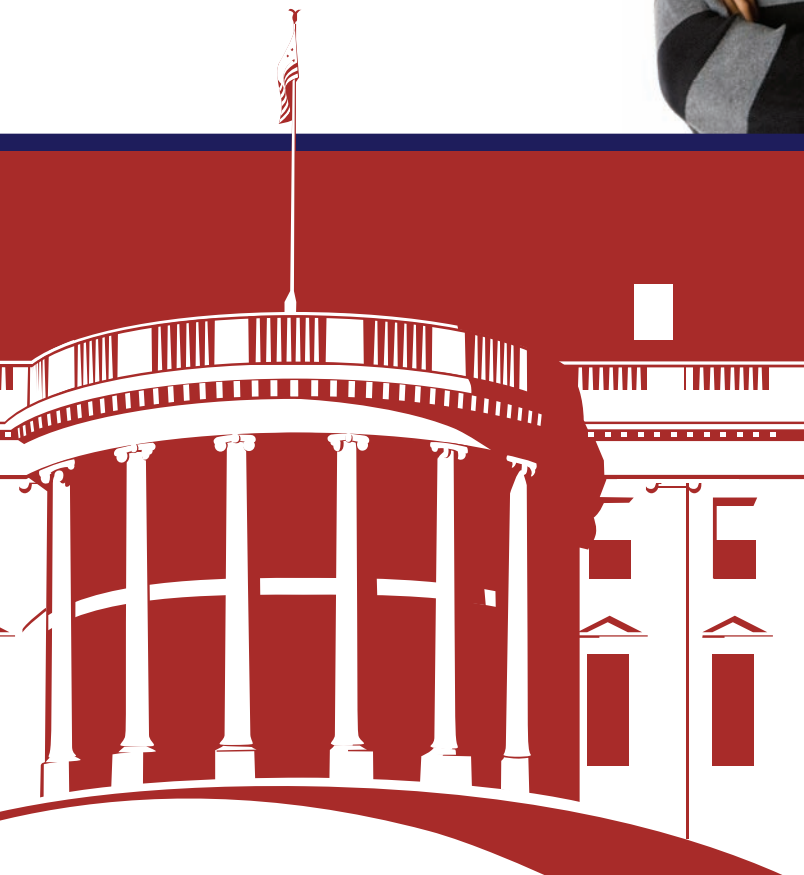




# Recommendations for Juvenile Justice Reform



Opportunities  
for the Obama  
Administration

**T**he juvenile justice system in the United States is in urgent need of reform and federal leadership is necessary. Despite a steady drop in juvenile detention over the past decade, there are still far too many young people securely detained for first-time, nonviolent offenses that would not be illegal if committed by an adult (i.e., status offenses such as truancy). Nationwide each year, police make 2.1 million juvenile arrests;<sup>1</sup> 1.7 million cases are referred to juvenile courts;<sup>2</sup> and over 200,000 youth are prosecuted in the adult criminal justice system.<sup>3</sup> On any given night, approximately 81,000 youth are confined in juvenile facilities,<sup>4</sup> and 10,000 children are held in adult jails and prisons.<sup>5</sup> Incarcerated youth are particularly vulnerable to victimization and abuse by peers, older inmates, and staff.<sup>6</sup> Also, the United States is alone in imposing the sentence of life without parole for crimes committed when under the age of 18. Recent estimates find that 2,589 people are currently serving a juvenile life without parole sentence for a crime committed as a juvenile.<sup>7</sup>

Current juvenile justice practices often ignore children's amenability to rehabilitation, cause long-term collateral consequences, waste taxpayer dollars, and violate our deepest held principles about equal justice under the law and the role of the juvenile justice system. Our system demonstrates racial and ethnic disparities, lacks sound mental health and drug treatment services, and applies excessively harsh sanctions for minor and nonviolent adolescent misbehavior.

With strong federal leadership, reforms are possible. Research over the past 20 years has increased our understanding of what works, and how to best approach juvenile delinquency and system reform. Promising reforms are being implemented in many jurisdictions across the country, and there is an increasingly clear path for moving toward evidence-based approaches to reducing adolescent crime. The Obama Administration has the opportunity to restore an effective system of juvenile justice for our youth and should begin by focusing on the following five priority areas:

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

## I. Restore Federal Leadership in Juvenile Justice Policy

Over the past decade, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) suffered a drastic depletion of funding and support, and the agency's commitment to the most important issues confronting youth has steadily waned.<sup>8</sup> Funding levels for OJJDP have declined 90 percent since 2002. In addition, the Juvenile Justice and Delinquency Prevention Act (JJDP Act) is four years' overdue for reauthorization. The Administration must provide the clear direction and resources needed to help States create and sustain juvenile systems that cost less, enhance public safety and treat court-involved youth in fair, humane and effective ways.

### *Recommendations for the Obama Administration*

#### **Appoint an Administrator for OJJDP**

The Office of Juvenile Justice and Delinquency Prevention is the sole agency within the U.S. Department of Justice without a permanent Administrator. This has halted progress in advancing reforms, reauthorizing the JJDP Act, and sends a message that federal leadership in juvenile justice is not a priority. The Administration must act quickly to appoint an experienced and competent OJJDP Administrator.

#### **Restore and Increase Funding for Evidence-Based Reforms**

As a national leader with access to and command of national resources, OJJDP is well positioned to focus on identifying, developing and promoting what works to reduce delinquency and to advance youth, family and community success. OJJDP should continue to evaluate the evidence base for other promising programs, support increased research to find new evidence-based programs that work, and discontinue federal funding for programs that are ineffective, such as boot camps and Scared Straight programs. We applaud the decision to update the Model Programs Guide in the OJJDP 2011 Program Plan. However, the Administration must request and advocate for sufficient appropriations for OJJDP and the juvenile justice programs it administers. The President's budget should restore juvenile justice funding to its FY 2002 levels, adjusted for inflation, and increase these investments over the next five years.

#### **Strengthen Federal/State Partnerships**

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

### **Ensure Program Policies and Practices Involve Families**

Consistent with the guiding principle to “empower communities and engage youth and families” because “their strengths, experiences, and aspirations provide an important perspective in developing solutions” in the 2011 Program Plan, OJJDP should have an intentional focus on increasing family and youth involvement in all program planning and grant making activities. At a minimum, OJJDP should conduct focus groups to hear the concerns of families, provide online resources for families to better understand and navigate the justice system, and fund parent resource, support, and training centers to provide direct services to families of youth involved in the justice system.

### **Improve Data Collection**

#### ***Race, Ethnicity and Gender***

We applaud OJJDP for recognizing the importance of research, evaluation, and data collection in the 2011 Program Plan. However, more improvements for data collection at the State and local level are still needed. First, few States and localities are able to achieve meaningful changes in their juvenile justice systems without adequate data, particularly data disaggregated by race, ethnicity, and gender so communities are able to develop culturally and linguistically appropriate services for youth and their families. OJJDP should prioritize this level of data collection through policy guidance, resource allocation, and training.

#### ***Transfer to the Adult System***

Even the most cursory data on youth prosecuted in the adult criminal justice system via judicial, statutory, or prosecutorial waiver mechanisms and age of jurisdiction laws are not currently collected or reported, despite the widespread use of transfer to the adult system. The Administration has made progress on collecting this information at the federal level by recently funding the *Survey of Juveniles Charged in Criminal Courts* through the Bureau of Justice Statistics. The Administration should require states to track the frequency with which juveniles are transferred to the adult system and evaluate the impact of prosecuting youth as adults. In addition, the 2011 OJJDP Program Plan should be modified to ensure that youth processed in the adult system are included in the scope of funded research.

#### ***School Discipline***

There must be better data collection on the consequences of school discipline (i.e., suspensions, expulsions, corporal punishment, referrals to disciplinary alternative schools and court referrals). The Administration should require that measures of school discipline be used in assessments of school success as part of the Elementary

and Secondary Education Act. Signs of poor school climate, high disciplinary rates and subgroup disparities should trigger required assistance and support from local, State and federal educational agencies.

#### **Strengthen the Powers of the Federal Coordinating Council on JJDP**

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

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

Decades of empirical studies of juvenile crime by scholars in the fields of criminology, child psychology, mental health, substance abuse, economics, and public health reveal that public dollars spent on effective prevention and early intervention programs targeting at-risk youth are very effective at reducing delinquency. Research also shows that broadening prosecutorial powers and stiffening criminal penalties for young people do not work to lower crime or prevent reoffending.<sup>9</sup> Similarly, public opinion polls reveal that taxpayers overwhelmingly favor paying for prevention, education, and rehabilitation programs over prosecution and incarceration of juveniles who are adjudicated delinquent.<sup>10</sup>

While we are encouraged that the Obama Administration and the Attorney General have identified children’s exposure to violence, gang violence, and community violence as focus areas for the Department of Justice, below are additional recommendations to prevent crime and keep youth out of the system.

### *Recommendations for the Obama Administration*

#### **Continue to Support Community-Based Alternatives to Detention**

OJJDP has a vital role to play in helping States and localities prevent and reduce the use of out of home placements. OJJDP has begun to partner with the Annie E. Casey Foundation to replicate the Juvenile Detention Alternatives Initiative (JDAI), which is aimed at reducing pre-adjudication detention through a variety of tools

and principles, such as objective risk assessment tools. We support the continuation of efforts to reduce the use of incarceration and other residential facilities.

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

Academic success plays a critical role in preventing delinquent behavior and promoting positive outcomes for youth and safer communities. Youth who drop out or are pushed out of school find themselves with fewer opportunities for gainful employment and are more likely than youth who remain in school to commit delinquent acts. In 2006-2007, nearly 10% of young male high school dropouts were institutionalized on a given day compared to only 3% of high school graduates and less than .1% of college graduates.<sup>11</sup> In addition, out-of-school suspension and expulsion are being overused and disproportionately affect youth of color, students with disabilities, and LGBT youth. According to the Dignity in Schools campaign, each year more than three million students are suspended and over 100,000 are expelled nationally.<sup>12</sup> African-American students (nearly 3 times as likely to be suspended and 3.5 times as likely to be expelled as white students) and Latino students (1.5 times as likely to be suspended and twice as likely to be expelled as white students) bear a disproportionate burden of these punishments when compared to their white peers.<sup>13</sup> Students with disabilities also experience disciplinary removal from the classroom at rates that are disproportionate to their overall representation in the K-12 population.<sup>14</sup> A recent study indicates that non-heterosexual youth are expelled at disproportionate rates.<sup>15</sup>

The Administration should help schools improve school safety and keep the maximum number of students in their regular educational placements by providing training and technical assistance to schools on how to use alternatives to suspension and expulsion, family and tutoring supports, social and emotional learning, positive youth development programming, bullying prevention, threat assessment, positive behavior supports, and restorative justice practices.

### **Examine the Role and Impact of Mental Health and Substance Abuse Disorders**

We are encouraged that OJJDP proposed to fund an initiative in partnership with the Department of Health and Human Services to identify best practices for juvenile drug courts and adolescent treatment. As an extension of that initiative, OJJDP, in coordination with the Substance Abuse and Mental Health Services Administration, should conduct a major study regarding the prevalence of mental health and substance abuse disorders among juvenile justice populations served by all U.S. States and territories. According to recent data released by OJJDP, 44 percent of youth in custody say they were under the influence of alcohol or drugs during the commission of their offense.<sup>16</sup> Additionally, OJJDP should increase training and technical assistance related to mental health and substance abuse, including best practices for law enforcement and probation officers, detention/corrections and community corrections personnel, court services personnel and others.

### **Promote Lesbian, Gay, Bisexual, and Transgender (LGBT) Cultural Competence**

Recent research shows that up to 13 percent of youth in juvenile detention identify as LGBT.<sup>17</sup> In their homes, schools, and communities, LGBT youth face challenges related to their sexual orientation and/or gender identity that can increase their risk of coming into contact with the juvenile justice system. A recent study in *Pediatrics* found that adolescents who self-identified as LGB were about 50 percent more likely to be stopped by the police than other teenagers. In particular, girls who identified themselves as lesbian or bisexual reported about twice as many arrests and convictions as other girls who had engaged in similar behavior.<sup>18</sup> LGBT youth also experience high rates of school violence, interfering with their ability to learn and impacting their involvement with the juvenile courts.

The Administration should promote LGBT cultural competence in Safe Schools/Healthy Students (SS/HS), a program widely recognized as a model for achieving effective collaboration across public education, local mental health, and juvenile justice. SS/HS evaluations should reflect efforts to meet the needs of LGBT students, including decreasing the rate of arrest and referral to the juvenile court of LGBT youth.

## III. Keep Court-Involved Youth Safe

Far too often, incarcerated youth endure abusive conditions. In a recent study by the Bureau of Justice Statistics (BJS), a shocking one in eight youth in juvenile facilities reported experiencing sexual abuse at their current facility in the past year alone, with more than one in five non-heterosexual youth reporting such abuse.<sup>19</sup> An earlier BJS survey, which focused solely on sexual violence reports filed with prison officials, confirmed that young inmates are also more likely to be victimized when in adult facilities.<sup>20</sup> Reports of widespread abuses in juvenile institutions in California,<sup>21</sup> Indiana,<sup>22</sup> Mississippi,<sup>23</sup> Ohio,<sup>24</sup> Texas,<sup>25</sup> and other states demonstrate the importance of using federal laws to ensure the safety of children in custody. Abuses have included frequent use of pepper spray, sexual assaults by staff, hog-tying, and subjecting youth to excessive restraint and isolation. Youth who commit crimes must be held accountable, but no court disposition, regardless of the offense, should ever include abuse, mental health deterioration, or death in a juvenile facility, adult jail or prison.

OJJDP has begun to recognize the national role it should play in ensuring that incarcerated youth are held in safe conditions by initiating a new Center on Youth in Custody. We also support the new Protection and Advocacy Juvenile Justice Monitoring Project proposed in the 2011 Program Plan and other efforts to encourage states to establish community advisory boards or other independent monitoring structures to monitor and improve conditions of confinement.

## *Recommendations for the Obama Administration*

### **Build a Comprehensive Center on Youth in Custody**

We support the development of a comprehensive Center on Youth in Custody that provides training and technical assistance to all facilities that currently incarcerate youth including juvenile detention and correctional facilities, as well as adult jails and prisons. We hope this new entity will make best practices and standards available nationwide and help states to provide necessary training for facility staff and to adopt best practices in programming, behavior management, and security while eliminating dangerous practices and unnecessary isolation. In addition, we recommend that this new entity have an advisory board that includes youth and family voices.

### **Enact and Enforce National Standards Protecting Youth from Sexual Abuse**

In accordance with the Prison Rape Elimination Act of 2003 (PREA), the Attorney General was to ratify binding national standards addressing sexual abuse in detention within one year from receiving recommended standards from the bipartisan National Prison Rape Elimination Commission (NPREC). The commission released its recommended standards in June 2009, proposed rules were submitted for comment on February 3, 2011, but the Attorney General has yet to finalize regulations to implement PREA. The standards enacted by the Attorney General should ensure that:

- Responsible, professional adults trained in adolescent behavior and development, provide continuous, direct supervision of youth and should not rely on video surveillance.
- The Adult and Lockup Standards prohibit holding youth in adult facilities to protect youth from sexual abuse and dangers associated with isolation.
- The standards underscore the need to protect youth from harmful cross-gender interactions and recognize that a large percentage of sexual abuse of young people in facilities is perpetrated by staff members of the opposite sex. The standards also should prohibit one-on-one cross-gender supervision and provide additional guidance on how these prohibitions apply to transgender residents.
- The standards provide more specific guidance on how to use individual safety plans to keep vulnerable youth safe and avoid resorting to blanket policies for certain groups, such as lesbian, gay, bisexual, or transgender (LGBT) youth.
- The Juvenile Standards do not treat voluntary consensual sexual activity as sexual abuse, even if facilities prohibit voluntary consensual sexual activity among residents by rule. Conflating abuse and voluntary consensual sexual activity often leads to overly harsh responses that misuse limited resources and

have a disproportionately negative impact on certain groups, such as LGBT youth.

- The Juvenile Standards include a clear statement of the dangers associated with isolation in order to reinforce a facility's responsibility to keep children safe without resorting to that practice. Additionally, youth who engage in sexual abuse should not be subjected to prolonged disciplinary isolation as punishment for that behavior.
- Employees, volunteers, and contractors working in all facilities that house youth receive training on adolescent development, the prevalence of trauma and abuse, mandatory reporting requirements, and the agency's zero tolerance policy on sexual abuse of incarcerated persons.
- The standards preserve the caretaking relationship medical and mental health professionals have with youth by eliminating inquiries into prior offending behavior and obtaining informed consent before sharing sensitive information.
- Medical and mental health programs engage in quality assurance activities, including monitoring with the standards.
- The standards ensure access to prophylactic HIV treatment and emergency contraception and pregnancy-related services.
- Limited English Proficient (LEP) children not only understand sexual misconduct policies and reporting procedures, but are also able to communicate with staff during other important phases, including investigation, medical and mental health care, and other supportive services.
- The standards require agencies to only hire, retain, and promote staff members who are qualified by experience, education, and background to protect children by considering information from civil protection orders and annual criminal background checks.

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

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

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

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

The Administration and OJJDP have not placed enough emphasis on addressing the needs of youth in the adult criminal justice system. Across the United States, an estimated 200,000 youth are tried, sentenced, or incarcerated in the adult criminal justice system every year.<sup>26</sup> Trying youth as adults is bad for public safety and for youth. Youth incarcerated in the adult system are more likely to reoffend than similarly situated youth who are retained in the juvenile system, and these offenses tend to be more violent. According to the federal Centers for Disease Control and Prevention, youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime.<sup>27</sup>

Youth in the adult system are also at great risk of sexual abuse and suicide when housed in adult jails and prisons. The National Prison Rape Elimination Commission found that “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.”<sup>28</sup> Youth are also often placed in isolation, locked down 23 hours a day in small cells with no natural light, and these conditions cause anxiety, paranoia, and exacerbate existing mental disorders and heighten the risk of suicide. In fact, youth housed in adult jails are 36 times more likely to commit suicide than are youth housed in juvenile detention facilities.<sup>29</sup>

The majorities of youth tried in the adult system are charged with non-violent offenses,<sup>30</sup> and yet still suffer the lifelong consequences from an adult criminal conviction. Youth are often denied employment and educational opportunities<sup>31</sup> which makes their transitions to adulthood difficult. If sentenced to an adult prison, approximately 80 percent of youth convicted as adults will be released from prison before their 21st birthdays, and 95 percent will be released before their 25th birthdays.<sup>32</sup> Many of these youth will not have been provided with the education and services they need to make a successful transition to productive adulthood. The Administration should provide strong leadership for states to reduce and eventually eliminate their harmful and dangerous reliance on trying youth as adults.

### *Recommendations for the Obama Administration*

#### **Fully Protect Youth in Adult Facilities from Sexual Abuse**

In accordance with the Prison Rape Elimination Act of 2003 (PREA), the Attorney General should enact standards to protect youth from sexual abuse. In light of the overwhelming evidence that youth cannot be kept safe in adult facilities and the research demonstrating that keeping youth in adult facilities is harmful to the youth and to public safety, the PREA standards should be modified to require removal of youth from adult jails and prisons altogether. This change would be consistent with

existing laws and policies used by the Federal Bureau of Prisons that prohibit the placement of youth in federal custody in adult jails and prisons.

### **Help States Remove Youth from Adult Facilities**

Roughly 1 in 4 incarcerated youth are held in adult jails or prisons instead of juvenile facilities. Several jurisdictions including Virginia, Colorado, and Multnomah County, Oregon have recently changed their state laws to allow youth tried in the adult system to be housed in juvenile facilities. OJJDP should fund a demonstration program to help these and other jurisdictions remove youth from adult jails and prisons.

## V. Support Youth Reentry

Approximately 100,000 young people under age 18 leave secure juvenile facilities and return to their communities each year.<sup>33</sup> Youth are often discharged from care back to families struggling with domestic violence, drug and alcohol abuse, and unresolved mental health disabilities. Many youth are placed back into neighborhoods with few youth supportive programs, high crime rates, poverty, and poorly performing schools. Public safety is compromised when youth leaving out-of-home placement are not afforded necessary supportive services upon reentering their communities, increasing the likelihood of recidivism.

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

We are encouraged that the 2011 OJJDP Program Plan does include additional funding for demonstration projects under the Second Chance Act Youth Offender Reentry Initiative and an evaluation of the Second Chance Act Juvenile Mentoring Initiative. Below are additional recommendations to help youth return safely to their communities.

## *Recommendations for the Obama Administration*

### **Increase Federal Coordination on Youth Reentry**

The Attorney General should oversee and coordinate youth reentry issues with other reentry programming that is taking place in other federal agencies through the Department of Justice's new Interagency Reentry Working Group, which convened in January 2011. The Interagency Reentry Working Group also should coordinate its work on youth reentry with the Department of Justice's Federal Coordinating Council on Juvenile Justice and Delinquency Prevention Subcommittees on Youth Reentry and Education.

### **Promote a Continuum of Education for Delinquent Youth**

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

### **Remove Barriers to Health Care for Incarcerated Youth**

The Administration should actively educate states about current Medicaid policy, support efforts to suspend Medicaid coverage rather than terminate eligibility for incarcerated youth, and help states use Medicaid and other health care coverage to support successful return to the community.

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- <sup>25</sup> In Texas, youth filed hundreds of complaints over physical and sexual abuse and repeated use of pepper spray by staff in juvenile facilities. Swanson, Doug, "Officials Indicted in Abuse at TYC", The Dallas Morning News, available at <http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/041107dntextyc.be59c6b.htm> (April 10, 2007); Ramshaw, Emily, "Complaints Pour In to TYC Abuse Inquiry," Dallas Morning News, available at <http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/DN->

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<http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/100307dntextyc.35bdf47.html> (March 13, 2007); Becka, Holly, et al., "Young Inmates Endured 'Deplorable Conditions,'" Dallas Morning News, available at <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/100307dntextyc.35bdf47.html>, (October 3, 2007).

<sup>26</sup> Woolard, J. (2005) Juveniles within adult correctional settings: legal pathways and developmental considerations. *International Journal of Forensic Mental Health*. 4(1), 18; Coalition for Juvenile Justice. (2005) *Childhood on trial: The failure of trying and sentencing youth in adult criminal court*. Washington, DC: Author.

<sup>27</sup> Centers for Disease Control and Prevention. (2007) 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. MMWR 2007; 56 (No. RR-9). Available online at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.

<sup>28</sup> National Prison Rape Elimination Commission, Report 18 (June 2009), available at <http://www.ncjrs.gov/pdffiles1/226680.pdf>.

<sup>29</sup> *Jailing Juveniles* (2007, November). Washington, DC: Campaign for Youth Justice.

<sup>30</sup> *The Consequences Aren't Minor: the Impact of Trying Youth as Adults and Strategies for Reform* (2007, March). Washington, DC: Campaign for Youth Justice.

<sup>31</sup> *The Consequences Aren't Minor: the Impact of Trying Youth as Adults and Strategies for Reform* (2007, March). Washington, DC: Campaign for Youth Justice.

<sup>32</sup> Richard E. Redding, *Juvenile transfer laws: An effective deterrent to delinquency?* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (Aug. 2008).

<sup>33</sup> Snyder, H. (2004). An Empirical Analysis of the Youth Reentry Population. *Youth Violence and Juvenile Justice* 2(1): 39-55.

