day, when she was late for school, Jane took her neighbor's bike from their yard and used it to get to class. Later that day, she left the bike at school and got a ride home from a friend. Her neighbors, who had seen her using the bicycle, called the police and when confronted, Jane was told to apologize to her neighbor. It seemed as if the incident would be settled informally, but then Jane's probation officer, from a previous arrest, found out about the "theft." The police charged Jane with a probation violation and she was jailed in adult jail. This incident led to Jane being incarcerated for 75 days in two different jails.

Jane was housed with adult women offenders where she had to try and avoid their negative influences. Every day, she watched television, claiming there were no "good" books to read in the jail. Although she attended Alcoholics Anonymous meetings and church services every week,

Jane was not able to resume school. Her request for mental health services also went unanswered. She was often cold at night, having only two sheets, two thin blankets, and a thin mattress for sleeping. Every day for lunch the inmates were served a bologna sandwich: Jane said the dinners were disgusting and that the jail was unsanitary. After spending 75 days between the jails, Jane was sentenced to time served. The probation violation and her misdemeanor conviction will remain on her record.

## Courts Review Cases Trying Youth as Adults

The movement to end the practice of trying youth as adults continues to press forward both at the state and federal court levels. In recent months, several groups have come forward nationwide to urge courts to grant reviews of previous cases affecting youth in the adult system.

**South Carolina:** On December 17, 2007, students and faculty at the University of Texas, Austin, filed a petition to the United States Supreme Court, requesting a review of the Christopher Pittman case. In 2001, at the age of 12, Pittman murdered his grandparents in their South Carolina home and set the house on fire in response to a reaction to the anti-depressant Zoloft. South Carolina courts allowed the state to transfer jurisdiction of the case from family court to adult court and he was given a 30-year sentence. The petition presents arguments that invoke the protection of the Eight Amendment and cites the seminal 2005 Supreme Court decision *Roper v. Simmons* declaring the juvenile death penalty unconstitutional. The Supreme Court will decide whether to grant the writ of certiorari on the Pittman case this upcoming March. More details available here: [http://www.utexas.edu/news/2007/12/18/law\\_supreme/](http://www.utexas.edu/news/2007/12/18/law_supreme/).

**Ohio:** On January 9, 2008, Ohio State University Moritz College of Law Professor Katherine Hunt Federle argued in front of the Ohio Supreme Court. The case, *State of Ohio v. D.H.*, questions whether juveniles who receive adult criminal sentences in addition to their juvenile dispositions are entitled to the same 6th Amendment protections as adults. Specifically, the court is expected to determine whether the statute, which authorizes a judge to impose a sentence beyond the normal statutory maximum based on a finding of fact made by the judge and not the jury, is unconstitutional. The defendant, D.H., was a 15-year-old boy found guilty of firing a gun during a neighborhood fight, wounding one bystander and killing another. As the state statute prescribes, when adjudicating youth who commit violent crimes, family court judges have the discretion to impose additional adult prison sentences upon the youth based on fact finding and without jury input. More details available here: [http://moritzlaw.osu.edu/jfc/amicus\\_project/index.php](http://moritzlaw.osu.edu/jfc/amicus_project/index.php).

**Massachusetts:** The Juvenile Law Center filed an amicus brief in support of Patrick Powell, a 16 year old charged with murder and who faces a mandatory, non-reviewable sentence of life

without parole. Powell and two other boys allegedly stabbed a man to death on January 6, 2006. Under Massachusetts state law, the juvenile court does not have jurisdiction over indictments charging murder when the youth is 14 years of age or older. If convicted, Powell will be subjected to life imprisonment without the possibility of parole. The Juvenile Law Center has filed a friend-of-the-court brief also using *Roper v. Simmons* and arguing that a juvenile sentence of life imprisonment without the possibility of parole violates the Massachusetts Constitution's prohibition against cruel punishment. More details available here: <http://www.jlc.org/news.php/44>.

**Nevada:** Most recently, the National Juvenile Defender Center (NJDC), the National Juvenile Justice Prosecution Center, the National Counsel of Juvenile and Family Court Judges, and the American Civil Liberties Union (ACLU) were requested by the Nevada Supreme Court to participate as amici in *In the Matter of William M.* and *In the Matter of Marques B.*, consolidated appeals of juvenile court orders certifying the youth for prosecution in criminal court. While the National Council of Juvenile and Family Court Judges and the National Juvenile Justice Prosecution Center declined to participate, NJDC and the ACLU did file briefs relating to two cases that took place in October, 2006. Both cases involve youth charged with offenses involving firearms and both cases were transferred from family court to adult court. William M. is currently detained in an adult facility and faces up to 36 years on the pending charges. Marques B. was detained for several weeks in an adult facility, but is now on house arrest and faces a minimum of six years and a maximum of 42 years on his pending charges.

Nevada law requires the juvenile court to send the child to adult court if the child is at least 14 years old and charged with an offense involving a firearm. However, the court does not have to send the child for adult prosecution if the juvenile proves by clear and convincing evidence that his actions "were substantially the result of the substance abuse or emotional or behavioral problems of the child[,] and the substance abuse or emotional or behavioral problems may be appropriately treated through the jurisdiction of the juvenile court." Since the juveniles have to show that one of these conditions "substantially contributed to" or "substantially influenced" the child's actions in the alleged offense, the juvenile must admit he committed the crime. So, a child facing presumptive certification faces the choice of either waiving his Fifth Amendment privilege and incriminating himself, or forfeiting his only chance at remaining in juvenile court by remaining silent and failing to provide the nexus the statute requires. In his orders transferring each of these young men, the judge specifically found that, because they maintained their innocence, they could not meet their burden.

On January 31st, the NJDC, with the law firm Baker & McKenzie as their counsel and a number of national organizations including CFYJ signing on in support, filed a brief in Nevada's Supreme Court. The brief addresses several constitutional and public policy issues including the Sixth and Fourteenth Amendments, the fact that prosecuting youth as adults ignores well-established developmental differences between youth and adult offenders, and discusses national trends and

standards for certification. The ACLU's brief addresses other critical constitutional issues including the Fourteenth Amendment right to Due Process, and the Fifth Amendment right to silence. If you would like to see copies of the NJDC and ACLU briefs, please contact Elizabeth Kehoe at [ekehoe@njdc.info](mailto:ekehoe@njdc.info).

## Congressional Research Service Releases Report about the History and Future of Juvenile Justice

The Congressional Research Service (CRS) recently released a report for Congress discussing the history and future of juvenile justice in the country. "Juvenile Justice: Legislative History and Current Legislative Issues" provides an in-depth background on the history of juvenile justice in the United States including the Juvenile Justice and Delinquency Prevention Act (JJDPA) and Juvenile Accountability Block Grants. The report notes the significant shift in state juvenile justice systems that occurred in the 1980s and 1990s in which the approach to juvenile crime became more punitive rather than rehabilitative and allowed youth to be tried as adults in more instances.

The CRS report illustrates that the reauthorization of the JJDPA may serve to determine the purpose and future of juvenile justice. There are a variety of decisions at stake in this reauthorization including a determination of what the best federal response to juvenile violence and crime should be; whether the system should focus on punishment rather than rehabilitation; and whether grant programs currently funding state juvenile justice systems are the best way to approach juvenile justice.

A number of current bills introduced by the 110th Congress would affect or modify state juvenile justice systems, but none of the introduced legislation would reauthorize the entire JJDPA. The report also provides a discussion of each of these bills and how they would affect state juvenile justice systems.

"Juvenile Justice: Legislative History and Current Legislative Issues" is available online at: [http://assets.opencrs.com/rpts/RL33947\\_20070402.pdf](http://assets.opencrs.com/rpts/RL33947_20070402.pdf).

## Human Rights Watch Calls for the Abolishment of Juvenile Life Without Parole Sentences in California

In January, Human Rights Watch released a report on juvenile life without parole in California. "When I Die, They'll Send Me Home: Youth Sentenced to Life without Parole in California" finds that 227 youth have been sentenced to life without parole in California's prisons. Through surveying 130 youth serving the sentence, conducting individual interviews, and analyzing California Department of Corrections and Rehabilitation records, Human Rights Watch found that:

- the majority of those 17 years old and younger serving a life without parole sentence were convicted of murder, however, in 45 percent of cases the youth did not actually commit the murder but was held legally responsible due to some level of involvement;
- 85 percent of youth sentenced to life without parole are people of color;
- in nearly 70 percent of California life without parole cases, where the juvenile committed their crime with co-defendants, at least one co-defendant was an adult;
- nationwide, 59 percent of youth sentenced to life without parole are first-time offenders with no previous criminal history;
- each juvenile serving a life without parole sentence will cost California approximately half a billion dollars by the end of their lives.

Human Rights Watch calls on the California state legislature, governor, state judges, and district attorneys to support the abolition of sentencing juveniles to life without parole for youth who were under age 18 when they committed their crime. State and county officials are asked to ensure adequate legal representation for juvenile defendants facing life without parole sentences, and defense attorneys are asked to fight for the rights of juvenile clients in adult court.

Thirty-eight other states allow juvenile life without parole sentences. However, across the country, the movement to change these laws is growing. Colorado outlawed life without parole for children in 2006.

The Human Rights Watch report is available online at: <http://hrw.org/reports/2008/us0108/>.

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